ALASKA STATE LEGISLATURE

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December 14, 2010

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities and the attached report is submitted for your review.

DEPARTMENT OF COMMERCE, COMMUNITY, AND
ECONOMIC DEVELOPMENT
REGULATORY COMMISSION OF ALASKA
SUNSET REVIEW

October 16, 2010

Audit Control Number

08-20067-11

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Currently, under AS 44.66.010(a)(3), the Regulatory Commission of Alaska is scheduled to terminate on June 30, 2011. In our opinion, the termination date for this commission should be extended. We recommend the legislature extend the termination date to June 30, 2019.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and recommendations presented in this report are discussed in the Objectives, Scope, and Methodology.

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Regulatory Commission of Alaska (RCA) to determine if there is a demonstrated public need for its continued existence and if it has been operating in an efficient and effective manner.

As required by AS 44.66.050(a), this report shall be considered by the committee of reference during the legislative oversight process to determine whether the RCA should be reestablished. Currently, under AS 44.66.010(a)(3), the board will terminate on June 30, 2011, and will have one year from that date to conclude its administrative operations.

Objectives

The RCA was created to regulate public utilities and pipeline carriers. In regulating public utilities and pipeline carriers, the RCA's activities include certificating qualified providers of public utility and pipeline service, and ensuring reliable services and facilities at just and reasonable rates, terms, and conditions.

To this end, the primary objective of this audit was to determine whether there is a public need for the RCA and if its existence should be extended.

The secondary objective was to determine if the RCA is serving the public's interest in its commissions and administrative activities.

Scope

Alaska Statute 44.66.050 outlines the factors to be considered in determining whether the RCA has demonstrated public need for its continued existence. We reviewed the RCA activities that occurred between FY 07 and FY 10.

Methodology

In order to meet the various objectives of the audit:

- We evaluated a statistical sample of 73 dockets[1] and a statistical sample of 73 tariff filings[2] to determine that dockets and tariff filings were processed within the applicable, if any, statutory timeline or within tariff regulations.

[1]The sample included: 62 utility dockets, 8 pipeline dockets, and 3 rule-making dockets.
[2]The sample included: 63 utility tariffs, 7 pipeline tariffs, and 2 interexchange tariffs.

- We reviewed the RCA regulation changes and board minutes for adequate public notice and public comment.

- We reviewed proposed legislation and related testimony for statutory changes and the RCA's position.

- We generated ALDER management reports to prepare a schedule of revenues and expenditures for FY 07 through FY 10.

- We examined a random sample of 25 power cost equalization eligible non-regulated utilities to determine if the RCA was performing reviews of annual financial reports.

- We interviewed the RCA's Consumer Protection Section and American Association of Retired Persons (AARP) representatives on the extent of the RCA public outreach efforts.

- We analyzed consumer complaints received during July 1, 2006 to April 9, 2010, to assess the timely processing of the complaints. On a sample basis, we also selected 25 consumer complaints for examination of compliance with the RCA regulations and procedures.

- We reviewed appealed RCA decisions to determine the status of the decision and the explanation for the court remanding the appealed decisions back to the RCA.

- We evaluated the reliability of certain data maintained in the commission database.

- We surveyed a sample of representatives from public utilities, pipeline companies, and individuals who were party to formal proceedings or tariff filings during July 1, 2006 through April 9, 2010. We also surveyed a sample of parties involved in informal complaints during the same time period.

Exhibit 1

Survey Group	Response Rate
Utility Dockets	42%
Rule-making Dockets	44%
Pipeline Dockets	21%
Tariff Filings	41%
Informal Complaints	26%

- We interviewed the RCA staff, commissioner, and various individuals from other state agencies. We also contacted the State Ombudsman, the Office of Victims' Rights, the Alaska State Human Rights Commission, the United States Equal Employment Opportunity Commission, the Alaska Labor Relations Agency, and the equal employment opportunity staff within the Department of Administration.

ORGANIZATION AND FUNCTION

The Regulatory Commission of Alaska (RCA) was created July 1, 1999, upon reorganization of the Alaska Public Utilities Commission by Ch 25, SLA 99. Under state law, the RCA is responsible for ensuring safe, adequate, and fair public utility and pipeline services. This is to be done by allowing regulated entities to charge users rates and provide service in a manner consistent with the interests of both the public and regulated entity. The RCA has the authority to adopt regulations and to hold formal, quasi-judicial hearings to accomplish these purposes.

The RCA regulates pipeline, telephone, electric, natural gas, water, sewer, refuse, cable TV, and heat services through a certification process. A public utility or pipeline company must obtain a certificate of public convenience and necessity, which describes the authorized service area and scope of operations. A certificate is issued when the RCA formally finds the applicant to be fit, willing, and able to provide the service requested.

