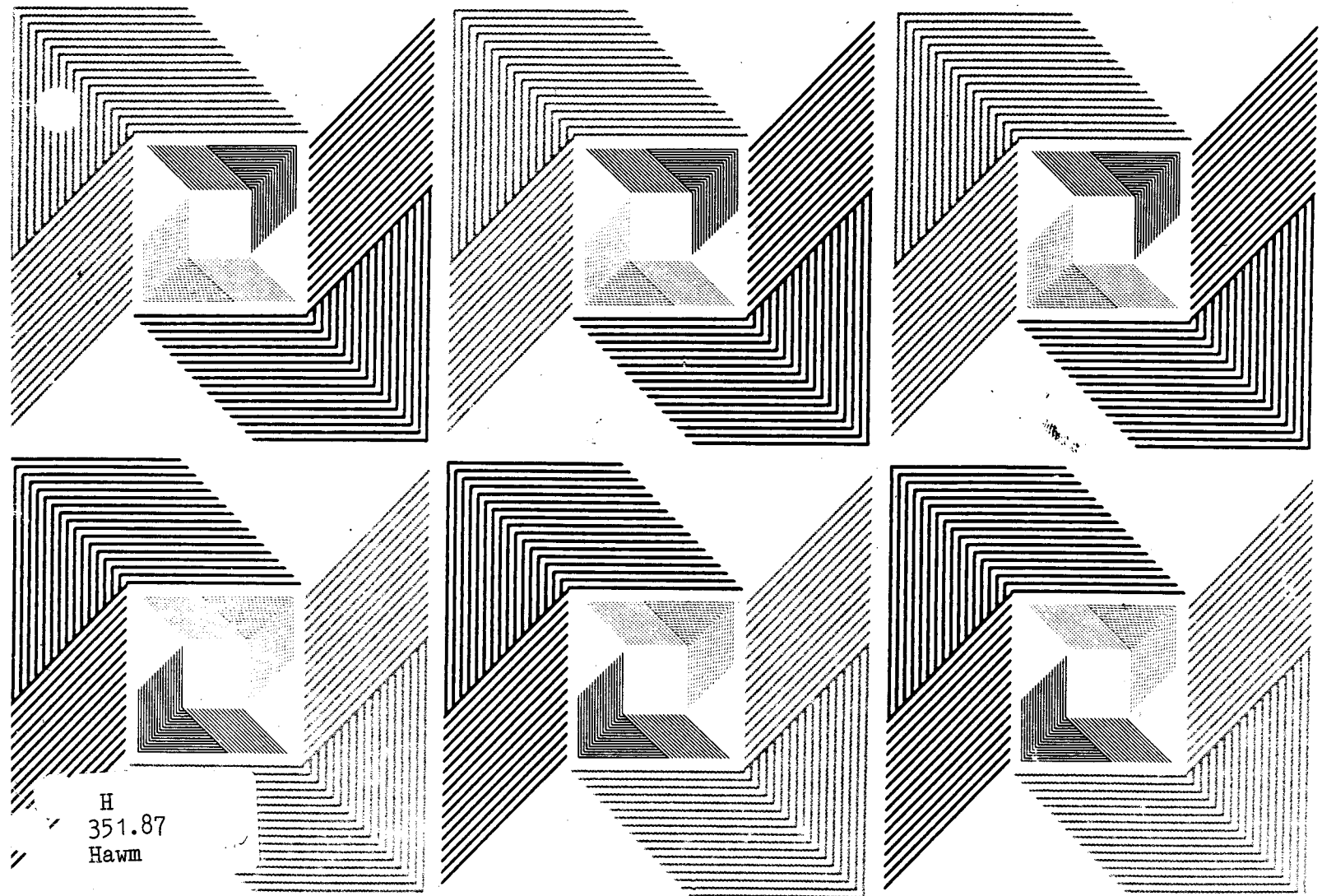


# MANAGEMENT AUDIT OF THE PUBLIC UTILITIES PROGRAM OF THE STATE OF HAWAII

A REPORT TO THE GOVERNOR AND THE LEGISLATURE OF THE STATE OF HAWAII



H  
351.87  
Hawm

## Chapter 1

### INTRODUCTION, BACKGROUND, AND AUDIT FRAMEWORK

#### **Request for the Audit**

In its 1988 session, the Hawaii State Legislature requested the Legislative Auditor through Senate Concurrent Resolution No. 89, Senate Draft No. 1, to conduct an audit of the State's public utility regulatory process as covered under Chapter 269, Hawaii Revised Statutes.

After taking note of the previous management audit of the Public Utilities Commission (PUC) performed by the Auditor and reported on in 1975, the Legislature specifically requested the Auditor to conduct, with the assistance of the Legislative Reference Bureau, a comprehensive audit encompassing the following:

1. A review of the policies and procedures under which the PUC is presently operating;
2. An update and elimination of statutory provisions that are obsolete or no longer applicable;
3. Identification of areas of regulation that are inhibiting the development of business while serving no purpose in protecting the public interest;
4. An analysis of the effectiveness of the PUC including parameters for measuring effectiveness;
5. An evaluation of the organizational structure of the PUC with particular reference to the development, application, and enforcement of rules and regulations;
6. An examination of decisions rendered by the PUC with reference to a time frame and general trends that indicate an inclination for or against business interests; and
7. An assessment of the role of the PUC as an active enforcement agency or passive regulatory agency.

The Legislature further requested that the role of the Consumer Advocate (CA), or the Division of Consumer Advocacy (DCA) in the Department of Commerce and Consumer Affairs, "not be eliminated from the examination of the regulatory responsibilities under the jurisdiction of the PUC."

## **Objectives of the Audit**

The audit's major objective was to assess the adequacy of the present utility regulatory process in dealing with issues, problems, and developments in complex and changing areas, such as telecommunications, energy, deregulation, and intergovernmental relations. The audit therefore focused on meeting the following objectives:

1. Assessing changes and improvements made by the PUC and DCA in recent years with respect to rule-making, organization, personnel management, case management, complaint handling, consumer education, and enforcement activities.
2. Identifying problems arising from or associated with Chapter 269, Hawaii Revised Statutes, due to obsolescence or inapplicability to the State's current economic climate and conditions.

## **Scope of the Audit**

This audit reviews the following topics: (1) appropriateness and applicability of current utility legislation; (2) adequacy of coverage of current PUC policies, rules, and procedures; (3) management of the PUC and DCA in terms of providing technical and analytical staff support in case management and enforcement of the PUC's rules and regulations; and (4) the effectiveness of the PUC and CA in dealing with telecommunications, energy, and other utility issues.

The audit specifically has sought to determine: (1) if the two agencies are meeting their responsibilities in a timely and efficient manner; (2) if relevant statutes, rules, procedures, and practices are adequate to meet current technological and economic conditions; (3) if the PUC devotes appropriate attention to its rule-making, case management, enforcement, and complaint-handling roles; (4) if the staffing of the PUC and DCA provides appropriate and sufficient support; and (5) if the DCA fulfills its role as the representative of utility consumers.

For the most part, this audit has not looked in any detail at matters relating to motor carriers, water carriers, water and sewer utilities, and cable television. At the end of this chapter, however, we do summarize the major findings and recommendations set forth in our earlier report with regard to these areas of concern. Generally, we feel the results of the earlier audit with respect to these subjects are still worthy of consideration.

The scope of this audit has been affected by the recent changes in leadership that have occurred in both the PUC and the DCA. Due to the immediacy of these events, we have had to focus primarily on conditions and developments as they existed prior to these leadership changes, and only limited consideration could be given to the effects flowing or expected to flow from the changes.

