

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

9931 HOUSE LABOR & COMMERCE

## APUC orders on appeal in the courts

### Appeals pending during Fiscal Year 1998

**Anchorage Telephone Utility v. Alaska Public Utilities Commission.** ATU appealed Commission orders disallowing approximately \$20,000,000 in investment for excess cable, outside plant and line cards on the grounds that these investments were not "used and useful." The superior court, per J. Woodward, held that the APUC had the statutory authority under AS 42.05.441 to disallow investments that were not used and useful but found a lack of substantial evidence to support the amount disallowed. The case was remanded for further proceedings.

**The Quality Bank Price Index Appeals.** For the purpose of computing the TAPS quality bank adjustments, the Commission has adopted the use of substitute price indexes by the administrator of the quality bank. Both Exxon and Tesoro have filed appeals of these orders. The appeals have been stayed until further order of the superior court pending resolution of the issues before the Federal Energy Regulatory Commission and the federal courts.

**GCI Communications Corporation v. Alaska Public Utilities Commission.** GCI filed a petition for review in the superior court seeking to modify the confidentiality provisions of a discovery order issued by the APUC in Docket U-97-34, which prevented GCI decision makers from having access to competitively sensitive information. The issue was pending before Judge Michalski at the end of the 1997 fiscal year. On July 18, 1997 Judge Michalski granted GCI's petition for review and remanded the matter to the APUC to delete the provision in the confidentiality order prohibiting the disclosure of confidential information to a competitor's decision makers and strategists. On August 7, 1997 the APUC filed a petition for review with the Alaska Supreme Court to review Judge Michalski's interlocutory order. On December 5, 1997, the Alaska Supreme Court denied the APUC's petition for review as moot in view of the APUC's approval of a stipulation resolving matters in Docket U-97-34.

**GCI Communications Corporation v. Alaska Public Utilities Commission.** In January 1998, GCI filed three administrative appeals from APUC orders in Docket Nos. U-97-60, U-97-65, and U-97-66 challenging the APUC's decision in each of these dockets precluding GCI from further participation in these proceedings. Based on the documentary record, the Commission determined that GCI had violated the confidentiality order governing the exchange of confidential information in these dockets. The APUC opposed GCI's appeals however, and moved for a remand in view of its decision to grant GCI evidentiary hearings to reconsider whether GCI complied with the confidentiality orders, and to determine what sanctions, if any, are warranted. On February 20, 1998 Superior Court Judge Murphy granted APUC's motion for a remand but retained jurisdiction over the appeals pending the completion and outcome of the administrative hearings.

**GCI Communications Corporation v. Alaska Public Utilities Commission.** On January 8, 1998, the Commission issued three orders denying GCI's petition to terminate rural exemptions under Section 251 of Telecommunications Act of three PTI companies, Telephone Utilities of Alaska, Inc. (TUA), Telephone Utilities of the Northland, Inc. (TUNI) and PTI Communications of Alaska, Inc. (PTIC). The Commission found that the impact upon universal service could not be determined until a new support system compatible with competition was established. On March 20, 1998, GCI filed administrative appeals of the three

## APUC orders on appeal in the courts (continued)

orders. A group of rural telephone utilities, the Rural Coalition has been participating in the appeal. The appeals have been consolidated. CCI has raised issues concerning the burden of proof, due process and whether substantial evidence supported the findings of the Commission. The appeal is now being briefed.

**Tlingit-Haida Regional Electrical Authority (THREA) v. Alaska Public Utilities Commission, Alaska Power Company (APC), and City of Klawock.** This procedurally complicated litigation began following the APUC's decisions in Orders U-94-2(9) and U-94-2(10) revoking THREA's right to provide retail electric service to the City of Klawock and granting the exclusive right to provide such service to APC. THREA filed an administrative appeal challenging APUC's Orders U-94-2(9) and U-94-2(10). On April 24, 1995, Superior Court Judge Weeks upheld the APUC's authority to delineate the overlapping service territories of THREA and APC, but remanded the matter to the APUC to determine how Orders U-94-2(9) and U-94-2(10) would financially impact THREA and the ratepayers in THREA's service territory, and whether such impacts would frustrate the federal purpose of the Rural Electrification Act of 1936 (REAct). On remand, the APUC held evidentiary hearings to investigate the impact issues identified by the superior court. On July 3, 1997, the APUC issued Order U-94-2(19), in which it held that the decertification of THREA's right to serve Klawock would have only a de minimis impact on ratepayers in THREA's service territory, and that it would frustrate the REAct if THREA continued to serve Klawock. Order U-94-2(19) re-affirmed the decisions in Orders U-94-2(9) and U-94-2(10). THREA filed an administrative appeal challenging the APUC's decertification decision in Order U-94-2(19). On July 1, 1998, Superior Court Judge Weeks upheld the Commission's decertification decision and remanded the matter to the APUC for a determination of the fair value of THREA's property taken by the decertification decision. THREA has filed an appeal to the Alaska Supreme Court challenging Judge Weeks' decision. The City of Klawock and APC have jointly filed cross-appeals and the APUC has filed its own cross-appeal on portions of Judge Weeks' decision regarding the takings issue.



Assistant attorneys general Ron Zobel  
and Marty Weinstein

## Legal authority

### Statutes

Created in 1959, the Alaska Public Utilities Commission has, since 1970, been a full-time administrative agency under the Alaska Public Utilities Commission Act (AS 42.05) charged with the duty of regulating public utilities within the state. The jurisdiction of the Commission extends to electric, gas, refuse (garbage), sewer (wastewater), steam, telecommunications (cable television, interexchange, and local exchange service), and water public utilities as defined by the Act. In 1981 the Legislature amended the Alaska Pipeline Commission Act (AS 42.06) to merge the Alaska Pipeline Commission into the Alaska Public Utilities Commission, and the Commission's jurisdiction was extended to pipeline carriers and pipelines.

The Commission is comprised of five commissioners appointed by the Governor and confirmed by the Legislature for six-year terms of office. In addition to the business, engineering, and law members, there are two consumer members of the Commission. The Commission is authorized to employ additional personnel to assist in the performance of its duties.

The Commission is responsible for making or requiring just, fair, and reasonable rates, classifications, regulations, practices, services, and facilities for public utilities and pipeline carriers. The Commission has the authority to investigate, hold hearings, prescribe systems of accounts, determine depreciation rates, require the filing of reports, adopt regulations, and take other lawful actions necessary to accomplish the stated purposes of AS 42.05 and AS 42.06. The Commission also determines the eligibility of electric utilities for power cost equalization and the kilowatt-hour subsidy amount under the provisions of AS 42.45.100 — 42.45.190. The Commission is also authorized under AS 31.15.010 - 31.15.050 to determine if there has been unjust and unreasonable discrimination in the purchase of oil offered for purchase within Alaska.

Under AS 42.05.221, a public utility<sup>1</sup> providing service to customers for compensation is required to obtain a certificate of public convenience and necessity<sup>2</sup> from the Commission. A certificate describes the nature and extent of authority granted to a public utility, including a description of the authorized service area and the scope of operations of the utility. Under AS 42.05.241, no certificate may be issued unless the Commission finds that the service is required for the convenience and necessity of the public and that the applicant is fit, willing and able to provide the utility service requested. Similarly, pipeline carriers subject to the Commission's jurisdiction must secure a certificate of public convenience and necessity. A certificate for pipeline carriers generally includes the same information found in a public utility certificate.

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<sup>1</sup> The terms "public" and "public utility" are defined in AS 42.05.990(3) and (4), respectively. Generally, a public utility is one that provides utility service for compensation to ten or more customers or that sells wholesale service to a utility that serves ten or more customers.

<sup>2</sup> Electric and telephone utilities grossing less than \$50,000 are not required to be certificated unless their customers petition the Commission for regulation under AS 42.05.712(h). AS 42.05.711 (e).

## Legal authority (continued)

A number of certificated utilities are statutorily exempt from economic regulation<sup>3</sup> by the Commission, including:

(1) public utilities owned and operated by a political subdivision of the state, none of whose utilities is in competition with any other utility, unless the political subdivision elects to be regulated by the Commission (AS 42.05.711(b));<sup>4</sup>

(2) refuse utilities with annual gross revenues of \$300,000 or less, unless the subscribers of the utility petition the commission for regulation under AS 42.05.712(h) or customers paying 25 percent of a utility's gross revenues have petitioned the Commission for regulation (AS 42.05.711(i));

(3) cable television utilities, unless the customers petition the Commission under AS 42.05.712(h) for regulation (AS 42.05.711(k)); and

(4) electric and telephone utilities with gross revenues of less than \$50,000 are exempt from both certification requirements and economic regulation, unless 25 percent of their customers petition for regulation under AS 42.05.712(h).

AS 42.05.711 also specifies other utilities that may, under terms specified in AS 42.05.712, elect to become economically deregulated by the Commission. Utilities that may elect to deregulate are:

(1) electric or telephone utilities with annual gross revenues of less than \$500,000 (AS 42.05.711(f));

(2) utilities, other than electric or telephone utilities, with annual gross revenues of less than \$150,000 (AS 42.05.711(g)); and

(3) cooperative utilities organized under AS 10.25 (AS 42.05.711(h)).

In a deregulation election at least 15 percent of a utility's customers must return ballots. If a majority of those returning ballots vote for deregulation, the utility is exempt from economic regulation by the Commission (AS 42.05.712(b)). The same election procedures apply to the reregulation of a utility that was deregulated by vote of its member/subscribers. For details on the elections held under AS 42.05.712, see *Results of Utility Regulation Elections* in the Statistical Information section of this annual report.

The Commission is also authorized under AS 42.05.711(d) to exempt a utility from all or a portion of AS 42.05 if such an exemption is in the public interest. Under this provision, the Commission has exempted a number of small utilities from ratemaking regulation. Competition in refuse collection services has also been introduced in a number of areas around the state.

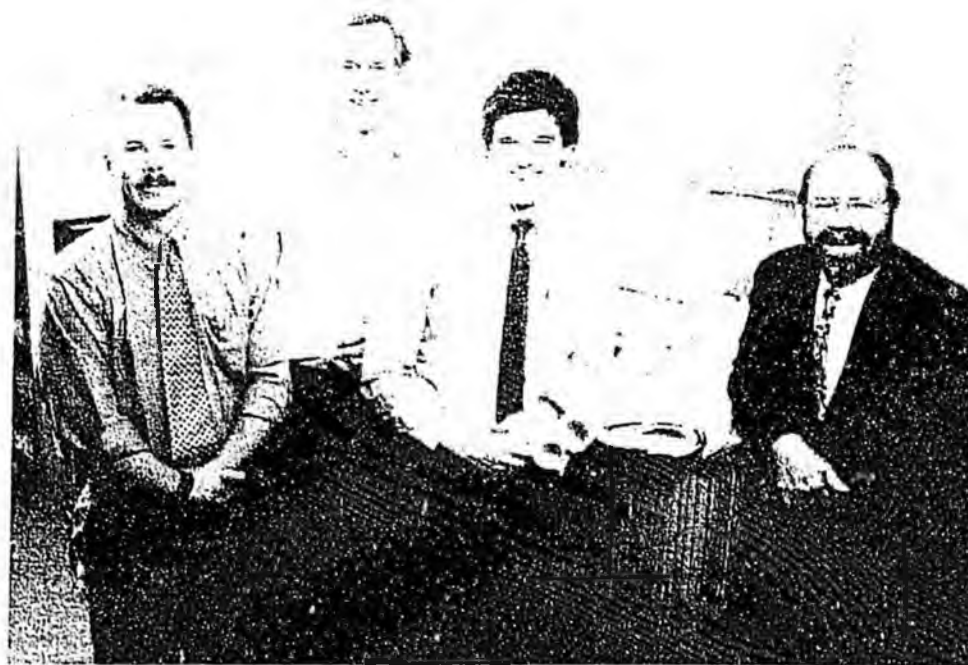
<sup>3</sup> "Economic regulation" (defined in 3 AAC 48.820(43)) means that the Commission's jurisdiction extends to matters concerning rates and charges for public utility or pipeline carrier services, quality of service provided by a utility or pipeline carrier to its customers or shippers, management practices of a utility or pipeline carrier, and customer or shipper complaints concerning the services furnished by a utility or pipeline carrier. The foregoing matters comprise the principal regulatory activities of the Commission other than certification under AS 42.05.221 — 42.05.281, to which the indicated utilities remain subject under AS 42.05.711.

<sup>4</sup> The utilities of the Municipality of Anchorage are the only utilities operated by a political subdivision that are currently subject to economic regulation by the Commission.

## Legal authority (continued)

### Regulations

As authorized under AS 42.05.151 and other statutory provisions, the Commission has adopted regulations to carry out its statutory duties. The Commission's regulations are set out in the Alaska Administrative Code at Title 3, Part 5, Chapter 47 (Regulatory Cost Charge); Chapter 48 (Practice and Procedure); Chapter 49 (Deregulation); Chapter 50 (Energy Conservation); Chapter 51 (Telecommunications Relay Service); Chapter 52 (Operation of Public Utilities); and Chapter 53 (Telecommunications).



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# THE ALASKA PUBLIC UTILITIES COMMISSION

## A New Structure

In the course of the sunset review of the Alaska Public Utilities Commission (APUC), two facts became clear: There is a continuing need for the existence of the Commission and there is a need to change the manner in which it operates. This white paper will discuss the APUC's mission and its organizational structure.

### Mission:

There is a need to focus on the mission statement of the APUC as laid out in statute. There are two basic functions to be served by the APUC. One is to protect the public interest; the other to assure the continued viability of the utilities.

In the case of the former, the APUC should have the mandate of assuring that utility rates are just, fair and reasonable. In the process of carrying out this mandate, they must determine appropriate rate of return, either on an industry or an individual company basis. To do so, they must make a determination of the costs of providing service, establish what is used and useful in rate base and be assured that management practices are prudent.

The latter function is equally important. If utilities are not financially viable, then service will be eroded and if carried to the absurd, service could become unavailable. It is in the public interest to protect the viability of the utilities.

As the APUC carries out these two functions, it must be mindful of the appropriate economies. They must, in other words, accomplish these two mandates by use of the most efficient and economical means possible to assure that the cost of regulation is not a major contributor to the cost of service. It is in neither the public interest nor that of the utilities for the staff of the APUC to engage the utility in a proceeding, the cost of which is ten to twenty times more than the cost or rate in question within that proceeding.

### Structure:

There is a need to address the structure of the APUC using the Federal Communications Commission (FCC) as a model. Restructuring the APUC in this manner will provide for a more efficient operation and eliminate certain inequities which now exist.

