

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10584 SENATE JUDICIARY

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 battles 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 — haves 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. Staff 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.

The number of open dockets has doubled. There are 500 open dockets, a lot of which are telecommunications cases. The agency is spinning out of control. A huge number of orders have extended suspension periods. This itself takes time. We stopped having meetings on docket management or how to get a docket closed. [We] may not want to know [how bad it is]. Docket status meetings should be revived. We have four tariff filings that went into effect by force of law because the statutory deadline expired.

Telecommunications gets hundreds of filings. Promotions are coming in by the gross. Also electric, gas, water, sewer, and garbage [filings]. The tariff section had a gift of a 45-day statutory recommendation [requirement]. The IXC statute also has a 60-day limit. To speed things up we should have requirements for what gets done when. [Here's an] example of lack of timeliness. One and a half years to get to EAS balloting. Then the Commissioners said they would look at it in a generic proceeding. They didn't get to it until way too much later. Some orders are so badly written by staff that they have to be rewritten. They can have contradictions in the same paragraph.

The Commission speaks through its orders. Orders need to strike a balance between an historical description of the docket and the findings and rationale. Too much time is spent on the history. The most substantive orders are written by staff or hearing officers. There is not enough time to get orders done. Paralegals don't have the experience to write orders. Orders contain little useful information. Dissenting opinions are sometimes scathing. Orders are terrible. The Commission needs more on-going education in order writing. The one-time training didn't help. Commissioners may not understand how hard and time-consuming it is to write orders. Those who write orders are too slow. The paralegals have been added to speed up the process. Prioritization of work would be helpful; everything is not first priority.

The staff Docket Manager writes up orders. Whoever that is might not be good at it. Staff should start sooner on writing orders. I'm not sure the extensive editing of orders is productive. The hearing officer writes lots of orders. Technical staff also writes

orders. An application comes in. A staff member makes a recommendation in writing (which is not published). Engineering, an Accounting paralegal, or A.G. drafts the order. We have good procedures in place. Technical staff doesn't follow basic procedures on orders. Paralegals have to complete and rewrite orders.

The Hearing Officer staff should be increased and included in as many dockets as possible. APUC rules allow Hearing Officers to hear cases. The role of the current Hearing Officer is being reduced. When a Commissioner attempted to hold a hearing without the Hearing Officer, she later had many due process objections that parties hadn't raised. The Hearing Officer could conduct pre-hearing conferences.

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.

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.

**EVALUATION OF THE REGULATORY COMMISSION OF ALASKA:
A FOLLOW-UP REPORT**

by

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EXECUTIVE SUMMARY

In 1998, the National Regulatory Research Institute (NRRI), under contract, prepared a review of the Alaska Public Utilities Commission (APUC). That report identified a number of areas in need of attention. They included Commissioner-staff and Commissioner-to-Commissioner relations, timeliness, the quality and speed of Commission orders, and management information systems.

In April of 2000, the NRRI began under contract a similar review of the Regulatory Commission of Alaska (RCA), the successor agency to the APUC. Eighteen RCA stakeholders (Commissioners, staff, and external stakeholders) were interviewed. Their names are listed in Appendix 1; their comments are included in Appendix 2.

Overall, it appears that each of the areas identified in the first review as being in need of attention has experienced substantial improvement. Of particular note are the perceptions of Commissioner competence and hard work, the high regard for the Chair, improved morale, the reduction of the backlog in cases, improved information flows, the potential for the newly established Public Advocacy Section to provide effective advocacy and clarify staff roles, the additional authority of the Chair, the potential for the new management information system to even further improve communications, the establishment of an MIS unit, a better balance between due-process concerns and Commission effectiveness, and better external relations.

Given the success so far of the RCA, areas for concern are limited. They include the potential for the high workloads to undermine morale over time, the continued evolution of the PAS and the role of advisory staff, the staffing and role of the Consumer Affairs Section, staff training, the current heavy reliance on the Chairman, and the overall pace of change at the RCA.

INTRODUCTION¹

In an era of rapid change for the regulation of the nation's public utilities, the State of Alaska in 1999 elected to hasten that change process by abolishing the former Alaska Public Utilities Commission (APUC) and establishing the new Regulatory Commission of Alaska (RCA) in Senate Bill 133. Though that new regulatory commission might still be regarded in being in its formative stages, the members (Commissioners) of the RCA and its Chair determined that an early assessment of the Commission was warranted in order to identify early problems and assess the extent of the new Commission's success. Such a self-assessment also presents an opportunity for commission staff and stakeholders to provide input into the direction of commission change. In February 2000, Chairman G. Nanette Thompson contacted the National Regulatory Research Institute (NRRI) to inquire as to the feasibility of a contract with the NRRI to review the operations of the RCA. A contract was finalized in May, though interviews with key stakeholders began in April.

The NRRI has some familiarity with regulatory operations in Alaska. In 1998, the NRRI conducted a similar review of the APUC. That review was presented to the Public Utilities Commission in a report entitled *Report on the Alaska Public Utilities Commission* dated October 1998.² That report identified a number of significant challenges facing the Public Utilities Commission.

To accomplish this current assessment, the author interviewed nine RCA staff, the five Commissioners, and four external stakeholders. The persons interviewed are identified in Appendix 1. Their aggregated comments are included in Appendix 2. Commitments were made to those interviewed to keep input confidential (i.e., not to link names to comments). The results of the NRRI inquiry are contained in this report, grouped generally by the major components used in the first NRRI report. A brief

¹ Special thanks is given to Dr. Vivian Wilkind Davis, a co-author of the NRRI report on the APUC, for her review of this report.

² David W. Wirick, Vivian Wilkind Davis, and Douglas N. Jones, *Report on the Alaska Public Utilities Commission* (Columbus, Ohio: National Regulatory Research Institute, 1998).

summary of the findings of the first report are included for each component so that comparisons can be drawn. Those findings of the NRRI report on the APUC are printed in *italics* to distinguish them from the findings of this current report.

Reports of this type are necessarily somewhat subjective. In that sense they are always limited and imperfect. The task, of course, is to attempt to be fair and accurate, and the author has tried to be both in his assessment. His comments are informed by his extensive exposure to state public utility commissions throughout the country. Though the circumstances that surround the RCA are unique, as are the circumstances of each state public utility commission, some comparisons can be drawn and judgements made. The report avoids references to the behavior of specific individuals, unless the performance of the individual presents a challenge for the organization as a whole. Fortunately, in the case of the RCA it was only exemplary behavior of key persons (and the potential difficulty of replacing them if they were to leave) that was most commonly cited.

As will be seen, this report is largely and, perhaps uncommonly, positive in its assessment and tone. That tone should not be regarded as arising from an unwillingness to be critical of regulatory commission operations if a critical response is warranted. Nor has the report glossed over necessary areas for improvement with indirect writing. In fact, this report does point out a number of areas that may cause problems at some later point. But, overall, those interviewed for this report provided nearly unanimous, though occasionally guarded, support for the work of and prospects for the RCA. The tone of the report is necessarily reflective, therefore, of the tone of stakeholders.

ANALYSIS OF ORGANIZATIONAL COMPONENTS

The components examined and explained in this report are:

- General Factors
- Communications

- Morale
- Commission Structure, including discussion and analysis of the changes in structure caused by the legislation that established the RCA.
- Staffing
- Management Information Systems
- Process
- External Relations
- Consumer Protection
- General Comments

Each component is discussed in turn.

