November 29, 2002

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Titles 24 and 44 of the Alaska Statutes, the attached report is submitted for your review.

DEPARTMENT OF COMMUNITY AND
ECONOMIC DEVELOPMENT
REGULATORY COMMISSION OF ALASKA
SUNSET REVIEW

November 26, 2002

Audit Control Number

08-20021-03

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently, under AS 44.66.010(a)(4), the Regulatory Commission of Alaska is scheduled to terminate on June 30, 2003.

In our opinion, the termination date for this commission should be extended. The regulation of public utilities and pipelines contributes to the protection of the public's welfare. We recommend the legislature extend the termination date to June 30, 2005.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section.

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Regulatory Commission of Alaska (RCA). The purpose of this audit was to determine if there is a demonstrated public need for the continued existence of this commission and if it has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during the legislative oversight hearings to determine whether the Regulatory Commission of Alaska should be reestablished. The law currently specifies that the board will terminate on June 30, 2003.

Objectives

RCA was created to protect and promote the public interest by certificating and economically regulating qualified public utilities and pipeline carriers. It oversees the availability, affordability, and quality of utility services throughout Alaska. The objective of this audit was to determine whether the public need for this commission continues to exist.

Our analysis of public need, findings and recommendations, and our conclusions have been summarized in the applicable sections of this report.

Scope and Methodology

Alaska Statute 44.66.050 requires the factors outlined in the Analysis of Public Need section of this report be evaluated as part of this audit in order to determine need for the commission's continued existence.

In a special session in June 2002, legislative committees conducted extensive oversight hearings that focused on RCA's workload and the utilities' complaints of slow processing of their requests. The legislature responded to these complaints by enacting statutory deadlines for RCA decisions in several categories of cases. The governor signed that legislation in August.

As the new timelines are just now beginning to take effect, it is premature to conduct a workload study of RCA processes or survey utility companies on whether they believe RCA has improved. These issues will be included in the next sunset audit of RCA.

Approximately a year has elapsed since our prior sunset audit. Our present audit thus reviewed RCA activities for the limited period from July 2001 through November 2002. Our report conclusions and analysis of public need are limited to those activities excluding an opinion on RCA's effectiveness or efficiency in dealing with its workload.

Our fieldwork included the following:

- Review of minutes from the oversight hearings conducted by legislative committees during the summer of 2002, which included testimony from utilities.

- Interviews of commissioners and staff members.

- Review of applicable statutes and regulations.

- Review of RCA's case monitoring database and selected case files.

- Contact with the Ombudsman, Alaska Human Rights Commission, U.S. Equal Employment Opportunity Commission, and Governor's Office of Equal Employment Opportunity.

ORGANIZATION AND FUNCTION

The Regulatory Commission of Alaska (RCA) was created July 1, 1999 upon reorganization of the Alaska Public Utilities Commission by Ch. 25, SLA 1999. Under AS 42.04, 42.05 and 42.06, RCA is charged with the responsibility to ensure the furnishing of safe and adequate service to all public utility patrons, without discrimination and at reasonable rates, consistent with the interests of both the public and the utility. RCA certifies qualified providers of public utility and pipeline services. After issuance of this certificate, the commission also regulates the rates, classifications, rules, regulations, practices, services, and facilities of a public utility or pipeline, unless it is specifically exempted or has been deregulated by a vote of its customers. The commission has the authority to adopt regulations and to hold formal, quasi-judicial hearings to accomplish these purposes.

RCA regulates pipeline, telephone, electric, natural gas, water, sewer, refuse, cable TV, and steam services. All pipelines, and all other public utilities with ten or more customers, are regulated by the certification process. Most are also economically regulated.

Regulatory Commission of Alaska Members

Nan Thompson, Chair
Term Expires July 2004

Bernie Smith
Term Expires July 2003

Patricia DeMarco
Term Expires March 2008

Will Abbott
Term Expires March 2007

Jim Strandberg
Term Expires July 2006

The commission consists of five commissioners appointed by the governor and confirmed by the legislature. The commissioners must either be a member in good standing 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 commissioners serve six-year terms.

The staff of RCA is divided into the seven major functions of administration, finance, tariff, engineering, communication carriers, consumer protection, and public advocacy. RCA has 62 funded positions[1] in its $6 million FY 03 operating budget. A brief description of the services provided by each function is as follows.

