2007 SUNSET REVIEW

Colorado Department of Regulatory Agencies
Office of Policy, Research and Regulatory Reform

Public Utilities Commission

October 15, 2007

STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES
Office of Policy, Research and Regulatory Reform
Bruce Harrelson, Director

1560 Broadway, Suite 1550
Denver, CO 80202
Phone: (303) 894-7855
FAX: (303) 894-7885
www.dora.state.co.us/opr

Bill Ritter, Jr.
Governor

D. Rico Munn
Executive Director

October 15, 2007

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the Colorado Public Utilities Commission (PUC). I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2008 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

> The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...
>
> The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination…

The report discusses the question of whether the regulatory program provided under Title 40, C.R.S., serves to protect the public health, safety or welfare. The report also discusses the effectiveness of the PUC and staff in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

D. Rico Munn
Executive Director

2007 Sunset Review
Public Utilities Commission

Executive Summary

Quick Facts

What is Regulated? The Public Utilities Commission (PUC) has varying degrees of regulatory authority over natural gas, electrical, telecommunications, steam, and water utilities, as well as motor carriers and railroads.

Who is Regulated? In fiscal year 05-06, the PUC had full regulatory authority over 570 natural gas, electrical, telecommunications, steam, and water utilities and 189 transportation carriers; partial regulatory authority over 44 municipal utilities and cooperative electric associations; and safety jurisdiction over 11,678 transportation carriers and 69 natural gas or propane pipeline operators.

How is it Regulated? The PUC is a Type 1 agency housed in the Department of Regulatory Agencies. The PUC issues certificates of public convenience and necessity (CPCNs) to entities seeking to provide service as public utilities; issues permits to transportation carriers; performs safety inspections and audits; resolves complaints between consumers and utilities; ensures that utilities' rates and services meet prescribed standards; and takes enforcement actions against utilities found to be in violation of the law.

What Does it Cost? The fiscal year 05-06 expenditure to oversee this program was $13,270,389. There were 93.5 full-time equivalent employees associated with this program.

What Enforcement Activity is There? Between fiscal years 01-02 and 05-06, the PUC's enforcement activities included:

- Informal Complaints Closed: 31,940
- Formal Complaints Closed: 136
- Transportation Civil Penalties Assessed: $1,386,900
- Gas Pipeline Safety Violations Cited: 71
- Rates Suspended & Cases Heard: 60

Where Do I Get the Full Report? The full sunset review can be found on the internet at: http://www.dora.state.co.us/opr/oprpublications.htm

Key Recommendations

Continue the Public Utilities Commission. Almost every Coloradan interacts with a PUC-regulated utility on a daily basis, whether by flicking on a light switch or hailing a taxicab. The ubiquity of public utilities, along with the wide range of technologies and services they encompass, underscores the need for effective regulation. The PUC possesses the breadth and depth of knowledge and experience to act on the public's behalf, assuring that utilities meet minimum safety, service, and quality standards. The fact that some utilities still function as monopolies means the PUC must take a role in rate-setting, ensuring the utility has an opportunity to earn a reasonable rate of return on its investment while keeping rates affordable. Through technological advances and changes in regulatory policy, the PUC's mission—to protect the consumer while fostering effective economic competition—has remained and will continue to remain relevant. The PUC's licensing, investigatory, enforcement, and research activities assure the public access to safe, reliable and affordable utility services. For these reasons, the PUC should be continued.

Require cooperative electric associations and municipal utilities to offer customer-sited generation incentives and net metering. With the passage of Amendment 37, Coloradans expressed a desire to increase the generation and use of renewable energy resources. Two ways of doing that are through customer-sited generation (which occurs when a relatively small amount of electricity is generated at the location of a customer, e.g., by the use of solar panels) and net-metering (which occurs when customer-sited generation produces more electricity than the customer can use, and the customer is able to deliver the excess electricity to the power grid). However, Amendment 37 and the resultant law require only investor-owned utilities to offer customer-sited generation and net-metering programs to customers: cooperative electric associations and municipal utilities are exempted from the mandate. Consequently, almost half of

…Key Recommendations Continued

Colorado's electricity consumers do not have access to these programs. Requiring cooperative electric associations and municipal utilities to offer consumers customer-sited generation incentives and net-metering—as investor-owned utilities currently must—would allow all Coloradans to participate in the greening of the state's energy portfolio, while also helping cooperative electric associations and municipal utilities satisfy their renewable energy portfolio requirements.

Amend the Low-Income Telephone Assistance Program eligibility criteria to mirror the Low-Income Energy Assistance Program eligibility criteria.
The General Assembly established the Low-Income Telephone Assistance Program (Lifeline program) and the Low-Income Energy Assistance Program (LEAP) to help low-income Coloradans pay for basic telephone, natural gas and electric service. However, each program has its own set of eligibility criteria. Conforming the eligibility requirements for the Lifeline program to those of LEAP will serve to streamline the process for determining eligibility. This will ease the administrative burden of the Colorado Department of Human Services, because it will have only one set of criteria to apply, and it will ease the administrative process for eligible low-income households. Additionally, establishing a standard set of criteria will likely expand the number of those eligible to participate in the Lifeline program.

Remove the burden of proof on applicants for new taxi service.
Currently, new applicants for authority to provide taxi service must prove that there is a public need for such service which is not being met by existing motor carriers. Placing the burden of proof on the applicant can give existing carriers an inequitable advantage, especially if the applicant is a small start-up company and existing carriers are large corporations with legal representation. This burden of proof should be shifted: existing carriers wishing to contest a new applicant's application should be required to prove that granting the applicant authority to provide service would harm the public. This change would remove an unnecessary barrier to market entry for new companies and would shift the regulatory focus to protecting the public, rather than existing carriers.

Include investor-owned water and sewer corporations in the definition of a public utility. The PUC has jurisdiction over investor-owned water utilities. Most of these utilities also provide sewer services, which are not regulated by the PUC. This creates a loophole whereby a utility wishing to raise rates, knowing that raising water rates could result in a customer filing a complaint with PUC, could simply shift the rate increase to sewer services, over which the PUC has no jurisdiction. Defining investor-owned water and sewer corporations as public utilities would close this loophole and protect consumers from unfair rate increases.

Major Contacts Made During This Review

- American Association of Retired Persons
- Aquila
- Atmos Energy
- CenturyTel
- Clean Energy Action
- Colorado Department of Natural Resources
- Colorado Department of Personnel and Administration
- Colorado Department of Public Health and Environment
- Colorado Department of Regulatory Agencies Information Technology Services
- Colorado Hotel and Lodging Association
- Colorado Independent Energy Association
- Colorado Office of Consumer Counsel
- Colorado Public Utilities Commission
- Colorado Renewable Energy Society
- Colorado Telecommunications Association
- Comcast Cable
- dcp Midstream
- Encana Oil & Gas (USA), Inc.
- Energy Outreach Colorado
- Freedom Cabs
- Governor's Energy Office
- Interwest Energy Alliance
- Missouri Public Utilities Commission
- Office of the Colorado Attorney General
- Ratepayers United of Colorado
- SourceGas
- Qwest
- Telcom Consulting Associates
- Towing and Recovery Professionals of Colorado
- Tri-State Generation and Transmission Association
- Western Resource Advocates
- Xcel Energy

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are Prepared by:
Colorado Department of Regulatory Agencies
Office of Policy, Research and Regulatory Reform
1560 Broadway, Suite 1550, Denver, CO 80202
www.dora.state.co.us/opr

Table of Contents

Background

The Sunset Process

Regulation, when appropriate, can serve as a bulwark of consumer protection. Regulatory programs can be designed to impact individual professionals, businesses or both.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation. Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection – only those individuals who are properly licensed may use a particular title(s) – and practice exclusivity – only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements – typically non-practice related items, such as insurance or the use of a disclosure form – and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency – depending upon the prescribed preconditions for use of the protected title(s) – and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

As regulatory programs relate to businesses, they can enhance public protection, promote stability and preserve profitability. But they can also reduce competition and place administrative burdens on the regulated businesses.

Regulatory programs that address businesses can involve certain capital, bookkeeping and other recordkeeping requirements that are meant to ensure financial solvency and responsibility, as well as accountability. Initially, these requirements may serve as barriers to entry, thereby limiting competition. On an ongoing basis, the cost of complying with these requirements may lead to greater administrative costs for the regulated entity, which costs are ultimately passed on to consumers.

Many programs that regulate businesses involve examinations and audits of finances and other records, which are intended to ensure that the relevant businesses continue to comply with these initial requirements. Although intended to enhance public protection, these measures, too, involve costs of compliance.

Similarly, many regulated businesses may be subject to physical inspections to ensure compliance with health and safety standards.

Regulation, then, has many positive and potentially negative consequences.

The regulatory functions of the Public Utilities Commission (PUC) in accordance with Title 40, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2008, unless continued by the General Assembly. During the year prior to this date, it is the duty of the Department of Regulatory Agencies (DORA) to conduct an analysis and evaluation of the PUC pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the PUC should be continued for the protection of the public and to evaluate the performance of the PUC and staff. During this review, the PUC must demonstrate that there is still a need for the PUC, that the currently prescribed regulation serves to protect the public health, safety or welfare and that the currently prescribed regulation is the least restrictive regulation consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly. Statutory criteria used in sunset reviews may be found in Appendix A on page 80.

Methodology

As part of this review, DORA staff attended PUC meetings and hearings, interviewed PUC staff and Commissioners, reviewed PUC records and minutes including complaint and disciplinary actions, interviewed officials with state and national professional associations, interviewed representatives of various regulated utilities, interviewed representatives of consumer and advocacy groups, reviewed Colorado statutes and PUC rules, and reviewed the laws of other states.

Profile of the Industries

The PUC's broad regulatory authority can be broken down into five basic categories of utilities: energy, gas pipeline safety, telecommunications, transportation and water.

Energy

Electric

Modern society depends upon reliable electrical service to ensure economic prosperity, national security, and public health and safety. Without electricity, everyday things like food preparation, water distribution, and law and order become difficult or impossible.

Electricity is,

> one of the largest and most capital-intensive sectors of the economy. Total asset value is estimated to exceed $800 billion, with approximately 60 percent invested in power plants, 30 percent in distribution facilities, and 10 percent in transmission facilities.[1]

The electricity industry accounts for between three and four percent of the U.S. gross domestic product,[2] or approximately $230 billion per year.[3]

As a result, the electrical distribution system that has evolved in North America, commonly referred to as "the grid," is the most complicated machine in the world. The grid is a bit of a misnomer, however, since North America is divided into three actual grids or interconnection regions: the Western Interconnection, the Eastern Interconnection and the Electric Reliability Council of Texas, Inc. Interconnection (Texas Interconnection).

The Western Interconnection lies to the west of a line that runs north and south along, more or less, the Colorado-Kansas border north through Canada and south to the U.S.-Mexico border. The Eastern Interconnection, then lies to the east of this line. The Texas Interconnection includes most, but not all, of Texas. Although there are some relatively low voltage interconnections between the Interconnection regions, there is surprisingly little capacity to transport electricity from one Interconnection region to another. However, this lack of capacity also serves to insulate the various Interconnection regions from problems that may arise in anther Interconnection region. As a result, a blackout in the Eastern Interconnection will have minimal impact on the Western and Texas Interconnections, and *vice versa*.

[1] *Gridworks: Overview of the Electric Grid*, U.S. Department of Energy, Office of Electricity Deliver and Energy Reliability, downloaded on January 12, 2007, from www.energetics.com/gridworks/grid.html
[2] "Electric Industry Regulation," National Conference of State Legislators, downloaded on January 12, 2007, from www.ncsl.org/programs/energy/EleIndReg.htm
[3] "The Evolving Electricity Business: The Shift from Regulation to Competition," presented at *The Short Course: Power System Basics for Business Professionals* at Denver, CO, June 9, 2004, p. 11.

The electric distribution system is highly complex, but, in the end, it consists of little more than the movement of electrons from one physical location to another at the precise time they are needed. This requires careful monitoring of the electric grid and of power plants. Power plants must be brought on-line and taken off-line within precise time limitations to satisfy the fluctuations in demand, or load, for electricity throughout the grid without overloading the system.

Electrons are most commonly generated at power plants. A power plant may be owned by a utility or by an independent power producer (IPP), and it may be located inside or outside of Colorado. According to the U.S. Energy Information Administration, in 2006, Colorado's peak summer generating capacity was 11,086 megawatts (MW), 3,063 MW (28 percent) of which was held by IPPs.

There are three primary types of electric utilities: investor-owned, municipal and cooperative. In Colorado, the PUC has full jurisdiction over investor-owned utilities and partial jurisdiction over municipal utilities and cooperative electric associations.

In Colorado in 2005, there were two investor-owned electric utilities (controlling approximately 59 percent of the Colorado market), 29 municipal electric utilities (controlling approximately 18 percent of the Colorado market) and 26 cooperative electric associations (controlling approximately 23 percent of the Colorado market).[4]

When a utility seeks to construct a power plant to service Colorado consumers, the utility must obtain a certificate of public convenience and necessity from the PUC. In other words, the utility must demonstrate that the power plant is necessary.

Electricity can be generated in many ways. Historically, the most common type of power plant was the coal-fired plant. Coal is burned to heat water, creating steam, forcing a turbine to turn, thereby creating electricity. Although coal is relatively inexpensive, it produces a considerable amount of pollution. The cost of a coal plant can easily reach into the billions of dollars and take up to five years to construct. Additionally, it takes hours to fire up a coal plant and bring it on-line and hours to take one off-line. As a result, coal plants are base-load generators, meaning that they are the consistent work horses of the electric generation industry.

In the last 15 to 20 years, however, natural gas-fired plants have become more common. Depending on the type of plant, the natural gas may be used to power a jet engine, thereby creating electricity. Alternatively, in a combined cycle plant, the exhaust from the jet engine heats water, creating steam, forcing a turbine to turn, thereby generating even more electricity.

[4] "Electric Power Utilities in the State of Colorado," Colorado Public Utilities Commission, downloaded on June 19, 2007, from www.dora.state.co.us/puc/energy/ColoradoElectricPowerUtilities.pdf.

Natural gas, although more expensive than coal, burns more cleanly. Additionally, natural gas plants can be built for millions of dollars (as opposed to the billions of dollars required for a coal plant) in just a year or two. They can be taken on- or off-line in a matter of minutes, making them ideal for peak-load operations.

Even more recently, renewable sources of energy have gained market share. These include wind farms and solar arrays. Although the amount of energy produced by these sources is still relatively small, and their cost is relatively higher than coal or natural gas, they are becoming more common and their market share is increasing. Additionally, since we cannot control when the sun shines or when the wind blows, renewable energy sources are not, for reliability purposes, considered base-load sources of electricity. At the same time, however, they are also considered "must take" sources, meaning that when the sun shines or the wind blows, these resources are utilized, regardless of systemic demand at the moment.

Finally, the passage of Amendment 37 in 2004 popularized a new type of generation in Colorado – customer-sited generation. This allows consumers, and others, to install solar panels, for example, and receive federal tax incentives as well as incentives from some utilities. In short, customer-sited generation not only reduces the amount of electricity that these consumers take from the grid, but allows them, through net metering, to sell their generated and unused electricity back to the utility by allowing the electricity to flow onto the grid.

The energy mix of Colorado's power generators in 2004 consisted of: coal (74 percent); natural gas (23 percent); hydroelectric (2 percent); renewable (1 percent) and oil (0.03 percent).[5]

Once the electricity has been generated, it enters the grid and the electrons flow through a series of transmission and distribution lines. Higher voltage transmission lines are used to transport the electrons over greater distances and step-down substations and transformers are used to take the electricity from higher voltage to relatively lower voltage transmission and distribution lines until, ultimately, the electricity is delivered to the end user.

The PUC has jurisdiction over intrastate transmission lines, distribution lines and substations in Colorado.

Once the electrons reach the end user, a meter records the amount of electrons taken off the grid, which then serves as the basis for that customer's bill from the utility.

[5] Richard P. Mignogna, Ph.D., P.E., of the Colorado Public Utilities Commission, "An Implementation Update on Amendment 37: A Mid-Term Report Card on Colorado's Renewable Portfolio Standard," presented at *Power-Gen: Renewable Energy & Fuels* at Las Vegas, NV, March 7, 2007.

Natural Gas

Natural gas is pumped from the ground and then transported through gathering lines to a processing facility where impurities such as water and heavy metals are removed from the gas. The gas is then compressed and sent into the pipeline system, which delivers the gas to a local distribution company, more commonly referred to as a natural gas utility.

There are two primary types of natural gas utilities: investor-owned and municipal. Colorado has six investor-owned natural gas distribution companies, one investor-owned propane distribution company and six natural gas municipal utilities.

While the PUC regulates the rates that investor-owned utilities charge their customers, the PUC only asserts jurisdiction over municipal utilities when they serve consumers outside their physical boundaries and only when those customers are charged more than customers within the municipality's physical boundaries.

Regardless of the type of utility, natural gas utilities buy natural gas in a competitive wholesale market. As a result of fluctuations in this market, the cost to consumers also fluctuates through a Gas Cost Adjustment mechanism. While this results in more volatile natural gas bills, it provides consumers with a price signal and encourages conservation when the cost of gas is relatively high.

Steam

Steam is generally used to heat buildings and, in some cases, to cool buildings. Additionally, the steam can be used to heat water for laundries, as is most common in the hotel industry.

The steam is created at a plant by burning fuel oil or natural gas to heat the water, thereby creating steam. Additives are injected into the steam to prevent corrosion of the steam pipeline system and to inhibit bacterial growth, and then the steam is delivered into the steam pipeline system. Steam customers are connected to the steam pipeline system and take steam as they need it.

In Colorado, there is only one steam utility and it serves approximately 150 customers (mostly commercial buildings) in downtown Denver. Two of the utility's largest customers are the City and County of Denver and the State of Colorado.

The advantage to a customer of buying steam from a utility is the avoidance of purchasing, installing and maintaining a boiler for an individual building. Additionally, not all buildings have the physical space required to accommodate a boiler.

Geothermal

Large-scale geothermal energy projects involve tapping into super-heated water under the earth's surface. Several limitations on the practicality of geothermal energy involve the depth at which the water is located and the relative depth of magma from the earth's surface.

Tapping into such a large-scale geothermal energy source is akin to drilling for oil. The reservoirs are typically miles below the surface and require the well to be encased and topped off before the resource can be exploited. As a result, it can be very expensive to develop geothermal energy resources.

