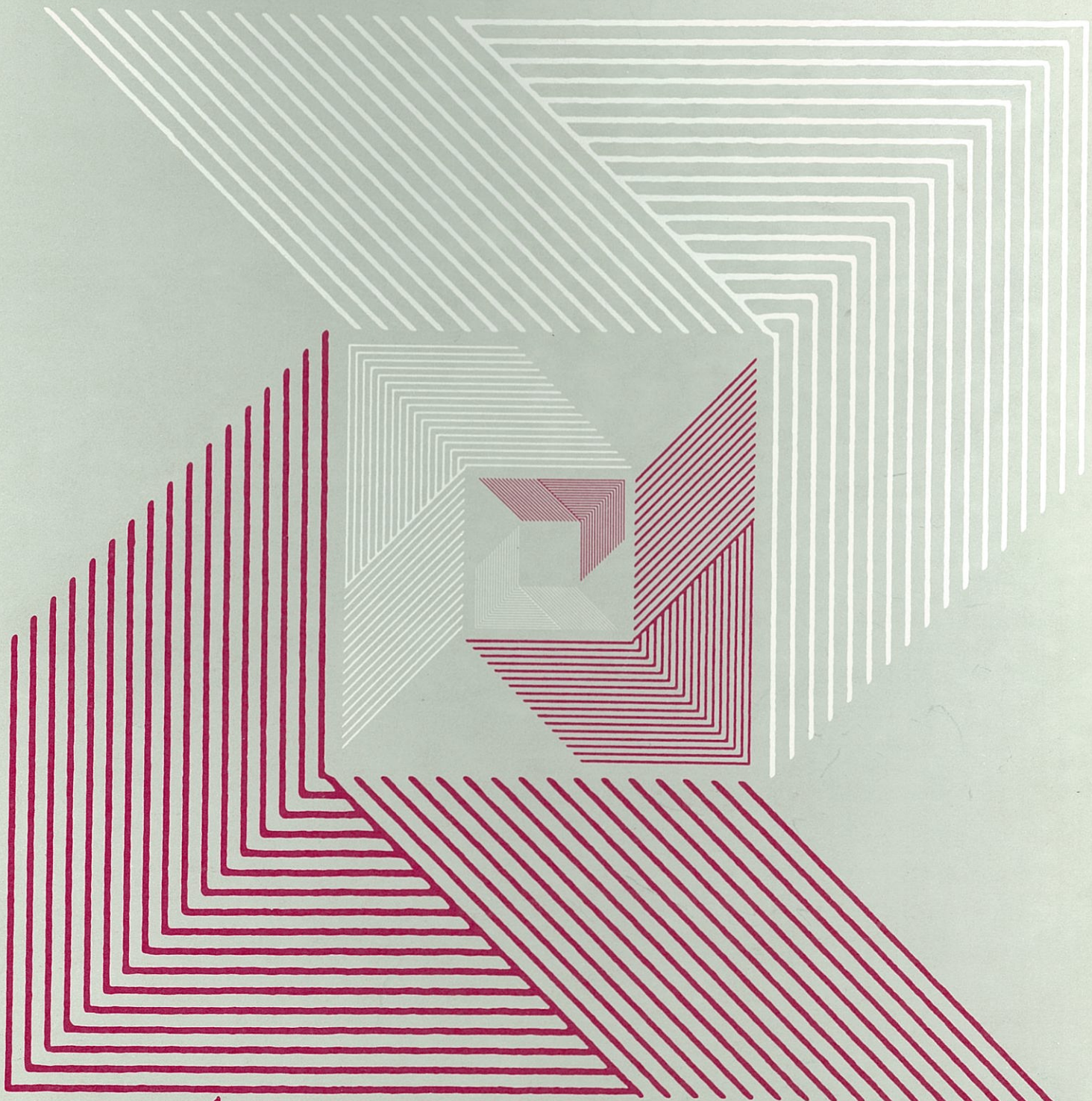
AUDIT REPORT NO. 75-4
AUGUST 1975

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MANAGEMENT AUDIT OF THE PUBLIC UTILITIES PROGRAM

VOLUME II THE REGULATION OF PUBLIC UTILITIES

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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Submitted by the
Legislative Auditor of the State of Hawaii

Audit Report No. 75—4
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FOREWORD

The regulation of public utilities is large and complex and has widespread economic effects. With evidence of growing public concern and interest over the actions and activities of the public utilities commission, the senate of the Hawaii legislature in 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 adequacy and current applicability of the laws pertaining to the commission.

This is the second in a series of volumes reporting on our audit in response to Senate Resolution No. 28. Volume I dealt with basic organizational issues in the regulation of utilities and certain procedural and financial issues. Volume II addresses the actual regulation of utilities in Hawaii, examining such matters as ratemaking, quality of service, safety, and related government programs.

The volume is divided into five parts. Part I contains an introduction and background information. Part II deals with those aspects of utility regulation that are directly economic in nature, having to do with the interests of the utilities and the consumers of their services. Part III discusses noneconomic issues, including safety and environmental protection. Part IV presents our findings and recommendations regarding the regulation of cable television. We have followed our customary practice of inviting comment from agencies affected by this part of our report, and Part V contains their responses.

We wish to acknowledge the cooperation and assistance extended our staff by the agencies contacted during the course of this audit.

Clinton T. Tanimura
Legislative Auditor
State of Hawaii

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PART I

INTRODUCTION AND BACKGROUND

Chapter 1

INTRODUCTION

This volume is the second part of an audit of Hawaii's public utilities program, conducted at the request of the Senate of the Legislature of the State of Hawaii, as expressed in Senate Resolution No. 28, Senate Draft 1, Regular Session of 1972. This resolution requested that a review be made of the public utilities program, with particular reference to:

1. the organizational structure of the Hawaii public utilities commission;

2. the policies and procedures under which the public utilities commission operates; and

3. existing statutes pertaining to the public utilities commission, with a view to the improvement or repeal of any sections which may be obsolete or inapplicable.

Audit Approach

Although the public utilities agency has a relatively small staff and budget, its responsibilities are both large and complex. Public utilities regulation touches many separate organizational entities, including the public utilities commission (PUC) itself, the department of regulatory agencies (DRA), the department of the attorney general, the various utility companies, and still other federal, state and local agencies. The jurisdiction of the PUC is extensive, encompassing matters that are disparate and often specialized and technical. The activities subject to regulation permeate the entire community, having widespread and important economic and social aspects; they have a real effect on virtually every area of human endeavor within the State of Hawaii.

To manage a subject of such complexity, we reduced it to several focal areas. The audit reflects this segregation of subject matter, each of its volumes containing one major topic. Volume I dealt with the organization of the public utilities program and some of the major regulatory issues now facing the State of Hawaii.

This volume, number II, concentrates on the process of utilities regulation in its various forms.

Organization of this Volume of the Report

We noted in volume I that the varied activities undertaken in utilities regulation may be classified basically into two categories: those activities which serve the economic objectives of the State; and those which are directed at achieving non-economic ends. We argued there that these two classes of activities ought to be separated and that the PUC should be vested with responsibility over those activities designed to achieve economic results.

The treatment of this dichotomy between economic and non-economic activities is carried

forward and is reflected in the organization of this volume.

Part I includes an introduction and some background information on the utilities subject to regulation in Hawaii.

Part II contains almost wholely a discussion of the regulation of those activities directly concerned with achieving the economic objectives of utility regulation. It contains our findings and recommendations on those aspects of utility regulation which constitute the primary function of utility regulators; i.e., striking a balance between the interests of the utilities regulated and the consumers of utility services. Thus separate chapters in this part deal with (1) ratemaking and (2) quality of service, consumer complaints, and consumer credit. In addition another chapter is devoted to the application of Hawaii's antitrust law to the utilities field and the representation of Hawaii's interest before federal regulatory agencies on matters relating to the regulation of public utilities. Hawaii's antitrust law and federal regulatory policies set the parameters within which the State's economic regulation of utilities may proceed.

Part III is concerned with those regulatory activities which are not economic in nature or which directly bear upon the activities of other state agencies (whether those activities are economic or non-economic in character) or which constitute a specialized area in utility regulation worthy of special attention. Specifically, it includes our findings and recommendations on (1) the program of ensuring safe operations of the utilities, (2) the capital improvements program of the utility industries, and (3) environmental protection activities of the utility regulators.

Part IV presents our findings and recommendations regarding the regulation of cable television (CATV) in Hawaii. We accord separate treatment to CATV regulation because it is legally separated from other public utilities regulation and is administered by the cable television division (CTD) within the department of regulatory agencies, not the PUC.

Part V contains the responses of the agencies affected by this part of the audit of the public utilities program and our comments on these responses.

Each of the above agencies was asked to respond to the findings and recommendations as contained in our preliminary draft of the second volume of the audit of the public utilities program.

Conduct of the Audit

The fieldwork on this audit and the initial drafting of the various sections of the report on the audit extended over 18 months, from early 1973 until mid-1974. We concentrated on activities and events which occurred during 1972 and 1973. In many cases, however, events and actions had to be traced to the mid-1960's to gain sufficient understanding and adequate perspective. Similarly, certain events which have occurred since mid-1974 have required consideration and are noted in several places in this volume. These time factors make it difficult, if not impossible, to fix with precision the exact periods to which various chapters of this volume of the report refer. We do not feel that this detracts from the audit, because conditions affecting the public utilities program have tended to persist over relatively long periods of time.

The fieldwork for this audit involved interviews and the examination of records, files, and documents maintained by the public utilities division (PUD) of the department of regulatory agencies. The interviews were with persons both in and out of government who were involved in some way and at some time with the public utilities program. Records of other agencies besides the PUD were also examined.

Readers of this report should recognize that auditing by its very nature is a critical process. Hence, this volume of the report, like the others, contains many criticisms. However, the purpose of these criticisms is not to focus upon what is wrong with regard to the public utilities program, but to point directions for improvements which can and should be made in the program. We believe that this volume of the report provides a framework within which the program managers can make greatly needed improvements in the regulation of utility services in Hawaii.

Terminology

Throughout this report, we use the terms "agency" and "regulators." They refer 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," "CTD," and "DRA," refer to the public utilities commission, the public utilities division, the cable television division, and the department of regulatory agencies, respectively.

Chapter 2

BACKGROUND: THE UTILITIES REGULATED

There are two ways of categorizing the utility companies, as distinct from transportation companies, which are subject to regulation under Hawaii's public utilities program. One way is by functional or industry grouping. Under this approach, the regulated companies in Hawaii would fall into three categories: (1) those concerned with supplying gas and electric energy, (2) those providing communications services, and (3) those engaged in the water supply and sewage disposal businesses. Another way of looking at regulated utilities is in terms of the specific laws under which regulation is exercised. In Hawaii's case, two separate laws are involved: (1) HRS, chapter 269, which is the State's general public utilities law, and (2) HRS, chapter 440G, which provides for the regulation of cable television companies in the State.

Companies in the Energy Field

Operating as regulated suppliers of energy services in Hawaii are three electric utilities and one gas company.

1. **Electric companies.** 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. 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.

The electric utility companies have shown substantial growth during the decade from 1961 to 1971. Gross revenues for all of the companies more than doubled between 1961 and 1971 from $42 million to $99 million, while total assets increased almost 2½ times from $156 million to $382 million. In the same period, the total energy sold expanded from 1,766,031,185 kilowatt hours per year to 4,167,128,198 kilowatt hours. However, the number of customers increased by only about 40 percent during this same time, from 162,452 to 226,514. Thus, much of the growth of these companies is attributable to increased consumption of electric energy. This is seen in the fact that the average annual residential usage of electricity increased from 4567 kilowatt hours in 1961 to 7124 kilowatt hours in 1971, almost a 56 percent increase.

2. **Gas company.** GASCO, Inc., is Hawaii's only gas company. Formerly the

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

Honolulu Gas Company, Ltd., as the 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 the function of gas transmission while ENERCO has become the manufacturing utility.[2]

GASCO is relatively small in comparison to the electric utility industry but has been enjoying some growth over the past decade. Total revenues have increased from $5 million in 1961 to $8 million in 1971, while total assets have doubled from $17 million in 1961 to $34 million in 1971. The company's growth during this period came in the area of nonresidential customers, which more than offset slight decline in the number of residential customers and in the total energy sold to residential customers.

Communications Companies

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

1. **Telephone company.** 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]

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 is the State's largest utility, being just about equal in size to the entire electric utility industry in terms of total revenues. Moreover, it has enjoyed very strong growth in the period from 1961 to 1971. In this decade, total revenues have increased from $28 million to almost $100 million and

[2]Covered in the PUC's Decision and Order (D&O) No. 3394 (Docket Nos. 2345 and 2399).

[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. The U.S. Ninth Circuit Court of Appeals has recently remanded the case back to the district court for further consideration regarding appropriate remedies in the case. The higher court held that the divestitures ordered were not the appropriate remedy in a case initiated by a private party and that other remedies are available.

total assets have expanded from $99 million to $387 million. At the same time, telephones in service have just about doubled, approaching almost half a million by 1971. With almost 2½ times as many employees as all the electric companies combined, the telephone company is one of the largest employers in the State. All in all, the company is a very significant factor on the State's economy.

2. **Telegraph company.** Western Union–Hawaii, Inc., at its request, was placed under the jurisdiction of the PUC on April 14, 1972.[4] Western Union-Hawaii, Inc., 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.

3. **Radiocall company.** Radiocall, Inc., applied on August 27, 1970[5] to be declared a public utility and placed under the jurisdiction of the PUC. 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.

4. **Cable television companies.** The licensing and regulation of cable television (CATV) systems in the State came into being with the enactment of Act 112, SLH 1970. CATV is the sole exception to the jurisdiction of the PUC over the utilities described in this part. Jurisdiction over CATV has been lodged by Act 112, at least temporarily, in the director of regulatory agencies, rather than in the PUC.

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. In addition, two applications are currently pending to complete service to the entire island of Maui. The systems which 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 96,000 potential subscribers. The oldest of the licensed companies date 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.

5. **Telephone interconnect companies.** As a result of an FCC decision handed down in 1968,[7] 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 industry. The FCC and state regulatory commissions generally still have not decided how to deal with these interconnect companies. In Hawaii, the PUC has issued an order[8] 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, they are still very small in comparison to the Hawaiian Telephone Company.

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

[5]Docket No. 1881.

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

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

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

Water Supply and Sewage Disposal Companies

Private water supply companies have for many years been subject to regulation by the PUC, but it was only in 1974 that private sewage disposal companies were declared to be public utilities and placed under the jurisdiction of the PUC.[9]

1. **Water supply companies.** At the present time, there are only three small private water supply companies which are formally subject to control by the PUC. These companies are the Kohala Ditch Company and the Waikoloa Water Company on the island of Hawaii and the East Kauai Water Company on Kauai. Until recently, there was a fourth company—the Waianae Development Company's Water Division at Makaha on the island of Oahu—but with the merger of this company's water system into the water system of the city and county of Honolulu, the PUC terminated its jurisdiction over this company.[10] In addition to these companies, there are apparently several other private water companies subject to the PUC's jurisdiction which have never been formally regulated by the PUC. Generally these appear to be small, domestic water systems that were originally developed as part of sugar or pineapple plantation operations. No inventory has ever been made to determine how many such companies exist and where they are located. An example of such a private water operation is the domestic water system at Kahuku on the island of Oahu which was originally established by the now defunct Kahuku Sugar Plantation, but which continues in operation.

2. **Sewage disposal companies.** With private sewage disposal companies just being placed under the PUC's jurisdiction in 1974 and with such jurisdiction not yet being implemented, it is still too early to know which sewage disposal operations are subject to regulation and how many there are. One major private sewage disposal system which apparently falls within the scope of the 1974 law is that at the Hawaii Kai development on the island of Oahu. In addition, the state department of health has informed us that there are numerous other residential developments and condominiums which have their own private sewage disposal systems. Thus, this may be a significant new area of jurisdiction for the PUC.

Companies Subject to HRS, Chapter 269

Chapter 269 of the Hawaii Revised Statutes, the basic public utilities statute, defines public utilities and describes the jurisdiction of the public utilities commission. Public utilities, in essence, are entities which transport passengers or freight; transmit telephone or telegraph messages; generate and transmit electricity; furnish heat, cold, water, gas, or oil; or warehouse goods for public use. There are a number of specific exclusions from the general definition, such as taxicabs and common carriers operating only on public highways. But the definition is broad, and encompasses all the companies now generally recognized as public utilities, and some which are not. The attorney general concluded that the statute even covered cable television companies prior to the time the legislature enacted specific legislation covering cable TV. Sewage disposal companies were an exception to the broad coverage of the statute until the legislature included them in 1974.

For our purposes, however, there are a number of enterprises that are subject to regulation and which are not of concern in this discussion. The federal government has preempted most regulation of the two interisland airlines that operate within the State, and the PUC retains only limited control over some of their financing. The status of air taxi companies is not clear, and the PUC has not asserted jurisdiction over them. The city and county of Honolulu has taken over the only mass transit companies, and the county

[9] Act 59 of 1974.

[10] D&O No. 3380, January 21, 1974 (Docket No. 2384).

governments generally have been charged with the responsibility for mass transit services. Water carriers are still subject to regulation, but since the enactment of new legislation in 1974 have been covered by different sections of the law. Other regulation of vehicles is conducted under the Motor Carrier Law.

This volume, then, deals with those more familiar subjects of regulation, the energy, telecommunications, and water supply and sewage disposal companies. Transportation enterprises and their regulation are discussed in another volume.

Companies Subject to HRS, Chapter 440G

Originally, CATV companies were considered utilities subject to regulation by the PUC under chapter 269. This is confirmed by two separate opinions of the attorney general.[11] However, in 1970, a new Hawaii Cable Television Systems Law (Act 112) was enacted, placing the regulation of CATV companies directly under the director of regulatory agencies and completely separate from the PUC. This law now appears as chapter 440G of the Hawaii Revised Statutes. The law does not, however, change the basic nature of the industry or its general relationship with the state government in terms of being a regulated utility. It merely provides for a different administrative means of effectuating regulatory control over the industry.

There are significant differences, however, between the manner in which regulation is exercised over the CATV companies and the way in which other utility companies are regulated by the PUC. Due to the unique character of CATV regulation under chapter 440G, a separate part of this volume is devoted to this area of regulation. The companies affected are those referred to above and listed in table 11.1 in chapter 11.

[11] Opinion No. 65–12 (April 20, 1965) and Opinion No. 69–29 (December 2, 1969).

PART II

ECONOMIC REGULATION OF PUBLIC UTILITIES

Chapter 3

INTRODUCTION

The state government's program structure locates public utilities regulation within the major program of individual rights and the subprogram of consumer protection. This placement of the program reflects the view of the authors of the program structure that utilities regulation "is founded upon services to the consumer . . . ." However, in this case they believe consumer protection includes protection of the investor because "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."[1]

As volume I of this audit indicated, however, utilities regulation is more appropriately considered to serve the objective of economic development, described in the state government's program structure as follows:

> "To assist in maintaining the State's economy in a strong and competitive condition by providing policies, operations, facilities, service, 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."

In the context of economic development, the most important function performed in utility regulation is to approximate the normal market mechanism to achieve a balance between the interests of suppliers and consumers of utility services. This function is performed principally through the medium of utility ratemaking. Ratemaking, however, is but one facet. On the other side of the scale is the quality of the services rendered.

This part examines ratemaking and quality of service. It also considers matters regarding the handling of consumer complaints and consumer credit which resemble consumer protection activities. They are included here, however, because they bear a relationship to quality of service and thus are definitely on the consumer's side of the economic scale. The applicability of Hawaii's antitrust law and representation of Hawaii's interests before federal regulatory agencies round out our discussion on the economic regulation of public utilities.

Summary of Findings

1. The ratemaking process functions poorly because:

The existing process is restrictive and excessively time-consuming.

[1]Department of Regulatory Agencies, *Current Program Plan, Fiscal Years 1969–70 Through 1977–78, Budget Period 1971–73 (Second Half)*, submitted to the State Legislature, January 18, 1972, pp. 6–7.

. The process overly emphasizes "fair return on fair value" and provides insufficient focus on efficiency in utility operations.

. The handling of utility tariffs not directly involving rate increases is not consistent with legal requirements.

. Automatic fuel price increase arrangements applicable to energy companies result in overcharging and discriminatory treatment of customers.

2. Service standards are not adequate or consistent enough, or enforced vigorously enough, to assure high quality service.

3. Consumer complaints-handling differs among the utility companies, is not properly monitored, and does not provide the means for public managerial review; regulations and administrative monitoring of consumer credit extensions are lacking, resulting in unfair, discriminatory, and improper practices.

4. The attorney general and the PUC have not given adequate attention to antitrust aspects of utility company consolidation.

5. The PUC and PUD have neglected the representation of Hawaii's interests before federal regulatory agencies, although the actions of federal agencies are of immediate importance to the regulation of utilities within the State and have large impact on their operations.

Chapter 4

UTILITY RATEMAKING IN HAWAII

Ratemaking—i.e., the establishment and regulation of utility rates and tariffs—is not only one of the most important but also one of the most visible functions of regulatory agencies in the public utilities field. Besides receiving more public attention than any other area of regulatory activity, this is where regulatory agencies generally devote a major proportion of their time and available resources.

This chapter discusses the nature of the ratemaking process, the means by which utility rates are formulated, the time currently required for ratemaking, the significance and effect of tariff actions not directly related to ratemaking, and the nature and effect of clauses permitting utility companies to pass the cost of rising fuel prices on to consumers.

Summary of Findings

1. In recent years major rate cases have consumed an undue amount of time to the significant detriment of both the utilities and consumers.

2. The "cost-plus" approach to utility pricing overly emphasizes profits to utilities and provides insufficient focus to questions of efficiency in utility operations. Indeed, the use of the "cost-plus" approach tends to cause utility regulation to drift away from its central purpose of economic regulation.

3. The utility ratemaking process tends to restrict participation by interest groups.

4. The handling of utility tariffs not directly involving rate increases, but which can have significant effects on overall rate structure has been deficient. Rules and regulations governing such tariff filings are lacking, resulting in inconsistencies; there have been inadequate public notices of such tariff filings; and the tariff filings have been given inadequate review and examination.

5. Present practices allowing the automatic adjustment of gas and electric utility rates to reflect changes in the cost of fuel oil appear to be legally questionable and to be inadequately administered, with the result that serious inequities and overcharging seem to be occurring.

General Nature of Utility Ratemaking

Ratemaking: an inexact art, heavily dependent on judgment. Utility ratemaking as it has developed in the United States tends to be quite technical and complicated. It requires a great deal of expertise, special knowledge, and detailed examination of voluminous data. At the same time, it is not an exact science, but rather something of an inexact art requiring the development of informed opinions and the exercise of human discretion. Despite the development and evolution of various formulas and other regulatory yardsticks for measuring

and evaluating proposed adjustments in rates, there are no hard and fast solutions or clear answers to the various problems and questions involved in rate proceedings. As a consequence, a fair amount of conflict is inevitable in the ratemaking process. Even where the experts may agree on the factual data (which by no means is always assured), they frequently will disagree on how the data should be interpreted and applied. Therefore, in the final analysis, the determination of rates involves the exercise of judgment based upon the facts that are developed or elicited during the proceedings in the case.

Factors considered in ratemaking. Although the specifics may vary from case to case and from one type of utility to another, the general framework for ratemaking and the types of factors considered have become fairly well established through the practice and experience of regulatory commissions throughout the country. Many articles, books, texts, and treatises have been written on the subject of public utility ratemaking. The approach to ratemaking in Hawaii does not depart significantly from the general approach taken elsewhere.[1] The procedural steps involved in processing a major utility rate case through the PUC are set forth in outline form in the appendix.

At this point, it is probably sufficient to summarize the various factors which are, or should be, taken into consideration when rate determinations are made. These factors include the following:

- The earnings position of the utility.
- Revenues, sales, and customers.
- Expenses, taxes, and depreciation.
- The company's rate base.
- Net revenues of the company.
- Financial requirements of the utility.
- Capitalization (debt versus equity financing).
- The cost of money.
- The rate of return on the company's rate base.
- Apportionment of charges (between different activities, different governmental jurisdictions, and different classes of customers).

A perusal of the above list of factors quickly makes obvious the fact that a great deal of cost, engineering, financial, economic, and other data must be analyzed and interpreted during a rate proceeding and that various areas of specialization and expertise must be utilized to do so effectively. Thus, all participating parties must bring to the process capabilities and understanding in all of these areas if they are to discharge their functions and responsibilities adequately and effectively.

A highly formalized and legalistic process. Due to the conflicts which are inherent in ratemaking and due to the need to winnow out facts and the significance of facts from masses of data, volumes of expert testimony, and a wide variety of opinions and interpretations, ratemaking is almost by necessity an adversary proceeding. Generally, the opponent on one side (the initiator of the action) is the utility company seeking an increase in rates. In theory, the customers (or, in rare instances, competing utilities) are the opponents on the other side. However, due to their fragmentation, dispersion, and diversity of interests, the customers are seldom in a position to undertake effective and unified action on their own behalf. Only some of them may have the desire and capability to oppose the utility directly, while most of

[1]For a fairly concise summary of the ratemaking process in Hawaii, see Tom Dinell, *The Hawaii Public Utilities Commission*, Legislative Reference Bureau, State of Hawaii, Report No. 6, 1961, pp. 58–69.

them must rely upon the government to act as their representative and defender. Imperfect though such representation must be because of the diversity of interests involved, the actual opponent on the other side is a government agency acting on behalf of customers or consumers, joined in some cases by particular interests acting on their own.

In the normal situation, the procedure is for the utility to try to present the best case it can to justify the requested increase; for the protagonist of the consumers to counter or refute the utility's evidence through cross-examination and through the submission of other evidence; and for the utility, in turn, to defend itself against the consumers' advocate by cross-examining the opposing witnesses and by throwing into question or otherwise countering the opposing evidence. It is through this process of test and counter-test that the facts are expected to be determined and the bases established upon which to make a judgment regarding what is to be a fair and reasonable rate.

The adversary process involved in ratemaking places great emphasis upon the establishment of a formal record in each case. This is because any final rate determinations are supposed to be based upon consideration of only matters which are contained in the record and because the record must serve as the basis for any appeals of decisions which may be made to the courts. For these reasons, verbatim records are kept of rate proceedings before the PUC. Thus, in a major rate case, the proceedings may well exceed 5000 pages, including verbatim transcripts and voluminous formal documents and exhibits which may be filed and made a part of the record. Appendix A setsforth the detailed procedural steps that must be followed in the process of developing the formal record in a rate case. Observance of these procedural requirements becomes another element in determining the validity of all rate decisions.

Marked Trend Toward Long, Drawn-Out Proceedings

Major utility rate cases have always been among the most time-consuming matters brought before the PUC. But, since 1968, the trend has been toward longer and more drawn-out proceedings than ever before. This trend was very much evident during the five-year period which was the focus of our study (i.e., 1968 through 1972), and seemed to be the case even up through mid-1974.

Evidence of the trend. A statistical analysis of all rate cases handled in the period from 1950 to 1972 and a detailed examination of the seven specific cases presented to the PUC from 1968 to 1972 bear out the trend toward long, drawn-out proceedings.

*1. **Statistical comparison of elapsed time for cases.*** In 1961, the legislative reference bureau in its report on the Hawaii PUC analyzed the number of major rate cases handled during the period 1950 to 1960 and the time required on the average to process these cases. For the purposes of this audit, we made a similar analysis for the period from 1962 to 1972. Table 4.1 contains a comparison of the results of these two analyses.

As shown in table 4.1, during the period of 1950 to 1960 the PUC handled a much larger number of cases than were handled from 1962 to 1972, yet it moved with much greater dispatch to initiate action on the cases and to render decisions concerning them. Thus, during the 1950's it generally took less than two months on an average after a rate request was filed to open hearings on the case and usually less than six months on an average to reach a decision and conclude the case. By way of a comparison, by the 1970's, it was taking about six months to open hearings on rate cases after the requests had been filed and almost a year and a half on an average to complete the proceedings.

*2. **Detailed examination of seven cases handled during 1968 to 1972.*** The general trend indicated in table 4.1 was confirmed and emphasized by the results of our detailed examination of the seven major utility rate cases handled during the period from 1968 to 1972 (which included two transportation-related cases by virtue of the fact that mass transit and interisland water carrier activities were still subject to regulation under chapter 269 during this period). Table 4.2 summarizes the results of that examination.

As shown, the proceedings in the seven cases have been quite lengthy and drawn-out. Two of the proceedings were initiated as early as 1968 and were still pending by mid-1974. The telephone case appears to have reached a final conclusion in September 1974 so that it may now be considered closed some six years after the first docket pertaining to the case was opened. In the Kauai electric case, the last action taken on the matter is phrased in terms of an interim decision and order, but both the company and the regulators appear to assume that the case is closed. The shortest period of time in which any of the seven cases was handled was ten months, and this did not involve a request for rate increase. Three of the seven cases were appealed to the state supreme court. One was remanded to the PUC, another was rendered moot by the action of the city and county of Honolulu to take over the mass transit system on Oahu, and in May 1975 the supreme court handed down its decision in the third case in which it overruled the PUC and sustained the position of the appellant.

It is obvious from the records in these seven cases that a great deal of time has been consumed by both government agencies and the private utility companies on rate increase requests.

Time as a measurement of performance or effectiveness. When considering the matter of "regulatory lag" or the amount of time required by regulatory agencies to handle matters coming

Table 4.1

Comparison of the Time Required to Process Major Utility Rate Cases Before the Hawaii Public Utilities Commission for Selected Years of the Period of 1950 to 1960 and in the Period of 1962–1972

Year	Tot No. of Cases in Which Orders Were Issued	Avg Time Lapse Between Date Docket Filed and: Date First Heard (Mos)	Avg Time Lapse Between Date Docket Filed and: Date Order Issued (Mos)	Year	Tot No. of Cases in Which Orders Were Issued	Avg Time Lapse Between Date Docket Filed and: Date First Heard (Mos)	Avg Time Lapse Between Date Docket Filed and: Date Order Issued (Mos)
1950	12	1.6	5.4	1962	4	1.5	9.9
1952	8	1.6	5.0	1964	0	–	–
1954	10	1.6	6.6	1966	2	1.3	5.3
1956	3	1.0	5.7	1968	3	4.9	11.1
1958	5	1.7	5.0	1970	4	7.2	18.4
1960	8	1.6	4.8	1972	2	5.6	16.6

Sources: Research and Statistics Branch, Public Utilities Division, Department of Regulatory Agencies, State of Hawaii.

Tom Dinell, *The Hawaii Public Utilities Commission,* Legislative Reference Bureau, State of Hawaii (Honolulu: 1961).

Table 4.2

Overview and Summary of Seven Major Rate Cases
Fiscal Years 1968–69 Through 1972–73

	Hawaiian Telephone Company	Kauai Electric Company	Hilo Electric Light Co.[e]	Honolulu Rapid Transit Co.	Hon Gas Co (GASCO, Inc) Oahu	Hawaiian Electric Company	Young Brothers, Ltd.
Docket date and no.	8/13/68 (1814)[a] 6/26/70 (1871) 6/7/72 (2117)	9/1/68 (1817)	11/21/68 (1826)	8/25/69 (1841)	11/3/69 (1851)	4/27/71 (1971)	5/4/71 (1975)
Amendments or supplements filed	3/2/71	11/1/68	7/16/69 8/6/69	none	6/8/70	6/25/71 10/13/71	11/3/71 11/29/71
Hearings begun	12/15/70	9/12/69	5/22/69	11/19/69	6/17/70	11/9/71	7/27/71
Hearings concluded	5/16/74[b]	12/19/69	2/4/70	3/24/70	7/21/70	5/4/72	2/15/73[h]
Interim rate increase(s) granted	4/16/71	9/1/69	–	–	–	–	2/1/72 5/30/72 11/9/72
Decision by commission	9/4/74	7/27/73	2/10/70	4/23/70	7/24/70	8/1/72	2/21/73
Final order date and no.	9/11/74 (3571)[c]	8/31/73 (3294)[d]	12/2/70 (2535)	8/14/70 (2624)[f]	8/31/70 (2621)	8/17/72 (3008)[g]	6/4/73 (3225)
Received into record	9/26/74	9/28/73	none recorded	8/26/70	8/26/70	8/25/72	6/26/73
New rates effective	9/11/74	9/1/70	3/1/70	–	8/1/70	8/21/72	11/10/72

[a]Dockets 1814 and 1871 were consolidated on November 6, 1970, and were further consolidated with docket 2117 on December 22, 1972.

[b]Hearings on the remand portion of the case were closed on May 16, 1974; previously, hearings on docket nos. 1814 and 1871 were concluded on July 16, 1971; and hearings on the consolidated dockets 1814, 1871, and 2117 were concluded on December 21 and 22, 1972.

[c]D&O No. 3571 (filed 9/11/74) closed the dockets after the case was remanded by the State of Hawaii supreme court. Prior D&O's which affected rates were D&O No. 2853 filed 11/9/71 and D&O No. 3157 filed 3/9/73.

[d]Rate increases went into effect on September 1, 1970 pursuant to a motion adopted on August 24, 1970. Same rates were contained in a show cause order (Order No. 2660) which was received into record on December 17, 1970, but which the order document indicates was adopted and filed on December 18, 1970. D&O No. 3294 indicates that it is a provisional order. Final order is apparently still pending.

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

[f]Rate increase request was denied.

[g]Judgment on the appeal of D&O No. 3008 was made in favor of the appellantsby the State of Hawaii supreme court in March 1975 regarding promotional practices.

[h]First hearings concluded on October 11, 1972 but were reopened for hearings held on December 30, 1972 and completed on February 15, 1973 on the adequacy of service of Young Brothers, Ltd.

before them, much caution needs to be exercised in using time as a measurement of agency performance or effectiveness. This is because time gives no indication of the quality of consideration and decision-making involved in the actions on a particular case. For example, an agency may handle its rate cases very expeditiously, but in a very cursory and superficial manner. In this case, it would build up a good record in terms of time required to handle cases, but its performance in terms of rendering fair and meaningful decisions might be sadly deficient.

Nevertheless, the proper utilization of time should be a matter of concern when assessing performance. In the ratemaking process in particular, time may be a highly crucial matter. This is due to the fact that the more time is prolonged in handling a case, the more likely it is to have adverse results on one or more of the parties involved. Several factors contribute to this likelihood: (1) a great deal of effort is required to develop and analyze the data to be used and much of this work can be rendered obsolete if the case drags on too long; (2) the longer a case lasts, the more the chances are increased that changes in the membership of the PUC will occur which will force the reconsideration or an inadequate consideration of some or all aspects of the case; and (3) to the extent a rate increase is valid and justifiable, the longer the utility must wait to put the increase into effect the more heavily it is penalized. Conversely, if rate decreases would be in order, then the consumers would be the ones who would be penalized.

Illustrating the unfairness that occurs from a rate proceeding that is protracted is the Hawaiian Telephone Company rate case. In that case, the PUC granted virtually all that the telephone company requested, but that approval came in October 1971, some one year and four months after the request for a rate increase was filed. However, even then, the telephone company was unable fully to receive the benefit of the increase. *First,* a part of the increase was suspended until a PUC-ordered study by an outside consultant could be made to confirm that the company's quality of service was indeed adequate. *Second,* upon remand of the case by the state supreme court to the PUC for further consideration, the telephone company was forced to place the revenues attributable to the rate increase in escrow, pending reconsideration by the PUC. In short, the telephone company did not have full access to or freedom of the use of the added revenues granted to it by the PUC in October 1971 until September 1974—a long three years later.

Evidence of waste: telephone rate case. Determination of the reasonableness of, or justification for, the time required for ratemaking in Hawaii rests upon whether or not it can be demonstrated that the time consumed is being well spent, is necessary, or is producing exceptionally superior results. On the basis of our examination of the recent rate cases, it would be impossible to demonstrate that the time is being well spent, that it is necessary, or that it is producing exceptional results. On the contrary, evidence points to the fact that time is being wasted, proceedings are being drawn out unnecessarily, and the quality of consideration and action is deficient. The long intervals of time between the various steps in the ratemaking process are notable for the decided lack of activity during the intervals and lack of meaningful results flowing from what little activity that does take place. The proceeding in the Hawaiian Telephone Company's rate case is an example in point.

The telephone rate case represents a consolidation of two separate dockets which came before the PUC and which ultimately resulted in the opening of still a third docket. The case had its beginnings in 1968, and by late 1974 some aspects of it were still pending before the PUC. The case dealt with the matter of the quality of service as well as the matter of rates and it touched directly upon the interrelationship between federal and state regulation in the public utilities field. The case evolved over four fairly distinct phases.

*1. **Initial phase – 1968 to 1970.*** This case was originally initiated by the PUC and PUD in August 1968. Docket No. 1814 was opened with the stated purpose of conducting an investigation into two aspects of telephone service in Hawaii: (a) the revenue requirements of the Hawaiian Telephone Company for its *intra*state business and the reasonableness and propriety of the rates and rate structure used to meet these requirements, and (b) the adequacy of the service being rendered by the Hawaiian Telephone Company.[2] This action was apparently the result of consumer complaints and user dissatisfaction which were being expressed at the time concerning the quality of service being provided by the company.

About the only matter taken up during this phase was the question of "separations"–i.e., the allocation of costs between the company's *intra*state business and its *inter*state business. With the FCC regulating rates for interstate services and the PUC regulating those for intrastate services, the separation between the two types of businesses becomes a key question in ratemaking at both the federal and state levels.

Although the inquiry in this phase was thus limited and although this phase was initiated by the PUC and PUD, there was little, if any, discernible action on the part of the PUD staff. It was not until February 1969 (some six months after the opening of the docket) that any serious study of the matter began, but largely at the instigation of the telephone company. At the urging of the telephone company, two FCC experts on separations came to Hawaii to meet with company and PUC–PUD representatives for the purpose of devising a mutually acceptable separations formula for Hawaii.

An apparent agreement on a formula, satisfactory to all parties, was eventually reached. However, the efforts devoted to the establishment of the formula came to no avail, as the PUC failed to formalize the agreement. This was unfortunate, because the question of separations subsequently became a major issue in the case.

*2. **Rate increase request phase – 1970 to 1971.*** The record is devoid of any other action being taken on this case until the company filed a request for a general rate increase in June 1970. Although the rate request, Docket No. 1871, was filed on June 26, 1970, no staff action appears to have been taken on the matter until October 1970 when it became necessary to prepare for a pre-hearing conference with the company before the PUC on November 6, 1970. (This conference resulted in the consolidation of the two dockets–Docket Nos. 1814 and 1871–and the establishment of a timetable for considering the combined cases.)[3]

Faced with this pre-hearing conference, the PUD hurriedly tried to secure the services of outside consultants for the case. This effort to secure outside consultants continued into 1971. However, in the meantime, in December 1970, the case proceeded to the public hearings stage. The public hearings were completed in early January 1971, and by the end of February 1971 the company had presented its case and had been cross-examined by the special deputy attorney general who was employed to handle this case for the PUD. This was more or less in accordance with the agreed upon timetable.

The PUD was scheduled to present its case in early April 1971. By this time the staff had had three separate consultants under contract to work on the case, but it still had no position ready to present to the PUC. Thus, it requested a continuance until August 1971 so that it would have more time to prepare its case. Over the strenuous objections of the telephone company to any delay in the proceedings, the

[2]Order No. 2293, an order of investigation, dated August 19, 1968.

[3]Although the pre-hearing conference was held on November 6, 1970 and it resulted in the holding of public hearings in December 1970, the order embodying the decisions and actions of the conference was not filed until February 1971.

PUC granted the staff a postponement until June instead of August. However, engaged in proceedings which threatened to be lengthy, the company requested and received approval to put into effect an interim rate increase. Effective April 15, 1971, the company was allowed to raise rates in an annual amount of almost $5 million out of the total annual amount requested of $13 million. This approval was granted over the objections of the staff.

By June, the PUD had hired another consultant, raising the number of consultants hired for this case to four. However, the time, effort, and money expended in searching for and engaging the four separate consultants produced little worthwhile results. No significant use was made of the work of the three earlier consultants. The fourth consultant, along with his subcontractor, appeared as the staff's major witness when the hearings finally resumed in early July 1971. However, the PUC completely rejected the testimony of both this consultant and his subcontractor, stating that the first "did not appear to be a qualified expert" and that his testimony was "worthless" and noting that as to the second, his only direct experience in telephone operations had been as a subscriber and that his testimony "was shown on cross-examination to be of no probative value."

Final briefs were filed with the PUC by the staff and by the company on September 23, 1971. The company filed a 147-page brief, containing as an appendix a 29-page draft decision and order. Although the final filing of the briefs had been twice postponed at the request of the PUD, the brief filed in its behalf by the special deputy attorney general consisted of seven and one-half pages, protesting that sufficient studies had not been made of the areas of separations, rate structure, and adequacy of service—the very areas which the PUD had supposedly been investigating since August 1968 when Docket No. 1814 was opened.

On October 21, 1971, the PUC approved a decision and order in the case. This decision and order was prepared by the commissioners themselves at an informal meeting without the benefit of legal counsel or other expert assistance and was based on the telephone company's draft decision and order. To a great extent, the PUC accepted the company's position in the case and rejected that of the PUD (i.e., $11,228,315 of the $13,159,400 requested by the company was granted). Apparently, the PUC was aware that at least the question of adequacy of service had not been fully explored in either the first or this second phase of the case, for the PUC voted to withhold a portion of the increase (i.e., $2,129,865) until such time as the company could demonstrate to the PUC's satisfaction that adequate telephone services were being provided. This action culminated the second phase of the case.

*3. **Appeal phase – 1971 to 1973.*** The PUC's decision in the rate case resulted in several appeals being made, including appeals by the staff, by the city and county of Honolulu, and by a member of the legislature. After a flurry of court cases, the state supreme court in October 1973 handed down a decision in which it held that the decision of the PUC in the case was deficient and should be reviewed and acted upon again by the commission.[4]

In the meantime, the PUC proceeded with its consideration of the matter of the quality of service being provided by the company and whether or not the funds withheld should be released to the company. For purposes of this action, a new docket was opened—Docket No. 2117, dated June 7, 1972. The opening of this new docket was nearly eight months after the PUC had rendered its decision in combined Dockets Nos. 1814 and 1871. The reason for this delay is not readily apparent.

Under Docket No. 2117, a special study was conducted of the company's quality of service by an independent consulting firm selected by the chairman of the PUC and paid

[4]It also held that the PUD was a proper "party" before the PUC and that it had standing to appeal the PUC decision.

for by the telephone company. Using standards developed in California, this consultant found that the quality of service being provided by the telephone company was generally satisfactory. As a consequence, the PUC issued a final order on March 9, 1973, granting the telephone company the authority to implement fully the rate increase previously approved, effective April 8, 1973.

Three things are worthy of note here. *First,* it took nearly three years for the commission to act on the telephone company's request for a rate increase. *Second,* it required almost five years for the PUC to dispose of the question of whether the telephone company was providing adequate service. *Third,* although the issue of adequacy of service was settled for the time being, the larger question of the standards to be used in assessing adequacy in the future (i.e., whether the California standards, which were used in this instance, should constitute the standards in future assessments) was left unresolved.

*4. **Remand phase – 1973 to the present.*** After the supreme court remanded the rate case to the PUC, the staff and the company engaged in a series of maneuvers aimed at trying to define the scope of matters which would be considered by the PUC in its further review of the case. The company generally took the position that the existing record provided an adequate basis for reaching a new determination on the case, while the staff argued that the record needed to be supplemented and expanded with additional testimony and data. The net result was that very little additional information was entered into the record. Rather, primary attention was focused upon the question of a general restructuring of the company's rates. The staff called for a comprehensive review of the costing of various services and indicated that there should be a fairly fundamental reallocation of rates among the various users so as to relate rates more closely to costs. However, the company indicated that the type of information required to carry out the staff's suggested approach was not readily available and that any drastic restructuring of the rates would require several years to implement. In the end, a sort of compromise was reached. The company was allowed to retain the total amount of the increase previously granted to it by the PUC, but the rate structure was revised so as to shift a greater proportion of the increase to business and commercial users and away from residential users. Thus, the previously raised residential rates were lowered by approximately 25 cents per month per telephone on Oahu, while business and commercial rates were raised still higher. This action was confirmed in a decision and order adopted by the PUC (Decision and Order No. 3571, dated September 11, 1974). The new rates under this decision and order were put into effect in September 1974.

This action more or less brought the case to a conclusion, at least as far as a new set of higher rates was concerned. However, a number of important issues were left hanging from the case. Among these were such matters as: (a) a new, permanent set of standards for quality of service for the telephone company, (b) an agreed upon separations formula for the telephone company, and (c) a rationalized and accepted comprehensive restructuring of rates for the telephone company.

*5. **Summary.*** In summary, it may be said that the telephone rate case represents an instance where rate proceedings have been dragged out for more than six years with no meaningful PUD activity having occurred to justify such a protracted period, and where many thousands of dollars have been spent by the State in trying the case before the PUC with no real impact on the case having resulted from the expenditure of such sums. The many important studies that were not made and the many significant issues that were not resolved in the case point to another period of difficulty and probably another protracted process if and

when the telephone company seeks another rate increase.[5]

While this telephone rate case (or, for that matter, any of the seven major rate cases that came before the PUC during 1968 to 1972) cannot be said to be "typical"; nevertheless, parallels can be drawn between the events and problems in the telephone case and those in the other cases. Overall, the telephone rate case exemplifies the fact that neither the efforts being expended nor the results being achieved justify the time it now seems to take to process rate cases.

Apparent causes of delay in Hawaii's ratemaking process. In a complicated process involving many variables such as the ratemaking process, it is difficult to pinpoint and fix with certainty the reasons why many of the recent major rate cases in Hawaii have been so time-consuming, especially when a number of causes may be involved. Nevertheless, as we examined the records of the seven rate cases indicated above and as we interviewed various participants in these cases, we detected a number of factors apparently contributing to the development of this situation. Set forth below are the apparent causes which we have been able to identify.

*1. **Staff limitations.*** Perhaps contributing most to the prolongation of major rate cases are staff limitations—both quantitative and qualitative. Staff in this case refers both to the personnel of the PUD and of the department of the attorney general who are available or assigned to work on major rate cases.

This observation is not to disparage the dedication, desire, and intentions of the staff to do a good job. It is fairly evident, however, that the State lacks in number and quality that kind of staff needed in rate cases. As already noted, the time lags in the rate proceedings are marked by either inactivity on the part of the staff or by work inadequate to the task. In other words, the delays that do occur, often at the request of the staff, are of little help in enabling the staff to present an adequate case. These staff limitations are described in greater detail as follows.

First, the staff of the PUD is relatively small. This small number plus the duties, other than those relating to ratemaking, that the staff is required to perform make it possible for no more than a dozen staff members, including the utilities administrator, to be available at any one time to work on rate cases. Indeed, some staff members are not available or used at all in rate cases, although their involvement appears warranted. For example, neither the rates and tariff branch nor the investigation and compliance branch generally becomes involved in utility rate cases. When several rate cases are pending at the same time, the no more than a dozen staff members available for rate cases are bound to be stretched fairly thin. In any one case, probably as few as six staff members may have to carry the full burden of the case. This means, in numbers alone, the staff is outmanned by the staff of any one of the major utility companies which it confronts in the ratemaking process.

Second, the staff is hindered by limited capabilities in certain technical fields and other areas of expertise which become involved in the ratemaking process. For example, the PUD readily acknowledges it has no adequate technical expertise in the telecommunications field. Only one member of the audit staff has a CPA certificate. Most of the regular deputy attorneys general who work on rate cases are relatively new to the utility ratemaking field when compared to the attorneys who serve as legal counsel for the utility companies. An indicator of this limitation is the heavy reliance which is placed on outside assistance to handle the major rate cases. An extensive use is made of a special deputy attorney general who had once

[5]The company filed for a new rate increase on January 3, 1975 (Docket No. 2585). The main justification for the proposed rate increase contained in this request is the need to offset increased labor costs resulting from a recently negotiated union contract.

been the executive director of the PUD, and of a California consulting firm, the latter being used in most of the electric and gas rate cases.

There is nothing wrong, per se, in using outside assistance. In fact, when properly employed, outside experts should be able to improve, facilitate, and speed up staff action on matters requiring its attention and consideration. However, an overdependence on outside help places the staff in the position of letting the outside help set the pace of its work. There are indications that this tends to be the situation within the PUD with regard to major rate cases. For example, we have found a tendency on the part of the staff to await visits to Hawaii by the representative of the California consulting firm before deciding on the next steps to take in a particular case. A more extreme example of this tendency, however, is that involving the special deputy attorney general. In the cases which he handles, he is in complete charge of the staff's actions and activities. Thus, he literally sets the pace of activity in the cases which he controls. In addition to most of the important rate cases in recent years, he has been handling other controversial PUC matters (e.g., the Kauai electric merger case) and various cases before federal regulatory agencies on behalf of the State of Hawaii.

It would seem that it would be in the interest of the State for early attention to be given to the development of more adequate internal capabilities. This applies to the department of the attorney general as well as to the PUD. In the paragraphs which follow, other causes for the long delays in ratemaking proceedings are discussed. In a large part, these causes exist because of the lack of staff expertise.

*2. **Lack of advance planning and preparation.*** Although the commission and the staff are frequently aware months ahead of time that a rate application is going to be filed, there is virtually no forward planning of any consequence in anticipation of upcoming rate cases. Hence, everyone on the regulatory side is essentially unprepared and must start from scratch at the time each new application is filed. On a few occasions some consideration seems to have been given to the need to secure extra funds to employ consultant services for an anticipated case, but this seems to be the extent of thinking on the subject. Even in the telephone case where the PUC and PUD initiated the first action in 1968, we could find no record of any staff action of substance on the matter prior to or after the original docket was opened regarding plans as to how the proposed investigation was to be carried out. Until the company filed for a rate increase two years later, the only activity in the case appears to have been some consultations with federal officials regarding relationships with the FCC which were initiated by the telephone company. Considering Hawaii's small size and the limited number of utilities being regulated, there appears to be no good reason why the commission and staff cannot anticipate and prepare for major rate cases so as to be ready to proceed almost at the time the application is filed.

*3. **Lack of operating procedures for handling rate cases.*** Reflecting the general lack of internal operating procedures within the PUD and PUC, there is almost a complete lack of specific operating procedures for the handling of rate cases. Although there are detailed procedural steps set forth for determining how rates should be set, these do not specify how the staff should go about developing and presenting its position in each rate case. Rather, these matters are decided upon and implemented by the staff on a case-by-case basis. While each case is different from all other cases and must thus be handled on an individual basis, nevertheless, there are many common elements in all rate cases. There should be a more or less standardized way in which these common features can be approached and staff resources allocated to make sure they are all covered.

The lack of operating procedures probably explains why the various units within the PUD tend to work quite independently of each other

in rate cases and sometimes end up duplicating each other's efforts or developing data and presentations which are not mutually consistent. It is also probably a contributing factor to the somewhat erratic staff followup which seems to be characteristic of many of the rate cases. For example, we have found that the staff's actions on the cases are generally marked by flurries of activity shortly before particular events (e.g., the holding of a hearing or the approach of a deadline for filing) rather than by any planned, consistent, and coordinated pattern. Between such spurts of activity, there are long intervals of almost no activity whatsoever.

*4. **Lack of ratemaking guidelines.*** The PUC and PUD currently handle ratemaking without any basic guidelines. No one on the commission or among the staff has been devoting any real effort to formulating a theory or philosophy of ratemaking for the purpose of establishing a framework within which specific rate decisions can be made. As a result, inconsistencies between different cases arise and a higher than necessary degree of uncertainty is built into every case. For example, the question of advertising and promotional expenses has arisen in case after case without a clear and consistent position ever being taken by the PUC on the matter. Similarly, whether charitable donations by utility corporations are allowable expenses for ratemaking purposes has been a bone of contention in a number of cases. Likewise, no definite position has been taken on how the telephone company should apportion its rate base between that part of its business which is subject to FCC regulation and that which is under the PUC. The allocation of the rate burden among different classes of customers is another unsettled point. Certain environmental groups have raised and argued the issue of whether or not rates should be so structured as to discourage increased consumption of energy.

The PUC has opened dockets to consider some of the questions posed (e.g., utility promotional practices and utility purchasing practices), but in most instances no conclusive or definite result has ever been achieved. In other areas, no direct or organized attention is given to recurring general issues and they are simply argued over again in each case. In this connection, the holding of the Hawaii supreme court in the recent case of *In re Hawaiian Electric Co., Inc.*, 56 Haw. (Case No. 5374, May 7, 1975) is pertinent. In that case, the court held that the electric company's promotional expenses to divert customers from gas usage and to subsidize the promotional activities of dealers and distributors of electrical appliances should not have been allowed by the PUC for ratemaking purposes. In so holding the court took the PUC to task for consistently failing "to meet squarely the issue of reasonableness of competitive advertising expenditures." It noted that the PUC had opened a docket in late 1963 "for the avowed purpose of inquiring into the promotional practices of the utilities," but that "to date no concrete action aimed at a final resolution of the problem has been taken by the commission." On the contrary, the court observed, the PUC "has recently closed Docket No. 1581."

To the extent that general issues must be handled on a case-by-case basis, they tend to prolong the individual cases. It would be much more effective if these general issues were considered on their own merits so that consistent, well-considered actions could be taken on them and so that the issues would not be matters of controversy in individual rate cases.

Recommendations. *The PUC and PUD should speed up the ratemaking process by correcting the conditions that appear to be causing unnecessary delays. Specifically:*

1. The state staff capabilities should be enlarged both in number and kind. A program of in-service training should be instituted to increase the skills of those on board. This recommendation is applicable to the PUD, the PUC, and the office of the attorney general.

2. The PUD should engage in forward planning, anticipating the probability of rate increase requests. To assist in such forward planning, utility companies should be required to submit advance notices of intent to request increases in rates to both the PUC and the director of the department of regulatory agencies.

3. The PUD and the director of the DRA should develop and implement an effective system of internal operating procedures for rate cases.