- Administration: The commission chair is responsible for fiscal and personnel administration, budget preparation, and records and document management. The chair is aided by a special assistant, an administrative manager, documents processing and accounting personnel, and other clerical support staff.

[1] This total does not include the assistant attorneys general that the Department of Law furnishes to RCA through a reimbursable services agreement.

- Finance: This section examines, analyzes, and evaluates financial statements submitted for rate cases. It audits financial records of utilities and pipeline carriers and examines historical operating year data and pro forma adjustments. It presents these analyses at proceedings before the commission.

- Tariff: This section examines, analyzes, and investigates tariff filings and presents recommendations to the commission at biweekly tariff action meetings. Administrative functions include organizing those meetings, ensuring that public notice requirements on tariff filings are met, and maintaining current master tariffs for all utilities.

- Engineering: This section is responsible for certification proceedings and the investigation of utility and pipeline carrier procedures and practices affecting service quality. It also reviews legal descriptions for service areas, plans for plant expansion, and plant-in-service and depreciation schedules. These analyses are presented in proceedings before the commission.

- Communication Carriers: This section was established to develop, recommend, and administer policies and programs with respect to the regulation of rates, services, accounting, and facilities of communications common carriers within the state involving the use of wire, cables, radio, and space satellites.

- Consumer Protection: This section investigates and resolves informal consumer complaints and is responsible for public affairs and media relations as well as responding to information requests.

- Public Advocacy: This section was legislatively established upon creation of RCA. The public advocacy section operates separately from the commission and represents the public interest. The commission assigns cases to the public advocacy section when a public interest perspective would clearly add to the full development of the record.

REPORT CONCLUSIONS

In a special session in June 2002, legislative committees conducted extensive oversight hearings that focused on the Regulatory Commission of Alaska's (RCA) workload and the utilities' complaints of slow processing of their requests. The legislature responded to these complaints by enacting statutory deadlines for RCA decisions in several categories of cases. The governor signed that legislation in August.

As the new timelines are just now beginning to take effect, it is premature to conduct a workload study of RCA processes or survey utility companies on whether they believe RCA has improved. These issues will be included in the next sunset review of RCA.

Therefore, the report conclusions and analysis of public need are limited to RCA's operations excluding the Commission's effectiveness or efficiency in dealing with its workload.

Except for the limitation discussed above, RCA is operating in an efficient and effective manner and the public interest is being served by requiring public utilities and pipelines to be certificated and economically regulated by RCA. The regulatory process stabilizes the availability of utility services. Economic regulation by the Commission ensures that, despite the absence of competition, utilities provide service at reasonable rates.

In two years, the impact of the new deadlines on both the utilities and the public can be meaningfully evaluated. We thus recommend that Alaska Statute 44.66.010(a)(4) be amended to extend the termination date of the Regulatory Commission of Alaska to June 30, 2005.

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FINDINGS AND RECOMMENDATIONS

In our previous sunset audit,[2] we made three recommendations. We noted the Regulatory Commission of Alaska's (RCA) lack of published procedures and criteria as to when its public advocacy section would be assigned to a case and how its intervention would be accomplished.[3] RCA has now considered public comments and drafted proposed regulations that adequately address our concerns. We recommend that RCA diligently pursue its current plan to forward the proposed regulations to the Department of Law regulations attorney by December 2002.

We also reported last year that 65 piped water systems and 65 piped sewer systems did not have the required certificate to operate a utility. RCA indicates its intention to ultimately address this matter through regulations that distinguish among the requirements imposed upon water-related utilities of various sizes and settings. See Recommendation No. 3.

We further recommended that RCA improve its procedures for assuring that the newspaper notices of its formal proceedings are printed in an accurate and timely manner. Our fieldwork shows that this problem remains uncorrected. See Recommendation No. 2.

Finally, an outstanding recommendation from our 1998 sunset review[4] concerned the implementation of a management information system with a number of components. This recommendation was subsequently incorporated as a requirement within RCA's enabling legislation.[5] The management information system has now been substantially implemented, though on a piecemeal basis spread among a variety of systems rather than on a single, fully-integrated mainframe. This overall system also included an employee time tracking component mandated by statute.[6]

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[2] Department of Community and Economic Development, Regulatory Commission of Alaska Sunset Review, Audit Control No. 08-20013-02 (November 30, 2001).

[3] Neither this audit nor our prior audit evaluated the organizational placement of RCA's public advocacy function under the existing statute or as clarified by the regulation project that is currently pending. We will look at this issue during the next sunset review.

