

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE



Division of Legislative Audit

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October 25, 2010

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

DEPARTMENT OF COMMERCE, COMMUNITY, AND
ECONOMIC DEVELOPMENT
REGULATORY COMMISSION OF ALASKA
FY 09 ANNUAL REPORT

September 21, 2010

Audit Control Number

08-30057-10

In accordance with AS 24.20.271(10) we have conducted an audit of the Regulatory Commission of Alaska's (RCA) annual report. The RCA is required to annually report the performance measures it has adopted as well as its compliance with various statutory timelines imposed on its activities.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our finding and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology.

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Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 of the Alaska Statutes, we conducted an audit of the information found in the Regulatory Commission of Alaska's (RCA) FY 09 annual report related to statutory timelines, extensions, and performance measures.

Objectives

The objectives of this audit is to determine if the information presented in the RCA's annual report is accurate regarding RCA compliance with the statutory timeline requirements of AS 42.05.175(a)-(e), the timeline extensions made by the RCA under AS 42.05.175(f), and other RCA-adopted performance measures.

Scope

The major areas of our review included compliance with:

- Statutory deadlines for utilities, rule-making, suspended tariff filings, and formal complaints;
- Statutory timeline extensions issued for utilities, rule-making, suspended tariff filings, and formal complaints; and
- RCA-established performance measures.

Only dockets involving utilities are subject to the statutory timeline of AS 42.05.175.¹ We reviewed utility and regulatory dockets for statutory timeline requirements that were open in FY 09. Our population consisted of 240 utility dockets and 17 regulatory dockets. For the compliance with performance measures, we utilized the same utility and regulatory populations and included the population of 35 pipeline dockets that were open in FY 09.

Methodology

Of the 240 utility dockets, a random, statistical sample of 25 utility dockets was selected. All of the 17 regulatory dockets were selected to determine if the RCA issued a final order prior to the statutory deadline and if the final order issued had evidence of legal counsel review.

Our evaluation of utility and regulatory dockets included dockets subject to the statutory timeline of AS 42.05.175(a)-(e) and dockets having a final order issued during our audit time period. We verified the accuracy of the statutory deadline and reviewed the final order issued to confirm it was prior to the statutory timeline.

¹There are a few formal proceedings that are not subject to the state statutory timelines such as dockets subject to federal law.

Our evaluation of timeline extensions included all utility and regulatory dockets that had timeline extensions issued during FY 09. We reviewed the statutory timeline extension orders and management reports to verify the order was issued prior to the statutory deadline.

Review of RCA-established performance measures included those reported in the RCA's FY 09 operating budget and annual report. Our evaluation of the performance measures reported in the RCA's annual report included:

- Reviewing the results of the docket testing of final orders issued prior to the statutory timeline to verify the accuracy of the RCA reporting of its "*Timely decision*" performance measure.
- Reviewing the population of dockets opened or closed during FY 09 to confirm the "*Processing cases*" performance measure was accurately calculated.
- Reviewing draft final orders of the utility dockets in our sample for evidence of legal counsel's review.

During our field work, we also:

- Interviewed RCA management regarding the information presented in the FY 09 annual report.
- Reviewed the RCA's FY 09 annual report and FY 09 operating budget for performance measures.
- Reviewed the RCA statutes specific to the timeline requirements.
- Reviewed control procedures and tested the accuracy of the case management system data.

ORGANIZATION AND FUNCTION

The Regulatory Commission of Alaska (RCA) was created July 1, 1999, upon reorganization of the Alaska Public Utilities Commission by Chapter 25 of the SLA 1999. Under state law, the RCA is responsible for ensuring safe, adequate, and fair public utility and pipeline services. This is to be done by allowing regulated entities to charge users rates and provide service in a manner consistent with the interests of both the public and regulated entity. The RCA has the authority to adopt regulations and to hold formal, quasi-judicial hearings to accomplish these purposes.

The RCA regulates pipeline, telephone, electric, natural gas, water, sewer, refuse, cable TV, and heat services through a certification process. A public utility or pipeline company must obtain a certificate of public convenience and necessity, which describes the authorized service area and scope of operations. A certificate is issued when the RCA formally finds the applicant to be fit, willing, and able to provide the service requested.