However, there are at least 39 users in Colorado that exploit geothermal energy for a variety of purposes: 18 pools and spas; 15 space heating; 4 aquaculture; 1 greenhouse and 1 district heating.[6]

Space heating users are primarily hotels and resorts that are affiliated with pools and spas.

Interestingly, the single district-heating user is actually a municipal utility. The U.S. Department of Energy drilled a test well in Pagosa Springs and when the research was completed, the federal government turned the facility over to Pagosa Springs to use as a municipal heating source.

However, due to the statutory definition of a geothermal utility, all 39 of these types of users of geothermal energy are exempt from PUC regulation.

Recent interest in all types of renewable energy resources has sparked an interest in "heat-pumps," which apply geothermal concepts on a smaller scale. In particular, some of the small rural cooperative electric associations have recently initiated forums to discuss these smaller scale geothermal applications. Additionally, there are residential subdivision applications of geothermal heating and cooling that have been tried in other countries, with the possibility of application in Colorado.

[6] "Direct Use Projects in Colorado," Oregon Institute of Technology, Geo-Heat Center, downloaded on May 23, 2007, from www.geoheat.oit.edu/state/co/all.htm.

Pipeline Safety

Hydrocarbons (crude oil and natural gas) are found in reservoirs deep within the earth. They are found and brought to the surface by companies that drill oil and natural gas production wells. If natural gas or oil is found, a wellhead is installed. If necessary, well-site production equipment (flowlines, separators, tanks, etc.) is installed to ensure the smooth flow of oil or natural gas from the well to on-site storage facilities. These companies are under the jurisdiction of the Colorado Oil and Gas Conservation Commission (OGCC).

Natural gas from production wells often contains impurities that need to be removed in order to create a product ready for normal consumption. Common impurities in natural gas include liquid hydrocarbons (crude oil), hydrogen sulfide, carbon dioxide, helium and water. Impurities can primarily be removed at the well-site or sent through gathering pipelines to processing plants or to central collection points where additional gas processing and treatment occurs. These exploration and production wastes also fall under the jurisdiction of the OGCC.

The natural gas transportation industry consists of gathering, transmission and distribution pipeline systems. Gathering pipelines carry natural gas to processing facilities where it is compressed and sent, in large volumes, into the transmission pipeline system. Transmission pipelines deliver natural gas to local distribution companies (LDCs), which, in turn, deliver the natural gas to end-users.

Although the U.S. Department of Transportation (USDOT) has legal authority to assert jurisdiction over gathering pipelines, it has focused its authority on populated areas. Similarly, the OGCC has the legal authority to assert jurisdiction over gathering pipelines in unpopulated areas, but has not done so in an attempt to avoid conflicting regulations with the PUC. However, the PUC, too, has the legal authority to assert jurisdiction, but has only recently done so.

The PUC has safety jurisdiction over intrastate natural gas transmission pipelines, natural gas distribution systems and propane distribution systems. The PUC does not have safety jurisdiction over pipelines that transport hazardous liquids such as refined fuels or crude oil. The USDOT retains safety jurisdiction over liquid pipeline facilities and interstate natural gas transmission pipelines.

A LDC, commonly referred to as a natural gas utility, is a pipeline operator responsible for distributing natural gas locally to its customers. LDC's operate and maintain the underground network piping, regulators, and meters that connect to each residential and commercial customer. The PUC’s safety jurisdiction ends at the outlet of the customer’s meter.

Pipeline safety is ensured through inspections of pipelines during construction or major repairs, alterations of existing pipelines, and operation/maintenance activities. Inspections focus on, among other things, the materials used, joining procedures, quality of installation, employee/contractor qualifications, and excavation damage prevention.

PUC jurisdiction over pipelines focuses on the safety of pipelines. The goal is to avoid leaks and explosions through proactive approaches to pipeline operation and maintenance activities. Since pipeline companies and utilities that operate pipelines lose money when pipelines leak, the industry is relatively compliant with the USDOT's and PUC's pipeline safety regulations.

Additionally, if there is a major incident such as a leak, explosion, or security threat on pipeline facilities, PUC staff is contacted and involved in any subsequent investigation.

Telecommunications

The telecommunications industry has experienced many significant changes in the past 30 years. The first significant change involved the American Telegraph and Telephone Company (AT&T). In 1982, AT&T agreed to divest in order to avoid a lawsuit filed by the U.S. Department of Justice. The divesture of AT&T in 1982 created competition in the long-distance market. Divesture of AT&T also enabled the formation of multiple new local telecommunications companies. Specifically, AT&T was divided into seven Regional Bell Operating Companies (RBOCs), commonly known as the "Baby Bells." In Colorado, Mountain Bell became one of three major subsidiaries consolidated under the umbrella of US West, one of the seven RBOCs. Mountain Bell, along with two other major operating subsidiaries (Northwestern Bell and Pacific Northwest Bell), was later consolidated into US West, which later merged with another competitive local exchange provider to become part of Qwest.

With the breakup of AT&T, and the continued evolution of the telecommunications industry, the country's service areas (territories) were divided into Local Access Transport Areas (LATAs). In Colorado, there are two LATAs. One LATA includes the 303, 720 and 719 area codes, while the other LATA includes the 970 area code. At the time of divestiture, intrastate calls (that is, calls within a state) were declared subject to PUC jurisdiction, while interstate calls were declared under the jurisdiction of the federal government. Further, at the time of divesture, the RBOCs were prohibited from carrying calls between LATAs, opening that segment of the long-distance market to competitive long-distance providers. The RBOCs were prohibited from selling services in the interLATA segment of the long-distance market because their continued status as monopoly local service providers could have impeded competition in the newly-developed long-distance markets.

The Colorado legislature, in 1995, passed House Bill 95-1335, which opened local competition in the telecommunications industry in Colorado. House Bill 95-1335 changed the landscape of the telecommunications industry in Colorado in a variety of ways. First, House Bill 95-1335 allowed the Colorado PUC to regulate all providers of telecommunications services in a competitive environment to ensure that basic (universal) service is available to everyone in the state at fair and affordable rates. In Colorado, basic telecommunications service includes the following:[7]

- A single-party line;
- Voice grade access to the network;
- Touch tone service;
- Fax and data transmission within the voice grade bandwidth;
- A local calling area that reflects a community of interest;
- Access to emergency services;
- Equal access to toll (long-distance) services;
- Customer billing as required by PUC rules;
- Access to operator services;
- White page directory listing; and
- Access to directory assistance.

House Bill 95-1335 also requires the PUC to review the definition of basic services every three years. These reviews include input from the public, the telecommunications industry and PUC staff.

It is important to note that local telecommunications companies are required to offer basic services to customers at PUC-regulated rates; however, local telecommunications companies may offer additional features (services) for additional fees.

Additionally, House Bill 95-1335 created the Colorado High Cost Support Mechanism (CHCSM). The purpose of the CHCSM is to create a funding system that assists in providing universal telecommunications services at affordable rates to all customers. All telecommunications providers pay into the CHCSM, which currently collects approximately $63 million annually. Telecommunications service providers, in turn, charge a monthly surcharge to their customers.

[7] Colorado Public Utilities Commission. What is Basic Phone Service? Retrieved June 25, 2007, from http://www.dora.state.co.us/PUC/Publications/FYIs/FYI_T-2BasicService.pdf

In 1996, the Congress passed the Federal Telecommunications Act (Act). The Act permitted a variety of companies, including cable, wireless, long-distance and satellite companies to compete in offering telecommunications services for both local and long-distance services. The Act established provisions for new companies or Competitive Local Exchange Carriers (CLECs) to compete with existing or Incumbent Local Exchange Carriers (ILECs). The effect of the Act was to deregulate the telecommunications industry, creating a competitive market that could ultimately increase choice for the consumer, thereby establishing more competitive services.

The Act also enabled 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. Under the Act, ILECs are required to sell other carriers (CLECs) access to their physical infrastructure, emergency and directory assistance services and transmission and switching services on an as needed basis. ILECs, in turn, are permitted to offer long-distance services outside their home regions.

Transportation

The PUC is charged with regulating motor carriers in Colorado. The PUC is responsible for safety and insurance oversight of both passenger and property carriers that operate on a for-hire basis in Colorado, for permitting of hazardous and nuclear materials carriers, and for economic regulation of common and contract carriers.

There are a variety of transportation providers permitted and regulated by the PUC:

- Common carriers
- Contract carriers;
- Property carriers;
- Towing carriers;
- Luxury limousine carriers;
- Charter bus carriers;
- Off-road scenic charter carriers;
- Children's activity bus carriers;
- Hazardous materials carriers;
- Nuclear materials carriers;
- Household goods movers; and
- Fire crew transports.

Taxicabs are regulated utilities and are regulated for safety of vehicles, insurance requirements, and rates and service areas, among other things. Generally, the PUC regulates the territory, routes, rates, schedules, and service of common and contract carriers including taxis, shuttles, charters, and sightseeing carriers. Rates and schedules can only be changed on 30 days' notice unless otherwise approved by the PUC.

Many taxi drivers are *lease drivers*. These drivers pay a daily, weekly, or monthly fee to the company allowing them to lease their vehicles. Leasing also permits the driver access to the company's dispatch system. The fee also may include charges for vehicle maintenance, insurance, and a deposit on the vehicle. Lease drivers may take their cars home with them when they are not on duty, subject to contract provisions.

The taxi industry in Colorado has experienced increased scrutiny in the recent past. Stemming from a newspaper story about a disabled woman's long waits for service, both legislative and private sector responses were launched to study problems in the taxi industry. Results and recommendations of these efforts will likely surface prior to the next regular session of the legislature. Partially in response to the aforementioned problems, the General Assembly passed legislation in 2007 giving the PUC authority over lease rates by taxi companies, which was one of the identified shortcomings in the regulatory scheme.

The PUC has regulatory authority over towing rates for non-consensual tows and most types of storage. Such rates are regulated by the PUC's rules. Towing rates cannot be changed, except by rulemaking or the granting of a waiver or variance. Any registered towing company may apply for a waiver or variance of the rates set by the towing rules. Regarding consensual towing, the PUC regulates insurance and safety.

Water

In Colorado, water utilities are regulated in a variety of ways. Municipal water utilities and water districts fall under the jurisdiction of local authorities, not the PUC. The bulk of water utilities in Colorado fall within this category.

Water utilities that are regulated by the PUC include small investor-owned water utilities. Currently, there are five investor-owned water utilities regulated by the PUC. All five are regulated due to a complaint or complaints filed against the utility, typically involving increases in rates. As a result of the complaint(s), the PUC assumes the regulatory authority for the aforementioned water utility.

Once an investor-owned water utility is under the PUC's jurisdiction, the PUC approves rates that are established for water services. The PUC reviews requests for rate changes by the investor-owned water utilities to ensure that the proposed rate changes meet the financial, engineering, legal and economic requirements. In addition to approving rate changes, the PUC assists investor-owned water utilities in establishing standards to initiate and maintain service and equipment to an appropriate level that satisfies the comfort and convenience of the customers.

The PUC provides regulatory oversight through a simplified regulatory treatment for small, under 1,500 customers, privately-owned water utilities. Specifically, section 40-3-104.4, C.R.S., states:

> The Commission, with due consideration to public interest, quality of service, financial condition, and just and reasonable rates, must grant regulatory treatment that is less comprehensive than otherwise provided for under this article to small, privately-owned water companies that serve fewer than one thousand five hundred customers. The Commission when considering policy statements and rules, must balance reasonable regulatory oversight with the cost of regulation in relation to the benefit derived from such regulation.

History of Regulation

Energy

Electric

The following timeline outlines significant regulation milestones related to electric utilities:

1961 – All suppliers of electricity, including cooperative and non-profit electric associations were declared to be public utilities, placing them under the jurisdiction of the PUC.

1983 – Cooperative electric associations were allowed to exempt themselves from PUC regulation by majority vote of their members and consumers. Municipal utilities were also exempted from PUC regulation.

1983 – The General Assembly authorized the PUC to pursue civil actions against electric utilities.

1992 – The PUC was given the power to flexibly regulate electric utilities by approving or denying applications for special rate contracts. Utilities were prohibited from subsidizing such contracts by raising the rates of other regulated utility operations.

1992 – The federal government enacted the Federal Energy Policy Act of 1992, requiring open access of investor-owned electric transmission lines. The act also prohibited the Federal Energy Regulatory Commission (FERC) from regulating retail wheeling, leading many to conclude that states could now regulate retail wheeling.

1998 – The 21-member Colorado Electricity Advisory Panel (CEAP) was created to assess whether retail competition in the electricity market would benefit the state's consumers.

1999 – CEAP issued its final report, which concluded that restructuring Colorado's electricity market to enable retail competition would not be in the best interests of consumers.

1999 – The PUC promulgated rules requiring investor-owned utilities to itemize the fuel sources of their generated and purchased electricity. Consumer bills were required to itemize fuel and delivery costs.

2001 – The General Assembly directed the PUC to give full consideration to clean energy and energy efficient technologies when examining jurisdictional utilities' resource selection plans.

2004 – The people of Colorado approved Amendment 37, which amended the state's constitution to require all utilities serving over 40,000 customers to meet certain renewable energy standards by certain identified dates.

2006 – The General Assembly directed the PUC to consider proposals by jurisdictional utilities to propose, fund and construct integrated gasification combined cycle electric generation plants, as opposed to subjecting such projects to the PUC's bidding rules.

2007 – The General Assembly doubled the renewable energy standards delineated in Amendment 37 and expanded the number and types of utilities that would be required to meet a new set of targets.

2007 – The General Assembly authorized the PUC to permit jurisdictional utilities to engage in discriminatory ratemaking for low-income customers.

2007 – The General Assembly mandated that jurisdictional utilities more aggressively participate in demand side management activities.

Natural Gas

The following timeline outlines significant regulation milestones related to natural gas utilities:

1983 – The General Assembly authorized the PUC to pursue civil actions against gas utilities.

1992 – The PUC was given the power to flexibly regulate gas utilities by approving or denying applications for special rate contracts. Utilities were prohibited from subsidizing such contracts by raising the rates of other regulated utility operations.

1992 – FERC Order 636 fully implemented previous requirements that interstate gas pipelines provide gas suppliers non-discriminatory open access to transmission facilities.

1996 – The Colorado General Assembly authorized a study to assess whether retail competition in the natural gas market would benefit the state's consumers.

1999 – The General Assembly authorized, but did not require, natural gas utilities that demonstrated, among other things, that at least five other natural gas companies could offer service to customers in their respective service territories, to engage in retail competition. If such a situation arises, the PUC was authorized to promulgate rules to implement the transition to competition and to, among other things, establish standards of conduct.

2001 – The General Assembly directed the PUC to investigate the natural gas acquisition practices of jurisdictional natural gas utilities with the aim of ensuring greater long-term price stability for consumers.

2007 – The PUC approved, for the first time, an investor-owned utility's proposal for partial revenue decoupling, thereby reducing the utility's disincentive to encourage conservation.

Steam

The following timeline outlines significant regulation milestones related to steam utilities:

1983 – The General Assembly authorized the PUC to pursue civil actions against steam utilities.

1989 – The General Assembly authorized the PUC to authorize steam utilities to negotiate contracts with specific customers within their respective service territories. Utilities were prohibited from subsidizing such contracts by raising the rates of other regulated utility operations.

1992 – The General Assembly directed the PUC to flexibly regulate steam utilities by approving or denying applications for special rate contracts.

Geothermal

In 1983, the General Assembly authorized the creation of geothermal utilities, requiring such utilities to obtain operating permits from the PUC.

Pipeline Safety

The following timeline outlines significant regulation milestones related to gas pipeline safety:

1955 – The General Assembly authorized the PUC to cooperate with any agency of the federal government or any other state to ensure the safe operation of public utilities.

1970 – The General Assembly specifically authorized the PUC to cooperate with other governmental agencies, including municipalities, regarding the safety of natural gas pipelines. Specifically exempted from this authority were natural gas gathering lines.

1983 – The General Assembly authorized the PUC to pursue civil actions against pipelines companies.

1993 – The General Assembly authorized the PUC to adopt rules to enforce and administer, in cooperation with the USDOT, the provisions of the federal Natural Gas Pipeline Safety Act. The authorized rules were to be limited to gas pipeline safety issues and were to apply to all investor-owned utilities, municipal utilities, quasi-municipal utilities and master meter systems. The previous exemption for natural gas gathering lines was repealed and the PUC promulgated safety standards for natural gas gathering lines in populated areas.

2003 – The PUC's jurisdiction with respect to safety rules was expanded to include all intrastate natural gas pipelines.

2007 – The PUC asserted jurisdiction over all natural gas gathering lines in the state, including those in rural areas.

Telecommunications

The following timeline outlines significant, relatively recent events regarding regulation of telecommunications services in Colorado:

1984 – AT&T was ordered to divest itself of its local operating companies which were organized into several regional operating companies, including US West.

1984 – Telecommunications providers (companies) of intrastate telecommunications service declared to be a public utility, which was subject to regulation by the PUC.

1985 – 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 were exempted from regulation as public utilities.

1987 – Article 15 of Title 40, C.R.S., was repealed and reenacted. Reenactment created three categories of regulation. First, it included full regulation under traditional means with alternative regulation available under specified conditions. Second, it included "emerging competitive" where various types of alternative regulatory formats were allowed for certain services. Third, it deregulated services. The services in existence at the time were placed in one of the three categories. The reenactment also articulated that competition for telecommunications services was to be encouraged and fostered, where possible. The PUC was granted the authority to deregulate services under certain conditions.

1990 – The PUC established the Low-Income Telephone Assistance Program (Lifeline program). The Lifeline program allows eligible customers to receive local telephone service at a discounted rate.

1992 – The PUC was given the power to implement and fund telecommunications relay services for disabled telephone users, conforming to the federal Americans with Disabilities Act of 1990.

1993 – The PUC amended its definition of basic telecommunications service. The amended definition incorporated changes in new technology within the telecommunications industry. The amended definition includes:[8]

- Single party line;
- Facsimile and data transmission capable of at least 2,400 bits per second;
- E-911;
- A calling area that reflects the community of interest in which the customer is located; and
- Access to toll (long-distance) services.

1995 – Colorado House Bill 95-1335 opened local exchange services to competition, created a rate cap for residential basic local exchange service, and reiterated the previous policy of encouraging competition for all regulated services while providing high quality and affordable services through an appropriate blending of traditional and non-traditional regulatory schemes.