The current structure of the Commission has staff moving back and forth in two roles. On the one hand, they are often party to dockets, representing the public interest. On the other hand, they serve in an advisory capacity to the Commission. To put the situation into context, the Commission serves as a quasi judicial body. Allowing the staff to move back and forth as both party to and advisors to the Commission in the same docket is much the same as allowing either

the plaintiff or defendant in a legal proceeding to advise the judge on his final decision, rather than just presenting evidence for the record.

Utilizing the FCC model, that portion of the staff designated as representative of the public interest would be established separate from the Commission itself. This "Staff" would serve under the direction of the commission's executive director and would be party to dockets as appropriate. Their participation in dockets would be as an autonomous party and they would be subject to the same rules regarding ex parte contact with the Commission as are other parties to dockets.

The commissioners, on the other hand, should have personal staff, as well as their own counsel, to assist them in research, writing orders and, in general, filling an advisory role.

As commissioners serve in the role of judges, they should not launch investigations or open dockets on their own motion. They should not issue notices of inquiry or engage in writing regulations. These functions should be the sole purview of "Staff".

The designated seats concept should be eliminated. The designated seats (accountant, legal and engineering) originated in the early days of statehood when the Commission was a part time body with no staff. In those days, it was necessary to have an engineer, a lawyer and an accountant on the Commission because they had no staff with such expertise. The two consumer seats were added in the mid seventies in the mistaken belief that the three assigned seats were charged with representing their special vocational interests. The fact is that the commissions must be neutral judges and should not be representing any special interest group. Under the structure outlined above, "Staff" would represent the public interest. To further emphasize the separation of "Staff" and the Commission, it must be clearly understood that the executive director will be in charge of the "Staff". *The "Staff" positions must be designated as exempt to allow the hiring of truly qualified people in these positions, who can be held accountable for the quality of work they produce.*

Doing away with the assigned seats on the Commission will also require language to make it clear that candidates for the Commission must be professional with some knowledge of utilities. There must also be a restriction which allows no more than one commissioner from anyone vocation.

Included here are examples of organizational structures.....

#### Current Operating Authority:

As a final note, one other amendment to current statute is proposed. AS 42.05.141(1) must be amended to eliminate the language "...the powers of the commission shall be liberally construed to accomplish its stated purpose." This language has become one of the most obvious barriers in relating to the Commission. The commissioners and the staff have used this language to offer differing interpretations of regulations and statute on a case by case basis.

The phrase has also allowed the Commission to state that it does not set precedent. Both utility management and the general public are placed in a precarious situation when they are unable to rely on past decisions of the Commission to determine proper conduct in relation to any particular issue because the Commission feels free to develop differing interpretations to similar conditions on a case by case basis. As a quasi judicial body, the Commission must be held accountable to its own decisions and interpretation.

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March 9, 1999

Honorable Bill Hudson  
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House Utility Restructuring Committee  
State Capitol  
Juneau, Alaska 99801

RE: Alaska Public Utilities Commission

Dear Rep. Hudson:

This letter is prompted primarily by HB 62 which deals with extending the Alaska Public Utilities Commission for four more years. As you have heard in my testimony before your committee, the ATA does not want the commission to enter into a "wind down" year. That happened five years ago and it was burdensome to industry, the commission and our customers. The Telecommunications Act of 1996 generated a very substantial increase in the amount of work for all of us and Alaskans will benefit if both industry and the commission devote their efforts toward that work rather than to the confusion of "wind down."

However, the sunset review process gives us a welcome opportunity to offer some suggestions for change within the structure of the commission. ATA has long espoused a more defined separation between advocacy staff and staff that is counsel to the commission. We think that the current structure that has a staff person as an advocate on one docket and the same individual as counsel on another docket lends itself (even without intent) to conflict with ex parte rules.

ATA recommends that there be an organizational separation where advocacy staff, under the direction of the executive director, represent the interest of the public in matters before the commission. Commissioners, acting in an adjudicative role, should have access to professional advisory staff so they can be properly prepared to weigh the issues presented by representatives of industry and the advocacy staff.

Presently the commission has authorization to hire nine additional employees, but due to the state-hiring freeze, the positions remain unfilled. ATA strongly supports full staffing for the commission and recommends it as necessary for the agency to complete its tasks in a reasonable time. Furthermore, the beneficiaries of an efficient APUC are the utility customers; the same people who pay the Regulatory Cost Charge that funds the commission. ATA also believes that with full staffing, the commission should implement the separation of staff mentioned previously.

Another facet that should be included in the restructuring is a delineation of the powers and responsibilities of the Chairman. Clearly, it is important to preserve the autonomy of each commissioner to vote his/her mind on an issue, but the responsiveness of the commission might be held more accountable with the responsibility of leadership placed in the hands of one individual.

Finally, ATA questions the continued necessity of commission seats being designated as engineering, attorney, business and consumer (two seats). Undoubtedly, it is valuable to have the professional disciplines represented on the commission, however, especially in light of the increased number of professional staff, that value may be outweighed by the elimination of exceptionally capable candidates whose experience is in another field.

In summary, ATA proposes

- Reauthorization of the APUC;
- Clear separation of advocacy staff from advisory staff;
- Hiring to fill the nine vacant staff positions;
- Delineation of the powers and duties of the Chairman;
- Abolish requirement for designated seats.

Thank you for the opportunity to offer comments on these issues. Members of the ATA are available to answer questions or provide assistance on all matters before this committee.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jim", written in black ink.

James Rowe

# REPORT ON THE ALASKA PUBLIC UTILITIES COMMISSION

by

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October 1998

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## INTRODUCTION

While claims of dramatic change and great challenge in a field are usually an exaggeration, that is probably not the case where the subject is the regulation of public utilities. Current developments in industry organization, technology, customer expectations, and attendant public policy are altering the provision of most utility services in fundamental ways. Intimately related to all this are the state public utility commissions as both responders to necessary change and initiators of constructive change. These roles often center around changes in mission, process, and timeliness. In electricity, gas, telecommunications and, to a lesser extent, water, the changes taking place are changes in kind and not just degree. Most importantly to state public utility commissions, the introduction of market forces and competition into the utility industries may substantially supplant the need for continuing, comprehensive, and traditional public utility regulation.

As each state public utility commission undertakes an effort to transform itself to meet the demands of this emerging environment, it is often useful to begin the process with a self-assessment to identify the major issues involved, the necessary timing of change, staff attitudes about change, and potential impediments to change. Such a self-assessment also presents an opportunity for commission staff to provide input into the direction of commission change.

After several preliminary discussions in early spring, the National Regulatory Research Institute (NRRI) was invited in May to submit a proposal "To Assist the Alaska Public Utilities Commission (APUC) in an Organizational Self-Assessment As

It Undertakes Efforts Toward Large-scale Change." A contract for this work was subsequently entered into, and the onsite team visit took place over the period June 17-22, 1998.

To accomplish this self-assessment, NRRI staff interviewed sixteen Alaska PUC staff, the five Commissioners, and four former employees, and asked the interviewed staff to complete a short assessment instrument. The results of the overall NRRI inquiry are contained in this report. Part I of the report describes the assessment instrument and presents the results obtained by its application. Part II of the report presents NRRI findings by major subject component. For each component, the NRRI draws some conclusions and offers accompanying observations. Part III provides summary conclusions. Specific comments received by NRRI in the interviews are included in the Appendix.

Reports of this type are inherently judgmental and subjective. In that sense they are always limited and imperfect. The task, of course, is to be fair and accurate, and we have tried to be both in our assessment. In trying to accomplish this we have avoided the extreme stances — "the sky is falling" at the APUC (it isn't) or "we have no problems" at the APUC. We have employed "discount factors" where they seemed appropriate and have only treated things that could be called recurring themes coming from multiple interviewees, thus minimizing the outlier phenomenon. We have attempted to make our frame of reference either *horizontal* comparisons, that is, differences in conditions within the APUC and with other commissions, or *vertical* comparisons, that is, differences in conditions at the APUC now as against the APUC at an earlier time. We have also avoided references to the behavior of specific individuals. It was not our purpose to evaluate individual performance; comments directed toward individuals were only included if they could be regarded as applying to the position held by the individual in some generic sense. Finally, the report is the collaborative product of the three-person team that conducted the exercise; it contains only those observations and conclusions that could be agreed to by all of the authors.

For a report to be contributory to agency self-assessment and to be useful to the leadership it must be a candid one — even if occasionally painfully so. Accordingly, while not seeking sharply pointed assessments, we have not glossed over areas of important perceived deficiencies with indirect writing. It should be said that all participants demonstrated a great deal of goodwill toward the assessment initiative and genuinely cared about an improved APUC as a place to work and contribute.

## PART I

### APPLICATION OF THE COMPETING VALUES MODEL

Robert Quinn of the University of Michigan has developed one typology of organizational change that may hold great promise for the analysis of public utility commissions as they undergo transformation in response to their evolving environment. His model focuses on the inherent contradictions of organizational life and is referred to as the competing values model.<sup>1</sup>

Quinn identifies four ways of categorizing organizations and arrays them in a two-by-two grid, which is illustrated in Figure 1. In the upper right-hand quadrant (I) is the open systems approach. Organizations in this quadrant are oriented toward taking risks, excitement, and innovation. Success is measured by being on the leading edge.<sup>2</sup> An interdisciplinary team working on industry restructuring would help pull the commission in the direction of quadrant I.

In the lower right-hand quadrant (II) is the rational goal approach. These organizations tend to be achievement oriented, emphasize logical direction, and are competitive. Success is measured by acquiring resources and defeating competitors.<sup>3</sup> As commissions confront their new environments and adapt to new market and consumer needs, they move toward quadrant II.

In the lower left-hand quadrant (III) is the internal process approach. This organization is control-oriented and mechanistic. Organizations in this quadrant are

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<sup>1</sup> Robert E. Quinn, *Beyond Rational Management: Mastering the Paradoxes and Competing Demands of High Performance* (San Francisco, CA: Jossey-Bass Publishers, 1989).

<sup>2</sup> *Ibid.*, 36

<sup>3</sup> *Ibid.*

hierarchical and value security and perpetuation of the status quo.<sup>4</sup> Some portions of every organization are better suited to quadrant III than others. For example, commission administrative operations probably fall mostly within quadrant III.

The upper left-hand quadrant (IV) is the human relations model or the consensual or team approach. Organizations here emphasize mutual dependence and focus on feelings. They tend to value harmony and consideration of all individuals.<sup>5</sup> Commissions tend to have strong internal cohesiveness, a trait which pulls them toward quadrant IV.

These quadrants represent attributes of organizations, though no organization can be fully contained in any one quadrant. For example, every organization has some functions or offices that are more hierarchical than others, and, over time, an organization may shift its emphasis from one quadrant to another. As a matter of fact, there is a tendency for organizations to drift toward quadrant III. That is not to imply that the control/management quadrant is inappropriate. The attributes contained within that quadrant are necessary for every organization, even the most innovative. What is to be avoided is excessive reliance on control and management at the expense of appropriate levels of innovation and flexibility.

Because every organization contains elements of each quadrant, a quadrangle-shaped map can be drawn for an organization. The NRRI asked the Commissioners and staff interviewed to completely assess how the APUC fits each quadrant, once to attempt to describe the APUC as it exists *now* and again to describe how they would *prefer it to be*. Eleven persons completed the questionnaire (which may limit the statistical significance of the outcome). Figure 2 shows the results of the analysis of the APUC as it exists now; Figure 3 describes the APUC as those who completed the analysis would prefer it to be.

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<sup>4</sup> Ibid., 37.

<sup>5</sup> Ibid.

Figure 2 (the APUC as it exists now) displays the typical kite-shape expected of government agencies. The score in the control/management quadrant (III) is very high. The scores in each of the other three quadrants are much lower and nearly identical to one another. The net result is that those who completed the instrument regard the APUC as being skewed toward control, perhaps even further than could be expected of government agencies.

The quadrangle describing the APUC as respondents prefer it to be (Figure 3) is quite different. The quadrangle clearly indicates a preference for a more balanced organization, for substantially less reliance on control, for a very slight increase in reliance on the rational goal approach (Quadrant II), a tilt toward the open systems model and innovation (Quadrant I), and, most dramatically, a substantial increase in attention to the human relations model (Quadrant IV).

These results are consistent with several of the themes articulated by those interviewed. The majority of the problems identified in this report are internal to the APUC, and it is clear from the results of this analysis and the comments of many of those interviewed that substantial repairs need to be made to internal relationships if the APUC is to thrive. Though the APUC continues to serve the public and perform its established role, mitigation of morale problems and the application of leadership could go far to create better internal cohesion that is sought by many.

Figure 1

# Public Organization Profile

|   |  |
|---|--|
| <p><b><u>Collaboration: Human Relations Model</u></b></p> <ul style="list-style-type: none"><li>• Emphasis on interpersonal relations, teamwork, participation and consensus</li><li>• Family-like</li><li>• Sensitivity to customers</li><li>• High commitment to organization</li><li>• Being things better</li></ul> | <p><b><u>Creativity: Open Systems Model</u></b></p> <ul style="list-style-type: none"><li>• Emphasis on flexibility, risk taking, experimentation, innovation</li><li>• Success measured by being on the leading edge</li><li>• Success measured by long-term growth and new resources</li><li>• Doing different things</li></ul>  |
| <p><b><u>Control/Management: Internal Process Model</u></b></p> <ul style="list-style-type: none"><li>• Emphasis on stability, management, following procedures, policies, predictability</li><li>• Machine-like</li><li>• Pursuit of efficiency</li><li>• Incremental change</li></ul>                                 | <p><b><u>Competition: Rational Goal Model</u></b></p> <ul style="list-style-type: none"><li>• Results oriented, goal directed</li><li>• Emphasis on production, building a reputation, increasing productivity</li><li>• Success measured by acquiring resources and defeating competitors</li><li>• Being things faster</li></ul> |

Adapted from Robert E. Quinn and Jeff DeGraff, University of Michigan.

