

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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SUMMARY OF: A Sunset Review on the Department of Commerce, Community, and Economic Development, Regulatory Commission of Alaska, July 19, 2013

PURPOSE OF THE REPORT

In accordance with Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the Regulatory Commission of Alaska's (commission or RCA) activities. The purpose of this audit was to determine if there is a demonstrated public need for its continued existence and if it has been operating in an 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 in determining whether the commission should be reestablished. Currently, under AS 44.66.010(a)(3), RCA will terminate on June 30, 2014, and will have one year from that date to conclude its administrative operations.

REPORT CONCLUSIONS

Overall, RCA is operating in the public's interest. In our opinion, the commission fulfills a public need and is serving Alaskans by:

- Assessing utility and pipeline companies' capabilities for safely serving the public;
- Evaluating regulated entities' tariffs and charges;
- Verifying charges passed through to consumers from electric and natural gas utilities;
- Adjudicating disputes between ratepayers and regulated entities; and
- Providing consumer protection services.

We recommend the legislature extend RCA's termination date until June 30, 2022.

Although the commission partially addressed case management system data deficiencies noted in the audit of RCA's FY 11 annual report,¹ continuing deficiencies were noted and further improvements are recommended. We also recommend the legislature consider clarifying the statutory timeline for rulemaking proceedings.

FINDINGS AND RECOMMENDATIONS

¹*Department of Commerce, Community and Economic Development; Regulatory Commission of Alaska, FY 11 Annual Report, May 23, 2012, audit control number 08-30067-12.*

Recommendation No. 1

RCA's chair should improve and enforce written procedures to ensure case management system data is accurate, consistent, and complete.

Although RCA management developed written procedures for tariff filing and docket data entry during FY 12, testing results showed procedures were not consistently applied. The data errors can be attributed to a lack of adequate training and documentation of data review, and a lack of ongoing quality reviews to ensure case management system data is accurate, consistent, and complete.

Recommendation No. 2

The legislature should consider clarifying AS 42.05.175(e) to ensure RCA fulfills legislative intent when processing regulatory dockets.

The legislature should consider clarifying AS 42.05.175(e) to ensure RCA fulfills legislative intent when processing regulatory dockets. Currently, RCA interprets AS 42.05.175(e) to allow for two separate dockets during the regulatory process. If the legislature intends the entire regulatory deliberative process to be subject to the 730-day timeline, the legislature should consider clarifying Alaska Statutes.

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August 19, 2013

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 Regulatory Commission of Alaska's (commission) activities and the attached report is submitted for your review.

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

July 19, 2013

Audit Control Number
08-20079-13

The audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists the criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Per AS 44.66.010(a)(3), the commission is scheduled to terminate on June 30, 2014.

In our opinion, the commission's termination date should be extended. We recommend that the legislature extend the termination date to June 30, 2022.

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.

A handwritten signature in blue ink, appearing to read "Kris Curtis".

Kris Curtis, CPA, CISA
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 Regulatory Commission of Alaska's (commission or RCA) activities 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 in determining whether the commission should be reestablished. Currently, under AS 44.66.010(a)(3), RCA will terminate on June 30, 2014, and will have one year from that date to conclude its administrative operations.

Objectives

The three central, interrelated objectives of our audit were:

1. Determine if the termination date of the commission should be extended.
2. Determine if RCA is operating in the public's interest.
3. Provide a current status of the recommendations made in the prior sunset audit report.

Scope and Methodology

The assessment of the commission's operations and performance was based on criteria established in AS 44.66.050(c). Criteria set out in this statute relate to the determination of a demonstrated public need for the commission.

The audit evaluated RCA operations from July 1, 2010, through May 15, 2013. The audit reviewed information from RCA's database related to utility, pipeline, and regulatory dockets; tariff filings; and informal consumer complaints that were open or opened from July 2012, through February 2013.

During the course of the audit, the following were reviewed and evaluated:

- Applicable Alaska Statutes and regulations to identify RCA's functions and responsibilities. Changes made during the audit period were reviewed to determine whether the changes enhanced or impeded commission activities. Changes were also evaluated for consistency with statutory purpose and to ascertain if the commission operated in the public's interest.
- Public notice documentation to ascertain whether public notice of RCA public meetings, regulatory docket proceedings, and tariff filings was published as required by Alaska Statutes.

- The prior sunset audit and a previous audit of the RCA FY 11 annual report to identify issues affecting the commission.
- Appeals of RCA decisions to the Alaska Superior and Supreme Courts to determine whether the commission's adjudicatory decisions were based on evidential record and contain justification for the decision reached.
- FY 13 Regulatory Cost Charge levied on regulated entities by RCA to determine compliance with statutory and regulatory calculation requirements.

In order to identify and evaluate issues relating to RCA's activities, we conducted interviews with: RCA's staff, management, and commissioners; Alaska Energy Authority management; and Regulatory Affairs and Public Advocacy section staff within the Department of Law. Topics of discussion included RCA's operational efficiency, suggestions for areas of improvement, and whether RCA is duplicating the activities of another governmental agency or private company.

Representatives from public utilities and individuals party to utility dockets or tariff filings presented before the commission from July 2012 through February 2013 were surveyed. The surveys sought opinions on: what statutory or regulatory changes should be made; whether the commission operated efficiently and in the public's interest; whether the commission effectively communicated; satisfaction with RCA's overall operations; the adequacy of RCA's website; and whether the commission duplicated functions of another governmental or private entity.

A random sample of 25 of 175 utility dockets open or opened during the audit period (July 1, 2012 through February 28, 2013) was selected and assessed for the effectiveness of internal controls and for compliance with statutory timelines and extensions. An additional random sample of 16 utility dockets from the same period was selected to further assess the effectiveness of internal controls. In determining sample size, the applicable controls were considered moderately significant; the inherent risk was considered limited; and the risk of noncompliance was considered low. The internal control error rate was statistically projected over the total population of 175 utility dockets.

A random sample of 26 of 261 tariff filings open or opened during the audit period was selected and assessed for the effectiveness of internal controls and for compliance with statutory timelines and public notice requirements. In determining sample size, the applicable controls were considered moderately significant; the inherent risk was considered limited; and the risk of noncompliance was considered low. Error rates were statistically projected over the total population of 261 tariff filings.

A random sample of nine of 41 pipeline dockets open or opened during the audit period was selected and assessed for the effectiveness of internal controls. In determining sample size, the applicable controls were considered moderately significant; the inherent risk was considered limited; and the risk of noncompliance was considered low.

A random sample of 25 of 175 informal consumer complaints open or opened during the audit period was selected and assessed for the effectiveness of internal controls. In determining sample size, the applicable controls were considered moderately significant; the inherent risk was considered limited; and the risk of noncompliance was considered low. Error rates were statistically projected over the total population of 175 informal consumer complaints.

A random sample of five of nine regulatory dockets open or opened during the audit period was selected and assessed for the effectiveness of internal controls. Additionally, an analysis of 22 regulatory dockets open or opened from July 2010 through February 2013 was performed to determine compliance with RCA's statutory requirement not to evade statutory timelines.

Inquiries regarding commission-related complaints were made with the following organizations:

- Alaska State Commission for Human Rights;
- Department of Administration's Division of Personnel and Labor Relations;
- United States Equal Employment Opportunity Commission;
- Department of Commerce, Community, and Economic Development's Commissioner's Office;
- Office of the Ombudsman;
- Office of Victims' Rights; and
- Office of the Governor's Alaska Boards and Commission.

