

ALASKA STATE LEGISLATURE
HOUSE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

January 26, 2006

8:07 a.m.

MEMBERS PRESENT

Representative Kurt Olson, Co-Chair
Representative Bill Thomas, Co-Chair
Representative Gabrielle LeDoux
Representative Mark Neuman
Representative Sharon Cissna
Representative Woodie Salmon

MEMBERS ABSENT

Representative Pete Kott

COMMITTEE CALENDAR

OVERVIEW: REGULATORY COMMISSION OF ALASKA

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

KATE GIARD, Commissioner, Chair
Regulatory of Alaska (RCA)
Department of Commerce, Community, & Economic Development
Anchorage, Alaska

POSITION STATEMENT: Presented an over of the RCA and answered questions.

ACTION NARRATIVE

CO-CHAIR KURT OLSON called the House Community and Regional Affairs Standing Committee meeting to order at [8:07:27 AM](#). Representatives Olson, Thomas, LeDoux, Neuman, and Cissna were present at the call to order. Representative Salmon arrived as the meeting was in progress.

REGULATORY COMMISSION OF ALASKA

[8:08:03 AM](#)

KATE GIARD, Commissioner, Chair, Regulatory of Alaska (RCA), Department of Commerce, Community, & Economic Development (DCCED), in outlining the course of her discussion, related her belief that the RCA has to be production-oriented in order to adequately respond to the business needs of the regulated utilities and pipelines. Ms. Giard explained that she is trying for the 2007 sunset review of the RCA to not be a repeat of the 2003 RCA sunset review. Therefore, as the chair she said her goal is to listen to the legislature, the utilities, and the pipeline companies and try to turn the RCA to a direction that outlasts herself. In that vein, she highlighted the work she has done, such as public meetings and meetings with the industry over possible changes. Ms. Giard characterized the RCA as an introverted agency in which decisions are sometimes made in isolated chambers and lacking transparency. Therefore, for two years the RCA has talked with regulated and unregulated utilities and the owners of the Trans-Alaska Pipeline System (TAPS). Ms. Giard said that she hoped the changes being made are long-lasting, although she mentioned that the changes aren't happening fast enough for her liking.

[8:13:35 AM](#)

MS. GIARD turned to the global perspective of the RCA and provided the committee with a chart entitled, "Regulatory Commission of Alaska - Production Performance Since Last Sunset Review". She related that the feedback she receives from the utilities is that they will accept the RCA's decision, although they may not like it. However, the utilities want the RCA to come to its decisions faster, to be more transparent in its decisions, and a bit predictable and stable. Utilities say, she further related, that they don't produce fast enough, and therefore they don't meet the RCA's business needs. Ms. Giard highlighted that although the production performance chart looks good because it shows the RCA moving from 376 cases July 1, 2003, to 107 cases June 30, 2005, it doesn't specify how long it took to decrease the number of cases. She said that she could gauge the success of the RCA if she could provide an average timeline for each docket and have benchmarks for the length of time for the RCA to make a decision and the time the order went out the door. Such benchmarks would show the utilities that the RCA is responding.

[8:18:27 AM](#)

MS. GIARD moved on to what it looks like when the RCA is involved in a docket. She provided the committee with a spreadsheet that lists the current dockets. She said that if there were a lot of dockets open from 2003, she would be uncomfortable coming before the committee, although she was uncomfortable with 2004 dockets still being open. She noted that some of the dockets have 15-month timelines and others have no timeline. Furthermore, some of the dockets won't be closed because the RCA is waiting for a filing from the utility.

8:21:41 AM

MS. GIARD then provided the committee the docket detail for U-oo-o88, which is the oldest active docket. Review of the hearing and order histories specify that activity is occurring with this document. She also provided the committee with the docket detail for U-o5-oo7, another open docket. This docket is interesting because it was opened on 1/26/05, but the RCA didn't take action until 11/25/05, almost 10 months later. She viewed the aforementioned as an unacceptable length of time to respond to a docket. However, this can happen when the RCA is busy and doesn't carefully manage its dockets. The system being implemented will take care of this, she stated.