# Figure 2

## Commission Organization Profiles Now

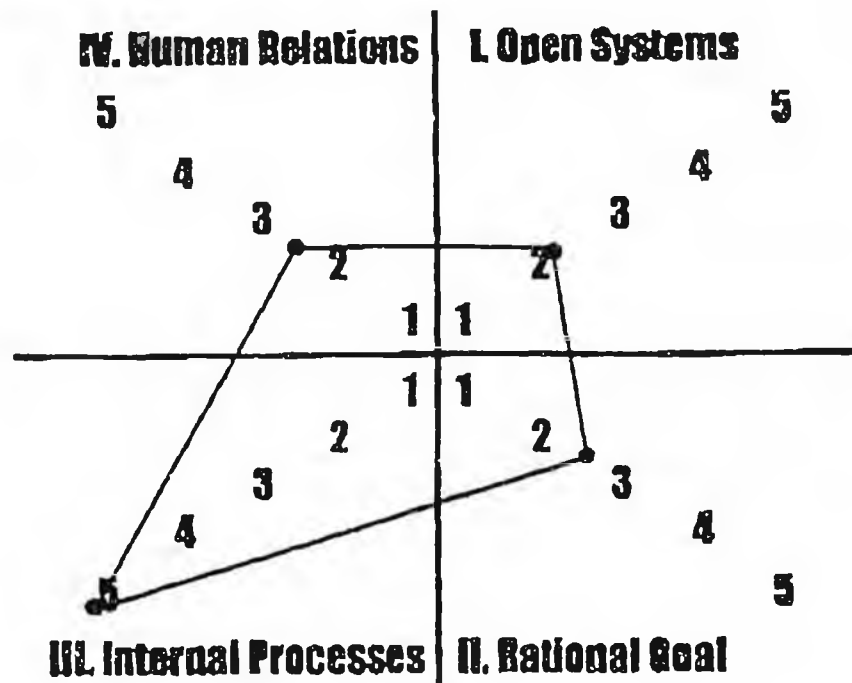
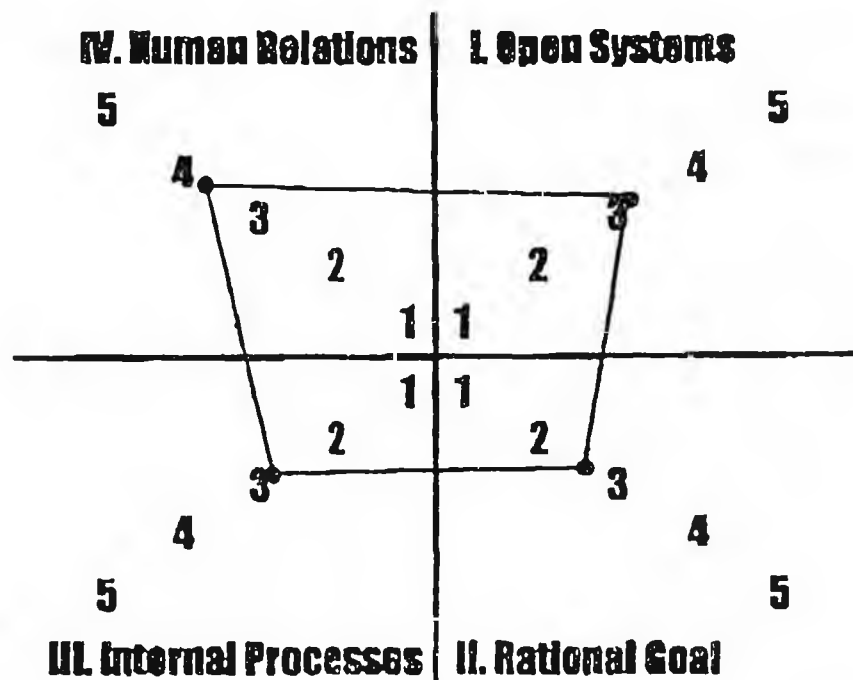


Figure 3

# Commission Organization Profiles Preferred



## PART II ANALYSIS OF ORGANIZATIONAL COMPONENTS

The components examined and explained in Part II are:

- General Factors Including Leadership
- Morale
- Commission Structure
- Staffing
- Management Information Systems
- Process
- External Relations
- Consumer Protection
- Information Flows/Communications

### GENERAL FACTORS

#### Overall Commission Functioning

**Observation:** Though problems exist and the workload is extremely high, overall the APUC is regarded as having done a competent job of handling its responsibilities.

Despite the range and depth of problems cited by those interviewed, several of those interviewed cited the fact that APUC decisions are rarely overturned in court. Most cited the competence of the staff and its ability to focus on the real task of the Commission despite constant emergencies and a very heavy workload. Though some are concerned that current difficulties may eventually limit the ability of the APUC to do its job, there seemed to be no doubt that overall the APUC has accomplished its mission up to this point even considering the substantial increase in the APUC workload following industry restructuring.

## Leadership

It is widely agreed that leadership is an important and sometimes determinative component of agency success. Small organizations comprised of highly motivated and self-directed persons sometimes do not require much leadership. Effective agency leadership is particularly desirable during a period of churn and change, like the current environment at public utility commissions, including the APUC.

Also of note in the context of multi-member public utility commissions is the fact that there are at least two kinds of "leadership" that can be examined. One is the traditional view of the chairperson as the locus of leadership, and the other (less frequently examined) is the *collective leadership* of the Commissioners. Both will be considered here.

**Observation: Several opportunities exist at the APUC for the application of leadership to perceived problems.**

Interestingly, the word "leadership" was not actually spoken by any of the interviewees, but a number of the perceived difficulties emphasized by them hark back to the leadership question, both from the Chairman's office and from the Commissioners as a collective. Several opportunities for asserting general leadership on big themes would seem to present themselves in the course of fixing a number of particular problems incorporated in them as reported by interviewees. One of these is improving vertical communication throughout the agency. (Reportedly, horizontal communication is adequate.) Another opportunity is to introduce and conduct a systematic training and orientation program for new personnel at all levels. (This was a deficiency identified by those interviewed.)

A third, and perhaps most important, opportunity is in dramatically clearing the docket backlog including tariff filings and devising procedures and practices that lead to prompt resolution of cases. Some amount of regulatory lag is, of course, inherent in complex filings, and users of the system are often unduly impatient. However, even allowing for this, those interviewed were critical of

unnecessary delays in case processing, of too frequent use of suspensions and extensions, and of applications taking effect by default.

**Observation: Because of the structure of public utility commissions, collective leadership is required.**

In the public utility commission model (1) there is a proper and sharp distinction between technical staff and commissioners; (2) commissioners are to a very great extent co-equal in responsibilities and authority (in the Alaska case there is not even extra pay for the chairperson); (3) loyalties are presumptively "upward" to the governor and not "sideways" to each other; and (4) the overall *effectiveness* of the organization hangs crucially on the willingness and ability of a majority of the commissioners to support the chairperson on issues vital to the agency *as an institution*. This last is about recognizing that the commission functions well or badly depending in good measure on whether commissioners pull together in the traces or pull apart. The argument here is that adopting the former approach allows for the very considerable benefits to the agency of collective leadership, and pursuing the latter course precludes these benefits and probably forecloses any real chance of individual leadership as well.

In the course of sustained discussions with those interviewed, several opportunities for collective leadership by the Commissioners (mostly of the "lead-by-example" variety) were identified. It is, of course, true that staff do not always know or appreciate what exactly constitutes a Commissioner's workday. However, perceptions that Commissioners do not "pull their weight" were voiced several times in interviews. Addressing those perceptions is a difficult but worthwhile task.

## **MORALE**

**Observation: The morale at the APUC appears to be low.**

Given the level of turmoil and uncertainty inherent in utility industry restructuring and the extremely high workload of commissions around the nation, morale problems might be expected. Comments from quite a few, though not all,

interviewees indicate that a morale problem exists at the APUC that might exceed national norms. Fortunately, the earlier turmoil that surrounded the attempt to remove two Commission staff and the dispute over the appointment of a Commissioner were perceived by interviewees as "over and done with" and no longer a factor in morale matters.

Improving morale in a troubled organization is difficult at best. It has a chance of being achieved with the following conditions: (1) the existence and understanding of a persuasively articulated vision of the agency; (2) a wholesale "buying in" to that vision so that it becomes a shared one; and (3) a workplace demonstrably characterized by civility and professionalism, by fair treatment, and by appropriate recognition and appreciation of good performance. The task of creating this environment falls to the Chairperson *and* the collective leadership.

Happily, there is much to build upon. There are a number of pockets of real excellence and dedication within the agency, and these can be celebrated and enhanced. The Commission has a long and reputable history of service. The traditional mission of consumer protection in the sectors of the economy that most fundamentally touch the Alaskan citizenry — the utility sectors — is a high calling. Now the added mission of inducing, presiding over, and adroitly shaping the restructuring of the energy and communications sectors provides an opportunity for a new level of cohesiveness among the APUC staff. Regulatory oversight is not yet "a declining industry," but rather has an essential and particularly demanding role in the context of transformation. This sort of challenge can appeal to the best instincts of an informed and energized staff.

## COMMISSION STRUCTURE

Structure refers to an organization's relatively stable activities over a period of time, often reified as an organization chart. Organizations are ordinarily structured to support well-established programs that can operate most efficiently within given boundaries. A U.S. regulatory commission structure, like that of corporations and other government agencies, has traditionally been hierarchical, with several levels of authority and numerous compartments representing cohesive activities that contribute to overall functioning. Commissions are typically characterized by a strict structural delineation between commissioners and staff, due to the quasi-judicial nature of their activities and the traditional

model of commission process that considers staff the provider of technical expertise to the commissioners as judges (the "technocratic model"). It is common to have a strong executive director who supervises technical staff. In several states the bifurcation of staff and commissioners is maintained by having two separate agencies — a commission and a public staff.

The APUC is divided into four major layers. The Commissioners and paralegals assigned to them form one level; the Hearing Examiner, Assistant Attorney General, Executive Director, Administrative Law Judge, and Associate Attorney form a second. At the third level, several paralegals and secretaries report to the Associate Attorney, and the technical staff report to the Executive Director. Six sections, representing the bulk of the commission's manpower, are supervised by the Executive Director: Engineering, Common Carrier, Finance, Tariffs, Consumer Protection, and Administration. The sections are organized by function rather than industry, with the exception of the Common Carrier section.

**Observation: Administrative authority is best consolidated at commissions.**

Based on the NRRI's interviews, it appears that some APUC Commissioners are too involved with administration. This involvement could inhibit their consideration of the important issues facing the commission. One way to avoid this would be to strengthen the Chairman's direction of purely administrative matters. If all Commissioners were less involved with administration, they would have time for more substantive matters, could take on substantive lead assignments, and, thereby, might improve the functioning and, perhaps, the product of the Commission.

**Observation: Existing structure that combines functional and subject matter groupings seems to be appropriate to recent programmatic needs.**

The APUC technical staff are organized largely by discipline (e.g., Engineering) with the exception of the Common Carrier section that has responsibility for communications-sector matters. Overall, the structure, which is duplicated at other commissions around the nation, appears to be an appropriate

one. Some interviewees remarked that the Common Carrier section holds a special status within the technical staff. But the success of the Common Carrier section in weathering and indeed mastering changes in telecommunications policy the last several years is good reason for them to be "the fair haired division," as one person we interviewed put it. The hybrid organization of sections (with both utility and functional sections) works well for commissions when combined with a team approach to assigning responsibility for cases. For the APUC, other sections need to be strengthened, rather than the Common Carrier section weakened.

Some concern was expressed that the assignment of management information systems (MIS) responsibilities to the Engineering section had the potential to overwhelm that section and to get in the way of other engineering functions.

**Observation: The location of the APUC in the Department of Commerce and Economic Development encourages cooperation with allied functions.**

Many state commissions stand alone as quasi-judicial agencies somewhat independent from either the legislature or executive branch. With the responsibilities of commissions being redefined, it is of particular help to the APUC to have good communications with the state functions of promoting economic development and other allied functions. At the same time, the Commission's expertise in consumer interests and in the complex field of public utilities is an important resource for the rest of the Department. Striking a balance between involvement and independence is the key.

## **STAFFING**

**Observation: Commissioners need more staff support for decisionmaking.**

As the issues facing commissions become more complicated (often involving issues of market power and consumer protection) and more often involve policymaking, commissioners across the country and at the APUC will need more staff assistance. Those interviewed expressed concern that the

assignment of existing staff resources of the APUC did not give adequate attention to the advisory function. Two general options are available for providing more staff assistance to Commissioners.

First, the APUC could hire additional advisory staff or permanently assign staff to Commissioners from existing staff resources. Adding small numbers of advisory staff can be problematic because of the wide range of expertise across all utility sectors required of those staff. In a commission as small as the APUC, the permanent reassignment of staff as advisors to the Commissioners further reduces the expertise available to the advocacy function. A contrary view was expressed by at least one of those interviewed, who suggested that the permanent assignment of a staff member as an advisor to the Commissioners would substantially alleviate the problem.

Second, the APUC could adopt administrative models that allow Commissioners to have greater access to existing experts on the staff. Several states, including Ohio, Iowa, and Florida, have created models which do not impose a rigid *ex parte* wall between commissioners and technical staff. At least one of those models defines staff as "participants" in cases but not "parties." They have full, statutory discovery rights but are not subject to discovery by others. As participants in cases, staff cannot contest commission actions and cannot apply for rehearings.

**Observation: Legal support of the Commission is a critical function and could be improved.**

Attorneys are assigned by the Attorney General to support APUC needs. Two part-time attorneys are available. Concern was expressed, however, about the level of support provided and the potential for a conflict of interest. Given the quasi-judicial nature of most APUC actions, several of those interviewed expressed the sentiment that more legal input into case preparation would be desirable. In fact, at least one suggested that an attorney should be assigned as the team leader in case preparation. Full-time assignment of two attorneys might be desirable.

Because the attorneys assigned to the APUC do not serve either a strict advisory or advocacy role, there is the possibility in the minds of some that a conflict of interest could be created for attorneys. The same attorney who assisted with the development of the staff position could be also assigned to

represent the APUC on appeal in a situation in which the Commission decided in opposition to the staff position. A solution would be to assign one of the attorneys to the Commission staff to help craft staff positions and assign the other to provide advice to the Commissioners and to represent the Commission on appeal. This is commonly done in other commissions by the formal split between staff counsel and chief (commission) counsel. If a permanent split of the attorneys between advocacy and advisory functions would create uneven workloads between the two attorneys, they could be split on a case-by-case basis. Hearing examiners, though often attorneys, are separate from both.

### MANAGEMENT INFORMATION SYSTEMS

**Observation: The Commission needs improved management information systems, but increased computerization will not solve information problems by itself.**

Both commissioners and staff strongly believe that systems for managing commission processes at the APUC need to be improved. Consideration is being given to hiring an outside consultant to design a computer information system for the commission. A well-designed computer system can indeed facilitate many management functions.

But Commissioners and staff expressed problems that run deeper than the technical means that are used to enable organizing, planning, and other management functions. One person at the APUC who we interviewed said, "I sometimes feel that procedures are crumbling here." Another remarked, "We're in meltdown." A computer system, no matter how elegant, cannot set priorities and cannot say what information is needed by whom, when, and in what format. The computer equipment and software available to APUC members is not directly to blame, since the Commission is commendably up-to-date on computer quality and speed. It seems likely, however, that the available technology is not being used to its greatest effect. A larger state commission has different management information needs than the APUC. So does a federal agency such as the FCC, which relies on "paper hearings" rather than a typical state commission process of oral, face-to-face hearings.