4. The PUC should identify those policy areas in which general guidelines can be established for ratemaking, then establish appropriate guidelines. For instance, the PUC should determine whether utility companies should be allowed to include charitable contributions within their rate bases, how rate burden should be allocated among classes of customers, and the standards by which quality of service is to be measured.

Inadequacies of the "Cost-Plus" Approach to Ratemaking

The working assumption in utility rate cases in Hawaii and elsewhere is that the rate which the regulatory agency allows will be sufficient to cover the costs of the utility company involved plus produce enough additional income to assure a reasonable level of profit to the owners of the utility. To oversimplify the matter somewhat, this means that most rate proceedings revolve around the question of what percentage of income will be allowed on a given base. This approach is known as the "cost-plus" or "rate base-rate of return" approach.

To determine the rate of return, in a typical ratemaking case, the utility companies present evidence concerning: (1) the amount of investment or assets which they have committed to their particular businesses, (2) the amount of income or profit which they should receive on this investment, (3) how much it costs to operate their businesses relative to the revenues being received, and (4) how much additional revenues will be required to cover all of their costs and also produce sufficient additional income to provide them with an acceptable level of profit or return on their investment. The first of these items is referred to as the utility company's "rate base" and includes both the depreciated value of the company's total physical plant being devoted to the business plus the amount of working capital (cash and inventory) required to stay in business. The second item is called the "rate of return" and is usually expressed as a percentage of the rate base. The third item is referred to as the "results of operations" and these results are generally determined on the basis of expenditures and revenues experienced during an agreed upon "test year." The fourth item constitutes the amount of the rate increase. The staff of the PUD also presents evidence concerning these points as do intervenors if there are any. The parties to the case can also challenge and question the evidence presented by other parties.

The weaknesses. The "cost-plus" approach is the time-honored method of determining utility rates in the United States. There are, however, weaknesses in this approach.

One of these weaknesses is that this "cost-plus" approach is susceptible to manipulation by the utility. It would be possible, for instance, for a utility company to expand its staff during a test year, then reduce personnel following the successful conclusion of a rate case. Similarly, a utility company could finance construction at high interest rates during a test year, then refinance at more favorable terms after the rate case; or undertake expansion of service during the test year and subsequently curtail the expansion, and so on.

This is not to say that Hawaii utility companies are deliberately inflating the costs of production or manipulating costs during rate

proceedings; it is only to point out the possibilities that exist under this procedure.

Far more important is the fact that the "cost-plus" approach requires such a heavy concentration on the narrow issue of costs and profits to the utility that it provides too little time for the commission to pay attention to the question of efficiency in the operation of the utility. It must be remembered that the purpose of utility regulation is to encourage utility companies which are monopolies to behave as nearly as possible in the manner they would or must if they were operating under competitive conditions. One of the attributes of a competitive market is that it rewards management for superior performance and penalizes management for incompetence. Thus, if utility regulation is to substitute for competition, then, in its ratemaking process, it ought to be able to compensate utilities for efficiency and penalize them for inefficiency. This, at present, is not being done.

One other weakness of the cost-plus approach, much discussed in the literature, might be noted. This weakness, perhaps more than any other, tends to cause utility regulation to drift away from its central purpose (and thereby contribute, among other things, to the neglect of promoting efficiency in utility operations). The emphasis of the cost-plus approach is on the *rate of return* (or profit) to equity investors in the utility company, rather than on the *price* of the service and of the amount of the service supplied by the utility. Thus, in ratemaking, a considerable amount of attention is focused on what constitutes a "fair value" of the utility's property and what would be a "fair return" on that value. In determining "fair value," such matters as the "reproduction" cost of the utility's property, the "proper" method of calculating such reproduction cost, and the "appropriate" rate at which the utility's assets should be depreciated are debated at length. In the end, "fair value" is arrived at by the exercise of judgment on the part of the utility regulators. (By comparison, the other cost items presented by the utility to justify its proposed rates are easily and rather quickly verifiable. For example, the wages paid, the expenses actually incurred, and the cost of floating bonds are matters of record—they are not matters about which one can debate much about.)

The debate on "fair value" of the utility's property is conducted as if the equity investors are entitled to freedom from all risks attendant such investments and to a *guarantee* of profits from their investments. Aside from the fact that investors in a utility company probably do not expect their investments to be entirely risk-free (although they perhaps expect risks no greater than those incurred in investing in high-grade bonds), this concern for a "fair return" on equity investment is not in keeping with the objective of utility regulation. Again, the purpose of utility regulation is to substitute for competition which is absent in the utility industry. In the competitive market, it is the price mechanism through which the public expresses how it wants society's resources to be used. Thus, in utility regulation, if it is indeed to be a substitute for competition, the focus of attention should be on the price to be paid for the service and the amount of service that the utility is expected to provide, rather than on the level of profit incident to that price.

The "cost-plus" approach, and its emphasis on "fair return on fair value of property," has had its genesis in a U.S. Supreme Court decision rendered in 1898 in the case of *Smyth v. Ames.*[6] There, the court held that a public carrier was entitled to earn a "fair return" on "the fair value of the property being used by it for the convenience of the public." In so holding, it said,

> "And in order to ascertain that value, the original cost of construction, the amount expended in public improvements, the amount and market value of its bonds and stock, the present as compared with the

[6] 169 U.S. 466.

> original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property"[7]

However, in 1944, the court all but abandoned the *Smyth v. Ames* doctrine. In *Federal Power Commission v. Hope Natural Gas Co.*,[8] the court held that a commission was not bound to the use of any single formula or combination of formulas in determining rates. It said,

> " . . . Under the statutory standard of 'just and reasonable' it is *the result reached not the method employed* which is controlling. It is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the Act is at an end. The fact that the method employed to reach that result may contain infirmities is not then important . . . ."[9] [Emphasis supplied.]

Despite this enunciation of the "end-result" doctrine in the *Hope* case, commissions in the various states, Hawaii included, have clung to the "fair value, fair rate of return" principle of *Smyth v. Ames.*

Some suggestions: continuous surveillance. Precisely how the focus of utility regulation might be returned to a concern for the price to be paid for the quality and quantity of service expected to be supplied by the utility, rather than on the "fair return on the fair value of property" is beyond the scope of this report. We might, however, suggest the following as a way by which the utility regulators might begin to function more in keeping with the basic, economic purpose of utility regulation and to give greater attention to such economic matters as efficiency in industry operations.

In volume I of this report, in connection with the rulemaking aspect of utility regulations, we mentioned the possible use of a technique commonly referred to as "continuous surveillance"—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. The following might be included in any such continuous surveillance program.

First, the utilities might be required to submit to the PUC and PUD periodic reports on management efficiency studies conducted by the utilities. Indeed, a requirement might well be imposed on the utilities to conduct such studies on a periodic basis. A program for such studies should be developed by the utilities, and upon review and approval by the PUC, they should be implemented by the utilities.

Second, the utilities should be required to develop short- and long-range objectives for their companies, subject to review and approval by the PUC. Periodic reports on progress in achieving these objectives should be required. In addition, all utility budgets and proposals for rate changes should relate to these short- and long-range objectives. Cost data traditionally submitted by the utilities in justification for rate increase proposals are meaningless, for they relate for the most part to historical costs, with little or no information on the relationship between the costs to be incurred and the ends to be achieved. The objectives to be developed may be operational in nature (e.g., switching from one device to a more modern device) or in terms

[7] *Ibid.*, at 546–547.

[8] 320 U.S. 591.

[9] *Ibid.*, at 602.

of the quantity or quality of service or in terms of the broader social and economic issues (e.g., reduction in pollution).

Third, the utilities should be required, in all cases of proposed, major capital expenditures, to conduct and submit to the PUC a cost-benefit study showing the ends to be sought by such capital expenditures and the costs and benefits of the various, feasible alternatives or options. Such a study should be submitted by the utilities and reviewed thoroughly by the PUC before the proposed capital expenditure is authorized. Presently, very little study is made by the PUC of the utilities' proposed capital improvements budgets, much less is a definitive cost-benefit study supporting the proposed expenditures required. The last telephone rate case provides an example of this.

Fairly late in the ratemaking process, the PUD staff raised an issue concerning the type of switching equipment which the company was installing and including in its rate base. The staff challenge was based on the fact that the company was continuing to invest in equipment manufactured by a sister subsidiary of the corporation which owns the telephone company rather than purchasing what the staff considered more appropriate and up-to-date equipment manufactured by an entirely separate supplier. It is noteworthy, however, that this issue was never raised earlier when the company's capital improvements budgets were presented to the PUC and PUD for review and approval. Indeed, despite capital improvements spending at the rate of $50 million per year, the company's capital budgets received only cursory attention from the PUC and PUD, and the company avoided altogether, with full acquiescence on the part of the regulators, the required detailed review and approval of its major capital expenditures (i.e., all those exceeding $500,000). Scrutiny and action before the fact can be much more effective, of course, than review and judgment after the fact. Further, the level of effectiveness can be improved when requests for approval of proposed capital expenditures are supported by cost-benefit studies. It is not at all certain that in the telephone case the PUD's preference of the machine it suggested was the "best" of all options available, in the absence of such cost-benefit study.

A program of continuous surveillance requires the PUC to establish the policies and guidelines governing the various aspects of the program. However, the benefits to be derived from such a system are worth the effort required in establishing such policies and guidelines. Not only will such a system allow the PUC to begin to focus on the economic purpose of regulation, but, it may well contribute to lessening of the time now required in the ratemaking process. Much of the detailed work required in ratemaking, if ratemaking is to be properly accomplished, could be accomplished during the periodic reviews conducted by the commission.

This program of continuous surveillance, however, is not possible unless, as stated earlier in this chapter, the PUC is provided with the staff it needs and the competency and skill of the present PUD staff are upgraded.

Recommendation. *We recommend that the PUC refocus its attention on the economic purpose of utility regulation and begin to pay greater attention to the questions of efficiency in utility operations. In furtherance of this end, the PUC should institute a program of continuous surveillance, including the following:*

- *A requirement for periodic study of management efficiency by the utilities.*
- *The development of long- and short-range objectives by the utilities, and a requirement that all utility submissions of proposed rate increases and budgets be linked to these long- and short-range objectives.*
- *A requirement that all major capital expenditure proposals be supported by cost-benefit studies.*

Meanwhile the regulators, together with the affected utilities and other interested groups, should seek to devise new regulatory formulas which will reduce or eliminate dependence on the cost-plus approach to utility pricing and provide incentives for utility companies to achieve more efficient and economical operation, while maintaining suitable standards of service.

Restrictive Nature of the Ratemaking Process

As noted elsewhere in this report, a primary objective of utilities regulation is to serve as a proxy for market forces that are absent in the monopolistic utilities field. Ordinarily consumers have the option of abandoning a product which they consider too expensive or otherwise unsatisfactory, and to substitute for it some other product that is more satisfactory. But utility services are essential and there are no alternative suppliers. Hence, consumers have no opportunity to express themselves as to the perceived quality of the utility product they purchase, the price which they pay for it, and the like, except in the ratemaking process.

In our review of the seven major rate cases handled between 1968 and 1972, however, we have found that the ratemaking process in Hawaii tends to be quite restrictive and to deny full accessibility to interest groups which desire to participate in the process. Moreover, there is reason to believe that the process by its very nature and the way it operates tends to discourage such groups from even seeking to participate in the process.

The nature of the participation. Ratemaking is a "contested case" within the meaning of the Hawaii Administrative Procedure Act (HRS, chapter 91). Under the general law on public utilities, namely HRS, section 269–16, the PUC is required to hold "public hearings" before approving any increase in utility rates. In practice, these "public hearings" are distinguished from hearings "on the merits" of the case.

At the public hearings, anyone wishing to testify is allowed to do so. By their nature, these public hearings tend to be diffused and unorganized and the views expressed by one speaker after another are allowed to go unchallenged. "Hearings on the merits," however, are restricted to the "parties to the case." Invariably, the utility company seeking the rate increase and the PUD are parties to the case. Any other person wishing to become a party must seek to "intervene." Who may so intervene is within the discretion of the PUC (HRS, section 269–13). All who are "parties," including those allowed to intervene, have a right to be represented by counsel, to present evidence, and to cross-examine witnesses (HRS, chapter 91 and section 269–13). Those who are not "parties" do not have these rights.

The PUC's General Order No. 1, in Rule 12.02, provides that a person seeking to intervene and become a party must file a petition setting forth the facts and reasons for the proposed intervention and the position and interest of the petitioner in the proceeding. It requires that the petition make reference, among other things, to the extent to which petitioner's participation will broaden the issue or delay the proceedings, the extent to which petitioner's interest differs from that of the general public, and how the petitioner's intervention would serve the public interest. The general order also provides that the PUC may permit "participation without intervention" at the hearings on the merits, and in case such permission is granted the person so permitted is allowed to participate in the proceedings "only to the degree indicated by the presiding officer."

Indications of the restrictive nature of the process. One indication of the restrictive nature of the process is the fact that in only two cases was a full intervenor status granted to a third party. The first occurred in the telephone case where the U.S. Department of Defense on behalf of the federal government as a major user of

telephone services in Hawaii was allowed to intervene in the case over the somewhat strenuous objections of the telephone company. The second occurred in the recent Kauai Electric rate case, still under consideration by the PUC, where the county of Kauai has been granted intervenor status. With regard to the U.S. Department of Defense, it is interesting to note that, in a subsequent electric rate case heard for the island of Oahu in 1974, the PUC denied intervenor status to the defense department and this action was sustained by the state supreme court.[10]

In one other case where formal petitions were filed to intervene (i.e., the 1971–72 Hawaiian Electric Company rate case), the PUC allowed three petitioners to participate without intervention. The three intervenors were required to submit any questions they might have had to the deputy attorney general representing the PUD staff in the case and then allow him to decide which should be posed to the company during the formal proceedings.[11] The result was that the deputy attorney general became the spokesman for three such widely diverse groups as an environmentalist organization, the legal aid society representing low income ratepayers, and an association of large commercial building owners and managers.

In the most recent 1974 Hawaiian Electric Company rate case, both the federal government and an environmentalist group sought but were denied intervenor status. In other cases, there were indications that third parties might have sought intervenor status if there had been fewer obstacles to intervention or if the process had been felt to be more accessible. For example, the mayor of Hawaii county testified at the public hearings held in the Hilo Electric Light Company rate case, but the county never filed a formal petition to intervene in the case. In the telephone rate case, the city and county of Honolulu did not seek intervention in the case while it was in progress, but did attempt to appeal the final decision of the PUC to the courts. In doing so, the city and county of Honolulu indicated it would have sought intervenor status if it had realized beforehand how its interests as represented by the staff of the PUD would have been acted upon by the PUC.

Reason for restrictive participation. The ostensible reason for limiting intervention by third parties is to permit the timely and efficient handling of rate cases. This is based on the general contention that the more participants there are in a case the more likely it is that there will be repetitious and redundant questioning of witnesses, the introduction of extraneous matters, and the prolongation of the proceedings. Thus, General Order No. 1 places heavy emphasis on the need for would-be intervenors to show that their interests in the case are different from those of the rest of the general public or of those who are already parties to the case and that their participation as intervenors would not unduly broaden the issues. It is further contended that to compensate for the restricted participation in the hearings on the merits the PUC conducts public hearings at which time ample opportunity is provided to all who might wish to express their views.

A case for loosening restrictions on participation. There is something to be said for fostering orderly procedure at hearings on the merits, and, judging from the decisions rendered by the state supreme court, it does not appear that the PUC has thus far abused its discretion in denying intervenor status to those who sought to intervene in rate cases. To state this observation in another way, it does not appear that those who sought intervenor status in the past had been able to show, to the satisfaction of the court, that their interests in the cases differed sufficiently from the interests of others already parties to the case or of the general

[10]Docket No. 2296, D&O No. 3509, *In re Hawaiian Electric Company, Inc.*, Supreme Court No. 5696, Order of Dismissal, July 9, 1974.

[11]This limited participation was upheld by the state supreme court. *In re Hawaiian Electric Company, Inc.*, 56 Haw. (Case No. 5374, 1975).

public represented by the PUD staff and that their participation as intervenors would not unduly broaden the issues in the cases. The state supreme court has upheld the decisions of the PUC denying intervenor status in cases which were appealed to the court in the past.

This is not to say, however, that some loosening of the restrictions on participation might not be in order. Other jurisdictions with more, larger, and more complex rate cases than those facing Hawaii appear to be able to handle their workloads and still provide a much greater degree of accessibility than does Hawaii. California provides an example of such a jurisdiction where intervention seems to be allowed on a much more open basis in all types of utility cases than is the case in Hawaii.

Compared with the hearings on the merits, the public hearings do not provide an adequate forum for the promotion and protection of positions in a rate case. At public hearings, fact, fiction, and fancy are all allowed to be voiced, intermingled, and to go unchallenged. It is in the restricted later phase that basic issues are raised and considered in an orderly fashion, where contending parties can challenge each other's positions, and where the various ramifications of each case are deeply probed. Thus, public hearings, though important, are by no means adequate substitutes for full participation in a rate proceeding.

In this connection, we note that the fact that a person is not allowed to intervene in the hearings on the merits of a case is not fatal to his standing to appeal the decision on the merits reached by the PUC, so long as he is "aggrieved" by that decision and he has participated at least in the public hearings phase of the case.[12] However, it may well be that appeals from the decisions of the PUC to the supreme court, which appear to occur much more frequently in recent years, might be minimized if there is a greater willingness on the part of the PUC to allow third parties to intervene when the commission is considering the case on its merits.

If not on a full intervenor status basis, the PUC might well consider at least allowing more frequently the participation of third parties on a limited basis. Such limited participation could be in the form allowed the environmental organization in the Hawaiian Electric Company case or in the form of submission of memoranda or briefs on the merits of the case. Further, it would appear that the PUC could conceivably select one or two third parties to intervene, provided all others interested in intervening agree to join their forces with those of the parties selected by the PUC and thereby limit their direct participation in the case. In this fashion, the number of intervenors could be kept to a manageable number.

Finally, we note what we have already said in volume I of this report, that the PUC should emphasize its rulemaking function to a greater degree than it has in the past. Much of the controversy that is generated in the ratemaking process revolve around issues that could well be settled by rules. For example, what factors should be considered and what standards are to be used in evaluating rate proposals appear time and again to be the center of dispute in ratemaking. Rulemaking requires public hearings, and it is in rulemaking hearings that the public finds its greatest opportunity to make its input in the regulatory process.

Recommendations. *We recommend that the ratemaking process be made more accessible to the diversity of interest groups which may be affected by the process. Specifically, we recommend that more intervenor status be allowed to groups interested in becoming parties on the merits of the case, and greater use be made of the limited participation status to keep the number of intervenors to a manageable number. We further recommend that the PUC establish rules on matters which now appear to be litigated again and again in rate cases.*

[12] See *In re Hawaiian Electric Company, Inc.*, 56 Haw. (Case No. 5374, 1975).

Deficiencies in the Handling of Tariff Filings Not Directly Involving Rate Increases

There are other aspects to utility ratemaking besides those which are the focus of attention in major rate proceedings. Among these are tariff filings which do not directly involve rate increases. This section discusses the handling of such tariff matters.

The meaning of "tariff" in the ratemaking process. In the ratemaking process, the term "tariff" is frequently used but is seldom explained (presumably on the assumption that those involved in the process know and understand what it means). Nowhere in the laws and rules and regulations relating to the public utilities program is the term defined and it is used somewhat differently with regard to motor carriers than for the other utilities. A dictionary definition of the term is as follows: "A *published schedule* of rates, ratings, or charges with associated rules, regulations, routes, and information issued by utilities and carriers, or their agents, and *filed with a public regulatory agency.*" Under this dictionary definition, the term "tariff" includes rates resulting from requests for rate increases, and the term "tariff filing" includes all requests for approval of changes in any aspect of the tariff, including requests for a rate increase.

However, in Hawaii, except in the motor carrier area, requests for increases in rates are initiated through the filing of rate increase requests which are not identified as "tariff filings." Ultimately, such requests may culminate in a tariff filing, but this usually occurs after the final decision is made and simply formalizes or embodies the details of the decision that has been rendered. When a change other than a rate increase is sought, the utilities initiate action through the "tariff filing" process. In the motor carrier area, all filings are referred to as tariff filings whether they involve a general rate increase, a specific rate change, or a simple modification of wording.

Distinction in procedure between tariff increases and other tariff changes. Under HRS, section 269–16, no tariff (rate) increase can be legally effectuated without going through the hearing procedures prescribed in section 269–16 and in the Administrative Procedure Act (HRS, chapter 91). For other types of changes, the commission has the discretion, under section 269–16, to: (1) allow the proposed changes to take effect 30 days after filing by the utilities, by simply taking no action at all on the matter; (2) 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 (3) suspend the taking effect of the proposed changes until 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. The responsibility is imposed upon the commission, in any event, to assure that all rates and tariffs are just, reasonable, and nondiscriminatory. In general, it might be said that the commission's procedural discretion is greater in non-rate-increase cases than in rate-increase cases.

In accordance with section 269–16, the PUC does treat tariff filings not involving rate increases differently from filings involving rate increases, unless the commission exercises its discretion to hold a public hearing. For instance, tariff filings not involving rate increases are not "docketed" and are not assigned "docket numbers," and the procedure used is very much simplified. Our observation of this procedure in practice is set forth in the paragraphs which follow.

Lack of rules and regulations. Although HRS, section 269–16, gives the PUC the discretion to handle tariffs not involving rate increases in a different and more simplified manner than that required for those involving rate increases, the rules and regulations of the PUC as embodied in its General Order No. 1 make no provision for the handling of tariff filings not involving rate increases in any manner

different from filings that do involve rate increases. For example, Rule 6.01 of General Order No. 1 relating to tariff filings reads, in part, as follows:

> "**UTILITY APPLICATIONS TO CHANGE TARIFF PROVISIONS.** This rule applies to applications for authority to change any rate, fare, toll, rental or charge, or to alter any classification, contract, practice, rule or regulation as to result in such a change. Such applications shall comply with Rules 2.01 through 2.07 and 4.01."

Under this provision, the same prescribed procedure applies to all tariff filings, regardless of whether or not they involve increases in rates. Rules 2.01 to 2.07 referred to in Rule 6.01 prescribe the format and other formal requirements for all pleadings filed with the commission. Rule 4.01 specifies what is to be included in the contents of all applications filed with the commission. Thus, General Order No. 1 presumes that all tariff matters, whether or not they involve tariff increases, will be handled in essentially the same manner as the filing and docketing of formal requests, the holding of public hearings, the submission of evidence, the cross-examination of witnesses, and the rendering of formal decisions and orders.

In short, the PUC's practice of treating tariff filings not involving rate increases differently from those involving rate increases, although statutorily permitted, is technically not in conformance with its own rules and regulations.

A different and more simplified procedure can probably be justified for some of these tariff filings not involving rate increases (but not for all, as noted below). However, rules and regulations are necessary in this area. They are needed in the first instance to enable all parties to know whether a given matter involves or does not involve a "rate increase." 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 may in fact result in a rate increase. Further, rules and regulations are needed to spell out how tariff changes involving no rate increases are to be filed, what information and documentation are required in such filings, the specific conditions under which the commission might require the holding of public hearings, even though the tariff change proposed does not in fact involve a rate increase.

Then, as to those instances when a simplified procedure is applicable, the rules and regulations ought to specify how the filings are to be handled and the circumstances under which the PUC may assent to the effectuation of the change before the lapse of 30 days after filing.

Without such rules and regulations, inconsistencies in the treatment of the cases and in procedure are likely to develop. Although minor in appearance, the following is an example of the inconsistencies that can develop, absent such rules and regulations.

The utilities currently use differing forms in filing tariff changes. The Hawaiian Telephone Company uses what are commonly referred to as "transmittals." There is no formal legal or procedural basis for this term, but it is recognized and used by the company, the staff, and the commission. These documents are numbered by the company in chronological order each calendar year as they are filed with the commission (e.g., "Transmittal No. 73–1," "Transmittal No. 73–2"). As for the electric utilities, their applications are submitted in letter form. The gas company's applications have been in both letter form and in the format set forth in General Order No. 1.

Greater inconsistencies in the handling of tariff changes between and among the several utilities have not yet developed, apparently because the tariff filings by the utilities, other than the telephone company, have been relatively few and have been allowed

automatically to go into effect (without commission action) upon the expiration of the 30-day period. This is not to say that such inconsistencies will not occur in the future as these other utilities begin to file a greater number of tariff changes or as the commission begins to give (as we later note it should) greater attention to the filings than they have in the past.

Inadequate public notice. The present procedure for handling tariff changes is to distribute, immediately upon filing, copies of the filing to the members of the commission, to the staff's legal counsel, and to the appropriate administrator who refers it to the tariff branch within the public utilities division for review and analysis. Then, at the commission's next quorum meeting the staff submits a report on the matter, either orally or in written form. At that point, the commission may decide to take no action and thereby let the proposed change take effect at the end of the 30 days, or, the commission may decide that the matter should be questioned and reviewed, in which case an order of suspension will be issued, a docket will be established, hearings will be held, and ultimately a final decision and order will be issued. Table 4.3 shows the frequency of tariff changes by utility companies for the years 1970 through 1972, including the numbers filed and the numbers falling into each category of disposition. Of interest is that in 1973 the telephone company submitted 185 transmittals for approval.[13]

For the period 1970 through 1972, we found that the usual disposition of applications for tariff changes submitted by the gas and electric utilities was the effectuation of the changes without commission action. When changes are allowed in this manner, the public receives very little notice. Unless one is a very avid follower of commission proceedings or regularly checks with the commission on the status of tariff changes, it is virtually impossible to know when these changes are occurring. This is not important, of course, when minor corrections in text are all that are involved, but when significant issues may be at stake this appears hardly adequate.

Although many tariff filings contain relatively minor and quite technical matters, they do sometimes involve significant policy issues and raise important questions which should be carefully examined. When any filing is considered important or controversial, the PUC may and sometimes does docket the matter and subject it to the public hearing process.[14] However, under existing practices, this is by no means required. Further, the judgment of the PUC may not always coincide with those of the general public.

It would appear that one of the 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 request the PUC to hold public hearings at which they may voice their views on the changes. Thus, it would seem that the procedural machinery should be designed to spotlight such filings, 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.

Inadequate review and examination. The lack of obvious public notice for many changes might not be quite so bad if it were

[13]This is a 478 percent increase over 1972. According to the staff, the company has changed its procedure by submitting each change in a separate transmittal where formerly more than one change was submitted in a single transmittal.

[14]For example, the PUC has opened dockets on the telephone company's transmittals and on formal complaints lodged against the telephone company, which raise the issue of "interconnect companies"—that is, companies selling and leasing equipment used directly by customers (telephone instruments, switchboards, etc.) and *interconnected* with the lines of the telephone companies (Docket Nos. 2078, 2120, 2133, 2165, and 2174).

The PUC has also opened a docket (Docket No. 2189) on the transmittal submitted by the Western Union of Hawaii, Inc., to allow it to provide a private line data service. This transmittal was opposed by the telephone company, alleging that it could provide the same service proposed by Western Union of Hawaii. The commission ruled after hearings that the new service proposed by Western Union was needed and that, although the telephone company claimed it could provide the same type of service, it had not offered the service.

Table 4.3

Frequency of Tariff Changes by Utility Companies
1970 – 1972

	1970	1971	1972
Hawaiian Telephone Co.	19	22	34
Rate revision (increases)	1	–	–
Transmittals	18	22	32
Schedule changes(1)	–	–	2
Hawaiian Electric Co.	5	4	1
Rate revision	–	1	–
Schedule changes(1)	2	–	–
Fuel oil changes	3	3	1
Hilo Electric Light Co.	5	5	1
Rate revision (increases)	–	–	1
Schedule changes(1)	–	–	–
Fuel oil changes	5	5	–
Maui Electric Co.	8	5	2
Rate revision (increases)	–	–	–
Schedule changes(1)	–	–	–
Fuel oil changes – Maui	6	5	1
Fuel oil changes – Lanai	2	–	1
Kauai Electric Co.	3	3	–
Rate revision (increases)	–	–	–
Schedule changes(1)	–	1	–
Fuel oil changes	3	2	–
Molokai Electric Co.	5	–	–
Rate revision (increases)	–	–	–
Schedule changes(1)	2	–	–
Fuel oil changes	3	–	–
Gasco, Inc. (Oahu, Kauai, Maui, Hilo)	4	4	3
Rate revision (increases)	1	–	2 (Hilo & Oahu)
Schedule changes(1)	1	2	1
Fuel oil changes	2	1	–
Propane gas change	–	1	–
Young Brothers, Ltd.	1	2	7
Rate notices (schedule changes)(1)	1	1	5
Others	–	1	2

(1) Schedule changes include new rates, decrease in rates, text changes, and deletion of rate schedules.

Source: Rates and tariff branch, public utilities division, department of regulatory agencies, State of Hawaii.

compensated for by careful scrutiny and vigilant concern for consumers and the public interest on the part of the staff and of the commission. However, there is no assurance that this is the case. In fact, on the basis of available evidence, it would appear that many of the proposed changes receive little more than cursory examination by the staff and casual review and endorsement by the commission. The staff reports which are prepared on the transmittals are frequently quite sketchy and simply repeat much of what is actually contained in the company's document. No attempt is made on a regular basis to summarize in clear, concise language readily understandable to laymen what the effect of the proposal would be. Then, although internal written staff reports from the tariff branch to the public utilities administrator are prepared on all transmittals, many of the administrator's reports to the commission are presented orally and acted upon immediately by the commission without a study of any written explanation or documentary material on the proposals. This procedure is frequently dictated by the exigencies of time in trying to meet a 30-day deadline within the meeting schedule of the commission. Considering the technical nature of many of the proposals, however, there is a serious question as to whether the commission has sufficient knowledge and understanding to make a sound decision.

An example of the inadequacy of the review and examination of proposed changes is the special tariffs that are proposed from time to time on specialized equipment used by the U.S. military. In these cases, the staff does not appear to examine the matter very closely since the federal government is the only customer affected. Similarly, the commission lets the change go into effect without question. In one such instance, the federal government telegraphed a request to be heard on the matter prior to the expiration of the 30-day limit, but after the commission had decided to let the change go into effect. Two months later, the executive director advised the federal government that, if it had any objections to the tariff, it should file a formal complaint. The federal government did follow up on this suggestion and filed a formal complaint, which is now being processed through the formal complaint procedure. However, even now the staff is letting the federal government carry the burden of testing the fairness and reasonableness of the approved tariff.

In recent years, the ability of the commission to make sound decisions on proposed tariff changes has been further weakened by its direction to the staff not to make recommendations as to whether or not proposed changes should be suspended and subjected to review and hearings. In years past, such recommendations were solicited and given. Considering the fact that many tariffs are complicated and that the effect of many proposed changes may be difficult to ascertain and understand, it would appear reasonable for a group of lay commissioners to expect recommendations from the professionals in the field. For its part, if the staff firmly believes it represents and should protect the consumers, then it should insist upon making recommendations aimed at promoting consumer protection. The fact that the commission and staff may end up taking opposite views on a matter should not be a deterrent against making recommendations. It is our understanding that, despite the commission's directions, the staff since 1974 has resumed making recommendations to the commission. We believe this is as it should be.

Recommendations. *We recommend that the PUC establish rules relating to the simplified handling of tariff filings not involving rate increases, if such simplified procedure is deemed desirable. However, in the formulation of such rules, we recommend that:*

1. The PUC establish clear guidelines defining:

- *which tariff matters will be treated as rate increase requests and which will be treated as non-rate-increase tariffs;*

- *the circumstances under which tariff filing requests may be allowed to go into effect before the expiration of the 30-day waiting period;*
- *how non-rate-increase tariff filings are to be handled internally by the staff.*

2. Any alternative procedures used for non-rate-increase matters deemed to require public attention include adequate means of giving public notice of proposed tariff changes and of ensuring full access to the decision-making process to all parties with an interest in such changes.

3. The PUD staff provide a greater in-depth review and examination of tariff filings.

Unfair and Discriminatory Treatment of Consumers in the Regulation of Fuel Oil Adjustments

Along with the regulatory agencies of 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. Under the fuel oil adjustment concept, it is recognized that fuel oil constitutes one of the major operating costs 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 PUC allows utility companies to adjust the charges to their customers in accordance with a set formula whenever the price of fuel oil changes. In other words, the basic rates established for a utility assume a certain level of cost of fuel oil and, as this cost changes, the basic rate can be adjusted upward or downward accordingly.

Although the concept itself is relatively simple and appears quite reasonable on the surface, unless it is properly designed and monitored, it can in practice result in serious inequities and severe penalties to the users of utility services. Discussed below are various aspects of the operation of the fuel oil adjustment mechanism in Hawaii, including some of the problems that have developed in this area of regulation and the apparent causes of these problems.

Factors involved in determining fuel oil adjustments. The price of fuel oil is not the only consideration which goes into the design of a fuel oil clause. There are several important factors which are included in the formula for any fuel oil clause. These include:

1. ***The basing point*** - this is the average cost of fuel to a particular utility based upon its total mix of energy sources (e.g., fuel oil, diesel oil, bagasse, and hydrogeneration) and is generally determined by a study of the incremental increases in cost of all sources of energy used by the particular utility for a test period or test year.

2. ***The basic cost of fuel*** – this is the actual or specified cost of fuel oil which is assumed in the approved basic rates of the utility, and it generally reflects the prevailing cost of fuel to the utility at the time the basic rates were approved. It is expressed in terms of a cost per unit, which may be the cost per barrel (e.g., $2.60 per barrel) or the cost per unit of energy produced (e.g., 50 cents per million BTU [British thermal units]).

3. ***The fuel oil factor*** – this is the amount by which the consumer utility rate is increased given an increase in the cost of fuel (e.g., for each 10-cent increase in the basic cost of fuel, the consumer utility rate may be increased by a factor of $0.0002 per kilowatt hour of usage). In determining this factor, the cost of fuel may be calculated on the basis of cost per unit of energy (i.e., per kilowatt hour or per million BTU) produced. The factor generally reflects the fuel efficiency of the utility's total system—i.e., roughly the number of kilowatt

hours which can be produced per barrel of fuel oil.

4. The effective date of change – this is the date on which an adjustment can be put into effect in the utility's billings to its customers following a change in the price of fuel oil being paid by the utility.

Hawaii's procedure for making fuel oil adjustments. At the present time, all of Hawaii's electric and gas utilities have a fuel oil clause incorporated in their rate structures which have been approved by the PUC. Although there are variations among these different fuel oil clauses, essentially the same procedure is followed in the effectuation of rate adjustments under them. Basically, this procedure consists of a letter notice which an affected utility sends both to the PUC and to the PUD, informing them of the change which will automatically be put into effect by the utility. This notice will indicate the date of the change in the price of fuel oil for the company, the amount of the price change, the effective new rates in cost per kilowatt hour resulting from the fuel oil adjustment, and the effective date of the new rates (i.e., the date on which meter readings will be calculated at the changed rates for purposes of billing customers).

Generally, the only action taken on such notices is a brief staff check to determine that the company's calculations are correct. The notices are not considered or acted upon in any way by the PUC so that no formal action is ever taken with regard to them. As for the PUD, once the calculations have been checked, the notices generally are just filed away. Only on rare occasions have staff members gone back to the utility companies to verify a figure or to correct an apparent error. The whole procedure is quite cut-and-dried, is handled on a routine and more or less automatic basis, and rests primarily within the hands of the utility companies.

Adjustments do occur with some frequency in Hawaii. For example, in the four-year period from 1970 through 1973 the lowest number of adjustments among the electric utilities in Hawaii made by a single utility was ten (almost three per year), while the highest totaled 22 (almost six per year). Moreover, in recent months, the adjustments have been quite large so that in some instances customers have found their bills practically doubling.

Based upon our examination of the present administration of the fuel oil mechanism in Hawaii, some serious problems became readily apparent in this area of regulation. These are discussed in the paragraphs which follow.

Questionable legal basis for fuel oil clauses. Although it has been a long-standing and generally accepted practice in Hawaii to include a fuel oil clause in the approved rate structures of the gas and electric utilities, we have been unable to find any firm legal basis for this practice. In our examination of the records of the PUC and the PUD and in our interviews with the personnel concerned, we were unable to determine how the practice first came into use and whether or not its legality has ever been carefully reviewed and confirmed. The PUC does not appear to have ever considered the subject on its own merits through the opening of a separate docket and the holding of hearings concerning it. Although the matter has ended up being included in the final rate structures approved as the result of specific rate cases, only peripheral attention appears to have been given to the subject in the actual rate proceedings themselves.

The inclusion of a fuel oil clause in a rate structure is legally questionable because HRS, section 269–16, specifically provides that all rate increases must receive prior approval by the PUC after it has conducted advertised public hearings on the island affected. As most of the fuel oil adjustments involve rate increases, it would thus appear that they would fall within the meaning of this statutory requirement.

Even if the inclusion of a fuel oil clause in the approved rate structure of a utility is permissible under section 269–16, there is still a question as to whether or not the existing fuel

oil clauses have met the requirements of the Hawaii Administrative Procedure Act. This is due to the fact that scant attention was paid to the fuel oil clauses in the rate case proceedings resulting in the rate structures which include the fuel oil clauses.

The opinion of the deputy county attorney for the county of Kauai rendered early in 1974 (Opinion No. 74–13, dated March 7, 1974) concerning Kauai Electric Company's fuel oil clause, is pertinent:

> "Therefore, as to the first inquiry–the validity of the oil clause–since it is not part of the rate base and has no support in the record of the proceedings before the PUC, more than likely the Hawaii Supreme Court would have set aside the clause for lack of substantial evidence if an appeal had been taken from the Commission's decision and order following that hearing. However, unless the clause is changed by the PUC or is successfully challenged in a court of record by a party other than those directly involved in the 1969 rate hearing, i.e., by collateral attack, the fuel oil clause will continue to be operative. It can only be voided now by court order rendered in a separate proceeding initiated by a consumer individually or as a member of a class, i.e., a class action to refund any overcharge. With respect to its validity as applied by Kauai Electric Company, this too must be answered equivocally for clearly the application of the clause by Kauai Electric Company is contrary to the spirit and intention of the Public Utilities Act, Chapter 269, HRS, *Chang v. Meagher,* 40 Haw. 96. But so long as the clause remains in effect, Kauai Electric Company is in a position to apply it as was done in February, 1974, without fear of any sanction. Public opinion is responsible for the recent reduction of the fuel oil clause factor."

Considering the importance of this subject and its significant economic implications, it would appear that prompt attention should be focused upon establishing the legal basis for using the fuel oil clause technique. Although a good case can probably be made for including some sort of flexibility in the rate structures of utilities to accommodate fluctuations in a major cost item such as fuel oil, nevertheless, this should be statutorily based and there should be adequate safeguards surrounding the use of such flexibility to protect the interests of the consumers.

Inadequate attention to fuel oil adjustment clauses and their implementation. There does not appear to be sufficient attention devoted by the PUC to the fuel oil adjustment clauses that are inserted into the utilities' rate structures and by the PUD to the implementation of those clauses by the utilities. Illustrating this lack of attention is what happened on the island of Kauai in late 1973 and early 1974.

1. An illustration: Kauai overcharging. In the last rate proceeding for the Kauai Electric Company, the PUC adopted a decision and order approving a new rate structure for the company which included a fuel oil clause dating back to 1958 rather than a revised one suggested by the staff. The staff's revised formula took into consideration the many changes and improvements which had been made in the company's utility system in the period between 1958 and 1973. As indicated above, several factors enter into the formula, and fuel efficiency is one of the most important of these.

Subsequent events demonstrated that this action by the PUC was ill-advised. As a result of the incorporation of the 1958 fuel oil clause into the new rate structure, the ratepayers on Kauai were grossly overcharged during the energy crisis of late 1973 and early 1974 when world fuel oil prices began to spiral upwards. The fuel oil adjustment on that island increased by 579 percent between early 1973 and early 1974. In other words, a typical utility bill based upon 1000 kilowatt hours of usage for a

two-month period in 1973 amounted to $46.10, of which $4.90 was the fuel oil adjustment; but in 1974 the bill rose to $74.45, of which $33.25 was the fuel oil adjustment. From all indications, this increase in the fuel oil adjustment was just about double what it should have been.

Upon a complaint received from a customer on Kauai, the PUD conducted an investigation of the rapid increase in the electric rate on that island. This Kauai resident had used a total of 1900 kilowatt hours of electricity for the billing period of December 10, 1973 to February 10, 1974. For this usage, he was charged $130, of which $63 was attributed to the fuel oil adjustments which occurred during that period. The investigation revealed that the large increase in the electric rate had resulted from the inclusion of the 1958 fuel oil clause in the company's rate structure. The 1958 fuel oil clause reflected a system efficiency of approximately 286 kilowatt hours of electricity per barrel. However, due to significant additions and improvements made to the company's system in recent years, the company's efficiency rate was in fact approximately 500 kilowatt hours of electricity per barrel. Calculating the fuel oil adjustment on the basis of the new efficiency rate and the highest price paid for fuel oil during the billing period affected, this customer's fuel oil adjustment should have been only about $36 instead of the $63 which he was charged, a difference of $27.

If the distortion suffered by this one customer is extended to all the utility customers on Kauai, the excess charges accumulated by the company during the two-month billing period in December 1973 to February 1974 amounted to a significant figure. For example, if we assume that the average residential customer on Kauai uses 1000 kilowatt hours of power over a two-month period, then during the single 60-day billing period the approximately 9720 residential customers on Kauai paid approximately $137,000 in excess fuel oil adjustment payments because of the fuel oil clause that was in effect in early 1974. This figure is probably greater when one considers the fact that there are three other classes of customers on the island whose rates were also subject to adjustment under that fuel oil clause.

The company conceded that its fuel oil adjustments were excessive by virtue of the fact that it submitted several different proposals to the PUC for reducing its fuel oil adjustments. The company finally gained approval on a new formula which is substantially the same as that previously suggested by the PUD. This reduces by about half the amount of the adjustments, and will remain in effect until the new pending rate case is completed. Even so, no restitution of previously paid overcharges was required of the company.

*2. **Laxity on the part of PUC.*** It appears that the 1958 fuel oil clause was inserted in the Kauai Electric's rate structure by inadvertence and mistake on the part of the PUC. It had no intention to adopt the 1958 clause. It got into the rate structure partly because the PUC relied heavily on the draft prepared by the company's counsel in formulating the commission's decision and order. Nevertheless, it seems that the PUC should have exercised greater care on this matter since it has a direct effect on the welfare of consumers.

*3. **Laxity on the part of PUD.*** That the PUC did not devote sufficient attention to the fuel oil clause before its insertion in the rate structure was not the only cause of the distortion that occurred on Kauai. Equally at fault was the insufficient attention paid by the staff in the implementation of the clause. Generally, the only action usually taken by the PUD, following the announcement by the utility company of its intention to adjust its rates pursuant to the fuel oil adjustment clause is to verify the mathematical calculations contained in the adjustment notices received from the company or used by the company to prepare such notices. It rarely, if ever, goes behind the information reported in the adjustment notices to determine that it is properly documented and verified. Indeed, the staff members who

generally handle the review of these calculations hardly ever see the actual provisions of the contracts which set the terms for the purchase of fuel oil by the utility company.

Perhaps, more importantly, the PUD has no program for continuous monitoring of utility performance to ensure that the impact of any upward fuel oil adjustment is as minimal as possible. For example, the staff does not review or examine the fuel acquisition policies, procedures, practices, and negotiations of the utility companies. Although power purchase agreements require PUC approval, no approval procedure is required for fuel contracts despite the fact that the cost of fuel oil has a much greater economic impact on Hawaii than all the power purchase agreements combined. Further, the regulators have no means of assuring that alternative sources of energy are being evaluated and utilized wherever this appears economically feasible (e.g., bagasse, sugar cane trash, and combustible rubbish). Likewise, there is no effective and consistent monitoring and followup on the factors which make up the fuel adjustment formula for each company. It would appear, for example, that the PUD should have been much more aggressive and diligent in assisting the PUC avoid committing the error of including the badly outdated clause in the Kauai case. In this case, the staff waited until a rate case came up before suggesting any change in the formula. Even then, it accepted the action of the PUC not to update the formula.

Fuel oil clauses enable the utilities automatically to pass on added costs to consumers and thus remove much of the incentive for the utilities to seek ways of improving their performance and keeping costs down, unless they are continuously prodded and monitored by the regulators.

Lack of any clear policy. The origins of the use of the fuel oil adjustment technique in Hawaii date back so many years that no one within the PUC or PUD is able to identify with any precision what the initial policy may have been on this subject. In the ensuing years, various modifications have been introduced into the specific fuel oil clauses of the individual utility companies. As a result, there appear to be as many variations in fuel oil clauses as there are gas and electric utilities.

Due to the unique characteristics of each utility company, there may well be ample justification for individualized fuel oil clauses. Nevertheless, variations should only be adopted within the context of a well developed and consistent policy framework. However, most changes in the fuel oil clauses have taken place during rate proceedings and have generally been handled on a technical, staff-level, informal basis between the PUC and the affected utility rather than being a major issue at point where the policy questions involved are fully aired and decisions are made on the basis of the record in each case. In recent years the PUC has not considered the matter on its own merits in any separate docket on the subject and has not attempted to formulate any overall clear-cut policy relating to it. Thus, there is no yardstick or guideline against which to match the formula adopted in any particular case.

There are several examples of inconsistencies among the various fuel oil clauses which involve matters of general policy and do not seem to be directly related to special conditions affecting only one utility. One such example is the fact that the regulators have fluctuated back and forth as to how the effect of taxes should be treated in the calculation of the fuel oil adjustment. Another is the fact that some of the formulas are designed to reflect changes in more than one of the factors while others are geared strictly to changes in the cost of fuel oil, or even one type of fuel oil. A third area of difference is the effective date provisions in the various fuel oil clauses. This third area and the effect of the differences among the clauses are described below.

*1. **Inequitable treatment resulting from inconsistent effective dates for implementing fuel oil adjustments.*** The date upon which a fuel oil adjustment is put into effect has a direct

result on the utility bill that the consumer must pay. Since different companies handle the matter in different ways, fuel oil adjustments affect consumers differently.

For example, on Hawaii, if the price of fuel oil changes within the first 15 days of a calendar month, the Hilo Electric Company imposes the fuel oil adjustment based on this new cost on all customer billings from meter readings made on or after the first day of the following calendar month, but if the price change occurs after the 15th day of a month, it imposes the fuel adjustment based on the new cost on billings from meter readings made on and after the first day of the second month following the change. The practice of Hawaiian Electric Company was similar to that of Hilo Electric until August 19, 1974. Since that date Hawaiian Electric has made any fuel oil adjustment effective on the date of the change in the cost of fuel oil to the company (Docket No. 2296, Decision and Order No. 3546). On Maui and Kauai, the effective date of a new fuel oil adjustment is the first day of the calendar month following the change in price of oil to the company. Thus, whether the change occurs the first or last day of the preceding month, customer billings are adjusted beginning the first day of the succeeding month. For Molokai (like on Oahu since August 19, 1974), a new fuel oil adjustment is made effective the day a change occurs in the price of oil for the company. The net result of these varying practices is that customers are treated inequitably among the various islands in the State.

It would appear desirable for the PUC to establish some sort of standard period for putting into effect fuel oil adjustments so that everyone will be treated equally when a price change occurs.

*2. **Overcharging and discrimination due to the failure to prorate fuel oil adjustments.*** Closely associated with this problem of differences in the effective date is the further problem of the different ways in which the utilities impose adjustments resulting from a series of price changes during a given short period of time. This situation is best explained by the experience on Kauai.

Earlier we noted that the consumers of electricity on Kauai were overcharged due to an outdated fuel oil adjustment formula. This was not the only distortion which occurred at that time. There was another type of distortion which affected the electric company's customers. During a relatively short period between November 1973 and January 1974, the price of fuel oil increased three times–from $7.7792 per barrel on November 13, 1973 to $12.5632 on January 22, 1974. The basic cost of fuel included in the company's rates was $3.00 per barrel. The electric company charged its customers whose billing period fell within this November–January period, as adjustment for the increases in fuel oil price, the difference between the highest price experienced by the company ($12.5632) and the basic cost ($3.00) or $9.56 per barrel, rather than an adjustment calculated on the basis of how long during the period each price increase was in effect. The result was, of course, payment by these consumers of the additional costs for fuel which had not been incurred by the utility.

We explained in connection with the outdated fuel oil formula, that the customer who had complained to the PUD would have paid $27.00 less had the company applied an up-dated formula rather than the 1958 formula. If, in addition, the company had prorated the adjustment necessitated by the three fuel oil price increases according to the time that each of the increases was in effect during the billing period, this customer's bill (and other customers' bills) would have been reduced even further, by about another $14, and his fuel oil adjustment would have amounted to only $21.97, a small fraction of the $63 he was actually charged.

Since August 19, 1974 (Docket No. 2296, Decision and Order No. 3546), the Hawaiian Electric Company, at least, has begun to prorate fuel oil adjustments according to the number of

days each fuel oil price increase was in effect during a customer's billing period. This preferred practice, however, is not yet being followed by the other gas and electric utility companies. It would appear that a PUC-enunciated policy is needed in this area. A combined policy requiring proration and making the effective date of adjustments uniform throughout the utilities would go a long way in ensuring fairness and equity in the treatment of consumers.

Inadequate public notice and public awareness of impending fuel oil adjustments. As long as the fuel oil adjustment remains a very small proportion of the customer's utility bill, then the impact of fluctuations in the fuel oil adjustment is negligible and the need for advance notice to customers of an impending change is not obvious. However, when the amount of the adjustment begins to approach or exceed the amount of the basic rate, then it can come as quite a shock to customers to find suddenly upon receiving their utility bills that they have to pay double the amount anticipated. Thus, it is important that some sort of public notice procedure or some sort of program to generate public awareness be included within the fuel oil adjustment mechanism. However, at the present time, there are no advance notice requirements imposed upon the utilities regarding the implementation of fuel oil adjustments and no provisions calling upon them to engage in any public information programs to alert customers to impending jumps in their utility bills. Thus, we found in the recent energy crisis when large and rapid fuel oil adjustments were being made that both the utility companies and the regulatory authorities, not to mention the news media, were flooded with inquiries and complaints about the sudden and large increases reflected in the utility bills.

In practice, the actual time period for 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* the change has already taken effect, with one week before being the usual time. 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 that goes to the PUC and PUD, it can hardly be termed a public notice. Each notice receives only limited staff review and none is ever placed on the agenda of the PUC or acted upon in any official way by the PUC. No procedures exist for assuring that public dissemination will be given to the notices as they are received by the PUC.

At a minimum, therefore, it would appear desirable for the PUC to establish a requirement that public notice be given of all proposed rate adjustments within a designated time period prior to the effective date of such adjustments. In addition, the regulators should work with the utility companies in making sure that adequate public information programs are put into effect to alert consumers to the proposed changes and to explain the reasons for and effects of the proposed changes.

Recommendations. *We recommend that the PUC make a thorough and comprehensive examination of the fuel oil adjustment mechanism in Hawaii. Specifically, we recommend that the PUC:*

1. Examine the legal validity of the fuel oil adjustment clauses and if necessary and appropriate, formulate legislation to authorize the use of such clauses.

2. Formulate appropriate rules and regulations providing for a uniform development of fuel oil adjustment formulas, such as the factors or situations allowing the invocation of the fuel oil adjustment changes, the treatment to be given to the effect of taxes on fuel oil prices, the effective date of fuel oil adjustments, and the proration of multiple fuel oil price increases occurring within a given period, to the end that all customers of all utilities are treated fairly and equitably.

3. Develop internal procedures to ensure careful reviews of all fuel oil adjustment formulas to be included in any rate structure and for continuous monitoring of all fuel oil adjustment clauses to ensure their continuing relevancy and adequacy.

4. Maintain continuous oversight on the implementation of the fuel oil adjustment clauses, including a review of all utilities, fuel contracts and fuel uses to ensure that the utilities are diligently seeking to keep fuel cost increases to the minimum possible.

5. Investigate the overbilling of consumers on Kauai and elsewhere in the State, and require rebates where appropriate.

6. Provide in its rules for adequate notice to the public of all impending increases in rates resulting from the invocation of the fuel oil adjustment clauses.

Chapter 5

QUALITY OF SERVICE, CONSUMER COMPLAINTS, AND CONSUMER CREDIT

The setting of utility rates is but one side of the equation in ratemaking. The quality of the services rendered by the utilities and how consumers are treated constitute the other side. The price to be paid for utility services must be fair in light of the kind of service and treatment that the consumers receive from the utility companies. This chapter explores the consumers' side in utility regulation.

Summary of Findings

1. The quality of service rendered by the utilities receives insufficient attention by the utility regulators. The standards that have been established governing quality of service are incomplete, vague, and indefinite, and there is no functioning administrative machinery for monitoring the quality of service and for enforcing adherence to whatever standards there might be.

2. Although consumer complaints, if properly handled, provide a valuable source of information for managing and regulating the utilities, they currently provide only a limited contribution to the economic functioning of the utility systems. There is no integrated system for the handling, recording, and analyzing of data on consumer complaints; there are insufficient PUC rules on the matter; and there is no state administrative machinery to give consumer complaints the attention they deserve.

3. Regulatory activities relating to consumer credit in the utilities field are woefully lacking. There are insufficient PUC rules and administrative monitoring to ensure that consumers are fairly and reasonably treated by the utilities. As a consequence, the policies and practices of the utilities are arbitrary, discriminatory, harsh, and insensitive to the individual rights of consumers, particularly those policies and practices relating to deposits, credit information, bill collections, and termination of services.

Shortcomings in the Establishment and Enforcement of Standards of Quality of Service

Utility ratemaking cannot be discussed properly without reference to the quality of utility services. As in any other economic transaction, price and product quality go hand-in-hand. In the utilities field, however, there is no such thing as comparison shopping because the sale of utility services is monopolistic in character. The substitute for product comparison is the quality of service standard, which normally is designed and applied by the utility regulatory agency.