General Factors

In the first report, a considerable range and depth of problems was cited by those interviewed. Problems included leadership, though interestingly, the word "leadership" was not actually spoken by any of the interviewees at that time. But a number of the perceived difficulties emphasized by them harken back to the leadership of the APUC. 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 did not "pull their weight" were voiced several times in interviews.

To be fair, several of those interviewed cited the fact that APUC decisions were rarely overturned in court, and most cited the competence of the staff and its ability to focus on the real task of the APUC despite constant emergencies and a very heavy workload. Some were concerned that the then current difficulties might eventually limit the ability of the APUC to do its job.

For this review (of the RCA), those interviewed were first asked if the Commission is accomplishing its mission. Responses were positive but sometimes cautious. Representative comments were:

- There is a more cooperative effort among Commissioners, which is apparent to staff.
- The Commission is doing its job but it has taken work and is very challenging.
- The boat is turning but won't turn overnight.
- This Commission is making a difference.
- It may be too soon to know about substance.
- There is a lot of stress on staff and no extra help. Productivity is up.
- The Commission is on a learning curve. In the long-run, it is likely to be positive.

Those interviewed were then asked if things were better now than before the abolishment of the APUC. They all suggested that things are, in fact, much better than before. Representative comments include:

- Things are going really well.
- A better structure is in place now.
- The RCA is functioning as a Commission.
- There is a conscious effort to get things done.
- I have the utmost respect for Nan (i.e., Chairman Nan Thompson).
- It is much better than before and as good a commission as Alaska has ever had.

Overall, comments regarding the ability of the RCA to accomplish its mission were positive as were the assessments that the RCA is doing better than its predecessor. Cautions were expressed about the learning yet to be done, the extreme work load (in part occasioned by the backlog that will be discussed later), and the RCA's reliance on the current Chairman, about which more will be said later in this report. *Concerns that Commissioners were not "pulling their weight"* seemed to be

dramatically changed with the arrival of the five new Commissioners, whose work ethic is highly regarded. More about that is said later in this report.

Communications

In the first report, those interviewed identified a number of communications problems. One of these was improving vertical communication throughout the agency. (Reportedly, horizontal communication was adequate.) Another opportunity cited was to introduce and conduct a systematic training and orientation program for new personnel at all levels. A third, and perhaps most important, problem identified was the impact of the docket backlog including tariff filings and devising procedures and practices that lead to prompt resolution of cases. 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.

Perceptions are that vertical communications are much better now. Commissioners are cited as being approachable, and section heads are meeting with their staffs regularly following their meetings with the Chair. Communications can always bear improvement, and they continue to be worked on at the RCA.

Given the amount of turnover and new hires, the orientation and training of new staff is key. Fortunately, some of those new staff came to the RCA with knowledge of the industry. On-the-job training appears to be the norm, though some training is provided at external training opportunities (such as "Camp NARUC"), and existing staff are cited as being helpful.

The docket backlog is a clear problem, but one that is being worked on. Some cite the backlog as being 500 cases in the system plus another 250 that had not been assigned when the RCA was created. It is also cited as being a frustration. The orders that are being issued for those backlogged cases are, according to at least one of the persons interviewed, of little value because of their age. Commission efforts to clear the backlog are being applauded.

As to whether the interaction between Commissioners and staff is productive,

comments were generally positive. Staff cite the approachability of Commissioners; Commissioners, in turn, describe staff as cooperative. A feeling of mutual respect appears to exist. There is some sentiment, however, that some staff may not be fully committed to the changes being made.

Commissioners are cited as working well together, which had reportedly been a problem for the APUC. Again, an attitude of mutual respect seems to prevail. In addition, staff and stakeholders are impressed with the work ethic of the Commissioners. They are putting in long hours and have, in the words of one person interviewed, "a sense of the public interest."

There seems to be a concerted effort to ensure more effective information flows at the RCA. The Chairman, one person noted, will intervene when necessary. Though from many perspectives, information flow is adequate, some cite problems. One person suggested that there is still a bit of the "I know something you don't know" mentality, and that mail sits when someone is out. (Using the courier for mail has helped.) Staff are cited as providing necessary information to Commissioners, though the workload and backlog have gotten in the way.

Overall, it appears that communications within the RCA are good. That they are regarded so highly given the rapid pace at which the Commission is moving, the high work volume, and the extent of the changes being made is remarkable. Commissioners, staff, and stakeholders appear to have high expectations for performance of the RCA; caution might be warranted to ensure that unrealistically high expectations are not created and that the pace of work, though necessary in the short term, does not serve to create staff and commissioner burn-out if continued for the long term.

Morale

In this era of rapid change for regulatory commissions, it is not uncommon to discover fairly low morale, particularly among staff for whom employment might be more uncertain than in the past, for whom the job requirements and skills necessary are changing, and toward whom substantial stakeholder dissatisfaction with the regulatory process is being directed. *In the NRRRI review of the APUC, comments from quite a few, though not all, interviewees indicated that a morale problem existed at the APUC that might exceed national norms.*

It is apparent that morale at the RCA is much improved. Better communications, the perceived better treatment of staff by Commissioners, and staff confidence that things are changing were cited as reasons. Impediments to higher levels of morale are the workload and the turnover particularly among clerical staff. Two of the people interviewed expressed concern that morale might be lower among the staff most closely affiliated with the Commissioners because of the extent of the changes there. The Commissioners have sponsored and organized staff events, which seem to have been well-received, and a new evaluation form has been created to provide staff feedback on their performance. One cited deficiency was the lack of an RCA mission statement. As the regulatory environment changes, an evolving mission statement might help staff clarify its role.

Commission Structure

Structure refers to an organization's relatively stable activities over a period of time, often reified as an organization chart. In this report, it also refers to the new tools and processes adopted by the RCA or mandated by its defining legislation. *It was reported in NRRRI's interviews for the first report that some APUC Commissioners were perceived as being too involved with administration and that this involvement might inhibit their consideration of the important issues facing the commission. 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.*

When the RCA was established, several structural changes were made. They included:

- The legislation establishing the RCA requires a time-accounting system, and the charge to the utilities for support of the RCA is now based on time charges rather than utility revenues.
- An MIS system is being put in place as an aid to external users and internal management.
- The RCA is now using the Internet to publish information, orders, and dockets.
- The Chair was provided more authority.
- The legislation gave the RCA the authority for three Commissioners to hear cases. (One person interviewed believes that this authority existed before but was not used.) This is more efficient than the requirement that all five sit on cases.
- The legislation gives the RCA the authority to use arbiters and hearing officers.
- The Executive Director position was abolished. An assistant to the Chair (described by one person as a "Super Assistant" position) has assumed some of the coordinative duties previously accomplished by the Executive Director and, reportedly, some additional duties have fallen to the Chair.
- A Public Advocacy Section (PAS) was established. This section performs the advocacy function formerly performed by a much larger number of staff. It is assigned to cases by the Chair or can petition to intervene. The establishment of a PAS-like entity had been supported by industry.

Of these changes, the creation of the PAS seems to be the most significant. For one thing, it should provide Commissioners more staff advisory assistance, *which appeared to be lacking in the NRRI review of the APUC. Those interviewed then expressed concern that the assignment of existing staff resources of the APUC did not give adequate attention to the advisory function.*

Clearly, the PAS is just getting underway, and it may be too early to tell how it might affect the RCA and the regulatory process. There is some concern that it may not have enough staff to accomplish

the desired functions. There is also some concern that the other Commission staff (those assigned now to the "advisory" function since the PAS will handle "advocacy") may not have fully adjusted to their new role.