Besides the certification process, the RCA also may economically regulate the rates, classifications, rules, regulations, practices, services, and facilities of public utilities and pipeline companies covered by statute. The RCA determines whether the rates being charged or proposed by regulated entities are fair, just, and reasonable.

Exhibit 1

RCA Dockets FY 09			
Docket Type	Open Prior to FY 09	Open During FY 09	Closed During FY 09
Utility	86	154	146
Pipeline	22	13	7
Regulatory	12	5	5
Total	120	172	158

The RCA records in dockets the activities relating to certification and regulation of pipeline and public utilities; resolution of formal complaints; and adoption of regulations. These dockets are categorized into three types: utility, pipeline, and regulatory. (See Exhibit 1 for the number of dockets in FY 09.)

As shown in Exhibit 2, the RCA consists of five commissioners. The commissioners are appointed by the governor, confirmed by the legislature for six-year terms, and must either be a member of the Alaska Bar Association or have a degree in engineering, finance, economics, accounting, business administration, or public administration from an accredited college or university. The RCA's staff includes Administrative law judges, engineers, financial analysts, telecommunications specialists, tariff analysts, consumer protection officers, paralegals as well as administrative and support staff. The RCA also receives legal advice from counsel assigned to it by the Department of Law.

Exhibit 2

Regulatory Commission of Alaska Members
Robert Pickett, Chair Term expires March 2014
T.W. Patch Term expires March 2016
Kate Giard Term expires March 2013
Paul Lisankie Term expires March 2015
Jan Wilson Term expires March 2012

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BACKGROUND INFORMATION

The Regulatory Commission of Alaska (RCA) is responsible for ensuring safe, adequate, and fair public utility and pipeline services. The RCA records its formal proceedings in dockets. The three types of formal proceedings (suspended tariff filings; applications for certificate of public convenience and necessity; and formal complaints) may involve public utilities or pipeline carriers. These formal proceedings are recorded either in a utility or in a pipeline docket. Another formal proceeding called rule-making petitions are recorded in regulatory dockets.

In 2002, the Alaska State Legislature enacted statutory timelines to address utility concerns regarding the timeliness of the RCA's actions. Only dockets involving utilities are subject to the statutory timelines of AS 42.05.175.² In 2007, the legislature amended the RCA's statutory timeline requirement by adding AS 42.05.175(i) to address other adjudicated utility matters that were not already subject to a federal law, state law, or the statutory timelines of AS 42.05.175(a)-(e). The amendment also modified the timeframe terminology from months to a specified number of days. (Exhibit 3 on the following page summarizes the timelines stipulated in AS 42.05.175.)

Alaska Statute 42.05.211 mandates that the RCA will publish a report concerning public utility services, specifying:

The commission shall, by November 15 of each year, publish an annual report reviewing its activities during the previous fiscal year and notify the legislature that the report is available. The report must address the regulation of public utility service in the state as of June 30 and must contain details about the commission's compliance with the requirements of AS 42.05.175 (a) - (e), with the timeline extensions made by the commission under AS 42.05.175 (f), and with other performance measures established by the commission.

Similarly, AS 42.06.220 mandates that the RCA report on pipeline activities stating:

The commission shall, by November 15 of each year, publish an annual report reviewing its activities during the previous fiscal year and notify the legislature that the report is available. The report must address the regulation of oil and gas pipeline facilities in the state as of June 30 and must contain details about the commission's compliance with performance measures reported by the commission.

²There are a few formal proceedings that are not subject to the state statutory timelines such as dockets subject to federal law.

