
Management Audit of the Public Utilities Commission and the Division of Consumer Advocacy

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

Report No. 04-02
February 2004



THE AUDITOR
STATE OF HAWAII

Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawaii State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

Under its assigned missions, the office conducts the following types of examinations:

1. *Financial audits* attest to the fairness of the financial statements of agencies. They examine the adequacy of the financial records and accounting and internal controls, and they determine the legality and propriety of expenditures.
2. *Management audits*, which are also referred to as *performance audits*, examine the effectiveness of programs or the efficiency of agencies or both. These audits are also called *program audits*, when they focus on whether programs are attaining the objectives and results expected of them, and *operations audits*, when they examine how well agencies are organized and managed and how efficiently they acquire and utilize resources.
3. *Sunset evaluations* evaluate new professional and occupational licensing programs to determine whether the programs should be terminated, continued, or modified. These evaluations are conducted in accordance with criteria established by statute.
4. *Sunrise analyses* are similar to sunset evaluations, but they apply to proposed rather than existing regulatory programs. Before a new professional and occupational licensing program can be enacted, the statutes require that the measure be analyzed by the Office of the Auditor as to its probable effects.
5. *Health insurance analyses* examine bills that propose to mandate certain health insurance benefits. Such bills cannot be enacted unless they are referred to the Office of the Auditor for an assessment of the social and financial impact of the proposed measure.
6. *Analyses of proposed special funds* and existing *trust and revolving funds* determine if proposals to establish these funds are existing funds meet legislative criteria.
7. *Procurement compliance audits* and other *procurement-related monitoring* assist the Legislature in overseeing government procurement practices.
8. *Fiscal accountability reports* analyze expenditures by the state Department of Education in various areas.
9. *Special studies* respond to requests from both houses of the Legislature. The studies usually address specific problems for which the Legislature is seeking solutions.

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OVERVIEW

Management Audit of the Public Utilities Commission and the Division of Consumer Advocacy

Report No. 04-02, February 2004

Summary

This audit was conducted pursuant to Act 94 of the 2003 Regular Session, which requested a management audit of the Hawaii Public Utilities Commission (commission) and the Division of Consumer Advocacy (division). The commission regulates all chartered, franchised, certificated, and registered public utility companies that provide electricity, gas, telephone, telecommunications, private water and sewage, and motor and water carrier transportation services in the State. The division represents the interests of consumers of utility services before any state or federal agency.

We found that the commission and the division did not have strategic plans to guide their respective agencies. More importantly, neither agency had a vision of Hawaii's utility regulatory future and its role in that process. Without a vision and corresponding plans to achieve it, the commission and the division trudge through daily operational work mired in process and individual case details.

Core deficiencies result from a lack of vision and plans. In 1975 and 1989, we conducted management audits of the commission and found planning and organization deficiencies. Since that time—nearly 30 and 15 years ago—neither agency has planned strategies to correct the deficiencies and many of the same serious problems persist.

Poor personnel management planning results in staffing shortages and vacancies, outdated and obsolete job descriptions, inconsistent performance evaluations, a lack of formal training programs, and inadequate staff and procedural manuals. Severe staffing shortages may compromise the quality of the agencies' work and result in delay.

Lack of strategic planning is also evident in the area of information technology. Neither the commission nor the division has a formal plan or strategy for information systems development. In fact, poor planning has resulted in inefficiencies that limit the effectiveness of both agencies' information systems in supporting operations.

Finally, poor strategic planning also affects the commission's and the division's administration of laws. Both agencies have not assessed whether their administration of laws is effective in meeting the public's current needs. The commission shirks policy-making responsibilities by failing to evaluate motor carrier regulation, despite several factors in support of deregulation. The commission failed to adopt administrative rules specifying maximum time periods for approvals despite a mandate in the automatic permit approval law. And the commission's complaints system does not fulfill statutory requirements for a central clearing house.



The division does not adequately represent, protect, and advance the interests of the public in its failure to fulfill its role in utility education and to assess the appropriateness of rule making. First, the division has not educated the public on public utilities regulation, a condition that existed in 1989. Second, the division has not assessed whether to adopt rules to help carry out its statutory responsibilities. The division stated it has no plans to perform such an assessment or adopt rules, yet we identified two areas where administrative rules would be helpful: 1) motor carrier issues and 2) filing requirements.

Recommendations and Response

We made several recommendations to the Public Utilities Commission and the Division of Consumer Advocacy. We recommended that the Public Utilities Commission chair and administrative director develop a strategic plan for the commission. We also recommended that the Department of Commerce and Consumer Affairs' director fill the Division of Consumer Advocacy's executive director position. The director of commerce and consumer affairs, as consumer advocate, and the division's executive director, should then develop a strategic plan for the division.

We recommended that both agencies make personnel management a priority and that they collaborate and hire a consultant to develop an information system that shares common information and processes but keeps separate information secured.

Finally, we recommended that the commission improve its complaints handling process, adopt administrative rules specifying application approval deadlines, and fulfill its policy-making function. The division should conduct an assessment of the need and value of its own separate set of rules to supplement or fill in gaps in the commission's rules.

The Public Utilities Commission, the Departments of Budget and Finance and Commerce and Consumer Affairs, and the Division of Consumer Advocacy provided responses to our draft report. The commission generally agreed with our findings and stated that it had already commenced with strategic planning. It also indicated that it would carefully evaluate and explore ways to streamline its regulatory process. The Department of Budget and Finance pledged to support the commission in its efforts to address audit recommendations.

The Department of Commerce and Consumer Affairs and its Division of Consumer Advocacy agreed with our findings and have already begun to address identified issues. The department and the division agreed that a strategic plan encompassing the division's personnel management problems must be developed and that the division should conduct an independent assessment of the need and value of developing its own set of rules. The department and the division also clarified issues raised in the report.

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Submitted by

THE AUDITOR
STATE OF HAWAII

Report No. 04-02
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Foreword

This is a report of our audit of the Public Utilities Commission and the Division of Consumer Advocacy. The audit was conducted pursuant to Act 94 of the 2003 Regular Session.

We wish to express our appreciation for the cooperation and assistance extended to us by officials and staff of the Public Utilities Commission, Division of Consumer Advocacy, Department of Budget and Finance, Department of Commerce and Consumer Affairs, and others whom we contacted during the course of this audit.

Marion M. Higa
State Auditor

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Chapter 1

Introduction

Background

The Hawaii Public Utilities Commission (commission) regulates all chartered, franchised, certificated, and registered public utility companies that provide electricity, gas, telephone, telecommunications, private water and sewage, and motor and water carrier transportation services in the State. The commission exercises extensive powers by establishing and enforcing rules and regulations and by exercising quasi-judicial authority over contested case proceedings.

In 2003, the Legislature enacted Act 94, which requires the Auditor to conduct a management audit of the commission and the Division of Consumer Advocacy (division). The Legislature noted that previous management audits found excessive workloads and inadequate resources hampered the commission's and the division's effectiveness. The Legislature requested this management audit to help the commission better recognize its strengths and weaknesses, improve on meeting statutory mandates, and better meet Hawaii's changing economy.

The purpose of this audit is to assess the adequacy of the present utility regulatory process. Specifically, Act 94 listed four assessment objectives for the audit: 1) appropriateness and applicability of utility legislation; 2) adequacy of policies, rules, and procedures; 3) management of staff support in case management and enforcement of rules; and 4) effectiveness of the commission and the division in dealing with telecommunications, energy, and other utility issues.

This management audit includes the Division of Consumer Advocacy because it represents the interests of all consumers of utility services. The director of the Department of Commerce and Consumer Affairs is the state's consumer advocate and is supported by the division.

The Public Utilities Commission Regulates Specific Public Utilities

The commission was established by Act 89, Session Laws of Hawaii (SLH) 1913. The commission's mission is to ensure that customers of regulated companies receive adequate and efficient services at reasonable and fair rates, while providing a fair return to the regulated companies.

The commission achieves its mission by performing the following activities: prescribing rates, tariffs, charges, and fees, and determining the allowable rate of earnings in establishing rates; prescribing the methods, services, and annual rates of depreciation for utility properties;

and acting on applications for certification and the extension or abandonment of services, requests for the acquisition, sale, disposition, or other exchange of utility properties, and for the issuance and disposition of securities and other evidence of long-term indebtedness. The commission also issues orders and guidelines concerning the general management and operations of regulated utility businesses, and adopts rules and regulations governing the operations, standards of services and facilities, and fiscal management of utilities, including procedures and practices of the commission.

Chapter 269, Hawaii Revised Statutes (HRS) describes the commission's general powers and duties for utility regulation. In general, the commission regulates five categories of public utilities: 1) transportation of passengers and freight, excluding certain carriers such as taxis and sightseeing or recreational water carriers, governed by Chapters 271 (The Hawaii Motor Carrier Law) and 271G (The Hawaii Water Carrier Act), HRS, respectively; 2) telecommunications; 3) storage or warehousing of goods (when found necessary by the commission); 4) private sewage disposal; and 5) provision of light, power, heating, cooling, water, gas, or oil (excluding nonfossil fuel sources and wholesale power production).

Telecommunications and motor carriers make up the majority of companies regulated by the commission. In FY2001-02, the commission regulated 1,154 companies, consisting of: four electric, one gas, 215 telecommunications, 31 water and sewer, three water carriers, 527 passenger motor carriers, and 373 property motor carriers.

When a company files an application or a request, the commission opens a case, also known as a docket. Dockets can be simple, such as an application, or complex, as in a company's rate change request. In FY2001-02, the commission opened 420 new dockets and disposed of 410 dockets. When the commission makes a decision on a case, it issues a decision and order. In FY2001-02, the commission issued 764 decisions and orders and approved applications totaling more than \$20 million in utility capital improvements. Exhibit 1.1 shows a summary of these statistics from FY1998-99 through FY2001-02.

The commission also manages complaints against utilities

Section 269-55, HRS requires the commission to collect and compile all consumer complaints and inquiries concerning public utilities. The commission receives the most complaints on telecommunications and motor carrier companies. Exhibit 1.2 summarizes informal and verbal complaints logged by the commission.

Exhibit 1.1 Summary of Statistics for Public Utilities Commission

Fiscal Year	Utility Companies Regulated	Water, Passenger, and Property Carriers	Dockets Opened	Dockets Disposed	Dockets Pending	Dockets Carried Over From Prior Years	Decisions and Orders Issued
1998-1999	266	912	417	262	155	93	662
1999-2000	280	997	438	269	169	116	750
2000-2001	277	860	461	291	170	124	851
2001-2002	251	903	420	410	304	294	764

Source: Public Utilities Commission annual reports, 1999-2000

Exhibit 1.2 Informal and Verbal Complaints, CY1997-CY2003

Type of company regulated	1997	1998	1999	2000	2001	2002	2003
Telecommunications	883	593	366	215	277	243	83
Electricity	169	118	97	101	94	140	92
Gas	56	21	23	10	18	24	4
Water/Sewer	23	7	9	9	17	18	14
Water carrier	6	5	5	6	10	10	0
Motor carrier	231	155	300	297	189	161	116
	1368	899	800	638	605	596	309

Source: Public Utilities Commission annual reports, 1999-2002 and summary of 2003 complaints

When an informal complaint is received, staff investigate and resolve the complaint. Complainants who are not satisfied with their resolutions are encouraged to file a formal complaint. Formal complaints trigger a contested case hearing process and may require the assistance of an attorney. In the past seven years, from 1997 to 2003, the commission received 16 formal complaints.

Three commissioners manage the commission

The commission is run by three full time commissioners who serve staggered six-year terms. Commissioners are appointed by the governor with the consent of the state Senate. The governor also selects the chair of the commission. For administrative purposes, the commission falls under the Department of Budget and Finance.

Separate functional sections support the commission

The commission's organization is separated into two parts: 1) staff and services that report directly to the commissioners and 2) sections that perform operational functions under an administrative director. Exhibit 1.3 shows the commission's organizational chart. A secretary, legal stenographer, administrative director, and legal counsel report directly to the commissioners. The chief legal counsel, with assistance from staff attorneys, provides legal advice to the commission. The administrative director administers the daily operations and supervises a secretary and several operational sections: research, audit, engineering, investigative, public utilities assistants, clerical services, and documentation.

The research section analyzes financial information on pending applications and operating activities of public service companies, and renders technical (mathematical and statistical) assistance on matters before the commission. The audit section examines and evaluates accounts, records, reports, and expenditures of regulated utilities. The engineering section reviews electric and telephone companies' overhead line construction and measures compliance with service standards, analyzes depreciation studies, performs capacity studies, and evaluates capital expenditure requests.

