

1992 SUNSET REVIEW

OF THE

COLORADO PUBLIC UTILITIES COMMISSION

**COLORADO
AGENCIES**

**SUBMITTED BY
DEPARTMENT OF**

REGULATORY

JUNE 1992

June 23, 1992

**The Honorable Bob Schaffer, Chairman
Joint Sunrise/Sunset Review Committee
Room 348, State Capitol Building
Denver, CO 80203**

Dear Senator Schaffer:

The Colorado Department of Regulatory Agencies has completed the evaluation of the Colorado Public Utilities Commission. We are pleased to submit this written report, which will be the basis for my office's oral testimony before the Joint Legislative Sunrise/Sunset Review Committee. The report is submitted pursuant to Section 24-34-104 (8)(a), of the Colorado Revised Statutes, which states in part:

"The Department of Regulatory Agencies shall conduct a 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 such supporting materials as may be requested, to the Sunrise and Sunset Review Committee created by joint rule of the Senate and House of Representatives, no later than July 1 of the year preceding the date established for termination..."

The report discusses the question of whether there is a need for the regulation provided under the Public Utilities Law pursuant to C.R.S. 40-1-101 et. seq. as amended. The report also discusses the effectiveness of the Public Utilities Commissioners and the staff in carrying out the intention of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

**Steven V. Berson
Executive Director**

EXECUTIVE SUMMARY

The 1992 Sunset Review of the Colorado Public Utilities Commission (PUC) takes place in an atmosphere of uncertainty and concern. The Commission staff cite issues which include a huge workload and lack of support from the PUC Commissioners and upper level managers. The PUC Commissioners also cite lack of support for their work and lack of understanding of their important decision making role in public utility regulation. Colorado consumer groups, the regulated industries and the Legislature have all sent strong signals of concern over the operation and direction of the Colorado Public Utilities Commission. Taken together, there are many crucial challenges facing the PUC today. However, steps to address the issues highlighted in this report are being taken. A new Executive Secretary has been hired who has begun to work with the PUC Commissioners and staff, and with the Executive Director of the Department of Regulatory Agencies to resolve these issues. This report makes numerous recommendations aimed at improving the operation of the PUC, including the following:

- 1) Revise the PUC's policies on ex parte communications by requiring that all communications with the PUC Commissioners or Administrative Law Judges (ALJs) be "on the record" and available for review by the public.**
- 2) Create a Public Utilities Law Review Committee of the General Assembly which will meet during the interim to discuss public utilities regulatory issues and proposed laws.**
- 3) Revise the Public Utilities Law to provide that the Executive Secretary of the PUC will be the appointing authority for staff positions within the PUC and that the Executive Director of the Department of Regulatory Agencies will be the appointing authority for the Executive Secretary of the PUC in consultation with the PUC Commissioners.**
- 4) Create an advisory and research staff for the PUC Commissioners, to be drawn from existing personnel. The purpose of this staff would be to perform research and to advise the Commissioners on matters coming before them for decision.**
- 5) Create a high quality training program for PUC Commissioners which would be aimed at briefing new Commissioners as quickly and as thoroughly as possible to perform their decision and policy making roles. Commission staff should play an important part in Commissioner training and a training resources inventory should be compiled and updated periodically to foster identification and use of innovative and traditional training resources.**

- 6) Deregulate the few remaining investor-owned water utility companies in Colorado. This will decrease PUC workload and remove unnecessary regulation.**
- 7) Commission a task force to thoroughly study the coordination of transportation regulation and development among the four departments of Colorado state government which have responsibilities in this area: the Departments of Transportation, Revenue, Public Safety and Regulatory Agencies.**
- 8) Explore ways of restructuring and consolidating the PUC with the Office of Consumer Counsel to improve the efficiency and effectiveness of both agencies.**

TABLE OF CONTENTS

CHAPTER 1

INTRODUCTION AND HISTORICAL PERSPECTIVE.....	1
THE SUNSET PROCESS.....	1
HISTORICAL REVIEW.....	2

CHAPTER 2

STRUCTURE AND FUNCTION OF THE COLORADO PUC	8
INTRODUCTION.....	8
OPERATING STRUCTURE	8
EXECUTIVE OFFICE.....	10
OFFICE OF EXTERNAL AFFAIRS.....	10
ADMINISTRATIVE SERVICES/MANAGEMENT AND BUDGET.....	11
ADMINISTRATIVE HEARINGS SECTION	11
SAFETY SECTION.....	11
TRANSPORTATION SECTION.....	12
FIXED UTILITIES SECTION.....	12
OTHER IMPORTANT UTILITY REGULATORY PERSONNEL	13

CHAPTER 3

COLORADO PUBLIC UTILITIES COMMISSION ISSUES.....	14
INTRODUCTION.....	14
NATIONAL.....	14
COLORADO PUC	17
ELECTRIC UTILITY	18
NUCLEAR UTILITY REGULATION - CASE STUDY	26
NATIONAL TELECOMMUNICATIONS	29
COLORADO TELECOMMUNICATIONS.....	30
TRANSPORTATION	32
DEREGULATION	32
SAFETY	33
INSURANCE.....	34

CHAPTER 4	
SHOULD THE PUC BE CONTINUED?	37
INTRODUCTION	37
RATING THE PERFORMANCE OF THE PUBLIC UTILITIES COMMISSION	38
Organizational Competence	38
Independence	41
Administrative Efficiency	42
Leadership	43
Openness	44
Conclusion	45
Recommendation 1	46
CHAPTER 5	
RECOMMENDATIONS FOR RESOLVING STRUCTURAL AND OPERATING ISSUES	47
INTRODUCTION	47
I. THE EX PARTE COMMUNICATION ISSUE; HOW IS INFORMATION SHARED?	48
Current Ex Parte System Needs Further Reform	49
Solving The Ex Parte Communication Issue	50
Open Communication Should Be Required	52
Recommendation 2	52
Allow Individual Meetings With Disclosure When Case Not Pending	52
Recommendation 3	53
Recommendation 4	53
II. THE STAFF RESOURCES ISSUE: HOW BEST TO HANDLE THE WORKLOAD	54
Settlement Rules Are Needed	55
Recommendation 5	56
Qualifications, Training And Resource Allocation	56
Recommendation 6	60
Stagger Commissioner Terms Of Office	60
Recommendation 7	61
Implement Commissioner Training	61
Recommendation 8	61
Encourage The Commissioners To Hear Cases As An Appeals Court	62
Recommendation 9	62
Perfect Judicial Appeals To The Colorado Court Of Appeals	63
Recommendation 10	63
Coordinate Staff Testimony in Hearings	63

Recommendation 11	64
Expedite Judicial Appeals	64
Recommendation 12	65
Expedite Commission Hearing Process	65
Recommendation 13	68
Relax Rules Requiring Attorney Representation	68
Recommendation 14	69
Strengthen Transportation Fining Authority	69
Recommendation 15	70
Recommendation 16	70
Recommendation 17	70
Strengthen PUC Consumer Protection Function	70
Recommendation 18	71
Create Technical Unit Heads For Telecommunications And Economics In Fixed Utilities	72
Recommendation 19	72
III. PUC MANAGEMENT ISSUES NEED TO BE CLARIFIED	73
New Management Structure Is Needed	73
Recommendation 20	75
Recommendation 21	75
Appointments Of ALJs At The PUC Also Conflict With The Colorado Constitution	76
Recommendation 22	76
Appointment Of PUC Attorney Is Outdated And Contrary To Law	76
Recommendation 23	77
The Role Of The PUC Within DORA Can Be Further Defined Using A Total Quality Management Process	77
IV. ROLE OF THE PUC	79
Create Advisory/Research Staff	80
Recommendation 24	80
Study New Arrangement For PUC: Public Staff	81
Recommendation 25	82
Create Advisory Panel	83
Recommendation 26	83
Deregulate Investor-Owned Water Utilities	83
Recommendation 27	84
Commission Task Force To Study Transportation Regulation	84
Recommendation 28	85
Create Transportation Utility Review Process	85
Recommendation 29	86
Increase PUC Accountability	86

Recommendation 30	87
--------------------------------	-----------

CHAPTER 6

STATUTORY REVISIONS	88
----------------------------------	-----------

I. FIXED UTILITIES STATUTORY AMENDMENTS	88
--	-----------

911 Emergency Providers	88
--------------------------------------	-----------

Recommendation 31	88
--------------------------------	-----------

Determine Basic Local Service	88
--	-----------

Recommendation 32	88
--------------------------------	-----------

Clarify Need For A Certificate	89
---	-----------

Recommendation 33	89
--------------------------------	-----------

Rates Subject To Refund	89
--------------------------------------	-----------

Recommendation 34	89
--------------------------------	-----------

II. SAFETY STATUTORY AMENDMENTS	90
--	-----------

Drug Testing For Jurisdictional Natural Gas Pipeline Operators	90
---	-----------

Recommendation 35	90
--------------------------------	-----------

Statewide One-Call For Jurisdictional Natural Gas Pipeline Operators	90
---	-----------

Recommendation 36	91
--------------------------------	-----------

Increased Issuance Of Civil Penalties On Jurisdictional Natural Gas Pipeline Operators Who Fail To Comply With Safety Regulations	91
--	-----------

Transportation Statutory Amendments	91
--	-----------

Recommendation 37	92
--------------------------------	-----------

Automatic Revocation Of Interstate Carrier Registrations For Failure To Maintain Effective Insurance	92
---	-----------

Recommendation 38	92
--------------------------------	-----------

Emergency Temporary Authority	92
--	-----------

Recommendation 39	92
--------------------------------	-----------

Deregulate Economic Regulation Of Towing Carriers, Except For Police Ordered Tows	93
--	-----------

Recommendation 40	93
--------------------------------	-----------

Deregulate Economic Regulation Of The Transportation Of Unprocessed Agricultural Products	93
--	-----------

Recommendation 41	94
--------------------------------	-----------

Transportation Of Nuclear Materials	94
--	-----------

Recommendation 42	94
--------------------------------	-----------

TABLES

	PAGE
1. COLORADO PUBLIC UTILITIES COMMISSION STATUTORY HISTORY	4
2. COLORADO PUBLIC UTILITIES COMMISSION ORGANIZATIONAL CHART	9
3. STATE PUBLIC UTILITY COMMISSIONS - COMPARATIVE DATA	15
4-7. COMBINED MONTHLY TELEPHONE, GAS AND ELECTRIC UTILITY BILLS: A 1990 SURVEY OF MAJOR U.S. CITIES (Residential, Small Commercial, Large Commercial, Industrial)	21
NOTES REGARDING THE UTILITY RATE SURVEY FOR MAJOR U.S. CITIES	25
8. COMPARATIVE SALARIES, CHAIRMEN AND COMMISSIONERS (1990)	57
NOTES REGARDING COMPARATIVE SALARIES	59
9. TYPICAL TIMETABLE FOR PROCESSING CONTESTED APPLICATIONS FOR OPERATING AUTHORITY	67
10. TYPICAL TIMETABLE FOR PROCESSING NON-CONTESTED APPLICATIONS FOR OPERATING AUTHORITY	68
11. COLORADO PUC WITH PUBLIC STAFF	82

APPENDICES

1. SUNSET STATUTORY EVALUATION CRITERIA	95
2. SOURCES	96

1992 SUNSET REVIEW OF THE COLORADO PUBLIC UTILITIES COMMISSION

CHAPTER 1

INTRODUCTION AND HISTORICAL PERSPECTIVE

THE SUNSET PROCESS

The Colorado Public Utilities Commission (PUC) and its regulatory functions under the Public Utilities Law, C.R.S. 40-1-101 et. seq., will terminate on July 1, 1993, unless continued by the General Assembly pursuant to the Sunset Act, C.R.S. 24-34-104 (22). The purpose of this sunset report is to evaluate the performance of the PUC based on statutory evaluation criteria which are attached as Appendix 1 of this report. The central question this report seeks to answer is whether the continuation of this regulatory program is necessary and beneficial to the public health, safety and welfare of the people of Colorado, and whether, if the program is continued, significant changes are necessary to improve agency operations and thereby enhance the public interest.

Research for this report began in August, 1991. Most of the employees of the Public Utilities Commission were interviewed at length, as well as former employees, current and former Commissioners, representatives of the regulated industries, legislators, consumer activists and many other persons knowledgeable about the operations of the PUC. A literature search was conducted which yielded large amounts of information on public utility commissions in the fifty states. The structure and operation of each state's PUC was examined and compared with that of the Colorado Public Utilities Commission. The National Association of Utility Regulatory Commission's studies and reports were reviewed, along with information provided by the research arm of that organization, the National Regulatory Research Institute. Numerous state and federal laws were also reviewed. Many open meetings of the Public Utilities Commission were observed and the issues discussed were further researched. The Colorado Attorney General's Office was consulted and assisted by reviewing the initial draft. The author of this report wishes to thank all of those persons who gave their time in personal interviews and written submissions in order to make this report possible. (Please see Appendix 2 for Sources)

HISTORICAL REVIEW

The Colorado Public Utilities Commission dates back to the year 1913, when the State Legislature created it as part of the passage of the Public Utilities Act of 1913. Many of the states at that time in history proceeded to create public utility commissions for the purpose of regulating electric, gas and telephone utilities as well as transportation utilities. Prior to that time, the principal concern of state utility regulators was the railroads, and often state public utilities commissions find their roots in state railroad commissions, many of which existed during the 1800's. Some, like the Texas Railroad Commission, which has wide regulatory powers over railroads as well as other utilities in the State of Texas, still exist today.

In the early days of utility regulation, the federal government was the most important player. In 1887, Congress had created the Interstate Commerce Commission (ICC) for the purpose of protecting farmers from exorbitant shipping costs charged by the railroads. As the trucking industry grew in importance in America, Congress responded by passing the Motor Carrier Act of 1935, which extended the ICC's regulatory authority to buses and trucks. In the area of communications, Congress created the Federal Communications Commission (FCC) in 1934 to coordinate the regulation of wire and radio communications. In the energy field, the Federal Power Commission was created by Congress in 1920 to regulate the interstate sale of electricity and natural gas. This Commission was reorganized in 1977 as the Federal Energy Regulatory Commission (FERC) and is now part of the U.S. Department of Energy. Although federal law and federal regulatory policy are still important, state public utility commissions have become increasingly important players in utility regulation, especially since the federal government has moved toward deregulation in the telephone and trucking industries during the last 20 years.

Colorado's PUC became a constitutional fixture of state government in 1954 with the passage of Article XXV of the Colorado Constitution. It provided that, "until such time as the General Assembly may otherwise designate, [the authority to regulate public utilities] shall be vested in the Public Utilities Commission of the State of Colorado". Apparently, the Legislature found the Public Utilities Commission to be such a useful regulatory device, that it was deemed appropriate to essentially "permanentize" its utility regulatory role by placing it in the Colorado Constitution.

In 1968, the Colorado Legislature passed its landmark Administrative Reorganization Act and amended the Colorado Constitution, which resulted in the PUC being made a division within the Department of Regulatory Agencies (DORA). In particular, the Legislature's decision to amend the Constitution (Section 22 of Article IV) to require that government functions be placed within the departments of state government, formally brought to an end all free standing state government agencies, and placed them within line departments in the Executive Branch.

In addition to this major restructuring, the Legislature has also changed the mix of the PUC's regulatory duties over the years, particularly during the last two decades. For example, the General Assembly has deregulated or reduced regulation of such transportation related businesses as trash

haulers; motor vehicles transporting sand, dirt, gravel or road surfacing materials; commercial motor carriers; volunteer transportation; household goods movers; charter buses; luxury limousines; scenic tour operators; and couriers.

Public utility regulation has also changed significantly in the telecommunications area, where the 1982 breakup of the American Telephone and Telegraph Company has resulted in multiple new telecommunications companies and services which dramatically complicate the regulatory picture. In particular, changes in technology which offer new products such as cellular telephones, pagers, mobile radios and cable T.V. related services, present difficult questions for government regulators seeking to appropriately oversee the operations of an industry that was once essentially one unit.

Although regulation in the energy industry has been less subject to change, issues related to cost, environmental impact, nuclear power, alternative forms of energy and conservation are still very much in the forefront of public debate. Although Colorado has taken some steps to flexibly regulate rural electric cooperatives by allowing them, on an individual basis to vote to become deregulated after 1983, energy utilities are of such basic importance to Colorado's citizens that issues relating to their quality of service and cost are constantly before the PUC.

Table 1 on the following page shows the statutory history of the PUC.

TABLE 1

**COLORADO PUBLIC UTILITIES COMMISSION
STATUTORY HISTORY**

1885	Railway Commission established with the power to investigate railroad rates and charges and to recommend, but not enforce, reasonable and just rates.
1893	Statute creating the Railroad Commission repealed.
1907	A three-member State Railroad Commission created but repealed while a court hearing was pending.
1910	Three-member Railroad Commission created.
1913	The Public Utility Act passed creating a three-member Public Utilities Commission and abolishing the State Railroad Commission. The Commission was empowered to adopt, regulate, and enforce intrastate public utilities' rates; to approve the issuance of certain utilities' securities; and to control utilities' capital improvements. The Act transferred to the Commission some of the State Railroad Commission's powers to regulate motor vehicle common carriers along with the regulation of pipeline gas, electrical, telephone, telegraph, and water corporations. Municipally owned utilities and all utilities within home rule cities were excluded from PUC regulation by the state constitution.
1915	The public utilities statutes amended to specify that motor vehicle common carriers providing service similar to that provided by railroads were subject to Commission regulation as public utilities.
1927	The Commission given full and complete jurisdiction over all motor vehicle common carriers.
1931	The Commission given partial control over motor vehicle contract carriers.
1935	Commission authority over motor vehicle contract carriers increased significantly by not allowing the grant of a permit if it would impair the service of motor vehicle common carriers in the area and by requiring the Commission to prescribe minimum rates for motor vehicle contract carriers in competition with motor vehicle common carriers at a level not less than rates of motor vehicle common carriers.

- Late 1930's** **The Commission interpreted the language as giving it jurisdiction over intrastate air common carriers.**
- 1954** **A constitutional amendment established the Public Utilities Commission in the constitution and authorized Commission regulation of all non-municipally owned public utilities within home rule cities.**
- 1955** **The Commission authorized to regulate motor vehicle commercial carriers.**
- 1961** **All suppliers of electricity including cooperative and nonprofit electric associations declared to be public utilities and, therefore subject to Commission regulation.**
- 1967** **Motor vehicle common carriers of property to be regulated according to the doctrine of regulated competition rather than by the doctrine of regulated monopoly.**
- 1969** **Ash and trash motor vehicle carriers placed within the Commission's jurisdiction.**
- 1971** **Towing carriers placed within the Commission's jurisdiction.**
- 1978** **Commercial and common carrier motor vehicles transporting solely sand and gravel or logs and poles removed from Commission regulation.**
- Federal legislation (Airline Deregulation Act of 1978) exempted air carriers having federal authority from state regulation of rates, routes, and service.**
- 1979** **Transportation of hazardous materials by motor vehicle placed within Commission jurisdiction.**
- 1980** **Ash and trash motor vehicle carriers removed from Commission regulation.**
- 1981** **People service transportation and volunteer transportation declared not to be public utilities.**
- 1982** **Federal legislation (Bus Regulatory Reform Act of 1982) increased federal preemptive authority over state regulation of intrastate bus transportation.**

1983 **Cooperative electric associations allowed to exempt themselves from Public Utilities Commission regulation by majority vote of members and consumers. The 1983 legislation also ended the Commission's jurisdiction over municipal utilities' rates and most services, whereas the Commission previously regulated those services when provided to customers outside the municipal boundaries. However, the Commission retained jurisdiction over municipalities in the area of complaints regarding the sale of natural gas by a municipal utility to another public utility.**

Geothermal heat suppliers declared to be affected with the public interest and subject to limited jurisdiction (operating permits). Geothermal heat suppliers selling at wholesale to other entities which are reselling the heat or converting it to electricity and municipal and county geothermal heat suppliers acting alone, together, or in concert with private parties exempted from regulation.

1984 **Carriers of household goods declared to be affected with public interest and subject to regulation (safety and insurance requirements) but not to be public utilities.**

Each provider of intrastate telecommunications service declared to be affected with a public interest and to be a public utility subject to regulation.

Public Utilities Commission to establish standards and procedures to be used in determining whether certain rail carrier transportation should be exempted from regulation.

Legislation was passed to relax regulation of Private Telecommunication Networks (HB 1264).

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

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

- 1986** **Colorado State Patrol, not the Public Utilities Commission, to promulgate rules and financial responsibility requirements for hazardous material transportation by small carriers with a gross vehicle weight of ten thousand pounds or less.**
- Public Utilities Commission to promulgate rules and requirements for the safe transportation of nuclear materials by motor vehicles.**
- Public Utilities Commission to promulgate rules and regulations regarding emergency telephone access.**
- 1987** **Repeal and enactment of Article 15 of Title 40, C.R.S., 1984, concerning the regulation of intrastate telecommunication service, products, services, and providers. Subject to regulation are: basic local exchange service, basic emergency service, public coin telephone service, white page directory listing, local exchange listed telephone number service, new products and services necessary for provision of basic local exchange service, and dual tone multi-frequency signaling. Emerging competitive telecommunications services subject to relaxed regulation: advanced features offered and provided to customers with no more than five lines, premium services, interLATA toll, intraLATA toll, switched access, and private line service. Services, products, and providers exempt from regulation: cable services, cellular telecommunications services, mobile radio service, radio paging service, new products and services other than those necessary to provide basic local exchange service, centron and centron-like services, special arrangements, special assemblies, informational services, operator services, advanced features offered and provided to nonresidential customers with more than five lines, and special access.**
- 1992** **Creation of a high-cost fund administered by the Commission to provide financial assistance to small, local telephone carriers.**
- Office of Consumer Counsel powers expanded to allow intervention in federal proceedings affecting Colorado residential small business or agricultural utility consumers.**
- Public Utilities Commission given power to implement and fund telecommunications relay services for disabled telephone users, conforming with the federal "Americans With Disabilities Act of 1990".**
- Public Utilities Commission given power to flexibly regulate electric, natural gas or steam service public utilities by approving or denying applications for special rate contracts. Utilities cannot subsidize such contracts by raising the rates of other regulated utility operations.**

Source: Report of the State Auditor, January 1988, as updated by DORA.

CHAPTER 2

STRUCTURE AND FUNCTION OF THE COLORADO PUC

INTRODUCTION

The Public Utilities Commission is the largest regulatory agency in Colorado state government. Authorized for 99 full-time employees and regulating industries which generate approximately \$4 billion per year in gross revenues in the State of Colorado alone, the PUC's impact is very significant (Department of Regulatory Agencies Budget, Fiscal Year 1992-93, page 171). More than 1,100 companies rely on the Public Utilities Commission to make timely and informed decisions with respect to their rates and other key details of their operations. These companies include some of the largest in the state, such as NW Transport Service, US West Inc. and Public Service Company of Colorado, (PSCo).

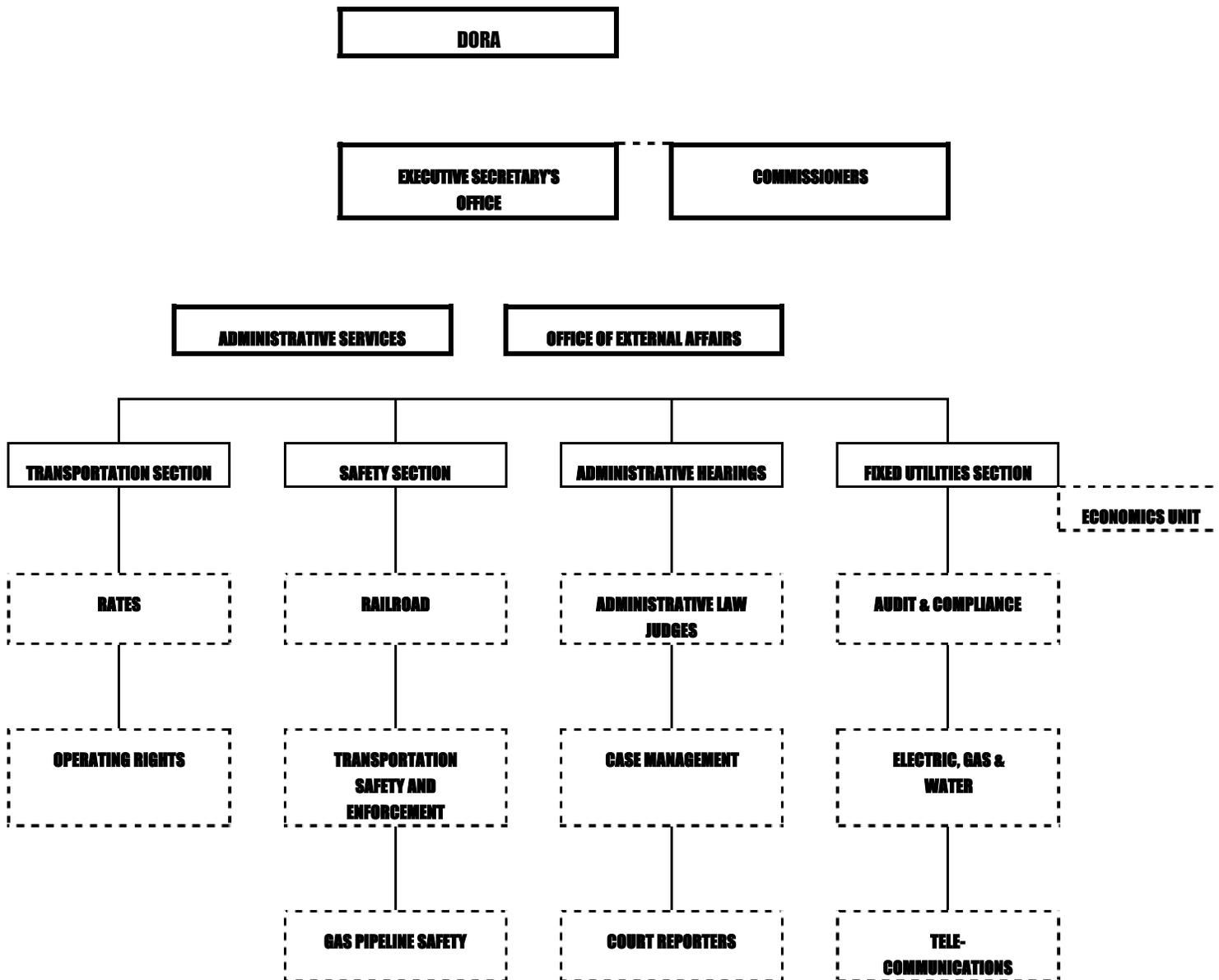
OPERATING STRUCTURE

In order to carry out its many regulatory tasks, the Public Utilities Commission has divided itself into the functional sections shown in Table 2. The structure shown on this Table resulted from an audit recommendation in 1988 which proposed that the PUC "functionalize" its operations by combining employees into sections related to the businesses being regulated. Prior to this reform, parts of the PUC were structured by profession, with all of the financial analysts, for example, grouped together and performing analyses on energy, telecommunications, and other utility regulatory matters. Now, because of the functionalization as shown in Table 2, smaller sections have been created with mixed groups of employees, including, for instance, engineers and financial analysts, who work on only one principal regulatory area, such as telecommunications.

