

COLORADO DEPARTMENT OF REGULATORY AGENCIES
OFFICE OF POLICY AND RESEARCH

COLORADO PUBLIC UTILITIES COMMISSION

1997 SUNSET REVIEW



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EXECUTIVE SUMMARY

The Department of Regulatory Agencies (DORA) has concluded the 1997 Sunset Review of the Public Utilities Commission (PUC). DORA found there is a need for continued regulation and recommends that the PUC continue to serve as the state regulatory agency. Using the Sunset evaluation criteria §24-34-104, C.R.S. to evaluate the operation of the PUC, DORA found several areas where statutory changes are necessary to remove impediments or enhance the PUC's ability to operate in the public interest. The Sunset Review includes a total of eleven statutory and four administrative changes. Each recommendation is followed by an analysis and discussion regarding that recommendation.

Industry and consumer representatives contacted for input on the report were generally supportive of the operation of the PUC. The passage of HB95-1335 allowing competition into the local telecommunications market and the current debate over regulatory restructuring for gas and electric utilities creates new responsibilities and challenges for the PUC. If and when competition becomes an actuality, the General Assembly will need to reevaluate the organizational structure of the PUC. Until those changes are necessary, the PUC will operate in a state of transition regulating monopolies while also providing a level playing field for competitors to make competition a reality. This requires a flexible and far sighted PUC that can provide leadership in achieving these goals.

Opening markets to competition in Colorado requires the PUC to actively participant in regulating companies while also understanding what is best for Colorado consumers. A regulatory structure that supports monopolies must be modified for a competitive market. This observation results in statutory recommendations that grant greater enforcement authority to the PUC, that expedite the rule making process, and that provide more consumer input into the decision making process. These statutory recommendations include the following:

1. Strengthen the definition and regulation of luxury limousines to provide quality control for consumers while ensuring adequate public access to passenger transportation.
2. Revise the PUC law to provide for improved safety and enforcement of the towing carrier industry. This includes the implementation of three levels of towing carrier licenses and increased permitting fees to cover costs of enforcement and inspection.
3. Increase the Class I railroad's yearly contribution to the Crossing Protection Fund. Railroad grade separations are funded through a \$1.25 million yearly contribution from each Class 1 railroad. The recent mergers of five Class I railroads has left only two railroads resulting in a \$4 million reduction to the fund.
4. Exempt utility companies and the Office of Consumer Counsel from obtaining 25 signatures in order to issue a complaint regarding reasonableness of rates or charges of utilities.

5. Remove the reconsideration, reargument, or rehearing option on final rules to expedite PUC rule making procedures. Rule making procedures for the PUC require more review than other agencies that follow the Administrative Procedure Act.
6. Permit hearings to be electronically recorded in an effort to conserve PUC staff resources.
7. Allow the Director of the PUC to conduct public meetings and enter those comments at PUC hearings. More consumer input into the decision making process is also necessary.
8. Grant the PUC direct fining authority. Other Colorado agencies and other states have this authority. Currently, the PUC's fining authority is too prohibitive and recovery is too slow to be effective.
9. Grant the PUC authority to revoke or deny the issuance of new permits or certificates for failure to pay civil penalties. Currently, the PUC is unable to take action against transportation carriers for failure to pay civil penalties.
10. Allow the PUC to set motor carrier fees by rulemaking and remove all such from the statute.

This report also makes administrative recommendations to the PUC; many of these recommendations concern consumer complaints. The administrative recommendations include:

- A. Conduct a study on the safety of the placement of gas meters by utility companies and report their findings to the General Assembly. A change in the traditional placement of gas meters from the house to the curb by some companies has resulted in explosions of homes and property in other states. This meter placement practice occurs in Colorado.
 - B. Centralize consumer complaints into one office. This will provide more uniformity in treating and managing complaints.
 - C. Provide more detailed complaint information more frequently. Currently some offices provide the public with monthly information while other offices provide their information only when requested.
 - D. Provide computer "read-only access" to the Office of Consumer Counsel so that they may analyze complaint information to identify trends in the market.
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BACKGROUND

Introduction

For decades, the U.S. telecommunications and electric utility industries have been subject to comprehensive regulation by both federal and state governments. This intensive level of regulation is due to utilities operating as monopolies. Given the high cost of the utility infrastructure, the government believed that a single company could provide these services more efficiently than several competing companies.

This situation, however, is being brought to an end, by allowing competition in the utility industry and changing technologies. Traditional electric utility providers are being challenged by independent power producers and marketers and by alternate energy sources in both the wholesale and retail markets. The divisions between telecommunications providers are breaking down; cable television companies and long-distance carriers may soon compete with existing local companies to provide for local telephone service.

As the telephone industry moves toward an open competitive environment, the Public Utilities Commission of Colorado (PUC) should ensure that all residents of Colorado continue to receive reliable, reasonably priced services. It is imperative that the PUC continue to change its emphasis from the rate cases and regulatory directives of monopoly regulation to a broader oversight role designed to ensure fair competition while protecting consumer interests.

History of Utility Regulation in Colorado

In 1913, the General Assembly created the PUC as part of the passage of the Public Utilities Act of 1913. At that time, many states created Public Utilities Commissions to regulate electric, gas, and telephone utilities, as well as transportation utilities. Colorado's PUC became a component of the State Constitution in 1954 with the passage of Article XXV of the Colorado Constitution. It provided that, "until such time as the General Assembly may otherwise designate, [the authority to regulate public utilities] shall be vested in the Public Utilities Commission of the State of Colorado." By law, public utilities include every common carrier, every pipeline, gas, electrical, telephone, telegraph, or water corporation, and every municipality that supplies such services to the public.

In 1968, the General Assembly passed the Administrative Reorganization Act which resulted in the PUC's being made a division within the Department of Regulatory Agencies (DORA). In addition to this major restructuring, the General Assembly also changed the PUC's regulatory duties over the years, particularly during the last two decades. For example, the General Assembly deregulated or reduced regulation of such transportation-related businesses as trash haulers; motor vehicles transporting sand, dirt, gravel or road-surfacing materials; commercial motor carriers; volunteer transportation; household goods movers; charter buses; luxury limousines; and scenic tour operators.

Public utility regulation has also changed significantly in the telecommunications area. The 1982 breakup of the American Telephone and Telegraph Company resulted in multiple new telecommunications companies and services. Colorado's passage of HB 95-1335 opened local exchange service to competition. In addition, the federal Telecommunications Act of 1996 promotes competition in telephone and cable television services and partially deregulates much of the telecommunications industry.

Utility Regulation History Timeline

The following timeline provides a brief history of significant dates within the State of Colorado's regulation of utilities.

- 1885 Railway Commission established with the power to investigate railroad rates and charges and to recommend, but not enforce, reasonable and just rates.
 - 1893 Statute creating the Railroad Commission repealed.
 - 1910 Three member Railroad Commission created.
 - 1913 The Public Utility Act passed creating a three-member Public Utilities Commission and abolishing the State Railroad Commission.
 - 1915 The public utilities statutes amended to specify that motor vehicle common carriers providing services similar to those provided by railroads were subject to PUC regulation as public utilities.
 - 1927 The PUC given full and complete jurisdiction over all motor vehicle common carriers.
 - 1954 A constitutional amendment established the PUC and authorized regulation of all non municipally owned public utilities within home rule cities.
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- 1955 The PUC authorized to regulate motor vehicle commercial carriers.
- 1961 All suppliers of electricity including cooperative and nonprofit electric associations declared to be public utilities and therefore subject to PUC regulation.
- 1969 Ash and trash motor vehicle carriers placed within PUC jurisdiction.
- 1971 Towing carriers placed within PUC jurisdiction.
- 1980 Ash and trash motor vehicle carriers removed from PUC regulation.
- 1983 Cooperative electric associations allowed to exempt themselves from PUC regulation by majority vote of members and consumers.
- 1984 Carriers of household goods declared to fall within the scope of public interest and subject to regulation (safety and insurance requirements), but not to be public utilities.

Providers of intrastate telecommunications service declared to be a public utility subject to regulation.

- 1985 Charter/scenic bus, courier, luxury limousine, and off-road scenic charter motor vehicle carriers exempted from regulation as public utilities but required to register and have adequate insurance and comply with PUC safety requirements.

Consumers owning pay telephone equipment and reselling local exchange and toll service using the tariff services and facilities of regulated telephone utilities and cellular radio systems exempted from regulation as public utilities.

- 1986 Transportation of hazardous materials by motor vehicle placed within PUC jurisdiction.

1987 Repeal and reenactment of Article 15 of Title 40, C.R.S., 1984, concerning the regulation of intrastate telecommunications service, products, and providers. Subject to regulation are basic emergency service, public coin telephone service, white page directory listing, local exchange listed telephone number service, new products and services necessary for provision of basic local exchange service, and dual tone multi-frequency signaling. Services, products, and providers exempt from regulation: cable services, cellular telecommunications services, mobile radio services, radio paging services, new products and services other than those necessary to provide basic local exchange service, centron and centron-like services, operator services, and special access.

1992 Public Utilities Commission given power to implement and fund telecommunications relay services for disabled telephone users, conforming with the federal "Americans With Disabilities Act of 1990."

Public Utilities Commission given power to flexibly regulate electric, natural gas, or steam service public utilities by approving or denying applications for special-rate contracts. Utilities prohibited from subsidizing such contracts by raising the rates of other regulated utility operations.

The Federal Energy Policy Act of 1992 requires open access of investor-owned electric transmission networks. Because the Act prohibits the Federal Energy Regulatory Commission from regulating retail wheeling, many believe it authorizes states to permit it. Retail wheeling occurs when customers negotiate the purchase of electricity at a lower cost from a supplier other than their local utility.

The Federal Energy Regulatory Commission (FERC) Order 636 resulted in major changes in the way interstate pipelines purchase gas. The Order finalized a decade-long process of requiring interstate pipelines to provide gas suppliers non-discriminatory open access to their pipelines.

1994 Senate Bill 94-113 relaxed the market entry requirement for taxicab companies in Colorado's 11 largest counties. As a result, instead of having a regulated monopoly, taxicab companies in these counties have regulated competition. This means that permit applicants no longer have to prove that existing service is substantially inadequate. Instead, they must only show the need for service and their fitness to provide the service and destructive competition will not result.

1995 Federal regulation preempted state regulation of transportation utilities that carry property within state boundaries (intrastate). The PUC no

longer regulates routes, rates, or services of intrastate property carriers.

Colorado House Bill 95-1335 changed local telephone exchanges from regulated monopolies to regulated competition and shifted the regulatory role from rate regulation to quality-of-service enforcement. New providers file an application to provide service and will come under state regulation for the first time, resulting in an increased oversight role for the state. The Telecommunications Act of 1996 requires that states conduct formal arbitration of any interconnection disputes between incumbent telephone companies and new entrants.

- 1996 Colorado Senate Bill 96-138 authorized a study to determine the feasibility of providing residential and small customers a choice of gas suppliers. The study provided no recommendations to change the present regulatory structure.

SUMMARY OF STATUTE

Title 40 of the Colorado Revised Statutes encompasses most of the regulatory statutes on the PUC. Title 40 outlines the powers and duties of the PUC as well as identifies the responsibilities of public utilities. This section outlines each article under Title 40 and describes the various types of utilities regulated in Colorado.

Article 1 General and Administrative

This article defines public utilities and establishes the jurisdiction of the PUC.

Article 1.1 People Service Transportation

Transportation systems meeting the criteria described in this article are not classified as public utilities or as any form of carrier subject to regulation by the PUC. These systems are classed as people service transportation and volunteer transportation subject to safety and insurance regulation described in this Article.

Article 2 General Provisions

This article establishes the qualifications and duties of the Commissioners and the Director of the PUC. It grants the Commissioners rule-making authority and authorizes the PUC to establish reasonable requirements to promote safety of operations for motor carriers. It requires that the PUC furnish a list of public utilities subject to its jurisdiction, supervision, and regulation to the Executive Director of the Department of Revenue. It sets forth annual identification fees for motor carriers.

Article 3 Regulation of Rates and Charges

The PUC is entrusted with supervision and regulation of all public utilities including rates and regulations. The primary purpose of utility regulation is to ensure that the rates charged are not excessive or unjustly discriminatory. This article ensures that the PUC sets rates which protect both the right of the public utility company and its investors to earn a return reasonably sufficient to maintain the utility's financial integrity and the right of consumers to pay a rate that accurately reflects the cost of service rendered.

Article 3.4 Emergency Telephone Access

Article 3.4 establishes the fund and the eligibility requirements for individuals to receive low-income telephone assistance.

Article 3.5 Regulation of Rates and Charges by Municipal Utilities

Article 3.5 grants the governing body of municipal utilities the authority to adopt all necessary rates, charges, and regulations to govern and regulate all rates, charges, and tariffs of its municipal utility within its authorized electric and natural gas service areas which lie outside the jurisdictional limits of the municipality.

Article 4 Service and Equipment

This article gives jurisdiction to the PUC over adequacy, installation, and extension of power services and facilities necessary to supply, extend, and connect these services and facilities. The PUC has the authority to designate location and relocation of transportation facilities. For example, Article 4 includes standards for electricity, gas, and water, and rules for public safety crossings.

Article 5 New Construction - Extension

Extensions and improvements of utilities must have the approval of the PUC. Under this section, the utility must show that there is a need for additional construction, thereby demonstrating that the existing sources are not adequate. This article establishes the certificate of public convenience and necessity that creates the right to service customers in a particular region.

Article 6 Hearings and Investigations

This article empowers the PUC to conduct hearings and investigations. Article 6 addresses standards of conduct for members and staff of the PUC; basis of review for applications for reconsideration, reargument, or rehearing; ex parte communications disclosure; complaints; hearings on tariffs; and amendment of decisions.

Article 7 Enforcement Penalties

Article 7 provides penalties and enforcement mechanisms for violation of the provisions of this statute. Any public utility that fails to comply with any provision of Articles 1-7 is subject to a penalty of not more than two thousand dollars for each offense through the district court. Any person who operates a motor carrier (i.e., taxis, tow trucks, carriers of household goods, etc.) is subject to civil monetary penalties.

Article 7.5 Civil Remedies Available to Utilities

A utility may bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts any of the following acts resulting in damages to the utility: bypassing, tampering, or unauthorized metering.

Article 8 Unclaimed Funds for Overcharges

The PUC may determine the manner in which overcharges by a public utility are returned to the customers of that utility.

Article 8.5 Unclaimed Utility Deposits

Article 8.5 establishes the Legislative Commission on Low-Income Energy Assistance, its disbursement of moneys, and eligibility for the fund.

Article 9 Carriers

The provisions of Article 9 apply to common carriers engaged in the transportation of passengers or property by railroad from one point within the state to any other point in the state.

Article 9.5 Cooperative Electric Associations

Article 9.5 addresses Cooperative Electric Associations that are owned by the member-consumers they serve. Part 1 of the act contains the “exemption” from the Public Utilities Law, the duties of the associations, regulations concerning consumer complaints, and elections of the board of directors of the cooperatives. Part 2 deals with the service rights and facilities of the cooperatives.

Article 10 Motor Vehicle Carriers

Motor vehicles are defined as any automobile, truck, motor bus, or other self-propelled vehicle. The PUC has authority over both contract and common carriers. The fundamental difference between these two carriers is that the contract carrier enters into a contract with each of his customers and assumes no obligation to carry for anyone else. Common carriers carry for all persons who choose to employ and remunerate them. Article 10 addresses required certificates, penalties for violations, insurance requirements, and penalties imposed for violations.

Article 11 Contract Motor Carriers

Contract motor carriers include any corporation, person, firm, association of persons, lessees, or trustees who own, control, operate, or manage any motor vehicle that is in the business of transporting persons or property for public hire and by special contract within the State of Colorado. Carriers must file schedules of rates, charges, routes, and collections with the PUC. The PUC has the authority to levy civil penalties against any carrier violating provisions of the article.

Article 11.5 Independent Contractors - Motor Carriers

Motor vehicle carriers and contract motor carriers may utilize independent contractors. Article 11.5 sets forth the provisions regarding lease agreements between carriers and the independent contractors.

Article 13 Towing Carriers

In order to operate a towing vehicle in Colorado, carriers must obtain a permit from the PUC and file a liability insurance policy. The PUC has the authority to promulgate rules and regulations for towing carriers that address 1) public identification of towing vehicles, 2) responsibilities of the carrier regarding the towed vehicle, and 3) circumstances under which a carrier may tow a vehicle without consent of the owner. The PUC may prescribe minimum and maximum rates and charges to be collected by the towing carrier.