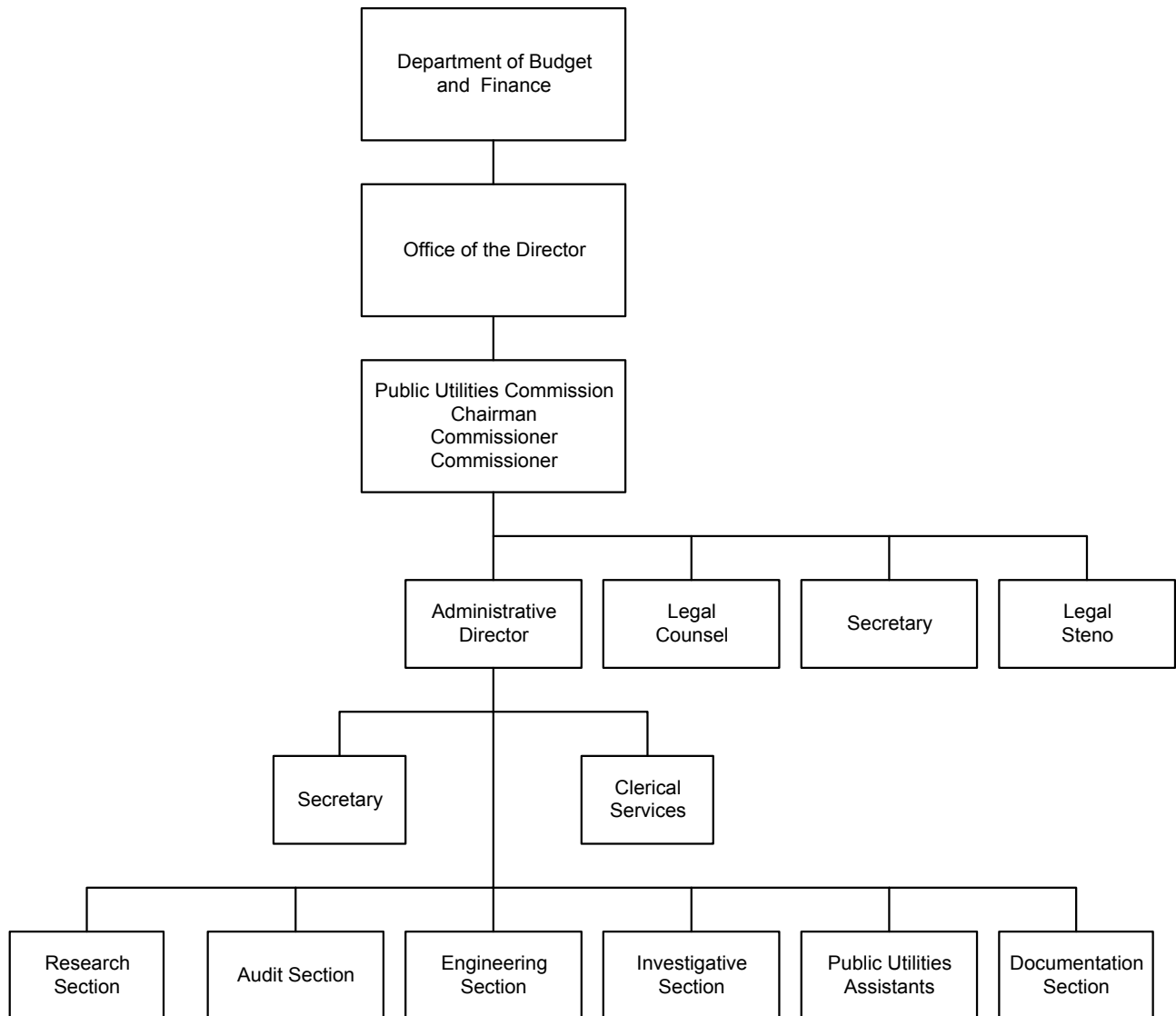
The investigative section investigates regulated companies for compliance with service standards, safety, adequacy of facilities, and whether efficient and reasonable services are provided to the public. The public utilities assistants, located in the counties of Kauai, Hawaii, and Maui, act as local representatives of the commission. Clerical services maintains records and the library, and performs other administrative tasks. The documentation section maintains official case files, other official documents, a register of all decisions, and performs hearings related work.

For several years, the commission performed its functions with less than full staff. From FY1998-99 to FY2002-03, the commission was appropriated 43-44 positions with little or no restrictions. However, from FY1998-99 to FY2001-02, the commission reported vacancies of ten to 14 positions; and 17 vacancies were reported for FY2002-03.

The Division of Consumer Advocacy Represents the Public in Utilities Regulation

The consumer advocate's mission involves advocating affordable, quality utility and transportation services. Section 269-54, HRS lists the general powers and duties of the consumer advocate, which are to: conduct investigations to secure information useful in administering this section; assist, advise, and cooperate with federal, state, and local agencies and officials to protect and promote the interests of consumers in relation to public utilities; study laws affecting all consumers of utility

**Exhibit 1.3
Public Utilities Commission Organizational Chart**

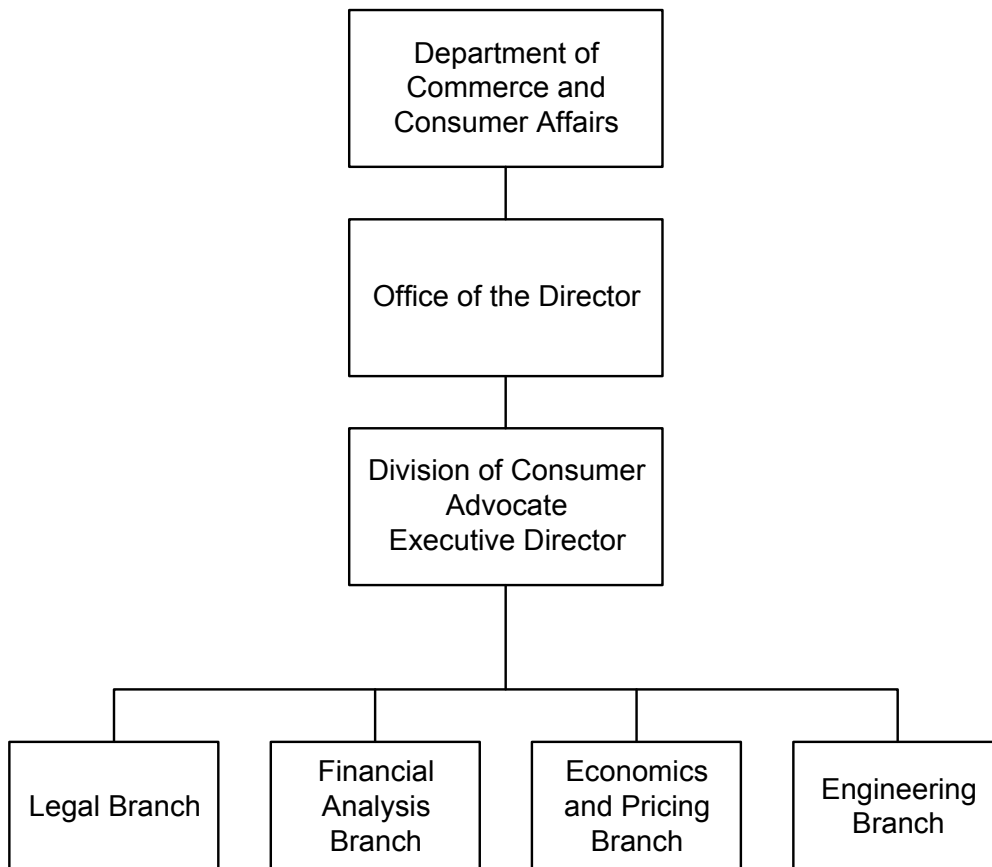


Source: Public Utilities Commission

services, including small businesses, and make recommendations on new laws and amendments in consumers' interests regarding public utilities; and represent the interests of consumers of utility services before any state or federal agency. The consumer advocate is also charged with counseling utility customers in the handling of consumer complaints before the Public Utilities Commission.

The division's 13 staff includes an executive director, an attorney, auditors, statisticians, analysts, clerks, and an engineer. For the past few years, the division has received 20 to 23 position allocations, but regularly maintains five to ten vacant positions.

Exhibit 1.4
Organizational Chart of the Division of Consumer Advocacy



Source: Division of Consumer Advocacy

Fees and Citations Provide Funding for Both the Commission and the Division

Act 226, SLH 1994 established the Public Utilities Commission Special Fund and deposited \$1 million in general fund seed money into the special fund for FY1994-95. At the beginning of each subsequent fiscal year, the special fund starts with a \$1 million balance carried over from the prior year. Pursuant to Section 269-33, HRS, special fund moneys in excess of \$1 million remaining in the fund at the end of each fiscal year lapse to the general fund. The special fund covers both the commission's and the division's expenses.

Fees and citations paid by utility companies provide most of the special fund's revenue. Public utilities pay an annual fee of one-half of one percent (.5 percent) of the gross income of their previous year's business. The fee is paid semi-annually, in July and December, and deposited into the special fund. Motor carriers pay annual fees based on one-fourth of one percent (.25 percent) of gross revenues of their previous year's business. Other special fund revenues include filing, document reproduction, and penalty fees. Exhibit 1.5 shows the special fund's revenues and expenditures for FY2000-01 and FY2001-02.

Exhibit 1.5 Public Utilities Commission Special Fund Revenues and Expenditures, FY2000-01 and FY2001-02

	FY2000-01	FY2001-02
Revenues	\$10,320,467	\$12,194,467
Expenditures	5,243,309	5,084,451
Transfer to General Fund	5,077,128	7,110,016

Source: Public Utilities Commission special fund reports, FY2000-01 and FY2001-02

During FY2001-02, commission expenses included \$2,355,529 for division operations and about \$1.9 million for personnel expenses. Exhibit 1.6 shows a breakdown of these expenditures.

Exhibit 1.6**Public Utilities Commission Special Fund Expenditures, FY2000-01 and FY2001-02**

	FY2000-01	FY2001-02
Personnel	\$1,863,223	\$1,879,631
Consumer Advocate operating expenses	2,295,007	2,355,529
Central service assessment	516,957	609,317
Public Utilities Commission direct expenses (public notices, dues, subscriptions)	215,320	183,199
Office renovation	309,000	13,070
Equipment	43,802	43,705
Total	\$5,243,309	\$5,084,451

Source: Public Utilities Commission special fund reports, FY2000-01 and FY2001-02

Previous Audits Have Noted Significant Problems at Both Agencies

We have conducted two previous management audits of the commission, in 1975 and 1989. The 1975 audit consisted of three volumes, Report Nos. 75-3 (Volume I), 75-4 (Volume II), and 76-6 (Volume III) entitled *Management Audit of the Public Utilities Program*. Volume I focused on the organization and roles of regulatory agencies; Volume II audited the regulatory process; and Volume III focused on the regulation of transportation services. In 1989, our Report No. 89-17, *Management Audit of the Public Utilities Program of the State of Hawaii*, reviewed issues identified in 1975.

Report No. 75-3 (Volume I) found “considerable confusion” regarding the roles and responsibilities of the commission, its staff, and the director of regulatory agencies (now the director of commerce and consumer affairs). The report noted policies and procedures were contrary to law and led to inconsistent decisions. The report also found a lack of time limitations for commission proceedings, personnel problems such as unqualified staff, obsolete job descriptions, and understaffing, and poor records management. Volume I recommended that the commission clarify roles and responsibilities, establish a system for developing and maintaining rules, deregulate telephone interconnect systems and motor carriers, and improve records management. The report also recommended that the commission be a full-time body, implement financial management policies, and diligently enforce its penalties.

Report No. 75-4 (Volume II) focused on the regulatory process. It found the ratemaking process was time consuming and limited participation in rate cases. It also found the commission’s ratemaking emphasized utility companies’ profitability instead of improving operational efficiency; rules and regulations for the handling of utility tariffs were lacking; and

consumer complaints were inadequately addressed. The report also found that the commission approved mergers and consolidations without considering antitrust ramifications. Recommendations included enlarging staff capacities to speed up ratemaking, developing an in-service training program, engaging in forward planning, revising the commission's ratemaking approach, and coordinating a consistent approach to antitrust matters.