In the case of the PUC, a new chairman, a new commissioner, and a new administrative director all came into office in July and August 1988. In the short time since then, they have already begun to inaugurate various changes in the organization and operation of the PUC. However, because many of the changes are still in the process of being developed or are not yet official, it is premature to consider them firmly fixed or to subject them to normal audit examination. Similarly, the new head of the DCA did not assume office until May 1988, and he is still very much in a shakedown period during which changes continue to be somewhat formative. Here again, then, it is too soon to arrive at any final conclusions regarding changes he is putting into effect. In both cases, however, we do note where recently installed or proposed changes appear to relate to our findings and recommendations.

As for the time frame of this audit, it is focused on activities and events of the last five years. However, some of the issues discussed in earlier management reports of this and other offices have been referenced as necessary to assess the effectiveness of the present PUC and DCA.

### **Organization of the Report**

This report consists of four chapters. Chapter 1 is this introduction, which also provides some background on the PUC and DCA. Chapter 2 delves into agency roles and relationships within the public utility regulatory process. Chapter 3 is an assessment of existing regulatory policies and procedures. Chapter 4 examines organizational and personnel management of the PUC and the DCA.

### **Background**

**The Public Utilities Commission.** The Hawaii Territorial Legislature established the PUC through Act 89, Session Laws of Hawaii 1913. This Act formed the basis for utility regulation in Hawaii by creating an independent regulatory commission with broad oversight and investigative authority over utility companies. The Minister of the Interior and Director of Public Works of the Kingdom, Republic, and Territory of Hawaii had been responsible for public utility regulation prior to 1913. This was accomplished primarily through the granting of charters and franchises to the affected utilities.

The first commissioners were three individuals who were appointed by the Governor and confirmed by the Senate and who served on a part-time basis. This number increased to five in 1933 when representation of the islands of Kauai, Maui, and Hawaii became a requirement. In 1976, the Legislature enacted Act 165 which converted the PUC to a body of three full-time commissioners appointed by the Governor and confirmed by the Senate for overlapping six-year

terms. This act also moved the PUC from the Department of Regulatory Agencies (now the Department of Commerce and Consumer Affairs) to the Department of Budget and Finance for administrative purposes, and established three PUC assistant positions in the neighboring counties to represent the commission in all utility matters.<sup>1</sup>

Act 165, Session Laws of Hawaii 1976, was enacted in part as a result of an audit of the public utilities regulatory program conducted by the Auditor. The audit report, composed of three volumes, found serious organizational, procedural, and staffing deficiencies in the PUC and in the Public Utilities Division (PUD, now the DCA) of the Department of Regulatory Agencies. This audit spurred the Legislature to examine and reorganize Hawaii's public utilities regulatory program.<sup>2</sup>

From 1976 when the PUC was reconstituted until 1988, only seven different individuals have served on the commission, and two of those were newly appointed in 1988. During this same period of time, three of the commissioners have served as chairman, with the first one serving from 1976 until 1985. As previously indicated, the present chairman assumed that role in August 1988. The staffing of the PUC, including the three commissioners, has increased from 8 to 23 during the past 12 years.

**The Division of Consumer Advocacy.** The 1975 legislative audit also figured in the enactment of Act 124, Session Laws of Hawaii 1976. This Act designated the Director of the Department of Regulatory Agencies as the Consumer Advocate in proceedings before the PUC, and made the advocate responsible for representing, protecting, and advancing the interests of consumers of utility services. Prior to Acts 124 and 165, Session Laws of Hawaii 1976, the Director of Regulatory Agencies had been charged with the general duty of protecting consumers, including providing such protection in proceedings before the PUC. At the same time, the PUC was placed within the Department of Regulatory Agencies for administrative purposes. A single staff, the Public Utilities Division (PUD), was charged with the dual functions of representing the director as Consumer Advocate and of providing the PUC with administrative and support services. As a result, the roles and relationships between and among the director, the PUC, and the staff of the PUD were confused and awkward.<sup>3</sup> Based on recommendations of the 1975 audit, Acts 124 and 165, Session Laws of Hawaii 1976, separated the PUC from the PUD and the Department of Regulatory Agencies.

The PUD's staff remained relatively intact during the first few years after 1976. The bulk of the staff remained with that agency while only the chief clerk moved out with the commission (which was reassigned to the Department of Budget and Finance for administrative purposes). A few years later, the utilities administrator and chief rate analyst left the PUD to join the

commission's staff. Subsequently in the 1980s, by which time the PUD had become the DCA, two engineers and two investigators moved from the DCA to the PUC.<sup>4</sup>

From a staff of 29 in 1976, the DCA now has a staff of 19. This reduction in staffing is largely the result of the elimination of positions which remained vacant for long periods of time following the departure of incumbents through retirement, resignation, or transfer to the PUC.

**Subsequent developments.** The 1976 amendments to Chapter 269, Hawaii Revised Statutes, "Public Utilities Commission," did not fundamentally change Act 89, Session Laws of Hawaii 1913, which is still the basic law that regulates public utilities in Hawaii. Since 1976, the Legislature has enacted other laws affecting the PUC and DCA, but many of these are of a technical or "housekeeping" nature. Acts having some substantive effect are noted below:

- 1977 **Act 102** exempted producers of power generated from non-fossil fuel sources from the definition of "public utility" and gave the PUC authority to assist in setting "just and reasonable rates" for non-fossil fuel generated electricity supplied to a public utility by such a producer.
- Act 168** stipulated that no more than 25 percent of the issued and outstanding voting stock of a Hawaii public utility may be held by any foreign corporation or nonresident alien without the PUC's prior approval.
- 1977 **Act 20** (Special Session) transferred responsibility for motor carrier safety from the PUC to the Department of Transportation.
- 1981 **Act 167** eliminated all regulation of aerial transportation enterprises.
- 1983 **Act 219** "clearly and specifically" authorized the PUC to promulgate rules (without implying it was not authorized to promulgate rules before the act) and permitted the PUC to appoint "such hearing officers as may be necessary" as well as one or more attorneys independent of the attorney general.
- 1984 **Act 289** required the PUC to render an interim rate increase decision if the PUC had not issued its final decision on a public utility's rate application within the nine-month period required by HRS 269-16. The PUC may postpone its interim rate decision 30 days if it considers the evidentiary hearings incomplete.
- 1986 **Act 116** required the PUC to implement a "lifeline" telephone program for residential users, or a discounted rate for those the PUC identifies as being elderly or handicapped and having a limited income.
- 1988 **Act 250** specified the PUC is a party to all matters from which an order of the commission is appealed and required it to file appropriate responsive briefs or pleadings defending all such orders.

**Act 254** raised the civil penalty to a public utility for violating or failing to confirm or comply with Chapter 269 or any lawful order of the PUC from a maximum of \$1,000 to \$25,000 for each day such violation continues.

**Act 368** required public utilities to file with the PUC verified copies of contracts or other documentation of agreements for the purchase of goods or services from affiliated companies.

### **Audit Framework**

This audit was conducted within a framework similar to that of our management audit of the public utilities program in 1975. We took into account the industries regulated, the regulatory functions of the Public Utilities Commission and Consumer Advocate through the Division of Consumer Advocacy, and the objectives of the public utilities program. It should be noted that the following discussion is modeled closely after the framework presented in our audit of 1975.<sup>5</sup>

**The industries regulated.** The privately owned industries subject to regulation in Hawaii may be categorized as energy supply, communications, transportation, water supply, and sewage disposal services. As will be seen, water and sewers have not been an area of intense regulatory effort. The companies in the three major groupings are briefly described in the following paragraphs.

*Energy.* This category includes industries that supply electric and gas services to consumers. There are three electric and one gas utilities in Hawaii.