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ORGANIZATION AND FUNCTION

The Regulatory Commission of Alaska (commission or RCA) is responsible for ensuring safe, adequate, and fair public utility and pipeline services. This is done by allowing regulated entities to charge users rates and provide services in a manner consistent with both the public and regulated entities' interests. RCA has the authority to adopt regulations and to hold formal, quasi-judicial hearings to accomplish these purposes.

The commission 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 RCA formally finds the applicant to be fit, willing, and able to provide the service requested.

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

All economically regulated utilities and pipeline companies are required to maintain a tariff and operate under the terms of the tariff. *Tariffs* are the written terms, conditions, rules and rates governing a company's conduct in providing public utility or pipeline services. The commission reviews all initial tariffs and tariff revisions.

The commission records in dockets the activities relating to certifying and regulating public utilities and pipeline companies, formal complaint resolutions, and regulation adoptions. These dockets are categorized into four types: utility, pipeline, complaint, and regulatory.

As shown in Exhibit 1, 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 university. The commission's staff includes administrative law judges, engineers, financial analysts, consumer protection officers, paralegals, as well as administrative and support staff. RCA also receives legal advice from counsel assigned to it by the Department of Law.

RCA had 61 permanent and two non permanent positions in its \$9.4 million FY 13 operating budget.

Exhibit 1

Regulatory Commission of Alaska Members as of June 2013
T.W. Patch, Chair Term expires March 2016
Robert Pickett Term expires March 2014
Norman Rokeberg Term expires March 2019
Paul Lisankie Term expires March 2015
Jan Wilson Term expires March 2018

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BACKGROUND INFORMATION

Regulatory Commission of Alaska's (commission or RCA) Use of Dockets in Rulemaking Proceedings

Subsections of AS 42.05.175 provide statutory timeline requirements for rulemaking proceedings that:

- Require RCA to issue a final order in a rulemaking docket not later than 730 days after a complete petition for regulatory change is filed or after the commission issues an initiating order for such proceedings;
- Allow for one 90-day extension if the commission finds good cause exists for the extension; and
- Do not allow RCA to evade statutory timeline requirements by terminating a proceeding in a docket and opening a proceeding in another docket on substantially the same matter.

In practice, the commission's regulation adoption process may include two rulemaking dockets for the same or similar matter. The first rulemaking docket is opened to ascertain whether there is a need for regulations in an area of concern or interest. Once public testimony and comments are obtained regarding potential regulations, the docket is closed. If the record indicates a need for regulations, RCA opens another docket to consider adopting regulations. This second rulemaking docket is closed by an order to adopt or an order not to adopt the regulations.

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REPORT CONCLUSIONS

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

Overall, RCA is operating in the public's interest. In our opinion, the commission fulfills a public need and is serving Alaskans by:

- Assessing utility and pipeline companies' capabilities for safely serving the public;
- Evaluating regulated entities' tariffs and charges;
- Verifying charges passed through to consumers from electric and natural gas utilities;
- Adjudicating disputes between ratepayers and regulated entities; and
- Providing consumer protection services.

Under AS 44.66.010(a)(3), RCA is scheduled to terminate June 30, 2014. We recommend the legislature extend RCA's termination date until June 30, 2022.

Although the commission partially addressed case management system data deficiencies noted in the audit of RCA's FY 11 annual report,¹ continuing deficiencies were noted and further improvements are recommended. (See Recommendation No. 1.) Additionally, we recommend the legislature consider clarifying the statutory timeline for rulemaking proceedings. (See Recommendation No. 2.)

¹*Department of Commerce, Community and Economic Development; Regulatory Commission of Alaska, FY 11 Annual Report, May 23, 2012, audit control number 08-30067-12.*

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FINDINGS AND RECOMMENDATIONS

In the previous sunset audit,² no recommendations were made. However, the audit of the Regulatory Commission of Alaska's (commission or RCA) FY 11 annual report included one recommendation to implement written procedures to ensure case management system data was accurate, consistent, and complete. This prior recommendation has been partially implemented and is reiterated as Recommendation No. 1. Additionally, one new recommendation is made regarding processing rulemaking dockets.

Recommendation No. 1

RCA's chair should improve and enforce written procedures to ensure case management system data is accurate, consistent, and complete.

Prior Finding

Certain data in the FY 09 and FY 11 RCA annual reports was unreliable due to inaccurate and incomplete case management system data. Case management system data problems stemmed from not having comprehensive written procedures in place to ensure accurate data was entered into the system in a consistent manner and not having quality control mechanisms to ensure the data was accurate, consistent, and complete.

Inaccurate data in the commission's annual reports misleads the legislature, industry, and public regarding the commission's efficiency and effectiveness in performing its functions. RCA management is responsible for ensuring the information collected and reported is accurate, consistent, and complete.

Legislative Audit's Current Position

An examination of 26 of 261 tariff filings and 41 of 175 utility dockets open or opened from July 2012 through February 2013 found case management system data error rates of 27 percent and 20 percent in each respective sample. Additionally, analysis of 25 of 175 consumer complaints open or opened during the same time period found a 12 percent error rate.³

Although RCA management developed written procedures for tariff filing and docket data entry during FY 12, testing results showed procedures were not consistently applied. The

²*Department of Commerce, Community and Economic Development; Regulatory Commission of Alaska, Sunset Review, October 16, 2010, audit control number 08-20067-11.*

³Based on a 90 percent confidence level, the projected error rates derived from test work exceeded the assigned acceptable tolerable error rate of 10 percent in the sample. Statistical analysis resulted in projected error rates up to 40 percent for tariff filings, 29 percent for utility dockets, and 23 percent for consumer complaints.

data errors can be attributed to a lack of adequate training and documentation of data review and a lack of ongoing quality reviews to ensure case management system data is accurate, consistent, and complete.

Missing or improper information entered into the case management system affects the integrity of the data, and could affect tariff filing and utility docket processing, including compliance with statutory and regulatory timelines.

Again, we recommend RCA's chair improve and enforce written procedures that ensure case management system data is accurate, consistent, and complete.

Recommendation No. 2

The legislature should consider clarifying AS 42.05.175(e) to ensure RCA fulfills legislative intent when processing regulatory dockets.

A review of 22 rulemaking dockets found two instances where RCA split the rulemaking proceedings into two dockets: one to "*consider the need*" for regulations and another to "*consider the adoption*" of regulations. This process appears to circumvent statutory timelines for regulatory proceedings.

Alaska Statutes 42.05.175(e) and (f) require rulemaking dockets to be completed within 730 days but does allow a 90-day extension for good cause. Alaska Statute 42.05.175(l) states that RCA may not evade the timelines by terminating a proceeding in a docket and opening a proceeding in another docket on substantially the same matter.

RCA management believes that including clear intent language in a regulatory docket's initiating order makes the process transparent and complies with Alaska Statutes. We acknowledge that dockets included language that identified RCA's intent. In that regard, the process was transparent. However, this approach allows RCA to take over four and a half years to complete proceedings, appears to evade statutory timelines, and does not appear to serve the regulated community and public's interests.