Although this new system makes it easier for an outsider to glance at the PUC's organization chart and gain a quick understanding of which employees work in the different regulatory units, the jury is still out on whether this reformed structure is in any way significantly superior to the PUC's previous practice of grouping similar professionals together, such as all the engineers, and then assigning them to different regulatory matters as the need arose.

TABLE 2

**COLORADO PUBLIC UTILITIES COMMISSION
ORGANIZATIONAL CHART**



NAME OF SECTION	NO. OF STAFF	
Executive Secretary's Office		10
Administrative Services	7	
Office of External Affairs	6	
Transportation Section	17	
Safety Section		13
Administrative Hearings	12	
Fixed Utilities		34
TOTAL	99	

Because the PUC is divided into sections in order to perform its work, it is important in understanding the PUC to focus on the mission, structure, and staffing level of each functional unit. The statewide hiring freeze, which began in August 1991, came at a time when the PUC had many vacant staff positions. This problem has only become worse in the interim as other staff members have retired or left the PUC to take other jobs. As this report is written in April 1992, the vacancy rate at the PUC continues to be a significant problem. Obviously, this requires the remaining employees to carry much larger workloads than intended and is generally very debilitating to morale and efficiency at the PUC.

EXECUTIVE OFFICE

The Executive Office at the Public Utilities Commission is currently staffed by ten persons. Within this office, the Executive Secretary and the PUC Commissioners work closely to coordinate the overall operations of the agency. The Executive Secretary functions as the top manager of the PUC's staff and resources. The Commissioners function as the chief policy makers and ultimate decision makers with respect to utility regulation cases. These people are supported by one administrative officer, one staff assistant and three secretaries. Two full-time attorneys from the Department of Law also provide legal assistance and advice to the Commissioners. The Executive Office of the PUC is the nerve center of the agency and all of the people who work there are housed in close proximity to one another in order to foster close coordination of PUC executive activities. It should be noted that the PUC Commissioners are full-time state employees who are prevented by law from having any other employment during their terms as Commissioners. Therefore, the Commissioners keep full regular business hours and are always available for consultation with the PUC staff.

OFFICE OF EXTERNAL AFFAIRS

This section handles informal consumer complaints against utilities and is responsible for public information and education concerning utility consumer rights, PUC decisions and how to comply with rules and regulations of the PUC. The office identifies consumer complaint trends and uses complaint data in formal proceedings before the Commission to obtain solutions to quality of service issues. The section acts as a facilitator between the utility and consumer in solving complaints, ensures that the utilities are following rules and regulations, and monitors the ratepayer impact of PUC decisions. The section consists of six authorized positions. Three of the FTE's (full-time equivalent staff positions), are responsible for the statewide public information and education program and one position provides staff support.

ADMINISTRATIVE SERVICES/MANAGEMENT AND BUDGET

This section provides internal administrative support to the PUC, such as accounting services, computer support, general clerical and general administrative support. It is also responsible for preparing the annual agency budget request and for monitoring and contracting expenditures throughout the year to ensure that the annual funding authorization is not exceeded. This section is staffed currently by seven persons.

ADMINISTRATIVE HEARINGS SECTION

Six Administrative Law Judges, four court reporters, a staff assistant and one secretary comprise the Administrative Hearings Section of the PUC. This section has been very stable over time with the newest Administrative Law Judge having seven years of experience at the PUC and the senior Administrative Law Judge having fifteen years of experience. The Administrative Law Judges are responsible for hearing cases and issuing final decisions (recommended decisions) and interim decisions. Formal complaint cases are also heard by the Administrative Law Judges. Recommended decisions may be appealed to the Commissioners, who may allow the decisions to stand by operation of law, may reverse them and enter their own initial decision, and/or remand them to the Administrative Law Judges for further consideration. The Commissioners may also choose to hear all cases themselves. Cases appealed to the Commission, or originally heard by the Commissioners may be reheard if the Commission so determines. Verbatim transcripts of all administrative hearings are reported by court reporters. These verbatim transcripts are available for review by the Commissioners on appeal of any Administrative Law Judge decision to the Commission. These verbatim transcripts are also available for future reference by the litigating parties, the Commissioners, and by courts on appeal.

SAFETY SECTION

The Safety Section of the PUC is divided into three parts: railroad safety, gas pipeline safety and transportation safety and enforcement. One employee basically handles all of the railroad safety issues and the entire safety section is staffed by one secretary. Motor carrier safety, consumer complaints, and carrier complaint matters are handled by six employees. Three safety inspectors deal with gas pipeline safety issues. A section chief oversees all of these safety related matters. This section was created less than two years ago, after the natural gas explosion at the Crested Butte State Bank. Previously, the safety personnel were distributed within the Transportation Section or the Fixed Utilities Section.

TRANSPORTATION SECTION

Seventeen persons staff the Transportation Section of the PUC. It is broken into two parts: the Rates Section and the Operating Rights Section. As the name indicates, the Rates Section, which employs eight people, deals with the adequacy and fairness of rates charged by motor carriers in Colorado. The Operating Rights Section, staffed by seven persons, tracks whether Colorado motor carriers are maintaining the required insurance policies and operating within their authorized areas. This section is headed by a transportation chief who is supported by a secretary.

FIXED UTILITIES SECTION

The PUC employs one chief to oversee the regulatory activities of the several parts of the Fixed Utilities Section. These parts are: (1) Audit and Compliance; (2) Energy and Water; (3) Telecommunications; and (4) Economic Research. Thirty-four persons are employed in the Fixed Utilities Section. The economic research arm of the Fixed Utilities Section employs five economists currently. The economists provide high level economic analysis of telecommunications and energy related issues coming before the PUC.

A large and active section of the PUC today is the Telecommunications Section, which employs eight persons, divided equally between engineers and financial analysts. These persons comprise the professional technical staff who review all important telecommunications matters submitted to the PUC.

Another key section in the Fixed Utilities area is the Energy and Water Section, employing nine persons when fully staffed. This section is also divided evenly between engineers and financial analysts. Like their counterparts in telecommunications, the members of the Energy and Water Section are responsible for the financial and engineering analyses of all important matters in the energy and water area of the PUC's jurisdiction.

Finally, the Audit and Compliance Section is staffed by eight people in all. A principal role of the Audit and Compliance Section is to review the books of the numerous fixed utility companies within Colorado to determine compliance with the laws, rules and regulations of the PUC. This section also handles the rate filings of the independent telephone companies, works on other telecommunications and energy issues and provides support and assistance to the Telecommunications and Energy and Water Sections of the PUC, especially when the workload of those sections becomes heavy. This section, for example, handled the Colorado Ute Electric Association bankruptcy case.

OTHER IMPORTANT UTILITY REGULATORY PERSONNEL

At least a dozen additional people are generally overlooked in considering public utility regulatory personnel in Colorado. These are the persons who staff the PUC by providing legal advice and representation from the Office of the Attorney General. Approximately three and a half full-time Assistant Attorneys General are involved in representing the various portions of the PUC in its regulatory functions. These Assistant Attorneys General are housed at the Attorney General's Office rather than at the offices of the PUC.

The Office of Consumer Counsel is also part of the Attorney General's Office. It consists of ten employees, only two of whom are attorneys, with the balance being financial analysts, engineers, economists or support staff. The Office of Consumer Counsel is headed by a full-time director and the office itself is part of the Consumer Section of the Attorney General's Office. The director of the OCC would be hired and fired by the Attorney General if he or she were a lawyer. The current director, who is not an attorney, was originally hired by a previous Attorney General but is considered part of the Colorado State Personnel System and is therefore not subject to dismissal by the Attorney General, except for good cause. This is a vital issue for the OCC, since the independence of its director and staff is crucial to its main goal, which is to represent residential, small business and rural utility consumers in actions before the Public Utilities Commission. Indeed, the entire reason for creating the OCC, and the purpose of its continued existence, is to focus on the consumer interest, as opposed to the public interest which is represented by the PUC. The public interest is broader than the consumer interest, and includes the public's interest in having responsive utilities which are financially sound. The OCC has provided a strong professional voice in selected regulatory consumer issues before the PUC.

The OCC is an advocate for specific consumer groups. However, the PUC staff must look at all consumer classes. In addition, the OCC can choose what cases it wishes to enter while the Commission and its staff must deal with all matters brought before it, because the PUC is tasked by law to represent the entire public interest.

The PUC staff must review all filings, i.e., advice letters, applications or complaints, before they are considered at an open meeting by the Commission. This includes preparing data sheets which give a written analysis to the Commissioners, checking the filings for technical accuracy, understanding the content of the request and making a recommendation to the Commission for action. The OCC is not required to perform these functions.

CHAPTER 3

COLORADO PUBLIC UTILITIES COMMISSION ISSUES

INTRODUCTION

Public Utilities Commissions, or their equivalents, are fixtures of every state government in the nation. This fact alone signals something of the necessity and importance of public utility regulation and also dictates a thoughtful hesitancy when considering questions of whether to abolish or restructure utility regulatory programs. Although the fifty public utility commissions in America have differing jurisdictional boundaries, with some of them only regulating energy and telecommunications and others broadly regulating state commerce in general, all of them are typified by a board of commissioners which is sometimes elected, but is most often appointed by the governor of the state. Each commission has a staff of professional and support employees, often running into hundreds of persons. This structure of state regulation of public utilities is so common that there even exists a National Association of Regulatory Utility Commissioners (NARUC), which provides information and services to all of its member public utilities commissions in the United States. One of the largest PUCs is found in New York, with seven Commissioners, six hundred seventy eight employees and an annual budget of \$52 million. The smallest PUC is found in South Dakota with three elected Commissioners, twenty two employees and a budget of \$1.2 million annually. Table 3 contains comparative figures compiled by NARUC which show public utility commissions by state and include data on number of commissioners, number of employees, numbers of complaints handled per year and budget authorizations.

NATIONAL

Public utility commissions across the United States are faced with a fascinating and complex variety of issues. About half the states have commissions which are similar to Colorado's, in that they examine and decide matters relating to both fixed utilities, usually defined broadly as energy and telecommunications, as well as the regulation of transportation utilities. The other half of the states, generally speaking, have placed the regulation of transportation utilities, such as intrastate trucking, bus and taxi regulation, in a state department of transportation. The decisions made by these state utility regulatory agencies as they work through the issues presented to them are crucial to the economic development and prosperity of each state.

TABLE 3**STATE PUBLIC UTILITY COMMISSIONS - COMPARATIVE DATA**

STATE	COMMISSIONERS	EMPLOYEES	COMPLAINTS	BUDGET
Alabama	3	152	2,098	8.5 M
Alaska	5	43	NA	3.6 M
Arizona	3	226	5,728	9.9 M
Arkansas	3	114	1,736	4.7 M
California	5	1122	NA	80.9 M
Colorado	3	99	3,945	6.7 M
Connecticut	5	113	NA	8.3 M
Delaware	5	20	171	2.0 M
D.C.	3	64	779	5.1 M
Florida	5	376	5,588	18.3 M
Georgia	5	159	2,390	9.5 M
Hawaii	3	23	176	1.7 M
Idaho	3	57	1,958	2.7 M
Illinois	7	456	5,167	20.8 M
Indiana	5	101	NA	6.7 M
Iowa	3	77	2,248	4.4 M
Kansas	3	237	NA	12.0 M
Kentucky	3	115	1,832	5.0 M
Louisiana	5	85	NA	3.7 M
Maine	3	69	1,417	3.9 M
Maryland	5	135	4,656	7.3 M
Massachusetts	3	111	NA	4.7 M
Michigan	3	240	5,831	15.4 M
Minnesota	5	40	NA	2.4 M
Mississippi	3	145	5,426	6.6 M
Missouri	5	191	NA	3.5 M

NA - Not Available

STATE	COMMISSIONERS	EMPLOYEES	COMPLAINTS	BUDGET
Montana	5	46	NA	1.9 M
Nebraska	5	61	NA	2.3 M
Nevada	5	111	2,331	6.2 M
New Hampshire	3	55	NA	2.9 M
New Jersey	3	367	33,078	21.6 M
New Mexico	3	50	961	2.8 M
New York	7	678	25,088	52.0 M
North Carolina	7	134	5,168	6.2 M
North Dakota	3	50	568	4.0 M
Ohio	5	526	78	28.2 M
Oklahoma	3	426	NA	16.5 M
Oregon	3	452	13,742	27.6 M
Pennsylvania	5	614	NA	29.4 M
Rhode Island	3	38	NA	2.2 M
South Carolina	7	152	1,870	6.7 M
South Dakota	3	22	1,139	1.2 M
Tennessee	3	281	2,082	12.8 M
Texas	3	242	7,951	9.7 M
Texas RR Comm.	3	940	NA	NA
Utah	3	19	1,360	4.9 M
Vermont	3	59	NA	4.3 M
Virginia	3	179	NA	14.2 M
Washington	3	234	3,724	13.5 M
West Virginia	3	178	2,385	7.6 M
Wisconsin	3	184	NA	9.5 M
Wyoming	3	31	472	1.8 M

**Source: NARUC Annual Report, 1991
As updated by DORA**

NA - Not Available

Colorado and our sister states are all confronted by a "new world order" when it comes to utility regulation. State utility commissions were once, "consigned to the sleepy role of rate setting or service review" but are now, "confronted with industry led campaigns to change the intrastate rate and regulatory structure of regulation" (Fredrick Williams, Director, Center for Research on Communication Technology and Society, University of Texas, October 16, 1989) . As a result of many forces, including the breakup of the Bell System, advancing technology, environmental concerns, escalating costs and experiments with outright deregulation, utility regulation is no longer quiet or simple.

Utility regulators in Colorado and in all the states are confronted by the same basic problem: how to tailor regulation appropriately to meet changes in the way modern utilities operate in the United States. This problem is well expressed by the President of the California Public Utilities Commission:

"Technological and regulatory advancements are creating tremendous pressures on federal and state regulatory commissions. The principal issue for regulators is to develop and implement modifications to the existing regulatory structure which can both facilitate the use of market forces where possible and continue to protect consumers.

The most prevalent form of the pressures on regulators is utility bypass. When a customer stops purchasing services or products from a utility and instead purchases them from an alternative non-utility source at a lower cost the customer is bypassing the utility system. Bypass is a descriptive term that is limited to regulated industries; in other industries what we call bypass is called competition.

***Bypass is possibly the most significant problem utilities and regulators face in the transition from monopolies to competition. While regulators welcome competition as a means of improving the efficiency of utility services and minimizing costs for consumers, competition can sometimes work to the disadvantage of certain consumers, usually those with the fewest choices."*(Stanley W. Hulett, "Public Utilities In Transition: Competition and Regulation In the New Age". Vital Speeches of the Day, November 8, 1988.)**

COLORADO PUC

In Colorado, regulated utilities are calling for "flexible regulation". In order to meet potential competitors for their services, they desire a loosening of regulatory reins on the part of the Colorado Legislature and the Colorado PUC. For example, the Legislature passed HB 1104 in the 1989 session, which allows energy utilities to enter into contracts with large users who have a viable alternative energy source. By allowing an expedited review of these contracts by the PUC, Colorado energy companies can better deal with the bypass issue noted above. By obtaining quick approval of their contracts with large customers, energy companies can compete effectively with

the alternative sources. However, the concept of regulatory flexibility is a difficult one. In the past, the principal regulated utilities, the electric company and the phone company, were pretty clearly monopolies. Regulation was a straightforward matter of protecting consumers from price gouging by the utilities in their charges for electric and telephone service. The role of the regulator was to skeptically examine industry's requests for increases in consumer charges while basically making sure that the utility was solvent enough to continue providing service.

Today, with the introduction of various forms of competition in what were traditionally monopoly controlled utility industries, the regulators role must change to recognize and respond to the impact of limited competition. This requires a level of industry/regulatory cooperation and a degree of market analysis which has been heretofore unknown on either the state or federal level. Achieving regulatory goals in traditionally monopolistic industries, "will require some dramatic changes in the nation's regulatory approaches. Reaping the technological rewards from competition while at the same time protecting captive rate payers by maintaining adequate service at reasonable rates demands a very difficult balancing act." (Stanley Hulett, President, California PUC) The Colorado Public Utilities Commission is daily engaged in this balancing act.

The kinds of issues faced by the Colorado PUC can be generally divided into three areas: electric utility issues, telecommunications utility issues and transportation utility issues. Each area is technologically complex, often controversial and constantly evolutionary. This section will discuss some of the issues faced by the Colorado PUC in each of these areas and will focus on one or two such issues to illustrate the work of our PUC.

ELECTRIC UTILITY

Electric utility regulation is often the area of public utility regulation best understood by the average consumer. This is true not only because of the relatively routine nature of natural gas and electricity service to the average household but also because of efforts by the industry to educate the consumer. Public awareness of the electric utility industry took an enormous leap upward in the early 1970's, with the historical convergence of the environmental movement, the Middle East oil embargo, the energy conservation movement and the anti-nuclear power movement. The Colorado Public Utilities Commission was heavily involved and continues to be the focus of much debate and progress as it seeks to regulate the electric utility industry in Colorado while responding to these now well-established public concerns.

The National Conference of State Legislatures, (NCSL), reports:

"A heightened awareness throughout the United States of the environmental effects of electric power production, coupled with a renewed emphasis on energy conservation, will influence state legislative activity in the electric utility area. Incentives to encourage alternative power supplies and the environmental aspects of facility siting constitute the

top priorities in the electric utilities topic area. Over half the states planned to address one or both of these policy issues in FY 1991. Incentives to encourage customer energy conservation and utility management efficiency are also ranked as high priorities.

These top ranked issues tend to parallel and corroborate the amended Federal Clean Air Act and the emerging National Energy Strategy (NES) in that they reflect a general concern for global warming, acid rain and a renewed interest in the environmental affects of fossil fuel based electrical power production. The amended Clean Air Act will have a substantial impact on the cost of producing electrical power. Extensive air pollution abatement equipment will influence a utility's choice of fuel, and there will most likely be a shift toward natural gas and/or low sulphur coal.

Co-generation and waste-to-energy are the top sub-issues in this area. The strong interest in these areas reflects ongoing state involvement in the Public Utility Regulatory Policy Act (PURPA) and a concern for combined solutions to solid waste management and the satisfaction of electrical power demands. Several states, following New Jersey's lead, adopted competitive bidding programs for qualified facilities under PURPA. State Legislatures and public utility commissions are emphasizing "least cost planning" strategies and "integrated resource management". This approach to energy planning merges energy issues with solid waste management and environmental protection issues.
(NCSL State Issues, 1991, page 47)

The Colorado Public Utilities Commission is very much in line with this list of electric utility issues as outlined by the NCSL. As part of a settlement of a major Public Service Company rate case, the PUC is currently heavily involved in dockets pertaining to explorations of demand side management, integrated resource planning, collaborative decision making and decoupling Public Service Company's revenues from its sales with a view toward providing electric utilities with incentives to conserve energy. These efforts are aimed at achieving a balanced approach to electrical demand management and diversification of supply resources. They involve the hard work of PUC staff, industry experts, attorneys and company representatives as well as input from the Office of Consumer Counsel, the Colorado Attorney General's Office, the Land and Water Fund of the Rockies, and the Colorado Office of Energy Conservation. This new regulatory concept holds the promise of conserving energy resources and consumer dollars by avoiding the cost of building new power plants while at the same time providing good access to energy at a reasonable cost. The leadership of the Colorado PUC has exercised wisdom and foresight by encouraging and participating in these difficult but promising new regulatory strategies.

Potentially, there are numerous other steps the Public Utilities Commission could take in the future which would benefit Colorado consumers and the electric utility industry. For example, by following the lead of the North Carolina Public Utilities Commission, which is involved with the major utilities in that state in the North Carolina Alternative Energy Corporation (NCAEC), the Colorado PUC could work in partnership with industry and other governmental units to conduct research, technology implementation and public education programs to promote energy efficiency. Colorado is rich in resources in this regard, including one of the world's premier solar energy research institutes (SERI), located in Golden, Colorado.

The bottom line in any electric utility regulatory scheme is rates. The Colorado PUC has been successful in keeping Colorado utility rates in the reasonable range. Colorado ranks 19th in the country in terms of the per kilowatt hour cost of electric service. (1989 Development Reportcard of the States) Tables 4-7 on the following pages compare the relative cost of utility services in the largest U.S. cities from lowest to highest cost.

The Colorado PUC has engaged in numerous settlements of electric utility rate increase cases over the last decade, which have served to further expedite the regulatory process, thereby saving the industry and consumers money. For example, Public Service Company has settled all of its major rate cases with the PUC, often by involving the Office of Consumer Counsel in the settlement negotiations, since 1983. Cases in point include the Fort St. Vrain Decommissioning case and the major Public Service Company rate case in 1991. In the latter, the company's proposed rate increase was in the range of \$13 million. The PUC staff provided expert testimony regarding the revenue requirements of PSCo. Staff analysis of the filing and recommendations for stipulations allowed the Commission to reach a settlement of the matter. That settlement called for a \$22 million refund to consumers and a \$36 million reduction in PSCo rates over 18 months.

The PUC has also been heavily involved in another case of major importance to Colorado electric consumers, the Colorado Ute bankruptcy case. At the urging of Colorado Ute, that utility was partially deregulated by the Colorado Legislature in 1983. In addition, the Legislature forced the Colorado PUC to cut back its electrical utility regulatory activity by slashing five persons from the PUC's budget in 1986. In 1989, Colorado Ute declared bankruptcy, and has been operated through the courts by a receiver in bankruptcy pending a settlement of the case. Only recently, the Federal Energy Regulatory Commission approved the sale of all the assets of the defunct utility to Public Service Company of Colorado, Portland based PacifiCorp and Tristate Generation and Transmission Association of Thornton, Colorado. The Colorado PUC played a pivotal role in working through the settlement negotiations, approving them and giving supporting testimony before the Federal Energy Regulatory Commission which resulted in the sale of the defunct utility's assets and the assumption of its service responsibilities by other utilities.