2003 – The PUC eliminated zone charges for certain customers. A zone charge is a monthly fee, in addition to the basic monthly rate, that is assessed to customers who live outside the base rate area served by a central office.[9]

[8] Colorado Public Utilities Commission. What is Basic Telephone Service? Retrieved June 26, 2007, from http://www.dora.state.co.us/PUC/publications/FYIs/FYI_T-2BasicsService.pdf

[9] Colorado Public Commission. *PUC Approves Elimination of Zone Charges*. Retrieved February 22, 2007, from http://www.dora.state.co.us/puc/publications/news_release/07-30-03NR_zonecharges.htm

2005 – The PUC deregulated intrastate toll service for all providers and began a new regulatory scheme that allows even greater pricing flexibility.

Transportation

The following timeline outlines significant regulation milestones related to the transportation industry:

1885 - Office of Railroad Commissioner established with the power to investigate railroad rates and charges and to recommend, but not enforce, reasonable and just rates.

1893 - Statute creating the Office of Railroad Commissioner repealed.

1910 - Three member Railroad Commission created.

1913 - The Public Utility Act passed creating the three-member PUC and abolishing the 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 - PUC given full and complete jurisdiction over all motor vehicle common carriers.

1955 - The PUC authorized to regulate motor vehicle commercial carriers.

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 jurisdiction.

1984 - Carriers of household goods declared to fall within the scope of public interest and subject to safety and insurance requirements.

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.

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

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. The intervenor may then show that destructive competition will result and the applicant would then have to prove that additional authority would not result in destructive competition.

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 and household movers.

2003 - Intrastate movers of household goods fall under the jurisdiction of the PUC and are subject to regulation. Movers are required to provide estimates and contracts, meet safety standards, and comply with insurance, bonding or self-insurance requirements.

2003 – The Highway Crossing Protection Fund, originally created in 1965 under the Highway Users Tax Fund to pay for the costs of installing, reconstructing, and improving safety signals or devices at crossings that are not covered by federal funds, was transferred to the PUC.

2003 – Non-consensual towing rates by towing carriers fall under the jurisdiction of the PUC to prescribe minimum and maximum rates. In addition, the PUC may require financial statements or other information from carriers to determine costs associated with performing non-consensual tows.

2003 - The fee for issuance of a towing permit is increased from $10 to $150.

2003 - The civil penalty against a motor carrier who fails to carry the required insurance is increased from $400 to $11,000.

2006 - Directors, officers, owners and general partners of household goods moving companies and some passenger carrier drivers (charter or scenic bus, fire crew transport, luxury limousine, off-road scenic charter, children's activity bus, and taxicab) are required to be fingerprinted for criminal history record checks.

2006 - The Single State Registration System (SSRS) and Interstate Exempt registration (bingo stamp) programs expired and were replaced by the federal Unified Carrier Registration (UCR) program. The UCR program will manage the collection and distribution of registration and financial responsibility information provided and fees paid by for-hire and private motor carriers, brokers, freight forwarders, and leasing companies.

Water

The five water utilities currently regulated by the PUC do not serve more than 1,500 households. The PUC's regulatory oversight, in each case, resulted from a complaint brought by customers receiving potable water from the company in question.[10] Rates were already in place and in several instances the company's proposed dramatic increases in rates "triggered" the complaint to the PUC.[11] The following timeline outlines when the five water utilities came under PUC jurisdiction:

1996 – The first water utility falls under the regulatory authority of the PUC.

1999 – An additional water utility falls under the regulatory authority of the PUC.

2006 –Two additional water utilities fall under the regulatory authority of the PUC.

2007 – The final water utility falls under the regulatory authority of the PUC.

[10] Public Utilities Commission. *A Report to the Colorado Public Utilities Commission Concerning the Regulation of Water Utilities in Colorado*. p.15. (December 2006).
[11] Public Utilities Commission. *A Report to the Colorado Public Utilities Commission Concerning the Regulation of Water Utilities in Colorado.* p. 15. (December 2006).

Legal Framework

Federal Laws

The breadth and complexity of public utility regulation necessitates a network of federal laws to coordinate regulatory efforts among the states. Significant federal legislation in the realm of public utilities includes:

- The **Natural Gas Pipeline Safety Act of 1968** and the **Hazardous Liquid Pipeline Safety Act of 1979** authorized the U.S. Department of Transportation's (USDOT's) Pipeline and Hazardous Material Safety Administration to regulate pipeline transportation and storage of 1) natural gases, and 2) hazardous liquids, respectively.[12]

- The **Public Utility Regulatory Policies Act of 1978** (PURPA) pioneered promotion of energy conservation and fostered the development of renewable energy sources by non-utility power producers.[13]

- The **Unified Carrier Registration Act of 2005** eliminated the Single State Registration System (SSRS) for motor carriers and authorized the Unified Carrier Registration System, which established standard guidelines for motor carrier registration and fees.[14]

- The **Telecommunications Act of 1996** paved the way for the deregulation of telecommunications services, including local and long distance telephone, cable, and broadcast services, by allowing communications businesses to compete against each other in any market.[15]

- The **Energy Policy Act of 2005** (EPACT) set forth a research and development program encompassing a broad range of topics, including energy efficiency; renewable and alternative energy sources; and modifications to all sectors of the mainstream energy industry.[16]

[12] Office of Pipeline Safety, downloaded from http://ops.dot.gov/init/partner/partnership.htm on June 26, 2007.
[13] "History of PURPA and Non-Utilities", Energy Information Administration, downloaded from http://www.eia.doe.gov/cneaf/solar.renewables/rea_issues/html/history.html on June 26, 2007.
[14] Library of Congress, THOMAS, Summary of Public Law 109-59, downloaded from http://thomas.loc.gov/cgi-bin/bdquery/z?d109:HR00003:@@@L&summ2=m&|TOM:/bss/d109query.html| on June 26, 2007.
[15] "Telecommunications Act of 1996", Federal Communications Commission, downloaded from http://www.fcc.gov/telecom.html on June 26, 2007.
[16] Library of Congress, THOMAS, Summary of Public Law 109-58, downloaded from http://thomas.loc.gov/cgi-bin/bdquery/z?d109:HR00006:@@@L&summ2=m&|TOM:/bss/d109query.html| on June 26, 2007.

Colorado Laws

The Public Utilities Act of 1913 provided the foundation for current public utilities law in Colorado, creating the Public Utilities Commission (PUC) and granting the PUC authority over public utilities. Article XXV of the Colorado Constitution, enacted in 1954, grants the General Assembly the power to designate a state agency to regulate the facilities, service and rates and charges of public utilities in the state. The Article formally delegates such authority to the PUC.

Title 40 of the Colorado Revised Statutes (C.R.S.) contains most of the laws governing the regulation of public utilities. Generally speaking, this title defines the powers and duties of the PUC; the types of utilities subject to regulation and the extent of such regulation; the obligation of the PUC to strike a balance between protecting consumers and providing utility companies the opportunity to earn a reasonable profit; the rights and responsibilities of utility companies; and establishes standards for broad policy issues relating to topics as varied as telecommunications deregulation and renewable energy standards. Following is a summary of each article within Title 40.

Article 1: Definitions defines critical terms and establishes the jurisdiction of the PUC. Further, it establishes the rules for the issuance of securities.

Article 1.1: People Service Transportation seeks to promote availability of transportation for certain populations—including people in rural areas, the elderly, and people with disabilities—by exempting transportation companies operated by charitable or non-profit organizations from specific portions of Title 40 and establishing more relaxed regulatory criteria.

Article 2: Public Utilities Commission—Renewable Energy Standard creates the PUC and defines its administrative structure, including the qualifications, duties, and terms of the three Commissioners, the PUC director and staff. The article grants the PUC the authority to promulgate rules to administer and enforce all aspects of Title 40. The article creates the Motor Carrier Fund and the Fixed Utility Fund to pay for the regulatory activities of the PUC.

The article also lays the groundwork for the deregulation of the natural gas supply market and emphasizes the PUC's obligation to develop and use alternative (renewable) energy sources to the greatest possible extent.

Article 3: Regulation of Rates and Charges establishes one of the primary functions of the PUC: to ensure that rates are reasonable, nondiscriminatory, and commensurate with the level of service provided, yet sufficient to assure the utility a reasonable rate of return on its investment. This article authorizes the PUC to suspend rates it deems unreasonable and to modify rates after hearing.

Article 3.2: Air Quality Improvement Costs states that it is in the public interest to improve air quality. To encourage utility companies to reduce the amount of air pollutants they produce, this article allows utilities to request from the PUC, expedited recovery of costs prudently incurred to improve air quality, and authorizes the PUC to develop a means of such recovery.

Article 3.4: Emergency Telephone Access seeks to expand access to basic local exchange service by creating a Low-Income Telephone Assistance Program. The article outlines its funding, administration and eligibility requirements.

Article 3.5: Regulation of Rates and Charges by Municipal Utilities grants the governing body of a municipal utility the authority to adopt all necessary rates, charges, and regulations, within the authorized electric and natural gas service areas of each municipal utility that lie outside the jurisdictional limits of the municipality.

Article 4: Service and Equipment authorizes the PUC to establish standards for the construction, use, and maintenance of safe and adequate facilities and equipment, including railroad crossings, and to promulgate rules to enforce these standards. Additionally, the PUC must promulgate rules defining the appropriate level of service that all electric, gas and water utilities must provide.

Article 5: New Construction—Extension requires public utilities to prove that existing facilities are inadequate before constructing a new facility or extending an existing facility. The article requires a public utility to obtain a certificate of public convenience and necessity, which grants a public utility the right to serve customers in a specific geographic region.

Article 6: Hearings and Investigations authorizes the PUC to conduct hearings and investigations and defines the procedures to be followed by all parties during the hearings process. The article establishes standards of conduct for staff and Commissioners, including the rules for conflict of interest and ex parte communications, and outlines the process for amendment of PUC decisions.

Article 7: Enforcement—Penalties defines penalties the PUC may impose on public utilities that violate the law. A public utility that violates or fails to comply with any provision of Articles 1 through 7 is subject to a penalty of no more than $2,000 per offense per day. The PUC must bring an action in district court to recover these penalties. The PUC has the authority to assess fines against motor carriers directly.

Article 7.5: Civil Remedies Available to Utilities permits a public utility that incurs damages or losses due to bypassing, tampering, or unauthorized metering to bring a civil action against any person directly or indirectly responsible.

Article 8: Unclaimed Funds for Overcharges authorizes the PUC to determine how overcharges should be returned to utility customers.

Article 8.5: Unclaimed Utility Deposits creates the legislative Commission on Low-Income Energy Assistance, which is charged with defraying energy costs for disadvantaged populations by collecting monies, including a portion of unclaimed utility deposits, for the Low-Income Energy Assistance Fund and distributing such monies to eligible recipients.

Article 8.7: Low-Income Energy Assistance creates a program responsible for collecting optional energy assistance contributions from utility consumers and distributing the monies to low-income energy assistance programs. Electric utilities that provide retail service to their customers are required to serve as collection agents for these programs, must allow their customers a means to contribute to the programs, and are reimbursed for the cost of collecting the contributions.

Article 9: Carriers Generally applies to transportation within the state's borders, and addresses common carriers' liability for property loss or damage, or injury to person; the duty of common carriers to exercise utmost diligence in the transportation of shipments, and the procedures railroads must follow in the event of an accident.

Article 9.5: Cooperative Electric Associations allows member-owned electric associations to elect exemption from PUC regulation. The article establishes requirements for the governance and administration of all cooperative electric associations, and defines their duties and prohibited acts. The article clarifies the service territories' relationship between such cooperatives and municipalities that operate electric utilities.

Article 10: Motor Vehicle Carriers grants the PUC jurisdiction over motor vehicle carriers, and requires such carriers to obtain the appropriate certificates and meet the insurance requirements before operating in the state. The article sets forth the penalties the PUC can impose for violations.

Article 10.5: Unified Carrier Registration System prohibits any entity subject to the Unified Carrier Registration Act from operating on any public highway in the state without first registering with the USDOT and vests the PUC with the authority to administer the Unified Carrier Registration System in Colorado, and to promulgate rules to that end.

Article 11: Contract Motor Carriers defines contract motor carriers as any corporation, person, firm, association of persons, lessees, or trustees that own, control, operate, or manage any motor vehicle that is in the business of transporting persons for compensation or 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 allows motor vehicle carriers and contract motor carriers to use independent contractors, and sets forth the provisions lease agreements may contain.

Article 13: Towing Carriers requires carriers to obtain a permit and meet certain insurance requirements before operating as a towing carrier in Colorado. 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 for non-consensual tows.

Article 14: Carriers of Household Goods requires carriers to obtain a permit and meet certain insurance requirements before operating as a mover of household goods in the state of Colorado. The article lists the penalties the PUC may impose for violations.

Article 15: Intrastate Telecommunications Services seeks to create a flexible regulatory environment for telecommunications services that encourages competition while assuring the public a wide availability of high-quality telecommunications services. Part 1 of Article 15 defines key terms, differentiates between regulated and unregulated services, outlines methods for calculation of rates and charges, and prohibits telecommunications companies from changing customers' telephone service without their consent ("slamming") and from charging customers for extra services they did not request ("cramming"). Part 2 addresses 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 2 also creates the High Cost Support Mechanism to help fund the expansion of telephone services into remote or high-cost areas. Part 3 authorizes a more flexible regulatory treatment for emerging competitive telecommunications services, which are defined as those services subject to future deregulation. Part 4 addresses services, products and providers that are exempt from regulation. Part 5 directs the PUC to encourage competition and the development of alternate, interim regulatory mechanisms with the ultimate goal of implementing a fully competitive telecommunications marketplace.

Article 16: Motor Vehicle Carriers Exempt from PUC Regulation addresses motor vehicle carriers exempt from regulation as a public utility, including those who offer services as property carriers or offer services using charter or scenic buses, luxury limousines, off-road scenic charters, fire crew transport, and children's activity buses. Although these carriers are exempt from regulation, they must register with the PUC and meet certain insurance and safety requirements. The PUC may impose penalties for failure to fulfill these requirements.

Article 17: Telecommunications Relay Services for Disabled Telephone Users establishes the service standards for telephone relay services and creates a mechanism to fund these services.

Article 18: Rail Fixed Guideway System Safety Oversight authorizes the PUC to create an oversight program for rail fixed guideway systems not subject to federal regulation, and to promulgate rules governing these systems.

Article 20: Organization and Government addresses the governance and administration of railroad corporations.

Article 21: General Offices sets forth requirements for the headquarters of domestic railroads.

Article 22: Consolidation sets forth the circumstances under which a railroad company may consolidate its capital stock, franchises, and property into and with the capital stock, franchises, and property of any other railroad company.

Article 23: Reorganization empowers railroad companies to reorganize.

Article 24: Electric and Street Railroads determines right-of-way issues and requires railroads to keep bridges and crossings in good repair.

Article 27: Killing Stock – Fencing clarifies the rights and responsibilities of both landowners and railroad companies in preventing the accidental killing of livestock on railroad tracks.

Article 29: Safety Appliances sets forth the standards for railroad safety devices and the penalties for failure to meet those standards.

Article 30: Fire Guards requires railroad companies to maintain fire guards alongside all tracks, sets forth the penalties for failure to do so, and establishes the liability of the railroad company in the event of a fire.

Article 31: Overcharges establishes the method by which overcharges are refunded to customers.

Article 32: Employees permits railroads to employ peace officers on trains and defines the scope of such peace officers' duties.

Article 33: Damage to Employees holds a railroad corporation liable for the injury of its employees if such injury occurred due to the negligence of the corporation's officers, agents, or employees, or due to any defect or insufficiency caused by the corporation's negligence.

Article 40—Geothermal Heat Suppliers grants the PUC authority over geothermal heat suppliers and authorizes the PUC to establish a system of operating permits for geothermal heat suppliers, and grants the PUC authority the enforce compliance with this article.

Colorado Rules

The **Rules and Regulations** (Rules) are divided into eight parts.

Part 1: Rules of Practice and Procedure provides guidance on all aspects of the PUC's administrative activities; sets forth instructions for the treatment of confidential and personal information in PUC proceedings, prohibits certain communications and establishes disclosure requirements for others; and delineates the procedure for all proceedings before the PUC.

Parts 2 through 8 address the following for each specific industry area: types of authorities requiring application to the PUC and the rights and obligations that come with such authorities; the reporting process for "major events" (e.g., outages); standards for the maintenance of facilities and equipment and quality of service; required information that companies must display on customers' bills; and methodology for calculating rates and charges.

In addition to this information, the Rules address the following notable issues:

Part 2: Rules Regulating Telecommunications Providers, Services, and Products identifies the default forms of regulation for each service and establishes the process for applying for simplified regulatory treatment or deregulation; includes guidance for the administration of the High Cost Support Mechanism.

Part 3: Rules Regulating Electric Utilities outlines the Resource Planning process; provides guidance for utilities in implementing the Renewable Energy Standard as well as the Low-Income Energy Assistance Act.

Part 4: Rules Regulating Gas Utilities and Pipeline Operators introduces the Gas Cost Adjustment, which allows utilities an expedited process for changing rates to reflect increases or decreases in gas commodity and upstream costs. Rules effective August 1, 2007, expand PUC jurisdiction over all gathering pipelines, not just those in populous areas. The number of gathering pipelines regulated by the PUC will increase from that date forward.

Part 5: Rules Regulating Water Utilities lays out the five options available to small, privately-owned water companies seeking simplified regulatory treatment.

Part 6: Rules Regulating Transportation by Motor Vehicle establishes the requirements for common and contract carriers; exempt passenger carriers, including luxury limousines, movers of household goods and property carriers; towing carriers; and interstate carriers.

Part 7: Rules Regulating Railroads, Rail Fixed Guideways, Transportation By Rail, and Rail Crossings provides extensive guidance on the design and construction of safety crossings and warning devices and explains cost-allocation methodology; compels every transit company to develop a System Safety Program Plan.

Part 8: Rules Regulating Steam Utilities addresses matters relating to jurisdictional steam utilities.

Program Description and Administration

Housed within the Department of Regulatory Agencies (DORA), the Public Utilities Commission (PUC) is charged with regulating all utilities affected with the public interest.[17] The agency's mission is to:[18]

> …achieve a flexible regulatory environment that provides safe, reliable and quality services to utility customers on just and reasonable terms, while managing the transition to effective competition where appropriate.