Currently, RCA interprets AS 42.05.175(e) to allow for two separate dockets during the regulatory process. If the legislature intends the entire regulatory deliberative process to be subject to the 730-day timeline, the legislature should consider clarifying AS 42.05.175(e) to ensure legislative intent is met.

A ANALYSIS OF PUBLIC NEED D

The following analyses of the Regulatory Commission of Alaska's (commission or RCA) activities relate to the public need factors defined in the "sunset" law, AS 44.66.050(c). These analyses were not intended to be comprehensive, but to address those areas we were able to cover within the scope of our review.

As part of the audit, we surveyed representatives from public utilities and individuals party to utility dockets or tariff filings presented before the commission from July 2012 through February 2013. One hundred eleven representatives were provided the survey for utility dockets and 41 (37 percent) responded. Sixty-eight representatives were provided the survey for tariff filings and 31 (46 percent) responded. Survey questions and results are presented in Appendices A and B.

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

We conclude that RCA is serving the public's interest. The commission is concerned about affording all parties to a decision appropriate due process while at the same time being responsive to concerns about the timeliness of its decision-making process. Approximately 94 percent of tariff survey respondents and 85 percent of utility docket survey respondents agreed that RCA operates in the public's interest.

RCA identifies its core services as the following:

1. Review utility and pipeline filings for compliance and approval.
2. Provide guidance to utility and pipeline service providers.
3. Ensure Alaska's interests are considered in the development of federal legislation and regulations.
4. Resolve disputes involving regulated entities.
5. Educate and inform the public to enhance the public's understanding and use of utility and pipeline services.

In carrying out its responsibilities, RCA acts in a quasi-judicial manner. Accordingly, decisions must be supported by findings of fact, and the findings of fact must be based solely upon evidence appearing in the record of a given proceeding. Analysis of final orders from samples of utility, pipeline, and regulatory dockets indicated that RCA's legal counsel reviews final orders to ensure final decisions are based on evidentiary record and contain justification for the decisions reached.

Of 261 tariff filings and 175 utility dockets open or opened from July 2012 through February 2013, 26 tariff filings and 25 utility dockets were examined for compliance as part

of this audit. Results showed that RCA complied with statutory timelines for these proceedings. However, the process for rulemaking appears to circumvent statutory timeline requirements by splitting the regulatory process into two separate dockets. RCA applies the 730-day statutory timeline to rulemaking dockets opened for the same regulatory matter. Additionally, the commission may extend one or both dockets for 90 days. Therefore, under RCA's process for rulemaking proceedings, it could take up to 1,640 days (2 × 820 days) to adopt regulations for a particular matter. (See Recommendation No. 2.)

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.

RCA operations were enhanced by regulations governing the submission and processing of electronic filing of docketed matters. The regulations were adopted in FY 11; however, the electronic filing system was not fully implemented until February 2012. The regulations require all parties and representatives participating in docket proceedings to file online through the commission's electronic filing system. Parties that are unable to file electronically may request a waiver. Per inquiry with management, no waivers were requested as of February 2013. Sixty-six percent of utility docket survey respondents rated the electronic filing system between "good" and "very good." Twenty percent rated the system as "fair."

RCA's operations could be further enhanced by adopting regulations that govern submitting and processing electronic tariff filings. RCA implemented a test program for electronic tariff filing, but did not open a rulemaking docket to adopt regulations. Regulations for electronically filing dockets and tariffs were separated to ease adoption and implementation.

The commission's operations were not impeded by budgetary matters. Regulated entities paid the commission an annual regulatory cost charge (RCC) to cover most of the expenditures for RCA and the Regulatory Affairs and Public Advocacy (RAPA) section within the Department of Law. The expected RCCs from all regulated utilities may not exceed statutory percentages of the total adjusted gross revenue of all regulated public utilities. Regulations further define the methodology to determine an annual RCC. The FY 12 and FY 13 RCC calculations were reviewed and found to comply with statutory and regulatory requirements. The Schedule of Revenues and Expenditures for FY 11 through March 2013 is included as Appendix C.

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

From FY 11 through FY 13, RCA did not formally introduce any legislation. However, 14 legislative bills relating to the commission were introduced. Except for the commission's reauthorization bill, RCA management did not present a position on the introduced bills. The following three RCA-related bills were enacted by the legislature during the audit period.

1. Senate Bill 23 created a new class of public utilities for regulating liquefied natural gas storage facilities.
2. House Bill (HB) 4 made public utility agreements and contracts entered into with the Alaska Gasline Development Corporation subject to RCA review and added AS 42.08 which applies to the regulation of in-state natural gas pipelines.
3. House Bill 24 reauthorized RCA.

Reauthorization legislation (HB 24) directed RCA to provide a proposal to reduce the statutory 450-day timeline for dockets related to suspended tariffs that change a utility's revenue requirement or rate design. Legislative intent language in HB 24 required RCA to provide a proposal to the legislature by January 17, 2012.⁴ In response, RCA did not propose a statutory reduction in the 450-day rate case timeline under AS 42.05.175(c); rather, RCA plans to reduce the time for these dockets through regulatory changes and to customize each docket timeline based on the complexity of the case. The timeline for the most complex dockets will be set at the statutory 450-days, while less complex dockets may be set at less than 450 days.

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.

RCA offered members of the public an opportunity to speak at public meetings. Review of all 15 public meetings conducted from July 2012 through April 2013 showed that RCA published notices in accordance with regulations. Notices stating the dates and times of the public meetings, including the agendas, appeared on RCA's website and on the State's Online Public Notice website. Over 75 percent of tariff filing survey respondents and 90 percent of utility docket survey respondents rated RCA's communication of important actions between "good" and "very good." Additionally, 95 percent of utility docket survey respondents reported that RCA informed them of statutory timelines related to their dockets.

RCA also encouraged feedback from the public by annually participating in several public events. In FY 11, FY 12, and FY 13 the commission conducted two, four, and seven public outreaches and workshops respectively. These included informational booths to provide consumer protection and financial education to the general public at the Alaska State Fair, the Elders and Youth Conference, and the Homer Electric Association Energy and Conservation Fair. RCA, in a joint venture with AARP Alaska, also participated in several Wise Consumer workshop presentations in various cities in Southcentral and Southeast Alaska.

⁴A Report to the Legislature by the Regulatory Commission of Alaska, On a Proposal to Reduce the Statutory Timeline for Tariff Filings that Change a Utility's Revenue Requirement or Rate Design, January 17, 2012.

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 RCA operates provided opportunities for all interested and affected parties to informally and formally respond to proposed regulations and decisions. Review of five of nine rulemaking dockets open or opened during the first eight months of FY 13 confirmed that RCA public noticed proposed regulations in accordance with the *Administrative Procedures Act*. Review of 26 of 261 tariff filings open or opened during the same time period confirmed that RCA public noticed tariff filings in accordance with regulations.

RCA's website was instrumental in communicating with the public. In addition to posting upcoming public meetings notices, formal actions were posted on RCA's website along with the commission's annual reports, discussions of major regulatory issues, and a forum for public comment. Furthermore, consumers could file complaints and utility companies could electronically file documents related to docket proceedings through RCA's website. A computer terminal was made available at RCA's office for the public to use for researching records.