Report No. 76-6 (Volume III) focused on transportation services regulations. The report found the motor carrier industry was intrinsically competitive and that government regulation had rendered the industry inefficient and non-competitive. The report recommended the motor carrier industry be deregulated. However, the report added that the government should enact measures to prohibit below-cost rate setting by motor carriers to prevent undercutting. These measures could consist of establishing minimum financial and capital standards for motor carriers before issuing license permits.

Report No. 89-17, *Management Audit of the Public Utilities Program of the State of Hawaii*, found that some previous recommendations had been implemented. However, continuing ambiguities and deficiencies in functions, duties, and powers of the commission, division, and attorney general continued to exist and detracted from program effectiveness.

The report found the commission and the division to be passive and reactive in defining and carrying out their separate roles. The commission emphasized adjudication and lacked adequate policymaking, enforcement, and administrative capabilities. The division became involved in fewer than 20 percent of cases before the commission, and in a number of instances, this was at the commission's request rather than on its own initiative. The report also noted that neither agency was adequately addressing consumer complaints. The report recommended the commission and the division take a more active and comprehensive attitude and establish an integrated complaints process. The report found numerous and serious problems with organization and personnel management and recommended the agencies focus attention on those areas.

Objectives

1. Assess the Public Utilities Commission's and Division of Consumer Advocacy's ability to fulfill their respective missions.
2. Assess the commission's and division's administration of their laws, rules, and policies and procedures, to effectively support their respective goals and objectives.

3. Make recommendations as appropriate.

Scope and Methodology

The principal period of review for this audit was from FY1998-99 to the present. However, prior years were reviewed as necessary to provide sufficient material for analysis.

Methodology for the first objective included reviewing and analyzing the commission's and division's organization, functions, responsibilities, staffing, decision-making structure, management of personnel, and information systems. Fieldwork included interviews with officials of the Department of Budget and Finance, the commission, the Department of Commerce and Consumer Affairs, and the division. We also interviewed professional organizations, utility companies, and national regulatory associations.

We examined the commission and the division's information systems development efforts. We also reviewed personnel files, policies and procedures, and other management controls; analyzed work processes; and reviewed recruitment efforts.

We conducted a mail survey of all regulated companies and samples of complainants and motor carrier companies. The survey asked recipients to relate their experience with and level of satisfaction from working with the commission and the division.

Our second objective required a review and analysis of the laws, rules, decisions, orders, policies, and procedures of the commission and the division. We examined the commission's regulatory work processes and the division's role and involvement in that process. We also evaluated the commission's and division's effectiveness in dealing with utility issues.

Our work was conducted from June 2003 to October 2003 according to generally accepted government auditing standards.

Chapter 2

The Public Utilities Commission and Division of Consumer Advocacy Are Trapped in Decades-Old Thinking and Processes by Outdated Vision and Deficient Planning

The Public Utilities Commission (commission) and the Division of Consumer Advocacy (division) lack focus and have failed to update utility regulatory needs and modernize desired outcomes. Because neither agency has taken the time to renew goals and objectives or rethink roles and responsibilities, mission statements are outdated and misguided. Without valid mission statements, the commission and division are unable to strategically plan for the future.

Handicapped by a lack of visionary thinking and strategic planning, both agencies grind away at regulatory processes hampered by decades-old management problems and deficiencies. Both agencies are hard pressed to devote time and personnel required to strategically plan for desired results; consequently, program and activity plans are allowed to drift without direction. Long-standing problems impacting core personnel resources persist and information systems development efforts flounder without leadership, vision, and coordination. Lack of strategic planning and direction cause both agencies to react to, rather than direct, the outcome of certain legal processes and requirements.

Both the commission and the division need to step back from daily operational work to outline priorities in terms of strategic goals and desired outcomes. Once accomplished, top-to-bottom redesigns of what the agencies do and how they do it is needed to empower the commission and the division with the means to address their priorities.

Summary of Findings

1. The Public Utilities Commission's and the Division of Consumer Advocacy's lack of strategic planning and vision impede regulatory operations.
2. The commission's and the division's perspectives on certain laws strain resources and lessen public protection.

Neither Agency Has a Plan or Vision for the Future

The commission and the division do not have strategic plans to guide their respective agencies. More importantly, neither agency has a vision of Hawaii's utility regulatory future and its role in that process. Without a vision and corresponding plans to achieve it, the commission and the division trudge through daily operational work mired in process and individual case details.

Core deficiencies result from a lack of vision and plans. For example, outdated mission statements no longer align with commission and division activities, yet new goals have not been developed. Two key resources for operational success—personnel and information systems—suffer from years of conscious neglect and mismanagement. Commission and division retorts of insufficient time and resources to carry out planning demonstrate the urgency of its need.

Goals and objectives must be identified before planning can begin

Key to any strategic plan are clear, specific goals and objectives based on identified needs. In its special report, *Reporting Performance Information: Suggested Criteria for Effective Communication*, the Governmental Accounting Standards Board (GASB) describes goals and objectives government is trying to address. The process of developing operational plans based on such goals and objectives, and meaningful performance measures to gauge how well an agency achieves these, is called strategic planning. By following this process, agencies can better communicate to the public and legislative bodies government accomplishments, the extent to which goals and objectives are being achieved, and how efficiently and effectively government is functioning.

Goals and objectives may be expressed in a mission statement. The commission expresses its mission as “ensuring consumers receive adequate and efficient services at reasonable and fair rates while providing a fair return to the regulated companies.” The division describes its mission as “advocating affordable, quality utility and transportation services.” Neither agency's mission statement aligns with present activities and both fall short of developing and communicating goals and objectives for the future.

For instance, the commission's mission statement emphasizes ratemaking and does not adequately define its overall responsibilities in regulating utilities. While ratemaking has traditionally been the primary function of state public utility commissions, a much broader coverage is expected today. The National Regulatory Research Institute, a national organization for state utility regulatory agencies, indicated that commissions should move beyond rate setting and include policy making, consensus building, dispute resolution, provision of information,

and consumer interaction. Because state agencies have had difficulty achieving such broad coverage, the institute assists them with strategic planning and could do the same for Hawaii's commission.

Likewise, the division's mission statement appears to emphasize ratemaking and does not adequately define its overall responsibilities in advocating on behalf of utility consumers. As with the commission, the division must move beyond its focus on rate setting and expand coverage to include at minimum its policy making and consumer education roles.

Until the commission and the division take the time to reevaluate what they do and modernize their programs and services, Hawaii's utility regulatory process will be in a rut. Both agencies need to 1) identify needs and desired outcomes; 2) establish new goals and objectives based on those needs and outcomes; 3) express their goals and objectives in updated mission statements; and 4) commence with planning to develop strategies (programs and services) aimed at achieving their mission statements.

The Legislature intended for the commission to make strategic plans and required that it report such plans annually. Section 269-5, HRS requires the commission to include both long- and short-range plans in its annual report. While we found at least one commission chair who realized the need for strategic thinking and forward planning, his term was too short-lived to have made systemic change. To date, and even though mandated by law, this requirement remains unfulfilled.

Strategic planning could also help both agencies with transitional planning to address problems induced by change. Specifically, both agencies have recently endured profound changes in leadership. Over the last five years, the commission chair has changed twice, the administrative director four times, and the chief counsel once. At the division, the executive director position has been held by three different persons and is currently vacant. Planning guides program staff in delivery of services in spite of changes in leadership. Proper long- and short-range planning can ease disruption in leadership by providing program continuity.

***Longstanding
personnel problems
are indicative of poor
planning***

The commission and the division have suffered through decades of personnel management problems and ignored suggestions for improvement. Our 1975 and 1989 management audits of the Public Utilities Program found that the commission and the division lacked adequate staff and procedural manuals; possessed outdated and obsolete job descriptions; lacked staff training and development programs; and

improperly evaluated staff performance. We recommended that the agencies make personnel management a priority and bring their workforces in line with agency needs.

Since we made those recommendations—nearly 30 and 15 years ago—neither agency has made much effort to plan strategies to correct such deficiencies. Today, both commission and division personnel problems continue to fester and important personnel processes and procedures have never been developed. Staffing shortages and vacancies persist, inconsistent performance evaluations and outdated job descriptions continue, and both agencies lack a formal training program as well as personnel policies and procedures.

Human resource planning is deficient in both agencies

Effective personnel management includes interrelated processes that address human resource issues including human resource planning; job and work analysis; staffing; performance appraisal and review; and training and development. As a core resource for service delivery, personnel planning should be an integral part of an agency's overall program plan.

We found that neither the commission nor the division could produce a formal, written plan on how it intends to deal with human resource issues and personnel system deficiencies. Although administrators from both agencies have expressed the need for additional staff, very little effort has been made to identify present and future staffing needs or initiate an action plan. In fact, efforts to plan for personnel needs have been sporadic and disjointed at best.

Staffing is a fundamental function of human resource planning that includes a recruiting and hiring strategy that is targeted to fill short- and long-term human capital needs of an organization. At the commission, the chair and the administrative director share this responsibility; at the division, it falls to the acting executive director. Unless commission and division leadership develop plans to improve human resource issues, both agencies will continue to struggle with staff shortfalls.

Prolonged vacancies plague the agencies

Both the commission and the division have inordinate vacancies. As of June 2003, 38 percent of commission positions were vacant—which is up from 22 percent in 1999. Vacancies include key management, supervisory, and staff positions such as the administrative director, chief researcher, economist, transportation specialist, auditors, analysts, and engineers.

The division also endures a high vacancy rate. At mid-year 2003, 42 percent of the division's positions were vacant, as compared with 21 percent in 1999. Key supervisory and professional positions such as the economist, education specialist, analyst, engineers, and most importantly, the executive director, remain unfilled. Although the governor has imposed hiring freezes in some years, many of these positions have been vacant for three or more of the past five fiscal years. Yet, even with its difficulties in filling positions, the division has expressed a preference for in-house engineers rather than outside consultants, citing cost and inefficiencies associated with familiarizing consultants with division work.

Failure to fill these vacancies diminishes the commission's ability to deliver timely services, as fewer staff must accommodate the workload. New cases are distributed to the chief counsel and supervisors who work together with staff in teams to produce analyses for the commissioners. The commission uses the analyses to evaluate the stances advocated by utility companies. Different types of cases require different professional specialties.

Vacant supervisory positions force the commission's administrative director to oversee detailed, case-specific work, which detracts from program oversight responsibilities. The same holds true at the division where the transportation officer also fills the division's top position, serving simultaneously as the acting executive director. Her predicament is compounded because no person has been assigned to relieve her of transportation officer responsibilities.

Vacancies in key management and supervisory positions compromise quality of work. By the commission's own description, engineering analyses are vague and unreliable without a supervising engineer. Likewise, analyses conducted by research assistants lack technical expertise and depth without a chief researcher to supervise and ensure that technical issues are adequately addressed, information is accurate, and recommendations are reasonable. For the division, the vacancy of the executive director ripples through the ranks, placing a continuous strain on division staff. As long as the division's transportation officer remains on temporary assignment to the executive director's position, a gap will exist in her position and duties. Overall, the effect is diminished guidance and direction to subordinate staff.

This condition makes policies and procedures of paramount importance in filling the directional void left by supervisory vacancies. Procedures should cover general agency operating procedures; staff recruitment; training and development; performance appraisals; and assessment of resource needs and utilization.

The commission has made some effort to fill vacancies, but has encountered difficulties such as hiring restrictions and has been largely unsuccessful.

The commission deals with lengthy approval processes through the Department of Budget and Finance. The commission has eight pending requests for various personnel actions to the department dating back to September 2000. To date, all eight requests await department action.

When asked about approval delays, the department's personnel officer claimed she lacked sufficient staff to address the requests and that commission priorities were not aligned with those of the department. When asked why the commission allowed its requests to languish with the department, the acting administrative director told us he made intermittent status checks but admitted that it was not routine to do so. He was also concerned that frequent follow-up calls would cause the department to further delay the request. The commission similarly expressed that it did not want to exacerbate what it considered to be an already strained relationship with the department. In its own words, it was "at the mercy" of the department for personnel issues and did not want to cause friction.

The division reported no delays in receiving approvals from the Department of Commerce and Consumer Affairs, but blames its inability to fill positions in part on inaccurate position descriptions. The acting executive director claimed that prior executive directors did little in personnel management, which explained the longstanding personnel issues.

When the acting executive director tried to change position classifications, she reported receiving little assistance from the department's personnel staff. The department's personnel staff performs limited personnel management services and has provided only marginal advice or assistance to the division regarding position redescription. The division expressed frustration at not receiving what it considered to be appropriate guidance.