To fulfill its mission, the PUC performs both quasi-judicial functions, such as presiding over contested matters and assuring due process for all parties, and quasi-legislative functions, such as promulgating rules. Since almost all Colorado citizens are also utility customers, the PUC has formidable reach.

"Fixed utilities" are utilities that don't move: gas, electrical, telecommunications, steam, and water. Currently the PUC has full regulatory authority over:

- 33 local exchange telecommunications service providers
- 81 competitive local exchange carriers
- 128 emerging competitive service providers
- 315 toll reseller registrations
- 2 investor-owned electric utilities
- 6 investor-owned natural gas distribution companies
- 1 investor-owned propane distribution company
- 5 investor-owned water utilities
- 1 investor-owned steam utility

The PUC has partial regulatory oversight over:

- 18 municipal utilities
- 1 cooperative electric association - regulated
- 25 cooperative electric associations - unregulated

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

- 6 investor-owned distribution system operators
- 9 municipal distribution system operators
- 31 master meter distribution system operators
- 2 municipal transmission system operators
- 7 propane system operators
- 5 direct sales purchasers
- 5 interstate pipelines
- 4 gathering pipelines

[17] § 40-1-103(1)(a), C.R.S.
[18] Public Utilities Commission Home Page, downloaded from http://www.dora.state.co.us/puc/index.htm on October 9, 2007.

The PUC has full regulatory jurisdiction, including rates and schedules, over the following transportation carriers:

- 134 common carriers
- 55 contract carriers

The PUC has safety jurisdiction over transportation carriers consisting of:[19]

- 2,128 hazardous materials carriers
- 682 towing carriers
- 5,199 property carriers
- 148 household goods carriers
- 480 luxury limousines
- 44 charter scenic buses
- 4 children's activity buses
- 29 off-road scenic charters
- 28 regulated railroads
- 1 regulated rail fixed guideway system (light rail)
- 2,559 public highway-rail at-grade crossings
- 376 public highway-rail grade separated crossings
- 5 nuclear materials carriers

The PUC itself consists of three salaried, full-time Commissioners whom the Governor appoints with the consent of the Senate,[20] designating one Commissioner as chair.[21] Commissioners serve staggered, four-year terms and are prohibited from holding any outside employment during this time. No more than two Commissioners may be affiliated with the same political party.[22]

The PUC meets at least weekly. At the Commissioners' Weekly Meetings (CWM), the PUC conducts routine business, such as referring docketed items to administrative law judges (ALJs) for resolution; approving interconnection agreements and railroad safety crossings; and considering uncontested applications, as well as applications to discontinue service, transfer assets, or make changes to existing tariffs. Commissioners may also, at their discretion, schedule "deliberative meetings" for more in-depth discussion of issues that would normally be handled at a CWM. PUC meetings are open to the public and must be given full and timely notice pursuant to Colorado's open meetings law.[23] Since March 2003, video and audio of PUC meetings have been broadcast live over the Internet.

[19] Many carriers have multiple authorities from the PUC, so the number of authorities does not correlate to the number of carriers.
[20] § 40-2-101(1), C.R.S.
[21] § 40-2-101(2), C.R.S.
[22] § 40-2-101(2), C.R.S.
[23] § 24-6-402, C.R.S.

The PUC may also host informational sessions on current topics related to public utilities and hold town hall meetings around the state to solicit feedback from utility customers.

The staff of the PUC is responsible for carrying out the agency's regulatory activities, which include evaluating applications, issuing permits, conducting financial and engineering analyses, performing inspections and audits, resolving complaints between consumers and regulated utilities, and enforcing compliance with PUC statutes and rules.

Funding

The PUC is cash-funded: the regulated utilities themselves pay annual fees to finance the PUC's regulatory activities.

Fixed utilities pay a fee based on a percentage of their gross annual operating revenues,[24] although utilities are not required to pay any fees in excess of .2 percent of such revenues.[25] Each year, the Executive Director of the Colorado Department of Revenue (DOR) calculates the financial obligation of each fixed utility and each utility pays the total fee to the DOR in equal quarterly installments. The State Treasurer distributes 3 percent of these fees into the General Fund and the remaining 97 percent into the Fixed Utility Fund.[26]

The process is simpler for motor carriers. Each common, contract and interstate carrier must pay a $5 annual identification fee per vehicle,[27] which is credited to the Motor Carrier Fund.[28] Until recently, interstate carriers paid the majority of the fees collected. However, effective January 1, 2007, the federal Unified Carrier Registration Act (UCRA) prohibits states from charging interstate carriers fees for operating authority. As a result, there has been a drop in revenue for the Motor Carrier Fund in the first half of 2007. Instead of charging fees on a per vehicle basis, UCRA establishes a fee structure based on a carrier's fleet size. UCRA was fully implemented in September 2007, and revenues have begun to be partially restored.

At each regular session, the General Assembly determines the amount of money needed to finance the PUC's administrative expenses for the regulation of motor carriers and fixed utilities and authorizes an appropriation from the appropriate fund for that purpose.[29]

[24] § 40-2-112(1), C.R.S.
[25] § 40-2-113, C.R.S.
[26] § 40-2-114, C.R.S.
[27] § 40-2-110.5(1), C.R.S.
[28] § 40-2-110.5(5), C.R.S.
[29] § 40-2-110, C.R.S.

Table 1 shows the total program expenditures and staffing levels for the five fiscal years indicated.

Table 1
Agency Fiscal Information

Category	FY 01-02	FY 02-03	FY 03-04	FY 04-05	FY 05-06
Total Program Expenditures	$14,275,166	$13,709,104	$12,830,601	$12,800,026	$13,270,389
FTE	92.7	92.7	92.7	92.7	93.5

In addition to the three Commissioners, 92.6 full-time equivalent (FTE) employees are allocated to the PUC effective July 1, 2007. PUC staff is under the leadership of a director charged with implementing the policies, procedures, and decisions of the PUC.[30] Due to the scope and complexity of its regulatory activities, the PUC employs a wide range of professionals with specific expertise, including engineers, economists, and financial analysts. The PUC also employs ALJs to help fulfill its quasi-judicial role.

The office of the PUC director includes an executive assistant and a chief of staff, for a total of 3.0 FTE. The remaining staff is organized into the following work areas:

The **Telecommunications** section is responsible for telecommunications regulatory activities, including evaluating rates and conducting financial and engineering analyses. This section consists of 8.0 FTE.

The **Energy** section is responsible for regulatory activities relating to electric, gas, and steam utilities. Its responsibilities include conducting gas volume and compliance audits, producing energy supply and demand forecasts, and ensuring rates and service meet acceptable standards. This section consists of 14.0 FTE.

The **Economics** section performs economic analysis for all regulated utilities. This section consists of 4.0 FTE.

The **Transportation** section regulates the affordability and availability of motor carriers transporting passengers for hire. The section conducts inspections, ensures rates and service meet acceptable standards, and issues permits. This section consists of 11.0 FTE.

The **Administrative Hearings** section consists of ALJs and certified court reporters. The section is responsible for conducting hearings and issuing recommended decisions. This section consists of 7.0 FTE.

[30] § 40-2-103, C.R.S.

The **Consumer Assistance** section resolves complaints between customers and regulated utilities. This section consists of 4.0 FTE.

The **Public Information and Education** section informs the public about PUC decisions and ratepayer issues through publications, an agency spokesperson and community outreach. This section consists of 3.0 FTE.

The **Policy Advisors and Case Management** section provides advice and technical training to Commissioners and ALJs. It also handles all utility filings, ensuring statutory deadlines and requirements are met. This section consists of 14.5 FTE.

The **Rail and Water** section is responsible for regulatory activities relating to rail and water utilities. This section conducts on-site safety inspections, accident investigations, and audits. This section consists of 3.0 FTE.

The **Gas Pipeline Safety** section ensures the safety of utility services, conducting gas pipeline safety inspections and accident investigations. This section consists of 4.0 FTE.

The **Administrative Services** section is responsible for fund administration, budgeting, purchasing, central records control, business system administration, personnel, and administrative support. This section consists of 13.0 FTE.

The **Policy, Research, and Emerging Issues** section works directly with Commissioners, conducting research and policy analysis on topics related to utility regulation. This section consists of 2.0 FTE.

Because of the sophisticated technical knowledge many regulatory activities require, the PUC's decision-makers—the Commissioners and ALJs—rely on its subject matter experts—its engineers, economists, financial analysts, etc.—for guidance in adjudicated proceedings. It would be improper for a PUC staff member who drafted a formal complaint against a utility to provide information affecting the complaint's disposition to the decision-makers. To address this potential conflict of interest, the PUC makes an important distinction between trial staff and advisory staff in contested proceedings:

- **Trial staff** represents the PUC and advocates for specific positions in litigated proceedings. Trial staff is prohibited from advising the decision-makers on issues relevant to that proceeding.

- **Advisory staff** provides subject-matter expert technical advice, recommendations, and options to the PUC's decision-makers.[31]

The PUC director may designate which staff members will serve as trial and advisory staff.[32]

Formal Proceedings

A formal proceeding before the PUC is called a docket. Each docket—which can be related to an application or petition, formal complaint, or rulemaking—is assigned a unique number that it retains from inception to resolution. This allows staff to keep track of responses and testimony for complex matters that may stretch over a period of months. There may be more than one decision for a single docket and often there are a number of related decisions for a specific docket prior to it being finally closed.[33] These final decisions made by Commissioners and ALJs form the core of the agency's work.

Table 2 shows the number of decisions issued by Commissioners and ALJs over the five fiscal years indicated.

Table 2
PUC Decisions

Category	FY 01-02	FY 02-03	FY 03-04	FY 04-05	FY 05-06
Commissioners	766	838	827	944	870
ALJs	617	635	656	732	602
Total	1,383	1,473	1,483	1,676	1,472

Typically, the PUC refers adjudicatory matters to ALJs for initial review and analysis, although it may elect to hear a matter itself.[34] The ALJ then issues a recommended decision, which he or she transmits to the PUC. Upon review, the PUC may adopt, modify, or reject the findings of fact or conclusions of the recommended decision.[35]

[31] Rule 1007 (b).
[32] Rule 1007 (a).
[33] "Dockets and Decisions," Public Utilities Commission, downloaded from http://www.dora.state.co.us/puc/DocketsDecisions/DocketsDecisions.htm on June 28, 2007.
[34] § 40-6-101(2)(b), C.R.S.
[35] § 40-6-109(2), C.R.S.

Hearings—on-the-record, contested proceedings—can be held before the PUC or an ALJ for a wide spectrum of reasons, from a motor carrier contesting a $1,100 civil penalty to a rate case involving a major utility with millions of dollars at stake. Hearings are all conducted following the Colorado Rules of Civil Procedure, section 40-6-101, C.R.S. *et seq*., and Part 1 of the PUC's Rules and Regulations. All hearings are recorded by a court reporter. In the event of an appeal or an application requesting rehearing, re-argument, or reconsideration, the requesting party must order the appropriate transcripts, which become part of the record.

Rulemaking hearings are a critical function of the PUC. The PUC is charged with promulgating rules to enforce all aspects of Title 40, Colorado Revised Statutes (C.R.S.). Changes in federal or state laws, evolving perspectives on energy policy, technological advances, and a multitude of other issues can precipitate a rulemaking proceeding.

Table 3 shows the number of rulemaking hearings held for each industry area for the five fiscal years indicated.

Table 3
Rulemaking Hearings

Category	FY 01-02	FY 02-03	FY 03-04	FY 04-05	FY 05-06
Natural Gas	2	2	2	0	1
Electric	2	2	2	1	1
Water	2	1	2	0	0
Telecommunications	6	7	8	4	17
Transportation	1	4	8	0	2
Electric/Gas*	2	0	2	0	0
Railroad	0	0	2	0	2
Practice & Procedure	1	0	1	2	1
Gas Pipeline Safety	0	2	0	0	1
Total	16	18	27	7	25

*This category reflects rulemakings that made concurrent, parallel changes to the electric rules and to the gas rules within one hearing.

In fiscal year 05-06, there were an unusually high number of rulemakings in the area of telecommunications. Many of these changes were substantive and stemmed from changes in PUC policy. These policy changes, which increased competition for non-basic telephone services, were triggered by an application from Qwest for deregulation of many of its services. The PUC did not grant this request, but allowed Qwest increased flexibility in the pricing of its optional services and recognized the need to deregulate the pricing of intrastate long distance services for all carriers. These rule changes fulfill that objective. The remaining rulemakings made changes to the High Cost Support Mechanism pursuant to House Bill 05-1203 and aligned the rules with new federal legislation.

Another reason for the considerable number of telecommunications rulemakings in fiscal year 05-06 is the particular administrative procedure that was followed in that instance. For each substantive change, the PUC had to first issue emergency rules, then notice permanent rules, and finally issue another emergency rulemaking because the permanent rules had not been finalized. In short, each substantive change required a total of three hearings.

Rate cases may occur when a utility seeks PUC approval to change the rates its customers pay for their utility service. The process begins at least 30 days before the effective date of the proposed rate change, when the utility files an Advice Letter (request) and the proposed new tariffs (price list with terms and conditions) with the PUC.[36] Typically, the utility is requesting to increase its revenues because of an earnings shortfall. A key principle of utility regulation is that because utilities provide a vital service to the public, they are entitled to a certain rate of return on equity. The PUC is responsible for assuring that utilities have the opportunity to earn a reasonable rate of return, while at the same time ensuring that rates are just and reasonable for customers.[37]

If the PUC finds the tariffs acceptable, the tariffs are allowed to go into effect by operation of law. If the PUC determines that the new tariffs are in any way unjust, unreasonable, or discriminatory,[38] the tariffs are suspended and a formal hearing is set. [39]

Rate cases are typically split into two phases. During Phase 1, the PUC determines the overall total dollar amount the utility is entitled to recover. During Phase 2, the utility proposes how much to increase the rates for the various classes of customers—e.g., residential, commercial, and agricultural—in order to recover the PUC-approved overall revenue level determined in Phase 1.

Because of the sweeping impact of increases to utility rates, rate cases typically generate a great deal of interest. Individual customers can give feedback during public hearings, and consumer groups and professional associations may elect to be represented by counsel and participate in the formal hearing.

[36] § 40-3-104(1)(a), C.R.S.
[37] § 40-3-101(1), C.R.S.
[38] § 40-3-111(1), C.R.S.
[39] Rule 1210 (a)(VII).

Table 4 shows the rate case activity for the five fiscal years indicated.

Table 4
Rate Case Activity

	FY 01-02	FY 02-03	FY 03-04	FY 04-05	FY 05-06
Fixed Utilities					
Rate & Price Changes Filed	687	794	864	720	841
Rates Suspended & Cases Heard	12	17	8	9	14
Money Saved Consumers	$66,089	$1,682,7501	$391,297	$315,8847	$20,903,760
Transportation*					
Rate & Price Changes Filed	54	67	66	65	89
Rates Suspended**	0	0	2	3	0

*The PUC has jurisdiction over rates for common and contract carriers only.
**All suspended rates were withdrawn prior to hearing.

Compared with the total number of rates filed with the PUC, the number of rate changes suspended and sent to hearing is very low. This just means that most rates filed with the PUC are not contested by the PUC or any other party. Uncontested rates are simply allowed to go into effect.

Licensing

One of the primary functions of the PUC is to authorize companies to provide service as public utilities. The PUC grants such authority via one of the following documents:

- Companies seeking to provide gas, electric, water, or regulated telecommunications services (pursuant to Part 2 of Article 15 of Title 40, C.R.S.) must first secure a PUC order stating the present or future public convenience and necessity requiring such service. This order, a **certificate of public convenience and necessity** (CPCN), grants a company the right to provide specific services to customers in a defined geographical region.

- To remove barriers to market entry for telecommunications companies, the PUC created a simplified application process for entities seeking to provide emerging competitive telecommunications services pursuant to Part 3 of Article 15 of Title 40, C.R.S. These "Part 3" applicants apply for a **letter of registration** (LOR) instead of a CPCN.[40] Because the PUC considers emerging competitive services less essential than basic local interchange services, the LOR requires less documentation; consequently the licensing process is faster and less expensive. While a CPCN for local exchange services correlates to a specific service territory as defined by the calling areas and exchange maps each provider files, the PUC grants LORs on a statewide basis.

- Motor carriers seeking to operate as common carriers[41]—meaning those intending to provide transportation indiscriminately to all customers, such as taxicabs—must apply for a **common carrier certificate**,[42] which is defined as a CPCN.[43] Those seeking to operate as contract carriers—for example, someone wishing to operate an employee shuttle bus for a certain company—apply for a **contract carrier permit**.[44]

In addition to the request for initial authority to provide utility service, companies must apply to the PUC for a variety of other reasons. These reasons vary considerably across each industry, but typical applications for fixed utilities include those to amend or transfer a CPCN or LOR; to change the boundaries of a service area; to implement a change in tariffs outside the timeline dictated by statute; to change, extend, or discontinue any service or facility; to issue securities for the purpose of funding a long-term capital project; and to approve a refund plan or resource plan. Typical applications for contract and common carriers include those for a temporary, emergency, or seasonal authority; and to suspend or abandon a CPCN.

Most applications submitted by fixed utilities and motor carriers follow essentially the same process.

1. **Entity files an application.** Applicants file required documentation with the PUC either via a legal pleading or using forms provided by the PUC. The rules for each utility type specify the required documentation.[45]

[40] Rule 2001 (xx).
[41] § 40-1-102(3)(a), C.R.S.
[42] § 40-10-104(1), C.R.S.
[43] Rule 6001 (b).
[44] § 40-11-103(1), C.R.S.
[45] Telecommunications, Rule 2002(b); Electric, Rule 3002(b); Gas, Rule 4002(b); Water, Rule 5002 (b); Common/Contract carriers, Rule 6203(a); Rail, Rule 7101; Steam, Rule 8002(b).