Approximately 68 percent of tariff survey respondents and 60 percent of utility docket survey respondents reported that RCA's website was easy to use for finding information. Eighty-seven percent and 95 percent tariff and utility docket survey respondents respectively stated that the website provided sufficient information regarding tariff filings and utility dockets. Of the website users, 32 percent of survey respondents (eight of 31 tariff respondents and 15 of the 40 utility docket respondents) stated that they would like the website to provide better searching capabilities – a continuing concern of survey respondents from the prior sunset audit.

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.

No RCA-related complaints were filed with Department of Commerce, Community, and Economic Development, the Alaska Office of Victims' Rights, and the Boards and Commissions section within the Office of the Governor from July 2010 through January 2013. Four complaints were filed with the State's Office of the Ombudsman and all were efficiently resolved and closed.

As part of its operating mission, RCA has an active consumer protection function which provides utility customers an avenue to seek complaint resolution. Exhibit 2 illustrates the consumer complaints filed with RCA regarding utility types during the first eight months of FY 13.

Consumers may file complaints through mail, email, telephone, fax, in person, and online through RCA’s website. RCA generally tries to resolve disputes between consumers and utility companies informally before opening a formal complaint. Testing⁵ showed that RCA resolved 88 percent of consumer complaints within 45 days of receipt.

From July 2010 through April 2013, RCA had 10 appeal cases open or opened with eight at the Alaska Superior Court and two at the Alaska Supreme Court. Nine cases were closed, and one at the Alaska Superior Court level remained open as of the end of FY 13.

In eight of the nine closed cases, RCA’s decision was reaffirmed or the parties settled. The remaining case was remanded back to RCA by the Alaska Supreme Court. The remand was an issue of interpretation of legal precedent.

Exhibit 2

Consumer Complaints Filed with RCA July 1, 2012 through February 28, 2013		
	Number Filed	Percent of Total
Telecommunications	65	37%
Electric	62	35%
Natural Gas	19	11%
Water / Sewer	12	7%
Refuse	12	7%
Cable Television	5	3%
Total	175	100%

Source: RCA case management system.

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

RCA employs utility financial analysts and utility engineers to perform appropriate analyses to make a determination of an applicant’s capabilities before granting a certificate. As of June 2013, there were 655 active certificated entities. Of these, 143 are economically regulated entities which are required to maintain a tariff and operate under the tariff’s terms. Exhibit 3 lists the number of economically regulated certificates by service type.

Exhibit 3

RCA Economically Regulated Certificates by Service Type As of June 6, 2013	
Telecommunications	51
Electric	35
Pipeline	26
Water	13
Gas	6
Sewer	6
Refuse	4
Heat	2
Total	143

Source: RCA case management system.

⁵Of 175 consumer complaints open or opened from July 2012 through February 2013, a sample of 25 complaints was reviewed.

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.

From July 2010 through January 2013, no RCA-related complaints were filed with the Alaska State Commission for Human Rights, the United States Equal Employment Opportunity Commission, or the Department of Administration's Division of Personnel and Labor Relations.

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.

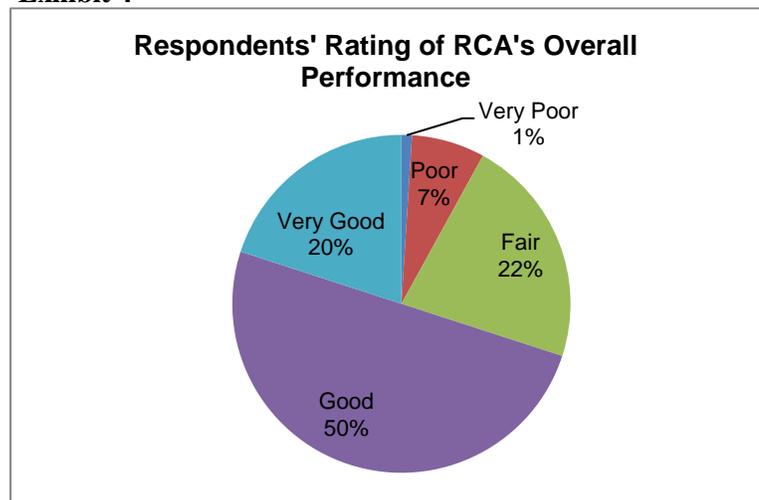
RCA addressed specific concerns raised in the prior sunset audit by adopting regulations for discovery, implementing electronic filing for dockets, and proposing a plan for reducing the timeline for tariff rate docket proceedings.

Survey respondents identified concerns that may warrant further action by RCA. Forty-two percent of tariff survey respondents and 66 percent utility docket survey respondents believed existing Alaska Statutes and regulations were obsolete, vague, unduly restrictive, or inadequate. Twenty-three percent of those respondents (four of 13 tariff respondents and five of 27 utility docket respondents) commented on the need to reduce the statutory timeline for suspended tariff dockets. Another 10 percent of the survey respondents (two of 13 tariff respondents and two of 27 utility dockets) suggested implementing electronic filing for tariffs.

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.

The audit of RCA's FY 11 annual report concluded that five of 12 performance measures reported on by the commission were either inaccurately reported or the underlying case management system data was unreliable. Review of data from the case management system for this audit identified similar errors with data entry into the system for utility dockets, consumer complaints, and tariff filings. Although RCA had written procedures to ensure

Exhibit 4



the case management system data is accurate, consistent, and complete, test work showed the enforcement of these procedures was inconsistent. RCA's management acknowledged and agreed that improvements are needed regarding the enforcement of written procedures, staff training, and data review documentation. (See Recommendation No. 1.)

As shown in Exhibit 4, over two thirds of survey respondents (68 percent tariff and 70 percent utility docket respondents) rated RCA's overall performance between "good" and "very good."

Fifty-eight percent of the tariff filing survey respondents rated the overall efficiency of the filing process between "good" and "very good," and 29 percent rated it as "fair." Sixty-eight percent of the utility docket survey respondents rated the overall efficiency of the hearing process between "good" and "very good," and 22 percent rated it as "fair."

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

RCA's mission is to assure viable utility and pipeline services are provided with just and reasonable rates to consumers in Alaska. 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. In carrying out its mission, RCA interacts and communicates with several agencies such as RAPA, the Alaska Energy Authority (AEA), and the Federal Energy Regulatory Commission (FERC). None of these agencies duplicate RCA's activities.

RAPA was established within the Department of Law to advocate on behalf of the public's interests in utility and pipeline matters that come before the commission,⁶ in court appeals, and before the legislature and other policymakers. The attorney general, as the public advocate, advocates for the general public's interests 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. There is a common mission between the two organizations; however, they perform different functions. RCA issues decisions on utility matters in the public's interests and RAPA advocates for the public.

RCA assists in administering the State's power cost equalization (PCE) program. AEA administers the program and authorizes payments to utility companies based on eligibility determinations and PCE rate calculations performed by RCA.

RCA and FERC have similar responsibilities in regulating utility and pipeline companies, but their jurisdictions are distinct. FERC regulates interstate transmission of natural gas, oil, and electricity, while RCA has jurisdiction to regulate intrastate shipments.

⁶Alaska Statute 44.23.020(e).

Interviews conducted with RAPA and AEA management indicated no duplication of efforts with RCA. Over 85 percent of survey respondents stated that RCA did not duplicate the activities of another government agency or private entity. The remaining survey responses were reviewed, and it was determined that RCA did not duplicate the activities listed.