Statutory Timelines

- (a) *The commission shall issue a final order not later than 180 days after a complete application is filed for an application*
 - (1) *for a certificate of public convenience and necessity;*
 - (2) *to amend a certificate of public convenience and necessity;*
 - (3) *to transfer a certificate of public convenience and necessity; and*
 - (4) *to acquire a controlling interest in a certificated public utility.*
- (b) *... the commission shall issue a final order not later than 270 days after a complete tariff filing is made for a tariff filing that does not change the utility's revenue requirement or rate design.*
- (c) *... the commission shall issue a final order not later than 450 days after a complete tariff filing is made for a tariff filing that changes the utility's revenue requirement or rate design.*
- (d) *The commission shall issue a final order not later than 365 days after a complete formal complaint is filed against a utility or, when the commission initiates a formal investigation of a utility without the filing of a complete formal complaint, not later than 365 days after the order initiating the formal investigation is issued.*
- (e) *The commission shall issue a final order in a rule-making proceeding not later than 730 days after a complete petition for adoption, amendment, or repeal of a regulation...*
- (f) *The commission may extend a timeline required under (a) – (e)... if all parties of record consent to the extension or if, for one time only, before the timeline expires, the*
 - (1) *commission reasonably finds that good cause exists to extend...*
 - (2) *commission issues a written order extending the timeline and setting out its finding regarding good cause; and*
 - (3) *extension of time is 90 days or less.*
- (i) *In adjudicated docket matters that come before the commission under state law or federal law and are not subject to a timeframe under federal law or (a) – (e) of this section, the commission shall issue a final order not later than 180 days after the filing of an initiating petition. If the matter is commenced on the commission's own motion, the commission shall issue a final order not later than 365 days after the issuance of an order opening the docket.*

The RCA annually establishes performance measures during the budget reporting process. Three performance measures specific to RCA proceedings were presented in the FY 09 annual report as:

1. **Timely decisions.** The RCA should issue a final decision for matters subject to the statutory timelines of AS 42.05.175 prior to the expiration of the statutory deadline. The matter goes into effect by law if the RCA does not issue a final order to document the final decision before the statutory timeline,
2. **Processing cases.**³ The RCA's caseload should consist of current and active cases; therefore, excepting cases being appealed, the number of resolved cases should roughly equal the number of cases opened each year. Prompt case resolution is necessary for the RCA to manage its caseload within applicable statutory timelines.
3. **Well-reasoned decisions.** The RCA's final decisions should be based on an evidentiary record and contain justification for the decisions reached. To help ensure that final decisions have adequate evidentiary support and that rationale is clearly articulated, the RCA's legal counsel should review 100% of the final orders before they are issued.

Beginning in October 2007, the RCA's new case management system became operational. The RCA reported that its purpose for the new case management system was to improve internal efficiencies and facilitate the completion of a demanding workload within applicable statutory and regulatory deadlines. As of October 2010, RCA management reported expending over \$2 million on its new case management system.

³The RCA's annual report performance measure refers to "*cases*" and not "*dockets*." However, the term *cases* and *dockets* are used interchangeably; throughout this report, we will refer to "*dockets*."

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REPORT CONCLUSIONS

In accordance with AS 24.20.271(10), we audited the information found in the Regulatory Commission of Alaska's (RCA) FY 09 annual report regarding the RCA's compliance with the statutory timelines, timeline extensions, and reported performance measures. Based on our review and analysis, the RCA met the statutory requirements of AS 42.05.175(a)-(f). However, the RCA did not accurately report and detail its compliance with the statutory timelines, timeline extensions, and performance measures. (See Recommendation No. 1.)

The RCA is in compliance with the statutory timeline requirements of AS 42.05.175(a)-(e).

The review of the sample of dockets with final orders confirmed that the RCA accurately reported its overall compliance with the statutory timeline requirements in its FY 09 annual report. However, the RCA did not provide details concerning its compliance about each statutory timeline requirement. (See Recommendation No. 1.)

The RCA complied with timeline extensions but did not accurately report them.

In addition to the statutory timeline compliance presented in the RCA's annual report, the RCA reported that 15 extension orders were issued during FY 09; however, 16 orders were actually issued to extend the statutory timelines. The overall analysis confirmed these 16 extension orders were issued prior to the statutory deadline. (See Recommendation No. 1.)

The RCA did not report all performance measures.