8:26:30 AM

MS. GIARD addressed the changes that the RCA is making to better respond and meet the needs of the utilities. After meeting with the pipeline companies, the RCA began to better understand the significant challenges they face with the regulatory paradigm in Alaska. She informed the committee that at this point the RCA has issued regulations for comment. These regulations would change the way in which the RCA views pipeline regulation in the state. After meeting with everyone, including the Federal Energy Regulatory Commission (FERC), the RCA has moved forward on those regulations, which have been well received thus far. She related positive comments from BP, the Kenai Kachemak Pipeline, LLC (KKPL), and Union Oil Company. Ms. Giard said that [the regulation change] is coming along, although not as fast or clean as she would like. She then turned to the comments of General Communication, Inc. (GCI), which are representative of the frustrations some have with the RCA.

MS. GIARD said that in order to attract qualified, diligent commissioners who are willing to put in the time, they need to be dedicated. Therefore, the wages for the RCA need to be raised, she opined. She indicated her acceptance of the

public's disapproval of that suggestion. In fact, GCI said that before giving commissioners a raise, the RCA should put in place performance metrics, define its workload, and review the performance under the timelines adopted in 2002. Therefore, Ms. Giard opined that now is the time to move forward on performance measures and setting benchmarks. The commissioners have agreed to do so. With regard to whether benchmarks are adopted as part of a regulation or part of something that's the purview of the chair is yet to be determined. However, she noted her preference to place [the benchmarks] in regulation. She mentioned that the metrics would be brought to the public for comment, which should be done by the time the legislative session is completed.

MS. GIARD noted that there are some comments regarding timeliness in relation to a document GCI and ultimately AT&T filed requesting the issuance of an order by a specific date. However, the RCA didn't recognize the importance of the request until she communicated directly with [GCI representatives and the former RCA chair]. Once it was determined what would happen, the RCA responded. Such situations, she opined, won't be settled by a system because it requires communication between the parties. As long as the door is open, the RCA can react, she said. She related that the RCA is working on how to be clearer in the future.

[8:39:29 AM](#)

MS. GIARD concluded her testimony by speaking about the statutory timelines under which the RCA operates. She noted that for some things there are no statutory timelines, such as for ETC applications and disaggregation plans. Therefore, she as the chair, has, in some dockets, set a timeline in the docket. Once the case management system is in place, the RCA should be able to place a timeline in every docket. The parties can still protest the timelines. She expressed her hope that the timelines will be in place by July 1. She suspected that during the 2007 sunset review, the legislature will want to know whether the RCA has adhered to these timelines and whether [other] timelines should be established. Ms. Giard opined that the RCA can adhere to any timeline so long as there is a system in place to track the statutory timelines. She recalled missing a statutory timeline and expressed the need not to allow that to happen again because it means that something went into place that could negatively impact ratepayers. Therefore, Ms. Giard suggested that the aforementioned system be put in place and that the RCA talk with the utilities regarding timelines. She

mentioned that she would be working on the 2007 sunset review beginning July 1.

8:43:49 AM

CO-CHAIR OLSON noted that he spent a significant amount of time this interim working on gas line issues and actually met with Ms. Giard regarding issues in Cook Inlet. He recalled that the KKPL cost \$20 million and the expenses associated with the RCA totaled \$3.5 million. He related his understanding that the time it took for KKPL to get permitted and the expenses of the RCA were much higher than in other states [contributed to a much higher total expense]. Therefore, he inquired as to how the RCA can be more efficient in the permitting process without "killing them" with the expense.

MS. GIARD expressed hope that the regulations being brought forward would have had a positive impact on KKPL, which was an adversarial docket about the rate. She acknowledged that the rate-setting process for KKPL took a long time and is still a matter before the RCA. She then turned to the matter of what can be done so that such situations as that with KKPL don't happen again. She informed the committee that most of the Cook Inlet pipeline disputes are settled by alternative dispute resolution (ADR) that was working at the Federal Energy Regulatory Commission (FERC). Although use of ADR tends to lengthen the time frame, ADR has been successful. She emphasized that a business-to-business resolution is far better than the RCA making a rate decision. The RCA is moving forward with ADR, she related.

MS. GIARD opined that part of the problem is the RCA's liberal rules regarding allowing parties into dockets. The pipeline companies have challenged the aforementioned and discussed narrowing who is allowed into the dockets. However, others say that there's better evidence with more parties. Ms. Giard indicated that the correct balance on that matter is difficult to find. She then noted that the RCA has sought comment on the notion of exempting a pipeline from RCA regulation if it's only shipping its own fuel, which she referred to as a tier system. The RCA ensures that the rates are fair and reasonable in order to encourage development around the pipeline.