APPENDICE**S**

As part of the audit, representatives from public utilities and individuals who were party to utility dockets or tariff filings presented before the Regulatory Commission of Alaska (RCA) from July 2012 through February 2013 were surveyed. One hundred eleven representatives were provided the survey for utility dockets and 41 (37 percent) responded. Sixty-eight representatives were provided the survey for tariff filings and 31 (46 percent) responded. The survey results are summarized in Appendices A and B.

Additionally, Appendix C provides a schedule of RCA revenues and expenditures from FY 11 through March 31, 2013

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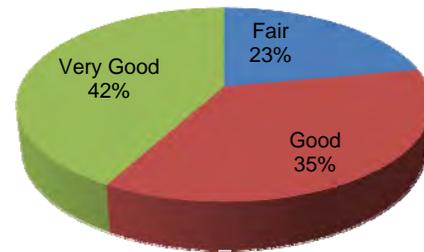
Appendix A

Regulatory Commission of Alaska Tariff Survey Results

1. How would you rate RCA's communications of important actions (such as: completion of filing, tariff action meeting, commission decision) related to tariff filing(s) to which you have an interest?

<u>Response</u>	<u>Number of Responses</u>	<u>Percentage of Total Responses</u>
Fair	7	23%
Good	11	35%
Very Good	13	42%
Total Respondents	31	100%

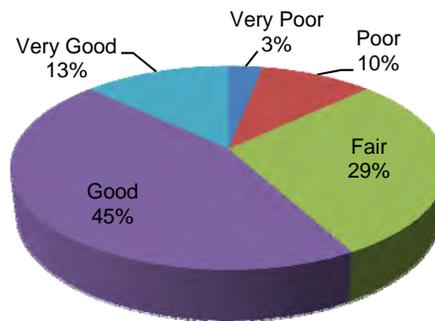
RCA's Communication of Important Actions



2. How would you rate the overall efficiency of the tariff filing process?

<u>Response</u>	<u>Number of Responses</u>	<u>Percentage of Total Responses</u>
Very Poor	1	3%
Poor	3	10%
Fair	9	29%
Good	14	45%
Very Good	4	13%
Total Respondents	31	100%

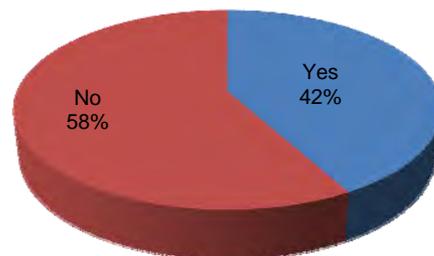
Overall Efficiency of the Tariff Filing Process



3. Are there any existing RCA statutes and regulations that you believe are obsolete, vague, unduly restrictive, inefficient and/or inadequate?

<u>Response</u>	<u>Number of Responses</u>	<u>Percentage of Total Responses</u>
Yes	13	42%
No	18	58%
Total Respondents	31	100%

Existing Statutes and Regulations Obsolete, Vague, Unduly Restrictive, Inefficient and/or Inadequate



Appendix A

Regulatory Commission of Alaska Tariff Survey Results (Continued)

4. What is your overall satisfaction with RCA's performance?

<u>Response</u>	<u>Number of Responses</u>	<u>Percentage of Total Responses</u>
Very Poor	1	3%
Poor	1	3%
Fair	8	26%
Good	16	52%
Very Good	5	16%
Total Respondents	31	100%

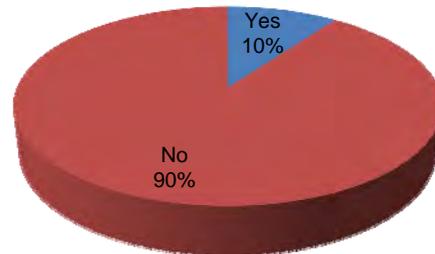
Overall Satisfaction with RCA's Performance



5. In your opinion, does RCA duplicate functions of another governmental agency or private entity?

<u>Response</u>	<u>Number of Responses</u>	<u>Percentage of Total Responses</u>
Yes	3	10%
No	28	90%
Total Respondents	31	100%

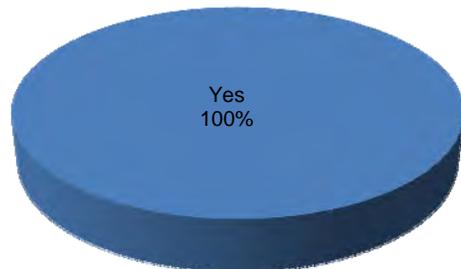
RCA Duplication of Other Agency Functions



6a. Have you visited RCA's website in the past year to obtain information about the tariff filing(s) to which you have an interest?

<u>Response</u>	<u>Number of Responses</u>	<u>Percentage of Total Responses</u>
Yes	31	100%
Total Respondents	31	100%

Used RCA's Website

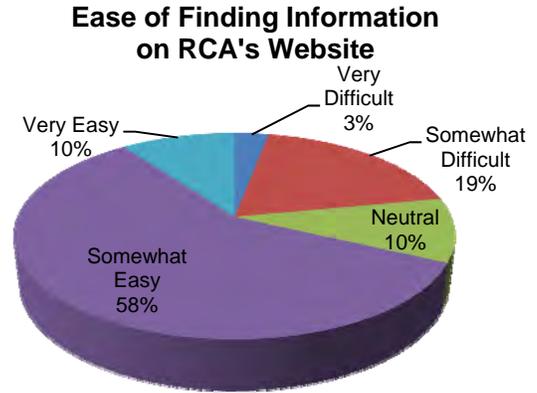


Appendix A

Regulatory Commission of Alaska Tariff Survey Results (Continued)

6b. How would you rate the ease of finding what you were looking for on RCA's website?

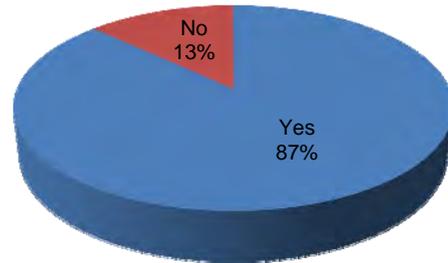
Response	Number of Responses	Percentage of Total Responses
Very Difficult	1	3%
Somewhat Difficult	6	19%
Neutral	3	10%
Somewhat Easy	18	58%
Very Easy	3	10%
Total Respondents	31	100%



6c. Did RCA's website provide sufficient information regarding the tariff filing(s) to which you have an interest?

