

STATE PUBLIC UTILITY COMMISSION OPERATIONS AND MANAGEMENT:
A MANUAL PREPARED BY
THE NARUC STAFF SUBCOMMITTEE OF EXECUTIVE DIRECTORS

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October 1992

This report was prepared by The National Regulatory Research Institute (NRRI) with funding provided by participating member commissions of the National Association of Regulatory Utility Commissioners (NARUC). The views and opinions of the authors do not necessarily state or reflect the views, opinions, or policies of the NRRI, NARUC, or their contributors.

TABLE OF CONTENTS

COMMITTEE MEMBERS	v
FOREWORD	vii
ACKNOWLEDGEMENTS	ix
1. THE STATE REGULATORY COMMISSION: HISTORY, ORGANIZATION, RESPONSIBILITIES, AND CHANGING ROLE	1
by Neal J. Shulman Scope of state jurisdiction. Purpose of state regulatory commissions. Development of state commissions. Commission structure. Sources of commission authority. Goals of state regulation. Changing regulatory goals. Impact of industry changes. Changes in regulatory processes.	
2. BUDGET AND FISCAL ADMINISTRATION	15
by Ronald Hawkins and Donald W. Myers Sources of commission revenues. Structure and purpose of commission budgets. Financial controls. Fiscal administration and internal controls. Cost control.	
3. MANAGING HUMAN RESOURCES	25
by Robert G. Holetz and Judy L. Cochran Civil service rules, regulations, and procedures. Union or collective bargaining contracts. Consultants. Job classification and evaluation. Salary surveys. Internal equity. Setting salaries. Performance planning and goal setting. Performance reviews. Employee training and development. Resources.	
4. PUBLIC SERVICE COMMISSION OPERATIONS AND SERVICE	35
by Paul Curl and Kathy Bartleson The workplace of the future. The reason for implementation of innovative technologies. Defining information needs. Data planning. Linking data enhancements to business practice. Commission libraries. Information documentation. Information accessibility. Defining service excellence.	
5. RELATIONSHIPS WITH LEGISLATORS, ELECTED AND APPOINTED OFFICIALS, AND CITIZENS	59
by Dwight Wininger and Ronald Hawkins Importance of commission credibility. Handling consumer input. Relationships with legislators. Relationships with other public officials: authority, litigation, and cooperation. Federal relationships: regulatory and congressional.	

6.	LEGAL IMPLICATIONS OF REGULATION	67
	by Richard I. Harris	
	History of state regulation. Impact of law on commission operations. Open meeting requirements. Codes of conduct and ethics requirements. Conflict of interest regulations. <i>Ex parte</i> communications. Open records requirements. Alternative dispute resolution. Administrative procedures. Enforcement of penalties.	
7.	THE EXECUTIVE FUNCTION	87
	by Wynn E. Arnold	
	Changing environment of commission regulation. The commission executive as policy maker. Top down versus bottom up management. Essentials of policy. Policy implementation. Suggestions for effective administration. Variations on the hearing process. Procedural rules.	
8.	ORGANIZATIONAL ASSESSMENT AND CHANGE	111
	by the Honorable Lisa Rosenblum	
	Development of the current commission organization. Examination of values and organization. Development of the agency's mission statement. Structure of the organizational assessment process. Objectives of the assessment. Assessment process and methodology. Implementation of the assessment study. Results of the organizational assessment effort.	
9.	A COMMISSIONER'S PERSPECTIVE ON COMMISSION OPERATIONS AND MANAGEMENT	125
	by The Honorable Sharon L. Nelson	
	Evolution of the commission. Role of commissions. Reduction of hierarchy. Flexibility and cultural diversity. Importance of training. Core organizational values. Commitment to quality. Commitment to policy. Independence.	
10.	WHAT THE FUTURE HOLDS	133
	by James Matthews	
	Implications of electronic technology. Creation of self-evaluating organizations. Empowering employees. Managing for excellence. Importance of creativity and marketing.	

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FOREWORD

Effective regulation of the nation's public utilities effectively requires a convergence of factors. It requires an adequate legislative mandate and a well-defined regulatory process, informed and independent commissioners, and cooperation from the regulated utilities. It also requires the effective management and organization of the resources available to commissions--money, people and information. Management and organization require a multitude of skills, including an understanding of the regulatory framework and commission authority, finance and budgeting, human resource management, information processing, public and legislative relations, the legal implications of commission administration, the relationship between the commission and staff, and the future direction of commission regulation.

One of the major goals of the National Association of Regulatory Utility Commissioners (NARUC) Staff Subcommittee of Executive Directors is to provide administrative education to commissioners and staff who manage the resources imperative to good regulation. In order to help that committee meet its goal, The National Regulatory Research Institute (NRRI) suggested in late 1990 that the Staff Subcommittee prepare a manual on commission operations and management. The NRRI offered to provide coordination, editing, printing, and dissemination of the manual. The Staff Subcommittee endorsed the project and, in the summer of 1991, began work. This document is the result of that effort.

Most of the chapters of this manual were written by experts in the field of commission management--the executive directors themselves. Where opinions are expressed, they are the opinions of the authors and may not represent the positions of their respective commissions, the Staff Subcommittee, NARUC, or the NRRI. Overall, it was the intention of the Staff Subcommittee to provide a resource for commissioners and staff which would do the following:

- Supplement other professional training programs,
- Incorporate within one source information covering a wide range of commission administrative issues,

- Illustrate the diversity among commissions without becoming mired in unnecessary detail,
- Has a five- to ten-year shelf life.

Given these objectives, the authors did not attempt to detail the operating practices of each state commission. Instead, they attempted to present an overview of commission operations and to identify significant variations. Each chapter was designed and written to stand on its own. As a result, some duplication of coverage may occur. To help the reader find the information he or she may be seeking, a summary of each chapter is included in the Table of Contents.

The NRRI and the Staff Subcommittee of Executive Directors hope that this manual is of use to those charged with the awesome responsibility of regulating the nation's public utilities. If it provides helpful information or presents new ideas which allow improved operations of any commission, we will have accomplished our mission.

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Associate Director-NRRI
October 1992

ACKNOWLEDGEMENTS

The NARUC Staff Subcommittee of Executive Directors is extremely grateful to Chairman Sharon Nelson of the Washington Utilities and Transportation Commission, who provided a lucid and exciting vision of the future of commission operations, which is included as Chapter 9, and Deputy Chairman Lisa Rosenblum of the New York Public Service Commission, who detailed for us the exciting changes taking place in New York. We would also like to express our thanks to David Wagman of the NRRI who helped edit the manual, and to Joan Marino and Jacquie Shepherd who assembled the pieces and provided clerical support.

CHAPTER 1

THE STATE REGULATORY COMMISSION HISTORY, ORGANIZATION, RESPONSIBILITIES, AND CHANGING ROLE

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A fundamental element that defines the scope of state public utility regulation turns on the principle of utility ownership. After all, while the general term "public utilities" may encompass virtually all utility services, the state is concerned only with those "public utilities" that are privately or investor-owned. It is these utilities over which state regulatory commissions exercise jurisdiction and authority.

To be sure, there remains a large number of publicly owned and governmentally operated utilities, such as municipal systems, public utility districts, metro districts, and so on, that are regulated by the governmental agencies to which the systems belong. These "public utilities," however, are not generally subject to the regulatory authority of state commissions.

Why State Regulatory Commissions

State public utilities commissions have long been charged with protecting the interests of their citizens by controlling the market power of industries that provide essential services. The first state commissions, created before 1870, were mainly fact-finding and advisory bodies whose jurisdictions were limited to railroads.¹ These commissions made recommendations to their legislatures and to railroad managements, appraised property taken by railroads under the right of eminent domain, and enforced railroad safety standards. Interestingly, they had no authority over rates.

Public utility commissions have the authority and responsibility to act in the public interest, and to ensure that the utilities subject to their jurisdiction provide

¹ Charles F. Phillips, *The Regulation of Public Utilities* (Virginia: Public Utilities Reports, Inc., 1988), 122.

adequate service and charge reasonable rates. Public utilities provide necessary services such as telephone, water, electricity, and natural gas to customers, or provide local or regional transportation.²

These services tend to be more efficiently provided by a single network because multiple systems would be too costly for potential competitors to build and would result in excessive rates for customers. A unique aspect of public utilities is that they are privately owned firms providing services that are public in nature and are more or less essential to the economy.³

State regulation of utility services and prices has generally been substituted for competition to prevent utilities from exercising market power. With little or no competition for sales or service, a monopoly utility would have little incentive to provide the level of services required at reasonable prices. It would be tempting for a monopoly utility to restrict goods and services and charge prices higher than what a competitive market would set. In the absence of competition, regulation has assured that utilities provide reliable service at reasonable prices. Utilities are economically motivated to maximize profits. However, since they render a public service they have been subject to detailed governmental regulation to assure that profit is not pursued at the expense of the public interest.

Development of State Regulatory Commissions

State regulatory agencies have become the most important form of economic regulation in the United States. This was not always the case.⁴ During the early development of the industries that are now regulated utilities, cities relied on franchise competition to protect consumers. Cities and states freely granted charters and franchises to utility companies to operate in specific areas. For instance, Denver

² Ibid., 4.

³ Ibid., 5.

⁴ Ibid., 117.

granted a general electric utility franchise in 1880 to "all comers," and in 1887 New York City gave franchises to six electric utilities.

It soon became evident that franchise competition would not be sufficient to regulate the provision of utility services.⁵ When cities issued franchises indiscriminately, they paid little attention to how well the franchise agreement would serve the public interest. Franchises tended to be poorly drafted because city council members were inexperienced in such matters. The few well-drawn franchises tended to benefit the utilities. Not surprisingly, utility lawyers usually drafted and presented these franchises for approval by city councils. Changes in prescribed rates or services were difficult to bring about because both the city and the utility had to approve any changes in service standards or rates. Further, in granting an exclusive franchise, authorities often bargained away their right to allow competition, losing effective control over rates and services.

A more serious drawback emerged as technological developments made it feasible and more efficient to have one company serve multiple towns. It soon became evident that a different form of regulation would have to replace the franchise approach.

States created utility regulatory commissions to have tighter ongoing control over providers of essential basic services than was possible with state legislative, judicial, or municipal regulatory efforts. The first commissions with power to set maximum rates, prevent discrimination, and forbid mergers of competing railroad lines were established in the 1870s. State regulation actually preceded federal regulation; by the time Congress created the Interstate Commerce Commission in 1887 to regulate the nation's railroads, twenty-five states already had commissions with authority over railroads.

The first commissions were established in the mid-1800s in Rhode Island, New Hampshire, Connecticut, New York, Vermont, Maine, Ohio, and Massachusetts to regulate the railroads. Commissions with stronger regulatory powers--to set rates and

⁵ Ibid., 120-121.

approve railroad mergers--were established in the early 1870s in Illinois, Iowa, Minnesota, and Wisconsin.⁶

In time, commissions with regulatory authority over other utility industries evolved to address the abuses of these natural monopolies. By 1920, regulatory utility commissions existed in about two-thirds of the states. Today all states have commissions regulating the essential basic services of electricity, gas, telephone, transportation, and water.⁷

Regulatory Structure and Functions

State regulatory commissions are identified by different names, such as public utilities commission, public service commission, corporation commission, utilities board, and commerce commission. Most such commissions issue permits to begin service, construct or abandon facilities, set rates, approve standards of service, require annual reports, and approve the issuance of securities. Generally, they are funded from a percentage tax of gross revenue imposed on each regulated utility, although seventeen commissions receive funding from general tax revenues.⁸

Thirty-two commissions have three commissioners each, sixteen have five commissioners, and three have seven commissioners. The length of commissioners' terms ranges from four to six years. Most are appointed by the Governor with approval of the state senate, although a few are appointed by the legislature. Commissioners are elected in Alabama, Arizona, Georgia, Louisiana, Mississippi, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Tennessee, and Texas.⁹

⁶ Ibid., 122.

⁷ Ibid., 123.

⁸ Ibid., 123-131.

⁹ National Association of Regulatory Utility Commissioners, *1990 Annual Report on Utility and Carrier Regulation* (Washington D.C., 1991), 908-930.

Selected 1990 statistics show that California with 1,800 employees has the largest staff of any commission. Those with staffs ranging from 300-700 include Florida, Illinois, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, and Virginia. Those with staffs of less than 100 are Alaska, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Idaho, Iowa, Louisiana, Maine, Minnesota, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Rhode Island, South Dakota, Utah, Vermont, and Wyoming.¹⁰

State commissions usually organize staff according to function, such as accounting, engineering, rates, legal, financial, or with separate departments for the industries they regulate, or some combination of these. For instance, the California Public Utilities Commission has a Commission Advisory and Compliance Division as well as a Division of Ratepayer Advocates, both of which include accounting, engineering, and rate evaluation functions. The California Commission also has a Legal Division, Administrative Law Judge Division, Safety Division, Transportation Division, Division of Strategic Planning, Public Affairs Division, and Management Services Division.

To assure timely and efficient regulation, the commissions historically and intentionally have been kept independent of the executive, legislative, and judicial branches of government, although obviously they are affected by governmental actions.

Commissioners typically are appointed by the executive branch, often with required approval of the state senate. Commissions have *quasi-legislative* functions, enabling them to investigate rates or service standards and establish regulations. Commission budgets are affected both by executive and legislative decisions. Commissions also have *quasi-judicial* functions such as conducting hearings, taking legal testimony, issuing decisions and orders, issuing for contempt citations, and subpoenaing witnesses and records. Their decisions may be subject to court appeal. In California, for instance, while a party may seek the Commission's reconsideration of a decision, if it wishes to pursue a legal appeal following reconsideration or denial of reconsideration, the only recourse is to the California Supreme Court.

¹⁰ Ibid., 908-925.

Each state commission's jurisdiction is limited to the utility company operations within its boundaries. Companies that provide utility services such as long-distance telephone service and transportation of natural gas between states fall under the jurisdiction of federal commissions. Thus, state commissions are affected and may be preempted by actions of the federal courts and commissions including the Federal Energy Regulatory Commission, the Federal Transportation Commission, the Federal Communications Commission, and the Federal Railroad Administration.

Sources of Commission Authority

Some commissions were established by legislatures. In 1881, for instance, the Railroad Commission of Alabama was created to regulate railroads and later was given regulatory responsibility for land and transportation companies operating as common carriers--that is, companies which transport goods or people for hire for anyone who asked. In 1915, the Alabama legislature broadened its jurisdiction to include telephone, energy, and water companies and changed its name to the Alabama Public Service Commission.¹¹

Other commissions established by legislation are those in Alaska, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virgin Islands, Washington, West Virginia, Wisconsin, and Wyoming.¹²

Those with authority derived from state constitutions include Arizona, California, Louisiana, North Dakota, Oklahoma, and Virginia.¹³

¹¹ Ibid., 201.

¹² Ibid., 201-247.

¹³ Ibid.

Regardless of how they were created, commission authority and jurisdiction gradually expanded through legislation to include other growing utility industries and to respond to the changes occurring in regulated industries.

The qualifications necessary to be appointed a commissioner at a public utility commission vary from state to state. Only eight states specify by law the professional background or the skills required to attain the post. Commonly, however, a candidate must be a qualified elector of the state, may not own utility stock, or have a pecuniary interest in or be employed by a utility. Sometimes members representing different political parties must be selected. Some states also require that members have experience in fields such as law, economics, finance, accounting, or engineering.¹⁴

To deal with what some view as a desirable separation of a commission's administrative, policy-making, and judicial functions, the judicial function is carried out by administrative law judges who come from the state's civil service system. This leaves administration to the commission's executive director and policy making to the commissioners.

To assure consistency in decision-making and effective oversight of evolving policy, many commissions, including California's, have individual commissioners assume responsibility for overseeing preparation of particular decisions and presenting them for consideration and vote by their colleagues. This is done to prevent a decision in one case from conflicting with that of a similar case.

State legislatures have given utility regulatory commissions broad authority and standards under which to assert that authority, including, for example, assurance of "public convenience and necessity," "public interest," and "just and reasonable rates."¹⁵ This in turn enables a commission to carry out its obligations in an environment of changing utility industries, economics, and public policy concerns or goals.

The California Public Utilities Commission, for instance, recently had to weigh the benefits and problems posed by the proposed merger of Southern California Edison and San Diego Gas & Electric companies. The merger would have created

¹⁴ Ibid.

¹⁵ Phillips, *The Regulation of Public Utilities*, 792-793.

the largest public investor-owned energy public utility in the nation. However, the Commission concluded that the proposed merger did not meet the legislative criteria in California Public Utilities Code section 854 of long-term net benefits to ratepayers and no adverse effects on competition. Therefore, it was not in the public interest and not allowed.

Goals of Regulation

Rate regulation has been the main concern of public utility commissions, although more recent issues of safety, efficiency, and environmental considerations have attracted more attention. Utilities are expected to provide highly reliable and good quality service. In return, the commissions set rates that allow utilities to recover operating costs and an opportunity to earn a "fair" rate of return.

To do this, commissions have pursued five objectives.¹⁶ First, commissions have sought to restrain utilities from restricting goods and services and from reaping excessive profits through their exercise of market power. Commissions also have sought to prevent utilities from charging discriminatory rates to different customers. Second, commissions have tried to assure adequate utility earnings to enable development and expansion to meet consumer demand. Third, commissions have sought to provide reasonably priced service to the maximum number of customers, sometimes by subsidizing costs of providing services to one group of customers with the revenues from another, for example, using long-distance phone rates to subsidize local service. Fourth, commissions have used rate design or subsidies to promote social policy goals, such as universal telephone service. And fifth, commissions are becoming increasingly concerned with safety enforcement issues and management efficiency.

These objectives have guided the development and implementation of rate-of-return regulation. Under this approach, regulatory commissions determine the utility's costs of delivering goods and services, then determine the revenue required to recover

¹⁶ Ibid., 164-166.

these costs plus an appropriate rate of return. Changes in technologies, legislative priorities, and federal regulation have prompted commissions to pursue additional or different objectives.

Changes in Regulatory Goals

Departure from traditional rate-of-return regulation is often based on social policy considerations, such as to encourage energy efficiency or to account for environmental costs of energy production. For example, concerns about environmental quality recently led the California legislature to require that the Public Utilities Commission explicitly value environmental costs and benefits of energy resources. The California Commission is now developing methods of valuing and incorporating those costs and benefits in provision of electric services. In addition, many states now encourage energy efficiency and conservation measures through shareholder incentives or other regulatory mechanisms.

Other regulatory changes result from federal regulation and industry structure. In natural gas, for example, the Natural Gas Policy Act of 1978 gradually deregulated prices. A competitive gas market emerged and by the early 1980s the supply of proven gas reserves began to exceed demand. The Federal Energy Regulatory Commission (FERC) then implemented policies to open access to pipeline capacity and ensure that the competitive market for gas would have many buyers as well as sellers. Because of these federal changes, the California Commission began to restructure its own regulatory scheme for natural gas to emphasize transportation services as the essential monopoly function of regulated utilities. Customers now have the option of purchasing gas directly from producers or marketers and buying transportation services from the utility. This emerging regulatory structure has made room for competition to reduce the cost of gas supplies and encourage utilities to operate efficiently.

Commission regulatory goals are also changing in other areas. More emphasis is being placed on economic efficiency and the optimal allocation of scarce resources through incentive regulatory structures. For example, the California Commission has

implemented a price-cap regulatory structure in telecommunications for the two largest local exchange carriers. Prices for their services are set and indexed, and it is up to the utilities to earn a profit by operating efficiently. The Commission no longer determines their rate of return or revenue requirement.

In the transportation sector, regulation of motor carriers is evolving from an approach that protects the industry from perceived cutthroat competition to one that uses competition to increase efficiency. The California Commission is shifting from minimum rate regulation to a maximum rate system, which provides incentives for carriers to compete, improve quality, and increase efficiency. At the same time, commissions nationwide are moving toward a greater emphasis on safety by requiring carriers to maintain adequate insurance and increasing efforts to enforce safety regulations.

Changes in Regulatory Programs and Structures

Increasingly, commissions find they must respond to rapidly changing industry technologies and competitive forces. Growing competitiveness within the telecommunications industry, for instance, spurred California to change its regulatory approach. As already mentioned, rate regulation of the state's two major local phone companies is no longer done through the year-long process of a general rate case but by a new regulatory framework. This framework uses a price-cap indexing approach based on the Gross National Product-Price Index reduced by a productivity factor and a sharing of earnings above a benchmark rate of return between ratepayers and shareholders. In addition, the Commission no longer determines revenue requirements or rate of return for these two utilities. The new regulatory framework is intended to align these companies with other businesses that have the same incentives, risks, and rewards prevailing in a competitive market, ultimately encouraging innovative services and reduced rates.

California has also recognized the competitive forces in its general freight trucking industry and instituted flexible regulation which allows truckers to change rates within a pre-determined "rate window." This new approach allows motor carriers

to respond quickly to market changes and avoids time-consuming rate change approval processes.

More commissions are requiring energy utilities to do least-cost and long-range planning. Utilities have the incentive to build generating plants because their shareholders earn a return on capital investments. As construction costs soared and public and political concern turned toward minimizing the environmental cost of providing energy services, commissions responded by developing policies requiring utilities to use least-cost planning methods to determine their actual investment needs. Often, least-cost planning requires utilities to compare energy efficiency and conservation programs side-by-side with generation sources, or to incorporate air quality or land-use effects in selecting utility resources.

These examples demonstrate that state regulatory agencies continually must assess technological, economic, political, and social forces of change and develop industry wide policies and programs to address them.

In response to recent regulatory and technological changes, commissions have developed more flexible regulatory programs and find they now need to adapt their internal structures and processes to implement them.

Some regulatory commissions have sought ways to streamline their decision-making processes and procedures. At the same time, commissions must ensure due process for all parties and maintain oversight activities to assure reliable service and reasonable rates for all ratepayers.

The California Commission has tried several alternative decision-making processes to respond to complex policy issues. For example, its demand-side management collaborative effort involved utilities, ratepayer advocates, customer groups, state agencies, and environmental groups in developing a blueprint for revitalizing demand-side management programs. The Commission also employed a consensus group approach to suggest interim actions the Commission can take with regard to electromagnetic fields until scientific evidence provides a better direction for public policy. Parties are encouraged to settle cases that might otherwise involve protracted, contentious, and costly litigation. Workshops offer another means of streamlining complex cases and have been used for changing regulation of general

freight and household goods carriers, electric transmission access, and resource planning. Workshops help resolve issues informally and identify those that must be litigated; they also facilitate implementation of new programs. Finally, legislative-type hearings, in which all commissioners sit to hear the positions of interested parties, are useful for exploring new issues and receiving input on policy decisions.

The new flexible regulatory approaches of commissions benefit ratepayers and regulated industries alike because they respond to change quickly, cut the costs of the regulatory process for all parties and the regulatory commission, and reduce the time required for complex regulatory proceedings.