**Observation: A computer information system can be developed in synchrony with other efforts to identify, analyze, and address Commission management information needs.**

A concerted initial effort to reduce case backlog and identify areas where timeliness must be improved will help to clarify the needs for outside help on developing a computerized management information system. Lack of computer support or inadequate use of computers were frequently mentioned as problems. Here an outside consultant may be very helpful in setting up a system where, among other things, industry files cases electronically, the same information is entered only once into the computer system, and the status of cases and the text of decisions are available to every interested person in the APUC via their desktop computers. Such a system should allow management to ascertain the time it takes for each case to go through each step in the process and assess whether prioritized goals are being met. The computer system may be used as well to accomplish tasks that the commission has not attempted as yet, such as analyzing complaint filings to be able to anticipate new issues.

## **COMMISSION PROCESS**

**Observation: There is widespread concern that the APUC does not act promptly enough on cases before it.**

Many APUC members referred with dismay to a lack of timeliness in decisions, a concern that staff felt was shared by the regulated industries. This problem is associated with a backlog of cases that appears to be getting worse. One person we interviewed claimed that there are 500 open dockets and that this number has doubled over a relatively short period of time. Suspension periods are routinely extended, which avoids an immediate expenditure of scarce resources but in itself takes time, thus compounding the problem. Interviewees identified a number of possible sources of slowdowns in Commission processes. One is simply an increased caseload, particularly in telecommunications. Promotional offerings in telecommunications are "coming in by the gross," we were told, at the same

time this industry expects, if anything, faster decisions consistent with a competitive environment. Filings by electric, gas, water, sewer, and garbage utilities are increasing as well.

At least one Commissioner expressed the belief that staff is generally slow in getting cases before the Commission. Particular concerns about timeliness at the staff level were the lack of speed with which documents move between the fourth and third floors and the amount of work that has to be corrected or even redone, especially order writing, which is time-consuming and duplicative. Commissioners were also faulted for a lack of timeliness, both on making needed decisions and getting them out the door when a decision has been made. More than one staff member remarked that a final order may sit on Commissioners' desks for a period of time before being signed and taking effect. More serious, perhaps, was a sense of an absence of clear priorities throughout the APUC that contributes to a crisis mentality. "We have management by emergencies," said one person we interviewed. "It feels like we're under fire all the time."

**Observation: Steps must be taken as early as possible to bring the backlog under control and address the issue of speedy processing of Commission business.**

The lack of timeliness and growing case backlog is a measure of impaired Commission effectiveness. Though the dramatic increase in the APUC's workload might be a contributory factor, delays in case processing were cited by many of those interviewed. Several specific problems that might impact the speed with which the APUC disposes of cases were noted. They included striking the appropriate balance between efficiency and careful maintenance of due process (some citing undue attention being paid to the maintenance of due process; others citing not enough attention), the assignment of staff including the hearing examiner, and the role of Commissioners. The sense of slipping behind is also a drag on morale and a sense of accomplishment.

The first step is to identify more clearly the nature of the backlog by industry and current status. The Executive Director may want to reinstitute meetings on the status of all current dockets. Such meetings can be used to rearticulate priorities and possibly batch similar cases, such as

telecommunications promotional offerings, for expedited treatment. The Commission may wish to consider using temporary resources to help reduce the backlog at this stage, although simply hiring permanent staff as quickly as possible in key areas may be enough.

The second step is to identify bottlenecks and other problems. A flow chart can show the actual sequence of events in Commission case processing. This will help to identify problem areas, redundancy, and unexpected complexity. It also will help to identify information needs that a computer system can be designed to address. There are several checklists in use at various points in the Commission process. These can be used to help develop a more complete, integrated understanding of the flow of events from the date a case is filed until the date on which an order goes into effect.

Particular consideration needs to be given to solving problems upstream in the Commission process. Better order writing early (which is addressed later), so that rewriting and editing do not have to be done at the end of the process, can reduce overall workload and the sense of constant emergency. It is a mistake to rely overmuch on any one person to make sure that the procedural and substantive record is adequate, especially one placed at the end of the process. The APUC should also look for areas where industry can help, for example by contributing information upon filing that the staff has routinely been taking upon itself to gather. We are not suggesting always taking short cuts where they are available. Failure to follow due process can result in as many problems downstream as failure to fully address substantive issues.

**Observation: The use of streamlined administrative processes and alternative methods for hearing cases should be explored.**

Several methods for streamlining case processing were identified by those interviewed. They included the issuance of one-page orders for procedural issues, an attempt to limit the number of pre-hearing conferences, allowing the hearing examiner to conduct pre-hearing conferences, better use of the paralegals, and making better use of stipulations. Other small commissions have made use of more informal processes to expedite case handling. In North Dakota, for example, informal, open meetings are held following most formal proceedings. No notice is made of these meetings although they are included

on the Commission calendar. Meetings are tape recorded. No sworn testimony is presented, but the party bringing an issue is asked to present the issue. Staff is allowed to respond. In these informal meetings, no decisions are made. If a Commission decision is required, it is held for the next formal meeting. If it is apparent that controversy will develop, the issue is sent to a hearing. According to staff, these meetings have substantially streamlined the Commission process.

More dramatically, the APUC might also consider changing the manner in which cases are heard. Currently, Commissioners hear all cases with the hearing officer in attendance as a legal advisor, though her role has been limited. Other approaches are available. In some cases around the nation, a single commissioner will hear a case; in other instances, several commissioners (less than the full commission) can hear cases. In other states, albeit typically larger ones, hearings are conducted by hearing examiners, who later present their findings to the commissioners for ratification or amendment. The commissioners must still make their decisions based on the established case record. This latter option may be appropriate for the APUC where the concern is the identification of the appropriate balance between due process and speed. This option also has the advantage of allowing commissioners to focus on policymaking and questions of industry structure and develop specific expertise.

**Observation: As the work of the APUC shifts towards more policymaking and away from the kinds of fact finding embedded in traditional rate cases, the APUC may want to further explore the use of nontraditional means of making decisions.**

A majority of the substantive work of the APUC has been performed through formal adjudicatory processes that emphasize due process, which includes the requirements that Commission rulings be based on the public record accumulated in the course of the proceedings and that there be a separation of functions between those who make the decisions and those who argue before them on behalf of specific positions. These adjudicatory and often confrontational processes work best in matters of retrospective fact-finding and in those cases where winners and losers can be identified. They worked well when the majority of the Commission's work was the setting of utility rates and when specific utility interests conflicted with the interests of ratepayers.

Unfortunately, they do not work as well for future-oriented establishment of policy or in finding creative or collaborative solutions to public policy problems.

Despite the fairly standard requirements that govern public utility commission adjudicatory processes, the application and design of these adjudicatory processes vary across commissions and across time. The APUC process is fairly formal and rigorous in its interpretation of *ex parte* requirements. The APUC staff are charged with presenting the staff case in adjudicated proceedings and are generally regarded as serving an *advocacy* function, a function that is particularly critical since there is no separately constituted consumers' counsel in Alaska. Other intervenors also present their views, which are entered into the case record. Those staff members who are to be separated from Commissioners are designated by memorandum for each proceeding. Staff not so designated may be used by Commissioners as resources; they are regarded as being *advisory*. This split between the staff's advisory and advocacy roles is commonly referred to as bifurcation of a commission. In some cases, the staff attempts to reach a settlement with parties prior to the presentation of a case.

As the work of the APUC shifts towards more policymaking and away from the kinds of fact-finding embedded in traditional rate cases, the APUC will need to further explore the use of nontraditional means of making decisions. Options include designating more Commission actions as "rulemaking" rather than adjudication and using more mediation, negotiated rulemaking, workshops, technical conferences, and task forces. Training in mediation for Commissioners and staff or the use of external mediators/facilitators may be useful as well.

**Observation: Commission orders are perceived as being not well written and take too long to prepare and issue.**

Several of those interviewed expressed strong dissatisfaction with the time required to write orders and the quality of the content of those orders. Currently, the responsibility for writing orders is fragmented among staff, paralegals, the hearing examiner, and (potentially) Commissioners. Most who commented on the training that had been provided for writing orders regarded the training exercise as a failure. Some felt that training must be on-going in

order to be effective. Some feel that paralegals lack the expertise to write good orders.

In addition to providing more training in the writing of orders, the APUC may want to consider the consolidation of responsibility for writing orders. One option is the expanded use of hearing examiners to write orders. This is standard practice around the nation and has the opportunity to create a good balance between the provision of an adequate background in orders and clear policy direction. If hearing examiners are to write the preponderance of Commission orders, more examiners would need to be added to the current one.

**Observation: Additional statutory deadlines are not a preferred solution to APUC problems of timeliness.**

Some APUC members suggested that because statutory deadlines are for the most part being met, perhaps the legislature should enact more. These types of guidelines are common around the nation but do little to expedite proceedings, at best serving only to force commissions to pay close attention to the prompt handling of cases. New deadlines would not necessarily help the Commission address the highest priority issues before it. Externally-set deadlines also encourage invention of ways to get around them if necessary to meet changing priorities. And the Commission, like other administrative agencies, needs flexibility to manage itself. Our suggestion is, instead, a determined, concerted effort, with the aid of an outside consultant experienced in the development of support systems for management, to improve the timeliness of case processing.

## **EXTERNAL RELATIONS**

**Observation: Maintaining a good working relationship with the legislature will be necessary to ensure that the APUC can maximize its contributions to industry restructuring.**

By most accounts, the APUC enjoys a good working relationship with the legislature, aided in part by the legislative experience of two of the Commissioners. Those linkages will become increasingly important in the future

as the Commission further adopts a more legislative rather than judicial role. Commissions around the nation are increasingly recognizing that developing and maintaining good relationships with external stakeholders is critical to their emerging missions. In the past, public service commissions may have adopted a "less-attention-is-better" strategy toward the media and legislature, only responding when required. At least one comment to the NRRI indicated the belief that the APUC's legislative strategy has been largely reactive. Commissions are now recognizing that a proactive media strategy is one key to the success of consumer education.

In addition, with the movement toward deregulation some members of the public do not understand the mission of public service commissions. A proactive media strategy can assist the APUC in its efforts to inform the public about its programs and continuing roles.

## **CONSUMER PROTECTION**

**Observation: Increases in consumer complaints are beginning to strain the capacity of the Consumer Protection section.**

Although everybody the NRRI interviewed who commented on the Consumer Protection section agreed that it is functioning very well, there are incipient signs of overload. The section is quite self-sufficient, while not isolated from other sections, but does receive support from other staff on particularly knotty technical complaints. Complaints on telecommunications service have increased dramatically, due to the advent of competition. Disposition of a complaint takes up to six weeks and the average time before resolution is becoming longer because complaints are not only more numerous but more complicated than in the past. Interviewees reported an increase in carrier-to-carrier complaints, which are now being treated as informal complaints but may need to be upgraded to formal ones if they continue at the current rate. Solely on the basis of the strain on the capacity of the section due to increasing consumer complaints, a case can be made for providing additional support to this section, both clerical and professional.

**Observation:** The overall mission of state regulators throughout the United States is shifting towards new means of consumer protection, especially through consumer education.

The major responsibilities of the Consumer Protection section, as listed in the Commission's FY 1997 *Annual Report*, are to investigate and resolve consumer complaints, disseminate information, and provide public relations support to the Commission. Although the consumer protection staff does some community outreach, the complaint load prohibits much consumer education and public relations effort.

In Commissioners' Summit conferences held under the aegis of the NRRI and NARUC, commissioners from around the United States have agreed that in the near future much of the work of public utility commissions will be directed toward protecting consumers in restructured markets and educating them. Competition cannot work well unless consumers have the information, ability, and motivation to make informed choices. A proactive media strategy is also a tool for consumer education, especially since the movement towards deregulation means that some legislators and members of the public may not fully understand the APUC's changing role. Consumer affairs, including complaint handling, consumer education, and public relations, will not be a tangential function, but a central one. Many state commissions are actively engaged in shifting towards a "consumer-centered" orientation.

Although a substantial commitment of time and energy will be required to perform effective consumer education in the short run, this need may decline over time as competition becomes the norm. The APUC may want to consider flexible, interim options to support its consumer protection section in addition to some increase in permanent positions. Consultants, temporary staff, or existing networks that already have links to consumer groups, are options that might be explored. Whatever combination of permanent staff or temporary help is chosen, the Commission will need to analyze information needs of consumers, their current level of awareness, and how they receive messages about the industries under the purview of the Commission. Preparation of appropriate literature and outreach to Alaskan communities can follow.

**Observation:** Since there is no separate consumer protection agency in Alaska, the Commission role is even more important than in many other states.

For electricity and gas regulation, Alaska's situation is idiosyncratic *vis-a-vis* the rest of the country, but the transition to competition is already affecting the Commission in telecommunications. Since there is no separate state consumer protection agency in Alaska, the Commission's advocacy role is even more important than in many of the states that have such a specialized agency. Both Commissioners and staff will need to be involved in recentering APUC goals on the consumer, with particular attention to residential and small business consumers. This can happen in the context of traditional concerns in Alaska for economic development through utility infrastructure and within the constraints of Commission jurisdiction. The good working relationship of the Consumer Protection section with larger utilities is commendable, as are the efforts to deal expeditiously with the carrier-to-carrier complaints the section has begun to see in telecommunications.

### **INFORMATION FLOWS/COMMUNICATIONS**

**Observation:** Information needs at all commissions are becoming more complex and less easily categorized.

An efficient communications system for any organization ensures that the people who contribute to organizational results have the right information, including adequate feedback, at the right time. Coordination of information flows or communications is a management function that ensures that individuals and work groups are neither overburdened with information nor starved for this vital resource.

Both APUC Commissioners and staff interviewed by the NRRI expressed frustration with information flows and communications within the Commission and sometimes blamed each other for communications problems. While these criticisms deserve attention, it is important to place them in the context of the increasing complexity of information requirements and the increasingly uncertain, amorphous nature of the information actually available at any and all commissions in this time of regulatory transition.

In a traditional commission, staff is highly specialized not only in their tasks but in the type of information they present as testimony. Both substantive and process information are necessary to smooth commission operations. Process information includes such matters as case dockets, timetables, budgets, and assignments. Cases are developed and executed in the form of testimony (the primary substantive information) presented by all parties from their individual points of view, with a decision rendered on the evidence by the full commission. There is a presumption that the staff point of view, company point of view, and the views of other interested parties are sufficient to give commission decisionmakers the ability to decide for that particular company in that rate case. In the traditional commission organization, marked by adversarial proceedings, communication is very much on a "need-to-know" basis. If errors are to be made, the traditional commission preference is to make them on the side of too strictly limiting information flows rather than allowing too much out into the open.