Response	Number of Responses	Percentage of Total Responses
Yes	27	87%
No	4	13%
Total Respondents	31	100%

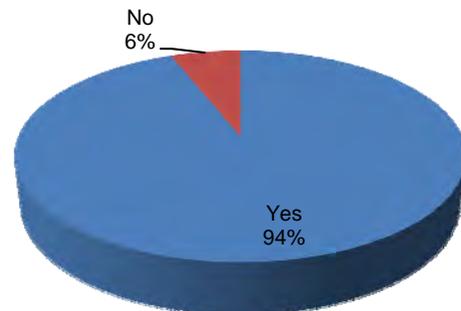
Sufficiency of Website Information



7. In your opinion, does RCA operate in the public interest?

Response	Number of Responses	Percentage of Total Responses
Yes	29	94%
No	2	6%
Total Respondents	31	100%

RCA Operating in the Public's Interest



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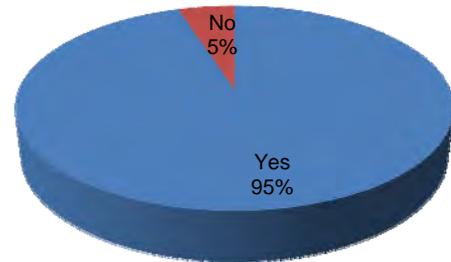
Appendix B

Regulatory Commission of Alaska Utility Docket Survey Results

1. Were you informed by RCA of the statutory deadline in each utility docket to which you were a party?

<u>Response</u>	<u>Number of Responses</u>	<u>Percentage of Total Responses</u>
Yes	39	95%
No	2	5%
Total Respondents	41	100%

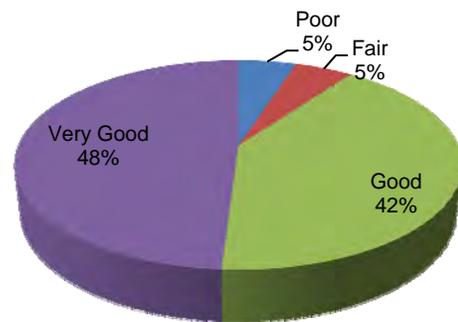
Informed of Statutory Deadline



2. How would you rate RCA's communications of important actions (such as: prehearing conference, completion of filing/application, assigned docket manager, issuance date for a final order) related to each utility docket to which you were a party?

<u>Response</u>	<u>Number of Responses</u>	<u>Percentage of Total Responses</u>
Poor	2	5%
Fair	2	5%
Good	17	42%
Very Good	20	48%
Total Respondents	41	100%

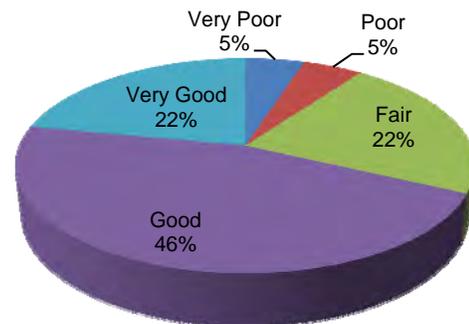
RCA's Communication of Important Actions



3. How would you rate the overall efficiency of the hearing process for each utility docket to which you were a party?

<u>Response</u>	<u>Number of Responses</u>	<u>Percentage of Total Responses</u>
Very Poor	2	5%
Poor	2	5%
Fair	9	22%
Good	19	46%
Very Good	9	22%
Total Respondents	41	100%

Overall Efficiency of the Hearing Process



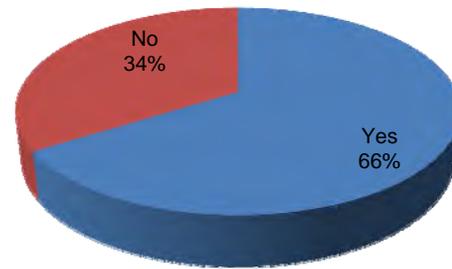
Appendix B

Regulatory Commission of Alaska Utility Docket Survey Results (Continued)

4. Are there any existing RCA statutes and regulations that you believe are obsolete, vague, unduly restrictive, inefficient and/or inadequate?

Response	Number of Responses	Percentage of Total Responses
Yes	27	66%
No	14	34%
Total Respondents	41	100%

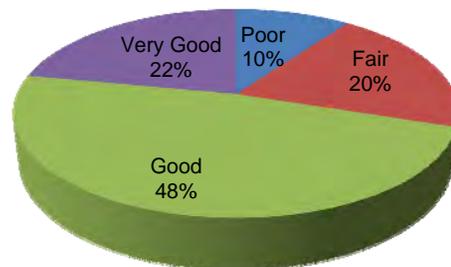
**Existing Statutes and Regulations
Obsolete, Vague, Unduly Restrictive,
Inefficient and/or Inadequate**



5. What is your overall satisfaction with RCA's performance?

Response	Number of Responses	Percentage of Total Responses
Poor	4	10%
Fair	8	20%
Good	20	48%
Very Good	9	22%
Total Respondents	41	100%

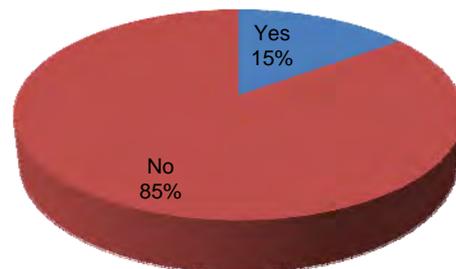
**Overall Satisfaction with
RCA's Performance**



6. In your opinion, does RCA duplicate functions of another governmental agency or private entity?

Response	Number of Responses	Percentage of Total Responses
Yes	6	15%
No	35	85%
Total Respondents	41	100%

**RCA Duplication of Other Agency
Functions**

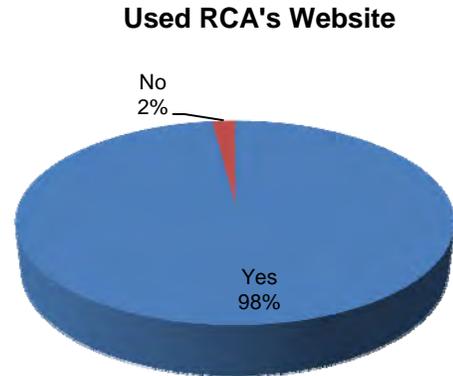


Appendix B

Regulatory Commission of Alaska Utility Docket Survey Results (Continued)

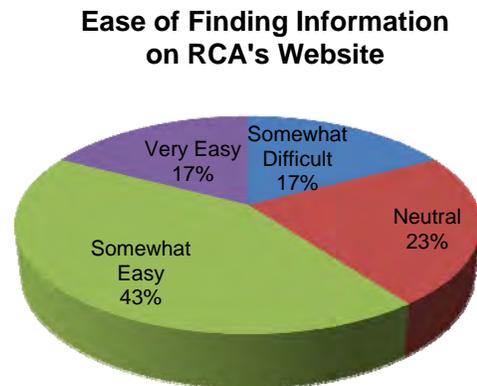
7a. Have you visited RCA's website in the past year to obtain information about each utility docket to which you were a party?

<u>Response</u>	<u>Number of Responses</u>	<u>Percentage of Total Responses</u>
Yes	40	98%
No	1	2%
Total Respondents	41	100%



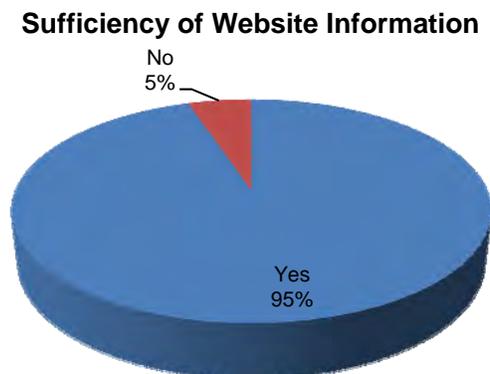
7b. How would you rate the ease of finding what you were looking for on RCA's website?

<u>Response</u>	<u>Number of Responses</u>	<u>Percentage of Total Responses</u>
Somewhat Difficult	7	17%
Neutral	9	23%
Somewhat Easy	17	43%
Very Easy	7	17%
Total Respondents	40	100%



7c. Did RCA's website provide sufficient information regarding each utility docket to which you were a party?