Article 15 Intrastate Telecommunications Services

Article 15 promotes a competitive telecommunications marketplace while protecting and maintaining the wide availability of high-quality telecommunications services. Part 1 of Article 15 contains the general provisions including definitions, nondiscriminatory access charges, cost methodologies, and assurance of interconnections. Part 2 contains the provisions for the regulation of basic local exchange service, basic emergency service, public coin telephone service, white page directory listing, local exchange listed telephone number service, and new products and services necessary to provide basic local exchange service. Part 3 deals with the regulation of emerging competitive telecommunications service. Part 4 addresses those services, products and providers that are exempt from regulation. Part 5 directs the PUC to encourage competition in the local telephone marketplace and ensure that all consumers benefit from such increased competition.

Article 16 Motor Vehicle Carriers Exempt From PUC Regulation

Motor vehicle carriers exempt from regulation as a public utility include persons who offer services as couriers or offer services using charter or scenic buses, luxury limousines, off-road scenic charters, and children's activity buses. Article 16 provides for some regulation that includes registration requirements, insurance requirements, safety requirements, and penalties and enforcement.

Article 17 Telecommunications Relay Services for Disabled Telephone Users

The Telecommunications Relay Services for Disabled Telephone Users was established in 1992 to provide access to telecommunications for disabled Colorado telephone users. Article 17 creates a fund and directs the source of funding and the use of appropriations.

Articles 20-33 Railroads

Articles 20 through 33 provide the following regulation for intrastate operations of railroads:

- Powers of incorporation
- Right-of-way issues
- Headquarters of domestic railroads
- Consolidation of railroads
- Right to reorganize
- Electric and street railroads
- Railroad tickets
- Killing or injury of animals by railway corporations
- Railroad crossings
- Railroad safety appliances such as switch lights, and guardrails
- Fire guards
- Working conditions for railroad employees
- Damages for injuries to employees

Article 40 Geothermal Heat Suppliers

Article 40 is the Geothermal Heat Suppliers Act. Pursuant to this section, the PUC may establish a system of operating permits for geothermal heat suppliers. In addition, the PUC has authority over geothermal heat suppliers to enforce the provisions of Article 40 and ensure that the suppliers adhere to the conditions of their operating permit.

SCOPE, ORGANIZATION, AND FUNDING

The PUC is authorized for 93.7 FTE and regulates industries which generate approximately \$4 billion per year in gross revenues in the State of Colorado alone, the PUC's impact is significant. In accomplishing its mission and fulfilling its tasks, the PUC affects approximately 3.4 million Colorado citizens. The mission of the PUC "is to achieve a regulatory environment which provides safe and reliable utility services to all on just and reasonable terms."

Funding

The PUC is entirely cash-funded. The two major sources of funds are the Fixed Utility Fund (§40-2-110(1), C.R.S.) and the Motor Carrier Fund (§40-2-110(2), C.R.S.). The Fixed Utility Fund consists of fees collected from regulated fixed utilities, such as US West Communications and Public Service Company of Colorado. The amount of each utility's fee is computed by multiplying its gross intrastate utility operating revenues for the preceding year by no more than 1/5 of 1e percent (§40-2-113, C.R.S.). Three percent of the amount collected goes to the state's general fund and 97 percent goes to the fixed utility fund. The amount in the fund can be used only to defray the administrative costs of supervising and regulating utilities that contribute to the fund and for the financing of the Office of Consumer Counsel. The Motor Carrier Fund consists primarily of an annual identification fee of \$5.00 collected from each common and contract motor carrier and each interstate carrier. Ninety percent of the Motor Carrier Fund is comprised of fees from interstate carriers. As the table on the following page demonstrates, total funds have remained consistent over the last four years.

Item	Actual FY 93-94	Actual FY 94-95	Actual FY 95-96	Actual FY 96-97	Appropriated FY 97-98
	98.5 FTE	98.5 FTE	93.0 FTE	93.0 FTE	93.7 FTE
	Total Funds				
Fixed Utilities Assess Cash	4,615,188	4,491,288	5,514,800	5,471,524	4,619,991
Fixed Utilities Cash Exempt Funds	0	396,909	2,940		
Motor Carrier Cash Funds	1,943,303	1,856,621	1,821,884	1,710,971	1,623,239
Motor Carrier Cash Exempt Funds	201,142	386,147		3,062	
Highway Crossing General Fund	0	0	110,732	13,272	240,000
Highway Crossing Cash Fund	0	0	0	0	44,598
Highway Crossing Cash Exempt Funds	236,722	277,047	115,858	266,666	
Disabled Phone Users Cash Fund	2,439,907	2,581,051	2,473,111	2,653,207	2,712,000
Disabled Phone Cash Exempt Funds	183,941	454,070	191,878		114,000
Local Exchange Cash	0	0	58,606	42,765	241,394
Local Exchange Cash Exempt					
Colorado High Cost Fund Cash	1,228,585	1,371,090	1,090,912	979,662	1,009,272
Colorado High Cost Fund Cash Exempt	208,386	0	0	0	
Low-Income Phone Asst Fund Cash	45,661	45,226	67,074	86,074	86,922
Low-Income Phone Asst Cash Exempt	0	0			9,251
Telecommunications Fund Cash Exempt			22,000		
TOTAL	11,102,825	11,859,449	11,469,785	11,497,203	10,700,667

Source: Department of Regulatory Agencies Budget

Governance Structure

The PUC consists of three full-time salaried Commissioners who are appointed by the governor with the advice and consent of the Senate. The Commissioners serve staggered four-year terms and the chairman of the PUC is designated by the Governor. To be eligible for appointment as a Commissioner, a person must be a qualified voter and a resident of Colorado. A person is not eligible for appointment as a Commissioner if he/she is employed or has any official relation with any corporation or person that is regulated by the Commission, or owns or controls stocks or bonds in a public utility or affiliated interest. The Commissioners are prevented by law from having any other employment during their terms as Commissioners.

Organization

The PUC is divided into eight functional sections that include the Executive Office, Office of External Affairs, Administrative Services Section, Safety and Enforcement Section, Fixed Utilities Section, Transportation Section, Administrative Hearings Section, and the PUC Advisory Coordinating Team.

Executive Office

The Executive Office at the Public Utilities Commission is currently staffed by 10 full-time equivalent (FTE) staff. Within this office, the Director and the PUC Commissioners work closely to coordinate the overall operations of the PUC. The Director functions as the top manager of the PUC's staff and resources. The Director manages the PUC's day-to-day operations and advises the PUC on management issues. In addition to managing the PUC, the Director coordinates special projects and programs such as legislative monitoring and agency-wide strategic planning. The primary role of the three-member Commission is to function as the chief policy makers and ultimate decision makers with respect to utility regulation cases, and serve in a quasi-judicial and quasi-legislative capacity on utility rate cases and other proceedings that have gone through the hearings process. In addition to issuing final orders, Commissioners adopt agency rules, develop long-range agency goals and plans, and set regulatory policy. Two full-time attorneys from the Department of Law also provide legal assistance and advice to the Commissioners.

Office of External Affairs

The Office of External Affairs handles inquiries and complaints regarding gas, electric, and telephone utilities from the general public, and assists consumers in resolving their problems. The Office investigates public complaints and attempts to resolve disputes informally between utilities and consumers. The Office forwards complaints that it cannot resolve for further review and possible action by the PUC. The Office also handles all news media information requests, print and electronic media interviews, and news releases on utility issues pending before the PUC. This Office is responsible for a communication/education program which explains the PUC's objectives, consumer rights, and information needed by the utilities to comply with PUC law. The Office consists of 6.5 authorized positions.

Administrative Services/Management and Budget Section

This section provides internal administrative support to the PUC, such as accounting services, computer support, human resources, purchasing, and general clerical and general administrative support. It is also responsible for preparing the annual agency budget request and for monitoring and contracting expenditures throughout the year to ensure that the annual funding authorization is not exceeded. Included in this section is the Information Center where the public can research a pending case or a past case the Commission has handled. The Administrative Services/Management and Budget Section is also responsible for administering the \$3 million per year contract for Telecommunications Relay Services; a program that enables individuals with hearing or speech disabilities to relay telephone messages to any other telephone. This section is currently staffed by 9 persons.

Safety and Enforcement Section

This section was created several years ago, after the natural gas explosion at the Crested Butte State Bank. Previously, the safety personnel were located within the Transportation Section or the Fixed Utilities Section. Currently, the Safety and Enforcement Section of the PUC is divided into three parts: railroad safety, gas pipeline safety, and transportation safety and enforcement. Motor carrier safety, consumer complaints, and carrier complaints are another responsibility of this section. This staff accomplishes its task by conducting gas pipeline safety inspections and accident investigations, driver qualification reviews, and inspections of motor carriers transporting passengers and/or property for hire. In addition, this Section is responsible for railroad and light rail safety, including the location, design, construction, and maintenance of railroad and light rail/highway crossings and system safety oversight over light rail. One employee basically handles all of the railroad safety issues. Electric utilities are required to file accident reports with the Safety Section. The 13.7 FTE in this Section operate mainly as engineers or transportation inspectors.

Transportation Section

The Transportation Section, with 13.0 FTE, handles all utilities that move, such as railroad and motor carrier utilities that are for hire. Under its jurisdiction are common and contract motor carriers, such as taxicabs, luxury limousines, and van services. The Transportation Section is responsible for regulating the affordability and availability of motor carriers transporting passengers for hire. It is broken into two parts: the Rates Section and the Operating Rights Section. The Rates Section performs financial reviews to determine fair and cost-based carrier rates and performs audits to determine that the user is charged the proper rate. The Operating Rights Section processes various carrier applications and issues certain permits, such as those for towing and for the transporting of property, hazardous materials, and nuclear materials. Permits are issued based on compliance with insurance and safety standards.

Fixed Utilities Section

The Fixed Utilities Section is the largest section in the PUC (28 FTE) and regulates the utilities that do not move--gas, electric, telecommunications, and water utilities. The PUC employs one person to oversee the regulatory activities of the several regulatory departments of the Fixed Utilities Section. These include 1) Audit and Compliance, 2) Energy and Water, 3) Telecommunications, and 4) Economic Research. The Economic Research department provides economic analysis of telecommunications and energy-related issues addressed by the PUC.

Audit and Compliance reviews the records of the numerous fixed utility companies within Colorado to determine compliance with the laws and rules, and regulations of the PUC. This department also handles the rate filings of the independent telephone companies, works on other telecommunications and energy issues, and provides support and assistance to the Telecommunications and Energy and Water departments of the PUC.

Energy and Water consists of engineers and financial analysts. They are responsible for the financial and engineering analyses of matters in the energy and water area of the PUC's jurisdiction. Finally, the Telecommunications department, comprised of engineers and financial analysts, reviews telecommunications matters submitted to the PUC. This department is also responsible for issuing certificates of public convenience and necessity to public utilities, which allow the utilities to provide service in a given area. The department now has new responsibilities to ensure that consumers receive the maximum benefits from the introduction of competition in local telephone service brought about by state and federal legislation.

Administrative Hearings Section

Four full-time and one half time Administrative Law Judge (ALJ), three Hearing Reporters and an Administrative Assistant (8.5 FTE) comprise the Administrative Hearings Section. The ALJs are responsible for hearing cases such as formal complaints, show cause proceedings, rate cases, investigation dockets, and rule-making matters. At the conclusion of a hearing before an ALJ, the ALJ issues a recommended decision which becomes a commission decision by operation of law, unless one of the parties files written exceptions. If exceptions are filed, they are reviewed by the Commissioners who may affirm the recommended ALJ decision, may reverse the ALJ and enter their own decision, and/or remand the case to the ALJ for further hearing and consideration. Commission Hearings Reporters transcribe verbatim all formal evidentiary administrative hearings.

PUC Advisory Coordinating Team (PACT)

This Section provides technical assistance directly to the Commissioners and the Director. The five members of the PACT team do not testify at hearings since they advise the Commissioners on the adequacy and accuracy of the record in key contested cases. PACT members have expertise in financial analysis, economics, and engineering and planning, and serve as a resource to the Commissioners during deliberations and in drafting decisions for the Commissioners.

Regulatory/Jurisdictional Framework

State law gives the PUC the authority to regulate the rates and services of public utilities within the state. The PUC has been successful in keeping utility rates in the reasonable range. Tables on pages 34-37 compare the relative cost of utility services in twenty-six U.S. cities from lowest to highest total bills. The staff has participated in numerous settlements of utility rate cases over the last decade. In addition, the PUC strives to meet the telephone service needs of Colorado's rural population by the implementation of a High Cost Fund that allows urban telephone customers to contribute toward the improvement of rural telephone service.

Fixed Utilities The PUC has jurisdiction over fixed utilities (utilities that do not move) -- gas, electric, telecommunications, and water. The Commission has full economic and quality of service regulatory authority over:

- 33 local exchange telecommunications service providers
- 3 competitive exchange carriers^{1*}
- 106 long distance, operator services, and their providers
- 2 investor-owned electric utilities
- 9 investor-owned natural gas utilities
- 3 investor-owned water utilities

The Commission has partial regulatory control over:

- 18 municipal utilities
- 2 electric cooperative associations - regulated
- 24 electric cooperative associations - deregulated

No utility may begin construction of a new facility greater than 10MW without having obtained from the PUC a certificate that the present or future public convenience or necessity will require such construction. Two investor-owned electric utilities, Public Service Company of Colorado and WestPlains Energy, are currently subject to both rate and facilities regulations.

¹ * Note: of the 35 applications received thus far, 21 have been approved; 5 have stipulations pending; 6 are currently set for hearing; and 3 have withdrawn.

In general, municipal utilities enjoy a constitutional exemption from the Colorado Public Utilities Law. The regulation of municipal electric utilities is performed primarily by individual city or town councils. However, if a municipal electric utility seeks to provide service outside its city limits at a rate that differs from that charged inside the city limits, it must obtain PUC approval to do so.

According to §40-9.5-103, C.R.S., cooperative electric associations may, by an affirmative vote of their members, elect to exempt themselves from Public Utilities Law. Cooperative electric associations include nonprofit electric corporations or associations, but do not include nonprofit generation and transmission electric corporations. If a cooperative electric association elects to exempt itself from Public Utilities Law, PUC's jurisdiction is limited to complaints concerning territorial rights, construction of extensions, or discriminatory rate settings. These cooperatives must also submit annual reports.

Tri-State Generation and Transmission Association, Inc., is the only cooperative generation and transmission association in Colorado. The PUC has regulatory authority over Tri-State regarding certificates of public convenience and necessity, construction of new facilities, the integrated resource planning process, and the filing of annual reports.

The PUC has safety jurisdiction over natural gas pipeline operators comprised of:

- 9 investor-owned distribution system operators
- 8 municipal distribution system operators
- 55 master meter distribution system operators
- 8 investor-owned transmission system operators
- 2 municipal transmission system operators
- 13 propane system operators
- 2 direct sales purchasers

Transportation Utilities These are utilities that move, such as railroad and motor carrier utilities that are for hire (such as vans, taxicabs, limousines, etc.). Under PUC jurisdiction are approximately:

- 2,500 property carriers
- 150 common/contract passenger carriers (taxis, vans, shuttles), including schedules and rates.
- 12,500 interstate motor carriers
- 2,200 hazardous material carriers
- 800 towing carriers
- 150 luxury limousine companies
- 75 charter scenic bus carriers
- 75 off-road scenic charter carriers
- 1959 public railroad-highway grade crossings
- 331 public railroad highway grade separated crossings
- 10 railroads
- 1 light rail system (RTD)

Basic Activities

The goal of the PUC is to “achieve a regulatory environment that provides safe and reliable utility services to all on just and reasonable terms.” To accomplish this mission, the PUC carries out the functions described below.

Certificate of Convenience and Public Necessity

The PUC traditionally regulates utility facilities by the issuance of certificates of convenience and public necessity (CCPN) because utilities have operated as monopolies. The PUC approves a CCPN application if it finds that the certificate is necessary for the public’s convenience, necessity or safety.

Rate Setting

The PUC is responsible for setting rates and ensuring that regulated industries maintain services that are fair to both the customer and the utility. A rate case is a quasi-judicial hearing intended to set rates and establish fair rates-of-return on a public utility's operations. Most rate cases are contested by a number of affected parties since the issues generally are complex and subject to differing interpretations or methods of calculation.

Tariff Approval

Public utilities must file tariffs with the PUC for approval. A "tariff" is a document specifying the utility's rates, tolls, charges, and rules and regulations pertaining to its services. No utility may demand, charge, or collect any rate or charge or impose any classifications, practices, rules, or regulations other than those prescribed in its tariff filed with the PUC. Each tariff generally lists the cities and counties in which service is provided; rate schedules; and applicable service rules and regulations, including service agreements.