2. **Application is logged and posted.** Intake staff logs the application and assigns a docket number using the Integrated File Management System posts the application on the PUC website, and forwards the application to the appropriate section within the PUC (Telecommunications, Energy, or Transportation). The required notice period varies depending on the type of application, but is typically 15 to 30 days. Securities filings, considered business-critical because of potential fluctuation in interest rates, are placed on a particularly accelerated time schedule: the PUC must issue a decision on the application within 30 days of receipt.[46]

3. **During the notice period, interested parties apply for intervention.** An intervention occurs when a person or entity with an interest in the outcome of the proceeding seeks to become part of a docketed matter. There are two types of interventions:

    a. **Interventions as of right** occur when a statute expressly states that a party will be directly affected by the granting or denial of any application, petition, or other proceeding.[47] For example, a common carrier may intervene as of right on the application for another common carrier serving the same geographic area, because the granting of such application might affect the carrier's business.
    b. Requests for **permissive interventions** must be evaluated by the PUC on a case-by-case basis and may be granted or denied.

4. **Application is assigned to an analyst.** The section chief assigns the application to an analyst, depending on the analyst's area of expertise. The PUC employs individuals with a broad range of professional and technical expertise, including engineers, network and information technology specialists, economists, accountants, and financial analysts.

5. **Analyst determines whether application is complete.** If, while reviewing the application, the analyst finds deficiencies, the analyst sends a letter to the applicant giving a timeframe for correction of deficiencies. If the applicant does not cure deficiencies within the specified timeframe, the analyst skips to Step 7 below, with the recommendation that the application be dismissed as incomplete.

[46] § 40-1-104(5), C.R.S.
[47] § 40-6-108(2), C.R.S.

6. **Analyst evaluates the application on its merits.** Once the application is complete, the analyst determines whether the entity has the managerial, technical and financial resources to support the authority being applied for. The applicant must also demonstrate there is a public need for the service. A complex application might be reviewed by several analysts.

7. **Analyst develops a recommendation for the Commissioners.** If no substantive concerns remain after analysis of the application and any supplemental information provided by the filing party, and after review of any pleadings by other parties, the analyst may draft an order consistent with his or her recommendation. The analyst provides this draft order along with the analyst's recommendation to the Commissioners and their counsel for discussion at the Commissioners Weekly Meeting (CWM). However, if the analyst has substantive concerns about the application, he or she notifies PUC advisory staff of intent to intervene, then works closely with the Attorney General's Office to develop the rationale for the intervention. In this situation, an advisory staff member assumes responsibility for advising the Commissioners on the application.

8. **Commissioners decide on the application at a Weekly Meeting**. The analyst or the advisory staff member shares his or her recommendation and draft order with the Commissioners during the CWM.

    a. **If an application is complete and uncontested**, the PUC may waive the hearings process and either adopt an order issuing the authority on the spot or allow the authority to go into effect by operation of law.
    b. **If the application is contested and the PUC determines a hearing is necessary**, the matter will be set for a hearing. The applicant and all intervening parties including PUC staff may present testimony and have the right to cross-examine witnesses. In high-profile cases or those addressing broad policy issues, the PUC may elect to preside over the hearing. In all other cases, the PUC will refer the matter to an ALJ. In referred cases, the ALJ will issue a recommended decision, which the PUC may affirm, amend, or reject. If the PUC takes no affirmative action on a recommended decision, it will become a PUC decision by operation of law.

9. **The PUC adopts an order granting or denying the authority.** The order may include a formal CPCN or it may simply grant the utility the authority to do something. The order lays out any terms and conditions of the authority (e.g., applicant must provide tariffs or proof of insurance by a specified date). Staff will verify that the terms and conditions of the order have been met.

Table 5 shows the number and type of applications the PUC evaluated over the five fiscal years indicated.

Table 5
Applications Filed with the PUC

	FY 01-02	FY 02-03	FY 03-04	FY 04-05	FY 05-06
Fixed Utilities					
General applications processed	245	324	226	199	182
Security filings	5	12	8	9	0*
Filings on less than statutory notice**	26	34	19	36	28
Interconnection filings	0	0	37	44	70
Transportation					
Applications for common or contract carrier	149	225	202	190	189
Applications for railroad crossings	33	31	41	30	43

* For fiscal year 05-06, the number of security filings is included in the number of general applications processed.
** These types of filings typically relate to a single, narrow issue, such as a gas-cost adjustment.

The time to process a specific application varies widely. A typical interconnection filing is relatively brief and straightforward, requiring little staff time, while applications for approval of a major construction project might require extensive financial and engineering analysis. High-profile projects also tend to draw the interest of consumers, environmental groups, and other utilities, so a number of parties may intervene on the docket.

Another licensing function the PUC handles is the insurance registration and permit issuance program for motor carriers exempt from regulation as public utilities. Although the sheer number of permits issued is high, this process is relatively straightforward and handled entirely by staff. Exempt passenger carriers, property carriers/household goods movers, and towing carriers must submit an application with documentation from an insurance company verifying the applicant holds a policy sufficient to meet the financial responsibility requirements pursuant to Rule 6007. In some cases, a safety or "qualifying" inspection must be performed before a permit can be issued. For example, if an applicant is applying to start a limousine service, PUC staff must ensure that the vehicle meets the specific requirements for luxury limousines as outlined in Rule 6305.

Table 6 shows the number of permits issued for motor carriers for the five fiscal years indicated.

Table 6
Permits Issued to Motor Carriers

Permit Type	FY 01-02	FY 02-03	FY 03-04	FY 04-05	FY 05-06
Exempt Passenger Carrier	167	152	124	94	112
Hazardous Materials	2,479	2,358	2,110	2,202	1,913
Nuclear Material	2	3	2	3	3
Towing	122	140	120	108	106
Property Carrier	802	892	740	906	906
Household Goods Movers	N/A*	N/A*	89*	145	114
Interstate Exempt Carrier *	308	236	148	142	150
Single State Registration System*	2,179	2,089	2,355	2,415	2,513

*Effective January 1, 2007, these are no longer issued due to the federal Unified Carrier Registration Act.

Complaints

The vast majority of complaints against regulated utilities are handled via the "informal complaint" process set forth in Rule 1301. This streamlined grievance resolution process is intended to avoid the costs of litigation.

Before contacting the PUC with a complaint, consumers are expected to make a reasonable effort to resolve billing or service issues directly with the utility. When those efforts prove unsatisfactory, consumers contact the PUC's Consumer Assistance section by mail, fax, telephone, or email, and an information specialist will initiate the informal complaint process. The information specialist evaluates the matter to ensure it is within PUC's jurisdiction. If the matter is not within the PUC jurisdiction, the matter is referred to the appropriate agency. If the matter relates to a docketed proceeding like a formal complaint or rulemaking hearing, it is referred to that docket as a public comment. If the matter relates to an issue the specialist can address without referring to the utility, it is coded as an "informational" request rather than a complaint. If the matter meets the criteria of a jurisdictional complaint, the information specialist forwards the complaint to the utility, giving it 14 days to respond. The specialist then works as an intermediary between the consumer and the utility, typically resolving the issue within 10 days. When closing an informal complaint, the specialist documents the estimated dollars saved the customer (if any).

According to PUC records, the most common reason for complaints against gas and electric utilities involve billing and repair issues, followed by disconnections. The most common reason for complaints against telecommunications companies is billing issues, followed by slamming, which occurs when a telecommunications provider changes a customer's telephone service without his or her consent, and cramming, which occurs when a telecommunications provider charges a customer for extra services he or she did not request.

Table 7 shows the number of calls or inquiries received by the Consumer Assistance section, the number that were coded as complaints and resolved via the informal complaint process, and the estimated money saved consumers for the five fiscal years indicated.

Table 7
Informal Complaints

Category	FY 01-02	FY 02-03	FY 03-04	FY 04-05	FY 05-06
Calls Taken	18,683	18,056	14,582	11,248	9,721
Complaints Closed	8,387	7,569	6,001	4,527	3,671
Transportation Complaints Closed*	405	362	408	267	343
Money Saved Consumers	$1,076,345	$807,420	$567,604	$517,625	$827,479

*Prior to January 1, 2007, transportation complaints were handled by staff in the Transportation section rather than the External Affairs section.

The total number of customer calls received by the PUC has declined over the five fiscal years indicated. Several factors may explain this decline. One is the PUC's action to correct many of Qwest's service quality deficiencies which began in 2000 but continue to the present. Another is the abolition of zone charges[48] in 2003. A third cause is the creation of no-call lists, both state and federal. A fourth is that some services—such as directory assistance—are no longer within PUC jurisdiction, and customers have been educated over the years regarding the appropriate avenues for recourse.

The number of complaints is not necessarily directly tied to the estimated money saved consumers. The estimated money saved consumers fluctuates from year to year because many complaints have to do with billing errors. A few "large" billing errors in a given year could yield a larger savings amount than many "small" billing errors.

[48] Zone charges are incremental monetary charges over and above the rate for basic local exchange telephone service which are levied on subscribers residing significant distances from the telephone switches that service the particular customers. The further from the switch, the higher the charges levied. Typically, but not exclusively, zone charges are levied on subscribers that live in sparsely populated areas. In 2003, Qwest had 226,000 lines subject to zone charges.

If a complaint cannot be resolved via the informal process, the complainant has the option to file a formal complaint, which is then presided over by an ALJ. Formal complaints are considered the last resort for resolution of a jurisdictional issue. The PUC may also initiate a formal complaint proceeding on its own motion.[49]

Table 8 shows the number of formal complaints for the five fiscal years indicated.

Table 8
Formal Complaints

	FY 01-02	FY 02-03	FY 03-04	FY 04-05	FY 05-06
Total Formal Complaints	42	34	23	22	15

Formal complaints can result in the PUC taking enforcement actions. As with informal complaints, this decrease in the number of formal complaints can be explained by improvements in customer service and the shrinking of the PUC's jurisdiction due to deregulation.

Enforcement

It is the duty of the PUC to see that the provisions of the constitution and statutes affecting public utilities are enforced and that violations thereof are promptly prosecuted.[50]

> …the Commission may direct the Attorney General to bring an action in an appropriate court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and monetary penalties as provided in Article 7 of Title 40, C.R.S. [51]

Typical grounds for enforcement action include utilities over-collecting money from customers and utilities' failure to file required documents such as annual reports. The most dramatic enforcement action at the PUC's disposal is to revoke a utility's CPCN or registration. This is a viable option for some types of utility companies, like toll resellers, because it is relatively easy to disconnect such provider from the public switched network and move the affected customers to another provider. In other cases, where hundreds if not thousands of customers would be affected, revoking a company's CPCN is simply not a viable option. Although the PUC has the authority to assess fines against utilities in district court, this is seldom done due to the money and resources such proceedings demand. Ordering a company to submit a plan for refunding customers' overpayments is a typical enforcement action.

[49] § 40-6-108(1)(a), C.R.S.
[50] § 40-7-101, C.R.S.
[51] Rule 1508.

Pursuant to section 40-7-112, C.R.S., the PUC has direct fining authority over motor carriers. PUC staff serves a Civil Penalty Assessment Notice (CPAN) to a motor carrier found to be in violation. The motor carrier may either pay the fine—the amount of the assessed fine is cut in half if he or she pays it within 10 days—or choose to contest the fine at a hearing before an ALJ.[52] When determining the amount of the penalty, the ALJ must take the following factors into account:[53]

- The nature, circumstances, and gravity of the violation;
- The degree of the respondent's culpability;
- The respondent's history of prior offenses;
- The respondent's ability to pay;
- Any good faith efforts by the respondent in attempting to achieve compliance and to prevent future similar violations;
- The effect on the respondent's ability to continue in business;
- The size of the business of the respondent; and
- Such other factors as equity and fairness may require.

Table 9 shows the number and dollar amount of CPANs issued over the five fiscal years indicated.

Table 9
Motor Vehicle Civil Penalties

Fiscal Year	FY 01-02	FY 02-03	FY 03-04	FY 04-05	FY 05-06
CPANs Issued	39	32	65	48	50
CPAN Issuance Amounts	$172,400	$162,650	$502,350	$233,100	$316,400

The Office of the State Auditor conducted a legislative audit of the PUC's motor carrier regulatory activities in September 2003. The audit report indicated that the PUC was not using the enforcement tools at its disposal to compel carriers to comply with the laws.[54] Consequently, the PUC developed and implemented a uniform procedure for assessing civil penalties, which resulted in a substantial increase in the number of CPANs issued by staff, particularly the criminal investigators, in fiscal year 03-04. The CPAN procedure was revised in October 2004 to provide additional criteria for issuing CPANs and determining amounts. These revisions, combined with fluctuations in the staffing of the criminal investigators, resulted in decreases for fiscal years 04-05 and 05-06.

[52] Rule 6015(l).
[53] Rule 1302(b)(I)-(VIII).
[54] "Audit of Motor Carrier Regulation, Public Utilities Commission and Department of Revenue, Performance Audit 2003," Office of the State Auditor, p. 41.

Inspections and Audits

The PUC is charged with conducting safety inspections for gas pipelines, railroad crossings, and motor carriers.

Table 10 shows the number of inspections conducted over the five fiscal years indicated.

Table 10
Safety and Compliance Inspections

Category	FY 01-02	FY 02-03	FY 03-04	FY 04-05	FY 05-06
Gas Pipeline					
Inspections	276	237	247	215	362
Violations Cited	32	10	6	23	3
Construction Inspections	110	107	112	86	195
Incident Investigations	7	9	8	3	11
Motor Carriers					
Motor Vehicle Safety Inspections	2,808	2,484	2,025	1,196	1,137
Safety & Compliance Reviews	361	396	199	264	268
Railroad					
Safety/Service Inspections	66*	66*	38	35	88
Rail Fixed Guideway System					
Safety/Service Inspections	5**	5**	5**	5	10
Audits	19	18	18	12	18

*Based on information found for number of inspections made for the years 1998 through 2001, the average is 66 per year. Half of this yearly average was used to account for inspections for the July 2003 through January 2004 time period.
** No records available. Based on recent history, an average of 5 field inspections per year is used.

The decline in safety inspections for motor vehicles is due to a shift in inspection criteria. The 2003 performance audit noted that four employees were responsible for inspecting over 6,000 regulated vehicles, and recommended that the PUC make better use of staff resources by implementing a risk-based inspection schedule.[55] The PUC developed a system that takes into account carriers' violation history as well as the time frame of the most recent inspection. This resulted in fewer, but more effectively targeted, inspections.

Another factor contributing to the decline in the number of safety inspections were changes in the criteria for issuing CPANs. These changes led to the issuance of more CPANs, the prosecution of which took time away from the investigators to perform inspections.

[55] "Audit of Motor Carrier Regulation, Public Utilities Commission and Department of Revenue, Performance Audit 2003," Office of the State Auditor, pp. 28-30.

Analysis and Recommendations

Statutory Recommendations

General

Recommendation 1 – Continue the Public Utilities Commission for 11 years, until 2019.

Article XXV of the Colorado Constitution, enacted in 1954, designates the Public Utilities Commission (PUC) as the sole state agency responsible for regulating the facilities, service and rates and charges of public utilities in Colorado. The laws governing the regulation of public utilities are contained within Title 40 of the Colorado Revised Statutes (C.R.S.). The first question of this sunset review is to determine whether the PUC is still needed to protect the public health, safety, and welfare.

The world of public utility regulation can seem dauntingly vast. The PUC has at least partial jurisdiction over many distinct industry areas—electric, natural gas, steam, telecommunications, and water utilities as well as motor carriers and railroads—each presenting unique issues and challenges. One need only look at the PUC's organizational chart to appreciate the complexity of its regulatory activities: the PUC employs economists, engineers, financial analysts, accountants, and other professionals with specific expertise to help fulfill its mission. The public could not reasonably be expected to have sufficient expertise to navigate all of these areas independently. The PUC has the depth and breadth of experience and knowledge to act on the public's behalf.

This expertise comes to bear when determining an applicant's fitness to provide service as a public utility. The PUC evaluates every application it receives—whether for a certificate of public convenience and necessity (CPCN) to construct a power plant or for a permit to transport hazardous materials—to determine whether the applicant has the technical and financial resources to provide the relevant service. This process assures that only qualified companies are admitted into the marketplace, which ultimately protects the public's interests.

The PUC has the power to ensure regulated utilities' facilities, equipment and services meet acceptable standards. The PUC monitors utilities' compliance by performing safety inspections on motor vehicles, railroad crossings, and gas pipelines; investigating major events such as widespread service outages; evaluating telephone complaints fielded by staff to detect any recurrent service problems; and auditing utility financial records. For some of these activities, the stakes are high: failure to detect a leaky gas pipeline could result in injury and loss of life. Other activities have less immediate consequences but still ultimately benefit the consumer: an investigation into a power outage could prevent future outages, and persistent problems with a utility's call center might be resolved with the PUC's intervention.

When the PUC finds that a utility has violated the law, it can bring enforcement actions, which can include compelling a utility to pay reparations to customers, and restricting or revoking a utility's operating authority. Monitoring compliance with the law and taking action against those that violate it protect the public from unsafe, unsound practices.

Several of Colorado's largest utilities still function as monopolies: there is no market competition to drive rates. In these cases, the PUC plays a critical role in keeping rates reasonable and non-discriminatory for consumers while ensuring these utilities stay economically viable. A CPCN legally obligates a utility to provide service to anyone who seeks it. In exchange for providing this service and fulfilling the responsibilities that entails—including maintaining existing infrastructure, undertaking improvement and expansion projects, assuring that supply meets or exceeds demand, and providing customer service —the PUC provides the utility the opportunity to earn a reasonable rate of return. If there were no regulatory body to authorize companies the opportunity to make a reasonable profit, companies might elect not to take on such a costly, potentially risky venture and investors might choose to invest their money in another industry. A mass divestment from any of the PUC's regulated industries could have devastating consequences.

The PUC no longer has a role in setting rates for deregulated telecommunications services: the open market is expected to keep rates fair and reasonable for consumers. In the future, more services may be deregulated, further diminishing the PUC's role. In the meantime, it makes sense for the PUC to continue to manage the transition to a more competitive telecommunications environment. The PUC also retains jurisdiction over slamming[56] and cramming[57] complaints, both of which could originate from deregulated providers. Since slamming and cramming are among the most prevalent grounds for consumer complaints, clearly the PUC's involvement is still warranted.

[56] "Slamming" occurs when a telecommunications provider changes a customer's telephone service without his or her consent.
[57] "Cramming" occurs when a telecommunications provider charges a customer for extra services he or she did not request.

The world of telecommunications evolves more quickly than regulatory frameworks can. There is current debate over the regulation of wireless and voice over Internet protocol (VoIP) services, and it is impossible to predict what new technologies might surface even within the next five years. What role, if any, the PUC will play in future regulation of new telecommunications services remains to be seen, but the PUC's existence assures that Coloradans will have an agency to intercede on their behalf—promulgating rules, implementing federal requirements, ensuring standards of service are met—if required.