While most state regulators advocate individual state regulation of utilities, many acknowledge that because of changing industry conditions, increasing numbers of utilities providing multistate service, and disputes over state and federal jurisdiction, some issues may need to be addressed or regulated on a regional basis. Examples of issues which could be addressed either through regional regulatory bodies or regional compacts are integrated resource planning for utilities with operations in several states, retail rates of operating companies of holding companies, natural gas transportation, electric transmission access, and electricity wheeling.¹⁷

Regional approaches to regulation have been used by Western state regulators, for instance, who formed the Regional Oversight Committee for U.S. West which serves most Western states. Similarly, the states served by Ameritech oversee the activities of that utility. The National Association of Regulatory Utility Commissioners has supported regional compacts on certain issues and advocated, through the filing of amicus curiae briefs, joint state boards to address and resolve federal/state disputes. And New England has an informal relationship with New York to oversee the activities of NYNEX. This same collaboration may be a more efficient and cost-effective approach in proceedings before federal regulatory commissions and

¹⁷ "The 1991 State Regulators' Forum--Inside the Incubators," *Public Utilities Fortnightly* (November 1, 1991), 29-37.

courts.¹⁸ An added advantage of this regional approach for each participating state regulatory entity is the ability to pool and cross-check information.¹⁹

This kind of interdisciplinary team approach can be incorporated into any individual state regulatory agency structure to take advantage of the diverse knowledge and expertise within its own staff and cope with reduced staffing and budgetary constraints.

One of the greatest and most constant constraints on regulatory commissions is budget. Budgetary constraints affect commission abilities to allocate staff time and travel funds for active participation in federal commission proceedings, the policy conclusions of which potentially affect their states. As regulated utility industries grow in size and complexity and state economies are strained by diverse social program needs, commissions will be even more hard-pressed to manage growing workloads if budgets continue to shrink.

¹⁸ Ibid.

¹⁹ Sharon L. Nelson, "Mastering a Lexicon," *Public Utilities Fortnightly* (November 8, 1990), 18.

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CHAPTER 2
BUDGET AND FISCAL ADMINISTRATION

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Even in normal financial times, there are no functions more important for managers of state public utility commissions than budgeting and fiscal administration. Without financial resources, none of the essential tasks of a commission can be accomplished, and, in these lean financial times, financial management and budgeting take on an even more critical role. This chapter acquaints readers unfamiliar with budget and fiscal administration with some basic knowledge of revenues, expenditures, and budgets. It also will provide some general insight into the overall operations of governmental fiscal offices and will address some financial problems encountered by managers.

Commission Revenues

Revenues are the life-blood of any organization. In an accounting sense, revenues are defined as net additions to assets. In public sector organizations, revenues represent the ability to expend funds to pursue organizational objectives. State agencies and departments that regulate utility and common carrier companies receive operating revenues (as opposed to revenues restricted to the support of capital projects) from one of two basic sources of funding.

One source is the legislative appropriation of all the anticipated operating needs from general fund tax dollars. According to the 1989 NARUC Annual Report on Utility and Carrier Regulation, these eight state agencies depend on such general fund allocations: Alaska PUC, Hawaii PUC, Iowa DOT, Michigan DOT, Nebraska PSC, New Jersey DOT, New Mexico PSC, and South Carolina PSC. All other agencies and departments that regulate public utilities at the state level obtain their

funding either in part or exclusively from a second method that gives state agencies authorization to assess public utility companies for the cost of special investigations, the cost of specific transactions and proceedings, and the cost of general regulatory functions. State law usually provides the specifics for the utility assessment; the actual method of computing the assessed cost and the manner of actually collecting the funds due vary from state to state. Even agencies claiming to receive 100 percent of their budget from general fund appropriations may make cash deposits into the state's general fund from fees collected from regulated companies.

For example, a portion of Maryland's Public Service Commission Law details how fees are assessed and how expenses are to be reimbursed by companies operating in the state. Commission costs and services are included in the Maryland state budget and are to be paid through appropriations from the state treasury. The treasury, in turn, is reimbursed from money collected from the public service companies as assessed under Maryland law.

The assessment process works this way in Maryland. Prior to the start of each fiscal year, the Commission chairman estimates the agency's total costs and expenses. Included in this estimate are (1) commission payroll, (2) employee benefits, and (3) all other operating costs as well as direct and indirect costs. Based on this figure, the chairman determines the amount to be paid by each public service company and bills them by May 1.

Each company's bill is determined by multiplying the Commission's estimated costs and expenses by the fraction that represents the gross operating revenues for the company from its in-state operations over a 12-month period to the total gross in-state operating revenues for all public utility companies operating in the state. In equation form, that means (Estimated Commission expenses) x (Companies' in-state operating revenue/All companies' in-state operating revenues) = Billable Amount.

The bill charged to any public service company is capped at 0.22 percent of its gross, in-state operating revenues. Disputes regarding bills are heard, on demand, within thirty days after they are rendered.

Budget Administration

Regardless of the method a state department uses to generate revenues, the ability to properly administer a budget is the single most critical issue for budget and fiscal administrators. To manage a budgetary operation effectively, administrators need to understand thoroughly the importance of budgets.

Simply put, a budget is the result of coordinating financial and nonfinancial data to carry out the goals and objectives of an organization. Stated another way, a budget is the formal tool used to plan and control fiscal activity based on a given level of resources. As described earlier, for state public utility commissions, resources could be obtained through general taxes, funds derived from assessments, or some combination of both. The goal of budgeting is the matching of results to a budgetary goal, not simply to limit expenditures.

Budgets can be either incremental, zero based, or a combination. Incremental budgets use prior period expenditures as the base. Key tasks are the determination of the costs of prior year programs and estimating the costs of future years. A typical budget directive under an incremental system would be to increase (or decrease) annual expenditures by 5%. Zero-based budget systems, on the other hand, divide the budget into packages of goals and programs. Each package is then evaluated on its own merits with no assumption of a base level of funding. The intent of zero-based budget approaches is to evaluate each program completely and to select the best alternatives without giving an advantage to existing programs. Key tasks are the evaluation of the effectiveness of programs and ranking alternative programs.²⁰

A distinction is also made between operating budgets and capital budgets. Operating budgets provide for the generation and expenditure of funds necessary for current operations and include such items as staff salaries, benefits, consultants, and travel. Capital budgets provide for the accumulation of fixed assets such as buildings and major pieces of equipment. Budgets can be created by object of expenditure

²⁰ For a good description of zero-based budgeting see Peter A. Phyr, "Discretionary Expense Centers and Zero-Base Budgeting," *Controllers Handbook* (Homewood, Illinois: Dow Jones-Irwin, 1978), 647-675.

(e.g., salaries, office supplies) or by program (e.g., consumer affairs, rate case processing).

In preparing a budget, managers must decide how their resource needs are to be acquired and once received, how they are going to be used during the budget cycle (usually a one-year fiscal period). Although incremental budgets are often applied, future plans must also be considered in the initial budget development process. Because budgets look forward, assumptions play a major role in their formulation.

Administrators need to be explicit in expressing their needs to those ultimately responsible for final budget approval. In final form, the budget request should not only show detail in monetary terms, but also should provide sufficient descriptions to justify the need for specific items of expenditure. It would be fair to say that good budgeting promotes good planning and vice versa.

The other key element in the budget process is control. The control function requires management periodically to review fiscal operations and evaluate performance. The review process should focus on both revenue and expenditure transactions. By performing detailed analyses, management is kept abreast of budget fluctuations, allowing them an opportunity to take corrective actions which could influence revenues, expenditures, or both.

Two competing philosophies of financial control exist.²¹ The first is measurement centered and derives from the manufacturing roots of cost accounting. Those who follow a measurement-centered approach are most concerned with calculating the numeric differences between what happened and what was supposed to have happened. They want to know "what" and "why." Those who follow the second approach, which is behaviorally oriented, see quantitative measurements only as tools to influence the behavior of organizations. They are more concerned with improving decision making than determining objective facts. In either, management by exception--the focusing of management attention on deviations from budget plans--allows managers to concentrate their energies and time on those issues most in need of attention.

²¹ Paul G. Hines, "Controlling Service Organizations," *Controller's Handbook* (Homewood, Illinois: Dow Jones-Irwin, 1978), 1195-1196.

Where departments rely on general fund appropriations and a deficit appears imminent at year's end, a supplemental budget request may be appropriate. Those departments that depend on an assessed dollar figure, yet appear to be overextended, may seek a supplemental assessment to levy against the regulated companies to increase revenues. If revenues cannot be modified, expenditures can be reduced. Regardless, management needs to balance the budget and be prepared to justify its actions.

Budget analysis could show that surplus funds are projected to remain after accounting for all actual and anticipated expenditures. That would be the appropriate time for management to decide if additional spending plans were a possibility or whether some alternative use should be made of the surplus. (An expenditure that exceeds the original budget request, however, will usually need approval from a level of higher authority.)

An ideal question for a discussion of deficit and surplus situations is: Does revenue control spending or does spending control revenue? In either event, the key word is "control." Managers should be obligated to follow prescribed policies and procedures and to set up necessary controls to achieve the final objective. The executive director must be in continual contact not only with commissioners but with all department heads regarding budget and fiscal concerns. By communicating with other supervisors, the executive director is kept informed of programmatic needs. It is nearly impossible for the executive director to exercise appropriate budget control without an understanding of the components of the budget.

Thus far, the discussion of budgets has focused on importance and purpose. Another ingredient is participation. Often the term "budget" frightens people who perceive a budget as a restriction or constraint. Negative views may have formed because management may have failed to involve the people directly affected in the budget preparation process. The remedy is active involvement of all levels of management in the budget preparation process.

The Public Service Commission of Maryland's budget process provides an example of participatory budgeting. General fund agencies in Maryland, including the Public Service Commission, are given a maximum budget amount developed by the

Department of Budget and Fiscal Planning (DBFP). This amount is known as the "CPS" which stands for Current People's Services and is formulated by taking the current year's appropriation and adjusting for annualizations, one-time-only expenditures, new legislation, inflation, and any other adjustments.

Shortly after the close of the fiscal year (early July), a meeting is convened with all Commission program directors and department heads to issue formal budget instructions, a print-out of actual expenditures for the prior three years, and blank budget forms. Program directors are asked to submit their individual budgets to the fiscal administrator by August 1st. During the first two weeks of August, the information received from the program directors is reviewed by the Commission fiscal administrator and entered into a computer.

A rough draft is prepared next and is presented to the executive director and the Chairman of the Commission around mid-August, when budget numbers and program decisions are finalized. A copy of the formal budget request is presented to DBFP by August 31st. DBFP is responsible for presenting all agency budgets to the state legislature in January. Shortly thereafter, the Commission has an opportunity to present items of special interest to the Senate Budget and Taxation Committee and the House Appropriations Committee. Following passage of the State Budget in April, the Commission is provided a copy of the next fiscal year's appropriation in sub-object or line-item detail. The most important result of this entire process is the production of a clear and precise document for those who work with it or who are controlled in some way by it.

Fiscal Administration

Another area over which an executive director usually exercises supervision is fiscal administration. Generally, fiscal administration includes, but is not limited to, accounts payable, accounts receivable, payroll and personnel, cash receipts, special bank accounts, bank reconciliations, petty cash funds, inventories, purchasing, and other day-to-day accounting functions. The fiscal department in Maryland ensures that

all departments or programs operate within the confines of the approved budget and that appropriate internal controls are applied.

Internal controls are defined as the methods, procedures, or systems designed to promote efficiency, assure the implementation of policy, and safeguard assets.²² According to the American Institute of Certified Public Accountants, financial controls include, among others, the following concepts:²³

1. Staff must be competent and have integrity.
2. Management is responsible for internal control.
3. Responsibilities of custodianship, record keeping, and authorization of financial transactions should be separated.
4. Transactions must be appropriately authorized.
5. Transactions must be promptly recorded.
6. Access to assets should be limited as much as possible.
7. Assets should be periodically and independently compared to records.

For example, equipment purchases should be clearly identified as to commodity type, quantity, and price, and the certification for their purchase should be authorized accordingly. The same holds true for all other expenditures incurred regardless of type or amount.

Whether financial reports are required daily, monthly, or quarterly, management needs to know the agency's current status and the projected status at the end of the fiscal cycle. Thus, projections of revenue and expenditures are critical, and interaction between fiscal administrators and program directors is just as important as the interaction between the executive director and all other program directors. Proper accounting procedures must be followed and an audit trail must be maintained. In Maryland, legislative auditors are required by law to perform detailed audits of all

²² John Downes and Jordan Elliot Goodman, *Dictionary of Finance and Investment Terms* (Woodbury, New York: Barrons Educational Series, Inc., 1985), 186.

²³ Irwin Gleim, *CMA Examination Review* (Gainesville, Florida: Accounting Publications, Inc., 1981), 557-558.

financial records every two years. Since the Chairman is held responsible for any improprieties, he or she, in turn, looks to the executive director for guidance in administering sound financial accountability.

Cost Control

In difficult financial times, pressures are placed on managers of public utility commissions to control or reduce expenditures. Budget reductions, hiring freezes, salary freezes, and layoffs become parts of the terrain for public utility commission managers when financial resources are scarce.

Controlling or reducing costs for public sector and service organizations is particularly difficult. When expenditures are reduced, it is rare that workloads are decreased commensurately, and in many cases, though financial resources are being reduced for commissions, the amount of work to be done is being increased. The answer is to improve productivity, but, as Jeremy Main says, "the political system is stacked against productivity."²⁴ One technique, however, that might enhance productivity is job simplification, which is the process of detailing each administrative procedure, cutting away the unnecessary or duplicative steps, and reassembling it in a simpler form.²⁵

To reduce administrative costs, Donald McKay suggests a four point program. His program of cost control suggests that the organization do the following:²⁶

1. Make certain that the cost accounting system provides a suitable apparatus for the accurate identification, reporting, and measurement of control of administrative expenses.
2. Initiate actions necessary to improve productivity in the administrative areas.

²⁴ Jeremy Main, "Why Government Works Dumb," *Working Smarter* (New York: Penguin Books, 1982), 141.

²⁵ Jeremy Main, "Battling Your Own Bureaucracy," *Working Smarter* (New York: Penguin Books, 1982), 81-91.

²⁶ Donald N. McKay, "Effecting Administrative Cost Reductions," *Controller's Handbook* (Homewood, Illinois: Dow Jones-Irwin, 1978), 1158-1182.

3. Initiate actions to eliminate excess costs in the administrative area.
4. On a longer term basis, initiate the systems studies necessary to insure that the output of the administrative departments is essential, is tailored to the requirements of the users, and is produced in the most efficient manner possible.

Certainly, no magic formulae exist for reducing the costs of state public utility commissions while protecting the ability of the commission to accomplish its mission. The best hope for commission managers is aggressive local management and the sharing of ideas nationally through NARUC.

Conclusion

Of the challenges that face managers of state public utility commissions, none is more daunting than the challenge to secure adequate financial resources and use them effectively. And, since public utility commissions are governmental and service organizations, they do not have access to the simple benchmarks and tools that can be applied to industrial environments. The tools they do have, however, are the skills, energy, and dedication of those who manage them.

CHAPTER 3

MANAGING HUMAN RESOURCES

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Welcome to the state public service commission. As a commissioner or staff member, you will want to have some understanding of the basic rules, procedures and laws that govern your organization, and its management. This chapter has been written to prepare you for what you should be aware of in the area of human resource management.

Civil Service Rules, Regulations and Procedures

Commission structures vary greatly from state to state. Some have the equivalent of an executive or administrative director or other top level manager who assumes the day-to-day operating responsibilities of the agency. Others have commissioners who act in a managerial role directing staff, as well as perform their own administrative duties determined by law. Most states have some type of civil service laws, rules and regulations governing employment of workers. Within the framework of those laws, rules or regulations, commissions may have some degree of latitude to develop their own employment policies and employee manuals.

Most states have a centralized personnel system that administers civil service employment. These systems administer employment exams, maintain merit lists of eligible candidates, and manage other programs related to state employment, such as benefits administration, labor agreements, equal employment opportunity, affirmative action, and other related human resource programs. You will want to determine whether there is a centralized personnel system within your own state, and the degree to which you are governed by its laws, rules, and regulations. In the absence of such

governing controls, some commissions may have the authority to develop their own employee selection processes, determine pay rates, maintain their own job postings, recruitment, and hiring programs, and determine their own personnel policies.

You may find that your state allows you to operate somewhere between a strong centralized civil service or merit system, and a more decentralized structure. There may be strong centralized administration in the area of employee benefits and employment examinations; however, your commission may have authority to set policies and procedures that govern its specific situation. As a manager, you should be aware of any pertinent laws, rules, regulations, policies, or procedures that govern the selection or actions of your employees in order to determine your latitude in managing human resources most effectively.

Union or Collective Bargaining Contracts

Certain states have laws that entitle employees to collectively bargain issues regarded as terms and conditions of employment. Union contracts address issues such as employee and employer rights, payment of dues, discipline and discharge, grievance processes, vacation and sick leave, seniority, benefits, job posting and bidding, transfers, layoffs, reimbursement of expenses, hours of work, and overtime.

If union or collective bargaining contracts are in effect, commissions may be limited in their ability to design and implement employment policies due to the comprehensive coverage provided by the labor contracts.

Use of Outside Consultants

Commissions are often faced with the need to research and formulate positions and decisions concerning technical topics that are new either to the industry or the commission's jurisdiction, or on topics generally not recurring. Current staff also may lack sufficient technical experience on a certain topic or issue. In these instances, you may find it necessary to employ outside resources.

There are many consulting firms specializing in utility regulation that provide professionals skilled in research and analysis, and developing and delivering expert testimony. State commission contracting procedures vary. Make sure that you follow applicable contracting laws, rules or procedures required by your state which cover the use of outside expertise.

If you determine that you need to employ an outside consultant or firm, there are several good management practices you should use in making your choice and in ensuring that you receive a good quality product. If you are considering a specific individual or firm, ask for a list of work references, a list of recent assignments, a proposal outlining the consultant's approach to meeting your specific needs, and resumes of those who will be involved in the project. Another issue that should be discussed with consultants prior to entering into an agreement is whether any of their previous work may conflict on issues that may occur in rate cases or with other testimony or presentations they will be undertaking on your commission's behalf.

If the issue, research, or project has the potential to reoccur, make sure that a commission staff member is assigned to work closely with the consultant to develop his or her own level of technical knowledge on the topic.

Consultant Fees

Fees charged by consultants can vary significantly depending on the scope of work and experience levels of the individuals involved. To determine the "going rate" for outside expertise you may want to contact other state commissions to determine the hourly fees they have recently been charged.

Each state will have specific statutes and policies regarding entering into and negotiating contracts. Check with the appropriate legal counsel or other administrative agency that governs the proper use, terms, and conditions allowed for entering into contracts with consultants.

Clearly define the scope of the work to be performed and the results expected for the fees allowed by the contract. Make sure any specific expectations or concerns with the work assignment(s) are clearly understood by all parties entering into the

agreement. In addition to gaining all the approvals required through your state's contracting rules, you may want to have your own legal staff review the contract prior to its being signed.

Compensation

Job Classification and Job Evaluation

Most states have formal job classification structures which define job titles and pay scales. The working titles of employees within your agency may not be the same as the formal job classification titles. (Example: Manager of Rates may be the working title of one of your managers, but the formal job classification title could actually be Rate Analyst 4.)

Job classification is a systematic method of grouping individual job positions into similar "classes" or groups of jobs for comparison based on evaluation of job content. These groupings are then categorized by degree of similarity in types of work, level of responsibility and degree of difficulty, becoming a job series that translates into different pay levels. If a formal job classification system is in place, pay levels are determined generally through job evaluation or point factor systems such as the widely-used Hay method of job evaluation or some other numeric rating scale.

Salary Surveys

Besides job classification structures accompanied by job evaluation, salary data from the marketplace is usually used to help determine employee pay levels. It is advisable to ensure that your organization stays competitive in terms of salary compensation. Salary information can be obtained from a variety of sources such as industry surveys like those available for engineers. Other state regulatory commissions are another good source of salary data. Also, NARUC publishes a report entitled the *NARUC Annual Report on Utility and Carrier Regulation*, which all commissions receive each year in early September. This report contains survey information on commission

organizational structures, salary ranges, budgets, and so on. The data covers the previous calendar year. Though this report will provide a good point of reference for jobs and job classifications, its salary information will be at least nine months old. Therefore, before making any recommendations for salary revisions, make sure you are using updated information.

When you conduct salary surveys of similar jobs in other states, make sure the person you have asked for salary information has your commission's current job descriptions and other pertinent information. This ensures that the salary information you receive will provide an accurate salary picture for similar positions.

Periodically, information about other commissions may be available through the Executive Director's Subcommittee. To obtain this information, contact the subcommittee chairperson, or a subcommittee member whose name, address, and telephone number is listed in one of the various NARUC publications.

Internal Equity

In government, pay and certain other employee data are public information. Therefore, in your organization it is likely that employees are aware of the salaries of their peers and managers. Some states have very specific laws known as comparable worth or pay equity laws relating to the internal relationship of pay among jobs. Other states may define the pay relationships of jobs to each other in more general ways. In either instance, it is important that internal equity of pay, based on level of job responsibilities, experience, skill levels of employees, and other related factors, be maintained as much as possible through your hiring, promotion, performance reviews, pay increases, and other managerial practices.

Pay

As discussed earlier, each state has its own method of setting pay levels. In addition, each state will have its own method of determining individual employee pay increases and making annual adjustments to pay levels. If employees are covered by

the terms of collective bargaining, the contracts will specifically describe the timing and amounts of employee increases. Civil service or merit rules also may similarly specify the amount, timing and eligibility of employees to receive pay increases. Generally, contracts or rules will allow for annual merit increases of specified amounts for competent performance, and an annual cost of living adjustment to the salary ranges of employees. These increases may come twice yearly: one on the employee's anniversary date, the date of hire or last promotion, and the other at the beginning of the fiscal year.

Some commissions may have more latitude in determining pay increases for individual employees. In these instances, the amount of merit increases may be based entirely on performance and can be given at the discretion of management. (The South Dakota Public Utilities Commission, for example, has implemented a pay plan with a wide range of flexibility.)

Appraising Employee Performance, Performance Planning, and Goal Setting

Employees and their supervisors or managers should identify work and performance objectives at least annually, but preferably quarterly or semi-annually. This planning should serve several purposes, including ensuring that the work and performance goals and objectives of the unit, division, and commission are met; clearly outlining performance expectations and timelines to the employee; identifying individual training and development needs, career goals and aspirations; and identifying problems or concerns that may exist with either the supervisor or the employee.

Performance Review/Evaluation Formats

Employee performance reviews are a critical, yet often ignored aspect of managing and developing employees. Your commission may be required by the provisions of collective bargaining contracts or merit rules to conduct at least an

annual performance review of its employees. Some organizations even may conduct a review of each employee's major projects upon their completion. Since an employee may work on several different cases or projects in a given year, it is most helpful to have their project leaders (if different from their regularly assigned manager or supervisor) conduct evaluations after each major assignment.

Performance Reviews and Employee Feedback

Performance planning, goal setting and consistent employee review and feedback are critical, and project or performance feedback should be shared with the employee as soon as possible following an assignment. Providing timely feedback to an employee will assist in reinforcing those areas of performance that are positive and identifying areas needing improvement.

Information contained in performance reviews can often be reviewed when an employee is being considered for promotions. Along with test scores and interviews, performance reviews should be a good indicator of performance. Because a performance review generally becomes part of an employee's permanent file, it is extremely important that the information contained in the document be factual, accurate and objective. It is also advisable that your commission have a consistent approach to ratings and their interpretation, since it is neither fair to the employee nor the organization as a whole to have wide variation in employee performance evaluations.