<u>Response</u>	<u>Number of Responses</u>	<u>Percentage of Total Responses</u>
Yes	38	95%
No	2	5%
Total Respondents	40	100%

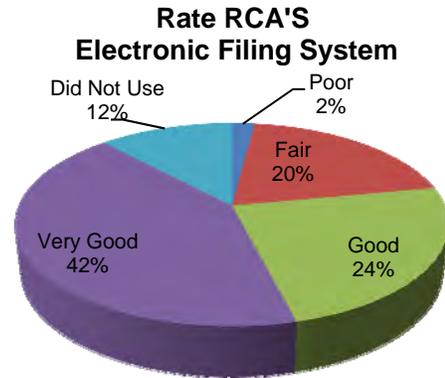


Appendix B

Regulatory Commission of Alaska Utility Docket Survey Results (Continued)

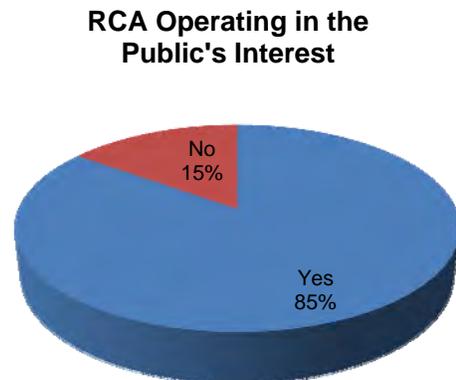
10. How would you rate RCA's electronic filing system that was implemented in February 2012?

<u>Response</u>	<u>Number of Responses</u>	<u>Percentage of Total Responses</u>
Poor	1	2%
Fair	8	20%
Good	10	24%
Very Good	17	42%
Did not Use	5	12%
Total Respondents	41	100%



11. In your opinion, does RCA operate in the public interest?

<u>Response</u>	<u>Number of Responses</u>	<u>Percentage of Total Responses</u>
Yes	35	85%
No	6	15%
Total Respondents	41	100%



Appendix C

**Department of Commerce, Community, and Economic Development
Regulatory Commission of Alaska
Schedule of Revenues and Expenditures
FY 11 through March 31, 2013
(Unaudited)**

<u>Revenues</u>	<u>FY 11</u>	<u>FY 12</u>	<u>July 1, 2012 – March 31, 2013</u>
Utility Regulatory Cost Charge	\$ 9,314,100	\$ 9,020,100	\$ 5,954,100
Utility Application Fee	15,600	30,100	26,000
Utility Hearing Reimbursement	6,900	0	0
Public Document Sale	800	700	1,700
Third Party Collection	0	900	7,500
Alaska Energy Authority, Power Cost Equalization Program	62,600	93,400	55,200
Federal Stimulus - State Electricity Regulations Assistance Program	<u>82,600</u>	<u>93,600</u>	<u>67,900</u>
Total Revenues	<u>\$ 9,482,600</u>	<u>\$ 9,238,800</u>	<u>\$ 6,112,400</u>
<u>Expenditure</u>			
Personal Services	\$ 5,455,400	\$ 5,731,500	\$ 4,223,700
Travel	79,300	105,000	67,600
Contract Services	1,749,500	1,554,600	1,396,700
Commodities	178,000	182,700	87,800
Capital Outlay	<u>66,100</u>	<u>0</u>	<u>0</u>
Total Expenditures	<u>\$ 7,528,300</u>	<u>\$ 7,573,800</u>	<u>\$ 5,775,800</u>
<u>Transfer to</u>			
Department of Law - Regulatory Affairs and Public Advocacy	<u>\$ 1,570,600</u>	<u>\$ 1,367,400</u>	To Be Determined at Fiscal Year End
Surplus⁷ (Deficit)	<u>\$ 383,700</u>	<u>\$ 297,600</u>	To Be Determined at Fiscal Year End

⁷Each surplus is accounted for in the next fiscal year's RCC calculation.

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THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Commerce, Community,
and Economic Development

OFFICE OF THE COMMISSIONER

P.O. Box 110800
Juneau, Alaska 99811-0800
Main: 907.465.2500
Programs fax: 907.465.5442

September 10, 2013

Ms. Kris Curtis, CPA, CISA
Legislative Auditor
Division of Legislative Audit
Alaska State Legislature
4341 B Street, Suite 400
Anchorage, AK 99503

RECEIVED

SEP 11 2013

LEGISLATIVE AUDIT

Re: Preliminary Audit Report, Department of Commerce, Community, and Economic Development (DCCED), Regulatory Commission of Alaska (RCA) July 19, 2013

Dear Ms. Curtis,

Thank you for the opportunity to respond to the auditor's conclusion and recommendations regarding the sunset review of the Regulatory Commission of Alaska. The department concurs that the RCA fulfills a public need and supports extending the commission's termination date to June 30, 2022. Our comments on the auditor's two recommendations are provided below.

Recommendation No.1

RCA's chair should improve and enforce written procedures to ensure case management system data is accurate, consistent, and complete.

In general, DCCED concurs with this recommendation. The RCA is committed to continual refinement of written procedures and the implementation of quality control measures to ensure data is accurate, consistent, and complete.

Recommendation No. 2

The legislature should consider clarifying AS 42.05.1.175(e) to ensure legislative intent is met by RCA when processing regulatory dockets.

Although this audit recommendation is directed at the legislature, DCCED appreciates the opportunity to preview an audit recommendation that may affect the department. It is important to note that until recently, the RCA regulations docket (R-docket) procedures were used to allow informal interaction and information gathering by the Commissioners and the public prior to issuing a specific regulatory proposal. In 2012, a new regulatory provision (3AAC 48.060 (b)) established an Information Docket (I-Docket) category to

Ms. Kris Curtis, CPA, CISA

September 10, 2013

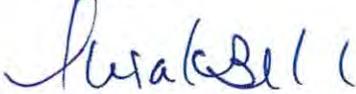
Page 2

address this activity. As a result, the R-Docket is now used exclusively to consider specific regulation proposals.

DCCED remains open to cooperative review of any options proposed by the legislature and executive branch that will benefit the state and improve services to the public.

Again, thank you for the opportunity to respond to the audit conclusion and recommendations. If you have any additional questions, please contact me at 465-2500.

Regards,

A handwritten signature in blue ink that reads "Susan Bell". The signature is written in a cursive style with a large initial "S" and a trailing flourish.

Susan Bell
Commissioner

cc: T.W. Patch, RCA Chairman
JoEllen Hanrahan, ASD Director



STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Sean Parnell, Governor
Susan K. Bell, Commissioner
T.W. Patch, Chairman

Regulatory Commission of Alaska

September 4, 2013

Ms. Kris Curtis, CPA, CISA
Legislative Auditor
Division of Legislative Audit
Legislative Budget and Audit Committee
Alaska State Legislature
P.O. Box 113300
Juneau, Alaska 99811-3300

RECEIVED
SEP 12 2013
LEGISLATIVE AUDIT

RE: "Confidential" Preliminary Audit Report, Department of Commerce, Community, and Economic Development, Regulatory Commission of Alaska, July 19, 2013

Dear Ms. Curtis:

Thank you for your letter regarding this matter, and specifically for the opportunity to submit the Regulatory Commission of Alaska's independent written response.