*Electric.* The three electric utilities are Hawaiian Electric Industries, Molokai Electric Company, and Kauai Electric Division. Hawaiian Electric Industries serves the islands of Oahu, Hawaii, Maui, and Lanai through its subsidiaries: Hawaiian Electric Company, Hawaii Electric Light Company, and Maui Electric Company. As this report was being completed, Hawaiian Electric Industries was in the process of also acquiring Molokai Electric Company, which provides electric service to the Island of Molokai. Kauai Electric Division is owned by Citizens Utilities Company of Connecticut, which purchased Kauai Electric in the early 1970s from sugar plantations that had previously owned the utility. Hawaiian Electric Company is by far the largest segment of the industry in the State. As for Hawaiian Electric Industries, it has become quite a diversified entity with interests in such areas as banking, insurance, and interisland surface transportation. Several of these other interests fall beyond the purview of the PUC.

*Gas.* GASCO, Inc. is Hawaii's only gas company and is a subsidiary of Pacific Resources, Inc. Its main operations are on the Island of Oahu, but it also conducts business on the other islands. GASCO has a nonregulated division that handles the distribution of liquefied petroleum or

bottled gas. ENERCO, Inc., another regulated subsidiary of Pacific Resources on Oahu, produces synthetic natural gas. This essentially leaves GASCO with the function of transmitting gas.

*Telecommunications.* The telecommunications category includes telephone, telegraph, cellular, paging and mobile services, and interisland data transmission services as well as cable television companies.

*Telephone.* Hawaii has a single statewide telephone system that is owned and operated by the GTE-Hawaiian Telephone Company (Hawaiian Telephone). The Kingdom of Hawaii granted Hawaiian Telephone a charter in 1883, and it was an independent corporation until General Telephone and Electronics Corporation acquired the company in 1967. Hawaiian Telephone is now a wholly owned subsidiary of this large mainland-based telecommunications and industrial conglomerate.

Hawaiian Telephone is also involved in international communications by sharing in the ownership of the long-distance submarine cables connecting Hawaii with the world and through participation in the satellite telecommunications network. Operations beyond Hawaii's boundaries are subject to regulation by the Federal Communications Commission (FCC) and thus are not under the State's control. Moreover, Hawaiian Telephone is involved in other business activities which are not subject to regulation by the PUC. Besides being a large retailer of telephone instruments and other equipment through its Phone Marts, it is a major contractor for the construction and installation of telecommunication systems for large users like the military and the University of Hawaii. The regulation of Hawaiian Telephone is complicated, therefore, by the need to separate the intrastate and regulated aspects of the business from the FCC-regulated and nonregulated operations and to ascertain and monitor the interrelationships between these different segments of the company's business. This situation is not unique to Hawaii, but factors of distance and isolation distinguish Hawaii's position from those of other states (except for Alaska).

Hawaiian Telephone is a significant factor in the State's economy and is one of Hawaii's largest private employers in terms of full-time employees.

*Telegraph.* The PUC has regulated Western Union of Hawaii, Inc. since 1972. Western Union of Hawaii was incorporated in Delaware in 1971 and is a wholly owned subsidiary of Western Union Corporation, a large nationwide telegraph company. Western Union of Hawaii provides certain data transmission and related services. It is not now as active as it once was due to competition from the entities listed below.

*Cellular telephone.* The PUC regulates Hawaii's two cellular telephone companies: GTE Mobilenet of Hawaii, Inc. and Honolulu Cellular Telephone Company. Cellular companies divide geographic areas into "cells," each of which has a radio transmitter. A customer is connected with that transmitter as he moves from one area to another. GTE Mobilenet provides wireline and Honolulu Cellular non-wireline telephone service on the island of Oahu.

*Paging and mobile telephone companies.* The State currently has seven operating and regulated firms that provide paging and mobile telephone services: Dr. Mark A. Goldman, dba Island Radio-Phone; Ram Paging Hawaii; Pacific Mobiletelephone Corporation; Radiocall, Inc.; Page-Com Hawaii, Inc.; General Telcourier, Inc.; and Tel-Page Corporation. These companies service customers through radio paging and mobile telephones. Mobile telephones are provided through base units attached to Hawaiian Telephone Company's network. Hawaiian Telephone is also involved in the paging and mobile telephone business but is now scaling back its operations in this field.

*Interisland data transmission.* Tel-Net Hawaii, Inc., a regulated entity, is the only company in the State currently involved in transmitting data between the islands. Tel-Net Hawaii is a digital microwave transmission carrier that is limited to transmitting data on a point-to-point basis in the State of Hawaii.

*Cabletelevision.*<sup>6</sup> Eight cable television companies operate in Hawaii. As of December 31, 1987, there were nearly a quarter of a million subscribers; over 200,000 subscribers are on the island of Oahu. On Oahu, Oceanic Cablevision, Inc., the largest of the eight companies, has 74.1 percent of the statewide subscribership and McCaw Communications of Hawaii Kai, the second largest company has 5.5 percent of the statewide subscribership. Jones Spacelink of Hawaii, Inc. (formerly known as COMTEC, Inc.), Sun Cablevision of Hawaii, and McCaw Cablevision LP Maui County/Hawaii County service clients on Hawaii Island. McCaw Cablevision LP Maui County/Hawaii County also provides cable service on Maui, Molokai, and Lanai. Hawaii Cable Vision Company provides cable service in West Maui. Garden Isle Cablevision Company and Kauai Cable TV service the island of Kauai.

*Transportation.* The transportation category includes companies engaged in transporting people and cargo over land and sea.

*Motor carriers.* The PUC assumed jurisdiction over various types of motor carriers and responsibility for safety regulation of almost all types of trucks and buses with the passage of the Hawaii Motor Carrier Act, Session Laws of Hawaii 1961. In 1977, the responsibility for the safety regulation of motor carriers was transferred from the PUC to the Department of Transportation. As a result, the PUC is now primarily concerned with the economic regulation of several different

classes of motor carriers. The most extensive regulation applies to common carriers of passengers and property, which include motor vehicle transportation companies offering their services to the general public (with a number of specific exceptions set forth in the statute, such as taxicabs, school buses, city buses, ambulances, and rubbish trucks). Some regulation is also exercised over contract carriers of passengers and property, which encompass those carriers who provide transportation services to specific customers under contractual arrangements.

Some of the affected companies are relatively large, but the motor carrier industry generally is characterized by a great number of small firms. Many are owner-operator entities involving one or two vehicles. Motor carriers are a significant factor in the State's economy and employment picture.

*Water carriers.* The only regular water carrier currently regulated by the PUC is Young Brothers, Ltd., a wholly owned subsidiary of Hawaiian Electric Industries. Young Brothers provides barge service for the shipment of property between the islands. Closely affiliated with Young Brothers is the nonregulated subsidiary of Hawaiian Electric Industries, Hawaiian Tug and Barge Corporation, which provides contract tug and barge services to various customers, including Young Brothers.

*Water supply companies.* The PUC regulates 11 small water companies. The majority of the water carriers are located on the neighbor islands: six on the island of Hawaii (Kilauea Water Company, Kohala Ditch Co., Ltd., Kohala Ranch Water Company, Miller and Lieb Water Co., Punalu'u Water and Sanitation Corp., and Waikoloa Water Co., Inc.); two on Maui (Kaanapali Water Corp. and Kapalua Water Company); two on Kauai (H. Hackfeld & Company, Ltd. and Princeville Water Co.); one Molokai Public Utilities, Inc. on Molokai. These utilities are small private water supply companies subject to the control of the PUC.

*Sewage disposal companies.* Private sewage companies were placed under the PUC's jurisdiction through Act 59, Session Laws of Hawaii 1974. At that time, a major private sewage disposal system in Hawaii Kai (East Honolulu Community Services, Inc.) fell under the PUC's jurisdiction. Today, six of the seven regulated sewage plants are located on the neighbor islands: three on the island of Hawaii (Mauna Lani STP, Inc., Waikoloa Resort Utilities, Inc. and Waikoloa Sanitary Sewer Co., Inc.); and one each on Maui (Kapalua Waste Treatment Co.), Molokai (MOSCO, Inc.), Kauai (Princeville Utilities Co., Inc.) and Oahu (East Honolulu Community Services, Inc.).