The RCA did not report on all performance measures in its annual report as required by AS 42.05.211 and AS 42.06.220. The RCA accounted for only three of its nine performance measures approved by the commission in its FY 09 annual report. The six, adopted performance measures not accounted for in the annual report are:

1. The RCA will issue an initiating order on all matters filed within 15 days. This will be measured as a percentage of the initiating orders issued.
2. Hearings will be scheduled for utility and non-complex pipeline matters within established timelines for parties to present their case. This will be measured as a percentage of hearings scheduled in accordance with the timelines.
3. The RCA will issue a final order within 90 days after the conclusion of a hearing and 120 days for more complex cases. This will be measured as a percentage of orders issued within the established timelines.
4. Chair and adjudications commissioner shall meet twice monthly with the chief judge and advisory section manager to review status of dockets. This will be measured by the number of docket status meetings held during the fiscal year.

5. RCA professional staff will receive annual training opportunities on complex issues presented in RCA dockets, federal and state statutes, federal and state case law, and RCA regulations. This will be measured as the number of trainings taken per year compared to the number of professional staff.
6. Administrative law judges (ALJ) will be provided annual training opportunities concerning the regulatory legal environment. This will be measured by the number of trainings taken per year compared to the number of ALJs.

(See Recommendation No. 1.)

The RCA did not accurately report information in the FY 09 annual report for two performance measures.

The RCA's "*Processing cases*" performance measure incorrectly states that the RCA ended the year with 9% more dockets than were open at the beginning of the year. Based on analysis of the number of open and closed dockets for FY 09 the RCA ended the year with 12% more dockets than were open at the beginning of the year.

The "*Well-reasoned decisions*" performance measure states that legal counsel reviewed over 98% of the final orders before they were issued. Review of final orders⁴ from the sample of utility dockets indicates that 92% of the final orders were reviewed by the RCA's legal counsel. This performance measure is overstated in the annual report. (See Recommendation No. 1.)

The RCA's annual report does not contain the sufficient details required by statute.

The RCA did not report the details on its compliance with the statutory timeline requirements and its performance measures in its FY 09 annual report. As specified in AS 42.05.211, "*The report...must contain details about the commission's compliance with the requirements of AS 42.05.175(a)-(e).*" Additionally, AS 42.05.211 and AS 42.06.220 require that the "*report must...contain details about the commission's compliance with performance measures.*"

The RCA did not provide details to support its compliance with each statutory timeline requirement mandated by AS 42.05.175(a)-(e). The report does not specify the number of dockets for each compliance requirement and which dockets met or did not meet the timeline.

The reported "*Processing cases*" performance measure does not adequately support its percentage by providing the number of dockets. Also, the RCA's "*Well-reasoned decisions*" performance measure does not contain details identifying the dockets with final orders issued during the fiscal year or report how many were reviewed by legal counsel.

⁴Final orders included those issued for statutory timelines of AS 42.05.175(a)-(d).

In summary, the RCA's FY 09 annual report does not contain details about the its compliance with the statutory timeline requirements and performance measures. (See Recommendation No. 1.)

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Regulatory Commission of Alaska (RCA) management should implement procedures to ensure information in the annual report is accurate, complete, and in sufficient detail.

The RCA did not accurately report the number of issued final orders, timeline extension orders, and current, active dockets in its FY 09 annual report.

- The RCA's annual report states there were 69 final orders issued during FY 09; however, we identified over 140. These final orders were misclassified in the RCA's case management system and were not included in the RCA's annual report calculation for the "*Well-reasoned decisions*" performance measure.
- The FY 09 annual report indicates there were 15 extension orders; however, there were actually 16 extension orders issued. These 16 extension orders were identified in the quarterly reports submitted to the Legislative Budget and Audit Committee in accordance with AS 42.05.175(g).
- The RCA's annual report presents an inaccurate summary table of the number of utility, pipeline, and regulatory dockets opened by FY 09. As a result, the RCA incorrectly reported the percent of dockets open at the end of FY 09 compared to the number open at the beginning of the FY 09 for its "*Processing cases*" performance measure.

RCA management stated that the majority of the data used for the annual report comes from the case management system, supplemented with manual records/logs, meeting documents, orders, and the legislative reports. However, RCA staff did not retain the supporting documentation for the data presented in the annual report. RCA management also reported that, due to staff turnover, there was little time to gather and review the information presented in the FY 09 annual report.