REPORT CONCLUSION

I endorse with enthusiasm your conclusion that the Regulatory Commission of Alaska (RCA) is operating in the public interest. I concur that the RCA fulfills a public need and serves Alaskans in the ways you have identified. I also believe that the RCA serves its many constituencies in additional areas.

I join with you and believe that the RCA, the Legislature, utilities and pipelines regulated by the RCA, and all Alaskans will be well served by legislative action extending RCA's termination date until June 30, 2022 or beyond.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1: RCA's Chair should improve and enforce written procedures to ensure case management system data is accurate, consistent, and complete.

Commission Response: In general the RCA agrees that the recommendation for continued refinement of written procedures, training of staff on those procedures, and implementation of carefully considered quality control measures will result in case management system data that is:

(1) entered into the system in a consistent fashion, (2) complete and useful, and (3) accurate based on the filing.

The agency planned its case management system to be a tool that would enable document retrieval by a simple means and provide for the electronic processing of documents and information routed to, within, and from the agency. At the time of system acquisition, the agency did not appreciate the level of resource commitment that would be necessary to ensure system data is fully complete, wholly accurate, and useful. Nonetheless, despite the difficulties presented by the case management system, I believe the agency meets all responsibilities assigned by its enabling legislation and extends its best effort to present accurate information at all times.

While the RCA has procedures and training manuals for most operations, we have recently started to review and edit all case management system manuals to assure that they are clear, understandable, and appropriate to the mission of the agency. For work sections that have beta versions of procedures manuals your letter has spurred action to move them to actual operations versions. Following adoption of edits employees will train on the practices and procedures set out in the manuals.

We contemplate adopting a training schedule and will adopt a practice of cross training staff responsible for input of information into the case management system. In addition to initial training we will conduct recurrent training as concerns are noted and cross training on other sections' procedures manuals. While your recommendation embodies a suggestion that enforcement is indicated, we have limited enforcement tools available. Certainly directed training is one action along an enforcement continuum. The implementation of enforcement for repeated failure to employ adopted data entry procedures will be carefully studied.

Quality control procedures are being reevaluated and will be adopted. Out-of-section or independent periodic testing of both the quality of original input and effectiveness of the quality control procedure is under consideration. It may be difficult to judge quality of original input if, at a stage of first review and correction, data is fully and accurately corrected and specific item training is individually tailored and timely performed.

The RCA continues to revise filing types and document categories. Such revisions should limit opportunity for error at the time of original data input and enhance the case management system search capability employed within and from outside the agency.

Recommendation No. 2: The Legislature should consider clarifying AS 42.05.175(e) to ensure legislative intent is met by RCA when processing regulatory dockets.

Commission Response: The RCA disagrees with Recommendation No. 2 and does not concur that clarification of the statutory provision enacted by the legislature is appropriate. The recommendation appears based on the implicit finding that the commission may have exceeded, on two occasions, the AS 42.05.175(e) timeline for regulations dockets by closing one docket and opening another to consider matters of similar scope. The implicit finding on which the

recommendation rests, in turn, appears to be based on the unstated assumption that a study of the need for regulations is “substantially the same matter” (for the purposes of AS 42.05.175(I)) as a specific proposal to address that need. That assumption is at variance with the general scheme for regulations adoption set out in the Administrative Procedures Act (APA) (AS 44.62, specifically AS 44.62.180-AS 44.62.290).

Except in the case of a petition filed under AS 44.62.220, no agency in state government is expected to address the need for regulations in a public setting. Therefore, the public is often unaware that such a consideration is occurring. Indeed, a responsible agency is probably continuously reviewing and considering changes to its regulations, a process that is assisted by the Department of Law (AS 44.62.125(b)). The RCA, in the spirit of open government and by means of a transparent and participatory process, chooses to inform and invite the public and more specifically, the concerned and directly affected public, into that process and, until recently, the only vehicle for doing so was a regulations docket (“R-docket”).

When the RCA (or any agency subject to the APA) provides the public with notice of a specific proposal for a change in regulations, the APA is implicated. In fairness, until a public notice is issued, it cannot be asserted that the regulations process has been commenced. The fact that, for the convenience of the public and administrative efficiency, the RCA chose to identify pre-APA proceedings as “R-dockets” does not change the substance of the regulatory activity.

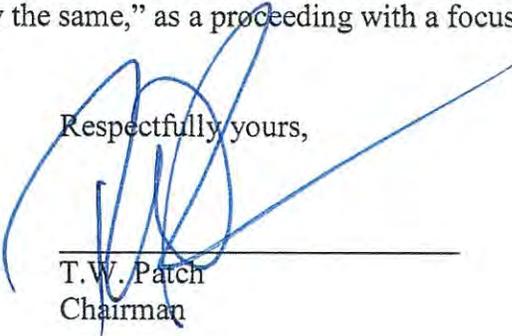
Simply put, the well-informed and careful consideration of the need for regulations is a completely distinct matter from a proposal to adopt, revise, or repeal specific regulations. It is not only appropriate, but also practically required, for the RCA to give clear notice to the public that it has changed the nature of its activity and is no longer considering the need for change but is now considering a concrete regulations proposal. The negative implications of Recommendation No. 2 include the perverse incentive to consider the need for regulations changes without accounting for:

- public input
- a convenient method to access the factual and policy material collected for the purpose, and
- the public’s ability to monitor the commission’s progress in reaching a decision about what, if anything, needs to be done and whether regulations are the appropriate method for accomplishing the agency’s statutory mission.

Additionally, after considering whether a need exists for new or amended regulations the commission may decide, on the record developed, that the proper course is to take no action. Or, the commission may decide that an alternative other than a change in regulations may be the better course. The RCA, as a quasi-judicial agency, may address a regulatory need through the adjudication process, followed by orders to specific utilities or classes of utilities to implement the adjudicated decision. Although examples of this outcome are not included in your analysis, the commission is authorized to regulate through case-by-case adjudication. In that event, the appropriate timeline would apply to the adjudicatory matter (usually AS 42.05.175(d)). Another alternative course of action for a regulatory need would be to seek legislative action, for which there is no timeline at all.

On some level, every action the RCA takes involves the same subject matter (i.e., regulation of public utilities and pipeline carriers). Therefore, the inclusion of the word “substantially” (AS 42.05.175(l)) dictates a detailed analysis of not merely the title of a proceeding but also the articulated purpose established by order, and the scope of the proceeding. A proceeding, however denominated, that is opened to determine whether there is a jurisdictional issue that needs to be addressed and to consider what decision best serves the public interest cannot be considered the “same,” much less “substantially the same,” as a proceeding with a focus on adoption of a specific regulations proposal.

Respectfully yours,



T.W. Patch
Chairman

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

JoEllen Hanrahan
Administrative Services Director
Department of Commerce, Community & Economic Development

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
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legaudit@akleg.gov

September 20, 2013

Members of the Legislative Budget
and Audit Committee

We have reviewed the Department of Commerce, Community, and Economic Development and the Regulatory Commission of Alaska management responses to the preliminary audit report, *Department of Commerce, Community, and Economic Development, Regulatory Commission of Alaska, Sunset Review, July 19, 2013*. Nothing contained in the responses causes us to revise or reconsider the report's conclusions and recommendations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kris Curtis".

Kris Curtis, CPA, CISA
Legislative Auditor

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