A recent study entitled *Hawaii Energy Utility Regulation and Taxation* found that the number of Hawaii's regulatory agency staff is severely undersized by industry standards even if all existing positions were filled. The fact that the agencies currently face 38 and 42 percent vacancy rates underscores the magnitude of the dilemma.

The ongoing vacancy rate and lack of staff expertise have not gone unnoticed among the utility companies that responded to our survey. We conducted a mail survey of all regulated utility services and asked that they relate their experience and level of satisfaction in working with the

commission and the division. The large utility companies indicated that both the commission and the division are handicapped by lack of staff. The companies stated that staffing constraints diminish the commission's ability to give sufficient time and attention to specific cases. Lack of staff puts the commission and the division at a disadvantage, particularly in light of the depth and expertise of staff among the large utilities. To equalize the balance of resources, the commission, division, and respective oversight agencies must agree to plan for staffing and make filling vacancies a management priority.

With a new chair and administrative director at its helm, the commission should welcome the opportunity to fulfill this management role. It is imperative that the chair and administrative director cultivate a working relationship with the Department of Budget and Finance and agree to shared priorities. For the division, the director of commerce and consumer affairs must make appointment of an executive director a priority so that the director and the executive director may plan for personnel initiatives. In the interim, the acting executive director should assume this role.

Inadequate staffing results in delays

Chronic understaffing causes delays in commission and division workflow. The commission has several unresolved dockets that were initiated as early as 1991. In addition, the division has not met the deadline to submit its statement of participation in many instances.

Although the commission resolves most of its dockets within a year, the open status of some dockets is a concern. We found 52 open dockets that were initiated prior to January 2003. While most of these were initiated in 2002, the remaining dockets were initiated between 1991 and 2001. Delays in 25 of the 52 dockets are directly attributable to the commission, the division, or both. For 16 dockets, the commission awaits action by commission staff. For nine dockets, the commission awaits filing by the division of its position statement.

The division's inability to meet legal deadlines for filing its position statements delays the timely processing of dockets. By law, the division is a party to every commission case. Section 6-61-62, Hawaii Administrative Rules (HAR) requires the division to file a statement explaining whether it intends to participate in the case within 20 days of being served with copies of an application, a complaint, or a commission order of investigation. The division has not met this 20-day deadline in over 85 percent of its cases and has had to request extensions from the commission. The commission is liberal in allowing such extensions because it wants to encourage the division to participate and represent the public.

Timeliness is a source of overall dissatisfaction among regulated companies and persons filing complaints with the commission. Our survey revealed that approximately 72 percent of motor carriers and 48 percent of complainants rated the commission as average, below average, poor, or could not rate on timeliness. Only utility companies rated the commission as above average in timeliness. Sixty percent of utility companies, 65 percent of motor carriers, and 30 percent of complainants rated the division as average, below average, poor, or could not rate the division.

Both the commission and the division again claimed lack of staff as the primary reason for delays. The commission's acting administrative director stated that staff changes cause delays because replacement staff require additional time to become familiar with existing cases. In addition, changes in the commission's chair have caused shifts in priorities, which also result in delays. As for the division, the acting executive director stated that staff shortages are the primary cause of the division not being able to meet filing deadlines.

We also found that lack of coordination between the two agencies caused delays. Two commissioners said the commission sometimes triggers the division's participation and waits for it to file. The acting executive director of the division told us the commission's priorities do not coincide with the division's priorities, causing the division to scramble to review cases that the commission has set for hearing. Ultimately, the parties harmed by delays are businesses seeking a decision by the commission.

Chronic vacancies cause cross-functional overlap

Both agencies have been operating with significant staff vacancies. Significantly, our most recent review shows both agencies have been operating at less than two-thirds staffing levels. Faced with the challenge of being chronically short-staffed, the commission and the division address pending work by utilizing staff at hand, even if it means assigning staff to functions outside their position descriptions. This practice requires staff to perform functions for which they are not qualified.

For example, a commission auditor routinely performs some engineering duties, while a division rate analyst performs certain audit and engineering functions. The division's transportation specialist handles information technology duties beyond his job description.

On occasion and when a vacancy occurs, it is reasonable for agency staff to perform duties outside their position descriptions to accommodate pending work. Staff should not, however, be burdened with chronically

operating outside position descriptions and in areas beyond their qualifications. Having staff perform in this manner does not support the overall organizational or operational effectiveness of either agency.

This condition is worsened at both agencies by the high vacancy rate among supervisory personnel who would provide needed oversight and guidance to staff assigned to work outside their position descriptions. Without adequate supervision of such staff, the quality and depth of complex analysis is at risk, which in turn may affect the overall validity of the regulatory and consumer advocacy functions of the commission and the division, respectively.

Of equal concern is the negative perception cast upon the commission and the division by the continuous shuffling of work among staff. This perception may be one of the reasons why our survey showed that regulated companies do not have confidence in the commission and the division and do not believe staff are sufficiently knowledgeable to carry out their duties. Filling positions with knowledgeable staff is of vital importance for both agencies to improve the delivery of core services.

Performance evaluations are not consistently done

Performance evaluations are management tools to evaluate whether employees meet the performance requirements of their positions and provide feedback to improve employee performance. Chapter 76, HRS, the Civil Service Law, requires all state agencies to establish and maintain performance appraisal systems and to use them as the basis for evaluating whether civil service employees meet performance requirements of their respective positions.

We found that both agencies have ignored this obligation and consistently fail to complete performance evaluations of their employees. Of the 26 commission employee files we reviewed from 1998-2002, 25 lacked performance evaluations. Eleven of these 25 employees were in the civil service. We also found ten instances where exempt employees received pay increases that were not connected to collective bargaining increases or an evaluation showing work deserving of an increase. In addition, the commission often gave delayed performance evaluations, as 12 evaluations were provided over two years late.

Similarly, the personnel files of all 13 division employees between 1998-2002 showed that 11 were missing performance evaluations. Nine of these 11 employees were civil service employees.

Both agencies again claimed lack of staff and time as the reasons performance evaluations were absent. The commission claimed that supervisor vacancies resulted in inconsistent evaluations; the division

claimed existing staff lacked the time necessary to complete the task. Both explanations underscore the need for personnel planning and illustrate the overall negative impact of chronic and prolonged vacancies.

We also found that the commission and the division lack formal training and development programs, nor have any plans to develop such programs. Training programs are designed to ensure staff have the necessary skills and knowledge to perform their jobs. The amount and type of training required can be identified in performance evaluations. Staff in both agencies reported receiving general training from time to time, but not the specific training and development needed for their jobs.

The absence of training is also evident in areas relevant to all state employees, such as ethics. Numerous questionable gifts from regulated companies to the commission chair, the division's acting executive director, and commission and division staff, and an apparent lack of awareness that such gifts might be perceived as influencing decisions, have focused attention on both agencies. Since those events were publicized, however, both agencies have implemented strict gifts policies that should bar future occurrences.

Performance evaluations coupled with training programs provide agencies with an awareness of their employees' level of knowledge. Lacking both personnel management tools, the commission and the division may not know their staff's level of knowledge.

Our survey results indicate that regulated companies do not have confidence in the staff's knowledge, as most believe they are not sufficiently knowledgeable to carry out their duties. The majority of respondents from utility companies, motor carriers, and complainants rated the level of knowledge of the commission and division staff as average to below average or could not rate it.

Position descriptions are outdated

The division's position descriptions are outdated and obsolete. Of the 23 division job descriptions we reviewed, eight were ten years or older, the oldest being 37 years. While age alone does not invalidate a position description, it may reflect a long overdue need to revisit a position's duties and responsibilities. We found this to be true at the division. Position descriptions are not aligned with work actually performed and division administration, while aware of the misalignment, has failed to address the issue. For example, the division's transportation specialist handles a host of information technology duties that are not reflected in his position description.

Accurate and up-to-date job descriptions create an understanding of a position's requirements and establish performance standards for staff evaluations. Inaccurate descriptions make it difficult to hold employees accountable.

The division's acting executive director acknowledged that position descriptions are not accurate and hence do not attract the type of staff necessary for the division's work. Even after the Department of Human Resources Development determines that applicants meet minimum qualifications and generates a certified list, the division has indicated those applicants "do not meet the division's requirements." The division stated that applicants either did not possess the necessary skills and knowledge or were not interested in the position after completing the interview process. Thus, recruitment to fill positions is often stymied by a scarcity of qualified applicants who have unrealistic expectations potentially caused by misleading position descriptions.

Until the division revisits the position descriptions for positions traditionally difficult to fill, it will continue to face obstacles in recruitment. Moreover, so long as these positions remain vacant, the division's work may suffer delays, potentially requiring the commission to render a decision on an application without the division's recommendations. Should this occur, Hawaii's ratepayers may go unprotected.

Poor planning results in inefficient, nonintegrated information systems requiring redundant manual processes

The commission's and the division's information systems consist of a hodgepodge of databases that require duplicative, manual processes. The condition of both systems is not surprising, given that development efforts lacked planning and did not follow any accepted system development methodology. These inefficiencies limit the effectiveness of the agencies' information systems in supporting operations.

Effective information systems require planning

The commission and the division were unable to produce documented plans for their information systems. Without plans, projecting when or if anything will be accomplished, or how much it will cost, is impossible. The commission has repeatedly researched and collected information on the same technical problems but has failed to complete the initial step of development. Instead, the commission has vacillated from one development alternative to another and botched several attempts to address its information systems deficiencies.

Planning attempts were littered with miscommunication and confusion about the direction, priorities, and who at the commission was in charge of these projects. The commission's lack of planning and in-house

technological savvy also gave rise to a website that was evaluated by an outside industry source as the “most worthless” of all 50 state regulatory commission websites.

Similarly, the division also failed to identify information technology goals and plan a strategy for information systems development. During the past five years, the division purchased hardware and software to upgrade its computer network. However, there is no documented evidence that the division evaluated whether current business and information resource processes and management meet its needs.

Furthermore, the commission and the division have made no attempt to harness available funds for information systems development. For the past two years, the Public Utilities Special Fund has received over \$10 million in revenues. Each year, the commission’s and the division’s expenses hover around \$5 million. At the end of the fiscal year, the special fund’s remaining balance of around \$5 million reverts to the general fund.

In the past five years, the commission and the division have spent \$118,673 and \$373,497 on computer equipment, respectively, but neither agency has produced useful, effective, or efficient information systems. With over \$5 million in the fund every year, sufficient moneys are available for the commission and the division to develop a plan for integrated information systems. Until system development planning begins in earnest, however, the commission and the division have no means to request budget appropriations and justify expenditures.

Information systems do not effectively support operations

The commission’s and the division’s information systems do not adequately support operations. Instead of increasing efficiency and decreasing staff processes, they add more work for staff. Both agencies use various software programs and applications that do not share data electronically. Information is maintained in a patchwork collection of spreadsheets, text documents, and databases that require redundant entries of information. Because data cannot be shared electronically, both the commission and the division waste valuable human resources maintaining identical information in multiple computer applications.

The commission uses an outdated, DOS-based application called the Docket Tracking System to record decisions and orders as dockets are opened and closed. The commission maintains another application to identify open dockets and docket status. Other spreadsheets and word processing files track regulated companies’ contact information. Staff must use several different applications, spreadsheets, and word-processing files to access data.

Multiple entries of duplicate data result in untimely updates and inaccuracies. According to staff, updating the commission's databases is burdensome and updates are not timely. Input errors also cause inaccuracies in contact information for regulated companies.

The division suffers from a similar lack of system integration, multiple stores of information, and inefficiencies associated with duplicate data entry. However, unlike the commission, the division uses the computer's "cut and paste" function to copy data from one application to another instead of manually retyping the information, thus reducing input inaccuracies. Electronically linked applications would eliminate the need to cut and paste information.

The division also uses a mixture of applications to track work status, identify open cases, and trace staff's docket assignments. A single integrated information source is not available at the division to provide this information to management. Instead, spreadsheets, text documents, and computer folders track work status. Significantly, the division's acting executive director spends valuable managerial time inputting new information, indicating when work is completed, and deleting information manually. The acting executive director currently updates each of the multiple locations that store work status information.

Common information is not shared

Although the commission and the division utilize common data, the two agencies have failed to coordinate efforts to share their information. For example, staff at both agencies use the same data to identify docket information, such as docket number, description, filing date, and docket type. This information could be entered once and accessed by both agencies from a single data source. Instead, the commission and the division maintain separate collections of spreadsheets and stand-alone databases.