Earnings Monitoring

Regulatory agencies like the PUC, which traditionally act as a substitute for competitive forces, have an obligation to ensure that earnings are not excessive. By monitoring the earnings of utilities, the PUC attempts to ensure that utility earnings and the rates paid by consumers are reasonable. Utilities file annual reports addressing their earnings in accordance with PUC rules. These reports are used to monitor utilities' financial condition and determine whether each utility's earnings are excessive. If a utility is found to be earning an excessive rate-of-return, PUC staff can recommend that a rate inquiry be initiated.

Customer Service

One of the PUC's most important functions is customer service. Customer assistance is coordinated through the Office of External Affairs. External Affairs responds to consumer complaints and requests for public information, and handles all media/press relations. This office handles the production of *Connections*, a quarterly newsletter that covers PUC cases and actions of importance to consumers, utilities, consumer groups, and decision makers and publishes many fact sheets informing utility ratepayers of their rights.

PUBLIC UTILITIES COMMISSION

Public utilities commissions, or their equivalents, exist in every state. Although these agencies have different jurisdictional boundaries, they all regulate energy and telecommunications with some having the added responsibility of regulating certain areas of state commerce. While degrees of jurisdiction may vary, all commissions are run by boards of commissioners varying in range from three to seven members, which are either appointed or elected. Each commission has a staff of professional and support employees that provide guidance to the commissioners and assist in enforcement of the statute and regulations. The following table compares state Public Utilities Commissions.

STATE PUBLIC UTILITIES COMMISSIONS - COMPARATIVE DATA

State	Commissioners	Employees	Complaints	Budget/Millions
Alabama	3	148	3,562	9.3
Alaska	5	44	654	3.6
Arizona	3	275	8,906	5.3
Arkansas	3	117	1,722	6.6
California	5	1,024	44,520	80.5
Colorado	3	90	4,852	6.2
Connecticut	5	129	30,560	10.7
Delaware	5	24	238	2.5
D.C.	3	89	1,997	5.4
Florida	5	408	6,903	23.3
Georgia	5	140	18,657	10.4
Hawaii	3	44	835	1.9
Idaho	3	N/A	5,357	4.3
Illinois	7	310	11,727	24.4
Indiana	5	56	3,704	4.9
Iowa	3	74	2,881	4.5
Kansas	3	215	3,638	13.5
Kentucky	3	117	2,699	6.6
Louisiana	5	106	N/A	5.2
Maine	3	69	1,230	5.0
Maryland	5	131	10,930	8.4
Massachusetts	3	140	5,684	6.2
Michigan	3	200	2,186	17.6
Minnesota	5	45	5,727	2.6
Mississippi	3	139	3,940	6.4
Missouri	5	207	5,964	13.4
Montana	5	46	1,380	2.4
Nebraska	5	45	785	4.1
Nevada	5	97	3,033	8.7
New Hampshire	3	75	7,733	4.5
New Jersey	3	367	N/A	19.6
New Mexico PUC	3	50	1,263	6.6
New Mexico SCC	3	185	7,153	17.0
New York	5	725	18,211	60.5
North Carolina	7	140	6,229	10.6
North Dakota	3	47	506	5.0
Ohio	5	458	99	45.5
Oklahoma	3	482	2,215	22.8

State	Commissioners	Employees	Complaints	Budget/Millions
Oregon	3	450	3,985	34.9
Pennsylvania	5	565	3,033	40.0
Rhode Island	3	38	N/A	.9
South Carolina	7	128	1,980	5.9
South Dakota	3	24	864	1.8
Tennessee	3	240	2,678	14.5
Texas PUC	3	220	8,129	12.3
Texas RC	3	840	507	5.8
Utah	3	62	1,657	6.6
Vermont	3	34	N/A	.9
Virginia	3	540	15,236	52.8
Washington	3	183	3,929	14.0
West Virginia	3	233	4,144	11.5
Wisconsin	3	185	3,896	12.0
Wyoming	3	33	807	1.8

Source: National Association of Regulatory Utility Commissioners, *Profiles of Regulatory Agencies of the United States and Canada - Yearbook 1995-1996*. Definition of "complaint" varies by state.

Commissions may also receive assistance from the National Association of Regulatory Utility Commissioners (NARUC) which provides information and services to all of the public utilities commissions throughout the United States.

In addition to the duties associated with regulating utilities, PUCs throughout the country must meet the new challenges of an environment that is undergoing considerable change. The opening of competition in fixed utilities has created a new regulatory responsibility whereby the commissions must continue to regulate monopolies but add new responsibilities of open competition regulation. The following review from the Texas Performance Review, *The Future of the Public Utility Commission in Texas, 1997*, accurately summarizes the challenges ahead for all public utility commissions in the United States.

As competition emerges, PUC will be forced to significantly modify its current approach to regulation. This will involve a switch from traditional economic regulation (rate shifting and restrictions on market entry) to a broader oversight intended to ensure quality service for consumers and a level playing field for new competitors. This shift will not happen overnight and will occur more rapidly in major urban areas due to the greater economic opportunities available there. Some rural areas will continue to operate without competition for some time.

Telecommunications

Throughout much of this century, state and federal governments have allowed the telecommunications and electric utilities to function as regulated monopolies. The early goal was to ensure that basic services were provided to all Americans whether they lived in rural or urban settings. In order to achieve this goal, companies were granted monopolies to ensure reliable and relatively inexpensive access to the public. Called “universal service,” this concept was designed to ensure that basic services were available and affordable to all citizens in all areas and that the scope of these services expanded with new technological advancements.

Advances in telecommunications services in the local, long-distance, and international telephone companies, along with technological advances in cellular and mobile radio, satellite, and Internet, created a more competitive market for telecommunications. These advancements coupled with a change in regulatory philosophy resulted in opening these markets to competition. The beginning of this deregulation began in 1982 with the elimination of AT&T’s regulated monopoly over United States telephone service.

The breakup of AT&T in 1982 created a competitive market in the long-distance market. Local telephone companies were divided into seven Regional Bell Operating Companies (RBOCs), known collectively as “Baby Bells,” that continued to enjoy a virtual monopolistic control over the areas of local telephone service. The country’s service territories were divided into local access transport areas, or LATAs. Basic local exchange service was provided by the RBOCs as well as other independent local exchange carriers (LECs). Under the terms of the breakup, these RBOCs had exclusive franchises to provide intrastate basic local exchange service but were prohibited from entering certain lines of business including the long-distance market.²

² Victoria A. Ramando, *The Convergence of Telecommunications Technology and Providers: The Evolving State Role in Telecommunications Regulation*, 6 ALB. L.J. SCI & Tech 35, 40-42 (1996)

Federal Telecommunications Restructuring

In 1996, the Federal Telecommunications Act was signed into law. This law allowed a wide variety of companies, including cable, wireless, long-distance and satellite companies and electric utilities to compete in offering telecommunications services for both local and long-distance services. The Act established provisions for new companies (“entrants”) to compete with Regional Bell Operating Companies (RBOCs) for local telephone service, and for RBOCs to compete with interexchange carriers for long-distance service. The Act also allowed the Federal Communications Commission (FCC) to preempt any state or local law or regulation that presents an “illegitimate barrier” to the telecommunications market by favoring one provider over another. Incumbent companies must sell other carriers access to their physical infrastructure, emergency and directory assistance services, and transmission and switching services on an as needed basis. Incumbents, in turn, are permitted to offer long-distance services outside their home region. The law also allowed cross-ownership of cable television and telephone companies, which, prior to the Act, was illegal. Finally, the law gave the FCC explicit authority to require common carriers to provide universal service.³

Congress divided telecommunications carriers into four classifications and varied the degree of regulation within each category. They are:

General Telecommunications Carrier - Identified as any entity offering, for a fee to the public, to transmit information without changing the content of that which is transmitted. General telecommunications carriers have a duty to interconnect directly or indirectly with all other carriers.

Local Exchange Carriers - Those entities that provide local exchange service or service access. Under the 1996 Act, LECs are barred from prohibiting or imposing discriminatory or unreasonable conditions on the resale of telecommunications services. LECs must allow (within technological feasibility) consumers to switch among telecommunications carriers without having to change their telephone/telecommunications number (number portability). LECs must provide dialing parity, meaning that customers would dial the same number of digits to use any telecommunications carrier. LECs must provide their competitors with access to their poles, conduits, and other rights-of-way. Finally, LECs must establish reciprocal compensation agreements, whereby a call originating in one LEC network compensates the LEC network in which that call terminates.

³ Michael I. Meyerson, *Ideas of the Marketplace: A Guide to the 1996 Telecommunications Act*, 49 Fed. Comm. L.J. 251, 255-257 (1997)

Incumbent LECs - These are LECs that were in existence prior to opening the market to competition (in Colorado, US West). While following the obligations set out above, incumbents have additional responsibilities. Incumbents must provide interconnection from other telecommunications carriers at any technically feasible point in their network. Incumbents must provide interconnection to all providers who wish to provide local telephone exchange service and exchange access. Incumbents must make available unbundled access to network elements, meaning the availability of access to distinct parts of the incumbent's network at an appropriately lower wholesale cost than access to all of the elements of the network. Incumbents must also allow other carriers to place their equipment at the site of the incumbents' own existing center. Finally, incumbents are required to sell to other carriers, at wholesale rates, the same telecommunications services it provides.

RBOCs - May provide long-distance to local clientele but must first meet all criteria from a "competitive checklist."

Colorado Regulatory Restructuring

Nine months prior to the enactment of the Federal Telecommunications Act, the Colorado Legislature enacted HB 95-1335, which opened the local telephone exchange to competition. The Legislature charged the PUC with promulgating rules by July of 1996 in six specific areas dealing with regulatory restructuring. They were:

1. Certification of telecommunications carriers
2. Interconnection and Unbundling
3. Local Number Portability
4. Resale
5. Universal Service/High Cost Fund
6. Services

Implementation of these rules proved to be a difficult task. First, the Legislature provided a limited time frame to the PUC to implement these rules. As a new regulatory initiative that was in the forefront of national and state telecommunications regulatory restructuring, the PUC had little or no guidance from other states to address many of the complexities surrounding these telecommunications issues.

The PUC implemented regulations pertaining to HB 95-1335, except in one area. Difficulty arose in implementing regulations dealing with new entrants and whether they should be regulated as Part II (basic service) or Part III (emerging competitive service) services. The Commission adopted a rule that established a default regulatory standard for new entrants. This rule was overturned by the General Assembly's Legal Services Committee stating that the PUC rule did not carry out the legislative intent. The PUC is currently adopting new regulations to satisfy this requirement of HB 95-1335.

The adoption of HB 95-1335 has placed Colorado ahead of much of the nation in telecommunications restructuring. Many states are now only beginning to create task forces and wrestle with issues that Colorado has already solved. The enactment of HB 95-1335 also placed Colorado in a good position for it to implement the Federal Communications Act (Act) requirements. The Act charged the PUC with approving or rejecting all interconnection agreements negotiated among carriers and also to conduct binding arbitration for those agreements where a party requests it. As of September 1997, 21 companies have been approved by the PUC to provide local telephone service in Colorado.

Colorado's local telephone service is dominated by US West. As an incumbent LEC and one of the Regional Bell Operating Companies (RBOC), US West, prior to state and federal legislation, had a monopoly on local service. As a monopoly, it in turn guaranteed universal service. Regardless of the location or cost, US WEST was required to provide basic telephone service to Coloradans. As a monopoly, more expensive service costs could be offset through larger profits in greater rate-of-return areas.

The opening of competition makes the continuation of universal service more difficult to accomplish. Competition will occur first where companies can make the greatest profit. Certain areas of the state and types of service provide a greater rate-of-return than other areas or types of service. Generally speaking, business telephone service in a concentrated area provides the greatest rate-of-return for a company. In Colorado, Denver and the Denver Technological Center (DTC) are the high-profit areas. Moving down the rate-of-return chain towards the least desirable market, companies are less inclined to provide service in residential, and finally rural residential areas. The reason is that it requires less capital for a company to provide telecommunications lines to a building that may serve hundreds or thousands

of people than to run lines throughout a neighborhood. Likewise, costs increase further when those houses are farther apart, as in rural areas. A review of new entrants' applications reveal that most of these companies wish to service Denver and the DTC. House Bill 95-1335 recognized the universal service issue and amended the Universal Service High Cost Fund to offset the high-cost of pending rural local exchange service.

The PUC has a difficult task ahead. They must balance market opportunities for all so that companies have an equal opportunity to enter or remain in the market. This task requires balancing US WEST's overwhelming position in the market against new entrants who may only wish to "cherry pick," leaving the rest of the state with limited or very expensive service. In this new competitive era, it is important to ensure that Colorado consumers benefit the most from competing telecommunications agendas and are protected when the market fails. At the same time, the PUC must ensure that open competition exists. The PUC's task in the following years is to balance these difficult and conflicting tasks.

Electricity

The regulation of electricity seems to be following a similar route to that of telecommunications. In the past two years, bills in both the U.S. Congress and the Colorado Legislature have proposed deregulation of the electric industry. Currently, the retail supply of electricity is provided through franchise-electric monopolies. Like telecommunications, technological advancements in electric-generating technology, lower natural gas prices, as compared to coal as a fuel source and recent regulatory action have paved the way for discussions of competition in the local electric markets. Termed "retail wheeling," open competition would allow customers to purchase electricity directly from the electric generation company of their choice and have it delivered by their local utility.

Large wholesale electric generation is already occurring in the electric market. The Federal Energy Policy Act of 1992 and the Federal Energy Regulatory Commission Order 888 in 1996 were the result of federal initiatives to increase competition in the wholesale power market. Through these initiatives, utilities are purchasing increasing amounts of electricity from a variety of bulk suppliers, allowing the purchaser the ability to buy less expensive electricity.

Proponents of retail wheeling state that it will lower consumers' electric bills as wholesale wheeling did for bulk producers. Opponents argue that competition will benefit only the industrial and large commercial customers and increase costs to residential customers.

Colorado has over fifty-three electric utility companies that supply virtually all of the retail electric sales in the state. These utilities can be categorized into three general types. They are 1) investor-owned (Public Service Co. of Colorado and WestPlains Energy; 2) rural electric cooperatives (22 co-ops); and 3) municipal utilities (29 municipal-owned utilities). Investor-owned utilities are regulated by the PUC while rural electric cooperatives and municipal utilities are regulated by their board of directors or the municipalities they serve.

In 1996 and 1997, bills were introduced in the Colorado General Assembly proposing retail wheeling, but they did not pass. During this period, the PUC conducted feasibility studies in this area and is current on these issues should retail wheeling be implemented. In 1996, the PUC issued a report on electric restructuring to the Governor and the General Assembly.

It is likely that the Colorado General Assembly will again debate the merits of retail wheeling. As it does, they will need to address many complex and controversial issues related to this proposal, including:

- Impact on rates and reliability of the electric system;
- Ability of utilities to recover investments already made in power plants that may not be used (commonly termed "stranded costs");
- Determining who will be the provider of last resort in a competitive market; and
- Determining what type of regulation will be necessary with competition.

Gas

While much of the attention on public utilities has focused on telecommunications and electricity, natural gas has quietly undergone its own regulatory restructuring. The natural gas industry has experienced significant changes since the mid-1980s. Prior to that time, natural gas was delivered to consumers via local gas distribution companies and municipal gas distribution systems. Local gas distribution companies were state-regulated monopolies that purchased their gas from interstate pipelines. Pipelines were also considered monopolies and were regulated by the Federal Energy Regulatory Commission (FERC). FERC Order 436 in the 1980's and Order 636 in 1992 resulted in deregulating gas prices and changing the regulatory format of gas by separating the commodity "gas" from the transportation of that commodity. Currently, the price of gas is determined in a competitive environment on the interstate basis, while the transportation of gas to low-volume customers continues to be a regulated service. Local distribution companies (LDCs) may now purchase gas from whomever is the least expensive, thereby reducing the cost to consumers. The positive effect of wholesale gas supply has raised the issue in Colorado of extending this regulatory restructuring to the retail side. Theoretically, end consumers would be able to purchase their gas from whomever they wished.

In 1996, Hagler-Bailley, a consulting firm, produced a report for the General Assembly on the feasibility of opening competition of the retail sale of gas. The General Assembly asked the PUC to review this report. The PUC's review in 1997 noted that a consensus of utility industries believed that the PUC's statutory authority must first be modified before the PUC could begin to consider changes in gas supply to low-volume customers. Over the past year, the PUC has met with the industry to identify potential issues. Should this market be opened to competition, the PUC will have the necessary knowledge for the intricacies of the tasks ahead.

State Comparison of Fixed Utility Rates

The PUC Mission statement states:

To achieve a regulatory environment which provides safe and reliable utility services to all on just and reasonable terms.