Employee Training and Development

Commissions will vary in the type and amount of professional resources assigned to training. Larger organizations may have full time trainers or persons assigned training functions on a part-time basis. Most commissions have some type of on-the-job training program in place, especially for staff members during their first three years of employment. Usually, on-the-job training consists of a variety of closely supervised projects or field assignments in addition to increasingly difficult research

and, possibly, provision of expert testimony. Also, employees may progress from first serving in staff capacities, to "lead" capacities, and eventually to functioning as full project leaders. From there, employees may concentrate solely on a technical career track or may wish to combine their technical expertise with project leader, supervisory, or managerial functions as these opportunities occur.

With the continued trend of tighter budgets in both corporate and public sectors, organizations will often severely limit or totally eliminate dollars spent on developing staff. This approach can be counter-productive in that staff growth and development, which is vital in a continually changing regulatory environment, is diminished or completely eliminated. A result of this perceived stagnation can be increased turnover and morale problems, and the organization can "fall behind the times" in its approaches to regulatory matters in general.

It is extremely important that your commission have a well defined training and development program for its staff. Even if financial resources do become limited, don't overlook the beneficial experience of having in-house technical experts teach other staff members. This can serve as both a developmental experience for those who are doing the training, as well as for those who are learning. (The California Public Utilities Commission has developed a staff relations and development program which outlines their program for employee development activities, including promotions and training.)

In addition to the training and development programs sponsored by your own commission, there are several formal training programs available for the development of commission regulatory staff offered through NARUC. For more complete information, please refer to listing of resources at the end of this chapter.

Resources

In addition to your own managers and staff, these are other resources that you may call upon:

NARUC

Administrative Staff Offices
202/898-2200

The National Regulatory Research Institute
614/292-9404

Committee on Administration
(Consult NARUC directories for names and telephone numbers of chairman and committee members)

Staff Committee on Education
(Consult NARUC directories for name and telephone numbers of chairman and committee members)

Staff Sub-Committee on Executive Directors
(Consult NARUC directories for names and telephone numbers of chairman and committee members)

INSTITUTE OF PUBLIC UTILITIES

Michigan State University
517/355-1876

The NARUC Weekly (blue) Bulletin provides information about regulatory educational and training opportunities and current publications of regulatory interest.

The NARUC "Members, Committees and Policy" Handbook prepared three times annually and provided to registrants at the NARUC Winter, Summer and Annual Meetings offers a listing of committees and organizations affiliated with NARUC.

CHAPTER 4

PUBLIC SERVICE COMMISSION OPERATIONS AND SERVICE

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Secretary
and
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Washington Utilities and Transportation Commission

On a typical morning Joan, a journey-level analyst for the state public utilities commission (PUC), and 100 fellow state workers avoid a long rush hour commute to the commission offices by reporting to a suburban telework center near their homes. Joan's workstation is compact but functional, the dominant feature a state-of-the-art micro computer. Joan's workstation, one of a group of ten at the telework center set aside for regulatory agencies, is located near a laser printer, convenience copier, and tele-fax machine. The ten workstation clusters are arranged around two conference rooms, a video conference center, and a small theater where employees and the public can monitor live legislative and administrative hearings broadcast regularly from the state capital.

As she starts her "telework" day, Joan first checks her voice mailbox for telephone messages, automatically forwarded from her downtown office. One message is from Joan's supervisor, Jane, who is out of town at a conference, regarding an upcoming staff meeting. A second message is a return call from a regulated company with information Joan needs to complete the analysis on a tariff filing. Joan notes the information then forwards the call to three other project team members. A third call is a message Joan herself left several weeks ago reminding her of a dental appointment scheduled for the next day.

Joan next turns to her computer and logs onto the commission's local area network. A red flag notifies her that she has electronic mail (E-mail) messages including an agenda for the staff meeting, (which Jane has sent via her portable computer and modem), "morning announcements" from the executive director, and new project assignments, including one from the Chairman. The last item is a draft

report on another tariff filing which Joan reads, amends with several electronic "post-it notes," and sends back to the lead analyst to incorporate into the final report. She then returns to the new project assignments, one of which is a new subject area for her: the Chairman's request to prepare a legislative proposal for funding telephone devices for the deaf (TDD).

Since this is a new subject area, Joan calls up an electronic bibliography from the state library and keys in telephone devices for the deaf. From a list of books, journal articles, and research papers, Joan selects three and orders them. If the materials are available anywhere within a regional network of state, local, college and private libraries, they will be forwarded to the commission library or made available to down-load to her computer by the end of the week.

Next, she looks at the National Association of Regulatory Utility Commissioners' (NARUC's) database to see if there is an official position on funding TDD. She then turns to "LEGISLATE", identifies several states with pending, or recently enacted, legislation on TDD and sends an electronic query to those states over NARUC's E-mail system to find out how other public service commissions are responding to similar legislation. Her last request for TDD data goes to the state budget office database for demographic information on the state's deaf community.

Joan then returns to the commission's local area network, calls up the electronic bulletin board, and scans it for upcoming training sessions. She locates a seminar recommended by Jane in her last evaluation, checks the dates offered against her electronic appointment calendar and sends a "reservation" to the Human Resources Office.

While Joan is connected to her coworkers and databases as she works at the telework center, she is also in touch with the regulated companies and members of the public. In addition to electronic bulletin boards with employee-specific information, the commission maintains an electronic bulletin board with current information about meeting agendas, hearing schedules, company filings and rulemakings, as well as a comprehensive index to public records. The public can access the bulletin board at any time with a modem-equipped personal computer. The text of many public records, including orders, rules, tariffs, and transcripts of

hearings also are available through the electronic bulletin board. Hard copies of these records can be ordered and automatically paid for by credit card or alternatively, be down-loaded to the caller's computer memory and printed locally.

Regulated companies have similar access to the electronic bulletin board but also to other computer functions and databases. They may, for example, also tie in to the commission's electronic mail system, on a limited basis, to efficiently communicate with staff and transfer selected, informal documents. More formal documents, such as tariffs and pleadings, may also be communicated electronically, but on a more restrictive basis. Finally, the public and companies alike can monitor, and in some cases participate in, all Commission public meetings and hearings through a communications bridge by simply calling a published telephone number from anywhere in the world at the appropriate time.

Although this example of a public service commission employee's workplace and its operations sounds futuristic, these technologies for managing information resources and supporting knowledge workers are available today. Only ten years ago in *Managing New Technologies: The Information Revolution in Local Government*, John Leslie King discussed constructing "an exciting picture of the local government of the future." This future included such innovations as "executive information systems, office automation systems, electronic mail, and other sophisticated applications."²⁷ Though today all are considered commonplace in business and government, including many public service commissions, ten years ago King argued there was no reason to believe that such innovations would come to pass in the near future or offer a better way of doing government's business than current methods.

Today public service commissions face similar conditions to those King described for local governments ten years ago. That is, although most commissions currently take advantage of at least some of the technologies offered in Joan's workplace, there is no reason to believe that a similar workplace will reflect all public service commissions of the future. Information technology continues, however, to

²⁷ John Leslie King, *Managing New Technologies: The Formation Revolution in Local Government* (Washington, D.C.: International City Management Association, 1985), 1.

change at unprecedented rates offering a confusing array of possibilities.

Governmental (and therefore commission) budgets are always limited and commissions must shape technologies to their agendas, not follow technologies wherever they go. Commissions can't, however, shortsightedly ignore the potential benefits, though perhaps unproven, of using technology to support their work. Spending resources now on technology that increases the quality of analysis and service and the effectiveness and efficiency of operations ultimately will maximize future resources.

In spending resources to maximize resources, public service commissions must balance the possible with the desirable. Though everything King forecasted ten years ago is not universally available to public service commission employees today, that vision is real. Will the future imagined for these employees be their reality three, five, or ten years from now? Should it be? In its struggle to achieve excellence in administratively supporting its clients, each public service commission will have to answer those questions. At their core, such questions address how effectively commissions will manage their information resources to support forming and directing public regulatory policy.

Public service commission operations and service-related issues are information resource issues. Not surprisingly, information requirements vary widely from commission to commission. For this reason, no single cookbook is available for managing information resources. Each ingredient necessary to create our own programs exist in a giant marketplace of people, hardware, software, systems, theories, methods, and practices. Selecting the best items from this dizzying array of choices can be done by pulling together the experience and knowledge available in other commissions with the insights of recognized leaders in the field.

The Business of the Business-- Regulatory Theory and Other Unsolved Mysteries

When addressing questions about what innovations might offer a better way of doing commissions' business, we must first ask "What is the business?" As government agencies, public service commissions make and administer public policy.

Commission policy making is specifically directed toward protecting the public's interest in receiving safe, affordable public utility and transportation services. Like other policy-making bodies, public service commissions' work is done "through structures of information resources, technologies, and people."²⁸ Since policy-making is decision-making, these structures must support and enhance the decision-making process.

Accurate, available information is key to sound decision making and policy development. In addition,

*Beneath every public policy and its government agency lies a supporting information infrastructure. An 'information infrastructure' is that underlying foundation of information resources and associated people, technologies, and facilities that supports decision making in organizations.*²⁹

Cindy Kahan, in *Managing New Technologies*, seconds this view, saying that information is the "underpinning upon which all government operations depend."³⁰

Karen Levitan describes the building blocks of this underpinning and their importance in *Government Infostructures*:

*The strength of an information infrastructure depends on how well information resources are managed -- what, how, where, and for whom sources of information are established and made available for reuse.*³¹

Thus, designing and evaluating administrative operations of commissions must be directed toward strategically managing information resources to assure the availability of sound information that supports excellent decision-making.

²⁸ Karen B. Levitan, ed., *Government Infostructures: A Guide to the Networks of Information Resources and Technologies at Federal, State, and Local Levels* (Westport, CT: Greenwood Press, Inc., 1987), xv.

²⁹ Ibid.

³⁰ King, *Managing New Technologies*, 142.

³¹ Levitan, *Government Infostructures*, xvi.

The Plan--Of Databases, Applications, Chickens, and Eggs

Effectively managing information resources means, therefore, addressing "what, how, where, and for whom" when designing programs, processes, and automated systems. Equally important, information specialists, including information technology and records specialists and librarians, must know in some detail about the business of regulation. This is critical to knowing what information is needed and where and how to find or provide it. Since successfully integrated and useful information systems necessarily start with what information is needed to do the commissions' work, understanding that work is critical to providing the most appropriate information. An understanding is also essential to providing information in the best way--through manual or automated means, by hard copy or electronic media.

Of course, much of the work done by public service commissions is like that of any business organization; that is, managing internal administrative operations such as budgets, payrolls, human resources, and facilities. In most organizations including government, much of this information is managed and provided electronically. Governmental agencies commonly apply automated technologies to routine in-house operations, at least initially.

*In almost every instance, the initial applications created support legislative and internal administrative functions. Only after these initial systems have been successfully implemented do most legislatures develop decision-assisting and policy analysis applications.*³²

Many public service commissions currently apply automated systems and technologies to some of their administrative operations. This includes communicating by voice and electronic mail, processing printed documents, tracking cases and dockets, registering motor carriers, tracking consumer complaints, preparing commission budgets, and tracking employee assignments.

³² J.J. Stucker, "Assessing the Role and Impact of Information Technology in the Legislative Environment," in *Information Management in Public Administration* Horton and D. Marchand, eds., (Arlington, VA: Information Resources Press, 1982), quoted in Levitan, 87.

More than automating administrative functions like docket and consumer complaint tracking and budgeting is needed, however. There is an important need for information-producing agencies to be highly responsive to the needs of policy analysts and policymakers.³³

For commissions this means its commission staff, as well as its economic, rate and policy analysts, must be responsive to information needs of commissioners. It means, in turn, that information specialists must support those analysts' need for meaningful information. To manage information resources strategically, this policy- and issue-driven part of the questions "what information" and "for whom" must be answered.

Like other governmental agencies, most commissions to date have applied information technologies to in-house operations. To address the public policy information needs, however, several commissions currently scan portions of company related filings into databases. Some also receive regulated company annual reports and "data request" replies electronically. Some commissions also maintain electronic files of final orders and case transcripts. Since these text-based files require large volumes of computer storage, commissions that develop and maintain such a database generally own or have access to mainframe computers.

One of the greatest challenges to strategically managing information resources is the need to address emerging policy issues. Like other regulatory agencies, many issues that individual commissions decide to address emerge from outside research conducted by public and private organizations, including other public service commissions. Offering an analyst such as Joan access to databases developed outside her own organization is, in part, what our imagined workplace offers.

While emerging policy issues is one of the challenges to strategically managing information resources, allocating limited resources to meet the dual information requirements (in-house administration and policy making) of commissions undoubtedly

³³ Jeanne E. Griffith, "Federal Data Systems: Policy and Practice," in *Managing New Technologies: The Information Revolution in Local Government* Costas Torgas, ed., (Washington, D.C.: International City Management Association, 1985), 62.

is the greatest. Though as stated above, it is common first to apply technologies to in-house operations, regulatory policy-making information needs argue equally strongly for quick attention. Commissions face, therefore, a chicken and egg dilemma: Which comes first?

Chicken and egg theory implies that this is an "either/or" conflict. In practice, commissions must apply information resources--people, technologies, and facilities--among all information needs. One method for assuring that information resource specialists are firmly grounded in the business of commissions and that all information needs are identified and tied to that business is to conduct formal data planning.

This formal planning is widely known as information resource management. James Martin and Peter Pin-Shan Chen have written and spoken widely on this topic. In *Strategic Data-Planning Methodologies*, Martin sets out steps to achieve organization-wide data planning.³⁴ (Chen promotes a similar model). IBM also applies similar techniques in developing systems for clients. These methodologies all tie information and related processes to business functions and goals of organizations and result in a formal written plan which provides a framework for identifying and prioritizing information needs. Some of these needs will be met with automated systems.

Although many commissions identify information technology and automated systems needs through ad hoc requests from individuals to information services staff, at least three have completed within the past few years formal data planning for some commission functions. Texas, for example, contracted for a study of requirements and a plan for a utility information system. IBM and Wang also have studied information needs and developed plans for implementing needed systems for the New Hampshire Public Utilities Commission. The Washington Utilities and Transportation Commission has completed similar data plans for its two operating divisions, Utilities and Transportation.

Though these plans firmly link information systems to business functions, they are costly. Upfront cost is a significant drawback to these methodologies: they are time consuming and resource intensive. Further, these methods require substantial in-

³⁴ James Martin, *Strategic Data-Planning Methodologies* (Englewood Cliffs, NJ: Prentice Hall, Inc., 1982).

house expertise or much vendor involvement. A Texas study of a relatively narrow commission business function was completed, for instance, after the costly false starts of others by a consulting firm at a cost of approximately \$135,000. The New Hampshire study took a year to complete and the Washington studies took nine months each with full-time effort from five to seven commission employees. Even so, these commissions strongly support similar efforts and contend that their information resources are better allocated because of them.

Why? Because We've Always Done It That Way

To maximize its information resources, the Washington Utilities and Transportation Commission did more than data planning. To avoid automating inefficient or outdated procedures, formal data planning was tied to formal management analysis. The primary focus of these studies was to see where improvements could be made to current business practices. They explored the following questions:

What do we do?

Why do we do what we do?

What *should* we do?

How *should* we do it?

The Washington Commission no longer wanted to do things just because they had always been done that way.

Of course, there are any number of "right" ways to manage public service commission business functions, including information resource functions like document handling, setting up and managing libraries, and organizing information services. It seems inappropriate, however, to advocate a single model for any of these functions. Managing supporting information resources must "position the [commission] to make the best use of expected developments in technology" and "must reflect the political,

social and organizational environment" in which they work.³⁵ Each commission, therefore, must develop information resource structures within that context.

The range of these structures in today's commissions clearly reflects different political, social, and organizational environments ranging from fully manual to largely automated processes. Though commission size and number of companies regulated directly affect administrative operations, these do not necessarily coincide with how many procedures are automated. South Dakota, with twenty-three employees and California, with about 1,100, have similar office automation including word processing and spreadsheets. Further, some commissions with electronic office automation systems (namely, Iowa, Arizona and Georgia) have varied levels of data shareability and manual "case" tracking systems.

Regulated company "filing" and "case" docketing and tracking processes clearly illustrate this range and variety of operations and individual responses to commission environments. Utah, for instance, employs a manual docket tracking system and is not considering automating it. (The commission regulates only three major utilities, making a manual system appropriate to their business need.) As noted above, several other commissions also track dockets manually, but some of them, including Rhode Island, are moving to electronic systems.

Formal data planning is another example of responding to different political and organizational environments--at least in Florida, Minnesota and Washington. These states statutorily have created agencies to oversee and develop policies for information resource management for state agencies. These agencies, including public service commissions, are required to develop information technology plans tied to business functions. Minnesota's state agencies must also

ensure that the management of information resources for any particular agency be coordinated with the strategic management of that specific agency
and that

³⁵ Cindy Kahan, "Information Master Planning," in *Managing New Technologies*, 144.

*this must include an information management plan focusing on information resources -- namely, information access, sharing, and re-use.*³⁶

Florida's state agencies are required to develop "inter-related information technology resources to support common functional purposes or needs."³⁷

Commissions can conduct formal management analyses to find out what is likely to work best for supporting common functions purposes and serving internal and external clients. Like formal data planning these studies are labor intensive, but many benefits can flow from carefully scrutinizing existing practices. They include redirecting automated information systems' efforts toward supporting identified business functions; reorganizing the commission's structure to maximize policy development, customer service delivery and access to information; and eliminating programs and practices that no longer support the commission's policy goals. On the other hand, management analyses can highlight programs and procedures critical for effectively accomplishing business goals that do not exist or that are haphazardly organized.

The Library--Reading Room or Vital Resource?

One key information-related program available in varying levels within public service commissions is the in-house technical library. Though many information needs are best met with automated systems, others, especially policy related information needs, require a multifaceted approach. This is especially true since public service commissions apply their automated systems first to internal procedures. As already mentioned, to stay abreast of emerging policy issues commission employees must have access to up-to-the-minute research conducted by other commissions and private

³⁶ Phyllis L. Kahn, "Information Resources Management in Minnesota," in *Government Infostructures*, 123.

³⁷ Thomas R. Davies and William M. Hale, "Implementing a Policy and Planning Process for Managing State Use of Information Technology Resources," in *Public Administration Review* 46 (November 1986), 521.

enterprises. Joan's "fingertip" electronic access to library facilities is one way for commission staff to access this information.

The Public Utility Commission Information Resource Network (PUCIRN) developed a manual in 1990 to guide administrators in developing, organizing, and accessing highly specialized public utility and transportation regulation information, especially hard copy materials.³⁸ This manual offers much helpful information on designing and providing library related service. Contributors suggest centralizing access and sharing information resources.

Although this manual proposes accessing online databases to conduct efficient research and recommends centralized computer access to information on the commission's library collections, public service commission libraries in the early 1990s are largely stand-alone information resources.³⁹ That is, they do not have electronic networks for commission employees to access library materials from their personal computers. A commission library with the highest level of service is connected primarily to outside databases. Generally these libraries also apply computers to in-house library administrative functions, such as receiving, documenting, and controlling materials.⁴⁰

Three levels of library service are discussed in *Libraries in Public Utility Commissions*.⁴¹ The minimum level is a self-service collection of loosely organized resources. The intermediate level is staffed by paraprofessionals with resources formally organized and accessible, but with informal library policies. Additionally, this library has no separate identity in the commission. The comprehensive level contains all the components of any public, academic, or specialized library with full reference and research capabilities, separate budget and identity, and formal enforced policies.

³⁸ Diane Friese and Christine Westerlund (eds.), *Libraries in Public Utility Commissions* (Public Utilities Commissions Information Resource Network, 1990).

³⁹ Ibid. 49.

⁴⁰ Ibid. 16, 35.

⁴¹ Ibid. 19-20.

Rather than the electronic literature search and material ordering proposed in Joan's workplace, today's public service commissions generally provide more limited service. Replies from thirty-nine commissions to a survey of all public service commissions show that four have no library service at all, while eleven provide minimal, eighteen intermediate, and six comprehensive services. The Hawaii Commission has just contracted to develop and provide in-house library services. As mentioned above, some of these libraries provide on-line access to outside databases. Of the thirty-nine respondents, for example, thirteen access LEXIS/NEXIS, and eleven access WESTLAW. Two also access LEGISLATE while four access state legislative tracking systems.

On their own, these specialized technical libraries illustrate uniting each element of an information resource structure--people, technologies, facilities, and information resources--to support public service commissions' work. They can be most useful, however, only if they are part of a commission's integrated information resource. Library specialists and their tools must, therefore, be an integral part of internal information systems. They must be applied to meeting, perhaps "at the employee's fingertips," common functional purposes and clearly defined business related information needs (as in data planning).

The Trail--Footprints or Bread Crumbs?

We have mentioned the importance of available, reliable information. It is, of course, most available when it is easily found and most reliable when it is systematically stored. Well designed and managed in-house libraries offer one place to find needed information easily. As libraries must be tied to all other information resources, all of the commission's information-related activities must be as carefully organized and documented as a well run technical library.

This need is highlighted by commission dependence on "institutional" memory; that is, employee memory and informal, privately held files. As Hansel and Gretel depended on bread crumbs to mark their way home, many commissions depend on institutional memory as a key element to inform their policymaking. Hansel and

Gretel's trail markers disappeared with the birds; commissions' policymaking markers often disappear with departing employees.

Although employee memory can and should supplement other information sources, given the information explosion (the imbalance between the volume of data available to an organization and the ability of that organization to process it), even the most heroic oral historian is likely to remember only a fraction of what needs to be preserved.⁴² Even then the accuracy will be suspect. Since memories fail and employees come and go, this can lead to critical failures to meet the information needs of commission policymakers. Commissions must, therefore, develop not only formal structures and programs to support administrative services and maximize information resources, but also document systematically what they do and where supporting information is.

After documenting what they do and what information and records support it, commissions must safeguard documents vital to ongoing business operations and prepare for recovery from natural disasters. Many commissions centralize control of and maintain indexes for formal records, and they microfilm critical documents including formal orders and case materials. Though most commissions manage these records manually, some, like North Dakota, have automated paper indexing and tracking.

Another way to ensure the security of critical documents is to store them electronically, back them up routinely, and store source documents off-site. Image storage and retrieval systems provide this function. When our fictional analyst Joan accesses text-based files on her computer to research previous commission actions and case materials, she accesses them from an image storage and retrieval system. This system allows her to view these materials, including text, graphics, and images on her computer screen. Information then is "scanned" into these systems.

Using image storage and retrieval systems is in the future for almost all commissions for several reasons. First, although some currently have optical scanners, they use them infrequently or in limited cases. The Kansas Corporation Commission

⁴² Marc R. D'Alleyrand, *Image Storage and Retrieval Systems* (New York: McGraw-Hill, 1989), 3.

uses its scanner only for general office tasks. The Maine and Wisconsin Commissions use scanners for graphics; text is problematic. Utah found "fixed-type" scanners inaccurate and now uses a "fast learning" scanner that works well for most typefaces. One commission has a scanner but doesn't use it at all. Others have requested funds to purchase scanners during their next budget cycle.

Second, costs to make these systems an integrated part of automated systems are generally prohibitive within commission budgets. Third, although scanning technology is improving, scanning accuracy is not guaranteed. This is especially critical when scanning numbers where processing errors "must be practically nil."⁴³ Inaccuracies can lead to more effort in physically editing the files than can be justified.

Though not practical for most commissions at this time, with improved technology, image storage and retrieval systems promise future security of and ease of access to commission-related policy information for all who need it.