In addition to the certification process, the RCA also may economically regulate the rates, classifications, rules, regulations, practices, and services of public utility facilities, and pipeline carriers covered by Alaska Statutes. The RCA determines whether the rates being charged or proposed by regulated entities are fair, just, and reasonable.

The RCA records in dockets the activities relating to certification and regulation of public utilities and pipeline carriers; resolution of formal complaints; and adoption of regulations. These dockets are categorized into three types: utility, pipeline, and regulatory. (See Exhibit 3 on page 10.)

As shown in Exhibit 2, the RCA consists of five commissioners. The commissioners are appointed by the governor, confirmed by the legislature for six-year terms, and must either be a member of the Alaska Bar Association or have a degree in engineering, finance, economics, accounting, business administration, or public administration from an accredited college or university. The RCA's staff includes administrative law judges, engineers, financial analysts, telecommunications specialists, tariff analysts, consumer protection officers, paralegals as well as administrative and support staff. The RCA also receives legal advice from counsel assigned to it by the Department of Law.

Exhibit 2

Regulatory Commission of Alaska Members
Robert Pickett, Chair Term expires March 2014
T.W. Patch Term expires March 2016
Kate Giard Term expires March 2013
Paul Lisankie Term expires March 2015
Jan Wilson Term expires March 2012

The staff of RCA is organized around seven major functions: administration, administrative law, finance, tariff, engineering, common carriers, and consumer protection. The RCA had

57 permanent funded positions[3] in its $8 million FY 10 operating budget. A brief description of the services provided by each RCA function is as follows.

- Administration: This function is responsible for fiscal and personnel administration, budget preparation, and records management - including the case management system. The commission chair is responsible for this function and is aided by an administrative manager, a commission section manager, an advisory section manager, documents processing and accounting personnel, and other clerical support staff.

- Administrative Law: This function is responsible for setting procedural schedules for dockets, making discovery and evidentiary rulings, issuing procedural orders, conducting hearings, advising commissioners on legal issues in pending dockets, and drafting the RCA orders. An administrative law judge is assigned to each docket shortly after it is opened and, along with an assigned commissioner and staff docket manager, works on the docket until it is closed.

- Finance: This function examines, analyzes, and evaluates financial statements submitted for rate cases. The finance staff audits financial records of utilities and pipeline companies and examines historical operating year data and pro forma adjustments. These analyses are presented at proceedings before the RCA.

- Tariff: This function examines, analyzes, and investigates tariff filings and presents recommendations to the RCA at biweekly tariff action meetings. Administrative duties include organizing those meetings, ensuring that public notice requirements on tariff filings are met, and maintaining current master tariffs for all utilities.

- Engineering: This function is responsible for certification proceedings and the investigation of utility and pipeline company procedures and practices affecting service quality. The engineering staff also reviews legal descriptions for service areas, plans for plant expansion, and plant-in-service and depreciation schedules. These analyses are presented in proceedings before the RCA.

- Common Carriers: This function develops, recommends, and administers policies and programs with respect to the regulation of rates, services, accounting, and facilities of communications common carriers within the State involving the use of wire, cables, radio, and space satellites.

- Consumer Protection: This function investigates and resolves informal consumer complaints, and is responsible for public affairs and media relations as well as responding to information requests.

[3]This total does not include three non-permanent positions and the assistant attorney general that the Department of Law furnishes to RCA through a reimbursable services agreement.

REPORT CONCLUSIONS

In developing our conclusion regarding whether the termination date of the Regulatory Commission of Alaska (RCA) should be extended, we evaluated RCA operations using the 11 factors set out in AS 44.66.050. Under the State's "sunset" law, these factors are to be used in assessing if an agency has demonstrated a public policy need for continuing operations.

In our opinion the RCA fulfills a public need and is serving Alaskans by:

- Assessing the capabilities of utility and pipeline companies to safely serve the public;
- Evaluating tariffs and charges made by regulated entities;
- Verifying the pass-through charges to consumers from electric and natural gas utilities;
- Adjudicating disputes between ratepayers and regulated entities;
- Providing consumer protection services; and
- Performing financial reviews of utilities for the State's power cost equalization program.

Under AS 44.66.010(a)(3), the RCA is scheduled to terminate June 30, 2011. We recommend the legislature extend the RCA's termination date until June 30, 2019.

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FINDINGS AND RECOMMENDATIONS

In our previous sunset audit,[4] we made one recommendation. The recommendation was for the Regulatory Commission of Alaska (RCA) to develop regulations that would enhance the transparency, accountability, and efficiency of the RCA's decision making process. The recommendation included three areas for improvement: (1) establishing timelines for matters not covered by statute; (2) establishing standards for certain aspects of discovery; and (3) clarifying terms used in statute that relate to established timelines for certain formal proceedings. This overall recommendation has been partially resolved.