Various types of standards may apply to quality of service—i.e., engineering standards, safety standards, financial reporting standards, etc. However, for present purposes, discussion is limited to those standards which apply to services that directly affect the consumer and

through the use of which the consumer can readily perceive the nature and quality of the services being rendered.

Although normally the quality of service being rendered by a utility is an important part of ratemaking, in Hawaii utility regulation it plays but a small part. Quality of service is given very little attention as evidenced by the following.

Vague, indefinite, incomplete, and minimal standards. To be truly effective, any set of standards should be definite, quantifiable, and measurable. However, the standards that do exist and are incorporated in the PUC's various general orders are far from meeting this criterion. To the contrary, they are frequently couched in such general nonspecific terms as to be meaningless for purposes of measuring performance. For example, one of the standards set for the telephone company reads as follows: "Traffic studies shall be made and records maintained to the extent and frequency necessary to determine that sufficient equipment and an adequate operating force are provided during the busy hour, busy season." This is by no means an atypical example of the type of standards included in the general orders. Standards, if they are to be useful, must be more than general exhortations to the utility companies to perform satisfactorily. Not only are existing standards vague and indefinite, but they are also entirely lacking in some fields of utility regulation. Thus, for example, there are no standards of quality of service for the water supply companies regulated by the PUC. Without standards, of course, quality of service cannot be measured.

Where there are specific, quantifiable measures, they are frequently very low standards which the utilities have no difficulty meeting and which are highly questionable in terms of setting an acceptable threshold for adequate performance. For example, in a comparison made by a private consultant of quantifiable standards in Hawaii and in California, Hawaii's standards were consistently and significantly lower than those in California. The consultant found that the Hawaiian Telephone Company was meeting California's higher standards, and its recommendation to the commission was that the California standards be adopted for Hawaii. In view of the fact that the company is already meeting standards which are significantly higher than those set forth in the general order, it would appear that the PUC should be moving forthwith to upgrade the standards in the general order.

Case-by-case development of standards. Standards are properly the subject of rulemaking where the public might fully participate in discussing the appropriateness of the standards. However, in part due to the inadequacies of the standards in the general orders or the lack of them, the PUC has sometimes utilized the ratemaking process to impose standards on the utility companies. This is done through the attachment of certain conditions and requirements affecting the quality of service to the decisions and orders issued in rate cases granting rate increases to the utilities. Unless the affected utilities meet the conditions and requirements, they would not be able to put the approved new rates into effect.

The most recent telephone rate case provides an example of this approach to setting standards. In that case, the telephone company was required to demonstrate to the satisfaction of the PUC that it was meeting standards of service developed for the State of California, not those contained in the general order, before it was able to receive the full amount of the rate increase granted to it by the PUC. The net effect was that a new and higher set of standards was set for the telephone company than that contained in the general order.

There are several problems inherent in setting standards as part of the ratemaking process. First, of course, is the question of the legal validity of this method of standard-setting. Second is the fact that it can lead to the creation side-by-side of inconsistent, or even conflicting, standards. This, in turn, raises a question of

which standards are really binding upon the affected utility. It also permits different utilities and different groups of consumers to be treated in varying, and perhaps unfair and inequitable, ways. A third problem concerns the degree of public access to and participation in the decision-making process in which such additional standards are set. As noted in the previous chapter, public accessibility to the ratemaking process is quite limited. In the telephone case, for example, the question of the applicability of the California standards to the situation in Hawaii was a subject in which the general public had an interest. But no public discussion was possible because the decision to use the California standards was made in the ratemaking process. In that case, it might be noted, the California standards were presumed to be applicable to Hawaii, and the sole focus was whether or not the company complied with the standards. It does not appear that any real discussion was had on the applicability of the standards to Hawaii.

The most appropriate forum for setting standards is the regular rulemaking procedures, not some device which allows the avoidance of full public discussion of the issues involved and permits widely varying standards to be put into effect.

General lack of penalties for noncompliance with standards. Standards of quality of service, if they are to be meaningful, must carry with them sanctions against the utility which fails to perform at the level prescribed by the standards. However, the rules and regulations of the PUC are almost completely devoid of any penalties or sanctions which may be applied against utilities for failure to comply with such standards as do exist. Thus, at present, about the only action that is likely to be taken is for an order to be issued to improve matters if, as a result of an investigation, deficiencies are revealed. On occasion, some extreme measures may be applied—measures which probably would be unnecessary were properly prescribed penalties built into the rules. In the recent telephone rate case, for example, a large portion of the allowed rate increase was withheld until the company could satisfy the commission that its service was adequate. Considering the company was able to satisfy the commission in this regard, the withholding action appears to have been quite a drastic measure for the commission to have taken.

An example of an alternative approach is provided by New York in the area of telephone service. There they have an out-of-service rule where the telephone company must refund one-thirtieth of the customer's basic monthly charge for the first 24-hour period of lost service and two-thirtieths for each additional day where loss of service is the company's fault. For service interruptions which are beyond the control of the company (e.g., natural disasters), there is no penalty for the first 24 hours and only a one-thirtieth refund requirement for each successive 24 hours of lost service. New York has also developed a "Basic Service Index Plan" which provides for refunds to subscribers in chronically poor service areas. Under this plan, there has been developed a quantifiable index of service which is monitored on a regular basis. Whenever service in an exchange area falls below the predetermined acceptable level, then the company must make a refund to all affected subscribers. The New York Telephone Company was required on one occasion to refund $1.50 per month to all eligible subscribers.

In Hawaii, there have been instances where particular areas serviced by the utility companies have received noticeably inferior service compared to other areas or where there have been serious interruptions of service with no penalty being imposed upon the companies involved or any relief provided to the customers affected. For example, there have been periods when telephone service for certain areas of Oahu was less than satisfactory, but nevertheless the customers in those areas paid the same rates as all other customers. Another example has been the frequent electric power failures experienced in some neighbor island communities. Considering the tremendous discomfort and inconveniences which can be caused by

prolonged power outages, it would appear that there should be very strong incentives for the utility companies to take precautions to avoid such occurrences wherever possible and to remedy such problems rapidly when they do occur.

No program for monitoring compliance with standards. The result of inadequate and incomplete standards (or, perhaps, the cause of such deficiencies) has been that there is no real program to monitor the adequacy of service being rendered by the utilities. The staff may occasionally examine some aspects of performance, but generally when this occurs it is in response to some specific consumer complaint or is part of a rate proceeding. However, even then, no thoroughgoing examination of performance is ever attempted. Where records of performance are required to be maintained by the utility, they are very seldom if ever reviewed by representatives of the commission or staff. Where reports are required to be submitted by the utility to the commission, they are usually examined only in a very cursory manner and then generally are filed away without further action or comment.

Indeed, if the most recent telephone company case is an example, it does not appear that either the PUC or PUD is aware of how it should go about evaluating the quality of service of the utility companies. In that case, the PUD initiated action for such an evaluation, apparently because of the numerous complaints which the PUD was receiving from telephone users about the quality of service being provided by the telephone company. Although initiated by the PUD, it did nothing to move the case along for more than two years until the telephone company filed for a very significant general rate increase. Even then, the PUC, at the instigation of the telephone company, required the assistance of an outside consultant, who, having little to work with, used the California standards in its evaluation. The PUD staff, having no real basis to challenge the use of the California standards, did not contest the consultant's finding that the telephone company was meeting the official California state standards.

Little public information about quality of service standards and their enforcement. For standards to be meaningful and effective, it is essential that the general public and the users of particular utility services be aware of the standards and the recourses open to them in the event standards are not being met. Unfortunately, however, (probably in part due to the inadequacies of the standards themselves) very little effort is exerted on the part of the regulatory authorities or of the utilities to acquaint the public with the quality of services to which they are entitled and the means by which they can seek to improve the quality of such services.

There are means by which such consumer information program can be implemented, assuming the existence of adequate standards. One way is to require the utilities to send out appropriate information with their bills from time to time. In the case of the telephone company, it would be possible to require such information to be prominently posted within the regularly issued telephone directories.

Recommendations. *We recommend that the regulatory authorities in Hawaii:*

1. Develop, through the rulemaking procedure, complete, meaningful, and quantifiable standards by which utility performance may be measured.

2. Include in any such standards appropriate sanctions to encourage compliance with the standards.

3. Develop a system and capabilities for monitoring performance in the various service areas by the utility companies.

4. Formulate and implement an ongoing public information program concerning quality of service standards and their enforcement.

Shortcomings in the Handling of Consumer Complaints

Complaint-handling has come to be recognized rather widely as an important management tool. Complaints are viewed as a means of informing management of the deficiencies in the company's product or services and of discovering how the product or services can be made more appealing. In the competitive market, such information and search for ways to improve one's product or services are particularly to be sought since the consumer has the option of turning to some other product or the service of another company, if the product being purchased or the service being received is unsatisfactory.

Good service and improvements in service are equally important in the utility field as in other fields. The essential nature of the services provided by the utilities makes it imperative that utilities be constantly in search for ways to improve their operations to the end that the desired amount and quality of service are provided without interruption. However, the monopolistic character of the utilities—i.e., the lack of an option in the consumers to turn to another supplier of the services—provides an environment for utilities to become lax in their efforts to maintain services at a desired level, notwithstanding consumer complaints.

It is thus vital for the regulatory machinery to provide a system by which consumer complaints are heard and given adequate consideration and the level of services provided by the utilities are monitored and constantly improved.

Despite the importance of consumer complaints in the overall operation of the utilities, it does not appear that complaints and complaint-handling are given the attention they deserve or that they play any significant role in utility regulation. Indeed, it appears that there is a general lack of concern on the part of the utility regulators to questions of how consumer complaints are handled and how they are used to upgrade the quality of service of the utilities. Witness the following.

Limited rules. The PUC's general orders contain some provisions relating to consumer complaints and their handling. But the rules that do exist are limited in nature and scope. For instance, Part III of General Order No. 1 deals exclusively with complaints. However, aside from two relatively short sections stating (1) that informal complaints may be handled by the commission by correspondence or conferences with the appropriate persons and (2) that the commission may institute investigations on its own motions, the bulk of the section is concerned only with the procedural aspects leading up to a hearing by the commission of formal complaints. Thus, it details how and when formal complaints and answers are to be filed, how and when motions to dismiss complaints may be filed, the notice required to be given to the parties prior to hearings, and when hearings are to be held on the complaints.

There are brief sections in three other general orders touching upon complaint-handling in the electric, telephone, and gas utility areas. However, even here, aside from simply exhorting each affected utility to "make a full and prompt investigation of all types of complaints made by its customers, either directly to it or through the commission," the general orders are silent as to how utilities should react to valid complaints and what actions, if any, they should take other than conducting full and prompt investigations.

Nonintegrated system. The existing rules in effect create two separate and distinguishable systems (if they may be called "systems") for complaint-handling: one for the PUC and another for each of the utilities. Indeed, the three general orders (other than General Order No. 1) cited above leave to each individual utility company the procedure for handling complaints lodged with the company.

To the credit of these utility companies, each has developed a complaint-handling system.

The systems of some are more sophisticated and detailed than others, and some procedures included in the system of one company do not appear in the systems of others. Nevertheless, the utility companies appear to have devised systems for receiving, logging, and taking action on complaints. The chief weaknesses of the systems devised by the utilities appear to be that there is no uniformity in the methods used by the utilities in registering, categorizing, and recording action taken on complaints; there is no uniformity in the way the various utilities report to the PUC on complaint-handling; and, except perhaps for the Hawaiian Telephone Company, little if any analysis is conducted by the utilities on a systematic and regular basis of the data compiled—an analysis which might well lead to an overall improvement in services. In a large measure, these deficiencies are the result of insufficient guidelines in the PUC general orders regarding complaint-handling.

From the utility regulators' point of view, the differences in the utilities' systems make it impossible for the utility regulators to integrate the data generated by the utilities with those of the regulators so as to enable them to secure a comprehensive view of the complaints in the utility area and how they might be used or how they are being used to improve the quality of utility services.

Non-system approach on the part of utility regulators. The method of handling complaints lodged with the PUC and PUD is best described as a non-system. Thus, even if the integration of the utilities' systems with that of the regulators is desirable, such integration is not now possible. The non-system approach of the regulators to consumer complaint-handling is evidenced by the following.

First, there appears to be great difficulty on the part of the regulators in categorizing consumers' communications. The PUD has developed a form for recording *complaint* information and another for *inquiries* addressed to the PUC dealing with utility services. In practice, the use of the form developed for inquiries has been dispensed with, and only the form devised for complaints is used. This result has occurred because no guidelines have been established to distinguish between complaints and inquiries, leaving the staff at a loss as to how to categorize any particular communication from a consumer.

Second, under the 1970–71 unofficial reorganization of the PUD staff, the investigations and compliance branch is responsible for pursuing complaints. However, almost anyone in the PUD can take complaint calls. Indeed, the office services section receives many complaints. None of these persons who take complaint calls has ever been trained to do so. Moreover, the actual handling of complaints is not restricted to the investigations and compliance branch. The executive director, the two administrators, the tariff branch, the engineering branch, the office services section, and individual commissioners, all become involved in complaint-handling from time to time.

Third, for statistical compilation, the investigations and complaint branch is supposed to forward information on complaints reaching the regulators to the research and statistics branch. However, only recently have statistics relating to complaints been directed to the research and statistics branch. Even then, the information reaching the research and statistics branch has been incomplete and unsatisfactory. For one thing, not all complaints are properly logged on the complaint form. For another, the tally on the number of complaints received kept by a member of the clerical staff and the tally put together by the research and statistics branch often do not agree, but no attempt is made to reconcile the differing data. Further, the statistics compiled by the research and statistics branch reflect only the number of complaints received during a given reporting period, the number disposed of, and the number pending. This information is used primarily for indicating workload within the PUD, not for purposes of evaluating adequacy of utility services.

Fourth, no information or data received from the utilities or collected by the PUD staff itself is subjected to analysis and examination by either the PUD or the PUC. Indeed, almost no information concerning complaints is transmitted to the commission for its consideration. Thus, consumer complaints are not currently used to guide management decisions or stimulate analysis of levels of services rendered, efficiency of utility services delivery, or potential problem areas within the public utilities operations.

Recommendations. *We recommend that the PUC devise a comprehensive system for complaint-handling for the purpose of monitoring the operations of the utilities and encouraging utilities to provide high levels of service. In the development of such a system, the PUC should ensure that:*

1. Adequate guidelines regarding expectations as to the level of services to be provided by the various utilities and the manner in which utilities respond to consumer complaints are spelled out in the rules;

2. The methods of collecting, categorizing, and reporting data by both the utilities and the utility regulators are uniform;

3. The procedures to be followed by the staff on all complaints, informal as well as formal, lodged with the utility regulators, are clearly delineated;

4. Analyses of data on consumer complaints by both the utilities and the PUD staff are conducted; and

5. Periodic reviews of complaint data collected by the staff and analyses performed by both the staff and the utilities are conducted by the commission and the insight gained by such reviews are used in formal ratemaking proceedings.

Shortcomings in Consumer Credit Policies and Practices

Public utility customer credit operations are a central and sensitive aspect of public utilities operations. The very nature of the utility business dictates that utility companies cannot demand cash payment for services as they are rendered. (While the introduction of widespread electronic data processing makes such a system theoretically possible, no such system has yet been developed.) Utility companies, instead, generally charge for services rendered during a particular period of time, usually on a monthly or bimonthly basis. The telephone company is something of an exception, as it requires advance payment of the initial monthly billing, but in the case of long distance calls, the telephone company, too, bills after the fact. Thus, it generally is necessary for utility companies to have a system for extending credit to their customers.

This being the case, it is inevitable that problems will arise from abuses by customers, mistakes by utilities, differences between the two over billings, and the like. However, there is no consumer sovereignty in the utilities field; customers have little recourse but to deal with the utility companies directly, and generally on the companies' terms. Guaranteeing that the customer's interests are as well-served as those of the utility companies, then, becomes a task for the regulators of the utilities.

The discussion which follows is based upon a review of the policies, procedures, and practices within the PUC and PUD and within the three major utility companies operating on the island of Oahu—i.e., Hawaiian Electric Company, Hawaiian Telephone Company, and GASCO, Inc.

The criteria. Fairness, nondiscrimination, and reasonableness are criteria which have application to almost every kind of action which affects the general public. However, particular attention is required in the public utilities area to ensure that these standards are adhered to,

since utilities provide services that are essential and operate as monopolies. Unfortunately, the credit practices in the utilities area appear to fall short of these standards. Set forth below are some of the major shortcomings revealed as a result of our examination.

Deficiencies in the PUC rules. The rules and regulations of the PUC constitute a vital form by which fairness, nondiscrimination, and reasonableness of the utilities'credit policies may be ensured. The PUC has adopted formal rules and regulations concerning credit matters for three utility areas—i.e., the electric, telephone, and gas utilities. For all other fields subject to regulatory control by the PUC, no rules and regulations have been adopted on the subject of credit. The rules and regulations on credit in the electric, gas, and telephone utility areas cover the following: (1) the establishment and re-establishment of credit, (2) customer deposits, (3) interest on customer deposits, (4) denial and nondenial of service to customers, and (5) the form of customer bills to be used and the methods for adjusting customer billings. Generally, the rules and regulations for the three types of utilities are similar, but they are by no means uniform and completely consistent.

In the three areas where rules and regulations have been adopted, the formal requirements suffer from some serious deficiencies. These include the following:

*1. **The rules themselves contain discriminatory features.*** One very serious deficiency in the rules and regulations is the fact that on their faces they contain discriminatory provisions. This is found in the language contained in the general orders providing that property owners shall automatically be entitled to establish credit with the utility companies. There is no language affording such right to automatic extension of credit to nonproperty owners. There is a large number of renters within the State, and renters cannot be assumed as a class to be poorer credit risks than property owners. The distinction between renters and property owners is a very inappropriate, if not illegal, discriminatory provision in the rules and regulations.

*2. **The rules are overly vague and broad.*** The rules and regulations specify some of the grounds upon which credit is to be extended and upon which service cannot be denied. However, they give broad discretionary authority to the utility companies to determine how their credit policies, procedures, and practices will be formulated and put into effect. Thus, the rules are generally silent as to how customers are to be classified and their credit ratings are to be determined and when customers may be required to make deposits.

The rules not only give the utilities broad discretionary authority but they are also vague and inconsistent. For example, although minimum and maximum deposit limits are set, there are variations in such limits among the three types of utilities.

Another illustration of the vagueness in the rules may be drawn from the PUC's experience with the rules relating to the payment of interest on deposits required by the gas company. General Order No. 9, which governs the gas company, says in Rule 4.2c2(a):

> "Simple interest on deposits at the rate of at least 6% per annum shall be paid by the utility to each customer required to make such deposit for the time it is held by the utility after credit is established."

However, under another rule (No. 4.2a), which contains optional definitions of when "credit is established," the company and the PUC considered that no payments need be made until after 12 months had elapsed from the date of deposit. In 1970, a customer of the gas company complained to the ombudsman that the electric company paid interest from the date of deposit, but the gas company did not. Eventually, the attorney general ruled, citing another option of Rule 4.2a, that interest was due from the date of deposit. The PUC then made payment from the date

of deposit a common requirement for the gas, electric, and telephone companies.

Even so, the question of what consumers are due in such instances has not been wholly resolved, for the PUC's rule states that interest paid shall be "at least" 6 percent. Correspondence in the case cited above indicates that interest rates paid utility depositors should bear some relation to market rates, but the PUC nevertheless has not changed the rate payable to depositors to reflect the rates that have prevailed in the market in recent months.

*3. **The rules contain virtually no procedural safeguards.*** The rules and regulations governing credit matters list various required and prohibited actions and practices on the part of the utility companies, but there are very few procedural safeguards to assure compliance with these requirements and prohibitions. For example, there is no formal requirement that the in-house policies, procedures, and practices of the individual utility companies affecting credit matters be reviewed and approved by the PUC prior to their implementation or even be filed with the PUC for information purposes after their adoption.

The situation regarding the right of utility companies to terminate services probably best illustrates the weaknesses present in the area of procedural safeguards. The rules specify the grounds upon which service can or cannot be denied to customers, but the decision whether or not to deny or terminate service is left exclusively to the utility companies. Thus, compliance with and enforcement of the regulations can only be dealt with after the fact—i.e., *after* service has been denied or terminated. Then the only recourse a customer has if he wishes the service provided or restored is either to meet the company's requirements or to seek redress through the PUC's rather ineffectual complaint-handling process. This places the customer at a severe disadvantage. The only safeguard provided consumers is a limited notice provision. Moreover, there are no remedies for situations in which the denial or termination of services may be found subsequently to have been arbitrary, capricious, or in violation of the rules on the part of the utility company. It appears that the only relief available to customers in such cases is an order from the PUC requiring the company to provide or restore service. PUC rules do not encompass the possibility that a customer may suffer undue hardship.

Considering the vital nature of utility services, it seems fair to question whether a utility company should have unilateral authority to deny or terminate services in the absence of a remedy for the customer, other than restoration of service, particularly if the action of the utility company turns out to be arbitrary, capricious, or in violation of PUC rules. Deprivation of utility services in a society as complex as ours is tantamount to a substantial reduction in the individual's standard of living. In certain cases, such as that of homebound persons who are dependent on fixed incomes, utility service can literally be a life-and-death matter. This being the case, a balance needs to be struck between the recognized business interests of the utility companies and the right of their customers to protection against unreasonable and potentially dangerous business practices. Further, means must be provided for redress to persons who suffer undue hardship because of utility company actions. As the rising cost of energy prompts consumers to reduce consumption to levels commensurate only with their real well-being, as consumers make economic tradeoffs between energy consumption and communications, and as communications systems gain sophistication and economic importance, such safeguards become progressively more necessary.

General lack of administrative machinery for monitoring performance. Effective regulation consists as much or more in active administration as it does in rulemaking. However, the PUC and PUD leave the credit area virtually untouched and do not appear to have any plans for more vigorous regulation. Their only involvement in credit matters in recent

years has been a recent amendment to General Order No. 8 and staff attention to a small number of complaints.

No one within the regulatory agency has seen or requested copies of the internal operating policies and procedures of the utility companies relating to credit matters. We had to request these directly from the companies. Moreover, the PUD staff had no information at all about the number and frequency of terminations and denials of service by the utilities and was very reluctant to request such information from the utilities. The staff indicated this was no great problem and did not want to impose a burden on the utilities to collect such data. Finally, the staff agreed to ask the larger utilities to indicate how many service cutoffs they had instituted during the month of January 1973—i.e., terminations initiated by the companies for nonpayment of bills and related reasons, but not including those requested by customers. The results of this one month's sample, which may or may not be representative, are set forth below:

Hawaiian Electric Company . . .	208
Hawaiian Telephone Company.	1,251
GASCO, Inc.	114
Maui Electric Company	20
Hilo Electric Light Company .	12
Total	1,605

It is not known, of course, how many of the above involved the same parties, how long the cutoffs lasted, and how many customers and individuals may have been affected by these terminations of service, but the above figures indicate that in a single month's time a fair number of persons in Hawaii are at least inconvenienced temporarily by having their utility services discontinued. The number whose health, safety, and welfare are potentially jeopardized by the actions of the utility companies is disquieting to say the least. If the figures for January 1973 are typical, then this means that in a year's time as many as 20,000 customers in Hawaii will have their utility services cut off by the utility companies. Assuming several individuals may be affected by each such action, then the total number of persons suffering will be several times the 20,000 figure. The above figures also include only those whose services were cut off and do not include those who may have been denied service as allowed under the commission's rules and regulations. It would seem, therefore, that this is an area deserving the exertion of some effort, concern, and imagination on the part of the PUC and staff.

Deficient and inappropriate utility company credit policies, procedures, and practices. We examined credit policies and procedures of the gas, electric, and telephone companies on Oahu and found many weaknesses, including unfair, discriminatory, and inappropriate practices, due in large part to inadequate PUC rules and regulations and administration. The weaknesses include:

1. Discriminatory policies and practices. Both the telephone company and the electric company have formal policies and procedures which accord some groups preferential credit treatment almost automatically, while other groups are required to meet minimum requirements as a matter of course. The difference in treatment is based on general socio-economic considerations (property owner/professional employee vs. nonproperty owner/nonprofessional employee, for example) and not on the personal credit standing of the individual. Persons who do not get preferential treatment usually have to supply detailed information and pay deposits to establish credit with the utility companies. This should not be so; if there are to be differences in treatment of customers, they should be based on specific credit qualifications of individual customers, rather than on broad socio-economic classifications.

The telephone company has a formal policy of granting especially favorable treatment to groups that are in positions of influence; by

written policy the company extends its best credit rating to government officials, newspaper personnel, and top management of large corporations. This may be a practical approach for a regulated utility, but it hardly squares with the legal requirement that utility companies provide fair and nondiscriminatory treatment of all customers.

*2. **Lack of individual credit protection.*** Another disturbing aspect of credit practices followed in varying forms by the utility companies is that customers may be subjected to onerous credit requirements and conditions because of information which may not be correct or fair and against which the customer has no opportunity to defend himself. The telephone company has the following provision in its credit rules:

> "Information of unsatisfactory payment records may be used as basis for 'D' [classification denotes bad credit risk], regardless of source of information (company records, collection agency or of mainland telephone company, etc.). Under no circumstances should source of information be revealed to the customer."

While policies among the other two utilities may differ somewhat in detail, all three of the utility companies pursue similar practices in this regard.

Already federal legislation has been enacted, and state legislation considered, to protect individuals from possible abuses by private credit agencies by requiring disclosure of credit information and the right to correct misinformation. Considering that the telephone company exchanges credit information with other utilities, other telephone companies, credit bureaus, etc., the question may very legitimately be raised as to why the telephone company should not comply with safeguards of individual rights and credit standings.

*3. **Unfair and inappropriate collection practices.*** Another weakness in present utility company credit policies and procedures is the use of various types of pressure to induce or coerce customers to pay their bills. Among other things, the companies write letters to employers or commanding officers regarding utility bills. Considering that employers and commanding officers have no legal authority or responsibility to compel their subordinates to make such payments, and considering also the fact that such communications can have serious adverse effects on the careers of the individuals involved though they are not relevant to job performance, this appears to be a highly questionable and unwarranted practice on the part of the companies.

*4. **Undue encouragement of high bills.*** The telephone company may be unduly encouraging its subscribers to incur high bills which may result in termination of service. The company aggressively markets toll calls (long distance calls) using conventional media advertising, promotions, telephone directory advertising, and recorded advertising on its time-of-day number. The marketing program is understandable enough; toll calls are an important source of revenues. They are regulated by the Federal Communications Commission instead of the PUC, and the FCC allows a greater rate of return than the PUC. Hence, the importance in ratemaking of the issue of "separations"; that is, the determination of which regulatory agency will regulate each part of telephone company business. Moreover, the cost of collecting toll call bills is considered in the ratemaking process to be a normal cost of doing business, and, as such, does not affect the company's rate of return, which is allowed over and above the cost of doing business. Toll calls, then, are a very desirable aspect of the company's business. The company recognizes this in its policy manual, which includes this statement:

> "Toll billing provides an important source of revenue for the company. As such, there is a need to

effect collection *without jeopardizing or discouraging maximum use of toll facilities.*" [Emphasis added.]

However, toll billings also constitute the major source of uncollectibles, and the amounts involved are large. Uncollectible billings increased from about $133,000 in 1961 to almost $1 million in 1971. When the company cannot collect a bill, of course, it terminates service, local as well as toll. The cost of attempting to collect these bills and the company's losses, meanwhile, must be borne by the other users of the telephone system.

Considering the large and continuing losses involved, the terminations of service that result, and the fact that the losses are almost entirely attributable to toll calls, it appears that there is a serious question whether the company is unduly encouraging toll calls. Both the company and the PUC should focus on the problem of large losses in uncollectibles, and the PUC should review and consider revising policies that strongly encourage the use of toll calls.

5. Unduly rigid and harsh disconnection practices. For at least some of the utility companies, present policies and procedures seem unduly rigid and harsh concerning disconnection of services due to the nonpayment of delinquent bills. For example, the gas company has established the following policy for past-due bills which may be as small as $10:

> "When an account falls into a delinquent status . . . final notices *must* be sent and, if balance is not paid within 5 days, service *must* be discontinued *even though the customer is not home.*" [Emphasis is the company's.]

The company's rules provide that a "door-knob tag" be left on the premises to inform a customer that service has been disconnected in the event this cannot be handled directly with the customer. To have service restored, a customer must pay at least 50 percent of the amounts due if they total in excess of $30 or 66-2/3 percent if the balance is $30 or less. In addition, the customer must make a deposit equal to twice his average monthly billing and must pay a reconnect fee of $2.50. (The other utilities also require reconnect fees.) If reconnection must be made after normal working hours, then the reconnect fee is raised to $4.

That such a procedure might be unduly rigid and harsh appears to be recognized by the company to some extent, because so-called "special accounts" (i.e., community leaders, churches, schools, hospitals, lodges, businesses, and governmental agencies) are contacted by telephone concerning delinquent bills. It would appear that such favorable and more understanding treatment should be accorded to all customers.

There is a lack of procedural safeguards in this area, and the utility companies are the sole judges of when services are to be terminated for nonpayment of utility bills. No hearing procedures are involved and no intervention by any impartial third party is provided for. Failure to meet payments may be due to circumstances beyond the control of the customer; however, the consequences of having service terminated can be exceedingly drastic.

Recommendation. *To ensure that utility company credit policies, procedures, and practices are fair, nondiscriminatory, and reasonable, afford maximum protection of individual rights, and provide protection against undue encouragement of debt, we recommend as follows:*

1. The PUC establish clear and definitive rules governing the extension of credit and deposit requirements. Among the guidelines established should be those which

> *prohibit utility companies from making credit determinations on the basis of class distinction or other arbitrary classifications unrelated to individual credit records;*

- *protect the confidentiality of consumer credit records and afford consumers the right to examine their credit records and correct misinformation they may contain;*

- *require utility companies to pay interest on consumer deposits at rates commensurate with current money market prices;*

- *provide safeguards for consumers against arbitrary and capricious actions by the utilities, including actions relating to termination of services; and*

- *control telephone company toll calls and the consequent build-up of toll call uncollectibles.*

2. Pending the development of such appropriate rules by the PUC, the various utilities take steps to correct the deficiencies in their credit policies and practices.

3. The PUC and the PUD develop an administrative machinery to monitor the utilities' credit practices.

Chapter 6

UTILITY REGULATION WITHIN THE CONTEXT OF OTHER STATE AND FEDERAL REGULATIONS IN THE ECONOMIC FIELD

The regulation of Hawaii public utilities is not the exclusive domain of the state PUC nor is the state statute on the regulation of public utilities the only statute which affects the operations of the utilities. Since aspects of utility operations involve interstate commerce, the utilities are subject to or at least their operations are affected by regulations imposed by federal agencies. Further, since utilities are business enterprises, they are subject to other state policies governing economic activities.

This chapter is concerned with the relationship between utility regulation and the State's policy against monopolies as expressed in the State's antitrust law. An exploration of this relationship is useful, since utilities, by their very nature, tend to be monopolistic. The question is, what, if any, are the limits to which the utilities may be monopolies. This chapter is also concerned with the impact which federal regulations have on utility regulation in Hawaii and how well the State is able to influence the formulation of these federal regulations to its advantage.

Summary of Findings

1. Although the State's antitrust law is apparently applicable to the public utilities, no state policy has been developed on the limits of the monopolistic standing that the utilities may enjoy and on mergers, acquisitions, and consolidations of utility companies. No state agency has assumed the responsibility for the development of such policy. As a consequence, the PUC has been approving mergers, acquisitions, and consolidations of utility companies almost as a matter of course, without consideration of the antitrust ramifications of such corporate actions.

2. There is no consistent, coordinated program for the representation of Hawaii's interests before federal regulatory agencies on matters affecting the utilities in Hawaii. The PUC, the agency that is closest to utility matters in Hawaii, takes virtually no interest in such representation. In practice, the state attorney general has taken the responsibility for representing Hawaii's interests before federal regulatory agencies, but the tendency to disperse federal regulatory matters among various deputy attorneys general, the fairly rapid turnover of attorneys assigned to work on federal regulatory matters, and the lack of operating procedures have prevented the attorney general from developing a coordinated and consistent program of representation.

Utility Regulation and Hawaii's Antitrust Law

Concentration of the ownership and control of business enterprises can have a profound impact upon the nature, level, and vigor of economic activity in a community; as well as upon the economic freedom, discretion, and mobility of individual businessmen, consumers, and employees. It is for this reason

that governments in the United States have long had a keen interest in and concern for the control and regulation of corporate mergers, acquisitions, reorganizations, and related aspects of corporate structure. The term commonly used to refer to governmental activity in this field is "antitrust legislation and enforcement." Such antitrust activity may be considered to be one of the earliest forms of protection against harmful economic combination in this country.

Public utilities are frequently referred to as "natural monopolies" because by their very nature they tend to foster, promote, or require the formation and maintenance of monopolistic conditions and practices. In other words, it is considered economically wasteful and politically and socially unacceptable to permit the large-scale duplication of extensive and highly expensive installations simply to ensure or preserve competition in the utilities field. With public utilities frequently being referred to as "natural monopolies," questions are immediately and unavoidably raised as to how and when antitrust policies and legislation should be applied in the public utilities field. Although utilities tend to be monopolistic in character, it appears that in certain situations and under certain conditions competition may actually be desirable and should be encouraged. Also, there may well be limits to the extent of the monopoly that utilities should be allowed to enjoy—for example, territorial limits, size of the utility, and kinds of services provided.

This question of what the parameters of utility monopoly ought to be and how they should be enforced has become an issue of some import in recent years in light of the mergers and acquisitions of utility companies since 1961.

Recent consolidations of public utilities. Since 1961, there have been a number of consolidations of companies and two transfers of ownership of utilities from local to mainland control.

Mergers and acquisitions have been most pronounced in the electric utility field. In 1961, there were seven separate electric utilities in Hawaii. Now there are only three. The Maui Electric Company absorbed both the Hana Light and Power Company and the Lahaina Light and Power Company. Maui Electric Company, in turn, was then acquired by the Hawaiian Electric Company (the large, Oahu-based electric utility) after having received merger overtures from the Honolulu Gas Company. Hawaiian Electric Company further extended its corporate territory when it acquired the Hilo Electric Light Company with its electric utility franchise for the island of Hawaii. Thus, with the exceptions of the islands of Molokai and Kauai, all electric utility services in the State are under single ownership and control. The very small Molokai Electric Company still remains independent (being owned by the dominant economic interest on the island of Molokai), but the Kauai Electric Company has been acquired by Citizens Utilities Company, a large mainland-based utilities combine, and operates as a division of the larger company.

In the telephone utility area, Hawaii has had a single telephone company for many years. However, in 1967, the Hawaiian Telephone Company was transformed from one of the largest independent telephone companies (i.e., telephone companies outside of the Bell System of the American Telephone and Telegraph Company), into a wholly owned subsidiary of the giant General Telephone and Electronics Corporation, a billion-dollar-plus, mainland-based conglomerate. The Hawaiian Telephone Company also expanded its size and service area by consolidating into its system the telephone communications facilities and services formerly operated independently by the federal military services on the island of Oahu. This latter shift, not a merger in the usual sense, has taken place in two steps since 1967 and comprises a multimillion-dollar transaction.

Finally, the Honolulu Gas Company was renamed GASCO, Inc., and became a subsidiary of Pacific Resources, Inc., a holding company which also controls the newly developed oil refinery on Oahu known as the Hawaiian

Independent Refinery, Inc. This is a case in which a regulated utility has been used as the springboard to the formation of a much larger, corporate conglomerate.[1]

The statutory setting. Under HRS, chapter 269 (relating to public utilities in general) and chapter 417 (the general law on corporate mergers and consolidation), the matter of acquisitions, mergers, and consolidation of public utility companies is vested in the PUC—that is, the PUC has the authority to approve acquisitions, mergers, and consolidations of public utility companies.

Hawaii's antitrust law is contained in HRS, chapter 480. It is patterned quite closely after the federal antitrust law. It declares that unfair competition and deceptive business practices are unlawful (section 480–2), and indicates that federal precedents are to be followed in interpreting the meaning of unfair competition and deceptive practices (section 480–3). It prohibits mergers and acquisitions which may have the effect of substantially lessening competition or of tending to create a monopoly in any line of commerce in any section of the State (section 480–7). It further states that: "No person shall monopolize, or attempt to monopolize, or combine or conspire with any other person to monopolize any part of the trade or commerce in any commodity in any section of the State" (section 480–9). Chapter 480 places the responsibility for its implementation and enforcement in the state attorney general.

Chapters 269, 417, and 480 were passed at different times under varying conditions to meet different situations. Since the enactment of all three, there has been no attempt to bridge one to the other. As a consequence, the issues of the extent to which the antitrust law is applicable to public utilities and the agency responsible for ensuring that mergers, acquisitions, and consolidations that do occur do not violate the antitrust law are not very clear.

Gaps and incongruities in the policies of the antitrust law and those in the law on public utilities. The current status of the law is that there are gaps and incongruities. Hawaii's antitrust law tends to ignore the special situation obtaining in the public utilities field. Thus, although it makes specific exemptions from the coverage of the law, including labor organizations (section 480–10), certain cooperative organizations (section 480–11(a)), certain insurance transactions (section 480–11(b)), and mergers approved by federal regulatory agencies (section 480–11(c)), there is none for public utilities as such or for mergers over which the Hawaii PUC exercises jurisdiction. A fair implication of this is that public utility corporations are to be treated no differently from other types of corporations under chapter 480.

At the same time, however, the special nature of the utilities and the purpose of the provisions of chapter 269 cannot be entirely ignored. Yet, both chapters 269 and 480 are completely silent as to how the PUC might go about balancing the ends of the two chapters. For instance, there are no statutory criteria, standards, or guidelines upon which the PUC might base its decisions and actions in approving mergers, acquisitions, and consolidations in the utility field.

In the absence of any such guidelines as to enable the PUC to reconcile monopoly and antimonopoly policies, the performance of utility regulators in matters of mergers, acquisitions, and consolidations has been cursory and unsystematic, and their judgments have been without adequate foundation. Indeed, it appears that they are totally unprepared to act

[1]This portion of the chapter focuses on mergers, acquisitions, and combinations of utilities regulated by the PUC under HRS, chapter 269. However, the trend toward corporate consolidation and concentration has not been limited to utility companies regulated under that chapter. The same process has been at work among motor carriers regulated under chapter 271, HRS; vertical and horizontal integration of passenger carriers with other elements of the travel and tourism industry has become widespread. Similarly, there have been corporate combinations and concentration in the cable television industry, which is regulated under chapter 440G, HRS.

on these cases. For the most part, the PUC and the PUD, in cases which have come before the PUC in the past, have accepted the merger, acquisition, and consolidation proposals submitted by the companies without probing deeply into the justifications for the proposals and without examining closely the possible antitrust ramifications of the proposals. In fact, both the PUC and the PUD have operated in these matters as if the antitrust law does not exist, or, at least, that it does not apply to the public utilities field. No reference has ever been made in these cases to the antitrust law. As a result, approval has been granted to mergers, acquisitions, and consolidations where no clear case of public interest was ever made in support of the proposals. Examples follow.

*1. **Hawaiian Telephone acquisition.*** In the case of the acquisition of the Hawaiian Telephone Company by the General Telephone and Electronics Corporation, no real staff action occurred on the application for acquisition until less than three weeks before a final decision was made on the matter by the PUC, although it had known about the proposal for almost four months. Even then, the PUD's action consisted merely of sending out a questionnaire to other regulatory agencies concerning the nationwide operations of General Telephone and Electronics Corporation. The superficial review accorded this case involving hundreds of millions of dollars in assets and revenues has been described as follows by the federal judge who heard the antitrust case instituted by a third party in the matter:

> "It was obvious that the hearings lacked the testing adversarial quality of a trial such as was held in the instant case; the questions do not appear deeply penetrating nor the responses and prepared statements greatly revealing. For example: Witnesses were asked whether the merger was 'in the public interest,' i.e., Hawaiian telephone subscribers' interest. The PUC did not undertake the more far-reaching inquiry whether the effect of the merger might be substantially to lessen competition or tend to create a monopoly in the manufacture and supply of telephone equipment in either the state or national market. Nothing indicates that the commission considered either the nationwide trend toward concentration both in the independent telephone company industry and in and through vertical mergers with telecommunication equipment manufacturers, or, other than superficially, the long-range effects upon Hawaiian's service or rates of AE's becoming an in-house supplier of Hawaiian's equipment and supplies. That the PUC might order divestiture if the merger, horizontal and/or vertical, were to prove incompatible with the public interest was never mentioned."[2]

*2. **Maui and Hawaii electric companies' acquisitions.*** The acquisition of the electric companies on Maui and Hawaii by the Hawaiian Electric Company illustrates the dubiousness of the acquisitions being in the public interest. In 1967, before the acquisitions, in comments made to the Public Utility Law Section of the American Bar Association meeting in Honolulu, the vice president of the Hawaiian Electric Company, who is now president of the company, made the following case *against* such acquisitions:

> "The same gas company operates on all the islands and the same telephone company does also. The question is often raised, 'Why not one electric utility company?' This certainly poses some interesting problems for the electric utilities and the commission. As I previously described, interconnections of the electric systems are not economically

[2]Decision, Civil No. 2754, U.S. District Court for the District of Hawaii, dated July 13, 1972, pp. 71–22.

feasible and the advantages would be in the areas of administration, engineering, purchasing, and financing. However, the federal government does not look with favor on a company's having noncontiguous electric service areas which are not capable of interconnection.

"Integration would also bring about many other problems; for example, the labor rates on the neighbor islands are lower than they are on this island but the same labor union operates on all islands. Whether or not this disparity in labor rates would continue with one ownership is questionable and obviously they won't come down on this island. The electric rates on the neighbor islands are higher than they are on this island because of factors mentioned earlier and on a cost-of-service basis the rates should remain higher. Even though the public utilities commission would undoubtedly be inclined to keep the present relationships with respect to rates, it is almost certain that political pressures would build up to tend to equalize them."

Yet, less than one year later, the company sought to effectuate a merger with the electric utility on Maui, and within two years of this speech mergers with both utilities on Maui and Hawaii had been approved by the PUC. The records in both of these cases clearly establish that the benefits to be derived from the two mergers were somewhat nebulous and were considered as long-term possibilities rather than immediate probabilities. This is reflected in the following statements included in the decision and order approving the merger of the Hilo Electric Light Company into the Hawaiian Electric Company which are similar to the statements included in the decision and order of the other case:

"Although there is no physical interconnection of electric facilities between the Islands at the present time, [Hawaiian Electric Company's] witness testified, and the Staff concurred, that there may be future administrative economies, not now precisely measurable, accruing in certain managerial, operational, financial, accounting and statistical areas, principally through utilization . . . of [Hawaiian Electric Company's] capabilities.

". . . The Staff also reviewed the physical operations of Hilo and concluded that Hilo could benefit from association with [Hawaiian Electric Company] in the long run, and concluded that the merger proposal should not have any substantial adverse effects and recommended approval."

Data processing applications were suggested as one of the areas where the mergers might produce possible savings and improvements, but at the time this audit was conducted, some four years after the mergers, billings for the two neighbor island subsidiaries still had not been computerized, although the parent company's billings on Oahu had been so computerized for some years.

*3. **Kauai Electric acquisition.*** In the Kauai Electric case, a mainland holding company sought to acquire the local electric utility from the sugar plantations which owned it. A long, drawn-out legal and procedural tangle ensued. The merger finally won a reluctant approval from the PUC, but it is not at all clear that this approval was in the best interest of the citizens of Kauai. The PUC, of course, acted in this case without the benefit of any policy regarding large national holding companies and conglomerates acquiring ownership of or control over local utilities.

Whether by its action in the Kauai Electric case the PUC has implicitly adopted the notion that acquisition by large national holding companies of ownership of local utilities is appropriate and desirable is by no means clear.[3] However, by their actions, words, and deeds, Hawaii's utility regulators betray an apparent bias in favor of large and centralized utility corporations. This is evident in the fact that the State's antitrust laws have received scant attention and notice during merger and reorganization proceedings and have generally been felt to be inapplicable in the public utilities field. It is further evident in the fact that all of the proposed mergers and reorganizations have won PUC approval, usually with the concurrence of the PUD and with a minimum of delay and no deep probing on the part of the regulators. It is perhaps best exemplified, however, by the open endorsement of the concept of a "super monopoly" by the PUC in the merger of the Maui Electric Company into the Hawaiian Electric Company. The decision and order in this case contains the following rather startling language:

> "The Commission . . . is of the opinion and finds that the proposed merger . . . conforms to the concept of a statewide 'super electric utility' and is in the public interest . . . and should be authorized."

Gaps and conflicts in the responsibility for ensuring adherence to antitrust policies. The gaps and incongruities in the law regarding the monopoly–antimonopoly policies of the State are carried over into the administrative organizations charged with implementing these policies. On the one hand, the PUC, under chapters 269 and 417, has wide, discretionary authority to approve mergers, acquisitions, and consolidations of public utility companies. On the other hand, under chapter 480, the attorney general is charged with the responsibility to "enforce the criminal and civil provisions of this chapter." No role is assigned to the PUC in the antitrust field. A fair reading of this situation is that commission actions on mergers, acquisitions, and consolidations of public utility companies are not a substitute for action by the attorney general–that is, it cannot be assumed that commission approval of any such mergers, acquisitions, and consolidations provides immunity against subsequent action by the attorney general. This is in contrast to the practice in the federal government where actions by the various regulatory agencies on mergers subject to their respective areas of jurisdiction are recognized as controlling and final (except for appeal to the courts).

The question of legal jurisdiction in the public utilities field regarding antitrust matters recently came to the forefront in legal proceedings which the attorney general's office instituted against the telephone company relative to the interconnect industry. In these proceedings, the attorney general sought to use the courts as the avenue for taking action against the company, while the telephone company argued that the PUC should have jurisdiction over the matter. In this case, the PUC declined to accept jurisdiction and action is presently proceeding through the courts.

Considering the ambiguities that exist between the public utilities law and the antitrust law, it would seem that at a minimum the department of the attorney general and the department of regulatory agencies would have tried to reach some meeting of minds on the subject and to develop some working relationships in this field. However, no formal (and no apparent informal) arrangements have been established between the attorney general and the utility regulators aimed at coordinating efforts in the antitrust field or at achieving any common or consistent policies and approaches to handling mergers involving public utilities.

On the attorney general's part, it appears that his position over the years has been one of

[3] If it has, it is contrary to the policy laid down by the New York State public service commission that "there is inherent value to local subscribers in being served by viable, locally-owned and managed companies."

staying clear of the merger, acquisition, and consolidation cases brought before the PUC. In none of the five merger cases nor in the gas company's corporate reorganization has the attorney general taken any active, major part. The extent of the participation of the attorney general in these cases was as legal counsel to the PUC or the PUD, the usual role that he plays in all proceedings before the PUC. Even in the largest merger, that involving the telephone company, the attorney general's participation was minimal. Initially, it was felt that Hawaii's law would not be applicable because the telephone company was subject to regulation by the FCC. However, after it became apparent that FCC clearance would apply only to a small segment of the total transaction and that antitrust immunity would therefore not apply to the main part of the merger, the company's legal counsel had to take the initiative to see if the deputy attorney general handling antitrust matters had any questions concerning the case. Even then, the attorney general failed to move in the case. There is no record of any response to the inquiry of the company's counsel nor of any expression of interest on his part in the case. This is the same case the federal district court found to be in violation of both state and federal antitrust laws.

So far as the PUC and the PUD are concerned, there appear to be no visible signs that they have sought or are seeking the cooperation or active participation of the attorney general in the merger, acquisition, and consolidation cases. Indeed, it appears that the PUC and the PUD, on the one hand, and the attorney general, on the other, are pursuing antitrust matters in the utility field, if at all, independently of each other.

Recommendation. *We recommend that the department of the attorney general and the department of regulatory agencies jointly form a task force, or similar cooperative effort, to develop a consistent, coherent, and coordinated approach to antitrust matters in the public utilities field, with particular attention being given to: (1) the clarification of state policy and intentions in this general field; (2) the formulation of appropriate amendments to the laws to implement state policy and intentions in this field; and (3) the creation of effective administrative and organizational arrangements to carry out a continuing program of surveillance and enforcement of state policy in the utilities field. Having done so, the attorney general and the PUC should examine existing mergers and combinations among entities regulated by chapters 269, 271, and 440G; determine whether they are in the public interest; and take appropriate action.*

Representation of Hawaii's Interests Before the Federal Regulatory Agencies in the Utilities Field

The federal government is an active and direct participant in utilities regulation, having regulatory authority of its own which preempts, overlaps, or complements that of the state government. For the most part, this regulation is exercised through independent regulatory agencies, such as the Federal Communications Commission (FCC), the Federal Power Commission (FPC), the Securities and Exchange Commission (SEC), the Interstate Commerce Commission (ICC), the Civil Aeronautics Board (CAB), and the Federal Maritime Commission (FMC). In some fields, the federal regulatory authorities have preempted a large portion of the regulatory power available (e.g., air transportation under the CAB), while in other fields regulation is exercised jointly by federal and state authorities with considerable sharing of the regulatory power available (e.g., telecommunications under the FCC).

The regulations exercised by these federal agencies often impact the policies and operations of the State in the public utilities field. For this reason the state government must be alert to what is happening before these federal agencies and, where necessary, ensure that the interests of the State are adequately represented in the proceedings before the federal agencies.

Our conclusion is that the State is currently not participating as vigorously as it should before federal regulatory bodies. Our findings in this regard and the apparent causes of this situation are discussed below.

Statutory framework's overlapping legal jurisdictions. Under Hawaii's laws, legal responsibilities regarding state action in the area of federal regulation are assigned to the department of the attorney general, to the PUC, and to the office of consumer protection (OCP). The respective legal provisions are as follows.

1. Department of the attorney general. HRS, section 26–7, charges the department of the attorney general with the responsibility of administering and rendering state legal services and representing the State in all civil actions in which the State is a party. HRS, section 28–1, requires the attorney general, except in cases where the OCP represents the State, the counties, and the general public as consumers, to appear for the State in all cases where the State is a party or may have an interest. On the basis of these general grants of authority and responsibility, the attorney general's office has long assumed the duty of representing the State of Hawaii before the various federal regulatory agencies.

2. Public utilities commission. Legal provisions regarding PUC action in federal regulatory matters are found in HRS, sections 269–7 and 269–15. The first of these relates to the PUC's investigative powers and includes compliance with all applicable federal laws among the things which the PUC can investigate regarding public utilities subject to its control and jurisdiction. The second section empowers the PUC in any matter referred to in section 269–7 to "... effect ... 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." At the time the law, including these sections, was adopted, the ICC was the only federal regulatory agency in existence and thus it is the only one specifically mentioned. But, the foregoing provisions undoubtedly contemplate an active role for the PUC with respect to federal regulatory bodies.

3. Office of consumer protection. HRS, section 487–5, gives the OCP broad functions, duties, and powers in the field of consumer protection, including: (a) the coordination of all state and county activities relating to consumer protection; (b) assistance and advice to and cooperation with federal, state, and local agencies for the protection and promotion of consumer interests; (c) appearance before governmental commissions, departments, and agencies to represent the interests of consumers; and (d) such other acts as may be incidental to the other functions, duties, and powers given to the OCP. At the same time, however, HRS, section 487–8, provides as follows:

> **"Powers and duties of other departments and agencies.** Nothing contained in this chapter shall be deemed to delegate or detract in any way from the functions, powers and duties prescribed by law for any other department or agency of the State, nor to interrupt or preclude the direct relationships of any such department or agency or units of county government in the performance of such functions, powers and duties."

Under section 487–5, it might be concluded that the office of consumer protection has the right and duty to concern itself with federal regulatory matters and to appear before federal regulatory bodies on behalf of the State of Hawaii and consumers in Hawaii. However, under section 487–8, apparently this right and duty are to be shared with others, such as the PUC, which under other provisions of the law have similar rights and duties.

Lack of formal working relationships among state agencies concerned with federal regulatory matters. It would appear that since the statutes assign the responsibility for handling federal regulatory matters to each of them, the three affected agencies would develop and implement some type of formal understanding or working relationship which would define their respective roles and provide for close coordination and cooperation among them. However, such is not the case. During our examination, we were unable to find any agreements or operating procedures among the three agencies as to how federal regulatory matters should be handled, who should do what, and how information on such matters might be interchanged among them.

PUC abandonment of responsibility. As a matter of fact, neither the PUC nor the OCP takes any active role in federal regulatory matters. Thus, by default, the attorney general's office is the only state agency that is actively engaged in federal regulatory matters. While this reduces the need for close coordination among the three agencies, it does not completely remove such need.

The lack of activity on the part of OCP in federal regulatory matters is perhaps understandable. It has neither the expertise nor the staff to delve into the highly specialized, complex, and technical area of utility regulation. However, the inactivity of the PUC is inexcusable. It is the one agency in the State which specializes in utility matters and for that reason might be expected to have a working knowledge of and concern for what occurs on the federal level regarding the utilities which come under its regulatory jurisdiction. Yet, the PUC seldom, if ever, acts on federal regulatory matters.

During the period which was the focus of attention in this audit of the public utilities program (i.e., from 1965 through 1972), we did not come across a single instance in which the PUC took the initiative in instituting proceedings before a federal regulatory agency or in representing Hawaii's interests before one of these federal agencies. During this period, however, the State of Hawaii has been a party to many cases before the federal regulatory agencies. Among these cases was a jurisdictional dispute between the PUC and the CAB concerning regulatory control over interisland air carriers.

During the period when the attorney general was the legal counsel for the PUC, perhaps much vigorous action by the PUC was not necessary. The PUC and the attorney general were one, and the actions of the attorney general before federal regulatory agencies might have been construed as representing those of the commission. However, with the attorney general being by statute mandated to represent the PUD and not the PUC, it would appear that the need for PUC action, at least to see to it that its interests were being adequately represented by the attorney general, increased in importance. But no such action, not even coordination or cooperation with the attorney general, is currently apparent. This inactivity on the part of the commission contrasts greatly from the stance of other state regulatory commissions.