8:51:03 AM

MS. GIARD, in further response to Co-Chair Olson, specified that currently all pipelines go through the same regulatory regime at

the RCA. Therefore, [the RCA] can allocate and differentiate in order to promote economic development and the existing pipeline structure while not dampening the desire to build [a pipeline].

[8:51:51 AM](#)

REPRESENTATIVE NEUMAN noted that he has talked with utility companies. He then stated that he is somewhat disturbed with what he is hearing today. He highlighted that the RCA has consistently violated statutory directives for timeliness that were adopted by the legislature in 2002, and yet it was presented that the RCA will adopt new regulations regarding timeliness. He also noted that in several rural communities the RCA has had to have certificates to operate. With regard to the notion that the RCA is an isolated agency, Representative Neuman viewed that as a difficulty for utility companies. Therefore, he suggested [making the RCA more approachable]. Representative Neuman then turned to Ms. Giard's willingness to pay the commissioners more, and suggested that such could be reviewed after the RCA shows that it can be more efficient and timely. Therefore, he inquired as to what the RCA is doing to establish a better relationship with the companies it regulates.

[8:56:48 AM](#)

MS. GIARD reiterated that she has met with the utilities that the RCA regulates and inquired as to their view of the RCA, which didn't happen in the past. Furthermore, the RCA has had public meetings during which the public is allowed to comment on possible changes. Ms. Giard opined that the utilities have more input now than they ever have. She characterized these as steps in the right direction, although perhaps not at the speed desired.

[8:59:57 AM](#)

REPRESENTATIVE LEDOUX returned to the deadline that the RCA almost missed and her understanding that it's not a deadline that a computer system would catch.

MS. GIARD explained that the deadline isn't one that a computer system would normally catch because it couldn't be programmed in the system. The deadline is driven by a request that has to be read by a human.

REPRESENTATIVE LEDOUX asked if there could be a form with locations to insert critical dates, which could be input into the computer.

MS. GIARD replied yes.

[9:01:11 AM](#)

REPRESENTATIVE CISSNA opined that the case reviews provided don't seem to give enough information to specify the complicated situations of each. Therefore, she said it would be more useful to have some coding that specifies where, in the process, the case is. In regard to the [isolated agency], she asked if the role of the commissioners is similar to a judge in the court system such that a firewall of sorts is required.

MS. GIARD specified that the role of the RCA is legislative in that it makes regulations, and thus the RCA should be very open. However, the role of an RCA commissioner is also very judicial in that he/she makes judicial decisions on disputed dockets similar to cases before the court. The aforementioned requires discretion such that most of the time [the RCA commissioner] will not talk with the utility about an open docket in order to avoid violating due process. The aforementioned has contributed to the introverted nature of the RCA. Still, Ms. Giard opined that the chair of the RCA should be allowed and actually have an obligation to represent the agency and the administration in regard to the dockets.

[9:06:50 AM](#)

REPRESENTATIVE SALMON inquired as to who sets the rates for the utilities in the villages. He also inquired as to how the RCA regulates [the utilities in the villages].

MS. GIARD pointed out that Representative Salmon's district includes a numerous amount of utilities certificated by the RCA. Furthermore, many of [the utilities in the villages] aren't economically regulated and thus the RCA doesn't set the rates for those. She noted that she has brought staff who could discuss the specifics of each utility in the member's district. In further response to Representative Salmon, Ms. Giard confirmed that if the RCA doesn't set the rates, then the utility company does so.

[9:08:55 AM](#)

REPRESENTATIVE CISSNA returned to her suggestion to use coding that would specify "who's the one that has to toss [the ball] next."

MS. GIARD said that the more sophisticated data in which Representative Cissna is interested isn't tracked. Therefore, a case management system would generate such reports.

[9:09:44 AM](#)

REPRESENTATIVE LEDOUX pointed out that the court system uses a system by which the judges have to periodically certify that decisions have been made within a specified time frame. If there isn't a legitimate reason why a case hasn't been decided within a specified time, the judge doesn't receive his/her salary. She asked if something similar has been considered for use with the RCA.

MS. GIARD clarified that [the RCA] isn't bringing forward legislation for raises, rather she has merely inquired as to what the utilities think of such. In response to Representative LeDoux, Ms. Giard specified that when she reviewed the commissioner's salaries she had reviewed the possibility of tiering their salaries and tying performance on dockets to salaries. However, she indicated that care must be taken to ensure that commissioners don't "bang" through a docket in order to receive their salary. Although the RCA has only missed one statutory deadline in its history, she noted that it has the ability to extend statutory deadlines for 90 days. When it does extend statutory deadlines, it must report those to the Legislative Budget and Audit Committee. She recalled that in calendar year 2005 the RCA extended the statutory deadline in 16 cases. In further response to Representative LeDoux, she directed attention to the chart which specifies that the RCA opened 131 cases and closed 179 cases.