The APUC, because of the state's unique energy situation, is to a greater extent than many commissions in the lower 48 still appropriately a traditional regulatory agency. But the Commission is affected by transition in the electric industry and is fully involved in restructuring of the telecommunications industry. In this time of great change, everyone at the APUC is struggling to make sense out of ambiguity. In this environment, more emphasis is needed on substantive communications about nonprogrammed activity, especially that related to initiating and establishing new programs. Process information, so essential to the efficient functioning of a traditional agency, becomes more the servant of substantive informational needs in an agency in transition. For all involved, both Commissioners and staff, the available information is likely to seem incomplete and unsatisfactory compared to earlier times.

**Observation: Lateral communications within the Commission appear to be quite good.**

Within the major working groups — the commissioners, technical staff, and administration — the exchange of ideas and information seems to be substantial and open. One Commissioner remarked particularly that the Chairman is very forthcoming with information.

**Observation: Commissioners tend to complain that they cannot always easily acquire information from staff, while staff tend to complain that Commissioners are uninformed.**

Commissioners say they find it difficult to obtain the information they need to frame issues and make decisions. One Commissioner commented that staff likes to work independently but that Commissioners need to hear the opposing viewpoints from staff. Commissioners remarked that they do not have contact with individual staff and that information is tightly controlled. Sometimes staff input may be quite technical and quantitative, without an understanding of the context of the hearing, suggested a Commissioner. One Commissioner remarked that a presentation from Alascom, set up in an effort to broaden external sources of information, provided more information "than we ever could have otherwise [gathered]."

Several staff remarked that before a hearing they do not always know the scope of the proceeding or what questions the Commissioners would like to have answered. Staff were concerned that Commissioners in some cases do not have a full understanding of the substantive information they need to make a decision and that they focus on administrative details instead. One staff member said it was disheartening to be named to brief a subject and have a Commissioner argue with the staff member from what s/he considered a superficial knowledge of the subject. Others said they believed the Commissioners rely more than they should on industry to set priorities and provide a context for their decisions. Another remarked that in their opinion Commissioners do not send information down to staff and do not know the extent of the demand they are placing on staff when they request information. However, both Commissioners and staff remarked on people at the Commission who are able because of exceptional ability and their positions in the organization to master a breadth of vital information and coordinate its use.

**Observation: Commissioners and the Executive Director need to work together to improve Commissioners' knowledge of substantive utility matters.**

Clearly, Commissioners need to have more information earlier about cases they will be deciding. But this is not a one-way street. It requires effort on the part of Commissioners as well as staff. In the past, commissions decided issues that were arcane but well-bounded. Today the issues are often strategic ones, but decisions still depend for their impact on complicated operational considerations. One way to help commissioner preparation on cases expected to come before them is for the Commissioners to prepare an "issues list" comprised of questions they would like answered and circulate it to staff well before a hearing. Staff might also provide Commissioners with "must read" documents, again well before an actual hearing, perhaps even before the circulation of the list of issues. Commissioners would read the documents and prepare their questions, so that they can learn what they need to know in each major case and generic proceeding.

The use of teams to create a coordinated staff viewpoint has been an efficient way to develop policy perspectives within staff and to avoid overwhelming the Commission with unnecessary analysis. In a time of increasing substantive complexity, however, there may well be greater need for presentation of conflicting and somewhat redundant data and analysis from multiple sources. In other words, it is possible to provide too much orchestration to the development of some staff positions and end up overly restricting Commissioners from access to the expertise and accumulated wisdom of staff. One way for the Executive Director and other technical staff to accomplish this might be to institute issue roundtables that include the participation of Commissioners. The use of teams among staff has done much for cross-fertilization of knowledge. With nonroutine problems, the use of roundtables, which could include industry participation as well, would broaden that team approach. Another means of enhancing understanding of current issues throughout the commission might be a series of tutorials. We caution, however, that these suggestions, if they prove of interest to the APUC, must be taken on in a structured, incremental progression, rather than all at once, so as not to impede tackling some of the other problems discussed in this report.

### PART III OVERALL CONCLUSIONS

There is much to be proud of at the APUC. Despite a heavy workload, it has, by all accounts, served the public interest. There is a fear, however, that the agency cannot continue to perform its important functions without real reform. The areas most in need of attention seem to be:

- Commissioner-staff and Commissioner-to-Commissioner relations, which includes issues of leadership and morale

- Timeliness

- The quality and speed of Commission orders

- The increase in consumer complaints, the likelihood that complaints will increase further, and the implications for the adequacy of current staffing levels.

- Electronic filing and management information systems.

The APUC has many competent and dedicated professionals. By focused application of their talents, the challenges facing it can surely be met.

## APPENDIX

### COMMENTS RECEIVED IN INTERVIEWS

#### OVERALL COMMISSION FUNCTIONING

*In some respects, not much has changed over time at the Commission. The upcoming "sunset" review of the Commission will be important. The current level of discontent with the Commission is higher than in the past over a variety of carriers. Some utilities seek help/relief from the Commission. There is a mix of adversarial and cooperative relationships with utilities. Stakeholders are not looking for radical change.*

*Despite the turmoil and recent loss of staff, staff is generally doing a good job of focusing on the task. The Commission environment is characterized by constant emergencies. The workload has increased dramatically (tripled or quadrupled). There are not enough resources. There is a risk that the workload will overwhelm Commission consideration of the big picture.*

*The Commission is full of good people. The staff are the strength of the Commission. Staff have the feeling that the work of the Commission is important. There is an us-versus-them attitude between Commissioners and staff. Commissioners are experienced. The funding source is stable.*

*The foundation is crumbling. There is some inclination to adopt the status quo.*

#### LEADERSHIP

*The Commissioners are experienced. Equally important, they have significant legislative experience. The chairman especially has access to the legislature. There is bipartisan legislative experience within the Commission itself.*

*It was divisive to have a dispute on timekeeping in public.*

*I don't think the [timekeeping dispute] was particularly debilitating. I have seen some hattles and some morale problems.*

*The staff considers it a distraction to have Commissioners who are absent.*

*An earlier attempt by the Governor to remove a Commissioner was in the press.*

*I've heard from industry that staff shows disrespect for Commissioners.*

*We have Commissioners who want to administer rather than do strategic planning and an Executive Director who does substantive stuff because that's where the vacuum is.*

*Each Commissioner has his own personality and brings some strength to the process.*

*It's hard to know what a problem is if you are only getting one Commissioner's opinion.*

*We're slow in production and do finger pointing, a common industry complaint.*

*We have good ability to work with industry. They don't have a difficult time getting a point across to us.*

*Some Commissioners are not as easy to get along with. Commissioners could be more supportive — treat people with courtesy.*

*Our major strength is a committed, knowledgeable staff and our major weakness is the Commissioners. They should show up for work. There is infighting. At hearings, they haven't read the filings, haven't read the staff memos with one exception.*

*Commissioners often come into a hearing with their minds made up.*

*The Commissioners don't have a sense of urgency. But there are cases where Commissioners get excited and involved. Then they make an effort.*

*People earning the high salaries are not accountable. The buck doesn't stop anywhere.*

*It's demoralizing to have staff come down with something to sign but nobody's in.*

*Commissioners have a total lack of appreciation for the work that has to be done. There is never a thank you from a Commissioner.*

*It's bad for morale to have lazy Commissioners.*

*All five of the Commissioners came with zero knowledge and aren't interested in working hard to learn their job.*

*Industry has fear of reprisals.*

*You can't make too much of dissatisfaction but I believe utility dissatisfaction level is considerably higher than when they had extremely knowledgeable and hardworking Commissioners.*

*There is a double standard for Commissioners which is wearing on staff. Former Commissioners read stuff.*

*The current Commissioners are not particularly technically adept. One of them is conscientious. They even do things that give worse impressions than they have to — cable TV in their offices.*

*There are differences of opinion partly because we have Commissioners that aren't thinking alike.*

*We never had a sense of where we were going. This is endemic to a regulatory commission.*

*Having hearings at 8:30 was impossible.*

*Friends in industry call and say "what's happening." They feel they're not going to be heard, that there are biases. Utilities see the place in disarray, ineffective, dysfunctional.*

*We don't have the feeling we have the support of Commissioners. It didn't used to be this way.*

*Leadership could be better but I am afraid it never will be. It could be a lot worse than we have. I'm happier now than in the past.*

## **MORALE**

*Staff comes to work because they feel they're doing something worthwhile.*

*The people [here] are dedicated, knowledgeable and good team players.*

*There are lots of hard working people. People are one of our assets.*

*Staff are hardworking, have good experience, are committed — excellent.*

*There has been some loss of morale — have and have nots on promotions.*

*The APUC staff is a real small group. Everybody has input and is listened to.*

*Morale is okay, but there is some frustration. Disputes among Commissioners [are one cause]. On the staff side there is frustration over workload and interruptions that impede scheduling. Commissioners have time lines that don't take into account the individual's workload.*

*[Commenting on morale]: Commissioners need to have an idea of what they are asking for.*

*Everybody is overworked and puts in extra hours. We're a close group — you can get assistance from other sections.*

*There is high stress.*

*Everybody is supportive. [Morale varies] section by section.*

*This is a sick agency. There is a distinct minority of dedicated, hard working people and they're worked to the bone. A distinct minority of people have a feeling of serving the public interest.*

*We have extremely high stress and tension levels, which is probably contributing to attrition. We have the lowest morale of any commission.*

*Low morale is leading to attrition.*

*There is too much focus on negatives and not enough on fixing things.*

*The trend is in a bad direction.*

*In general, employees are not treated well.*

*We're in meltdown.*

*I believe in public service — serving every consumer in the state.*

*The Telecommunications Act hasn't helped morale. But overall there's no inspiration to go the extra mile.*

*Trend is downhill quick. Philosophical view is that we will probably settle somewhere but can be in quite a bit of danger while we're going down.*

*Despite all the turmoil, staff is doing a good job of keeping their nose to the grindstone.*

*A lot of people with bad morale have left. Three to five years ago morale was worse.*

*Things have changed so much in the last six months that I am optimistic.*

## COMMISSION STRUCTURE

*The Common Carrier group is the most open to calling on other sections and serving other sections.*

*The location of APUC in Department of Commerce and Economic Development allows good communications with allied functions. The Executive Director has bi-weekly meetings with representatives of related functions in the Department.*

*Staff feels they used to get more support from assistant Attorneys General. It would be helpful if the A.G.s sat down with staff to say "this is the strategy." Should attorneys be team leaders?*

*There is some feeling by others in the Commission that common carrier people are the "stars."*

*The hybrid structure works well as an allocation of resources. Resources are where the tasks are. If organized by utility sector, expertise would be tailored by sector. Structure gives flexibility because you can form teams.*

*It is difficult to have partially exempt staff who don't work for the Commission. The Chairman can't supervise them.*

*Telecommunications is the fair-haired division. They are unaccountable for their work or their errors.*

*The computer support function may take up too much of the Engineering Section's time, and the engineering function may suffer.*

*It's not the structure that's the problem. It's the people.*

*It would help accountability to reorganize.*

*The Chairman doesn't have a clear line of authority on administrative matters. Consensus is a poor way to manage a work force.*

*The Commission structure is not efficient. There is a high concentration of bosses to Indians. Cases mix across sectoral boundaries [implying that there are too many sections].*

*If the Commission were restructured, it would cause apprehension and affect morale — not that that's so bad.*

*The Executive Director is the person with veto power [on cases] but it is usually one lead staff person who develops a position and tries to sell it to the group.*

*There has always been a question of how much authority the Chairman has. There is minimal management at the Commissioner level which is sometimes good and sometimes not.*

## **STAFFING**

*The process does not support Commissioners.*

*Commissioners can't get staff to devote time to their projects. Commissioners complain of a lack of information being received from staff.*

*Staff are represented by attorneys assigned by the Office of the Attorney General. The Commission can't contract for additional assistance.*

*The same attorney who argued the staff case may have to defend the Commission on appeal even if the Commission disagreed with staff.*

*Though the attorneys are very busy and not always timely, they come through in a crunch. There is not enough legal support. The Commissioners should have their own legal counsel.*

*The workload for attorneys may not be balanced between representing staff and filling an advisory role, but there should be a split of the two attorneys on a case-by-case basis.*

*The legal advice received is sound. It would be helpful to have more attorney input in case development. In the past, more support from attorneys was received.*

## MANAGEMENT INFORMATION SYSTEMS

*I sometimes feel that procedures are crumbling here.*

*We have management by emergencies. It feels like we're under fire all the time.*

*We should get more efficiency rather than hiring more people.*

*We're not getting basic management information [and this harms accountability and performance evaluation].*

*We're in meltdown. [The problem] starts with records and finance, one of the most critical parts of the organization. We don't get filings.*

*Computers are good [up to date in quality and speed] and a lot is done on them. It would be nice to have electronic filings. There should be two full-time computer support staff.*

*There is duplication of entering information into computers. We are using computers as typewriters. We need an integrated information system. We are not at the request for proposal stage on this. It is difficult to dedicate resources to solving this problem.*

*The mail is slow getting from the fourth floor to the third floor. Urgent documents do not get downstairs fast enough.*

*It's slow to get information and documents electronically available.*

*Rates and Finance doesn't get mail downstairs or filings downstairs in a timely manner. We lose several days.*

*We have more computer tools but don't have someone to help use them.*

*We need a data input person. We need to create calendars so people don't miss deadlines. We need to go to electronic filings.*

*We have fairly reasonable computer support, though software is a problem and we need to replace [the data processing] person who left.*

## COMMISSION PROCESS

*Procedural time lines are lacking. Current statute allows the Commission wide discretion to set deadlines. Some pipeline cases have been open since 1986. Cases are not being handled promptly. Statutory deadlines should be imposed. Time delays are the result of bad process, not a lack of resources.*

*The Commission isn't performing well substantively, procedurally, or timely. We have several checkoff lists [to manage processes] agency wide. Procedural tracking could be done better than it is. When a docket or tariff reaches a certain point it is sent to the third floor for further processing and it is difficult to know what's going on. Stuff gets lost. A month later it may show up. We have lots of internal procedures that aren't written down anywhere and we don't know when they change. A procedures manual would help. There is good industry support for getting the Commission the resources it needs to process cases quickly. Increased caseload is stretching resources and we are getting further behind. Deadlines are not being met. Utilities expect faster decisions under a competitive environment. Should statutory maximums for decisions be made tighter? To fix slowness we need to see where the delays are more precisely. Statutory deadlines are usually met.*