In May 2007, HB 209 amended the statutory timelines in AS 42.05.175 to include a new section for other adjudicated matters. The amendment also modified the timeframes from months to days. The concerns related to this part of the prior audit recommendation have substantially been addressed.

The second part of the recommendation stated that the RCA should establish standards for certain aspects of discovery. The RCA opened a docket in October 2006 to seek comments from regulated entities and interested parties regarding potential regulation projects that should be viewed as priorities. One of the potential projects noted in the docket is regulations for discovery. However, no action was taken regarding discovery regulations, and the 2006 regulations docket was subsequently closed. In May 2010, the RCA opened another docket to solicit comments on discovery regulations. The docket states:

> *We are required by AS 42.05.175(e) to issue a final decision in a rulemaking proceeding not later than 730 days after the order initiating the proceeding is issued. However, until we have received public comment and evaluated the availability of staff resources, we will not know whether it is appropriate to initiate one or more rule-making proceedings, and, if so, the proper scope and subject matter of those proceedings. Consequently, we may close this docket without further action once we complete our information gathering effort, or we may issue one or more orders initiating separate rule-making proceedings.*

Comments were received, and the RCA is currently in the process of reviewing the comments in order to assess if one or more orders initiating separate rule-making proceedings are necessary. The concerns related to this part of the prior audit recommendation have not been addressed, but the RCA is currently in the process of evaluating industry and public input on discovery regulations.

The third part of the prior audit recommendation states the RCA should clarify terms used in statute that relate to established timelines for certain formal proceedings. Specific terms

[4]Department of Commerce, Community and Economic Development; Regulatory Commission of Alaska, Sunset Review, October 20, 2006, Audit Control No. 08-20048-06.

include *complete*: applications, tariff filings, formal complaints and petitions. The RCA adopted new regulations specific to complete and incomplete applications.[5] The RCA's management stated that no regulations were adopted for the terms *complete*: tariff filings, formal complaints, and petitions.

The prior recommendation also suggested an alternative solution to clarifying terms by developing a practice of issuing an order to memorialize the date when the initial record is considered complete. The RCA did implement this practice by issuing an initiating order on each matter which calculates and identifies the statutory deadline. Parties disputing the calculation of the statutory deadline may petition the RCA for reconsideration within 15 days of the initiating order. Under this revised procedure, the statutory deadline is known and communicated to all parties early in the proceeding.

[5]3 AAC 48.648 "Complete Applications" and 3 AAC 48.650 "Incomplete Applications."

ANALYSIS OF PUBLIC NEED

The following analyses of board activities relate to the public need factors defined in AS 44.66.050(c). These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

Determine the extent to which the board, commission, or program has operated in the public interest.

The Regulatory Commission of Alaska (RCA) is operating in the public's interest. The RCA identifies its core services as the following:

1. Thoroughly review utility and pipeline filings for compliance and approval.
2. Clear guidance to utility and pipeline service providers.
3. Ensure Alaska's interests are considered in the development of federal legislation and regulation.
4. Dispute resolution involving regulated entities.
5. Public information and education to enhance the public's understanding and use of utility and pipeline services.

In carrying out its responsibilities, the RCA acts much of the time in a quasi-judicial manner. Accordingly, decisions must be supported by findings of fact, and the findings of fact must be based solely upon the evidence as it appears in the record of a given proceeding. The RCA implemented a new practice beginning in FY 08 for the RCA's legal counsel to review final orders ensuring final decisions are based on evidentiary record and contain justification for the decision reached. Review of final orders from a sample of utility dockets indicates that the RCA has substantially implemented this new practice. The RCA continues to be very concerned about affording all parties involved in a given decision appropriate due process, while at the same time being responsive to concerns about the timeliness of its decision making process.

The RCA has responded well to legislative concerns about timeliness. In 2007, the legislature amended the RCA's statutory timeline requirement by adding AS 42.05.175(i) to address other adjudicated matters that were not already subject to a federal law, state law, or statutory timeline of AS 42.05.175(a)-(e). We reviewed a sample of formal proceedings

subject to statutory timelines[6] and a sample of tariff filings subject to regulatory timelines.[7] Testing showed that the RCA was in compliance with its statutory and regulatory timelines.[8]

Exhibit 3

Regulatory Commission of Alaska Dockets
FY 07 – FY 10

Docket Type	Utility	Pipeline	Regulatory	Total
FY 07				
Open as of July 1, 2006	75	17	13	105
Opened during FY 07	150	18	6	174
Closed during FY 08	142	17	7	166
FY 08				
Open as of July 1, 2007	83	18	12	113
Opened during FY 08	166	16	5	187
Closed during FY 08	163	12	5	180
FY 09				
Open as of July 1, 2008	86	22	12	120
Opened during FY 09	154	13	5	172
Closed during FY 09	146	7	5	158
FY 10 (as of April 9, 2010)				
Open as of July 1, 2009	94	28	12	134
Opened during FY 10	76	13	1	90
Closed during FY 10	66	5	1	72

Source: The RCA Case Management System

Exhibit 3, details the number of dockets the RCA processed for FY 07 through FY 10. The RCA opened 175 dockets, on average, over the three year period of FY 07 through FY 09. Additionally, the RCA closed, on average, almost 170 dockets for the same three year period.