Information--Yours, Mine, and Ours

Formal data planning answers *what* information and, in part, *how* to provide appropriate information resources. Developing and implementing appropriate programs such as libraries, records management, and telecommuting and computerized systems fill in the *how* and *where* of information resource operations and service. The question "*for whom?*" remains.

The work of public service commissions is done, of course, on the public's behalf. Information related to that work is, therefore, largely public information. As such, it is, with few exceptions, open by law to public access. Other conditions also compel commissions to view information resources broadly as "ours." For instance,

State legislatures have been enacting laws affecting the public's right to electronically processed information. This is already changing the methods

⁴³ Ibid. 58.

*of providing public access to our records, our files, and even our software systems.*⁴⁴

Commissions therefore must make as much information as possible "ours" rather than "yours" or "mine." This means that employees must routinely share information among themselves as well as with regulated companies and other interested people.

Libraries, records management programs, and local area networks help disburse information among commission employees and in some cases between regulated companies and commission staff.

Telecommunications advances, especially fiber cable, not only provide increased opportunities for disseminating information to the public, but also increased difficulties in managing related security, compatibility, and cost issues. When providing information to those who request it, commissions must balance the need and desire to share information with the need for security--for example, security of automated systems, documents, and proprietary information. Additionally, with increased complexity in information systems and technologies, this balance between openness and ease of access and security is harder to maintain. Opportunities for equipment failure, human error, and mischief increase in direct proportion to system complexity and the number of people accessing systems.

This necessary balance is also complicated by the increasing array of possibilities for providing access. Clearly, information *availability* is closely related to information *shareability*. Shareability is no issue when information is kept and distributed on paper, assuming we all speak the same language. Electronic data and systems, however, can be shared only through standard "interfaces;" that is, languages, equipment, or both.

Finally, increased technical complexity also complicates balancing costs and access. Among these complexities are advances in technology, especially telecommunications, and greater expectations for open, accessible government meetings in conference centers and theaters similar to Joan's and in the public's dial-in access to hearings and "open meetings." Access to local area networks, electronic mail, and

⁴⁴ Robert S. LaSala, "Managing with Telecommunications," in *Managing New Technologies*, 136.

bulletin boards are common means of information sharing among staff, regulated companies, and the public today. Pressures to share frequently incompatible electronic, rate-case-related data and "models" among commission staff and regulated companies mount daily. The wider the range of technologies in use at each company and commission, the greater the potential costs of communicating among them.

Like others in our society, commission constituents are growing "accustomed to instant information access and response."⁴⁵ Since increased technological possibilities drive expectations, commissions must, while balancing costs with benefits, develop a

*process for integrating the various telecommunications technologies and services into their operations and organization. This is needed to . . . make the maximum use of the technology.*⁴⁶

Only in this way will commissions be able to meet the ever increasing expectation of their staff and constituents for quick response to information needs and for quick, sound decisions on issues of public interest.

Excellence--Do We Know It When We See It?

In the end, it matters little how efficient or integrated information resources are if the business needs of the public utility commission and the service needs of the public are not met. Equally important, these needs cannot possibly be met if the information needs of administrative operations clients aren't served. Like other information resources administrative issues, high quality products, and excellent service have been frequent topics in the media. Most of these articles have, until recently, addressed excellence in service in the private sector.

Many are now arguing, however, that increased excellence in product, operations, and service is equally important from public agencies. F. Joseph Sensenbrenner, former mayor of Madison, Wisconsin was quoted in *Business Week* as

⁴⁵ Ibid, 137.

⁴⁶ Ibid.

saying "The goal of the quality movement is increasing confidence in government."⁴⁷ Further, Michael Barzelay, professor of public policy at Harvard's John F. Kennedy School of Government states,

*In general, improving quality in government services involves the same steps as in the private sector. It means paying attention to the process, involving employees in the process, paying attention to the customer.*⁴⁸

Although common sense dictates an emphasis on excellence in these areas, defining excellence and then evaluating efforts, processes, and products against that definition is no easy task.

Defining excellence in public service commission administrative operations and service, like defining excellence in other organizations, is difficult. Difficulties range from meeting different expectations from different client groups, (internal versus external and regulated company customer versus regulated company, for example) to prioritizing needs within typically tight budgets. We have focused on strategically managing information resources and related administrative operations largely because

*Improving quality often requires big investments in such equipment as computers and custom-designed software. In an era of tight budgets, it can be hard to find the money.*⁴⁹

We can't simply manage these resources well, however, and assume that we have improved administrative operations like docket and case tracking, information and records access or service. Epstein concludes in a review of case studies "Services to the consumer are occasionally, but by no means necessarily, improved when

⁴⁷ "Even Uncle Sam Is Starting to See the Light," *Business Week* (October 25, 1991), 133.

⁴⁸ Ibid.

⁴⁹ Ibid, 134.

computers are introduced."⁵⁰ We won't know excellence when we see it if we don't have clear service goals and ways to measure our progress in achieving them.

Although many current books and articles promote defining and measuring service, there are no agreed upon models or measures for excellence in providing service in service organizations.

*[T]he concepts and models for measuring product quality are not always comprehensive enough for service quality. One must be able to understand the intricate details of a service encounter, to identify and quantify the attributes of a service encounter, and to correctly measure customer expectations.*⁵¹

This imprecision confounds defining them for public service commissions.

One way of measuring our progress in meeting service goals is by measuring the extent to which we meet client requirements. "To a large extent, quality needs to be judged from the client's perspective."⁵² Similarly, in "Measuring and Managing Service Quality," David A. Collier claims that "Excellent service encounters occur because of dedicated people who care about and listen to the customer."⁵³ Craig A. Terrill states this more firmly as the ninth of "The Ten Commandments of New Service Development: Thou shalt measure quality through customer satisfaction."⁵⁴

⁵⁰ J. Epstein, *Computers and the Consumer*, Review of Research of the European Foundation for the Improvement of Living and Working Conditions, RICA, 1986 cited in Clifford H. Glover and Kieran O'Dwyer, "Using IT to Support Administrative Modernization," *Informatization Strategies in Public Administration*, P.H.A. Frissen and I. Th. M. Snellen, eds., (New York, Elsevier Science Publishers, 1990), 55.

⁵¹ David A. Collier, "Measuring and Managing Service Quality," in *Service Management Effectiveness* David E. Bowen, Richard B. Chase, Thomas G. Cummings, and Associates, eds., (San Francisco, CA: Jossey-Bass, 1990), 242.

⁵² Clifford H. Glover and Kieran O'Dwyer, "Using IT to Support Administrative Modernization," in *Informatization Strategies in Public Administration*, P.H.A. Frissen and I. Th. M. Snellen, eds. (New York, New York: Elsevier Science Publishers, 1990), 55.

⁵³ In Bowen, Chase, Cummings, and Associates, eds., *Service Management Effectiveness*, 262.

⁵⁴ Craig A. Terrill, *Management Review* (The American Management Association, February 1992), 27.

Rosander argues, however, that this measure is incomplete. He states that frequently "companies have no intention of giving customers what they want." Further, these customers (in this case, customers buying insurance) "may have to buy what is offered because it is required by law." According to Rosander when measuring excellence by a client's requirements, unless the organization is doing what the client wants and is meeting the client's specifications, an organization is not achieving--in fact, cannot achieve--excellence.⁵⁵

Although they are employees, regulated company representatives, and members of the public (each with varying information needs) public service commissions' clients all depend on commission administrative operations and systems to meet them. Terrill frames this varied need as tailored offerings when he states "In services, each customer is looking for a slightly tailored offering."⁵⁶ Commission "clients" may, like insurance customers, be required by law to "buy" our services. This means that commission "information structures [must be] coordinated but also responsive to specific needs."⁵⁷

Listening to customers within the limits of commission business mandates, tailoring services to individual needs within commission resources, and defining meaningful service goals and measurements within manufacturing "product" models frame the difficult challenge commissions face in developing administrative operations and service related goals. The primary consideration for commissions in meeting this challenge is how to define and measure the "right level of information (amount, timing, place, quality, cost.)"⁵⁸ The following points can provide rough measures and guide this definition:

What business function does the information support?

⁵⁵ A.C. Rosander, *The Quest for Quality in Services* (Milwaukee, WI: Quality Press, 1989), 8-9.

⁵⁶ "Management Review," 26.

⁵⁷ Levitan, ed., *Government Infostructures*, 123.

⁵⁸ Albert H. Rubenstein and Eliezer Geisler, "The Impact of Information Technologies on Operations of Service Sector Firms," in *Service Management Effectiveness*, 269.

Is the information that clients need available?

How easily and quickly can clients conduct the business transactions they must complete?

How easily and quickly can clients access the information or service they need?

Is the needed information accurate and complete?

After defining the "right" level of service and related goals, public service commissions can design operations that support them. All administrative operations must do just that.

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CHAPTER 5

RELATIONSHIPS WITH LEGISLATORS, ELECTED AND APPOINTED OFFICIALS AND CITIZENS

Dwight Winger
Executive Director
Nebraska Public Service Commission

and

Ronald Hawkins
Executive Secretary
Maryland Public Service Commission

The manner in which a regulatory commission deals with various external parties speaks volumes about how the commission views itself. A commission with a strong sense of purpose and self-awareness will be open with legislators, elected and appointed officials, and citizens. A commission with internal conflicts or lack of a common vision, however, will often be defensive with these same constituencies.

The relative health of a regulatory commission, perhaps even its survival, depends greatly on a positive relationship with legislators, officials, and the general public. This positive relationship is based on mutual trust. Therefore, the most important attribute which can be developed by a commission and its staff is its credibility. Credibility can only be established by providing responsive, reliable results to questions, concerns, and complaints to those who inquire. It can also only be established when a commission understands the role and needs of the person or group making the inquiry.

Understanding to Whom You are Responding and Why: Consumers

It has been said that you truly know you deal with a bureaucracy when you have to get transferred at least three times to find out that the person you need to talk to has left for the day. Few members of the public have any concept of what they are getting themselves into when they make their first inquiry to a regulatory commission. All they know is that they have a problem and they need some help.

Regulatory commissions must avoid this problem at all costs. A consumer is generally going to be frustrated before placing the call and street level bureaucrats must be properly trained to handle these calls.

Once consumers are into process, they have several concerns which must be addressed. They want regulators to be accountable, they want openness in the process, and they demand fairness and equitability. In this current age of antigovernment sentiment and tax protests, government employees, particularly regulatory employees, must appreciate who ultimately pays their salaries. Consumers must be treated with respect and they must be treated as equals in the process. Any attempt to be parental with consumers will undoubtedly cause problems for regulators and staff.

The system for regulation must be open and consumers must have a way to hold regulators accountable for decisions. Even if a commission is not required to meet the statutory requirements for an open meeting law, policies should be adopted to make the process as open as possible. By the same token, policies concerning *ex parte* communications should be assiduously followed to avoid even the appearance of impropriety. It is imperative for a commission to be proactive in developing a positive rapport with consumers. Once a reputation has been damaged with consumers, it can take years for a commission to recover.

Legislators

Perhaps no relationship exists for regulators which is so diverse as the relationship with legislators. Legislators vote on directives that affect a commission's policy, funding priorities, and the very scope of the commission's authority. In these instances, legislators can be somewhat intimidating to commissioners and staff. At other times, however, legislators need help with constituent problems and can be vulnerable to pressure from home. Clearly, both the policy and consumer arenas offer regulators an opportunity to develop a strong relationship with key legislators, if it is done properly.

The first step in developing such a relationship is to remember that the legislature has tremendous influence over a regulatory commission. Legislators and their staffs should be treated with deference and respect. Even commissions having constitutionally-based authority or which are cash funded still should adhere to this general principle. After all, the legislature still has the ability to set the limits under which the commission may operate.

Keeping this in mind, all commissioners and upper level staff must be "legislative liaisons," even if the commission has a person on staff full time for that purpose. Some legislators are status conscious and consider a reply from a middle level commission staffer to be a rebuke. It is important for all staff to understand the importance of a positive relationship with legislators and staff. Training for all staff who have any dealings with the legislative body should be developed and implemented.

The second step in a positive legislative relations program is to make friends before you need them. The legislative session is not a proper time for a commission to attempt to educate legislators about its responsibilities. Never assume that because a legislator sits on a key committee he or she understands what role your commission plays in the state governmental process. Schedule a meeting with key legislators and staff during the legislature's interim period and offer an annual tour and "state of the commission" presentation to key legislators and staff. Legislators must trust the source of information during the hectic days of a legislative session. The groundwork for this trust should be laid well ahead of time.

The third step is to provide timely, accurate information, including help for constituents with problems. Constituents with difficult problems often turn to legislators because they do not know where else to turn. Legislators often do not want to get involved in these sticky problems and need help in dealing with them. A commission can create goodwill for the legislator and for itself in return by promptly handling a constituent's problem and reporting the result of the investigation and the resolution of the problem immediately to the legislator.

The relationship between legislator and regulator should be one of mutual trust and respect. To attain and maintain this level of trust, regulators must remember

that legislators have a legitimate oversight function, both in the policy and fiscal arenas. Any show of resentment toward regulators for legislative inquiries will undermine the development of this relationship.

Other Public Officials

In addition to legislators, there are other public officials, both elected and appointed, with whom regulators must interact on a regular basis. These officials exist at the local, state, and federal level.

Officials at the local level are usually under the most direct pressure from the public. Local official's problems generally concern issues of rates or franchise agreements. Quite often, these issues are complex and technical and officials may need assistance in helping their own constituencies understand the regulatory process as it progresses. These local officials can provide a direct link to consumers and local organizations which can prove to be quite beneficial for regulators.

In the area of state officials, the relationships generally involve questions of authority, litigation, or cooperation. Authority questions generally involve the governor, especially in states where the governor appoints commissioners. A truism of appointed regulatory commissions is that while commissioners come and go, staff tends to remain for longer periods of time. Therefore, a tendency can develop for staff to deal with problems with the governor's office by stalling, hoping they will go away. It is imperative that commissioners and upper level managers do all they can to see that this attitude does not develop among staff. The governor has certain policy and fiscal responsibilities which must be understood, and the commission must respect those responsibilities.

The second area of state-level interaction is in the area of litigation. This generally involves the offices of an attorney general or consumers counsel. In most cases, an attorney general will represent the commission in a legal proceeding. Often, legal problems can be addressed before they actually become legal problems, so a positive relationship with an attorney general can be helpful, even if a commission has its own legal staff. If any decision which a commission has to make could potentially

have constitutional questions or could involve litigation against the state, contact with the attorney general should be made before the decision, not after. In the case of consumer counsels, relationships should be kept as open as possible, keeping in mind *ex parte* rules in any contested proceedings. Consumer's counsels often are funded with tax dollars and generally share many of the same problems as commission staff. Understanding their role and how they fit into the regulatory process is imperative.

The final area of state intergovernmental relations involves other state agencies. Since no state government is completely clearly delineated among specific task areas, projects often will involve several different agencies. Embarrassing situations can occur, however, when one agency of government does not know what another agency is doing. This can be particularly acute if a regulatory agency must stop a project at a crucial time due to lack of communication. Therefore, ongoing communication with related agencies is very important. This communication should be both formal (through contacts between commissioners and key staff people using mechanisms such as intergovernmental advisory committees) and informal (such as sharing newsletters and press releases). Whenever a regulatory commission thinks its actions may affect another agency, contacts should be made as soon as possible. These initial contacts and mitigation of the possible delays could save the commission from embarrassment or frustration down the road.

Finally, commissions have relationships with many federal officials, again both elected and appointed. These relationships generally fall into two areas, regulatory and political (specifically Congressional).

Regulatory relationships are generally present between federal commissions which regulate similar areas such as the Federal Energy Regulatory Commission, the Federal Communications Commission, and the Nuclear Regulatory Commission. These relationships can be either cooperative and confrontational depending on the issues involved. What is most important in this relationship is to keep abreast of what the federal agency is doing and to try to keep intrastate regulations as close to interstate regulations as possible. One of the most common complaints from consumers and regulated industries alike is the often differing requirements of state and federal regulators. State commissions diligently need to keep themselves

informed about events at the federal level. Staff should be appointed to act as liaisons between key federal agencies wherever and whenever appropriate. Disagreements between state and federal commissions should be handled as professionally and unemotionally as possible. Remember that both levels of regulators are ultimately working toward the common goal of protecting consumers.

Congressional relations are more political and generally should involve commissioners and high level staff. It is important to know which Representatives and Senators from your state serve on strategic committees and to develop a relationship with these members. The same recommendations made earlier concerning interaction with state legislators apply here as well. Commissioners must work harder to develop a relationship with federal representatives because of the distance factor. The relationship must not be a one-way street with the commission constantly asking for favors. There must be a prompt response to any congressional inquiry by the appropriate person.

Summary

Regulatory commissions have a tremendous diversity in the relationships in which they find themselves. Some commissioners are elected and interact directly with constituents while others are appointed by governors and therefore have a somewhat different constituency. Some commissions are cash funded through assessments while others are funded through sales and income taxes and have a tremendous amount of legislative oversight. Some deal daily with federal agencies while others seldom speak with Washington.

Yet, despite these differences, all commissions must have one thing in common if they are to survive: integrity. Without it, the trust needed to perform the precarious balancing act called regulation will not develop and the commission will never fully function in its role of regulator. Developing this integrity must happen from the top down and the organization must be committed to providing the public service for which the commission was created. Reactive attempts to deal with integrity problems probably will not be satisfactory.

Regulators must understand the roles of the public, legislators, and other public officials and must be prepared to respond to these unique needs. They must understand the knowledge and limits each party brings to the regulatory table. Without such knowledge, fairness and equity in the process may be difficult to assure, and the trust and integrity needed may never develop.

CHAPTER 6

LEGAL IMPLICATIONS OF REGULATION

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History

The evolution to the present Federal era of regulation can be dated to the creation of the Interstate Commerce Commission (ICC) in 1887. The need for some constraints over big monopoly businesses became evident during the reign of the "robber barons". The ICC provided the needed curbing influence. Later, telecommunications and common carrier regulation became parts of the constitutions and statutes of the states.

In 1889 the National Association of Railroad Utility Commissioners was created to bring together all Federal and State commissions involved in regulating of public utilities and carriers to encourage and facilitate communication and cooperation.

Regulatory commissions continued to emerge in the early years of the 20th century. Their primary mandate was to preserve and protect the public interest in the regulation of industries such as electric, gas, telecommunications, water, railroads, and motor carriers.

These regulatory entities have since evolved into quasi-legislative, quasi-judicial and quasi-administrative agencies charged with writing rules and regulations, adjudicating cases, and establishing an administrative process that has continuity, is systematic and informed, and is funded at government initiative and cost.

Introduction

Traditional regulation as operated by the ICC, the Federal Communication Commission (FCC), the Federal Energy Regulatory Commission (FERC), state public utility commissions and corporation commissions, and various other regulatory entities has established over the years a very exacting science (or is it art?) for plying its trade. It is a very strange beast indeed. For example, while the separation of powers

doctrine is the basis of our country's form of government, in the regulatory community, judicial, administrative, and legislative functions are grouped under one umbrella--there is no separation. Louis Jaffe states, "The multi-powered administrative agency finds it difficult to allocate its energies among its policy-making, enforcement and adjudicatory tasks".⁵⁹ These "tasks" are controlled by rules and regulations, statutes, codes, and so on that are factors constraining and restraining the activities of regulatory agencies.

Commissioners are public officials elected or appointed to establish agency policy. They hire an executive director (executive secretary, chief clerk or CEO) who is responsible for day-to-day agency administration and who also is custodian of all agency records. In turn clerical and professional staff including lawyers, economists, engineers, and actuary examiners are hired by the executive director, commission chairman or both to perform the necessary processing, procedural, and analytical functions of the agency.

Commissions must balance the interests of disparate groups in reaching their decisions including utilities, businesses, industry, residential customers, energy suppliers, and consumers. The framework in which this balance operates is, or has been, a traditional regulatory scheme tied very much to legal precedent that makes it extremely judicialized. Historically, it has been an adversarial process.

The "legal implications of regulation" are real--open meetings, codes of conduct, conflicts of interest, open records/"sunshine", *ex parte* communications, alternative dispute resolution, and the administrative process and rules of procedures themselves all play an important role in affecting outcomes.

Of the thirty-eight states responding to a survey conducted for this Manual, thirty-four have open meeting statutes, thirty-two have statutes on rules governing code of conduct, thirty-five operate under sunshine statutes, and thirty-two have a conflict of interest statute.

If the mandates of the U.S. Constitution, various state constitutions, and other statutory and programmatic requirements including procurement codes, personnel acts,

⁵⁹ Louis L. Jaffe, *Judicial Control of Administrative Actions* (Little, Brown, & Company, 1965), 20.

administration procedures acts, general appropriations acts and so on are given a literal interpretation, the traditional regulatory scheme becomes sanitized nearly to the point of inertia. Despite those legal requirements there must be movement, flow of information, negotiation, debate, settlement, and decision-making that accomplishes the task of insuring due process, timely decision-making, and balanced regulation.

Presiding over this delicate and difficult balancing act are the Commissioners and the executive director. As the "stewards" of the agency's trust, these public officials are responsible for ensuring that legal mandates are strictly adhered to and that the work of the commission is performed.

The principles of law applicable to commission management, whether they are statutes, codes, rules of regulation and process, will now be discussed briefly. These principles include a myriad of rules, regulations, statutes, codes, Constitutional mandates and procedures at the Federal and State levels that control the regulatory environment in which the commissions and other regulatory bodies operate.

These are the guidelines that serve to form the decision-making framework which bridges the gap between the legislative, judicial, and administrative functions of the various regulatory agencies. It is within this framework that commissioners, executive directors, and staff work to balance the interests of consumers, ratepayers, regulated companies and other advocates of diverse concerns, and even non-participants such as the Governor, legislature, press and special interest groups, to ensure the rights of all are protected.

Open Meetings

It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy.

-Louisiana Statutes

It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed.

In enacting this article the legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberations be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

-California-Bagely-Keene
Open Meeting Act 11120

Regulatory entities collectively are empowered to deliberate openly, establish a record that is open to public scrutiny, collect relevant information, make formal decisions that affect a variety of stakeholders, and justify the decisions when necessary. But what is an open or public meeting? A public meeting, as defined by most of the states, means the official convening with a proper notice of a quorum of a public body to conduct public business to make a decision or to deliberate toward a decision on public policy. A public body is defined in New York Public Officer Law to mean "any entity, for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof, or for a public corporation. . . . or committee or sub-committee or other similar body of such public body."

There are times though when closed meetings or public meetings in executive sessions are necessary and appropriate to the regulatory process. Exceptions to open meetings provisions include among others:

- Personnel matters
- Privacy
- Litigation and attorney-client privilege
- Confidentiality (Federal law; State statute)

For example, proprietary information could surface during a public utility's hearing for a rate increase. In the course of the public meeting, the proprietary information is ready to be entered into testimony, the attorney for the utility may request that the commission adjourn into executive session. If the commission agrees, everyone including the public is excused, leaving the official parties who have

executed a non-disclosure agreement (which may include staff, intervenors, and their expert witnesses). Provisions of the open meetings act are not violated if an executive session is appropriate to the process and as long as specific procedures were followed. That is, before the commission can adjourn into executive session it must disclose for the record the nature of the matter to be discussed in private, and indicate when the discussion can be revealed to the public.