*Commissioners find it hard to keep track of filings, schedule, and substance as well.*

*It takes longer if you try to take shortcuts. We should do proper motions in the first place [talking about due process]. [There are] no priorities. [It takes] lots of work to coordinate technical staff. Prioritizing is a weakness. The magnitude of the work is a problem and the feeling that everything has the same value. How do you address backlogs? How do you meet the public interest and still simplify workflow?*

*Need a standard reporting process on the status of projects.*

*The Commission is improving on production and efficiency. There is growing participation by Commissioners in making sure once a decision has been made it goes out the door. Staff for the most part does their work on a timely basis. We now have more people who write orders so that's improving. Paralegals write them. S' 4 writes lots of orders, especially engineering and finance staff. The adjudication phase also takes time.*

*Adjudication packets are still being put together at the last minute. Often orders are approved but sit within the Commission. They have to be signed by all five Commissioners [but sit on their desks]. The Commission process is slower than before because Commissioners don't have a sense of urgency. Some issues get priority and the Commission does see to getting them done. I can get an order drafted within days and it can sit for three months on a Commissioner's desk. Circulation of an order can take months. Staff is always late.*

*Commissioners are not clear about their expectations of advisors; sometimes an active role is expected; sometimes it is not. More three-Commissioner panels could be employed. Procedural orders are too detailed. There is no need for multiple pre-hearing conferences. The one-page order for procedural issues is helpful.*

*There are not enough staff to have full staff separation in important cases. The Executive Director splits staff to provide advantage to the advocacy side. Negotiation between the Executive Director and the Commissioner managing the docket would be helpful. There is a lack of staff responsiveness to Commission desires. The first priority of staff is to provide effective advocacy; effective advisory support is secondary. The lack of a consumers' counsel means that staff must protect the public interest. Previously, staff didn't have an advisory role and were wholly advocacy. Replacement of advocacy staff or addition of advocacy staff in the middle of a process requires due-process notification. In complex cases, one side might get shortchanged and might need outside resources. The role of staff even in an advocacy role is to round out the record, not to "win" the case; it is hard for staff to understand that. Staff do not respect the process or the Commissioners. Commissioners need to hear opposing viewpoints.*

*The assignment of a lead staff person for case preparation is sometimes ambiguous and sometimes shifts. Much case work interaction is informal. How the primary staff person assigns duties to the other staff is unclear.*

*"Splitting the staff" is a major concern. Because of small staff size, splitting creates frustration among the staff. Commissioners often regard staff in an advocacy role as "the enemy." The paralegals have not helped the process, and their skills have not been fully employed by Commissioners. The paralegal experiment was a "disaster." Supplementing the advocacy staff in mid-stream has been a problem.*

*There are frustrations among those involved with the APUC about the time required to complete cases. There is also some perception that the Commission values form over substance. Schedules agreed to in pre-hearing conferences are not held to. Delays are caused by hidden agendas, lack of case management, lack of competence, and inadvertent delay. The delays are caused by lack of a sense of urgency on the part of Commissioners. Documents can take months to circulate among Commissioners. The process of producing orders is getting better. The increased caseload has outstripped the increase in resources; the Commission is falling further behind. Cases have increased significantly. The staff side is generally timely; the fault lies on the Commissioner side.*

*Some cases are procedurally defective when brought to the Commission. The Chairman assigns Commissioners to cases as Docket Managers. The quality of*

*pre-filed testimony and exhibits is "scary." There is some question as to who sets schedules. Some Commissioner expectations of timing are not communicated well. The Commissioner may spend too much time attempting to make the perfect case and opinion; they may need to relax in the interest of speed. The Commissioner needs to find the right balance between due process and speed.*

*The Commission has a fairly good record of not being overturned. In some cases, decisions should have been appealed but weren't, perhaps because parties might feel that the Commission might have been vindictive. There seems to be some unevenness in the application of due process — sometimes overly rigid.*

*There has been little use of alternative methods of dispute resolution (ADR). The lack of skilled staff and the governing statutes prohibit better use of ADR. Stipulations are sometimes reached after dockets are filed. In a fairly high percentage of cases, there is some stipulation. Sometimes Commissioners want a detailed overview of stipulations. Staff might be too disputative to serve as mediators.*

*The Executive Director leads the advocacy team and does a final review of the staff case. The Docket Manager is the day-to-day leader. All voices are heard in case development. Sometimes the Executive Director overrules staff.*

## **EXTERNAL RELATIONS**

*The legislative experience of Commissioners is an asset. The Legislature has been responsive to the difference between the APUC and other agencies. The Commission is frequently asked for advice by the Legislature. The Legislature regards the Commission as a resource. The Commission has a good relationship with the Legislature. The Commission attempts to avoid lobbying. The relationship with the Legislature has been reactive except in limited situations.*

*The environment is more political than in the past. There is now more interaction with the Governor. Commission decisions are rarely overturned. There is now more contact with the public, which is more knowledgeable than before.*

*Commissioners have limited contacts with external stakeholders due to lack of time. Overall, external relations are good. Public contact is increasing and the public is now more knowledgeable. The public doesn't understand the Commission process.*

*Some regulated utilities might be afraid to be direct with the Commission for fear of reprisals. They are definitely frustrated by the lack of timeliness and the concern with form over substance.*

## CONSUMER PROTECTION

*The Consumer Protection section is working well.*

*I'm totally satisfied with the job Consumer Protection does. I see no problems in consumer affairs [Consumer Protection]. [As a technical staff person] I get involved in lots of the complaints.*

*The state does not have a consumer protection agency. Consumer protection needs to be beefed up. It should be at the forefront of what we do.*

*There has been a dramatic increase in complaints in telecommunications. We now have three competitors in Anchorage.*

*The number of complaints has doubled and there are only two intake people. The section cannot do administrative stuff [because the complaint handling takes all the time]. The section was promised a half time clerk but received a one-quarter [-time clerk] instead. Disposition of a complaint takes up to six weeks. It's taking longer because complaints are becoming more complicated. Telecommunications is the majority of the complaints.*

*There are not enough resources and [there is] high stress. The Consumer [Protection] section should have enough resources to do what other commissions are doing in this area.*

*They [Consumer Protection section] keep to themselves. They get a lot of work. Complaints have risen. They do call on me [a technical staff person] for assistance, such as drafting letters. Sometimes (but rarely) I talk to consumers.*

*There is not enough community outreach. I would like the Consumer Protection section to do more.*

*A Consumer [Protection] section representative does do some outreach — visiting churches and senior groups.*

*The amount of time it takes the Commission to decide issues harms [the] Consumer Protection [section]. Often the Commission has to be defended for delays. Consumers may think that information is being withheld [when in fact there has not been a decision].*

*Commissioners should not promise results from the Consumer Protection section. Often the issues they refer are not even jurisdictional to the Commission.*

*The Consumer [Protection] section reports to the Commission once a month in a public meeting.*

*The Consumer [Protection] section does not prepare literature on the Commission.*

*The Commission used to be more consumer conscious. As the state becomes more deregulated it will become more important to consider consumers.*

*The Consumer [Protection] section has cooperative relationships with larger utilities [for complaint resolution].*

*The Consumer Protection section is starting to get utility-to-utility complaints, or a utility filing complaints on behalf of customers of another utility. These are now being treated as informal complaints but are typically complex issues. The APUC wants to [handle a complaint of this sort] quicker as an informal complaint but may have to bump them up to formal complaint status.*

*Consumer complaint processing is a slow process. It would be good to shorten the time period for a utility to respond to a complaint.*

## **INFORMATION FLOWS/COMMUNICATIONS**

*The Commission arranged a presentation from Alascom in an effort to broaden external sources of information. This was successful — more information than we ever could have otherwise.*

*Communications among Commissioners are good. The Chairman is very informative.*

*Communications are fairly good: this is a small community. But sometimes the Commission has questions for staff that come out at a hearing but would be nice to know about ahead of time. It would be good to know what information they're seeking. The scope of a proceeding and Commissioner questions are sometimes not clear. I'm not sure how you'd do this effectively. The staff is less politically aware [than Commissioners] and technical staff may respond to Commissioner concerns in numbers, without input in the context of a political situation.*

*There probably is some isolation for Commissioners.*

*We have problems with information flow. Every Commissioner who is not the Chair complains they have no idea what's going on.*

*Staff likes to work independently but Commissioners need to hear opposing viewpoints in staff. We don't have contact with individual [staff]. Information is tightly controlled.*

*External communications are limited for the Commission. The Commissioners keep getting down to details and don't have time to understand the substantive issues.*

*There is room for improvement on vertical communications. We are an hourglass with the Executive Director in the neck.*

*It's not always clear what Commissioners want. We have Commissioners who want to administer and an Executive Director who does substantive stuff because that's where the vacuum is.*

*Internal communications are poor.*

*Lack of communication [is a problem]. Lateral communications are better than vertical but lateral aren't great. If you're not working on an order it doesn't get to you. We should have electronic means to see a brief summary of an order [because there may be one related to one you are working on].*

*These Commissioners rely a lot on industry. They get a sense of what's important and what industry wants. Often the Commissioners come in with their minds made up. In adjudicatory hearings it's even more obvious.*

*Out of necessity, the Administrative division has become very close.*

*Commissioners do not respond to their e-mail.*

*We have differences of opinion partly because we have Commissioners that aren't thinking alike [aren't evenly prepared on substantive matters].*

*Communications are laterally good and vertically relatively cordial.*

*The Commission considers staff the enemy because "you're staff" or because "they know more than we do."*

*It is disheartening when you are named to brief the subject and they [the Commissioners] argue with you with no information.*

*There is not always clear direction from Commissioners about what they want [from staff advisers]. Since you don't know what they want, it is hard to prepare.*

*This place is a big gossip house. But you don't get communications on things you need to know and aren't told. Commissioners' information doesn't flow down. They don't know what demands they're placing on us.*

# STATE OF ALASKA

## DEPARTMENT OF LAW

### OFFICE OF THE ATTORNEY GENERAL

May 3, 1999

TONY KNOWLES, GOVERNOR

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VIA FACSIMILE & U.S. MAIL

The Honorable Norman Rokeberg  
Alaska State Legislature  
House of Representatives  
Alaska State Capitol, Room 24  
Juneau, Alaska 99801

MAY 11 5 1999

Re: Requested amendment to  
House Bill 183(L&C)

Dear Rep. Rokeberg:

Attached you will find, as requested, a proposed amendment that will allow the Alaska Public Utilities Commission to assign matters to a hearing officer or arbitrator for a proposed decision in the same manner provided by AS 44.62.500 of the Administrative Procedures Act.

One of the purposes of HB 183 is to allow the assignment of hearing officers and arbitrators in order to get more efficiency in deciding matters before the Commission. The Alaska Administrative Procedures Act allows an agency to assign a hearing officer to hear a case alone and to submit a proposed decision to the agency. The agency may adopt such a proposed decision without a review of entire record or argument.

The current statute in AS 42.05.171, which HB 183 (L & C) amends, has a sentence in it that provides, "A commissioner who has not heard or read the testimony, including argument, may not participate in making a decision of the commission." This arguably does not allow commissioners to approve a proposed decision of a hearing officer or arbitrator if they have not read the transcript or sat in on the hearing.

The APA allows an approval of a proposed decision or reduction in a penalty without a review of the record and requires such a review only if the agency decides to further modify the decision. The attached amendment adapts that version of the APA for APUC hearings so that in appropriate cases the commissioners can adopt a proposed decision of a hearing officer or arbitrator without reviewing the entire record. The suggested amendment gives the chair the power to assign cases as appropriate, the assigned commissioners retain the power to approve or modify the decision of hearing officers and arbitrators, and requires a review of the record or hearing of the evidence and argument only when the proposed decision is modified in the manner of the APA. The word "decision" has been used to include an order or arbitrator's award. Under this amendment, the chair would have to use judgment in assigning appropriate cases to an arbitrator. Not all cases are appropriate for an arbitrator.

If any more drafting or information is necessary, please contact me.

Very truly yours,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:



Ron Zobel  
Assistant Attorney General

Enclosure:

AS 42. Of 171 is amended to read:

Sec. 42.05.171 **Formal hearing.** (a) A formal hearing that the commission has the power to hold may be held by or before three or more commissioners, a hearing officer, an administrative law judge, or arbitrator as assigned [designated for the purpose] by the chair of the commission. The testimony and evidence in a formal hearing may be taken by the commissioners, [by the] hearing officer, [by the] administrative law judge, or arbitrator to whom the hearing has been assigned. [A commissioner who has not heard or read the testimony, including the argument, may not participate in making a decision of the commission.] In determining the place of a hearing, the commission shall give preference to holding the hearing at a place most convenient for those interested in the subject of the hearing.

(b) If a hearing is held before a hearing officer, an administrative law judge, or an arbitrator alone, the hearing office, administrative law judge, or arbitrator shall prepare a proposed decision in a form that may be adopted by the commissioners assigned. A copy of the decision shall be filed in the record of the proceedings and served on each party. The commissioners assigned may adopt the proposed decision in its entirety, or may reduce a proposed penalty and adopt the balance of the decision.

(c) If the proposed decision is not adopted as provided in (b) of this section, the commissioners assigned may decide the case upon the record, with or without taking additional evidence or argument, or may remand the case to the same or another hearing officer or arbitrator to take additional evidence. If the case is so remanded, the hearing officer or arbitrator shall prepare a proposed decision as provided in (b) of this section upon the additional evidence and the record of the earlier hearing. A commissioner who has not heard or read the testimony and argument may not participate in making a decision under this subsection.

# Copper Basin Sanitation Service Company



PO BOX 88 • GLENNALLEN, AK • 99588-0088  
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April 29, 1999

State of Alaska  
Legislature  
House Labor & Commerce Committee  
Rep. Rokeberg, Chair

APR 29 1999

REF: HB 183  
Garbage Service Regulation

Dear Chairman Rokeberg,

Garbage service across the state **NEEDS** to be regulated whether by A.P.U.C. or another regulatory body.

Refuse collection is tied to public health no matter where you live. Garbage will endanger the health of the public if it is not promptly and properly disposed. This is a fact of life.

There is presently in the State of Alaska, a business that is capable of taking over ANY garbage service area it wants. I am not saying it wants any particular area, but IF it wants AND garbage service is deregulated, it CAN take any service area. Waste Management Inc. is a strong business and owns or controls garbage service companies and sanitary landfills across the nation. They have recently moved into Alaska and have purchased a number of garbage collection businesses and acquired control of landfills in most of the heavily populated areas. (Street rumor has it, they now own the garbage service companies that service over 60% of the populace of Alaska.) They are obviously good business people or they would not have such a strong financial footing necessary to purchase control of so many companies in such a short period of time.