That clear separation of duties may evolve with time. Some concern was also expressed that some external stakeholders may be uncomfortable with the closeness of advisory staff to Commissioners and that advisory staff input is not subject to cross-examination. This too might abate over time.

Overall, it appears that the RCA is functioning well without an Executive Director. Two of those interviewed stated that it is sometimes unclear who to go to on particular issues and that a gap exists, but the majority of those interviewed expressed the belief that the lack of an Executive Director is not a problem. On the plus side, the Commissioner Assistant seems to be picking up coordinative duties well, department heads have more authority now, and there is now more direct staff access to the Chair.

In the new organization, the Chair was provided more authority, including decision authority in procedural matters. Overall, that seems to be an improvement. Those interviewed observe that the Chair and her Assistant are highly thought of, that things are being worked out, that the Chair is not a "power monger," that the other Commissioners defer to her appropriately and support her leadership, and that she is giving more authority to department heads. If problems exist, they may be embedded in her work load and the extent to which the substantial success of the RCA might be related to her competence and hard work. (It should be noted that all five Commissioners were cited for their attitude and hard work; the Chair seems to be regarded as the most able person in a very able group.) Some commented that more delegation from her may be necessary.

Staffing

In response to questions about the adequacy of staff support, comments were again directed toward the evolving advisory versus advocacy role of staff. It was noted that the RCA is not overstaffed by any means. Problems noted were the lack of strong leadership on the staff at the "sergeant" level, the backlog, recruiting difficulties, the need for the PAS to get staffed up, the need for a new paralegal, and that some staff are not reliable (one comment).

Concern was expressed in the review of the APUC about the level of legal 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. Legal support is now regarded as probably better than before, though the departure of an attorney was described as hurtful. Comments in the RCA review were mixed about whether legal support is adequate. Some expressed concern that staff don't get enough legal support, particularly given the backlog; others said that there is no scarcity of legal support and that, in the advisory role, staff need less support than before.

Management Information Systems

In the review of the APUC, both Commissioners and staff strongly believed that systems for managing commission processes at the APUC needed to be improved. Lack of computer support and inadequate use of computers were frequently mentioned as problems. Consideration was being given to hiring an outside consultant to design a computer information system for the commission. In the current review, there was near-unanimous support for the creation of the MIS section, which previously had been a part of Engineering. In addition, the recent upgrading of systems and standardization of systems was much appreciated. The MIS staff was described as responsive and knowledgeable. The RCA use of electronic systems to make documents available has

been well-received, and one person reported that the willingness to share information has improved information access. Much is expected of the MIS system currently under construction, though there is some expectation that it won't accomplish everything expected of it and that there will be transition problems.

Process

Of critical importance to the RCA is the perception that its decision-making processes are timely. *In the review of the APUC, the lack of timeliness and growing case backlog were regarded as measures of impaired Commission effectiveness. Though the dramatic increase in the APUC's workload might have been a contributory factor, delays in case processing were cited by many of those interviewed. Several specific problems that might have impacted the speed with which the APUC disposed 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. Particular concerns about timeliness at the staff level were the lack of speed with which documents moved between the fourth and third floors and the amount of work that had 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 had been made.*

It appears that stakeholders believe that the RCA is moving orders as quickly as possible. The RCA is making an effort to clear the backlog and to keep on top of current cases. Though perceptions are very positive, concerns were raised about the speed of adjudication, the desire for perfect information in some cases, and a tendency for the RCA to take on too much.

A key to commission effectiveness is the ability to establish an appropriate balance between due process protection (fairness) and commission effectiveness. Across the nation, commissions are attempting to move toward more effective decision-

making methods without, at the same time, unduly diminishing fairness. In the case of the RCA, there is the general impression that an attempt is being made to end an over-emphasis on process. One person noted that there has been a dramatic change in this regard. As was noted by one person interviewed: some people want speed; some want deliberation, but the RCA has made a good compromise. Any attempt to move toward a more effective process will cause concern on the part of some that fairness has been diminished. There were a couple of concerns in this regard in the RCA interviews. The ability of legal staff to pull the Commission back when it moves too fast was also cited.

In the NRRRI's review of the APUC, a number of complaints were expressed about the timeliness and content of Commission orders. Several of those interviewed expressed dissatisfaction with the time required to write orders and the quality of the content of those orders. The responsibility for writing orders was regarded as 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 paralegals lacked the expertise to write good orders.

The writing of Commission orders is, in the words of one person interviewed, "improving but still in need of work." The content of orders appears to be adequate. Commissioners are writing orders in some cases paralegals in others, and parties in procedural orders can submit draft orders. This distributed responsibility seems to be regarded as productive rather than fragmentation of responsibility as was the case with the APUC. Orders are said to contain fewer "weasel words."

There are still perceived problems with the issuance of orders. Orders are cited as being held up, though the source of the administrative delay was not further specified. One complaint was that some orders are needlessly detailed and that work needs to focus on the important orders and, by implication, to limit time spent on less important, procedural orders. Docket managers may need to follow up on orders.

Streamlining administrative processes is being pushed by Commissioners, though one person indicated that staff is resistant. Prehearing conferences are being used and several cases are being arbitrated by hearing examiners. The system of

assigning three Commissioners seems to work, and some cases are being consolidated. One person interviewed cited the potential danger of one Commissioner being able to dominate the others, which has a greater potential if three Commissioners are hearing a case as compared to five. No specific Commissioner was cited, and no example of this happening was given.

A majority of the substantive work of the APUC was performed through formal adjudicatory processes that emphasize due process. According to those interviewed, the APUC process was fairly formal and rigorous in its interpretation of ex parte requirements. Several potential 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.

The RCA is perceived, as was noted earlier, as being less constrained by formal judicial processes than the APUC. In addition to making better use of the hearing examiners, the RCA was cited as using workshops, mediation, and arbitration. In one case cited, mediation had failed because the parties were too far apart. It may be too early to determine the success of these attempts to employ processes that are less judicial.

As the work of the RCA shifts towards more policymaking and away from the kinds of fact-finding embedded in traditional rate cases, the RCA may 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.

External Relations

Legislative linkages will become increasingly important in the future as the

Commission further adopts a more legislative (i.e., policy making) 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 NRRRI indicated the belief that the APUC's legislative strategy was largely reactive. The passage of legislation disbanding the APUC may provide further attestation to the possible shortcomings of APUC legislative relations.*

By all accounts, RCA legislative relations are very good, and the legislature appears to be supportive of Commission work. Relations with the utilities are cited as being in a process of transition. Commissioners are currently being careful about communications with the industry and the potential for *ex parte* violations. According to one person interviewed, they may be being too careful. Industry may, according to one person, be a bit intimidated by this Commission, which is well-prepared and willing to attack sacred cows.

The public was cited as being at worst neutral to the RCA, though one person noted that there is some work to be done with consumers.

Consumer Protection

Although everybody the NRRRI interviewed in its review of the APUC who commented on the Consumer Protection section agreed that it is functioning well, there were incipient signs of overload. Complaints on telecommunications service had increased dramatically, due to the advent of competition. Disposition of a complaint took up to six weeks and the average time before resolution was becoming longer because complaints were not only more numerous but more complicated than in the past. Interviewees also reported an increase in carrier-to-carrier complaints. Solely on the basis of the strain on the capacity of the section due to increasing consumer complaints, a case was made for providing additional support to this section, both clerical and professional.