Though open meetings laws are intended to increase public involvement in policy development and the governmental decision-making process, they sometimes have caused the process to come to a standstill. Agenda items must be posted in advance, and the ability of commissioners, executive directors, staff and other parties to debate and exchange ideas are inhibited and discouraged by the requirements. Commissioner Ervin Duggan of the FCC stated at the 1991 NARUC Convention in San Antonio, Texas that public meetings of Federal and State regulatory entities have become "choreographed," "lack spontaneity," and are not the "collegial" process they should be.

None the less, it is incumbent upon various agency's officials, including executive directors, to follow mandates to ensure that the meeting is open and held in a public manner, that the public is fully aware of the meeting and its purpose, and that the public is able to observe and listen to the deliberations that go into the decision-making process.

Codes of Conduct and Ethics

Another legal mechanism that may help frame regulatory agencies' operations is a code prescribing standards of conduct for public officials. These standards help ensure that the agency's integrity is upheld, that there is no impropriety in its actions, and that its duties are carried out with diligence and impartiality.

Most states have addressed ethics in a statute, rule, or policy stating that the development of public policy will be free from commotion, threats, favoritism, and all manner of undue influence. Codes of conduct, which establish the standards of

behavior for all commissioners and staff to ensure that the public trust is not being violated, generally state that public officials are expected to do the following:

- Maintain high standards of honesty, integrity, impartiality and conduct;
- Ensure propriety and preserve the public confidence;
- Not use official office for personal gain or use confidential information for personal advantage;
- Not accept or solicit any gift, favor, gratuity, entertainment, or loan which may influence official conduct.

These canons of ethics and standards of conduct require of individual public officials three qualities that can be identified and developed. The first is competence to recognize ethical issues and to think through the consequences of alternative resolutions. The second is self-confidence to seek out different points of view and then decide what is right at a given time and place, in a particular set of relationships and circumstances. The third is what William James called tough-mindedness, which in management is the willingness to make decisions when all that needs to be known cannot be known and when the questions that press for answers have no established and incontrovertible solutions.⁶⁰ (emphasis added)

Within the regulatory environment these standards of conduct are precise. They form the guidelines and prohibitions which separate public officials from private citizens. The public official works under a much higher standard to avoid even the slightest appearance of impropriety.

To what extent is the executive director responsible for the ethical actions of the agency? Who is responsible for monitoring implementation of these standards? As stated in the Code of Ethics of the Delaware Public Service Commission, "a Commissioner should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the Commission." Where there are conflicting ethical principles involved, it becomes the responsibility of the executive director within the hierarchial organization to recognize and define the issues, identify various alternatives, and be decisive in promoting a solution that is morally correct

⁶⁰ Kenneth R. Andrews, "Ethics in Practice," *Harvard Business Review* (September/October 1989), 100-101.

and feasible. The goal of administrators and executive directors is to find a way to accomplish the task at hand, with all its inherent ambiguities, while maintaining their status as the moral conscience of the agency and realizing that they may be overruled anytime by the Commissioners.

The American Society of Public Administrators (ASPA) has developed the following code of ethics which can be used as a set of principles to enhance the value of public service. They also can help guide the Commissioner or executive director merge the statutory requirement of regulation with other external or internal factors.

1. Demonstrate the highest standards of personal integrity, truthfulness, honesty, and fortitude in all public activities in order to inspire public institutions.
2. Serve in such a way that public officials do not realize undue personal gain from the performance of official duties.
3. Avoid any interest or activity which is in conflict with the conduct of official duties.
4. Support, implement, and promote merit employment and programs of affirmative action to assure equal employment opportunity by recruitment, selection, and advancement of qualified persons from all elements of society.

Despite this guidance, questions remain. To what extent is the executive director responsible for ethical actions of the Commissioners? What are the legal implications of administrative decisions made by the executive director? Is the executive director a quasi-legal advisor to the Commissioners? Who is liable for that advice? What are the traps and obstacles an executive director must work through in managing the agency? What kind of process must occur for the executive director to ensure that the goals and objectives of agency administration, lawyers, and commissioners are accomplished?

The executive director must assess the risks involved, make choices, and above all be alert to the legal ramifications of his or her actions on a situational basis. Kenneth R. Andrews stated in the *Harvard Business Review* that "executives must find in their own will, experience, and intelligence the principles they apply in balancing

conflicting claims. Wise men and women submit their views to others, for open discussion of problems reveals unsuspected ethical dimensions and develops alternative viewpoints that should be taken into account. Ultimately, however, executives must make a decision, relying on their own judgement to settle infinitely debatable issues."

Whether it be the commission, commission chairman, or executive director, the ethical dilemmas faced by commissions are many and diverse. They range from attempted bribes to offers of a birthday dinner, to a gift bag of peanuts, to *ex parte* communications involving a major utility case or the disclosure of confidential information. The potential exists to make wrong choices, and the temptation is great to act unethically. Knowing the rules of the game and relying on common sense must come into play.

It is the responsibility of the commission and executive director to establish standards, set regulations and enforce the ethical conduct of the agency.

Conflict of Interest

Each agency head shall be responsible for the appropriate standards within his agency to protect against actual or potential conflicts of interest on the part of employees of his agency, and for the administration and enforcement within his agency . . . (Washington Statutes)

Conflict of interest regulations are intertwined with codes of conduct and codes of ethics. In many states, either through statutes, policies, or rules and regulations, specific limitations and prohibitions do exist. In Maine no member or employee of the public utility commission may:

- have any official or professional connection or relation with any public utility;
- hold any stock or securities in a public utility;
- render a professional service against any such public utility; or
- be a member of a firm which renders service against any such public utility.

Other conflict of interest restrictions in force throughout the country generally include:

- Acceptance of any gift, involvement or employment from any public utility or entity subject to the jurisdiction of the commission, and
- Direct or indirect solicitation or recommendation of employment with a regulated entity.

Conflict of interest statutes exist in most states. Basically, they govern actions which may unfairly influence outcomes. The Washington Utilities and Transportation Commission developed "Ethics in the Public Sector: A Practical Handbook for Commission Employees," which suggests the following categories whose violations may cause conflict of interest to exist:

- Disclosing confidential information;
- Accepting gifts, favors, or hospitality;
- Using confidential information for private investments or personal gain;
- Directing state contracts to a firm in which one has an interest;
- Investing in firms doing business with or being regulated by the state;
- Favoring friends or relatives--nepotism in general;
- Using one's position to influence or coerce for personal gain; and
- Former employees doing business with the state.

There are various controls in place designed to govern and prevent conflict of interest violations. Among these are financial disclosure statements, codes of ethics, criminal statutes, and required oaths of office. In New York, controls are in place so that:

Each commissioner and each person appointed to office by the chairman shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office. No person shall be eligible for appointment or shall hold the office of commissioner or be appointed to, or hold any office or position under the commission who holds any official relation to any person or corporation subject to supervision of the commission, or who owns stocks or bonds of any such corporation.

Violations can result in removal from employment, or stricter measures can be employed (a later section of this chapter deals with enforcement issues). Again, the executive director serves as an interpreter of the law.

Since commissions deal with the regulation of multi-million dollar telecommunications, electric, gas, and water utilities, major motor transportation carriers, and other conglomerates, it is logical to assume that possibilities for conflict in the public service arena will arise. "The Conflict of Interest with which the public is concerned is the encounter between the personal economic interest of a public official and his duty as a fiduciary to the public. The jousting between these two occurs far more frequently when the activities of government and the operations of the private economy intersect than when they do not."⁶¹ There has been debate, for instance, regarding the appearance of conflict of interest regarding ex-regulators turned utility advocates going to work for the companies they once regulated.

In Connecticut, a state regulatory official risks going to jail if, during his first year out of office, he goes to work in the industry he once regulated. In other states such as Illinois and New Mexico, it is not an illegal practice as long as federal and state laws are followed to avoid conflict of interest. Other potential conflict of interest issues deal with:

- On the job conduct,
- Outside employment,
- Use of privileged information,
- Use of state property, and
- Relationships with fellow employees.

Ultimately, the issue falls back on the shoulders of the commissioners themselves, administrators, and the executive director to establish rules of conduct within their own agencies that comply with state law, basic principles of ethical behavior, common law, and common sense. "The most basic principle of conflict of interest protection is aimed at the most obviously unacceptable conduct: namely, the act of a public official, taken in his public capacity, in dealing with himself in his private capacity."⁶²

⁶¹ Roswell B. Perkins, "The New Federal Conflict of Interest Law," *Harvard Law Review* (April 1963), 1113.

⁶² *Ibid*, 1118.

There are gray areas in establishing these policies. The ambiguous nature of these various codes, statutes, rules, and regulations on a state-by-state basis makes it almost impossible to synthesize one uniform theme throughout the regulatory community. A good example is the constraints placed on *ex parte* (off the record) communications, which seek to ensure that all information concerning a particular contested issue is presented and communicated in a public forum.

Ex Parte Communications

The California Public Utilities Commission has defined *ex parte* communication as "a written or oral communication on any substantive issue in a covered proceeding, between a party and a decision maker, off the record and without opportunity for all parties to participate in the communication."

The primary intent of *ex parte* prohibitions is to ensure that all contested matters coming before a regulatory body are conducted in an open forum, are free of personal bias, and are fundamentally fair. Most states permit contacts between the various parties, commissioners, staff, and companies on all "procedural" matters. These matters would probably include rulemaking and investigative proceedings as well as proceedings to establish general policy and genuine dockets. It is with the "substantive" matters where *ex parte* communications, unless required and authorized by law, are not allowed. Most specifically, communications between commissioners and the regulated company are banned during a major rate case. Commissioners' communication with the other parties, including intervenors and their staff as parties to the case representing the public interest, is also prohibited.

An exception to the *ex parte* rule in most states is that Commission staff communicating with the regulated company and with all parties, including the intervenors involved in a contested proceeding, is allowed. This provides for opportunities to negotiate, discuss settlements, and improve the flow of information. Also, staff members may communicate with other staff members, commissioners with other commissioners, and they may have the advice of personal assistants.

The quandaries faced by regulatory decision-makers (Commissioners, executive directors, hearing officers, administrative law judges, and so on) when the commission is engaged in dispute resolution or adjudicating a covered proceeding are to ensure that the decision is unbiased, the procedures are conducted fairly for all parties, and the determinations are factual. The limits of off-the-record communications must be delineated and if *ex parte* contact is unavoidable, the Commissioner, hearing officer, or administrative law judge should advise all parties to the proceeding of the communications as soon as possible. To accomplish this, specific rules governing *ex parte* contacts should be developed by each agency. In the survey conducted for this manual, eighteen states either had a rule or a policy regarding *ex parte* communications.

For example in Illinois, "neither the Commissioners nor Commission advisors may communicate on an *ex parte* basis with any party (including advocacy staff) on any issue. Advocacy staff may communicate with all parties including the company on all issues."

The Wyoming PUC "will not discuss substantive issues in pending cases or controversies likely to come before them."

The Maine PUC states that a "violation of the *ex parte* statute or rules may render Commissioner unable to act (legally biased) or cause the entire proceeding to be rendered void."

Regulatory agencies function as administrative, legislative, and adjudicatory bodies. An exchange of ideas, flow of information, and accessibility of the policy makers are necessary to the legitimacy of the process. It is up to the agencies themselves to establish rules and policies that specify what is an adjudicatory proceeding governed by *ex parte* restrictions and what is a more narrowly defined rule-making process that is more legislative, excluded from the *ex-parte* rule and thus more amenable to open discussion.

The California PUC has excluded rulemaking from its definition of "covered proceeding." Other states have also excluded non-enforcement investigative proceedings from *ex parte* requirements. Thus, a prohibited communication is further defined in another jurisdiction (South Carolina Rule-making and Adjudications Section 1-23-

360) "as members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case, shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate." The administrative process as practiced by regulatory agencies with *ex parte* rules lends itself to determinations and decisions that are accurate and factual, have the ability to withstand review of agency decisions, and are procedurally sound.

Traditional regulation has long been an adversarial process, although the scale seems to be tipping from the adversarial approach toward less formal deliberations. In making this transition, it is still important to operate in the open, to conduct business in an ethical manner, to communicate within the guidelines, and to maintain open records on all proceedings.

Open Records

Open records acts are statutes in most states that provide freedom of information (sunshine) to the public regarding the affairs of all government entities, as well as access to the official acts of all public officials.

To implement freedom of information provisions the Illinois Commerce Commission supports the policy of providing "public access to the public records in the possession of the Commission while, at the same time, protecting legitimate privacy interests and maintaining administrative efficiency." It was the intent of the Illinois legislature in enacting this act to ensure

. . . that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of this Act. Such access is necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgements and monitoring government to ensure that it is being conducted in the public interest.

Public records are defined in most states as the portion of all documents, writing, letters, memoranda, or other written, printed, typed, copied, or developed

materials which contain public information as well as maps, books, tapes, photographs, or films. Public bodies are responsible for establishing procedures and guidelines to provide for access to examine the records and identify the subject matter, its custodian, and depository location. Such inspection procedures usually require that the request be made by mail, telephone, or in person to the custodian of the record; that inspection of the records be made during regular working hours; that original copies of the public records not be removed from the office; and that a nominal fee be charged for furnishing copies of the public records.

What records are excluded or exempt from open records requirements and are not to be made available for public inspection? As a general rule, exceptions are made for:

- Records that are classified as private or confidential; or,
- Records or information specifically precluded from disclosure by statute or Federal regulation.

Such documents may include reports of enforcement investigations, audits, trade secrets, personnel records, and inter/intra-agency telephone communications.

Government accountability to the public is enhanced when requests for information are met in a timely and forthright manner. Procedures which spell out who is responsible for coordinating responses to a request, who is responsible for supervising the program to ensure compliance, and who is responsible for processing appeals regarding denials of access to records will go a long way toward achieving this goal.

Alternative Dispute Resolution

Of the thirty-eight states responding to the survey for this manual, only four commented on alternative dispute resolution (ADR) statutes and only one provided documentation that ADR is embodied in statute. Most states indicated that ADR is still being studied and that it was a method of regulation possibly coming into its own. Illustrative comments were:

Administrative Procedures Act (APA) and Commission rules encourage settlement and informality. The Commission's experiments in the early 80's were squelched by legislative leaders as attempts to avoid APA process and as possible detriments to consumers.

(Washington Utilities & Transportation Commission)

It is the policy of the commission to encourage the resolution of disputes at the earliest appropriate time. Pre-hearing conferences are scheduled in most formal proceedings for this purpose. In addition, Consumer Services provides mediation services on an informal basis. The Commission has no formal written rules on ADR.

(Ohio Public Utilities Commission)

The Utility board has not adopted a policy regarding ADR. There are statutes and rules regarding stipulation and settlements.

(Iowa Utilities Board)

ADR is under study. There are abbreviated rate proceedings for small water companies and settlements in appropriate cases are encouraged.

(Maryland Public Service Commission)

Alternative dispute resolution is defined as a means or technique used to resolve differences in a voluntary manner not requiring a formal adjudicatory trial or contested hearing to reach a decision.

The traditional administrative adjudicatory process has become extremely cumbersome to some. Its formality provides for due process, but impedes timely decisions. "All too often, the regulatory process has served less to address the political and moral issues implicit in the proceedings, than to cloud them, less as a vehicle for consensus building than as a means for driving parties further apart."⁶³

ADR, through various techniques such as mediation, arbitration, fact finding, consensus-building, and neutral-expert evaluation, is being proven to be a valuable settlement tool that can facilitate equitable resolution in a timely and much more cost-effective manner.

In Hawaii, the following types of issues are referred to that state's Center for Alternative Dispute Resolution:

⁶³ Robert B. Reich, "Regulation by Confrontation," *Harvard Business Review*, (May/June 1981).

- Public disputes involving actual or threatened court action over the allocation or management of public resources;
- Complex litigation cases in which a regulatory or administrative agency has determined that the dispute involves multiple parties or formidable, technical, procedural or factual issues, or both;
- Policy roundtables in which the Center--at the request of executive, legislative, or judicial decision-makers--convenes and chairs advisory discussions of matters pertaining to standards or rules; and,
- Other cases directly referred by judges, legislators, agency heads, or appointed government officials.

ADR is searching for institutionalization and legitimacy. It is not now viewed as a replacement for mainline regulatory methods, but as a true alternative to the mechanisms and structures now utilized.

Some critics of ADR have charged, though, that with so much private settlement there will not be enough public debate.⁶⁴ Is that true? As long as the ADR process is melded with other legal principles that assure the public's right to know and participate in the regulatory debate and if it is used judiciously, probably not.

Administrative Procedures

The discussion in this section will center on administrative procedures currently in place in most states. Administrative procedures establish and control the format of regulation and provide the framework which allows the interface of the legal principles already discussed. Administrative procedures provide a guide that is applicable to all rulemaking, contested case proceedings, and suits for judicial review of actions by the various regulatory agencies.

⁶⁴ Carrie Menkel-Meadow, "Pursuing Settlement In An Adversary Culture: A Tale of Innovation Co-opted or the Law of ADR," *Florida State University Law Review* (V. 19, No. 1, 1991).

The purposes of the Iowa Administrative Procedures Act are among the following:

- To increase public accountability of administrative agencies;
- To simplify government by assuring a uniform minimum procedure to which all agencies will be held in the conduct of their most important functions;
- To increase public access to governmental information;
- To increase public participation in the formulation of administrative rules;
- To increase the fairness of agencies in their conduct of contested proceedings; and,
- To simplify the process of judicial review of agency action as well as increase its ease and availability.

The stated intent of these purposes, applicable across the country, is to strike a fair balance between these purposes and the need for efficient, economical and effective government administration. (Iowa Administrative Procedures Act Section 17.A.1)

Specifically, these rules of procedures outline the process by which regulatory agencies conduct their business; that is, what is allowable and what is not, and in what form? The process delineates in most cases the following procedural requirements:

- Application and docketing;
- Time limits for processing applications;
- Formal hearings procedures; notice, pre-hearing conference, and so on;
- Pleadings, motions, briefs;
- Interventions;
- Discovery, subpoenas, and protective orders.

Most states operate under rules of civil procedure. Technical rules of evidence apply in some cases, although all parties to a contested proceeding must be given a reasonable opportunity to be heard and to present views without partiality. In New York, administrative hearings do not apply strict rules of evidence. The emphasis is on obtaining as complete a record as possible upon which the decision-maker will base his or her decision. Matters such as relevancy and materiality are, of course,

considered when establishing procedures for admitting evidence. An example would be establishing a foundation for admission of exhibits.

"Under our system of government the exercise of government power will not be tolerated unless it is subjected to procedural safeguards."⁶⁵ All federal and state agencies make a great number of decisions each year. The Administrative Procedures Act controls and facilitates the process with numerous safeguards in hand. Unfortunately it can sometimes function as an impediment and barrier to effective decision-making. There is a tendency among many regulatory agencies to rely too much on the adjudicatory process and not pay enough attention to the substantive issues and opportunities for increased exchange of information. If a consensus-building approach can be accomplished, it is possible that the obstacles to effective decision-making could be overcome.

Enforcement

What enforcement procedures and/or penalties are applicable for violations of the various codes, standards, statutory acts, and rules that have been discussed?

Indiana: All possible violations are brought to the attention of the State Ethics Commission.

New York: Violations of the conflict of interest and code of conduct laws result in a class "A" misdemeanor. Such misdemeanors involve a sentence of imprisonment; the sentence shall be of definite time not to exceed one year.

South Dakota: Under certain circumstances the Governor may remove an elected Commissioner from office. The voters also exercise "enforcement."

Maryland: Misdemeanor conviction for violation of statute can occur. Commission employees can also lose their jobs.

Until twenty years ago few laws governed the conduct of public officials. Now more are prescribed. Public values have changed and the opinions people have of

⁶⁵ Louis L. Jaffe, *Judicial Control of Administrative Actions* (Little, Brown, & Company, 1965), 18.

those officials have become much more jaundiced. More and more restrictions are being placed on the actions of public officials every day. Special state ethics commissions among other governmental watchdog authorities are being established to monitor the process and individuals and to determine who and what offenses to prosecute. What once was tolerated may now be an actionable offense. The public has a heightened sense of ethical sensitivity, and it is incumbent on all public officials, (most specifically those in the regulatory community) to be aware of and comply with all the legal standards in force.

Conclusion

What are the basic goals and objectives of the legal principles that have been discussed? Why are they important and necessary to the regulatory process?

As a reaction to the power and bureaucracy that has been created by regulatory agencies, many demands for deregulation are heard. In spite of this cry, for the foreseeable future the role of the regulator will continue to be that of balancing the public's interest with an individual's right to conduct his or her business in such a way as to make a reasonable profit.

This simple statement belies the complexity of the task. Hence, it is the goal of the regulatory commission to perform this balancing in a professional, impartial, open, and honest manner. The best way for executive directors to assist their commissioners in this complex process is to promote the adoption of reasonable and understandable "guidelines." An appropriate comment from the Iowa commission stated that:

when dealing with an administrative agency there is a fine line between administrative and legal issues. Judgement and sound legal advice is extremely important in the conduct of daily business. It is normally the technical staff that encounters difficulty in this area. The development of good working relationships between the technical and legal staff are critical to the administration of an agency.⁶⁶

⁶⁶ Raymond K. Vawter, Jr., Executive Secretary, Iowa Public Utilities Board.

Slow and unwieldy though the process may be, this "formalization" allows all interested persons, no matter what their economic status or political power, to know what is going on and to some extent participate in the process.

More problems are created in Commissions through bad judgement or ignorance than by intentional malfeasance. Open meetings laws, sunshine acts, codes of conduct, conflict of interest reporting, prohibitions against ex-parte communications and the administrative process itself set out the rules of the game for everyone: commissioners, staff, regulated industries, and the public.

Although the rules of the game are clear, they in no way lessen the necessity for an executive director to exercise sometimes super-human judgement and tact in enforcing these laws.

CHAPTER 7

THE EXECUTIVE FUNCTION

Wynn E. Arnold
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As the first crowds of the French Revolution rushed past, a man in a bar was asked where all the people were going. The man responded, "I don't know, but I'm off to catch up to them for I am their leader."

So it is with the executive function of public utility commissions. The substantive aspects of regulation have evolved so rapidly over the last decade that commission administration has frequently been left in the dust trying to catch up.

Adapting commission administration to the vast changes in regulation has not been easy nor in many cases has it been accomplished. Commissioners who were part-time fifteen years ago are now full-time. AT&T's divestiture and other manifestations of increasing competition have emerged in what had previously been considered natural monopolies. Economists and lawyers have invaded the formerly exclusive turf of engineers and accountants. Demand-side management in the context of integrated resource planning and escalating environmental and health concerns have changed the way utilities and commissions view their functions. There has been an explosive growth in public interest and participation in regulatory proceedings. Advances in technology have created planning nightmares as well as opportunities, while increasing the sophistication of computer-age practice before commissions. Commissions, previously restricted to retroactive prudency reviews, now find themselves participating to some extent as partners with the utilities they regulate in various planning functions such as siting of major facilities and projecting how demand for utility service can be met consistent with least-cost planning and other public policy goals.

These are among the factors forcing a reexamination of our needs regarding staffing, agency organization, data processing requirements, consultants, statutory authorizations, and other basic aspects of our operations.