Decision and order documents are another source of common information that could be shared between the agencies. The division has converted all decisions and orders to electronic format and posts recent ones on their website. At present, the commission's website links to the division's internet list of decision and order documents. The commission stated that it intends to add decision and order document access to its website. We question the wisdom and necessity of duplicating efforts. The commission, as the custodian of records for decision and order documents, is the appropriate agency to maintain the internet copies of those documents. The two agencies should agree to the commission maintaining these documents and the division providing a link to the commission's website.

There has been no concerted effort between the commission and the division to formally discuss common informational needs. Yet, our review indicates that immediate opportunities to share common information more efficiently exist. For example, instead of providing hard copy format of decision and order documents, the commission could provide these documents to the division electronically.

While there may be concerns that sharing an information system or common data jeopardizes independence of the agencies, current technology is capable of ensuring agency independence and data security. However, the commission and the division lack the in-house expertise to recognize the benefits of sharing information and translate regulatory requirements for independence into a technologically sound solution. The two agencies need to maximize resources by coordinating information system development efforts to search for mutually beneficial solutions.

The Commission's and the Division's Perspectives on Certain Laws Strain Resources and Lessen Public Protections

Lack of strategic planning also affects the commission's and the division's administration of laws. The commission and the division have not assessed whether their administration of laws is effective in meeting the public's current needs. In addition, neither agency has a systematic process to identify and critically analyze areas in need of improvement. Had the commission and the division engaged in a strategic planning process, such analyses would have been integrated into their overall plans for the future.

Specifically, the commission shirks policy-making responsibilities by failing to evaluate the need to regulate certain utility services and has not maintained a central clearing house of complaints. The division acts in a manner inconsistent with protecting the public's interest and does not fulfill its role in educating the public on public utility regulation. These administration deficiencies by both agencies ultimately weaken laws designed to protect the public.

The commission evades the issue of motor carrier deregulation

The benefits of motor carrier regulation impact relatively few consumers when compared to other regulated industries yet consumes significant commission resources. Although various factors support deregulation, the commission has not been proactive in evaluating whether regulation is still warranted. It has, however, recently begun to evaluate whether or not to adopt streamlined requirements for motor carrier rate setting.

The time the commission spends on motor carrier issues could be spent on issues with broader impact and greater consumer concern. For decades the division has elected to not participate in motor carrier cases

in order to focus its resources on what it believes to be more significant cases. Other states have deregulated motor carriers after determining that regulation is not warranted. Although it would be premature to suggest that motor carriers be deregulated, it is appropriate to require that the commission fulfill its policy-making responsibility by evaluating and making recommendations on motor carrier regulation.

Motor carrier regulation is labor intensive

Regulating motor carriers requires significant commission resources. In FY2001-02, the commission regulated over 900 motor carriers, which is three times the number of all other regulated utility companies combined. In the past five fiscal years, the commission opened an average of 260 motor carrier dockets per year. In contrast, the next highest average was for telecommunications businesses, with 127 dockets per year. Motor carrier issues may not involve complexities found in other utility services, but the volume of carriers generates considerable work for the commission.

In December 2002, a commission study found that staff spent from 30 to 40 percent of its time on motor carrier matters. The enforcement section spent 80 percent of its time conducting motor carrier work; clerical staff spent 50 percent; audit staff 35 percent; and legal staff 26 percent. The commission's neighbor island district representatives reported spending 26 percent of their time on motor carrier matters. Time spent on motor carrier issues means less time available for other more complex issues.

Motor carrier regulation diverts resources from more important regulatory matters

Devoting 30 to 40 percent of staff time to motor carrier issues decreases the time staff spends on other matters of greater significance to Hawaii's utilities environment. For example, the commission has not kept up with dockets involving review of utility companies' plans to meet consumers' energy needs. We also found examples of electricity or telecommunications dockets receiving insufficient attention.

Dockets involving plans that describe how a utility company intends to meet consumer needs are called Integrated Resource Planning dockets. In addition to providing useful insight into the utility companies' plans to meet consumers' energy needs cost effectively, these dockets help the division to monitor utility companies' delivery of services. As of August 2003, the commission had 12 planning dockets pending, all of which had been opened several years ago. One docket initiated in 1996 had little or no activity for over three years. Inattention to planning dockets denies the public access to utility companies' plans.

Other types of dockets also experienced periods of inattention. A 1991 complaint filed against a utility company has had little or no activity since that time. The commission claimed that staff turnover resulted in lack of attention to the file. A 1991 docket opened to address rolling blackouts on the island of Hawaii was closed in 2003 because the information was old, not because the problem was solved. Whether delays are caused by inactivity by the utility company, the commission, or the division, the commission should ensure dockets receive timely attention and are moving toward closure.

The commission disregards factors supporting deregulation

The commission continues to regulate motor carriers despite several factors in support of deregulation. The strongest factor supporting deregulation is the nonparticipation of the consumer advocate in motor carrier dockets. Although charged with representing the interests of consumers, the consumer advocate does not participate in motor carrier cases based on its belief that the number of motor carriers provides sufficient competition to protect consumer's interests. Our 1975 Report No. 75-6 (Volume III), *Management Audit of the Public Utilities Program: The Regulation of Transportation Services*, echoed that finding. In fact, we found government's intervention in the competitive motor carrier industry makes the industry non-competitive. We also found that the majority of states (29 of 50) do not regulate motor carriers.

The commission believes recommending deregulation of motor carriers and the repeal of Chapter 271, HRS is beyond its authority. Chief counsel for the commission stated that the commission abstains from involvement in deregulating motor carriers because it conflicts with the commission's quasi-judicial role of adjudicating motor carriers. We find these claims without merit. Other boards and commissions with adjudicatory functions have recommended deregulation when regulation is no longer warranted. For example, the Real Estate Commission supported legislation that resulted in deregulation of continuing education instructor certification and limited equity housing cooperatives. Nothing prevents the commission from doing the same for any area within its jurisdiction.

The commission has the authority to open an informational docket to evaluate whether regulation of motor carriers is required for public convenience and necessity. Section 267-7.5(b), HRS requires that the commission determine whether a "proposed service is, or will be, required by the present or future public convenience and necessity" before issuing a certificate to an applicant. By avoiding the question of whether motor carrier regulation is warranted, the commission neglects its policy-making function. And considering that the commission

receives approximately 200 motor carrier applications per year, perpetuation of potentially unnecessary regulation results in delays and costs for motor carriers as well as waste of public resources.

The commission's defiance of automatic permit approval law chills Hawaii's business climate

The 1998 Hawaii Legislature enacted Act 164, known as the “automatic permit approval law,” to implement the Economic Revitalization Task Force’s recommendations for improvement of Hawaii’s business climate. The Legislature intended to provide businesses a greater level of certainty of the time needed for agencies to grant or deny a business permit, license, or approval. If an agency does not act within its maximum timeframe, the law deems the application approved. Act 164 required all agencies to adopt administrative rules specifying a maximum time period by December 31, 1999.

In spite of the automatic permit approval law’s mandate for rules, the commission has failed to specify a maximum time period in which it must act in reviewing, approving, or denying applications for certificate. The commission’s existing rules are silent as to deadlines; hence, applications can languish indefinitely. For example, we found water, telecommunications, and motor carrier applications pending for months, sometimes years, and from as far back as January 2000. This lack of maximum time periods for approvals results in uncertainty for applicants and chills Hawaii’s business climate.

Lack of maximum time periods also puts the commission and the state at risk of legal action. According to a 1999 letter from the attorney general responding to a commission inquiry, the commission is subject to the automatic permit approval law and must adopt rules setting deadlines or risk being sued and forced to adopt rules. Four years later, and in spite of the attorney general’s advice, the commission remains in defiance of the automatic permit approval law.

The commission continues to manage complaints poorly

Our 1989 audit found the commission’s complaints handling disjointed and ineffective in assuring and promoting the protection of public utility consumers. Since then, little improvement has been made. There are no written plans for improvement of the complaint handling process; hence, it remains flawed and littered with inaccuracies and inconsistencies. Complaints are not resolved and staff who handle complaints interpret and implement policies differently, resulting in inflated complaint numbers. Overall, the commission’s complaints system does not fulfill statutory requirements for a central clearing house.

The commission's complaint handling is flawed

The commission classifies complaints as either formal or informal. Formal complaints must be filed in writing in a prescribed format and specify the facts involved, relief desired, and sections of law allegedly violated. Only two formal complaints were docketed in FY2002-03. No formal complaints were docketed in FY2001-02.

Informal complaints may be verbal or written. Commission staff log verbal complaints upon receipt. Upon receiving a written complaint, they log, review, and analyze the complaint, then contact the utility company involved to facilitate a resolution. Sometimes the utility company works with commission staff to resolve issues; at other times the company deals directly with the complainant.

The commission's complaint process is fraught with inconsistencies. There are no established procedures for processing complaints, so staff process complaints differently. Complaints that should have been processed similarly are not. While there are general guidelines on distinguishing inquiries from complaints and characterizing complaints into categories, some staff had the guidelines while others did not.

The guidelines themselves create confusion among staff. Staff are uncertain about the differences between a complaint and an inquiry. The guidelines define a complaint as an issue that requires staff to contact outside entities for resolution, while an inquiry is an issue staff can resolve without contacting outside entities. We posed a hypothetical issue to staff who handle complaints and asked them to categorize the issue as a complaint or an inquiry. We received differing interpretations of the hypothetical case—some identified it as a complaint while others called it an inquiry. Differing responses could lead to inaccurate complaint data when complaints are counted as inquiries and vice versa.

Inaccurate complaint data could also result from double counting verbal and written complaints. Double counting could occur if someone called in a verbal complaint and also filed a written complaint about the same subject. The complaint would be counted as both a verbal and written complaint, inflating the actual number of complaints received.

The commission does not monitor or review informal complaints, nor provide training in complaint resolution. Lack of monitoring and review allows investigations to remain pending indefinitely. In a sample of 62 informal written complaints, ten (16 percent) were not investigated or resolved. Given these statistics, it is no wonder that complaining parties were generally dissatisfied with the commission's complaints process.

Our survey reflected 67 percent of complainants found the commission's complaints handling to be average, below average, or could not rate the process. Monitoring and review would facilitate the complaints process and likely improve these ratings.

Some states have addressed these issues by establishing procedures requiring responses by utility companies and to the complainant within a set time period, or resolution of the complaint within 72 hours. The commission should assess whether adopting some of these procedures would improve its responsiveness and overall complaints process.

Finally, the commission's complaints process falls short of statutory mandates. Section 269-55, HRS requires the commission to provide a central clearinghouse of information by collecting and compiling all consumer complaints and inquiries concerning public utilities. The commission does not collect information on complaints handled by utilities and has not created a central clearinghouse of complaint information. We reiterate our 1989 audit finding that this is a problem. Until the commission fulfills its role by gathering complaint information, it cannot evaluate the overall satisfaction of utility consumers and the quality of services provided.

Complaints are not analyzed to identify areas for improvement

The commission's understanding of the complaints it receives is shallow because it does not analyze complaint issues. The commission merely tallies totals by area—telecommunications, electricity, gas, water/sewer, water carrier, and motor carrier. Without analysis, the commission lacks understanding of the root cause of problem or service deficiencies and is unable to focus on reducing problem areas.

The division has failed to adequately represent and support the public

The consumer advocate is required to represent, protect, and advance the interests of the public. Part of this responsibility includes educating the public on the regulation of public utilities. To date, the division has not performed this function. Although Hawaii's utility regulatory law permits the division to adopt administrative rules to effectuate the purpose of the law, no rules have been adopted.

Consumer education continues to be deficient

The division has not educated the public on the regulatory process. Chapter 269, HRS imposes an aggressive program of consumer education within the authorized duties and powers of the division. Our 1989 audit found the division remiss in satisfying its education responsibility. Recognizing this, the division has tried to fill its educational specialist position but has been unsuccessful for a variety of reasons, most notably an inability to attract and hire qualified applicants.

Without an educational specialist, the division has been unable to fulfill statutory mandates to educate the public. It has not organized and held conferences as required by Section 269-54(b)(5), HRS, and has been unable to consider the “breadth and depth of public sentiment with respect to an above-ground versus underground system” as required by Section 269-27.6, HRS. The division indicated that it needs a specialist to conduct surveys, participate in forums, and work with special interest groups to achieve these mandates. Based on this reasoning, the division will be negligent in providing consumer education as long as the position remains vacant.