One factor in measuring the effectiveness of the PUC is to compare Denver utility rates to those of other major United States cities. Every two years, the PUC performs a survey to identify where residents of Denver stand in relation to residents of other cities. A 1996 survey of 26 large cities' utility rates conducted by the PUC revealed that Denver residents were the 24th lowest in total utility costs with an average monthly bill of \$104.47.

A breakdown of this data by service does, however, indicate that Denver bills fluctuate from some of the highest to some of the lowest in the survey. Denver ranked 25th in gas bill rates, 15th in electric bill rates, and 3rd in telephone rates⁴. Due to the average cost associated with each surveyed utility, the relatively small cost of telephone bills results in little impact to the overall utility costs.

⁴ Denver has one of the largest local calling areas in the country.

COMBINED MONTHLY TELEPHONE, GAS, AND ELECTRIC UTILITY BILLS

A 1996 Survey of 26 U.S. Cities

(Ranked from highest to lowest total bills)

RESIDENTIAL

SURVEY RANKING	TELEPHONE	GAS	ELECTRIC	TOTAL
1. New York City	\$16.92	\$119.00	\$80.91	\$216.83
2. Boston	\$20.35	\$124.25	\$64.07	\$208.67
3. Washington, D.C.	\$18.24	\$130.52	\$32.73	\$181.49
4. Philadelphia	\$18.15	\$83.80	\$70.17	\$172.12
5. San Jose	\$14.75	\$75.66	\$80.58	\$170.99
6. Los Angeles	\$14.75	\$83.76	\$66.21	\$164.72
7. San Diego	\$14.75	\$90.87	\$58.07	\$163.69
8. Jacksonville	\$13.80	\$105.58	\$37.33	\$156.71
9. San Francisco	\$14.75	\$77.13	\$61.96	\$153.84
10. Baltimore	\$20.01	\$78.98	\$48.54	\$147.53
11. Cleveland	\$18.35	\$59.92	\$60.88	\$139.15
12. Chicago	\$10.03	\$69.93	\$57.76	\$137.72
13. Columbus	\$18.35	\$71.03	\$45.32	\$134.70
14. New Orleans	\$17.05	\$76.53	\$37.78	\$131.36
15. Dallas	\$13.90	\$68.51	\$44.83	\$127.24
16. Milwaukee	\$12.50	\$74.23	\$36.80	\$123.53
17. Nashville	\$15.65	\$74.90	\$31.73	\$122.28
18. Memphis	\$15.65	\$71.62	\$33.32	\$120.59
19. Indianapolis	\$16.67	\$64.44	\$38.47	\$119.58
20. Detroit	\$15.41	\$56.09	\$46.02	\$117.52
21. San Antonio	\$13.35	\$69.33	\$32.44	\$115.12
22. Houston	\$14.55	\$59.63	\$39.72	\$113.90
23. Austin	\$12.85	\$63.85	\$31.67	\$108.37
24. Denver	\$18.45	\$45.72	\$40.30	\$104.47
25. El Paso	\$12.85	\$39.66	\$51.64	\$104.15
26. Seattle	\$15.00	\$65.14	\$16.23	\$96.37

The following assumptions are for rates in effect on April 1, 1996, exclusive of taxes:

Telephone - basic rate for 1 line including the federal access line charge. No long-distance calls, no custom features.

Gas usage - 120 CCF.

Electric usage - 500 KWH (with a demand of 3 KW).

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Compiled by the Colorado Public Utilities Commission, September 1996.

COMBINED MONTHLY TELEPHONE, GAS, AND ELECTRIC UTILITY BILLS

A 1996 Survey of 26 U.S. Cities

(Ranked from highest to lowest total bills)

SMALL COMMERCIAL

SURVEY RANKING	TELEPHONE	GAS	ELECTRIC	TOTAL
1. New York City	\$226.84	\$126.36	\$264.85	\$618.05
2. Boston	\$192.00	\$128.73	\$173.53	\$494.26
3. New Orleans	\$219.40	\$80.21	\$167.88	\$467.49
4. Indianapolis	\$283.95	\$60.24	\$116.75	\$460.94
5. Washington, D.C.	\$176.73	\$128.57	\$153.12	\$458.02
6. Los Angeles	\$136.70	\$113.89	\$197.07	\$447.66
7. Detroit	\$203.55	\$68.01	\$159.07	\$430.63
8. Philadelphia	\$151.15	\$92.22	\$181.13	\$424.50
9. Cleveland	\$174.17	\$59.92	\$190.07	\$424.16
10. Nashville	\$228.50	\$90.64	\$99.56	\$418.70
11. Memphis	\$228.50	\$74.70	\$104.46	\$407.66
12. Milwaukee	\$228.90	\$66.20	\$105.90	\$401.00
13. Baltimore	\$199.55	\$82.34	\$116.85	\$398.74
14. San Diego	\$136.70	\$80.55	\$177.79	\$395.04
15. El Paso	\$139.25	\$46.47	\$201.28	\$387.00
16. Jacksonville	\$170.00	\$101.99	\$101.30	\$373.29
17. Columbus	\$174.17	\$71.03	\$127.88	\$373.08
18. Denver	\$216.95	\$48.25	\$105.37	\$370.57
19. San Francisco	\$136.70	\$68.83	\$161.00	\$366.53
20. San Jose	\$136.70	\$68.83	\$161.00	\$366.53
21. Dallas	\$155.50	\$75.12	\$135.38	\$366.00
22. Houston	\$170.50	\$69.07	\$117.77	\$357.34
23. Seattle	\$220.05	\$67.65	\$51.75	\$339.45
24. Chicago	\$114.65	\$86.48	\$127.33	\$328.46
25. San Antonio	\$144.75	\$69.33	\$98.34	\$312.42
26. Austin	\$139.25	\$68.04	\$99.35	\$306.64

The following assumptions are for rates in effect on April 1, 1996, exclusive of taxes:

Telephone - basic rate for 5 lines including the federal access line charge. No long-distance calls, no custom features.

Gas usage - 120 CCF.

Electric usage - 1,500 KWH (with a demand of 5 KW).

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Compiled by the Colorado Public Utilities Commission, September 1996.

COMBINED MONTHLY TELEPHONE, GAS, AND ELECTRIC UTILITY BILLS

A 1996 Survey of 26 U.S. Cities

(Ranked from highest to lowest total bills)

LARGE COMMERCIAL

SURVEY RANKING	TELEPHONE	GAS	ELECTRIC	TOTAL
1. New York City	\$777.61	\$540.94	\$1344.00	\$2662.55
2. Boston	\$699.20	\$549.59	\$948.71	\$2197.50
3. Philadelphia	\$537.50	\$401.81	\$1134.77	\$2074.08
4. Washington, D.C.	\$629.84	\$583.89	\$856.42	\$2070.15
5. Cleveland	\$586.46	\$311.98	\$1127.64	\$2026.08
6. Detroit	\$704.60	\$280.96	\$1008.12	\$1993.68
7. Los Angeles	\$459.50	\$404.06	\$1061.24	\$1924.80
8. Baltimore	\$724.60	\$352.84	\$804.30	\$1881.74
9. Nashville	\$754.50	\$385.59	\$615.85	\$1755.94
10. Columbus	\$586.46	\$336.84	\$772.62	\$1695.92
11. Memphis	\$754.50	\$290.89	\$645.06	\$1690.45
12. New Orleans	\$438.80	\$387.13	\$860.86	\$1686.79
13. Jacksonville	\$636.30	\$390.14	\$638.50	\$1664.94
14. San Francisco	\$459.50	\$352.70	\$852.40	\$1664.60
15. San Jose	\$459.50	\$352.70	\$852.40	\$1664.60
16. Milwaukee	\$779.80	\$299.97	\$564.50	\$1644.27
17. Dallas	\$458.00	\$417.08	\$751.49	\$1626.57
18. San Diego	\$459.50	\$383.82	\$741.57	\$1584.89
19. El Paso	\$391.00	\$193.47	\$965.31	\$1549.78
20. Indianapolis	\$567.90	\$285.36	\$665.47	\$1518.73
21. Austin	\$391.00	\$405.66	\$717.80	\$1514.46
22. Chicago	\$420.20	\$289.49	\$761.73	\$1471.42
23. Houston	\$505.00	\$281.61	\$678.39	\$1465.00
24. Seattle	\$794.10	\$299.22	\$345.00	\$1438.32
25. San Antonio	\$410.50	\$332.32	\$554.03	\$1296.85
26. Denver	\$460.83	\$197.86	\$604.66	\$1263.24

The following assumptions are for rates in effect on April 1, 1996, exclusive of taxes:

Telephone - basic rate for 10 PBX trunk lines including the federal access line charge. No long-distance calls, no custom features.

Gas usage - 602 CCF.

Electric usage - 10,000 KWH (with a demand of 30 KW).

.....
 Compiled by the Colorado Public Utilities Commission, September 1996.

COMBINED MONTHLY TELEPHONE, GAS, AND ELECTRIC UTILITY BILLS

A 1996 Survey of 26 U.S. Cities

(Ranked from highest to lowest total bills)

INDUSTRIAL

SURVEY RANKING	TELEPHONE	GAS	ELECTRIC	TOTAL
1. New York City	\$1,944.03	\$46,295.50	\$46,661.00	\$94,900.53
2. Boston	\$1,748.00	\$44,237.89	\$34,572.80	\$80,558.69
3. Philadelphia	\$1,343.75	\$26,614.48	\$36,374.33	\$64,332.56
4. New Orleans	\$1,097.00	\$33,723.28	\$24,146.15	\$58,996.43
5. Cleveland	\$1,466.16	\$24,613.00	\$30,459.10	\$56,538.26
6. Jacksonville	\$1,590.75	\$32,802.91	\$21,260.00	\$55,653.66
7. Detroit	\$1,761.50	\$24,376.13	\$29,340.40	\$55,478.03
8. Austin	\$977.50	\$25,745.18	\$26,182.00	\$52,904.68
9. Los Angeles	\$1,148.74	\$22,330.70	\$28,693.22	\$52,172.66
10. Baltimore	\$1,811.50	\$29,872.82	\$19,726.67	\$51,410.99
11. El Paso	\$977.50	\$16,382.60	\$33,182.00	\$50,542.10
12. Houston	\$1,262.50	\$24,833.33	\$23,902.12	\$49,997.95
13. Memphis	\$1,886.25	\$26,083.18	\$21,709.06	\$49,678.49
14. Chicago	\$1,050.52	\$21,176.94	\$27,158.39	\$49,385.85
15. Columbus	\$1,466.16	\$24,189.92	\$22,715.00	\$48,371.08
16. San Antonio	\$1,026.25	\$27,588.43	\$18,632.00	\$47,246.68
17. San Francisco	\$1,148.74	\$18,482.00	\$27,259.12	\$46,889.86
18. San Jose	\$1,148.74	\$18,482.00	\$27,259.12	\$46,889.86
19. Milwaukee	\$1,894.50	\$27,115.83	\$17,813.00	\$46,823.33
20. Dallas	\$1,145.00	\$20,272.47	\$23,041.14	\$44,458.61
21. San Diego	\$1,148.74	\$15,269.60	\$25,703.27	\$42,121.61
22. Nashville	\$1,886.25	\$17,854.90	\$20,951.80	\$40,692.95
23. Denver	\$1,171.00	\$18,242.00	\$21,163.00	\$40,576.00
24. Indianapolis	\$1,419.75	\$19,271.81	\$18,953.60	\$39,645.16
25. Seattle	\$1,985.25	\$18,647.58	\$13,795.00	\$34,427.83
26. Washington, D.C.	\$1,574.24	N/A	\$26,687.35	N/A

** This large of load on contract basis only.

The following assumptions are for rates in effect on April 1, 1996, exclusive of taxes:

Telephone - basic rate for 25 PBX trunk lines including the federal access line charge. No long-distance calls, no custom features.

Gas usage - 6,024 MCF.

Electric usage - 400 MWH (with a demand of 1,000 KW).

.....
 Compiled by the Colorado Public Utilities Commission, September 1996.

Other Commission Duties

In addition to addressing the dynamic issues of fixed utilities, the Colorado PUC is also responsible for effectively regulating transportation and safety matters. These include taxis, luxury limousines, and railroads as well as gas safety. The recent growth in the number of Colorado residents has had a significant impact on the PUC. With growth comes increased construction that results in a need for greater utility services. Additionally, the opening of Denver International Airport (DIA) has impacted the regulation of ground transportation.

The PUC has been instrumental in regulating all of these areas. Over the years, the PUC has participated in and/or accomplished resolution in a variety of issues. Below are examples of some of those accomplishments.

TELECOMMUNICATIONS:

- The Commission ordered US WEST to pay \$4 million in reparations for violations of service quality rules in 1993 and 1994. Reparations are being paid through telecommunications projects that are coordinated through the PUC.
- In 1996, the Commission concluded a five year project to end party line service to telephone customers in Colorado.
- The Commission issued a decision to deny US WEST's requests to increase residential rates and to reduce business rates by \$3.00 per month. Businesses were not allowed to subsidize residential rates.

ENERGY

- The town of Walden and the surrounding area obtain their heating source from three wells used by Rocky Mountain Natural Gas Company. An influx of water into these wells left Walden and the surrounding area without gas. Construction was necessary to complete a 46 mile natural gas pipeline from Walden to Laramie, Wyoming. The Commission conducted emergency procedures to expedite the new transmission line.
- The Commission approved the merger request between Public Service Company of Colorado and Southwestern Power. The Commission ordered an \$18,000,000 merger savings to be given to rate payers for five years. Additionally, the Commission established an incentive and quality of service program for the electric operations of Public Service Company

SAFETY AND ENFORCEMENT

- On February 3, 1994 a gas explosion occurred in Steamboat Springs resulting in severe injuries as well as gas leaks at other locations. The PUC performed an investigation to determine the cause of the explosion and oversaw the excavation and removal of the leaking gas main.
- The PUC investigated and reported their findings on the March 13, 1995 natural gas explosion and fire in Westminster.
- The PUC approved the safe construction or upgrade of over one hundred railroad crossings.

MISCELLANEOUS

- The PUC developed an extensive Internet Web site home page that provides information on commission proceedings, customer assistance, and consumer-oriented information related to service received from utilities. (Their site is <http://www.puc.state.co.us/>)
- In 1995, the PUC established a mediation program to resolve complaints filed between customers and utilities. Due to the programs success, the PUC expanded its use to include complaints filed between utilities. Mediation has proven to expedite resolution of disputes while lowering the cost.

DISCUSSION OF ISSUES

I. Continuation of the PUC

Recommendation 1: The Public Utilities Commission should be continued until 2005.

The central questions which any sunset review seeks to answer are whether regulation by the agency is necessary to protect the public's health, safety and welfare; whether conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less, or the same degree of regulation.

The regulation of utilities and other markets by the PUC requires an exhaustive knowledge of complex issues related to these industries, their practices, and their effects on the general public. At the present time, the PUC provides these services. Under Article XXV of the Colorado Constitution, regulation of public utilities is delegated to the PUC until the General Assembly provides otherwise. Title 24, Article 40, C.R.S., outlines the duties and responsibilities of the PUC. To perform these functions, the PUC requires knowledgeable staff and resources to ensure that these regulated entities are operating properly under the direction of the Colorado statutes.

Since 1982, the PUC has been subject to two sunset reviews which determined that the PUC should continue. Gas, electric and telephone utilities generally still operate as monopolies in Colorado. As the only provider of service, a monopoly is theoretically free to charge customers any price it chooses. Consumers generally have no choice as to which local service provider to use, and cannot shop for a better service or a lower price if dissatisfied. Subsequently, there is a need for regulation to protect the public from excessive rates and to ensure reliability and quality of service.

The PUC also provides a necessary regulatory presence in transportation matters. Through PUC oversight, the public is protected by adequate railroad crossings and safe taxis, limousines, tow trucks, and other vehicles. Additionally, the PUC's inspection program of gas pipelines protects the public from potential catastrophic events that could cause serious damage to people and property.

The adoption of HB95-1335 allowing competition into the local telecommunications market, and federal regulatory changes in electric and gas regulation, has considerably changed the PUC's regulatory role. In addition to its prior duties, PUC now must lead the state toward a competitive environment. As competition emerges, the PUC will need to take a broader oversight role with a focus on quality of service for consumers and a level playing field for competitors. Effective competition in local telecommunications service is still in the future. Until consumers have a choice in their utility, the PUC will continue to be in a state of transition.

Interviews with representatives of the regulated industry and other interested parties indicated the PUC should take more of a leadership role in affecting competition in the telecommunications market. Rather than just reacting to issues, there is a consensus by the industry that the PUC should determine its present and future roles and the future direction of utility regulation. In addition, the PUC and its staff should also change their philosophy and approach from that of regulating monopolies to regulating competitive companies.