Who's in Charge Here? The Executive as Policy Maker

Many an anguished chairman has argued with his or her fellow commissioners over the extent of their respective authority. Some executive directors wonder for whom they work--for all the commissioners as a group or for the chairman. Staffers have been heard muttering as they work long hours to meet the cumulative demands of case deadlines, their supervisor, the various commissioners who approached them for special projects, the executive director, and the chairman. Line supervisors lament that their staff has so much work assigned from higher up that divisional priorities get sidelined.

The legislature thinks it's the boss by virtue of setting the commission's statutory framework. The governor, other politicians or the electorate appoint commissioners for varying terms of years. A chairperson is named, frequently by the governor, and both think they are the boss. Then, on the seventh day, the role of the executive director⁶⁷ is defined. But is it? As the legislature changes the laws affecting the commission, and as commissioners and chairmen come and go, the role of the executive director changes.

Many commissions over the last few years have sought to amend the laws defining their administrative structure to clarify the respective administrative roles of commissioners in relation to the chairman, the executive director, and other staff administrators.⁶⁸ In New Hampshire, for example, the chairman's authority was not differentiated from the other two commissioners by statute until 1990 when the chairman was specified as the agency's chief administrative officer.⁶⁹ This clarified staff administrative lines, with the executive director reporting to the chairman and

⁶⁷ The chief staff administrator is called by various names in addition to executive director, including secretary, executive secretary, director and others. For convenience, the position will be referred to here as executive director.

⁶⁸ Pertinent results of a telephone survey of 48 commissions regarding commission organization, conducted in May, 1989 by the Rhode Island Division of Public Utilities are summarized in Appendix B to this article. See also Footnote 70.

⁶⁹ N.H. RSA 363:4-a. All three commissioners share authority for hiring department heads and attorneys, for budget formulation, and for rulemaking.

department heads reporting to the executive director. This facilitated day-to-day agency administration while preserving for the full commission those functions deemed most important to them.

Streamlining agency administration while preserving the needed scope of authority for commissioners is no easy task. In an era of scarce resources, however, the payback in administrative efficiency can be well worth the effort. Specifying and enforcing administrative lines puts personnel and budget management in the realm of possibility, prevents employees from "shopping" for an administrative decision they like, provides supervisors with the authority needed to perform the tasks they are held accountable for, and helps reduce the effects of office politics on the administrative process.

Top Down (Dictatorship) Versus Bottom Up (Anarchy) Management

Is perestroika the name of the game or should the hardliners win out? On the one hand, commissioners, whether elected or appointed, have policy and regulatory objectives to advance and are obligated to exert leadership and decisional authority to ensure that the job gets done. Being the least efficient type of government, democracy often tempts staff administrators and commissioners to dictate agency objectives and compel staff to adapt and obey.

On the other hand, staff experts work in the trenches, having immense knowledge of regulatory and administrative matters that could, if incorporated into the policy-making process, enhance the achievement of commission objectives. Staff members know where they feel pinched for resources. They observe administrative procedures that either help or hinder them in accomplishing their jobs and frequently understand better than the policy makers technical matters and policy developments that are useful, if not essential, to effective administration.

Different commissions meld the two approaches--commission directives versus staff input--into their policy development and budgetary process in many different ways. Some increasingly common practices include:

1. Annual retreats by commissioners and department/division heads to review the past year, plan for the next budget and discuss policy and administrative issues. The chairman and commissioners, of course, retain ultimate decision-making authority but benefit from broader knowledge of agency operations and from using staff as a "reality check" for their ideas.
2. Regular department/division head meetings (generally without commissioners present). A few commissions, such as New Hampshire's, have weekly department head meetings while other staff meets less often. Weekly meetings are most useful in commissions organized by discipline rather than by utility type.⁷⁰ Most commissions⁷¹ are organized by discipline with all engineers in an Engineering Department, accountants in a Finance Department, and so on. Typically, each department assigns personnel to case teams in utility dockets. Since case team members often lack a common supervisor below executive director level, case coordination and team supervision can be difficult. Weekly department head meetings can help achieve effective interdepartmental coordination and cooperation.⁷²

Periodic department head meetings with the executive director during the year can be valuable for any commission since they provide a regular flow of essential information, such as how well agency resources are being used, where bottlenecks have developed, what administrative or policy changes

⁷⁰ For sample of commission organizational charts, refer to the NARUC 1990 Annual Reports on Utility and Carrier Regulation and to subsequent reports.

⁷¹ Of the 24 commissions responding to a recent survey by the Subcommittee on Executive Directors, 14 are organized according to discipline, with departments such as Engineering, Economics, Finance, and Legal. These include Arkansas, Arizona, Delaware, the District of Columbia, Hawaii, Idaho, Illinois, Maine, Maryland, Nevada, New Hampshire, Pennsylvania, Rhode Island, and Tennessee. The ten commissions whose organization reflects utility types include California, Connecticut, Florida, Mississippi, New York, North Dakota, Ohio, South Carolina, Texas, and Utah. Iowa indicated that it has an organization reflecting both approaches. Delaware is the only commission with part-time commissioners.

⁷² Computers are proliferating at commissions across the country as they are identified as an invaluable facilitator of case management and office administration. Paul Curl's article elsewhere in this manual shows how.

might be appropriate, and what the agenda for the next annual retreat should include. They also tend to enhance morale and teamwork by making staff feel, with justification, that their advice is valued and is being incorporated into the commission's administrative decision-making process.

3. Occasional general staff meetings.
4. Regular staff meetings within each department/division.
5. Other forms of strategic planning.
6. Soliciting and responding to staff recommendations.

Such strategic and inclusive management practices can produce more realistic and effective policy, more efficient administration, better morale, and increased productivity over more dictatorial administrative approaches. On one hand, commissioners and executive directors benefit from an opportunity to adapt their goals to the practical and substantive advice staff has to offer, thereby facilitating implementation of the goals which are ultimately set. On the other hand, even if their views are not adopted, staff feels that the policy makers welcome and value their input and care about the effect proposed policy changes would have on limited staff resources.

Essentials of Policy

Agency policy should be designed to reflect the current and projected needs of the commission at a given time. The interactive approach discussed above results in policies which adapt and grow over time as the agency's needs change. It is not a one-shot deal which, once written, is good for all time. The process is continuing, year-round.

The power behind good policy is the validity of its rationale, how well it is framed to accomplish its purpose, its fairness, and how it is enforced. The ongoing involvement of staff in the process of policy formulation goes far toward achieving these goals. Outmoded policies are replaced with currently useful policies. The process itself tends to win the support of staff and educates them of the results.

The resultant policy is also easier to defend and explain. In New Hampshire, for example, budget development, legislative initiatives, and major personnel and administrative policy development involve ongoing opportunities for staff input. In the past biennium (FY's 1990-91), several new positions, resulting in a nearly 20 percent increase in staff size, were authorized by the legislature despite extraordinarily hard economic times in the state, thanks in part to extensive feedback from staff on what they felt was needed to do their jobs better.

A nearly universal lament is the way cumbersome state legislative, budgeting, and personnel systems impede implementation of changes seen as necessary by commissions. During recessionary times, legislatures across the country typically cut commission budgets, even for agencies which assess their costs against the utilities they regulate. The legislators' rationale seems to be a desire to treat all agencies alike for reasons of fairness. Strategic planning and other interactive administrative approaches have been cited by various states as providing more persuasive documentation in support of requested change.

Some of the more common recommendations regarding policy formulation from executive directors⁷³ include:

1. Policy should address ethical and due process guidelines, including *ex parte* communications. Staff should not have to guess about what ethical and procedural standards are expected of them, yet most commissions are reluctant to develop and enforce appropriate guidelines.
2. Policy should be clearly communicated and easy to understand. Once policy is formulated, memories often fade and policies can be interpreted and enforced differently within the same agency. In addition to publishing policies, other forms of dissemination such as postings, electronic mail and bulletin boards, periodic memoranda, and discussions with employees at staff meetings and during performance evaluations are often helpful.

⁷³ Based in part on a recent survey of twenty-four commissions conducted by the NARUC Subcommittee on Executive Directors.

3. Policies should be enforced. It is difficult for staff or the public to respect rules which agency administrators do not take seriously. If a policy is outmoded or inappropriate to the way the agency does business, the policy should be abolished or changed. If the policy is appropriate, it certainly cannot accomplish its purpose if it is not enforced. As simple as this sounds, poor enforcement of essential policies is frequently cited by executive directors as a reason for administrative inefficiencies, both in the hearing process and in personnel management.
4. The purpose of the agency and of each subdivision should be clearly defined. It is hard to lead when you do not know where you are going. Agency and divisional goals evolve, making it necessary to periodically reexamine how those goals are reflected in official policy declarations.
5. Policy should tie together:
 - a. How the agency manages outside forces which affect the agency, such as the legislature, the governor's office, public interest groups, lobbyists, intervenors, and the federal government.
 - b. Management of internal agency resources, including personnel, finances, equipment, and so on, and how they are applied to accomplish the agency's goals.
 - c. Definition of agency goals.

Ulcers abound because of unclear, conflicting, or ineffective authority within an agency relating to these three areas of management. Clear assignments of responsibility and respect of lines of authority by commissioners and staff alike can facilitate workload management, allow efficient implementation of assignments, boost supervisory morale, and otherwise prove to be more effective than Maalox in combatting indigestion.

Upper-level administrators, including executive directors, chairmen, and commissioners frequently, albeit unwittingly, disrupt carefully planned and heavy staff workloads by making special assignments directly to staffers. Intermediate supervisors left out of the loop can find their assignments to staff, also essential to meeting procedural deadlines and other business essential to the agency, are not accomplished

on schedule. These tasks may, and often are, more significant to the commission than the superseding assignment was.

The simple act of channelling directives through intermediate supervisors or otherwise keeping them informed of requests made of staff allows supervisors a timely opportunity to reassign tasks, reset priorities, or provide feedback to the requesting official (perhaps influencing his or her perceived need for the information). Thus, the requesting official can obtain required information without unanticipated disruption of other important assignments.

Translating Vision into Reality

Knowing where you want to go is one thing. Applying available resources to accomplish the journey is another. Our needs and priorities change over time, yet governmental agencies cannot easily amend their authorizing legislation, modify the composition of their work forces, redefine their jobs, and adjust their budgets.

Budget periods run from one to two years with little opportunity for interim adjustments. The legislative process is cumbersome and often hostile to budget requests and statutory changes. Legislators, governors, utilities, and public interest groups all have their own ideas about how regulatory staff should be doing its jobs. Personnel rules and regulations frequently make it difficult to formulate position descriptions and job specifications the way we would like to see them. Adjusting salaries to appropriate levels to facilitate recruitment and to retain the best employees is a pipedream for many commissions. How can we change direction and shift priorities effectively given these obstacles?

There are no easy answers to this recurring problem, but some commissions have found the following approaches helpful:

1. Strategic planning, including the interactive (bottom-up) form of management described above helps to identify and document agency needs. Encouraging open communication between supervisors and subordinates, holding regular department head and commission meetings as well as other forms of structured intra-agency dialogue help define problem areas and

agency needs accurately and in a way that employees and commissioners can understand and articulate. This in turn makes it easier to persuade the legislature, governor, and the public of the merit of a position.

2. Commissions should ensure that agency goals and policies are consistent with divisional goals, position descriptions, and job specifications. Changing demands on a commission do not automatically result in a commensurate change in staff expertise and resources. Outmoded position descriptions based on job specifications designed to meet yesterday's needs all too often cling to life long after commission needs evolve beyond the ability of the position descriptions (and existing employees who qualify under the terms of the descriptions) to meet those needs.

A growing number of commissions are finding they can no longer support such inefficiencies. Some, such as New York, have hired outside consultants to study their structure and organization. Others, such as Wisconsin, have conducted in-house reviews to synchronize their administration with the regulatory changes they have experienced. Working with the assistance of their state personnel departments and fiscal authorities has made it possible to add new positions while phasing out antiquated positions, thereby softening the budget impact.

Those who seek new staff positions while resisting the abolition of outmoded positions are missing an opportunity to strengthen our agencies and to make the proposed changes more palatable to the political powers that must approve our budgets. Frequently, as computerization expands, fewer secretaries and clerical staff are needed. Growth in some areas, such as in economics departments, could reflect shifts in responsibility from other areas, such as engineering or finance, where position modifications or cutbacks might be advisable.

Thus, as an agency staff grows in new directions, it can be trimmed of less productive positions (a healthy occurrence in itself) with the deleted positions simultaneously used as a quid pro quo to minimize the budget effect of the new positions. It may even be possible, as in New Hampshire

in recent years, to reclassify an outmoded position or swap it for a more useful position of similar grade level without waiting for the next budget submission.

The hardest part of accomplishing change is frequently recognizing and admitting that certain positions that have been around for years have become a drag on the agency. An outside consultant could help overcome this obstacle and provide specialized expertise unavailable to most commissions. Use of a consultant also could conserve use of scarce staff resources. However, for a variety of reasons, consultants are rarely used by commissions in this regard. Inability to fund consultants is one oft-cited reason. A more common reason perhaps is that commissions fear losing control of agency direction if an independent consultant were to be hired. When, for whatever reason, consultants are not utilized, the year-round interactive planning strategy outlined above can be effective on its own in the longer term.

3. Performance evaluations should be implemented. Once valid agency and divisional goals are established and positions are tailored to accomplish those goals, the next logical step is to ensure that staff performance is measured against those goals as well as the specific job description pertaining to each employee. Annual performance evaluations alone are far from sufficient in this regard because they are not conducive to effective supervisor/subordinate feedback throughout the year. They are perceived as more punitive than constructive and memories fade between the time an event occurs and the time of the next evaluation. Continuous, year-round, performance evaluation processes are growing in popularity because they work better. Although they sound intimidating, they are not all that burdensome given the distinct advantages. Different management consultants and personnel specialists favor different approaches, but many seem to advocate the same basic ingredients:
 - a. Mandatory training for all supervisors on how to conduct performance evaluations, including listening skills, appreciation for differences in

personal work styles, and the importance of providing employees with prompt feedback on all performance which either substantially exceeds or falls below expectations.

- b. Evaluation of supervisors on how well they evaluate the performance of their subordinates, including how well they request and take to heart employee feedback regarding what the *supervisor* can do differently to enhance the employee's performance.
- c. Maintaining notes on performance-related discussions throughout the year for each subordinate. At the end of the year, the supervisor summarizes these discussions in an annual performance evaluation. The evaluation, being a summary of past communications, contains no surprises and becomes a vehicle for constructive growth for both the supervisor and the employee.

This approach is time-consuming and runs counter to the traditional management perception that the boss is always right. It pays big dividends, however, in enhancing constructive communication, allowing supervisor and employee alike to regularly "get back on course," focusing on employee growth rather than on documenting failure, enhancing morale, and providing continuous feedback to agency executives about developing problems and needs.

The status quo is a formidable opponent, especially for governmental agencies. The suggested approaches discussed above are but a few of the ways some commissions have found to translate vision into reality. They all emphasize the importance of communication and inclusive decision making. And they describe continuous, rather than sporadic, processes characteristic more of day-to-day management styles and attitudes than of occasional events and tactics.

Things Commissioners and Executive Directors Do (or Don't Do) That Make (or Break) Staff's Day

Various executive directors have submitted (anonymously) various topics that recur in discussions between staff and commissioners regarding the effective administration of their respective commissions. The more common items, listed

below, may be useful as discussion topics at staff meetings, retreats, seminars, and so on:

1. Are agency goals clearly identified and articulated?
2. Is agency administration consistent in its practices and procedures?
3. Are administrative lines clearly delineated (chairman, commissioners, executive director, department heads, case teams, and so on)?
4. Do commissioners use enough travel/education funds to allow them to keep up with the cutting edge of regulation?
5. Is staff independence ensured even though they are ultimately responsible to the commissioners? How does the commission balance the occasionally conflicting staff role as advisors to the commission versus being advocates before the commission?
6. How does the commission manage the influence of outside forces?
 - a. Politics--governor, legislature, attorney general, consumer groups, lobbyists.
 - b. Press.
 - c. Elected versus appointed commissioners.
7. What does the commission do to prevent *ex parte* communications with the staff, utilities, and other parties? What does the commission do to encourage public input on utility matters?
8. Does the staff perceive that commission administrators have confidence in them? When commissioners do not agree with the staff:
 - a. Does staff exhibit resentment?
 - b. Is it reasonable for staff to expect to "win" all of the time? Most of the time?
9. Does the commission exhibit unacceptable biases in favor of the regulated utility? In favor of utility customers?
10. To what extent, if at all, is it appropriate for the commission to direct staff on when to file its testimony?

11. How does the commission manage and assign staff responsibilities to the individual commissioners? Some commissions, regarding split decisions, split staff responsibilities to create conflicts or strain resources.
12. What can be done to improve commission adaptation to changing demands of regulation?
13. How well does the commission integrate changes in policy direction commensurate with changes in staffing and resources?
14. How well does the commission coordinate its work with other governmental units?
15. How does the commission integrate changing policy direction into the budget process?
16. How do supervisors at the commission evaluate the performance of subordinates and manage interrelationships between themselves and subordinates to maximize performance and professional growth while meeting the changing needs of the agency?
 - a. Do agency needs and goals define job criteria?
 - b. Do job criteria form the basis of performance evaluations?
 - c. Is the evaluation process continuous or periodic?
 - d. Is the process construed by employees and supervisors as being positive and constructive?
17. Is the agency structure appropriate to its needs?
18. Does the commission appropriately abolish or redefine obsolete positions and programs?
19. Does the agency use computers appropriately to assist in agency administration?⁷⁴
20. How does the commission promote and facilitate ethical behavior among commissioners and staff?

⁷⁴ See Paul Curl's article elsewhere in this manual.

21. What role does training and professional development play in adapting the commission to a changing environment and to enhance employee performance?

22. How do commission employees feel about their jobs? What can be done on an ongoing basis to improve employee morale and motivation?

Asking the right questions is a prerequisite to getting the right answers. By listening and responding appropriately, the next time questions are asked the answers could be a source of pride, allowing executive directors to face the utilities and the public knowing they are doing the best they can with what they have. There are few places an executive director can make this more evident than in the hearing room.

Hearing Process

Few if any studies address the wide variance in how commissions structure their respective hearing processes and how they relate to staff functions. In some states, such as Vermont and New Mexico, regulatory functions are divided into two distinct agencies, one adjudicative and the other investigative with more of an advocacy function.

This arrangement provides structural protection against *ex parte*⁷⁵ communications between the staff who develop and present administrative law cases and the commissioners who adjudicate them. The major drawbacks to this approach are cost and available staffing. In the traditional combined commission, the adjudicators can obtain advice and assistance from staff experts who can also serve as

⁷⁵ The definition of "*ex parte* communication" varies among jurisdictions. The Federal APA defines it as "...an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding..." APA S 51 (14). The APA restrictions regarding *ex parte* communications apply only to "on the record" proceedings. APA S 553, Davis, Administration Law Treatise (2nd Ed 1978, 1 K.C. s 6:18).

The primary reasons for prohibiting *ex parte* communications are so that: (a) other parties may have a chance to reply; and (b) a reviewing court may know what the agency has considered. ID.

investigators and witnesses in utility hearings before the agency.⁷⁶ In a bifurcated commission, the adjudicative commissioners still need sufficient assistants and advisors to do their jobs properly. Simply dividing staff that would be sufficient for a unified commission probably would leave at least one of the two agencies shortchanged and having to remain interdependent to some extent. Thus, bifurcation carries a cost most commissions have not been willing to bear.

Unified commissions, on the other hand, encounter more difficulties in preventing *ex parte* communications. It is tempting to call a subordinate who has testified into your office to explain in private what the testimony meant. However, had other parties to the proceeding had the same opportunity to hear the explanation, they may have offered substantive cross-examination or rebuttal testimony that would give the adjudicator a fairer, more balanced understanding of the matter at hand.

To safeguard against such communications, some commissions (Maine is one) designate particular staff persons in each case as either commission advisers or staff advocates. Commission advisers can discuss the substance of the case with the adjudicators (whether they are hearings examiners, administrative law judges or commissioners), but not with the parties. Staff advocates are free to discuss the substance of the case with the other parties but not with the adjudicators. As simple and attractive an option as this arrangement appears to be, it presupposes adequate staffing to duplicate staffing on each case.

This is not a reality for many commissions. Staffing levels are frequently marginal considering the heavy workloads at many commissions. Many smaller commissions, New Hampshire included, do not have enough duplication of staff expertise to be able to provide distinct advisory and hearing room staffing in all cases while at the same time providing comprehensive support for both functions. New Hampshire's solution, promulgated as a rule after public hearings, has remained controversial but effective as a way of serving both staff and commissioners while

⁷⁶ This dual role for staff at times extends in many commissions to presentation of a case and advising the adjudication regarding the same case.

providing the parties with an opportunity to protect their due process interests.⁷⁷ A staff person can present testimony or otherwise participate in the presentation of an adjudicative case and nonetheless provide procedural or technical assistance to the commissioners unless, on motion of a party, he or she is designated a staff advocate (and thus barred from *ex parte* communications with the commission) or an advisor (barred from *ex parte* communications with the parties). Despite the broad discretion allowed under the rule, the commission applies it narrowly to ensure fairness. The rule has been appealed twice since it took effect in November 1984, and was upheld by the New Hampshire Supreme Court.⁷⁸

Procedural Rules--Fact or Fiction?

The two most common questions arising about procedural rules governing the investigative and hearing processes are what the rules should be and how strictly they should be enforced. Procedural rules vary substantially from jurisdiction to jurisdiction, with some commissions having only brief and general guidelines while others, such as the Federal Energy Regulatory Commission, have detailed and extensive rules.

Few assets are more valuable than procedural rules which are clearly expressed, easy to understand and implement, fair, and, perhaps most importantly, promote efficient and expeditious proceedings. Nonuniform and incomplete filings,

⁷⁷ For the text of this rule, NHPUC Admin. Rule Puc 203.15, see Appendix A.

⁷⁸ Appeal of Atlantic Connections, LTD., No. 91-042, Slip Op. (N.H. Sup. Ct. May 5, 1992). Held that staff attorneys who presented witnesses at hearing can assist commissioners in drafting the written order after the commission has deliberated and decided the case without violating the *ex parte* prohibitions of the Administrative Procedures Act. Staff attorneys in this instance were deemed to be personal assistants to the commissioners merely reducing the commission's decision to writing. Also see, Appeal of the Consumer Advocate (NHPUC), 134 NH 651 at 659-660 (October 4, 1991) which holds that where investigative, accusative and adjudicative functions are commingled in a single individual, the appearance of prejudice alone could render the adjudication unconstitutional. When commingled within an administrative agency, however, actual bias must be shown.

extraneous and repetitive information, petitions which are continuously amended during the proceedings, free-for-alls in the hearing room, nonresponsive answers to discovery requests or cross-examination, inadequate preparation for hearings, and inconsistent rulings on procedural matters are among the more common and avoidable plagues infecting the regulatory process.

The first step in curing such infections is to develop rules, or revise existing rules, to address these and other identified obstacles to efficient operation. Rules of other federal and state commissions can provide useful models. Some commissions have borrowed from rules promulgated by trial courts regarding discovery, transcripts, pleadings, time frames, filing formats, and other procedural matters. Perhaps the richest resource can be tapped by including appropriate staff (as discussed above regarding inclusive management decision-making generally) as well as other affected parties in the rulemaking process thereby enhancing the commission's ability to identify its needs and to frame rules which effectively address those needs. Most jurisdictions have statutorily defined rulemaking procedures which require an opportunity for public input conducive to this kind of inclusive process.