Surveys were sent to representatives from utility and pipeline companies who were parties to a sample of formal proceedings or tariff filings presented before the RCA during FY 07 through April 2010. Surveys were also sent to a sample of consumers who filed an informal complaint with the RCA during the same time period. Over the past three years, approximately 85% of survey respondents stated that the RCA's overall operations stayed the

[6]Alaska Statute 42.05.175(a)-(i)
[7]3 AAC 48.220 – 3 AAC 48.280
[8]RCA management reported during our sunset audit that there were two tariff filings that went into effect without the required commission approval.

same or improved. Additionally, comments from two utility survey respondents regarding the RCA serving the public interest stated:

- *Sometimes it is more important to carry out the RCA's purpose of protecting the public than it is to "be efficient."*

- *Continue the good public service.*

The RCA's efforts at resolving consumer complaints with regulated utilities also serve the public's interest. The commission resolves most informal complaints within 45 days. Most of the respondents to the informal complaint survey reported that the RCA's complaint resolution process was efficient.

Determine the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters.

During FY 07, the RCA created an administrative law section comprised of four administrative law judges (ALJs) and a professional support staff. The RCA made this change based on input from regulated entities seeking streamlined pre-hearing and hearing processes as well as enhanced quality and timeliness of commission orders. The ALJs set procedural schedules for dockets, make discovery and evidentiary rulings, issue procedural orders, conduct hearings, advise the RCA on legal issues in pending dockets, and draft RCA orders. An ALJ is assigned to each docket shortly after it is opened and, along with an assigned commissioner and staff docket manager, oversees the processing of the docket until it is closed.

Although over half the utility survey respondents felt the efficiency of the RCA's hearing process did not change in the last three years, a third felt that the process is more efficient now. Utility survey respondents suggested the following areas for improvement in the efficiency of the hearing process:

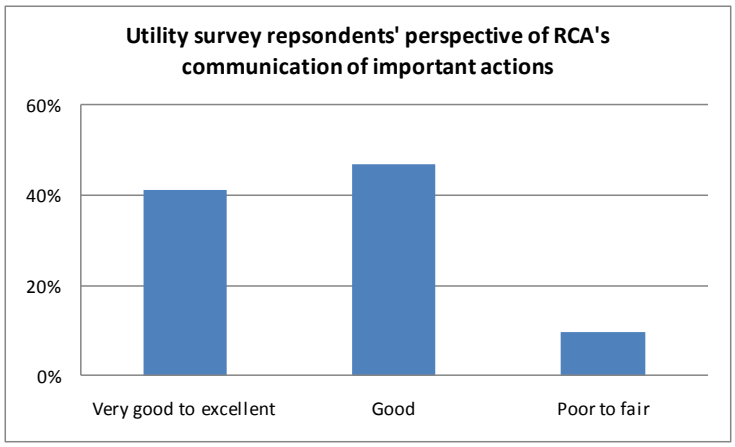
- Utilizing the ALJs for discovery and evidentiary rulings;
- Requiring only three commissioners to sit on the hearing panel; and
- Limiting the number of issues to be addressed and ensuring they are defined and fully explained.

Also, during FY 07, the RCA implemented the new procedure of issuing an initiating order that identifies: (1) the statutory or regulatory authority and timeline; (2) the RCA panel assigned to the docket; and (3) the ALJ assigned to the docket. The initiating order should document the application completion date, tariff filing date, or petition date. These dates are critical as they trigger the statutory timeline.

The RCA conducts two docket status meetings each month to review open dockets and the associated statutory timelines to ensure the dockets: will be evaluated, will proceed to the hearing process, and a final order will be issued prior to the statutory timeline. Additionally, the RCA monitors its tariff filings to ensure timelines are met and holds two tariff action meetings each month to approve tariff filings.

Almost all the utility survey respondents involved in formal proceedings before the RCA reported that they were informed by the RCA of the statutory timelines related to their dockets. As illustrated in Exhibit 4, over 40% of the utility survey respondents stated that the RCA's communication of important matters related to their formal proceeding was very good to excellent and almost 50% said that communication was good.

Exhibit 4



The RCA's total expenditures remained relatively stable from FY 07 through FY 10. The funding source for almost all of these expenditures was the regulatory cost charges paid by regulated entities. The RCA's total revenues remained stable between FY 07 and FY 09; however in FY 10, the RCA had $900,000 more in revenues than in expenditures. Appendix A summarizes the RCA's revenues and expenditures for FY 07 through FY 10.