**Regulatory functions.** The Public Utilities Commission is the agency primarily responsible for regulating public utilities. Its general authority is derived from Chapter 269, "Public Utilities Commission;" Chapter 271, "Motor Carrier Law;" and Chapter 271G, "Hawaii Water Carrier Act" of the Hawaii Revised Statutes.

The functions performed by the PUC under these chapters may be categorized as certification and licensing, rate-making, safety regulation, and economic and business regulation. The PUC is also vested with rule-making and investigative powers to assist it in discharging its responsibilities. A brief description of these functions follows.

*Certification and licensing.* Certification and licensing are governmental authorizations for businesses to operate as certain types of public utility. These regulatory devices control or limit entry into a market or particular kind of utility business and ensure that only those who meet certain specified safety, financial, and other standards may operate as a public utility.

*Rate-making.* The purpose of rate-making is to establish fair and reasonable rates that public utilities may charge the public for their services. The PUC has broad powers to fix the rates and fares of all public utilities, including regulated transportation services. Section 269-16, Hawaii Revised Statutes, governs the rate-making procedure and requires prior approval by the PUC for "any increases in rates, fares, or charges."

*Safety regulation.* Safety regulation consists of activities to ensure the safety of the public served by the utilities and of employees of utility companies. Section 269-7, Hawaii Revised Statutes, empowers the PUC to examine the manner in which each public utility is operated with reference to the safety or accommodation of the public and to the safety of its employees. The PUC as part of its safety regulation responsibilities also inspects and monitors Hawaii's gas pipelines. The commission performs a minimum of 75 field inspection a year. The inspections are done in conjunction with the federal program administered by the U.S. Department of Transportation's Research and Special Programs Administration. The federal government pays 50 percent of the inspections' costs, and the PUC's efforts in this area are audited biennially and inspected annually. Prior to 1977, the PUC also had broad responsibility for the safety regulation of motor carriers in Hawaii, but as indicated above this function has been transferred to the Department of Transportation.

*Economic and business regulation.* Economic and business regulation includes activities related to supervising, controlling, and regulating internal business operations of public utilities. The PUC has broad powers in this area. Chapters 269, 271, and 271G, Hawaii Revised Statutes, authorize the PUC to examine, supervise, and regulate the following: (1) issuance of stocks, bonds, notes, and other evidence of indebtedness; (2) sale of assets; (3) wages paid to employees; (4) valuation of physical property; (5) merger or consolidation of public utilities; systems of accounting and bookkeeping; (6) construction, modification, or improvement of facilities; and (7) the disposition of income.

*The Division of Consumer Advocacy.* "Consumer Advocate," Part II of Chapter 269, Hawaii Revised Statutes, creates a division of consumer advocacy within the Department of Commerce and Consumer Affairs to provide administrative support to the director of that department in his role as Consumer Advocate. Section 269-54, Hawaii Revised Statutes, vests the Consumer Advocate with the following powers: rule-making; investigative; assist, advise, and cooperate with federal, state, and local agencies to protect and promote the interests of public utilities consumers; recommend legislation in the interests of consumers of public utility services; organize and hold conference on problems affecting consumers; perform "such other acts as may be incidental to the exercise of the functions, powers, and duties" of the Consumer Advocate; and represent the interests of consumers of utilities before any state or federal agency with jurisdiction over matters affecting those interests.

Part II also permits the Consumer Advocate to "institute proceedings for appropriate relief" before the PUC whenever it is determined a public utility is violating any requirement of the PUC. The Consumer Advocate may also serve on any public utility a request to furnish information relevant to the performance of his or her duties. Finally, Section 269-55, Hawaii Revised Statutes, requires the Consumer Advocate to provide a "central clearing house of information" by collecting and compiling all consumer complaints. The Consumer Advocate is also charged with monitoring the PUC's handling of such complaints.

**Program objectives.**<sup>7</sup> An evaluation of any program requires a consideration of that program's objectives. In the State's program structure, the PUC is placed in the *Transportation, Communications, and Utilities* program and the DCA within the program, *Consumer Advocate for Communications, Utilities and Transportation Services*. These two programs are almost exclusively concerned with public utilities and consumers. This suggests that the state program structure views the PUC and DCA as having the objective of protecting consumers through regulation.

The objective of the *Transportation, Communications, and Utilities* program implies consumer protection but it also suggests economic development goals as shown below:

"To ensure that regulated companies provide communication, utilities and transportation services to the public at acceptable standards of quality, dependability and safety at fair rates by establishing and enforcing appropriate service standards."

On the other hand, the *Consumer Advocate for Communications, Utilities and Transportation* program, which includes the cable television program, has clear consumer protection goals and implied economic development goals:

“To ensure that individuals have available to them communication, utility and transportation services meeting acceptable standards of quality, dependability and safety at fair rates, and to achieve this by advocating the establishment and enforcement of appropriate service standards and ratemaking methods.”

Although not explicitly recognized in the State's formal program structure, the activities of the PUC and DCA also affect and are affected by the State's programs relating to economic development, environmental protection, and public safety.

#### **Areas not Covered in Detail in this Audit**

As previously indicated, time and resource constraints prohibited us from examining in depth all of the affected areas of regulatory concern--especially motor and water carriers, water supply and sewage disposal services, cable television, monitoring of utility safety practices, and utility capital expenditure planning. We did, however, examine and make recommendations on many of these subjects in our 1975 management audit which we feel are still valid. The Legislature may wish to consider these recommendations in future deliberations on the public utilities regulatory program.

**Transportation.** We recommended in our 1975 audit that motor carriers be deregulated except for safety aspects, which should be assigned to the highway safety coordinator for standards and county police departments for enforcement.<sup>8</sup> We found in 1975 and believe today that the current economic regulation of motor carriers does not encourage competition or efficient practices and that the attendant rates are higher than they would be under competitive conditions.<sup>9</sup> Barring full-scale deregulation of the motor carrier industry, the Legislature may wish to consider deregulating certain segments, such as dump trucks and the smaller size passenger vehicles for transporting tourists (that is, the 1-to-7 category).

**Water and sewer utilities.** Our last audit also found that “scant attention” had been given to the regulation of private water and sewer companies. This is still true today, although the number of such private utilities has increased from four to 18 since 1975. The PUC is now moving toward regulating this area through the rule-making process; current regulations are contained in each firm's tariff. We noted in 1975 that water and sewage services are necessities provided under monopolistic conditions and therefore proper subjects of PUC regulation. However, we felt that such regulation should be placed with the counties as they generally own and operate water and sewer systems and thus have more expertise than the PUC in these fields.<sup>10</sup> The PUC and Legislature should still consider such a transfer of regulatory authority.

**Cable television.** In 1975, we recommended that cable television be placed under the jurisdiction of the PUC as it was a monopolistic business.<sup>11</sup> Cable television was then, and is now, under the jurisdiction of the Department of Regulatory Agencies, or the current Department of Commerce and Consumer Affairs. Technological advances since 1975 are erasing the differences between and increasing the opportunities for competition among the various types of telecommunication facilities and services. The economic and other ramifications of this development are great, and the Legislature may wish to consider the placement of cable television companies under the jurisdiction of the PUC.

## Chapter 2

### REGULATORY ROLES AND RELATIONSHIPS

The Public Utilities Commission (PUC), the Division of Consumer Advocacy (DCA) of the Department of Commerce and Consumer Affairs, and the Department of the Attorney General all have important roles to play in Hawaii's public utilities regulatory program. In this chapter, we examine the roles of and interrelationships among these three organizational entities with respect to exerting regulatory control over public utility activities in Hawaii.