An alternative to rulemaking is a procedural order issued by the presiding officer at the start of or during course of the hearings. Such orders can limit the length of briefs, arguments, and interrogations of witnesses; establish timeframes and parameters for discovery; define the scope of the proceedings; and set forth other procedural guidelines important to the presiding officer.

Having the right rules and procedural orders is meaningless, however, if they are not enforced. If the commission does not respect its rules and orders enough to enforce them, no one else can be expected to respect or abide by them either.

One axiom often cited and followed by administrative law judges has demolished the effectiveness of more procedural rules and orders than any other. Since the rules of evidence generally do not apply to administrative proceedings in most jurisdictions, many presiding officers live by the credo: "You can't get overturned on appeal by what you let into the record, only by what you don't let in." There is some truth to this since immaterial, irrelevant, and otherwise useless information cluttering the record generally does not, on its own, create grounds for

appeal. Excluding evidence, on the other hand, raises the specter of due process violations and other launching pads for eager appellants aggrieved by the final decision to propel the decision into higher review.

This fear of reversal compels more than a few presiding officers to be lax about enforcing applicable rules and procedural guidelines, sacrificing administrative efficiency for appellate immunity. In recent years, with increasingly burdensome case loads, more commissions are recognizing the necessity for insisting on more efficiently run proceedings. One of the more infamous FERC administrative law judges regularly reduces pompous and loquacious witnesses to docile and laconic victims of cross-examination with what is commonly referred to as his "this is not a graduate seminar" speech. When a witness launches into an expansive answer, especially to a question calling for a "yes" or "no" response, the judge chastises the witness to answer the questions directly and succinctly. Although lawyers face this judge with some trepidation because he allows no nonsense and expects them to know what they are doing (disturbing prospects for many attorneys), they also respect him for his ability to be fair while demanding efficient and focused case presentations.

Merely announcing that this is not a graduate seminar will not magically transform the declarant into a model of judicial excellence. However, some thought, research, and dialogue with interested parties can usually produce enforceable guidelines that benefit all concerned. After all, it is hardly offensive to due process to expect the parties to take the proceedings seriously, to be prepared, to respect the rules and the forum, to present their cases efficiently and competently, and to avoid actions designed only to confuse and delay the proceedings. Old habits are hard to break, however. Being timid about taking control of the proceedings won't help to break them.

There are various alternatives to Dale Carnegie courses for building the confidence and skill necessary to take charge of the hearing room. The National Judicial College (with campuses located in Las Vegas and Reno) offers fine and affordable short courses on Administrative Law, Managing complex Litigation, and

other related topics.⁷⁹ The NARUC's Education Subcommittee⁸⁰ is another resource for identifying educational opportunities relating to your particular needs.

Conclusion

As with the leader in the French Revolution, commission executives have grown accustomed to playing catch-up. Sorting out administrative responsibilities, finding the right blend of top-down (dictatorial) and bottom-up (anarchy) management and establishing appropriate policies and procedures can set the framework for translating vision into reality. Continuing introspection then can help commission administration keep pace with substantive changes affecting the agency over time. Finally, by taking ourselves seriously, by respecting and enforcing our own rules and procedures, others are likely to follow. Then it would be they who are trying to catch up.

⁷⁹ To obtain a current catalogue of course offerings, write to: The National Judicial College, Judicial College Building, University of Nevada, Reno, Nevada 89557.

⁸⁰ To ask questions of the NARUC Staff Subcommittee on Education, write to: Robert E. Smith, Chairman, Staff Subcommittee on Education, % Idaho Public Utilities Commission, Statehouse, Boise, Idaho 83720.

N.H. Admin. Code Puc 203.15, Participation by Staff

(a) Definitions. For the purposes of this section:

- (1) "Decisional employee" means any commissioner, the presiding officer or any other person so designated under subsection (b)(2) of this section as a decisional employee in an adjudicative proceeding.
- (2) "Party" means an applicant, respondent, petitioner, defendant, complainant, and intervenor in an adjudicative proceeding, and any agent or other person acting on behalf of the above. Such term does not include the staff of the commission.
- (3) "Staff advocate" means any person designated under subsection (b)(2) of this section as a staff advocate in an adjudicative proceeding.

(b) General provisions.

(1) Exclusion.

a. Exclusion for Matters Not Related to Merits. For purposes of this section, the term "*ex parte* communication" does not include a communication with respect to a proceeding if such communication:

1. is a status report or request for a status report,
2. relates to a matter of procedure,
3. is made in the course of another proceeding of commission to which it primarily relates, and is on the public record.

b. Other exclusions. This section does not apply to any communication:

1. which is specifically authorized by law,
2. which is one all parties agree in writing or on the record may be made without regard to the applicable provisions of this section in the case of an adjudicative proceeding.

(2) Designation of employees. Any employee (or class of employees) may be designated for purposes of subsection (a)(1) or (a)(3) by the commission as a staff advocate or decisional employee. Unless the commission provides otherwise, any such designation shall only be applicable to a specified adjudicative proceeding. All such designations shall be available

to the public in the office of the executive director and secretary on a list containing all current designations.

a. The commission may designate an employee (or class of employees) as a staff advocate when the employee (or class of employees) will participate in an adjudicative proceeding in a way which makes likely a commitment to a particular result. This subsection is not applicable to all staff members who serve as witnesses at a hearing or provide expert advice to staff advocates.

b. The commission may designate an employee (or class of employees) as decisional employees when the employee (or class of employees) will be providing advice as a personal assistant to the commission or the presiding officer and when the employee (or class of employees) should not engage in *ex parte* communications.

(3) General counsel opinion. Any employee of the commission or person may apply to the general counsel for an opinion as to whether any provision of this section is applicable to a communication or class of communications.

(4) Phased or segmented proceedings. If a proceeding is phased or segmented so that one or more parts of the proceeding constitute nonadjudicative processes and one or more parts constitute adjudicative proceedings, the commission may by order provide that each phase or segment shall constitute a separate proceeding for purposes of this section.

(c) *Ex parte* communications in adjudicative proceedings. Unless required for the disposition of *ex parte* matters authorized by law, decisional employees assigned to render a decision or to make findings of fact and conclusions of law in a contested case, or who assist the presiding officer in such matters, shall not communicate, directly or indirectly, in connection with any issue before the commission, with any person or party, except upon notice and opportunity for all parties to participate. This notice requirement shall not apply to:

(1) Communications between or among commission personnel, or between the commission and legal counsel; or

(2) Communications between or among the decisional employee and one or more personal assistants.

(d) Separation of functions. No employee designated as staff advocate in an adjudicative proceeding may advise any decisional employee designated as such in the same proceeding, with respect to matters at issue in the proceeding. The term "advise" means to discuss, converse, or communicate regarding the

evidence, findings, conclusions or decision in the adjudicative proceeding other than as a participant in the course of public proceedings.

Source. #2912, eff 11-26-84;
ss by #4998, eff 11-26-90

TABLE 1

Public Utility Commission Organization		
Who has primary responsibility for the day-to-day administration of the commission?		
	<u>Number of States</u>	<u>% of all States (50)</u>
Executive Director	31	62%
Chairman	15	30%
Line functions separate	4	8%

TABLE 2

Public Utility Organizations in States with fewer than 1 million population		
Day-to-Day Administrator		
	<u>Number of States</u>	<u>% of all States (50)</u>
Executive Director	8	67%
Chairman	3	25%
Line functions separate	1	8%

(Alaska, Delaware, Hawaii, Idaho, Nevada, New Hampshire, Montana, N. Dakota, Rhode Island, S. Dakota, Vermont, and Wyoming)

TABLE 3

Public Utility Day-to-Day Administrator in States where PUCs have fewer than 100 employees		
	<u>Number of States</u>	<u>% of all States (50)</u>
Executive Director	10	62.5%
Chairman	4	25%
Line functions separate*	1	12.5%

(Alaska, Colorado, Delaware, Idaho, Maine, Minnesota, Montana, Nebraska, Nevada, New Mexico, New Hampshire, N. Dakota, Rhode Island, S. Dakota, Vermont, and Wyoming)

*Utah, a state with a split system, has 101 employees.

TABLE 4

The Person to Whom the Day-to-Day Administrator Reports		
	<u>Number of States</u>	<u>% of all States (50)</u>
Commission as a whole	28	61%
Chairman only	3	7%
Commission/Chairman	8	17%
Chairman is the day-to-day administrator	1	2%
Information not available	6	13%

Prepared by Rhode Island Division of Public Utilities (5/15/89)
 For more information, contact Douglas Hartley (401)277-3500

CHAPTER 8

ORGANIZATIONAL ASSESSMENT AND CHANGE AT THE NEW YORK PUBLIC SERVICE COMMISSION: A PARADIGM FOR ADMINISTRATORS

The Honorable Lisa Rosenblum
Deputy Chairman
New York Public Service Commission

Creating change in organizations is one of the most difficult challenges faced by commission administrators, and when the goal is comprehensive, organization-wide change, the process becomes particularly demanding and time consuming. One model for creating organizational change that may be of use to other state commissions is the use of formal organizational self-assessment with the assistance of an outside consultant prior to the implementation of comprehensive changes as applied recently at the New York Public Service Commission.

This chapter describes the various "change" initiatives that took place prior to the assessment study, including the development of the Agency's mission statement and the organizational assessment, and discusses the objectives of the study, the process used, the report's findings and recommendations, and the implementation strategy that is being developed. Finally, I will reflect on the progress made, the challenges ahead and some of the lessons we have learned.

Background

The New York State Department of Public Service has approximately 700 employees and an annual operating budget of \$56 million. The Commission, which is bipartisan by law, has seven members, appointed by the Governor and confirmed by the State Senate. The Governor designates the Chairman of the Commission, who is responsible for the Department's operations. The New York Public Service Commission regulates the investor-owned utilities, gas, electric, water, and telephone, which have \$37 billion of plant investment and \$26 billion in annual revenues.

In 1970, Governor Rockefeller appointed Joseph Swidler, former Chairman of the Federal Power Commission, to chair the Commission with the singular purpose of

reinvigorating it. Swidler's appointment is a defining moment in the Agency's history. He significantly reorganized the Commission into its current structure. There are four utility divisions: Gas, Power, Water, and Communications, and a Consumer Services Division, which is now the largest Division in the Agency. The Agency also has five offices that provide specific expertise and cut across divisional lines: Legal, Accounting and Finance, Regulatory Economics, Energy Efficiency and the Environment, and Utility Productivity and Efficiency, which houses our auditing function. The Office of Secretary manages fiscal and administrative matters as well as the Commission's docket. The ALJ Office provides the judges that preside over the Commission's proceedings. The Chairman's staff consists of an Executive Deputy, who functions as a chief of staff, an Executive Assistant, who assists with policy development, and a Special Assistant, who handles correspondence, speeches and special projects.

In the "Swidler organization," the Agency is hierarchical, with communications and work development flowing largely vertically. It encourages healthy competition among divisions and offices and pushes coordination to the higher levels in the organization. Chairman Swidler introduced a different organizational approach in litigated proceedings. In each case, trial staff, representing different offices and divisions, is organized to present a complete record on behalf of the consumer interest. Under this model, trial staff is wholly independent of senior staff in the formulation of its positions. Senior staff serves as advisors to the Commission.

With the regulatory upheavals of the late 1970s and 80s, Commissions faced new regulatory demands and became increasingly controversial. Consumer discontent over utility rates and utility management increased dramatically in the wake of the oil price hikes and the nuclear construction failures of the 1980s. The enactment of PURPA, the emergence of third party power production and the restructuring of the gas industry all placed new challenges on the Commission and its staff. The divestiture of the local telephone companies and the rapid emergence of telephone competition confused the public and presented a brave new world to regulators.

In New York, the Commission faced the seemingly irreconcilable situation involving the future of the Shoreham Nuclear plant. The Niagara Mohawk Power

Corporation, the State's second largest utility, experienced severe financial troubles as a result of its nuclear construction programs. In the telecommunications area, negative information about New York Telephone's affiliate relationships began to emerge and the company's service deteriorated as increased competition and recession drove increased cost cutting.

These difficult demands on the Commission called for different organizational approaches. In 1981, then Chairman Paul Gioia established a new Consumer Services Division to increase the Agency's focus on consumer issues. A few years later, the Agency established the Office of Utility Efficiency and Productivity to focus on utility management effectiveness and operational efficiency. In 1987, Chairman Bradford joined the Commission as Chairman and sought to address proactively the myriad of complex issues, including both the Shoreham and the Niagara Mohawk problems. He designated priority areas and moved outside the formal organizational structure to set up multidisciplinary task forces to formulate policy recommendations. Bidding for electric supply, Shoreham, small water company financing, demand side management and telephone competition made up the first group of task forces. The task forces introduced a new, more flexible approach to policy resolution. The Chairman, in concert with his senior staff, would review and modify them in view of the changing issues that faced the Commission.

The task forces required new management behaviors. Senior managers became responsible for coordinating the work product of staff from other offices and divisions. Collaboration and coordination became important. Moreover, the distinction between senior and trial staff began to blur as the task forces sought to develop coherent policy approaches. With these new matrix management complexities, resource allocation and planning issues emerged.

As a result of these changes, the Agency began to reexamine its values and organization and search for new ways of doing business. The Chairman held two off-site senior staff forums to identify problem issues and work together to resolve them. A group of interested senior staff, including myself, volunteered to participate in a special State program conducted by an MIT professor on the importance of culture to organization change. In these forums, similar issues surfaced regarding the need to

improve resource allocation and budget preparation and to focus greater attention on management development. There was a shared recognition that managers had to communicate and collaborate better. Issues flowing from the changes in the senior-trial staff relationship emerged and senior managers encouraged the development of some guideposts for policy development. There also was a recognition of the Agency's strong culture, its commitment to regulatory excellence, intellectual independence, and creativity as well as its stubborn insistence on finding and holding "the truth."

The Agency began a series of initiatives to address the pressing issues identified in these forums. With the support of the Chairman, it formed working groups, representative of various offices and divisions and management levels, to look at management development, the budget process and trial and senior staff issues. The "Culture Club," a group of managers trained in organizational change, arranged for a consultant in management to conduct a series of forums for senior staff to build better communications and teamwork. And, for the first time, the Chairman introduced a preliminary planning process to bring senior staff together to review the work of the entire Agency, not just that of their own organization.

There was a synergy between the approaches to regulation that the Agency was developing and its internal change process. The work of the staff task force on Niagara Mohawk was pivotal in this regard. Given the company's serious management and fiscal problems, senior staff worked with trial staff to facilitate the development of a comprehensive improvement program. The plan required the company to perform a comprehensive self-assessment with the assistance of an expert outside consultant of the company's operations and management and it included an incentive form of ratemaking that tied increased profitability to implementation of the self-assessment recommendations. There were serious adjustment pains during the process. While the new senior-trial staff relations led to a dynamic and creative process, trial staff experienced uncertainty in its new role and those senior staff, not directly involved with the task force, felt left out of the process. The experience, however, introduced the Agency to the self assessment concept, gave birth to new

regulatory approaches and heightened the Agency's awareness of its own internal complexities and problems.

The development of the Agency's mission statement was a critical step forward in the change process. The Mission Statement and the process used to develop it provided a shared understanding of the values of the organization and a framework for policy development and performance. A group of key senior staff collaborated on the drafting of the Statement, including soliciting agency-wide comments and working with the Chairman to finalize it. The Mission Statement reflects the Agency's statutory responsibilities while incorporating the concept of incentives as a legitimate regulatory approach; it embraces the Agency's defining culture of independence and integrity while recognizing the emerging importance of teamwork and workforce diversity.

In retrospect, the initiatives leading up to the assessment ultimately required a substantial staff investment of time and energy. There was no advance plan. The Agency was growing into the change process when the Assessment opportunity presented itself.

The Organizational Assessment Structure

In the fall of 1991, State's Division of Budget asked us to participate in a new initiative under the auspices of the Governor's Council on Productivity. The purpose of the initiative was to train Budget staff to conduct assessments of Agency operations and programs to understand better their operations and enhance their efficiency and effectiveness. Budget selected the Department as its first candidate because it could fund the project without impacting the State's budget, the Agency enjoyed an excellent reputation and Budget wanted an early success story. While we recognized that convincing the Department of Budget's good intentions would be a challenge, we welcomed the opportunity to tie together the multiplicity of initiatives we had started and to develop a more coherent plan for the future.

The first challenge was to develop an organizational structure that integrated the various participants and maximized the Department's involvement. It needed to include Budget, the outside consultant and staff, and it needed to reflect the Department's preeminent role in managing the assessment process. After much discussion, we developed a structure with the following key elements:

- We first formed a joint senior level Steering Committee composed of staff, Budget and the consultant. (The Culture Club naturally became the staff members on the Committee.) The Steering Committee adopted a "buddy system" to ensure that the Steering Committee members discussed the process with their colleagues.
- The Department selected a full-time Project Team to conduct the study, composed of 11 staff: three from DOB, the remainder from the agency. We asked directors to nominate only those individuals who they felt they could not afford to lose. The Steering Committee members interviewed these nominees and made a final recommendation. The Project Team contained staff representatives of the various offices and divisions and various levels within the organization.
- We designated a full-time communications coordinator which proved to be one of the most important functions in the assessment.
- We designated senior management as sponsors of key issue groups. The sponsors served as sounding boards and facilitators on important issues.

In the assessment process, the Chairman felt strongly that he needed to demonstrate his full support and leadership without dictating its conclusions or stifling open expression of views about the Agency. The Steering Committee kept the Chairman advised of developments and sought his input at critical junctures in the process. The senior expert consultant also provided him with an independent view of the process.

The structure of the Organization Assessment (OA) team contributed to the project's success. It integrated the Budget staff and facilitated their acceptance into the project. It created clear relationships with the consultants at the various project levels which enabled effective communications. This was particularly important since there exists some tension between the client and consultant regarding project control. And the buddy and sponsor initiatives worked well to keep the senior management involved. The integration of the Steering Committee and the Project Team could

have been stronger. And in hindsight, the project would have benefited from a clearer definition at the outset of their respective roles and responsibilities and increased informal communications.

Process/Objectives

The Steering Committee utilized the RFP to describe the challenges facing the Department and define the study's objectives. The objectives of the study were as follows:

- Determine whether the Department's organizational structure is best suited to meet changing regulatory responsibilities;
- Determine whether existing staff resources are adequate and properly allocated to the Department's tasks and responsibilities;
- Evaluate whether processes and management methods optimize the efficiency and effectiveness of staff;
- Train staff of the Department and the Division of Budget to conduct organizational assessments of other organizations.

The RFP also made clear that the Department sought to conduct a self-assessment. We had learned from Niagara Mohawk's experience the value of the self-assessment approach. Self-assessment is more likely to energize an organization by maximizing staff participation and producing a lasting commitment to implementing the study's recommendation. This was a difficult concept even for the Department to absorb. It proved necessary to reinforce this notion throughout the process both within the Agency and with the consultant.

The Steering Committee conducted the selection process based on criteria developed by the Department's audit staff, adapted to this specific study. The Steering Committee placed a premium on the participatory nature of the consultant's process. After reviewing the six proposals received, the Steering Committee interviewed three finalists and selected the firm of Cresap/Towers & Perrin. Cresap presented a clear and organized process to conduct the assessment, which

incorporated the joint Project Team approach. We sensed a real ability to work well with the Cresap staff assigned and had confidence that the senior Cresap managers had the requisite background in the energy area to understand the policy context for the study.

The OA process involved four major steps over a 22 week period. Team Orientation and Planning, Fact Finding and Data Gathering, Detailed Analysis and Action Plan Development. Each phase resulted in a series of work products. In the fact-finding phase, the Project Team used agency-wide surveys, hundreds of interviews both within the Agency and with outside groups and focus groups to identify issues and define opportunities for improvement. The team then conducted a detailed analysis of the findings to further test and refine them and develop a series of more conclusive findings. The final phase involved the development of the Action Plans to address the study's findings.

To give you a sense of the extent of the Department involvement, the Project Team conducted two agency-wide surveys to determine the way staff allocated their time and prioritized their work and to obtain general suggestions and data on the Agency's culture. There was an 88% survey response rate, which reflected the Department's strong interest in the study. The team conducted 200 interviews, 30 focus groups as well as issue specific surveys of about 300 employees.

To encourage agency-wide participation, the project required increased attention to planning and communications. It was important that the Department was informed of the study's progress and ways to become involved.

In addition to the four step process, at the request of the Steering Committee, Cresap incorporated an analysis of the Department's culture into the assessment process. The Steering Committee, drawing from the lessons learned by the Culture Club, felt that it was important to identify potential cultural barriers to effective management and that this information would assist in developing the study's findings and effective action plans.

Cresap conducted a culture survey that sought to identify those key values that give direction to how the organization operates. The survey revealed that the Agency focused on its regulatory responsibilities, such as protecting consumer rights, ensuring

safe and reliable service, and providing an appropriate return, and carried them out vigorously and ethically. It also revealed that the Department similarly placed a high value on effective management, teamwork and organizational efficiency but did not act on those values with the same commitment. The information obtained from the cultural survey underscored the study's findings that the Department needed to pay greater attention to management and operational issues.

From my perspective, the Steering Committee's most difficult challenge was to maintain the focus of the project on the study's overriding objectives and coordinate the development of a cohesive study and action plan. In the course of the project, the Project Team identified 44 issues, which covered a wide range of topics. The Steering Committee, at key stages in the project, pressed the Project Team to recognize the interrelationship among issues, to link them in view of their underlying causes and to prioritize its findings. The final study contains an in-depth analysis with recommendations on 24 key findings grouped into the following five thematic areas.

- Leadership, Management, Communication
- Organization, Roles & Responsibilities
- Planning and Resource Allocation
- Regulatory Processes
- Human Resources and Affirmative Action

It designated the other 20 issues as summary action items which did not need further analysis. This consolidation of issues increased the value of the study to the Agency by clarifying its focus and permitting the development of a cohesive action plan.

In Area I of the study, the Project Team analyzed issues involving leadership, management and communications and found that the Department would improve the efficiency of its operations and employee morale if it increased substantive communication from the Chairman's office and if senior management implemented a management skills evaluation program and continued its efforts to strengthen management development. The study also urged senior management to empower lower level employees by increasing delegation of decision making and pushing coordination down in the Department. Further, it identified the need to define more precisely the rules and procedures governing task forces.

Area II dealt with the Department's organization, roles, and responsibilities. Area II's recommendations are intended to improve the Department's performance in carrying out its mission by ensuring that the organizational structure is well designed to support its activities, particularly with the new emphasis on collaboration and coordination. The study contained the following recommendations:

- Clearly define and communicate roles and responsibilities, including a chief operating officer function;
- Consider reorganization options to support greater policy coordination and operating efficiencies, and internal and external communications planning.

During the course of the study, the organizational issues proved to be the most contentious, since they involved the development of organizational alternatives, which threatened existing arrangements. The team found that the existing structure worked against the coordination needed to meet the interdisciplinary demands placed on the Agency, particularly in the energy and environmental areas, where there were separate organizations for gas, power, and energy efficiency. The Project Team basically proposed two alternatives. The more far reaching option involved reorganizing the Department along functional areas, such as litigation, policy analysis and compliance. The other proposal sought to consolidate the energy units into a single division, including the Water Division, which needed increased integration and attention, and to strengthen the planning and communication functions in the Chairman's Office. The Steering Committee endorsed this option because it presented a realistic approach to improving Department policy coordination, enabling greater management development opportunities and strengthening communications and planning. The Chairman is finalizing the new organizational plan, which was announced in the summer of 1992. We are planning a full communications effort.