Determine the extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.

During FY 07, the RCA opened a docket requesting recommendations for statutory revisions and sought comments on five specific areas of potential statutory reform.[9] The RCA invited two rounds of comments, held a public workshop and a public hearing, and discussed the proposed statutory revisions at three public meetings. The RCA then voted to transmit several proposed statute changes to include revising:

- Public utility and pipeline carrier regulatory costs;
- Civil penalties for public utilities and pipeline carriers;
- Timeliness for issuance of final orders;
- Potential conflict of interest of legal counsel;

[9]The areas were: (1) a specific statutory interest rate or interest formula to apply to refund obligations; (2) an increase to the statutory exemption levels in AS 42.05.711; (3) statutory timelines for AS 42.05 and AS 42.06 matters not currently subject to timelines; (4) updated civil penalties; and (5) statutory authorization for the chairman to appoint ALJs to hear certain types of cases and present proposed decision.

- Partially exempt position structures; and
- Qualification levels for commissioners.

The transmittal also included adding an administrative law section and a natural gas and oil pipeline section to the RCA's statutes that were forwarded to the governor for consideration. According to RCA management, the governor's intention was to support a bill that would enact many of the requested statute changes. However, based on committee minutes[10], the governor did not pursue the legislation and requested that the RCA work with the legislature. The resulting bill that was presented to the legislature did not contain many of the original statutory changes the RCA sought.

During the 2007 legislature, the RCA chair provided testimony to the legislature in support of establishing a deadline for formal proceedings not currently subject to statutory timelines. This legislation was passed and created statutory timelines for adjudicatory matters that come before the RCA and are not subject to federal timelines or timelines in AS 42.05.175(a)-(e). Also, in 2007, the legislature amended the RCA's annual report statutes[11] to include specific language in the statute that requires the RCA's annual report to contain details about the RCA's compliance with the statutory timeline requirements under AS 42.05.175(a)-(e), with the timeline extensions made by the commission under AS 42.05.175(f), and with other performance measures established by the commission.

The RCA did not recommend any statutory changes during FY 08 through FY 10. While numerous statutory changes were made by the legislature, the RCA did not have an official position on the changes.

Determine the extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.

The RCA affords the public opportunities to speak at publicly noticed, RCA meetings. The RCA uses a variety of methods for notifying the public of formal proceedings. Notices appear on the RCA and the State's website. Notices are also placed in newspapers in the affected regions of the State or maybe included with utility customer billings.

Additionally, as part of its operating mission, the RCA has an active consumer protection function which provides utility customers an avenue to seek resolution of complaints. The RCA generally tries to resolve disputes between customers and utilities informally, before

[10] House Labor and Commerce Committee, April 13, 2007

[11] Alaska Statute 42.05.211 and AS 42.06.220. Note: AS 42.06.220 states, "*The report must address regulation of oil and gas pipeline facilities in the state … and must contain details about the commission's compliance with performance measures reported by the commission*."

opening a formal complaint. Exhibit 5 below illustrates the consumer complaints filed with the RCA regarding utility types during the first ten months of FY 10.

The RCA resolved 84% of consumer complaints within 45 days of those filed between July 1, 2006 and April 9, 2010. Additionally, most of the respondents to our survey, who were involved with the informal complaint resolution process, reported the RCA was efficient in processing their complaint.

Exhibit 5

Consumer Complaints filed with the RCA between July 1, 2009 to April 9, 2010

	Number Filed	Total Complaint %
Telecommunications	94	40%
Electric	68	29%
Water / Sewer	30	13%
Natural Gas	25	10%
Cable Television	12	5%
Refuse Collection	6	3%
Totals	235	100%

Source: The RCA case management system

Beginning in 2007, the RCA, in a joint venture with the American Association of Retired People (AARP) Alaska, participated in several workshops for outreach in financial education and consumer protection. The RCA has continued to collaborate with consumer groups such as the Alaska Housing Finance Corporation to educate ratepayers and homebuyers about utility rates and services. The RCA also had an informational booth present at the Alaska Federation of Natives convention and was present at the Better Business Bureau seminars. As part of the consumer protection workshops, staff taught classes to educate consumers on utility rates and services.

Determine the extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

The quasi-judicial manner in which the RCA operates provides opportunities for all interested and affected parties to informally and formally respond to proposed regulations and decisions. Review of a sample of proposed regulations confirms that the RCA provided opportunities for public comment at the public meetings, workshops, and through the RCA's website.

The RCA's website is instrumental for communicating with the public. The RCA makes a computer terminal available at its office for the public to use for researching RCA records. Besides notices of upcoming meetings, formal actions are posted on the RCA website along with the commission's annual reports, discussions of major regulatory issues, and a forum for public comment. The process for filing a consumer complaint is explained and visitors to the website can subscribe to direct e-mail notices related to specific topics of interest.