Additionally, the RCA's annual report does not include all the performance measures adopted by the commission. RCA management stated they were unclear on what performance measures should to be included in its annual report. As a result, the RCA's FY 09 annual report is incomplete with regards to performance measures.

In accordance with statute, the RCA is to publish an annual report of its activities from the previous fiscal year and notify the legislature when the report is available. The annual report "*must contain details*" about the RCA's compliance with the AS 42.05.175(a)-(e) timeline requirements, the timeline extensions made by the RCA under AS 42.05.175(f), and other performance measures established by the commission. The FY 09 annual report does not

contain sufficient details specific to each timeline requirement and their performance measures.

Inaccurate, incomplete data and lack of detailed information in the RCA annual report provides a misleading picture to the legislature, industry, and the public regarding the RCA's efficiency and effectiveness in performing its functions. Management is responsible for implementing and enforcing internal controls to ensure compliance with statutes and for the accuracy of its data. We recommend that RCA management take action to ensure information presented in the annual report is accurate, complete, and sufficiently detailed; and that supporting documents are retained to corroborate the information presented in the report.

Recommendation No. 2

RCA management should implement and enforce written procedures to ensure the case management system data is accurate, consistent, and complete.

Errors in the annual report data can be traced back to errors in the RCA's case management system. Errors included an incorrect number of final and extension orders issued and an incorrect number of dockets opened and closed. The errors were caused by data being entered into the case management system by RCA staff who lack adequate training and guidance to ensure the data entered is accurate, consistent, and complete.

The RCA does not have comprehensive written procedures regarding data entry processes or quality control mechanisms to ensure that the data in its case management system is accurate, consistent, and complete. The data used for the annual report comes mainly from the case management system supplemented with other sources since RCA management cannot rely solely on the case management system.

The RCA stated that the purpose of the case management system is to improve internal efficiencies and facilitate the completion of a demanding workload within applicable statutory and regulatory deadlines. However, inaccurate, inconsistent, and incomplete data impedes the RCA's ability to:

- Improve its efficiencies;
- Automate its process for monitoring and reporting statutory and regulatory timeline requirements; and
- Provide accurate information to on-line users such as the legislature, industry, and the public.

We recommend that RCA management provide sufficient trainings as well as implement and enforce written procedures to ensure that RCA staff enter accurate, consistent, and complete data into the case management system. The written procedures should include quality control

processes over the case management data that improves its reliability of automation for monitoring and reporting of statutory and regulatory requirements.

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AUDITOR'S COMMENTS

In May 2007, the legislature amended the Regulatory Commission of Alaska's (RCA) statutory timeline requirement to include AS 42.05.175(i) regarding other adjudicated matters. Also in May 2007, Ch. 37, SLA 07 amended the RCA's annual report statute to include specific language for the report to contain details about the RCA's compliance with the statutory timeline requirements. However, the Ch. 37, SLA 07 does not include the other adjudicated matters statute AS 42.05.175(i). As a result, the "other adjudicated matters" timeline was not included in the RCA's annual reporting statutes. We suggest the legislature consider amending AS 42.05.211, the RCA's annual report statute, to include the "other adjudicated matters" timeline.

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STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Office of the Commissioner

Sean Parnell, Governor
Susan K. Bell, Commissioner

November 19, 2010

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LEGISLATIVE AUDIT

Ms. Pat Davidson
Legislative Auditor
Division of Legislative Audit
Alaska State Legislature
P.O. Box 113300
Juneau, AK 99811-3300

RE: Response to preliminary audit report, Department of Commerce, Community, and Economic Development (DCCED), Regulatory Commission of Alaska (RCA), FY 09 Annual Report

Dear Ms. Davidson:

Thank you for the opportunity to respond to the preliminary audit report regarding the RCA's FY09 Annual Report. I appreciate the conclusion that the RCA met the statutory requirements of AS 42.05.175 (a)-(f). Your preliminary audit made two recommendations and I agree with both.

Recommendation No. 1

RCA management should implement procedures to ensure information in the annual report is accurate, complete, and in sufficient detail.