TABLE 4

**COMBINED MONTHLY TELEPHONE, GAS AND ELECTRIC UTILITY BILLS:
A 1990 SURVEY OF MAJOR U.S. CITIES**

RESIDENTIAL

SURVEY RANKING		TELEPHONE	GAS	ELECTRIC	TOTAL
1	PHILADELPHIA	\$15.74	\$90.92	\$66.39	\$173.05
2	NEW YORK CITY	\$14.27	\$89.29	\$68.47	\$172.03
3	SAN DIEGO	\$11.85	\$91.37	\$51.80	\$155.02
4	BOSTON	\$13.64	\$89.46	\$47.77	\$150.87
5	WASHINGTON, D.C.	\$18.98	\$96.53	\$33.30	\$148.81
6	LOS ANGELES	\$11.85	\$76.56	\$52.94	\$141.35
7	CLEVELAND	\$18.75	\$61.83	\$60.54	\$141.12
8	PHOENIX	\$13.50	\$74.98	\$51.26	\$139.74
9	SAN FRANCISCO	\$11.85	\$69.72	\$51.79	\$133.36
10	SAN JOSE	\$11.85	\$69.72	\$51.79	\$133.36
11	RALEIGH	\$16.01	\$71.42	\$43.23	\$130.66
12	BALTIMORE	\$19.65	\$69.02	\$41.11	\$129.78
13	ATLANTA	\$19.40	\$71.31	\$37.98	\$128.69
14	INDIANAPOLIS	\$18.23	\$66.39	\$40.37	\$124.99
15	CHICAGO	\$12.85	\$59.81	\$51.76	\$124.42
16	DETROIT	\$15.58	\$62.57	\$45.39	\$123.54
17	MILWAUKEE	\$19.75	\$69.27	\$34.30	\$123.32
18	COLUMBUS	\$18.75		\$38.10	\$122.34

			\$65.49		
19	JACKSONVILLE	\$13.55	\$69.81	\$37.85	\$121.21
20	PORTLAND	\$19.58	\$72.72	\$24.46	\$116.76
21	HOUSTON	\$14.55	\$57.56	\$40.79	\$112.90
22	DALLAS	\$13.90	\$63.07	\$34.60	\$111.57
23	SAN ANTONIO	\$13.35	\$62.68	\$35.52	\$111.55
24	NEW ORLEANS	\$19.12	\$50.07	\$36.18	\$105.37
25	EL PASO	\$12.60	\$44.43	\$45.06	\$102.09
26	SEATTLE	\$15.00	\$56.52	\$26.93	\$98.45
27	DENVER	\$14.53	\$43.29	\$36.90	\$94.72
28	MEMPHIS	\$15.65	\$47.13	\$30.90	\$93.68
<p>The following assumptions are for rates in effect January 1, 1990, exclusive of taxes: Telephone - Basic rate for one line including the federal access charge, no long distance calls, no custom features. Gas usage - 120 CCF. Electric usage - 500 KWH (with a demand of 3 KW).</p>					
<p>Compiled by the Colorado Public Utilities Commission, July 1990</p>					

TABLE 5**COMBINED MONTHLY TELEPHONE, GAS AND ELECTRIC UTILITY BILLS:
A 1990 SURVEY OF MAJOR U.S. CITIES****SMALL COMMERCIAL**

SURVEY RANKING		TELEPHONE	GAS	ELECTRIC	TOTAL
1	NEW YORK CITY	\$215.15	\$92.28	\$227.96	\$535.39
2	ATLANTA	\$236.50	\$76.34	\$182.37	\$495.21
3	INDIANAPOLIS	\$301.00	\$72.64	\$117.18	\$490.82
4	RALEIGH	\$288.30	\$67.23	\$131.72	\$487.25
5	NEW ORLEANS	\$230.10	\$63.45	\$198.85	\$482.40
6	CLEVELAND	\$240.90	\$61.83	\$168.14	\$470.87
7	BOSTON	\$218.73	\$91.71	\$152.93	\$463.37
8	PORTLAND	\$279.50	\$65.25	\$87.49	\$432.25
9	SEATTLE	\$257.10	\$80.07	\$79.16	\$416.33
10	PHILADELPHIA	\$145.70	\$99.26	\$169.52	\$414.48
11	COLUMBUS	\$240.90	\$65.49	\$101.10	\$407.49
12	DETROIT	\$174.20	\$72.99	\$158.97	\$406.16
13	PHOENIX	\$151.80	\$75.17	\$166.80	\$393.77
14	WASHINGTON, D.C.	\$94.07	\$98.98	\$198.61	\$391.66
15	LOS ANGELES	\$126.75	\$87.11	\$174.84	\$388.70
16	MEMPHIS	\$226.55	\$54.92	\$102.97	\$384.44
17	BALTIMORE	\$197.50	\$72.18	\$106.72	\$376.40
18	SAN FRANCISCO				\$374.33

		\$126.75	\$90.29	\$157.29	
19	SAN JOSE	\$126.75	\$90.29	\$157.29	\$374.33
20	SAN DIEGO	\$126.75	\$94.27	\$140.44	\$361.46
21	JACKSONVILLE	\$167.00	\$76.52	\$113.15	\$356.67
22	HOUSTON	\$158.75	\$67.00	\$118.33	\$344.08
23	MILWAUKEE	\$179.48	\$61.71	\$98.40	\$339.59
24	DENVER	\$185.35	\$45.72	\$101.00	\$332.07
25	DALLAS	\$143.75	\$68.51	\$110.76	\$323.02
26	EL PASO	\$124.00	\$44.72	\$153.76	\$322.48
27	CHICAGO	\$132.72	\$65.01	\$124.58	\$322.31
28	SAN ANTONIO	\$133.00	\$62.68	\$108.67	\$304.35
<p>The following assumptions are for rates in effect January 1, 1990, exclusive of taxes: Telephone - Basic rate for five lines including the federal access charge, no long distance calls, no custom features. Gas usage - 120 CCF. Electric usage - 1500 KWH (with a demand of 5 KW).</p>					
<p>Compiled by the Colorado Public Utilities Commission, July 1990</p>					

TABLE 6

**COMBINED MONTHLY TELEPHONE, GAS AND ELECTRIC UTILITY BILLS:
A 1990 SURVEY OF MAJOR U.S. CITIES**

LARGE COMMERCIAL

SURVEY RANKING		TELEPHONE	GAS	ELECTRIC	TOTAL
1	NEW YORK CITY	\$766.80	\$377.26	\$1,176.59	\$2,320.65
2	PHILADELPHIA	\$564.40	\$497.69	\$1,220.61	\$2,282.70
3	BOSTON	\$1,000.03	\$402.22	\$780.23	\$2,182.48
4	CLEVELAND	\$800.30	\$293.00	967.43	\$2,060.73
5	DETROIT	\$635.40	\$305.93	\$1,009.79	\$1,951.12
6	NEW ORLEANS	\$481.20	\$426.23	\$987.49	\$1,894.92
7	ATLANTA	\$720.80	\$337.70	\$813.03	\$1,871.53
8	WASHINGTON, D.C.	\$573.82	\$490.96	\$768.85	\$1,833.63
9	LOS ANGELES	\$485.70	\$396.69	\$951.07	\$1,833.46
10	SAN FRANCISCO	\$485.70	\$404.54	\$891.00	\$1,781.24
11	SAN JOSE	\$485.70	\$404.54	891.00	\$1,781.24
12	COLUMBUS	\$800.30	\$304.42	\$673.68	\$1,778.40
13	SAN DIEGO	\$485.70	\$452.07	\$782.10	\$1,719.87
14	BALTIMORE	\$745.00	\$308.99	\$660.40	\$1,714.39
15	JACKSONVILLE	\$674.90	\$319.61	\$717.50	\$1,712.01
16	RALEIGH	\$662.70	\$386.21	\$658.00	\$1,706.91
17	INDIANAPOLIS	\$752.00	\$288.09	\$618.92	\$1,659.01
18	PHOENIX			\$911.76	\$1,648.10

		\$419.50	\$316.84		
19	MILWAUKEE	\$701.30	\$307.72	\$634.75	\$1,643.77
20	MEMPHIS	\$750.90	\$251.76	\$636.60	\$1,639.26
21	CHICAGO	\$423.24	\$293.98	\$746.31	\$1,463.53
22	EL PASO	\$391.50	\$207.74	\$772.40	\$1,371.64
23	HOUSTON	\$522.00	\$269.56	\$557.36	\$1,348.92
24	SAN ANTONIO	\$423.00	\$299.98	\$620.88	\$1,343.86
25	PORTLAND	\$559.00	\$299.90	\$482.00	\$1,340.90
26	DALLAS	\$472.50	\$296.47	\$537.69	\$1,306.66
27	SEATTLE	\$514.20	\$288.24	\$500.34	\$1,302.78
28	DENVER	\$420.70	\$193.23	\$597.80	\$1,211.73
<p>The following assumptions are for rates in effect January 1, 1990, exclusive of taxes: Telephone - Basic rate for 10 PBX trunk lines including the federal access charge, no long distance calls, no custom features. Gas usage - 602 CCF. Electric usage - 10,000 KWH (with a demand of 30 KW).</p>					
<p>Compiled by the Colorado Public Utilities Commission, July 1990</p>					

TABLE 7

**COMBINED MONTHLY TELEPHONE, GAS AND ELECTRIC UTILITY BILLS:
A 1990 SURVEY OF MAJOR U.S. CITIES**

INDUSTRIAL

	SURVEY RANKING	TELEPHONE	GAS	ELECTRIC	TOTAL
1	NEW YORK CITY	\$1,917.00	\$29,907.00	\$42,050.37	\$73,874.37
2	PHILADELPHIA	\$1,411.00	\$30,635.48	\$34,118.36	\$66,164.84
3	CLEVELAND	\$2,000.75	\$28,895.38	\$29,646.20	\$60,542.33
4	LOS ANGELES	\$1,214.25	\$29,326.72	29,401.82	\$59,942.79
5	DETROIT				

		\$1,588.50	\$26,325.49	\$30,809.88	\$58,723.87
6	BOSTON	\$2,500.04	\$32,250.64	\$21,705.00	\$56,455.68
7	HOUSTON	\$1,305.00	\$32,404.92	\$18,734.70	\$52,444.62
8	SAN DIEGO	\$1,214.25	\$29,395.19	\$21,554.82	\$52,164.26
9	PHOENIX	\$1,048.75	\$24,555.18	\$26,239.15	\$51,843.08
10	COLUMBUS	\$2,000.75	\$28,952.29	\$19,958.36	\$50,911.40
11	CHICAGO	\$993.20	\$24,748.40	\$24,185.67	\$49,927.27
12	JACKSONVILLE	\$1,687.25	\$23,367.10	\$24,600.00	\$49,654.35
13	SAN FRANCISCO	\$1,214.25	\$23,922.15	\$23,597.52	\$48,733.92
14	SAN JOSE	\$1,214.25	\$23,922.15	\$23,597.52	\$48,733.92
15	ATLANTA	\$1,802.00	\$20,615.16	\$24,950.40	\$47,367.56
16	SAN ANTONIO	\$1,057.50	\$24,952.44	\$21,227.00	\$47,236.94
17	BALTIMORE	\$1,862.50	\$26,306.39	\$18,508.94	\$46,677.83
18	RALEIGH	\$1,656.75	\$18,924.30	\$25,918.00	\$46,499.05
19	EL PASO	\$978.75	\$18,074.87	\$27,416.00	\$46,469.62
20	NEW ORLEANS	\$1,202.50	\$20,180.40	624,235.90	\$45,618.80
21	MEMPHIS	\$1,877.25	\$22,005.67	\$21,656.40	\$45,539.32
22	DALLAS	\$1,181.25	\$25,863.51	\$17,917.44	\$44,962.20
23	SEATTLE	\$1,285.50	\$25,484.40	\$15,719.90	\$42,489.80
24	INDIANAPOLIS	\$1,880.00	\$22,096.04	\$17,884.40	\$41,860.44
25	MILWAUKEE	\$1,753.25	\$21,968.94	\$17,180.00	\$40,902.19

26	PORTLAND	\$1,397.50	\$20,107.14	\$18,532.00	\$40,036.64
27	DENVER	\$1,051.75	\$17,105.49	\$21,393.77	\$39,551.01
28	WASHINGTON, D.C.	\$1,434.54	.	.	.
<p>* This large of load would be on a contract basis.</p> <p>The following assumptions are for rates in effect January 1, 1990, exclusive of taxes: Telephone - Basic rate for 25 PBX trunk lines including the federal access charge, no long distance calls, no custom features. Gas usage - 6024 MCF. Electric usage - 400 MWH (with a demand of 1000 KW).</p>					
<p>Compiled by the Colorado Public Utilities Commission, July 1990</p>					

NOTES REGARDING THE UTILITY RATE SURVEY FOR MAJOR U.S. CITIES

The sample telephone bills are based on "flat rate" charges except where only measured or message service is available. In those cities where measured/message service is used, the following assumptions by customer type were used to calculate the bills.

RESIDENTIAL SERVICE

Telephone – Flat rate plus customer access line charge (or if on measured service, 60 calls per month for average length of five minutes; 80 percent of calls within the closest zone, 20 percent of calls in the next zone, no toll calls; 60 percent of calls on day rates, 20 percent of calls on evening rates, 20 percent of calls on weekend rates).

SMALL COMMERCIAL SERVICE

Telephone – 5 business lines plus customer access line charge (or if on measured service, 250 calls per month per line for average length of 2 minutes; 80 percent of calls within the closest zone, 20 percent of calls in the next zone, no toll calls; 80 percent of calls on day rates, 20 percent of calls on evening rates).

LARGE COMMERCIAL SERVICE

Telephone – 10 PBX trunk lines plus customer access line charge (or if on measured service, 600 calls per month per trunk for average length of 2 minutes; 80 percent of calls within the closest zone, 20 percent of calls in the next zone, no toll calls; 80 percent of calls on day rates, 20 percent of calls on evening rates).

INDUSTRIAL SERVICE

Telephone – 25 PBX lines plus customer access line charge (or if on measured service, 600 calls per month per trunk for average length of 2 minutes; 80 percent of calls within the closest zone, 20 percent of calls in the next zone, no toll calls; 80 percent of calls on day rates, 20 percent of calls on evening rates).

NUCLEAR UTILITY REGULATION - CASE STUDY

Perhaps most illustrative of the issues before the PUC and the results of its work is the strange and unique history of the Fort St. Vrain Nuclear Electric Generating Plant owned by the Public Service Company of Colorado and located in Platteville, 37 miles northeast of Denver. Prior to its shutdown in 1989, Fort St. Vrain was the first commercial nuclear electric generator of its kind in the United States. The Colorado PUC approved the building and operation of this unique machine in early 1968 at the request of the Public Service Company of Colorado and the reactor's design company, the now defunct Gulf General Atomic Company. The federal government was also involved in promoting the development of nuclear power generating stations through its Atomic Energy Commission and subsequently through the Energy Research and Development Administration and the Department of Energy. Faced with an apparent need to add generating capacity in Colorado and the assurances of the industry that the nuclear plant would be safe, economical and non-polluting, the PUC gave its permission to build Fort St. Vrain.

The plant began operation in 1976, and during thirteen years of operation, never achieved its promised potential. Quickly gaining a reputation as a "troubled plant," Fort St. Vrain never operated above 85% of its rated capacity, even in the prime of its life. Overall, the shareholders of Public Service Company spent \$400 million on the plant, but serious operating problems finally forced its closure in 1989. Three years before, in 1986, the Colorado PUC required Public Service Company of Colorado to remove the Fort St. Vrain generating station and its related costs from the rate base charged to Colorado consumers.

The history of Fort St. Vrain is a history of firsts, not all of them positive by any means. Fort St. Vrain was the first and only nuclear power station in Colorado and was the first commercial high temperature gas cooled reactor in the country. It was the first and only reactor built by Gulf General Atomic. The reactor brought the issues of transportation of commercial nuclear materials and disposal of commercial nuclear waste to Colorado's Governor, legislators and regulators for the first time. Fort St. Vrain will also be the first active nuclear electric generating station to be decommissioned and dismantled in the United States, thus providing valuable information and guidance to other government entities which must oversee the dismantling of other nuclear plants around the world. Finally, Fort St. Vrain will likely achieve another first when it becomes the first nuclear power station ever to be converted and repowered as a natural gas fueled electrical generating plant.

The Colorado PUC acted swiftly to settle the matter of Fort St. Vrain when it decided in November, 1991, to allow Public Service Company to dismantle the plant, beginning in 1992. The plan was basically hammered out in an agreement between Public Service Company and the Office of Consumer Counsel. Attorneys representing low income utility consumers were also involved. Although the approval of the plan by the PUC was swift, it was not without controversy. After some initial concern on the part of the Commissioners, and after a formal hearing on the settlement, the Commissioners decided to let it go forward.

As in so many other cases, the Commission was faced with balancing the equities between the industry and consumers and trying to make a decision which, in the long run, would be most beneficial for Colorado citizens. It began by deciding that the settlement worked out by PSCo and the OCC was in the public interest because it traded a revenue stream for current decommissioning (\$13.9 million per year for 12 years) for an agreement from the company that it would not seek certain "regulatory costs" in the future (up to \$50 million per year for 12 years). After a settlement hearing which included a discussion of the pros and cons of the plan, the decision to close the plant and dismantle its nuclear components now rather than waiting, perhaps for decades, was found to be the most beneficial to all concerned. The plan involves a trade-off, whereby the company received a promised revenue stream for decommissioning while in turn giving up the right to claim payment in the rate base for certain other regulatory principles. The cost to the consumers over the next 12 years should be neutral at a minimum and could very well reduce their electric rates.

As stated above, PSCo gave up the right to claim up to \$50.7 million a year in return for receiving a revenue stream of \$13.9 million for decommissioning of Fort St. Vrain. This means that the typical residential customer will pay \$0.43 per month for the decommissioning of the plant but in turn will receive a reduction of future costs that could amount to as much as \$1.44 per month. The typical commercial customer will pay \$4.33 per month for decommissioning while receiving a reduction of future costs of up to \$17.62 per month. Between now and the year 2005 the company will not include up to \$50.7 million of otherwise allowable costs in any rate case it files with the Commission.

In addition, PSCo agreed to donate a minimum of \$13 million and as much as \$32 million of shareholder monies to the Colorado Energy Assistance Foundation (CEAF). This foundation is authorized by state law to raise funds for energy assistance to low income persons. Finally, the agreement calls for PSCo to donate \$1 million and to match donations on a dollar for dollar basis made by its customers up to \$2.5 million to the CEAF.

The Fort St. Vrain case illustrates the complexity, impact and sensitivity of electric utility regulatory issues over time in Colorado. The PUC has had to deal with and resolve difficult public policy questions pertaining to the plant including: Is this plant necessary in the first place? Where should the plant be built? Will the costs of electricity generated by the plant be economical or will rate payers end up being charged for untested new technology? How will nuclear waste be disposed of? Will there be special security at the plant for nuclear materials? What is an acceptable operating capacity for the plant over time? Are the operating problems encountered by the plant a threat to human or

environmental safety? Should the plant be shut down due to its operating problems? Who should pay for the unsuccessful nuclear plant and its poor generating history? Should the plant be dismantled now or fifty years in the future? How should the electric generating capacity of the plant be replaced and the problems of a Fort St. Vrain avoided in the future?

As Colorado's Public Utilities Commission proceeded to identify and work through the kinds of questions posed above over the course of the last two decades, it has made mistakes, inspired guesses and difficult calls, sometimes within the same deliberation. Most of these matters were cases of first impression in Colorado. At the time the approval for Fort St. Vrain was given, it was heavily supported by the federal government and powerful utility and industry groups, many with national bases of funding. When Fort St. Vrain was proposed it looked like a good deal, however, the Commission was uncertain of the new technology offered by this plant and as a precaution, placed protective language in its order approving the construction of the plant. This language put the burden on the company's stockholders if the costs of constructing and operating Fort St. Vrain exceeded the costs of construction and operation of a similar sized fossil fuel plant, had it been built instead. The unsuccessful operation of the plant forced the PUC to first place a penalty in the company's Fuel Adjustment Clause. This penalty started in the mid-1980's and was to be exercised if the plant did not perform up to certain standards. Because of this penalty provision, the performance of the plant, and several law suits, the company asked to settle these issues. In 1986, a settlement was reached between the company, the Commission and the parties to the law suits. In addition to requiring the company to refund certain sums of money, the settlement removed the plant from rate base, placed the responsibility of decommissioning on the stockholders of the company and allowed the company to sell power from the plant back into its system as a non-regulated utility. After operating in this manner for several years, the management of the company elected to shut down the plant in 1989. Potentially, this exposed the major electric utility in the state to a ruinous financial situation, but the interest of the consuming public in a safe and reliable electric generating system outweighed the gravity of the company's financial situation. At any rate, there was considerable question whether the plant could be made to work economically no matter how much longer the operators were given to "work out the bugs".

In deciding to dismantle Fort St. Vrain now and allow some of the costs of that process to be borne by Colorado rate payers, the PUC is taking a calculated risk. Some disagree with the decision to allow PSCo to charge the rate payers. They ask "Why should PSCo's nuclear mistake continue to be paid for by Colorado citizens?" The PUC's response was thoughtful and well calculated in that it made use of an agreement basically struck between the utility and the Office of Consumer Counsel, thereby lending credibility to its terms. Aside from the promised monetary benefits to Colorado rate payers, the straightforwardness of the plan to dismantle the plant now rather than waiting fifty years and letting someone else do it then has an essential appeal. Further, expert witnesses pointed out that the cost of dismantling the plant in the future could be enormous. "For example, evidence showed that the cost of storage of low level radioactive waste rose 11.9% per year over the last ten years. Today's prices for storage of low level radioactive waste range from \$70 per cubic foot to \$500 per cubic yard, with prices expected to increase dramatically in the future. With up to 140,000 cubic feet of nuclear contaminated

material that will need to be stored, it is essential that the problem be addressed at the earliest possible date." (Colorado PUC News Release, November 21, 1991) The basic logic of taking the bull by the horns now rather than saddling a future commission with the decision in circumstances which may be financially and environmentally worse, is a reasonable judgement for which the Commissioners, the OCC and the industry should be credited. However, only continued attention by all the parties concerned will assure that Colorado rate payers will eventually reap the full benefits of this agreement.

NATIONAL TELECOMMUNICATIONS

Telecommunications policy is the hot issue of the 1990's for public utility commissions across the country. The debate, which is taking place in Congress as well as in state legislatures and PUCs, focuses on protection of telephone customers and efforts to evolve appropriate deregulation, flexibility and competition policies for the telecommunications industry. New technology is driving much of the debate. In every state, PUCs are confronted with the promise of new and useful telecommunications services and questions of the cost and regulatory treatment of those services. As never before, PUCs are being called on to answer questions such as, "Is there a first amendment right in allowing consumers access to pay per call service (also known as "900" service) when the content of the service may include pornographic material? Should caller ID, which allows customers to view the telephone numbers of incoming calls before answering, be allowed as a service to consumers with or without "per line or per call blocking", which protects the anonymity of consumers with unpublished numbers? How should these new services be priced? Should they be considered as part of the utilities' regulated services or should they be unregulated "new technology" and offered on a deregulated basis?"

Since the divestiture of the Bell System in 1982, which created seven regional operating phone companies, the "baby bells", questions of deregulation and flexible regulation in the telecommunications industry have been priority issues in nearly every state. NCSL points out that, "most states have reformed traditional, cost based rate of return regulation of local telephone companies, replacing it with alternative or flexible regulatory structures. Alternative regulatory methods now in place in one or more states include: sharing of earnings with rate payers; deregulation (or flexible pricing) of certain competitive services; streamlined administrative procedures; pricing freedom for small telephone companies; "step" regulation to reflect the competitive level of each service; and linking the company's share of profits to telephone infrastructure improvements." (NCSL State Issues, 1991, page 101) Indeed, in 1991, more than half the states considered new or expanded methods for providing flexible or decreased regulation to telecommunications companies.

Another major battle shaping up in the telecommunications field which will be fought in Congress, state legislatures and state PUCs is the battle over cable and radio services. With the introduction of fiber optic technology, telephone companies are well placed to seize a new and lucrative market to provide computer and video services to consumers. At the same time, the "baby bells" are looking to

the future of telecommunications with discussion of services that are based on cellular and other technologies which do not require cables or telephone wires. The cable T.V. industry, which is undergoing its own battles with respect to whether or not it should be reregulated, will be in direct competition with the phone companies for these lucrative new markets. The cable companies will demand that regulators treat the phone companies rigorously to assure that their monopoly of basic local telephone services does not cross subsidize their new deregulated services, thereby offering them an unfair competitive advantage.

COLORADO TELECOMMUNICATIONS

In Colorado, all of these issues are under consideration or on the horizon. At the end of 1991, US West proposed and the PUC took testimony on a plan for an "alternative form of regulation" (AFOR). US West proposed a partial freeze in basic phone rates for the next five years, in return for which the PUC would abolish the cap on US West's rate of return. Currently, US West is allowed to earn no more than 13.5% profit. Under the plan US West would keep any extra profits up to 14.5% but would share half of any profits above that level with rate payers through refunds, and investing its share in new construction projects. The company, which controls 98% of the basic telephone service in Colorado, believes that allowing it to earn a higher rate of return will spur creativity and technology innovation, while also providing both quality of service and monetary benefits to its customers.

The issues of service quality, technology upgrades and customer access to low cost service are at the top of the PUC's agenda. The PUC has engaged US West in a program to upgrade rural service, which is now entering its second phase. US West is also involved in a major infrastructure case with the PUC, involving \$150 million in upgrades to its facilities in order to be able to provide at least two party service throughout the state as a minimum standard. The PUC is also involved in extending the service areas of a number of telephone companies within the state which will allow callers to reach more local parties without incurring a long distance charge.

Economic development is one of the key reasons for pressure to look carefully at alternative forms of regulation and the future of telecommunications policy in general. Nearly every state has awakened to the importance of telecommunications as part of a modern state's infrastructure in order to attract new businesses and to promote existing ones. Colorado is currently engaged in a general review of telecommunications issues in the state, including matters related to competition, distance learning (via satellite or cable links between classrooms), commission telecommunications policy, privacy issues and new technology. Although the laws which govern telecommunications policy in Colorado were substantially revised in 1987, Colorado is still behind some other states in developing policies to integrate telecommunications development with statewide economic development. Numerous consumers are still unhappy with their basic telephone service and do not have available to them newer services such as computer access lines and telecopier (FAX) lines. The Colorado PUC currently has an open case which will address these issues and has begun programs to modernize US West's infrastructure.