Half of the survey respondents[12] report that the RCA's website is easy to use for finding information and provided sufficient information regarding dockets and filings. However, a third of the respondents stated that the website was not user friendly. Areas for improvement suggested by survey respondents include:

- Better search capabilities;
- Access to historical decisions;
- Status of pending motions for dockets;
- Continuous updates of current forms and information; and
- Allow for electronic filings.

Determine the efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved.

The Department of Commerce, Community, and Economic Development, the Boards and Commission within the Office of the Governor, and the Office of Victims' Rights reported receiving no complaints about the RCA over the past four years. The State's Office of the Ombudsman opened 24 cases based on contacts from the public. The majority of the cases were about how to contact the RCA. There were four cases filed by consumers regarding complaint processing and public meeting activities of the RCA. Based on our review of these cases, we determined that the ombudsman's investigation was appropriate resulting in the case being closed with no further recommendation for the RCA.

The RCA's orders and decisions are subject to appeal to the state courts. Since the prior sunset review, 18 of the RCA's final orders reflecting docket decisions have been appealed to the State's Superior Court. The Superior Court remanded two of the decisions back to the RCA for further proceedings due to the RCA not adequately articulating the reason for one decision and the other due to the RCA denying a direct refund to the affected entity. One remanded decision is pending a final decision before the RCA and the other was settled prior to further proceedings before the RCA. Eight appealed decisions are open and pending at the Superior Court, six were dismissed, and the Superior Court affirmed two of RCA's decision.

Additionally, the State's Supreme Court issued decisions related to four RCA docket decisions, resulting in affirming two RCA decisions, reversing the RCA's decision on one appealed decision and denying the RCA's appeal of a Superior Court's decision.

[12]Survey respondents included representatives from utility and pipeline companies who were a party to a utility, pipeline, rule-making docket or a tariff filing.

Determine the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public.

A public utility or pipeline carrier must obtain from the RCA a certificate of public convenience and necessity, which describes the authorized service area and scope of operations. A certificate is issued upon the RCA formally finding the applicant to be fit, willing, and able to provide the service requested. The RCA generally regulates the rates, services, and practices of these entities.

As of June 2010, there were 622 active certificated entities. Of these, 153 were economically regulated. Exhibit 6 is a summary, by service type, of the economically regulated entities.

To ensure utilities meet requirements, the RCA employs utility financial analysts and utility engineers to perform the appropriate analyses to make a determination of an applicant's capabilities before granting a certificate. Between July 1, 2007 and June 30, 2010, the RCA issued 54 certificates of public convenience and necessity, of which 18 were for economically regulated entities.

Exhibit 6

RCA Economically Regulated Certificates by Service Type

Telecommunications	56
Electric	37
Pipeline	24
Water	14
Gas	6
Refuse	6
Sewer	6
Cable TV	2
Heat	2
Total	153

Source: The RCA case management system

Determine the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

We found no evidence of the RCA's hiring practices or appointments that were contrary to state personnel practices. Since July 2006, no complaints have been filed with any of the following: (1) Alaska State Commission on Human Rights within the Office of the Governor; (2) the United States Equal Employment Opportunity Commission; (3) the Alaska Labor Relations Agency with the Department of Labor and Workforce Development; or (4) staff specializing in equal employment opportunity issues in the Division of Personnel within the Department of Administration.

Determine the extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Almost half of all survey respondents[13] reported the existing statutes and regulations are

[13]Except for consumer complaint survey recipients.

obsolete, vague, unduly restrictive, or inadequate. Some of the areas that the respondents believe should be addressed by statutory or regulatory changes are:

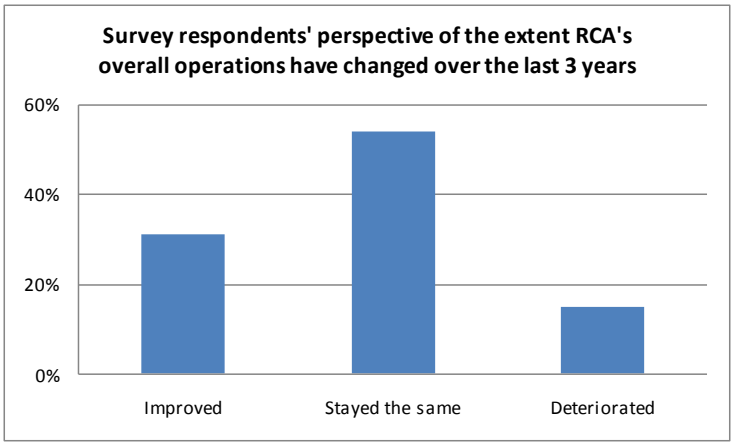
- Clarifying statute for definition of a final order;
- Revising regulations to allow for electronic filings;
- Establishing regulations for discovery;
- Amending parts of AS 42.05.175 to segregate the timeframes between adjudicative proceedings and the time given for the RCA to issue its final order at the close of such proceedings;
- Shortening the statutory timeline for decisions in rate proceedings; and
- Revising ex parte communication rules.