[4] Department of Commerce and Economic Development, Alaska Public Utilities Commission, Audit Control No. 08-1459-99 (December 23, 1998).

[5] Section 26 of Ch. 25, SLA 1999 directs RCA to *"develop its management information system and make the system accessible to the general public through the Internet for the purpose of tracking, scheduling, and managing all dockets within the commission."*

[6] AS 42.04.070(a)(2) directs RCA's chair to "*establish and implement a time management system for the commission.*"

Recommendation No. 1

RCA should propose legislation to clarify statutes enacted last session.

In last summer's special session, the legislature amended RCA's enabling legislation to impose statutory deadlines for the agency to decide various types of utility requests. While the main categories of RCA work are clearly included, the agency has expressed uncertainty as to which deadline, if any, applies to several other types of specialized proceedings.[7] RCA should draw upon the expertise of its senior technical staff and propose the necessary amendments to AS 42.05.175 that will correct this uncertainty.

Recommendation No. 2

RCA's chair should ensure that the publication of notices of formal proceedings is monitored.

Under RCA's statutes and regulations, whether RCA orders public notification of a proceeding, and the specific method to be used, the discretion to determine on a case-by-case basis is left to RCA.

RCA uses a variety of methods to notify potentially-affected consumers of formal proceedings. All notices appear on the Internet. Some are also placed in newspapers in the affected areas, posted at a local post office, or included with customer billings.

Newspaper notices are still published in cases where that traditional method will be an effective means to reach the affected public. In our prior sunset review, we suggested that RCA improve its monitoring of the newspaper notices. In that prior review, we checked 55 cases in which RCA had directed the publication of such an advertisement. Case files for only 36 contained any verification that the notice had been printed.

This time we checked 31 FY 02 cases in which RCA had directed the publication of advertisements in one or more newspapers. Seventeen of those cases lacked verification for at least one of the advertisements mandated by an RCA order.[8] After receiving our findings, RCA conducted its own review of the missing verifications and candidly acknowledged its discovery of 13 instances in which the intended newspaper ad was never actually published.

In short, without conscientious verification of compliance with RCA's publication orders, it is entirely possible that a notice was inaccurate, untimely, or simply not printed. A defective notice may be a meaningless notice, as well as a wasteful expenditure ultimately borne by the utility's customers.

[7] For instance, RCA's most experienced staff indicates uncertainty as to the applicable time limit, if any, for interexchange carrier applications, intervenor contests, applications to discontinue or consolidate service, certificate revocations, and applications for temporary operating authority.

[8] Eight of the 17 lacked verification for any advertisement. Another nine lacked verification for at least one out of a number of ads ordered for a single matter.

During legislative oversight hearings held at the end of FY 02, RCA's chair indicated that this deficiency had been corrected with a *"new internal proceeding to monitor notices"* (see Exhibit 1). By the time of our next sunset review, this new procedure will have had ample opportunity to be fully implemented and the Division of Legislative Audit will be able to test its effectiveness in curing this persistent problem.

EXHIBIT 1

EXCERPT FROM TRANSCRIPT OF SENATE JUDICIARY COMMITTEE

(June 25, 2002)

SENATOR THERRIAULT: *And then [audit recommendation] number three should insure that the publication of notices and formal proceedings be monitored.*

CHAIRWOMAN THOMPSON: *We did that. We implemented a new internal proceeding to monitor notices after we got the auditor's recommendation.*

Recommendation No. 3

RCA should either require smaller water and sewer utilities to be certificated or establish a meaningful exemption system by regulation.

Alaska Statute 42.05.141(a)(1) empowers RCA to *"regulate every public utility engaged . . . in a utility business inside the state, except to the extent exempted by AS 42.05.711."* RCA's responsibility *"to regulate"* includes the certification of water and sewer utilities.

Certain larger water and sewer utilities are subject to full ongoing economic regulation, such as the setting of prices. However, even the smaller utilities that are not economically regulated must obtain an RCA operating certificate, unless the agency exempts them under AS 42.05.711(d). This latter subsection permits RCA to *"exempt a utility, a class of utilities, or a utility service from all or a portion of this chapter if the commission finds that the exemption is in the public interest."*

Our prior review reported 65 piped water systems and 65 piped sewer systems that did not have the required certificate to operate a utility. These systems were spread among 73 different operators, 52 (71%) of which were incorporated under Alaska law as second-class cities. RCA was thus overlooking almost half of the State's 114 second-class cities and not fulfilling its statutory role under AS 42.05.141.