Over the last few years, the PUC has spent considerable time and resources responding to the mandates of HB95-1335. Without much guidance from the federal government or other states, the PUC began the difficult task of implementing regulations that allowed competition to operate in a traditionally regulated monopolistic environment while maintaining public protection.

The changing regulatory environment in the utilities industry today is considerably different than it was five years ago when the last sunset review was conducted. As effective competition becomes more of a reality in the future, the General Assembly may need to reevaluate the regulatory structure of the PUC. Competition may remove the need for rate hearings (or other formal decision making procedures), require easier access for the public and quicker decisions by the PUC. Regulatory restructuring will also require that the PUC have the necessary enforcement tools to carry out legislative directions. As the transition to open competition begins, the PUC is already confronted with some of these issues.

Currently, it is imperative that the PUC be at the forefront of utilities restructuring. Its expertise in utility matters will help Colorado to implement a new regulatory scheme that benefits consumers and competitors alike. These needs, coupled with the PUC's role of protecting consumers in other regulatory matters, result in the Department of Regulatory Agencies' recommendation to continue the PUC until 2005.

II. Transportation

The PUC no longer regulates routes, rates, or services of intrastate property carriers as a result of preemptive Federal legislation effective January 1, 1995. The major provisions of the Federal legislation include the elimination of common and contract carrier permits and certificates relative to the transportation of property, and the elimination of household goods and courier permits. Presently, the PUC's primary role regarding intrastate property carriers is to ensure that they comply with insurance and safety requirements. The vast majority of transportation regulation of the PUC pertains to passenger transportation within the state, such as luxury limousines, taxicabs, and scheduled buses. The PUC also regulates towing carriers; hazardous materials carriers; and safety operations of intrastate railroad companies (i.e., Durango Silverton Narrow Gage Railroad.)

Taxi Industry

The taxi industry is a privately owned common carrier form of transportation that operates on public roadways, generally with no fixed routes. Taxis provide door-to-door service for individuals or small numbers of customers. Where regulated, the price is usually based on the distance (and sometimes the duration) of the ride. Airport vans and limousines differ in that they typically operate over fixed routes while taxicabs proceed directly to the destination requested by the customer.

American cities began regulating local taxi firms in the 1920's. Today, most city governments regulate taxi companies; however, in Colorado, the PUC regulates the taxi industry. Until 1994, entry licensing in the Colorado taxi industry was controlled by the practice of a "regulated monopoly." Under a "regulated monopoly," no certificate of convenience and public necessity (CCPN) was issued unless the applicant could demonstrate that existing operations were substantially inadequate.

Senate Bill 94-113 in 1994 relaxed the market entry requirement for taxicab companies in Colorado's 11 largest counties, which resulted in a system of "regulated competition." In "regulated competition," the controlling criterion is the public interest or public need. To prevent market entry for new competitors, existing companies must prove that destructive competition would result. The regulation of taxicabs in Colorado involves (1) limited entry (restricting the number of firms, and/or ratio of taxis to population); (2) reasonable and nondiscriminatory fares; (3) quality of service standards (i.e., vehicle and driver safety); (4) 24-hour radio dispatch service and a minimum level of response time; and (5) insurance requirements.

The PUC maintains discretion in determining whether public convenience and necessity requires the issuance of additional permits. In addition, the PUC determines the number of vehicles allowed to operate, the effect of new entry on competition, and the number of permits in operation.

Debate continues over whether taxicabs and other forms of transportation (limousines, vans, etc.) should be regulated or deregulated. The proponents and opponents of deregulation have two different views on what a change in regulatory policy would entail. Some proponents of taxicab regulation argue that controls are necessary to ensure taxicab owners a satisfactory income; ensure the financial responsibility of taxicab owners; and prevent traffic congestion.⁵ Proponents of deregulation contend that eliminating pricing and entry regulation of the taxicab industry would lower prices, improve service, and provide a wider variety of price and service options dictated by consumer demand. Government costs would be reduced by eliminating oversight of pricing, service, and entry.⁶ Most of these predictions have been based on free market economic theories which contend that government regulation creates distortions that thwart market incentives for productivity.

⁵Paul Stephen Dempsey, *Taxi Industry Regulation, Deregulation & Reregulation: The Paradox of Market Failure*, University of Denver, College of Law, (1996), p. 30.

⁶Paul Stephen Dempsey, p. 31.

However, empirical studies by scholars in the field reveal that most anticipated economic outcomes did not materialize. Regulatory reform of the taxi industry shows few of the benefits claimed by proponents.⁷ The experiences of several cities reveal that taxicab deregulation resulted in:

- A significant increase in new entrants;
- A decline in operational efficiency and productivity;
- An increase in highway congestion and energy consumption;
- An increase in rates;
- A decline in driver income;
- A deterioration in service; and
- Little or no improvement in administrative costs.

Price Waterhouse conducted a study in 1993 that concluded that the benefits of deregulation were devalued by unanticipated and unattractive side effects:

- Supply of taxi services expanded dramatically, yet only marginal service improvements were experienced by consumers;
- Prices rose in every instance; and
- Service quality declined.

Experience by most major cities shows that the fundamental question is not whether taxis should be regulated, but what is the most effective regulatory scheme. Such a determination requires careful oversight by the regulatory body to ensure the appropriate ratio of taxis to passengers to ensure prompt, safe, and reasonably priced service for the public while allowing efficient and well-managed firms to earn a reasonable return on investment.⁸

⁷Sandra Dempsey, *The Taxi in the Urban Transport System, The Private Challenge To Public Transportation* (Charles Lave, ed. 1984).

⁸Dempsey, p. 47.

Luxury Limousines

As discussed previously, taxicabs are regulated by the PUC and are held to a high standard of performance and availability. By Charter, they are obligated to serve without discrimination and meet stringent safety and operational standards. They are obligated to provide service 24 hours a day, every day of the year. Taxicabs serve a wide range of transportation needs, some profitable and many not. These services include transportation for the business traveler, the elderly, and the disabled; guaranteed rides home for intoxicated drivers; and stranded transit riders.

Conversely, “luxury limousines” are exempt from regulation as public utilities. Section 40-16-101, C.R.S., defines a “luxury limousine” as a “motor-driven passenger automobile for hire on a charter basis to transport passengers which offers luxury features which shall include, but not be limited to, television, telephone, and beverages.” Sections 40-16-102 through 40-16-108, C.R.S., prescribe the requirements for limousines: registration containing name and address of registrant, a minimum of one million dollars combined single limit liability insurance, and compliance with motor carrier safety rules pursuant to § 40-2-116, C.R.S. The PUC also has the authority to monitor the compliance of persons offering limousine service and enforce the requirements of the law.

In Colorado, there is a twofold problem with the limousine industry. One widespread problem, especially in the mountain ski areas and the Denver metropolitan area, is that limousines operate as taxicabs by offering service to and from Denver International Airport (DIA). This is in direct competition with taxicabs that have registered routes to and from the airport. In addition to registration, insurance, and safety requirements, the routes, tariffs, and service of the local taxicab companies are regulated by the PUC. Denver area taxicabs must consistently charge \$1.40 per mile to and from DIA, while limousines may adjust their fares as the situation requires. As previously mentioned, the PUC has considerably less regulatory jurisdiction over “luxury limousines.” These operators benefit from skimming off the profitable segments of traditional taxicab markets, “cherry picking,” while offering none of the less lucrative services on which the public relies.

The other problem that affects the public regarding “luxury limousines” is that there is no standard enforceable definition of “luxury limousines.” A luxury limousine must include such luxury features as a television, telephone, and beverages. However, vehicles have operated as limousines with broken black-and-white television sets, cell phones in the driver’s pocket, and a six-pack of beer in a Styrofoam cooler in the trunk. This is not the intent of the legislative definition of a “luxury limousine.” It is important that when the public contracts for limousine service, they receive a luxury service.

A bill was introduced and defeated during the 1997 legislative session that would have revised the definition and regulation of luxury limousine companies. This bill was the result of consensus by the taxi industry, the Luxury Limousine Association, the mountain regulated carriers, and the PUC. The bill successfully passed in the House but subsequently failed in the Senate because of major amendments that were of concern to small operators.

Recommendation 2: Amend §40-16-102 to give the PUC rulemaking authority to define physical and operational characteristics of luxury limousines.

To alleviate the problems that result from the current definition of “luxury limousines,” the Department of Regulatory Agencies recommends amending the definition of luxury limousine. In addition, DORA recommends the PUC be granted authority to promulgate rules and regulations to define the physical characteristics of luxury limousines as well as operational characteristics required to distinguish luxury limousine service from taxi service.

Towing Carriers

Currently, towing carriers may obtain a permit by submitting the proper liability insurance or bond and a ten-dollar application fee to the PUC (§40-13-104, C.R.S.). The PUC is allowed to set minimum and maximum rates for towing and storage of vehicles (§40-13-107(2), C.R.S.).

The PUC regulates all towing carriers as follows:

- a) Permit registration; including rates and charges for nonconsensual tows
- b) Proof of insurance
- c) Safety regulations
- d) Complaint resolution

Vehicle tows can be classified into the following categories:

Voluntary tow (Consensual) describes the situation where the consumer has control over the request for service and determines whether to order service based upon the charges quoted (i.e., car breakdown). The consumer enters into these arrangements voluntarily.

Private property tow (Nonconsensual) describes a situation where a property owner, or its agent, authorizes a towing carrier to remove a vehicle parked on private property. The vehicle owner does not have control over who provides the service or the rates charged. The maximum charge for this type of tow is set at \$100.00.

Accident tow (Consensual or Nonconsensual) describes a situation where vehicle owners are involved in an accident. If they are unconscious, they have no control over the decision to tow the vehicle or the carrier chosen to provide the service (i.e., a law enforcement officer orders a towing vehicle to tow a vehicle involved in a traffic accident).

The Department of Regulatory Agencies attended a meeting with the Towing and Recovery Professional of Colorado (TRPC) and the PUC staff regarding the multitude of problems that beset the towing carrier industry. TRPC has seven chapters throughout Colorado. There are 120 member companies in the TRPC. Of these, approximately 100 companies have 4 or fewer vehicles which is indicative of the industry as a whole. In addition, most towing companies are also involved in some other business such as a repair shop.

Of the 806 complaints received by the Transportation Section of the PUC in fiscal year 1996, 503 (62 percent) concerned towing carriers (see page 59 for a chart illustrating type of towing complaints). The most commonly mentioned problems owners of towed vehicles have with towing carriers include private property impounds and nonconsensual tows due to an accident. When a vehicle is towed without the owner's knowledge, the owner may not be able to locate it. Also, vehicles may be damaged in tow or vandalized in storage. Sometimes the towing carrier can request an unreasonable charge which must be paid before the owner may retrieve the vehicle or other belongings within the vehicle.

The problems that exist within the towing industry include 1) the need for implementation of better safety regulations for towing carriers; 2) improved enforcement of the laws; 3) increased funding for more inspections; and 4) implementation of three levels of tow carrier licenses.

The revisions recommended for §40-13-101 et seq., C.R.S. - Towing Carriers, would address the current problems. The towing carriers would be classified based on a system of identifying towing carriers by the type of service provided. This system would distinguish commercial towers from the private towers and repossession towers. Rules and regulations would specifically address each classification of towing carrier.

The fee for a permit would be increased from the statutorily mandated \$10.00, to \$250.00. All fees collected from the towing carriers would be credited to a "Towing Carrier Fund." The funds sole purpose would be the administration and enforcement of the Towing Carrier Law. An improved enforcement and safety program necessitates this substantial increase in fees. The current program does not have adequate funds to ensure compliance with safety requirements. The revised statute would require inspection of towing companies and vehicles at least once every 24 months to ensure compliance with safety rules and regulations.

Recommendation 3: Amend §40-13-101 et seq., C.R.S., to enhance the safety, enforcement and inspection of towing carriers. This would include classifying carriers into three categories and increasing permitting fees to pay for enforcement and inspection.

III. Safety And Enforcement Section

The Safety and Enforcement Section has jurisdiction over gas pipeline, railroad, and transportation safety regulations. Specifically, it is responsible for intrastate gas pipeline safety, oversight of fixed guideway systems, rail crossing safety program, motor carrier safety, and consumer protection and complaint resolution. The following chart summarizes the inspection and enforcement activities of the Motor Carrier Safety Unit from 1993 through August 1996.

Motor Carrier Safety and Inspection Activity 1993-1996

Year	1993	1994	1995	1996
Inspections at place of business	915	623	670	689
Number of vehicles inspected	2186	2261	2454	2292
Number of vehicles reinspected	74	43	149	61
Penalty assessments on vehicles reinspected	1	0	0	0
Number of driver records audited	1490	1495	1525	1279
Penalty assessments on driver records reinspection	95	16	4	5
Carriers issued a penalty assessment	0	1	0	0
Drivers issued a penalty assessment	31	23	49	38
Violation warnings issued - corrected immediately	0	0	0	0
Show cause investigations	62	52	34	64
Safety & Compliance Surveys*	386	371	324	326

* Comprehensive inspection that may include any or all of the following: review of carrier records, drivers' qualifications, drivers' hours of service, vehicle maintenance records, carriers' knowledge of safety regulations, and vehicle inspection.

Railroads

The PUC oversees the railroad crossing safety program through funds from the Crossing Protection Fund (the Fund) and monetary assessments to the railroads and the roadway authorities. The Fund was created in 1965 to supplement federal funding, of which Colorado receives \$2.3 million per year, for grade crossing warning devices.

Initially, the Fund received \$10,000 per month from the top of the Highway User Tax Fund. Additionally, the PUC, by statute, had the authority to assess the railroads a minimum of 10 percent of the cost of the railroad warning devices, based on the benefit to the railroad. The remainder of the cost of railroad safety crossing devices (switch lights, warning sound signals, guardrails) came from the roadway authority. The average cost of grade crossing signals in 1966 was approximately \$11,550. In 1978, the Fund received an increase to \$20,000 per month and the railroads' assessment was raised to 20 percent per month, in part because the average cost of grade crossing signals increased to approximately \$50,250. The Fund has not received an increase in funds since 1978. Today, the average cost of grade crossing signals is estimated to be \$161,115.

The chart below illustrates yearly railroad crossing safety activity. Typically, a city, county, Colorado Department of Transportation (CDOT), Regional Transportation District (RTD), or other special municipal district determines that it needs to close an existing railroad crossing, open a new one, or install warning devices at a crossing. Before an application is submitted, the government entity will collaborate with the Railroad Safety Section to ensure that the application process is successfully completed. Next, the governmental entity officially submits an application to the PUC. The PUC reviews the application and subsequently approves, disapproves or modifies.

Railroad Crossing Activity

	1992	1993	1994	1995	1996	Jan-May 1997
Applications filed with PUC	39	43	58	29	28	10
Commission Decisions	10	16	38	19	56	2
Safety / Service Inspections	31	61	123	124	69	44

Note: The number of applications filed each year differs from the PUC's decisions due to the tremendous workload in a department with only one staff member.

In addition to railroad crossings, the PUC is responsible for grade separations, which include bridges, viaducts, overpasses, and underpasses. Section 40-4-106(3), C.R.S., passed in 1984 and revised in 1987, directs the PUC to allocate the cost of grade separations between the roadway authority and the railroad. The law presently sets the Class I railroad maximum yearly contribution at \$1.25 million each, and was predicated on the fact that there were originally five Class I railroads at the time the legislation was passed. Several years ago, the Missouri Pacific merged with Union Pacific and only four Class I railroads remained. In the past 12 months, the Burlington Northern and the Atchison Topeka Santa Fe merged to form the Burlington Northern Santa Fe; and the Union Pacific, Southern Pacific, and Denver Rio Grande merged to form Union Pacific. This merger activity leaves Colorado with only two Class I railroads. Therefore, instead of \$6.25 million maximum potential contributions from the railroads, the PUC is now restricted to collecting \$2.5 million because of the railroad mergers. The resources of the railroads have not declined; there has been a reduction in the number of railroads that may be assessed a fee. In addition, the cost of construction of grade separations has increased since 1987.

Bridges are the safest crossings because there is no potential for train - motor vehicle accidents. In addition, extended motor vehicle delays, which can contribute to pollution and cause extreme inconvenience to drivers, are eliminated by the use of bridges.

Recommendation 4: Increase the yearly contribution from the Class I railroads from \$1.25 million annually to \$2.5 million annually.

Gas Pipeline

Under federal safety standards, natural gas pipeline operators are responsible for pipelines up to the point where the operator's distribution line connects to a customer's piping or the customer's gas meter. Traditionally, gas meters have been placed adjacent to a customer's main building, rendering the operator liable for the gas line that crosses the customer's property up to the point at which the gas exits the meter and enters the building. All operator-owned pipelines must meet minimum federal safety standards.