#### Summary of Findings

We find as follows regarding roles and relationships of agencies involved in regulating public utilities in Hawaii:

1. While some sorting out and enhancement of functions, duties, and powers have occurred as a result of actions taken to implement recommendations from our previous management audit of the public utilities regulatory program, ambiguities and deficiencies in these areas still exist and still detract from program effectiveness. More specifically:
  - The Division of Consumer Advocacy and the Department of the Attorney General have not developed an adequate means of assuring a high level of continuity, coordination, and competence in legal representation of consumer interests before the Public Utilities Commission.
  - The Public Utilities Commission, the Division of Consumer Advocacy, and the Department of the Attorney General have not given adequate attention to making sure that a comprehensive and coordinated approach is taken to identifying, representing, and protecting Hawaii's interests relative to federal regulation of public utility activities.
2. Generally speaking, the Public Utilities Commission and the Division of Consumer Advocacy have been passive and reactive rather than aggressive and pro-active in defining and carrying out their separate roles.
  - In the case of the Public Utilities Commission, this approach is reflected in the agency's heavy emphasis on adjudication and lack of policymaking and enforcement and in its slow build-up of administrative capabilities.

As for the Division of Consumer Advocacy, it becomes involved in less than 20 percent of the cases before the Public Utilities Commission and in a number of instances at the commission's request rather than on its own initiative.

### **Concern with Agency Roles and Relationships**

In the previous management audit of Hawaii's public utilities program which we reported on in 1975, we found that one of the major problems detracting from the program at that time was a confusion in roles, functions, duties, and powers among the several organizational entities involved in carrying out the program. The distinction between consumer advocacy on one hand and adjudication, policymaking, and administration on the other hand was unclear. Similarly, there was no clear demarcation between economic regulation and other types of regulation (such as for safety, environmental protection, and promotion of economic development). Both the PUC and the Public Utilities Division (PUD) were parts of the Department of Regulatory Agencies, with the PUD expected to serve as Consumer Advocate on behalf of the departmental director *and* as administrative and staff support to the PUC in the discharge of its adjudicatory, policymaking, and enforcement functions. The Department of the Attorney General, in turn, was required to represent both the PUC and the PUD, even when they came into conflict with one another.

As a result of this confusion, we also found in our previous audit that the public utilities program had become seriously bogged down and was being rendered ineffective. To deal with this situation, we recommended that the consumer advocacy function be clearly separated from the other functions assigned to the PUC. We also recommended that the responsibility for economic regulation of public utilities be clearly focused in the PUC (or eliminated altogether in the case of motor carriers and telephone interconnect activities) and that other types of regulation be assigned to other agencies. In terms of legal representation, we recommended that the Attorney General should represent only one party, the PUD, and that the PUC should have its own legal counsel.<sup>1</sup>

In response to these recommendations, the Legislature separated the PUC from the Department of Regulatory Agencies and the PUD, and assigned it for administrative purposes to the Department of Budget and Finance. The commission itself was converted from five part-time members to three full-time members. The Department of Regulatory Agencies (through the PUD) was clearly constituted to be the Consumer Advocate in proceedings before the PUC.<sup>2</sup> Except for the regulation of motor carrier safety which was transferred to the

Department of Transportation, all regulatory functions previously assigned to the PUC remained with the PUC. The PUC was given the authority to retain its own legal counsel while the attorney general continued to be the legal representative of the PUD.<sup>3</sup>

When we were asked once again by the Legislature to conduct a management audit of the public utilities regulatory program, we turned first to see what actions had been taken with respect to our previous recommendations regarding agency roles and how well the implementation of these actions was proceeding. Our interest in this area was heightened by the concern about agency roles expressed by the Legislature in its request for this audit. The Legislature was especially interested in finding out whether a passive or active approach to regulation was being taken.

Accordingly, in the remainder of this chapter, we set forth the results of our current examination of agency roles and relationships with regard to Hawaii's public utilities regulatory program.

### **Sorting Out Roles and Relationships**

Compared to the situation encountered in our previous management audit of the public utilities regulatory program, considerable progress has been made with regard to the sorting out of roles and relationships among affected agencies. The consumer advocacy function with regard to proceedings before the PUC has become much more clearly defined. Similarly, the independent role of the PUC has become more clearly delineated. Nevertheless, we find there are still some troublesome areas regarding agency roles and relationships in this field. These are discussed below.

**Legal representation of DCA.** Utility regulatory law is a specialized area of legal representation which requires time, experience, and, frequently, specialized training in order to develop the necessary expertise to handle cases effectively. While not as formal and as stringent as judicial proceedings, PUC proceedings are nevertheless quite legalistic. Moreover, besides requiring familiarity with the particular (and often quite intricate) administrative process followed within a jurisdiction, the handling of utility cases also requires the ability to understand, integrate, and present information and materials relating to a number of different disciplines--law, economics, finance, accounting, engineering, and other technologies (such as telecommunications and energy generation).

To meet their needs in this area, Hawaii's regulated utilities and transportation companies rely upon in-house legal staffs and outside law firms who specialize in utility regulatory law and who have developed considerable experience and expertise in this legal field. This is in addition

to other staff with expertise in other areas, such as economics, finance, accounting, and engineering. As a consequence, the State's Consumer Advocate faces formidable adversaries when contesting issues before the PUC.

Thus, if the DCA is to be effective in representing consumer interests before the PUC, it must be able to match within a reasonable degree the capabilities of those on the opposing side. This means having legal counsel who not only are expert and experienced in the field of utility regulatory law but are also able to work effectively as part of a total team in developing and carrying out legal strategy in representing and protecting consumer interests.

As previously indicated, the Attorney General is designated to serve as the legal representative of the DCA (the successor to the PUD), under the Department of Commerce and Consumer Affairs (DCCA), which is the present title of what used to be the Department of Regulatory Agencies.<sup>4</sup> Unfortunately, this relationship has been an unstable one insofar as actual legal staff has been concerned. One factor contributing to this instability is the fact that legal staff are often assigned to the DCA only on a part time basis. As a result, the DCA has to compete for service with other demands on the time and attention of its attorneys. Of much greater concern, however, is the high rate of turnover in legal personnel representing the DCA. In the period between 1980 and 1988, there have been at least eight changes among the deputy attorneys general assigned to the DCA (or its predecessor, the PUD). During this time, only two of the deputies have served more than three years (including one currently assigned). The average has been less than two years.

Under these arrangements, it is extremely difficult to develop the expertise and experience necessary to represent consumer interests effectively in proceedings before the PUC. Representatives of the utilities have told us that it even makes their jobs more difficult because they continually have had to spend much time and effort just to familiarize new deputies with the regulatory process and with the status of cases pending before the PUC. With this turnover and with deputies often being assigned on a part time basis and really answerable to the Attorney General and not to the director of the DCCA in his capacity as Consumer Advocate, the DCA has frequently been put in a difficult position insofar as being able to set and pursue strategy and maximize the utilization of available resources.

In this regard, it should be noted that the DCA differs from several other units under DCCA relative to legal representation. Both the Office of Consumer Protection (OCP) and the Regulated Industries Complaints Office (RICO) have their own legal staffs which are separate from the Department of the Attorney General. Even the Division of Financial Institutions has

its own financial institutions law analyst. In the cases of OCP and RICO, separate legal staffs are apparently justified on the basis that legal work is an integral and continuing part of the normal operations of those two units. Much the same logic would apply to DCA.

At the time we were doing the fieldwork for this audit, the principal deputy assigned to DCA had been on the job for more than three years and displayed considerable commitment, ability, and capacity to work smoothly with the DCA staff. Thus, the situation is not critical currently with regard to this relationship problem. However, at the same time, we note that he is assigned to the DCA only part time and that there are periods when he must divert his time and attention to other matters. Moreover, the present situation is subject to change at any time without DCA being in a very good position to do much about it. For any number of reasons, one or both of the deputies now assigned to DCA could be wholly or partially assigned to other duties or leave the Department of the Attorney General altogether and be replaced by other deputies with little or no background in utility regulatory law.<sup>5</sup>

If the DCA is to be effective in carrying out its responsibilities, it must be assured of continuity, competence, and control in the handling of its legal representation before the PUC. At present, such assurance is shaky at best. This suggests that either the Department of the Attorney General should come up with a better plan for providing legal services to the DCA or DCA should be allowed to follow the example of OCP and RICO by employing its own legal staff.