Since 1965, other state regulatory commissions have been actively and directly involved in numerous proceedings before the various federal regulatory agencies. Although no intensive study has been made of this activity and no comprehensive or comparative statistics have been complied on the subject, a quick review of the annual reports of some of these state agencies reveals quite clearly that federal regulatory matters are of keen concern to such state agencies. It is difficult to say how active Hawaii's PUC might have been or should have been in federal regulatory matters since 1965, but it appears that there have been ample opportunities for action. For example, the PUC could have sought to involve the SEC in the takeover of the electric utility on Kauai by a mainland-based utilities conglomerate; the SEC is responsible for enforcing the federal law governing utility holding companies. In the telephone rate case where the FCC became

involved in the question of an appropriate separations formula for the telephone company, the PUC could have taken the initiative in trying to work out an agreement acceptable to all parties, but instead left action to the company.

The department of the attorney general: the lack of consistent and coordinated approach. In the absence of any action on the part of the PUC, the attorney general's office has assumed the preeminent role of representing the State of Hawaii before the federal regulatory agencies, making most of the decisions and formulating most of the policies supporting the State's position. Only in the recent telecommunications matters before the FCC has the attorney general's office failed to exercise firm control and full direction over Hawaii's participation. In the telecommunications matters, a special deputy attorney general (i.e., a Washington attorney hired on contract) has been used and liaison with and direction to the special deputy attorney general have come from the director of regulatory agencies rather than the attorney general. In all other federal regulatory cases, however, the attorney general appears to have been the state official who has been fully in charge of the cases and the one ultimately responsible for making the key decisions concerning the State's participation in such cases.

During the period from 1965 through 1972, the department of the attorney general has been fairly heavily involved in federal regulatory matters. Table 6.1 shows the number of federal regulatory cases handled through the attorney general's office during this eight-year period. As the table shows, during the eight years covered, the department participated in 88 cases before four of the federal regulatory agencies, plus one case before the maritime subsidy board of the U.S. Department of Commerce. No cases have been recorded for either the FPC or the SEC.

It should be noted that table 6.1 may not provide a complete picture of Hawaii's involvement. This is due primarily to the manner in which the attorney general's office maintains its files relating to federal regulatory matters. *First,* no record is kept of matters which come to the attention of that office but are not pursued. Thus, there is no way of determining how many cases may have received some sort of preliminary review but were found not to be of sufficient importance or concern to warrant the filing of any formal motions, etc. *Second,* not all case files are filed in the central filing system because some deputies prefer to hold on to their files, and we made no attempt to try to track down any such dispersed files. It should also be noted that table 6.1 only indicates the opening of a file. It does not indicate how simple or complex each case may have been, whether any of them was interrelated to another, how each case was handled, what disposition was made of each case, how long each case lasted, or whether or not the State's position prevailed wholly or in part in each case.

Even with these limitations, however, table 6.1 does indicate a fair degree of activity on the part of the attorney general's office in matters relating to the federal regulatory agencies. In the eight-year period federal regulatory cases have averaged a frequency of almost one per month. In the last four years of the eight-year period, the average has been almost 16 per year.

Limited time and resources for conducting this audit precluded a detailed and comprehensive examination of the numerous cases relating to federal regulatory matters handled by the department of the attorney general. Hence, no assessment is made here as to how effectively and efficiently the State of Hawaii may have been represented in these specific cases. However, in our overall review of the handling of such cases, we were able to see how the general administrative machinery within the department of the attorney general operates with regard to such cases and to form some judgments concerning the functioning of this administrative process. Our general conclusion is that the department of the attorney general appears to work quite independently, and does not seem to devote much emphasis to the development of a consistent and coordinated

Table 6.1

Summary of Cases Involving Federal Regulatory Matters Handled Through the Department of the Attorney General, State of Hawaii From 1965 Through 1972

Calendar year	Federal agencies involved					All agencies combined
	Civil Aeronautics Board	Civil Communications Commission	Federal Maritime Commission	Interstate Commerce Commission	Other	
1965	3	0	4	1	0	8
1966	6	3	3	0	0	12
1967	1	0	0	0	0	1
1968	2	0	4	0	0	6
1969	8	0	4	1	0	13
1970	10	0	6	1	0	17
1971	9	1	9	2	0	21
1972	7	3	0	0	1	11
1965–72	46	7	30	5	1*	89

*The federal agency involved in this case was the Maritime Subsidy Board of the U.S. Department of Commerce.

Source: Case files in the Department of the Attorney General, State of Hawaii.

approach to the program of representing the State before federal regulatory bodies. Some of the reasons for the absence of such approach are enumerated below.

1. Dispersal of cases without centralized control. Cases dealing with federal regulatory matters generally have been widely dispersed within the department among the deputy attorneys general. The prevailing practice has been for several deputies each to specialize in cases relating to one or more of the federal agencies. Thus, one deputy has handled CAB cases; another has worked on FMC and ICC matters; and still another on FCC cases. As each new case came to the attention of the department, it has been assigned almost automatically to the deputy specializing in the particular area. Although there is a section within the department which is supposed to be the focal point for the handling of all federal regulatory cases, the deputy attorney general assigned to head the section has not been able to coordinate the activities of the various deputies to whom the cases were dispersed. He has had little real influence over the assignment of cases and virtually no control over cases other than those he handled himself after assignment.

In some instances, special deputies (attorneys in private practice) and consultants have been hired under contracts to work on cases.[4] In these instances, the deputy in charge of the section has had even more difficulty controlling the work on the cases. Sometimes, these special deputies and consultants have been placed directly in charge of the cases for which they were hired. In one instance, the telecommunications matters before the FCC mentioned above, the role of the deputy attorney general in charge of the section was reduced to nothing as the special deputy attorney general hired for the case worked almost exclusively with the director of regulatory agencies.

Since this audit was initiated, however, the situation seems to have changed somewhat with regard to the organizational and personnel arrangements for handling the federal cases. There has been a decided trend toward centralizing all federal matters within the hands of the section chief and toward eliminating the several specialists in federal matters. As of the writing of this report, the handling of federal cases within the attorney general's office is still in a state of flux. At one point, the deputy attorney general assigned as legal counsel to the PUD was also charged with the responsibility of overseeing all federal regulatory matters. However, he has now transferred to the post of executive director of the PUD and the reassignment of his duties to other deputies is not yet final or clear. If this latest arrangement is reestablished and persists, then the problem of widely dispersing federal regulatory matters within the department of the attorney general may be eliminated. Much depends, of course, upon how much direction and control this deputy is able to exercise. If cases continue to be simply farmed out to special deputies, then the centralization of coordination and management of the federal cases may continue to be more apparent than real.

*2. **Personnel turnover among those handling federal cases.*** There is a fairly rapid personnel turnover among the deputy attorneys general assigned to work on federal regulatory matters. Within the period from 1962 to 1972, there were at least ten separate deputy attorneys general who were assigned on a regular basis to work on one or more areas of federal regulation affecting Hawaii. Among these ten deputies the amount of turnover was accentuated by rotation of deputies from one area of specialization to another. Instead of working continuously on cases relating to one particular federal agency, a deputy might work for only one or two years on these cases and then be shifted to cases relating to another agency.

With such extensive turnover in personnel, it is virtually impossible for any deputy to gain sufficient expertise in an area as to ensure continuity and consistency in state actions over a long period of time.

*3. **General lack of operating procedures for handling federal regulatory matters.*** To a certain extent, the problems attendant upon a diffusion of responsibility for handling federal regulatory matters and a high turnover in personnel charged with carrying out this diffused responsibility can be overcome through clearly stated objectives and carefully prescribed departmental operating procedures. With a clearly and definitely established framework within which to operate, successive deputies as they take on new assignments can have the assurance of an adequate base upon which to act and fixed guidelines by which to formulate judgments and make decisions. Without such a framework, however, each deputy must start anew to chart his own course of action and flounder through the best he can until he moves on to other things.

Unfortunately, the department of the attorney general has no guidelines or operating procedures governing the handling of federal regulatory matters. The following examples

[4]Between 1970 and 1972, more than $100,000 was spent onthree law firms (two in Washington and one in Honolulu) and two consulting firms for services rendered in connection with federal regulatory cases.

illustrate the nature and extent of the department's shortcomings in this area:

a. No policies, guidelines, or objectives. No policies, guidelines, or objectives have been established for handling federal regulatory matters other than the very vague and practically meaningless admonition "to safeguard the rights and interests of the people in general by undertaking legal or judicial actions on their behalf." It would appear essential that explicit policies and guidelines be formulated to assist the deputies in determining what real, specific results are being sought by the State's participation in the federal regulatory process and how such results might be attained.

b. No system for identifying cases of interest to Hawaii. The attorney general's office has no systematic means of identifying cases which may have an impact on Hawaii and of making sure that timely action can be taken on them. As the federal rules frequently specify time limits within which action must be taken to have any effect, it is extremely important that matters affecting Hawaii are promptly recognized and given appropriate attention and review. Hawaii's remoteness from Washington and the frequent slowness encountered in mail service accentuate Hawaii's problem and give added emphasis to the need to develop effective means of keeping on top of developments taking place within the federal regulatory agencies affecting Hawaii. Despite this need, however, little has been done to correct the situation. The department is geared only to react to cases that are brought to its attention in one form or another. Indeed, it relies upon one of the major ocean carriers to bring to its attention matters before the FMC which pertain to Hawaii.

c. No followup system. Just as there are no procedures for identifying cases that may have some impact on Hawaii, there are also no procedures for assuring coordination and followup on cases which are brought to the attention of the office. Each deputy is left to work in more or less his own style and no central log or control is maintained over federal cases, and there is no regular reporting procedure by which the attorney general or anyone else can keep track of what is happening on various cases and what issues there may be requiring consideration and resolution. There are also no formal means of keeping other affected state agencies informed about such cases or to solicit their comments and recommendations concerning them.

The recent representation of Hawaii's interests in telecommunications before the FCC: An example of the changes which can be wrought through attention and coordination. Hawaii's recent experience in the area of telecommunications provides an example of the kind of dramatic changes that can be wrought through proper attention and coordination.

The regulation of telecommunications services affecting Hawaii is split between the federal and state governments. The FCC exercises jurisdiction over the interstate and international aspects of telecommunications (including all radio communications), while the State regulates intrastate and most aspects of interisland telecommunications services. Federal regulation of that portion of telecommunications under its jurisdiction has great significance to the people of Hawaii, both in terms of the cost and in terms of the quality of services available to them. As used in this context, quality of services includes the types, scope, or variety of services that might be offered.

The effect of federal regulation in the past has been to inhibit and restrict the scope of services made available to Hawaii and to place Hawaii at a serious economic disadvantage relative to the other states. Hawaii has long been placed in the "international" category rather than the "interstate" category and has had to pay higher rates for services comparable to services enjoyed by the other states. This discrimination suffered by Hawaii has been largely the result of neglect, inattention, and lack of recognition of the special conditions affecting Hawaii rather than of any willful intent

to do wrong or to deny equitable treatment to Hawaii. The main deficiency in this regard can be placed upon the federal regulatory authorities, but until fairly recently, the State also has been less than forceful in looking out for its best interests.

Since 1971, the state government has become much more actively engaged in proceedings before the FCC affecting telecommunications rates and services in Hawaii. The impetus and direction for this effort has come from the governor's office and has been handled on an ad hoc basis rather than as a normal, ongoing function of the public utilities program. At the governor's direction and request, the director of regulatory agencies has become involved in this effort and has served as a coordinator of certain activities relating to it. Similarly, the public utilities division has provided some staff assistance for it. Heavy reliance, however, has been placed upon an attorney located in Washington who was selected by the governor to represent the State as special legal counsel in FCC matters and who is now under contract to the State as a special deputy attorney general for FCC matters.

In addition, a special consultant, also located in Washington, was hired to provide technical assistance and advice to the State and to the special legal counsel in Washington. In the initial stages of increased activity in this area, the special deputy attorney general who formerly was the executive director of the PUD was also deeply involved but now serves primarily as a liaison with the Washington attorney. Although both this individual and the Washington attorney are special deputies to the attorney general, the attorney general's office has played a very minor role in the proceedings before the FCC.

Largely as a result of the State's participation in recent cases, the FCC has decided that Hawaii should be included in the domestic satellite system, has recognized the principle that Hawaii should be given more equitable treatment with the other states in the setting of rates (which is producing fairly dramatic reductions in toll charges affecting Hawaii), and is taking steps to ensure that other services long denied to Hawaii will be extended to Hawaii (e.g., "mailgram" service).

What is instructive about the telecommunications case is that Hawaii's successes before the FCC have been achieved because of the coordinated and concentrated efforts made by the State in the case. However, direction for such coordination and concentration in this instance came from the governor, not the state agencies normally involved in utility regulation. It is doubtful that the positive results achieved could have been accomplished by the agencies themselves. What is required, of course, is for the public utilities program to become organized, prepared, or equipped so that it may assume on a continuing basis the primary role in FCC proceedings (and the proceedings of any other federal regulatory agency). Presently, however, none of the agencies concerned with utility matters is prepared to assume such a role. One will search in vain for any policy statement or reference to this as an area of concern or responsibility of any of the agencies. The public utilities administrator has viewed his work on FCC matters as being "extra" or in addition to his normal functions and responsibilities.

If the situation which prevailed in the telcommunications area prior to 1971 is more or less characteristic of conditions existing in the other areas of federal regulation affecting Hawaii, then there is more to worry about than just the need to maintain the present momentum in the telecommunications field. If this is indeed a general problem (and all indications suggest that it is probably the case), then there is a very widespread need to reshape and redirect the State's organizational arrangements and administrative behavior to assure that proper attention is being given to Hawaii's interests before the various federal regulatory agencies and that appropriate steps are being taken to protect and promote those

interests. Considering the interactions and interrelationships which exist between the federal and state levels of public utility regulation, it would appear most appropriate to associate the representation of Hawaii's interests before the federal regulatory agencies very closely with the rest of the State's public utilities program and to make this function a recognized responsibility of those charged with carrying out the regulation of public utilities in Hawaii.

Recommendations. *We recommend that the representation of Hawaii's interests before the federal regulatory agencies be recognized as an important and integral part of the State's public utilities program and that appropriate steps be taken to organize for and carry out this responsibility. More specifically, we recommend:*

1. That the PUC and the department of the attorney general develop guidelines by which they may distinguish matters requiring representation of Hawaii's interests before federal regulatory bodies by their programmatic function, as discussed in volume I of this audit, and that representation be undertaken accordingly; or by which they may devise cooperative or concurrent representation in matters in which the distinction between economic and consumer protection functions is difficult to make.

2. That the PUC and the department of the attorney general develop sources of information which will advise them on a timely basis of federal regulatory proceedings at which Hawaii's interests may need to be represented.

3. That the department of the attorney general and the PUC develop and implement systems for central assignment and administration of federal regulatory cases among their respective personnel.

4. That the department of the attorney general develop and implement operating procedures and staffing patterns that will preserve within the department expertise in federal regulatory matters, and preserve necessary legal information.

PART III

OTHER ASPECTS OF UTILITY REGULATION

Chapter 7

INTRODUCTION

Part II of this volume examined those aspects of utility regulation pertaining to balancing the interests of the utility industries and those of the consumers. However, this does not exhaust the important programmatic aspects of the utilities program.

Many utility regulatory activities have a substantial interaction with the activities of other governmental agencies. The interaction (or interrelationship) sometimes arises because the activities of utility regulation and the activities of other governmental agencies are both aimed at achieving the same broad governmental objective. For instance, economic development is the objective of both the utility regulators and the department of planning and economic development. Interaction at other times arises because the results being sought to be achieved in utility regulation clash with those sought in other programs administered by the other governmental agencies.

This part is concerned with utility regulatory activities that interact with the activities of other governmental agencies. In particular, it examines the performance of utility regulators as it affects safety, capital improvements, and environmental protection—areas which are of concern to other governmental bodies. There is one other area which is affected by the regulation of public utilities. That is the transportation area. Utility regulation as it bears on transportation is covered in volume III of this report.

The discussion on utility regulatory activities which affect safety, capital improvements, and environmental protection is not necessarily confined simply to the interaction of these activities with those of other governmental agencies. As necessary, specific issues arising from each of these activities, although not bearing directly on the interrelationship problem, are fully explored. For example, in our discussion of the utilities capital improvements program, we discuss not only how the utility regulators interact with the department of planning and economic development (the agency concerned with capital improvements on a statewide basis) but we also examine the utilities' operational practices regarding utility facility construction. This has been done to keep together in one place all related matters touching on the subject.

Summary of Findings

1. Although a number of public utilities regulatory activities impinge on activities designed to promote the State's safety, environmental protection, economic development, and transportation objectives, there is at present no mechanism for the coordination of efforts on the part of the utility regulators with those of other state agencies responsible for these other program areas. In the absence of such a mechanism, there is virtually no interaction between the utility regulators and these other agencies. Where such interactions do exist, they are ineffective.

2. The duty to regulate the safe operations of the public utilities, now vested in the utility regulators, duplicates the duty vested in the department of labor and industrial relations. The discharge of this duty by the utility regulators is ineffective and inadequate. The function of safety regulation is better placed wholly and exclusively in the department of labor and industrial relations.

3. Utility capital improvements programs are given but cursory examination by the utility regulators. The impact of such improvements on the State's economic development and social objectives receive scant attention by the utility regulators and by the other governmental agencies whose principal functions are the promotion of the economic and social well-being of the general public. Further, it appears that the utility regulators are for the most part unconcerned about the impact of capital improvements costs on the consumers of utility services.

4. Although in recent years, there has been increasing emphasis on the protection of the environment, utility regulators appear unconcerned about the effects of its activities and those of the utilities themselves on the environment. They appear equally unconcerned about the impact of environmental protection standards being promulgated on the costs and manner of utility operations.

Chapter 8

SAFETY REGULATION IN THE UTILITIES FIELD

Apart from motor carrier safety, the program structure of the State does not directly and specifically recognize the safety responsibility of the PUC and PUD. Nevertheless, in addition to economic regulation, the one other major function which is specifically assigned by law to the PUC (and by inference to the PUD) is that of regulation in the interest of promoting and protecting the safety of both the users of utility services and of the employees of the regulated utility companies. This chapter considers the performance of the safety function and responsibility in the utilities field.

Summary of Findings

1. The PUC and PUD are not the only agencies with statutory responsibility for safety in the utilities field. Other state agencies (department of labor and industrial relations and department of transportation) also have that responsibility. However, there is no coordination between and among the agencies in the performance of this responsibility. There are serious jurisdictional problems relating to safety in the public utilities field as a result of the multiplicity of federal and state laws and programs in this area.

2. The performance of the PUC and PUD in promoting and protecting safety in the utilities field is woefully inadequate.

a. There is no real, comprehensive safety program. Plans, objectives, and guidelines for carrying out this safety responsibility are completely lacking, and extremely limited resources are being devoted to this function.

b. Many of the rules and standards which have been adopted by the PUC relating to safety in the utilities field are vague and the PUC has generally failed to provide for a systematic means of reviewing them and keeping them up-to-date.

c. There is no program to monitor safety in the individual utility companies. Little, if any, on-site safety inspections and investigations of accidents are performed, and efforts are not expended to promote safety education and safety training.

3. The PUC and PUD are failing to perform all of the tasks they agreed to perform with the federal government in the area of gas pipeline safety.

Statutory Framework

Governmental activities concerning public safety in the utilities field may be classified as follows: (1) those aimed at industrial safety, the protection of workers and employees in the utility industries, (2) those which affect the safety of the general public without regard to employment status, and (3) those which relate

directly and specifically to gas pipeline safety. The governing laws on each of these are described below. As described, the PUC's authority and responsibility in the first and third classes of activities are not exclusive. Both the federal government and other state agencies are also concerned with them. It is only in the second class of activity that the PUC appears to be the only agency specifically charged with responsibility.

Employee or industrial safety. Both the federal and state governments are involved in employee or industrial safety in general, and in the utilities field in particular.

1. OSHA: U.S. Department of Labor. The federal government's involvement arises out of the Occupational Safety and Health Act (OSHA) of 1970, which is administered by the U.S. Department of Labor. This act was enacted as a result of congressional concern over the rising number of industrial accidents resulting in death or disability.

OSHA is comprehensive and stringent. It vests extensive authority and responsibility in the U.S. Department of Labor to establish safety standards and enforce them through inspections and the imposition of penalties (including fines and the closing down of unsafe operations). In lieu of actions by the Department of Labor, it permits states to formulate their own safety programs and to develop and enforce their own standards, provided the states' program and standards meet federal requirements, and the states are delegated the authority to conduct inspections and enforce requirements by the federal government. OSHA is wide in coverage and it applies to Hawaii's utility industries.

2. HRS, chapter 396 (Hawaii OSHA): state department of labor and industrial relations. Pursuant to the provisions of OSHA, Hawaii has opted to administer and enforce the requirements of OSHA itself, rather than leave the matter to be handled entirely by the federal government.

Hawaii's legislative action in this regard came in 1972 with the enactment of Act 57, entitled the Hawaii Occupational Safety and Health Law (HRS, chapter 396). It places the authority and responsibility in the department of labor and industrial relations to: (a) adopt rules and standards, (b) conduct inspections and investigations, (c) engage in educational, training, and informational activities, and (d) enforce the abatement and correction of unsafe conditions. The state plan developed by the department of labor and industrial relations pursuant to this Hawaii statute has been approved by the federal authorities. Thus the department of labor and industrial relations is responsible for carrying out federal and state OSHA requirements and objectives in Hawaii. It does so through its industrial safety division.

Like the federal legislation, chapter 396 and the state OSHA plan contain no exemptions or special provisions relative to Hawaii's utility industries. Thus, all of the companies subject to regulation by the PUC are also subject to all of the requirements of the state and federal OSHA laws, rules, and standards. But the jurisdiction of the department of labor and industrial relations over the utilities with regard to employee safety is not a new thing. Even before OSHA, Hawaii's utility companies, like any other industry in Hawaii, were subject to the safety regulations of the industrial safety division of the state department of labor and industrial relations, under previous legislation and departmental rules and regulations.

3. Chapter 269: the PUC. The PUC's authority and responsibility for the safety of utility company employees stem from HRS, chapter 269. Section 269–7, relating to the investigative powers of the PUC, empowers the commission "to examine into the condition of each public utility [and] the manner in which it is operated with reference to the safety and accommodation of the public [and] the safety, working hours, and wages of its employees. . . ." In addition, section 269–9 requires the regulated utilities to report all accidents to the PUC and mandates the PUC to investigate the

causes of all fatal accidents. The chapter also gives the PUC wide discretionary authority to investigate other nonfatal accidents. Section 269–15 empowers the PUC to examine into any matter referred to in section 269–7, even though some other governmental body may have jurisdiction in the matter, and to effect such relief or remedy it may deem appropriate through proceedings before any such other governmental body. By inference, the provisions of chapter 269 relating to the PUC also apply to the PUD.

Safety of the general public. At the present time, the PUC appears to be the only state agency specifically charged with the responsibility of protecting and promoting safety of the general public in the utilities field (other than gas lines). Neither the federal nor state OSHA contains any broad mandate to protect the public from industrial hazards, except in certain limited areas not including the utilities.

The PUC's authority and responsibility to look after the safety of the public are contained in section 269–7 quoted above. This statutory provision recognizes the potential safety hazards of some of the utility facilities and operations–e.g., possibilities of electrocution from electric lines and of asphyxiation and explosion from leaking gas lines.

Gas pipeline safety. Gas pipeline safety is handled at both the federal and state levels.

1. Office of pipeline safety, U.S. Department of Transportation. The federal government in 1968 enacted the Natural Gas Pipeline Safety Act. It charges the U.S. Department of Transportation with the responsibility for carrying out a nationwide gas pipeline safety program and creates an Office of Pipeline Safety within the department to administer the program. The act authorizes the Office of Pipeline Safety to enter into formal agreements with the various states for state implementation of the safety program, subject to federal requirements and the overall control and direction of the Office of Pipeline Safety. Hawaii concluded such an agreement with the federal government in February 1971, with the PUC designated as the state administering agency and party to the formal agreement with the federal government.

2. Hawaii PUC. The federal Pipeline Safety Act provides federal aid on a 50–50 matching funds basis for states which either certify that they meet the conditions for matching funds or sign an agreement with the Office of Pipeline Safety. Certification requires, among other things, that a state have enforcement authority that includes monetary and injunctive sanctions. Lacking such enforcement sanctions, Hawaii could not qualify for certification and thus signed an agreement instead. The terms of the agreement are that the state (a) establish an adequate program for record maintenance, reporting, and inspection relative to federal standards, (b) establish procedures for approving plans of inspection and maintenance in accord with the Pipeline Safety Act, (c) implement a compliance program acceptable to the secretary of transportation, (d) cooperate in federal monitoring and reporting of the compliance program, and (e) promptly notify the federal government of violations or probable violations.

Although the PUC is the signatory to the agreement with the federal government, in practice, the PUD does all of the actual work and implements the agreement. This leaves the PUC legally responsible for a program it does not command under existing PUC/PUD organizational arrangements, as the PUD is legally responsible to the director of the department of regulatory agencies.

3. Federal and state OSHA agencies. The federal and state OSHA agencies also appear to have responsibility for gas pipeline safety, at least for the safety of employees. Moreover, the State's industrial safety division is responsible for the safety regulation of welding and welders. Only qualified welders are supposed to do the welding on gas pipelines, and whenever any welding is involved in pipeline construction the welding is subject to inspection by the industrial

safety division as well as by the public utilities agency.

However, in a recent review of this matter with the industrial safety division, we were advised that, under current interpretations of the federal and state OSHA laws, exclusive jurisdiction over pipeline safety is vested in the Office of Pipeline Safety and the state agencies which it certifies or with which it has agreements. Accordingly, the industrial safety division does not feel that it can conduct inspections of gas pipelines except when invited to do so by the PUC or PUD.

4. State department of transportation. The state department of transportation may also have responsibility in this matter—or at least its activities may have an effect upon pipeline safety in some areas within the State. HRS, chapter 277, requires the department of transportation to "establish, maintain, operate, manage and control energy corridors throughout the State for the purpose of maximizing the utilization of lands available for use in connection with transporting by pipeline or other means, sources of energy including but not limited to oil, its derivatives and natural gas; provided, that the utilization of such energy corridors shall be permissive and not mandatory."

This is a very broad grant of authority to the department of transportation and would seem to include safety regulation of the users of any such energy corridors that might be established.

Lack of Coordination Among the Agencies Concerned with Safety

From the description above, it is obvious that there are considerable jurisdictional overlaps among the various federal and state agencies in the regulation of occupational (industrial) safety and gas pipeline safety. The federal authorities for the most part have left the implementation of federal requirements to the state agencies. Considering the intermixture of responsibilities, one might expect that there would probably be very close working relationships between and among the various state agencies concerned. However, this is not the case.

PUC/PUD—industrial safety division. The chief investigator of the public utilities agency formerly was an inspector with the industrial safety division. This being so, it might be assumed that the PUC/PUD and industrial safety division would have been able to get together on the matter of occupational safety in the utilities industry. However, our examination revealed that there are no formal or informal relationships of any sort between the two state agencies. The two agencies do not consult with each other on any meaningful basis and very seldom exchange information with each other, despite the fact that public utility companies are sending duplicate accident reports to both agencies.

In rare instances, the two agencies may come into contact with each other. This may happen when a fatality results from an industrial accident involving a public utility company, the only type of accident the public utilities investigates and which the industrial safety division also investigates. However, we could find no evidence of any real coordination of efforts even in such cases. The only other instance of direct contact that came to our attention concerned the allowing of cable television companies to mount their cables on the utility poles used by the telephone and electric companies. At a demonstration witnessed by representatives of the affected utility companies and of the cable television division, the public utilities division, and the industrial safety division, it was concluded that it would be safe to reduce the line clearance requirements specified in the PUC's General Order No. 6 to accommodate CATV cables on the poles. One can only conjecture what the result would have been had there been a disagreement between the parties to this demonstration.

Otherwise, the PUC/PUD and the industrial safety division operate day to day as if each other did not exist. There is no effort to develop joint or mutually compatible standards and requirements. There is a duplication of efforts as far as accident reports by the utility companies to the two agencies are concerned. Joint or cooperative investigations are never undertaken. There are no combined efforts pertaining to safety education, information, and training.

PUC/PUD–department of transportation. Similarly, despite obvious areas of mutual concern to the state department of transportation and the PUC and PUD relating to pipeline safety in state-established energy corridors, there is no interagency coordination in this field. The transportation department's view is that no joint action is necessary because the department has already included in its approvals to use the corridor a general provision which requires users to meet all other governmental rules, regulations, and requirements. It views safety regulation as being strictly a matter between the gas company and the public utilities agency. As for the PUC and PUD, they have seen no need to contact the transportation department concerning the pipeline use of the corridor. Again, we have the situation of different state agencies operating on a day-to-day basis as if each were the only agency concerned with a particular area of responsibility despite obvious overlappings of jurisdiction. This can lead not only to the waste or underutilization of state resources, but may also cause confusion and conflict between the various agencies. It can also lead to jurisdictional gaps if agencies each assume that others are exerting jurisdiction over an area of mutual concern, and none does.

Inadequate Performance of the PUC and PUD Regarding Safety

Besides the jurisdictional problems relating to safety in the utilities field, we assessed the performance of the PUC and PUD in carrying out their safety responsibilities. In general, despite the fairly large responsibility given by law to the PUC to provide for safety in the public utilities field, neither the PUC nor the PUD is presently devoting much attention and consideration to this area in terms of an ongoing and important program responsibility. Apart from the adoption of a widely scattered collection of rules and regulations on the subject, there is no indication of a consistent and continuing course of action or level of concern in the safety field by either agency. Even after considerable probing, we were unable to locate within the PUC or the PUD any comprehensive program plans for safety. A description of our specific findings follows.

Inadequate standards. One of the most important aspects of any area of regulation is that of rulemaking and the setting of standards. This is especially true in the safety area where accident prevention is the real key to success, and the observance of safe practices and procedures is the best means of preventing accidents. Thus, it is essential to establish clearly what are considered to be safe practices and procedures (i.e., set standards which are to be met) and to provide definite means of ensuring that they will be observed (i.e., specify the basic ground rules and the remedial actions that can be taken for failure to comply with them). With a high degree of technology being involved in the utilities field and with innovations and improvements being made continuously, it is also essential that such standards and requirements be kept up-to-date.

In their present state, the safety rules, requirements, and standards which have been adopted for utility companies in Hawaii do not provide a solid foundation for a comprehensive and effective public safety program in the public utilities field. One contributing factor is that safety provisions are widely scattered among five different general orders of the PUC and intermingled with all sorts of other provisions. With provisions widely dispersed in this manner, it is extremely difficult, if not impossible, to formulate and maintain a consistent, comprehensive, and coherent approach to the

general subject of safety in the public utilities field or to pinpoint responsibility for carrying out this responsibility.

In addition to the problem of dispersion, many of the safety provisions contained in the general orders are too broad and vague or lacking in precision to be really useful guides to action. The following examples point up more specifically this particular shortcoming.

*1. **Accident reporting requirements.*** General Order Nos. 7, 8, and 9 relating to electric, telephone, and gas utilities contain a virtually identical provision requiring the submission of reports on all accidents to the PUC. The following from General Order No. 8 is representative of this provision:

> "2.3 DATA TO BE FILED WITH THE COMMISSION
>
> c. Accident Reports
>
> The utility shall file with the Commission a report of each accident in connection with the operation of the utility's telephone plant. Prompt notice of fatal accidents shall be given to the Commission by telephone."

This is the full extent of the provision relating to accident reporting. It is obvious that it is extremely broad and unspecific. There is no classification of accidents relative to types or severity, except for fatalities. No report forms are specified or indication given of the kind and detail of information required on each accident. It is a practice in many industries to classify accidents (e.g., reportable and nonreportable; loss time and no loss time; minor injury, major injury, and fatality; preventable and nonpreventable) to facilitate analysis and the identification of problem areas and probable causes. Similarly, insurance companies and other regulatory agencies attempt to standardize the type of information reported through the use of specified forms so as to make information more usable and manageable. But the public utilities agency leaves it entirely to the regulated companies to decide the format in which information will be reported to the agency.

*2. **General standards for engineering.*** General Order Nos. 7, 8, and 9 adopt by reference general or industry engineering standards. The degree of specificity varies from one utility to another. The provision for the telephone company is vague and general. The section in General Order No. 8, applicable to the telephone company, reads in its entirety as follows:

> "5.1 CONSTRUCTION
>
> Construction of telephone plant shall be subject to the provisions of the current National Electrical Safety Code, Hawaii Public Utilities Commission General Order No. 6 and such other appropriate regulation as may be prescribed."

In contrast, General Order Nos. 7 and 9, which are virtually identical, are much more specific. They adopt quite a few general and industry standards by name and date of publication. General Order No. 7 (for electric utilities), for instance, lists the following among others:

- National Electrical Code, NFPA No. 70, ASA C–1, 1962 edition (for wiring beyond the service conductors)
- American Standard Code for Electricity Meters, ASA C–12, 1965 edition (for meters and associated equipment)
- American Standard Requirements, Terminology and Test Code for Instrument

Transformers, ASA C57.13, 1954 edition (for instrument transformers)

General Order No. 9 (for gas utility) goes even further. It lists not only those general and industry standards which the utility must comply with but also lists additional references which the utility may use as guides to acceptable practice.

*3. **Requirements for safety programs and safety measures.*** Each of the three general orders relating to electric, telephone, and gas utilities has a separate part devoted specifically to the subject of safety. The provisions in these three parts vary considerably in length and in their degree of specificity. For example, the one for the telephone company is relatively brief and quite general in nature. The one pertaining to the gas company is the longest and most detailed. The one for the electric utilities falls in between the other two in terms of length and specificity of content.

All three safety parts include an identical provision requiring the affected utilities to have a safety program covering their operations. However, this provision is so broadly stated it places upon the utilities the onus of developing the details of the safety programs they are to put into effect. The three sections read as follows:

"SAFETY PROGRAM

The utility shall adopt and execute a safety program, fitted to the size and type of its operations. As a minimum, the safety program should:

a. Require employees to use suitable tools and equipment in order that they may perform their work in a safe manner.

b. Instruct employees in safe methods of performing their work.

c. Instruct employees who, in the course of their work are subject to the hazard of electrical shock, asphyxiation or drowning, in accepted methods of artificial respiration."

Each of the three general orders also has a section entitled "protective measures." These sections are again so broadly stated that they constitute but mere exhortations to the utilities to be careful. For instance, General Order No. 7 (for electric utilities) provides in part as follows:

"Each utility shall exercise reasonable care to reduce the hazards to which its employees, its customers, and the general public may be subjected."

Then General Order No. 9 (for gas utility) provides in part:

"Each gas utility, unless specifically relieved in any case by the Commission from such obligation, shall operate and maintain in safe, efficient and proper condition all of the facilities and instrumentalities used in connection with the furnishing, regulation, measurement and delivery of gas to any customer up to and including the point of delivery, which point, for the purpose of these rules, shall be deemed to be the outlet fitting of the meter installed by the utility."

In addition to vagueness, some of the provisions relating to safety measures are stated in a permissive fashion when it appears that they should be mandatory. For instance, General Order No. 7 (for electric utilities) in section 84.c. states that the utility *may* refuse or disconnect service to customers who violate safety standards and rules. It would seem that this should be a mandatory requirement to assure compliance on the part of the customers, or at least that there should be some sort of reporting

requirement so that appropriate governmental authorities would be advised of violations. Similarly, in section 8.4.a. of General Order No. 9 (for gas utility), the utility is only required to advise a customer of the desirability of having a pressure test made of the customer's piping if such is not required by local governmental authorities. If such pressure tests are important, then it would seem appropriate for the public utilities agency to require such tests to be made.

4. Lack of review and updating procedures. In regard to all of the general order provisions relating to public safety in the public utilities field, there is a general lack of any regular review and updating procedures whereby the PUC and PUD can ensure that the safety standards and requirements which have been adopted reflect fully the latest thinking and developments in specific areas of public safety. With many of the standards and requirements being adopted by reference to other sources or being closely patterned after those adopted elsewhere, it would appear particularly important to make sure that Hawaii's needs and particular conditions are kept in mind as reference standards are themselves modified. Note, for instance, that the references adopted as engineering standards for the electric utilities date back to the 1950's and 1960's. Also the requirements and standards for overhead and underground utilities were based on the State of California standards as they existed in 1967 and 1968.

Failure to maintain an ongoing program of administrative and operational implementation. Even if the safety requirements and standards adopted by the PUC were fully adequate and completely up-to-date, they would still be largely meaningless without an effective system to implement them and give them effect. Formal requirements and standards must be applied through: (1) a regular and comprehensive system of monitoring performance by means of inspections and investigations; (2) an ongoing program of safety information, education, and training for all personnel involved in public safety in the public utilities field, including both utility company employees and employees of the regulatory agencies; and (3) the application where necessary of appropriate sanctions to enforce compliance with safety requirements and the correction of unsafe practices and conditions. Unfortunately, the PUC and PUD are generally deficient in all of these areas.

1. Lack of a comprehensive program for performance monitoring. A comprehensive program for performance monitoring encompasses inspections, investigations, and accident reporting. Inspections are conducted prior to the occurrence of accidents and are aimed at detecting unsafe practices and hazardous conditions and correcting them before they result in any type of harm or injury. Investigations are undertaken when accidents do occur to discover their causes and remedies that will prevent recurrence. Accident reporting is the proper reporting and recording of accidents and the compilation and analysis of accident statistics. There is currently no real program for monitoring performance. Current inspection practices and accident investigations are not adequate.

a. Inspection activities. A minimum effective inspection program would require regular inspections of all utility facilities and operations by trained, competent safety inspectors and periodic examination and review of utility company programs, activities, safety manuals, etc. These minimum requirements are presently being met only in a limited fashion.

The only inspections that are ever made are a limited number of overhead line inspections relative to compliance with General Order No. 6 and a limited number of pipeline inspections carried out pursuant to the pipeline safety agreement with the federal government. No review is ever made of company safety practices, procedures, and materials to assure they are adequate and satisfactory. No one within the PUC and PUD is familiar with the utility company safety manuals and no copies of these

manuals are regularly received and maintained by the PUC or PUD.

In the one area where some initiative has been taken to carry out the PUC's safety responsibilities–the inspection of overhead lines for compliance with General Order No. 6–we found that the results have been less than adequate.

In November 1971, the consulting engineering firm which the PUD frequently uses for utility matters provided a three-day training program for personnel in the PUD's engineering and investigation branches regarding the making of inspections for compliance with General Order No. 6. Following this training program, several of the investigators made a number of field inspections of overhead lines, primarily on the islands of Maui, Kauai, and Hawaii. All of the violations detected were listed and a formal notice of noncompliance was sent to each company. From that point on, however, followup action has been quite loose and indefinite. The staff developed no plans for ensuring that the companies actually correct the deficiencies that have been cited. Followup actions that have occurred have been highly informal and sporadic. As one of the investigators put it, if he happens to be in an area where past violations have been cited, he may check to see if they have been corrected. However, this is not done on any planned basis. The companies are supposed to advise the agency when corrections have been made, but there is no established procedure for reporting this information. In one instance, at least, the company cited the high costs involved in making all the corrections at once and indicated it was programming changes through 1975 so as to bring all of the violations into compliance with General Order No. 6. The agency voiced no objection to this prolonged period for achieving compliance.

b. Accident reporting. Under section 269–9 of the Hawaii Revised Statutes and under General Order Nos. 7, 8, and 9, the various electric, telephone, and gas utility companies in the State are required to report all accidents to the public utilities agency. Also, under the three general orders governing electric, telephone, and gas utilities, all regulated companies are required to maintain summaries of all accidents. These requirements are imposed to provide a basis for the utility regulators to conduct investigations to ascertain the causes of the accidents reported and to prescribe remedial action to prevent recurrence of such accidents; to monitor how well the utilities are paying attention to the safety aspects of operations; and to identify generalized problems and to devise comprehensive types of correction. In this light, accident reporting and analysis should be a major function and activity of the PUC and PUD. However, as now administered, accident reporting is simply just that. There is no program for analysis of data and for implementing actions as may be required on the basis of such analysis.

In the absence of any such comprehensive program, it is not surprising that the rules governing accident reporting are very vague. No attempt is made to classify accidents in any meaningful sense so that primary attention can be focused on the most serious problems. No form for reporting accidents is specified and even the type of information required is not suggested. No time limits within which reports are supposed to be made are set, except that fatal accidents are supposed to be reported promptly by telephone or telegraph. Similarly, no forms or suggestions for the keeping of summary data on accidents are provided to the regulated companies by the public utilities agency. To a very great extent, the PUC and PUD do not know what sort of information they want or need relative to accidents and simply receive whatever information is submitted to them by the utility companies.

The lack of specification as to the type of information to be submitted probably makes very little difference anyway because the PUC and PUD do virtually nothing with what information is provided to them by the utility companies. In most cases, the utilities simply

send to the PUC copies of the industrial accident reports which they prepare and submit to the industrial safety division of the department of labor and industrial relations. When a separate form is used, it contains basically the same information as the industrial accident reports. Once the accident reports are received at the agency, they are routed to the chief investigator who claims he looks them over before transmitting them to the office services section for filing. However, the purpose of his looking them over is difficult to determine because virtually no action is ever taken on them. No investigations are ever made, except in a few rare instances involving fatalities or severe electric shock. No statistics are compiled or summaries made. No information on industrial type accidents is ever submitted to or requested by the PUC except for fatal accident reports which are perfunctorily submitted to the commission and then filed.

c. Accident investigations. Section 269–9 of the Hawaii Revised Statutes requires the PUC/PUD to investigate the causes of all accidents resulting in the loss of life. The utility regulators are given discretionary authority to investigate such other accidents as they may deem appropriate. However, nonaction which characterizes what happens upon the receipt of accident reports submitted by the utilities carries over into those instances where a fatality occurs, notwithstanding the requirements of statute.

Even in those rare instances where the staff of the public utilities division does make an investigation and/or prepare an accident report for the commission, the investigative effort is hardly more than a formality. It appears to be aimed more at nominal satisfaction of the requirements of section 269–9, HRS, than at promoting system which is the object of the law. Consider the following illustrations.

(1) The case of four fatalities. During calendar years 1972 and 1973, there were four fatal accidents (exclusive of motor carrier accidents) reported to the public utilities agency. All four of these accidents involved electrocutions, three on Oahu and one on the island of Hawaii. In two of these four accidents, the staff relied entirely upon police reports and the accident report submitted by one of the two companies involved in preparing the staff's reports to the commission; it conducted no independent investigation. In a third case, one of the staff's investigators accompanied the company's safety director to the scene of the accident, but this was the extent of the investigation. Information contained in the accident report that was submitted to the commission was supplied entirely by the company.

In the fourth case, an investigator from the staff visited the scene of the accident within three hours after the accident occurred, along with two representatives of the company. All of the actual investigation work appears to have been performed, however, by the company's safety engineer and by the police. Again, it was the information supplied by these other sources which went into the written report that was submitted to the commission. In all four cases, no violations of commission rules and regulations were detected, and the cases were closed upon the filing of written reports to the commission.

(2) The case of an electrical shock. In addition to the four fatal accidents, there appears to have been one other serious accident during 1972 and 1973. This accident received some followup attention by the staff—primarily because the attorney for the injured party wrote a letter on the subject to the public utilities agency. This case involved a strong electrical shock which a worker received from a low-hanging wire, and which caused severe third degree burns on the worker's hands and feet. The accident occurred on February 7, was reported to the public utilities agency by the electric company on February 15, and was the subject of the attorney's letter dated February 26.

On March 7, in an interoffice memorandum, the executive director of the public utilities division said to the public utilities

administrator and the staff investigators: "I believe an investigation is necessary . . . to determine if the General Order . . . was violated by the Utility Co." He then went on to comment: "Further, we should institute a program wherein all accidents of this kind reported by the utility companies should be investigated as thoroughly as possible considering the elements involved in this matter."

The investigation section submitted a report to the utilities administrator on April 13, some two months after the accident. The report said that the lines were lower than they were supposed to be (nine feet from the ground rather than the required 25 feet) due to a temporary setup that was constructed to restore power when the line was damaged during a storm. It noted that a spokesman for the company reported to the investigator, that due to an "overlooked" job order, it was not known that further repairs to the line were needed. The company defended this situation on the basis that it was not done intentionally, but was the result of "human error" when the work order was inadvertently overlooked.

This appears to have been the extent of action on the matter. There is no record of further contact with the company, and the agency has no assurance that the line has been raised to the required clearance. More distressing than this, however, is that there is no evidence to suggest that the staff has taken any action on the executive director's admonition to investigate all accidents of this sort. The chief investigator continues routinely to file away the accident reports as they are received, despite the fact that quite a few reports of severe electric shocks are submitted to the agency. Our brief review of some of the accident reports received over a two-year period found a very serious problem of tree trimmers' and crane operators' coming into contact with high voltage transmission lines.

*2. **Providing safety information, education, and training.*** Adequate safety standards, inspections, and investigations of accidents are effective safety devices; but their effectiveness is greatly increased when persons within the zone of potential hazards are made aware of them and of the means for avoiding them. A large majority of accidents are the result of human error, so well-designed safety programs will emphasize strongly educational, training, and informational programs that alert potential accident victims to these hazards and the means of avoiding them.

The regulatory authorities in Hawaii place no emphasis upon providing safety information, education, or training to anyone involved with safety in the public utilities field. Apart from the very brief training given to PUD employees to enable them to make inspections of overhead utility lines, no sort of safety education or training program for the staff of the PUD is discernible. Similarly, the regulatory authorities have no knowledge at all of any informational, educational, or training programs which the utility companies may be providing or sponsoring for their own employees or for utility users in general. To the extent that the utility companies are taking actions in this area, it is at their own initiative or the result of some factor other than regulation by the PUC and PUD.

*3. **Applying sanctions as a means of enforcement.*** To be fully effective, a safety program must ultimately be backed up by sanctions which are strong and definite in their application—sufficiently strong and definite, that is, to make compliance the preferable course of action to be followed by those subject to the safety rules and regulations. Such sanctions include the right to order the cessation of unsafe practices and the correction of unsafe conditions and to impose, if necessary, monetary penalties and injunctive relief to enforce such orders.

Although not enjoying enforcement powers which are as specific and stringent as those given to industrial safety inspectors under the OSHA legislation, the public utilities regulators have

fairly broad authority under chapter 269 to enforce the State's utility laws, rules, regulations, and orders. This is found in section 269–28, which reads as follows:

> "**Sec. 269–28 Penalty; injunction.** Any public utility violating or neglecting or failing in any particular to conform to or comply with this chapter or any lawful order of the public utilities commission shall forfeit to the State not more than $1,000 for every violation, neglect, or failure, to be recovered by action brought in the name of the State by the commission, and may be enjoined by the circuit court from carrying on its business while the violation, neglect, or failure continues."

As nearly as it can be determined, however, the PUC and PUD have never invoked this provision or applied any sort of monetary or injunctive sanction against a public utility in Hawaii for failure to comply with legal requirements.

There would be, of course, no need for the exercise of such sanctions if the regulated companies always are meticulous in complying with all legal requirements and do not commit any serious violations warranting remedial action. Available evidence strongly suggests, however, that such is not the actual case. Rather, violations are known to occur. For example, the PUD's limited inspection of compliance with the electric utilities' overhead line requirements of General Order No. 6 discovered 158 violations on the island of Hawaii, 84 violations on Maui, and 83 violations on Kauai in a period from October 1972 to December 1973.

Although violations do occur, the regulators do not take any drastic action against the offending parties. The usual procedure is simply to request the utility in writing or even orally to comply with a particular requirement and then to give the utility ample time to do so. And, followup action to determine whether corrective action has been taken is rarely, if ever, taken. Thus, the utilities are able to operate on the assumption that the most that will happen to them if they are found in violation of any PUC requirement is they will be asked or ordered to come into compliance with the requirement.

Failure to implement fully the pipeline safety program agreed upon with the federal government. Under its agreement with the federal government, the State agreed to do a number of things concerning pipeline safety, and the federal government agreed to pay one-half of the costs incurred by the State in the pipeline safety program. The State's performance in this area, however, has been woefully inadequate. It simply has not lived up to its agreement with the federal government.

The State has not as yet established by formal rules and regulations a program for record maintenance, reporting and inspection designed to meet federal safety standards. It has not established formal procedures for the approval of plans and maintenance which are substantially the same as those required under the federal act. It has not engaged in a systematic review of the gas company's operation and maintenance manual nor participated actively with the company in the revision of the manual. It has not assisted the gas company in the development of standard specifications for the construction of main installations.

About the only activity that the State has undertaken has been to inspect pipelines. But, even there, the performance has not been as it should. In the first place, the utility regulators appear to be having some difficulty ensuring that they are properly notified of pipeline construction, so they can make the necessary inspections. The records indicate that several requests have been made to the gas company that the regulators be advised of all new construction in advance, but these requests do not always appear to be observed by the company. We have been able to find only one letter of notice in the PUD files. Secondly, most

of the pipeline inspections are handled by the most junior of the three investigators on the PUD staff who has received only rudimentary training for this work. Indeed, there appears to be little skill among the staff members to conduct pipeline inspections. For instance, for major pipeline constructions on Oahu, the company and its contractor utilize X-rays to check welds, but the agency has never looked at these X-rays because it is not qualified to know what they mean.

That pipeline inspections are necessary is revealed by an incident which occurred in the Kona area on the island of Hawaii in the fall of 1973. At that time, an investigator from the agency was on hand to inspect the startup of a pipeline laying project and detected that the contractor for the job was not qualified to do the work. It was only after the company was advised of this deficiency that it pulled the contractor off the project and assigned the work to another contractor.

The main problem in the area of pipeline safety is the lack of real commitment on the part of the PUD to carry out fully and completely the safety program which has been agreed upon between the State of Hawaii and the federal government and for which the federal government is willing to defray half the costs. The following statistics are clear indicators of this lack of commitment. For each of the years 1972 through 1974, the State in its applications to the federal government indicated a total expected annual expenditure of $25,000 (of which the federal matching portion was to be $12,500). In 1972, however, a total of only $7446 was expended, of which $3723 was provided by the federal government. For 1973, the comparable figures were $7310 in total expenditures and $3655 in federal matching funds. In 1974, the respective amounts were $9569 and $4785. Thus, for the three years, expenditures have never exceeded 40 percent of the amounts budgeted for gas pipeline safety. Another set of statistics of interest is that the engineer on the PUD staff nominally in charge of pipeline safety spent less than 20 percent of his time on the pipeline safety program in 1972 and .0623 man-years during the first half of 1973. He reported participating in only one inspection during all of 1973.

Considering the grave dangers inherent in the gas pipeline field and the fact that the number and length of gas pipelines in Hawaii are being greatly expanded, it would appear that this area of safety should be receiving increased consideration and attention.

A Case for the Transfer of Functions

In volume I of this report, we observed that the non-economic aspects of utility regulation are probably better transferred to other state agencies which have responsibility for similar matters. In particular, we noted that matters relating to industrial and public safety are non-economic regulatory activities that can probably be better performed by another agency or agencies.

The above discussion on the safety program of the State's public utilities regulators supports the case for such a transfer. Much of the safety responsibilities now in the PUC/PUD are also vested by statute in the state department of labor and industrial relations. Occupational safety, for example, is very much within the jurisdiction of the department of labor and industrial relations under Hawaii's OSHA. In fact, as noted above, the public utilities submit the same accident reports to both the PUC/PUD and the department of labor and industrial relations. With regards to pipeline safety, this is also conceded to be well within the department of labor and industrial relation's jurisdiction.

The case for a transfer of the occupational safety and pipeline safety functions to the department of labor and industrial relations is made by the fact, *first,* that the utility regulators do very little in these areas. For occupational safety, the regulators have no real program, do nothing with accident reports, and conduct little, if any, meaningful investigation of

accidents. Then, for pipeline safety, the utility regulators simply seem to shun their responsibilities. *Secondly,* the utility regulators are without the manpower, skills, and training to conduct these safety programs. The PUD inspection staff consists of only three men; safety is only one of many responsibilities they have; and none of them has received the education and training needed to do an adequate job in the safety field. In contrast, the department of labor and industrial relations has a safety program of some comprehensiveness and experienced, trained, and skilled personnel to administer and implement safety programs.

It may well be that not only the occupational safety and pipeline safety aspects, but also the public safety aspect of the total safety program could be transferred to the department of labor and industrial relations. For even here, the utility regulators have no real program or the experience and skills needed to do the job.

We note in passing that if the pipeline safety program is to be transferred to the department of labor and industrial relations, that department may need to be substituted for the PUC in the contract with the Office of Pipeline Safety of the U.S. Department of Transportation.

Recommendations

We recommend as follows:

1. The department of labor and industrial relations should assume the responsibility for both industrial and public safety with respect to the utilities field. This will require amendments to the industrial safety and public utilities laws. Whether or not the responsibility is vested exclusively in the department of labor and industrial relations, the following tasks should be accomplished:

a. Formal, updated safety standards and requirements for the utilities industry should be adopted.

b. A comprehensive program for monitoring industry compliance with the standards and for investigations of accidents should be developed and implemented.

c. An educational, training, and public information program to alert utility industry employees to safe work practices and industrial job hazards, and to inform the general public of hazards associated with public utilities and proper emergency procedures should be formulated.

d. Sanctions against violations of safety standards and requirements should be strengthened and applied.

If the responsibility for safety in the utilities area is vested exclusively in the department of labor and industrial relations, that department, in the development of rules, standards, and requirements, should do so upon consultation with the PUC and the PUD, to the end that the peculiarities of the utility industry and the impact of such rules, standards, and requirements on the costs of compliance therewith may be appropriately considered.

2. The contract between the PUC and the federal government for gas pipeline safety should be renegotiated to make the industrial safety division the contracting party for the State. The division should expand the program to meet Hawaii's contractural commitments.

Chapter 9

REGULATION OF UTILITY CAPITAL IMPROVEMENTS AND PROMOTIONS

Besides safety, there are two other areas of utility regulation of some import. This chapter is concerned with these two other areas—utility capital improvements and utility promotions.