[9:12:21 AM](#)

CO-CHAIR THOMAS noted his agreement with Representative LeDoux regarding the RCA's salary structure to match that of judges. With regard to the charts provided to the committee, Co-Chair Thomas pointed out that they should also specify how many appeals occur yearly. He then recalled reading that the RCA has about 20 percent less cases than in the past, and therefore he questioned why the same amount of commissioners would be necessary.

MS. GIARD, in regard to the number of appeals of RCA cases, explained that after the RCA issues an order there's an opportunity for petition of reconsideration to the full commission. After the RCA confirms or denies the panel, the parties have the opportunity to appeal to the Alaska Superior Court. She noted that lately there have been a number of appeals filed on RCA decisions. However, generally speaking RCA decisions are upheld on appeal. She recalled there only being one or two remands, which she viewed as a sign of thoughtful decisions from the RCA.

[9:15:49 AM](#)

CO-CHAIR THOMAS requested that he be provided a copy of the RCA's response to GCI. He mentioned that he likes consistency in reporting so that one can easily see changes. He asked if the RCA has the authority to have hearing officers hear dockets and provide opinions for lower level complaints, and if so, are such positions utilized.

MS. GIARD, in addressing whether the same amount of commissioners is necessary, said that it would be a good topic for discussion during the sunset review. She opined that if the proposed systems and the funding for them aren't in place, then the RCA shouldn't decrease the number of commissioners to three. Again, she said that the topic would be appropriate to review during the sunset review. Furthermore, decreasing the number of commissioners would be something about which the RCA would want to solicit opinions from the utilities. Having five commissioners allows for a variety of different philosophies for which there is a cost and a benefit. Ms. Giard noted that the annual report is provided to legislators. She acknowledged that she thinned down the report, perhaps too much, and will attempt to achieve a better balance with the upcoming report. On the matter of hearing examiners, the utilities have recommended that the RCA use more hearing officers. The governor's office has supported that and thus the RCA is pursuing two more hearing officers for a total of four hearing officers. She explained that the hearing officers are being placed more directly in control since they are attorneys.

[9:20:38 AM](#)

REPRESENTATIVE SALMON expressed the need to sit with Ms. Giard for answers to his questions.

MS. GIARD reiterated that her staff is available to Representative Salmon at any time.

9:21:15 AM

REPRESENTATIVE LEDOUX asked if a decision is made by one commissioner or the entire RCA.

MS. GIARD answered that every decision that the RCA makes on a case has to be decided by three commissioners, save procedural decisions that can be made by one commissioner or a hearing examiner.

REPRESENTATIVE LEDOUX asked if there is a problem with consistency in panels due to the varying philosophy of the commissioners.

MS. GIARD replied, "yes and no." She explained that the RCA tries to make decisions based on the precedence it has or "to distinguish." However, she acknowledged that the aforementioned isn't always successful. She noted that she, as the chair, assigns commissioners to panels. In doing so for important dockets that have economic impact on a broad section of ratepayers, all five commissioners are assigned.

9:24:26 AM

REPRESENTATIVE NEUMAN asked if adding two hearing officers would allow the hearing officers the ability to do the work twice as fast.

MS. GIARD answered that she didn't believe so. The desire [with adding the two additional hearing officers], she explained, is to provide the pipelines and utilities better ongoing management. There is a balance between the cost to the ratepayers to manage the dockets and the benefit to the utilities to have better management, she opined.

9:25:47 AM

REPRESENTATIVE NEUMAN related his belief that generally a business hires more staff to get the job done faster. However, if the job isn't getting done faster, he questioned whether additional staff merely created more paperwork for the utilities.

MS. GIARD pointed out that frequently the RCA isn't able to determine whether parties disagree. She explained that the number of motions, to a degree, determines the effort required to manage the case. She expressed her belief that additional hearing officers are a good idea in trying to manage the dockets better.

[9:27:57 AM](#)

CO-CHAIR OLSON turned to the RCA's request for comments on the [salary] package for the RCA's commissioners, and inquired as to why the RCA wants to give [control over the commissioner's salary] to the governor.