Independent telephone companies claim that one issue which may be getting lost as the PUC struggles to keep up with US West and national regulatory trends is the fate of Colorado's thirty two small telephone companies which serve local customers not part of the US West system. These small companies, which may serve as few as 100 or up to 2,000 customers, are concerned that regulatory policies appropriate to the giant US West are inappropriate for small local telephone companies. They complain specifically of the lack of a well defined action plan or any vision for telecommunications development within the state. Current costing methodologies used by the PUC prohibit new services from being offered that would benefit their customers. The cost which small telephone companies may have to bear in order to respond to regulatory directives may be very large compared with their revenues. While US West may be able to afford a full time regulatory law staff and whatever experts and counselors are required, small telephone companies are often one or two person operations which are very sensitive to regulatory pressures and regulatory costs. Rather than having the resources to fight a regulator's decision which they believe is unfounded, they may have no practical alternative but to settle an issue, even if they believe the regulator is wrong.

The Colorado PUC has taken steps to meet consumers' needs for telephone service in rural areas by establishing a high cost fund that allows urban telephone customers to contribute toward the improvement of rural telephone service. In addition, the small telephone companies are supportive of the PUC's consideration of incentive regulation which could encourage more efficient operation and wider service variety. The problem, they say, is not the steps that the PUC has already taken, but basic communication. The PUC's work in the telecommunications field needs to be accompanied by a thorough review of its relationships with the small telephone companies and the appropriateness of its regulatory approach for telecommunications utilities other than US West.

TRANSPORTATION

Colorado is one of about twenty-five states which continues to regulate all or part of intrastate transportation through its Public Utilities Commission. The vast majority of this regulation pertains to property and passenger transportation within the state, rather than railroad regulation. The requirements of this kind of state government oversight are familiar, having changed little since the passage of the Motor Carriers Act in 1935. At least three issues continue to be of major importance in this area, and are often debated and revisited by the Colorado Legislature and the Colorado PUC. These issues are: (1) deregulation; (2) safety; (3) insurance requirements.

DEREGULATION

During the 1991 interim, the Legislature's Joint Committee on Transportation held extensive hearings on deregulation of intrastate transportation. These hearings were the culmination of several years of efforts by a portion of the trucking industry in Colorado, the Office of Regulatory Reform and concerned

legislators. Reports prepared by the Legislative Council and the Office of Regulatory Reform indicated that Colorado would likely benefit from at least partial deregulation of the trucking industry in the state, and the Transportation Committee met to consider appropriate action.

After much debate, including conflicting testimony from the industry, transportation experts and one PUC Commissioner, three bills emerged from the Committee's deliberations. Each bill provided for measured steps toward a partial deregulation of portions of the transportation industry in Colorado. The Committee felt that small steps toward deregulation could be taken profitably, but that complete deregulation in Colorado was not appropriate. The three bills reported out by the Committee were: (1) a bill to deregulate the hauling of unprocessed agricultural products; (2) a bill to allow rate flexibility for intrastate trucking firms within a 7% band above or below rates approved by the Public Utilities Commission; (3) a bill to change C.R.S. 40-6-108 (2) which would require persons seeking to protest applications for new trucking authority be required to already be providing service as a condition of their participation in the proceeding on the application before the PUC. Bill (1) to deregulate the hauling of unprocessed agricultural products was passed out of the Senate, but died in the House Committee on Transportation and Energy. Bill (2) to allow rate flexibility for intrastate trucking firms was not passed out of the first committee that considered it. Bill (3) to change requirements for persons to protest applications for new trucking authority was passed and became law.

The unwillingness of the Legislature to take even minor steps toward deregulation of the trucking industry in Colorado is a clear signal that the majority of state policy makers prefer to continue transportation regulation as it stands. The national and local debate for and against trucking deregulation has only resulted in the continuation of the status quo in Colorado. Even the creation of the Colorado Department of Transportation by the Legislature in 1991 included only a single requirement that the regulation of buses be further studied by the Transportation Department with a view toward potentially moving that small part of Colorado's transportation regulatory program from the Department of Regulatory Agencies to the Transportation Department. This report is due to be presented to the Legislature during the 1992 interim session. No general review of Colorado's transportation regulatory system was proposed by the Legislature, although the Transportation Section of the Public Utilities Commission has itself set as a goal, the conducting of a comprehensive analysis of transportation regulation in the state, with a view toward making recommendations on "directions for the future" of transportation regulation. The PUC has opened a docket, No. 91R-356CY, and will be considering this issue during 1992.

Apparently, considerable additional study of the appropriate level of transportation regulation in Colorado is needed. Although there is a clear lack of consensus within the Legislature, the Executive Branch and the trucking industry on this question, the matter refuses to go away. It is unlikely that piecemeal studies of the regulation of buses, taxis, passenger carriers or freight carriers will resolve this issue. What is likely is that fundamental questions of the appropriate level of regulation in each of these areas will continue to bedevil the researchers. Colorado has considerable expertise within its Departments of Transportation, Revenue, Public Safety and Regulatory Agencies around the issue of state transportation regulation. Representatives from the Departments involved and from the industry

should be tapped to conduct an indepth review of transportation regulation in the state with a view toward providing the Legislature with clear recommendations for future regulatory policies which will provide the most public protection at the most reasonable rates.

SAFETY

The transportation safety issue is basic to the debate regarding just how much transportation regulation is needed in Colorado. Both sides of the debate agree that safety considerations are of paramount importance regardless of the level of state regulation. The Colorado Public Utilities Commission has concentrated its safety enforcement personnel in the Safety Section of the PUC as it continues its efforts to provide adequate oversight of the Colorado transportation industry. Beginning in 1991, a significant boost was given by the Legislature to the PUC's safety enforcement personnel, when a new law allowing the PUC to levy fines for safety violations was implemented for the first time. Although there is some indication that the fine structure is insufficient to encourage truckers to fix safety violations rather than simply paying the fine and continuing business as usual, the implementation of this fining authority is an important first step for the PUC in improving safety regulation.

The Legislature has also assisted the PUC by providing one additional FTE to the Safety Section. This will allow follow-up inspections of passenger vehicles placed out of service as a result of PUC inspections. The PUC is the state agency responsible for safety regulation and enforcement of 87% of the commercial passenger carriers in the state (vehicles carrying 15 passengers or less) and cooperates with the Colorado State Patrol and the Port of Entry officials in coordinating vehicle inspections. These inspections are based on uniform standards established by the US Department of Transportation and adopted by Colorado, and also on standards used by the Commercial Vehicle Safety Alliance (CVSA), which are used in forty eight states and nine Canadian provinces. The Legislature's support of this safety program will allow the PUC to conduct follow-up inspections of 100% of passenger carriers cited for safety violations in order to ensure that the violations have been corrected.

The importance of this issue is hard to minimize. The Public Utilities Commission points to the enormous cost in lives and property which the state suffers every year due to trucking industry accidents: "The National Transportation Safety Board conducted a study of 185 accidents involving heavy trucks during 1987-1988 to determine the cause of the accident. Seventy percent of the accidents were linked to the driver -- 30% fatigue, 30% alcohol/drug abuse and 10% other medical problems. A study in the State of Arizona found that between 42% and 49% of the commercial vehicle accidents were due to driver fatigue or inattention." (DORA Budget, 1991-92, page 235) Clearly, Colorado citizens would benefit from increased safety enforcement. The PUC has made several requests for additional personnel to carry out these tasks without success. Since transportation safety is the one issue upon which all parties to the transportation regulation debate agree, adequate enforcement of the transportation laws in Colorado should be a continuing priority of the Colorado Public Utilities Commission and the General Assembly.

INSURANCE

In 1991, the Public Utilities Commission raised the amount of insurance coverage which is required of regulated transportation utilities in this state. After a staff review, the Commissioners determined that the amount of insurance required in Colorado was inadequate to protect Colorado citizens involved in serious accidents with regulated carriers. The PUC set the new requirements for passenger carriers at the following levels: (1) \$1,000,000 of insurance coverage required for 1 to 7 passenger vehicles; (2) \$1,500,000 of insurance coverage required for 8 to 15 passenger vehicles; (3) \$5,000,000 of insurance coverage required for passenger vehicles seating 16 or more passengers.

Since the new requirements became law, the PUC has received 17 requests for waivers based on hardship. One example is illustrative. River Runners Limited, operates nine four-wheel-drive vehicles which provide jeep tours in and around Salida, Colorado. This business has been operating for about twenty years and the vehicles used carry from seven to nine passengers. The change in commission rules increased the insurance requirement for River Runners from \$300,000 to \$1.5 million in coverage. The cost for the new insurance coverage was \$18,000 per year, a \$13,000 increase over the \$5,000 previously paid by River Runners. After an analysis by PUC staff which indicated significant hardship to River Runners, a waiver of the insurance requirement was recommended on March 4, 1992 (Docket No. 91A-377CP), but the waiver was stayed by the Commissioners on March 18, 1992, pending a Special Open Meeting scheduled April 28, 1992 on the issue of carrier insurance.

The Public Utilities Commissioners have become concerned with the number of carriers applying for waiver of the new insurance requirements. The Commissioners have attempted to establish stringent standards for obtaining waivers of the insurance rules. In decision No. C91-1266, dated September, 27, 1991, the Commission clarified that while, "economic hardship might be grounds for waiver, it expects common carriers in the initial instance to attempt to recover insurance costs through fare increases." In cases where fare increases would potentially drive the carrier out of business, the Commission has been willing to consider the granting of a waiver of the insurance requirements.

In a larger sense, the number of waiver requests has caused the Commission to enter into a general review of its insurance requirements, via the Special Open Meeting referred to above. Regardless of the amount of insurance required of transportation carriers in Colorado, the administration of the insurance requirements by the PUC is a continuing concern. Every year, numerous authorities to operate are suspended or revoked by the PUC for failure to meet insurance requirements. For example, in March, 1992, the PUC revoked fully 104 authorities for "failure to keep a currently effective certificate of insurance on file with the Commission". Another ten authorities were suspended for varying periods of time, up to one year, for failure to have a certificate of insurance on file with the PUC for some period of time. In April, 1992, another 112 authorities were revoked and an additional five suspended for the same reasons. The expense and time required to obtain a transportation authority from the PUC and the issues surrounding the expense and adequacy of insurance coverage for each carrier raise significant concerns within the transportation industry over whether it makes sense to revoke operating authorities for these violations. Approximately 200 motor carriers per month are ordered to hearing by the PUC for a variety of infractions. Consolidated hearings on such matters are held twenty-four times per year. Often, these are default type hearings, where the carrier does not appear to defend against the violations charged.

The PUC staff point out that the commissioners have directed that insurance requirements be rigorously enforced since insurance is safety related. Indeed, insurance is required by Statute and the Legislature has authorized the Commission to levy maximum civil penalty assessments on violators from the first day of a violation. The PUC also notes that:

- 1) the majority of carriers ordered to hearing obtain appropriate insurance prior to the Commission revoking their operating authority;**
- 2) the majority of carriers that are revoked are interstate carriers; and,**
- 3) nearly all of the carriers revoked have discontinued operations.**

In cases of significant safety violations, PUC is correct to take strong action against violators. However, other violations which are not directly safety related raise a question over whether the PUC and the trucking industry could not cooperate more fully in arriving at a regulatory structure which would adequately protect Colorado citizens while cutting down on the time and expense involved in compliance proceedings. The PUC is active in attempting to address these problems itself by conducting hearings on the insurance issue as indicated above, and by reviewing its transportation regulation in general and also the specific areas of towing carrier regulation, charter and scenic passenger carrier (Article 16) regulation and alternative methods of funding transportation regulation. The PUC should be commended for and encouraged in the completion of these activities.

CHAPTER 4

SHOULD THE PUC BE CONTINUED?

INTRODUCTION

The Colorado Public Utilities Commission defines its mission in this way:

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

The PUC takes its mission and role from the Colorado Constitution, Article XXV and from the Public Utilities Law, C.R.S. 40-1-101, et seq. In addition, numerous Colorado court decisions over the years since the PUC was created have served to define and delimit the powers and functions of our PUC.

The central question of a sunset review is: "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." In seeking to answer this question it is important to note that this sunset report is only the latest in a series of reports which have been written about the PUC since the mid-1970's. Each of these reports, performed at different times by different reviewers, all have in common the fact that the regulation provided by the PUC was determined to be necessary and that it should be continued, albeit with certain recommendations for change. These reports are as follows:

1975	Management Study of the Public Utilities Commission (Department of Administration, DOA)
1975	Management and Efficiency Task Force (DORA)
1976	State Auditors Performance Audit
1977	DORA Sunset Review
1977	Workload Study of the Transportation Section of the Public Utilities Commission (DOA)
1980	DORA PUC Management Study
1981	Hearing Process Study
1982	DORA Sunset Review
1984	PUC Internal Task Force (Hearing Process)
1984	Department of Administration Task Force (Hearing Process)
1987	Management Study
1988	State Auditors Performance Audit
1992	DORA Sunset Review

A basic finding made by all of these reports is that the decision making role of the PUC is complex and controversial in nature, and that this central fact drives a number of key policy issues:

- 1. The need for organizational competence. The purpose of having an independent regulatory agency to make utility regulatory decisions is to focus expert opinion on complex issues and to resolve them through impartial decision making. This requires skill and cooperation and objectivity, or organizational competence.**
- 2. The need for independence. Because it is the job of the PUC to make objective decisions involving the health, welfare and prosperity of Colorado citizens and Colorado utilities, the decision makers must be free to hear and decide these issues without interference.**
- 3. The need for administrative efficiency. Limited budgets and reduced staff levels require now more than ever that the PUC operate optimally, with a special sensitivity toward minimizing the costs of regulation while optimizing the use of its staff and other resources.**
- 4. The need for leadership. Because the matters handled by the PUC are complex and controversial, there is general agreement among the three branches of government that these matters are best left to the Public Utilities Commission. This places a special burden on the Public Utilities Commission to provide regulatory leadership which is in concert with the needs of Colorado consumers to be provided with good utility services at reasonable prices.**
- 5. The need for openness. Public utilities commissions are public forums for resolving state utility regulatory questions. They must be as open, as available and as sensitive to the issues of their constituents among the public as they are to the needs and concerns of their constituents among the utility industries.**

RATING THE PERFORMANCE OF THE PUBLIC UTILITIES COMMISSION

Organizational Competence

In spite of all that it has accomplished, there is a general perception among the persons interviewed in the preparation of this report that the Colorado Public Utilities Commission has entered a period of instability. Today's PUC is often compared with the Public Utilities Commission of ten years ago, which many consider to be representative of the best in Colorado public utility regulation. That PUC is also remembered for handling questions of high complexity and conflict but it is also perceived that those issues were handled more expeditiously and with less controversy. What has occurred to change this perception over the years?

It is ironic that some observers of the PUC should question its organizational competence today while admiring the PUC of ten years ago. Many of the staff of the PUC today were resident there ten years ago. Indeed, the PUC's staff is a remarkably stable work force, with more than 50% of its members having more than ten years of service and fully 15% having more than twenty years of service. The PUC of ten

years ago regulated Colorado's utilities with hand held calculators. Today, the PUC is upgrading its computer system with a second generation network which will allow a vast increase in its ability to analyze utility financial and operating data. In addition, the PUC's budget has grown over the last ten years from about \$3.6 million in 1982 to approximately \$6.7 million today and from 98 FTE in that year to an authorization for 99 FTE today. What then accounts for this perceived lack of skill, cooperation and objectivity at the PUC?

Several factors could affect this change of perception. To begin with, the interviews for this report were conducted at a time when the agency was operating under a state hiring freeze. Although the staff and Commissioners have struggled with the expanding workload, this may have led some to believe that issues have not been handled as efficiently as in the past.

There is a general consensus that the issues facing the PUC today are more complicated and have more far-reaching implications than previously. After all, this is the first time the PUC has faced the issue of a bankrupt utility of the scope of Colorado-Ute or had to face the evolving concern of health-related issues, such as the possible link of cancer to electromagnetic fields created by power lines. The breadth of the issues is very different than ten years ago.

At that time, the PUC was not divided into a trial and advisory staff over issues. The decision-making processes and output of the PUC of yesteryear were considered to be more sure and swift, even though this often took place in ways that might be unacceptable today.

Ten years ago, there were not as many intervenors in PUC cases. Now, in major cases before the PUC there may be 10-12 various parties presenting their views to the decision-makers. Giving everyone due process is time consuming, but leads to greater debate over issues and probably better decisions.

In addition, the PUC has tried to adopt different processes in making the system more open to all parties, especially those who are representing themselves. For example, a September 1990 Denver Post article titled, "PUC Abandons Tough Cop Image" summed up the new approach. In that article, former PUC Commissioner Chairman, Arnold Cook is quoted as saying "We need a less adversarial process. When we discuss issues like how to improve phone service with a company, I don't want to have the chilling effect of a fact finder." This new approach may not be as controversial as in the past, but may be viewed with a certain degree of suspicion.

Many observers believe this changed regulatory approach accounts for the changed perception about the PUC. In the past, the agency was strictly a reactive agency – handling utility issues that came through the door. Over the years, the agency has become proactive. For example, to assist the state's economic development efforts, the Commission has developed a telecommunications infrastructure plan to ensure that communities are not hindered in recruiting new businesses because of an antiquated phone system.

This seems to lead to a general uneasiness over the regulatory role of the PUC. Many believed that ten

years ago, the PUC ruled clearly in favor of public protection, often at the expense of the utilities. In 1983, for example, Public Service Company was penalized for its poor performance at the Fort St. Vrain Nuclear Power Plant. The utility finally settled its confrontations over Fort St. Vrain by agreeing to pay more than \$100 million in refunds and rate reductions.

Even though the perception is otherwise, the PUC is still clearly ensuring that the public is protected. In the last fiscal year, the agency saved ratepayers \$275 million in refunds and rate case reductions, and it penalized US West \$100,000 for not providing adequate service in a certain telephone exchange.

Observers have also commented repeatedly about the perceived lack of harmony between the PUC Commissioners and staff. They point to open meetings of the PUC, where conflict between staff and Commissioners sometimes becomes apparent.

This is a difficult issue. There seems to be confusion over who makes the decisions and sets policy. Observers point to the fact that the staff often seems to have different priorities than those held by the Commissioners, who are the decision/policy makers.

Because many of the staff have been with the agency for such a long time, they question the quality of judgement and the goodwill of the Commissioners. They complain that their advice is often criticized or just ignored. Some staff see the Commissioners as "generalists" and "short-termers" who do not have the desire or the time necessary to develop the skills needed to handle the complex work at the PUC. A major survey of PUC staff morale performed two years ago documented these criticisms, which were also referred to in the 1988 Auditor's Report.

There appears to be a lack of respect between some staff and the Commissioners, which prevents them from communicating or cooperating very well with each other. The result is frustration on all sides with a marked lack of morale among Commissioners and staff.

The Commissioners have identified this issue and are committed to bridging the gap between Commissioners and staff.

Indeed, the Commissioners are clear that the regulatory goals of the PUC cannot be reached without top staff performance. Equally, many of the staff recognize that it is the role of the Commissioners to be the ultimate decision makers and set the PUC's policy priorities.

The agency will become more effective when both the Commissioners and staff develop better working relationships with close and productive cooperation.

Independence

The Colorado Public Utilities Commission was created to be an independent decision making authority on utility regulatory issues. The issue is not whether the model of an independent public utilities commission is appropriate but rather, whether the Public Utilities Commission, and especially its Commissioners, are sufficiently accountable in their operations. The General Assembly moved to increase accountability when it reduced the terms of office of the PUC Commissioners from six years to four in 1987. The Legislature also moved to curtail the agency's independence in 1986 when, at the urging of Colorado Ute Electric Association, it cut the PUC staff by five positions. Recently, the Commissioners have been criticized by legislators for apparent conflicts of interest and off the record communications with representatives of some of the regulated utilities. Legislators also reacted angrily two years ago when the PUC claimed that lack of money left them unable to enforce gas pipeline safety rules in Crested Butte, partially contributing to the circumstances surrounding the pipeline rupture and subsequent explosion of the Crested Butte State Bank. In each of the last several legislative sessions, the Legislature has flatly turned down bills proposing that the substandard salaries of the PUC Commissioners be increased to be more in line with the salaries paid to PUC Commissioners in the other states.

Clearly, the key arbiter of the continued independence of the PUC is the branch of Colorado government which has the most power over PUC operations, the State Legislature. PUC relations with the Legislature need to be improved if that arbiter is to be able to make wise decisions about PUC operations. Although it is unlikely that the Legislature would seek to assume the responsibilities of the PUC, it is clear that the Colorado Public Utilities Commission cannot function successfully without the support of the General Assembly and that by withdrawing its support the General Assembly can strongly hinder effective regulation.

Belatedly, the PUC has recognized the great need to improve its relationship with the Legislature. The Public Utilities Commissioners took the time in March, 1992, to appear as a group before the Senate Business Affairs and Labor Committee, to give an overview of current PUC issues and operations. The meeting was a successful exchange of information and ideas and should be repeated regularly. A strong liaison between the PUC and its oversight committees in the House and Senate, the Transportation and Business Affairs and Labor Committees, needs to be established and maintained. The daily work of this liaison is best left to the Executive Secretary of the PUC and his designees. The Commissioners can be most useful in formal communications and appearances such as the March

hearing indicated above. In addition, the resources of the Department of Regulatory Agencies should be used whenever possible to assist the PUC in keeping open the lines of communication with state legislators. Clearly, the key to building legislative support for the regulatory duties of the PUC is through continued and in-depth communication and understanding of PUC issues and operations. The regulated utilities are represented in the halls of the Legislature by flocks of well recognized lobbyists. Surely, the PUC, in cooperation with DORA and the Governor's Office, can do a better job of detailing a few key people under the direction of the PUC's Executive Secretary to represent it before the Legislature.

Administrative Efficiency

The General Assembly often attempts to enforce administrative efficiency at the PUC through budget cuts. Although this is not necessarily different from the treatment of other state agencies, it is potentially far more damaging to an agency like the PUC which bears the highly complex job of regulating essential utilities. One ironic result of this approach is a severe shortage of secretaries at the PUC. High level professional staff can often be found typing their own memoranda and analyses because sufficient staff support is not available. This problem has been severely compounded by the state government hiring freeze which went into effect in August, 1991, and still continues. Further, on the horizon looms the problem of senior staff retirements. As indicated earlier, fourteen of the PUC staff have more than twenty years of service with the State, and another fifteen staff members have worked at the PUC in excess of fifteen years. If a considerable number of these professionals retire in the near term it will severely affect the quality of PUC operations.

Finally, the terms of two of the three Commissioners will expire this year. When the Commissioner's terms were changed from six years to four years, the Public Utilities Law was not amended to assure that the terms of the Commissioners would be staggered so that no more than one would expire in any given year. Since it takes at least two years to adequately train a Commissioner to perform the duties of the office, the potential loss of the experience of two Commissioners at once will also put a significant drain on the resources of the PUC.

In spite of the apparent problems which it faces, the PUC continues to function. Decisions are made, analyses are performed, applications are processed and hearings are held. The work of the PUC is also supported by the Office of Consumer Counsel, the Department of Regulatory Agencies and the regulated industries, all of whom have a profound interest in a PUC which performs its regulatory tasks with quality and efficiency. While aware of the problems at the PUC, none of the individuals or business representatives interviewed for this report indicated that the PUC should be terminated. Rather, there was unanimous agreement that the problems at the PUC can be solved and the quality of regulation improved in order to serve the interests of all parties.

Leadership

There are a few well recognized industry leaders in public utility regulation in Colorado. They include the principal officers of the largest regulated utilities in Colorado, Public Service Company and US West. The trucking industry is also well represented through the active members of its Motor Carrier's Association and the independent telephone companies have a voice through the Association of Independent Telephone Companies. Certain key legislators, such as the Chairmen and Vice-Chairmen of the House and Senate Committees on Business Affairs and Labor and Transportation provide the principal legislative leadership and some offices in the Executive Branch of government such as the Office of Energy Conservation and especially the Office of Consumer Counsel are recognized leaders in this area. However, in the end, "all power to regulate the facilities, service and rates and charges therefore, including facilities and service and rates and charges therefore within home rule cities and home rule towns, of every corporation, individual or association of individuals, wheresoever situate or operating within the State of Colorado, whether within or without a home rule city or home rule town, as a public entity, as presently or as may hereafter be defined as a public utility by the laws of the State of Colorado" is vested in the Public Utilities Commission of the State of Colorado (Colorado Constitution, Article XXV). At the PUC, the ultimate authority when it comes to decision making and policy direction rests with the three Public Utilities Commissioners.

Because the Commissioners should be the key leaders in public utilities regulation in Colorado, it behooves all those concerned with PUC operations to provide the Commissioners with the tools necessary to ensure their success. Since much is expected of the Commissioners, it only makes sense to maximize their skill and experience in decision and policy making. Unfortunately, Colorado's approach often seems to be just the opposite.

Nationally, the average term of office served by public utilities commissioners is only 4.2 years. Single term appointments and resignations appear responsible for this average. Relatively rapid turnover is contrasted with the tenure of an average staff person of approximately 10.3 years. The majority of the states still retain six year terms for their public utilities commissioners while Colorado has gone to four year terms. Clearly, the difficulty of the job and the conflict involved are factors which operate to cause many commissioners to retire early. In addition, in Colorado, the relatively low \$48,000 salary makes any kind of extended service on the PUC unattractive.