Another area undergoing rapid transformation is renewable energy. In March 2007, Governor Ritter signed House Bill 07-1281 into law, doubling the renewable energy standard established in Amendment 37 to the Colorado Constitution. The new law requires that 20 percent of Colorado's energy be derived from renewable energy sources by 2017. The PUC is uniquely qualified to help Colorado navigate this changing environment, taking a leadership role in developing parameters for the new energy economy, soliciting feedback from the public and industry, and educating stakeholders on the changes. Further, the PUC will help ensure that reliability and quality of utility services are maintained as we shift to alternative energy sources and that neither consumers nor utilities are bankrupted in the process.

From a $3 billion coal plant to a mom-and-pop taxi company, from a gas pipeline running under a densely populated urban area to a rural railroad crossing, the PUC is responsible for regulating a wide range of companies, their products, and their services. It is hard to imagine there is a person in Colorado who is not affected on a daily basis by a regulated utility. Coloradans expect to be able to heat their homes in the winter, turn on the lights with the flick of a switch, and dial 9-1-1 to be immediately connected with emergency services.

Technologies may advance and regulatory policy shift, but the fact remains that in the 21st century United States, reliable and affordable energy, water, telephone and transportation service is considered a basic necessity. The PUC, through its licensing, investigatory, enforcement and research activities, preserves access to this necessity. For these reasons, the PUC should be continued.

Recommendation 2 – Grant the PUC administrative fining authority over fixed utilities.

Pursuant to section 40-7-101, C.R.S., it is the duty of the PUC to:

> …see that the provisions of the constitution and the statutes of this state affecting public utilities are enforced and obeyed, and that violations thereof are promptly prosecuted [.]

The PUC has several enforcement tools at its disposal to fulfill this mandate, assuring that utilities under its jurisdiction comply with the law. For fixed utilities, these tools include restricting or revoking an authority (e.g., a permit or CPCN); ordering reparations be paid to customers; issuing cease and desist orders; and assessing fines through district court.

These means are more limited than they might appear at first blush.

Restricting or revoking an authority could be effective in some industries, but it is simply not viable for others. For example, if an operator of a charter or scenic bus were found to have committed a serious violation of the law, the PUC could revoke the operator's permit with little harm to anyone but the operator. If, however, an electric utility serving thousands of customers committed a serious violation, could the PUC reasonably revoke its CPCN? In theory, yes; in practice, probably not. Such an action would unfairly penalize the utility's customers.

The PUC may elect to limit earnings as an enforcement tool, but this only applies to those utilities where the PUC has jurisdiction over rates. The rates for an increasing number of telecommunications services are exempt from regulatory controls, and hence are not subject to this practice.

Forcing a utility to pay reparations is without question an effective way of repaying to customers monies collected either unfairly or illegally. Implicit to the notion of reparations, however, is that a utility was collecting monies to which it was not entitled in the first place. Ultimately reparations are not punitive, and therefore cannot serve as a deterrent.

Cease and desist orders can serve an important purpose. 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, however, in that they only address inappropriate action, not *in*action, such as the failure of a utility to file a statutorily required annual report.

Finally, the PUC has the ability to assess fines in district court. Section 40-7-105(1), C.R.S., allows the PUC to fine utilities up to $2,000 per day for any offense, i.e., any violation of Articles 1 through 7 of Title 40, C.R.S. (the public utilities law). Although this amount seems too low to make an impact on some of the large utility companies, this is, in theory a sound, flexible enforcement tool. Fines can be assessed cumulatively, with each violation constituting a separate offense and each successive day a violation lasts considered a separate offense.

Because fines are punitive in nature, fining could be an effective way to encourage utilities to comply with the law: for example, to meet the terms of a CPCN or a quality assurance plan, to submit statutorily required reports by the prescribed deadlines, or to stop charging customers for services they did not request. While the PUC can currently seek fines, the existing tool is limited in that it requires the PUC to pursue the fines via an action in district court. The time, expense, and staff resources required to pursue such an action has prevented the PUC from doing so.

Allowing the PUC to assess fines administratively, rather than through district court, would grant a powerful, cost-effective means of compelling compliance with the law. The following case illustrates how administrative fining would fill a gap in the PUC's current enforcement program.

A toll reseller "crams" a customer by adding charges to the customer's bill for services the consumer did not request. In the absence of another enforcement option, the provider's letter of registration is revoked and Qwest is ordered to disconnect that provider from the public, switched network. However, because the reseller offers both regulated and unregulated services through the same switch, Qwest is unable to disconnect the provider. In short, the PUC found the reseller to be out of compliance, but was unable to take meaningful punitive measures. Further, unless there was a demonstrated pattern of inappropriate activity involving multiple consumers or multiple occasions, revoking the provider's registration could be considered extreme.

If the PUC had administrative fining authority, it could fine the reseller a specified amount for each day past the annual report filing deadline, thereby placing responsibility directly on the provider, rather than on Qwest, and preserving service for the provider's customers.

Administrative fining is not a novel concept in Colorado's regulatory environment. In fact, the PUC has the ability to fine motor carriers for various violations. Section 40-7-112, C.R.S., clearly delineates what offenses may result in assessment of a fine, and the specific maximum dollar amounts for each offense. Examples include:

- Any person who fails to carry the insurance required by law may be assessed a civil penalty of not more than $11,000.[58]
- Any person who operates a motor vehicle for hire as a common carrier without first having obtained a certificate of public convenience and necessity from the PUC may be assessed a civil penalty of not more than $1,100.[59]
- Any person who operates a motor vehicle who intentionally violates any provision of Articles 10, 11, 13, 14, and 16 of this title may be assessed a civil penalty of not more than $1,100.[60]

[58] § 40-7-113(1)(a), C.R.S.
[59] § 40-7-113(1)(b), C.R.S.
[60] § 40-7-113(1)(g), C.R.S.

Other Colorado state agencies also have administrative fining authority:

- The **Property Tax Administrator** (Administrator), as part of the Department of Local Affairs, has authority to administratively fine utilities for late filing of statements of property. Every year, utilities must file with the Administrator a statement of property identifying all property in the utility's possession for the purpose of determining its actual value. If a utility fails to submit such statement before the deadline, the Administrator has the authority to assess a fine of $100 for each calendar day the statement of property remains delinquent, up to a maximum of $3,000.[61]

- 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 of Insurance.[62]

- After notice and a hearing, the **Division of Banking** may assess fines of no more that $1,000 per day against any state bank. Grounds include submitting delinquent reports or submitting to the Banking Board any report or statement that contains materially false or misleading information.[63]

- The **Motor Vehicle Dealer Board** may fine a licensee up to $10,000 for each separate offense of the motor vehicle dealer statute.[64]

- The **Electrical Board** may fine an electrical contractor[65] up to $1,000 for a first offense and up to $2,000 for each subsequent violation.[66]

- The **Passenger Tramway Safety Board** can fine a tramway operator up to $5,000 per day for failure to comply with an order of the Board.[67]

Finally, other states' public utilities commissions have direct fining authority. Those states include California, Connecticut, Nebraska, Ohio, Texas and Tennessee. In the 2007 session, the Nevada legislature passed a bill that moves that state's fining authority from a model similar to Colorado's—whereby civil penalties are assessed via district court—to a model allowing the Nevada Public Utilities Commission to administratively fine utilities directly.

[61] § 39-4-103(1.5)(a, C.R.S.
[62] § 10-1-205(3)(d), C.R.S
[63] § 11-102-503(1)(a)(I)(B), C.R.S.
[64] § 12-6-104(3)(m)(I)(A), C.R.S.
[65] § 12-23-118(5)(a), C.R.S.
[66] § 12-23-118(5)(b)(I) and (II), C.R.S.
[67] § 25-5-707(3), C.R.S.

Changing from a district court model to an administrative fining model does not change the essential intent of Colorado's existing law: it just changes the process. Utilities would still be afforded due process and have a right to a hearing. The administrative fining process for motor carriers begins when PUC staff serves a Civil Penalty Assessment Notice (CPAN) to a motor carrier found to be in violation. The motor carrier may either pay the fine—the amount of the assessed fine is cut in half if it is paid within 10 days—or choose to contest the fine at a hearing.[68] When determining the amount of the penalty, an administrative law judge (ALJ) must take the following factors into account: [69]

- The nature, circumstances, and gravity of the violation;
- The degree of the respondent's culpability;
- The respondent's history of prior offenses;
- The respondent's ability to pay;
- Any good faith efforts by the respondent in attempting to achieve compliance and to prevent future similar violations;
- The effect on the respondent's ability to continue in business;
- The size of the business of the respondent; and
- Such other factors as equity and fairness may require.

This process assures due process for carriers, and while it allows the ALJ discretion, the ALJ is compelled to consider carefully the above criteria when determining the amount of the fine. The PUC could establish a similar process for assessing fines against fixed utilities.

For administrative fining to work effectively, the PUC would need to develop a clear, meaningful fining structure similar to that for motor carriers, with maximum fines tailored to specific offenses; and establish a procedure guaranteeing due process for utilities. Utilities should also be given the opportunity to pay a reduced amount if payment is made within a specified timeframe. To keep fines as a punitive measure that serves to deter future violations of the law, and to prevent such fines from becoming a routine business expense, a provision should be included that prohibits utilities from raising rates to absorb fine costs.

A key principle of effective regulation is establishing clear consequences for lack of compliance with the law. Administrative fining does just that. It is an enforcement tool currently used at the PUC for motor carriers, in other similar areas of state regulation, and in the public utilities commissions of other states. The principle behind administrative fining does not violate the intent of section 40-7-105, C.R.S., which grants the PUC authority to pursue fines against fixed utilities in district court. In both models, the goal is to punish utilities that break the law. The administrative model simply does so more swiftly and more efficiently, using less state money and fewer state resources.

[68] Rule 6015(l).
[69] Rule 1302(b)(I)-(VIII)

Recommendation 3 – Amend the *ex parte* rules to exempt rulemaking proceedings.

The PUC is a quasi-judicial body, and as such, is subject to rules restricting *ex parte* communications.

The purpose of *ex parte* rules is to ensure fair and impartial treatment of all parties in an adjudicated proceeding. For example, a typical *ex parte* rule would prohibit a plaintiff from discussing his or her pending case with the judge without the defendant being present.

The 1992 sunset review found that the PUC could increase public confidence in the integrity of its proceedings by strengthening its disclosure requirements for *ex parte* communications. Specifically, the report recommended that:

> The General Assembly…require the Public Utilities Commissioners and Administrative Law Judges to file a memorandum for the public records whenever they hold private meetings with any person in which general matters under their jurisdiction are discussed. This memorandum will set out the time and place of the meeting, the meeting participants, and the matters discussed. It will certify that the matters discussed did not relate to any pending case before the PUC [.][70]

Accordingly, the General Assembly enacted section 40-6-122, C.R.S., regarding *ex parte* communications and the PUC promulgated rules 1105 through 1108. These provisions require Commissioners and ALJs to file memoranda documenting all private communication with interested parties—meaning any person or entity that conducts activities within the PUC's jurisdiction, has within the last year participated in a proceeding before the PUC, or anticipates doing so within one year.[71] Each memorandum must contain:

- The date and location of the communication;
- A list of the people present when the communication was made;
- A description of the substance of the communication; and
- A statement affirming that the subject matter did not relate to any proceeding pending before the PUC.

[70] 1992 Sunset Review of the Colorado Public Utilities Commission, Department of Regulatory Agencies, June 1992, p 53.
[71] §§ 40-6-122(2)(a),(b) and (c), C.R.S.

The memoranda are to be kept on file for inspection for a minimum of three years.[72] PUC rules 1105, 1106, 1107, and 1108 further explain the procedure around *ex parte* communications, including remedies to take after a prohibited communication is made.

These provisions make perfect sense when applied to the PUC's adjudicative proceedings, but the PUC also conducts quasi-legislative proceedings, i.e., rulemakings. Section 40-2-108(1), C.R.S., provides that the PUC promulgate rules in accordance with the State Administrative Procedure Act (APA).[73] In *Collopy v. Wildlife Commission*[74] and *Colorado Ground Water Commission v. Eagle Peak Farms*, [75] the courts determined that rulemaking conducted under the APA is legislative, not judicial, in character.

Rule 1105(b) lists the types of communications that are not considered prohibited, and hence are exempt from the *ex parte* provisions. Exempt communications include procedural or status inquiries, customer objections to a utility's proposed tariffs, communications made as part of an educational program, and even communications with members of the General Assembly regarding legislation, but rulemaking proceedings are notably absent.

Legislative proceedings by their very nature are open and collaborative, with stakeholders involved at many stages of the process. Prohibiting communications between a Commissioner and a representative of an industry that will be affected by a proposed rule would be akin to preventing a member of the General Assembly from listening to the concerns of his or her constituents. The current *ex parte* rules make no clear distinction between quasi-judicial and quasi-legislative proceedings, applying equally to both, thereby placing an unintended restriction on the rulemaking process. Application of the *ex parte* rules to the PUC's rulemaking activities unnecessarily impedes the process and is inconsistent with the general intent of rules governing *ex parte* communications, as well as the intent of the 1992 sunset recommendation.

[72] § 40-6-122(3), C.R.S., and Rule 1106.
[73] § 24-4-101, *et seq*., C.R.S.
[74] 625 P.2d 994 (Colo. 1981).
[75] 919 P.2d 212 (Colo. 1996).

Agencies that share the PUC's quasi-judicial, quasi-legislative role, such as the Federal Energy Regulatory Commission (FERC) and the Colorado Oil and Gas Conservation Commission (OGCC), have *ex parte* rules that specifically exempt rulemaking proceedings. The FERC rules exempt what it calls "notice and comment" rulemakings from its rules governing off-the-record communications.[76] The PUC's rulemakings fall into this "notice-and-comment" category, which is distinct from formal rulemakings.[77] The OGCC rule governing *ex parte* communications states:

> Oral or written communication with individual Commission members is permissible in a rulemaking proceeding. If such information is relied upon in final decision making it shall be made part of the record by the Commission. After the rulemaking record is closed new information that is intended for the rulemaking record shall be presented to the Commission as a whole upon approval of a request to reopen the rulemaking record.[78]

Requiring that such communications be included as part of the record if they provide the basis for final decision-making further safeguards the integrity of the rulemaking process.

The laws and rules governing *ex parte* communications for the PUC should be changed to make a clear distinction between the PUC's quasi-adjudicatory and quasi-legislative proceedings.

Oral or written communications with Commissioners or ALJs regarding adjudicatory proceedings should continue to be strictly forbidden, and subject to the stringent *ex parte* rules currently set forth in section 40-6-122, C.R.S., and PUC rules 1105 through 1108.

Oral or written communications with Commissioners or ALJs regarding quasi-legislative proceedings—including rulemaking—should be permitted, but subject to disclosure requirements similar to those in place at the OGCC. This change will facilitate the rulemaking process and encourage stakeholders' involvement without sacrificing transparency.

[76] FERC Rule 385.2201.
[77] 5 U.S.C. § 553(c) defines a formal rulemaking as occurring when a statute specifically requires rules "to be made on the record after opportunity for an agency hearing."
[78] Oil and Gas Conservation Commission Rule 515(b).

Recommendation 4 – Repeal obsolete language.

The PUC statutes contain numerous obsolete provisions that should be repealed.

- **Telegraphs.** All references to telegraphs or telegraph lines should be repealed. Western Union ceased offering telegraph services in January 2006, due to the prevalence of email. While small companies still exist that offer telegraph services, such services are more like novelties (accompanied by flowers, chocolate, etc.) than utilities. References to telegraphs are located at the following places in Title 40, C.R.S.:

  - § 40-1-103, C.R.S. - Public utility defined.
  - § 40-3-106, C.R.S. - Advantages prohibited - graduated schedules.
  - § 40-3-107, C.R.S. - Transmission of business of other companies.
  - § 40-3-108, C.R.S. - Rates for long and short distances.
  - § 40-4-104, C.R.S. - Connection of noncompetitive lines - costs and rates apportioned.
  - § 40-23-101, C.R.S. - Right to reorganize.

- **Time limit regulations.** Because federal law prohibits state regulation of motor carriers of property,[79] the statutory provision establishing the PUC's power to prescribe acceptable timeframes for the delivery of packages and loading/unloading of freight cars is now obsolete. The provision can be found in section 40-4-107, C.R.S.

- **Railroad-railroad crossings.** Senate Bill 00-129 repealed Article 28 of Title 40, C.R.S., regarding railroad-railroad crossings, which are now under federal, not state, regulation. The obsolete references to such crossings can be found in section 40-4-106(2)(a), C.R.S.

- **Wording change.** Several places in the railroad statute refer to the "protection" of railroad crossings. Flashing lights, gates, and bells do not "protect" drivers from trains, they warn drivers about trains. Therefore, "protect" and "protection" should be replaced with "warning" and "signalization" throughout the statute.

[79] 49 USC § 14501(c)(1).

- **Rail Fixed Guideways.** The recent rulemaking revisions to the Code of Federal Regulations (CFR) involving 49 CFR Part 659 by the Federal Transit Administration (FTA) removed specific reference to the American Public Transportation Association (APTA) guidelines from the federal rules and created FTA-specific requirements. The continued requirement in Colorado's statutes to use the APTA guidelines could conflict with 49 CFR Part 659. The obsolete references to the APTA guidelines are found in sections 40-18-101(1), and 40-18-103(1)(d), C.R.S. Reference to 49 CFR Part 659 "Rail Fixed Guideway Systems; State Safety Oversight" should replace reference to the APTA guidelines in section 40-18-103(1)(d), C.R.S.

Energy

Recommendation 5 – Require cooperative electric associations and municipal utilities to offer customer-sited generation incentives and net metering.

In passing Amendment 37, the people of Colorado, in no uncertain terms, expressed their desire to see the state's development and use of renewable energy resources increase. Two of the mechanisms to increase such generation are commonly referred to customer-sited generation and net metering.

Very simply, customer-sited, or distributed, generation entails relatively small scale electricity generation at the location of a customer. At present, one of the more popular forms of customer-sited generation is the use of solar panels.

Net metering, in short, occurs when customer-sited generation produces more electricity than that customer can use. Net metering allows the customer to reverse the normal flow of electricity such that the unused electricity is delivered to the power grid. In return, the customer's meter essentially goes backwards so that the customer is credited with producing electricity and delivering it to the power grid, rather than taking electricity from the power grid.