**Responsibility for protecting state interests in federal utility regulatory matters.** As brought out in our previous management audit of Hawaii's public utilities regulatory program, public utility activities in Hawaii are affected by a wide range of federal actions, programs, and agencies. In some instances, the impact is indirect. In other instances, state regulation is preempted and nullified by overriding federal regulation. Moreover, in recent years, the federal impact has been subject to sometimes wide and sudden fluctuations. A number of factors contribute to this situation, including legal (the federal court break-up of the AT&T telephone monopoly), political and philosophical (the deregulation of various transportation and telecommunication services), and technological (satellite and fiber optic telecommunications).

Considering the significance of federal involvement in public utility activities in Hawaii, it is important for the State to position itself where it can be kept fully aware of what is happening at the federal level and can act in a timely and effective manner to represent and protect Hawaii's interests insofar as these may be affected by federal actions and programs. At present, several different agencies have roles to play with respect to the federal impact on public utility activities in Hawaii. Generally, however, these roles are not clearly recognized and defined and, as a consequence, the State lacks a comprehensive and coordinated approach to identifying, representing, and protecting its interests in this area.

As the advocate of consumer interests in the whole field of public utilities, the DCA is responsible for representing and protecting consumer interests before federal agencies as well as before the PUC. With the nature and scope of its jurisdiction subject to modification by federal actions, the PUC should continuously be aware of and ready to react to relevant actions and proposals at the federal level. As the chief legal agency for the State with concern for state authority and liability and employment of outside legal counsel, the Department of the Attorney General must also be geared to deal with federal issues affecting public utility activities in Hawaii as these emerge and evolve.<sup>6</sup>

In the case of the DCA, its statutory authority and responsibility with regard to federal actions in the public utilities field are quite clearly stated. Section 269-54 (b) (7), HRS, specifically authorizes it to "represent the interests of consumers of utility services before any state or federal agency or instrumentality having jurisdiction over matters which affect those interests." Chapter 269, HRS, however, is silent concerning the PUC's authority and responsibility with regard to federal matters. Nevertheless, considering the broad nature of the general powers and duties given to the PUC by this chapter, it does not appear that the PUC is precluded from acting in this area. As for the Department of the Attorney General, it is not specifically assigned authority and responsibility in this area by statute, but Section 28-1, HRS, does charge it with representing the State in most legal proceedings.

All three of these agencies have access to sources of information concerning federal activities relating to public utilities. Sometimes this access is direct, such as when they are on mailing or notification lists to receive particular filings or notices. More often, however, the information comes indirectly through other parties, such as national organizations to which they belong, commercial specialized news services, and members of Hawaii's congressional delegation. In the case of the DCA, it also retains a legal consultant in Washington, D.C. to monitor proceedings of the Federal Communications Commission (FCC) and to alert the DCA regarding any actions or cases which might affect consumers in Hawaii.<sup>7</sup>

Due to Hawaii's distance from Washington, it is not always satisfactory to rely upon generalized information sources to meet the State's particularized needs on a timely basis. This is why the DCA has hired its Washington consultant on FCC matters. Regardless of the source of information, it is also essential to have the capability to receive and understand the information, assess its likely impact on conditions in Hawaii, and to take appropriate follow up action in a timely manner. Where several different agencies may be involved, it is also important to have some means of coordinating the interchange of information and follow up action among them.

At present in Hawaii, however, many of the elements of an effective program for dealing with federal public utility regulatory matters are lacking. None of the three primarily involved agencies is organized and equipped to carry out responsibilities in this area in a comprehensive, consistent, and timely manner. Coordination among the three of them on any continuing basis is virtually nonexistent. The DCA is probably doing the most. As already indicated, it has a Washington, D.C. legal consultant monitoring FCC matters on a continuing basis. When intervention on behalf of Hawaii's consumers is deemed appropriate, this same legal consultant usually represents Hawaii. The DCA also tries to keep abreast of other federal activities which may affect Hawaii's public utility consumers. However, no one within the DCA is specifically assigned the responsibility of monitoring federal activities on an ongoing basis and of making sure that comprehensive coverage is provided.

As for the PUC, it rarely becomes involved in federal matters. Except for a few "friend of the court" briefs filed on its behalf, we found little evidence of any direct participation during the past 12 years. For the most part, it relies upon the DCA to look out for Hawaii's interests at the federal level. It has not assigned anyone to be responsible for federal matters and makes no concerted effort to monitor what is happening in this area.

As already indicated, Hawaii's statutes do not require, direct, or specifically authorize the PUC to be active regarding federal public utility regulatory matters. In this sense, Hawaii differs from some other states where there are statutory provisions on the subject. For example, Minnesota authorizes its commission to cooperate with federal agencies for the purpose of harmonizing federal and state regulations within the state and to conduct joint hearings with federal agencies where this is deemed advisable and in the interests of the people of that state.<sup>8</sup> Similarly, Maine provides for its commission to participate with other state and federal regulatory bodies in joint hearings and studies of mutual interest.<sup>9</sup>

Like the PUC, the Department of the Attorney General does not focus any regular or sustained attention on federal public utility regulatory matters. To the extent it becomes involved in such matters, it appears to be on an ad hoc basis as specific issues are brought to its attention.

In our previous audit, we recommended that representation of Hawaii's interests in federal proceedings be recognized as an important and integral part of the State's public utilities regulatory program and that appropriate steps be taken to organize for and carry out this responsibility, including developing sources of information that will advise affected agencies on a timely basis of federal regulatory proceedings where Hawaii's interests may need to be represented.<sup>10</sup> We regret to find more than 12 years later that these recommendations have not yet been adequately implemented. The affected agencies need to recognize their individual and

collective responsibilities in this area and to organize themselves to fulfill these responsibilities effectively. At a minimum, this means (1) fixing specific responsibility within agencies for monitoring and assessing the potential impact of federal activities and (2) establishing some mechanism for exchanging information and views among agencies. It is important, of course, to ensure that coverage is comprehensive, continuing, and coordinated.

### **Passive Rather Than Active Approaches to Agency Roles**

When the Legislature acted on the findings and recommendations of our previous management audit of the public utilities regulatory program, it vested considerable discretion in the affected agencies, the PUC and the DCA. It gave the agencies broad grants of authority and responsibility and did not set any strict limits on their activities. As a result, the agencies were given considerable leeway in defining their own roles. In this audit, we were interested in knowing whether the agencies have since been passive or active in defining their roles.

Based upon our current examination of the public utilities regulatory program, it may be said that the PUC and DCA generally have been passive and reactive rather than aggressive and proactive in defining and carrying out their respective roles. In the discussion that follows, we set forth the reasons for reaching this conclusion.

**Public Utilities Commission.** When we last looked at the PUC in the early 1970s, we found an organization with many broad powers and responsibilities, but with many functions not being carried out effectively and with some functions being almost totally neglected. In areas relating to economic regulation, public safety, and environmental protection, the PUC was expected to exercise adjudicatory, policymaking, and administrative (enforcement) authority and responsibility. To do all of these things, reliance was placed upon a commission composed of five part-time lay members without a staff of their own and with administrative support provided by a staff which was also charged with the duty of representing consumer interests before the commission.

In response to our recommendations, the PUC was given a more independent status, the commission was reconstituted into three full-time members, and the PUC was given its own staff. Authority and responsibility regarding motor carrier safety was transferred to the Department of Transportation, but the PUC retained all of the other authority and responsibilities it previously had. In the ensuing years since 1976, the PUC has not taken significant initiatives to expand its operations or enhance its effectiveness. For the most part, it has simply waited for matters to come to its attention (usually in the form of case filings) and then has reacted (sometimes by taking no action at all). Almost all of its emphasis has been on adjudication; very little attention has been given to policymaking and administration.