Although Colorado's Governors have often been able to call on high quality candidates for Public Utilities Commissioner in the past, the low salary and the difficulty of the job make recruitment for Commissioner positions increasingly difficult. Although candidates with good basic skills are commonly selected by the Governor and confirmed by the Colorado Senate, there are no requirements for the job. Since there is no training regime established to get new Commissioners up to speed in their difficult and demanding jobs, the training of a new Commissioner is a lengthy, hit-and-miss affair. Combined with the other problems indicated in this report, it is clear that the full experience, expertise and leadership abilities of Colorado's PUC Commissioners have not been developed.

Openness

Former PUC Chairman Edythe Miller observed many years ago that, "Economic efficiency is only one of many goals a society may adopt in implementing economic regulation." ("Controlling Power in the Social Economy", Review of Social Economics 43:2, October, 1985, page 129). Although economic regulation is the basic purpose of the Public Utilities Commission, the very reason for the Commission's existence has been to provide a public forum for decisions on utility regulatory issues that can be reached with the participation of all those concerned. Indeed, because regulation is simply a replacement for competition in an area where competition cannot operate because economic realities favor monopolies, public utilities commissions must inevitably hear from and voice the public interest as it seeks to determine the maximum public good. As J.M. Clark has observed in the often quoted treatise, *The Economics of Public Utility Regulation*, "We may fairly start, then, with the assumption that the cost of production under monopoly is less than it would be under competition which duplicates the service. The task of regulation is to give the consumer as much of the savings as justice and expediency permit."

The State of Colorado early recognized that utility regulatory decisions would vitally and fundamentally affect its citizens. In 1976, Colorado was among the first states to pass a Sunshine Law which required that the decisions of all state agencies, including the Public Utilities Commission, be made in the open. Colorado was also one of the first states to encourage participation by public intervenors through intervenor funding. That program serves to "selectively and retrospectively reimburse the expenses incurred by participants in Commission proceedings at the discretion of the three Commissioners. Any intervenor who makes a substantial contribution to a proceeding is eligible for reimbursement, although reimbursement is by no means guaranteed. Expenses that may be reimbursed include legal and expert witness fees. The funds for reimbursement in a rate case are provided by the utility company that initiated the case (and ultimately therefore by that company's rate payers)". (William T. Gosmley, Jr., *The Politics of Public Utility Regulation*, University Press, page 187.)

Colorado has also moved strongly to establish an even playing field for consumer advocates and industry representatives by creating the Office of Consumer Counsel in 1984. The OCC provides full time staff work and oversight of many of the issues coming before the Public Utilities Commission. Often, the OCC staff have participated with the Commission staff and the utilities to bring a negotiated settlement before the Commission.

Although the decisions of the Colorado PUC and many of its deliberations are now routinely open to inspection and participation, there is still a certain uneasiness with the democratization of the decision making process. Allegations and rumors of conflicts of interest and ex parte communications, some of them clearly unfounded, have not helped to encourage openness. The persons who appear before the Commissioners to give testimony and argue cases, continue to complain that the process is too legal, too formal and generally consumer unfriendly. A visit to Commission open meetings only serves to underline those concerns. Criticisms made of the PUC's open meeting process by the State Auditor in the 1988 Performance Audit continue to be true: "The outcomes of the Public Utilities Commission's open meetings are not easily understood by the public. We believe that it is critical that the Commission ensure that the public understands the processes and the decisions reached in the open meetings. A designated person on the Commission should ensure that all decisions are stated or restated in a clear and straightforward way at the conclusion of each discussion." (1988 Performance Audit, page 69) Increased public participation in and understanding of Commission issues and proceedings would only serve to provide a stronger base of support for the Commission's regulatory activities.

Fortunately, the leadership at the PUC has recognized the importance of citizen empowerment and involvement. Commissioner Gary Nakarado points out that, "The typical citizen today faces such a bewildering array of stimuli that he or she feels hopeless, helpless, or angry when thinking of exercising their public role as a citizen. Public processes, integral to the Integrated Resource Planning model, but also related to our growing use of collaborative and other informal or task force type processes are important attempts at finding ways of reaching out and including citizens in the process of government. Equally important, successful implementation of such processes confirm that we work for everyone, and that good ideas and important considerations must be heard whatsoever their source." (PUC Newsletter "Connections", November 1991)

Conclusion

Colorado's Public Utilities Commission looks very much like public utilities commissions in the other 49 states. As indicated previously in this report, there is little variation in the regulatory model used by any of the states. One state, Oregon, experimented for a time with a single Commissioner, but has since reverted to a more traditional three Commissioner scheme. Some states consider their public utilities commissions to be on the cutting edge of change and representative of the ultimate in utility regulation in the public interest. The PUC of the State of Washington is often mentioned in this regard. In other states, such as Illinois, the citizens have found it necessary to band together in consumer

advocacy groups to fight with their utilities and their public utility commission over "exorbitantly high rates, numerous large rate increases and no perceptible improvements in service." (Robert P. Hartwig, "Public Utilities And Their Regulation In Illinois", Illinois Business Review, Fall, 1990, page 3) Many states regulate with five or seven commissioners, but most still utilize only three. It is also important to remember that the relative success of the state public utility regulator is heavily influenced by the size of the state population, the efficiency of its key utility companies, its geographic location and access to key resources, such as energy reserves.

As a composite, Colorado's PUC is faced with the same kinds of problems and enjoys the same kinds of strength and support as PUCs found in other states. Our PUC is better than some and not as good as others. There is universal agreement, however, that the quality of the work of Colorado's PUC can be much improved. The PUC, regulated utilities, consumer groups, and state government officials are all unanimous in their desires to see an efficient and effective Colorado PUC. Given this support for the continuation of the PUC's mission and function, and given the relative lack of other proven approaches to public utility regulation, it is clear that the Colorado Public Utilities Commission should be continued and that this Sunset Report be used as an opportunity to make basic improvements in the operation of the PUC so that it may improve the quality of its regulatory work.

Recommendation 1: Continue the Public Utilities Commission.

The General Assembly should continue the Colorado Public Utilities Commission. Given the complexity of the issues and the pace of change at the PUC, the next sunset date for the PUC should be July 1, 1998.

CHAPTER 5

RECOMMENDATIONS FOR RESOLVING STRUCTURAL AND OPERATING ISSUES

INTRODUCTION

Extensive conversations with PUC staff and other knowledgeable persons show a remarkable unanimity on the issue of PUC structural and operating concerns that are preventing that agency from functioning well. These concerns are:

- I. The ex parte communications issue: How is information shared?**
- II. The staff resources issue: How do we handle the huge workload?**
- III. The commissioner/staff debate: Who is in charge of the PUC?**
- IV. The role of the PUC question: What is our mission?**

Each of these general areas is discussed below along with recommendations for solutions.

I. THE EX PARTE COMMUNICATION ISSUE; HOW IS INFORMATION SHARED?

There is overwhelming concern among those who work with the PUC about the ex parte communication problem at the PUC. This concern was dramatically underlined when the newspapers throughout the state published a series of stories and editorials critical of the PUC on this issue in early 1991 (e.g., "Who Regulates The Regulators?" Daily Sentinel, January 1, 1991). Ex parte communications may be defined as: "Any communication made to a decision maker(s), or their advisors, in a pending proceeding without notice to all parties, or without the presence of all parties." Prior to the time a matter is before the Commission, communications between the utilities and the decision maker(s), or their advisors, are subject to the ethical guidelines on the appearance of impropriety.

The concern over whether "off-the-record" ex parte communications either prior to or in a pending case between PUC Commissioners and "interested parties" will lead to biased decisions which are not in the public interest, goes back many years. Since the Commissioners have always been charged with making decisions on complex issues of public utility regulation, essentially acting as a "public utilities court", private discussions about pending cases have always been viewed as inappropriate.

During the decade of the 1970's, with the heightened public awareness and concern over energy supply and environmental issues, attention was focused sharply on assuring that the PUC would reach its decisions in an open and fair manner. To this end, the Colorado Supreme Court in the 1976 case of Peoples Gas vs. PUC went to the point of suggesting that even the PUC staff should be treated as a party in cases to be decided by the Commission. Thus, there developed the system which prevails today.

When a case is filed to be decided by the PUC, certain staff members are assigned to it as "trial staff". The trial staff are not allowed to talk to the Commissioners or their advisors on that case except "on the record". It is the job of this team of trial staff to review the case and to formulate a staff position to present to the Commissioners. Fairness is intended to be served by this system, since staff are now on the same footing as other "interested parties" in the case.

It is curious that the staff of a regulatory agency has been deemed so powerful and "interested" in the matters before the agency that it has been made a full and formal party in each case. Other regulatory agencies, such as the Division of Insurance, which also handles complex and contentious public policy issues in a quasi-judicial setting, do not carve out a part of their staffs on each case and make them "parties". This process of staff balkanization does not end here, however.

In addition to a "trial staff" on each case, the PUC also appoints an "advisory staff" on each case. It is the job of the advisory team of staff members to advise the Commissioners on the technical and policy issues presented by the case, thereby assisting them in reaching a well informed decision. The advisory staff may not communicate ex parte with the trial staff on this case and vice versa. Nor may it communicate ex parte with any of the other parties to the case. Advisory staff are allowed to meet privately with an individual Commissioner to present information and answer questions. In this context, they also are able to present their own conclusions as to how a case should be decided. When Commissioners meet together with their advisory staff to discuss a case, they must do so at an open meeting, in order to meet the requirements of the Sunshine Law. (C.R.S. 24-6-401, et. seq.)

Current Ex Parte System Needs Further Reform

While the PUC's concern for fairness is both admirable and necessary, the system it has chosen to try to assure fairness has become unworkable. Aside from being monumentally confusing, it restricts the flow of vital information to the decision-makers, thereby making poor use of scarce resources and endangering the quality of PUC decisions. Among the problems with this system cited by dozens of persons interviewed for this report are the following:

- 1. No one believes the system works. The purpose of the ex parte rules (Commission Rule 9), the "appearance of impropriety" rules (Commission Rule 10) and the staff bifurcation is to assure fairness but no one really expects that they do so. For all of the effort being put into operating this cumbersome system, there is still a generally held belief that ex parte communications continue to occur, thereby biasing Commission decisions. The feeling that interested parties are "whispering in the ears" of the Commissioners behind the scene has not been abated by this system.**
- 2. The combination of the ex parte rules, the current system of staff bifurcation and the "appearance of impropriety" rules have had a chilling effect on communication both within and outside of the PUC. As one observer put it, "the pendulum has swung to an extreme" at the PUC to the point where everyone is afraid to talk to anyone for fear of violating the new "appearance of impropriety" standard embodied in the recently revised Commission Rules 9 and 10 (concerning off-the-record communications and commission standards of conduct). The result is to take a confusing situation, where different staff members may be trial staff or advisory staff on different cases at different times, and to aggravate it by drawing all contacts between Commissioners, staff and other parties into question.**

3. **A structural "reform" put in place at the PUC two years ago has even further aggravated the information flow problem caused by the ex parte rules. This reform placed staff members in "functional" sections of the PUC. Now, for example, instead of having a pool of a dozen engineers who could be assigned to various kinds of utility cases as necessary, staff have been assigned to functional sections, such as energy and water, or telecommunications. In the former, there are now eight professional staff and one secretary. Only two of these staff are engineers assigned to electric utility matters. If these engineers are assigned to an important electric utility case as advisory staff, they are then prohibited from any but formal communication with the other staff and the Commissioners on that case and thus may well be unavailable for consultation on issues where only they have the required expertise. Obviously, this severely restricts the ability of the PUC to make the best use of its scarce staff resources.**
4. **When some staff are made trial staff, their supervisors may be made advisory staff. This results in an odd situation where supervisors cannot effectively manage the work product of their staff since they are prohibited from talking to them about important matters at issue!**
5. **In spite of this elaborate legal "Chinese wall" system of preventing parties within and outside the PUC from communicating about a case, there are still serious questions about fairness and openness. As indicated above, this system does not prevent advisory staff from rendering their own opinions on case decisions to individual Commissioners in private meetings. This by itself is not a fatal indictment of the system. But the same persons who are advisory staff on, say, a Public Service Company case today, may be trial staff on a related case dealing with the same company, next week. There is a clear conflict in this process of "changing hats", with a limited number of staff, from advisor to advocate and back again.**

Solving The Ex Parte Communication Issue

The standard device used in Colorado to assure fair and open communication between state government decision makers and the public is the Colorado Sunshine Law. It clearly declares that, "the formation of public policy is public business and may not be conducted in secret." (C.R.S. 24-6-401) This law provides that meetings of two or more decision-makers must be held with notice and in an open forum where the public can attend, "see for themselves what is going on" and understand how the decision was made. The whole purpose of the Sunshine Law, since its passage in 1973, is to assure that public business is done in public with adequate safeguards in place to allow both public participation and administrative efficiency. For these reasons, government agencies are allowed to close certain kinds of meetings, such as conferences with counsel about pending litigation or discussions on personnel matters, while the general rule remains that open meetings are required. Although not always easy to follow, this law has become part of the normal government operations landscape in Colorado. It is important to remember that one of the key goals of this law is to inspire

public confidence in the process that the state government uses to make its decisions.

The PUC has added to this foundation by enacting its own Rules of Practice and Procedure, in particular, Rules 9 and 10. Commission Rule 9 states that its purpose is to, "prohibit off-the-record communications and to maintain public confidence in the Commission's on-the-record proceedings." (Rule 9(a)). Rule 10 is a code of ethics which Commissioners are urged to follow in order to carry out their duties with integrity, honesty and objectivity.

PUC Rule 9 applies only when a case is pending for decision before the Commission and thirty days prior to the filing of such a case. It does not apply to other PUC related functions, such as, "rule making hearings, interpretative rule making proceedings, (as described by the court in *Common Carriers Conference vs. PUC*, 761 P.2d 737 (1988)), investigative proceedings, proceedings begun to determine and establish statements of general commission policy, generic proceedings, miscellaneous dockets, such as dockets established as repositories for information, or any communications with or at the request of members of the Colorado General Assembly or their staffs relating to legislation, appropriations, budget or oversight matters. ("Rule 9", Off-The-Record Communications, PUC Rules of Practice and Procedure) The purpose and use of Rule 9 is clear. When a case is pending or 30 days before, private communications between the PUC decision makers and parties to the case are prohibited.

Where Commission Rule 9 has specific boundaries which are limited to cases pending, including the 30 day period before the filing of such case, Commission Rule 10 defines a general standard of conduct for PUC Commissioners and staff which is intended to apply at all times. This rule directs that Commissioners and Administrative Law Judges at the PUC, "shall avoid the appearance of impropriety" in the discharge of their responsibilities.

Unfortunately, the pervasive lack of trust in Commission proceedings renders the Sunshine Law and Rules 9 & 10 insufficient to reassure the public and interested parties that the concepts of fundamental fairness will always be observed at the PUC. A stronger rule is needed, but also one that is both simpler and more flexible, in order to clearly assure fairness while not so hamstringing the PUC that it cannot efficiently conduct its business.

Open Communication Should Be Required

The new rule should be that all communications with the PUC will be "on-the-record" unless they contain information that falls within specific categories where non-disclosure is allowed, such as the familiar categories found in the Sunshine Law. In cases where there is any question, the Commission may make a determination under existing law and commission rules to issue a protective order for proprietary information.

If public confidence in the PUC is to be restored, every effort will have to be made to show that public business is being done in public. This extends not only to matters pending for decision before the PUC but also to general communications and information passed between the PUC Commissioners and staff and outside parties. Given a rule this basic and clear, communication will actually be encouraged since there will be no suspicion or doubt of impropriety or illegality.

Critics of the current system point out that we now have the worst of both worlds: lack of trust in the process and fear that any communication, no matter how important or innocent, will be deemed inappropriate or illegal. While the open system suggested above should resolve the trust problem, it should be recognized that there will still be a need to communicate with the PUC on an "off-the-record" basis at some times when a case is not pending for decision. For example, if one of the regulated utility companies has information of future plans or current developments which is sensitive and proprietary in nature, but which may be crucial to the PUC in its general administrative process, there may be a mechanism to allow the sharing of that information "off-the-record". Otherwise the information will not be forth-coming. The existing mechanism, which allows application for a protective order to guard the privacy of vital proprietary information, is allowed by the Open Records Act and the Sunshine Law. If all parties and the general public are reassured that communications with the PUC are a matter of open record, whether a case is pending or not, except as exempted by law, public confidence in the integrity of the PUC will be restored and the goals of Commission Rules 9 and 10 will be achieved.

Recommendation 2: The General Assembly should continue to require that all communications with the PUC strictly observe the Colorado Sunshine and Open Records Laws and should be "on-the-record", except where specifically exempted by law.

Allow Individual Meetings With Disclosure When Case Not Pending

While it is important to restore the publics' confidence in the PUC by requiring that all communications with the PUC be on-the-record, it is also important not to unreasonably constrict the flow of vital information. For example, a Colorado PUC Commissioner may now refuse to meet with a technical expert on telecommunications matters, even though the information to be conveyed was not the subject of any pending case before the PUC, and therefore not subject to Commission Rule 9 or ex parte

communications. In this way, the Commissioner would be meeting the requirements of the Commissions' new Rule 10, which counsels the avoidance of even the appearance of impropriety. At the same time, the vital technical information would be lost, thereby potentially harming Colorado telecommunications consumers, the PUC decision making process, as well as the interests of the regulated industry.

While the standards of high integrity found in Commission Rule 10 are reflective of the Colorado Executive Order of February 10, 1987, entitled, "Integrity in Government of Colorado State Executive Branch Employees" and are an appropriate goal, they are not intended to unduly hinder Commission operations. Rather, Rule 10 is intended to encourage the discharge of Commission responsibilities within the context of high integrity and impartiality. To the extent Rule 10 is being interpreted as a reason to prohibit the flow of vital information, in compliance with all other applicable state law, it should be revised to promote communication, if made openly.

Other states have successfully addressed this problem by expressly allowing such meetings to take place, but at the same time requiring that the meeting participants certify that no issues pending for decision before the PUC were discussed, and file for the public record with the PUC, a brief memorandum describing the issues discussed in the meeting. In this way, the communication is expressly allowed and the public interest is thoroughly protected through disclosure.

Recommendation 3: The General Assembly should require the Public Utilities Commissioners and Administrative Law Judges to file a memorandum for the public record 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 pursuant to Commission Rule 9.

Recommendation 4: The PUC should amend Rule 10 in order to promote necessary communications with Commissioners and Administrative Law Judges as allowed by law.

II. THE STAFF RESOURCES ISSUE: HOW BEST TO HANDLE THE WORKLOAD

The reason for using an administrative agency to consider and decide upon matters relating to the regulation of public utilities, rather than simply having those matters submitted to the courts for decision, is expertise. Colorado's PUC employs many experts in the fields of law, engineering, finance, economics, accounting and computer science in order to carry out its regulatory duties. In addition, Colorado employs another ten persons in the Attorney General's Office of Consumer Counsel, (OCC), and several assistant attorneys general who are assigned to assist the PUC.

On the industry side of the ledger, there are more than 1,100 companies which are regulated by the PUC. These include, of course, two of the largest companies in Colorado, US WEST Communications and Public Service Company. These regulated companies, especially the largest of them, are intensely concerned about the decision outputs of the PUC, since the health of their businesses is at stake. Therefore, no time or expense is spared by the regulated companies in placing their cases before the regulators. The result is often a flood of cases and communications from the regulated to the agency; a flood which cannot be controlled by the regulators, but only "processed" and worked through.

The problems described in this report, as well as simply the daily and ongoing problems of trying to work through complex issues in a timely and quality fashion, have combined to cause a new problem at the PUC. The problem is the settlement of cases. Although the public is arguably well and efficiently served by these case settlements, this is by no means automatic. Not all settlements are alike. Although the phenomenon of settlement may be part of a healthy response to a bureaucracy in need of streamlining, insufficient thought has been given to the logical consequences of settling major utility cases without sufficient involvement of the PUC staff and decision-makers. Are we paying for all the PUC's expertise simply to detour around it?

For example, in 1991, at least two very large Public Service Company cases were settled outside the normal PUC process: the rate increase case and the case regarding the decommissioning of the Fort St. Vrain Nuclear Power Station. Normally, large and important cases like these would be submitted to the PUC for a decision after careful consideration by staff and extensive opportunity for a formal hearing involving all of the potentially affected parties. The proponents and opponents of the case would file and argue their positions. As described above, PUC staff would be assigned as trial staff to weigh all the arguments submitted, to consider past PUC decisions and then to propose to the Administrative Law Judge assigned to the case, or to the Commissioners if they were hearing the case, the balanced solution that would protect both the company's and the ratepayers' pocketbooks. The advisory staff would further consider the matter from all sides and advise the decision-makers using their best faculties and experience. The cases cited, however, were largely settled outside the formal process and then presented to the Commissioners for their approval by Public Service Company and the OCC. Those parties carefully considered and planned to take this alternative decision route because they felt that a better decision could be reached in this way. Who would have thought that, when the OCC was created to represent Colorado utility consumers in 1984, it would be sought out in important cases

to bargain and settle with the largest regulated companies outside the traditional decision-making process?

At least in the case of Fort St Vrain, the Commissioners were not happy with being presented with a "package settlement" by the OCC and PSCo, although they approved it in the end. Some staff members felt strongly that the public interest had not been fully represented and that the ratepayers were being unfairly required to pay for the dismantling of the troubled plant. The Commissioners were not pleased at being put on the periphery of the decision process and then being asked to approve the result of the settlement. PSCo and OCC argued persuasively that the agreement to clean up the plant now and spread the cost over a number of years was the best that could be reached, particularly in a case without precedent, since no nuclear plant has ever been decommissioned and dismantled for clean-up in the United States before.

Settlement Rules Are Needed

There is clearly a place for settlement of cases before the PUC, just as there is in law generally. Settlements are often faster, cheaper and happier processes than the traditional process of the formal clash of interests before an impartial arbiter. Where the public interest can be better served, the settlement process should be encouraged. The problem is to assure that all the vitally affected parties have input into the process.

A 1988 study by the National Regulatory Research Institute suggests that State PUCs rely on traditional legal formats for hearing cases and settling disputes more than necessary or profitable. (Administrative Procedures for Proactive Regulation, NRRI - 87-18, March, 1988) This study discusses numerous alternatives such as negotiated rule-making, mediation, commission task forces, scientific panels or advisory committees which could help to at least augment the traditional regulatory legal approach. These processes could serve to substantively improve the PUCs' decision-making process and should be more fully explored.

What is needed is a system which encourages settlement where appropriate, but which cannot bypass the public decision-making process at will, as is currently the case. This can be accomplished through rulemaking by the PUC, which will formalize appropriate settlement procedures for all parties.

For example, PUC rules of procedure could be written to provide that settlement of cases is always to be encouraged throughout the decision process. However, no settlement would be allowed, except in extraordinary circumstances as decided by the Commissioners, without appropriate involvement by the PUC staff. The rules would provide that when a case is first filed with the PUC, the filing party could elect to follow a "settlement path" or a "trial path". In this way, appropriate staff involvement would be assured and the filing party could make the decision whether the matter is likely to be resolved without resort to the full, formal legal system of decision, or not.

Recommendation 5: The General Assembly should direct the Public Utilities Commission to engage in rule making in order to set standards for the appropriate encouragement and consideration of cases which are proposed for settlement. No settlement should be allowed, except in extraordinary circumstances as determined by the Commissioners, without appropriate staff involvement. Alternatives to the formal legal procedures utilized by the PUC should be explored and adopted where appropriate.

Qualifications, Training And Resource Allocation

At the PUC, as on Buckminster Fuller's Spaceship Earth, there are no passengers. Everyone is crew. Some of the most important members of that crew are the Commissioners. A former Commissioner was quoted, upon his retirement from the PUC, as saying that the job of a Commissioner is impossible. Appointed with little experience in utility regulation, (in order to assure objectivity), given little or no formal training, (because of lack of a system to provide it), expected to make decisions, both major and minor, as soon as appointed, and expected to act as a lightning rod for criticism from all sides, all for a salary so low that the PUC Commissioners in 43 other states make far more, it is no wonder that recruiting high quality PUC Commissioners is increasingly difficult.

There is wide agreement that the salaries of the Commissioners should be raised without delay. A bill to do so was submitted to the 1992 Regular Session of the General Assembly. It was defeated in the Colorado House by a narrow margin. Similar bills have been defeated in previous years.

The Colorado PUC Commissioners have not had a pay increase since 1984. Since that time, their salary level has lagged farther and farther behind that of PUC Commissioners in other states. Table 8 shows the salary levels of PUC Commissioners in the fifty states and Canada. Colorado ranks 43rd on that list.