The division has not adopted rules

Section 269-54(a)(1), HRS allows the division to adopt rules to help carry out its statutory responsibilities. However, the division has not done so. In our 1989 audit, we recommended the division assess whether or not to develop its own set of administrative rules to cover gaps in the commission’s rules. The acting executive director stated that the division has no plans to perform such an assessment or adopt rules.

We identified two areas in particular where administrative rules would be helpful to the division: motor carriers and filing requirements. The division does not participate in motor carrier issues because the consumer advocate has determined that sufficient competition exists. Yet, neither the Hawaii utility regulatory law nor the commission’s rules establish criteria to guide the consumer advocate in making this determination. Without criteria, the commission and the public cannot assess whether the division’s nonparticipation is appropriate.

Another area that needs clarification is filing requirements. The division’s acting executive director believes that a standard filing format would ease the division’s review of utility company information. The commission’s rules do not specify the format in which utility companies should submit financial information. According to the acting executive director, different businesses classify their expenses differently, making review cumbersome and time-consuming. Misclassified expenses also cause delays when the division must contact the utility company for clarification. Clarifying filing requirements in rules would facilitate the division’s review.

Conclusion

The commission’s and the division’s misguided mission statements and inability to strategically plan for organizational improvements have resulted in a lack of long- and short-term plans, mismanaged personnel and information systems, and faulty administration of laws. Previous audit findings and recommendations have been ignored and the

commission and the division have done very little in the past 28 years to improve. Both agencies continue to fall short in their statutory duties and responsibilities. It is imperative that the commission and the division update regulatory needs, modernize desired outcomes, and develop a strategy for the future of Hawaii's utility regulation. Until they do so, the protection and representation of utility consumers will continue to be undermined.

Recommendations

1. The Public Utilities Commission and the Division of Consumer Advocacy should engage in strategic planning. Specifically:
 - a. The Public Utilities Commission's chair and administrative director should develop a strategic plan for the commission; and
 - b. The Department of Commerce and Consumer Affairs' director should fill the Division of Consumer Advocacy's executive director position. The departmental director, as consumer advocate, and the division's executive director should then develop a strategic plan for the division.

Both agencies' planning processes should include all relevant stakeholders, including the agency, regulated companies, and utility consumers.

2. The Public Utilities Commission and the Division of Consumer Advocacy should make addressing their respective agency's personnel management issues a priority. This should be undertaken by the director of finance and the commission's chair and administrative director, and by the director of commerce and consumer affairs and the division's executive director, respectively.
3. The commission and division should collaborate and hire a consultant to develop an information system that shares common information and processes but keeps separate information secured.
4. The commission should:
 - a. Improve its complaints handling process;
 - b. Adopt administrative rules specifying application approval deadlines as required by Section 91-13.5, HRS;
 - c. Include long- and short-range plans in its annual report to the Legislature as required by Section 269-5, HRS; and

- d. Fulfill its policy-making function as required by Sections 269-5 and 269-7.5(b), HRS.
5. The division should conduct an assessment of the need and value of its own separate set of rules to supplement or fill in gaps in the commission's rules.

Responses of the Affected Agencies

Comments on Agency Responses

We transmitted drafts of this report to the chair of the Public Utilities Commission, the director of finance, and the director of commerce and consumer affairs on January 26, 2004. A copy of the transmittal letter to the commission chair is included as Attachment 1. Similar letters were sent to the directors of finance and commerce and consumer affairs. The response of the commission chair is included as Attachment 2. The response of the director of finance is included as Attachment 3. The joint response of the director of commerce and consumer affairs as consumer advocate and the acting executive director of the Division of Consumer Advocacy is included as Attachment 4.

In his response, the commission chair noted his interest in our findings and recommendations and a desire to maximize the commission's efficiency and effectiveness in serving the public interest. The chair generally agreed with our first finding and indicated that the commission has started the strategic planning process. Its strategic plan is contained in the commission's annual report dated November 13, 2003. The commission's long- and short-term goals and objectives are included in the commission's FY2002-03 annual report dated December 2003. Copies of the reports are attached to the chair's response. However, we note that for the duration of our fieldwork, which spanned the five months immediately prior to the issuance date of both commission reports, no one at the commission mentioned having commenced a strategic planning process, nor were drafts of reports or plans shared with us.

With respect to our second finding, the chair indicated that the commission must carefully evaluate the motor carrier issue before proceeding with a recommendation so as not to jeopardize its current decision-making role. It has already begun to streamline regulation and will continue to evaluate and explore other means within its authority to tackle this issue. The chair stated that the commission is in the process of drafting and adopting rules to implement the automatic permit approval law and updating its complaint handling procedures to resolve complaints efficiently and fairly.

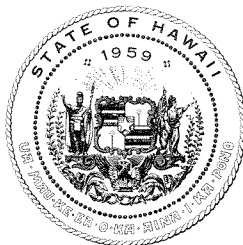
The director of finance responded that she will support and work with the commission, focusing on the areas and issues that will permit the commission to move forward in effectively fulfilling its responsibilities.

In their joint response, the director of commerce and consumer affairs as consumer advocate and the acting executive director of the Division of

Consumer Advocacy appreciated the observations, perspectives, and recommendations of our audit. They agreed with the identified issues and indicated that many of them are being addressed, including: updating the mission statement; adopting a no gift policy; hiring an education specialist; purchasing and implementing software to gather meaningful work statistics; and proposing legislation to streamline regulatory processes, thereby reducing workload that contributes to operational inefficiencies. They also agreed that a twenty-first century strategic plan for the division must be developed and that addressing the division's personnel management problems will be part of that process.

Finally, the director and acting executive director raised two points of clarification. We have amended the report to reflect the clarifications and have made some minor changes for the purpose of accuracy and clarity.

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917



MARION M. HIGA
State Auditor

(808) 587-0800
FAX: (808) 587-0830

January 26, 2004

COPY

The Honorable Carlito Caliboso, Chairman
Public Utilities Commission
Department of Budget and Finance
Kekuanaoa Building
465 S. King Street, Room 103
Honolulu, Hawaii 96813

Dear Mr. Caliboso:

Enclosed for your information are three copies, numbered 6 to 8, of our confidential draft report, *Management Audit of the Public Utilities Commission and the Division of Consumer Advocacy*. We ask that you telephone us by Wednesday, January 28, 2004, on whether or not you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Friday, January 30, 2004.

The Department of Budget and Finance, Department of Commerce and Consumer Affairs, Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this confidential draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Marion M. Higa
State Auditor

Enclosures

LINDA LINGLE
GOVERNOR



STATE OF HAWAII
PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
465 S. KING STREET, #103
HONOLULU, HAWAII 96813

CARLITO P. CALIBOSO
CHAIRMAN

WAYNE H. KIMURA
COMMISSIONER

JANET E. KAWELO
COMMISSIONER

January 30, 2004

RECEIVED
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OFFICE OF THE AUDITOR
STATE OF HAWAII

Ms. Marion Higa
State Auditor
465 S. King St, Room 500
Honolulu, Hawaii 96813

Re: Management Audit of the Public Utilities Commission and the Division of
Consumer Advocacy

Dear Ms. Higa:

We appreciate the opportunity to respond to your draft *Management Audit of the Public Utilities Commission and the Division of Consumer Advocacy*, which you provided to us under cover letter dated January 26, 2004 (the "Audit"). The Public Utilities Commission ("Commission") is greatly interested in your findings and recommendations. We wish to improve the Commission and its operations in every way possible in order to maximize the Commission's efficiency and effectiveness in serving the public interest.

We generally do not disagree with the Audit's first finding that, at least historically, a "lack of strategic planning and vision impedes regulatory operations." The Commission, however, has started the strategic planning process to evaluate and formulate its primary purpose (or mission statement), its long-term and short-term goals and objectives, an implementation plan, and a process used to measure performance. This strategic plan is contained in our Annual Report dated November 13, 2003, which was prepared pursuant to Section 7 of Act 100, 1999 Session Laws of Hawaii ("Planning Report") and submitted to the Legislature, a copy of which is attached as Exhibit A.

In addition, the Commission's long-term and short-term goals and objectives are included on page 4 of the Commission's Fiscal Year 2002-03 Annual Report (December 2003), which was submitted to the Legislature pursuant to Haw. Rev. Stat. § 269-5 ("Annual Report"). Excerpts of the Annual Report are attached as Exhibit B. While the primary purpose or mission of the Commission is still based on the statutory framework established in Chapter 269, Haw. Rev. Stat., which has not changed, you will notice that the Commission's long-term and short-term goals include other broader, policy-oriented objectives.

We also recognized in our Annual Report that the Commission needs to be modernized to keep up with this changing world. As we stated on page 1 of our Annual Report, attached as Exhibit B:

Public utilities are undergoing significant changes due to developments in technology, markets, economic conditions, consumer needs, and environmental concerns that test traditional regulatory theories and frameworks. The challenge faced by regulatory commissions throughout the United States is to recognize these changes and to adapt and adjust regulatory techniques and frameworks to these changes so that commissions can effectively protect the public interest and accomplish its goals and objectives, while it simultaneously allows and encourages the public utilities to efficiently operate, grow, and develop in their respective industries.

We do agree that, historically, lack of planning may have been a contributing factor in the Commission having a lack of resources to accomplish its mission. This, along with other issues described in the Audit, has resulted in chronic personnel vacancies and lack of additional required expertise, as well as in the Commission's outdated technology and information systems, and inadequate website. We have begun to address these personnel and technology issues, as described in the attached Planning Report. In this regard, the Audit re-enforces our own assessment of the Commission.

We recognize that these initial steps at strategic planning will need to be continually evaluated and refined, and much more needs to be done, but we are confident that we are headed in the right direction.

We also intend to continue to work cooperatively and collaboratively with all government agencies, regulated industries, and interested stakeholders to accomplish our mutual goals and objectives in a timely and efficient manner. We have already discussed sharing an information system (with appropriate technical and legal safeguards), or at least parts thereof, with the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, and agreed to work collaboratively on such a project. We will also continue to work collaboratively with the Department of Budget and Finance to find solutions to issues and challenges that we both may face.

With respect to the Audit's second finding that the Commission's "perspectives on certain laws strain resources and lessen public protection," we agree that resources are strained because of responsibilities placed on the Commission by certain laws. However, the cause may not be the Commission's perspective on such laws.

The Commission is required to regulate certain industries, such as motor carriers, as such laws are currently written. Whether motor carriers should be deregulated in the State of Hawaii is definitely a valid issue to be considered and evaluated before the Legislature given the number of competitors in that industry and in light of the various reports recommending deregulation, such as the 1975 audit prepared by your office.

Whether the Commission should recommend that the Legislature deregulate the motor carrier industry, as appears to be recommended by the Audit, is a more difficult issue, given the Commission's quasi-judicial role in contested case proceedings involving motor carrier regulation and enforcement. The Commission must carefully evaluate this issue before proceeding because the Commission's ability to give parties in such proceedings a fair and unbiased decision in motor carrier proceedings may be called into question. Even assuming the Commission may make such a recommendation to the Legislature to deregulate the motor carrier industry, it is still up to the Legislature to do so, as the Legislature has not delegated such authority to the Commission.

However, acting within its statutory authority, the Commission has begun the process of streamlining the regulation of the motor carrier industry. As noted in the Audit, the Commission reviewed how much time and resources were being used for motor carrier regulation. In 2003, to streamline motor carrier regulation, the Commission significantly simplified annual reporting requirements for all motor carriers, which substantially reduced the time spent on annual reporting requirements by the Commission and motor carriers.

In addition, the Commission directly addressed the policy issue of to what extent motor carrier rate regulation is currently required when the Commission recently established and implemented a "zone of reasonableness" to streamline the motor carrier ratemaking process. From January 1, 2004 to December 31, 2004, this established zone of reasonableness allows motor carriers to raise and lower their rates by a maximum ten percent (10%) of the rates in effect as of January 1st, without being required to show that such rate changes are financially justified. The theory is that there should be sufficient competition to control rates with minimal Commission intervention, within the limits imposed by the ten percent (10%) zone of reasonableness.

The Commission will re-evaluate this zone of reasonableness at the end of this calendar year to determine if it should be continued, terminated, or modified. The Commission may also explore or consider other means or processes within its authority to tackle this issue. Accordingly, the Commission will continue to address such policy issues as appropriate and as permitted by law.

Ms. Marion Higa
January 30, 2004
Page 4

The Commission is in the process of drafting and adopting rules to implement the automatic permit approval law set forth in Act 164, 1998 Session Laws of Hawaii, which are included in the group of rules to be updated and adopted as referenced in the Planning Report.