Since that review, the Consumer Protection Section has been provided more resources and appears, in the view of those interviewed, to be less stressed than before. The Section is highly regarded. Many of those interviewed still believe that the Section has a large work load and that they are barely keeping up. Of concern to some was the responsibility for that Section to prepare the Annual Report to the Legislature. One person suggested that a person be designated as fully responsible for that Report. Delegating pieces to other sections is also an option. Another concern was the replacement of Agnes Pitts when she retires. The Section would like to do more outreach to consumers but has been constrained by lack of resources. Carrier-to-carrier complaints have declined. Other complaints may be tapering off but may increase as other communities are impacted by local telecommunications competition.

General Comments

In the NRRRI review of the APUC, the areas most in need of attention seemed to be:

- *Commissioner-staff and Commissioner-to-Commissioner relations, which included 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.*

Each of these areas has seen substantial improvement since the formation of the RCA, and overall the RCA seems to be functioning at a very high level of energy and competence. There are a few areas, however, that may ultimately lead to

problems at the RCA. They are:

22. The High Workloads. No one interviewed at the RCA is opposed to high levels of productivity and hard work on the part of Commissioners and staff. However, it appears from comments that the current pace may be unsustainable in the long run. The current heavy workload has been occasioned largely by the 750-case backlog. When that backlog is reduced, workloads might decrease. If workloads don't decrease, they might, over time, prove disheartening to staff and diminish morale. The result might be an increase in staff turnover and low levels of staff motivation. The situation should be monitored closely and more resources provided the RCA if workloads don't decrease as the backlog is diminished.

23. The Continued Evolution of the PAS and the Role of the Advisory Staff. The PAS appears to be a promising mechanism for the effective representation of consumer interests and the provision, through the remainder of the RCA staff, of adequate advisory support for Commissioners. By all accounts, the PAS is in the process of development. It is not certain that the staffing levels provided to it currently will be adequate for its role; its ability to perform its role should be monitored. Because of the formation of the PAS, the role of the remainder of the staff will need to change from advocacy to decision-support. Several of those interviewed suggested that the staff has not yet fully assumed that role. This should be monitored. External stakeholders will be impacted considerably by these changes in staff roles. Close contact should be maintained with them to monitor their opinions and perceptions.

24. The Staffing and Role of the Consumer Affairs Section. Across the country, more resources are being dedicated to consumer affairs, partly because of the increase in consumer complaints and concerns caused by the opening of utility markets to competition. By all accounts, the RCA Consumer Affairs Section is competent and performing services of value to consumers. If national trends hold, the workload in that Section can be expected to increase. In addition, other commissions have found

outreach to consumers, in the form of brochures or advertisements, to be a useful strategy for educating consumers. The RCA Consumer Affairs Section has not yet been able to turn its attention to that consumer outreach. Additional resources in the Consumer Affairs Section might be warranted, either by hiring new staff or increasing the availability of other RCA staff to the Consumer Affairs Section. An alternative to placing more resources in that Section is to reduce the workload; the task most appropriate for reassignment to another RCA section might be the preparation of the Annual Report to the Legislature.

25. Staff Training. High turnover among staff is an unfortunate aspect of the regulatory environment around the country, and there is little hope that it can be slowed without dramatic increases in staff salaries. Ongoing training for new staff is, therefore, necessary for commission effectiveness. Complicating the need for training is the increasing complexity of regulatory issues. Training is available for commission staff at a number of locations around the country and may be a wise investment. Participation in NARUC events and work may be another way to plug the "expertise hole" caused by staff turnover.
26. Heavy Reliance on the Chairman. As was noted earlier, several of those interviewed expressed concern about the reliance of the RCA on the talents of the Chairman. For the long-term health of the organization, a concerted effort to delegate more duties to others, appointment of a vice-chair, or ensuring that other Commissioners are exposed to the duties of the Chairman might be warranted. At least one person interviewed expressed confidence in the ability of other Commissioners to step in as Chairman if Chairman Thompson were to leave.
27. The Overall Pace of Change. By all accounts the RCA has come a very long way in a very short time. Though organizational change can be exhilarating, it can also be draining and there is a danger in taking on too much change at once. The RCA may

wish to consider judicious choice of change targets so that some stability can be achieved. Development of a strategic plan may assist the RCA identify those areas most in need of change and help it prioritize its efforts.

The NRRI has been pleased to be able to conduct these two evaluations of the public utility regulatory institutions in Alaska. It is particularly gratifying to observe the tremendous positive changes that have occurred since our first visit. We would be pleased to assist in any other way that we can.

(d) In this section, "record" means a report, file, book, account, paper, or application, and the facts and information contained in it.

Sec. 42.05.681. Validity of certain certificates.

A certificate issued before July 29, 1968, to a public utility for the generation, transmission, or distribution of electric energy and power, or for the furnishing of telecommunications may not be considered as terminated or voided for the sole reason that the utility did not or would not produce an annual gross income in excess of \$25,000.

Sec. 42.05.691. Utility classes.

The commission may by regulation provide for the classification of public utilities based upon differences in annual revenue, assets, nature of ownership, and other appropriate distinctions and as between these classifications, by regulation, provide for different reporting, accounting, and other regulatory requirements.

Sec. 42.05.701. [Renumbered as AS 42.05.720].

Repealed or Renumbered

Sec. 42.05.711. Exemptions.

(a) The provisions of this chapter do not apply to a person who furnishes water, gas or petroleum or petroleum products by tank, wagon, or similar conveyance, unless the person is thereby supplying water, gas, petroleum or petroleum products to a public utility in which the person has an "affiliated interest".

(b) Except as otherwise provided in this subsection and in (o) of this section, public utilities owned and operated by a political subdivision of the state, or electric operating entities established as the instrumentality of two or more public utilities owned and operated by political subdivisions of the state, are exempt from this chapter, other than AS 42.05.221 - 42.05.281 and 42.05.385. However,

(1) the governing body of a political subdivision may elect to be subject to this chapter; and

(2) a utility or electric operating entity that is owned and operated by a political subdivision and that directly competes with another utility or electric operating entity is subject to this chapter and any other utility or electric operating entity owned and operated by the political subdivision is also subject to this chapter.

(c) The ownership in whole or part, of the corporate stock of a public utility does not make the owner a public utility.

(d) The commission may exempt a utility, a class of utilities, or a utility service from all or a portion of this chapter if the commission finds that the exemption is in the public interest.

(e) Notwithstanding any other provisions of this chapter, any electric or telephone utility that does not gross \$50,000 annually is exempt from regulation under this chapter unless the subscribers petition the commission for regulation under AS 42.05.712 (h).

(f) Notwithstanding any other provisions of this chapter, an electric or telephone utility that does not gross \$500,000 annually may elect to be exempt from the provisions of this chapter other than AS 42.05.221 - 42.05.281 under the procedure described in AS 42.05.712 .

(g) A utility, other than a telephone or electric utility, that does not gross \$150,000 annually may elect to be exempt from the provisions of this chapter other than AS 42.05.221 - 42.05.281 under the procedure described in AS 42.05.712 .

(h) A cooperative organized under AS 10.25 may elect to be exempt from the provisions of this chapter, other than AS 42.05.221 - 42.05.281, under the procedure described in AS 42.05.712 .