The principles of customer-sited generation and net metering were envisioned by Amendment 37 and are ensconced in Colorado law at section 40-2-124(1)(e), C.R.S.

Recall, however, that Amendment 37 applied only to investor-owned utilities. House Bill 07-1281 (HB 1281) expanded the renewable energy targets to cooperative electric associations and some municipal electric utilities. However, HB 1281 specifically exempted cooperative electric associations and municipal electric utilities from the mandate to incorporate customer-sited generation and net metering. Rather, these two types of utilities *may* implement such programs.

This is contrary to the impetus behind Amendment 37, which was to increase the state's utilization of renewable energy resources and to foster economic development, in that the mandates to offer customer-sited generation incentives and net metering are denied to almost half of Colorado's electricity consumers.

Additionally, at least 18 states have implemented statewide net metering.[80]

In Colorado in 2005, 29 municipal electric utilities and 26 cooperative electric associations controlled 41 percent of Colorado's electricity market.[81] Yet, under the terms of HB 1281, they need not offer customer-sited generation incentives or net metering.

Further, any costs associated with such programs need not be absorbed directly by the utilities involved. HB 1281 allows utilities to increase rates by up to two percent in order to cover the costs of implementing the renewable energy standards articulated therein. Additionally, customer-sited generation serves to help the utility satisfy its renewable energy portfolio requirements, as outlined in HB 1281.

Amendment 37 was passed by the people of Colorado, not just the customers of Colorado's larger investor-owned utilities. All Coloradans should be able to actively participate in the greening of the state's energy portfolio, and, at present, they are not.

For these reasons, municipal utilities and cooperative electric associations should be required to offer customer-sited generation incentives and net metering.

Recommendation 6 – Authorize the Colorado Department of Public Health and Environment, the Colorado Department of Natural Resources, the Colorado Department of Local Affairs and the Governor's Energy Office to participate in proceedings before the PUC, and expand the scope of the Office of Consumer Counsel's authority to participate in such proceedings to include issues pertaining to environmental and health concerns.

Only a limited number of entities may intervene in proceedings before the PUC as of right. Rather, most parties to PUC proceedings attain such status when the PUC approves their petitions for leave to intervene. While the PUC's rules regarding intervention are rather broad, and generally conform with the Colorado Rules of Civil Procedure, they are, necessarily, somewhat subjective.

[80] "Learning from State Action on Climate Change," Pew Center on Global Climate Change, March 2007 update, page 6. Downloaded from www.pewclimate.org/policy_center/policy_reports_and_analysis/state

[81] "Electric Power Utilities in the State of Colorado," Colorado Public Utilities Commission, downloaded on June 19, 2007, from www.dora.state.co.us/puc/energy/ColoradoElectricPowerUtilities.pdf.

In short, the PUC may grant a petition to intervene when,

> the subject of the docket may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented in the docket; subjective interest in a docket is not a sufficient basis to intervene.[82]

As a result, the PUC has considerable discretion with respect to granting petitions to intervene. While this can be problematic with respect to granting too many such petitions, resulting in a large number of parties in a given proceeding, it can also serve to prevent certain parties, the input of which could be invaluable, from filing such petitions.

In directing the PUC to give consideration to renewable energy technologies, the General Assembly also directed the PUC to consider,

> the beneficial contributions such technologies make to Colorado's energy security, economic prosperity, environmental protection, and insulation from fuel price increases.[83]

Additionally, when the PUC considers environmental effects in electric utility resource selection,

> it shall also make findings and give due consideration to the effect that acquiring such resources will have on the state's economy and employment, including, but not limited to, the effect on the mining, electric, natural gas, energy efficiency, and renewable resource industries.[84]

Finally, Amendment 37's declaration of intent states, in part,

> in order to save consumers and businesses money, attract new businesses and jobs, promote development of rural economies, minimize water use for electricity generation, diversify Colorado's energy resources, reduce the impact of volatile fuel prices, and improve the natural environment of the state, it is in the best interests of the citizens of Colorado to develop and utilize renewable energy resources to the maximum practical extent.

Thus, it is clear that the people of Colorado and the General Assembly intend for the PUC to look beyond mere price when determining how Colorado's electricity is generated.

[82] 4 C.C.R. 723-1-1401(c).
[83] § 40-2-123(1), C.R.S.
[84] § 40-3-111(1.5)(a), C.R.S.

However, the PUC lacks the institutional knowledge and expertise to address issues such as air and water quality, the long-term effects on the environment and the public health, economic and employment ramifications of utilizing new technologies, and, since the PUC's jurisdiction over cooperative electric associations and municipal electric utilities is severely restricted, the overall energy strategy of the state. It therefore becomes necessary for the PUC to acquire such expertise. Several means appear self-evident: 1) hire additional staff with the needed expertise; 2) contract with outside consultants; or 3) utilize the institutional knowledge and expertise of other state agencies.

Hiring new staff does not seem to be a viable option considering the fact that these are not issues that the PUC faces on a day-to-day basis. The specialized expertise outlined herein will be needed on more of an *ad hoc* basis. Permanent, full-time staff with this expertise, therefore, is not needed.

Contracting with outside consultants could provide valuable expert input into the PUC process and would not be as burdensome as hiring permanent, full-time staff. However, consultants can be expensive.

Additionally, the State of Colorado has departments with institutionalized subject matter expertise that, to the best of anyone's knowledge, has not been utilized by the PUC.

The Colorado Department of Public Health and Environment (CDPHE) regulates and monitors the quality of Colorado's air and water. Both of these elements are severely impacted by electricity generation. Coal-fired power plants are notorious for the amount of pollutants they pump into the air. Similarly, they use a considerable amount of water to generate electricity and to cool various systems.

Additionally, CDPHE understands the health effects of polluted air. For example, asthma episodes tend to increase when air pollution is particularly bad.

Similarly, the Colorado Department of Natural Resources has institutional knowledge of Colorado's water systems, as well as the state's production of oil, coal and natural gas. This knowledge could be exploited by the PUC as it explores alternative ways to meet Colorado's future energy needs.

The Colorado Department of Local Affairs (CDOLA) maintains contact with Colorado's local governments, many of which operate municipal utilities or that must interact with the state's regulated utilities on a variety of issues, including franchise agreements, transmission siting, power plant sitings, etc. The knowledge and experience of CDOLA should also be available to the PUC.

The Governor's Energy Office possesses considerable expertise on energy policy and planning.

Finally, the Office of Consumer Counsel (OCC) should be able to participate in matters before the PUC that pertain to items other than just utility rates and charges, and service quality issues. Current law restricts the OCC's involvement to proceedings, including rate cases and rulemaking and CPCN proceedings, before the PUC involving the rates and charges imposed by public utilities, and, in the case of rulemaking proceedings, service issues.[85]

However, environmental and health costs are real and, at some point, they will become tangible. Whether these costs are paid today, in terms of higher utility rates, or later, in terms of environmental remediation or higher health care costs, the costs will be borne by all Coloradans. As such, the OCC should be specifically directed to consider such issues in the cases in which it participates before the PUC.

Additionally, by expanding the scope of the OCC's right to intervene, efficiencies can be gained in the PUC litigation process. By allowing the OCC to represent a more diverse range of interests, and thus a larger number of parties, the number of parties seeking to intervene in such proceedings can be expected to decrease. This will result in a more efficient and streamlined quasi-adjudicatory process.

Therefore, it is most advantageous to utilize the expertise of other state agencies. The agencies outlined herein already possess the institutional knowledge and expertise that is needed by the PUC. The state has already invested in acquiring this expertise. This recommendation simply advocates that the state further leverage that investment and put it to use before the PUC.

Importantly, these agencies need not necessarily become parties to litigated matters before the PUC. The PUC can and should implement less formal procedures whereby these agencies can provide input that utilizes their respective areas of expertise without incurring the costs, in terms of time and money, of becoming parties to litigated matters. The PUC requires additional expertise, not additional parties.

By authorizing the OCC to expand the scope of issues that it may explore, it will not only be better able to serve the people of the state, but it may, in the end, serve to streamline proceedings before the PUC by reducing the number of parties that feel compelled to intervene in various dockets because their interests are not adequately represented by any existing party. The OCC will not be able to represent every conceivable interest, but it can certainly represent more than the limited, price-oriented interests that it represents today.

For these reasons, these various departments and divisions of state government should be specifically authorized to participate in proceedings before the PUC.

[85] § 40-6.5-104(1), C.R.S.

Telecommunications

Recommendation 7 – Amend the Low-Income Telephone Assistance Program eligibility criteria to mirror the Low-Income Energy Assistance Program eligibility criteria.

The Low-Income Telephone Assistance Program (Lifeline program) was established by the General Assembly in 1990. The purpose of the Lifeline program is to enable eligible participants to receive a discount on their telephone bills equal to the federal subscriber line charge, which is currently $6.50 per month, or a 25-percent discount on the basic local telephone service rate. As a result, the Lifeline program enables low-income Coloradans the opportunity to have a telephone in their households, which assists in communication needs, including medical emergencies.

The discount only applies to basic service, which is defined as:[86]

- A single-party line;
- Voice-grade access to the network;
- Touch tone service;
- Fax and data transmission within the voice grade bandwidth;
- A local calling area that reflects a community of interest;
- Access to emergency services;
- Equal access to toll (long-distance) services;
- Customer billing as required by PUC rules;
- Access to operator services;
- White pages directory listing; and
- Access to directory assistance.

Currently, the Lifeline program and the Low-Income Energy Assistance Program (LEAP) operate under two different criteria to determine eligibility. Under the current system, individuals who are eligible for telephone assistance through the Lifeline program must be certified by the Colorado Department of Human Services (DHS) as qualified to receive financial payments under at least one of the following programs:

- Old Age Pension;
- Aid to the Blind;
- Aid to the Needy Disabled; or
- Supplemental Security Income.

[86] Colorado Public Utilities Commission. What is Basic Phone Service? Retrieved June 25, 2007, from http://www.dora.state.co.us/PUC/Publications?FYIs?FYI_T-2BasicService.pdf

Upon determining whether an individual is eligible to receive assistance through the Lifeline program, staff within DHS mails the individual a letter confirming that he or she qualifies for telephone assistance. The DHS letter also informs the individual to contact his or her telephone company to request participation in the program. Eligibility is not exclusive to Qwest customers; consumers who have been approved for participation in the Lifeline program (regardless of their telephone company) may receive the benefits provided under the Lifeline program.

Meanwhile, in order to participate in LEAP, individuals are required to meet the following eligibility requirements:[87]

- An individual is a U.S. citizen or a legal resident and a resident of Colorado;
- An individual pays a heating bill to an energy provider or the heat expense is included in a rent payment; and
- An individual's monthly gross income is 185 percent of the federal poverty level or less.

Permitting individuals to participate in the Lifeline program if they qualify for participation in LEAP serves several purposes. Conforming the eligibility requirements for the Lifeline program to those of LEAP will serve to streamline the eligibility requirements for low-income households. Also, streamlining the criteria might serve to ease the administrative burden of applying different criteria for both programs. Instead of applying two different criteria, DHS will rely on one standard set of criteria to determine eligibility for both programs. Additionally, establishing a standard set of criteria would expand the number of those eligible to participate in the Lifeline program.

The General Assembly should amend the eligibility requirements for the Lifeline program to mirror those for participation in LEAP. Amending the criteria would expand the number of eligible Lifeline participants as well as establish uniform criteria for both programs, which would enable residents who qualify for LEAP to automatically quality for participation in the Lifeline program.

Recommendation 8 – Impose a surcharge on Voice over Internet Protocol carriers to more equitably fund the Colorado High Cost Support Mechanism.

Currently, all telecommunications carriers providing intrastate telecommunications services, including cellular and landline carriers but not voice over Internet protocol (VoIP) carriers, are required to contribute to the Colorado High Cost Support Mechanism (CHCSM).

[87] Colorado Department of Human Services. LEAP –Warmth in every home. Retrieved August 8, 2007, from http://stateboard.cdhs.state.co.us/oss/FAP/LEAP/default.html

The CHCSM was established to offset the high cost of telephone service in areas where the cost of providing telephone service is higher. The PUC calculates the amount needed to adequately support the fund and provide telecommunications services to citizens in areas of Colorado that require high costs to service customers. The surcharge amount is then assessed to the consumer on his or her monthly telephone bill. The regional operating company in Colorado, Qwest, receives the majority of the funds provided by the CHCSM. In 2006, funds provided to Qwest totaled approximately $58 million out of the total of $63 million in the CHCSM.

Conversely, Qwest receives limited funds from the Federal Universal Service Fund (FUSF), which subsidizes telecommunications carriers for the cost of providing telecommunications services in high cost areas. This is due to the fact that federal subsidies are considered an offset to the CHCSM. For example, if the total subsidy needed for a telecommunications carrier is $2 million and the same telecommunications carrier receives $1.5 million from the FUSF, the CHCSM will only cover the differential of $0.5 million.

The State of Colorado does not require VoIP service providers to contribute to the CHCSM. However, VoIP customers in Colorado still receive and initiate calls to high cost areas. In order to be equitable, VoIP service providers should pay a surcharge to the CHCSM just as do all other telecommunications service providers.

Importantly, this would be a surcharge on VoIP services only, it would not be a surcharge on Internet access.

Requiring VoIP service providers to pay into the CHCSM would increase the total number of providers paying into the fund and make them eligible to receive funds from the CHCSM. The PUC resets the fund annually and calculates how much revenue is necessary to adequately support high cost areas within Colorado. The PUC divides the total needed CHCSM fund support dollars by the total intrastate, retail revenues generated by all of the providers of telecommunications services in the state of Colorado.

Since VoIP service providers access high cost areas in Colorado, they should be required to pay into the fund. Therefore, the General Assembly should require a surcharge to VoIP service providers in order to equitably distribute costs associated with high cost areas in Colorado and make them eligible to receive CHCSM funds.

Recommendation 9 – Remove the burden of proof on applicants for new taxi service.

The PUC regulates the supply of taxis through the grant of authority to operate as a common or contract carrier. The PUC promulgated Rule 6203 regarding the application process to operate as a common carrier.

In summary, applicants are required to provide a complete description of the authority sought, including:

- Whether the applicant proposes to operate as a common or contract carrier;
- The proposed type of service (i.e., charter, limousine, sightseeing, taxicab, or scheduled), if the applicant proposes to operate as a common carrier;
- The proposed geographic area of service or the proposed points or routes of service;
- Any proposed restrictions to the authority sought; and
- A description of the make, model, and year of the motor vehicles proposed to be operated, or if unknown, then a summary of the number and types of motor vehicles proposed to be operated.

If an applicant seeks common carrier authority, the applicant must attach signed letters of support indicating a public need for the proposed service. Interestingly, a letter from the applicant is considered a letter of public support. PUC rules establish requirements for a letter of support including:

- the author's name, address, and phone number;
- an explanation of the public need;
- specific support of the applicant's particular request for authority;
- a description of whether and how existing service is inadequate; and
- a statement, signed by the author, stating that the letter contains only information that is true and correct to the best of the author's knowledge and belief.

An applicant must provide a statement of the facts upon which the applicant relies to establish that the application should be granted. If the application seeks common carrier authority, the statement should establish how granting the application is in the public interest. If the application seeks contract carrier authority, the statement should establish the superior, special, or distinctive nature of the transportation service, or how the transportation service will be specifically tailored to meet the customer's needs. An applicant must then provide a statement setting forth his or her qualifications to conduct the proposed operations.

An applicant also must provide the following documentation:

- A statement describing the extent to which the applicant, or any person affiliated with the applicant, holds or is applying for authority duplicating or overlapping in any respect the authority at issue in the application.
- If applicable, current copies of any authority, issued by either a state or federal agency, authorizing the applicant or any of its affiliates to provide for-hire transportation of passengers in the state of Colorado.
- If applicable, a statement that the applicant understands the PUC will, in its discretion, cancel any duplicating or overlapping authorities created by granting the application.
- A statement indicating the town or city where the applicant prefers any hearing to be held.

Given that the PUC dictates market supply through this process, this sunset review finds the regulatory mechanism remarkably imprecise. Essentially, the proper supply of taxis is assumed *a priori.* A change in supply only occurs when an applicant meets the burden of proof discussed previously. This process is carried out in a hearing before an ALJ. Often, the applicant's proposal will be challenged by an existing authority. This can create a rather lopsided situation, particularly when the applicant is a small start-up business and the existing business is a large corporation represented by counsel and experts.

The burden of proof should be reversed so that existing authorities are required to prove that granting the applicant's certificate of authority would result in harm to consumers. The existing process creates legal hurdles for small businesses that serve to protect established businesses, not Colorado consumers.

Much of the rationale that is used to support the *status quo* depends upon arguments against taxi deregulation for support. Admittedly, a great deal of evidence shows that deregulation of the taxi market leads to oversupply, price gouging, and poor customer service. However, oversupply and its attendant problems seems to be more of a problem in areas with active cab stand and street hail markets.[88]

The presence of large open entry cab stand markets leads to oversupply of cabs, as occurred at airports in Dallas and San Jose. In an open entry system, companies have the incentive to put as many cabs on the street as there are drivers willing to pay lease fees and thus fail to act as a gateway control to entry.[89]

[88] Bruce Schaller, *Entry Controls In Taxi Regulation: Regulatory Policy Implications of the U.S. and Canadian Experience*. September 2006, p.8, accessed on September 20, 2007 at http://www.schallerconsult.com/taxi/entrycontrol.pdf, referencing PriceWaterhouse. (1993) *Analysis of Taxicab Deregulation and Re-Regulation*. International Taxicab Foundation, Kensington, MD.

[89] Bruce Schaller, *Entry Controls In Taxi Regulation: Regulatory Policy Implications of the U.S. and Canadian Experience*. September 2006, p. 12, accessed on September 20, 2007 at http://www.schallerconsult.com/taxi/entrycontrol.pdf.

However, this sunset recommendation does not deregulate the taxi market. Thus, arguments that Colorado will face an oversupply of taxis, poor service quality, and destructive competition do not apply to the recommendation. The PUC will maintain regulatory oversight over vehicle safety and insurance compliance. Proper supply will be maintained but the applicant will not be saddled with proving that he or she should be allowed to open a business.