Finally, the Commission also is updating its complaint handling procedures in an effort to resolve complaints efficiently and fairly, and to develop a survey of complainants to obtain feedback on the complaint process, as mentioned in the Planning Report. This will allow the Commission to compile information on complaints for analysis and appropriate action

Once again, we thank you for this opportunity to comment on the Audit, and look forward to continuing to implement recommendations and ideas contained in the Audit.

Sincerely,



Carlito P. Caliboso
Chairman

CPC:ac

Attachments

c: Honorable Georgina Kawamura (w/attachments)
Honorable Mark Recktenwald (w/attachments)

**PUBLIC UTILITIES COMMISSION
STATE OF HAWAII**

ANNUAL REPORT
ACT 100 (1999), SECTION 7
November 14, 2003

INTRODUCTION

The Public Utilities Commission of the State of Hawaii ("Commission") is statutorily responsible for regulating all franchised and certificated public service companies that provide electricity, gas, telecommunications, private water and sewer, motor carrier and water carrier services in the State, under Haw. Rev. Stat. Chapters 269, 271, and 271G, as amended. This Annual Report, which is mandated by Section 7 of Act 100 (1999), describes the Commission's goals (what the agency hopes to accomplish), its objectives and policies (how its goals are to be accomplished), a plan of action (showing how the objectives and policies are to be implemented), and the process to be used to measure the Commission's performance.

Sections I and II of this Annual Report describe the Commission's goals, objectives, and policies, and are intended to be used as a guide for the Commission and its operations. The Commission's goals, objectives, and policies may be further refined, clarified, and prioritized as may be required due to the changing realities of the regulatory and economic environment in which the Commission and regulated utilities operate.

Section III of this Annual Report describes a plan of action and lists the significant actions to be taken by the Commission, but it is not an all-inclusive list of all projects and tasks to be undertaken by the Commission. There will be other actions taken by the Commission not specifically listed in this Annual Report to accomplish its goals, objectives, and policies.

Section IV of this Annual Report briefly describes the process to be used to measure the Commission's performance in achieving its goals, objectives, and policies. These performance measures necessarily include subjective measures of performance, and accordingly, an evaluation of the Commission's performance in many instances will require a subjective evaluation of whether the Commission's actions accomplished its goals, objectives, and policies.

The Commission will separately analyze and evaluate the funding requirements for the plan of action described in this Annual Report as part of the budgeting process.

I. STATEMENT OF GOALS: WHAT AGENCY HOPES TO ACCOMPLISH

(Section 7(1), Act 100)

A. Primary Purpose: The Commission's primary purpose is to efficiently, fairly, and impartially ensure that regulated utilities ¹ efficiently and safely provide utility customers with adequate and reliable utility services at just and reasonable rates, while providing regulated utilities with a reasonable opportunity to earn a fair rate of return.

B. Long-Term Goals:

- | |
|--|
| 1. Modernize and re-organize the Commission as needed to adapt to changes in technology, markets, economic conditions, consumer needs, and environmental concerns to improve the efficiency and effectiveness of the Commission. |
| 2. Foster and encourage competition or other alternatives where reasonably feasible in an effort to provide consumers with meaningful choices for services at lower rates that are just and reasonable. |

¹ Includes all persons and entities regulated by the Commission.

3. Promote and encourage efficient and reliable production and delivery of all utility services.	
4. Promote and encourage efficient and reliable electricity generation, transmission and distribution.	
5. Promote and encourage the use of alternative or renewable energy resources for the production of electricity to increase the efficiency, reliability, and sustainability of electricity generation and supply for consumers.	
6. Assist in creating an environment conducive for healthy economic growth and stability in the public interest.	
C. Short-Term Goals:	
1. Increase the transparency of the regulatory process and public access to the Commission to ensure that the Commission efficiently, independently, fairly, and impartially regulates public utilities.	
2. Streamline and modernize the regulatory process whenever reasonably feasible to increase the efficiency of the Commission and regulated utilities.	
3. Re-evaluate and update internal Commission staff procedures to increase the efficiency and effectiveness of Commission activities.	
II. OBJECTIVES AND POLICIES: HOW EACH GOAL CAN AND WILL BE ACCOMPLISHED (Section 7(2), Act 100)	
A. Increase the staffing and resources of the Commission by filling all vacant positions, and by increasing clerical and professional staff positions where required to increase the expertise, capabilities, efficiency, and effectiveness of the Commission.	
B. Modernize and improve the Commission's technological, computer, and database capabilities to improve the efficiency and effectiveness of the Commission in implementing its regulatory programs, tracking the Commission's and the utilities' performance, and responding to information inquiries from regulated utilities, consumers, and other government agencies.	
C. Update and improve the Commission's Internet website to improve the efficiency of the Commission, and to increase the transparency of the regulatory process and improve public access to the Commission and its regulatory activities, and to provide consumer education and information.	
D. Review and update the Commission's administrative rules to more efficiently and effectively accomplish its goals and objectives.	
E. Review and resolve all new and outstanding dockets fairly and efficiently and in a timely manner, while accomplishing all of its other goals and objectives.	
F. Increase overall staff productivity and efficiency by improving internal communications, task processes, and support system.	
G. Continually improve the effectiveness, expertise, and capabilities of commissioners and staff by providing needed and appropriate training and education for the Commission.	
III. ACTION PLAN: IMPLEMENTATION (Section 7(3), Act 100)	IV. PROCESS USED TO MEASURE PERFORMANCE (Section 7(4), Act 100)
A. One-Year Implementation:	
1. Fill vacant positions to increase capabilities and effectiveness of Commission.	Ongoing Review of Needs and Vacancy Status Vacancies as of Jul 1, 2003: <u>15</u> Number of Vacant Positions to be filled by Jul 1, 2004: <u>15</u>
2. Add relevant content to Internet Website concerning major dockets of public interest, such as FCC Telecommunications Triennial Review Docket ("Triennial Review"), Integrated Resource Planning ("IRP") Docket, Distributed Generation ("DG") Docket, Competitive Bidding ("Comp Bidding") Docket, Motor Carrier Zone of Reasonableness Docket ("Motor Carrier Zone"), and Wireless Telecommunications Exemption Docket ("Wireless Telecom Exempt"), to keep public informed of major proceedings.	Evaluate content of website on ongoing basis and at end of fiscal year to determine whether public being adequately informed of major proceedings before Commission. Triennial Review: Added <u>Oct 2003</u> IRP: Added Nov 2003 DG: Added Nov 2003 Comp Bidding: Added Nov 2003 Wireless Telecom Exempt: Added Nov 2003 Motor Carrier Zone: To be added by Jan 2004

3. Add and maintain listings of all new Applications filed with the Commission to the website.	Ongoing Monitoring of Applications Listing Posted To be added by Dec 2003 Short-Term Goal: Max Avg 5-day lag Long-Term goal: Instantaneous with filing
4. Add and maintain listings of all Decisions and Orders ("D&O") issued by the Commission to the website.	Ongoing Monitoring of D&O Listing Posted To be added by Dec 2003 Short-Term Goal: Max Avg 5-day lag Long-Term Goal: Instantaneous with filing
5. Obtain assistance, consultant, or additional staff position, for Technology expertise to assist Commission in technology, computer equipment, and software improvements and maintenance, and website development and maintenance, and also to assist in training and development for Commission staff.	Review Resources Allocated for Technical Assistance Initially obtain assistance from administratively attached Department (ongoing). Obtain assistance from outside consultant pending staff addition in next fiscal year.
6. Address and resolve all Pending IRP Dockets.	Review Status of Pending IRP Dockets Number of Pending IRP Dockets as of Jul 1, 2003: <u>12</u> Resolve or address all pending IRP Dockets by Jul 1, 2004.
7. Address and resolve pending generic Avoided Cost [Energy] Docket No. 7310.	Review Status of Pending Docket Resolve or address by Jul 1, 2004
8. Investigate the feasibility of DG and Comp Bidding and related issues for electricity generation in investigative dockets.	Review Status and Result of Investigative Docket DG Docket 03-0371 Opened: Oct 21, 2003 Comp Bidding Docket 03-0372 Opened: Oct 21, 2003
9. Address and resolve outstanding issues in Telecommunications Competition Docket 7702.	Review and Evaluate Status of Docket 7702 To be resolved by Jul 1, 2004
10. Review and resolve other pending dockets filed prior to Jul 1, 2001, not otherwise addressed above, unless intended to remain open.	Review pending dockets, status and results. Other Pending Dockets (not included above) filed prior to Jul 1, 2001: <u>12</u> Resolve or address all other pending dockets by Jul 1, 2004
11. Implementation of Triennial Review Docket 03-0272	Review and Evaluate Status and Results of Investigation Resolution desired by Oct 2004
12. Streamline the regulatory process for wireless telecommunications carriers in an investigative docket by exempting such carriers from regulations deemed unnecessary due to increased competition in the wireless telecommunications industry.	Review Investigative Docket Status and Results Wireless Telecom Exempt Docket 03-0186 Opened Jun 26, 2003 Resolution desired by Jan 2004
13. Streamline the regulatory process for applications for capital improvement projects by updating and increasing the threshold amount required for Commission approval.	Review Docket Status and Results The Gas Company Docket 03-0255, Sep 12, 2003 KIUC Docket 03-0256, Sep 12, 2003 HECO/HELCO/MECO Docket 03-0257, Sep 12, 2003 Verizon Docket 03-0258, Sep 12, 2003 Resolution desired by Mar 2004

14. Streamline the regulatory process for motor carrier rate adjustments by exploring the feasibility of establishing a pre-established zone of reasonableness within which motor carriers may adjust rates with minimal commission oversight, since competition appears to exist in the motor carrier industry.	Review Investigative Docket Status and Results Motor Carrier Zone Docket 03-0245, Opened Aug 29, 2003 Resolution desired by Jan 2004
15. Review and resolve informal complaints made against regulated utilities efficiently and fairly.	Survey Complainants and Review Survey Results Provide written survey form to all persons who submit written complaints from Jul 1, 2003 to Jun 30, 2004 upon closing of complaint to obtain consumer feedback on complaint-handling by Commission.
B. Two-Year Implementation Plan:	
1. Fill any vacant positions remaining.	Review status of outstanding and new (if any) vacancies.
2. Obtain additional staff position for Technology expertise to assist Commission in technology, computer equipment, and software improvements and maintenance, and website development and maintenance.	Review resources allocated for technical assistance. Include position in 2005-06 Budget Fill Position in Fiscal Year 2006
3. Update database software and computer hardware (server, scanner, and related equipment) as required for docket management to improve docket intake, tracking and management, and to allow all filed documents to be made available on website.	Review Commission capability to make all filed documents available on website for public access by Jan 2005.
4. Update database software and computer hardware to allow online filing on website.	Review Commission capability to allow online filing on website for public access by Jul 2005.
5. Increase Commission Staff expertise in Energy and Telecommunications, and in technical rule-making.	Review resources allocated for additional staff. Include position in 2005-06 Budget Fill Position in Fiscal Year 2006
6. Evaluate Commission staff organization and structure, and re-organize, if necessary, to adapt to changes in current markets and technologies.	Review of Commission's ability to effectively regulate modern markets and utility industries.
7. Review and update the Commission's administrative rules to more efficiently and effectively accomplish each of its long-term and short-term goals and objectives.	Review Pending Adoption and Revisions to Admin Rules Commence Admin Rulemaking Proceedings Jul 2004 Complete by July 2005
8. Provide training for all commissioners, legal, professional, and clerical staff.	Review training programs and seminars attended by all commissioners, legal, professional, clerical staff.
9. Evaluate feasibility of televising (e.g. Olelo or webcast) public hearings and contested case hearings, including analysis of resource, equipment, personnel, and funding requirements.	Review analysis of feasibility and requirements by Jul 2004
10. Evaluate need and feasibility of creating a consumer affairs section of the Commission.	Review analysis of feasibility and requirements by Jul 2004
C. Five-Year Implementation Plan:	
1. Review status of implementation of One- and Two-Year Implementation Plans, and adjust as required.	Evaluate effectiveness of One- and Two-Year Implementation Plans and Policies
2. DG and Competitive Bidding	Review status and effectiveness of distributed generation and competitive bidding in energy generation and distribution.
3. Encourage and promote use of Renewable Resources in electricity generation.	Review whether electric utilities on track to meet 20% renewable resources goal by 2020, and guidelines in Ch. 269, Haw. Rev. Stat.