(i) A utility that furnishes collection and disposal service of garbage, refuse, trash, or other waste material and has annual gross revenues of \$300,000 or less is exempt from the provisions of this chapter, other than the certification provisions of AS 42.05.221 - 42.05.281, unless the subscribers petition the commission for regulation under AS 42.05.712 (h). Notwithstanding AS 42.05.712 (b) and (g), if subscribers representing 25 percent of the gross revenue of the utility petition the commission for regulation, the utility is subject to the provisions of this chapter.

(j) The provisions of this chapter do not apply to sales, exchanges, or gifts of energy to an electric utility certificated under this chapter when the energy which is the subject of the sale, exchange, or gift is waste heat, electricity, or other energy which is surplus or the by-product of an industrial process. In an area in which no electric utility is certificated for service, energy provided by sale, exchange, or gift may be provided to any utility which is certificated for service to that area. A contract for the sale, exchange, or gift of energy exempt under this subsection does not make the supplier a public utility and does not transfer the responsibility to provide utility services from a certificated utility to any other person.

(k) A utility that furnishes cable television service is exempt from the provisions of this chapter other than AS 42.05.221 - 42.05.281 unless the subscribers petition the commission for regulation under the procedure described in AS 42.05.712 .

(l) A person, utility, joint action agency established under AS 42.45.310, or

cooperative that is exempt from regulation under (a), (d) - (k), or (o) of this section is not subject to regulation by a municipality under AS 29.35.060 and 29.35.070.

(m) The collection and disposal, under AS 29.35.050 (c), by a municipality of waste material deposited at an intermediate transfer site is exempt from this chapter.

(n) Except as provided by AS 42.06.370 (c), the provisions of this chapter do not apply to a person who owns or operates a natural gas pipeline as a North Slope natural gas pipeline carrier, as that term is defined in AS 42.06.630 .

(o) A joint action agency established under AS 42.45.310 is exempt from regulation under this chapter, including the requirement to obtain a certificate of public convenience and necessity under AS 42.05.221 , for the operation of, sale of power from, and other activities related to the power project the joint action agency purchases from the Alaska Energy Authority until the wholesale agreement and any related contract assigned by the authority becomes subject to review or approval by the commission under AS 42.05.431 . The exemption provided by this subsection extends to repairs and improvements to the power project the joint action agency purchases from the authority but does not extend to any other power project or other activity of the joint action agency.

Sec. 42.05.712. Deregulation ballot.

(a) A utility or cooperative that may elect to be exempt from the provisions of this chapter shall poll its subscribers or members in the manner described in this section.

(b) The votes of a majority of those voting in an election in which at least 15 percent of the eligible subscribers or members return ballots are required for a utility or cooperative to elect exemption under (a) of this section.

(c) Each subscriber or member of the utility or cooperative shall receive notice of an election under this section with the subscriber's or member's regular bill for service at least 60 days before the date set for the election. The notice shall contain impartial language informing the subscribers or members that an election on the option of deregulation or regulation by the Regulatory Commission of Alaska will be held within 60 days and that a ballot to participate in that election will be mailed or delivered to each subscriber or member of the utility or cooperative with the regular bill for service. The notice shall also state that a subscriber or member of the cooperative is entitled to vote in the election without regard to whether the subscriber's or member's account with the utility or cooperative is current and that the ballot must be postmarked or returned to the commission within 30 days after it was mailed or otherwise delivered to the subscriber or member. The notice shall also announce the schedule for one or more public meetings which shall provide an opportunity for the subscribers or members to discuss this election. The public meeting or meetings shall be held not more than 30 days before the ballots are mailed or distributed to those

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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

G. Nanette Thompson, Chair
Bernie Smith
Patricia M. DeMarco
Will Abbott
James S. Strandberg

In the Matter of the Tariff Revision, Designated
as TA11-290, Filed by GOLDEN HEART
UTILITIES, INC., for Its Sewer Division, for a
Rate Increase and Rate Redesign

) U-00-115
) ORDER NO. 18

In the Matter of the Tariff Revision, Designated
as TA14-118, Filed by GOLDEN HEART
UTILITIES, INC., for Its Water Division, for a
Rate Increase and Rate Redesign

) U-00-116
) ORDER NO. 17

In the Matter of the Tariff Revision, Designated
as TA72-37, Filed by COLLEGE UTILITIES
CORPORATION, for its Sewer Division, for a
Reduction in Sewer Treatment Charges

) U-00-146
) ORDER NO. 15

ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

Summary

After reviewing Golden Heart Utility's (GHU) arguments and the evidence on benefits to ratepayers presented by GHU at hearing, we deny GHU's petition for reconsideration. We conclude that GHU's model demonstrating benefits is based on assumptions too speculative to demonstrate that there are any tangible benefits to the ratepayers to outweigh the costs of the acquisition adjustment that the ratepayers will bear. We also affirm our requirement that GHU submit a plan of consolidation by

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1 March 26, 2002, with further explanation of the proceedings in which we intend to
2 consider this issue.

3
4 Background

5 In Order U-00-115(13),¹ we determined the revenue requirements and
6 rate changes supported by GHU's rate case filing in TA11-290 and TA14-118 and by
7 College Utility Corporation (CUC)² in TA72-37. GHU filed a motion for emergency stay
8 of Order U-00-115(13) on October 3, 2001. We granted the stay pending our decision
9 on the petition for reconsideration that GHU promised to file. See Order
10 U-00-115(16).³ On October 10, 2001, we received GHU's petition for reconsideration
11 of Order U-00-115(13).
12

13 In its petition, GHU contended that we failed to appreciate all that was
14 accomplished and promised to GHU when the APUC⁴ approved the acquisition of the
15 sewer and water utilities of the City of Fairbanks (the City) by GHU's parent company
16

17
18
19 ¹Order Establishing Revenue Requirement and Rate Design and Requiring
20 Filings, Order U-00-115(13)/U-00-116(12)/U-00-146(10) dated September 24, 2001,
(hereafter, Order U-00-115(13)).

21 ²CUC, also a subsidiary of Fairbanks Sewer & Water (FSW) and a party to
22 these consolidated dockets, did not join in GHU's petition for reconsideration.

23 ³Order Affirming Electronic Ruling Granting Motion for Stay and Vacating Filing
24 Requirement, Order U-00-115(16)/U-00-116(15)/U-00-146(13) dated
25 October 26, 2001.

26 ⁴The Alaska Public Utilities Commission (APUC or Commission) was the
predecessor to this agency. We assumed the responsibilities of the APUC on
July 1, 1999 under Ch. 25, SLA 1999.

1 FSW in 1997. GHU asserted that the APUC's decision in Order U-96-114(5)⁵ rejected
2 arguments that we considered or relied on in our reasoning in Order U-00-115(13).
3 GHU also argued that the rates we approved in Order U-00-115(13) will "render GHU
4 unsustainable." See Pet. Recons., p. 4. According to GHU, the rates approved in
5 Order U-00-115(13) are unreasonable because they produce less revenue than the
6 utility had five years ago. GHU also asserted that the depreciation allowed in Order
7 U-00-115(13) is insufficient to sustain a utility with \$110 million in plant and will not
8 allow GHU to pay the dividends necessary to purchase CUC.

10 GHU argued that the only remaining acquisition adjustment issue was
11 whether it showed that benefits to ratepayers outweighed the additional costs of the
12 acquisition adjustment. GHU said the ratepayer benefits it enumerated were
13 uncontested at hearing. GHU also contended that our order regarding consolidation is
14 contrary to past orders.