So, if they are such good business people, what's my problem??? A big company has the financial power to take a loss in one area and yet make a profit on the company's bottom line. When a large company moves into an area where there is

competition by a smaller company, all they have to do is provide the service at a lower cost to the public and the smaller company will be forced out of business. After the smaller company is forced out, the rates will rise and the no-profit and low-profit areas will be dropped.

Alaska has a lot of areas that can only be served by non-profit entities (village councils, volunteer groups, etc.), these areas are remote and do not have enough money to support a garbage service business. There are areas of the state that have lots of people and lots of service businesses (Anchorage, Fairbanks, Kenai, etc.), these areas have enough money to support multiple garbage service companies, IF no one company forces all others out. And last, but not least, there are the areas with highway connections that have enough population to support one business only (Copper Basin, Delta Jct., Tok, Parks Highway, etc.). These areas frequently include very rural areas that produce very little profit to the business. Because they are connected by the highway system, the high volume, high dollar areas could be cherry picked leaving the low/no profit areas to wallow in their trash.

Unorganized borough areas of the state are particularly at risk because the only regulation comes from the State. The areas that have another layer of government (city, borough or both) do have some protection because they could regulate in the State's place.

Deregulation of garbage collection and disposal *will* result in areas of the state no longer receiving any garbage service and also encourage an extremely large monopoly on the rest of the state.

Please do NOT deregulate garbage service in the State of Alaska. Please continue to make the State of Alaska responsible for the regulation of garbage collection and disposal services.

Sincerely,

COPPER BASIN SANITATION SERVICE COMPANY



Sharon Daniel  
Business Administrator

Please deliver this fax to:

**State House of Representatives  
Labor and Commerce Committee**

Page 1 of 4  
April 23, 1999

Testimony from April 23, 1999 committee meeting  
teleconference on HB 183 as requested by  
Representative Brice.



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APR 23 1999

TESTIMONY - HB 183  
House of Representatives - Labor & Commerce Committee  

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by Judy Warwick 4/23/99

GCI has four recommended amendments to HB 183.

1) The first amendment addresses commission candidate qualifications. Currently the requirements, other than for the 2 consumer seats are: one in the field of law, one an engineer, and one from the fields of finance, business administration or accounting.

Due to the changing scope of utilities regulation, and the transition to competitive provision of services, rather than have one seat for each of the three specific professions, we recommend those three seats being eligible to be filled from any of the already specified professions in addition to professionals in the public policy field and economics field. Adding these two professions to the mix of qualifications would provide expanded expertise and a larger pool of appropriately qualified individuals.

2) The second amendment requires setting dates and adhering to them. For the benefit of the consumers of this state as well as the utilities, this amendment would clearly state the statutory obligation of the commission to schedule matters before it for timely resolution and to render decisions in a timely manner.

3) The third recommendation, amending AS 42.05.151 subsection (b) addressing arbitration, recognizes delegation of mediation and arbitration responsibilities under the 1996 Telecommunications Act, and the strong Alaska state policy in favor of Alternate Dispute Resolution techniques. Legislative guidance as to the general applicability of Alaska's Uniform Arbitration Act is expressed. GCI favors prompt procedural decisions to guide parties before the commission.

4) The final suggested amendment to the formal hearings section of Title 42, including an arbitrator as an additional option, again recognizes delegation of arbitration responsibilities under the 1996 Telecommunications Act and the strong state policy in favor of Alternate Dispute Resolution techniques in general.

NOTE: Specific amendments suggestions on addendum to testimony

ADDENDUM TO TESTIMONY  
HB 183 - Judy Warwick 4/23/99

**Suggested amendments to HB 183**

- 1) AS 42.05.040 - Qualifications of members, is amended to read:

Members shall be qualified as follows: ~~three [ONE]~~ members shall be (A) graduates of an accredited school of law; ONE MEMBER SHALL BE A GRADUATE OF) or an accredited university with a major in engineering; ONE MEMBER SHALL BE A GRADUATE OF AN ACCREDITED UNIVERSITY WITH A MAJOR IN) finance, accounting, economics, public policy, or business administration; and two members shall be consumers.

- 2) AS 42.05.141 - General powers and duties of the commission, is amended by the addition of a subsection (d) which will read:

(d) On the filing of a petition, application, or complaint concerning a matter within the jurisdiction of the commission under this chapter, the commission shall promptly fix a date for hearing. The hearing shall be held without undue delay after the filing of the petition, application, or complaint. In no event shall the date for hearing be scheduled for a date exceeding five months in the future, unless the commission extends this period for good cause. The commission shall enter its order within 30 days after the hearing.

- 3) AS 42.05.151 - Regulations and hearing procedures, subsection (b), is amended to read:

(b) The commission shall adopt regulations governing practice and procedure, consistent with due process of law, including the conduct of formal and informal investigations, pre-hearing conferences, hearings, mediations, arbitrations and proceedings, and the handling of procedural motions by a single commissioner. The commission, or an assigned commissioner, shall enter an order on procedural motions within 10 days after the close of the applicable briefing period. Technical rules of evidence need not apply to investigations, pre-hearing conferences, hearings, and proceedings before the commission. The commission shall provide for representation by out-of-state attorneys substantially in accordance with Rule 81, Alaska Rules of Civil Procedure. To the maximum extent possible, the commission shall adopt arbitration regulations under this subsection that are substantially equivalent to the procedures set out in the Uniform Arbitration Act, A.S. 09.43.010-180.

4) AS 42.05.171 - Formal hearings., is amended to read:

Pg 2 Addendum to Testimony - HB 183  
Judy Warwick 4/23/99

A formal hearing that the commission has power to hold may be held by or before three or more commissioners, a hearing officer, [OR] an administrative law judge, or, in appropriate cases, an arbitrator designated for the purpose by the commission. The testimony and evidence in a formal hearing may be taken by the commissioners, by the hearing officer, ~~[or]~~ by the administrative law judge, or arbitrator to whom the hearing has been assigned. A commissioner who has not heard or read the testimony, including the argument, may not participate in making a decision of the commission. In determining the place of a hearing the commission shall give preference to holding the hearing at a place most convenient for those interested in the subject of the hearing.

# Audit Report

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DEPARTMENT OF COMMERCE AND  
ECONOMIC DEVELOPMENT  
ALASKA PUBLIC UTILITIES COMMISSION

December 23, 1998

---



Audit Control Number:

08-1459-99

Division of Legislative Audit  
P.O. Box 113300, Juneau, Alaska 99811-3300

# LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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## DIVISION OF LEGISLATIVE AUDIT

The Legislative Budget and Audit Committee is a permanent interim committee of the Alaska Legislature. The committee is made up of five senators and five representatives, with one alternate from each legislative chamber. The chairmanship of the committee alternates between the two chambers every legislature.

The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$5 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

As a guide to all their work, the Division of Legislative Audit complies with generally accepted auditing standards established by the American Institute of Certified Public Accountants and with government auditing standards established by the U.S. General Accounting Office.

Audits are performed at the direction of the Legislative Budget and Audit Committee. Individual legislators or committees can submit requests for audits of specific programs or agencies to the committee for consideration. Copies of all completed audits are available from the Division of Legislative Audit's offices in either Juneau, Anchorage, or our web site <http://www.legis.state.ak.us/legaud/web/default.htm>.

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# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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December 23, 1998

Members of the Legislative Budget  
and Audit Committee:

In accordance with the provisions of Titles 24 and 44 of the Alaska Statutes, the attached report is submitted for your review.

DEPARTMENT OF COMMERCE AND  
ECONOMIC DEVELOPMENT  
ALASKA PUBLIC UTILITIES COMMISSION

December 23, 1998

Audit Control Number

08-1459-99

This review examined the activities of the Alaska Public Utilities Commission to determine if there is a demonstrated public need for its continued existence and if the commission has been operating in an efficient and effective manner.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section. Audit results may be found in the Report Conclusions, Findings and Recommendations, and in the Analysis of Public Need sections of this report.

A handwritten signature in cursive script that reads "Pat Davidson".

Pat Davidson, CPA  
Legislative Auditor

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## OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Titles 24 and 44 of the Alaska Statutes, we have examined the activities of the Alaska Public Utilities Commission (hereinafter referred to as APUC or the commission) to determine if there is a demonstrated public need for its continued existence and if the commission has operated in an efficient and effective manner.

Legislative intent requires consideration of this report during the legislative oversight hearings to determine whether the commission should be extended. The law now specifies that the commission will terminate June 30, 1999 and have one year from that date to conclude its affairs.

Discussion of the objectives, scope, and methodology of our review follows.

### Objectives

APUC was created to protect and promote the public interest by certifying and economically regulating qualified public utilities and pipeline carriers. It oversees the availability, affordability, and quality of utility services throughout Alaska. The primary objective of this audit was to determine whether the public need for this commission continues to exist.

A secondary objective was to review the commission's major functions, such as certification of utilities, tariff actions, and investigations and complaint follow-up for effectiveness in meeting the public need. A third objective was to evaluate these functions in particular and the commission's operations in general, for economy and efficiency of operation.

Our analysis of public need, findings and recommendations and our conclusions have been summarized in the applicable sections of this report.

### Scope and Methodology

Alaska Statute 44.66.050 requires the factors outlined in the Analysis of Public Need section of this report be evaluated as part of this audit in order to determine need for the commission's continued existence. To address these areas, we analyzed the need for regulation of the various industries; considered the regulatory status and trends nationwide; interviewed commissioners and staff members; reviewed applicable statutes and regulations; contacted the acting ombudsman, attorney general, Alaska Human Rights Commission, and Equal Employment Opportunity offices; analyzed consumer complaints against utilities filed with the commission; and reviewed decisions made by the commission.

The effectiveness and efficiency of APUC was addressed through the above procedures, by requesting input from a random sample of 43 of the 127 currently regulated utilities, and by reviewing individual files.

Our review of decisions, complaints, tariff actions, hearings, investigations and certifications was performed primarily on a sample of these items drawn from FY 98 activities. These were selected on a judgmental basis in order to allow us to focus on certain activities and industries.

## ORGANIZATION AND FUNCTION

Public utility regulation in Alaska has evolved substantially since the creation of the Public Services Commission (PSC) in 1959. That three-member body had jurisdiction over electric power, heat, water, gas, oil or other petroleum products (except by pipeline), telephone or telegraph communications, and community sewer services. In 1960, PSC gained responsibility for transportation utilities which it regulated until the creation of the Alaska Transportation Commission in 1966.

PSC was replaced by a three-member Alaska Public Utilities Commission in 1970. Regulated industries included: electric; telecommunications; water; steam; sewer; gas and petroleum when no competition existed. A 1973 amendment added garbage, refuse, trash and other waste to the list. Amendments passed in 1980 provided exemptions from economic regulation for cable television services and other utilities with low annual gross revenues as well as establishing a provision allowing economic deregulation by consumer vote for certain utility groups. With abolition of the Alaska Pipeline Commission in 1981, jurisdiction over pipelines passed to APUC.

In addition to jurisdictional changes, the composition of APUC also changed. Alaska Statute 42.05.040 originally required one member to be a law school graduate, one to be a university graduate with a major in engineering, and one to be a university graduate with a major in finance, accounting or business administration. Two additional positions were added to the commission in 1975 for which no specific qualifications were required. All members are appointed by the governor and confirmed by the legislature in joint session for six-year terms.

Under AS 42.05 and 42.06, APUC is charged with the responsibility to ensure the furnishing of adequate service to all public utility patrons, without discrimination and at reasonable rates consistent with the interests of both the public and the utility. Statutory provisions direct the commission, after determining an applicant is fit, willing, and able to provide utility service, to issue that applicant a Certificate of Public Convenience and Necessity. After issuance of this certificate, the commission then regulates the rates, classifications, rules, regulations, practices, services, and

### **Alaska Public Utilities Commission Members**

Sam Cotten, Chairman  
Finance seat  
Term expires March 1999

Alyce Hanley  
Consumer seat  
Term expires March 2000

Dwight Ormquist  
Engineering seat  
Term expires March 2000<sup>1</sup>

Tim Cook  
Legal seat  
Term expires March 2001

James Posey  
Consumer seat  
Term expires March 2002

<sup>1</sup> Chapter 1, SLA 95 revised the engineering seat term to four years for the next appointment only. This change was required to stagger all seat terms so that no two seats expire in the same year. After the one-time adjustment from a six-year to a four-year term, the seat will return to a six-year term as established in AS 42.05.030(a).

facilities of a public utility, unless it is exempted or deregulated. The commission has the authority to adopt regulations and to hold formal, quasi-judicial hearings to accomplish these purposes.

The staff of APUC is divided into the six major functions of administration, engineering, communication carriers, consumer protection, finance, and tariff. In total, APUC employs 40 people with an operating budget for FY 99 of \$4.4 million. A brief description of the services provided by these functions follow.

- Administration. An executive director, hired by the commission, is responsible for directing all staff functions and acts as a liaison between staff and commissioners and between the commission and the legislature. The executive director is responsible for records and document management, fiscal and personnel administration, and budget preparation. The director is assisted in these duties by an administrative assistant, document processing personnel, and other clerical support staff.
- Engineering. This section is responsible for the investigation of utility procedures and practices affecting quality of service. It also reviews legal descriptions for service areas, plans for plant expansion, and plant-in-service and depreciation schedules. These evaluations are presented in proceedings before the commission.
- Communication Carrier. This section was established to develop, recommend, and administer policies and programs with respect to the regulation of rates, services, accounting, and facilities of communications carriers within the State involving the use of wire, cables, radio and space satellites.
- Consumer Protection. Major responsibilities for this section include investigation and resolution of consumer complaints, public relations, and information dissemination.
- Finance. Activities carried out by this section include the examination, analysis, and evaluation of financial statements submitted for rate cases, audits of financial records of utilities, examination of financial information comprising historical operating year and pro forma adjustments, and the presentation of these analyses at proceedings before the commission.
- Tariff. This section examines, analyzes, and investigates tariff filings and presents recommendations to the commission at biweekly tariff action meetings. Administrative functions include organizing those meetings, ensuring that public notice requirements on tariff filings are met, and maintaining current master tariffs for all utilities.