The purpose of intrusion by government into the marketplace is to protect consumers. To be sure, there is evidence that the unregulated taxi market may produce conditions that are harmful to consumers. However, the regulatory process in Colorado regarding market entry is one that serves to protect businesses from competition. The General Assembly should amend Colorado's statutes to allow new businesses to enter the market absent proof that such increase in supply will harm Colorado consumers.

Recommendation 10 – Update reference to census data.

Sections 40-10-105(2)(a) and (b), C.R.S., address the PUC's authority to issue certificates of authority. The statute establishes the duties of the PUC in this regard indexed to population figures based on the 1990 census. This section should be amended to reference 'the most recent census."

Water

Recommendation 11 – Include investor-owned water and sewer corporations in the definition of a public utility.

In Colorado, there are investor-owned water utilities, which provide water to customers, as well as investor-owned sewer utilities which provide sewer services to customers. However, some investor-owned water utilities provide both water and sewer service to their customers.

Currently, water corporations supplying both water and sewer services to customers are not defined as public utilities in Colorado statutes and are therefore not regulated by the PUC. The absence of the aforementioned water corporations in the definition of what constitutes a public utility in Colorado leads to a loophole that allows water corporations to potentially drastically raise fees on sewer rates instead of water rates to avoid regulation by the PUC.

Under the present system regarding the regulation of water corporations, the PUC asserts its jurisdiction over water associations once a complaint regarding water service is filed. Typically, complaints are filed because the consumer believes that a water corporation has increased water rates too drastically.

However, complaints filed regarding increases in sewer rates are currently not subject to PUC oversight due to the fact that the definition of a public utility does not include entities that jointly provide water and sewer services. This allows water corporations that provide water and sewer services to shift potentially controversial rate increases to sewer services. Under the current system, shifting rate increases to sewer services ensures that the PUC does not have jurisdiction, and ultimately oversight, over disputes over potentially unfair rate increases.

The practice of shifting potentially controversial rate increases from water services to sewer services is gaining momentum. Specifically, there have been recent instances where water corporations have implemented the aforementioned strategy to avoid PUC regulation.

As a result, the General Assembly should amend section 40-1-103, C.R.S., to include investor-owned water and sewer corporations in the definition of a public utility. Doing so enhances public protection by allowing the PUC to have jurisdiction in a rate dispute regarding sewer rates. Amending the aforementioned section in statute removes the current loophole that allows water corporations that also provide sewer services to shift rate increases to sewer rate increases in order to avoid PUC jurisdiction.

Administrative Recommendations

General

Administrative Recommendation 1 – Conduct a business process reengineering study, culminating in the replacement of the Integrated File Management System.

The regulatory activities of the PUC are necessarily complex. The PUC's docketing system depends on strict adherence to timelines, clear communication among management, administrative, and professional staff, and the prompt handling of voluminous amounts of paper.

In 2005, the PUC conducted an internal assessment of its business processes with the goal of increasing efficiency, enhancing automation of tasks, and distributing workload more equitably. Among other things, the assessment found that the PUC's technological resources were not sufficient to meet the PUC's needs: the PUC's main database, the Integrated File Management System (IFMS), had become outdated and cumbersome and the PUC lacked a paperless means to handle docketed and non-docketed items. An outside consultant evaluated the PUC in Summer 2005 and corroborated these findings. In response, the PUC made changes to its administrative structure and made the implementation of electronic filing, or e-filing, a priority.

An e-filing system would allow parties to submit records to the PUC electronically. Other features of such a system might include sophisticated imaging and file management components. The PUC envisioned an e-filing system that would be implemented in two phases. The first phase was to be developed by an external vendor and the second by the Information Technology Services (ITS) unit within the Department of Regulatory Agencies (DORA).

Phase One would include all docketed items, including applications for CPCNs, tariff filings, and formal complaints. The PUC went through the request for proposals (RFP) process and selected a vendor in Spring 2006. The selected vendor, however, was inexplicably unresponsive to the PUC, and a contract to develop the system was never executed. Consequently, it was determined that the DORA ITS unit would develop Phase One.

Phase Two would implement e-filing for non-docketed items, including annual report filings for regulated utilities; permit applications for motor carriers exempt from regulation; and web-based filing and payment for the telecommunications direct service programs, such as the CHCSM, the Lifeline program, and the Telecommunications Relay Service. Some components of Phase Two have already been implemented; others are currently under development.

Both phases of the e-filing project are expected to be fully implemented by Spring 2008.

It is understandable that the PUC chose to pursue e-filing without first undergoing a total system replacement. The implementation of e-filing is expected to have an immediate effect on workflow, allowing PUC staff to process filings in a more efficient, organized manner. Equally important, e-filing will represent a substantial improvement to the "public face" of the PUC, easing regulated utilities' interactions with the agency and eventually allowing the public greater access to documents filed with the PUC. Although the PUC's current website offers a wealth of information, finding a specific docket or decision is inordinately challenging. With growing public interest in alternative energy and the environmental impact of the utility industry, there is an increasing need for a web-based system that allows public documents to be easily searched and retrieved. An e-filing system should remedy this problem.

The implementation of e-filing is without question a crucial step in modernizing the way the PUC does business. The system underlying the e-filing application, however, must also be addressed. The PUC has used IFMS for its licensing, case management and tracking needs for over seven years, and the system remains the central electronic clearinghouse for utility regulation in Colorado. DORA's ITS unit has continued to maintain and improve IFMS over the years, but its replacement is inevitable. The PUC needs a state-of-the-art system to support its regulatory activities into the next decade.

That said, technology in and of itself is not a panacea. A software package, no matter how powerful and sophisticated, cannot correct a business' organizational or structural flaws. Although the PUC underwent its internal assessment and an evaluation by an outside consultant in 2005, these findings could never be fully implemented, and by the time business requirements are being gathered for an IFMS replacement, the findings will be several years old. A detailed analysis of the PUC's business functions is beyond the scope of this sunset review, which is intended to focus on broader policy matters. For these reasons, before initiating the process to replace IFMS, the PUC should first undergo a business process reengineering study.

Business process reengineering (BPR) can be described as:

> …a high-level assessment of the organization's mission, strategic goals, and customer needs….Within the framework of this basic assessment of mission and goals, reengineering focuses on the organization's *business processes*—the steps and procedures that govern how resources are used to create products and services that meet the needs of particular customers or markets.[90]

Essentially, BPR projects seek to tie every task an agency does back to the agency's mission statement. Tasks that have no relation to the agency's mission are revised or eliminated. If a business process is outside an agency's statutory mandate, why automate it? A common occurrence in the development of new computer systems is to automate bad processes. Every hour a vendor spends developing system requirements or writing code for an unnecessary business process is, simply put, money wasted. For this reason, federal agencies are required to undergo BPR studies before investing in major technology projects.[91]

The first goal of a BPR study would be to achieve a streamlined business model that defines clear lines of communication among staff, eliminates inefficient or duplicative tasks, and clearly ties all business processes to the PUC's core goals. The second would be to develop a powerful, flexible software application to serve that model.

[90] *Business Process Reengineering Assessment Guide*, United States General Accounting Office, Accounting and Information Management Division, May 1997, p. 5-6.

[91] Applicable federal laws include the Government Performance and Results Act of 1993, the Chief Financial Officers Act of 1990, the Paperwork Reduction Act of 1995, and the Clinger-Cohen Act of 1996. See *Business Process Reengineering Assessment Guide*, United States General Accounting Office, Accounting and Information Management Division, May 1997, p. 8.

The Missouri Public Service Commission (MPSC) underwent BPR and a subsequent system replacement from 1999 to 2002. The MPSC ended up reducing the number of its business processes from 165 to 30, and the resultant computer system has been well received. The MPSC funded the project via an assessment on regulated utilities, and secured the support of these stakeholders by including industry representatives at every stage of the process. In the end, Missouri's utilities realized a clear reduction in administrative costs, thereby recouping their investment in the new system. Colorado should consider this approach.

PUC staff interviewed for this sunset review expressed reservations about undergoing BPR, concerned that such a study might be duplicative and costly, or shift resources away from the PUC's pressing technology needs. For this reason, it is critical that this project be fully and adequately funded, from the inception of the BPR study all the way to the full implementation of the new technology.

The PUC's work is vital to the people of Colorado. Although following this recommendation might be expensive, underfunding the PUC's technological needs, or funding them without first conducting a comprehensive, top-to-bottom analysis of how the PUC fulfills its mission, could ultimately be more costly.

Administrative Recommendation 2 – Seek an opinion from the Office of the Attorney General on whether the statute permits the Commissioners to delegate more authority to staff .

Section 40-2-104(1), C.R.S., empowers the Director of the PUC to:

> …appoint such experts, engineers, statisticians, accountants, investigative personnel, clerks, and other employees as are necessary to carry out the provisions of this title or to perform the duties and exercise the powers conferred by law upon the commission.

Indeed, individuals employed by the PUC possess an extraordinary level of education and expertise, serving as subject-matter specialists across a diverse range of areas. Yet staff must still take numerous routine items before the Commissioners for their approval.

At the weekly meetings, a staff member will present an agenda item, e.g., an application for an authority, to the Commissioners and provide a recommendation on how to proceed, e.g., dismiss the application as incomplete or refer it to an ALJ. Although the PUC does not maintain statistics on how often Commissioners follow staff's advice and how often they reject it, over the past six months, Commissioners have followed the recommendations of staff in the vast majority of cases.

The purpose of employing a range of subject-matter experts, including ALJs, on the staff of the PUC is to expedite handling of routine matters, allowing Commissioners to focus their attention on higher-profile matters with implications for broader policy. Delegating more tasks to staff could result in greater administrative efficiency. The PUC should request a legal opinion on whether the statutes permit increased delegation of routine tasks to staff. If the statute does not permit expanded delegation, the PUC should consider seeking legislative changes to allow it.

Administrative Recommendation 3 – Run a bill to recodify the PUC statutes.

The statutes relating to public utility regulation, particularly those relating to the regulation of motor carriers, are in need of an overhaul.

Articles 10, 11, 13, 14, and 16 of Title 40, C.R.S.—all of which relate to motor carriers—should be recodified into a single article for the purpose of clarity and conciseness. Over the decades there has been a lot of regulation, deregulation, partial deregulation, re-regulation, and federal preemption that has resulted in numerous amendments to these statutes. Recodifying the statutes into a single article would:

- **Eliminate duplicative statutes.** For example, all five of the articles have a section regarding the jurisdiction of the courts that read essentially the same.

- **Clarify confusing statutes.** For example, "motor vehicle" is defined differently in four of the five articles.

- **Clarify federal preemption laws.** For example, except for the non-consensual towing of motor vehicles and household goods transportation, states are federally preempted from regulating property transportation with regard to rates, routes, and service. Recodification can clarify this relationship.

The PUC should evaluate the remaining statutes within Title 40 with the same objectives: to remove duplicative statutes, clarify any areas of confusion, and move or rearrange provisions as needed. For example, one area that might warrant review relates to the PUC's audit authority. This authority is currently embedded within the telecommunications statute at section 40-15-107, C.R.S., which has caused confusion for regulated utilities. Moving this provision to a different part of the statute might eliminate confusion.

A comprehensive overhaul of Title 40 would clarify matters for staff and regulated utilities alike. Therefore, the PUC should seek to recodify the statutes relating to public utilities.

Administrative Recommendation 4 – Explore the possibility of creating a Division of Public Utilities as a Type 2 agency, and pursue legislation if appropriate.

In very general terms, Colorado state government is organized into principal departments which consist of Type 1 and Type 2 divisions and Type 1 and Type 2 boards and commissions.

A Type 1 agency is one that exercises,

> its prescribed statutory powers, duties, and functions, including rulemaking, regulation, licensing, and registration, the promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications, independently of the head of the principal department.[92]

Thus, Type 1 agencies are generally recognized as policy autonomous. That is, they operate, by and large, outside the direct control of the executive director.

Regardless, even with Type 1 agencies, the principal department directs and supervises the agencies' budgeting, purchasing, planning and related management functions.[93]

With respect to Type 2 agencies, all of these powers are vested in the principal department itself.[94]

With respect to the PUC, however, this issue is complicated. Under the Administrative Organization Act of 1968, the PUC was transferred to DORA under a Type 1 transfer (meaning it became a Type 1 agency), as a division.[95] As a result, there is no clear statutory distinction between the PUC as a commission that consists of three members, and the PUC as a division that consists of staff.

While this fundamental problem can be traced back to the Administrative Organization Act of 1968, it was further complicated in 1989. At that time, based on a State Auditor's report that concluded that the then-current structure of the PUC violated the Colorado Constitution with respect to appointing authorities, the General Assembly passed legislation that split the three member PUC from the PUC staff. The 1992 Sunset Report of the PUC further attempted to address this issue by changing the title of the Director of the PUC and affirmed the position of the State Auditor that the Commissioners should not be involved in the day-to-day management of the agency. In the end, the Commissioners continued to be appointed by the Governor, but the Director of the PUC was, and still is, appointed by the Executive Director of DORA, with the approval of the Commissioners, and the PUC staff was, and still is, appointed by the Director of the PUC.

[92] § 24-1-105(1), C.R.S.
[93] § 24-1-105(1), C.R.S.
[94] § 24-1-105(2), C.R.S.
[95] §§ 24-1-122(2)(a) and 40-2-103, C.R.S.

While this served to clarify the lines of authority with respect to appointments, it left the status of the PUC staff unclear. The PUC, as a commission, is clearly a Type 1 commission, but the status of the PUC staff was not addressed. This was, in all likelihood, a technical oversight that should be corrected.

Out of all of the other divisions in DORA, only the Real Estate Commission was also transferred to DORA as a division.[96] The Banking Board was transferred to DORA as a Type 1 board and allocated to the Division of Banking, which is created in the same section as that in which the transfer occurs, but the Division of Banking is not designated as a Type 1 or Type 2 agency.[97]

The transfer language with respect to all other divisions makes a distinction between the relevant board or commission and the relevant division, and most of them are Type 1 agencies and all are Type 1 boards or commissions.

By way of comparison, most other divisions in state government are Type 2 agencies. Additionally, most boards and commissions are Type 1 boards and commissions.[98] However, relatively few divisions outside of DORA have governing boards or commissions.

Additionally, the PUC's organic statute specifies that the Director of the Commission:

> shall manage the operations of the agency in order to carry out the public utilities law, to carry out and implement policies, procedures, and decisions made by the commission . . . and to meet the requirements of the commission concerning any matters within the authority of an agency transferred by a type 1 transfer . . . and which are under the jurisdiction of the commission.[99]

This further complicates the relationship between the PUC and the staff in that both are, arguably, Type 1 entities.

Having a Type 1 agency supporting a Type 1 board or commission can be problematic in terms of clear roles and responsibilities and clean lines of accountability.

For example, if the PUC, as a commission, is a Type 1 entity and the staff of the PUC, too, is a Type 1 entity, problems can arise when the Commissioners set a policy course that conflicts with the ideals of staff.

[96] § 24-1-122(2)(k), C.R.S.
[97] § 24-1-122(2)(d), C.R.S.
[98] *See, generally* §§ 24-1-111 through 24-1-128.7, C.R.S.
[99] § 40-2-103, C.R.S.

The most reasonable solution to this problem is to create a Division of Public Utilities and make it a Type 2 agency, while retaining the PUC as the Type 1 governing body of the Division of Public Utilities. Such a change would make a clear distinction between the PUC and the PUC staff and will more clearly delineate the relative roles, responsibilities and accountabilities of each.

This approach has precedence both in and out of DORA. Within DORA, the Division of Financial Services is a Type 2 agency, and the Financial Services Board is a Type 1 board.[100] Similarly, in the Department of Natural Resources, the Division of Wildlife is a Type 2 agency, and the Wildlife Commission is a Type 1 commission.[101]

This recommendation is made to clarify the roles, responsibilities and accountability of the PUC and staff. It is a good government-type of recommendation and, in the future, when DORA identifies similar types of situations, similar recommendations will likely be made. This is most easily evidenced by a similar recommendation in the sunset report of the Colorado Real Estate Commission, which, like this sunset report, is presented to the General Assembly for consideration during the 2008 legislative session.

However, this is an issue that arose late in the sunset process, and, as a result, it was not possible to obtain the input of interested parties and stakeholders. So as to avoid potentially serious unintentional consequences, therefore, this recommendation is made to the principal department (DORA, in this case) and the PUC. DORA and the PUC should explore this issue, determine the consequences such a change would have on operations and the relationship between the PUC and PUC staff, and, if appropriate, pursue legislation at a later date.

Energy

Administrative Recommendation 5 – Reform and streamline the process whereby the PUC approves utilities' purchases of RECs.

RECs are, in short, the unit of currency in the renewable energy world. In general, one REC is equal to one megawatt (MW). Utilities pay producers of renewable energy for each REC that is generated such that the utility is able to legitimately claim that is has purchased X number of MWs, thereby fulfilling its renewable energy portfolio requirements, and the producer, in turn, uses the money realized from the sale of the REC to finance the construction of a specific renewable energy project.

[100] § 24-1-122(2)(c), C.R.S.
[101] § 24-1-124(3)(h), C.R.S.

The RECs, therefore, are key. The people of Colorado, in passing Amendment 37, and the General Assembly, in passing House Bill 07-1281, recognized this and enacted provisions allowing utilities to increase their rates by up to two percent in order to enable utilities to purchase these RECs.[102]

To ensure that PUC-regulated utilities do not spend too much on RECs from individual producers, the PUC was given authority to review the REC agreements and to develop standard terms for such agreements.[103]

However, the process that has developed has actually hindered the development of renewable energy projects in the state. One utility awarded contracts to producers of one MW or greater projects in June 2006. As of this writing (over one year later), the PUC still had not approved the contracts. Since the contracts have not yet been approved, the projects have not moved forward. This has resulted in developers losing their financing, losing security deposits placed on construction materials and, perhaps most importantly, has delayed these renewable energy projects coming on line.

As a result, the people of Colorado have not been able to benefit from these renewable energy sources. Worse, the delays need not have occurred.

The PUC has the statutory authority to develop standard terms for these types of agreements. It should do so. It should further clarify that individual agreements need PUC approval only when they deviate from the standard terms. This will enable developers to know what they are getting into and to better plan their construction schedules when contracts are awarded. This will enable the vision and spirit of Amendment 37 to come to fruition more quickly.

[102] § 40-2-124(1)(g)(I), C.R.S.
[103] § 40-2-124(1)(f)(IV), C.R.S.

Appendix A – 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 not 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 the public interest.