16 The Public Advocacy Section (PAS) and Intervenor JL Properties filed
17 oppositions to GHU's petition on October 16 and October 22, respectively.
18 JL Properties argued that the return we granted GHU was more than generous, that
19 Order U-96-114(5) did not make the promises GHU contends, that AS 42.05.441(b) is

22 ⁵Order Affirming Bench Rulings; Denying Motion to Strike and in limine;
23 Approving Applications, with Conditions; Approving Initial Tariff, with Modifications;
24 Approving Rates; and Requiring Filings, Order U-96-114(5)/ U-96-115(5)/ U-96-116(5)/
25 U-96-117(5)/ U-96-118(5)/ U-96-119(5), dated September 24, 1997 (hereafter, Order
26 U-96-114(5)). Dockets U-96-114 through U-96-119 dealt with the transfer and
acquisition applications from public to private operation for the water and sewer utilities
in the Fairbanks area.

1 a mandatory statute, and that higher rates based on nonexistent investment are not in
2 the public interest.

3 The PAS argued that AS 42.05.441(b) should be interpreted to require
4 any analysis of public benefits to include a showing of extraordinary circumstances.

5 GHU filed a reply to the opposition of JL Properties on October 25, 2001.
6 GHU argued that it did not mischaracterize Order U-96-114(5) as JL Properties
7 asserted. GHU reiterated its claim that its evidence of benefits of these acquisitions
8 outweighs the costs is undisputed.
9

10 Discussion

11 When the APUC approved FSW's acquisition of GHU from the City in
12 Order U-96-114(5) in 1997, it rejected GHU's request to approve a rate base of
13 \$15 million dollars as a part of the deal.⁶ Order U-96-114(5) did promise GHU a future
14 opportunity to demonstrate that the benefits of the acquisition outweighed the costs to
15 the ratepayers of including the acquisition adjustment in GHU's rate base.⁷ GHU had
16 that opportunity in this proceeding. Order U-96-114(5) does not imply that success in
17 demonstrating benefits would be a foregone conclusion. Rather, Order U-96-114(5)
18
19

20 ⁶The City transferred its sewer and water utilities to a new entity called GHU.
21 FSW then purchased GHU for a cash price of \$2 million and other non-cash
22 consideration. The City and FSW negotiated a rate base value of \$15 million dollars,
23 which they asked the APUC to approve as a condition of the acquisition. Throughout
24 this proceeding we have referred to the difference between the \$2 million and the
25 \$15 million (less current booked depreciation) as the "acquisition adjustment." See
26 Order U-00-115(13), p. 6.

⁷In Order U-96-114(5) at p. 43, the APUC said: "The commission notes that it is
willing to favorably consider an acquisition adjustment if a utility can demonstrate that
the public benefit outweighs the expense of the acquisition adjustment."

1 stated clearly that GHU would have to demonstrate benefits to ratepayers in excess of
2 the costs of the acquisition adjustment. Order U-96-114(5) then cited an APUC
3 decision that approved the purchase of a utility by a new owner as in the public
4 interest, but denied the requested acquisition adjustment. See *RCA Alaska*
5 *Communications, Inc.*⁸ In that decision, the APUC ruled that the claimed benefits were
6 not the kind of benefits that would justify allowing the acquisition adjustment.
7

8 In this rate proceeding, we considered GHU's evidence of ratepayer
9 benefits. We concluded, for reasons described at pp. 8-11 of Order U-00-115(13) and
10 in more detail in this order, that the benefits GHU asserted at hearing do not meet the
11 test of "tangible benefits that outweigh the additional costs." This order explains how
12 the benefits test we applied is consistent with AS 42.05.441(b) and with Order
13 U-96-114(5) and further explains our reasoning in determining that the economic
14 model GHU offered is not convincing evidence of ratepayer benefits outweighing the
15 additional cost of the acquisition adjustment. We also explain some utility ratemaking
16 fundamentals that guide our decisions in establishing GHU's rates.
17

18 GHU's Opportunity to Demonstrate Ratepayer Benefits

19 In its petition, GHU asserted that the APUC's commitment to favorably
20 consider the acquisition adjustment precluded other positions that were argued by the
21 parties or adopted as part of the reasoning in our Order U-00-115(13) decision. See
22 Pet. Recons., pp. 2-3. Among other things, GHU argued that the APUC determined it
23 would not be guided by AS 42.05.441(b). See Pet. Recons., pp. 2, 30. We believe
24

25 _____
26 ⁸U-78-4(33), 3 APUC 371 (1981).

1 GHU reads into Order U-96-114(5) many things that are neither expressly stated nor
2 reasonably inferred from the decision. We particularly take issue with GHU's assertion
3 that the APUC decided not to be guided by AS 42.05.441(b).

4
5 The APUC was not free to decide to ignore the statutory directive of the
6 legislature; neither are we. Therefore, in Order U-00-115(13) at p. 6-8, we explained
7 that we interpret AS 42.05.441(b) in a way that reconciles it with Order U-96-114(5)
8 and other commission decisions holding an acquisition adjustment may be allowed if
9 the ratepayer benefits outweigh the ratepayers burdens associated with the
10 acquisition adjustment. We rejected arguments that AS 42.05.441(b) imposes a
11 mandatory requirement to establish the rate base at the lower of acquisition cost or
12 original cost when first devoted to utility service. We interpreted AS 42.05.441(b) to
13 allow some flexibility to consider the public interest in a particular case. The statute
14 states the rule to be followed generally in valuing public utility property.⁹ However, we
15 think the "guided by" language permits (but does not obligate) us to make exceptions
16 to the rule if, after considering both costs and benefits to ratepayers, we find the
17 ratepayers would benefit from ratemaking valuation on a different basis. Therefore,
18 we followed the promise of Order U-96-114(5) by examining GHU's evidence of
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21

22 ⁹GHU argues that that AS 42.05.441(b) does not use the language of a
23 presumption. However, GHU does not dispute that it had the burden of demonstrating
24 benefits in excess of the costs. We made clear at Order U-00-115(13) at p. 7 that
25 GHU could "overcome the statutory presumption if it demonstrates that the acquisition
26 provides specific, tangible benefits to the ratepayers in an amount at least equal to the
additional cost of rates they will pay because of any acquisition adjustment." This is
the same burden of proof that the commission told GHU in Order U-96-114(5) it would
have to meet.

1 benefits to the ratepayers in this proceeding. We denied the acquisition adjustment
2 because we concluded, among other things, that GHU's evidence of ratepayer
3 benefits was too speculative.

4 Nothing in Order U-96-114(5) or other APUC precedents suggests that
5 the benefits test is easy to meet. In Order U-96-114(5), the APUC cited *RCA Alaska*
6 *Communications, Inc.*,¹⁰ which set out the benefits rule but showed that it is not easily
7 met. There the commission found that the benefits test was not met by a showing that
8 ratepayers would receive benefits of \$40 million in rate savings and \$27 million in new
9 plant investment. That decision makes a distinction that is important here. By
10 concluding that a transfer of ownership is in the public interest, the commission is not
11 also concluding that an acquisition adjustment is in the public interest. The issues are
12 separate.
13

14 However, we point out that the promise to consider ratepayer benefits in
15 connection with an acquisition adjustment is not an illusory promise. An example of
16 ratepayer benefits that could satisfy our standard for approving an acquisition
17 adjustment would be the cost savings from eliminating a second general manager's
18 salary and other administrative costs upon the combination of two utilities. A
19 combined utility could cut its costs through economies of scale. If the resulting savings
20 exceed any additional costs of purchasing the utility at a price higher than the
21 depreciated original cost of the utility property, then the acquisition adjustment would
22 benefit the public. We would expect that a benefit of this kind would be demonstrated
23
24

25 _____
26 ¹⁰See n. 8.