## REPORT CONCLUSIONS

While the recommendations included in this report may improve its efficiency and effectiveness, in our opinion, the Alaska Public Utilities Commission operates in a reasonably effective and efficient manner and should continue to regulate public utilities and pipelines. We believe that the public interest is being served by requiring public utilities and pipelines to be certificated and economically regulated by the commission. The regulatory process stabilizes the availability of utility services. Economic regulation by the commission ensures that, despite the absence of competition, utilities provide adequate service at reasonable rates.

We recommend that Alaska Statute 44.66.010(a)(4) be amended to extend the life of the Alaska Public Utilities Commission to June 30, 2003.

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## FINDINGS AND RECOMMENDATIONS

### Status of Prior Audit Recommendations

In our previous sunset audit,<sup>2</sup> we made five recommendations. All have been partially or fully implemented, except for those on Regulatory Cost Charge (RCC) allocations and employee timekeeping. These remaining issues are discussed again in this audit as part of Recommendation No. 1.

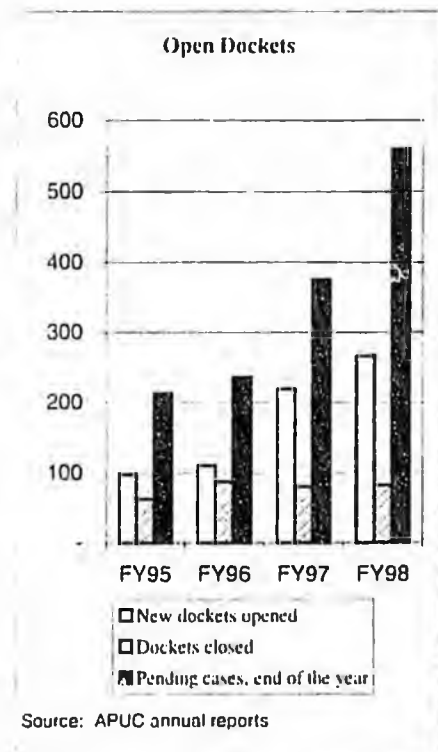
### Recommendation No. 1

The commission should develop an integrated management information system.

The commission does not have ready access to the information which would enhance its ability to efficiently run its operation. An integrated database system could provide search and reporting routines for electronic filings, document tracking, staff assignments, process timelines, employee timekeeping, cost tracking, and cost and time budgeting. While the commission does function with the information it currently has, we believe the rapidly rising caseload and accompanying backlog requires the management function to be more efficient. It will enhance the Alaska Public Utilities Commission's (APUC) ability to prioritize, plan, schedule, and monitor its efforts.

The commission's workload has increased tremendously over the years. The graph illustrates these changes. Much of this increase is attributable to the Telecommunications Act of 1996. As such, we expect this aspect of the commission's workload to eventually stabilize, rather than continuing the apparent trend. This graph illustrates that new filings and the backlog far exceed the commission's current capacity. Before considering whether to request additional staff, we strongly urge APUC to develop a management information system to make its processes as efficient as possible.

As part of our audit, we obtained input from 43 of APUC's regulated utilities. Many of the respondents were concerned

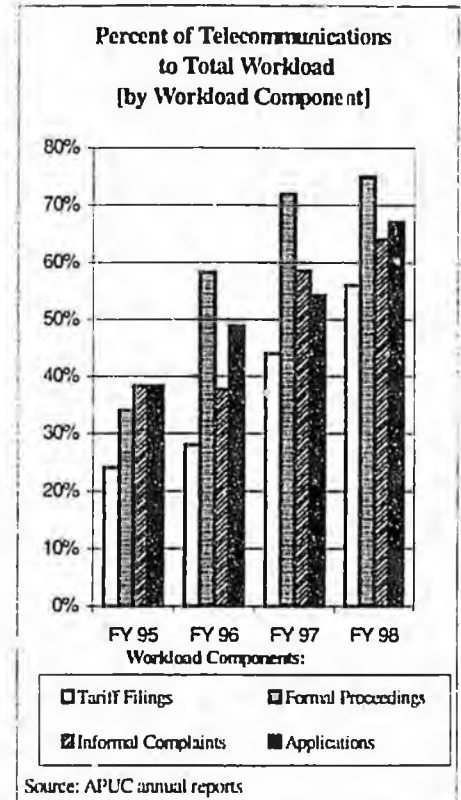


<sup>2</sup> Department of Commerce and Economic Development, Alaska Public Utilities Commission, January 26, 1993. Audit Control Number 08-1404-93.

about the commission's ability to respond in a timely manner. The National Regulatory Research Institute (NRRI) also voiced this concern in a report<sup>3</sup> on the commission. We believe a management information system will allow APUC to begin to address this concern. It will allow management to track the timeline, workload, and staffing and to reallocate resources as necessary.

In designing this information system, the commission should consider implementing past Legislative Audit recommendations on cost allocation and employee timekeeping.

As we suggested in our 1994 audit of APUC, the RCC should be more reasonably allocated to cost-causing utilities. We believe a true user-fee design can establish basic fairness in that only those who benefit from the regulatory process bear its cost; it can also encourage consumers to recognize and eliminate unwarranted regulation through deregulation elections. However, these benefits will only be realized to the extent that the RCC program reasonably links the cost-causer to the cost-payer. As demonstrated in our 1994 report, the cost-causers were not the cost-payers. Telecommunications was substantially underpaying its share. This misallocation is even greater today. The graph shows how telecommunications has continued to absorb even more of the commission's resources. The formal proceedings component is by far the most time consuming of the four workload components shown. In FY 98, telecommunications accounted for 75% of APUC's formal proceedings filings. The applications component is also significant and, in FY 98, telecommunications accounted for 67% of the total application workload. Telecommunications was the dominant industry in FY 95 and has grown to where it now absorbs the vast majority of APUC resources.



The current RCC allocation is a straight percentage of each utility's revenue. While it serves as an alternative funding source, it fails to provide any of the above benefits of a true user fee. The commission should consider including this information in its design of a management information system. Regardless of whether the commission currently intends to pursue a user-fee approach, this type of data needs to be captured. It is needed to comply with AS 42.05.254(a), which requires APUC to bill utilities exempt from regulation for the actual cost of services provided by the commission.

<sup>3</sup> Report on the Alaska Public Utilities Commission, October 1998. This report was commissioned and paid for by APUC at a cost of \$24,300. The study was conducted through interviews of APUC personnel; no utilities were interviewed. See further discussion in Recommendation No. 2. Copies of the report may be requested from APUC.

We also recommend that an employee timekeeping routine be included in the management information system. As we outlined in 1994, the costs to implement and operate timekeeping would be minimal, while the benefits would be substantial. In addition to giving APUC the tools to manage, it may increase staff efficiency as a result of timesheet accountability. Further, timesheets are essential to the "actual cost" calculations required under AS 42.05.254(a).

### Recommendation No. 2

The commission should fully explore the findings and recommendations it received from the National Regulatory Research Institute (NRRI).

The commission engaged NRRI to "assist [APUC] in an Organizational Self-Assessment As It Undertakes Efforts Toward Large-scale Change." In its October 1998 report, NRRI concluded that APUC was serving the public interest. Yet, it went on to say that "[t]here is a fear, however, that the agency cannot continue to perform its important functions without real reform." The areas most in need of attention were deemed to be:

- Commissioner-staff and commissioner-to-commissioner relations, which includes issues of leadership and morale
- Timeliness
- The quality and speed of commission orders
- The increase in consumer complaints, the likelihood that complaints will increase further, and the implications for the adequacy of current staffing levels
- Electronic filing and management information systems

In addition, throughout the report NRRI identified weaknesses and made suggestions for improvement. Examples of the interview notes, observations, and suggestions are as follows:

- . . . *substantial repairs need to be made to internal relationships if APUC is to thrive.*
- . . . *mitigation of morale problems and the application of leadership could go far to create a better internal cohesion . . . .*
- [There is a perceived need to improve] *vertical communication throughout the agency.*
- . . . *too frequent use of suspensions and extensions . . . .*

- . . . perceptions that commissioners do not 'pull their weight' were voiced several times in interviews.
- The morale at APUC appears to be low.
- . . . it appears that some APUC commissioners are too involved with administration. . . . One way to avoid this would be to strengthen the Chairman's direction of purely administrative matters.
- Those interviewed expressed concern that the assignment of existing staff resources of APUC did not give adequate attention to the advisory function. Two general options are available for providing more staff assistance to commissioners. First, APUC could hire additional advisory staff or permanently assign staff to commissioners from existing staff resources. . . . Second, APUC could adopt administrative models that allow commissioners to have greater access to existing experts on the staff.
- The commission needs improved management information systems, but increased computerization will not solve information problems by itself. . . . [S]ystems for managing commission processes at APUC need to be improved.
- [There was a] sense of an absence of clear priorities throughout APUC that contributes to a crises mentality.
- The lack of timeliness and growing case backlog is a measure of impaired commission effectiveness. . . . The first step is to identify more clearly the nature of the backlog by industry and current status.
- . . . APUC might also consider changing the manner in which cases are heard. . . . In some cases around the nation, a single commissioner will hear a case; in other instances, several commissioners (less than the full commission) can hear cases. In other states, albeit typically larger ones, hearings are conducted by hearing examiners, who later present their findings to the commissioners for ratification or amendment.
- Increases in consumer complaints are beginning to strain the capacity of the Consumer Protection section.

Several of the above are clearly symptoms, while others may be the causes of inefficiency. As noted in the first graph in Recommendation No. 1, the commission's workload far exceeds its current capacity. Before considering whether to request additional staff, we urge APUC to make its processes as efficient as possible. We encourage the commission to take full advantage of the observations and suggestions contained in NRRI's report.

## A ANALYSIS OF PUBLIC NEED

### Limited Analysis

The following analyses of commission activities address both positive and negative conditions related to the public need factors established in AS 44.66.050. These analyses are not intended to be all-inclusive, but rather address those areas we were able to cover within the scope of our review.

#### *The extent to which the board, commission, or program has operated in the public interest.*

The commission has made a conscientious effort to allow only qualified applicants to provide utility services and to regulate them in such a manner as to ensure adequate service at a reasonable cost. Upon finding that no public interest would be served by regulation, the commission administratively exempts certain utilities through its discretionary power granted by AS 42.05.711(d).

#### *The extent to which 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.*

The Telecommunications Act of 1996 (the act) imposed considerable new duties on state regulatory bodies. In FY 98, the commission initiated rulemaking and requested public comments in the areas of intrastate access charge reform, universal service, and market structure rules for competitive local exchange service mandated by the act.

As outlined in Recommendation No. 1, the commission's workload has increased tremendously over the past few years, primarily due to the Telecommunications Act. New filings far exceed the commission's current capacity and the backlog is overwhelming. Before considering whether to request additional staff, we strongly urge APUC to develop a management information system to make its processes as efficient as possible. This system should allow management to track the timeline, workload, and staffing and to reallocate resources as needed.

Along with this backlog situation, APUC is hampered by a number of management weaknesses and other operational problems. These issues were brought to the commission's attention in a report by the National Regulatory Research Institute. See Recommendation No. 2. We urge APUC to fully explore these findings and to make its processes as efficient as possible.

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

The commission supported statute changes, as recommended by the Division of Legislative Audit, to increase the revenue thresholds for deregulation exemptions. The amendments to AS 42.05.711 gave consumers greater ability to opt out of regulation.

Also as recommended by the Division of Legislative Audit, terms of the commissioners were adjusted to allow for one commissioner term to expire in each year. The commission supported this amendment to AS 42.05.030. Multiple expirations in a given year could have substantially impacted commission expertise.

*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.*

Formal proceedings are properly and timely noticed and are open to the public. The commission has held public hearings and formal proceedings within the service areas of the utilities before them to facilitate the public attendance and participation. The commission also staffs a Consumer Protection section to resolve complaints and disseminate information.

Beginning in FY 97, APUC increased its accessibility to the public by publishing its annual reports on its Internet website (<http://www.state.ak.us/apuc>). It also began to publish its orders on the Internet to make them readily available and established a pilot project for accepting electronic filings by public utilities and pipeline carriers.

Approximately once a year, the commission holds an informal work session for attorneys representing utility clients and other interested parties in order to answer questions and solicit feedback.

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

All formal proceedings, including hearings on proposed regulations, are noticed and open to the public. Any interested person or party may intervene in a formal proceeding if the intervention will benefit, but not unduly delay, the proceeding. The commission has also held informal workshops with attorneys and utility representatives in an attempt to be more responsive to the needs and concerns of these groups.

*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 the Ombudsman have been processed and resolved.*

The commission has adopted regulations for informal and formal complaint procedures, including a requirement that the complaint be made first to the utility before being filed with the commission. If the complaint cannot be resolved informally, formal procedures, including an investigation, may be initiated. The Office of the Ombudsman handled one case in the period from FY 94 through FY 98 regarding a complaint against the commission. The complaint resolution process appeared to be operating satisfactorily.

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

Prior to granting a Certificate of Public Convenience and Necessity to a public utility, the commission determines that the applicant is fit, willing, and able to provide the service. To that end, it employs utility financial analysts and utility engineers to perform the appropriate analyses to make this determination.

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

We found no evidence of hiring practices or commission appointments that were contrary to state personnel practices. No complaints have been filed with the Alaska Human Rights Commission or the Division of Equal Employment Opportunity.

*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.*

Please refer to the Findings and Recommendations section.

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APPENDIX

Department of Commerce and Economic Development  
 Alaska Public Utilities Commission  
Summary of Appropriations and Expenditures  
 For Fiscal Years 1998 and 1999  
 (Unaudited)

| Authorized Expenditures | FY 98            |                  | FY 99            |
|-------------------------|------------------|------------------|------------------|
|                         | Authorized       | Expenditures     | Authorized       |
| Personal Services       | 2,567,600        | 2,628,190        | 2,850,800        |
| Travel                  | 35,000           | 51,346           | 35,000           |
| Contractual             | 1,780,759        | 983,478          | 1,961,400        |
| Supplies                | 62,500           | 71,868           | 62,500           |
| Equipment               | <u>13,800</u>    | <u>16,172</u>    | <u>13,800</u>    |
| Total                   | <u>4,459,659</u> | <u>3,751,054</u> | <u>4,923,500</u> |

| Appropriated Revenues      | FY 98            |                  | FY 99            |
|----------------------------|------------------|------------------|------------------|
|                            | Appropriated     | Actual Receipts  | Appropriated     |
| APUC Receipts              | 4,015,000        | 3,775,601        | 4,923,500        |
| APUC Carryforward Receipts | <u>444,659</u>   | <u>67,571</u>    | <u>-0-</u>       |
| Total                      | <u>4,459,659</u> | <u>3,843,172</u> | <u>4,923,500</u> |

The information included in this summary was obtained from the State's accounting records. We have not audited this information and, accordingly, we express no opinion on it.

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