Recommendation No. 2

RCA management should implement and enforce written procedures to ensure the case management system data is accurate, consistent, and complete.

The RCA has reported its willingness to address both recommendations. I have every reason to believe that the issues addressed will be resolved.

In conclusion, the recommendation to provide additional details and performance measures in the annual report will increase costs in staff time and production. The RCA requests that the Division of Legislative Audit take these increased costs into consideration in making its final recommendations.

Thank you for the guidance you have given the Regulatory Commission of Alaska.

Sincerely,

Susan K. Bell
Commissioner

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STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Sean Parnell, Governor
Susan K. Bell, Commissioner
Robert M. Pickett, Chairman

Regulatory Commission of Alaska

November 19, 2010

Ms. Pat Davidson
Legislative Auditor
Division of Legislative Audit
Alaska State Legislature
PO Box 113300
Juneau, AK 99811-3300

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NOV 19 2010

LEGISLATIVE AUDIT

RE: Response to preliminary audit report,
Department of Commerce, Community, and Economic Development
(DCCED), Regulatory Commission of Alaska (RCA), FY 09 Annual Report

Dear Ms. Davidson:

Thank you for the opportunity to respond to the preliminary audit report. The RCA appreciates the conclusions that it met the statutory requirements of AS 42.05.175 (a)-(f). The RCA also appreciates the recommendations and will implement the suggested procedures. As requested, the recommendations made in the report are specifically addressed below.

1. The RCA agrees that information in the annual report should be accurate, complete, and in sufficient detail. As this was the first time an RCA annual report was audited, the audit was a learning experience. The RCA is reviewing current procedures for collecting, verifying and reporting information. The RCA included additional details in its recently released FY 2010 annual report. However if the Division of Legislative Audit expects more details than those included in the FY 2010 annual report, the RCA requests clarification as to what constitutes "sufficient detail."

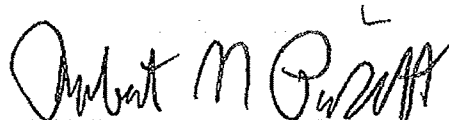
2. The RCA agrees with the recommendation that it should implement and enforce written procedures to ensure the case management system data is accurate, consistent, and complete. The RCA has started working towards written procedures to be available when electronic filing regulations are adopted (expected in March 2011). The RCA will follow up by running and reviewing case management reports to test data for accuracy, consistency, and completeness. The staff management team anticipates meeting regularly to review results and develop improved procedures to decrease the potential for error.

Ms. Pat Davidson
November 19, 2010
Page 2

In conclusion, the recommendations to report additional details and additional performance measures in the annual report will increase costs in staff time and production. The RCA requests that the Division of Legislative Audit take these increased costs into consideration in making its recommendations.

Thank you for the guidance you have given the Regulatory Commission of Alaska.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert M. Pickett", written over a horizontal line.

Robert M. Pickett, Chair
Regulatory Commission of Alaska

cc: The Honorable Susan Bell
Commissioner
Department of Commerce, Community and Economic Development

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE



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November 29, 2010

Members of the Legislative Budget
and Audit Committee:

We have reviewed the responses of Department of Commerce, Community, and Economic Development (DCCED) and the Regulatory Commission of Alaska (RCA) to this audit, and nothing contained in the responses causes us to revise or reconsider the report's conclusions and recommendations. However, there is one point that we wish to clarify.

In the responses from DCCED and the RCA, both state, "*additional details and performance measures in the annual report will increase costs in staff time and production.*"

The audit conclusions and recommendations encompass the RCA's compliance with AS 42.05.211 and AS 42.06.220 that mandates the RCA to publish an annual report concerning its activities. The annual report statutes require the RCA to include: details about its compliance with timelines; details regarding the regulation of oil and gas pipeline facilities; and details about its performance measures. Contrary to DCCED and the RCA's concerns, the recommendations are necessary for the RCA to comply with Alaska Statutes.

In summary, we affirm the report conclusions and recommendations.

A handwritten signature in black ink, reading "Pat Davidson".

Pat Davidson, CPA
Legislative Auditor