Capital improvements and promotions directly affect the rates that consumers must pay for utility services, for the costs of these improvements and the costs of promotions (including advertising) invariably are recognized as allowable expenditures for ratemaking purposes. Further, utility capital improvements (but not necessarily promotions) have economic (and social) impact far wider in scope than the narrow field of public utilities. Where and how utility capital improvements are placed influence the general economic development of the State and the counties, and the state and county economic and community plans affect when and where utility capital improvements are required.

This chapter describes how well the utility regulators are performing their function of regulating and overseeing the utilities capital improvements program and promotional practices. Although extensions of utility lines are a form of capital improvements, in this chapter they are given a treatment apart from the general utility capital improvements. This is because of the special and unique problems that are associated with utility line extensions.

Summary of Findings

1. Utility capital improvements are given but cursory attention by the PUC and PUD, even though these capital improvements have a substantial effect on the general economic and community well-being of the State and the counties and on the rates that consumers must pay for utility services. There are no rules, standards, criteria, or guidelines and no administrative mechanism by which the utilities capital improvements programs and projects might be fully reviewed, evaluated, and controlled.

2. Extensions of utility lines are being permitted to be constructed without the establishment by the utility regulators of rules and standards for such construction and without monitoring to ensure compliance with legal requirements. Rules are also lacking regarding the apportionment of the costs of constructing such extensions between the utilities and the customers seeking the extensions. The result is that costs are being apportioned in different ways by the various utilities, and customers are not being treated equally even within a utility area and within a utility company.

3. The costs of utility promotional programs and practices (including advertising) are recognized as allowable expenses for ratemaking purposes, with the consumers ultimately paying for such costs. However, the PUC has formulated no rules governing utility promotional practices. Without such rules, the utilities have engaged in illegal, wasteful, unreasonable, and unnecessary promotional activities at the expense of the consumers of utility services.

Regulation of Public Utilities' Capital Improvements Construction

Being heavily capital-intensive and being dependent upon capital improvements which require long lead times to plan and construct, the public utilities industries should naturally be keenly conscious of the needs for and benefits of engaging in long-range planning and careful programming of capital improvements projects, in terms of both construction and finance. Because these capital improvements affect both the rates and quality of service, it follows that the agencies responsible for regulating the public utility companies should be similarly interested. However, the utility regulators pay but cursory attention to the utilities' capital improvements planning, their programming, or their implementation.

Some general deficiencies. Each public utility is required to submit annually to the PUC for its review and approval an updated five-year capital improvements program. In addition, before undertaking any specific capital improvements project costing in excess of $500,000, or 10 percent of the total plant in service, whichever is less, the public utility must submit such project to the PUC for its review and approval. (For all practical purposes the $500,000 figure is controlling, since it is less than 10 percent of the total plant in service for almost all utilities in Hawaii.) In the review both of the five-year plan and of the specific capital improvements project, the utility regulators are quite deficient in their performance.

1. No guidelines. The five-year updated capital improvements plans and the plans for specific capital improvements projects are first reviewed by the PUD and then by the PUC. Neither the PUD nor the PUC, however, has any guidelines to assist it in such a review.

a. Five-year plans. With regard to the updated five-year plans, although they are the results of some long-range planning on the part of the utilities, the utility regulators themselves have no long-range goals by which to evaluate the utilities' plans. The public utilities agency in fact has no long-range planning capability and seemingly relies entirely upon the utilities to do any such planning.

The construction of new capital improvements has an effect upon utility rates as well as upon the economy of the State in general. If facilities are overbuilt or built too far in advance of need, then a burdensome cost is incurred which must be made up in increased rates until such time as demand catches up with capacity. If construction does not keep up with demand, the quality of service deteriorates. Hence, it would be expected that the public utilities agency would be keenly concerned about all proposed utility capital expenditure plans. However, in the absence of any planning on its part, the public utilities agency is unable to evaluate the five-year plans in such economic terms.

The review of the five-year plans are conducted almost entirely by the engineering branch of the PUD. The engineering branch, as might be expected, is primarily interested in the engineering economics of the particular projects being proposed in the five-year plans. The branch does check the *apparent* need for new facilities by comparing the company's projected service requirements with those projected by the staff. However, the staff's projections are relatively simple and unsophisticated—the staff simply projects historical trends forward for the next five years. For the most part, the staff does not appear to take issue with the plans submitted by the companies. We did not come across any instances where a company had to alter its plans significantly as a result of staff suggestions or comments.

b. Specific project proposals. The PUD staff has advanced the proposition that a thorough examination of the five-year capital improvements plans is not necessary because such an examination can be made at the time when specific capital improvements projects come before the agency for review and approval.

Our study of the situation reveals, however, that this is fallacious reasoning, because the review and approval process for specific capital improvements projects also suffers from the lack of standards or guidelines by which to assess the specific project proposals. Indeed, it does not seem possible for specific project proposals to be evaluated meaningfully without an adequate base having been established in the five-year plans.

As in the case of the five-year plans, the specific project proposals are reviewed mainly by the PUD's engineering branch, whose focus is strictly in terms of the engineering aspects of the projects. Generally speaking, the questions addressed are the following: (1) from an engineering point of view, does there appear to be a reasonable need for this particular project? and (2) from an engineering point of view, does the company's proposal indicate it is the most economical means of meeting the particular need?

No one appears to consider whether or not particular projects add up to an efficient and coherent system of facilities best suited to meet the general needs of the community. For the most part, therefore, the staff reports simply describe the projects being proposed by the company and recommend approval of same.

The foregoing is not to say that the utility regulators are not aware of the economic implications of the five-year plans and specific project proposals. Both the PUC and PUD appear to be aware of them, but they appear not to know how to come to grips with these matters effectively.

*2. **Lack of coordination with other agencies.*** It should be obvious that capital improvements decisions in the utilities field can and often do influence and, in turn, are often influenced by, decisions in other economic areas. Many investment decisions are ultimately determined by the availability, quality, reliability, and cost of utility services in the area affected. Conversely, the nature and extent of utility services provided in a community are highly dependent upon (a) the demand for such services created by the type and level of economic activity in the community, and (b) the ability of the economic enterprises located in the service area to sustain the utility services demanded and provided.

Utility services and other economic activities are so intertwined that it would appear reasonable to expect that the utility regulators, in deciding on utility capital improvements, would consult with and coordinate their decisions with those of other governmental agencies that have a direct responsibility for the economic welfare of the State and its subdivisions. But such is not the case.

There are at least two types of governmental agencies whose activities are or ought to be of interest to the utility regulators—the state department of economic development and the county planning agencies.[1] However, in our review, neither the utilities' five-year plans nor the utilities' specific capital improvements projects shows any semblance of consultation or coordination between the utility regulators and these state and county agencies.

Occasionally the research and statistics branch of the public utilities division may seek population data from the state department of planning and economic development, and a member of the staff of the department of planning and economic development might observe the hearings conducted before the public utilities commission, but this is the extent of the working relationship between the public utilities agency and the state department of planning and economic development. The public utilities agency has apparently felt no need to seek the advice and assistance of the trained economists in the department of planning and economic development, and the department of

[1]The department of planning and economic development is the principal agency concerned with the State's overall economic objectives and development. The county planning agencies are the principal formulators of detailed community plans.

planning and economic development in turn has not felt the urgency to take affirmative steps to assist the utility regulators in making capital improvements decisions. Then, with respect to the county planning agencies, there is virtually no contact at all. The utility regulators and the county planning agencies ignore each other and behave as if the other does not exist.

Thus, neither the state department of planning and economic development nor the county planning agencies make any comment on the five-year plans or the specific project proposals, and no such comments are ever solicited by the utility regulators. This is so, even though the utility regulators themselves are without any long- or short-term plans or guidelines to assist them in evaluating the utilities' proposals.

This lack of consultation and coordination between the utility regulators and other state and county agencies may not be all that bad, if the utilities themselves, in the formulation of their plans, secure the input of these other state and county agencies. However, although the utilities represent that they attempt to keep abreast of governmental plans and take into account the projections and economic forecasts issued by governmental agencies, there is not now any mechanism whereby the utilities may have an input from governmental agencies in the development of the utilities' long- and short-range plans.

*3. **Lack of integration between capital improvements and the means of financing their construction.*** In neither the five-year plans nor the specific project proposals is there an integration of capital improvements with the means of financing the construction of the improvements. There is no requirement that the utility companies submit their financial plans with their long-range plans and their specific project proposals. Throughout the entire regulatory process, capital improvements and financing matters are handled as completely separate and independent subjects of concern to the utility regulators. There is no effort to relate the financial requirements of the capital improvements to the means of financing them.

On specific capital improvements projects, entirely separate dockets are usually established—one for the project itself, and another for financing the project, and, in the PUD, different members are involved in the review of each of these cases. The engineering branch reviews the capital projects, and the finance branch reviews financing proposals, and the two rarely, if ever, consult with one another or exchange information. Even the timing of consideration and action on the two types of submissions is completely uncoordinated, with the companies determining when each will be submitted to the PUC.

Under these conditions, it is impossible, of course, to obtain an overall view of the implications of the utilities' capital improvements programs. For effective economic regulation of the public utilities, it would seem that consideration and action on capital improvements and the means of financing them should be very closely coordinated; they are intimately bound up with one another.

*4. **Short time devoted to review.*** Considering the potential economic impact and thus the importance of capital improvements in the utilities field, the utility regulators allow themselves too brief a period for review of the utilities' five-year plans and specific project proposals. The time period specified by the PUC for such review is an indication of the amount of concern which the PUC places on utilities' capital improvements programs.

a. Five-year plans. The first year of each five-year plan constitutes the capital budget for the ensuing year. The normal procedure is for the companies to submit their five-year plans in December of each year for the period beginning the following January. The December submission usually does not permit the PUD to begin staff review of the plans until January, when the first year of the plans and thus the year's capital budgets are already in effect.

Understandably, then, the presentations on the plans by the companies before the PUC (an informal conference), held in the first quarter of the year, are brief and discussions by the members of the commission are extremely limited.

b. Specific project proposals. Under PUC rules, utility companies are required to submit their specific project proposals for review and approval 60 days prior to the commencement of construction or commitment for expenditure. The rules further stipulate that if agency action does not occur within 90 days after filing, then the utility company is free to include the improvement within its rate base without any further determination being required on the part of the PUC.

As already noted, initial review of any such specific project proposals is conducted by the engineering branch of the PUD. The engineering branch, upon such a review, prepares a staff report which is submitted to the commission for consideration. Although some of the staff reports on these requests appear to be prepared fairly promptly and easily within this 90-day limit, we have found that in many cases the waiting period is nearing an end when the staff reports are submitted to the commission. Considering the highly technical and complex nature of some of these projects and the fact that they may also be multimillion-dollar projects which have been years in preparation by large engineering staffs and consultants employed by the utility companies, 90 days appear to be too short a time to allow thorough and meaningful analysis to be made by the PUD staff and a report to be prepared.

Working against such a deadline not only imposes an unreasonable burden on the PUD staff, but it also places the PUC in the unfortunate position of having to act almost immediately on complicated proposals. In many cases, the commission is left with little option but to accept the staff's recommendations on such matters. When this occurs, commission action simply becomes a formality and is rendered largely meaningless.

In addition, the 60-day prior notice requirement combined with the 90-day limit within which the PUC must act on such matters creates a 30-day hiatus of uncertainty where the utility company may be able to proceed with the construction of a project or with the commitment of funds for it, but during which it does not know how the project will be treated in terms of being included in or excluded from the company's recognized rate base.

*5. **Result: pro forma review.*** The consequence of the above deficiencies is that the review conducted by the utility regulators, both the PUD and the PUC, of the utilities' five-year plans and specific project proposals is *pro forma* at best. Not much effort or time is devoted to the plans or project proposals, and the submissions of the utility companies are invariably endorsed by the PUD and approved by the PUC. Particularly illuminating is the fact that the five-year plans are usually endorsed by the PUD without comment, and approved by the PUC on less than an hour's discussion with the utilities concerned. Yet, the five-year plans are equally important, if not more so, than the specific project proposals. But then even the specific project proposals generate but only cursory review by the PUD and are perfunctorily approved by the PUC.

Other deficiencies: specific project proposals. In addition to the general deficiencies, there are some other inadequacies in the handling of specific project proposals. One of these is that no consistent pattern is followed in the formal processing of specific capital improvements projects. For no apparent reason, some requests are formally docketed when filed by the utility companies, but others are not. General Order No. 1 appears to require that all requests be docketed upon being filed and be handled through the regular procedures prescribed for docketed matters.

The more serious deficiency in the handling of specific project proposals, however, is the fact that a great deal of major construction on the part of the utility companies escapes the review

process altogether, even though it appears that the process should apply. This is the result of: (1) the segmentation of large projects into smaller projects, so as to keep each specific project under the $500,000 ceiling established for waiver of the requirement or (2) the company's and the regulatory authorities' simply ignoring the requirement that projects be submitted for review by the PUD and PUC.

*1. **Segmentation of large projects into smaller projects.*** Upon reviewing capital improvements expenditures of the utility companies over the past five years, we found that there were numerous projects which were shown as costing more than $500,000 apiece in the company capital budgets but which never were submitted to the PUC and PUD for review and approval because they were broken up into different phases and smaller subprojects.

The gas company provides an example of how large projects might be segmented into smaller projects so as not to require review and approval by the public utilities agency. As a result of requirements imposed by the state health department to abate air pollution, the company had to undertake a major project to modify its production facility on Oahu. The total estimated cost of the project was $2,200,000, but the entire project was completed without the company's going to the public utilities agency to obtain approval to undertake it. As a consequence, the agency received no assurance that all feasible alternatives for this project were considered by the company or that the best alternative from the point of view of the general public was the one selected. After facilities are already constructed, it is not very feasible to try to exclude them from the rate base or to order the utility to replace them with other facilities. In this case, the expenditure had a significant impact upon the company's request for a rate increase, but by the time the rate case was up for consideration the regulators had little choice but to accept the new facility as an accomplished fact.

*2. **Company and agency disregard for review requirement.*** Equally as serious as segmentation of projects is the apparent outright disregard of the specific project review and approval requirement by both utility companies and the regulatory authorities.

Our review of the capital improvement projects of the utilities for the five-year period (1968 through 1973) revealed that a very significant proportion of the total capital expenditures by Hawaii's utility companies have been made without any specific or detailed review and approval by the PUC and PUD. The extent to which this happened varied considerably among the different companies, but the telephone company provides a very dramatic example.

a. Illustration: Hawaiian Telephone Company. For the years from 1968 through 1973, the telephone company spent more than $300 million on capital improvements, but during this period not a single project was submitted to the PUC for review and approval. Among such projects was the company's new headquarters building and major switching facility in downtown Honolulu which cost several millions of dollars. It is difficult to believe that with more than $50 million being spent annually, there was no single project which exceeded $500,000 in cost. Even if this were the case, it would seem that the regulators would find it appropriate to revise the $500,000 ceiling downward if it were necessary to assure detailed examination of expenditures in the magnitude of $50 million annually.[2]

The type of switching equipment being used by the company was a large issue in the most recent telephone rate case, but the proper time and place to have raised such questions were when proposals to incur expenditures for that purpose were being formulated. With no

[2] Subsequent to our questioning on this subject, the PUD staff wrote a letter to the telephone company noting that the general order requirements were not being met and requesting the company to take action to come into compliance with regard to future capital projects.

detailed examination of such expenditures being made either at the overall annual capital improvements budget stage or at the time specific projects are being initiated, it is not possible to subject projects to close scrutiny before they become physical realities and actual parts of the rate base of the utility.

b. Illustration: GASCO, Inc. The GASCO, Inc.'s new plant at Barber's Point provides a further case in point. The gas company, a subsidiary of Pacific Resources, Inc. did submit a request to the agency on February 1, 1973, for approval to construct a major new production facility to replace the company's primary production plant located in the Iwilei district on the island of Oahu. The proposed new facility was to produce synthetic natural gas (SNG) and was to be located near an oil refinery which was owned and operated by another subsidiary of Pacific Resources, Inc. The oil refinery was designated as the source of fuel supply for the new SNG plant. The SNG was to use naphtha as fuel instead of the low-sulphur residual fuel oil being burned at the Iwilei plant. Being located at Barber's Point, the new plant also required the construction of a 22-mile pipeline from Barber's Point to the Iwilei plant in downtown Honolulu. The matter was placed on the agency's docket as Docket No. 2230.

Sometime later, the company submitted separately a proposal for financing the new project. The financing proposal submitted was extremely complex and incorporated all sorts of long-term commitments to and entangling relationships with both a newly created utility entity and entities not subject to the jurisdiction of the public utilities agency. The complex financing arrangement circumvented the capital structure guidelines imposed upon the company by the public utilities agency; which, if observed, would have prevented the amount of debt financing contemplated by the company. Before this complex financing proposal could be resolved and before the PUC acted on the capital improvements project itself, the company initiated construction of the new plant. Ultimately, the commission signified its general approval and endorsement of the company's project and financing proposals, subject to review and approval of the final documents to be submitted to it. However, by this time, the project neared completion and action up to this point became virtually irreversible.

Recommendations. *We recommend that the PUC and PUD develop a systematic method by which to subject utility companies' capital improvements long-range plans, five-year plans, and specific project proposals to a full and in-depth review. As a part of this system for review, we recommend the inclusion of the following:*

1. The development by the PUC of standards and guides to assist both the PUC and PUD in evaluating the utilities' capital improvements plans and proposals. Reflected in such standards and guides should be the PUC's conception of the objectives to be pursued in the utilities' area and its own long-range plans.

2. The formulation of a mechanism by which other state and county agencies involved in economic and community development and planning may comment or otherwise have an input in the review of the utilities' capital improvements plans and proposals. Such mechanism is desirable since utility capital improvements affect and are in turn influenced by and should dovetail with the economic and community plans of the State and counties.

3. The setting of the requirement that the utilities submit together with their plans and proposals a comprehensive financial plan detailing the means of financing the capital improvements.

4. The lengthening of the time for staff and commission review of the utilities' plans and proposals. In this regard, the staff and commission should emphasize review of the five-year capital improvements plan.

5. The development and implementation of rules that will eliminate utility company

evasion of PUC review of specific capital projects. These rules should discourage the practice of segmenting capital projects into smaller projects for the purpose of avoiding PUC review and should include appropriate sanctions for purposefully evading review.

Regulation of Utility Line Extensions and of the Financing of Line Extensions

An aspect of utility regulation is the exercise of control over the physical location and construction of utility line extensions and the means of financing the construction of such extensions. Utility line extensions are intended to provide new or additional service to areas where service is unavailable or inadequate.

Regulation of the physical location and construction of line extensions. The manner in which utility lines are extended affect economic development and growth. A liberal line extension policy (one under which it is relatively easy for the utility to extend its service and finance the extension) will, of course, encourage and stimulate growth and expansion into areas previously unserved or inadequately served. A strict policy (one under which certain qualifications have to be met before service will be extended and for which financing is more difficult) may discourage or slow such growth and expansion.

*1. **The legal framework.*** In Hawaii, the subject of utility line extensions is covered by specific legislation as well as by rules and regulations of the PUC. The pertinent rules and regulations are contained for the most part in General Orders No. 6 and No. 10 which deal respectively with overhead and underground utility lines. Among other things, these general orders establish engineering and construction standards for all utility lines, whether they be existing lines or new extensions of facilities and services. The statutory provisions on this subject are as follows.

a. Act 134, 1961. To meet certain legal technicalities arising out of Hawaii's transition to statehood, the legislature enacted Act 134 in 1961. This act ratified all previously granted public utility franchises. At the same time, this legislation amended the various franchises in some ways. Among these amendments was a general one on line extensions affecting all of the franchises. This amendment read as follows:

> "Effective July 1, 1962 the company shall have the right to place, construct, erect, or otherwise build poles, wires, pipes, and other appurtenances in, on, above, along, or under public rights of way which right shall be exercised only upon the approval of the public utilities commission based upon its written findings that the proposed installation meets standards prescribed by the commission governing such installations; provided that the approval of the public utilities commission shall not be required with respect to such installations in federal aid highway rights of way."

Since Act 134 applied to all utilities operating in Hawaii under franchises granted by the legislature, it did not include the telephone company, which was and still is operating under a royal charter granted in 1883. It also excluded several companies which came under the commission's jurisdiction by means other than franchises. Exclusion from this act, however, did not mean that a company could not be subjected to the same requirements by rule and regulation of the public utilities agency.

Under Act 134, all line extensions along public rights-of-way, except federal aid highway rights-of-way, required the prior approval of the public utilities agency based upon its written findings that the installations involved complied with all standards prescribed by the agency. This meant that for all such line extensions, the companies had to file for approval and the commission had to grant or deny approval based upon a written determination of compliance with commission-established standards.

b. Amendatory legislation—Act 88, 1974. Recognizing that the review and approval process for line extensions was not being very effectively implemented and administered (as detailed below), the department of regulatory agencies in 1974 submitted as an administration proposal legislation to amend Act 134. The proposal sought to remove the requirement that the PUC review and formally approve line extensions. This proposal was accepted by the legislature by the enactment of Act 88, 1974. Act 88 amended Act 134 to read as follows:

> "Effective July 1, 1962 the company shall have the right to place, construct, erect, or otherwise build poles, wires, pipes, and other appurtenances in, on, above, along, or under public rights of way, provided that the proposed installation meets standards prescribed by the public utilities commission governing such installations."

It will be noted that although this amendment eliminated the necessity for specific formal approval by the PUC of line extensions along certain rights-of-way, it still requires that the installation of such extensions meet the standards established by the PUC. It further no longer excludes line extensions along federal aid highway rights-of-way from the requirement of meeting PUC-established standards. Thus, the PUC and PUD are not relieved in any way of their responsibilities for regulating the location and construction of line extensions. The act simply no longer requires specific formal approval of each and every line extension.

The paragraphs which follow describe the shortcomings that existed in the PUC/PUD implementation of Act 134 before its amendment by Act 88 and conclude with some observations on what is required to be done by the utility regulators even under Act 88.

*2. **Shortcomings in the implementation and administration of Act 134 prior to its amendment in 1974.*** Despite the very explicit provisions of Act 134 as passed in 1961, we found that that law was not properly and adequately implemented and administered. To a very great extent it was ignored by the PUC, the PUD, and many of the utility companies. Even where the formalities were observed, the regulatory action was largely perfunctory and meaningless.

a. Incomplete coverage. In practice, only the electric utilities submitted requests for approval of line extensions. Even then, until 1973, only three of the electric utilities so complied. Only in 1973 were the small electric utilities on Molokai and Kauai requested to conform with this requirement. This occurred while this audit was being conducted. Although the gas company operates under a franchise, it was not required to comply with the law. Similarly, because it operates under a charter instead of a franchise, the telephone company was exempted from the provisions of this law. The PUC could have closed this gap, of course, through its rules and regulations, but never chose to do so.

b. Noncompliance with formal legal requirements. In those instances where the utility companies submitted requests for approval to make line extensions, the processing of these requests generally was not in conformance with formal legal and procedural requirements:

(1) They were handled as nondocketed matters. Although General Order No. 1 makes no provision for the handling of utility company requests other than through the prescribed procedure for docketed matters, line extension requests were not docketed and were handled as nondocketed matters.

(2) Certain approvals were illegally delegated by the PUC to the PUD. If the estimated costs of line extensions were less than $10,000 on Oahu or less than $5,000 on any of the neighbor islands, the PUD staff was authorized by the PUC to act on the requests directly and no such requests were referred in

any way to the PUC. The law vested the approval authority in the commission and made no provision for the delegation of such authority to the staff, but the commission consciously shifted the burden of these approvals to the staff. The deputy attorney general assigned to the agency on this subject concluded that the commission's action was an unlawful delegation of its authority to the staff.

(3) Other PUC approvals were only after the fact "ratifications." Even for those items which exceeded the limits specified above and which went to the PUC for approval, the staff's action was controlling. The staff reviewed and approved the requests and the requests were then simply referred to the PUC for "ratification," according to the minutes of the PUC. Thus, the PUC's action was strictly a formality, and it was the staff's action which counted and upon which the companies depended. In many cases, the line extensions were under construction by the time the PUC's formal action was taken. The PUC made no written findings of compliance with its standards as required by Act 134 before these approvals were granted. In fact, even the staff did not make any written staff reports on these requests. Notations of approval were simply indicated on the requests that were submitted by the companies.

c. Cursory staff review of line extension requests. In addition to the legal and procedural deficiencies indicated above, the review and approval process for line extensions also suffered from substantive deficiencies. The staff reviews of the line extension requests were for the most part quite cursory in nature. Although the staff contends there were several points which were regularly checked out for each of these requests, all available evidence indicates that the requests generally were not subjected to very thorough scrutiny. For one thing, the requests were never compared with the capital budgets of the companies concerned to determine how they fitted into the long-range capital improvements planning of the companies. For another, no attempt was ever made to review the requests with local planning agencies to determine whether or not they were consistent with local long-range plans and zoning requirements. (For their part, the counties have never sought to participate in this process of reviewing and approving line extensions.)

The lack of close staff attention to these requests probably explains why the staff failed to notice that some of the line extensions exceeded the $500,000 limit for capital improvements projects which can be constructed without specific PUC approval. For example, among the line extension requests processed by the PUC and PUD during the five-year period from 1968 through 1972, there were two projects for which the costs exceeded $500,000 but which were never submitted for approval by the PUC as required under the agency's rules and regulations.

The number of line extension requests processed and the speed with which most of them were handled also suggest that staff review was rather perfunctory. In the five years from 1968 through 1972, the agency processed a total of 644 line extension applications, or an average of almost 10 per month. The dollar value of these extensions averaged almost $3.5 million annually. More than half of the applications were acted upon in 30 days or less, and only a handful required 90 days or more to process. During this period, none of the 644 applications was disapproved, and only six were sent back to the companies for modifications before receiving approval. The staff itself has conceded that its review and approval procedures for line extensions did not constitute very meaningful activity on the part of the PUC or PUD, and that for this reason the staff pushed for legislation to eliminate any formal review and approval requirement.

d. No monitoring of company performance following approval. A final, and perhaps fatal, deficiency, in the previous implementation and administration of Act 134 was the fact that there was never any effort to monitor performance on the part of the utility

companies to assure compliance with the applications for line extensions as approved by the PUC or PUD. As a consequence, the whole review and approval process amounted to little more than a paper processing activity. No field inspections were ever made of line extensions approved by the agency. Thus, the agency has no way of knowing to what extent its requirements were met in these line extensions.

Not only was no field inspection made to determine compliance with standards, but in subsequent company submissions of data to the PUD audit branch on capital additions for rate purposes, the agency made no effort to crosscheck the accuracy and consistency of the value of the line extensions reported against the agency's own records on what the company had reported to be the value at the time of the submission of its applications for line extensions. For example, for one company we found the following variations between the amounts of the total value of line extension additions reported to the audit branch and the amounts of the total value of the line extension applications processed by the engineering branch of the PUD:

Year	*Total value of line extension additions reported to audit branch*	*Total value of line extension applications processed by the PUD*
1972	$1,104,675	$705,252
1971	666,813	224,239
1970	No report	206,532
1969	331,314	3,718
1968	235,049	99,200

In addition, there was very little consistency between the two separate lists of projects contained in the documents filed with the two branches of the PUD. Apparently the two branches of the PUD never interchanged information so that monitoring of performance could take place.

*3. **Continuing need for administrative procedures in the area of line extensions.*** With the amendment of Act 134, the PUC is no longer required to follow the detailed procedural steps previously set forth in the law. However, as already noted, the law as amended does not relieve the PUC and PUD of their responsibilities regarding the application of PUC standards and requirements to line extensions. Indeed, these responsibilities have been expanded to include control over federal aid highway rights-of-way as well as all other public rights-of-way. Moreover, in addition to their responsibilities relating to the physical location and construction of line extensions, the regulatory authorities now are involved in the matter (discussed below) of the apportionment of costs for such line extensions.

In view of these continuing responsibilities with regard to line extensions, it would appear that the PUC and PUD must depend upon some sort of continuing administrative procedures to enable them to carry out these responsibilities. In other words, it would seem that at a minimum the PUC and PUD should be able to know what line extensions are being programmed by the utility companies and how the utility companies plan to defray and apportion the costs of such extensions. In addition, it would seem essential for them to have some administrative mechanism for monitoring performance to assure compliance with engineering and construction standards and to assure the proper reporting of additions for rate base purposes.

In its justification supporting the proposed amendment of Act 134, the public utilities agency not only argued that the formal requirements contained in the law were burdensome to the agency, but also that adequate controls were available through review and approval procedures governing capital improvements budgets and capital improvements programs of the utility companies. However, as already demonstrated above, these other control procedures are quite inadequate. Thus, the agency still needs to develop and implement appropriate and adequate procedures for

regulating line extensions. In doing so, it would do well to examine closely the shortcomings that were present in its previous attempts to deal with this area of responsibility.

Regulation of the apportionment of costs for line extensions. An important economic aspect of line extensions is the manner in which the costs of such extensions are apportioned between the utility companies and the customers seeking the extensions. If the costs of extensions are considered reasonable, then the utility companies are generally willing to bear the expense on the assumption that the costs can be readily absorbed out of the increased revenues that will be derived from the additional service rendered by the line extensions. On the other hand, if such costs are considered excessive, then the companies are very reluctant to extend their lines unless the customers are willing to advance enough funds to cover the excessive amounts. The companies are willing, however, to refund such advances to the extent revenues derived are sufficient to cover the added costs of the line extensions.

From the customer's point of view, it can make a big difference, of course, whether a line extension can be achieved relatively easily and without any added costs or only with some difficulty and an initial outlay of significant additional funds. Installing utility lines in a new subdivision, for example, can be quite costly, especially under existing governmental regulations requiring undergrounding in many areas. The usual procedure in such cases is to require the developer to advance the funds necessary to cover the costs of such installations and to refund the amounts advanced only when the ultimate purchasers of the subdivision units hook up and start taking utility services. Such arrangements naturally increase the problems and costs of financing the subdivision development. The added costs are also reflected in the prices the ultimate purchasers pay for the housing units.

The regulatory agency, therefore, can and should play a significant role in influencing how the utilities behave with regard to apportioning the costs of line extensions. It should make sure that fair treatment is accorded to all those seeking line extensions. The agency should also make sure that only necessary facilities are installed, and that they are installed at reasonable costs. This is necessary not only to protect the interests of the customers seeking line extensions, but also to ensure against unwarranted inflation of the utility company's rate base. The agency's concern might also extend to making sure that when refunds are made, they are passed through to the ultimate users of the extended lines who are the ones who usually bear the added costs involved.

Unfortunately, however, the public utilities agency has done extremely little in this area, either in terms of developing and implementing any rules or guidelines on the subject or in terms of achieving any consistent and orderly approach to the matter through regulatory control of the tariffs of the individual utility companies.

*1. **Failure to adopt any general rules and regulations.*** There is at present a complete absence of any PUC rules and regulations governing the matter of apportioning the costs of utility line extensions. At one time the public utilities agency opened a docket on the subject and apparently intended to issue an order of investigation relating to it. The docket in question is No. 1703, which according to the docket index was opened on April 19, 1966, and the order is No. 1749. However, no action has been taken on the matter and the intended order was never issued. So many years having gone by without any action since the opening of the docket, neither the docket file nor the proposed order could be found by the agency staff during our audit.[3] This is the extent of the action taken by the public utilities agency in formulating any rules and regulations on the subject.

[3]Only one document has been found relating to the docket. This is a copy of a letter dated August 7, 1967, and addressed to all other regulatory agencies throughout the country requesting information on their rules and policies pertaining to line extensions.

*2. **Shortcomings in regulation through control of utility company tariffs and operating practices.*** Not only are formal PUC rules or guidelines lacking, but the public utilities agency also exercises no control over the provisions relating to apportionment of line extension costs contained in the various tariff filings of the utilities which are subject to review and approval by the public utilities agency.[4] As a consequence, the policies and practices on apportionment may vary among the utilities and the customers of utility line extensions are treated differently by the various utility companies. These differences in policies and practices and treatment of customers are illustrated below.

a. Electric utilities other than Hilo Electric. For all of the electric utilities except one, the customers seeking line extensions are expected to assume the burden of and to advance the extension costs which exceed 60 months' estimated revenues from such lines. If additional revenues are generated within 10 years, refunds are made to those who advanced funds to the utility company. In the case of subdivisions, the developer is expected to advance the full costs arising out of the line extensions and cannot recover his advances until revenues are generated. No interest is paid on any of the advances. Generally, the customers and developers are expected to bear the costs of undergrounding, but the companies leave themselves the option of placing lines underground at their own expense. No criteria, guidelines, or limitations are set on the exercise of this discretionary authority.

b. Hilo Electric Light Company. Hilo Electric Light Company's policy varies from the policies of other electric companies in several respects. One of the most significant differences is that a 36 months' limitation is specified in the company's tariff in contrast to the 60 months' limitation specified elsewhere. In other words, a larger portion of the project costs is required to be advanced on the island of Hawaii than on other islands. The other major difference concerns the timing of and time limitations on refunds. Hilo Electric Light Company reviews annually the revenues derived from new line extensions and makes refunds to the customers, other than developers, whenever the revenues derived exceed one-fifth of the total estimated 60 months' revenues. In the case of developers, it pays over to them all revenues received annually up to the amount of their advances. No refunds are made after five years and no interest is paid on the amounts advanced.

When the staff of the agency was queried as to the reasons why Hilo Electric's policy was so different from the other electric utilities, the answer given was that more stringent requirements are needed on the island of Hawaii to deal with the much more speculative land development situation on that island. There is nothing in the records, however, to justify this conclusion and the different treatment of customers on the island of Hawaii. To avoid the charge of being unfair and of allowing discriminatory practices to persist, it would appear that at a minimum the agency would pursue the matter sufficiently to document and support the reasons for such different treatment. One thing the difference in treatment does illustrate, however, is the fact that there is felt to be a close relationship between utility policies and economic activities in the area affected.

c. Gas company. The gas company's policy indicates that the company would automatically absorb a portion of the costs of gas main extensions. For domestic users, each major type of gas appliance entitles the customer to a fixed number of feet of gas main extension without cost to the customer. For example, a gas water heater will entitle the customer to 60 feet of "free" installation of gas main extensions while a gas laundry dryer has an

[4]Interestingly enough, when we first sought information on this subject, the head of the rates and tariffs branch informed us the matter was not covered in the tariffs of the utility companies but under separate rules. He then referred us to the engineering branch. When we queried the engineering branch, we learned that the subject was indeed covered in the tariffs, but this portion of the tariffs was handled almost exclusively by the engineering branch. Apparently, therefore, the rates and tariffs branch does not concern itself with all matters relating to tariffs.

allowance of 10 feet. For general service, the amount of such "free" main extensions that will be allowed is highly variable as indicated by the following provisions:

> "The amount of free main extension for a customer under this classification will be determined for each individual case based upon the estimated annual revenue to be derived therefrom in relation to the investment required and must be approved by the President."

For main extensions beyond the "free" length allowed by the company, the customer is required to advance to the company before it makes the extension the sum of $2.50 per foot beyond the "free" footage allowed by the company. The policy ostensibly requires advances to the company only by customers in the general service category, but in context it apparently applies to domestic users as well.

Returns of advances are provided for to the extent this is justified by the addition of more customers to the line so extended. For domestic service customers, refunds are based upon the use of the extended line made by the next two permanent customers. By "use" is meant the types of gas appliances they install. For example, for each gas water heater added by the new customers, a refund will be granted in the amount of $75, while the refund for each gas laundry dryer will be $12.50. For general service customers, the refund is set at one-half of the estimated revenue to be received during the first year of service from the next two permanent customers connected to the same line extension. Refunds are limited, of course, to the amounts actually advanced to the company. Also, no refunds are made after five years and no interest is paid on the amounts advanced when the refunds are made.

The company has reserved to itself wide latitude in determining the extent to which it will install main extensions in real estate subdivisions before the receipt of any actual applications for service, as indicated in the following provision relating to this subject:

> "Gas distribution main extensions along permanently established public streets, roads and highways to and/or in real estate subdivisions will be installed by the Company in advance of actual applications for individual service therefrom when such extensions appear profitable on the basis of estimated revenues and investment costs upon the recommendation of the Sales Department followed by the approval of the Treasurer."

The gas company's policy is similarly broad and flexible with regard to main extensions to serve other major business customers as evidenced by the following provision:

> "In the case of application for main extensions to serve prospective customers under the Industrial and Large Commercial Service Rate, Schedule IC, the amount of free main extension will be determined individually for each applicant on the basis of recommendations by the Sales Department. The installation must be covered by an Expenditure Authorization approved by the Treasurer, based upon the estimated revenues and investment involved."

Another variable affecting the allocation of costs of line extensions between the company and the customers seeking the extension is not mentioned in the company's policy but is tied to its promotional practices. From time to time the company may offer as a promotion "free" footage of main extensions in excess of those specified in this policy.

The gas company's broadly stated and flexible policy appears to allow negotiation of actual arrangements for apportioning costs to play a much more significant role than it does

for the electric companies. This also means that there is probably much greater variation in the treatment of customers by the gas company than by the electric companies. However, as the agency makes no effort to monitor company activities in this area, it has no way of knowing whether customers are being treated fairly and reasonably or not.

Besides allowing discriminatory treatment among various gas company customers, the fairly broad and undefined line extension policy may also be unfair with regard to its competitive effects upon the electric utilities. The regulators may be causing an unrecognized and unintended effect upon the competitive relationship between the gas company and the electric utilities by allowing a less stringent line extension policy to be pursued by the gas company than by the electric companies. This is another good reason why the PUC and PUD should be closely assessing the utilities' policies, procedures, and approaches governing line extensions.

d. Telephone company. The telephone company's policy provides for line extensions at its expense for a distance up to and including 1320 feet. For extensions in excess of this distance, the applicant(s) must pay "the full cost of extending the pole line with circuit (excluding drop wire)." The company, however, reserves the right to use such line extension to serve additional customers beside the one(s) for whom the extension was originally made. Prior to the installation of service, the company may also require the applicant to execute a contract for telephone service for a period not to exceed three years. The telephone company also reserves the right "to refuse to make line extensions that are unreasonable in character or not to be subject to immediate use." Line extensions for temporary or speculative purposes will not be made by the company unless the applicant pays the company "the total cost of constructing and removing the line necessary to render the service, less the salvage value of the materials used."

The only refund provision contained in the telephone company's policy is the following very broad one which gives the company wide discretion to determine whether or not refunds will be made:

> "The line extension charge is not refundable except for transfers of or adjustments to line extension charges when deemed necessary or equitable because of service being provided for additional applicants to an existing telephone line extension."

To further safeguard the telephone company, the policy states:

> "The Telephone Company's obligation to furnish service is dependent upon its ability to secure and retain, without unreasonable expense, suitable facilities and rights for the construction and maintenance of the necessary pole lines, circuits and equipment. All rates and charges set forth in the tariffs of the Telephone Company contemplate that construction, service connection, installation and provision of facilities and service does not involve unreasonable expense. If unreasonable expense is involved because of the nature of the customer's requirements, the customer will be required to bear such expense.
>
> . . . . . .
>
> "When an applicant for a line extension will have the exclusive use of the line, the Telephone Company reserves the right to refuse to furnish party line service until such time that additional customers are added to the line."

As can be seen from the foregoing, the telephone company's requirements appear to be more favorable toward the company than

comparable provisions in the policies of the electric companies.

e. Policy variations and inconsistencies illustrated in practice. Uncertainty and inconsistency in the apportionment of costs for line extensions between the utility companies and the customers seeking the extensions of service are more than just a theoretical problem in the field of public utility regulation in Hawaii. This is illustrated by a specific case which arose in 1972 concerning this subject, which is among a number of such complaints that have been filed with the PUC.

On September 5, 1972, a developer of a subdivision on the windward side of the island of Oahu wrote a letter of complaint to the public utilities agency pointing out that when certain utility facilities had to be relocated in conjunction with the development of a new subdivision, the electric company agreed to absorb the costs of the relocation while the telephone company insisted that the developer bear this cost. The developer not only made an issue of the inconsistent action on the part of the two utilities but also stated that in a similar case involving another subdivision the telephone company had not imposed such a charge on the developer but had absorbed the full costs involved.

Although the point is not entirely clear, line relocations appear to be considered the same as line extensions. None of the utility company tariffs specifically deals with the matter of line relocation and system expansion projects separate from the tariff provisions relating to line extensions. Moreover, under the procedures which were being followed relative to Act 134 of 1961 governing line extensions along public rights-of-way, some line relocations and system expansion projects were processed as line extensions, but others were not.

In any event, the PUD staff investigated this particular complaint and sent a response to the developer on October 4, 1972 concerning the matter. In this response, the executive director of the agency stated that apart from a minor discrepancy involving the estimated amount allowed for contingencies the telephone company's charge to the developer was appropriate and there were no grounds for complaint. In fact, the letter went on to say that while the developer had not been asked to absorb the costs relating to the other subdivision, the telephone company should have imposed such a charge.

This apparently put an end to the efforts of the developer to press his complaint against the telephone company, but in January 1973, the staff addressed a report to the commission on this matter (Staff Report No. 1–21, dated January 16, 1973). In this report, the staff informed the commission that it had concluded that neither of the utility companies should have absorbed the costs involved in this case, but should have passed them on to the developer. Furthermore, the staff stated that it had informed the two utilities and their legal counsel of this finding and of the fact that the utilities should charge the costs to the developer. The staff then went on to say that while it had no objection if the utilities decided to absorb such costs it did feel that such absorbed costs should be removed from the rate base of the utilities affected. Accordingly, it recommended that the $17,894 in costs absorbed by the electric company be removed from the company's rate base. No mention, however, was made of the costs absorbed by the telephone company in the case of the other subdivision referred to in the complainant's letter. It would appear that if such costs were to be removed from the utility's rate base in one case, then the same principle should be extended to all other similar cases.

The staff report was not taken up by the commission until its regular quorum meeting on March 23, 1973. At that meeting, the commission took two actions on the matter. *First,* it dismissed the informal complaint as being without merit. *Second,* it decided that an order should be issued directing the electric company to remove the $17,894 from its rate base. On the same day, a new docket was

opened on the matter. This became Docket No. 2259. The case is still pending before the PUC. Although a hearing finally was held on the matter after a very extended waiting period, no D&O has been issued yet concerning it. At the hearing, the electric company admitted it had been in error and should not have absorbed the costs involved. By not contesting the staff's position, it would appear that the company accepted the view that the amount of the absorbed costs should be removed from its rate base. No action can be taken on the matter, however, unless and until the commission issues a formal D&O.

3. ***Summary.*** In the illustration above, even if the PUC does issue a D&O to remove the amount involved from the company's rate base, the general issues raised in the case still will remain largely unresolved and unanswered. For one thing, the agency still will not have any clear policy covering the subject of line extensions and line relocations. This is because the PUC's own rules and regulations do not provide any guidelines on the subject and because the tariffs of the utility companies also do not deal with the matter in a consistent and unambiguous manner. In addition, a decision in this instance will mean that the agency will have dealt with only one specific case when there may be many other similar cases deserving attention and like action. The agency is aware of at least one other situation where the same sort of thing seems to have happened (i.e., the telephone company case cited by the complainant in this case), and it is quite possible that an investigation might reveal other such cases. However, up to now, the agency has viewed the case as an isolated incident and no general examination of the subject has been suggested or initiated.

From the foregoing, it would appear that the present confusion and ambiguity concerning line extensions and line relocations need to be brought into sharp focus and examined by the public utilities agency so that it can establish and enforce clear policies and procedures governing the undertaking and financing of line extensions and relocations.

Recommendations. *We recommend that*

1. The PUC formulate rules governing utility line extensions and apportionment of costs of constructing or laying such utility line extensions.

2. The PUC develop a system for monitoring the construction of utility line extensions to ensure adherence to the established rules.

3. In the formulation of the rules concerning apportionment of costs, the PUC ensure fairness in the treatment of customers of line extensions, resolve the question of what portion of the cost of construction should become a part of the rate base, and determine what constitutes a fair rebate to customers who pay advances for utility line extensions.

Regulation of Utility Company Promotional Practices and Advertising

The utilities frequently engage in various promotional practices (advertising incentives to new customers, etc.) to enhance and increase the demand for their services. The costs of these promotional practices are generally included in the budget for ratemaking purposes and are passed on to the consumers. Since utility regulation is concerned with keeping the costs of regulated monopolies and the attendant utility rates as low as possible, it is within the jurisdiction of utility regulators to exercise control over the utilities' promotional practices. Such control, however, is currently not being exercised in any meaningful fashion.

We examine the deficiencies below. Before turning to them, however, we enumerate the arguments made for and against utility promotional activities. We do so for the purpose of providing a context within which this subject of promotions may be discussed.

The arguments. Many persons feel that it is unnecessary for utility companies to engage in

any form of promotional practices. This is because utilities are monopolies and the consumers have little choice but to accept the services of the utility companies. They view expenses incurred for advertising and other promotional practices as, thus, unnecessary and unjustified costs which are passed on to the consumers and which simply increase utility rates with no realizable benefits. Environmentalists object to any advertising and promotion on the part of utility companies on the basis that such activities increase demands for service artificially at the expense of nonrenewable resources (fossil fuels), and increase pollution through increased emissions into the air and water.

The utility companies argue that advertising and promotion are essential and desirable activities on the part of utility companies and that expenditures for such activities are justified because: (1) there is still competition present in the utilities field (gas utilities versus electric utilities); (2) there is a certain amount of customer information that needs to be imparted and this can be done most efficiently and effectively through advertising and promotion; (3) economies of scale are quite significant in the utilities field, so increased consumption can produce lower unit costs for all; and (4) utility capacity has to be built to meet peak demands for service, but more efficient service can be rendered if the peaks and valleys in demand can be evened out, and advertising and promotion are means of achieving a more even demand for services.

No rules or guidelines governing promotional practices. Up to the present time, the public utilities agency has not developed any rules, regulations, guidelines, or criteria governing the matter of promotional practices. The only real concerted effort to develop such rules, regulations, guidelines, or criteria was attempted in late 1963, but this effort came to naught.

The 1963 effort began with a questionnaire being sent to the various gas and electric utilities in the State requesting information on specific details of any promotional activities they might have been engaging in at that time. The replies to these questionnaires were compiled into a report prepared by the staff and presented to the commission in January 1964.

As a result of this report, in April 1964, the PUC opened Docket No. 1581 and issued Order No. 1417. Order No. 1417 required the utilities to show cause why certain promotional practices should not be banned and why all proposed promotional practices should not be submitted for prior approval by the public utilities commission before being put into effect. The companies submitted their answers and hearings were held in early 1965.

Since that date little, if any, action has occurred on the matter. The docket is still pending before the commission, a decade after it was initially opened. In late 1974 the PUC did vote to close the docket, but no D&O has been issued yet to finalize this decision. Hence, this docket is the oldest case still pending before the PUC.

It is noteworthy that despite the lack of agency action on the docket, before its closing in 1974 it was used by the commission as a reason for not acting on related issues raised in some of the rate cases that came before the commission between 1964 and 1974. In other words, the commission in its D&O's on these rate cases indicated that issues relating to promotional practices would be considered separately under Docket No. 1581 or some other separate docket. In the meantime, it proceeded to approve the promotional expenditures submitted by the utilities in ratemaking proceedings. An example of this is the Hawaiian Electric rate case. The staff recommended in this case that certain promotional expenditures amounting to a half million dollars be excluded from the rate base. The commission declined to accept this recommendation, indicating that the matter of advertising and promotional practices should be considered on its own merits under a separate

docket. The commission's inclusion of the promotional expenditures was later overruled by the state supreme court (see below). However, there are other cases in which the commission behaved in a similar manner.

Now that the PUC has voted to close Docket No. 1581, how it intends to proceed on these promotional matters in the future is not clear.

Continuing need for the establishment of rules or standards. Despite the inaction on Docket No. 1581, the need for the establishment of rules governing utility promotional practices persists. There are many kinds of promotions and many promotional schemes, tried and untried. Without rules or standards, it would be virtually impossible for the utility regulators to rule on these varied promotional practices with any degree of consistency and rationality, not to mention the impossibility of the utilities themselves to anticipate what promotions would be approved or disapproved.

*1. **The quandary illustrated.*** The manner in which the utility regulators handled promotional practice matters in the past illustrates how ineffective utility regulators can become without rules or standards to guide them in viewing the utilities' promotional practices. As already noted, the utility regulators were prone to allow the practices, postponing to some future date a real resolution of the issue. The following is a further example of the quandary in which utility regulators are placed in the absence of such rules or standards.

In late 1973, the telephone company put on a highly advertised promotion of offering the free installation of extension phones for a limited period of time. The company estimated that by allowing customers to save $33,000 by means of the promotion, annual revenues would increase by $45,000. This action might be considered discriminatory in the sense that all those who had previously paid the charge for such an installation had not been given this same opportunity. When the temporary tariff modification to accomplish this promotion was filed with the agency by the telephone company, some members of the staff were inclined to deny the request on this basis. However, the final decision was not to contest the request, and no recommendation was made by the staff to the commission on the matter other than to suggest that a discussion be held before disposal of the matter. The commission decided to allow the promotion to go into effect.

The problem in this case was that the commission and the staff (and the utility company itself) had no real basis for determining whether such a promotion should be allowed or not.

*2. **Some guides in setting rules or standards.*** The establishment of rules or standards governing promotional practices is a complex matter. It requires a good deal of hard thinking. Among the questions which must be faced are the following: To what ends may promotions be allowed; what considerations are relevant in determining the reasonableness of promotional activities and expenditures (e.g., energy conservation, environmental protection); and what data are necessary to support the reasonableness of a promotional activity.

To some degree, a past attorney general's opinion and memorandum and the Hawaii supreme court's decision offer some guidelines in answering these questions and in establishing the needed rules or standards.

a. Attorney general's opinion and memorandum. While Docket No. 1581 was still open, the attorney general issued an opinion (opinion no. 65–18, May 11, 1965), touching on the promotional practice of offering rebates or allowances to owners or builders who construct all-electric homes and apartments and

advertise them for sale as such.[5] The opinion was requested by the public utilities agency based on the list of promotional practices prepared as a result of the 1963 questionnaire to the utility companies which led to the opening of Docket No. 1581. The attorney general ruled that such promotional practices were proscribed by statute:

> "The vice of these programs is clearly prohibited by our statute prohibiting rebates per se and requiring that all consumers be similarly treated. Accordingly, it is our opinion that all of the programs you have listed are proscribed rebates which your Commission may prohibit."

Later in a memorandum dated November 3, 1969, the attorney general, in summarizing the events that had taken place on Docket No. 1581 up to that time, suggested various methods to effect regulation on utilities' promotional practices. He attached as an example of one method a decision of the Illinois Commerce Commission (General Order No. 195 of May 1, 1969, relating to promotional practices of electric and gas utilities).

b. State supreme court's decision, 1975. In May 1975, the state supreme court decided the case of *In re Hawaiian Electric Company, Inc.*, 56 Haw. (Case No. 5374, May 7, 1975). This was the case in which the PUC, over the objection of the PUD staff, allowed the inclusion of certain promotional expenses amounting to a half million dollars in the Hawaiian Electric's rate base for the purpose of determining the electric rate. In this case, the court faced squarely the question of the propriety of the inclusion of the expenditures in the rate base. First, however, the court took the commission to task for having failed to meet the issue of promotional expenditures by the utilities and bemoaned the closing of Docket No. 1581 without any definitive action having been taken by the PUC.

The court then announced certain principles which provide some guidelines in the development of rules or standards by the commission on utility promotional practices. First, the court clearly noted that competitive advertising expenditures are wasteful and unreasonable and should not be included in the base for ratemaking. By "competitive advertising expenditures" is meant those promotional expenditures intended to lure customers from one utility to another (e.g., from gas to electricity and vice-versa). The court declared that such competitive advertising "obviously . . . does not benefit the ratepayer," clearly implying by this that "benefit to the ratepayer" is a primary concern in determining the reasonableness of the costs incurred in promotional expenditures. It said that "there are alternative, viable means to promote sound competition among utilities, particularly between two utility companies (HECO and GASCO) which have already established themselves in Hawaii's market place." It gave as examples of such alternatives, "efficiency of management, technological improvements, superiority of service, and economy of costs."

The court further issued this guideline—that the burden is on the utility to justify the inclusion of promotional expenditure in the rate base. A part of this burden is to prove that the promotional expenditure will indeed produce the result claimed which is beneficial to the ratepayer. Thus, in the Hawaiian Electric case, the burden was on the company to prove that the expenditures to promote the use of electrical products would indeed generate the sale of new electrical products and thus an improvement in the load factor as represented

[5] Actually, there were four different groups of persons to whom promotional allowances or payments were available which were classified as (a) promotional allowances and payments under the builder program, (b) promotional allowances or payments to purchasers and dealers under the commercial program, (c) promotional allowances or payments to dealers and distributors of gas or electric appliances, also referred to as dealer distributor program, and (d) promotional allowances, payments or commissions to individual subscribers or customers by free installations, piping or wiring, merchandise premiums or special premiums, etc.

by the company, a burden which the utility was found not to have carried in the proceedings before the PUC.

Finally, the court observed that the current energy problems and environmental concerns "are here to stay," and warned that "in the face of dwindling oil supplies and spiralling costs, promotional practices which are wasteful or which only serve to fuel the energy crisis should be viewed by a regulatory agency with extreme caution."

Based on the fact, as the court noted, that a number of considerations must be entertained in passing on promotional expenditures which are to be included in the rate base, it would appear imperative that the utility regulators begin an earnest effort to develop rules governing the subject.