*Emphasis on adjudication.* Since the PUC was split off from the Department of Regulatory Agencies in 1976, it has devoted a very high proportion of its time and attention to the function of adjudicating cases. In the late 1970s, this was probably unavoidable with three commissioners who were new to the field of public utility regulation and who had extremely limited staff resources (in terms of both numbers and expertise) to back them up. Then in the early 1980s during a period of economic instability and high inflation, the PUC was hit with a rash of rate cases.

The PUC had to handle nine major rate cases which were filed between December 1980 and April 1983. Most of these cases took well over a year to dispose of; the shortest lasted 12 months and one took 19 months while another took 20 months. As rate cases are usually quite complicated and detailed, they tend to consume considerable staff resources as well as time.

Since 1984, however, there has been little activity in the area of utility rates. Nevertheless, the PUC's case docket has remained fairly heavy. This is reflected in Table 2.1 which summarizes docket filing and completion data for fiscal years 1982-83 through 1986-87. As can be seen in this table, annual filings have ranged from a low of 229 to a high of 330. The average for the period was 272 cases per year. Generally, the PUC has completed within a year two-thirds of the cases filed in that year; most of the cases pending at the end of a year were filed during the last quarter of that year. Cases pending at the ends of years range from 88 to 199.

It should be noted, however, that about two-thirds of the cases handled during the period covered by Table 2.1 involved regulated transportation companies. These tend to be relatively simple cases which do not require the time, attention, and effort that must be devoted to rate cases and other complicated utility cases. Moreover, these are the kinds of cases which can be handled by hearings officers (which the PUC is authorized to use) and do not require the time and attention of the full commission.

Due to the absence of any agreed upon means of measuring the workload of the PUC as well as a general lack of relevant data, it is impossible to determine with any precision the extent of the PUC's heavy emphasis on adjudication. However, available records do not indicate much activity outside of the area of adjudication. Further indication of inactivity in the area of policymaking has been the PUC's inattention to such issues as energy resource planning, deregulation of telecommunications, deregulation of transportation, the impact of tax reform on utility finances, and maintaining or enhancing the quality of utility services.

Table 2.1

Docket Filings and Pending Dockets  
Fiscal Years 1982-83 through 1986-87

No. of Dockets	1982-83	1983-84	1984-85	1985-86	1986-87
Filed	301	229	230	269	330
Completed	193	138	158	193	150
Completion Rate	64.1%	60.3%	68.7%	71.7%	45.5%
Uncompleted	108	91	72	76	180
Prior Year Pending	7	11	16	17	19
Total Pending	115	102	88	93	199

Source: Public Utilities Commission, Department of Budget and Finance, Annual Report for Fiscal Years 1982-83, 1983-84, 1984-85, 1985-86, 1986-87, State of Hawaii.

Even in the adjudicatory process, the PUC has not gone very far outside of the area of ratemaking or become involved in such matters as environmental concerns. This is illustrated by the PUC's actions with regard to the "biomass" generating facility of Molokai Electric Company (MOECO). In an attempt to find a better alternative to its antiquated diesel generating facility, MOECO in the early 1980s embarked upon a plan to develop a new plant that would generate power by using biomass material (hay, pineapple plants, wood chips, etc., as well as coal) as fuel. However, the effort was plagued with many troubles and the plant never fulfilled expectations and became inoperative. It was at this point that MOECO came to the PUC to seek permission to sell the plant to a third party who would be exempt from PUC regulation, would rejuvenate the plant, and then would sell energy back to MOECO.

Under PUC rules, approval was required to dispose of the assets and to enter into the new purchase power agreement. Although environmental concerns were raised (including the contention that the proposed use of kiawe wood chips as fuel would denude the island of Molokai of all its kiawe in less than five years), the PUC declined to consider environmental factors in reaching its decision and chose instead to let these matters be handled by other agencies.<sup>11</sup> Thus,

in giving its approval, it did not even make this action contingent upon compliance with all other governmental requirements. In effect, then, the PUC did not consider environmental protection as being as its responsibility or something about which it should be officially concerned.

This passive approach to its role is also evident in the PUC's stance regarding proposed legislation relating to public utility regulation in Hawaii. Since 1976, the PUC itself has rarely, if ever, initiated any proposed amendments to the statutes relating to it. Moreover, when proposed legislation in this area has been initiated by others, the PUC has either declined to express its views on or has opposed such proposals.

For example, during the 1988 legislative session, the PUC uniformly opposed legislation relating to such issues as capital expenditures, competitive bidding, interisland telecommunication services, mandatory renegotiation of purchase power agreements, information on public utility affiliated companies not subject to PUC regulation, and increasing penalties for noncompliance with PUC rules. In almost all cases, the PUC's position was that it already had sufficient authority to deal with the matters in question. Nevertheless, the Legislature enacted laws on such matters as making the PUC a party to Hawaii Supreme Court proceedings involving the appeal of PUC decisions, regulating business dealings between regulated public utilities and nonregulated affiliated companies, and raising penalties for violations of PUC orders from a maximum of \$1000 per violation to \$25,000 per day of violation.

It may be argued, of course, that since Chapter 269, HRS, does not give the PUC specific direction to consider policy goals in such areas as economic development, environmental protection, and energy conservation in its actions, then the PUC is justified in taking the passive role that it has displayed over the years. In this regard, it is noteworthy that some other states have enacted statutory provisions which articulate more clearly policies or concerns that are to be taken into consideration by their public utility regulatory agencies. Some of the more pertinent of these statutory provisions are summarized below:

Florida: The statute is aimed at ensuring consistency with the state's comprehensive plan and it requires its public service commission to take into consideration, when approving plans of the utilities subject to its regulation, the compatibility of each of the plans with the state comprehensive plan.<sup>12</sup>

Minnesota: The public utility law has specific guidelines and directs the commission "[t]o the maximum reasonable extent ... to set rates to encourage energy conservation and renewable energy use and to further the goals..." relating to the department of energy and economic development, relating to

cogeneration and small power production and relating to energy conservation improvements with any doubt as to "reasonableness" to be resolved in favor of the consumer.<sup>13</sup>

New York: The public service statute directs the commission to "encourage all persons and corporations subject to its jurisdiction to formulate and carry out long-range programs, individually or cooperatively, for the performance of their public service responsibilities with economy, efficiency, and care for the *public safety, the preservation of environmental concerns and the conservation of natural resources.*"<sup>14</sup> (emphasis added)

Illinois: The state's public utilities law states that "[t]he General Assembly finds that the health, welfare and prosperity of all Illinois citizens require the provision of adequate, efficient, reliable, *environmentally safe and least-cost public utility services* at prices which accurately reflect the long-term cost of such services and which are equitable to all citizens." The law further states that the goals and objectives of public utility regulation shall be to ensure *efficiency, environmental quality, reliability, and equity.*<sup>15</sup> (emphasis added)

Recent changes in the membership and chairmanship of the PUC may influence whether or not legislation giving more specific directions to the PUC is needed in Hawaii. While it is still too soon to make any lasting assessment of the situation, early indications are that the reconstituted commission will be more pro-active than its predecessor commissions. Already it has initiated a number of new dockets with potentially far reaching ramifications rather than wait for these matters to be brought before it by others.