ANNUAL REPORT

FISCAL YEAR 2002-03

(HAW. REV. STAT. § 269-5)

PUBLIC UTILITIES COMMISSION STATE OF HAWAII

I. INTRODUCTION.

Public utilities are undergoing significant changes due to developments in technology, markets, economic conditions, consumer needs, and environmental concerns that test traditional regulatory theories and frameworks. The challenge faced by regulatory commissions throughout the United States is to recognize these changes and to adapt and adjust regulatory techniques and frameworks to these changes so that commissions can effectively protect the public interest and accomplish its goals and objectives, while it simultaneously allows and encourages the public utilities to efficiently operate, grow, and develop in their respective industries.

The Public Utilities Commission ("Commission") of the State of Hawaii ("State") submits this Annual Report pursuant to Section 269-5, Hawaii Revised Statutes, as amended ("HRS"). In short, this report summarizes the activities and operations of the Commission and the public utilities it regulates during the July 1, 2002 to June 30, 2003 fiscal year ("Fiscal Year"), as well as the Commission's goals and objectives.

II. COMMISSION HISTORY AND BACKGROUND.

The Commission is responsible for regulating all chartered, franchised, certificated, and registered public utility companies that provide electricity, gas, telecommunications, private water and sewage, and motor and water carrier transportation services in the State. The Commission has statutory authority to establish and enforce applicable state statutes, administrative rules and regulations, and to set policies and standards.

A. HISTORY.

The Commission was established in 1913 by Act 89, Session Laws of Hawaii ("SLH") 1913, as a part-time, three-member body with broad regulatory oversight and investigative authority over all public utility companies doing business in the Territory of Hawaii. This act, amended over the years and codified in Chapter 269, HRS, is the basis for utility regulation in Hawaii. The Commission's authority to regulate various classifications of motor carriers of passengers and property is derived from the Hawaii Motor Carrier Law (Chapter 271, HRS) enacted in 1961. Responsibility for all commercial water transportation carriers of persons and property within the State is derived from the Hawaii Water Carrier Act of 1974 (Chapter 271G, HRS). Chapter 6-61, "Rules of Practice and Procedure Before the Public Utilities Commission," of the Hawaii Administrative Rules ("HAR") sets forth general procedural requirements for intervention and participation in proceedings before the Commission. Other HARs and general orders of the Commission set forth the standards, rules, and other procedures governing electric, gas, telecommunications, private water and sewage, and motor and water carrier transportation services.

Today, the Commission is a full-time body comprised of three Commissioners. The Governor, with the consent of the State Senate, appoints the Commissioners. They each serve six-year terms on a staggered basis.

Exhibit B

III. GOALS AND OBJECTIVES OF COMMISSION²

A. PRIMARY PURPOSE.

The Commission's primary purpose is to efficiently, fairly, and impartially ensure that regulated utilities efficiently and safely provide utility customers with adequate and reliable utility services at just and reasonable rates, while providing regulated utilities with a reasonable opportunity to earn a fair rate of return.

B. LONG-TERM GOALS.

Modernize and re-organize the Commission as needed to adapt to changes in technology, markets, economic conditions, consumer needs, and environmental concerns to improve the efficiency and effectiveness of the Commission.

Foster and encourage competition or other alternatives where reasonably feasible in an effort to provide consumers with meaningful choices for services at lower rates that are just and reasonable.

Promote and encourage efficient and reliable production and delivery of all utility services.

Promote and encourage efficient and reliable electricity generation, transmission and distribution.

Promote and encourage the use of alternative or renewable energy resources for the production of electricity to increase the efficiency, reliability, and sustainability of electricity generation and supply for consumers.

Assist in creating an environment conducive for healthy economic growth and stability in the public interest.

C. SHORT-TERM GOALS.

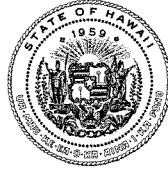
Increase the transparency of the regulatory process and public access to the Commission to ensure that the Commission efficiently, independently, fairly, and impartially regulates public utilities.

Streamline and modernize the regulatory process whenever reasonably feasible to increase the efficiency of the Commission and regulated utilities.

Re-evaluate and update internal Commission staff procedures to increase the efficiency and effectiveness of Commission activities.

² For a detailed plan of action to implement the Commission's goals and objectives described herein, along with a description of measures to gauge the performance of the Commission in accomplishing its goals and objectives, please also see the Commission's Annual Report dated November 14, 2003, prepared pursuant to Section 7 of Act 100 SLH 1999.

LINDA LINGLE
GOVERNOR



GEORGINA K. KAWAMURA
DIRECTOR

STANLEY SHIRAKI
ACTING DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
P.O. BOX 150
HONOLULU, HAWAII 96810-0150

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER
PUBLIC UTILITIES COMMISSION

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION

January 30, 2004

RECEIVED
JAN 30 9 32 AM '04
OFFICE OF THE AUDITOR
STATE OF HAWAII

The Honorable Marion M. Higa
State Auditor
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917

Dear Ms. Higa:

Thank you for the opportunity to review the report, "Management Audit of the Public Utilities Commission and the Division of Consumer Advocacy." The Department of Budget and Finance will support and work with the PUC as recommendations noted in your report are addressed. We will focus on the areas and issues that will permit the PUC to move forward in effectively fulfilling its responsibilities.

Sincerely,

A handwritten signature in cursive script that reads "Georgina K. Kawamura".

GEORGINA K. KAWAMURA
Director of Finance



LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET
P.O. Box 541
HONOLULU, HAWAII 96809

MARK E. RECKTENWALD
DIRECTOR

LAWRENCE M. REIFURTH
DEPUTY DIRECTOR

January 30, 2004

Ms. Marion M. Higa
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawai'i 96813-2917

RECEIVED
JAN 30 3 42 PM '04
OFFICE OF THE AUDITOR
STATE OF HAWAII

Re: Management Audit of the Public Utilities Commission and the Division of
Consumer Advocacy

Dear Ms. Higa:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to comment on your audit of the Hawai'i Public Utilities Commission ("Commission") and the Division of Consumer Advocacy ("Division") (the "Audit"). The Department appreciates the observations, perspective and recommendations that have been offered and concurs with the Audit's recommendations.

The Division sees many of the same issues and in much the same way as the Audit does. A number of the identified issues are already being or have already been addressed. For example,

- Division mission statement updated in 2002;
- Strict no gift policy adopted by Division in July 2003;
- Division's education specialist hired in October 2003;
- Purchase (November 2003) and implementation of time reporting application to gather meaningful work statistics; and
- Proposed legislation (HB 2434 / SB 2909 and HB 2435 / SB 2910) (January 2004) to streamline regulatory processes and thereby reduce workload that contributes to operational inefficiencies proposed in 2004

As discussed in the Audit, the education specialist performs a critical role in the Division's outreach and education effort. The education specialist maintains the Division's website, coordinates with community and interest groups, surveys consumer preferences and attitudes,

and informs the public about Division plans and programs. We expect that this hire should soon have a demonstrable effect on the Division and the performance of its statutory mandate.

Strategic planning will be a Division priority in 2004.

We are in complete agreement that a twenty-first century strategic plan for the Division must be developed, and have already begun the process of gathering meaningful data that will enable completion of this task. As this Audit and the Hawai'i Energy Forum's recently completed study entitled *Hawai'i Energy Utility Regulation and Taxation* both observed, the public utility regulatory environment has changed dramatically over the last twenty-five years. The Division must first determine (presumably in concert with the Hawai'i Public Utilities Commission) and then implement an updated plan for regulating public utilities, rather than relying on techniques developed for utilities, markets and circumstances common to the 1970's. This will be a first priority for the Division, and it will be expected to show significant progress toward that goal before the end of 2004. As part of that process, the Department intends to ensure that the Division's executive director position is filled as soon as possible.

Strategic planning must incorporate the perspectives of all the stakeholders in the process or the results are more likely to be flawed. The fact that the Division has made it a priority over the years to foster relationships with the Commission, the regulated companies and consumers will facilitate solicitation and acceptance of that input.

The Division's personnel management issues must be addressed before there can be any significant progress in operations.

As the Audit makes clear, the Division has personnel management problems that span decades. The acting executive director has made personnel management change a personal priority, but has not been able to complete that effort. Personnel management issues are part and parcel of the strategic planning that will have the bulk of the Division's initial attention, resolution of those issues will be central to the strategic planning initiative as having the right people in the right place to perform the right job is the ultimate project goal. Ultimately, resolution of those issues will involve the assistance of the Department and other support agencies and may require the support of the Governor and the Legislature.

Strategic planning notwithstanding, the Division will be expected to immediately focus on staffing shortages and vacancies through use of tools such as performance evaluations and updated job descriptions. Ultimately, a hiring and retention strategy that will fit the Division's place in twenty-first century utility regulation and its own strategic plan will have to be developed.

The Commission and the Division will collaborate to develop a common information system.

Development of the Division's information system technologies has allowed the agency to more efficiently manage the large volume of paper generated and utilize the volume of information produced in the analysis performed. The efforts to use information technologies have caused the Division to keep current with technology advances, supported by a Department budget that demonstrates an aggressive understanding of the importance of technology.

The fact that the Division took it upon itself to develop a website incorporating Commission decisions and orders and a list of the applications filed at the Commission is evidence of the Division's appreciation for the benefits of electronic technology and the need to provide stakeholders with more information. Although the Audit implicitly chides the Division for scanning hard copies of Commission decisions and orders, rather than obtaining and posting electronic copies of those decisions, it is important that document replication be exact in order to preserve document content and permit accurate reference to the Commission record. Electronic copies can not provide the same level of confidence.

The Department strongly agrees that the two agencies can better serve the public by coordinating information system development efforts. As a direct consequence of the Audit's recommendation, the Division and the Commission have agreed to collaborate on this project by mid-2004 to help develop a common information system. There is much public benefit to be realized from this effort, and we sincerely appreciate the Audit for having highlighted the need.

The Division will conduct an assessment of the need and value of its own separate set of rules.

The Department agrees that it is essential that the Division conduct an independent assessment of the need and value of developing its own separate set of rules to supplement or fill in gaps in the Commission's rules. The Division will be expected to show progress toward this effort before the end of 2004.

Clarifications

The Audit shines invaluable light on the Division's operations, and provides sound recommendations for change. There are two findings, however, which should be clarified.

The Audit discusses the fact that "numerous questionable gifts from regulated companies [were given] to . . . the division's acting executive director . . . and division staff." Audit, at 21. The following sentence states that the acting executive director "claimed that prior executive directors encouraged acceptance of gifts." According to the acting executive director, she was referring only to the small gifts of holiday food that utilities would commonly

deliver to the Division, and that while those were accepted by prior executive directors on behalf of the Division, they were in no other sense of the word “encouraged.”

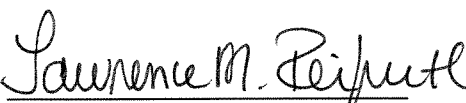
In another case, the Audit references what it says is the Department/Division’s statement in response to the 1989 audit that “the division had elected not to participate in transportation proceedings because they involve virtually no consumer-related interest.” Audit, at 13. The Audit juxtaposes that comment with the Division’s mission statement, which is “advocating affordable, quality utility and transportation services” (Audit, at 12) and concludes that “the division’s activities no longer align with its mission.” Audit, at 13. That the Division’s mission statement could appear so badly out of date is particularly surprising in that it was revised in September 2002.

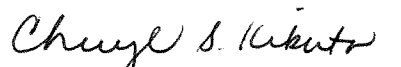
The Department/Division’s 1989 comment must be considered in context. The comment attributed to the Department/Division does not appear in the 1989 response at all. Rather, the Department/Division said that the Division did not participate in the bulk of the Commission’s dockets because the majority of those dockets “are show cause orders where small limousine services and trucking companies have failed to file annual reports, to pay fees to tariff bureaus, etc. Such cases constitute a form of enforcement and involve virtually no consumer-related interest.” 1989 Audit, at 78. That is quite different from saying that the Division does not participate in transportation proceedings without qualification. The fact is that transportation remains a core Division function and is properly a part of the Division’s mission statement.

Conclusion

The Department appreciates the Audit, its recommendations and the opportunity that it provides for self-reflection, improvement and comment. We look forward to the Division’s next audit and have every confidence that this Audit’s recommendations will be found to have been effectively addressed.

Sincerely,


f MARK E. RECKTENWALD
Director


CHERYL S. KIKUTA
Acting Executive Director