Again, the last three items are survey respondents' issues from the prior sunset audit.

Determine the extent to which the board, commission, or agency has effectively attained its objectives and purposes and the efficiency with which the board, commission, or agency has operated.

As shown in Exhibit 7, almost 55% of all survey respondents stated that the RCA's overall operations have stayed the same and over 30% stated they improved during the past three years.

Exhibit 7



The review of the data from the case management system for our analysis identified many errors with the data entry into the system. The RCA does not have comprehensive written procedures to ensure the data entered into the system is accurate, consistent, and complete. This was also identified during our audit of the RCA's FY 09 Annual Report and is documented in the Findings and Recommendations section of that report.[14] Although these errors were still present during our sunset audit, the RCA's management has acknowledged and agreed that improvements are needed.

[14]Department of Commerce, Community, and Economic Development, Regulatory Commission of Alaska, FY 09 Annual Report Audit, September 21, 2010, Audit Control No. 08-30057-10.

The RCA assists in the administration of the State's power cost equalization (PCE) program. The Alaska Energy Authority (AEA) administers the PCE program based on the PCE rate calculations performed by the RCA.[15]

There are approximately 70 non-regulated PCE recipients, and the RCA has set an internal performance measure to review one-third of the annual reports received annually. Exhibit 8 details the number of annual reports the RCA has reviewed during FY 07 to FY 10. The RCA has improved on the number of annual report reviews and has exceeded their internal performance measure for FY 10.

Exhibit 8

Non-regulated PCE entities' annual reports reviewed by the RCA

	FY 07	FY 08	FY 09	FY 10
Number of Non-Regulated PCE Entities	79	84	69	69
Goal (30% of entities)	24	25	21	21
Number of Annual Report Reviewed by RCA	11	7	9	30

Source: Compiled from the RCA annual reports and RCA management

During FY 10, the RCA was awarded a grant under the American Recovery and Reinvestment Act (ARRA) for $767,500 to help fund positions to manage an increase in its responsibilities resulting from the ARRA electricity-related projects.[16] As of June 30, 2010, the RCA has expended roughly $7,000 of the ARRA funding. The RCA hired staff[17] who worked on reviewing utility tariffs language, provided analysis and commission support in hearing reviews, and reviewed applications for the transfer of an electric utility. The staff also participated in the development of new electrical interconnection regulations.

Determine the extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.

The RCA's mission is to assure viable utility and pipeline service is provided with just and reasonable rates to consumers in Alaska. The RCA's role is to reach decisions which consider the often competing interests of the concerned parties in pursuit of outcomes which protect and promote the overall public interest.

The Regulatory Affairs and Public Advocacy (RAPA) section within the Department of Law also protects the public's interest. The responsibility of the RAPA was established in July 2003 to advocate on behalf of the public's interest in utility matters that come before the

[15]3 AAC 52.660 states that in order for the RCA to determine if the PCE rate is just and reasonable, a non-regulated utility shall file an annual report for review. The RCA, using its discretion under 3 AAC 42.640, will adjust the PCE rates based on review of the annual report. However, non-regulated utilities can request the RCA to review its annual report for the PCE adjustment at any time.

[16]The ARRA electricity related projects include, but are not limited to, energy efficiencies, electricity-based renewable energy, energy storage, smart grids, electric and hybrid-electric vehicles, demand response equipment, coal with carbon capture and storage.

[17]The ARRA funding is for two positions. The RCA filled one position with an engineering analyst; however, it has not found a qualified applicant for the financial analyst position.

RCA,[18] in court appeals, and before the legislature and other policymakers. The attorney general, as the public advocate, determines and advocates for the general public's interest with particular attention to the interests of consumers who would not otherwise have an effective voice regarding the rates and services of regulated utilities or pipeline carriers operating in the State. No legal services are provided directly to the people. Individual utility customers who seek assistance may contact the Consumer Protection Section of the RCA.

There is a common mission between the two organizations; however, they both perform different functions. The RCA issues decisions on utility matters in the public's interest and the RAPA advocates for the public.

Almost 90% of the survey respondents[19] stated that the RCA did not duplicate the activities of another government agency or private sector. The areas the survey respondents stated were duplicated include reports that are filed with the RCA and with the Federal Communications Commission and reports filed with the RCA and with the AEA. The duplicate reporting between the RCA and the AEA indicates this is an area for improved communication between the two state entities.