Recommendation. *We recommend that the PUC develop rules on utility company promotional practices. The rules should spell out the ends or purposes for which promotional expenditures may be incurred; the specific promotional practices that are prohibited; and the standards, criteria, and considerations by which proposed promotional expenditures will be evaluated. The rules developed should be consistent in their application to the various utilities.*

Chapter 10

REGULATION OF ENVIRONMENTAL PROTECTION IN THE UTILITIES FIELD

Environmental protection has only recently achieved a prominence which places it at the forefront of public issues confronting not only Hawaii but also other states, the nation, and other countries around the world. This is true even though environmentalism traces its origins back a hundred years or more to the conservationist movements of earlier periods. As such, environmental protection is a recent phenomenon when compared with the long-established policies and practices of public utility regulation.

Having developed at different times under different circumstances to meet different needs, it should not be surprising to find that public utilities regulation and environmental protection are not neatly cohesive, perfectly integrated, or smoothly coordinated. Nevertheless, the measures and steps taken in recent years to protect the environment have a direct and profound effect on the operations and activities of public utilities. Environmental protection measures are pervasive, affecting all manner of public and private activities, and utilities are not exempt from such coverage.

This chapter examines how well public utilities are being regulated in light of the developments in environmental protection.

Summary of Findings

1. The public utilities program in Hawaii is inextricably involved in matters of environmental protection, but this is not specifically acknowledged and provided for in the assignment of duties and functions to the PUC and the PUD.

2. Despite the absence of any specific statutory environmental protection duties in the PUC and PUD, there are numerous substantive areas where the PUC and the PUD can give, and probably should be giving, consideration to environmental matters and taking steps to enhance environmental protection. However, the PUC and the PUD are generally ignoring the subject of environmental protection and for the most part are failing to take any significant action to promote environmental protection in the public utilities field.

a. The PUC and the PUD have not involved themselves in the activities of other state and county agencies involved in environmental protection.

b. No rules, regulations, plans, and practices have been adopted to promote environmental protection on the part of the utilities.

Ways in Which Public Utilities Relate to Environmental Protection

There are many significant interrelationships between public utilities operations and the natural environment in which these operations are carried out. The sections

below examine the nature and scope of the impact which public utilities operations have upon Hawaii's environment and the nature and scope of the impact which environmental interests, in turn, have on public utilities operations.

There are several ways in which the interrelationship between the public utilities industry and the environment might be examined or reviewed, but for present purposes the approach is to examine it in terms of the specific issue areas which have received widespread public attention in recent years—e.g., air pollution, water pollution, mass transit, the energy crisis.

Water pollution. Water pollution has been one of the first environmental areas to receive concerted attention and demands for corrective action in the United States. The primary effect of public utilities industries on water quality (excluding sewage and waste disposal functions, which are handled primarily by government in Hawaii) is thermal pollution from the discharge of heated waters from power generation plants into adjoining public water areas. In Hawaii, the electric utilities have contributed thermal pollution to ocean and bay waters near the several power plants located in various parts of the State. The primary issue in this area is the need for pollution abatement measures versus the cost of such measures. A potential issue is the location of new or expanded power plant sites, especially in shoreline areas.

Air pollution. Air pollution is another area receiving widespread and intense attention at both the federal and state levels. In Hawaii, all of the regulated industries contribute in some manner to the State's air pollution problems. Both the electric and gas utilities utilize fuel oil to produce energy and emit various pollutants into the atmosphere from their production facilities. This involves them in issues pertaining to the installation of pollution abatement facilities and the use of so-called "clean" fuels (i.e., fuel oils with low sulphur and low ash contents which burn much cleaner than other types of fuel oil but which also are scarce and cost more than the other types of fuel oil).

Motor carriers all operate vehicles which emit exhaust fumes. In combination with individually owned automobiles, these vehicles are a major source of air pollution in all highly urbanized areas. Issues in this area include the requirement for emission control equipment on vehicles, the use of so-called "clean" fuels in commercial vehicles, and limitations on the numbers and types of vehicles to be allowed on the highways.

Noise pollution. Noise pollution has ranked behind air and water pollution as a problem but is receiving increasing attention. The utility companies do not appear to be a serious problem in this area, but the heavy equipment operated by motor carriers is frequently quite noisy and contributes significantly to noise levels on and along the highways. The issue here is the abatement of vehicular noise.

Visual or sight pollution. Visual or sight pollution is difficult to define and control because it is so dependent upon aesthetic considerations and frequently does not result in such observable and measurable damages and injuries as do most other types of pollution. Nevertheless, there are many strongly expressed feelings against disfigurement of the landscape by many manmade structures and actions. Utility lines and poles fall into this category. Although overhead lines are still tolerated in many areas, public pressure to place them underground has been becoming more intense—especially in areas of new construction. The location of high voltage transmission lines, in particular, can give rise to very heated public controversies.

Conservation of energy. As both users and suppliers of energy, the gas and electric utilities are very much involved in issues relating to the conservation of energy and are deeply affected by what is now known as the "energy crisis." In Hawaii, these utilities are uniquely

dependent upon one type of fossil fuel, fuel oil. Other sources of energy such as natural gas, coal, and hydroelectric power are virtually unavailable in Hawaii. Similarly, nuclear power is not deemed economically feasible in Hawaii now by the electric industry. Thus, the State is especially dependent upon what happens with regard to the supply, availability, and price of fuel oil (particularly low sulphur fuel). Likewise, the utilities are vulnerable to attack by those concerned with conserving the supply of fossil fuels if they encourage, promote, or allow the wasteful use of gas and electric energy.

The motor carriers (and other users of automobiles) are also major consumers of fossil fuels in the form of petroleum products used in their vehicles. Thus, the motor carriers are also susceptible to the shock waves and ripple effects spreading out from the energy crisis and any measures taken to limit the use of fossil fuels. The motor carrier industry is involved in the issues relating to mass transit versus the privately owned vehicles.

Land utilization and conservation of space. Although not identified as vividly as an environmental issue as water pollution and air pollution, land utilization and conservation of space and open areas are also matters of deep concern and subjects of increasing attention. The utility companies are occupiers of space, and their transmission lines and feeder lines reach into almost every area on most of the islands throughout the State. Similarly, the motor carriers serve the entire State and are major users of the public highways, themselves large consumers of space.

Because utility lines are usually built along streets, utility services and transportation services follow basically the same distribution patterns and affect the utilization of land in much the same way. To a great extent they can use the same space, and coordination can be highly desirable. In some cases, however, the uses may not be compatible—especially where overhead lines mar the view from the highway or utility poles are located so close to the traffic lanes as to constitute traffic safety hazards. This area of concern gives rise to such issues as undergrounding of utility lines, site location of utility facilities, commercial transportation use of highways versus use by individually owned automobiles (which affects the need for new and improved highways), and provision by the State of utility corridors.

Others. The above list covers most of the important areas of environmental impact by the regulated public utility industries. There are several areas of environmental concern where the utility industries do not become directly involved although they may be indirectly affected. They are as follows.

*1. **Population control.*** While the demand for utility and transportation services is certainly affected by the growth and distribution of population, utility regulation is not likely to be the primary instrument through which government will control population when and if this course of action is ever adopted.

*2. **Nuclear energy and radiation.*** Another area where the public utilities agency is not now directly affected is that relating to nuclear energy and problems of radiation leakage and fallout. This may change, however, if the electric companies in Hawaii decide to utilize nuclear power as a source of energy.

*3. **Solid waste disposal.*** A third major area of environmental concern which does not now directly affect the public utilities program is that relating to the problem of solid waste disposal. Except for the safety regulation of private and public motor carriers engaged in the hauling of rubbish over the highways, the activities in the public utilities area are not directly affected by and do not directly affect this field. However, with combustible rubbish being seriously considered as a possible source of fuel for generating electricity (especially on the island of Oahu), the PUC and PUD may soon find themselves involved to some degree in the matter of solid waste disposal. Already they are indirectly involved in the problem of disposing

of sugar cane bagasse and sugar cane trash because these materials are presently being used by the sugar plantations for fuel to generate power, some of which are sold to nearby electric utilities for resale to their customers.

4. Sewage disposal. Up until 1974, there was another area of environmental concern in which the PUC and PUD were not directly involved. This was the field of sewage disposal. With the passage of Act 59 in 1974, private sewage disposal companies are now defined as public utilities subject to regulation by the PUC and PUD. It is still too early to know how deeply this legislation and its implementation will involve the regulatory authorities in matters relating to environmental protection. It would seem, however, that these matters might be dealt with much more effectively by the counties than by the public utilities agency. With the counties already being responsible for a major portion of the field of sewage disposal, it appears entirely unnecessary for the PUC to develop a separate regulatory system for just a few privately owned sewage disposal systems. Thus, in the first volume of this report, we have recommended that the responsibility for private sewage disposal systems be transferred from the PUC to the counties so that all sewage disposal matters can be handled on a consolidated basis at the county level.

Statutes on Environmental Protection Affecting Public Utilities and the Role of Other Agencies in Environmental Protection

There are numerous laws relating to environmental protection, the provisions of which affect public utilities and the manner of their operations; and there are numerous federal and state agencies with direct responsibility in protecting the environment, whose rules, regulations, and activities impact (and may, in turn, be affected by) what public utilities do or are allowed to do. The sections below describe some of these laws and enumerate the agencies charged with responsibility for administering them.

Federal statutes and the federal government's involvement. The federal government has provided most of the leadership in the environmental protection field and has been spurring the states to take action. Most of the environmental protection functions of the federal government have been centralized in the Environmental Protection Agency (EPA). It is responsible for implementing and enforcing the sweeping federal environmental protection legislation in the areas of water, air, and noise pollution. Specifically, these federal statues are (1) the National Environment Policy Act of 1969 (P.L. 91–190); (2) the Clean Air Act (42 U.S.C. 1857 et seq.), including the Clean Air Amendments of 1970 (P.L. 91–604); (3) the Federal Water Pollution Control Act as amended by the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92–500); and (4) the Noise Control Act of 1972 (P.L. 92–574).[1] Under these statutes, the federal government establishes national policies, sets federal minimum standards, and assures implementation by the states by requiring federal approval of state plans, with federal funding being dependent on plan approval.

The energy crisis and its continuing effects have generated federal government initiatives which have very broad implications for environmental protection. A new agency, the Federal Energy Administration (FEA), is responsible for shaping federal energy policy. It will be some time before all the details of a national energy program are known, but several directions are clear: (1) the nation should reduce the growth of demand for energy, (2) the nation must increase domestic oil production to reduce dependence on imports, (3) the nation must

[1]Another area of federal legislation of great potential significance relates to shoreline protection and coastal zone management. Under the Coastal Zone Management Act of 1972 (P.L. 92–583), the federal government requires the development of state coastal zone management plans and programs and makes federal financial grants available to the states for this purpose. Through Act 163 of 1974 and through Act 176 of 1975, Hawaii is taking steps to comply with the federal requirements in this area of concern. Implementation will be through the counties, the department of planning and economic development, and the land use commission. Utility facilities and activities in coastal zone areas will be affected by this legislation.

develop alternative energy resources, and (4) energy prices should be high enough to stimulate domestic production.

These federal statutes, since they provide for the establishment of standards to be followed by the States, have a definite effect on Hawaii's public utilities.

General state policy on environmental protection. Based upon recommendations of a temporary commission on statewide environmental planning, the 1974 session of the legislature passed Act 247 (now HRS, chapter 244), which establishes a general environmental policy for the State of Hawaii and its political subdivisions. This law sets forth in very broad terms the State of Hawaii's objectives concerning environmental protection. In almost equally broad terms, it also sets forth guidelines by which these objectives are to be attained. Although the law provides no specific means or procedures by which to assure its observance and implementation, nevertheless, it is binding upon the actions of all affected agencies, including those concerned with the regulation of public utilities.

Office of environmental quality control and the requirement for environmental impact statements. As a counterpart to the federal environmental protection legislation, Hawaii enacted environmental quality control legislation in 1970 (Act 132), which appears now as chapter 341 of the Hawaii Revised Statutes. This law created the office of environmental quality control within the office of the governor. In general, this office is assigned an overall coordinating role in directing state action toward the solution of various environmental problems, with special emphasis on information gathering, research, public education, and promotion of community understanding of and support for environmental protection actions.

Although the office of environmental quality control does not establish environmental standards, formulate control regulations, or enforce the rules that are made, it does have significant influence on these activities. Indeed, since its inception, it has been the focal point for the development of state plans aimed at complying with federal requirements and for handling most dealings between the state and federal authorities in the area of environmental protection.

As a counterpart to the federal program for environmental impact statements, the governor of Hawaii issued an executive order on August 23, 1971, directing all state agencies to: (1) monitor, evaluate, and control on a continuing basis their activities so as to protect and enhance the quality of the environment; (2) prepare and report environmental impact statements for all legislative proposals and major state actions and projects which will have a significant impact upon the environment; and (3) develop appropriate procedures to ensure timely and widespread public discussion and consideration of the possible effects of proposed actions on the environment, including the submission of draft impact statements to the office of environmental quality control. Under this executive order, the office of environmental quality control is assigned the responsibility for overseeing the development of such impact statements and for reviewing and evaluating agency - prepared impact statements and the comments on such statements by people outside the originating agency.

Needless to say, full compliance with this executive order places a heavy responsibility upon all state agencies, including the public utilities agency.

Environmental center of the university of Hawaii. The ecology or environmental center of the university of Hawaii is, under HRS, chapter 341, given the functions of stimulating, expanding, and coordinating education, research, and service efforts of the university related to ecological relationships, natural resources, and environmental quality. The center provides research services to other state and local agencies. It does not conduct much

research itself, but it capitalizes on other resources available within the university in providing research services to state and local agencies.

The center's efforts since it became operational have been focused principally in the area of water pollution. The kind of research service the center provides which impacts public utilities is illustrated by the following activity that it has engaged in in the water pollution area. The center has been regularly providing to the department of health detailed comments at public hearings on the various applications of the electric utilities in Hawaii for zones of mixing (i.e., areas of state waters where the government would recognize and allow heated waters to be discharged from power generation plants and to be cooled by the mixing process that would take place in the affected areas). The department of health is responsible for acting on these applications, and as a regular procedure it refers such applications to the environmental center when they are received from the utilities. Up to now, the center has concerned itself primarily with the technical and data aspects of these applications and has not attempted to assess the economic and utility engineering aspects of the applications.

Department of health. All of Hawaii's laws aimed at controlling various forms of pollution are more or less brought together and codified in chapter 242 of the Hawaii Revised Statutes entitled "environmental quality." Under chapter 242, the department of health is the key agency in terms of establishing and enforcing standards in most areas of environmental control. About the only area of pollution control for which the department is not primarily responsible is that of visual or sight pollution.

Chapter 242 authorizes the director of health to "make, amend and repeal state rules and regulations controlling and prohibiting air pollution, water pollution, noise pollution, solid waste pollution, and any other form of pollution found in this State." In addition, the law vests in the department of health the primary responsibility to implement federal standards and requirements relating to pollution control.

Many of the pollution control standards and regulations that have been adopted by the department of health over the past several years and their implementation have a very direct impact upon those industries which are regulated by the public utilities agency. One example is the requirement that electric utilities use low sulphur fuel oil in their power generation plants as an air pollution control measure. Another example is the requirement that the electric utilities conform with water pollution control measures or submit applications for zones of mixing or special permits to continue discharging heated waters into the waters of the State of Hawaii. A third example is the imposition of noise control standards upon motor vehicles, including those of the motor carriers regulated by the public utilities agency.

Department of transportation. Transportation facilities (i.e., airports, harbors, and highways), because of their size, location, and use, cannot help but have a significant impact upon the environment. Airplanes, ships, and water and land vehicles consume tremendous quantities of energy (especially in the form of fossil fuels) and emit into the atmosphere tremendous quantities of pollutants. They are also major contributors to the very high noise level of modern civilization. Thus, it is inevitable that the state department of transportation with its widespread responsibilities for constructing and operating airports, harbors, and highways throughout the State should become deeply involved in environmental matters.

Although there is no law which vests any particular environmental control function as such in the department, the activities of the department, beginning in 1972, in the area of environment have had, will have, or may have an effect on the public utilities. These activities have arisen as a result of (1) legislation and (2)

the department's taking action on its own accord.

The legislation referred to is Act 59, SLH 1972. Under that act, an interdepartmental transportation commission was established, with the director of transportation as a member. The commission's responsibility was to evaluate annually the possible limitations in the number and kind of transportation units in the State. The exact impact of the work of this commission on public utilities regulation is not yet clear.[2] However, the impact of the second development is readily apparent.

This second development was the formation of a special utilities environmental task force by the department of transportation. It was created out of concern for aesthetics arising from the location of utility lines, poles, and other facilities along highway rights-of-way. This task force was composed of representatives of the various utility companies (including cable television companies), the department of transportation, the department of land and natural resources, the public utilities division, and the office of environmental quality control.

The task force met and prepared a report containing a number of recommendations. The emphasis was on the consolidation and sharing of utility facilities, improving the aesthetics of visible facilities, preventing facilities from marring scenic views wherever possible, providing for the review of proposed facilities, establishing environmentally controlled highways where special attention would be given to environmental considerations, and taking into account long-range plans for highways and principal utility routes.

These recommendations, of course, will have an effect on the public utilities. The impact of the recommendations will be felt not only with respect to utility lines, poles, and other facilities along highway rights-of-way, but also with respect to these facilities in the energy corridors over which the department of transportation has control.[3] The recommendations of the special task force included those contemplating the establishment of all-inclusive corridors which would accommodate all types of utility lines, including telephone, cable television, electric, gas, gasoline, oil, and water.

Department of land and natural resources: land use commission. Control of public lands and the State's natural resources is vested in the department of land and natural resources. Determination of the use to which the various parcels of land in the State, public and private, may be put is in the hands of the state land use commission. The scope of authority and responsibility placed in these two agencies makes them very influential participants in the whole area of environmental protection. Obviously, how land is to be used and the requirements established concerning the State's natural resources will influence the activities and operations of the public utilities. One particular land use matter directly affecting public utilities is worth mentioning.

In 1970, the land use commission's authority was expanded to include the establishment of shoreline setbacks around each of the islands in the State (Act 136, sections 205–31 through 205–37, HRS). This shoreline setback law requires the establishment of a shoreline setback area of 20 to 40 feet along all shorelines and severely restricts the uses and

[2]Even less clear is the work contemplated for the new statewide transportation council set up by Act 176 enacted during the 1975 session. This council has been set up to replace the interdepartmental commission. Its focus will be expanded from transportation control to a much broader approach to transportation planning.

[3]The department's authorization over energy corridors is contained in HRS, chapter 277. Section 277–2 reads:

> "**Authorization.** The department of transportation shall establish, maintain, operate, manage and control energy corridors throughout the State for the purpose of maximizing the utilization of lands available for use in connection with transporting by pipeline or other means, sources of energy including but not limited to oil, its derivatives and natural gas; provided, that the utilization of such energy corridors shall be permissive and not mandatory."

types of structures allowed in these areas. The law also allows the counties to establish wider shoreline setbacks. It exempts certain structures from the applications of the law. Included in the exemptions are "Tunnels, canals, basins, and ditches, together with associated structures used by public utilities." The exemption is on the proviso that:

> ". . . the plans therefor are submitted for review and approved by the [land use commission] after a public hearing has been held and . . . the appropriate state body has found that the proposed structures will result only in a minimum interference with natural shoreline processes; . . . ."

The exception and the proviso are fairly significant, because a number of electric-generating power plants discharge heated water across the setback area into coastal waters. The matter is likely to become even more complex as additional shoreline protection measures are put into effect through legislation and administrative action. For example, the 1975 session of the legislature enacted Act 176 which imposes additional shoreline protection restrictions.

The counties. Not only the State, but the counties, are also involved in the area of environmental protection. The counties are in the business of regulating and controlling various actions and activities of others for the purpose of meeting environmentally related objectives. This control is exercised primarily through the use of their zoning powers which can have a great effect upon the location, size, appearance, and use of facilities and structures within their boundaries. The county police departments are also the enforcement agencies for assuring compliance with state laws and regulations governing certain environmental protection matters, such as air and noise pollution.

In the field of public utilities, the major area of concern to the counties is that of the location and appearance of utility facilities and operations. As a result of their responsibilities for streets and street lighting and for land use and community appearance, the counties are deeply involved in the siting and location above or below ground of utility lines and the siting of power-generating plants.

Lack of Official Cognizance of the Involvement of the Public Utilities Program in the Area of Environmental Protection

Despite the many interrelationships which exist between the operation and regulation of Hawaii's public utilities and the protection of Hawaii's environment, there is little formal recognition that the public utilities program is in any way involved in matters affecting environmental protection.

In all of the laws relating to environmental protection, no specific or special references are made to the public utilities field or to the possible involvement of the PUC and PUD in environmental protection matters. The implicit assumption appears to be that the public utilities field does not differ in any significant degree from any other fields of activity and therefore can be treated in the same manner as all other fields. The further assumption seems to be that the public utilities regulators have no direct or special role to play in the promotion of environmental protection as it may pertain to the areas subject to their jurisdiction and regulatory control. This present situation does not appear to be the result of any deliberate and conscious policy decision. Rather, in all likelihood, it has come about simply because no one considered or focused attention on the interrelationships between public utilities regulation and environmental protection when environmental protection legislation was being enacted.

The State's basic public utilities legislation (primarily chapters 269 and 271 of the Hawaii Revised Statutes) omits any reference to environmental protection. This is not surprising,

considering that these laws were enacted before environmental protection began to be emphasized. However, these laws have not been changed subsequently to reflect the increased awareness of environmental protection, although actions taken under the public utilities laws can, and do, have environmental implications.

Utility Regulators' Lack of Concern with Environmental Matters

Although the utility regulators are not vested by law with any specific environmental control responsibility, since utilities and their facilities and operations have a tremendous impact on the environment, and in light of the laws on environmental control, it would be completely unreasonable and unrealistic to consider public utilities in isolation from matters relating to environmental protection. The public utilities agency with its broad grant of authority and responsibility and the extent of control and regulation it exercises over the public utility companies cannot legitimately avoid concern for environmental matters, disregard environmental protection requirements, or disclaim interest in or responsibility for environmental control measures.

It would seem that, at a minimum, the agency should (1) develop a basic understanding of the objectives, needs, and effects of environmental protection measures in the public utilities field; (2) establish close working relationships with other agencies having primary responsibilities for environmental protection; and (3) formulate programs and procedures which will enable it to support and reinforce environmental protection measures wherever possible and feasible and to react meaningfully to such measures being proposed by other agencies which seem to come into conflict with other basic objectives of the public utilities agency.

In fact, however, the PUC and PUD have done very little toward taking positive or substantive action directed specifically at the matter of environmental protection. They have not acquainted themselves in any detail with environmental issues, even those relating directly to public utilities. They have developed no overall approach to the handling of environmental matters. Where others have taken the initiative to bring environmental matters to the attention of the PUC and PUD, such matters have been dealt with in a very passive and reactive manner. Thus, while they have the ability to influence decisions relating to environmental protection, the PUC and PUD generally have yet to make their mark on environmental matters in the public utilities field.

The following sections describe more specifically these deficiencies and note the areas where PUC and PUD could have taken action but have thus far failed to do so.

Lack of coordination and consultation with other agencies having environmental protection responsibilities. Considering the nature of public utilities' activities, it would appear reasonable to assume that, as agencies charged with the direct responsibility for environmental controls began to formulate rules and to implement them, the utility regulators would have been in touch with these agencies to determine the impact of the laws and the rules on public utilities and to make known to these agencies the particular problems of the utilities in the environmental protection area. However, to date, there has been little, if any, consultation and coordination of activities between the utility regulators and the environmental protection agencies. Note the following.

1. With the office of environmental quality control. Up to the time of this study, contacts between this office and the public utilities agency were minimal. No formal relationships between the two agencies had been established. However, since our initial interviews with officials in both agencies, there appears to have been an increase in informal communications. Until our inquiry, there

appears to have been little recognition of the desirability of working together on such matters as determining the costs to the utilities of complying with environmental standards, selecting sites for utility facilities, and acting on the proposal submitted by the electric utilities to establish an "environmental clause" in the utility rate structures which would enable the companies to pass on automatically to the consumers the costs associated with meeting environmental protection standards and requirements. In the absence of coordination with the public utilities agency, the office has been acting as the intermediary between the utility companies and the department of health, which is the policing agency.

2. ***With the environmental center of the university of Hawaii.*** Although the center has been a key agency in proceedings relating to requests filed by the electric utilities for permission to discharge heated water into coastal waters, there have been no direct contacts or interrelationships between the environmental center at the university of Hawaii and the public utilities agency. It would seem that with the center being so directly involved in environmental matters affecting the electric utilities, the public utilities agency would have an interest in establishing and maintaining working liaison with the center.

3. ***With the department of health.*** The public utilities agency has generally not been directly involved in the various pollution control proceedings before the department of health. The department does not make a practice of soliciting views from the PUC or PUD on such matters, and the PUC and PUD never take any initiative to make their views known to the department of health. On the rare occasions when the public utilities agency has taken some action on pollution control matters vis-a-vis the department of health, it has always been at the instigation of the utility companies affected, not on the initiative of either the public utilities agency or the department of health.

It is obvious, of course, that pollution control decisions made by the department of health can have a substantial effect on the costs of utility operations and ultimately on the consumers of the utility services. Yet, the department has made these decisions without any input from the utility regulators (although it appears that the department has maintained some contact with the utilities themselves). It is conceded by the department of health that most of the pollution control decisions made by the department in the past were reached without any real regard to or consideration of the costs their implementation would entail or the impact the decisions would have upon consumers. No cost-benefit studies were considered essential or even relevant to these decisions. As for the public utilities agency's action on rate requests affected by actions and costs resulting from pollution control requirements, the director of health's opinion has been that the agency would simply have to accept the effects of the health department's requirements and adjust the utility companies' rates accordingly. He has not viewed the agency as a spokesman for consumers in proceedings before the department of health.

The recent energy crisis appears to have caused the department of health to modify somewhat its earlier position concerning how much consideration should be given to the economic consequences of pollution control requirements. For example, following the skyrocketing rise in the price of low sulphur fuel oil and the resultant effect this had on electric utility rates on the island of Maui, the department of health granted a 16-month variance to the Maui Electric Company to allow it to continue burning high sulphur industrial fuel oil. At the end of this variance period, the electric company is still supposed to convert to the use of low sulphur fuel (after having made the necessary plant modifications to do so), but at least the department of health has taken cognizance of the fact that this will cause an increase in utility rates at that time. To deal with this problem, the department in its variance order has admonished the company to try to develop some sort of energy conservation

program whereby reductions in usage by customers can be used to offset rate increases so as to stabilize total utility bills.

4. With the department of transportation. Interaction between the department of transportion and the public utilities agency is negligible. While it is true that the public utilities division had representation on the special utilities environmental task force, this was the only notable, substantive, direct contact between the two agencies in the past several years. There seems, for instance, to have never been any communication between the two of them regarding pipelines, even though they share pipeline responsibilities.

The interdepartmental transportation control commission did solicit the views of the public utilities agency on its work but was given a "cold shoulder" by the public utilities agency. The comments and recommendations of the transportation administrator, which were concurred in by the executive director of the public utilities agency, are revealing:

> "It seems that the ITCC objectives apply primarily to automobiles and related mass transit or rapid transit programs which are being actively administered or handled by the City or State Dept. of Transportation. Altho our trucks, buses, and limousines as well as water and air carriers may be affected, the impact at this point seems to be very minute and the major emphasis will be on automobiles and transit.
>
> "For the foregoing reasons, I recommend non-participation at this time."

5. With the department of land and natural resources. The department's relationships with the public utilities agency appear to be minimal; they are handled on a sporadic and informal basis, rather than through any continuing and formal means. The only significant area of direct contact between the two agencies is that of requests of the public utility companies to acquire and use rights-of-way across public lands subject to the control and management of the land department. In such cases, the approval of both agencies is required, but the initiative for obtaining such approval is left to the individual utility companies. Generally speaking, the acquisition of a right-of-way (by lease, permit, or other means) is a matter to be settled directly between the utility company and the department, while the public utilities agency restricts its consideration to a perfunctory approval of line compliance with construction standards and requirements set forth in General Order Nos. 6 and 10. If there is a controversy as to the best location of a particular line (e.g., construction of a major transmission line through a scenic area visible to many residents), the land department may consult the public utilities agency and obtain its advice. Otherwise, however, the granting of utility company easements is handled as a separate and independent action by the two agencies.

6. With the land use commission. Until now, no contacts or relationships have been developed between the land use commission and the public utilities agency regarding their one subject of mutual concern—namely, the location of utility facilities in shoreline setback areas. Considering the importance and difficulty of locating suitable sites for power plants and the fact that shoreline areas are generally sought for such plants by the electric utilities, this appears to be a serious oversight on the part of both agencies.

7. With the counties. Actual direct interrelationships between the public utilities agency and the counties in the area of environmental protection are virtually nonexistent, although they share at least one area of concern, the undergrounding of utility lines. The counties, especially the city and county of Honolulu, have been requiring some utility lines to be placed underground, primarily on the basis that they are unsightly and

aesthetically displeasing. However, in implementing such a plan, no effort has been made by the counties to consult with or to coordinate their actions with the PUC and PUD or to seek PUC and PUD assistance and cooperation in promoting the undergrounding of utility lines. However, Honolulu officials have sought the advice of the California PUC on underground utility lines.

Lack of consideration of environmental matters in decisions by the utility regulators. Although there are numerous areas in which public utilities regulation impinges significantly upon questions of environmental protection, the public utilities agency appears to have paid little attention to them in the decisions and actions it has taken.

1. *Long-range planning.* As already indicated, the utility regulators have never engaged in any long-range planning. It would appear, however, that with increasing interest in the environment and in light of the effects the laws, rules, and standards developed to protect the environment have on public utilities and on the costs of operating utilities, the utility regulators would at least have begun to become vitally concerned with environmental matters and to plan for future means of accommodating such environmental interests while at the same time pursuing the objectives of utility regulation. But such activities have not taken place.

Thus, there is no reference anywhere in the PUC and PUD plans, statements, rules, regulations, dockets, or decisions and orders to environmental protection as being a duty, function, or matter of concern to those responsible for administering the public utilities program. Nor is there any visible evidence that the regulators in their review of the utilities' five-year capital improvements programs or specific project proposals concern themselves with environmental issues. There is nothing in the record to indicate that the regulators ever asked that the utilities conduct cost-benefit studies of alternative means of reaching environmental ends and at the same time attaining the objectives of utility regulation.

The only case in which environmental issues were dealt with directly and specifically by the PUC and PUD was that concerning electric utilities and the costs involved in their use of low sulphur fuel oil and in the provision of pollution abatement facilities. Even in this one area of action, all of the initiative came from the electric utilities in response to environmental protection measures mandated by the state department of health.

2. *Research and development.* Consistent with the inaction with regards to long-range planning, the public utilities agency has no program for research and development to determine how environmentally compatible utility industries might be created, nor is there any requirement that the utilities themselves engage in such research and development. At a minimum, the regulators should be able to identify what the research and development needs are in the fields subject to their control and regulation, but they are not doing so.

Areas where concern for environmental matters can and needs to be expressed. Although the PUC rules are currently silent on the matter due to the utility regulators' inaction, it is perhaps instructive to note the areas in which some expression on environmental matters are needed. We note the following.

a. Utility environmental impact statements. The governor's executive order dated August 23, 1971 directed all state agencies, among other things, to (a) "Monitor, evaluate and control on a continuing basis, their . . . activities so as to protect and enhance the quality of the environment . . . [and to] develop programs and measures to protect and enhance environmental quality . . ."; (b) prepare and submit environmental impact statements for all major state actions and projects and for all proposals for legislation; and (c) develop appropriate procedures to assure that the

required environmental impact statements are actually prepared and submitted.

Although this executive order is perhaps not applicable to the utility companies themselves,[4] since the utility companies frequently are responsible for undertaking major projects which have a significant impact upon the environment, it would appear that the requirement for submitting environmental impact statements might very logically be extended to major utility projects. New York State has gone one step further than this, and by legislation now requires the securing of a certificate of environmental compatibility and public need from the public service commission before any construction of a major gas or electric facility can be undertaken in that state. There is no evidence that we could find, however, suggesting that the Hawaii public utilities agency has ever given any thought or consideration to the possibility of requiring the submission of environmental impact statements or the securing of any certificates of environmental compatibility prior to initiating any major projects in Hawaii.

b. "Environmental clause" in utility rate structures. At present, the public utilities agency has before it a proposal from the Hawaiian Electric Company, Inc., that the agency authorize the company to include in its rate structure an "environmental clause" comparable to the "fuel oil clause" presently authorized.[5]

The fuel oil clause allows utility companies automatically to pass on fuel price increases to the consumers without a rate change proceeding. The "environmental clause" would likewise permit the passing automatically of costs associated with complying with pollution control requirements imposed upon the utility by governmental action to the consumers.

If the PUC were to approve the environmental clause proposal, it would in effect be accepting the philosophy expressed by the department of health: that pollution abatement must proceed regardless of cost.[6] Moreover, the PUC would be determining that the utility company bears no responsibility for abating the pollution it created, and that consumers are entirely liable for the cost of abatement, but that classes of consumers have differing liabilities for pollution abatement of this sort according to the rates they pay for utility service.[7] Further, by adopting the environmental clause, the PUC would be creating a disincentive for utility companies to seek the cheapest means of pollution abatement, or to weigh alternative treatment technologies, as all costs would be passed on to consumers in the form of increased rates. Presently there may be a large incentive to find economical technologies because the cost of pollution abatement facilities must be considered in regular rate proceedings before the PUC.

Thus, it is by no means certain that the "environmental clause" route offers the best solution to the industries' problem in complying with pollution standards, nor that it is in the best interests of the general public. What is clear is that there is a need for a workable mechanism whereby environmental issues can be fully illuminated and where alternative objectives and solutions can be properly and effectively assessed and acted upon. It is to this end that the public utilities agency should be focusing its attention.

c. Utility energy policy. Both as suppliers of energy in one form (i.e., electricity and gas) and as consumers of energy in another

[4]In September 1973, a deputy attorney general in response to a request from the commission advised the commission that the governor's executive order did not require the submission of an environmental impact statement by the electric utility seeking the inclusion of an environmental control clause in its rate structure.

[5]Other electric utility companies also have filed for the inclusion of an environmental clause in their rate structures.

[6]The PUC does not appear to accept this philosophy with respect to "purely aesthetic" environmental protection measures, such as the undergrounding of utility lines.

[7]The situation is further clouded by the existence of a statute (Act 161) enacted in 1973 and now being tested in the courts, which would extend the coverage of state credit to revenue bonds sold to finance utility abatement projects.

form (i.e., primarily fuel oil), Hawaii's utility industries are vitally affected by the worldwide energy crisis. It would thus appear that the utility regulators should be taking steps to deal with this crisis. It should be devising a policy covering the uses and allocation of limited energy resources and delineating conservation measures to derive maximum use of available resources.

That the PUC and PUD should be playing a significant role in the development of an energy policy is made abundantly clear in the document issued by the state department of planning and economic development in 1974 entitled: "State of Hawaii Energy Policies Plan–General Plan Revision Program." In this report, there is a discussion of how utility regulation might be used to promote energy conservation within Hawaii. The report notes that electric utilities appear to be entering a phase in which they are becoming an increasing cost industry instead of a decreasing cost industry. Marginal cost is beginning to be more than the average cost. It suggests that new rate structure alternatives, such as incremental cost pricing, peak and off-peak pricing, and flattened rate structures might be installed to reduce energy consumption.

The report also suggests a reduction in the spinning reserve requirements as a means of reducing energy consumption. Utility regulators presently require Hawaii's electric utilities to maintain extra power generation capacity equal to the capacity of the largest generating unit on-line at any one time. Extra power generation capacity is to maintain reliability of service in the event of a breakdown in the electric system. Fuel is required to keep generators going to supply such extra power, although no power is actually produced until it is needed. The report recognizes that elimination altogether of the requirement for extra power generation capacity might be an undesirable and unacceptable alternative, but suggests that the present requirement might be modified and that the example of other utilities might be followed whereby customers would be given the option of taking interruptible service at a lesser cost than the cost for uninterruptible use.

Elsewhere in the report on an energy plan for Hawaii, there is a discussion of the development of alternative sources of fuel and energy for Hawaii. Some of these alternative sources are actually or potentially applicable to Hawaii's utility industries. To the extent this is the case, the utility regulators probably should be taking a positive role in encouraging the exploration and testing of alternative sources of fuel and energy by the regulated companies. Use of combustible rubbish as a source of fuel and greater utilization of sugar cane bagasse and trash as substitutes for fuel oil are two areas where more aggressive action might be in order.

So far, however, Hawaii's regulators do not appear to visualize themselves as being the initiators or generators of action toward the development and implementation of any utilities energy policy or program for Hawaii.

d. Facilities siting criteria. With engineering and safety criteria already established for many utility facilities, including utility lines, it would also appear quite feasible and appropriate for the public utilities agency to develop criteria which would take into consideration such environmental factors as appearance and location. Hawaii's public utilities agency, however, has none.[8] Indeed, with respect to location, currently it is a matter

[8]In this regard, the following comments from the 1970 annual report of the New York State Public Service Commission are instructive:

> "It is essential to avoid scarring scenery by siting transmission lines such that natural vistas are blocked and the breadth of the natural skyline is destroyed. Consideration must be given to tower and conductor designs, materials, paints, and finishes; to the disturbance of natural vegetation due to siting or construction; to limitations due to soil conditions; and to the clearing, replacement, and maintenance of natural vegetation.
>
> "Consideration must also be given to road, stream and valley crossings, maintaining a natural buffer as far back from roads and streams as possible. It is also desirable to deflect right-of-ways cleared through scenic forest to minimize the tunnel effect through the timber and to avoid steep slopes, ridge lines, and mountain tops entirely."

negotiated by the individual companies, the counties, and other agencies concerned. The utility regulators rarely if ever become involved in site selection alternatives.

e. Undergrounding of utility facilities. One of the main environmental issues in the public utilities field is that of undergrounding utility facilities, primarily utility lines.

The public utilities agency has not yet developed any formal policy or general approach to the question. It should. In other states such as New York and California, the public utility agencies have devoted considerable attention to this matter. Both New York and California, after investigation and study, established requirements and standards for undergrounding utility lines.

The need for PUC rules and regulations in this area is illustrated by the controversy which arose over cost sharing for conversion of overhead lines to underground lines. In this case, a developer complained of inconsistent policies between the telephone company and the electric company on Oahu regarding the absorption of costs associated with a line relocation. One utility absorbed the cost, but the other charged the developer. The PUD staff concluded in this case that the utilities should not absorb the cost of relocating their facilities.

The city and county of Honolulu on its own has adopted a policy of encouraging and requiring the undergrounding of utility lines. By ordinance adopted in 1966, all new subdivisions consisting of four or more units must place their utilities underground with the developers being required to bear the additional costs involved (i.e., the costs above what it would cost to install overhead lines). Also, pursuant to state statute enacted in 1968 (Act 73), there is now an equal sharing of costs between the county government, the utilities, and the affected property owners for the undergrounding of utilities in improvement districts. Undergrounding of utilities is a general requirement for new improvement districts.

While the public utilities agency has not actively opposed or interfered with the policy of the city and county of Honolulu to press for the undergrounding of utility lines, neither has it done anything to assist or promote this policy. The only policy that the PUC has followed is an informal one of not allowing the utilities to charge the general ratepayers for "expenses for pure aesthetics" (which include, of course, the extra costs related to undergrounding).

Before leaving the subject of undergrounding, it is interesting to note that the idea and desirability of undergrounding are by no means a new or novel concept in Honolulu. This is amply demonstrated by the following language which is contained in the royal charter granted to the telephone company almost 100 years ago (i.e., 1883):

> ". . . provided always that the erection of the necessary poles and fixtures of the corporation in the towns of this Kingdom shall be made with a due regard to the public convenience, so far as respects their position and in this respect the said corporation shall be subject to the supervision of the Minister of the Interior or any person or body succeeding to his powers or duties, and further provided that the wires used by the corporation shall if practicable be carried underground within the limits of the town of Honolulu, but if it should be found to be impracticable to use such underground communications, then cables shall be used as far as possible to the exclusion of wires within a radius of half a mile from the Fire Tower, and provided also that if the lines erected by the corporation shall at any time on the prosecution of the Attorney General be adjudged by any court of competent jurisdiction to be a public nuisance, and such nuisance shall not be abated within a time to be fixed by such court, then this Charter shall thereupon become void."

Recommendations

We recommend that the public utilities agency accord appropriate attention and consideration to environmental matters and acquire the necessary understanding and expertise to function effectively in this area of concern. More specifically, we recommend that the PUC:

1. Establish relationships and coordination of efforts with such other state and county agencies involved in the protection of the environment. A mechanism should be established to afford all other agencies and groups concerned with environmental matters full opportunity to participate in the PUC's decision-making process and to be assured that their views and positions will be taken into consideration before actions are taken affecting the environment.

2. Develop a program of long-range planning which takes into account environmental factors and means of achieving both the State's environmental objectives and the objectives of utility regulation.

3. Maintain a research and development program that will identify the changing needs of the industries it regulates and promote awareness of new technologies and the means to conserve resources and to meet the ends of environmental concerns.

4. Develop policies, rules, regulations, and criteria to (a) guide the utilities in their operations and activities which affect the environment, and (b) assist the utility regulators in evaluating and monitoring such industry operations and activities. Such policies, rules, regulations, and criteria should be developed for such things (among others) as siting of utility facilities, impact statements for the construction of utility facilities, undergrounding of utility lines, conservation of energy, and allocation of the costs incurred in complying with environmental standards.

PART IV

REGULATION OF CABLE TELEVISION IN HAWAII

Chapter 11

INTRODUCTION AND SOME BACKGROUND

Just five years ago, the state legislature enacted a statute on the regulation of cable television. In the interest of expanding CATV services as rapidly as possible, it vested responsibility for CATV regulation in the director of regulatory agencies rather than in the PUC.

This part examines how well CATV regulation has progressed since 1970. In this chapter, some background information is provided and in the next chapter our specific findings are discussed.

Nature of Cable Television and the CATV Industry

Although the basic concept of cable television is already more than 25 years old, as a generally available means of telecommunications it is still a relatively recent phenomenon and is not widely understood. The purpose of this section is to provide some background information on the nature of CATV.[1]

CATV is a rather complex operation. It is not necessary for the purposes of this report, however, to describe the technical details of CATV. Some generalized observations are sufficient.

Main components of cable television. Cable television is a method of distributing television signals through wire rather than broadcasting these signals through the air. To accomplish this, a CATV system is made up of three basic components: (1) an antenna tower and a head-end, (2) a distribution plant, and (3) house drops and terminals.

The head-end consists of receiving antennas, receivers, and amplifiers for local broadcast signals. It may also include equipment for translating signals from UHF stations to VHF channels and microwave[2] equipment to bring in distant TV signals. The distribution plant contains amplifiers and distribution cable lines attached to utility poles or fed through underground conduits in the same manner as telephone and electric wires. House drops are taps on the distribution lines for each building served by the system. Terminals include connectors, transformers, and converters (if necessary) on the subscriber's television set.

[1] Numerous sources were used to develop this chapter of background information on the cable television industry and its regulation. However, the following were primary:

a. Charles Tate, Editor, *Cabletelevision in the Cities: Community Control, Public Access, and Minority Ownership* (Washington, D.C.: the Urban Institute, 1971).

b. Michael R. Mitchell, *State Regulation on Cable Television* (Santa Monica, Calif.: the Rand Corporation, 1971).

c. Sloan Commission on Cable Communications *On the Cable: The Television of Abundance* (New York McGraw-Hill Book Company, 1971).

d. "The Cable Fable," *Yale Review of Law and Social Action* (Vol. 2, No. 3, Spring 1972).

[2] Microwave is a method of transmitting closed-circuit television signals through the air on a highly directional, line-of-sight system from an originating station to one or more receiving stations.

Other types of instruments or appliances besides television sets may also be attached to the terminals.

Features and variations of the basic CATV system. The basic CATV system is relatively simple in concept. However, it incorporates certain features and permits certain variations which not only offer significant advantages in terms of telecommunications but also present new and unusual problems in terms of control and regulation. Some of the major features and variations of CATV are outlined below.

*1. **Proprietary, leaseback, and hybrid distribution plants.*** The CATV operator may own its own distribution plant (proprietary system), lease it from someone else (usually a telephone company), or have a combination of proprietary and leaseback lines (hybrid system).

*2. **Local origination center.*** The CATV system may also produce or originate some of its own programs. In this case, it requires certain production equipment, facilities, and personnel. These elements make up a local origination center.

*3. **Two-way cable.*** Cables can include an added feature enabling the subscriber to make a response to a signal. By using subchannels or a second cable, signals can be returned to the head-end or origination center at the same time that signals are being sent out. This is known as a two-way cable. Usually, the response signal is restricted to a non-voice type signal, so in most situations a house drop cannot be used as a local origination center.

*4. **Multi-cable system.*** A single cable is generally limited to a capacity of 17 to 20 channels. To achieve greater capacity and flexibility, it is possible to multiply the number of actual cables used. Technologically, capacity is virtually unlimited. However, the largest capacity systems presently being constructed around the country are 20-, 40-, and 60-channel systems (i.e., one, two, or three cables).

*5. **Pay television.*** Pay television (Pay-TV) or subscription television (STV) is a means of providing additional and specialized programming for a fee (per program or per channel) above the normal monthly CATV subscription fee. Briefly, it works as follows: (a) scrambled signals are sent from the head-end to all subscribers, (b) each subscriber's television set is equipped with a converter which can decode or unscramble the scrambled signal, (c) a different code is used for each pay channel or program, (d) if the subscriber has ordered the particular program or channel, the scrambled signal will be decoded by the converter and the subscriber will receive the program, but (e) if the subscriber has not ordered the program or channel or tries to watch it without authorization, the converter will not unscramble the signals.

*6. **Multipurpose system.*** A multipurpose system consists of a computer controlled central station at the head-end which can control digitally coded messages to and from remote subscriber locations. For example, the central station can query all terminals and determine which sets are on and what channels are being watched. This can be done several times per second. This feature can be used to perform a variety of "watchdog" services (monitoring alarm circuits, remote control of home appliances, and data transmission). A two-way cable is necessary for a multipurpose system.

The economics of CATV. The most notable, general, economic characteristic of cable technology is the proportionality of costs and revenues to the size of plant and subscription—i.e., costs and revenues tend to rise in direct proportion to the size of the plant and the number of subscribers. Head-end costs are fixed costs, but studies indicate that in a typical system such costs represent only 1.4 percent of the total ten-year capital and operating costs of the system. Plant distribution costs are the major costs of a CATV system and are directly related to the size of the system. This means that almost any size system can be economically feasible, even very small systems.

Distribution system costs can vary widely depending upon: (1) whether the lines are aerial lines attached to utility poles or placed underground in conduits and (b) whether the lines are located in highly built-up areas or in areas with less concentration of urbanization. For example, on the mainland per-mile costs for aerial lines may average around $4,000, while the per-mile costs for undergrounding may go to $15,000 or more per mile. Construction of lines in downtown areas may go as high as $50,000 to $100,000 or more per mile.

In addition, the economics of CATV are also affected by the factors of "density" (i.e., the number of potential drops or customers per mile of cable) and "penetration" (i.e., the proportion of potential customers who become actual customers). Under similar circumstances, the greater the density (urbanized versus rural areas) the more economic the cable system becomes, but this can be offset by dissimilar circumstances (i.e., underground lines instead of overhead lines or the need to construct very expensive lines in downtown areas). Where broadcast reception is poor, penetration may be no problem. However, in good reception areas, CATV fees may be a deterrent and penetration may be low unless other worthwhile advantages (added features) can also be provided.

Major characteristics of the CATV industry. Although CATV is now 25 years old and has experienced considerable growth, it is still very much a fledgling industry. In the U.S., from 70 systems with 14,000 subscribers in 1952, the industry had grown to more than 2,500 systems in 4,400 communities with 4–1/2 million subscribers and about 14 million viewers in 1970. Still, this represents only 7 percent of the nation's population and only 1.6 percent of the TV homes in major metropolitan areas. Projections are that by 1980, CATV will penetrate 70 percent of the TV homes, that there may be as many as 7500 CATV systems, and that industry revenues will balloon from $300 million in 1970 to $4.4 billion.

The industry now is characterized by many small companies, but there is a very definite trend toward a concentration of ownership. As of 1970, only 350 of the more than 2500 systems in the United States had more than 3500 subscribers. As of March 15, 1971, the largest single system in the country in terms of number of subscribers was in San Diego, California, with 47,102 subscribers. Only about 70 others had more than 10,000 subscribers.

Development of Regulation over Cable Television

With the growth and expansion of the CATV industry came the need and demand for some sort of governmental control and regulation. This was the result not only of the problems which the new industry presented but also of the fact that the new industry competed with other industries involved in telecommunications (television broadcasters and telephone companies) which were already subject to regulation by federal and state regulatory bodies. Described and discussed below are: (1) the development of regulatory control over CATV nationwide, and (2) the development of CATV regulation in Hawaii.

Development of CATV regulation nationwide. Cable television traces its origins to the rise of regular television broadcasting and to the deficiencies inherent in the broadcast medium. With the growth and increased popularity of broadcast television, more and more of the nation's population sought clear and uninterrupted reception of broadcast video signals. However, due to physical limitations (i.e., distance, obstructions, and contour of the geography), high quality broadcast signals cannot be provided consistently and uniformly to all areas. Cable television was a means of overcoming this problem.

What happened was that larger and more effective antennas were constructed in remote and poor reception areas and were then hooked up to coaxial cables so that broadcast signals

could be transmitted from the so-called "community antenna" by wire to individual homes and other outlets located in the areas served by the antennas. This has not only made remote areas accessible to broadcast television, but also provided such areas with clearer pictures and more channels than were available for reception by off-the-air television sets closer to the point of broadcast origin. The use of CATV began to spread from the remote areas to areas near or actually in the places where television broadcasting stations were located and broadcast reception was generally acceptable.

Initially, the development of cable television was viewed as a boon to everyone—broadcasters and customers alike—because it increased broadcast coverage and improved the quality of broadcast reception. However, problems and controversies began to surface when broadcast stations detected a threat in the fact that signals from stations in more distant cities could also be "imported" into their territories via cable and become competition from "foreign" stations as well as any local rivals they might have. The reaction of the broadcast stations was to oppose strenuously this "fractionalization" of their television audiences. Their avenue of attack was through the FCC, the federal agency by which they were regulated, and their strategy was to cripple competition from CATV by making the utmost use of the FCC's regulatory outlook and procedures to impose control on CATV, to drag out proceedings as long as possible, and to make the rules applying to CATV as stringent and as restrictive as possible. To supplement and reinforce this approach, they resorted to the full use of the courts to test or restrain any actions which they deemed inimical to their position. The effect of these efforts has been to inhibit greatly CATV growth and to slow down its expansion.

1. Emergence of local regulation. During the early stages in the development of cable television, the FCC took little notice of the relatively small systems that were cropping up around the country because they did not seem to have any significant impact on the national regulation of telecommunications and because they seemed merely to be filling in the voids unreachable otherwise by broadcast television and because they appeared to be primarily matters of local concern. The highly "local" character of CATV derived from the fact that the whole concept depended upon the use of local rights-of-way to be put into effect. That is to say, the cables used for CATV had to be strung along the existing utility poles or placed in the existing utility ducts to bring service to customers in the area. Hence, CATV was closely tied into the transportation grid or street and highway system of the locality being served.

Thus, as CATV systems began to be developed, the usual procedure was to obtain some sort of license or franchise from the local government involved for the right to use the public rights-of-way in that jurisdiction for CATV. For the most part, local governments were not prepared to cope very effectively with this new and completely unfamiliar type of activity. As a result, all sorts of different arrangements were made for CATV franchises. Some were granted on the basis of first come, first served. Some were offered to whoever was willing to pay the highest price. Some undoubtedly were awarded on the basis of political considerations. Restrictions and requirements also varied all over the lot. Some franchises were granted for periods up to 50 years, for example, and some imposed almost no requirements at all on the franchisers. The primary concern of most local governments appeared to revolve almost entirely around the question of the amount of revenue that would be paid by the holder of the franchise into the government's coffers. In short, the early regulation of CATV was a hodgepodge of local franchises with many different kinds and degrees of controls being exercised over the CATV companies. In a very few instances, the local government itself entered the CATV business and provided CATV service on the same basis as other municipal services.

The situation regarding local control of cable television has been undergoing change in the past several years as a result of actions taken on both the federal and state levels. Nevertheless, municipal control over CATV still appears to be the predominant pattern of governmental regulation of the industry throughout much of the country.

*2. **Entry of state regulation.*** The state governments have been relatively late in entering the field of regulating cable television. Connecticut was the first state to attempt it when it enacted legislation in 1963 to place cable television under the jurisdiction of its public utilities commission. Nevada was the second state to enter the field through the adoption of legislation in 1967. These two states were followed by Vermont, Rhode Island, Hawaii, Minnesota, New Jersey, New York, Massachusetts, and Alaska so that by 1972 there were ten states with CATV laws on their books. The nature and scope of regulatory functions differ among these states, however. One commentator on the subject describes the situation as follows:

> "The currently enacted state CATV statutes are most easily classified by their functional relationships to local municipal bodies. Thus, statutes can be divided into three broad categories: (1) those that *fully pre-empt* local licensing authority, (2) those that perform an *appellate function* (i.e. set minimum franchise standards and review local franchise awards) and (3) those that perform an *advisory function* (i.e., keep local governments advised of developments in federal law, technological advances, etc.)...."[3]

On the basis of this system of classification, Hawaii, Connecticut, Nevada, Rhode Island, and Vermont have full preemption statutes while Minnesota, New York, and New Jersey have appellate function statutes. Massachusetts is the only state which has adopted a purely advisory function statute. Wyoming is "technically" an eleventh state to have assumed regulatory control over CATV activities by virtue of its action to designate CATV systems as public utilities subject to regulation by the state public service commission. This action probably places Wyoming in the full preemption category.

There are several factors which have given the states impetus to exert jurisdiction over this field. One has been the weakness and inadequacy of municipal control in some states. Another has been the jurisdictional problem created when a number of local jurisdictions physically close to one another attempt independent regulation. Such jurisdictional problems often can be resolved only at the state level. Another contributing factor is the fact that the FCC has given all indications that it does not intend to take over the licensing of CATV companies on a national basis, thereby opening the door to the states to move into an area which is being increasingly recognized as having political, social, and economic importance.