In many rural areas, however, the traditional practice has proven to be impractical. As a result, the operators place meters at the property lines of these customers, making the customer liable for the gas line that runs from the meter to the building. In line with this practice, the operator typically does not install the gas line that runs from the meter to the building. In addition, there are no regulations, either state or federal, as to the qualifications of the individual that installs the consumer-owned line, or for the types of materials that may be used. In essence, it is perfectly legal for someone with absolutely no experience to install a length of ordinary pipe from the meter to the building. As a result, these pipes are often not installed at an appropriate depth and, because there are no regulations for the type of pipe to be used, is often subject to corrosion.

As a matter of convenience, some urban operators across the country and in Colorado have abandoned the traditional practice of placing the meter at the building. Placing meters at the property line, often curbside, allows the operators to drive up and down a city street to take meter readings. They do not have to walk onto the customer's property to read the meter. Diagrams illustrating the various types of meter placement appear in Exhibit 1 on the following page.

Administrative Recommendation A: The PUC should conduct a study by January 1, 1999, to the General Assembly's Legislative Oversight Committee that determines whether Colorado law needs to be changed in order to protect the public from consumer-owned service lines that could be hazardous to the public.

Exhibit I

While this may be a labor-saving practice for the operators and may prove to be less invasive for the customers, there is cause for concern. In the winter of 1988-89, several of these consumer-owned gas lines exploded in Kansas City. As a result of these explosions, both Missouri and Kansas have adopted statutes mandating that natural gas pipeline operators own the gas lines up to the point that they enter the outer wall of the building, regardless of where the meter is placed. Since the operator owns the line, the line must meet federal safety standards, substantially reducing the risk of explosions.

While the PUC and several operators acknowledge that placing gas meters on property lines is not uncommon in Colorado's rural areas, it is unclear how common this practice is in urban areas. Preliminary evidence suggests that it is fairly widespread in Douglas County, Colorado, one of the fastest-growing counties in the nation.

The PUC should conduct a study to further investigate how widespread the practice has become in Colorado and to examine in greater detail the safety concerns raised by this practice. As a result of the study, the PUC should devise possible solutions to the problem.

IV. Complaint Process

No single office in the PUC currently has responsibility for general consumer inquiries and complaints. The Office of External Affairs, the Safety and Enforcement Section and the Transportation Section all receive and handle complaints. The Office of External Affairs handles inquiries and complaints regarding gas, electric, and telephone utilities. The Enforcement and Safety Section responds to complaints within its regulatory scope. These responsibilities include: 1) gas pipeline safety and inspections; 2) motor carrier safety including inspections, drivers' safety review, and motor vehicle carriers operating outside its authority; and 3) railroad safety. The Transportation Section manages complaints concerning 1) the authority process for standards for passenger carriers, luxury limousines, charter scenic buses, and off-road scenic charters; 2) jurisdictional issues relative to interstate passenger carriers; 3) towing carriers; 4) railroad jurisdictional issues; 5) rate-making; and 6) the taxicab industry. An individual desiring to register a complaint, must first determine which of these three sections should receive the complaint. Responsibility for an important function of the PUC is shared rather than concentrated in a single point of accessibility.

After initial inquiry to the appropriate PUC section, the complainant has three options or combinations thereof to resolve the dispute. The complainant may pursue the complaint through informal channels, through mediation with a PUC mediator, or through a formal complaint hearing procedure. The following is a description of these three procedures.

Informal Complaint Process

The PUC first directs consumers through an informal process in an attempt to resolve their problems, regardless of which section receives the complaint. The Office of External Affairs has 3.5 information specialists specifically assigned to receive the daily informal complaints/information inquiries via telephone, walk-ins, or in writing. Information specialists answer questions, consult with consumers and determine the best method for the consumer to achieve a satisfactory solution to the complaint. Information specialists are utilized by both the complainants and respondents because of their expertise in resolving complaint issues. The information specialists ensure that the policies, guidelines and rules of the PUC are adhered to by all parties.

The Office of External Affairs tracks key information on an automated tracking system. For fiscal year 1996, the Office of External Affairs responded to 5,643 consumer contacts/complaints. As illustrated on the chart below, consumer contacts/complaints are classified into three categories from which monthly and yearly summary reports are compiled from the computerized system. "Utility Not in Compliance with Rules" complaints are referred to the utility and the utility's response indicates that the company made an error and/or was in violation of rules, regulation or statute. When inputted into the tracking system, the violation must be clearly stated.

"Request for Information" is a request for general information about regulated or non-regulated companies and/or Commission procedures and decisions. To be inputted into the PUC tracking system, the inquiry must have necessitated some action by the staff. For example, the staff had to review a company's specific tariff sheet and mail it to the contact.

"Objections to Rates or Services" represents two types of complaints, both of which are inputted into the tracking system under this code. One type is when the contact wishes to express disapproval, such as to a rate increase. This type is not referred to the utility. The other type is when the contact objects to a specific issue to which the utility had to respond, and the utility's response indicated that it was not in compliance.

OFFICE OF EXTERNAL AFFAIRS				
CONSUMER ASSISTANCE SUMMARY				
FISCAL YEAR 1996-1997				
Consumer Contacts	Utility Not in Compliance with Rules	Request for Information	Objections to Rates of Services	Dollars Saved
5,642	481	1,701	3,723	\$104,846.00

Source: Colorado Public Utilities Commission, Office of External Affairs.

The tables on the following pages further illustrate the specific types of complaints received by the Office of External Affairs.

GAS AND ELECTRIC			
TYPES OF COMPLAINTS			
FISCAL YEAR 1996 – 1997			
	UTILITY NOT	REQUEST	OBJECTIONS
	IN	FOR	TO
	COMPLIANCE	INFORMATION	RATES OR
	WITH RULES		SERVICES
BILLING	2	68	235
BILLING THERMAL	0	2	7
CLAIMS & DAMAGES	0	8	6
CUSTOMER RELATIONS	0	1	21
DEPOSITS	2	11	39
DISCONNECT – ACTUAL	4	21	80
DISCONNECT – PENDING	2	45	119
MISCELLANEOUS	0	40	31
NEEDS SERVICE – CREDIT PROBLEMS	0	1	9
NEEDS SERVICE – OTHER	3	16	23
RATE FILING	0	4	31
RATES	0	5	21
REPAIR	0	22	100
RULES & REGULATIONS	0	0	1
SAFETY	0	3	10
TAXES & SURCHARGES	0	1	1
UNREGULATED	0	11	3
TOTALS	13	259	737
TOTAL CLOSED	1,009		
MONEY SAVED FOR CONSUMERS	\$29,295		

Source: Colorado Public Utilities Commission Office of External Affairs.

TELEPHONE			
TYPES OF COMPLAINTS			
FISCAL YEAR 1996 – 1997			
	UTILITY NOT IN COMPLIANCE WITH RULES	REQUEST FOR INFORMATION	OBJECTIONS TO RATES OR SERVICES
900/976 NUMBERS	0	2	5
AREA CODE	0	2	0
BILLING	20	103	407
CALL TRACE	0	3	8
CALLER ID	0	6	17
CLAIMS/DAMAGES	0	14	19
CUSTOMER RELATIONS	2	4	96
DEPOSITS	7	18	65
DISCONNECTION ACTUAL	26	32	165
DISCONNECTION PENDING	5	34	85
EQUAL ACCESS TO LD CARRIERS	0	0	1
LOCAL CALL AREAS (LCAP/CICP)	0	11	15
LOCAL EXCHANGE COMPETITION	0	1	0
MISCELLANEOUS	3	116	182
NEED SERVICE +30 DAYS	167	56	404
NEED SERVICE – 30 DAYS	166	56	197
NEED SERVICE – OTHER	22	45	164
NEEDS SERVICE – CREDIT PROBLEMS	1	2	25
RATE FILING	0	4	22
RATES	0	2	25
REGRADE – REQUEST TIED TO RFIP	0	0	1
REPAIR	32	84	434
RULES & REGULATIONS	0	1	0
SAFETY	0	0	2
SLAMMING	0	2	0
SS7 REGULATED	0	8	23
TAXES & SURCHARGES	1	4	15
UNREGULATED	1	56	19
ZONE CHARGES	1	26	52
TOTALS	3,594	454	692
TOTAL CLOSED	3,594		
MONEY SAVED FOR CONSUMERS	\$37,185		

Source: Colorado Public Utilities Commission, Office of External Affairs.

Often complaints received by The Enforcement and Safety Section and the Transportation Section may overlap into the other's jurisdiction. These two sections do not fully utilize the computerized complaint tracking system as the Office of External Affairs does. The following tables illustrate the number of complaints/inquiries that they received in 1995 and 1996.

Fiscal year 1995	Rules	Safety	Authority	Rates	Total
Enforcement	158	30	62		250
Rate Unit				85	85
Towing					559
Total					894

Source: Colorado Public Utilities Commission

Fiscal year 1996	Rules	Safety	Authority	Rates	Total
Enforcement	131	25	52		208
Rate Unit				95	95
Towing					503
Total					806

Source: Colorado Public Utilities Commission

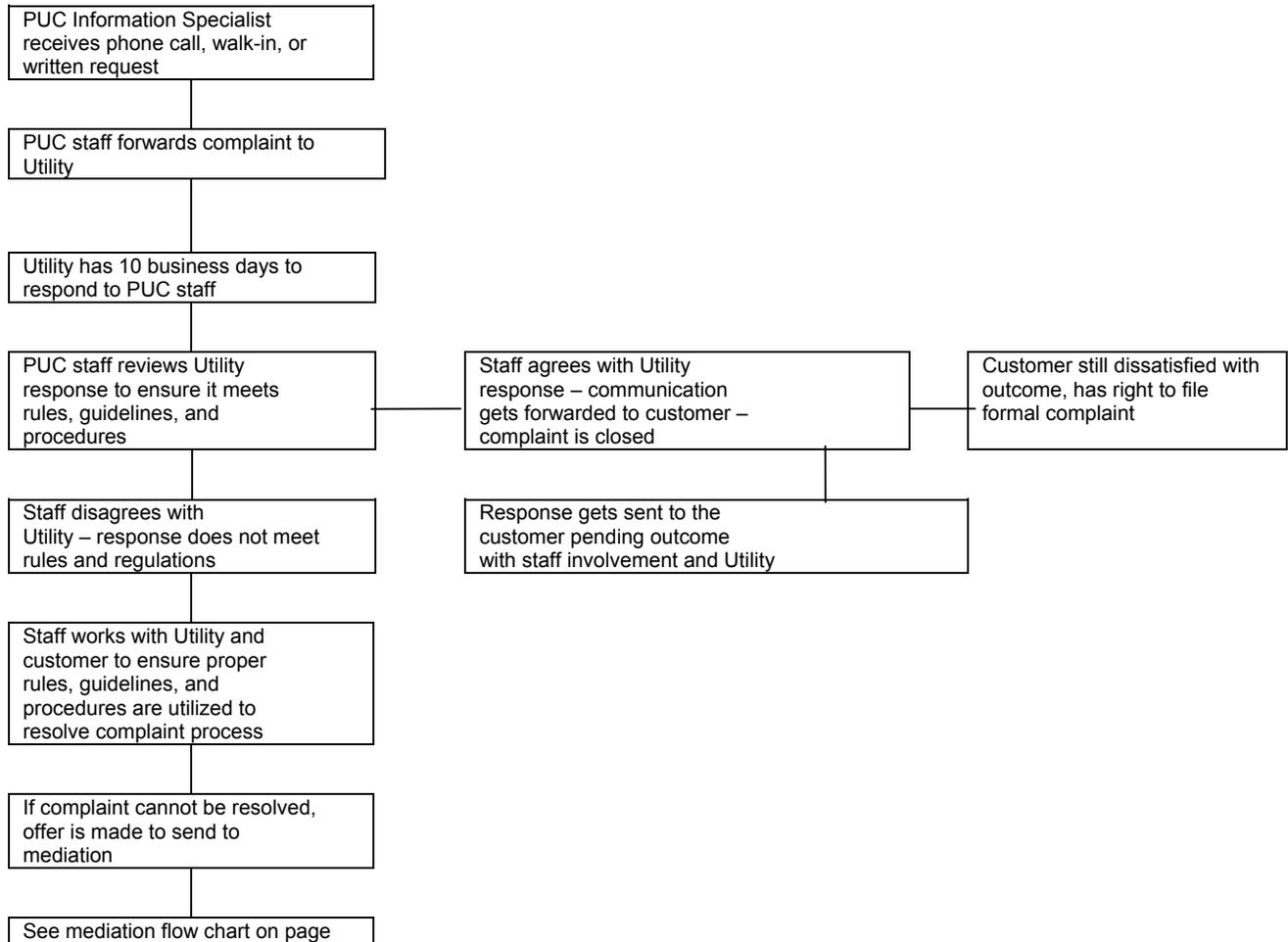
The towing complaints are further categorized as follows:

Distribution of Towing Type Complaints	
January -June 1997	
Complaint Type	Number of Complaints
Private Property Impounds	116
Non-Consensual Accident	40
Consensual Tows	19
Damage Claim	15
Authority Questions	11
Police Ordered Impounds	11
Abandoned Vehicle Sale	10
Repossessions	10
Other Contacts	3
Personal Property	2
Vehicle Release	2
Insurance	1
Total	240

Source: Colorado Public Utilities Commission

Throughout this process, every attempt is made to resolve the complaint without a hearing. PUC staff members are involved in determining the validity of the complaint and in acting as informal conciliators between the complainant and the respondent. After all attempts at informal resolution of a complaint have been exhausted the mediation process can be initiated.

Informal Complaint Process



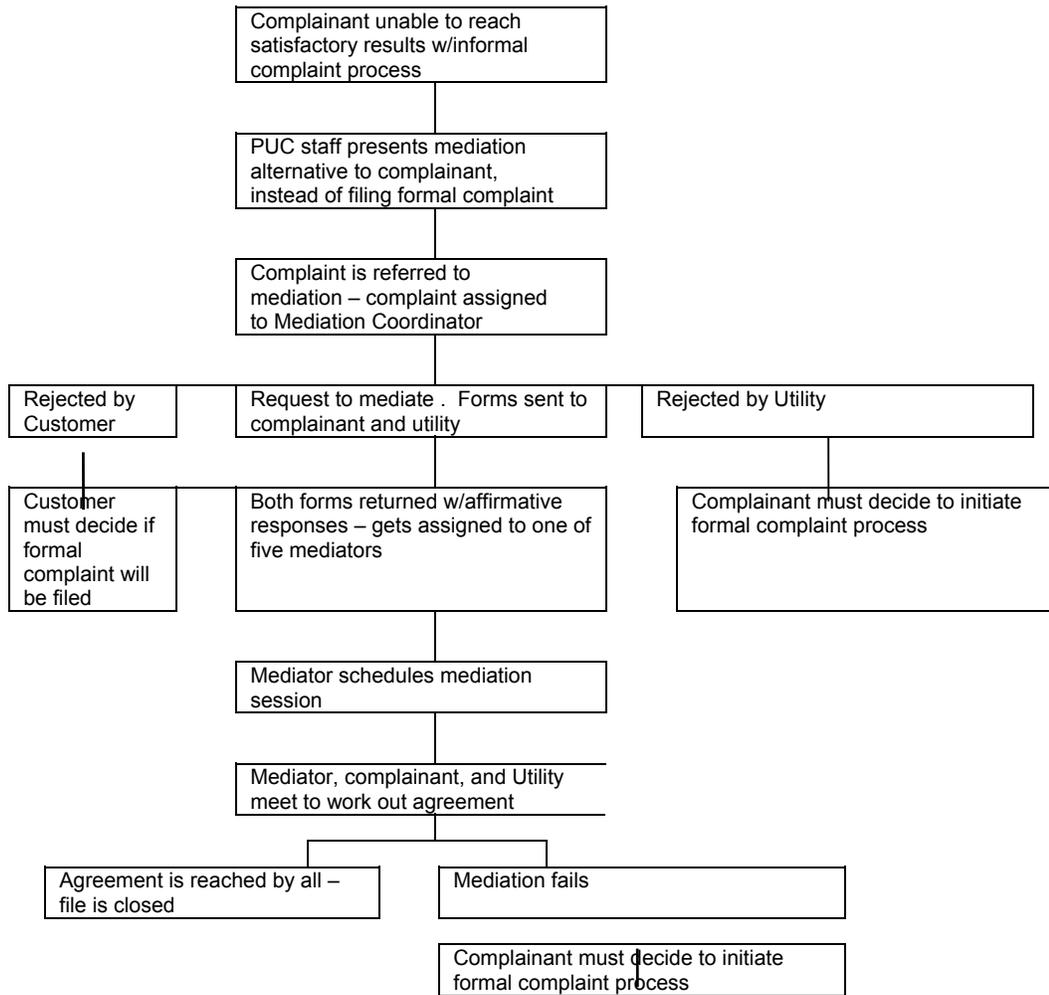
Mediation Process

The PUC established the mediation system to provide an alternative to the formal hearing process. The Mediation Process at the PUC utilizes a neutral third party to facilitate settlements between complainants and respondents. Mediators guide the negotiations between the parties, offer advice to both sides and help develop an amicable settlement.