In the planning and resource allocation area, the third group of issues, the team found that the task forces placed new workload demands on staff that competed with the Agency's existing baseload work. The report recommended that the Department:

- Develop goals and objectives consistent with the Mission Statement which guide individual divisions and offices resource allocation and which could be used to enhance the Department's budget as a planning vehicle;

- Institute a training program to develop planning skills in managers;
- Improve the Department's use of information technology; and
- Give secretarial and support staff greater responsibilities.

In the regulatory processes area, the Project Team built on the work of the Settlement Study Group and a number of organizational experiments in various cases that were taking place in the Department and made a series of recommendations to improve the hearing process and continue the dialogue on senior/trial staff roles. The assessment process facilitated discussions within the Department about the senior/trial staff issues which resulted in a greater understanding of the reasons for the ongoing experimentation in this area. As a result, there was less interest in these issues than we would have predicted at the outset of the study.

In the human resources and affirmative action area, the team recognized the challenges of motivating and developing employees in a government environment where there are civil service constraints and limits on opportunities to recognize and reward employees. The recommendations underscored the importance of developing and communicating to all employees, a formal, comprehensive human resources strategy, including a clear performance evaluation system. And consistent with the Mission Statement, the study recommends the integration of affirmative action and equal employment opportunity issues into the Agency's overall human resources initiatives.

The Agency completed the assessment in 22 weeks. It devoted substantial time, energy, and commitment to the project. The report provides a shared vision of the issues facing the Agency and a blueprint for resolving them. Certain key factors, in my view, contributed to the project's success. First, use of a full time carefully selected Project Team, composed of talented high level staff, contributed to the quality of the study. The participative approach was essential to the value of the study and the Department's acceptance of it. A strong Steering Committee facilitated a good working relationship with the consultant since matters of control and project development could be escalated and resolved.

With the completion of the OA study, the implementation process began. We formed a new coordinating group composed of senior managers who had not been

involved with the Steering Committee to oversee the process and energize it and retained a smaller group of interested Project Team members to form a new implementation facilitation team. Similar to the OA process itself, they are developing structures, roles and responsibilities and key success factors appropriate to implementation. The coordinating group is designing a process to facilitate the management and operational goals of flexibility, creativity, and teamwork identified in the OA. It includes the development of special teams to oversee groups of issues and to work on specific issues and it incorporates a facilitation role necessary to integrate the various components of the implementation effort. Implementation is proceeding. The team has met with all of the Offices and Divisions to introduce its approach and receive feedback.

The initial response to the implementation team's effort is positive. Over 160 employees have volunteered to participate in the subject matter and action teams and there appears to be a real excitement about acting on the recommendations. Nevertheless, the Agency is anxious about the organizational changes and the next important step is to present the final plan.

Progress Made/Challenges Ahead

In the three years since the Agency held two senior forums in 1989, the various initiatives and the Assessment have produced tangible results. The Department has introduced a planning process and is tying it into the budget process. We also have instituted a management training program and put together a more comprehensive plan. We need to do more work on defining senior/trial staff relations, but there is increased recognition and enthusiasm for finding ways to advance the Agency's overall policy objectives in the context of litigated cases. There has been a marked improvement in communications and policy coordination. Senior policy groups composed of the various offices and divisions have been formed in the telecommunications, energy, and incentive areas and are focusing on integrating the myriad of issues and cases in these areas.

In my view, these organizational changes have unleashed the creativity and produced the collaboration necessary to deal effectively with the pressing regulatory issues. The Agency has developed new incentive rate-setting approaches in the conservation and customer services area, which appear to be having their intended effect. The Shoreham situation has been resolved through a comprehensive settlement; the Long Island power supply situation is secure, the utility is performing well, and its financial health is returning. While the incentive approach in Niagara Mohawk is still in its initial stages, there are some signs that the company's operations are improving. As the Agency is increasing its focus on issues emerging in the telecommunications area, the flexibility in the emerging organization and the multidisciplinary approach to problem solving are already proving helpful.

In the course of this process, I read an article on "The New Managerial Work" by Rosabeth Moss Kanter, a distinguished management scholar, which described well the tensions felt by managers when new demands are placed on them and different approaches to management are required. She wrote: "New strategies challenge the old power of managers and shake hierarchy to its roots." In the new organization, Ms. Kanter observes that "To add value, managers think and work across boundaries."

Agency leadership needs to provide a sense of security, clear communications, and skills training to counter the feelings of chaos and frustration that may occur. It must deal as well with the cynicism of some who question whether real change will ever occur. Senior management must maintain the necessary excitement and momentum, a difficult task during an emotionally demanding process. And, finally, management must be open to learning from the process and changing its traditional approaches as change unfolds. This is tough work but it offers substantial rewards.

CHAPTER 9

A COMMISSIONER'S PERSPECTIVE ON COMMISSION OPERATIONS AND MANAGEMENT

The Honorable Sharon L. Nelson
Chairman
Washington Utilities and Transportation Commission

Imagine that you are the CEO of a 100-300 employee firm in the information business. Your product is analysis, and your employees are skilled, knowledgeable workers. The organizations which supply you the raw information for your analysis may be uncooperative; sometimes they shade the information and it is up to you to find out what is right or wrong. Your budget is not set on the basis of what you produce, but on the basis of available revenue and political factors. Moreover, the environment in which you operate is rapidly changing. Some markets you worked in no longer exist, others are emerging, and the technology and economics you face are complex and volatile. Your staff, while excellent, is limited. At the same time, your ability to bid for the best staff is sharply constrained by rigid wage and benefit schedules. As a result, you often have to work with new recruits and ensure they have proper development and training. Your business is highly visible and subject to constant criticism and second guessing. Seldom does the analysis you produce please everyone.

Welcome to the regulatory commission. From the relatively powerless and tiny "sunshine" commissions of the early 1900s, the regulatory commission has evolved into a complex and sophisticated organization. Armed with a public interest mandate, we employ skilled economists, engineers, accountants, and lawyers to grapple with challenging issues. Our tasks range from setting rates to least-cost planning, from inspecting trucks to writing privacy rules. Our workload is growing rapidly and our decisions have the potential to affect the economic well-being of millions of consumers.

As we face these challenges, we need to remind ourselves of our fundamental purpose. While we constantly are told that government should be run like a business, we need to remind ourselves that government is not a business: it is a public service.

That is not to say we should not be businesslike in how we go about our tasks. We need to be efficient and effective in our methods and procedures. However, we need to recognize that we exist to protect ratepayers where market forces have failed.

The regulatory commission is a peculiarly American institution. Born out of our pragmatic desire to harness private capital for public needs, the regulatory commission plays a critical role in the social welfare. The progressives championed the notion of "scientific regulation." While regulation often proves more art than science, their vision of an independent, analytic regulatory commission remains. Commissioners are transient; the organization is not. As stewards of the regulatory commission, commissioners have an obligation to build an effective and efficient organization.

As commissioners, we are both managers and clients. In our managerial role, we have to meet budgets, hire staff, and serve the public. We are also clients of the staff, who provide us with the information we need in our policymaking role. As managers we need to develop staff and use positive reinforcement to encourage performance. At the same time, our obligations as policymakers may lead us to reject staff advice. The different roles we play can lead to tension within the organization.

Commissions are traditional organizations, wedded to legal formalities and precedent. Yet the sheer pace and scope of change will force changes in our structures and processes. Seven attributes will likely characterize the effective regulatory commission in the future.

Less Hierarchy

Today's management literature is filled with calls for reducing hierarchy and increasing the speed and flexibility of organizations. In many cases, the formality of bureaucratic processes breeds a rigid adherence to traditional forms and customs. To paraphrase organizational analyst Stanley Davis, they become "organizations that exist to serve their own needs."⁸¹ Change is coming. Tom Peters has argued that by the

⁸¹ See, for example, Stanley Davis, *Future Perfect* (1987).

end of the 1990s, organizations will have "no job descriptions ever, no corporate elite, destruction of all Mickey Mouse bureaucracy (and) a redefinition of the workplace as a university."⁸² This implies a smaller core organization and a flexible group of professionals who can align in a work team, perform a task, and then split apart to realign in response to new challenges. While many agencies use work teams, they usually exist within a traditional management structure. In the future, they may replace the traditional management structure.

These new structures pose new management challenges. Rosabeth Moss Kanter, a perceptive management analyst, argues that managers need to find new tools to motivate employees.⁸³ As traditional carrots and sticks disappear, employees will need more control over their work agendas and more opportunity to learn new skills on the job. We can also adapt techniques from the private sector, such as self-managed teams. On these teams, workers are given responsibility for a particular project, with little or no management direction. Far from producing anarchy, self-managed teams often produce dramatic productivity increases, because the teams focus on performing tasks well, rather than satisfying the sometimes arbitrary or cryptic expectations of managers.

For the managers who remain, the new style of management will require greater flexibility. There will also be fewer management opportunities. Peter Drucker has described managers as human communications links. New technologies, like electronic mail, are replacing these links leaving less of a pure management function and more of a role for lead workers or producing managers. Drucker characterizes future organizations as "knowledge based...composed largely of specialists who direct and discipline their own performance through organized feedback from colleagues, customers and headquarters."⁸⁴ As a result, excellent technical and policy

⁸² Tom Peters cited in Paul Millar, "Guru Returns--with Bad News for the Ambitious," *The Independent* (March, 1990), 85.

⁸³ See Rosabeth Moss Kanter, "The New Managerial Work," *Harvard Business Review* (November/December 1989), 85.

⁸⁴ Peter Drucker, "The New Managerial Work," *Harvard Business Review* (January/February 1988), 45.

staff will need career ladders which allow them to continue to advance without taking on management functions. In leading private sector corporations, such as the Boeing Company, managers are often the lowest paid member of a work team, which is comprised of senior technical and policy staff.

Flexibility

The phrase "cultural diversity" is fast approaching the level of cliché. However, the phenomenon it describes is real. The Washington State Commission for Efficiency and Accountability in Government recently conducted a major study of the state personnel system.⁸⁵ Entitled "Workforce 2000," the study detailed the dramatic changes taking place:

- One-third of the states' current workforce will retire by the year 2000, creating a need for large-scale, high-quality recruitment, selection, and training;
- Competition for quality employees will intensify and there will be a lack of trained entry-level employees;
- The proportion of older, minority, and female workers will increase, creating a need to recognize and work constructively with diversity.

Many states are recognizing similar challenges and are beginning to take action. The study makes clear that in the future, we will be competing for a shrinking pool of skilled workers. Because it is unlikely that public sector compensation will rise as fast as the private sector, we need to be able to offer other inducements to attract and retain excellent workers.

Some of these inducements will require changes in traditional personnel policies. For example, we need to be considering more flex-time, part-time and job-sharing options to accommodate our workers' needs. We need to offer workers the opportunity to telecommute. Other changes will be driven by the more diverse mix of workers we do attract. For example, we need to ensure that our workers are trained

⁸⁵ The Washington State Commission for Efficiency and Accountability in Government, Workforce 2000 Personnel System Study Final Report (1990).

in communication skills and sensitized to issues of racial and sexual harassment. These are not simply moral goods or "politically correct" actions. Rather, they are essential to ensure that we recruit and retain talented employees.

A Learning Culture

A major challenge for commissioners is to create "learning organizations." In other words, we must leverage training--both to internal and external--to ensure that our employees have the skills needed to regulate effectively. At the Washington Commission, we have convened a committee to examine our training program and develop a plan for the future. We recognize that in many cases, training dollars are spent without a clear tie to organizational needs or a clear evaluation of what we have gained. In an era of scarce resources, we simply cannot afford to spend money for training which does not lead to improved job performance. At the same time, we must recognize that training goes beyond formal classroom learning. A major part of training involves teaming senior employees with less experienced employees to create a mentoring relationship. As managers, we must create time for valuable senior employees to share their skills and perspectives with newer employees.

Strong Values, Strong Vision

One of the elements that will distinguish the excellent regulatory commission will be a strong commitment to public service, which expresses itself in clear organizational values. These values include a commitment to a quality product, a focus on policy, and a tradition of independence and public service. We perform valuable work, though often we are subject to relentless criticism from regulated industries and public advocates. Our role is designed to please no one; yet without regulation, the public would be subject to monopoly abuse. These core values need to be developed and articulated in a way that enables all employees to feel a sense of pride in working for the commission.

Commitment to Quality

"Total Quality Management" is the buzz phrase of the moment, but that should not detract from its core message: to ensure quality service, we need to fundamentally examine the way we do our work. The need for quality permeates the organization, from the timeliness and completeness of staff analysis to the way we handle consumer complaints. How do we improve quality, especially in an era of scarce resources?

First, we must recognize that quality improvement is a continuous process. We must be willing to keep asking whether we can do something better, rather than resting on current performance. We also need to give our people the tools to do their jobs. That means we must invest in technology and training. Finally, we need to build formal quality assurance systems. A good rule of thumb is that no work is considered complete until it has been reviewed for quality by peers or supervisors. Another tool is the customer survey, which can gauge the quality of our service from the consumer perspective.

Commitment to Policy

The churn in many regulated industries has invited an ad-hoc approach to policymaking. Yet it is the ability to set and implement policy that will distinguish the effective regulatory commission. In the future, we may well be forced to choose our regulatory goals--our resources will not permit doing it all. Developing a policy agenda will help us choose which areas to pursue. As part of developing policy, we should explore forums other than the formal hearing. At the Washington Commission, we use a variety of approaches, ranging from formal cases and rulemakings, to notices of inquiry and informal workshops. The less formal approaches not only encourage negotiation, but allow staff to work together in a more creative, less rigid atmosphere.

Independence

Finally, we must maintain our independence. Public interest regulation has a long and proud tradition, built largely on our ability to protect the public in the face of strong economic and political pressures. Years ago, George Stigler argued that regulators are inevitably "captured" by the special interests they seek to regulate, who use superior resources, political power, and knowledge of the system to gain favorable results. Such special interests abound in utility regulation, and can bring great pressure to bear. Advocates of regulatory reform proposals sometimes resort to arguments about economic development, social welfare, and even jingoism, in an attempt to dilute our effectiveness. In the face of such pressure, we must remain committed to making our decisions in the open, on the facts.

Conclusion

For all of the deregulation of the past two decades, the regulatory commission remains a vital link in our economy. At the same time, the management challenges facing our commissions have never been greater. As stewards of the regulatory commission, we build the foundation for our successors. We are fortunate to have a committed core of executive directors who take their management obligations seriously. The NARUC Executive Directors' staff subcommittee is to be commended for its work to ensure that we can fulfill our duty to protect the public interest.

CHAPTER 10

WHAT THE FUTURE HOLDS

James Matthews
Executive Secretary
Arizona Corporation Commission

"Serving the public" is a phrase that has become the talisman of social commentators. Academicians, editorial writers, business writers, presidential candidate advisors, and even cartoonists have concluded that the best measure of organizational effectiveness is the way the customer is served. This new-found awareness by so many is old hat to most state utility commissions. After all, the organizations that regulate public utilities virtually since their inception have been called public service organizations. What this popular awareness provides to commission administrators is a new set of tools, a new language, and a new way of looking at the job.

Today, government organizations need to possess management skills that include the abilities to think, plan, and manage strategically; create self-evaluating organizations; create conditions for employee and organizational excellence, as well as for the image of excellence; negotiate and mediate conflict among diverse groups in and out of government; and act as social entrepreneurs.

Abilities to Think, Plan, and Manage Strategically

The virtual revolution in government information management, fueled by the increased availability and versatility of affordable computers and software programs, provides hope that government organizations can develop the self-evaluative skills to choose appropriate options, measure effectiveness, determine program effects on users and providers, monitor progress, and measure service costs and quality. State commissions are ideally suited to reap the benefits of electronic information management.

Already, commissions are using computers to track documents and proceedings. Personnel records and evaluations are being handled electronically. Field audits are

being performed on notebook computers linked to a central office, while cellular phones and 800 numbers make it easy to communicate with commission customers.

Some commissions are using electronic technology to improve their ability to think. Cost production and rate design modeling, as well as demand forecasting, are being accomplished by commissions on personal computers. The next challenge facing commissions will be developing these technologies in a form accessible to the public. The essence of strategic planning is good quality data and informed decision making. Putting good quality information in the hands of everyone involved in the decision-making process will raise the quality of the decisions.

A little-acknowledged consequence of the expanded use of personal computers has been the democratization of decision making. Decentralized data and computation, multi-point access to data, and the free flow of data is revolutionizing how commissions reach decisions and how the public reaches consensus about decisions. Historically, the way commissions manage their decision-making process has been the quoin to public acceptance of the decisions. As the very nature of regulation undergoes examination by those rushing toward deregulation, how commissions manage this new democratic decision-making process will be the key to their continued existence.

It is no longer enough to hire staff and provide a work space; managers need to be professionally trained and staff needs to be technically trained. The tools of the trade for managers and staff are essential.

Managers typically come from the technical staff ranks. In many instances, they come untrained for the manager's job. Nevertheless, managers are entrusted with the economic and policy resources of the commission. There are few organizations where multimillion dollar capital plants, computer systems, and staffs are left in the hands of managers whose only training is seniority. The investment is high, and the commitment should be to devise and make available ongoing management training.

Commissions today are making significant investments in staff technical training. The technology explosion that is occurring in every regulated industry has created a plethora of programs offered by NARUC and others designed to keep staff current.

The challenge facing commissions is how to bridge the gap between technical innovation and the policy implication to the public they serve.

Create Self-Evaluating Organizations

A fundamental feature of the Total Quality Management movement sweeping private enterprise organizations is a premium placed on evaluation. W. Edwards Demming taught quality to the Japanese and is thought of as the father of statistical quality control. The reason he considered quality control to be so important is that statistical quality control leads to increased self-inspection and evaluation by those responsible for making decisions. Demming teaches that quality is primarily a function of human commitment.

A successful organization must rely upon its human resources. Each aspect of the organization is dependent upon the others. Lines of authority are easy to see in a hierarchical organization but are less important in an organization centered around democratic policy making, dispersed decision-making, and free-flowing information. A self-evaluating, accountable organization that successfully implements its programs requires active management.

Top elected leadership must also be committed to organizational goals. There must be a careful consideration of the commission's mission, which is defined by asking the questions: what is the appropriate role of the organization and how will it be accomplished? The self-evaluating commission develops an action plan tied to a commitment of resources and an explicit description of expected results. It understands the external and internal environments in which the organization operates, including threats and opportunities facing it and its own strengths and weaknesses. The successful commission demonstrates in all its actions the clear and measurable benefits of regulation. Failure to actively manage these components will, by default, turn the future over to others who wish to shape and control the destiny of commissions.

Fundamental to managing change and the future is empowering members of the organization to participate in managing the change and defining the future. The

commission's problems and opportunities become each employee's personal challenge. In the governmental organization it is not possible to control individuals enough or to compensate them enough. Only by reaching consensus on the organizational mission and then empowering people can the organization become and remain vital and active.

Organizations generally have tried three approaches to empowering employees: encouraging information sharing, resource sharing, and participative management through formal and informal changes in organizational design. In addition, they have encouraged employees to examine their own values and belief systems concerning individual autonomy and behavior. They have taught employees techniques to enhance their communication skills and abilities to influence decisions.⁸⁶ None of these techniques alone can be successful without the commitment of top organizational leadership.

The advent of personal computers, resource sharing, and empowered employees results in a distribution of power bases within the organization. The commission of the future will recognize the free interplay between commission employees, information, external constituencies, and policy formulation and execution. The administrative challenge for commissions is managing this complex interaction so the end result is publicly acceptable regulatory policy and decisions.

Measuring performance and effectiveness runs the gamut from individual employee evaluations to elections for commissioners. Commission internal performance and effectiveness should be measured by the content of policy decisions and the implementation of programs. Goals and purposes should be considered in the attempt to evaluate whether those goals should continue to direct the commission's activities. The implementation of programs should also be measured against the commission's goals and purposes.⁸⁷ The self-evaluating commission

⁸⁶ Peter Kizilos, "Crazy About Empowerment?" *Training* (October 1992), 49.

⁸⁷ Aaron Wildavsky, *Speaking Truth to Power: The Art and Craft of Policy Analysis* (Boston, MA: Little, Brown 1979).

measures its performance by continually examining its mission and activities undertaken to accomplish the mission.

What makes it all work is the willingness of the commission to evaluate itself. This critique of every operation, decision, and assumption makes the organization relevant to the public it serves and the people who form it.

Managing for Excellence

There is a growing amount of literature that gives examples of and seeks to explain successful management. One of the most popular of all time, *In Search of Excellence*,⁸⁸ attempts to answer whether or not human organizations can manage to avoid failure and crisis. It is popular today for candidates for political office to pledge to "run the government like a business," a phrase that offers the public manager very little because there arguably are more poorly run businesses than successful ones. If one reads the literature about successful business organizations, though, the same mark of excellence exists for private enterprise as for public enterprise. Namely, the organization striving for excellence is accountable for effectively managing and developing the human potential of the organization. Accountability is more than bureaucratic control and cost cutting. It is leadership, innovation, empowerment, motivation, and participation.

The successful commission of the future must combine technical expertise with an understanding of the political world. Its actions not only must be practical and legally defensible but politically feasible as well. Traditional management techniques such as budget and personnel controls are not enough to deal with the complex environment within which commissions operate.

The preceding chapters of this manual are replete with examples of how commissions have implemented the tenets of excellence. Successful commissions create the conditions for employee and organizational excellence and then present to the community at large an image of excellence.

⁸⁸ Thomas Peters and Robert Waterman, *In Search of Excellence: Lessons from America's Best Run Companies* (New York, New York: Harper and Row, 1982).

Act as a Social Entrepreneur

Public utility commissions are in the business of dealing with social problems. Commissions must balance the needs of utility ratepayers with the needs of the utilities. These customers of the commission come to the commission to arbitrate their needs, a basic social interaction. Commissions historically have been a reactive participant, but in today's world (of rapidly changing technology in the regulated industries, of intertwined financial arrangements with regulated and unregulated businesses, of international competitive forces, of increasingly vocal and active constituencies for fiscal constraint and fiscal certainty) the commission that is not active in the decision-making process will be faced with obsolescence. Creativity and innovation can help establish or restore public confidence. Commission staff members can be encouraged and shown how to work with the regulated community and their customers.

A commission that eagerly faces the future is constrained only by its imagination. There are many possibilities. Commission administrators can learn entrepreneurial skills from the literature and the business world around them. Commissions can promote change by developing packages of services, inside and outside of rate cases, that are responsive to the commissions' customers. "Know your customer" is not a watchword only for private businesses.

Commission administrators can and must learn marketing skills. Top commission management, both careerists and political officials, must develop skills in marketing their services. Actively involving a wider public base in the decision-making process carries with it the responsibility to turn complex regulatory problems into easily digested concepts. "Trust me, I know what I am doing" is not an adequate response in the regulatory environment of tomorrow. These same marketing skills can also be used to negotiate with the regulated community. This marketing process helps to assure citizens that government has bargained with the private sector to the best advantage.

Conclusion

"Only the supremely wise and abysmally ignorant do not change," said Confucius. If he was correct, then we all are in the business of managing change. Operating a public utility commission is broad in scope and minute in detail. Every commission faces the challenge of meeting current demands and planning for future needs. The successful commission will be an active participant in shaping its future.