*3. **Shifting role of the federal government.*** The federal government's role in the regulation of CATV has shifted in several different directions over the past 10 to 15 years, in response to a great extent to the pressures of the regular television broadcasting industry, and subsequently to the gradually mounting counter-pressures of the CATV industry and other interests.

The first efforts to have the FCC exercise control over CATV were fruitless. A decision handed down by the FCC in April 1959 found there was no basis for it to assert jurisdiction or control over CATV systems. However, in February 1962, the FCC handed down a decision prohibiting a microwave company from transmitting TV signals via microwave to a CATV system, and in April 1965 it asserted

[3]Frederick W. Ford and Lee G. Lovett, "State Regulation of Cable Television, Part I. Current Statutes," *Broadcast Media/Engineering,* June 1974.

jurisdiction over microwave-fed CATV systems. Then, in March 1966, the FCC asserted jurisdiction over all CATV systems and placed severe restrictions on the carriage of distant signals in the top 100 markets in the country (i.e., the major cities throughout the country where approximately 80 percent of the population is located).

In the years that followed, the FCC placed further restrictions on CATV. In June 1968, the FCC ruled that section 214 of the Communications Act required telephone companies to obtain FCC approval prior to undertaking the construction or extension of CATV lines. In the same month, the FCC allowed CATV program originations, but prohibited CATV systems from accepting advertising on any local origination channel. Then, when the federal court in November 1968 upheld a Nevada law giving its public service commission regulatory authority over CATV, the FCC responded by placing a freeze on all CATV. In January 1969, the FCC further restricted the ability of CATV systems to obtain retransmission consent (the equivalent to a copyright clearance). In May 1969, the FCC "clarified" its previous position, increasing appreciably the number of communities to which new restrictions on CATV would apply.

Reversing previous positions, the FCC ruled in October 1969 that all CATV systems could originate their own programming and that all those with 3500 or more subscribers would *have* to originate programming by April 1971. All systems were also allowed to carry advertising. In June 1970, the FCC issued a series of major rulings and rulemaking actions relating to CATV. These proposed a relaxation of restrictions against the importation of distant signals, the establishment of rules governing ownership of CATV systems, joint federal-local regulation of CATV, and the establishment of standards for quality of service by the FCC.

During the period when the FCC was imposing these restrictive rules on CATV, both the U.S. Department of Justice and the President's Task Force on Telecommunications Policy were recommending that the FCC take a more relaxed position in regulating CATV. Since the beginning of 1971, there has been considerable maneuvering going on between and among the FCC, the White House, and Congress, including the appointment by the President of a special White House committee (with several cabinet members as members of the committee) to develop a comprehensive policy concerning CATV, and congressional hearings have been held on the subject.

In 1972, the FCC adopted major new rules. Under these rules, the FCC has set some minimum standards for CATV and imposed some general requirements on CATV systems, but has left licensing and many aspects of regulation to the state and local governments. The provisions of some of these rules are as follows.

a. Classification of CATV markets. For its rulemaking and standard-setting purposes, CATV markets throughout the country are classified into three categories: (1) the top 50 markets, (2) the second 50 top markets (i.e., those from 51 to 100), and (3) all others outside the top 100 markets.

Although according to the industry's means of measurement, Honolulu ranked 83 among the country's metropolitan markets, the Honolulu market has been omitted from the FCC's listing of the top 100 markets. As a consequence of this omission, all of Hawaii is treated under the FCC's rules as falling into the third category.

b. Carrying and importation of broadcast signals. CATV systems in the first 50 markets are authorized to carry the signals of three full network stations and three independent stations, and may in addition carry two additional independent signals, except that if any distant signals are being imported, they must be deducted from this additional allowance. CATV systems in the second 50 markets are authorized to carry three networks and two independent stations, and may also carry two additional

independents subject to the same import restriction as the first 50 group. Below the top 100, authorization is restricted to three network stations and one independent. If the authorized complement of stations is not available within a 35-mile radius, then distant signals can be imported to reach the required level of service.

c. Educational and foreign language broadcasts. All educational stations within 35 miles of a CATV system must be carried by the system and no limits are placed on the number of foreign language signals which a system may carry, except in markets where there may be a station broadcasting predominantly in one foreign language.

d. Program exclusivity. The rules provide nonduplication protection for network and syndicated programs assuring exclusive presentation rights at the time of broadcast. Such protection lasts for one year or for the run of the contract in exclusive contract situations in the top 50 markets. The rules are a bit more flexible for the second 50 group.

e. Operating requirements. All new systems must receive a certificate of compliance from the FCC before beginning operation. Among the requirements for such a certificate is a system franchise and statement of compliance with CATV rules issued by the appropriate state or local licensing authority.

f. Nonbroadcast channels. For the top 100 markets only, a minimum requirement of 20 channels for CATV systems is established. For each broadcast signal carried by CATV systems in these markets, a nonbroadcast channel must also be made available. CATV systems must provide at least three open access channels: (1) public access channel available without charge on a first come, first served basis, (2) a channel for educational use, and (3) a channel for local governmental use. During a developmental period, no charge is to be made for these dedicated channels. Extra channels available in a system may be provided for leased use.

g. Two-way capacity. The FCC requires all CATV systems to have a capacity for return communications on "at least a non-voice basis."

h. Regulation of nonbroadcast channels. Advertising (including political spots), lotteries, and obscene or indecent programs are prohibited from being carried over nonbroadcast channels and cable operators are prohibited from censoring or exercising control over program content presented over the open access channels. Likewise, discrimination in making channels available is prohibited. The same restrictions apply to channels leased to others. In addition, rate schedules are required for leased cables. CATV systems must maintain production facilities for those using the public access channels.

i. Franchises. Subject to some minimum requirements, local authorities are granted responsibility for awarding CATV franchises, for administering such franchises, and for following up on customer complaints about service. The minimum expectations are that (1) franchise actions will be the result of public proceedings, including public notice and public hearings, (2) construction of new systems will begin within one year after the issuance of a certificate of compliance and facilities will be expanded to cover at least 20 percent of the franchise area each succeeding year until full coverage is achieved, (3) franchises generally will not exceed 15 years, and (4) franchise fees will be "reasonable" (i.e., justification must be demonstrated if they exceed 3 percent of the system's gross subscriber revenues). Determination of character qualifications for franchise applicants is delegated fully to the local authorities.

The net result of all these developments, therefore, is to make the regulation of cable television a matter of joint concern and jurisdiction of the federal government (FCC) and of state and local governments.

Development of CATV regulation in Hawaii. One of the most important things to bear in mind about cable television in Hawaii is

the fact that the importation of distant signals is not a matter of concern and does not affect the situation in any way here. This is a result of Hawaii's physical isolation from the rest of the country and the fact that 2500 miles of intervening ocean renders moot the possibility of importing signals from surrounding TV markets. Thus, this subject of intense interest and controversy on the mainland is completely irrelevant to Hawaii.

Two main factors appear to have contributed to the genesis and growth of cable television in Hawaii. The first, and most important, is Hawaii's topography, which, with its mountains and deep valleys, creates numerous areas throughout the islands where broadcast television from the existing transmitters cannot be received or where reception is very poor and unsatisfactory. The second factor is the fact that two major developers of subdivisions in the burgeoning suburbs of Honolulu (i.e. Kaiser-Aetna, Inc., at Hawaii Kai and Castle & Cooke, Inc., at Mililani Town) decided to incorporate CATV on a subdivision-wide basis in their particular developments so as to enhance house sales by offering better TV reception and by avoiding the sprouting of a whole forest of unsightly rooftop antennas within their development areas.

As a result of these two factors, CATV had established a fairly firm foothold in Hawaii by the late 1960's. In this early period, the telephone company became quite actively and deeply involved in the business as a result of its general refusal to make its utility poles and ducts available to the CATV companies for placement of proprietary cables and as a result of its own entry into the construction of cables which it then leased to the CATV companies.

During this initial period, CATV development took place with little notice or interference by regulatory authorities. As long as leased telephone cables were used, the question of use of public rights-of-way was largely avoided by the CATV companies. (The Hawaii Kai and Mililani Town projects included the cable systems in their original development plans.)

1. ***PUC involvement through telephone company action.*** The matter of regulation of CATV did come to the attention of the public utilities commission as early as 1965 when the telephone company filed a tariff covering wide spectrum service (i.e., coaxial cable service) for the CATV companies that were beginning to spring up around the State during this period. In response to a request for a ruling on its jurisdiction in the matter, the commission received an opinion (Opinion No. 65–12, dated April 20, 1965) from the attorney general confirming its right to act on the tariff filing and to exercise jurisdiction over this service provided by the telephone company. It was subsequent to this that the FCC asserted its jurisdiction over wide spectrum service provided by common carriers (i.e., the telephone companies) and, in effect, preempted this area of jurisdiction.

When the FCC imposed rules requiring telephone companies to obtain FCC approval before constructing or extending CATV lines, virtually all further expansion of CATV in Hawaii (outside of Hawaii Kai and Mililani Town) came to an abrupt halt. Although the telephone company filed requests for certificates of public convenience and necessity to expand its wide spectrum services to the CATV companies in Hawaii, two of the companies opposed the requests on the basis that the telephone company was engaging in unfair practices by refusing to enter into pole attachment and duct agreements with CATV companies. The FCC ordered the cessation of all further construction in early 1969 and the matter became bogged down in FCC proceedings which promised to last for several years at a minimum.

The telephone company then decided that it was willing to enter into pole and duct agreements, but, in accordance with the policies of its corporate parent, General Telephone and Electronics Corporation, *only* with duly *licensed* or *franchised* CATV companies. This

move forced the CATV companies to seek some sort of approval from governmental authorities in Hawaii if they hoped for any early opportunity to expand into new areas.

Thus, it was that various proposals were submitted to the 1969 session of the legislature to grant the counties in Hawaii the right to grant and control CATV franchises within their respective boundaries. Recognizing the complex nature of the problem and unable to arrive at any quick decision on the matter, the legislature referred the subject to an interim committee for study and recommendations.

2. Legislative interim committee action. In its study of the matter, the interim committee elicited from the attorney general an opinion (Opinion No. 69–29, dated December 2, 1969) that the public utilities commission already had sufficient authority under chapter 269 of the Hawaii Revised Statutes to exercise jurisdiction over and to regulate CATV systems in Hawaii as public utilities. It also received from the director of regulatory agencies and from the telephone company views to the effect that if regulation were going to be exercised, it should be handled at the state level and through the public utilities commission. The companies themselves, however, preferred having the counties grant franchises. As for the counties, Honolulu and Kauai sought the right to grant franchises, while Maui demurred, and Hawaii favored state control.

In its report, the interim committee found that the CATV industry in Hawaii was not able to expand and develop locally to meet the demands for adequate TV reception throughout the islands due to the regulatory entanglement. The only way out of this entanglement appeared to be the establishment of some sort of franchising system which would enable the CATV companies to (a) construct, maintain, and operate their own CATV systems, (b) enter into pole attachment agreements with the telephone company, and (c) to lease, if they so wished, facilities from the telephone company (i.e., wide spectrum services, which are regulated by the FCC). The committee rejected vesting such franchising authority in the counties and opted instead for state control and regulation.

Having reached this conclusion, the committee then gave consideration as to whether to place such control and regulation under: (a) the public utilities commission, (b) under a separate and permanent CATV commission, or (c) directly under the director of regulatory agencies for a period, pending a final decision between the first two alternatives. The committee decided to recommend the third alternative. The stated reasons for this decision were: (a) in its developmental stage, the CATV industry was characterized "more as a private business enterprise than as a public utility" because of the competition and business risks involved, and (b) the regulation of mass media (radio and television) had traditionally been handled somewhat differently from the regulation of common carriers (telephone and telegraph companies) and CATV had not yet been finally clarified and defined in this context.

An unstated reason, but one appearing to have been a very influential factor in the minds of the committee, was the desire to accelerate the extension of CATV service to poor reception areas which were clamoring for relief, which was accompanied by a lack of confidence that this could be achieved through the public utilities commission with its cumbersome procedures, other interests, and record of performance.

Accordingly, the committee recommended a bill which, among other things, would: (a) vest temporary authority in the director of regulatory agencies to grant franchises to CATV companies and to regulate such companies; (b) create an advisory committee appointed by the governor to assist the director in carrying out his new and large duties and responsibilities; (c) give the director power to exercise surveillance over rates to see that they were reasonable; and (d) give the director authority to determine and enforce rules and regulations relating to (1) adequacy of service, (2) prevention or elimination of unjust discrimination, (3)

abandonment or suspension of service, (4) financial responsibility of CATV companies, (5) safety of operations and equipment, and (6) such other matters as might contribute to the accomplishment of the purposes of the proposed legislation.

The committee's report and draft legislation became the basis of the Hawaii Cable Television Systems Law which was enacted in 1970 (Act 112) and which now appears as chapter 440G of the Hawaii Revised Statutes.

3. Hawaii Cable Television Systems Law. Act 112 of 1970, which now appears as chapter 440G of the Hawaii Revised Statutes, is Hawaii's basic law governing the regulation of the CATV industry in Hawaii.

Although the legislature vested regulatory authority over CATV in the director of regulatory agencies, it reserved unto itself further study of "the issue of whether the eventual regulatory body should be the public utilities commission or some other commission."

The law provides for the issuance of permits to construct, operate, acquire, or extend CATV systems, but grants grandfather rights to CATV systems in operation on or before June 1, 1969. It spells out the requirements for the issuance of permits and provides for public hearings on all permit applications. It provides for filing written complaints with the director and provides that the director, after hearing, can revoke, alter, or suspend a permit on any of the grounds specified in the statute. Under the law, all CATV companies must file their rates and terms and conditions of service with the director. The director is then charged with the duty of maintaining "surveillance over such filed rates . . . to insure . . . [they] are fair both to the public and to the CATV company, taking into account the geographic, topographic, and economic characteristics of the service area and the economics of providing CATV service to subscribers in the service area." The law further grants the director other powers and duties to carry out chapter 440G. These include: (a) rulemaking, (b) approval or disapproval of contracts between CATV and utilities regarding use of utility-owned equipment, (c) visitation of facilities, examination of records, administration of oaths, and compelling submission of evidence and testimony, (d) setting up of staff, (e) conducting of investigations and issuance of orders and decisions, and (f) instituting legal proceedings. Finally, the statute creates a five-member advisory committee, to be appointed by the governor, to advise the director "on all matters affecting the issuance or revocation of CATV permits, the filing of rates by CATV companies, and any other matter within the jurisdiction of this chapter."

4. Department of regulatory agencies followup action on CATV law. Act 112 took effect on June 19, 1970 and the department of regulatory agencies moved forthwith to implement the provisions of the new CATV legislation. The new cable television division was created and it immediately began drafting rules and regulations governing its own practices and procedures, setting forth the service and operations requirements to be met by the cable television companies, and establishing fees to be paid by such companies. By November 1970, it was able to advertise public hearings on the proposed procedures and in the following month to hold the public hearings on all islands. The full set of rules and regulations went into effect on November 15, 1971.[4] The rules have subsequently been amended, effective March 23, 1973. The rules are said to be patterned fairly closely after those of the State of Nevada, one of the pioneers in state regulation of CATV.

During this initial period, the division was also busily engaged in the development of criteria, forms, etc., for the determination of service areas, for the receipt and consideration of applications, and for the granting of permits. In determining service areas, the division decided to use census tracts as the basis for setting boundaries so that the data available for the

[4]The director's approval of the rules and regulations is dated August 18, 1971.

tracts could be readily applied to CATV service areas. The grandfathered areas were recognized by permit in 1970 and permits for many new areas were granted in 1971. Five of the seven companies with grandfather rights have also been given additional new areas. Three new companies with all new areas have been given permits. Permits for most areas in the State with any concentrations of population have been granted, but portions of the State still remained uncovered (i.e., portions of the island of Hawaii, all of Maui except the Lahaina district, a small portion of Kauai, and the islands of Molokai, Lanai, and Niihau).

*5. **Present status of CATV and its regulation in Hawaii.*** As of the time of this study, there were ten CATV companies in Hawaii with assigned permit operating areas. Table 11.1 has been prepared to provide some summary data on these ten companies and systems, including the names of the companies, their principal stockholders, when they started in Hawaii, their service areas (both grandfathered and new), when they are scheduled to be completed, the number of cable miles to be included in their completed systems, the percentage of cable mileage completed, the number of potential subscribers of each based upon 1970 census data, and the percentage of penetration achieved to date (i.e., the number of actual subscribers versus the potential available in their service areas). Due to rapid population changes in some areas, the penetration figure may be misleading in some cases.

The systems range in size from a low of 25 miles of cable and less than 1,000 potential subscribers to a high of 572 miles of cable and 89,000 potential subscribers. The oldest of the companies date from 1961 (Kaiser Teleprompter of Hawaii, Inc., and Pacific Network, Inc.); the six newest from 1969. Several of the companies have large corporate backing (Kaiser Teleprompter and Oceanic Cablevision), but many of them are characterized by ownership by one or several wealthy entrepreneurs. (Comtec falls somewhere in between, being owned by the Realty Investment Company, a Hilo-based miniconglomerate.) Some of the smaller companies are well along toward the completion of their systems. Several of the companies, including the one with the largest permit rights, still have quite a large cable construction program ahead of them before they will be able to serve their service areas adequately. As a result, a large proportion of the total potential business in the service areas of these companies remains untapped at present.

Some recent developments regarding CATV companies in Hawaii should be noted. *First,* two companies have filed applications to serve the portion of the island of Maui not already under permit. At the time of the writing of this report, the applications were still pending before the cable television division of the department of regulatory agencies. *Second,* in 1973, the permit rights of Oceanic Cablevision, Inc., covering the Mililani, central Oahu, and Waikiki service areas were transferred to Cablevision Holdings, Inc. The areas now serviced by Cablevision Holdings comprise nearly one-half of the State's total potential viewing audience.

The division has processed ten tariff revision applications since 1971 to April 30, 1975. The tariff revisions involved rate increases, rates for new services, adjustments for excise tax, rule changes, or a combination of these items. In all of these cases, the director of regulatory agencies has granted "interim approval" of the tariff revisions requested.

To give added dimension to an understanding of the present status of the CATV industry, table 11.2 has been prepared to show several other factors relating to the existing CATV companies. One of these is the rates charged subscribers for the various services provided by the companies. Another is financial data concerning operating expenses, capital expenditures, and operating revenues for the years 1970–71, 1971–72, 1972–73, and 1973–74. Also shown is the type of cable systems utilized prior to July 1, 1974. As of

Table 11.1

Status of CATV Companies and Systems in Hawaii as of June 30, 1974

Company (island) and principal stockholders[1]	Date started	Service areas[2]		Completion date for full system	Total cable miles in system	% cable miles completed		No. of potential subscribers[4]	No. of subscribers	% penetration[5]
		Grandfathered[3]	New			FY 1972-73	FY 1973-74		FY 1973-74	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%	12,762	2,366	18.5%
Kaiser Teleprompter, Inc. (Oahu) Kaiser-Aetna, Hawaii Kai (50%) Teleprompter Corporation (50%)	2/14/61	Hawaii Kai	–	None	128	84%	87%	5,829	4,667	80.1%
Cablevision, Inc. (Oahu) Kenneth F. Brown (51%) Gene Piety (49%)	7/31/63	Waianae	Ewa Ewa Beach	8/12/73	95	84%	96%	11,678	4,708	40.3%
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%	62,505	7,578	12.1%
Cablevision Holdings, Inc. (Oahu)[6] 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%	109,518	1,800	1.6%
COMTEC, Inc. (Hawaii) Realty Investment Company (100%)	7/16/69	–	South Hilo	6/10/73	115	57%	100%	14,276	1,262	8.8%
CAMP, Inc. (Hawaii) Robert S. Anderson (100%)	10/31/69	–	Kau	6/10/73	25	100%	100%	1,430	522	36.5%
West Hawaii CableVision, Ltd. (Hawaii) The Hawaii Land Corporation (100%)	9/14/73	–	South Kohala North Kona South Kona	12/14/74	177	–	11%	4,691	–	–
Hawaiian 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%	2,535	2,082	82.1%
Derby Cablevision, Inc. (Kauai) Estate of Marshall T. Derby (100%)	4/ 7/69	Kalaheo	Kawaihou Lihue Waimea	10/ 1/73	135	55%	Not available	12,022	1,150	9.6%

[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 1974 revised census data.

[5] Penetration represents percent of subscribers relative to number of potential subscribers.

[6] 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.

Table 11.2

Rates, Expenditures (Operating and Capital), Revenues, and Plant Type of CATV Companies in Hawaii During the Fiscal Years 1970–71, 1971–72, 1972–73, and 1973–74

	Pacific Network, Inc. (Oahu)	Kaiser–Teleprompter Inc. (Oahu)	Cablevision Inc. (Oahu)	TV Systems, Inc. (Oahu)	Cablevision Holdings, Inc. (Oahu)	COMTEC, Inc. (Hawaii)	CAMP, Inc. (Hawaii)	West Hawaii Cablevision, Ltd. (Hawaii)	Hawaiian Cablevision Corp. (Maui)	Derby Cablevision, Inc. (Kauai)
Rates										
Installation cost . . .	$75	$5	$15	$65	$30.00	$30	$45	$27.50	$27.50	$65.00
First outlet cost/mo. . .	6	6	8	6	7.75	8	10	10.00	8.25	7.95
Extra outlet cost/mo. .	1	1	none	1	2.75	1	1	1.00	1.10	1.00
FM outlet cost/mo. . .	N/A	1	N/A	0	1.00	1	N/A	1.00	1.10	1.00
Revenues (in 000)										
FY 1970–71 . . .	$176	260	292	228	99	–	–	N/A	127	–
FY 1971–72 . . .	178	285	313	246	97	–	–	N/A	153	2
FY 1972–73	195	343	343	294	140	–	67	–	197	25
FY 1973–74 . . .	199	367	385	561	141	126	78	–	219	72
Expenditures (in 000)										
Operating										
FY 1970–71 . . .	$135	186	271	174	196	–	–	N/A	139	–
FY 1971–72 . . .	155	327	306	197	334	–	–	N/A	154	152
FY 1972–73 . . .	187	381	345	258	334	–	81	–	205	147
FY 1973–74 . . .	225	347	413	605	300	188	82	–	180	137
Capital expenditures										
FY 1970–71 . . .	5	298	12	3	41	2	–	N/A	35	317
FY 1971–72 . . .	–	114	4	28	248	69	–	N/A	13	118
FY 1972–73 . . .	3	308	17	60	123	1,157	226	–	76	203
FY 1973–74 . . .	154	349	289	955	1,260	501	–	–	75	148
Original plant type[1]	leaseback	proprietary	hybrid	hybrid	hybrid	proprietary	proprietary	proprietary	hybrid	proprietary

N/A = Not applicable.

NOTE: There is no consistency among fiscal years for the ten CATV companies due to varying fiscal years for the different companies. In addition, the first years shown for some companies represent totals for pre-operating periods covering more than one year.

[1]By May 16, 1974, all ten companies were using a proprietary-type system.

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

May 16, 1974, all systems in the State are proprietary systems.

Table 11.2 indicates considerable variation among the rates charged by the various CATV companies. While some variations might well be expected as a result of differences in areas and populations served, the present magnitude of the variations is difficult to explain. For example, installation charges between different companies range from $5 to $75 on Oahu and from $27.50 to $65 on the neighbor islands. There is more consistency among the companies in their monthly service charges, but even in this area there is a fairly high percentage difference between the lowest and the highest rates.

Table 11.2 also indicates that during the first four years of regulation the CATV companies operating in Hawaii were still relatively small enterprises in financial terms, especially when compared with the utilities subject to regulation by the PUC. For example, by 1973–74, only one of the ten companies exceeded $500,000 in annual operating revenues and three received less than $100,000. Several of the companies, however, had made capital expenditures well in excess of $1 million. Moreover, in total the CATV companies represent a fair-sized industry in Hawaii. Reported profits for this initial period have not been substantial for the industry, however, but this is not to be unexpected during a time of initial investment and the startup of operations.

Table 11.2 also shows that prior to July 1974 one system was entirely dependent upon leaseback cables while four others utilized hybrid systems and the remaining five were entirely proprietary. Now all are proprietary due primarily to a regulatory requirement imposed by the director of regulatory agencies.

Chapter 12

PRESENT REGULATION OF CABLE TELEVISION IN HAWAII

The preceding chapter portrayed the general circumstances within which CATV regulation operates at the state level in Hawaii. In this chapter we describe and discuss the implementation of regulation of CATV in Hawaii as it exists at present.

Summary of Findings

1. The legislature in enacting the CATV law urged the CATV regulators to expand as rapidly as possible the availability of CATV services throughout the State. In accordance with this urging, the CATV regulators have assigned top priority attention to this expansion, and despite limited resources they have moved fairly expeditiously to attain this objective.

2. However, by placing overwhelming emphasis on the early extension of CATV services, the CATV regulators have given less attention to other matters of regulatory concern. As a consequence:

a. There are serious shortcomings in the present approach to and handling of such matters as ratemaking, standard-setting, complaint-handling, consumer credit, representation before the FCC, and ownership of CATV systems.

b. The CATV regulators have yet to come to grips with other major regulatory issues concerning CATV, including access to CATV programming, fiscal responsibilities of CATV systems, and the safeguarding of individual rights against electronic intrusions into areas of personal privacy.

3. There is no reason why CATV regulation should be kept separate and apart from the regulation of other public utilities or why funding for the program of CATV regulation should be any different from the funding for the regulation of other public utilities.

Conditioning Factors for Assessing and the Focus of Assessment of Performance in Regulating CATV

When assessing performance in any area of activity, it is important to bear in mind the conditioning factors affecting the activity (i.e., those influences over which the parties involved have little or no direct control). These conditioning factors affecting CATV regulation in Hawaii are set forth below, followed by a description of the focus of the audit in assessing performance in the regulation of CATV.

Conditioning factors. Among the factors which have been highly influential upon or have had a limiting effect upon the regulation of CATV in Hawaii, the following are felt to be the most significant.

1. New activity with limited resources. CATV regulation is a relatively new activity for the State of Hawaii and is still in the formative

stages, and the resources devoted to it have been extremely limited. The CATV unit within the department of regulatory agencies is only about five years old. At the present time, the full staff still consists only of four persons, including one stenographer. Moreover, none of these persons had any real background or experience in cable television prior to joining the division. Thus, in addition to organizing a whole new operation, these staff members have had to engage in considerable on-the-job training to become acquainted with the many aspects of the field in which they are functioning.

*2. **Little advance preparation by the State to take on this newly emphasized function.*** Closely related to the above factor is the fact that the State of Hawaii was very ill-prepared to assume this newly emphasized function prior to the enactment of the Hawaii CATV law in 1970. It had laid very little groundwork upon which to build this new program, despite the fact that cable television had been around for some time and even though the need for some sort of regulation had begun to emerge long before the adoption of Act 112 in 1970.

Logically, the PUC and PUD were the parties to become concerned with this matter. However, no initiative, no study, and no preparation relating to CATV had been undertaken by the commission or staff before 1970. They were by no means unique in this respect, of course; regulatory bodies around the country (including the FCC) were either ignoring the problems and issues associated with CATV or were floundering badly as to what to do about this rather new and unusual industry.

Deficiencies aside, the main point is that, because of little or no advance planning, there were no clearly established administrative patterns or procedures for the administrators to follow when regulatory control was extended over CATV.

*3. **Impetus for early expansion of services throughout the State.*** The legislature in enacting the cable television law expressed some urgency over the need to provide for a rapid and orderly expansion of CATV service in many areas of the State, especially in those areas suffering from poor off-the-air reception of television broadcasts. Since the inception of the program, residents of these areas have continued to demand CATV service and to urge early action to achieve this end. Thus, the division and director of regulatory agencies have had a strong impetus to move as expeditiously as possible to assure the expansion of CATV into areas not previously enjoying this service.

*4. **Involvement of many varied interests in CATV.*** This new law has had to be implemented in an economic, social, and political environment in which there are many different and sometimes conflicting interests jostling for position, seeking attention and consideration, and generally applying heat to keep the pot boiling (perhaps the pressure cooker would be a more apt comparison in view of television's great popularity and people's emotional feelings about receiving a clear picture on their home television sets and in view of the real and assumed advantages to be gained from the control of or access to CATV). In other words, the administrators of this program have had to operate in a rather vigorous real life situation and not some isolated, academic, or test tube situation.

Focus of evaluation. In our evaluation of the performance in the regulation of CATV, the following were felt to be the most pertinent and appropriate subjects of attention.

*1. **Early statewide expansion of CATV services.*** As noted, Act 112 in 1970 separated CATV regulation from the rest of the public utilities program primarily on the grounds that rapid and orderly expansion of CATV systems throughout the State required special attention from an agency especially designated to handle this one area of regulation. The legislation recognized, however, that once this initial need had been met it might well be appropriate and expedient to merge the activity with the public

utilities program. This being the case, it is only reasonable to try to determine how well the cable television division (CTD) has performed in meeting the objective of early widespread coverage of CATV services throughout the State of Hawaii.

2. ***Economic regulation of CATV.*** The primary focus of the public utilities program is upon the economic regulation of utility services, with particular regard to balancing the interests of the industry and the consumers. It is reasonably safe to assume that, had the PUC and PUD retained jurisdiction over CATV, their approach would have been the traditional one of ratemaking, standard-setting, complaint-handling, etc. Taking this likelihood into consideration, it is appropriate to assess how well the CATV regulators have performed in these same respects.

3. ***Other policy issues in the area of CATV.*** In the discussion of nationwide trends relating to the regulation of CATV, many questions have arisen concerning CATV regulation; these fall into four major issue areas. One relates to the level of government at which such regulation should occur. As we have seen, the federal government has recently tended to withdraw somewhat from across-the-board CATV regulation and to leave much of the regulatory control up to other levels of government to handle. With the passage of Act 112 in 1970, the State of Hawaii has acted to make CATV regulation a matter primarily of state concern and to exclude its local governments from becoming involved in this field of governmental activity.

The other major issues concern: (a) access to CATV programming, (b) control over the fiscal operations of CATV systems, and (c) the safeguarding of individual rights against electronic intrusions into areas of personal privacy. It is appropriate that an assessment be made of the performance of Hawaii's CATV regulators with respect to these issue areas.

4. ***Organization for CATV regulation.*** In the law separating CATV regulation from other utility regulation and placing it under the director of regulatory agencies, the legislature reserved to itself the right to make a subsequent evaluation of this separation to determine whether it should be retained or whether CATV regulation should be merged with the public utilities program. In view of this specifically stated expression of legislative intent, any assessment of CATV regulation in Hawaii which did not deal with this particular question would be incomplete. Further, the CATV statute at present expects the revenues derived from the regulation of CATV to offset part or all of the costs of such regulation. How well this expectation is being fulfilled and how well the CATV regulators are managing their finances are also worthy of examination.

Early Statewide Expansion of CATV Services

With respect to the legislature's expressed desire that an early statewide expansion of CATV systems be achieved, we have found that the director of regulatory agencies and the CTD have given this matter top priority and moved fairly expeditiously to attain the objective specified by the legislature.

Taking into consideration the conditioning factors listed above, it would not have been surprising if we had found little action or forward motion in the relatively short time since the new CATV law was put on the books. Yet, much has actually been accomplished.

New rules and regulations have been formulated and adopted in a fairly prompt and expeditious manner. A whole series of applications for permits has been processed, and many different decisions have been made regarding the allocation of service areas and the granting of permits to operate in such service areas. Expansion, development, and construction of new cable facilities are proceeding apace in many areas around the State, and within the next several years a large

proportion of the State's population probably will be able to enjoy the benefits of cable television service. Even this much delay probably is due more to the failure of the CATV operators to plan well enough and obtain sufficient financing than to any deficiency and delay on the part of the regulatory agency.

To summarize the extent of CATV coverage and penetration that had been achieved as of December 31, 1974, we prepared table 12.1. Among other things, this table shows that approximately 87 percent of the housing units in the State are located in areas where permits or franchises to operate CATV systems have been granted by the director of regulatory agencies. Moreover, it shows that, of the ten approved systems, five are essentially completed. The completed systems include two on the island of Oahu (those serving Waianae-Ewa-Ewa Beach and Hawaii Kai), two on the island of Hawaii (those serving the Ka'u and South Hilo districts), and one on the island of Maui (serving the Lahaina district). In aggregate, the remaining five systems have completed approximately 523 miles of cable, or 38 percent of the 1373 miles to which they are committed. Three of the five systems were scheduled for completion by August and October 1973, but failed to meet these initially prescribed deadlines. Extensions of the deadlines were requested but were still pending before the director in May 1975. The delays in the two systems on Oahu were caused primarily by the companies themselves and were related to matters of reorganizing the companies and financing their construction programs. On Kauai, the delay was the result of problems encountered with regard to noise interference, microwave links, and bedrock (the system is a completely underground one). The remaining two incomplete systems were not granted permits until 1973 and were not scheduled to be completed until 1974 and early 1975.

Also pending before the CTD are two applications for the right to provide service to the remainder of the island of Maui outside of the Lahaina district. When a permit is granted for this area, the statewide permit coverage will increase to 97 percent. This will leave uncovered only sparsely populated areas on Hawaii and Kauai and the islands of Lanai, Molokai, and Niihau.

On the whole, therefore, it may be said that the CATV regulators in Hawaii have paid keen attention to the need to assure widespread coverage of CATV services throughout the State. Indeed, if anything, it can probably be said that too much rather than too little emphasis has been given to this matter as an objective for the program. The declared objective of the CATV division is to have the island of Oahu fully wired by the end of 1975 and to have a completed and fully operating network of CATV systems blanketing the entire State by the end of 1978.

This is not to say that the administrators of the program have not been aware of other issues. They have. For example, they have been taking some steps at least to make sure that some of the other potentials claimed for CATV can be realized when and if they become feasible realities. Thus, the CATV companies have been required to have a minimum cable capacity of 20 channels and to have a nonvoice-return communications capability by August 12, 1977[1] despite the fact that there is no immediate need for either requirement, and even though such restrictions may have caused some delay in the actual expansion of facilities to new areas in the State. Likewise, free drops are required for educational institutions, and the staff of the CATV division has been working with the department of education and the university of Hawaii system toward the development of some plan for educational use of CATV, even though neither of these things contribute directly to the early construction of additional miles of coaxial cables. However, the CTD has avoided all of those issues and controversies which, if met head-on, might place obstacles in the way of expanding CATV throughout the State or seriously jeopardize their timetable for the

[1]At the present time, three systems have 20-channel capacity. Of the remaining seven, only one does not have a 20-channel capacity in any part of its system. Most of the incomplete systems have partial 20-channel capacity.

Table 12.1

Statewide Coverage and Penetration of CATV Facilities and Services in Permit Areas
As of December 31, 1974 by Housing Units (Subscriptions) in Each County[1]

	Statewide	City & County of Honolulu	County of Hawaii	County of Maui	County of Kauai
Total housing units[2]	267,624	211,145	25,365	20,101	11,013
Housing units (potential subscribers) in permit areas	237,246	202,292	20,397	2,535	10,847
Housing units outside of permit areas	30,378	8,853	4,968	17,566	166
% of coverage in permit areas to total housing units	87%	96%	80%	13%	99%
% of housing units outside of permit areas	13%	4%[3]	20%[4]	87%[5]	1%[6]
Actual subscriptions (households) in permit areas	34,041	25,979	4,200	2,342	1,300
% of penetration in permit areas[7]	14%	13%	21%	92%	12%
% of penetration in total housing units	13%	13%	17%	12%	12%
Total cable miles in permit areas[8]	1,771	1,284	317	35	135
No. of completed cable miles[9]	1,007	581	287	39	100
% of completion in permit areas	57%	45%	91%	111%	74%

[1] All figures are estimates except for subscriptions and cable miles completed by December 31, 1974 since housing units are constantly being added. Projections used are based on various reports by the department of planning and economic development and Honolulu Redevelopment Agency.

[2] Housing unit is a house, an apartment, a group of rooms, or a single room occupied or intended as separate living quarters. Excluded are military barracks, institutions, boarding houses, dormitories, ships, and similar accommodations. Data are based on HRA's report on housing. See sources below.

[3] The City & County of Honolulu has 100 percent coverage since all permit areas have been assigned. The figures above show a 4 percent difference between the two data sources used.

[4] Hawaii County has the north Kohala, Puna, north Hilo, and Hamakua districts to be assigned.

[5] Maui County has only the Lahaina district covered.

[6] Kauai has Hanalei and Niihau to be covered.

[7] Percent penetration is based on a comparison of the number of household subscriptions to the numbers of house units in the permit areas (1974 census data).

[8] Cable miles are indicators in determining the scope of work toward completion of a system. (Cable miles for each system are identified at the time of application for permit areas.) This is primarily based on estimates made in 1971.

[9] Number of cable miles includes some duplication for one Oahu system. Without duplications, the number of cable miles completed on Oahu is 487 cable miles and statewide is 913 cable miles completed. On Maui, the actual number of completed cable miles (39 miles) exceeds the number indicated in the application for permit areas.

Sources:
1) CATV division, department of regulatory agencies, State of Hawaii.
2) Honolulu redevelopment agency, city & county of Honolulu, redevelopment & housing research, report no. 34, July 1974.
3) Department of planning and economic development, *Population and Housing Unit Estimates for Oahu,* report CTC–28, February 28, 1975.

completion of a statewide system. These issues are discussed below.

Economic Regulation of CATV

Viewing CATV regulation as being comparable to the PUC's economic regulation of utility services, we have assessed the performance of Hawaii's CATV regulators (including the director of regulatory agencies as well as the staff of the CTD) relative to such matters as ratemaking, standard-setting and enforcement, complaint-handling, regulation of credit practices, representation of Hawaii's interests before federal agencies, and application of Hawaii's antitrust law to the CATV field. The results of this assessment are set forth below.

Deficiencies in ratemaking. Ratemaking is, of course, one of the most basic elements of economic regulation. However, despite five years of regulating Hawaii's CATV industry, the CATV regulators have not yet engaged in any ratemaking processes which might be considered comparable to those followed by the PUC or even in conformance with the requirements of the CATV law and the CTD's own rules and regulations. This is true even though numerous rate and tariff matters have come before the regulators and have been acted on by them. Since 1971, at least ten tariff revisions in CATV tariffs have been approved on an interim basis by the director of regulatory agencies and several more are now pending before the CTD. Of the ten approved tariff changes, at least three were rate increases for CATV subscribers. The pending cases also involve rate increases. Hence, ratemaking is a matter of direct, vital, and immediate concern to all parties involved in the regulatory process.

Despite the significance and immediacy ot ratemaking, the CATV regulators have taken little action to formulate plans or prepare in other ways for carrying out ratemaking in the CATV field. Although giving some attention to rates and the impact they have on subscribers, the prevailing attitude is that ratemaking is not a matter requiring priority consideration and that full-blown rate proceedings patterned on the PUC model are something which should await the completion of installation of CATV cables throughout the State. Based upon current projections, this will not be until sometime after 1977. This is because existing permittees have until August 1977 to comply with permit requirements and some areas of the State have yet to be assigned, including most of the island of Maui, small areas on the islands of Kauai and Hawaii, and the entire islands of Lanai and Molokai. In the meantime, tariff and rate matters are being dealt with on an ad hoc, piecemeal, and "interim" basis. Many of the rates already approved on an interim basis have been in effect for four years or more.

There is a need to inaugurate a program of thorough and comprehensive examinations of CATV rates. Some of the more significant problems requiring attention are as follows:

*1. **Unclear agency role.*** One problem existing at present with regard to CATV ratemaking is the fact that two seemingly incompatible functions have been combined under the CATV regulators with the result that their intended roles are unclear. The director of regulatory agencies is vested with full decision-making powers over CATV rates under the CATV law, while at the same time he is designated a protector of consumers under the general statute establishing the department of regulatory agencies. Already discussed with regard to the PUC and PUD is the need to separate the decision-making function from the consumer advocate function. In the case of public utility regulation, a start has been made toward the separation of the two and the process only needs to be completed. In the area of CATV regulation, however, the two functions have been completely intermixed and no attempt has been initiated to distinguish and differentiate between them. One result this situation is likely to produce is that the CTD staff will be torn between the need to act as an impartial judge between the conflicting claims of CATV companies and their customers and the

responsibility to be a strong and forceful advocate of consumer interests.

2. Inadequate hearing procedures. In preceding chapters we have pointed out that elaborate procedural requirements are prescribed for ratemaking in PUC cases, especially the hearing requirements relating to rate increase requests. These requirements derive both from the public utilities law itself (HRS, chapter 269) and from the Hawaii Administrative Procedure Act (HRS, chapter 91).

Up to now, the procedural requirements governing CATV rate cases have been much less elaborate and rigorous. Indeed, in many cases—including ones involving rate increases—there have been no formal hearings at all. For instance, of the three tariff changes involving rate increases approved since 1971, only one was subjected to a public hearing before the increase was granted. One was approved without any sort of hearing at all. The justification for this increase was that the extra amount was necessary to cover the company's franchise fee and general excise tax payments which are based upon subscriber revenues. In the third case, the increase was granted not as a result of any sort of rate hearing but as a result of a hearing to decide which of several applicants would be granted a new permit area on the island of Oahu. The winning applicant in the permit case had indicated that an increase in subscriber rates over what was being charged in an area already served would be necessary to cover the cost of the use of converters to maximize channel capacity and eliminate "ghosting" in picture reception in certain areas. Although the applicant in its testimony referred to the fact that a separate rate proceeding would probably be in order to consider this rate increase, the CATV regulators felt that the testimony provided in the permit proceeding was sufficient and granted the increase on this basis without further hearings or proceedings.

a. Weakness in statute. The omissions in the procedural requirements covering CATV ratemaking are traceable in part to the wording of the provisions of the CATV law on this subject. Unlike chapter 269, which specifies ratemaking procedures in great detail, chapter 440G is relatively brief on the subject. The pertinent provisions are all contained in section 440G–11, which reads as follows:

> **"Rate, filed with director; approval.** The director shall require each CATV company to submit a schedule of its rates and all terms and conditions of service in such form and on such notice as the director may prescribe. The duty of the director shall be to maintain surveillance over such filed rates and terms and conditions of service to insure that the rates and terms and conditions of service are fair both to the public and to the CATV company, taking into account the geographic, topographic, and economic characteristics of the service area and the economics of providing CATV service to subscribers in the service area.
>
> "Any disagreement between the director and a CATV company over its filed schedule or rates shall be resolved by the director after a hearing has been held to afford the CATV company an opportunity to explain the basis of its filed schedule of rates. After a hearing, the director shall make a determination which is final and conclusive subject only to any rights of appeal as may be provided by statute."

Under these provisions, wide discretion is vested in the director of regulatory agencies. The only situation where section 440G–11 requires a hearing is when there is a disagreement between the director and a CATV company over proposed rates. In such cases, only the CATV company is afforded an opportunity to present its views under the terms of section 440G–11. Otherwise, the CATV law is silent on the subject of rate case hearings.

b. Weakness in rules. Reflecting the provisions of section 440G–11, the rules and regulations of the department of regulatory agencies relating to CATV regulation are similarly brief regarding ratemaking proceedings and the hearing requirements involved in such proceedings. Whether or not hearings will be held on rate and tariff matters is left almost completely to the discretion of the director. No provision is made for public participation in the process. Notice of proposed changes to subscribers is not required other than through paid legal notices published in the newspapers which frequently escape notice on the part of the customers who may be affected. As a result, subscribers may not become aware of changes in rates until after they have been approved and put into effect. The only hearing required is when a CATV company may disagree with the director's decision on a rate application. All of this is apparently based on the assumption that section 440G–11 is the only applicable statutory provision and that departmental rules and regulations need go no further than this section.

c. Relevance of APA. Chapter 440G is not the only law governing the actions and administrative procedures of the CATV regulators. Just as the PUC and other public agencies in Hawaii are subject to the Hawaii Administrative Procedure Act (APA), the CTD and the director of regulatory agencies when exercising their regulatory authority over the CATV industry, including their ratemaking power, are also covered by the provisions of the APA. They are granted no clear exemption from its operation. If there is any question at all as to whether or not the APA is applicable to the CATV ratemaking process, fairness and reasonableness would dictate that the requirements of the APA be observed whenever CATV rate applications are being considered and acted upon. This is because the APA is designed to protect the interests of all parties in contested cases and to make agency decisions as fair, reasonable, and impartial as possible.

Under the APA, public hearings are required in all contested cases following proper legal notice. During such hearings all affected parties are assured of the right to present evidence and arguments on all the issues involved, to retain legal counsel, to cross-examine witnesses, and to examine all relevant documents and evidence. Formal records are also required to be established and maintained in such proceedings, and agencies must render formal decisions and orders based upon such records. Under the present CATV rules and regulations, however, many of these requirements are not being met. Through practice, the CATV regulators are now beginning to move closer to an adherence to APA requirements, but this is in response to public reaction against recently proposed rate increases rather than to a recognition that the provisions of the APA should be controlling in all such situations.

For the best interests of all concerned, it would appear that the APA should be followed in all pending and future cases and that the rules and regulations governing CATV should be amended accordingly.

3. Inconsistent and nonconforming action on tariff matters. Besides not providing for adequate public participation in rate proceedings, the actions taken by the regulators on CATV rate and tariff matters have been procedurally inconsistent and frequently not in conformance with existing legal and procedural requirements. Some illustrations follow.

a. Procedural inconsistencies in tariff filings. Initial tariff filings have been handled in a manner different from that for subsequent tariff changes while at the same time there has been a difference in the handling of initial tariff filings for "grandfathered" service areas and for new service areas. In the case of initial tariff filings, no formal approval action by the director has been taken. The filings have simply been accepted by the CTD and presumed by all parties to be in effect by virtue of the fact that the director has taken no formal action to

disapprove them. Subsequent filings for tariff changes, however, have resulted in the issuance of formal orders by the director indicating his actions on the requests. For "grandfathered" areas, initial tariff filings have been processed on a completely separate basis from the issuance of permits. For new service areas, however, proposed tariffs have been included among the various materials submitted as part of the permit applications. Permit approvals for new service areas have carried with them an implicit approval of the rates and tariffs proposed by the applicants receiving the permits.

b. "Interim" nature of tariffs. A somewhat unusual action taken on CATV tariffs has been the persistent practice of considering and designating approvals as being "interim" in nature. In the case of initial tariff filings, the regulators say they consider them all to be interim but there is no formal indication of this anywhere in the records of the agency. It is not known whether all the CATV companies affected also consider their rates and tariffs to be approved only on an interim basis. In the ten tariff change cases where decisions and orders have been issued, the formal documents indicate the director is only granting interim approval. The CATV rules and regulations, however, make no provisions whatsoever for interim rate and tariff approvals. Moreover, there is no indication of any time limits on such interim approvals. Hence, some of them have already been in effect for four or more years and all may remain in effect indefinitely.

c. No determination of reasonableness of rates. It appears that none of the CATV rates and tariffs now in effect in Hawaii has been approved by the director of regulatory agencies in conformance with legal requirements. Section 440G–11 of the CATV law imposes the duty upon the director to "maintain surveillance over . . . filed rates and terms and conditions of service to insure that [they] . . . are fair both to the public and to the CATV company . . . ." Rule 18.1 of the CATV rules and regulations calls for CATV companies to submit financial data in sufficient detail to demonstrate that their "rates are just and reasonable," and places upon the CATV companies the "burden of proof . . . that rates are reasonable." Despite these provisions, the director of regulatory agencies has not made any determination regarding the fairness and reasonableness of any of the rates now being charged CATV customers in Hawaii.

In the case of all initial tariff filings, as noted above, no formal action of any kind has been taken by the director, and the CTD staff readily concedes that no thorough scrutiny was made of the indicated rates and tariffs to test their reasonableness and fairness. In the ten tariff change cases where decisions and orders have been issued, the decisions and orders specifically indicate that the director in granting interim approval has made no determination concerning the fairness and reasonableness of the interim rates and tariffs. Thus, it is impossible at the present time to know whether any of the rates now being charged can be supported on any rational, reasonable, and equitable basis. The rates now being charged for various CATV services are widely divergent among the different companies operating within the State, but there is no way to determine whether such differences are justified.

d. Other procedural discrepancies. Other procedural discrepancies were also noted in the course of this audit. For example, we found that the form in which tariff filings are submitted varies quite widely. Some requests closely approximate the very formal and detailed submissions required by the PUC while others are set forth in quite simple letter form and the remainder ranges in between. We also found that in some cases the formal tariff sheets filed by the companies do not conform either with the detailed requirements set forth in the rules and regulations or with the terms of the pertinent decision and order issued by the director of regulatory agencies. In both cases it would appear that greater attention needs to be given to ensuring proper adherence to procedural requirements.

4. Lack of guidelines and detailed procedures for considering rate applications. A major factor contributing to the above-listed problems as well as the overall problem of ratemaking is the fact that the CATV regulators have not yet formulated in their own minds any clear concept of or approach to the job of ratemaking. As a result, they lack completely any guidelines for use in the consideration of rate and tariff requests and they have failed to develop any detailed procedures outlining for all concerned how such matters are to be handled. Thus, neither the regulators nor those being regulated know from case to case how rate matters will be handled, what information will be required, and on what basis decisions will be rendered. At our request, the CTD staff did prepare a written summary of the procedure which they indicate is generally followed in the processing of applications for approval of rates, charges, and terms of service; but this was the first time the process had been reduced to writing and our review of the cases handled up to now indicates there have been many departures from this very generalized summary.

Due to the fact that all rates and tariff changes have been uncontested and have been approved as submitted up to now, the regulators have not been compelled to explain and justify their actions. The regulators have not developed any philosophy of ratemaking nor have they established any criteria upon which judgments might be based. As indicated previously, they seem to view real ratemaking as something which can be undertaken sometime in the indefinite and hazy future. In the meantime, they appear to be relying entirely upon the hope that rate increase requests will not be too frequent or too great and that pressures can be relieved through the piecemeal interim approach to rate approvals. This is, of course, no way for the regulators to fulfill their ratemaking responsibilities.

Insufficient operational standards for CATV. The rules and regulations adopted by the CTD do contain some standards which all CATV companies are supposed to meet. Some of these are technical standards, which closely parallel the technical standards established by the FCC in 1972. The division has adopted by reference the safety standards of the U.S. Department of Commerce relative to the installation and maintenance of electric and communications lines. The division has adopted the FCC's standards concerning minimum cable capacity and the allocation of cable channels for specified purposes (i.e., free public access channels, etc.). However, provisions relating to quality of service are relatively sparse and generally quite vague.

There is a requirement that service be continuous, for example, and that minor outages be corrected within 24 hours and major outages as soon as possible. However, the rules are silent as to steps the companies should take to receive and respond to trouble calls. Taking into consideration that most TV viewing occurs in the evening and the fact that many shows, if missed, probably are missed permanently, it would seem that perhaps the rules should impose some requirements geared especially to television. The only remedy at present under the rules is a requirement that bills be prorated for any outages exceeding 24 hours, but only up to the amount of the regular monthly bill.

It should be noted, too, that some standards are set by the "back door" route of being incorporated in the conditions set forth in the permits issued by the agency rather than being included in general rules and regulations. When this is done, the actions of the regulators can be arbitrary and taken without a public hearing and without consideration of the issues involved. It is by this means that a "standard" has been put into effect which states that each permittee "shall acquire and possess . . . its own distribution and origination systems and maintain the same, subject to the inspection and approval of the Director of Regulatory Agencies . . . ." As a result of this requirement, all existing systems in the State became

proprietary systems by May 1974.[2] Thus, without any economic analysis or other studies of possible alternatives, the telephone company has been forced out of the business of leasing CATV lines.

Informal complaint handling. The CTD has included in its rules and regulations a very elaborate complaint-handling procedure. No distinction is made between formal and informal complaints, and on the surface at least it would appear that all complaints must be handled in this elaborate manner. In fact, however, the elaborate procedure has never been utilized. Instead, the staff has handled all complaints thus far on a rather informal basis. A form has been developed for taking down information relating to complaints and recording followup action on them which is quite similar to the form used by the public utilities division. Due to the relatively small size of the CATV systems at present, the number of complaints has not been too great and has not imposed a very heavy workload on the staff. As a consequence, the staff has been able to investigate all complaints on an individual basis. No standard operating procedures have been developed for this area of staff activity. Likewise, no attempt has been made to date to compile and maintain data on complaints and to analyze such data for purposes of improving the general level of regulation over CATV.

There are no requirements in the rules governing complaint-handling by the CATV companies themselves. However, the staff reports that it has met with representatives of the various companies and helped them set up internal complaint-handling procedures.

During an initial period when the numbers of subscribers are small, perhaps the existing highly informal and indefinite complaint-handling procedures and requirements of the CATV division are sufficient. However, as the systems grow and as subscribers number in the tens of thousands, revisions and improvements will have to be made. It is not too soon, therefore, for the CATV division to start thinking about revamping its own complaint-handling procedures and to impose more definite requirements on the CATV companies for handling complaints.

Regulation of credit practices. The CTD's rules are practically silent on the subject of credit in the CATV field. There are no stated rules regarding establishment of consumer credit, customer payment of deposits, payment of interest on deposits, etc.

The rules do permit the termination of service for failure to pay bills. There is a requirement for a ten-day notice before termination. However, the CATV rules allow termination of service to a subscriber at one location for nonpayment of a bill for services at another location. (Thus, the tenants of a landlord who live at one place may have their service discontinued for the landlord's failure to pay a bill at another location if the landlord happens to be the subscriber at both locations.) This practice is strictly prohibited to public utility companies. In addition, in the case of disputes over bills, the present rules put the onus on the customer to file a complaint with the CATV division to seek relief.