1 in a clear and tangible way by showing the expenses to be avoided and the overall
2 impact on customer rates. Merely speculative or hoped for benefits will not satisfy the
3 test. A projected rate reduction could be a benefit justifying an acquisition adjustment,
4 but is not necessarily required to meet the test. We will consider all the circumstances
5 of a given case to decide if it is in the public interest to allow an acquisition adjustment.
6

7 GHU's Demonstration of Benefits

8 In this rate proceeding, GHU had an opportunity to demonstrate benefits
9 that would outweigh the costs to its ratepayers of the acquisition adjustment. In fact,
10 GHU had an unusual second chance to demonstrate that benefits it predicted in 1997
11 had actually materialized after four years. But, after considering GHU's evidence and
12 arguments, we concluded that GHU did not demonstrate benefits within the meaning
13 of the benefits rule. At pp. 8-12 of Order U-00-115(13), we explained our reasons.
14 We said there that we found it "inappropriate to compare GHU's proposed rates with
15 the speculative rates developed in the FMUS cost-of-service study," but we did not
16 discuss in any detail the benefits model presented in the testimony of GHU witness
17 Rogers. This order explains in more detail why we concluded that this model does not
18 show ratepayer benefits that meet our standard of clear and tangible benefits
19 exceeding the cost of the acquisition adjustment GHU seeks.
20

21 The benefits model is discussed in Rogers' prefiled direct testimony,
22 H-3, pp. 11-12, 15, 21-26, in Exhibit BDR-6, and in cross-examination beginning at
23 Tr.-392. Rogers explained that the basic approach of the model was to compare
24 GHU's rates and projected rates with rates proposed in a cost-of-service (COSS)
25 study prepared for the City in 1996. At H-3, p. 11, Rogers said: "I explored several
26

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Central Microfilm Services
Department of Education & Early Development
State of Alaska

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2 impact on customer rates. Merely speculative or hoped for benefits will not satisfy the
3 test. A projected rate reduction could be a benefit justifying an acquisition adjustment,
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24 GHU's rates and projected rates with rates proposed in a cost-of-service (COSS)
25 study prepared for the City in 1996. At H-3, p. 11, Rogers said: "I explored several
26 U-00-115(18)/U-00-116(17)/U-00-146(15) - (12/7/01)
Page 8 of 16

1 scenarios in this model to allow projected comparisons between what rates would
2 have been under FMUS management and what they are and I project to be under
3 GHU management." On the basis of this model, Rogers concluded that GHU's rates
4 were favorable in comparison to the cost-of-service study rates. "Under the GHU
5 proposal, ratepayers will pay less in 2001 than the FMUS Cost of Service Study
6 indicated they would have been paying in 1996 under the Cost of Service Study,
7 notwithstanding substantial system improvements." (H-3, p. 19).

9 However, the City never implemented rates based on the COSS. The
10 COSS was never examined or approved by the APUC. We consider the COSS rates
11 unreliable as a basis for comparison with GHU rates because they were never used by
12 the utility, or adopted by the City Council. Those rates were speculative. Indeed, it is
13 not even clear that the COSS projections reflect the reality of what engineers believed
14 would be necessary, given the political nature of municipal ratesetting and budget
15 allocations. (Tr. 395-397).

17 Rogers' model also incorporated other highly uncertain assumptions. At
18 H-3, p. 24, Rogers said:

19 Creating a comparison between what would have been FMUS operating
20 and capital costs and what are and will be GHU's operating and capital
21 costs is subject to significant variation based on the assumptions chosen.
22 Most problematic is creating the scenario for capital plant acquisition by
23 FMUS, since part of the problem in recent years was the failure of the City
24 of Fairbanks to invest in FMUS. The hidden subsidy of water and
25 wastewater by the telephone utility also distorts the picture.

26 To allow direct comparison of operating costs, for FMUS I used the 1996
FMUS Cost of Service Study as a basis for operating costs, allowing
modest inflation on wages, goods and services. For GHU, I used the actual
experience in 1998 and 1999, and projections for 2000 and thereafter.

1 To allow comparison of capital costs, I used GHU's current plan as a base
2 case. In Exhibit BDR-6, I assumed FMUS constructed the same capital
improvements as GHU, but at a cost premium of 50%.

3 Rogers' testimony and cross-examination clarified other assumptions.
4 He used the same debt cost for FMUS and GHU. (H-3, p. 25). He predicted both
5 GHU and FMUS would reinvest 80 percent of retained earnings in the utility. *Id.* He
6 did not model any federal or state grants as capital sources under FMUS ownership.
7 (Tr. 403).

8
9 Each of these assumptions in Rogers' model is based on unknown and
10 unknowable future circumstances. While it is the nature of a model to test the results
11 of different assumptions about unknown factors, the end product becomes so
12 speculative that we cannot use it as a reliable method for quantifying the benefits to
13 GHU consumers.¹¹

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18 ¹¹GHU contends that it demonstrated benefits through a model similar to the
19 one the APUC relied on approving an acquisition adjustment in Order U-96-120(5)
20 authorizing Golden Valley Electric Association (GVEA) to acquire the FMUS electric
21 utility. See Pet. Recons., p. 32. However, the benefits demonstrated by that model
22 differ significantly from those claimed here. Upon acquisition of the FMUS electric
23 utility, GVEA planned to apply its existing rate schedules to all FMUS customers,
24 realizing actual rate savings for all customers except those using small amounts of
25 electricity. The GVEA benefits model demonstrated "real resource savings" in the
26 form of lower electric rates and increased capital credits for ratepayers. These
savings were derived from more efficient use of generators and through economies of
scale in administration, distribution and customer services costs. See Order
U-96-120(5)/U-97-188(1), September 24, 1997, p. 22-25. Dockets U-96-120 and
U-97-188 dealt with the transfer and acquisition applications from public to private
operation for the electric utility.

1 We believe that GHU might have demonstrated credible ratepayer
2 benefits of the acquisition if it had initiated wholesale water sales or economies from
3 consolidation with CUC. Order U-96-114(5) noted that in 1997 FSW predicted savings
4 of approximately \$10 million from wholesale water sales from GHU to CUC. See
5 Order U-96-114 (5), p. 37. At the time of the GHU hearing in June of this year, GHU
6 had not captured these savings as benefits to the ratepayers.
7

8 Basic Ratemaking Principles

9 GHU's petition for reconsideration makes some arguments or assertions
10 that are contrary to the basic utility ratemaking principles that we follow. In this
11 section, we discuss the basic "compact" of utility regulation and other underlying
12 principles that we consider to be the foundation of the public interest protection that
13 economic regulation by this commission provides.
14

15 First, rates must be justified by cost information. Passage of time alone
16 does not justify any rate increase for a utility, especially where we have never before
17 seen evidence of the utility's actual costs of providing service. For more than four
18 years, GHU has been permitted to charge rates that were established without cost
19 justification, merely by adding fifteen percent to the previous FMUS rates. Order
20 U-96-114(5) indicates this rate increase was allowed on the basis of evidence that
21 FMUS rates did not recover all the utility's costs, and on the basis of GHU's agreement
22 with the City to limit rate increase requests to fifteen percent for three years after the
23 transfer. Although GHU repeatedly refers to the fifteen percent increase as a "rate
24 cap," the evidence of costs we have reviewed in this proceeding indicates that the
25
26

1 fifteen percent rate increase in 1997 permitted GHU to raise rates above its justified
2 costs.