*Slow build-up of administrative capabilities.* The PUC's approach to its role over the period since 1976 is also epitomized by the method and rate of development of its own administrative capabilities. When the PUC was separated from the Department of Regulatory Agencies, it started off with a severe handicap by virtue of the fact that the bulk of the staff remained with the PUD and did not go with the PUC. While the PUD retained 29 positions, the PUC was given only 8 positions. Included in the latter total were the three new full-time commissioners none of whom had had any previous experience in public utility regulation. The persons filling the other 5 positions included the former transportation administrator who returned to become the administrative director, a legal counsel, an auditor, the chief clerk, and a secretary. The legal counsel, a former deputy attorney general, was hired on contract by the commission.<sup>16</sup>

Thus, despite the broad grant of authority and responsibility and large task that it was given, the PUC was initially provided with very meager resources. Over the next several years, it

acquired 8 additional positions, but only 4 of these might be considered technical or subject matter support to the commission; the others consisted of 3 neighbor island representatives and 1 clerical position. Between 1980 and 1984, no additional technical positions were acquired by the PUC while one vacant clerical position was eliminated. Since then, there has been a gradual increase of staff up to the present 26 positions (including 3 vacant positions, the 3 commissioners, and the 3 neighbor island representatives).

In terms of staff numbers and qualifications, then, the PUC has been suffering from inadequate resources for much of the period since 1976. Even now, there are vacancies in two key technical areas and in the much needed area of clerical support. During this same period, the PUC has sought additional funding and positions from time to time, but for the most part, the agency has not made a strong case for its needs. This problem of staffing for the PUC is discussed more fully in a later chapter.

One way for making up for staff shortages is to employ outside consultants. This is particularly appropriate where workload tends to fluctuate and to require highly specialized expertise, which quite often characterizes the situation at the PUC. However, the PUC has neither sought nor received much additional funding for the employment of outside consultants. In contrast, the DCA regularly receives and expends substantial funds for this purpose.

Detracting from administrative capabilities has been the PUC's lack of an internal procedures manual, a library or other source of reference material, and adequate working space for the staff. Only recently have computers been acquired so that the agency can keep track of information and the staff can have the ability to access large amounts of data in an effective manner. The second chairman of the commission had recognized many of these shortcomings and was beginning to make progress in dealing with them prior to his departure from the PUC. However, many of the problems still remained when the present administration took office. Fortunately, it has given high priority to the resolution of these problems. The challenge is a formidable one.

**Division of Consumer Advocacy.** When looking at the DCA, it should be recognized that relative to the PUC, its role is more clearly and narrowly defined, and it has had more resources with which to work. Unlike the PUC with its broadly stated authority and responsibility to carry out adjudicatory, policymaking, and enforcement functions touching upon economic regulation, enhancement of public safety, environmental protection, and other matters, the DCA is specifically and exclusively charged with the task of looking out for the interests of consumers of public utility services in Hawaii. Moreover, when the PUC was separated from the Department of Regulatory Agencies in 1976, the PUD (predecessor of the DCA) was left with the bulk of the previously combined staff (including most of those with the most experience and expertise in public utility regulatory matters).

Under these circumstances, it should be expected that the DCA would be able to move more expeditiously than the PUC in shaping and carrying out its newly assigned role. Generally speaking, this has been the case. The DCA has fairly clearly established itself as the consumer protector in the public utilities field. Even so, however, it too has evidenced signs of passivity in its approach to its job.

*Inconsistent initiative in entering cases.* A truly pro-active Consumer Advocate would continuously be at the forefront in identifying possible impacts of utility company actions on the interests of consumers and in initiating or entering proceedings before the PUC aimed at protecting such interests. While the DCA has indeed been the initiator of actions filed with the PUC, in many instances--including cases with significant potential impact on consumers--the DCA has waited to be invited or directed by the PUC to become involved in such proceedings. Examples of this tendency are provided by recent "show cause" and investigation cases relating to the impact of the Tax Reform Act of 1986 on utility revenues and to the frequency, extent, and causes of electrical blackouts on Oahu and the neighbor islands. In these PUC-initiated cases, the PUC has been the one requesting the DCA to participate rather than being requested by the DCA to initiate action.

For some reason, the DCA appears to be extremely reluctant to become involved as a direct complainant in proceedings before the PUC. Prior to 1985, the DCA filed about a half dozen formal complaints dealing with transportation matters with the PUC. But since 1985, no formal complaints have been filed by DCA. While it or its predecessor was still performing the complaint handling function on behalf of the PUC, such a position might be understandable. However, since the staff members handling complaints were transferred from the DCA to the PUC in 1985, this should no longer be an inhibition on actions of the DCA.

### ***Recommendations***

*With respect to roles and relationships in the regulation of public utilities in Hawaii, we recommend as follows:*

- 1. The Department of Commerce and Consumer Affairs (in its capacity as Consumer Advocate in the public utilities field) and the Department of the Attorney General should jointly review that matter of how best to assure effective legal representation for the Consumer Advocate in the field of public utilities. If a proper level of continuity, coordination, and competence cannot be assured through the Department of the Attorney General, then the Division of Consumer Advocacy should be authorized to employ its own legal counsel to represent it in public utility regulatory proceedings.*

2. *The Public Utilities Commission, the Division of Consumer Advocacy, and the Department of the Attorney General should join together to establish and carry out a comprehensive and coordinated approach to identifying, representing, and protecting Hawaii's interests relative to federal regulation of public utility activities. This should include providing for: (a) the interchange of information among the three agencies, (b) the determination of when and by whom Hawaii's interests should be represented before federal bodies, and (c) the fixing of responsibility within each agency for monitoring federal activities and preparing recommendations regarding policy positions.*

3. *The Public Utilities Commission should take a more active and comprehensive approach to its role as Hawaii's primary public utility regulatory body. This includes taking a more balanced approach to its adjudicatory, policymaking, and enforcement responsibilities and broadening its scope of concern to encompass other considerations (environmental, public safety, economic development, etc.) besides economic regulation in its decisionmaking. If it feels that it needs clearer legislative direction on such matters, then it should seek such clarification from the Legislature.*

4. *In conjunction with the preceding recommendation, the Public Utilities Commission should take appropriate steps to strengthen its administrative capabilities. Inasmuch as the Public Utilities Commission has come under new leadership which has indicated its intention to improve internal operations, it should proceed with the preparation and implementation of an improvement plan.*

5. *The Division of Consumer Advocacy also should take a more active and comprehensive approach to its role as Consumer Advocate in the field of public utilities, including taking the initiative on all matters of significant consequence to Hawaii's consumers.*

## Chapter 4

### ORGANIZATIONAL AND PERSONNEL MANAGEMENT

In this chapter we examine some aspects of organizational and personnel management of both the Public Utilities Commission (PUC) and the Division of Consumer Advocacy (DCA) of the Department of Commerce and Consumer Affairs. Inasmuch as personnel expenditures constitute 85 percent of the budgets of the two agencies, emphasis is placed upon this area of agency management.

#### Summary of Findings

1. Organization and staffing for the public utilities regulatory program--especially for the Public Utilities Commission--have failed to keep pace with the needs facing the two affected agencies. Following their separation in 1976, the Public Utilities Commission suffered a severe cutback in resources and only very gradually built them up to their current level while the authorized staffing of the Division of Consumer Advocacy dropped significantly.

2. Staffing of the Public Utilities Commission and of the Division of Consumer Advocacy is relatively modest when compared to: (a) the income to the State generated by the public utilities regulatory program (from fees, fines, etc.), (b) the resources of the regulated utilities, and (c) the magnitude of the impact of the regulated industries on the people and economy of Hawaii.

3. Personnel management in the public utilities regulatory program is suffering from numerous and serious shortcomings, including: (a) poor physical work environment, (b) lack of backups for key technical and management personnel, (c) lack of staff procedural manuals, (d) outdated and obsolete job descriptions, (e) prolonged vacancies, (f) absence of training and career development programs, (g) severe lack of basic reference materials, and (h) failure to make regular job evaluations.

#### Failure To Keep Pace with Needs

When we reported on our previous management audit of the public utilities program in 1975, we pointed to numerous shortcomings in the organization and management of the program. In addition to recommending the separation of the consumer advocacy function from the other