Although there is no rule covering the subject, there is another practice prohibited by the PUC general orders for the utilities which has been allowed by the CTD, at least on an interim basis. One cable television company has been allowed to require deposits of certain new subscribers and customers "to guarantee the payment of bills for service until credit is established or re-established . . ." and of "[c]ustomers who require service facilities, other than station equipment, requiring large capital expenditures for cable, conduit or other type of

[2]Of the ten existing systems, only two companies did not have the "standard" written into their permits. Both companies–Hawaiian Cablevision Corporation on Maui and Kaiser-Teleprompter of Hawaii, Inc., on Oahu–have proprietary systems anyway. Kaiser-Teleprompter of Hawaii, Inc., was not affected by the standard since it has been a proprietary system from the start of operations. Hawaiian Cablevision Corporation was a hybrid system but became a proprietary system in December 1973.

construction material which cannot be used to serve others . . . ." In both cases the tariff states that "[n]o interest will be paid on deposit covered by this certification."

The comments in an earlier chapter about the regulation of credit policies and procedures of public utility companies apply to the regulation of credit policies and procedures of the CATV companies. Although cable television may not have the same degree of essentiality as other utility services, the applications projected for CATV indicate this may soon be the case. In any event, the regulators should assure that equitable credit policies are being followed by the CATV companies.

Lack of representation of Hawaii's interests before the FCC. Due to the FCC's direct and intimate involvement in many aspects of cable television, interaction between the CTD and the FCC is virtually unavoidable. Nevertheless, the division is very unsure of its possible role in representing Hawaii's interests before the FCC in CATV matters, and there is not now any such meaningful representation. The following illustrates this situation.

*1. **Exclusion of Hawaii from the top 100 TV markets.*** For its rulemaking and standard-setting purposes, the FCC classifies CATV markets throughout the country into three categories: (a) the top 50 markets, (b) the second 50 top markets (i.e., those from 51 to 100), and (c) all others outside the top 100 markets.

Although according to the industry's means of measurement Honolulu ranked 83 among the country's metropolitan markets, in 1971 the Honolulu market was omitted from the FCC's listing of the top 100 markets.[3] As a consequence of this omission, all of Hawaii is treated under the FCC's rules as falling into the third category. This omission is considered to place Hawaii at a disadvantage. For one thing, under the FCC rules, the higher the classification, the greater is the number of access channels required for public television, original programming, pay TV, etc., and greater is the number of channels for broadcast stations allowed. Although the CTD has adopted rules comparable to those of FCC governing the top classification, since Hawaii is officially classed by FCC as falling in the third category, the validity of Hawaii's rules is in question.

When the State questioned the FCC staff on the matter, it was admitted that the omission was due to an oversight and should be corrected, but the FCC staff suggested that this be handled through a letter to the FCC from the governor. Such a letter was sent in December 1971. No action was taken on the letter and there has been no followup on the matter by the CTD. As a result, Hawaii is still classified in the third category.

*2. **Nonparticipation in tariff applications before the FCC.*** Although the matter is now moot since the telephone company is no longer concerned with CATV, this example nonetheless serves as an illustration of the decided lack of state involvement before the FCC.

As noted earlier, before May 1974, the telephone company used to provide wide spectrum services (that is, lease coaxial cables) to CATV companies. By a condition written into each permit issued to CATV companies, the companies must now own their distribution and origination systems. This condition precludes the companies from leasing coaxial cables from the telephone company.

While the telephone company was still providing wide spectrum services, it filed a request with the FCC for a doubling in rates to be charged the CATV companies for the wide spectrum services. The State of Hawaii did not intervene in this case. The CTD staff indicated

[3] In the latest available rating. Honolulu ranked 79 nationally according to the American Research Bureau (ARB) ratings of November 1972 during prime-time for TV households. The State of Hawaii was ranked 81 nationally in this same period by the ARB in terms of area of dominant influence (ADI) for TV households. (Source: Hamilton-Landis & Associates, Inc., *TV Factbook No. 43,* 1973–74 edition, Nationwide Media Brokers, San Francisco, March 1973.)

that it was helpless to do anything about the case and was in no way empowered to intervene or to take issue with the telephone company's request to the FCC. Considering the involvement of the director of regulatory agencies in the recent and fairly successful interventions by the State of Hawaii in FCC matters affecting the telephone company in other areas, this reluctance and timidity are difficult to understand. In this case, the FCC granted the telephone company's request, and the increased rates for the wide spectrum services of the telephone company were effective until all systems became proprietary in 1974.

*3. **Noncompliance with the 1972 FCC regulations.*** There are a number of Hawaii CATV rules which appear to be in conflict with the rules of the FCC which became effective in 1972. The differences in the two sets of rules perhaps reflect the differences in local versus mainland conditions or in the philosophy and approach of the State and FCC. Some of these differences in the rules are as follows:

- The FCC rules limit the duration of franchises (permits) to a maximum of 15 years. Hawaii's CATV law allows the director to issue a permit for a term of 20 years. In practice, all permits issued by the director have been for 20 years, including two permits issued after the 1972 FCC rules went into effect. In one of the applications for FCC certificates of compliance which are required of all CATV companies by the FCC, the company had to stipulate that it would voluntarily request renewal of its state permit in 15 years in lieu of a showing that the 20-year permit granted by the State is reasonable.

- The FCC limits franchise (permit) fees to 3 percent of *gross subscriber revenues.* (The FCC may grant waivers "for fees up to 5% of the gross subscriber revenues in cases where an unusual or experimental program is proposed that can be shown to need the extra revenue.") From January 21, 1971 to June 1, 1975, the CTD has required through its rules that each system pay 5 percent of the *gross income* of the CATV activities or $5000, whichever is greater. Under the new CTD rules which became effective on May 26, 1975, from June 1, 1975 through May 31, 1977, existing systems are to pay a fee based on 4 percent of the *gross subscriber revenues,* and after May 31, 1977, if the rules are not in the meantime revised, they are to pay a fee based on 4 percent of *gross revenues.* New companies are to pay $5000 when a permit is issued and then pay 4 percent of the *gross subscriber revenues* for each of the second and third years of operation unless the rules are amended. Under these new rules, the State will be in compliance with FCC regulations requiring the fee to be based on the *gross subscriber revenues* at least for two years. The company cited above received its FCC certificates of compliance on the condition that, within 15 months of the issuance of the certificates,[4] it must inform the FCC "that Chapter 3 of the Hawaii Cable Television rules and regulations has been amended so that the franchise fee requirements reflect a base of gross subscriber revenues." The adoption of the new rules by the CTD, however, was not based on the request of the FCC but apparently on the basis that the reduction in the permit fee rate would not materially affect the financing of the program.[5]

- The FCC by its rules has pre-empted the field of regulating the rates to be charged by CATV companies in leasing access channels (i.e., channels, other than those for carrying signals of commercial television and radio broadcast stations, which are available for use in original

[4] *FCC Memorandum Opinion and Order on the Certificate of Compliance* was adopted on April 18, 1974.

[5] The anticipated revenues from permits for the fiscal year 1975–76 based on the 4 percent of gross subscriber revenues may be about $5000 short of the appropriation for that year.

programming, public TV, pay-TV, etc.).[6] By this pre-emption, the State is not permitted to regulate what rates are to be charged by the CATV companies for leasing access channels. The Hawaii CATV rules provide that public, education, and leased access channels be part of the required 20 broadcast channels of each system. In this regard, the Hawaii rules are not in conflict with the FCC rules governing the second top 50 TV markets. However, the practice in Hawaii is to require CATV companies to secure the prior written approval of the director of regulatory agencies before leasing access channels, including approval of the rates to be charged.[7]

The State may have legitimate reasons for establishing rules and conditions that are different from or contrary to the FCC rules. For instance, as observed, in the determination of the amount of the permit fee to be charged, the financial requirements of the State's CATV program are apparently a consideration. Then, the requirement that the CATV companies get written approval before leasing access channels, including approval on the rates to be charged, can perhaps be justified on the grounds (among others) of the State's interest in ensuring that the costs and revenues of that portion of the CATV business which is monopolistic in character and subject to state regulation is not affected by the costs and revenues of the competitive, leased access channel operations over which FCC claims jurisdiction. In one case where written approval was given, it appears that the approval process was instrumental in revealing that the company's common staff was servicing both the state-regulated, monopolistic portion of its CATV business and the leased, pay-TV access channel operations. This revelation, of course, immediately raised the question of the proper allocation of the costs of the staff between the two distinct operations.

Despite the fact that there are probably legitimate state interests in differing from the FCC-established rules, the CTD has not officially taken any action to seek any sort of waiver or change in the rules to permit Hawaii to meet its own situation.

It is evident that other regulatory bodies in the nation also are not satisfied with the FCC rules of 1972. On an individual basis or through national associations, they have petitioned the FCC for hearings on those matters which infringe on states' rights. Hawaii has not joined any of the petitions thus far.

For example, the State of Hawaii has taken no affirmative action to associate itself with the petition filed on April 21, 1975 in the U.S. Court of Appeals for the District of Columbia by the National Association of Regulatory Utility Commissioners (NARUC) requesting the court to annul and set aside FCC's *Memorandum Opinion and Order* of November 21, 1974. By this *Memorandum and Opinion,* the FCC had refused to reconsider its *Clarification of the Cable Television Rules and Notice of Proposed Rule Making and Inquiry* issued on April 15, 1974. It is in the *Clarification* that the FCC expressly pre-empted the field of regulating the rates for leased access channels. The NARUC's position in this case is that by such pre-emption, the FCC has assumed a responsibility reserved for the states under the Communications Act and previous precedents. NARUC's membership includes state officials charged with the responsibility of regulating communication common carriers within their respective states. Although the CTD is not a member of NARUC,

[6]FCC has declared that its policy is to encourage the growth of leased access channels. It believes that rate regulations by state and local authorities will artificially alter this growth. Although FCC is explicit on the point of pre-empting rate regulation, it has left the door open for the pre-emption of other regulatory activities concerning leased access channels. See FCC, *Clarification of the Cable Television Rules and Notice of Proposed Rule Making and Inquiry,* April 15, 1974.

[7]At least one system was required to cease a pay-TV offering because prior written approval was not received from the director. The application for the use of one of its channels for pay-TV is now pending before the director. In a more recent case, dealing with a system which received its permit after the 1972 FCC rules were promulgated, the system filed an application for the lease of one of its cables for pay-TV and has received authority to lease the channel for the purpose of pay-TV.

Hawaii does hold membership in the association through the PUC and PUD. Despite this relationship through the director of regulatory agencies, Hawaii has not sought to participate actively in the NARUC's suit.

Ownership of CATV: the application of Hawaii's antitrust law. The CATV industry here and nationally is characterized by many small companies, but there is a very definite trend toward a concentration of ownership in the hands of a few. This trend in Hawaii is illustrated by the recent awarding of the largest permit rights in the State to Cablevision Holdings, Inc.

In 1970, Oceanic Cablevision, Inc., was awarded a permit for CATV operations in central Oahu and Waikiki. This area contains nearly one-half of the State's total potential CATV subscribers. Oceanic Cablevision, Inc., lagged behind in completing its proposed system. Apparently, during a period of strenuous economic conditions, the corporate parent of this company (Castle & Cooke, Inc.) found itself faced with higher priorities for the some $11.5 million required to construct this proposed system and did not commit the resources necessary to carry out the program contemplated when it received its permit. As a consequence, CTD initiated action to ensure compliance with the permit requirements or to provide alternative means to extend service to the areas affected. The net result was that Oceanic Cablevision sought to find a suitable new owner to take over its obligations.

There were two competing applications filed with CTD to take over Oceanic Cablevision's obligations. One of the applications was filed by Cablevision Holdings, Inc., and the other by Aloha CATV Systems. After lengthy hearings and voluminous proceedings, Oceanic Cablevision's permit was awarded to Cablevision Holdings.

The significance of the award to Cablevision Holdings is that 51 percent of the company is owned by a variety of Hawaii interests, the makeup of which portends future acquisitions of or mergers with other CATV companies operating in Hawaii. The 51 percent is jointly owned mainly by Consolidated Amusement Co., Ltd. (17 percent of the total shares in Cablevision Holdings), Oceanic Properties (8 percent of the total ownership), Cablevision, Inc., and Hawaii Cablevision Corporation. The latter two are CATV licensees in their own right in Hawaii.

The awarding of the Oceanic Cablevisions permit to Cablevision Holdings illustrates not only the trend toward concentration of ownership but it also signals another movement in the CATV field. This is the movement toward acquisition of CATV systems by related industries. Note, for instance, that the Consolidated Amusement Co., one of the leading entertainment companies in Hawaii, is a part owner of Cablevision Holdings. The acquisition of interests by other related industries such as broadcast stations, newspapers, and other media or communications industries is prevalent in the rest of the country. In 1971, half of all TV subscribers was served by companies which were also involved in other forms of communication. Of the some 2500 CATV systems, 910, serving 36.5 percent of all subscribers, were owned by broadcasters; 207, serving 8.2 percent of all subscribers, were owned by newspapers and other publishers; and 146, serving 5.8 percent of all subscribers, were owned by telephone companies.[8]

Cablevision Holdings' acquisition of the permit is instructive in yet another way. Cablevision Holdings' competitor for the permit was Aloha CATV Systems, Inc. This firm is 80 percent owned by TelePrompter Corporation, a large mainland-based corporation which is in the

[8]It is interesting to note that the two largest stockholders in the largest CATV company, TelePrompter Corporation, are Howard Hughes (who owns other companies in the electronics equipment manufacturing business) and Jack Kent Cooke (who has interests in professional sports and was the promoter of the Muhammed Ali–Joe Frazier fight, which grossed $15 million on closed-circuit telelvision).

CATV business on the mainland.[9] Forty-nine percent of Cablevision Holdings itself is owned by interests outside the State.[10] Interests and investments by groups or companies outside the State in Hawaii-based companies are nothing new. But what the Cablevision Holdings case illustrates is that possible acquisition of Hawaii CATV systems by out-of-state interests is real.

Despite these rather obvious developments, there has been virtually no activity in Hawaii to examine the applicability of the State's antitrust law to these movements and to formulate policies governing ownership of CATV systems. There are no rules or guidelines on the subject. The CATV regulators have not as yet made any attempt to discuss or consult with the department of the attorney general on this matter, and by the same token, the department of the attorney general has given no signs to suggest that it is concerned with the antitrust implications of the movements in the ownership of CATV systems.

If anything, evidence seems to suggest that the State is embarked upon an unannounced but unmistakable program of encouraging, or at least very obviously and willingly acquiescing in, increased concentration of ownership and control of CATV in Hawaii. In all of our interviews, those responsible for administering the program expressed the view that there would continue to be a "shaking down" process, and that they foresaw the day in the not too distant future when there would be only a few CATV systems in the whole State, or perhaps even only one. Indeed, the assumption already being made by the regulators is that Cablevision Holdings, Inc., will eventually merge with several of the other smaller CATV companies in the State so that a large portion of the State will end up being served by this one company. This trend toward concentration of ownership is viewed by the regulators with complete equanimity—even some hopeful anticipation—as they feel that this will simplify the task of regulation. The only concern they expressed was that if there is going to be concentration of ownership, then it should be in the hands of local interests rather than mainland interests.

This expectation on the part of the utility regulators is unfortunate. It brushes aside the many antitrust issues that are inherent in the situation. It overlooks, for instance, the basic question of whether the public interest is better served by less rather than more CATV companies. A little thought on this question would appear to indicate that there is little economic justification for concentration of ownership. Economies of scale are not particularly relevant in this field and small CATV systems appear to be economically feasible. Experience clearly indicates that CATV companies, even the small ones, can be very lucrative investments for their owners, especially in areas of inferior off-the-air TV reception where penetration may well reach 100 percent. Even in the matter of fixed capital expenditures, there appears to be no reason why diverse and multiple ownership of CATV systems is not economically feasible. The case of the Cablevision Holdings, Inc., points this out. In its proposal to CTD, this company indicated it planned to construct certain facilities which could be made available and utilized by other CATV companies on a cost-sharing basis. This principle of cost-sharing could be applied to many facilities required by the various CATV systems.

In addition to the issues of few or many CATV companies, the ownership or non-ownership of CATV systems by related industries, and local or foreign control of the systems, one other issue is relevant in this area of antitrust and ownership of CATV systems. The CATV industry is basically composed of three very definite components: *programming* (the development and production of the

[9]The other 20 percent is spread among a dozen or so prominent business and political figures in Hawaii and the wealthy owner of professional sports interests on the mainland.

[10]The 49 percent is split between a large Canadian CATV operator (the Fred Welsh group) which owns 25 percent, and the mainland-based originators of "Sesame Street" (CTW Communications, Inc.) which owns 24 percent.

programs transmitted over the cables, including the picking up of programs from other sources); *distribution* (the construction and operation of the actual distribution facilities); and *equipment manufacturing* (the development and fabrication of the equipment used in both the production and distribution elements of the business). Some CATV companies are involved in all three elements while others are involved in only one or two. In addition, there are companies involved in one or more of these elements which also have interests outside the CATV industry. The questions raised here are obvious. Should a single company be permitted to engage in all three elements or should they be restricted to one or two? What control or restrictions on control over any of these elements by companies engaged in other related or unrelated business should be allowed or imposed?

Other Policy Issues in the Regulation of CATV

As might be anticipated from the nature of the medium and of the industry which has grown up around it, some major regulatory issues, other than those already discussed, have arisen concerning CATV. How these issues are faced today will have a significant impact on many aspects of American life in the future. Thus, in assessing the State's program for regulating CATV, it is essential to see to what extent and how well it has grappled with these issues and has attempted to come up with adequate answers to the questions which are being posed.

Unfortunately, Hawaii's program is not particularly encouraging. Perhaps this should not be surprising considering what has already been said about the emphasis given thus far to the early statewide expansion of CATV services and the general attitude and approach being taken toward the regulation of CATV in Hawaii. A brief review of some of these major issues and what Hawaii is doing about them follows.

Level of government to regulate CATV. The question as to which level of government should regulate CATV has been fairly definitively answered by the enactment of the Hawaii Cable Television Systems Law in 1970. Under this legislation, all such regulation is vested fully in the state government, except that which the FCC claims as falling within its jurisdiction. The county governments have been completely excluded from this field. This action is more or less consistent with Hawaii's long tradition of centralizing a multitude of governmental functions in its state government.

However, there is one question which still remains. This is in the area of taxes. In the case of other utilities (i.e., gas, electricity, and telephone), they all pay franchise taxes to the counties. In theory, the taxes are to compensate the counties for the use of their public rights-of-way by the utilities and are paid in lieu of property taxes. No such tax is imposed upon the CATV companies except in the county of Kauai. When some of the CATV companies were using leaseback lines of the telephone company, it could be said that they were paying such a tax in their lease rentals. However, now that the CATV companies are all proprietary systems, this argument loses its validity. Although CTD is aware of this situation, it has made no move to study the situation. Involved in this matter, of course, is the question of FCC jurisdiction. As noted above, the FCC has taken action to limit the amount of taxes on fees which state and local jurisdictions can impose on CATV companies.

Access to programming. Considering CATV's great capacity and flexibility (it is sometimes referred to as the "television of abundance") and the limited offerings of broadcast television, it should not be surprising that questions and controversy have arisen concerning *access* to CATV (i.e., the right to use nonbroadcast channels, the right to participate in the formulation, direction, and presentation of CATV programs, and the right to receive what is being presented to others). There are several ways of assuring or increasing

accessibility to the medium (e.g., by making more channels available, by reserving certain channels or program times for particular purposes, and by reducing or eliminating cost barriers).

Hawaii regulators have demonstrated some concern in this area—at least to the point of adopting the standards established by the federal government for the top 100 television markets in the country and making them applicable to Hawaii, although the FCC itself had arbitrarily exempted Hawaii from these standards. Thus, Hawaii now requires: (1) that minimum channel capacity be 20 channels, (2) that for each broadcast channel an equivalent channel be provided for nonbroadcast transmission, (3) that one channel be set aside for public access on a first come, first served and nondiscriminatory basis, (4) that there be an education access channel, (5) that there be a local government access channel, (6) that there be some channels and program times available for leased access services with priority being given to part-time users on at least one of the leased access channels, (7) that CATV companies be prepared to increase channel capacity within six months to meet demand as it occurs, and (8) that CATV refrain from all control over the content of programs carried over their channels. Moreover, for the education and local government access channels, all charges are prohibited for five years. For the public access channel, the companies are required to maintain and have available minimum production capabilities and to make both the channel and such production facilities always available without charge, except for production costs which may be assessed for live studio presentations exceeding five minutes.

At first blush, this appears to be a fairly comprehensive set of standards. However, a number of things are worthy of noting.

*1. **Adoption of standards without assessment of needs.*** One of the first things to note is that these standards are copied from the FCC standards for the top 100 markets. The FCC standards might be said to be only the minimum and do not necessarily represent what would be most suitable for the situation in Hawaii. For example, with regard to minimum channel capacity, the FCC noted that some systems were already being installed with 40 or more channels but felt that it should not place an unreasonable economic burden on CATV operators. Thus, the 20-channel requirement is "the minimum consistent with the public interest," according to the FCC. But, in the adoption of these standards, the Hawaii regulators have not expended much effort to determine the real needs for Hawaii. They have not sought to ascertain through public discussion or otherwise how much interest there is in the community in access to CATV and what the potential use may be of CATV within the next several years.

*2. **Definition of service areas.*** In the determination of service areas, the CTD appears to have given scant consideration to local community needs and aspirations or to the possibility of having the medium serve as the basis for strengthening local community ties. Rather, its point of departure was the applications filed by the companies seeking permits, and it was more concerned with utilizing census tract data (which have already proven to be obsolete in many rapidly growing areas) than with trying to identify any other communities of interest which might serve as the basis for defining service areas. This point is relevant when trying to answer such questions as: (a) how accessible is a public access channel if one must travel across the island to use it? and (b) how likely is CATV coverage to be given to an event of local interest to Pauoa or Manoa when transmission is also to Aiea, Wahiawa, and Kahuku? In a sense, then, the privateCATV companies have had a greater influence on determining service area boundaries than have any local community sentiments or desires.

*3. **Reduction of economic barriers to CATV access.*** Another area on which little, if any, attention has been focused up to now by the regulators is that of barriers to access to CATV. The regulators have not made any

studies of what effect CATV rates and charges will have upon the willingness of various economic and social groups to avail themselves of this service. Moreover, the regulators have made a fundamental decision to require all CATV companies to develop proprietary cable systems without having made any economic analysis of the possible consequences of this move on CATV rates and even without the benefit of any public hearings on the matter. (This action is accomplished not through the regular rulemaking procedure but by inserting such a requirement as a condition to all the permits issued by the division.)

4. Regulation on lease access channels. As discussed above, the rate regulation of leased access channels has been pre-empted by the FCC but the State has required that any use of facilities and equipment, including the rate to be charged, must first be approved by the director of regulatory agencies. Having imposed such requirements, however, the State has not yet established any rules or guidelines regarding the use and operations of leased access channels. This means that the CTD has not yet come to grips with the many complex issues surrounding leased access channels, such as: how should priorities be determined on the use of access channels; to what extent, if any, should a CATV system be protected from the use by the other CATV systems of the program materials aired over one of its channels; and should rules on "equal time" be applicable to access channels. Of course, how much authority and flexibility the State may exercise in this area will depend upon the extent to which (in addition to rate regulation) the FCC may exert pre-emptive rights and the ability of the states to resist such FCC pre-emption. However, the State having embarked on the course of regulating leased access channels, it would appear reasonable to expect the State to formulate rules and guidelines in this area.

In short, it may be said that although the Hawaii authorities have adopted FCC rules aimed at opening up access to CATV, they have not as yet probed further into the matter or to view Hawaii's peculiar conditions and needs on any comprehensive and in-depth manner. Instead, they seem to be waiting for the day when all systems are complete before making any moves in this area.

CATV financing. Closely related to the issues of ownership of and ratemaking for CATV systems is the question of control over CATV systems' fiscal operations. There are presently very little rules, guidelines, or activities in this area.

Regular financial reports and financial data are required to accompany applications submitted by the companies for consideration by the CTD, but this submission appears to be the extent of any regulatory controls over CATV finances. Even with this limited fiscal requirement, there is little activity on the part of the CATV regulators. In the first place, the financial information submitted is without the specificity and detail required of other utilities by the PUC. Then, there is no real analysis made of the financial data submitted; the CTD appears to review the financial information only to satisfy itself that the CATV company has the financial capability to carry out its proposed cable construction program. That there should be a much closer supervision over the fiscal affairs of the CATV companies is eminently clear. The fiscal operations of the CATV companies have a direct effect on the rates which the consumers must ultimately pay. In fairness to the CATV regulators, it must be noted that the CTD currently is without staff resources in fiscal matters.

Protection of individual rights. CATV has been highly touted for its ability to provide clearer television reception and more television channel capacity. The latter, in particular, offers to the general public an opportunity to view at home a far greater variety of entertainment, cultural, and informational programs (including first-run movies, sports events, etc.) than would be the case without CATV. But the potential of CATV is much more vast than this. It is already claimed (and has been actively demonstrated to

be technologically feasible) that CATV will be a boon to communication. It is said, for example, that CATV could provide a means for retrieving information from the library (via facsimile transmission and a hard copy copying appliance attached to the cable terminal in the subscriber's house) and make mail service as we know it today obsolete. Indeed, a whole new communications network is a possiblity by combining the various technologies (microwave, laser beams, and satellites) with the CATV systems. It is for this reason that the suggestion has been made that the term used for the medium be changed from "cable television" to "cable communications."

However, the potential of CATV is not all on the plus side. CATV is capable not only of transmitting signals to the receiver at home, but also of receiving signals from the sets placed in the living rooms of the subscribers. Already the operators of CATV systems can determine who have their television sets on and to which channel each set is tuned. As electronic gear become more and more sophisticated and as we move more and more toward the "wired community," we vastly increase the opportunities and capabilities for receiving as well as transmitting information. This raises the potential of the use of CATV for surveillance and control. Wiretapping of telephones to invade the privacy of individuals is well-known today. As compared with telephones, where tapping is accomplished on an individual basis, CATV offers the opportunity for surveillance on a grand scale.

Since CATV offers the potential for abuse, the matter of protection of individual rights in the use of the medium should be of keenest concern to CATV regulators. However, there is no evidence to suggest that anyone in authority in the State of Hawaii has as yet directed any study or attention to this aspect of CATV. In some of our interviews the subject was mentioned, but no one expressed any real concern about it or indicated any felt need to initiate any action with regard to the problem.

While it is probably true that no foolproof system can be devised to ensure against all tampering with CATV cables and other facilities, there are protections and safeguards which can be built into the system to make it much more difficult and costly to engage in such tampering. This can probably be done much more efficiently at the time of the system's initial installation than later on. In addition, it is possible to reinforce such mechanical safeguards with various legal sanctions and incentives to make it worthwhile and in the best interests of CATV operators to avoid and prevent wiretapping, unauthorized surveillance, etc.

Organization for the Regulation of CATV

Organizational placement of CTD. When the legislature enacted the CATV law in 1970, it left for later determination the question of whether, after an initial period, CATV regulation should be placed under the public utilities commission or whether it should continue to be left under the director of regulatory agencies, or placed under some other agency. As observed in volume I of this report, our assessment of the situation is that there are no strong or compelling reasons for maintaining the separation between CATV and other types of utilities, and that there are probably some real advantages to be gained from bringing all utility regulation together.

An example of the advantage to be gained is in the area of the use of the rights-of-way for CATV and other utility lines. Agreements between the telephone company and the CATV companies for the joint use of poles and ducts have been complicated and delayed by the fact that, under the present situation, no single regulatory agency has full jurisdiction over the matter. In fact the duct agreements are still pending. On the basis of public testimony in hearings before the CTD, the lack of duct agreements between the CATV and utility companies is causing considerable duplication of duct work and raising significantly the costs of installing CATV services.

Another example of the advantage to be gained is the matter of proprietary or leased lines for CATV. In the early stages of CATV development, it was the practice for the CATV companies to lease lines from the telephone company. This practice has ceased, for the director of regulatory agencies acting through the CTD has taken the arbitrary action to require the CATV companies to own their own lines. This action was taken without any economic analysis of the decision, and without any consideration of what impact this action may have on the costs and rates of CATV systems and on the telephone company and the telephone utility.

With the potential of CATV becoming a major means of communication and not just a medium for home entertainment, conflicts and competition between the telephone company and the CATV industry are likely to arise. Such conflicts and competition are better resolved by a single regulatory agency rather than by two separate and distinct agencies. Further, as CATV companies move more and more into the communications area, they more and more resemble other common carriers (i.e., telephone and telegraph companies) and the reasons for subjecting CATV to a regulation different from that for such other common carriers become less and less cogent.

For all these reasons, we feel the CTD should be merged into the regular public utilities program.

Financing CATV regulation. The CATV law (HRS, chapter 440G) provides for the financing of the regulation of CATV as follows:

> "A permittee under this chapter shall pay an annual fee computed in a schedule to be determined by the director [of regulatory agencies]. The fees so collected shall be used to offset the costs of administering this chapter."

The statutory provision requiring the fees collected to be used to offset the costs of administering the program of CATV regulation has raised two questions: (1) To what extent, if any, should CATV regulation be a self-supporting program; and (2) how should the funds for CATV regulation be accounted for.

*1. **Program self-sufficiency.*** At the outset we note that the program for CATV regulation, from its inception, has not generated sufficient revenues to pay for all costs associated with the program.

Table 12.2 provides a brief financial summary of the CATV regulatory program for the fiscal years 1970–1971 through 1973–1974. The "revenue fees" noted on the table consists of the annual fees paid by the CATV companies based on the fee schedule developed in early 1971.[11] The table shows that during the first four years of the program there was a steady increase in revenues received from permit fees and the sale of publications (copies of the CATV rules and regulations) so that the income received in 1973–1974 was about 66 percent higher than that received in 1970–1971. The table also shows that revenues just about equaled the expenditures directly chargeable to the CTD during this period, except for the first year when there was a general fund appropriation of $40,000 allocated to support the program. Thus, it might be concluded that the program has been largely self-financing (i.e., that fee revenues have offset the costs of administering the program). However, there are two things to note.

[11] As developed, the CATV rules provided for annual fees as follows. For companies in operation in 1970 (the "grandfathered" companies), for permits authorizing them to continue servicing the areas they were already servicing, the rules required an annual fee of 5 percent of gross income of the preceding year or $5000, whichever was greater. The first fee was payable in 1971 based upon the gross revenues reported for 1970. For new companies, and for existing companies for new service areas, the fee schedule required for the first year a fee based upon 5 percent of the estimated gross receipts for the first year or $5000, whichever was greater. After the first year, the fee was 5 percent of the gross income of the preceding year or $5000, whichever was greater. In all cases, annual fees were payable on or before July 1 and December 1 of each year in equal payments of 2.5 percent of gross income or of $2500, whichever might be applicable.

Table 12.2

Department of Regulatory Agencies
Financial Report of the Cable Television Division
For Fiscal Years 1970–71 Through 1973–74

	1970–71	1971–72	1972–73	1973–74
Legislative appropriation (Act 112, SL 1970)	$ 40,000	–	–	–
Revenues				
Fees and publications	61,218	$75,017	$84,271	$99,007
Total revenues	101,218	75,017	84,271	99,007
Expenditures				
Personal services				
Personal services	43,572	52,903	53,376	64,589
Assessment (est. fringe benefit costs)	8,557	9,838	9,158	12,457
Subtotal	52,129	62,741	62,534	77,046
Other expenditures				
Court reporting fees	2,086	765	1,490	–
Office supplies	2,233	1,533	1,941	2,697
Interisland travel	1,428	477	1,048	854
Out-of-state travel	334	1,813	797	–
Advertising and publication of notices	628	267	298	214
Office equipment rental and repair	2,437	3,997	6,193	4,024
Dues and subscriptions	117	117	748	647
Telephones, tolls, and cables	937	839	1,101	31
Miscellaneous expenses	2,465	2,037	57	32
Subtotal	12,665	11,845	13,673	8,499
Equipment	8,526	1,714	7,743	11,851
Total expenditures	73,320	76,300	83,950	97,396
Excess of receipts over expenditures	$ 27,898	[$ 1,283]	$ 321	$ 1,611

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

First, the program costs included in table 12.2 do not include general or overhead costs incurred in the program by agencies other than the CTD. These include, among other costs, the departmental administrative support costs and state central services costs. *Second,* the fee schedule was recently amended. The amendment went into effect on May 27, 1975. It provides for a reduction in the fees to be paid by the CATV companies. The estimated effect of this reduction, without any overhead charges assessed against the program, is to reduce revenues below expenditures for the fiscal year 1975–1976 and to make the program barely break even for the biennium 1975–1977. If overhead charges are assessed against the program during the biennium, the program will end in a deficit position for both years of the biennium.

The question that arises from this situation is whether or not the program for CATV regulation should be self-financing. If it should, then overhead costs should be assessed against the program and the fee reduction should not be instituted as now programmed. But, should it really be self-financing?

The requirement that the program generate revenues to offset costs (fully or partially) is unique in the economic regulation of utilities. In the case of none of the utilities under the jurisdiction of the PUC is there a requirement that fees collected be used to offset the costs of regulating the utilities.[12]

There is a case to be made for not expecting the fees collected in the regulation of CATV (and other utilities) to pay for the costs of regulation. *First,* CATV, like other utilities, is regulated to protect the public and to sustain the legitimate interests of the CATV industry, not to raise revenues for the State. *Second,* if revenues are expected to pay for the costs of regulation, the result would be either high fees to cover the costs of all aspects of regulation which the consumers must ultimately pay for or a restriction on regulatory activities to keep within the revenues generated by a more reasonable but lower level of fees. If regulation is necessary at all, it should not be restricted by receipts nor should it compel the CATV industry, and ultimately the consumer, to pay a high level of fees.

*2. **Confusion in status of funds for CATV regulatory program.*** If the legislative requirement that the revenues be used to offset the costs of regulating CATV is to be retained, the manner in which the funds for the program are to be accounted for must be clarified.

A degree of confusion appears to exist under the present statute. As already noted, for the first fiscal year 1970–1971, the program received a general fund appropriation of $40,000. In the budget act for the 1971–1973 biennium, however, the program was designated as being a special fund operation. In response to a question raised by the director of regulatory agencies at that time, the attorney general ruled that despite the special fund designation in the appropriations act the program was not a special fund operation. The attorney general did not, however, specify just exactly what financial status the program did enjoy. In the budget act for the 1973–1975 biennium, the program was given the designation of being financed from the source of "other funds." As a result, the exact nature of the program's funding arrangements is confused. During this audit we received different interpretations from the department of regulatory agencies and from the department of budget and finance.

In practice, the program is being handled on an appropriated receipts basis. Under this arrangement, fee revenues are paid into the general fund and direct program expenditures are made out of the general fund, but all funds flow through an account which is set aside for the program and the funds are earmarked to be used exclusively for CATV purposes. At the end of each fiscal year, the balance remaining in the account, rather than reverting to the general fund, is carried forward to the next fiscal year for use in the succeeding period. But, even as this practice has been followed, there appears to be a disagreement as to its validity. It was estimated that at the end of the 1974–1975 fiscal year, there would be a balance in the account of $29,000. The department of regulatory agencies appears to have assumed that this balance would be carried over and would be available for expenditure during the fiscal year 1975–1976. The budget analyst assigned to the department believed, however, that this balance would revert to the general fund, and only new revenues would be available for expenditure during the 1975–1976 fiscal year.

There would, of course, be no problem in accounting for the funds of the program if the CATV program were treated in the same manner as the other public utilities program and if there were no requirement for offsetting the costs of regulation from the revenues collected. CATV permit fees would then be general fund realizations and CATV expenditures would be general fund expenses. If information were desired to compare revenues with expenditures,

[12]Sometime back utilities regulation was a special fund operation. However, the utility special fund was abolished in 1959 when the legislature made sweeping changes in the laws regarding the State's special funds.

this can be accomplished within the general fund accounting system without difficulty. But, even if the present statutory requirement for offsetting were kept in force, the program funds could still be handled through the general fund just as if the requirement did not exist, although to avoid confusion and debate, some legislative expression may be required to accomplish this result.

Other organizational problems. Two other problems relating to the organization for the regulation of CATV should be briefly noted. The first concerns the appointment of an advisory committee, and the second relates to the personnel resources devoted to this program.

*1. **Advisory committee.*** The cable television law calls for the establishment of an advisory committee to assist the director of regulatory agencies in the implementation of the law. Despite this provision, no members have ever been appointed to this committee and no efforts have even been made to activate such a committee. This raises the question of the need or desirability for such committee. All evidence indicates that the regulators do not want such a committee, do not regard it as necessary, and feel that it probably would only delay and complicate decisions and actions directed toward an early completion of a statewide system. If the committee is desirable to secure outside opinions and varying viewpoints, then it should be appointed. If not, the requirement for the appointment of one should be deleted from the statute.

*2. **Staff capabilities.*** As already noted, the CATV regulatory program is being run by the director of regulatory agencies and the three nonclerical staff members of the CATV division. Collectively, they have very little background and experience in this rather complex and rapidly changing field. Because of this, initially some consideration was given to the hiring of a consultant to assist in the development of the CATV program, but it was decided, apparently in the interest of time, to model Hawaii's program on that of Nevada's and to proceed immediately to preparation and adoption of new rules and regulations, the processing of applications, etc. Since then, the same small staff has handled the entire program and has carried the full burden of policy formulation, decision-making, and program implementation. In view of the many tasks yet to be performed, it is doubtful that a staff of this size and of its present competency is sufficient. A review, at least, of the staff requirements for this program is in order.

Recommendations

The CATV regulators have moved diligently to live up to legislative expectations of an early expansion of CATV services throughout the State. It is time, however, for the regulators to devote their attention to the various issues confronting CATV. We thus recommend that:

1. The CATV regulators begin to formulate rules, regulations, and guidelines relative to such matters as: ratemaking, complaint-handling, credit, ownership of CATV companies, access to CATV, financing CATV operations, and protection of individual rights. In the formulation of these rules, regulations, and guidelines, and in the rules themselves, the requirements of the State's APA should be strictly adhered to. In determining the policy of the State with respect to the ownership of CATV companies, the CATV regulators should consult with the department of the attorney general on the ramifications of the State antitrust law.

2. The CATV regulators, in conjunction with the state attorney general, formulate a program for representing Hawaii's interests before the FCC.

In addition, we recommend that the legislature:

1. Merge the regulation of CATV with the regulation of other public utilities.

2. Review the need or desirability for the appointment of a CATV advisory committee.

3. Amend section 440G–14, HRS, to delete the requirement that fees collected in the regulation of CATV "be used to offset the costs of administering" the regulatory program.

4. In conjunction with a review of the staff capabilities of the PUD and PUC (as recommended in volume I), review the need for staff capabilities in the CATV area to enable the CATV regulators to accomplish the tasks recommended above.

PART V

RESPONSES OF THE AFFECTED AGENCIES

COMMENTS ON AGENCY RESPONSES

A preliminary draft of this audit report was transmitted on August 4th to the public utilities commission and to the departments of regulatory agencies, attorney general, and labor and industrial relations. We asked the agencies for their comments on the findings and recommendations contained in the report.

A copy of the transmittal letter to the public utilities commission is included as attachment 1 of this part. Similar letters were sent to the directors of the department of regulatory agencies and the department of labor and industrial relations and to the attorney general. Their responses are included as attachments 2 to 5 of this part.

The public utilities commission and the department of regulatory agencies are in general agreement with all of the recommendations directed to their agencies. The attorney general had no specific comments on the recommendations affecting his department. Only the response from the department of labor and industrial relations requires further comment.

The audit recommends that the department of labor and industrial relations assume the responsibility for industrial and public safety and gas pipeline safety with respect to the utilities field. The department concurs with the recommendation to transfer the industrial (occupational) and gas pipeline safety functions from the PUC to the department. The department, however, opposes the transfer of the *public* safety function to it. In its response the department states, in part:

> "Since DOSH [division of occupational safety and health] is almost entirely employee-oriented, to undertake a public safety role would require a type of expertise which we almost entirely lack and would result in the incongruity of being concerned with public safety only in the utility field to the exclusion of all other areas. The possibility of an employee vs public safety conflict within DOSH also cannot be ignored. It would be preferable, I believe, to preserve DOSH's unity of goal and effort–*occupational* safety and health."

We do not find it incongruous for the department to assume a role in *public* safety. While presently the department's activities on safety may primarily be employee-oriented, under existing statute (chapter 396 – Occupational Safety and Health), the department is responsible also for public safety. Paragraphs (3) and (4) of section 396–4(b) require the department to protect the safety of the general public in construction and certain recreational activities. They read as follows:

"(3) The department shall inspect construction activities for the purpose of protecting the health and safety of employees and the *general public.* A construction activity includes any activity related to the erection, construction, alteration, demolition or maintenance of buildings, structures, bridges, highways, roadways, dams, tunnels, sewers, underground buildings or structures, underground pipelines or ducts, and any other construction project or facility;

(4) The department shall inspect, at least semiannually, all mechanically or electrically operated devices considered as major rides and used as amusement rides at a carnival, circus, fair, or amusement park for the purpose of protecting the safety of the *general public.* This section shall not apply to any coin operated ride or mechanically or electrically operated devices considered or known in the amusement trade as kiddie rides; . . . ." [Emphasis ours.]

Chapter 396 also vests in the department responsibility for public safety in other areas, e.g., the inspection of elevators and escalators, and control over the manufacture, sale and transportation of explosives. While the chapter does not specifically state these safety functions in terms of public safety, it appears reasonably clear that the safety of the general public was intended.

ATTACHMENT NO. 1

THE OFFICE OF THE AUDITOR
STATE OF HAWAII
STATE CAPITOL
HONOLULU, HAWAII 96813

CLINTON T. TANIMURA
AUDITOR

RALPH W. KONDO
DEPUTY AUDITOR

August 4, 1975

C
O
P
Y

Mr. Lorrin W. Dolim, Chairman
Public Utilities Commission
State of Hawaii
Honolulu, Hawaii

Dear Mr. Dolim:

Enclosed are five copies of our preliminary report on the *Management Audit of the Public Utilities Program, Volume II, The Regulation of Public Utilities.*

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, the attorney general, and the director of labor and industrial relations.

The report contains a number of recommendations. I would appreciate receiving your written comments on the recommendations directed to the commission. Please have your written comments submitted to us by August 18, 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 August 11, 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,

/S/ CLINTON T. TANIMURA
Clinton T. Tanimura
Legislative Auditor

Enclosures

ATTACHMENT NO. 2

GEORGE R. ARIYOSHI
GOVERNOR

WAYNE MINAMI
DIRECTOR OF REGULATORY AGENCIES

R. DENNIS CHONG
EXECUTIVE DIRECTOR

STATE OF HAWAII
PUBLIC UTILITIES COMMISSION
DEPARTMENT OF REGULATORY AGENCIES
P. O. BOX 541
HONOLULU, HAWAII 96809

August 19, 1975

RECEIVED
AUG 20 9 05 AM '75
OFC. OF THE AUDITOR
STATE OF HAWAII

Mr. Clinton Tanimura
Legislative Auditor
The Office of the Auditor
State of Hawaii
State Capitol
Honolulu, Hawaii 96813

Dear Mr. Tanimura:

This is in response to your letter of August 4, 1975 with enclosures of copies on Volume II of the Management Audit of the Public Utilities Program and your invitation to comments on the preliminary report of the audit.

The Commission members have had an opportunity to review the report and have no comments at this time. Pending the Legislature's final decision on your recommedations as pointed out in the report, the Commission in cooperation with the Public Utilities Division and the Department of Regulatory Agencies will strive to correct the deficiencies as noted in your findings, wherever applicable.

Please accept our congratulations on the report and your efforts to contribute to the formulation and implementation of an effective public utilities program.

Sincerely,

Lorrin W. Dolim

Lorrin W. Dolim
Chairman
Public Utilities Commission

GEORGE R. ARIYOSHI
GOVERNOR

WAYNE MINAMI
DIRECTOR
BANK EXAMINER
COMMISSIONER OF SECURITIES
FIRE MARSHAL
INSURANCE COMMISSIONER

E. JOHN McCONNELL
DEPUTY DIRECTOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
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1010 RICHARDS STREET
P. O. BOX 541
HONOLULU, HAWAII 96809

August 18, 1975

RECEIVED
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OFC. 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 August 4, 1975 inviting our written comments and recommendations to your Report to the Governor and the Legislature of the State of Hawaii entitled "Management Audit of the Public Utilities Program, Vol. II, The Regulation of Public Utilities."

We concur with the general overviews of the report and recognize many of the deficiencies mentioned in your report. However, as mentioned in your report, the Division's staff is stretched fairly thin in dealing with major rate cases and other economic evidentiary proceedings such that priorities must be set by the Public Utilities Division on where to use its available manpower.

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 - UTILITY RATEMAKING IN HAWAII

Recommendation:

The PUC and PUD should speed up the ratemaking process by correcting the conditions that appear to be causing unnecessary delays.

Comment:

As mentioned in our letter to you dated March 14, 1975, which was included as Attachment 3 to Volume I of your report, the PUD submitted new procedures for use by the PUC in rate cases and if used by the PUC, the rate cases have been expedited considerably and completed within six to nine months.

PUD staff capabilities will be assessed and legislative appropriations will be requested.

Recommendation:

The PUD staff provide a greater in-depth review and examination of tariff filings.

Comment:

We will comply with this recommendation.

Chapter 5 - QUALITY OF SERVICE, CONSUMER COMPLAINTS, AND CONSUMER CREDIT

Recommendation:

We recommend that the regulatory authorities in Hawaii:

1. Develop, through the rulemaking procedure, complete meaningful, and quantifiable standards by which utility performance may be measured.

2. Include in any such standards appropriate sanctions to encourage compliance with the standards.

3. Develop a system and capabilities for monitoring performance in the various service areas by the utility companies.

4. Formulate and implement an ongoing public information program concerning quality of service standards and their enforcement.

Comment:

We agree with the recommendation and at present are studying the service standards for Hawaiian Telephone Co. in Docket No. 2543.

Recommendation:

3. The PUC and the PUD develop an administrative machinery to monitor the utilities' credit practices.

Comment:

The PUD will comply with this recommendation.

Chapter 6 - UTILITY REGULATION WITHIN THE CONTEXT OF OTHER STATE AND FEDERAL REGULATIONS IN THE ECONOMIC FIELD

Recommendation

We recommend that the department of the attorney general and the department of regulatory agencies jointly form a task force, or similar cooperative effort, to develop a consistent, coherent, and coordinated approach to antitrust matters in the public utilities field, with particular attention being given to: (1) the clarification of state policy and intentions in this general field; (2) the laws to implement state policy and intentions in this field; and (3) the creation of effective administrative and organizational arrangements to carry out a continuing program of surveillance and enforcement of state policy in the utilities field.

Comment:

We will pursue this recommendation with the Attorney General.

Recommendation:

We recommend that the representation of Hawaii's interests before the federal regulatory agencies be recognized as an important and integral part of the State's public utilities program and that appropriate steps be taken to organize for and carry out this responsibility.

Comment:

We agree with this recommendation. Given the necessary staff and resources, the PUD can take a more active role in representing Hawaii's interests before federal regulatory bodies.

Chapter 8 - SAFETY REGULATION IN THE UTILITIES FIELD

Recommendation:

1. The Department of Labor and Industrial Relations should assume the responsibility for both industrial and public safety with respect to the utilities field. This will require amendment to the industrial safety and public utilities law.

2. The contract between the PUC and the federal government for gas pipeline safety should be renegotiated to make the industrial safety division the contracting party for the State. The Division should expand the program to meet Hawaii's contractual commitments.

Comment:

This matter should be studied further to see if the shift in responsibility to another agency will accomplish the goal sought. We believe a major cause of many of the problems raised by the report is the lack of adequate manpower. Given the manpower, it must then be decided whether adoption of standards, enforcements and sanctions are more effectively and efficiently accomplished by the Department of Labor and Industrial Relations or the PUC. With reference to the skill of the staff to conduct pipeline inspection, we call attention to the fact that the staff has a member who is a registered mechanical engineer and is also a qualified gas and electric welder. This staff member has also had considerable experience in examining welds and reading x-rays in private industry.

Chapter 9 - REGULATION OF UTILITY CAPITAL IMPROVEMENTS AND PROMOTIONS

Recommendation:

We recommend that the PUC and PUD develop a systematic method by which to subject utility companies' capital improvements long-range plans, five-year plans and specific project proposals to a full and in-depth review.

Comment:

We agree with the above recommendation and steps are being taken to implement this in-depth review of the utility capital improvement programs.

Chapter 10- REGULATION OF ENVIRONMENTAL PROTECTION IN THE UTILITIES FIELD

Recommendation:

We recommend that the public utilities agency accord appropriate attention and consideration to environmental matters and acquire the necessary understanding and expertise to function effectively in this area of concern.

Comment

We agree that much more needs to be done in the area of environmental protection. The PUD has made it a policy to require all utilities to study alternate routes for energy transmission and have so testified to that effect before the PUC in evidentiary hearings.

Chapter 12 - PRESENT REGULATION OF CABLE TELEVISION IN HAWAII

Recommendation:

1. The CATV regulators begin to formulate rules, regulations, and guidelines relative to such matters as: ratemaking, complaint-handling, credit, ownership of CATV companies, access to CATV, financing CATV operations, and protection of individual rights. In the formulation of these rules, regulations, and guidelines, and in the

rules themselves, the requirements of the State's APA should be strictly adhered to. In determining the policy of the State with respect to the ownership of CATV companies, the CATV regulators should consult with the department of the attorney general on the ramifications of the State antitrust law.

Comment:

We agree with this recommendation and will comply.

Recommendation:

2. The CATV regulators, in conjunction with the state attorney general, formulate a program for representing Hawaii's interests before the FCC.

Comment:

We will comply with this recommendation.

We thank you for your comments and suggestions. We especially welcome your observations that the PUD has a severe staff limitation. In attempting to implement the suggestions made in your first report, we have been hampered by our inability to do all the things we want to do in the time we have. Rate increase investigations have continued to be our first priority and many suggestions contained in the second volume will be implemented as soon as possible.

The PUD staff faces a tremendous workload in implementing the recommendations contained herein. However, as I stated in the response to your first volume, the PUD staff are dedicated public servants who are willing to make the effort since the changes will benefit the people of this State.

Very truly yours,

Wayne Minami

Wayne Minami
Director

ATTACHMENT NO. 4

ADDRESS REPLY TO
"THE ATTORNEY GENERAL OF HAWAII"
AND REFER TO
INITIALS AND NUMBER

CABLE ADDRESS:
ATTGEN

RECEIVED
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OFC. OF THE AUDITOR
STATE OF HAWAII

RONALD Y. AMEMIYA
ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
STATE CAPITOL
4TH FLOOR
HONOLULU, HAWAII 96813

August 18, 1975

Mr. Clinton Tanimura
Legislative Auditor
State Capitol
Honolulu, Hawaii

Dear Mr. Tanimura:

This is in response to your letter of August 4, 1975 inviting our comments on recommendations directed to this office contained in your preliminary report on the Management Audit of the Public Utilities Program, Volume II, The Regulation of Public Utilities.

The limited time frame within which you request our comments precludes us from studying your recommendations in depth in order to do justice to the evident time and effort your office undoubtedly went through in its preparation. As such, please be informed that no specific comment will be submitted by this office.

Very truly yours,

Ronald Y. Amemiya

RONALD Y. AMEMIYA
Attorney General

GEORGE R. ARIYOSHI
GOVERNOR

JOSHUA C. AGSALUD
DIRECTOR

ROBERT C. GILKEY
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
825 MILILANI STREET
HONOLULU, HAWAII 96813

August 18, 1975

RECEIVED
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OFC. OF THE AUDITOR
STATE OF HAWAII

Mr. Clinton T. Tanimura
Legislative Auditor
The Office of the Auditor
State of Hawaii
State Capitol
Honolulu, Hawaii 96813

Dear Clinton:

Thank you for the opportunity to comment on your preliminary report on the Management Audit of the Public Utilities Program, Volume II, The Regulation of Public Utilities.

The Department of Labor and Industrial Relations (DLIR), more specifically its Division of Occupational Safety and Health (DOSH), would not be adverse to assuming the employee safety and health functions currently vested in the PUC under their contract with the Office of Pipeline Safety providing that adequate funding was made available to hire the necessary technical, inspection, and support personnel and acquire the concomitant office space and equipment. We already exercise occupational safety and health jurisdiction over public utilities in most areas, so that such an expansion would be a natural extension of our current function. It would also be necessary to negotiate a satisfactory agreement with the Office of Pipeline Safety and to iron out any conflicts between DOT and OSHA concerning funding of such activities.

On the other hand, I would oppose transfer of the public safety functions of the PUC to the DLIR. Since DOSH is almost entirely employee-oriented, to undertake a public safety role would require a type of expertise which we almost entirely lack and would result in the incongruity of being concerned with public safety only in the utility field to the exclusion of all other areas. The possibility of an employee vs public safety conflict within DOSH also cannot be ignored. It would be preferable, I believe, to preserve DOSH's unity of goal and effort--occupational safety and health. Again, if such a

transfer of functions is made, adequate funding is an absolute necessity if the job is to be done right.

If DOSH does assume either the employee or public safety functions of the PUC, or both, it would probably require the creation of an additional branch within the Division. This would place an increased load on the Administrator of DOSH. As you are already aware, a number of important time-constrained decisions concerning such matters as approval of citations, abatement periods, and proposed penalties, informal appeals, variances, imminent hazards, etc., can only be made by the Administrator at the present time. This can cause serious problems when the Administrator is absent for any reason--vacation, illness, course or meeting attendance, and so on. With the assumption of extra functions and the consequent growth in personnel, the problems this poses will become even more acute. Perhaps an assistant administrator position would be appropriate.

Sincerely,

Joshua C. Agsalud
Director of Labor and
Industrial Relations

APPENDIX

APPENDIX

Illustration of the Operation of Genetal 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 applicatibn 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.

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.

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.

3. Management Audit of the Public Utilities Program (Volume I; The Organization for and the General Management of the Public Utilities Program), 154 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.

LEGISLATIVE AUDITOR
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HONOLULU, HAWAII 96813