TABLE 8

COMPARATIVE SALARIES, CHAIRMEN AND COMMISSIONERS (1990)		
State Commissions	Chairperson	Commissioners
New York State Department of Transportation	98,399 Comm. of Transp.	82,777 Dir., Cert./Compl. Bur.
New Jersey Board of Public Utilities	95,000	90,000
Virginia State Corporation Commission	93,897	92,867
New York Public Service Commission	91,957	79,437
California Public Utilities Commission	90,860 President	88,062
New Jersey Department of Transportation	90,000 * Comm. of Transp.	79,500 Deputy Commissioner
Connecticut Department of Public Utility Control	70,117 - 89,948 *	65,173 - 83,162
Florida Public Service Commission	87,404	87,404
Ohio Public Utilities Commission	61,197 - 85,987	61,197 - 85,987
Wisconsin Public Service Commission	52,480 - 79,680	52,480 - 79,680
Washington Utilities & Transportation Commission	78,372	71,016
Hawaii Public Utilities Commission	77,964	71,136
Kansas State Corporation Commission	77,321	75,268
District of Columbia Public Service Commission	76,634 *	76,634
North Carolina Utilities Commission	76,252	75,252
Wyoming Public Service Commission	44,160 - 75,852	44,160 - 75,852
Texas Railroad Commission	74,698	74,698
Tennessee Public Service Commission	73,140	73,140
Oregon Public Utility Commission	72,639	69,180 Member
Maryland Public Service Commission	72,195	70,918
Texas Public Utility Commission	71,400	71,400
Maine Public Utilities Commission	71,344	67,225
Illinois Commerce Commission	70,455	61,530
Georgia Public Service Commission	70,202	70,202
Iowa Utilities Board	53,000 - 68,300	53,000 - 68,300
New Hampshire Public Utilities Commission	67,625 *	67,625
Nevada Public Service Commission	67,305	62,790
Alaska Public Utilities Commission	66,816	66,816
New Mexico State Corporation Commission	65,000	65,000
Michigan Public Service Commission	65,000	62,500
Utah Public Service Commission	65,000 *	62,000

COMPARATIVE SALARIES, CHAIRMEN AND COMMISSIONERS (1990)

State Commissions	Chairperson	Commissioners
Rhode Island Public Utilities Commission	64,768 *	55,978 - 58,522
Missouri Public Service Commission	64,323 *	64,323
Kentucky Public Service Commission	60,000 - 64,000	60,000 - 64,000
Massachusetts Department of Public Utilities	50,191 - 63,273 *	46,169 - 58,010
Arkansas Public Service Commission	61,011	58,795
New Mexico Public Service Commission	59,250	56,980
Missouri Division of Transportation	57,945 * Director	
Pennsylvania Public Utility Commission	57,500	55,000
Vermont Department of Public Service	57,400 * Commissioner	35,100 Principal Assistant
South Carolina Public Service Commission	56,154 *	51,916
Vermont Public Service Board	55,200 *	29,150 ** Members
Idaho Public Utilities Commission	55,000 President	55,000
Minnesota Public Utilities Commission	54,505	54,505
Indiana Utility Regulatory Commission	53,014	46,254 - 52,780
Arizona Corporation Commission	52,000	52,000
Oklahoma Public Service Commission	51,482 President	50,847
West Virginia Public Service Commission	50,000	46,200
North Dakota Public Utilities Commission	49,300 *	49,300
Colorado Public Utilities Commission	48,400	48,400
Mississippi Public Service Commission	48,000	48,000
South Dakota Public Utilities Commission	41,311	41,311
Montana Public Service Commission	39,253	37,970
Louisiana Public Service Commission	37,800	37,800
Nebraska Public Service Commission	35,000	35,000
Delaware Public Service Commission	20,000 **	15,000 **
Iowa Department of Transportation	10,000 ** Commissioners	40.00/day IRFA Comm. **
Virgin Islands Public Services Commission	30.00 ** per meeting	30.00 per meeting
* Salary data is older than December 31, 1990; comparison may not be accurate.		
** Part time positions.		
Rankings in the table are based on high end of Chairperson salaries.		
Canadian Commissions*	Chairperson	Commissioner
Canadian Radio-Television and	\$124,400 - 151,300	85,400 - 100,600 Member

COMPARATIVE SALARIES, CHAIRMEN AND COMMISSIONERS (1990)

State Commissions	Chairperson	Commissioners
Telecommunications Commission		
National Energy Board	124,400 - 151,300	95,200 - 112,100 Member
Ontario Energy Board	70,025 - 105,025	56,590 - 75,124 Members
Alberta Public Utilities Board	67,700 - 100,300	61,700 - 84,600 Members
Quebec Telecommunications Board (Regie des telecommunications du Quebec)	80,000 - 90,000	65,000 - 75,000 Members
* Quoted in Canadian Dollars		

NOTES REGARDING COMPARATIVE SALARIES

Of the 56 agencies reporting salaries for full-time chairpersons (or equivalent), 9 fall in to the range of \$80,000 and up; 15 in the range of \$70-79,999; 12 in the range of \$60-69,999; 13 in the range of \$50-59,999; 4 in the range of \$40-49,999; and 3 in the range of \$30-39,999.

Median full-time Chairperson salary is \$64,000, with 27 agencies reporting salaries higher and 27 reporting salaries lower. Reported salaries range between a high of \$98,399 and a low of \$35,000.

Of the 54 agencies reporting salaries for full-time commissioners (or equivalent), 7 fall into the range of \$80,000 and up; 14 in the range of \$70-79,999; 12 in the range of \$60-69,999; 12 in the range of \$50-59,999; 5 in the range of \$40-49,999; and 4 in the range of \$30-39,999.

Median full-time Commissioner salary is \$62,790, with 27 agencies reporting salaries higher and 26 reporting salaries lower. Reported salaries range between a high of \$92,867 and a low of \$35,000.

Twenty -four agencies reported identical salaries (or salary ranges) for chairpersons as for commissioners.

The funding for Commissioner's salaries is fee based and not drawn from the General Fund. Representatives of the regulated industries agree that it is vital that the salaries of the PUC Commissioners be placed at a level which will attract and retain persons with the skills and abilities necessary to carry out the difficult and varied tasks of a PUC Commissioner. Every time a Commissioner vacancy occurs, the state is faced with the task of offering a difficult and troublesome appointment for a relatively short four-year term to a pool of candidates whose skills and experience could command a far higher salary in other public or private positions. Naturally, many of these candidates decline to be considered for appointment to the PUC and the State of Colorado suffers as a result.

As introduced, the 1992 bill to raise the Commissioners' salaries would have set the salary level at the median for all PUC Commissioners in the United States. Another approach which would achieve the same goal is to tie Commissioners' salaries to the salaries paid currently to Colorado district court judges under Section 13-30-103(e) C.R.S. This concept would recognize the general similarity in decision making functions shared by district court judges and PUC Commissioners. As salaries for the former increase by statute over time, the same increase would be reflected in the PUC Commissioners' salary level. The salary of district court judges is currently fixed at \$70,500. A move to this level of compensation would allow the State of Colorado to attract and retain highly skilled persons to serve as PUC Commissioners.

Recommendation 6: The General Assembly should amend the Public Utilities Law by increasing the salaries of the Commissioners to \$70,500 per year beginning July 1, 1993. Thereafter, increases in the salaries of Colorado district court judges under 13-30-103 C.R.S. should also be reflected in increases in salaries of PUC Commissioners.

Stagger Commissioner Terms Of Office

Another issue which hampers the functioning of the PUC is the expiration of more than one Commissioner's term of office in the same year. When more than one Commissioner can be replaced in a given year, the knowledge and experience base of the Commissioners can be severely eroded. Training a new Commissioner is a long-term task as will be discussed in more detail below. The simple fix for this problem is to stagger the terms of the Commissioners to require that only one term can expire in any given year. When Colorado PUC Commissioners served six-year terms, the law was written in such a way that no more than one term expired in a given year. However, when the terms of Commissioners were changed to four years, the law was not properly amended to assure that only one term would expire in a given year.

Recommendation 7: The General Assembly should amend the Public Utilities Law to require that no more than one Commissioner's term expires in any given year.

Implement Commissioner Training

Once a Commissioner is appointed, it is generally agreed that it can take as long as two years before the "learning curve" is complete and the new Commissioner can be expected to render fully informed decisions. Due to lack of a training system and ex parte worries, Commissioners are often left to their own devices in seeking this "on-the-job training". Most often, we use the least rigorous and most expensive method of training available to teach our Commissioners, that of sending them off periodically to meetings of the National Association of Regulatory Utility Commissioners. The money employed in this fashion is then not available for wider needs, such as the on-going training of the PUC staff. The PUC does not have an adequate library to keep the materials collected at these national meetings so that the information can be shared by all.

Under the new "ex parte rules" recommended above, the PUC could avail itself of excellent local educational opportunities for both Commissioners and staff. In addition to continuing to play an important role as a member of NARUC, the Colorado PUC should sponsor a series of educational seminars for Commissioners and staff by drawing on the wealth of experience found among utility company and public advocates in state. In the past, Colorado has been a leader among the states in making use of both local and national training opportunities. By leveraging the skills and experience of local sources, such as the University of Colorado and local regulated utilities, in open meetings, the PUC can emphasize its commitment to continuing learning and become a forum for the exchange of ideas and information for the benefit of Colorado utility consumers.

Recommendation 8: The Public Utilities Commission should prepare a training plan for Commissioners and staff which is designed to optimally and efficiently prepare them for dealing effectively with utility regulatory issues. An adequate PUC library should be maintained as a repository for information generated through the training process. Whenever possible, consistent with conflict of interest policy, PUC Commissioners and staff should request that private sources provide this training on a no cost, low cost or shared cost basis.

Encourage The Commissioners To Hear Cases As An Appeals Court

The Commissioners time, as well as that of the rest of the staff of the PUC, could be better used by treating the Commissioners as an "appeals court", rather than as a "court of first impression". Now, the Commissioners can choose to hear a case when it is filed, or they can assign it to one Commissioner for hearing, or it can be assigned to one of the PUC's six Administrative Law Judges for hearing. If the Commissioners choose to hear a case, it is handled like any other case, with three Judges instead of one. If the parties to the case do not like the Commissioners' decision, they can ask for a rehearing, but this is rarely granted. The unhappy party's only alternative then is an appeal to the judicial system. This would not be the situation if the Commissioners were used as an "appeals court".

By changing the structure of the Public Utilities Law to encourage that all cases be heard first by an Administrative Law Judge, the time and energy of only one Judge instead of three is used. The Administrative Law Judge, is usually an experienced lawyer with special expertise in ruling on utility regulatory cases. The ALJ can weigh all the evidence and render a decision which will clearly spell out the issues involved. This will put the issues of the case in context and provide a conceptual framework which can be used on appeal.

If the parties do not like the decision of the ALJ, they can then appeal all or parts of it to the Commissioners, sitting as an administrative appeals body. The issues of the case have now been focused and perhaps some have been decided to the satisfaction of both sides. Those that remain have already been discussed and passed on by the ALJ, whose line of thought is available to the Commissioners in their review. This can be especially important if the Commissioners are new and not yet very well versed in the decision-making process. The Commissioners can hear the entire case again if they choose, or simply hear the parts in question. This preserves the most important issues for review by the Commissioners and affords the parties another chance at receiving a satisfactory decision on the administrative level before having to consider a resort to the courts.

The proposed change would also allow the Commissioners to continue to select those cases of major policy importance to be heard first by the Commissioners.

Recommendation 9: The General Assembly should amend 40-6-101 (2) C.R.S. to require that cases submitted to the PUC for decision must first be heard by an Administrative Law Judge, unless the Commission, by written order entered in the case, assigned the matter to the Commissioners for hearing.

Perfect Judicial Appeals To The Colorado Court Of Appeals

Another reform which the Department of Regulatory Agencies has consistently proposed in recent years has been the use of the court of appeals, rather than the district court, to hear appeals from decisions of the regulatory agencies. Once the issues in a case have been thoroughly digested on the administrative level, an appeals court is the appropriate place to perform a judicial review and render an opinion. In addition, appeals court judges are well acquainted with handling the kind of complex and arcane arguments which are often left over after a case has been through the administrative hearings process. The General Assembly has made this change in the laws of every program it has reviewed over at least the last three years in the sunset process.

Recommendation 10: The General Assembly should amend 40-2-101, et. seq. to require that appeals from the final decisions of the PUC must be made to the Colorado Court of Appeals.

Coordinate Staff Testimony In Hearings

The 1988 Performance Audit of the PUC identified an issue which still causes concern at the PUC: How to balance the need for vigorous and free debate among the PUC staff with the need for organized, coordinated and uniform testimony and recommendations to the Commissioners.

The Auditor found:

"The Public Utilities Commission staff give contradictory testimony and recommendations in public hearings before the Commission. As a result of this lack of coordination of testimony, public interest may not be well served. We have been told that representatives of the regulated community in the hearing take advantage of the apparent differences in staff testimony. Also, the Commission staff may be giving unclear signals to the regulated community on what their opinion really is regarding the matter at hand. With no coordination of testimony by Commission managers or regular work-required accommodation of the differing professional perspectives, public disagreements and contradictions are bound to occur". (Performance Audit, January 1988, pp. 63 & 64)

In order to address this issue, the Auditor made the following observation and recommendation:

"We recognize that honest differences may arise from the analyses and conclusions of Commission staff during their development of testimony for a hearing. These differences arise out of the various perspectives of the different professionals assigned to provide information and out of the sheer complexity of the issues involved in the hearing. We agree with the Commissioners that these differences should not be suppressed. However, we also believe that the differences should be presented in a coordinated fashion to provide guidance to the Commissioners on how to balance the different points of view.

Rather than continue to have contradictory staff testimony in hearings, we recommend that the Commission consider developing and using teams for matters in which different Commission staff members will testify. A team leader should coordinate the testimony of the staff, ensure that all relevant information is presented, and work with the PUC attorney in the case. To ensure full disclosure of all information, the team leader should be evaluated on the comprehensiveness of information presented. These teams would also provide a context in which members of different professions would work together more regularly." (Performance Audit, 1988, page 64)

The PUC staff has made use of the team leader concept with some success since 1988. However, issues of independence vs uniformity of testimony remain. The 1989 functional restructuring of the PUC staff into units like the telecommunications and energy units has helped somewhat in that PUC staff from different disciplines such as engineering and financial analysis, now work more closely together. In spite of this progress, the ultimate goal of a staff which speaks clearly with one voice has not been achieved.

The Department of Regulatory agencies agrees with the Auditor's findings and also recognizes that more remains to be done. The team leader concept would be more effective at encouraging vigorous in-house staff debate which results in clear and coordinated public staff testimony if the PUC would: a) adopt Recommendation 19 on page 72 regarding the appointment of unit heads to lead the work of its functional units, and b) adopt a policy which requires organized, coordinated and uniform public testimony by PUC staff.

Recommendation 11: The PUC should adopt a policy which encourages free and vigorous staff debate on PUC issues but requires that PUC managers organize and coordinate clear testimony and uniform public recommendations.

Expedite Judicial Appeals

A statutory amendment eliminating the requirement to file an Application for Rehearing, Reargument and Reconsideration (RRR) would shorten the appeals process by at least fifty days. In applications heard by an Administrative Law Judge a recommended decision is entered by the ALJ. Exceptions to the recommended decision must be filed within twenty days, pursuant to section 40-6-109 C.R.S. Additional time is needed if a transcript of the hearing must be prepared. A response to exceptions must be filed within fourteen days, pursuant to Rule 22(b) of the Commission's Rules of Practice and Procedure. After the Commission enters its decision on the exceptions, an Application for Rehearing, Reargument or Reconsideration of the Commission's decision must be filed within twenty days, pursuant to section 40-6-114 C.R.S. The Commission must rule on the Application for RRR within thirty days. Filing an Application for RRR is a prerequisite for obtaining judicial review of a Commission decision in the courts. Elimination of the requirement to file an

RRR in cases where exceptions have been filed would remove one step in the appeals process which requires almost two months.

Under current law, the requirement to file for an RRR before a judicial appeal can be perfected dates from 1913 and applies to Commission decisions for all utilities, including electric, gas, telephone and water utilities. However, there is precedent for abolishing this requirement since the Administrative Procedure Act, in sections 24-4-105 and 106 C.R.S. do not require an RRR of the final decisions of other state agencies as a prerequisite to judicial review. This statutory change would not affect the parties' rights to file exceptions to Commission decisions or to ask the Commission for an RRR in cases where their strategy so dictates. The change would simply remove an additional procedural step in cases where the parties decide that the Commission is not providing adequate relief and that an appeal to the judicial system is necessary.

Recommendation 12: The General Assembly should amend section 40-6-114 C.R.S. to provide that the filing of an Application for Rehearing, Reargument and Reconsideration of final decisions of the PUC is not a necessary prerequisite to a judicial appeal of a Commission decision.

Expedite Commission Hearing Process

By engaging in rulemaking, the Commission could reduce several phases of the hearing process up to thirty days. This is an important matter for the Commission and for the Commission's customers since cases which are delayed clog the Commission's docket and consume unnecessary amounts of time and money.

Tables 9 and 10 on the following pages show the typical timetable for processing contested applications for transportation operating authority for the Public Utilities Commission. This particular portion of the Public Utilities Law could be streamlined by the PUC through rulemaking in the following ways:

- 1) Reduce the notice period required by section 40-6-108 from thirty to fifteen days. (Savings of fifteen days.)**
- 2) Reduce the interval between the filing of the applicant's certification and the setting of the date of hearing from fifteen days to ten days. (Savings of five days.)**
- 3) Limit the time allowed for discovery on transportation applications similar to the time period allowed under the Colorado Rules of Civil Procedure, Rule 26.1 regarding limited and simplified discovery, from thirty days to twenty days. (Savings of ten days.)**

All of the foregoing recommendations could be handled by the PUC through rulemaking amendments to its Commission rules on Practice and Procedure. In fact, the Commissioners have

authorized the institution of such rulemaking proceedings, but the press of Commission work has caused those proceedings to be delayed. The General Assembly should encourage the PUC to find the resources necessary to make these rule changes in order to expedite the hearing process, thereby saving time and money for itself and for the regulated utilities.

TABLE 9**TYPICAL TIMETABLE FOR PROCESSING CONTESTED APPLICATIONS FOR OPERATING AUTHORITY**

PROCESS	REQUIRED DAYS		CUMULATIVE DAYS	RULE */STATUTE	
	MINIMUM	MAXIMUM			
Application Received	1	1	1		40-10-104 C.R.S. 40-11-103 C.R.S.
Notice Published		5	18	6-19	40-6-108 C.R.S.
Intervention Period		30	30	36-49	40-6-108 C.R.S.
Applicant's Certification to Proceed		1	30	37-79	Rule 71 (b)(4)
Setting Hearing		1	15	38-94	Rule 71 (b)(15)
Hearing Date		10	60	48-154	40-6-108(4)
Recommended Decision		1	30	49-184	Internal Policy
Exceptions Filed		1	20	50-204	40-6-109(2)
Response Filed		1	14	51-218	Rule 22 (b)
Commission Ruling on Exceptions		7	60	59-278	No Statutory Limit or Rule
Rehearing, Reargument & Reconsideration		1	20	60-298	40-6-114 C.R.S.
Commission Ruling on RR&R		1	30	61-328	40-6-114 C.R.S.

* All reference to rules refers to the Commission's Rules of Practice and Procedure.

TABLE 10

TYPICAL TIMETABLE FOR PROCESSING NON-CONTESTED APPLICATIONS FOR OPERATING AUTHORITY

PROCESS	REQUIRED DAYS		CUMULATIVE DAYS	RULE */STATUTE
	MINIMUM	MAXIMUM		
Application Received	1	1	1	40-10-104 C.R.S. 40-11-103 C.R.S.
Notice Published		5	18	6-19 40-6-108 C.R.S.
Intervention Period		30	30	36-49 40-6-108 C.R.S.
Commission Order		7	21	43-70 40-6-109(5) C.R.S.

Recommendation 13: The Public Utilities Commission should engage in rulemaking in order to expedite and streamline the hearing process wherever possible, including specifically those areas recommended above.

Relax Rules Requiring Attorney Representation

Currently, the PUC requires that applicants be represented by attorneys in their appearances before the PUC except in two cases: 1) pro se representation, where a party represents himself; and 2) representatives of a closely held corporation may be a corporation officer rather than an attorney. (PUC Rules of Practice and Procedure, Rule 21, effective March 2, 1991, pursuant to section 13-1-127 C.R.S.).

Applicants who appear before the PUC are often heard to complain of the cost and legal formalism of the PUC's hearing procedures. In particular, the cost of hiring an attorney to prepare a case may be prohibitive for a small utility company or a citizens' intervenor group. While the PUC is appropriately concerned that persons appearing before them be qualified to adequately represent themselves and their companies, it must weigh this concern against the chilling effect that excessive formalism and requirements for attorney representation have on certain parties. Similarly, the Attorney General's Office has

indicated its concern over unlicensed persons practicing law before the PUC. In particular, it has raised the issue of the constitutional separation of powers as discussed in Denver Bar Association v PUC, 154 Colo. 273,391, P.2d 457 (1964), and counsels caution in this area.

However, there appears to be sufficient flexibility which can be exercised in making determinations of appropriate representation in matters before the PUC, which would allow further relaxation of the attorney representation requirements consistent with the interests of all parties.

For example, some matters are more appropriate than others for representation by non-attorneys. These may include general informational matters or technical testimony not related to an adjudicatory proceeding. The PUC could institute a policy of suggesting that all parties be represented by legal counsel but allowing non-attorney officers of corporations and shareholders in partnerships to represent those firms when their cases would not be prejudiced thereby. This would allow an increased informality in the PUC's operations and a savings of time and money by parties appearing before the PUC.

Recommendation 14: The General Assembly should adopt a new subsection (7) to section 40-6-109, C.R.S., to allow staff, corporations, partnerships, and other legal entities to appear without counsel in certain nonadjudicatory matters before the Commission, and to authorize the Commission to adopt rules concerning representation by non-attorneys for such entities.

Strengthen Transportation Fining Authority

In 1989, the Public Utilities Commission was granted fining authority for common and contract carriers who violate Colorado laws, rules or regulations with respect to their PUC granted transportation authorities. Beginning in May, 1990, the PUC began levying fines, usually in the amount of \$100 per violation, and has found this authority to be very useful and flexible in assuring compliance with Colorado law. Previously, the PUC was forced to consider suspending or revoking the transportation authorities of regulated carriers in the event of safety or other violations.

However, experience with the new fining authority has led to two disconcerting discoveries by the PUC: 1) The fines are often so small that it is easier and cheaper for a regulated transportation company to pay the fine rather than remedy the violation. In some cases, repairs to vehicles can run into thousands of dollars or meeting insurance requirements can be far more expensive than stipulating to a violation and paying a small fine. 2) The fining authority section of the Public Utilities Law, sections 40-7-113 and 114, have been interpreted by the Attorney General's Office in such a way as to preclude the PUC from levying a fine for a rule violation (such as a safety hazard) on an initial inspection. Follow up inspections are often not possible due to lack of manpower and the press of other business. Thus, many violators are not being fined when initial violations are found and subsequent violations are not being recorded as repeat offenses.

Another problem encountered by the Commission in this area has been the requirement in law of service of process in person. This has hampered enforcement and is unreasonable in terms of cost and resource use. Allowing the PUC to serve process by registered mail would solve this problem.

Given the PUC's experience with this fining authority, a simple and effective expedient would be to amend the sections indicated to raise the fine level from \$100 to \$500, to change the law to allow the fines to be levied at the first instance where violation can be proven, and allow service of process by registered mail.

Recommendation 15: The General Assembly should amend sections 40-7-113 and 114 to provide an increase in PUC fining authority for transportation utilities from \$100 to \$500.

Recommendation 16: The General Assembly should amend section 40-7-114 to provide that fines may be levied in all cases on the initial violation.

Recommendation 17: The General Assembly should amend C.R.S. 40-7-116 to allow service of process on violators by registered mail, as follows: "Such notice shall be tendered by the enforcement officials, either in person or by registered mail."

Strengthen PUC Consumer Protection Function

The smallest section of the PUC is the External Affairs Section. When fully staffed, it consists of six persons.

The theory behind the External Affairs Section is to facilitate resolution of individual consumer complaints and problems. Emphasis is placed on using these individual complaints to help identify trends of deteriorating utility quality of service across the state. Solutions to these systematic problems are then addressed in rule-making and other formal proceedings before the Commission.

Because of the recent high staff vacancy rate in the section, the staff has limited consumer requests for assistance to 10:00 a.m. to noon and from 1:00 to 3:00 p.m. Monday through Friday. The Commission encourages consumers to contact the utility first to try to resolve any issue. This is similar to any other private or governmental agency.

If unsatisfied, the consumer then has recourse with the PUC. The staff investigates the complaint and makes sure that the utility is following the rules and regulations, and is not misinforming its consumers.

The section has initiated a consumer public information and education program to alert consumers about their rights as utility customers. This outreach program empowers utility consumers by giving them important utility related information.

When authorized staffing is achieved, the section should staff the consumer complaint phone line all day, which would emphasize the Commission's willingness to respond to individual consumer complaints. Colorado consumers expect the chief utility regulator to respond to their concerns and this expectation should be fully met.

But, more importantly, consumers want solutions to quality of service issues. It doesn't help to tell a customer that the problem can't be fixed because that's the current rule. It is vital that this consumer input be used in cases before the PUC to obtain services that consumers want, and to improve the service quality of utilities throughout the state.

The information and feedback of consumers should be accepted and utilized by the other sections of the PUC in setting work priorities and in determining the success of the agency in meeting its consumer protection responsibilities.

With the current limited resources, there is a feeling among consumer advocates that the PUC is not really concerned about resolving consumer issues and the Office of Consumer Counsel (OCC) is much more likely to be responsive to a class of consumer complaints and to intervene in cases effectively for multiple consumers in the residential, agricultural and small business sectors. However, the OCC is not empowered by statute to investigate individual consumer complaints. That role belongs to the PUC.