[18]Alaska Statute 44.23.020(e)

[19]Survey respondents include representatives from utility and pipeline companies who were parties to a utility, pipeline, rule-making, informal complaint docket or tariff filing that were open at one point between FY 07 to April 9, 2010. Survey respondents also included consumers of informal complaint dockets.

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ATTACHMENT A

Department of Commerce, Community, and Economic Development
Regulatory Commission of Alaska
Schedule of Revenues and Expenditures
FY 07 through FY 10
(rounded to nearest hundred)
(unaudited)

Revenues	FY 07	FY 08	FY 09	FY 10
Utility Regulatory Cost Charge	$ 7,548,400	$ 7,464,700	$ 7,745,700	$ 9,420,500
Utility Application Fee	10,400	9,400	15,300	21,000
Utility Hearing Reimbursement	4,200	4,100	6,000	2,700
Public Document Sale	5,800	4,500	700	5,800
3rd Party Collection	4,000	4,400	2,200	1,300
Total Revenues	$ 7,572,800	$ 7,487,100	$ 7,769,900	$ 9,451,300
Expenditures				
Personal Services	$ 4,132,400	$ 4,274,600	$ 4,782,300	$ 4,934,500
Travel	131,600	61,500	37,400	77,300
Contract Services	2,347,500	1,509,700	1,689,500	1,809,000
Commodities	132,400	131,600	211,900	161,200
Capital Outlay	169,700	603,700	42,900	0
Total Expenditures	$ 6,913,600	$ 6,581,100	$ 6,764,000	$ 6,982,000
Transfers To				
Department of Law - Regulatory Affairs and Public Advocacy[20]	$ 1,425,000	$ 1,327,500	$ 1,498,300	$ 1,537,300

Source: Alaska State Accounting System

[20]Expenditures for public advocacy, the responsibility of the Regulatory Affairs and Public Advocacy section within the Department of Law, are appropriated from fees paid by regulated entities.

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STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT
Office of the Commissioner

Sean Parnell, Governor
Susan K. Bell, Commissioner

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LEGISLATIVE AUDIT

January 4, 2011

Ms. Pat Davidson
Legislative Auditor
Division of Legislative Audit
Alaska State Legislature
P.O. Box 113300
Juneau, AK 99811-3300

RE: Response to preliminary audit report, Department of Commerce, Community, and Economic Development, Sunset Audit of the Regulatory Commission of Alaska (RCA)

Dear Ms. Davidson,

I have reviewed preliminary audit report on the sunset review of the RCA and concur with the recommendation that the legislature extend the RCA's termination date to June 30, 2019.

Your letter notes that the RCA has not resolved a recommendation from a prior audit that standards for discovery be developed. You also recognized that the RCA is currently evaluating input regarding discovery regulations. I have every reason to believe the matter will be appropriately addressed.

In addition, the audit's in-depth analysis of the RCA, with suggestions from survey respondents, provides an alternative perspective from which the RCA can evaluate its operations.

Thank you for the opportunity to comment on the preliminary audit report.

Sincerely,

Susan K. Bell
Commissioner

P.O. Box 110800, Juneau, Alaska 99811-0800
Telephone: (907) 465-2500 Fax: (907) 465-5442 Text Telephone: (907) 465-5437
Email: questions@alaska.gov Website: http://www.commerce.alaska.gov/

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STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Sean Parnell, Governor
Susan K. Bell, Commissioner
Robert M. Pickett, Chairman

Regulatory Commission of Alaska

January 4, 2011

Ms. Pat Davidson
Legislative Auditor
Division of Legislative Audit
Alaska State Legislature
PO Box 113300
Juneau, AK 99811-3300

RECEIVED
JAN 04 2011
LEGISLATIVE AUDIT

RE: Response to preliminary audit report,
Department of Commerce, Community, and Economic Development (DCCED),
Sunset Audit of the Regulatory Commission of Alaska (RCA)

Dear Ms. Davidson:

Thank you for the opportunity to respond to the confidential preliminary audit report. The RCA appreciates the conclusion that it fulfills a public need and is serving Alaskans.

The report details the RCA's response to the 2006 sunset audit report recommendation that the RCA enhance the transparency, accountability, and efficiency of its decision-making process. As noted, the first part of the three-part recommendation was addressed through a statutory change; another part was addressed through the use of initiating orders which calculate and identify statutory deadlines for new proceedings. Through a rule-making proceeding, the RCA is currently pursuing the remaining part of the recommendation by considering discovery regulations. As interested entities have conflicting views, new regulations take time and careful consideration. However, the RCA is currently evaluating industry and public input regarding discovery regulations.

In summary, the RCA concurs with the recommendation that the legislature extend the RCA until June 30, 2019. Thank you for the opportunity to comment on the preliminary audit report.

Sincerely,

Robert M. Pickett, Chair
Regulatory Commission of Alaska

cc: The Honorable Susan Bell
Commissioner
Department of Commerce, Community and Economic Development