For mediation to be effective, the mediator must be neutral and impartial. All five of the Administrative Law Judges and three additional staff members completed 40 hours of formal mediation training.

The mediation process has proven an effective means of dispute resolution for the PUC. In 1996, 43 of 44 formal and informal complaints referred to mediation were resolved through the process. In 1995, 91 formal complaints were filed with the PUC, but in 1996, only 56 such complaints were filed. The PUC credits the success of the mediation process for this reduction. Following is a flow chart of the medication process.

Mediation Process



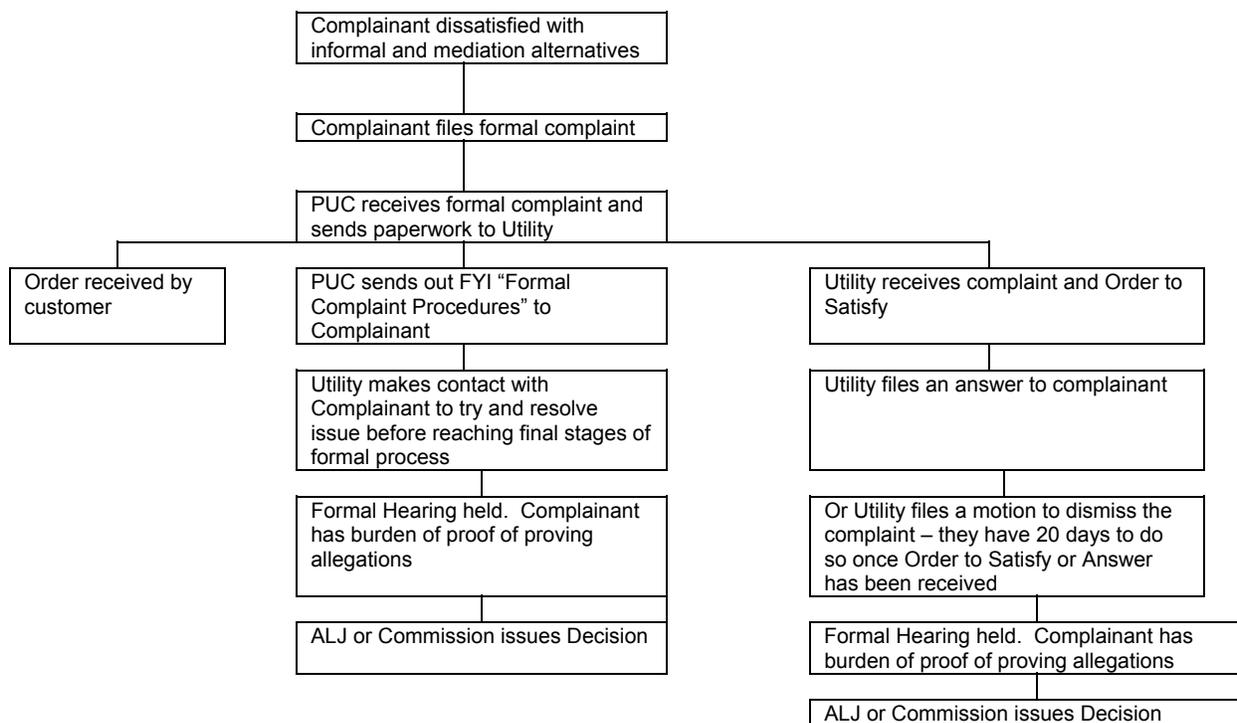
Formal Complaint Process

An informal complaint can become a formal complaint at any time during the informal complaint and mediation processes. To enter the formal complaint process, the complainant simply needs to file a formal complaint with the PUC. In addition, the mediation process is nonbinding, so the parties may enter the formal complaint process if mediation fails.

If a complaint is formalized, the complainant may have to hire an attorney and travel to Denver for a formal hearing before either an ALJ or the Commissioners. Because of the added costs to all parties (the PUC, the complainant and the respondent), every effort is made to avoid a formal hearing.

The formal complaint process is outlined in greater detail below.

Formal Complaint Process



CENTRALIZED COMPLAINT SECTION

Currently, three sections within the PUC are responsible for handling complaints. Centralizing the consumer complaint function would provide easier accessibility for the public because there would be one section to receive all complaints. Centralizing the complaint process would be advantageous to the PUC as well. The various sections could devote more resources to their other functions.

When necessary, the centralized section could request assistance from the relevant PUC section in order to handle the complaint with an acceptable level of expertise. Thus, the centralized office would receive the complaint, but continue to consult with other sections of the PUC to draw upon their technical knowledge and expertise without dedicating such individuals exclusively to complaint handling.

Furthermore, greater consistency in the way complaints are handled can be expected because there would be only one section dealing with all types of complaints, rather than the decentralized process that currently exists. Along similar lines, quality of service would increase because the PUC staff involved would be entirely dedicated to customer service and would not have other responsibilities competing for its time and resources.

A centralized section would enable the PUC to generate more detailed and useful reports regarding complaint statistics. The centralized section would have greater resources to analyze complaint data for various trends and recurring problems across the PUC's regulatory spectrum. These reports would enhance the PUC's ability to meet the information needs of the public, industry and the PUC itself. Such detailed reports would greatly enhance the PUC's oversight function by providing regular, detailed and useful summaries.

Furthermore, the PUC could provide this data on its Internet site and through periodic printed documents and reports. Widespread availability of complaint information would help educate consumers and would aid the PUC and other agencies such as the Office of Consumer Counsel.

Administrative Recommendation B: The PUC should organize its complaint in-take and handling procedures so that a centralized section handles consumer inquiries and complaints.

Administrative Recommendation C: This centralized section should generate a series of reports that analyze the collected complaint data and make the data available to internal and external consumers.

In addition to providing better statistical analysis of complaint data to the public, the PUC should also provide “read only” access of their complaint database to the OCC. The OCC is responsible for representing the public in hearings and acting as a “watch dog” for consumers on rate and service issues. Easy access to complaint data is essential to the OCC for proper representation of Colorado consumers. As Colorado utilities begin to open to competition, knowledge of complaint data on the many new companies entering the state is more important than ever. Through its own analysis of the data, the OCC will be able to identify trends in the market by analyzing complaint information by company, by similar complaint and by region of the state. This data will assist the OCC in determining where resources should be targeted to most effectively protect the Colorado consumer.

Administrative Recommendation D: The PUC should provide “read only access” of their complaint database to the Office of Consumer Counsel.

Filing of Complaints

Another aspect to complaint information is who may file formal complaints. Section 40-6-108, C.R.S., identifies how complaints may be heard before the PUC and defines the parameters of who may file a complaint regarding the reasonableness of rates or charges of public utilities. Subsection (1)(b) reads as follows:

No complaint shall be entered by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electric, water, or telephone public utility, unless the same is signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the county, city and county, city, or town, if any within which the alleged violation has occurred, or not less than twenty-five customers or prospective customers of such public utility.

The requirement of 25 signatures has outlived its usefulness and has also created an unnecessary burden to complainants in this era of open competition. The rise of competition in the utilities has created a new class of complaint in the regulatory structure. Regulatory restructuring in some of the utilities has created a situation in which competitors may, at times, wish to file complaints against competing companies. When this occurs, the complaining company must present 25 signatures of customers or prospective customers along with their complaint. In order to satisfy this requirement, companies get signatures from their employees. The Office Of Consumer Counsel performs the same needless task when it wishes to file a complaint against a utility. Past customer rate complaints have either had the backing of the local legislatures or were part of Office of Consumer Counsel initiatives. For these reasons, this report recommends that the 25 signature requirement for filing a complaint regarding the reasonableness of any rates be amended.

Recommendation 5: §40-6-108, C.R.S., should be amended to exempt the Office of Consumer Counsel and utility companies from the requirement of obtaining 25 signatures of customers or prospective customers in order to issue a complaint regarding reasonableness of rates or charges of any gas, electric, water, or telephone public utility.

V. PUC Hearing Process

Decisions by the PUC are made through the hearing process whereby the Commissioners hear cases in a trial-like setting and render decisions. In addition to the Commissioners, Administrative Law Judges (ALJs) may also hear cases and render recommended decisions to the Commissioners. Ultimately, the PUC Commissioners are the final decision makers at the PUC.

Commissioners are appointed by the Governor for four-year terms. Terms are staggered to maintain consistency and knowledge of issues among the three Commissioners. Individual Commissioners occasionally may hear cases and act as interim decision makers, but generally, Commissioners meet as a group. In large cases, Commissioners may act as the first decision-making body. At other times, the Commissioners will act in their capacity to rehear arguments of cases decided by the ALJs. Interviews with the regulated community identified that all were happy with the Commissioners, citing that the Commissioners were very knowledgeable and dedicated to the difficult tasks before them. Last year the Commission heard 23 cases.

There are currently five (5) ALJs, one of which one is part-time. ALJs are hired by the PUC Director. ALJs preside over hearings and issue either interim or recommended decisions. Interim decisions are procedural decisions made prior to the hearing and include such issues as motions and hearing dates. Recommended decisions are decisions made on the issues after the hearing is conducted. Recommended decisions go to the Commissioners and become final decisions within 20 days by operation of law unless a party to the case makes an appeal under the exceptions section of the statute. In that eventuality, the Commissioners act in an appellate capacity. Last year, there were approximately 600 cases on the docket and the ALJs heard 168.

Case Category

Commissioners and ALJs may hear seven categories of cases. These are 1) Investigations and Suspensions; 2) Rule-Making Proceedings; 3) Applications; and 4) Complaint Cases, 5) Civil Penalty Assessments, 6) Show Cause Proceedings, and 7) Investigatory Proceedings.

Depending upon the size and complexity of the issues before the PUC, hearings may run from one day to several weeks. Preparation by the PUC staff may take months leading up to the hearing. Hearings are conducted in front of an ALJ or the three Commissioners. In most cases, only attorneys argue in front of the PUC.

During hearings, there are two types of employees at the PUC: trial and advisory staff. Trial staff represents the PUC's position in front of the Commissioners. Like any party, they may converse with other parties in the case. In addition to trial staff, there is the Commissioners' advisory staff. Advisory staff do not advocate positions at hearings and have little or no contact with parties in the case. Their role is strictly to provide technical expertise to the Commissioners on issues heard before them.

The PUC Advisory Coordinating Team (PACT) was created in 1995 in response to industry and regulatory concerns of the potential for ex parte communications and confusion over who was trial and who was advisory on the agency staff. PACT has alleviated most of the confusion and controversy surrounding the trial and advisory staffs.

At times, the advisory staff may require additional expertise on particular matters that are expected to come before the Commissioners. When this occurs, PACT will utilize PUC employees who are not serving in a trial capacity in the case. Notification of who is trial and advisory personnel is then provided to all other parties. While industry members uniformly agree that PACT has greatly enhanced the process, some members of the community have expressed frustration over their inability to continue discussions with a member of the staff who becomes part of the advisory staff on a particular issue. If that employee becomes part of the advisory team for that case, the employee may not discuss those issues with any party in the case. The party must then find another PUC employee to discuss the matter, often repeating many of the party's original concerns.

Certain recommendations have been mentioned that may reduce this problem. Unfortunately, these recommendations result in undermining confidentiality or create the potential for impropriety. They include:

- **Relaxing Ex Parte Rules:** A prohibition of ex parte communications is designed so no one party may influence the Commissioners decision outside of the due process procedures. Relaxing these rules increases the possibility of such influence.
- **Increasing PACT Staff:** It is difficult to predict what specific expertise PACT staff will need. However, the PUC should investigate this issue further.

Post-Hearing Process

Generally, all hearings, regardless of category, have the same post-hearing procedures. They include:

Statements of Position: After testifying and presenting its evidence at a hearing, each party presents written statements regarding their positions in the case. This allows the parties to narrow the focus of their arguments and reiterate their positions.

Recommended Decision or Commission Decision: If an ALJ is hearing the case, the ALJ will issue a recommended decision that is presented to the Commissioners. The Commissioners have twenty (20) days to reject the decision before it becomes final by operation of law. If the Commissioners hear the case, they issue a decision after the hearing.

Exceptions Filed: Parties to the case may appeal a decision by an ALJ to the Commissioners through the Exceptions process. The Commissioners will review the entire case based upon the record if the party so requests. Otherwise, the Exceptions review is essentially a review of the ALJ's application of the law.

Transcripts Filed: If a party orders and pays for a record of the hearing, the PUC must provide a transcript of the hearing. This transcript is created from the Hearing Reporter's record. Transcripts must be available to the public, when ordered, prior to the Exceptions filing deadline.

Reconsideration, Reargument, or Rehearing Filed: Whenever the Commissioners issue a decision, regardless of whether the case went before the ALJ or directly to the Commissioners, and regardless of whether the Commissioners made a decision on the Exceptions, parties to the case have the right to request another review of the Commissioners' decision through a process termed "Reconsideration, Reargument, and Rehearing" (RR&R). RR&R occurs any time there is a change in a decision by the Commissioners. (Hypothetically, the number of RR&Rs is endless if the Commissioners choose to modify their decisions after every RR&R and grant requested RR&Rs.)

The hearing process is a time-intensive procedure designed to ensure that all parties have equal access in providing their arguments to the PUC. Due to the degree of expertise required to regulate public utilities and the complexity involved in balancing the interests of various classes of parties, there is a need for a decision-making process that places all of these competing interests on equal footing. In an effort to ensure this balance of power among the parties, as well as ensuring that decisions are based upon fact, time and quick decisions are sacrificed.

Decisions on rate changes may take up to nine months or longer. Although this process may be long, it does allow the parties to receive a full hearing on the merits. Furthermore, PUC decisions are much faster than traditional litigation in the state's court system. Considering the magnitude and complexity of the cases before the Commission, issues are resolved much quicker than in the court system.

Colorado is not unique in this organizational structure. Most states have similar decision-making processes for their public utilities commission. As a state agency, the PUC not only sets rates for utilities, but also, through its rules, orders, and decisions, makes prospective economic policy. In no state is the decision of the Commission subject to revision by a higher administrative authority.

Until effective open competition is available in specific markets, there will be a continued need for the hearing process. The question then becomes one of determining what changes can be made to the hearing process to expedite decision making.

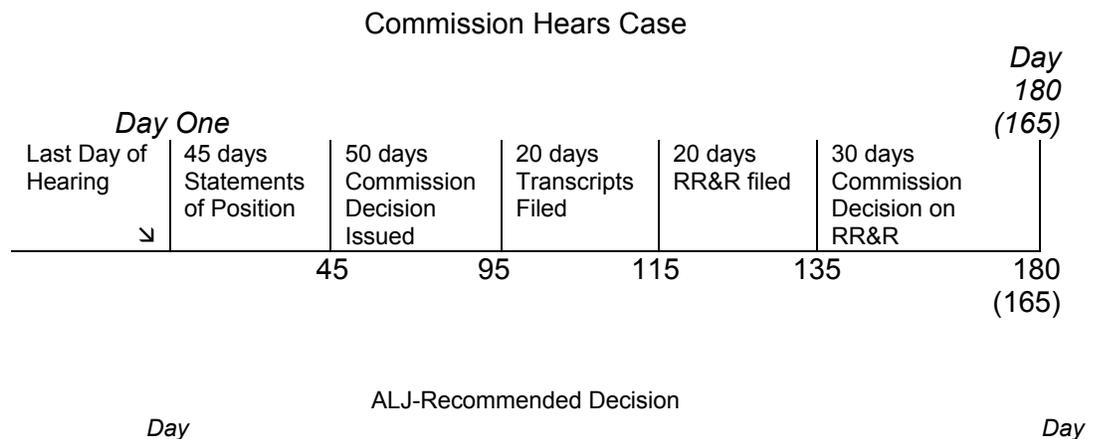
Rule-Making Proceedings

Section 40-2-108, C.R.S., sets out the PUC’s authority to promulgate rules and regulations for the proper administration and enforcement of utility regulation. As set forth in this section, the PUC is governed by the Administrative Procedure Act (APA). Additionally, §40-2-108, C.R.S., requires the PUC to issue a decision whenever it adopts rules or regulations. This requirement invokes Exceptions, and/or Rehearing, Reargument, or Reconsideration for any rules adopted by the PUC.