Recommendation 18: The Executive Secretary should place a high priority on achieving full staffing of the External Affairs Section to help fulfill the Commission's emphasis on overseeing utility quality of service operations by responding to individual consumer complaints; by ensuring that utility rates, rules and regulations provide utility service and quality of service to consumers statewide; and by continually educating utility consumers about their rights as utility customers.

Create Technical Unit Heads For Telecommunications And Economics In Fixed Utilities

About two years ago, the structure of the Public Utilities Commission was "functionalized" by grouping staff members in functional units such as telecommunications, energy, and audit and compliance. Prior to this reorganization, the Fixed Utilities Section was organized by profession with financial analysts, economists and engineers each having their own unit, which in turn reported to the Chief of Fixed Utilities. This change was suggested in the 1988 Audit of the PUC.

One of the purposes of the "functionalized" structure was to create Technical Unit Heads who would be responsible for the technical issues in their areas. This allows the Section Chief to concentrate on the job of managing the section. The technical demands placed on the Commission are very heavy. The Technical Unit Heads and their employees perform the majority of the technical work. The charge of the Chief of the Fixed Utilities is to perform the management functions, thus allowing the Technical Unit Heads and their employees to concentrate on their duties as technical staff.

One factor contributing to the Section's inability to separate the management functions from the technical functions, was the failure to fill the technical telecommunication position, leaving the Section Chief with both his responsibility and that of the technical supervision of the Telecommunication Unit. This problem was compounded when the Economics Unit Head resigned. Once again, the Section Chief was required to assume both the technical responsibilities and the immediate supervision of that unit as well.

The problems of the Section could be resolved by creating Technical Unit Heads in Telecommunications and Economics. These Unit Heads would be responsible for coordinating the technical work with their staffs, and assuming the duties of direct supervision.

Recommendation 19: The Executive Secretary should consider reorganizing the Fixed Utilities Section of the Public Utilities Commission by creating Technical Unit Heads for Telecommunications and Economics.

III. PUC MANAGEMENT ISSUES NEED TO BE CLARIFIED

There has been controversy and uncertainty for many years concerning management issues at the PUC. The primary issue has been one of reporting relationships: specifically, to whom does the Executive Secretary report, to the Commissioners or to the Executive Director of DORA? Historically, the statutes provided that the Commissioners appointed the Executive Secretary, but the Executive Director appointed the PUC staff (all of whom reported to the Executive Secretary).

Warned by a Legislative Audit in January of 1988 that this situation was "unworkable and a potential violation of the Colorado Constitution" (Performance Audit, page 48), an amendment to the PUC statute was passed by the Legislature in 1989 which provided that the Executive Director of DORA would appoint the Executive Secretary of the PUC with the approval of the Commissioners. This change in law and practice was intended to bring the PUC into compliance with the Colorado Constitution. It was also intended to recognize that the PUC was now fully a division within DORA pursuant to the 1968 reorganization of state government, but at the same time to allow the Commissioners some voice in the selection. The obvious problem is that the Constitution is clear on who is to be the appointing authority, not to mention the fact that a divided appointing authority is prone to conflict and cannot work.

New Management Structure Is Needed

The 1989 amendments have not achieved the desired results. A new and sound operating structure must be found. The 1988 Legislative Audit termed the then current system of managing the PUC "unworkable", in that it "may conflict with constitutional provisions regarding appointing authorities." (Performance Audit, Colorado Public Utilities Commission, January 1988, page 48.) The auditors pointed out that under the old law, DORA and the Commissioners tried to overcome organizational problems by informal agreements. With a high degree of perception, the auditors also said that, "informal agreements work only as long as all parties agree to them." Based on experience since 1989, it is apparent that these problems have not been solved.

The constitutional conflict referred to by the auditors is still present. The Colorado Constitution requires that, "The head of each principal department shall be the appointing authority for... heads of divisions... ranking next below the head of such department. Heads of such divisions shall be the appointing authorities for all positions within the personnel system within their respective divisions." (Colorado Constitution, Article XII, Section 13, Paragraph (7). However, the provision of the PUC statute which was passed in 1989 and which failed so completely to avoid the Executive Secretary hiring conflict described above reads, "The executive director of the department of regulatory agencies, pursuant to section 13 of article XII of the state constitution, and with the approval of the commission, shall appoint an executive secretary of the commission." (C.R.S. 40-2-103, emphasis added) Prior to 1991, the conflict described above was more potential than real. The fact that the higher legal

authority, the State Constitution, placed the entire appointing authority in the Executive Director of DORA, while the PUC statute provided for the sharing of that authority with the Commissioners, had never been tested. Then, as now, this system of appointment of the Executive Secretary of the PUC is unworkable and must be amended for the following reasons:

- 1. When the PUC was placed within DORA by the Administrative Organization Act of 1968, a fundamental policy decision was made to abolish free standing bodies of state government in favor of consolidation within the twenty principal departments of the executive branch. This concept is also enshrined in the Colorado Constitution which states, at Article IV, Section 22, "All executive and administrative offices, agencies and instrumentalities of the executive department of state government and their respective functions, powers and duties, except for the office of governor and lieutenant governor, shall be allocated by law among and within not more than twenty departments." In addition to fulfilling the goal of increased administrative efficiency, this move was intended to result in increased accountability of state government agencies. Rather than continuing to use the model, best typified by the Texas Railroad Commission, of a government agency that was a power unto itself, the 1968 Act and constitutional amendment married the concept of an independent regulatory agency with the concepts of increased administrative efficiency and accountability. Thus, while the three Commissioners continue to be very independent, being appointed by the Governor and confirmed by the State Senate for four year terms in office, the PUC staff and the PUC budget are administered and accountable through the regular and familiar organs of state government in Colorado. Allowing the Commissioners to manage the PUC, as they did prior to 1968, is a policy direction from which the state turned away by both statute and constitutional amendment, more than two decades ago. The issue has remained current, however, as cited by the State Auditor on page 62 of the 1988 Performance Audit, "The Commissioners have been too involved in management".**
- 2. One of the last vestiges of the Commissioners' management of the PUC staff is the statutory provision which allows them the power to approve the appointment of the PUC Executive Secretary. Although it appears minor, this power is crucial, since the PUC Executive Secretary has the authority and responsibility to manage the 99 employees and the \$6.7 million annual budget of the PUC. The 1989 amendment of the PUC statute which preserved this power was an attempt to satisfy the criticism of the state auditors while also**

observing the tradition of allowing the Commissioners to have a hand in selecting their Executive Secretary. It is not clear why a "consultation" requirement rather than an "approval" requirement in that amendment would not have preserved this tradition.

- 3. Another vestige of the past is the antiquated title and language used in statute to define the role of the Commission's chief administrator. When the Commission was first formed in 1913, the designation of a secretary as the executive who would "keep a full and true record of all proceedings of the commission..." might have been adequate. Today, however, the PUC's Executive Secretary is in reality a Division Director as defined in the Colorado Constitution and state law, with all of the responsibilities that position entails. In order to comply with the content and intent of those laws and in order to more accurately reflect the full range of duties of the PUC Director, the Public Utilities Law should be revised as set out below.**

Given the unworkable appointment system now in the PUC statute and the conflict with the higher authority of the state constitution, the PUC statute should be amended as follows:

Recommendation 20: The General Assembly should amend the PUC statute regarding the appointment of the PUC Executive Secretary to read: "40-2-103. Director - duties. The executive director of the department of regulatory agencies, pursuant to section 13 of article XII of the state constitution, after consultation with the commissioners, shall appoint a director of the commission." (All references in CRS and Commission Rules to the term "Executive Secretary" of the PUC should be changed to Director of the PUC).

Recommendation 21: The General Assembly should amend the duties of the Director of the Commission under CRS 40-2-103 to read as follows:

The director of the commission shall manage the operations of the commission in order to carry out the public utilities law and any matters under the jurisdiction of the commission. The director shall have all the powers and responsibilities of the division director for this purpose, including the power to issue all necessary process, writs, warrants and notices. The director shall have the requisite power to serve warrants and other process in any county or city and county of this state and to delegate such actions to duly authorized employees or agents of the commission as appropriate.

Appointments of ALJs At The PUC Also Conflict With The Colorado Constitution

The current PUC statute provides that, "The commission is hereby authorized to designate employees of the commission as administrative law judges..." (40-2-104 (3)) This provision conflicts with the part of the State Constitution quoted above regarding appointments by division directors: "Heads of such divisions shall be the appointing authorities for all positions within the personnel system within their respective divisions." (Colorado Constitution, Article XII, Section 13, Para. (7)) In order to give effect to both of these parts of the law, the Administrative Law Judge would have to be hired by the director and then "designated" as a Judge by the Commissioners.

In order to thoroughly remove the Commissioners from the responsibility for hiring and firing staff, this section of the PUC law needs to be changed. To allow the Executive Secretary/Director to effectively manage the PUC staff, the law should be amended as follows:

Recommendation 22: The General Assembly should amend C.R.S. 40-2-104 (3) to read as follows: "The director of the commission shall hire and designate employees of the commission as administrative law judges who have the power to administer oaths, examine witnesses, receive evidence, and conduct hearings, investigations, and other proceedings for the commission."

Appointment Of PUC Attorney Is Outdated And Contrary To Law

Another throw back to the time when the PUC Commissioners picked their own personal staff is Section 40-2-104 (2), regarding the appointment of the PUC attorney. This section sets up an arcane system for the appointment of an attorney for the Commissioners. It provides that the attorney will be appointed by the Executive Director of DORA, with the approval of the Governor, but shall serve at the pleasure of the Commissioners.

The current holder of the position was actually hired by the Office of the Attorney General after being designated for the job by the Commissioners. The unusual system set out in statute above was not used. It is not clear what would happen if the Commissioners decided that this attorney no longer met with their pleasure. Could they force the Attorney General to fire or replace this person, using this statute as a basis?

The Attorney General's office points out that this statute has been superseded and therefore has no force or effect. The Attorney General Statute and the Solicitor General Statute, found at Sections 24-31-101 through 105 and 24-31-201 through 206, C.R.S., are both later in time and are more specific than the 1913 statute quoted above and therefore would prevail in the event of a legal conflict. These statutes provide that the Attorney General is the legal counsel for the executive branch of government and that all advisory attorneys are employees of the Department of Law. There is no doubt on the part of the Attorney General that the attorney who plays the role of "Commission Counsel" is an employee of her

office.

Given the way the law relating to the Commission Counsel has developed since the PUC was created, it is clear that Section 40-2-102(2) is obsolete and should be repealed. According to the Attorney General, "The need for independent legal advice can best be met, and the provision of independent legal advice can best be fostered by employing the legal advisors to the PUC within the Department of Law".

Recommendation 23: The General Assembly should repeal C.R.S. 40-2-104(2) regarding appointment of the PUC attorney and C.R.S. 40-2-107(2), which provides for compensation of persons appointed by the Commissioners, including the attorney.

The Role Of The PUC Within DORA Can Be Further Defined Using A Total Quality Management Process

The state auditors recommended in 1988 that DORA, the PUC and the Governor work together, "to recommend to the General Assembly, a resolution to the current organizational problem which clarifies the following:

- a) The role of the Executive Secretary as the Division Director.
- b) The role of the PUC within the Department of Regulatory Agencies.
- c) The role of the Commissioners relative to the Commission staff."

Items "a" and "c" on this list should be largely resolved if the General Assembly decides to adopt recommendations 20 through 23 above. Item "b", however, is of long term concern. Since the PUC became a part of DORA in 1968, there has been a nagging sense that the transition from free standing governmental unit to that of a division within a state department has never been completed. PUC line staff have commented that even after years of service they are still not sure of how the PUC and the rest of DORA were meant to interrelate.

Cooperation is crucial if the PUC is to perform its difficult job effectively. A cooperative working relationship can be created, however, only by parties who have agreed upon organizational principals and goals. In order to reach a place where the PUC Commissioners, the PUC staff and the Executive Director of DORA can work together effectively to carry out their required tasks, a cooperative process needs to be established within DORA which will identify problems in the relationship between DORA and the PUC and focus energy on resolving them. The "total quality management" process, formally launched by Governor Romer in May of 1991 and already in the planning stages at DORA, could be used as the vehicle to help establish this sound working relationship.

For the last twelve months, DORA senior staff have been researching and writing a Total Quality

Management (TQM) plan for the department. The adoption of this plan will lead to the drafting of parallel TQM plans by each division within DORA, including the PUC. Involvement by the entire PUC staff in improving work processes and policies as part of a general DORA TQM plan should help to better coordinate the work of the PUC within DORA.

IV. ROLE OF THE PUC

The creation of the Office of Consumer Counsel in the Attorney General's Office in 1984 has had many impacts on the PUC that were both unintended and unforeseen. The charge of the OCC is to represent residential, small business and agricultural utility users in proceedings before the PUC. The OCC's success in this role has led to its playing a very active and central part in utility regulatory activity in Colorado today.

Thus, many observers feel the OCC role is expanding. For example, as discussed in another section of this report there has been a move toward settlement of cases by using the OCC as one of the first parties with which to bargain.

Because of this, there appears to be a growing sense of confusion over which agency is responsible for representing the public interest on utility regulatory issues. The role of representing the public interest is the PUC's role. State law requires the Commissioners to balance the goal of public protection with that of industry viability. The PUC staff has also apparently adopted this balancing approach to guide it in analyzing the regulated companies.

While this delineation of roles appears clear enough in concept, it has proven uncomfortable in practice. Role confusion is not an uncommon problem among government agencies. It most often occurs when the legislative body sends conflicting signals about what should be done, or sends signals that the agency is being too aggressive and needs to back off.

In the mid-80's, the latter occurred at the PUC, when the Legislature slashed five FTE from its budget. Generally, however, the Legislature in Colorado has been willing to entrust the complexities of utility regulation to the PUC.

Other states have experienced similar problems in the operations of their public utilities commissions. For a time in the late 1970's and early 1980's, the answer seemed to be the creation of semi-autonomous offices of consumer counsel in each state. This placed attention on the OCCs and on the Commissioners. In some states, it served to deemphasize the crucial role of PUC staff in analyzing case submissions.

Several states have recently decided to make major structural changes in their PUCs to reorient their efforts toward a clearly understood goal of regulation in the public interest. No state has chosen to abolish the Commissioners and have staff regulate alone. Commissioners have remained the ultimate decision making body.

Most states have also preserved structures which meet the need for some staff to advise the Commissioners, and other staff to analyze and make recommendations about case submissions. This process is called, "bifurcation", although bifurcation is more often conceptual than a real process of splitting a commission staff apart. The purpose of bifurcation is to optimize scarce staff resources by providing a clear mission and specific lines of authority and leadership.

Colorado could benefit by taking some initial steps toward better defining the roles of our PUC vis a vis our Office of Consumer Counsel. One such step is to actively study the idea of consolidating the operations of these two agencies. Another step is to create a clearly defined staff unit which would advise the PUC Commissioners on pending cases and perform research at their direction. These ideas are explored more fully on the following pages.

Create Advisory/Research Staff

The Public Utilities Commission would benefit substantially by creating an advisory staff for the Commissioners. Under the current structure of the PUC, the advisory staff may change on a case by case basis, causing confusion among Commissioners, staff, industry and consumers. Also, the Commissioners do not have a technical staff they can direct to perform research and examine alternative policy proposals. Rather, they must request staff assistance when it is available based on competing priorities. The Commission could create its own small advisory staff to perform research for the Commissioners at their direction and advise the Commissioners on all matters coming before them for their review. This staff would be drawn from existing PUC staff. The makeup of this advisory staff should rotate periodically with other staff members, perhaps on a staggered basis, with two advisory staff members per year rotating back to the trial staff and two trial staff members rotating on to the advisory staff.

The creation of an advisory staff for the Commissioners would solve a number of problems at the PUC. First, there would be no confusion or communication problems with respect to the identity of the Commissioners' advisors on any given case. The advisors would remain the same in any given year. Next, the Commissioners would have a small technical staff to whom they could turn to perform research on both a short and long term basis. Finally, both staff and Commissioners would benefit from these clearly defined roles. There would no longer be any conflict over work assignments and reporting arrangements. Additionally, staff would benefit professionally from the rotation periodically to the advisory staff, fostering a closer working relationship with the Commissioners.

Recommendation 24: The PUC should restructure its staff to create a small advisory/research staff for the Commissioners as outlined above.

Study New Arrangement For PUC: Public Staff

Colorado currently uses about 109 FTE to regulate public utilities in connection with the PUC: ten at the

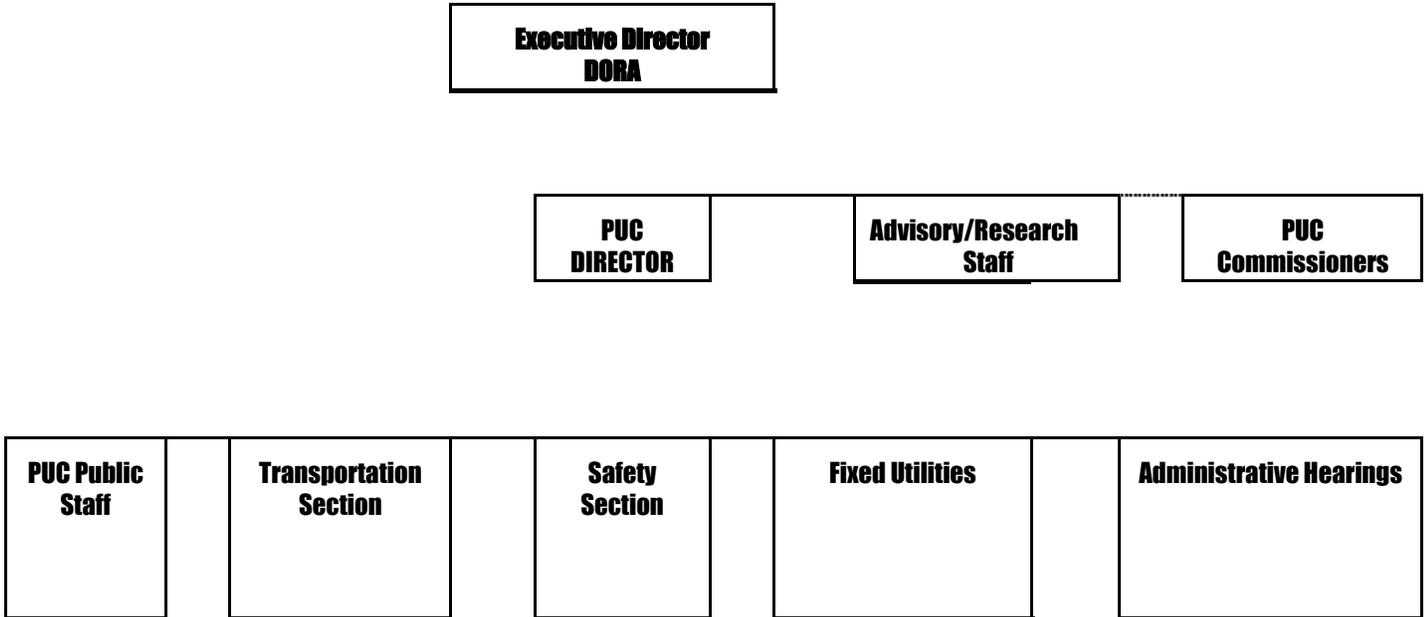
OCC and 99 at the PUC. It is possible a better job could be done with a simplified structure by creating a Public Staff within the PUC.

The Public Staff or Consumer Counsel Section, would consist of the OCC staff and an appropriate number of PUC technical staff, such as engineers, economists and financial analysts. Its job would be consumer representation. It would analyze case submissions from a consumer perspective and represent the public before the Commission in all cases. The rest of the Commission structure would remain.

The strength of this new structure, as has been discovered in other states which have adopted this format, including North Carolina and Indiana, is consolidation of functions, clear lines of communication and simplicity. The role of the consolidated public staff is to represent the public interest. Its research and intervention activities would be focused on getting the best deal reasonably possible for Colorado citizens. The role of the remaining Commission staff would be to render input into decisions on cases and to perform certain safety and auditing functions. Potentially, the new structure would be stronger than the existing two-agency structure because all the staff involved in representing the public interest would be contained in one unit which would include sufficient resources to allow it be a party to all cases coming before the PUC. Table 11 on the following page illustrates what the new structure might look like:

TABLE 11

COLORADO PUC WITH PUBLIC STAFF



To summarize, the potential benefits of this new structure would be the following:

- 1. Optimal use of limited staff resources.**
- 2. Clear lines of communication/authority/responsibility.**
- 3. Improved consumer protection and complaint handling.**
- 4. Improved Commission decision and policy making.**
- 5. No overlap of government functions.**

The idea of improving OCC and PUC efficiency and effectiveness through consolidation has never been studied. A task force of appropriate size, representing knowledgeable parties, could examine this issue and make recommendations to the General Assembly in a reasonable time frame.

Recommendation 25: The PUC should explore ways of restructuring and consolidating its activities with the Office of Consumer Counsel to achieve superior economies of scale and improve agency effectiveness.

Create Advisory Panel

Regardless of whether the General Assembly chooses to restructure the Public Utilities Commission as outlined above, two additional reforms should be carefully considered to improve the operation of the PUC. First, the Office of Consumer Counsel has successfully used a citizen advisory panel since its inception. This group has brought an important and timely sense of the concerns of the general public to the operations of the OCC. In the format described above, this group should be continued and its role expanded to provide much needed feedback to the Public Utilities Commissioners as well as to the public staff. However, in the event that the current structure of the PUC is not significantly altered, the Commissioners could benefit by adopting the approach of the OCC in convening an advisory group of citizens from around the State of Colorado on a regular basis. This group would be broadly representative of the utility industry and utility consumers. It would provide the PUC Commissioners with much needed feedback on the operations of the Public Utilities Commission.

Recommendation 26: The General Assembly should create an advisory committee to the Public Utilities Commission which is broadly representative of the Colorado utility industry and consumer elements. The advisory council should meet with the Commissioners as often as necessary to perform its advisory functions and should be reviewed periodically under the Sunset Law. The advisory committee should be given immunity from suit while meeting in performance of its duties.

Deregulate Investor-Owned Water Utilities

At last count, there were only five remaining investor-owned water utilities in the State of Colorado which are regulated by the Public Utilities Commission. Most often, these entities are composed of a few dozen taps and associated water lines which comprise a small water system serving a limited number of homeowners. Usually, these investor-owned water utilities were built many years ago in order to provide water service to a group of homeowners when no other service was available.

A good example of such an investor-owned water system is the Mildred C. Pierce water system, located in an area contiguous to Canon City, Colorado. This water system consists of approximately 65 taps and is composed of "old water lines in deteriorated condition which cause substantial losses of water due to leakage." (PUC Decision #C92-450, Adopted March 25, 1992.) The owner of record of this small water system recently applied to the Public Utilities Commission for permission to allow Canon City to assume ownership. The Commission granted the application in the decision cited above, and the homeowners are now served through an upgraded water system, by Canon City.

In order to comply with the amendments to the Federal Clean Water Act and generally to maintain their water systems, all of the remaining investor-owned water systems face the need for new revenues. Given the relatively small number of homeowners served by these water systems, significant increases in the rates charged for water cannot be supported. In each case, the consumers would be better served by consolidating their small water system with a larger public water system that could provide them with safer service at a lower long-run cost. Another alternative available to the few remaining systems would be to form a special district under Colorado law as administered through the Colorado Department of Local Affairs. This would allow residents to tax themselves to support the water system and to borrow money as necessary. Although the Public Utilities Commission does not spend a great amount of time working with these few remaining water systems, its regulatory burden could be appropriately eased by deregulating these investor-owned water systems.

Recommendation 27: The General Assembly should terminate the regulatory oversight of the Public Utilities commission over investor-owned water utilities in the State of Colorado.

Commission Task Force To Study Transportation Regulation

When the General Assembly created the Colorado Department of Transportation in 1991, it envisioned the consolidation of all transportation planning, coordination and service delivery functions in one department of state government. The General Assembly found, "a Department of Transportation in Colorado is necessary to:

- a) provide strategic planning for statewide transportation systems to meet the transportation challenges to be faced by Colorado in the future;**
- b) promote coordination between different modes of transportation;**
- c) integrate governmental functions in order to reduce costs incurred by the state in transportation matters;**
- d) obtain the greatest benefit from state expenditures by producing a statewide transportation policy to address the statewide transportation problems faced by Colorado; and**
- e) enhance the state's prospects to obtain federal funds by responding to federal mandates for multi-modal transportation planning." (C.R.S. 43-1-101)**

Under current Colorado law, four departments of state government are involved in transportation planning and service delivery. They are the Colorado Department of Transportation, the Department of

Regulatory Agencies, the Department of Public Safety and the Department of Revenue. Aside from the law enforcement function provided by the Colorado Highway Patrol through the Department of Public Safety, the transportation related functions of the remaining three departments could be consolidated, perhaps in the new Department of Transportation. If not, at least better coordination or partial consolidation may be possible. Among the benefits which might be realized through this consolidation of functions are decreased public and governmental confusion, better planning and use of state transportation resources and, potentially greater economies of scale and access to federal funding.

At the direction of the Colorado General Assembly, the Colorado Department of Transportation is studying whether the regulation of buses by the transportation section of the Public Utilities Commission should be transferred to the Colorado Department of Transportation. Other functions of the PUC may overlap transportation functions being carried out in the Colorado Department of Transportation. Each of these functions could be studied one by one, perhaps without much coordination between studies. It would be better to study the entire question thoroughly at one time, using representatives from all the Departments affected.