MS. GIARD specified that the salary issue is part of a group of materials about which the RCA wants to talk with the utilities. Ms. Giard related that she proposed [the salary schedule for the RCA] to mirror that of the Alaska Oil and Gas Conservation Commission (AOGCC), which the governor establishes. The force behind this is to determine what [salary] it takes to attract good quality people regardless of who sets the salary. In further response, she noted that nothing has been brought to the legislature, although she opined that she personally believes it to be a good idea.

[9:31:33 AM](#)

CO-CHAIR OLSON asked if any utilities that the RCA currently regulates could be deregulated.

MS. GIARD suggested that cooperatives managed by members are probably good candidates to move outside of the regulatory paradigm. Such cooperatives would be Homer Electric and Golden Valley Electric Association (GVEA). However, the challenge would be in regard to how wholesale and retail are related and whether one is regulated and the other isn't. In the Lower 48 a method by which cooperatives aren't regulated is utilized. "The challenge with just legislatively setting them free, is that members in every single one of those utilities have the ability to vote themselves out of regulation," she related. In regard to refuse collection, Ms. Giard stated that there is a monopoly situation for refuse in certain communities. She acknowledged that some commissioners believe that refuse shouldn't be regulated.

[9:33:52 AM](#)

REPRESENTATIVE NEUMAN asked if the RCA regulates small utility communities, such as those owned by a subdivision with its own wastewater treatment plant.

MS. GIARD answered that the RCA regulates some of them, but it depends upon the number of connections. Therefore, if there are 15 or fewer connections, the RCA doesn't regulate it. She noted that the RCA has provisional certification for water utilities with 25 or fewer connections.

REPRESENTATIVE NEUMAN commented that it's quite common in his district for subdivisions to have their own utility systems. He asked if Ms. Giard believes the current system works in a fair and expedient way for these small, privately owned utility companies.

MS. GIARD informed the committee that the provisional regulations were enacted about 12-14 months ago and it seems to be moving along. The regulatory effort for a water facility is [addressed] on a case-by-case basis.

REPRESENTATIVE NEUMAN suggested that perhaps other utilities could be helped by [providing provisional certification] for utilities with 500 or less connections.

MS. GIARD noted that the 25 or fewer connections is a statutory requirement.

REPRESENTATIVE NEUMAN offered to help change that and any other statutory changes that would help the RCA with its work and the developers of subdivisions.

[9:37:17 AM](#)

CO-CHAIR OLSON inquired as to whether there will be any phone wars this year.

MS. GIARD opined that when moving from a monopoly paradigm to a competitive paradigm, the economics of private commerce is being toyed with. Therefore, until all markets are fully competitive, there will be phone wars in Alaska. Ms. Giard related that the RCA is always involved in phone wars whether or not it comes to the attention of the legislature. She explained that in rural areas when competition arrives, the existing company often wants to remove the subsidy it has provided [to the satellite communities]. Therefore, competition drives rates to cost,

which could be an increase or a decrease depending upon whether the area received a subsidy when [there was a monopoly].

[9:42:03 AM](#)

REPRESENTATIVE NEUMAN asked if, when competition arrives in a large community where the existing telephone service provides service to the satellite communities, the competition has to provide services to those satellite communities as well.

MS. GIARD answered that has yet to be decided.

REPRESENTATIVE NEUMAN assumed that if a utility company enters an area, it can't cherry pick and only provide service to the areas it desires. He asked if that currently happens.

MS. GIARD said that it hasn't happened yet.

[9:43:00 AM](#)

CO-CHAIR OLSON inquired as to the RCA's greatest challenge for the next 12 months.

MS. GIARD responded that the challenge is meeting the bar in 2007.

[9:43:53 AM](#)

CO-CHAIR THOMAS expressed concern that in 2007 many of legislators won't be here and the same "story" will be told to the new legislators. Therefore, he suggested that legislators need to sit [on the committee] for four years in order to ensure consistency.

MS. GIARD emphasized that the legislators get to vote on the sunset.

[9:45:43 AM](#)

REPRESENTATIVE LEDOUX inquired as to what happens if the RCA is sunsetted.

MS. GIARD explained that there is a wind-down provision if the RCA is sunsetted. She pointed out that just as the former Alaska Public Utilities Commission was replaced by the RCA, the RCA would be replaced by another agency. Ms. Giard related that

the RCA's work would continue and [until a new agency is put in place], the work would be done by the legislature.

9:47:21 AM

ADJOURNMENT

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at 9:47 a.m.