3 Second, we discuss GHU's concept of a "sustainable" utility. GHU
4 argues that FSW and GHU/CUC will not be "sustainable" at the rates we approved in
5 Order U-00-115(13). See Pet. Recons., pp. 4, 12-13, 17-18, 47. GHU appears to
6 mean "self-sustaining," that is, capable of making necessary capital improvements
7 without any additional owner investment even while paying off the substantial loans
8 obtained to acquire CUC. Utility regulation recognizes a "regulatory covenant" that
9 promises public utility owners an opportunity to earn a fair return on their investment in
10 property used and useful in providing service to the public. But the regulatory
11 covenant does not promise utility owners that they will be able to "sustain" a utility
12 without supplying equity capital when the utility needs new investment. Of course,
13 owner investment can be supplied through retained earnings, but when a utility needs
14 large capital infusions, it may be necessary to raise more equity capital than retained
15 earnings can supply.

16
17
18 In Order U-00-115(13), we granted GHU a generous return on equity
19 enhanced by a hypothetical capital structure (which has the effect of raising the equity
20 return to an even higher level). Our purpose in granting this generous return is to
21 recognize that the old FMUS plant is in need of upgrading and repair. Thus, existing
22 investment is at higher risk than usual, and as a reward for GHU taking over a utility in
23 need of better management. Higher returns generally provide positive incentive to
24 investors to invest in troubled utilities. The high return on equity and the favorable
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26

1 hypothetical capital structure we granted GHU should not be considered normal, nor
2 should GHU expect that these generous allowances will continue in the future.

3 GHU likewise argues that it is not "sustainable" without a larger
4 depreciation allowance. In utility ratemaking, depreciation is the allowance to return
5 the owners' capital invested in plant as plant is used up or wears out. It does not
6 replace owner investment. When utility capital has been contributed, by customers or
7 by government grants, for example, depreciation is not allowed. A leading text says:

8
9 The basic purpose of depreciation accounting is to recover through
10 revenues the costs invested in the physical plant contributing to the
11 production of those revenues. By matching capital recovery with capital
12 consumption, a more accurate measure of current costs of operation is
13 possible. Stated another way, depreciation accounting is necessary to
14 reimburse those supplying the capital used to purchase the related assets
15 and should properly be charged to consumers as a cost of the service they
16 receive. It is the exhaustion of service life, not the particular cause of
17 retirement, that is important.

18 It should be noted that the basic purpose of depreciation accounting is not
19 to finance replacements. Even if facilities are not to be replaced,
20 depreciation must be charged to operating expenses in order to record the
21 cost of property consumed in providing service, thereby maintaining the
22 integrity of the investment. Nor does depreciation result in a fund.¹²

23 Finally, GHU points out that it has spent \$9.5 million for capital
24 investments, yet we have approved a revenue requirement less than the City of
25 Fairbanks received five years ago. See Pet. Recons., p. 62. GHU is entitled to have
26 an opportunity to earn a return on new investment when it becomes used and useful in
providing service to the public. If its new investment was not included in utility plant in
the test year in this case, GHU is entitled to file a new rate case supporting its
additional investment. But projected plant additions have to be treated very carefully,

¹²Charles F. Philips, Jr., The Regulation of Public Utilities, p. 258.

1 so that there is a match between the inclusion in rate base of new investment and the
2 revenue requirement. For example, if new investment replaces some existing pipe
3 that requires high maintenance, then the maintenance costs would be expected to go
4 down.

5
6 Consolidation Plan and Implementation

7 GHU contends that, based upon Order U-00-115(8)¹³ dated
8 April 12, 2001, it reasonably believed that consolidation would not be an issue in this
9 proceeding. Order U-00-115(8) granted reconsideration of a previous order that
10 required FSW to show cause why operations of its various subsidiaries should not be
11 consolidated. In Order U-00-115(8), p. 6 we said: "It would be inappropriate to
12 consider the concept of consolidation on a piecemeal basis. Therefore, FSW is not
13 required to show cause why these operations should not be consolidated. However,
14 we may investigate the issue of consolidation of these operations in the future."
15

16 Our requirement that GHU file a consolidation plan by March 26, 2002,
17 is intended to initiate our proceedings to investigate the issue of consolidation. We
18 intend to monitor the FSW corporate family's effort to capture the benefits of
19
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21
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23

24 ¹³Order Granting Reconsideration, in Part; Vacating Filing Requirements;
25 Requiring Filings; and Amending Docket Title for Docket U-00-116, Order
26 U-00-115(8)/U-00-116(7)/U-00-146(6)/U-01-24(2)/U-01-29(2)/U-01-30(2), dated
April 12, 2001 (Order U-00-115(8)).

1 consolidation that were predicted when it gained the APUC's approval to acquire the
2 FMUS water and sewer utilities. Order U-00-115(13) explored the current corporate
3 structure of FSW and why we found the argument for consolidation compelling. By
4 requiring GHU to file a consolidation plan, we intend that the utility inform us of its
5 intent and its progress toward the consolidation they discussed at the time of the
6 acquisition. We have made no final decision on the consolidation issue but will review
7 GHU's plan before determining whether any additional requirements should be
8 imposed.
9

10 We reopened the evidentiary record during the reconsideration period to
11 consider the many letters and e-mail communications from the public regarding bulk
12 water sales. Because we found that GHU may not have issued adequate notice to its
13 customers in advance of the hearing on this matter, we held consumer input hearing
14 on November 26, 2001. We will not lift the stay on the portions of Order U-00-115(13)
15 pertaining to the cessation of bulk water service until we have completed deliberations
16 on this matter.
17

18 **ORDER**

19 **THE COMMISSION FURTHER ORDERS:**

- 20
- 21 1. The petition for reconsideration filed by Golden Heart Utilities, Inc.,
22 is denied.
 - 23 2. The stay of Order U-00-115(13)/U-00-116(12)/U-00-146(10), dated
24 September 24, 2001, is lifted, except for the provisions related to bulk water.
25
- 26

1 3. By 4 p.m., January 6, 2002 Golden Heart Utilities, Inc., Water and
2 Sewer divisions, shall file revised cost-of-service studies and tariffs to reflect the
3 determinations in Order U-00-115(13)/U-00-116(12)/U-00-146(10), dated
4 September 24, 2001.

5
6 4. By 4 p.m., January 6, 2002, College Utilities Corporation shall file
7 revised tariffs to reflect the determinations in Order
8 U-00-115(13)/U-00-116(12)/U-00-146(10), dated September 24, 2001.

9 5. By 4 p.m. March 26, 2002, Golden Heart Utilities, Inc., Water and
10 Sewer Divisions, shall file a plan to clarify its intent for consolidating all operations and
11 comments on the Staff Recommendation regarding the Cost Allocation Manual, as
12 more fully discussed in Order U-00-115(13)/U-00-116(12)/U-00-146(10) dated
13 September 24, 2001, and in this Order.

14
15 DATED AND EFFECTIVE at Anchorage, Alaska, this 7th day of December, 2001.

16 BY DIRECTION OF THE COMMISSION

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19 (S E A L)

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