Prior to final adoption of a rule, the agency must provide notice to the public of the pending rule and provide a period of time to accept comments. The agency then must adopt the rule within 180 days from the last public hearing. All agencies within the Department of Regulatory Agencies must follow the procedures outlined in the APA. However, only the PUC has the additional requirement of invoking the Exceptions and/or RR&R provisions. Rarely, if ever, does an agency deviate from using the APA. Rule making is generally policy-directed. Unlike rate filings that are number-intensive and require many calculations, rules promulgated by the PUC do not have the same degree of complexity and therefore do not need the added requirement of the Exceptions and RR&R processes.

A survey of surrounding states’ utilities commissions revealed that no other state requires this additional “bite of the apple”; rather, these commissions promulgate rules according to their general APA guidelines only.

A review of the current PUC rule-making process indicates that the PUC currently makes decisions on proposed rules in 95 to 130 days, depending upon whether the rule-making case is an ALJ-Recommended Decision or the PUC hears the case directly. Eliminating the additional Exceptions/and or RR&R processes could shorten the decision time by as much as three months, as well as save valuable time for the PUC staff.



	<i>One</i>								180
Last Day of Hearing ↘	16 days Statements of Position	30 days Recommended Decision Mailed	20 days Transcripts Filed	20 days Exceptions Filed	14 days Responses to Exceptions	30 days Commission Decision on Exceptions	20 days to file RR&R	30 days Commission Decision on RR&R	
	16	46	66	86	100	130	150	180	

Under the APA, there is sufficient opportunity for parties to express their comments about the rule. There is no reason why the added step of requiring Exceptions and/or RR&R is necessary. According to the National Regulatory Research Institute (NRRI), the policy research arm of NARUC, no other state requires utility commissions to follow this procedure. There is no evidence to indicate the Colorado Public Utilities Commissioners are less knowledgeable than their respective peers in other states nor do the issues in Colorado appear to be any more or less complex.

Due to the already existing safeguards within the Colorado APA, the lack of any justification for creating additional post-APA requirements on PUC rules and regulations adoptions, and the saving of time and resources of the PUC, this report recommends that §40-2-108, C.R.S., be amended by deleting the requirement that the PUC issue a decision whenever it adopts rules or regulations.

Recommendation 6: §40-2-108, C.R.S., should be amended to eliminate the requirement that the Commissioners issue a decision whenever they adopt rules and regulations.

The Hearings Reporters transcribe all PUC formal evidentiary hearings by stenograph machines which create a paper tape that is transcribed either by hand or through the use of computer-aided transcription by the Hearings Reporter. The paper tape constitutes the official record. THE PUC Hearings Reporters have performed transcribing on personal computers and laptops that automatically perform the transcribing process. However, this has occurred on very few occasions. Depending upon the length of the hearings, transcribing the record may take several hours or days. A transcript of the hearing is required when Exceptions are filed to an Administrative Law Judge recommended decision, the recommendation of a single Commissioner, or when an application for rehearing, reargument, or reconsideration is filed to a Commission decision where any party seeks to reverse, modify, or annul the

recommended decision of a single Commissioner, an Administrative Law Judge or the decision of the Commission. Where a party does not seek to amend, modify, annul, or reverse basic findings of fact in the recommended decision of a Commissioner or Administrative Law Judge or in the decision of the Commission, it is not necessary for a party to file a transcript.

Under §24-4-105(13), C.R.S., of the State Administrative Procedure Act (APA), the Administrative Law Judges from the Department of Administration have the option to record all state administrative proceedings by a Hearings Reporter or by an electronic recording device. Most administrative agencies follow the APA and thus have the option for their hearings to be recorded electronically. Under §40-6-109(1), C.R.S., the record of all formal evidentiary PUC hearings is mandatorily required to be taken by a Hearings Reporter.

Providing the PUC the option to record hearings electronically would give the PUC more discretion in allocating court reporting resources when necessary. For example, PUC hearings of lesser complexity could be electronically recorded while providing Hearings Reporters more time to work on more complex and difficult hearings and transcripts and provide other services and duties where needed. This recommendation also has support in the regulatory community. In an effort to more efficiently allocate PUC resources, this report recommends that §40-6-109, C.R.S., be amended to allow the option of electronic recordings of hearings.

Recommendation 7: Amend §40-6-109, C.R.S., to allow proceedings before the PUC to be electronically recorded.

While the ultimate decision makers at the PUC are the Commissioners, they rely on information from the commission staff to carry out the commissions duties. The Director of the PUC manages the staff and operations of the commission staff in order to “ carry out the public utilities law, [and...to implement policies procedures and decisions made by the commission...” §40-2-103, C.R.S.

In an effort to determine how best to serve the citizens of Colorado, the Director has informal meetings with consumers around the state where he receives input on utility issues, concerns on future direction of the PUC and answers questions about utility matters. In the course of these informal meetings, the Director receives consumer information and input about issues that are or will be heard by the Commissioners.

Because the Commission issues decisions in a judicial proceeding, certain procedures must be followed, including the ability to enter information into the record. This requires an Administrative Law Judge or Commissioner(s) and a Hearing Reporter to record statements. Under the current system, it is unclear whether the Director may conduct such an informal meeting with Colorado consumers and whether the information the Director receives in those meetings may be entered into the record during a commission proceeding. The Director in the past has held public meetings. In 1995, the Director or his staff conducted 16 meetings across the state discussing local telephone competition. In April and May of 1997, the Director and his staff conducted ten meetings across metro Denver to discuss different area code options. Information from these meetings along with letters received by the staff were incorporated into a report to the commission during their hearings on these matters.

There is concern by the Director that the information of the public meetings could be challenged on evidentiary grounds. The Director and the Director's staff can conduct meetings more frequently than the Commissioners or Administrative Law Judges. The public meeting is also less intimidating to citizens than a hearing which is run with Commissioners or judges, hearing reporters and possible cross examination. The greater potential frequency of these meetings coupled with a less intimidating format enables consumers voices to be heard where it would not otherwise.

Opponents to this proposal have concerns about its practice. They believe that consumers should have the opportunity to voice their opinions on utility matters directly to the Commissioners rather than through a third party's report of their opinions. There is also a fear that these public meetings will be used in replace of commission attended public hearings.

Unfortunately the Commissioners time too address all matters makes their time limited. The ability to supplement commission hearings with informal meetings by the Director provides consumer input where there would be none. In an effort to provide more consumer input to the Commissioners, the Department of Regulatory Agencies recommends giving the Director of the PUC or the Director's designee the authority to conduct public meetings to obtain input and comment from utility customers and to introduce that information into commission records or proceedings.

Recommendation 8: Give the Director of the PUC the ability to conduct public meetings to obtain input from Colorado consumers and introduce that information into commission records and proceedings.

VI. Enforcement Authority

The role of any regulatory program is to provide oversight of a certain occupation or industry which results in a protected public. An important element in achieving this goal is an agency's ability to take appropriate enforcement actions against those who violate the laws and rules. When proactive measures fail to keep the regulated community from operating correctly, varying degrees of state action must be taken to ensure compliance. Enforcement actions have a twofold effect. First, they punish the illegal activity, and second, they act as a deterrent for future misconduct by the company and the rest of the regulated community. However, without an enforcement presence, there is no deterrent factor, and the public must rely only upon the good will of the regulated community.

In a competitive environment, a new regulatory dimension is added to the existing role of the regulator. The regulator must ensure that all parties follow the statutes and rules. Instead of protecting the public from only one company, the agency must ensure that all companies in the market are behaving properly. Consequently, the enforcement mechanisms appropriate to regulating a monopoly must be modified to address the issues of a competitive environment. Failure to effectively enforce the legislature's mandates results in public dissatisfaction with the regulated community and/or the agency.

The PUC is given the responsibility of regulating a wide range of industries, from telephone and gas utilities to taxis and intrastate trucking. All must acquire the appropriate degree of regulation to protect the public. As industries change, so too must the regulatory authority. As seen in the telecommunications industry, technological advances have had an important impact on the removal of monopolistic regulatory schemes. With open competition comes new challenges for regulation. The regulatory authority that allowed states to adequately protect the public from a monopoly must change to meet the new challenges of adequately protecting the public in competitive markets.

The telecommunications industry is an example of where additional enforcement authority is necessary. The passage of the Federal Telecommunications Act set in motion the eventual elimination of monopolies with the ultimate goal of open competition in these markets. Over the next several years, Colorado telecommunications regulation will be in a state of transition. The PUC will be required to perform a dual regulatory role of regulating both monopolies and competitors. The PUC will continue to require those tools to effectively regulate monopolies, but there will also be a need to effectively regulate companies in a competitive market. As a result, the PUC needs additional enforcement authority to meet these challenges in order to be an active participant in telecommunications regulation.

Under the prior regulated monopoly standards, the monopoly would guarantee statewide access for a guaranteed rate-of-return. The PUC could effectively monitor quality of service to Colorado consumers and adherence to Colorado statutes and rules and regulations through a variety of enforcement vehicles. Below is a summary of those enforcement tools.

Restrict or remove authority to operate: Although the Commission has the authority to restrict or remove a monopoly's authority to operate in Colorado, it is highly unlikely that such authority would ever be used except under extreme circumstances.

Control rates charged by a utility: The PUC has the authority to control rates charged by a utility. If a company is not complying with certain rules and/or regulations but wishes to increase rates, the PUC may not approve those rate increases. Competition will decrease or eliminate the role of controlling rates charged by a utility since the free market will dictate price.

Control earnings of the utility: The PUC has the authority to control the earnings of a utility. Like controlling rates, this enforcement authority created a strong incentive for the utility to comply with PUC rules and regulations. However, use of this tool will decrease or end with effective competition.

Charge reparations: In the past, the PUC has been able to charge reparations to customers for violations of the statutes and regulations. Reparations are not punitive and therefore are not a deterrent to bad conduct.

Fining authority through district court: The PUC may seek fines up to \$2,000 per occurrence per day that must go through the Colorado district courts. This fining authority has never been used by the PUC because of the long dockets in the district court. It can take years before a judgment is rendered.

Cease and Desist Orders: The PUC can require a utility, after a staff investigation and hearing, to cease and desist from inappropriate action. Cease and desist orders are limited in scope and only address inappropriate action, not inaction.

In a competitive environment, the PUC must have the necessary tools to be an effective regulator in a competitive environment. Competition will raise new issues for the PUC, including:

- Length of time for competition to reach the less populated areas of Colorado;
- Noncompliance with rules that could place resellers and new entrants at disadvantages; and
- Incumbent providers that are placed at disadvantages when new entrants go beyond their scope of authority.

Current Enforcement Tools Are Inadequate

The current enforcement tools are not adequate to resolve these issues. Due to the implementation of price caps in the Colorado Telecommunications Act and relaxed regulation of the industry, the PUC's role in determining rates has decreased. Consequently, controlling rates and earnings is no longer the deterrent force that it was under a monopolistic regime. Additionally, the other enforcement tools, such as fining companies through the district court, may take years to obtain results. Under a competitive environment, quicker action is required to ensure that all parties have an equal playing field. Without the ability to deter inappropriate behavior, the PUC is faced with the difficult task of ensuring compliance with legislative directives without appropriate tools. A substantial portion of the incumbent's business could be unlawfully taken by a new company that does not follow the rules. In other circumstances, new entrants may be forced out of business due to delays by the incumbent in providing statutorily required access. In the end, the consumer is hurt most through continued poor service or service by a new company that is not adequate.

The PUC has fining authority in other competitive markets that are regulated by the PUC.

Motor carriers under §40-7-113, C.R.S., can be fined for a number of violations. Under the gas pipeline safety rules, companies may be fined as much as \$10,000 per violation and a negotiated amount may be recovered by the PUC in a civil action before any court of competent jurisdiction, §40-7-117, C.R.S.

Other Colorado Agencies Have Fining Authority

Providing agencies with fining authority is not unique in Colorado. Other Colorado state agencies that regulate competitive industries give their Commissioners fining authority without going through district court. Below are a few examples of these authorities.

- The Division of Insurance may fine insurers up to \$10,000 for every act or violation, not to exceed \$150,000 in a six-month period, for not following the rules and regulations regarding financial and market conduct issues if the company should have known that it was in violation of any rule, law, or order of the Commissioner (§10-1-205(3)(d), C.R.S.).
- The Motor Vehicle Dealer Board may fine a licensee up to \$10,000 for each separate offense of the motor vehicle dealer statute (§12-6-104(3)(m)(I), C.R.S.).
- Under §11-2-117 of the banking statutes, the Banking Board may assess and collect a civil penalty from a state bank of up to \$1,000 per day for each violation. Additionally, under §11-25-107, C.R.S., a bank or financial institution may be fined \$2,500 per day for failure to file financial reports to the Board of Financial Services or Board of Banking.

Other States' PUC Commissioners May Fine

A survey of other state regulatory agencies revealed that many states give their agencies fining authority. Allowing the PUC Commissioners direct fining authority without having to obtain a decision from district court is also common among these states. Many of the states surveyed allow the Commissioners to fine directly. Fining authority within these states varies from \$1,000 per day to \$5, 000 per occurrence per day.

The following chart identifies those states that were surveyed and their authority to fine telecommunications companies.

Survey of Surrounding States Utilities Commissions Telecommunications Fining Authority

State	Commission Fining Authority	Court Fining Authority	Amount	Citation
Arizona		X	\$100-\$1,000/violation	Constitution, Art. 15 §16, §19
Iowa	X		up to \$2,000/day or \$10,000/day if willful	§476.51
Kansas	X		up to \$1,000/offense	§66-138
Nebraska	X		\$100/day	§75-1-56
New Mexico	X		up to \$1,000/day	§63-7-23
New York		X	\$250,000/offense- Human Safety-Gas \$100,000/offense each day = 1 offense	§24 and §25 of Public Service Law
Oregon		X	up to \$10,000 per offense	ORS 756.990, 759.990, 757.990.991
Texas	X		\$5,000/day/incident	Chapter 10, Art 1446c-O §1.322
Utah	X		up to \$2,000 / day / occurrence	§54-7-27, 28, 29
Washington	X		up to \$1,000 / day / offense	RCW 80.04.380, .405

In order to effectively address the new market in telecommunications, the Department of Regulatory Agencies recommends that the PUC be given the authority to fine telecommunication companies up to \$5,000 per day per occurrence.

Recommendation 9: This report recommends that the PUC be given the authority to directly fine telecommunications companies up to \$5,000 per day per occurrence.

Although the PUC has authority to issue civil money penalties, many motor carrier permit holders do not pay their penalties. During 1997, the PUC sent over \$81,000 to state collections and only \$3,200 have been collected. Many of the companies who refuse to pay their fines still have active permits with the PUC and are still operating in Colorado. The PUC has the authority to revoke their permits for safety or insurance violations but not for refusal to pay civil money penalties. Since these companies are not required to renew their permits, there should be provisions in Articles 10, 11, 13 and 16 that provide for the revocation of certificates or permits of any company that refuses to pay civil penalties for which they have been found legally liable while taking into account proper due process procedures. Additionally, the PUC should deny the issuance of new permits until the penalties are paid.

Recommendation 10: The PUC should be given the authority to revoke certificates and permits of any company that refuses to pay civil penalties while taking into account proper due process procedures.

Authority to Set Fees for Motor Carriers

The PUC is entirely cash-funded. The two major sources of funds are the Fixed Utility Fund and the Motor Carrier Fund. Colorado law requires that all costs of administration for the supervision and regulation of motor carriers by the PUC be offset by fees that are deposited to the Motor Carrier Fund. Maximum fees for annual vehicle identifiers, filing applications, registration, and transferring certificates for motor carriers are currently established by statute.

For example, fees collected from 12,500 interstate motor carriers account for a substantial amount of the PUC funding. Before the PUC will issue a permit to interstate motor carriers, allowing them to operate in Colorado, they must demonstrate proof of \$750,000 of insurance and pay a fee. The money collected from the interstate carriers is used to review insurance compliance by motor carriers, to perform safety inspections of motor carriers, and for general PUC overhead.

There is continuing risk that the federal government will preempt the PUC's authority to collect fees from interstate motor carriers. If the federal government preempts this authority, the PUC could forfeit \$1.5 million. Subsequently, if the PUC set fees by rule-making, it could defer the cost of regulation by increasing the fees imposed on interstate carriers. It is recommended that the amount of fees be removed from the statute and that the PUC be allowed to set the amount necessary to provide enough revenue to efficiently enforce and administer the law.

Recommendation 11: Establish all motor carrier fees by rule and in accordance with the rule-making procedures of the APA.

APPENDICES

Sunset Statutory Evaluation Criteria

- (I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- (II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- (III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- (VI) The economic impact of regulation and, if national economic information is available, whether the agency stimulates or restricts competition;
- (VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance public interest.