The proposed study would weigh the potential costs and benefits of consolidation. For example, the transportation regulation provided by the transportation section of the PUC may benefit from being relocated in the Colorado Department of Transportation. Since the mission of the Colorado Department of Transportation is focused solely on transportation issues, both the transportation section and the Transportation Department as a whole could find their responsibilities and authorities enhanced through such a consolidation. Conversely, such a study might reveal that the broad divisions of responsibility between the Departments of Transportation and Regulatory Agencies are logical and already working optimally but that other efficiencies might be possible, such as better coordination of policy.

Recommendation 28: The General Assembly should commission a study to explore ways of improving the coordination and consolidation of transportation regulation and development among the Departments of Transportation, Revenue, Public Safety and Regulatory Agencies.

Create Transportation Utility Review Process

Continuing concern exists with respect to the amount of insurance which the PUC requires of the transportation utilities it regulates. As indicated previously in this report, the PUC substantially increased the amount of insurance required in 1991, resulting in a significant increase in the number of waivers requested by Colorado carriers. In April,

1992, the PUC held a full day open meeting on the question of whether the insurance requirements it had placed in the regulations were too high, therefore creating an unnecessary hardship on the transportation utilities.

Given the fact that the cost of obtaining insurance is a significant overhead cost for transportation utilities and may directly drive increases in consumer costs, and given that Colorado consumers need to be adequately protected by insurance policies held by Colorado carriers in the event of accidents, there is a continuing need for research into an adjustment of the level of insurance required by the PUC. Often, obtaining accurate information from insurance companies with respect to rates charged and losses paid, is very difficult and time consuming. A mechanism needs to be created which would serve to periodically gather and analyze this data in order to make accurate determinations of the amount of insurance which the PUC should require from year to year. This would allow companies to carry enough insurance to protect consumers but not so much that the cost of insurance would substantially hinder their operations.

The Public Utilities Commission should utilize the resources of the Colorado Division of Insurance and the Colorado insurance industry as well as information provided by their regulated carriers on an annual basis in fixing the amount of insurance it requires. Open hearings should be held on this issue to ensure the widest possible participation. Waivers of these insurance requirements should continue to be available, but only in cases of clear hardship. The PUC should continue its efforts to grant such waivers only in cases where the evidence is clear and compelling and only where the waivers can be granted on a uniform basis, without inappropriate discrimination among carriers.

Recommendation 29: The Executive Secretary should direct the Public Utilities Commission to devise a mechanism for gathering and reviewing insurance data, utilizing information provided by regulated carriers, consumers, the Colorado Division of Insurance and the Colorado insurance industry in order to appropriately safeguard Colorado consumers and the regulated transportation utilities.

Increase PUC Accountability

One of the principal recommendations of the 1988 audit of the PUC was that the General Assembly establish a Utility Regulatory Legislation Review Committee. The audit found that "The statutes that enable the Public Utilities Commission to regulate public utilities in Colorado may be too ambiguous to be useful in understanding the policy directions of the Legislature. The statutes contain wide latitude and many phrases that are intentionally vague. As a result, it is difficult to hold the Commission accountable or to evaluate their attention to legislative intent." (1988 Performance Audit, pp 55 & 56) It was the belief of the auditors that the Public Utilities Commission would benefit, as the Transportation Department has benefitted, from the creation of an interim committee like the Highway Legislation Review Committee, which would "review and clarify the statute and recommend changes to improve

the public utility law."

This committee could be composed of available members from the standing House and Senate Committees on Transportation and Business Affairs and Labor. the members of the new interim committee would then become more thoroughly informed as to PUC operations and utility regulatory issues. These legislators could become a repository of information for the larger committees and the Legislature as a whole with respect to all matters under the PUC's jurisdiction in Colorado. The PUC as well as the Legislature could be expected to benefit from a more thorough understanding of each others' priorities, concerns and policy directions. Increasing the PUC's accountability would pay special dividends in credibility as it seeks to carry out its utility regulatory program.

Recommendation 30: The General Assembly should create a Utility Regulatory Legislation Review Committee to review matters related to public utility regulation during each interim period.

CHAPTER 6

STATUTORY REVISIONS

The following statutory change proposals have been prepared by the Public Utilities Commission in cooperation with the Executive Director of the Department of Regulatory Agencies. Each proposed amendment includes a discussion of the need for the changes and suggested language, or a recommendation concerning the needed legislative action.

I. FIXED UTILITIES STATUTORY AMENDMENTS

911 Emergency Providers

The proposed changes would allow the Commission to certify 911 Emergency Providers (E911) on a state-wide basis. This would probably be cheaper than under existing law where each local exchange carrier provides the service and may elect to refuse to provide the service. It could be cheaper on a state-wide basis with one carrier. It would also allow the Commission to order a provider of last resort. The Commission believes that E911 service meets the standards under scope and scale of a monopoly service within the State of Colorado and should be considered "regulated telecommunications services" under Part 2 of the Intrastate Telecommunications Services Act. Therefore, we are suggesting changes in legislation to allow E911 service throughout Colorado. The following proposed changes in the Statutes are offered as a method to achieve this end.

Recommendation 31: The General Assembly should amend the Public Utilities Law as follows: 40-15-202. Certificate required. Replace "local exchange provider" with "provider of part 2 services".

Determine Basic Local Service

In order to provide customers with the most current technological advancements available within the telecommunications network, the Commission needs to have clear statutory authority to determine what constitutes "basic local service". Although the Commission's authority has not yet been challenged, we believe that the Statute should be modified to clearly provide that authority to the commission.

Recommendation 32: The General Assembly should amend the Public Utilities Law as follows: "40-15-201. Regulation by commission. (2) (f) New products and services necessary for the provision of basic local exchange service as may be further determined by the commission."

Clarify Need For A Certificate

The Commission desires to clarify that providers offering "emerging competitive telecommunications service" (part 3 type service) in the State do not require certification. This legislation is being proposed to allow the Commission latitude in the manner of regulation of certain Part 3 providers who are small, or because of the circumstances of their business, may not need to incur the expenses required by certification.

Recommendation 33: The General Assembly should amend the Public Utilities Law as follows: "40-15-302. Manner of regulation - rules and regulations. (2) . . . but nothing in this part 3 shall require the commission to certificate providers of part 3 telecommunications services.

Rates Subject To Refund

Authority to file rates subject to refund is proposed as a utility option and not a requirement. Approval of this change by the Legislature would give the Commission and the utilities significant flexibility to respond either to emergency situations or to cases where it would be very difficult to complete the hearings within the 210 day statutory limit. The Commission would have to approve the request. If approved, rates filed under this option would go into effect on not less than 30 days notice, and investigation of the rates would not be subject to the 210 day limit. Any refunds made would be subject to interest at an appropriate rate. Staff would recommend that rate be the return on rate base.

Recommendation 34: The General Assembly should amend the Public Utilities Law "40-6-111. Hearings on schedules - suspension- new rates - rejection of tariffs." by the addition of the following: "The utility at its discretion, may request that such filing be subject to refund. If the commission approves the request, the provisions of paragraph (B) below shall not apply and the filing shall become effective not less than thirty days from the time of filing. In the event a subsequent refund is ordered, appropriate interest as prescribed by the commission shall be added to the refunded amount."

II. SAFETY STATUTORY AMENDMENTS

Drug Testing For Jurisdictional Natural Gas Pipeline Operators

The State of Colorado annually applies for and receives Certification pursuant to (5a) of the Federal Gas Pipeline Safety Act. Under this Certification, Colorado assumes safety responsibility with respect to intrastate facilities over which it has jurisdiction under state law. Under this agreement, Colorado assumes surveillance and inspection responsibilities for intrastate facilities and enforces federal safety standards in Part 192, Title 49 of the Code of Federal Regulations. Along with accepting Certification by the United States Department of Transportation(US DOT), the State of Colorado is required to adopt each federal safety standard applicable to intrastate pipelines under its jurisdiction as of the date of certification, or with respect to each new federal safety standard established, must adopt or be taking steps pursuant to state law to adopt such standards.

Effective December 21,1988, the US DOT adopted 49 CFR Part 199, Control of Drug Use in Natural Gas, and Hazardous Liquid Pipeline Operations.

In accordance with (5a) Certification Agreement, the Colorado Public Utilities Commission (PUC) adopted Part 199 by rule in August of 1989. Unfortunately, the Joint Senate and House Legislative Committee on Legal Services voted not to extend these rules past June 1, 1991. The (5a) Certification Agreement requires that we adopt and enforce safety standards adopted by the US DOT.

Recommendation 35: The General Assembly should change CRS 40-2-115 to allow the PUC authority to enforce the Safety Laws and Regulations of the US DOT concerning Pipeline Safety Drug Testing by adding the following: "The commission is authorized to enforce the safety laws and regulations of the united states department of transportation concerning pipeline safety drug testing and gas pipeline safety civil penalties that are part of the federal gas pipeline safety act.

Statewide One-Call For Jurisdictional Natural Gas Pipeline Operators

Effective September 20, 1990, the US DOT adopted 49 CFR Part 198. Grants for State Pipeline Safety Programs: State Adoption of One-Call Damage Prevention Program for jurisdictional natural gas pipeline operators. This sets up a requirement that there be a one-call system.

The State of Colorado presently has statutes requiring excavators to notify operators of underground utility services in advance of proposed excavation activities. In the Second Regular Session, Fifty-eighth General Assembly, Senator Schroeder and Representative Anderson sponsored Senate Bill 92-95 that would have revised the existing state statutes to meet the requirements of 49 CFR Part 198. Unfortunately, Senate Bill 92-95 was not passed by the Legislature. It was opposed by the Rural Electric Associations and therefore the sponsor withdrew the bill. The Rural Electric Associations concerns have been addressed and they are not expected to oppose the bill if it is reintroduced in the next legislative session. Legislation should be pursued this year that will require jurisdictional natural gas pipeline operators to belong to a state-wide one-call system.

Recommendation 36: The General Assembly should reconsider SB 92-95 as a model for proposed legislation requiring natural gas pipeline operators to belong to a State Wide One-Call System. A copy of Senate Bill 92-95 will be supplied to the Sunrise/Sunset Committee.

Increased Issuance Of Civil Penalties On Jurisdictional Natural Gas Pipeline Operators Who Fail To Comply With Safety Regulations

US DOT is encouraging all of their agents to strengthen their enforcement procedures by issuing more civil penalties to operators who are slow to respond to enforcement actions taken by the states. Suggested guidelines have been given to the states by the US DOT.

The gas pipeline safety group has moved toward satisfying the guidelines suggested by the US DOT but is limited in carrying out their recommendations by the lack of clear statutory authority.

It is recommended that CRS 40-2-115 be changed to allow the PUC the authority to enforce the Safety Laws and Regulations of the US DOT concerning the Gas Pipeline Safety Civil Penalties under the Federal Gas Pipeline Safety Act. Recommended change to accomplish this is included in Recommendation 35.

Transportation Statutory Amendments

The Commission regulates passenger carriers pursuant to the legal doctrine of regulated monopoly. The Commission regulates property carriers pursuant to the legal doctrine of regulated competition. The entry standard under regulated competition is less strict than the entry standard under regulated monopoly. We believe that changing the regulatory standard applicable to passenger carriers from regulated monopoly to regulated competition will improve the passenger transportation system. It would result in the

potential for increased competition while still requiring that new entrants demonstrate public need. Existing passenger carriers would lose some of the protection they have enjoyed under regulated monopoly. The following statutory change would accomplish this.

Recommendation 37: The General Assembly should change Public Utilities Law "40-10-105. Rules for issuance (2)" by omitting the following: "for the transportation of property".

Automatic Revocation Of Interstate Carrier Registrations For Failure To Maintain Effective Insurance

The hazardous materials statutes automatically revoke permits for failure to maintain effective insurance. Interstate carrier registration statutes do not contain similar provisions. At present, the Commission issues a formal Show Cause Order which requires a hearing before an Administrative Law Judge, a recommended order, possible exceptions to the recommended decision, and possible petitions for Rehearing, Reargument, and Reconsideration. Even if the Commission revokes an interstate carrier registration, the carrier can obtain a new interstate carrier registration by filing a new application, providing proof of effective insurance, and paying the \$20.00 application fee.

Recommendation 38: The General Assembly should adopt legislation which will allow automatic revocation of interstate carrier registrations for failure to maintain effective insurance.

Emergency Temporary Authority

Extend the maximum period of an emergency temporary authority from 15 days to 30 days. Occasionally, the Commission must issue back-to-back Emergency Temporary Authorities because of problems with publishing the Notice of Applications Filed or canceled open meetings. The following statutory change would eliminate the problem.

Recommendation 39: The General Assembly should change Public Utilities law "40-6-120. Temporary authority. (4)" by changing "fifteen" days to "thirty" days.

Deregulate Economic Regulation Of Towing Carriers, Except For Police Ordered Tows

The Commission regulates all towing carriers as follows:

- a. Permit registration, no entry standard**
- b. Proof of insurance**
- c. Safety regulations**
- d. Economic regulation: maximum filed rates and complaint resolution.**

Vehicle tows can be classified into the following categories:

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

Private property tow describes a situation where a property owner, or its agent, authorizes a towing carrier to remove a vehicle parked on private property. Although the vehicle owner does not have control over who provides the service or the rates charged, the vehicle owner/driver does not have "clean hands." The courts should settle disputes arising from these situations. Insurance providers should address potential problems regarding towing insurance in their policy coverage or premiums.

Accident tow describes a situation where the vehicle owners, through no fault of their own, have no control over the decision to tow the vehicle or the carrier chosen to provide the service (i.e., a law enforcement officer orders a towing carrier to tow a vehicle from the scene of an accident). The consumer is neither in control nor at fault in this situation. Therefore the consumer requires the greatest degree of government protection.

Recommendation 40: Towing carriers, except for accident tows, should be deregulated.

Deregulate Economic Regulation Of The Transportation Of Unprocessed Agricultural Products

The Interstate Commerce Commission exempts the transportation of unprocessed agricultural products. PUC issued emergency district authorities accommodate seasonal movements from the field to storage. Also, carriers may file emergency vehicle equipment lease letters to provide additional vehicle capacity as needed. HB 92-1165 proposed to deregulate economic regulation of the transportation of unprocessed agricultural products. The Senate Transportation Committee P'd this bill (4 to 1 vote).

Statutory changes are required. Any proposal should include specific provisions to allow carriers to recover the book value of their deregulated operating authorities, such as a tax credit over a five-year period, etc.

Recommendation 41: The General Assembly should reconsider HB 92-1165 and include provisions allowing carriers to recover the book value of their operating authority over a five-year period.

Transportation Of Nuclear Materials

The Colorado Legislature passed the Colorado Nuclear Materials Transportation Act of 1986, 40-2.1-101, et. seq., to protect the public health, safety and welfare of the people and environment of Colorado by requiring safe and environmentally acceptable methods of transporting nuclear materials. The PUC adopted Rules and Regulations Governing the Transportation of Nuclear Materials Within Colorado (4 CCR 723-25).

The heart of the PUC regulations and Colorado law require a carrier to prepare a nuclear incident clean-up plan addressing:

- 1. removal of the motor vehicle and cargo;**
- 2. prevention or minimization of releases of radioactivity into the environment; and**
- 3. decontamination of the environment after a radiation release.**

The US DOT, at the request of the United States Department of Energy (US DOE), reviewed the PUC regulations and issued an advisory opinion that the Hazardous Materials Transportation Act (HMTA) preempted the PUC regulations.

The Federal District Court ruled the HMTA did not preempt the PUC regulations.

DOE appealed that decision to the Tenth Circuit Court of Appeals. However, before the appeal could be heard, substantial changes in federal preemption were made in the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA). The Tenth Circuit Court of Appeals ruled that the HMTUSA preempts the substantive provisions of the PUC rules. These rules contain the Transportation Act of 1986 (40-2.2-101 et. seq.) and, therefore, the act itself may also be preempted.

Recommendation 42: The Colorado Nuclear Materials Act of 1986 (Title 40-2.2) should be reviewed for federal preemption, and if preempted, it should be repealed.

APPENDIX 1

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 regulations;**
- (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 of the Department of Regulatory Agencies and any other circumstances, including budgetary, resource and personnel matters;**
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;**
- (V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;**
- (VI) The economic impact of regulation and, if national economic information is available, whether the agency stimulates or restricts competition;**
- (VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;**
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;**
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance public interest.**

APPENDIX 2

Sources

Administrative Procedures for Proactive Regulation, March, 1988 (NRRI 87-18)

"A Giant Tug of Wire", Time Magazine, February 24, 1992

An Inquiry on State Responses to Regulatory Changes in the Telecommunications Industry (NRRI 82-1)

Annual Report of Public Service Company of Colorado to the Public Utilities Commission of the State of Colorado, 1990

A Perspective on Social Contract and Telecommunications Regulation, June, 1987 (NRRI 87-5)

"A Profile of State Regulatory Commissions", Electricity Consumers Resource Council, January, 1990

"A Proposed Model for an Agency Orientation for New Board Members, Commissioners and Senior Level Executives", University of Colorado at Denver, January 15, 1987

"Can Colorado Administrative Agencies Settle Judicial Review Actions?", the Colorado Lawyer, May, 1990

"Collegial State Administration: A Design for Today?", Western Political Quarterly, September, 1981, Charles Goodsell

Colorado Department of Highways Overview - Fiscal Year 1991

"Colorado on the Move", Colorado Motor Carrier Annual Report, Statistical Highlights, 1990, Colorado PUC

Colorado Public Utilities Commission Legislative Presentation before the Senate Committee on Business Affairs and Labor, March, 1992

Commission Personnel Policy Assessment, 1981 (NRRI 81-8)

Commission Statement of Adoption of Modified Rule 9, New Rules 10 and 11, to the Commission's Rules of Practice and Procedure, Docket #91R-272 adopted July 17, 1991

Competition in the Telecommunications Industry in Florida, A Report to the Florida Legislature by the Florida Public Service Commission, January, 1991

Computer Assisted Regulatory Analysis and its Potential Application to the Colorado Public Utilities Commission, January, 1979

"Connections", Newsletter of the Colorado Public Utilities Commission

Consumers Eat US West's Real Estate Loss", the Greeley Tribune, December 11, 1991

"Controlling Power in the Social Economy", Review of Social Economics, 43: #2, October, 1985

"Crested Butte Propane Blast Cover-Up Cited", the Denver Post, December 8, 1991

CWIP Policy Act of 1983: Hearings before the Subcommittee on Energy Conservation and Power. H.R. 555. Washington: USGPO, 1983

"Dealing with Troubled Utilities" by James A. Boxall, Jr.

Department of Regulatory Agencies Budget, Fiscal Year 1990-1991

Department of Regulatory Agencies Budget, Fiscal Year 91-92

Department of Regulatory Agencies Budget, Fiscal Year 92-93

"Deregulation and the Colorado Motor Freight Industry" (1991, Colorado Department of Regulatory Agencies)

Deregulation of the Electric Power Industry Perspective of State Regulation, Occasional Paper #6 (NRRI 83-6)

Enforcement of Pipeline Safety Regulations, US Department of Transportation, Revised, April, 1991

Federal Intervention by State Public Service Commissioners and Consumer Advocates, May, 1990 (NRRI 90-11)

"Fort St. Vrain Nuclear Power Plant to be Dismantled Early", News Release, Public Utilities Commission, November 21, 1991

Fourteenth Annual Report, Fiscal Year 1991, August, 1991

Funding Nuclear Power Plant Decommissioning, 1982 (NRRI 82-3)

"Gas Manager Cites Safety Lapse", the Denver Post, November 22, 1991

"Governor's Plan to Stifle Utility Panel is Unconstitutional", the Arizona Republic, March 2, 1992

"How Do You Build An Information Highway?", Business Week, September 16, 1991

Information regarding motor vehicle insurance filing requirements before the Public Utilities Commission of the State of Colorado document SRS: 3470J (1992)

Investigation Summary by Tony Owens, Special Agent, Department of Revenue regarding Investigation of Allegations made in Notice of Intent and Lawsuit filed by Suzanne Fasing, April 28, 1992

"Joint House and Senate Transportation Committee Request for Information from the Public Utilities Commission", Memorandum from Suzanne A. Fasing, September 18, 1991

Memorandum "An Analysis of the Organization and Management of the Public Utilities Commission", March 11, 1991

"Memorandum Audit Implementation Follow-up", April 4, 1989

Memorandum dated August 27, 1990, "Information on PUC Decision Items"

"NARUC Annual Report on Utility and Carrier Regulation", December, 31, 1990

"Natural Monopoly Regulation, Principles and Practice", Cambridge University Press, 1988, Sanford V. Berg and John Tschirhart

NCSL State Issues 1991

"Physical Infrastructure and Amenity Resources of the States, the 1989 Development Report Card for the States", January, 1990

"Powerful Change", Industry Week, November 21, 1988

Press Release of Colorado Governor Roy Romer, June 11, 1992 regarding Commission Chairman Arnold Cook

Proceedings of the Seventh NARUC Biennial Regulatory Information Conference, Volumes 1, 2 and 3, September 12-14, 1990

"Prosecuting an Appeal from a Decision of the Colorado Public Utilities Commission", The Colorado Lawyer, December, 1987

"PSCo Refunds of \$28 - \$34 Ok'd for 92", the Denver Post, November 21, 1991

"PSC Wants \$14 Million Rate Hike" the Rocky Mountain News, October 13, 1991

Public Service Company of Colorado - 1990 Generation Resource Study by Energy Management Associates Inc., November 20, 1990

"Public Utilities and their Regulation in Illinois", Illinois Business Review, Fall, 1990

"Public Utilities Fort Nightly", Volume 114, November 22, 1984

"Public Utilities in Transition", Vital Speeches of the Day, Fall, 1988

"Public Utility Regulation, the Economic and Social Control of Industry", edited by Kenneth Nowotny, Kluwer Academic Publishers, 1989

"Public Utility Regulatory Policies Act: Hearings before the Subcommittee on Energy and Power", Washington: USGPO, 1988

"PUC Announces Recommended US West Local Calling Area Changes", PUC News Release, January 3, 1991

"PUC Hears Pros, Cons of Proposed Caller ID", the Denver Post, September 4, 1991

"PUC to Investigate Rate Impact of Pending US West Property Sale", PUC News Release, December 18, 1991

Quarterly Bulletin, Volume 12 #4, December, 1991

"Reforming Regulation", the Brookings Institute, Washington, DC, 1971, Roger Noll

Report of the State Auditor, Performance Audit - Public Utilities Commission, January 1988

"Ruling Jolts Douglas Residents", the Rocky Mountain News, May 12, 1992

Rural Electrification Magazine, November, 1991

"States Step up to the Challenge", Telephony Magazine, October 16, 1989

"Study Links Cancer, Electric Fields", the Rocky Mountain News, November 20, 1991

"Summary of Commission Objectives for the Regulation of Intrastate Transportation", Colorado Public Utilities Commission, Transportation Section, Rates Unit, June 12, 1991

"Sunset Review of the Public Utilities Commission", Colorado Department of Regulatory Agencies, December, 1982

"Superphones, Video Hookups, Satellite Links, Laser Switches - High Tech Miracles are in the Making", Business Week, October 7, 1991.

Survey on State Commission Regulation of Water and Sewer Systems (NRRI 89-10), 1989

"Taking on Trucking Small Firms: Colorado Rates Crush Profits", the Denver Post, November 24, 1991

Telecommunications Modernization: Who Pays?, Telephony Magazine, September, 1988

"Tennessee Regulatory Reform Plan", Tennessee Public Service Commission, July 31, 1990

"The Decline of Service in the Regulated Industries", American Enterprise Institute for Public Policy Research, 1991, Andrew S. Carron

"The Economics of Public Utility Regulation", JM Clark, 1984

"The Mossbacks at PUC", Rocky Mountain News Editorial, October 27, 1991

"The Selection of Public Utility Commissioners: a Reexamination of the Importance of Institutional Setting", Public Choice 61: 1-13, 1989

"The States and Utility Regulation - Electric, Natural Gas and Telecommunications Collected Papers", National Conference of State Legislatures, January, 1985

"The Politics of Public Utility Regulation", William Gormley, Jr., 1982

"Toward a Revised Strategy for Rate Making", University of Illinois Law Forum, 1978, Thomas Morgan

"Transfer of Spent St. Vrain Fuel to End", Rocky Mountain News, June 11, 1992

"Transforming Regulation: A Case Study of Hydropower Licensing", Public Administration Review, January/February 1990, Volume 50 #1

Trends in State Regulatory Commission Development and Functioning (NRRI 79-27)

Users Manual G-Cost: A Gas Cost of Service Program, May, 1989 (NRRI 89-11)

"US West Sale and Lease of Downtown Building Probed", the Rocky Mountain News, December 19, 1991

"US West Real Estate Sales, Who Wins?, Who Loses?", the Denver Business Journal, December 20-26, 1991

Utilities Spotlight Newsletter, October, 1991

Utility Regulation and the Legislative Process in Oregon, January, 1979 (NRRI 79-2)

"Western Power Play, PacifiCorp Generating into a Mega-Utility", the Denver Post, December 15, 1991

"Who Regulates the Regulators", Daily Sentinel Editorials, January 13, 1991

"Winning an Appeal from a Decision of the Colorado Public Utilities Commission", The Colorado Lawyer, August, 1988