Since our prior review, RCA has chosen to neither solicit applications from, nor pursue enforcement against, such uncertificated utilities. RCA instead indicates its intention to ultimately address this matter through regulations that distinguish among the requirements imposed upon water-related utilities of various sizes and settings.

While public comment was solicited last summer, RCA has so far not drafted any proposed regulations. RCA indicates its intention to send proposed regulations to the Department of

Law by the summer of 2003. If the legislature wishes a more aggressive response to this problem, it may choose to directly develop statutory distinctions through a public hearing process.[9]

[9] For instance, after hearing from affected parties, the legislature could choose to exempt certain classes of utilities from certification under AS 42.05.711(d). The criteria could include such factors as the community size, number of customers, type of operating entity, and the system's predominant funding source.

ANALYSIS OF PUBLIC NEED

The following analysis of commission activities relates to the public need factors defined in the "sunset" law, Alaska Statute 44.66.050. This analysis was not intended to be comprehensive, but addresses those areas we were able to cover within the scope of our review.

The extent to which the board, commission, or program has operated in the public interest.

With the exception of smaller water and sewer utilities,[10] the commission has made a conscientious effort to allow only qualified applicants to provide utility services and to regulate them in such a manner as to ensure service at a reasonable cost. Upon finding that no public interest would be served by regulation, the commission administratively exempts certain utilities through its discretionary power granted by AS 42.05.711(d).

The extent to which the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters.

In a special session in June 2002, legislative committees conducted extensive oversight hearings that focused on the Regulatory Commission of Alaska's (RCA) workload and utilities' complaints of slow processing of their requests. The legislature responded to these complaints by enacting statutory deadlines for RCA decisions in several categories of cases. The governor signed that legislation in August.

As the new timelines are just now beginning to take effect, it is premature to conduct a workload study of RCA processes and to survey utility companies on whether they believe RCA has improved.

While it is premature to evaluate RCA's workload, we did review the agency's system[11] to monitor its decision-making progress and impending deadlines. This system appears adequate to plan for the issuance of timely decisions (or available extensions) and should prevent the triggering of default adoptions provided for tardiness.

The extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.

[10] These are discussed later in this section of the report.

[11] There are two components of RCA's system. First, each matter filed with RCA is assigned to a responsible "docket manager" who monitors subordinates' progress in preparing the matter for decision. Second, the RCA "process coordinator" maintains a database that she uses to monitor workflow and continually advise the commissioners and staff as to the needed allocation of resources.

The agency has not initiated any changes in its statutes since last year's sunset audit. The legislature has amended RCA's enabling statutes at the request of utilities and after considering RCA's position on the proposed changes.

The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.

RCA's consumer complaint function is the most active indicator of its interaction with individual consumers. RCA generally preconditions its informal intervention on an initial attempt by the consumer to work directly with the utility in question. If RCA is unable to resolve the matter informally, the consumer has the option to pursue a formal complaint before the commission.

Such a service is obviously beneficial to consumers. However, it also alerts RCA to potential departures from its expectations for those being regulated.[12] Such patterns may signal the need for RCA's chair to appoint the public advocacy section in particular formal proceedings.

As shown in Exhibit 2, RCA indicates that it received 664 consumer complaints during FY 02. As of October 15, 2002, RCA had closed all but one of these complaints.

RCA continues to be responsive, even with a 13% increase in the number of complaints over FY 01. The most significant part of the increase was an expansion in telecommunications complaints. A significant portion of all consumer complaints continues to involve two particular companies vying for control of local phone service in Anchorage.[13]

EXHIBIT 2

CONSUMER COMPLAINTS FILED WITH RCA DURING FY 02

(unaudited)

	Number Filed	*Percentage Of Total Complaints*
Telecommunications:		
Traditional complaints	459	68%
ACS vs. GCI disputes	64	10%
Electric	72	11%
Water / Sewer	25	4%
Refuse collection	25	4%
Natural Gas	19	3%
Cable Television	0	0%
Totals	664	100%

[12] *"The number and nature of consumer complaints we receive can be an important barometer of problems in utility services that we need to address."* RCA's Order Opening Investigation of Telecommunications Service Disparity Claims, U-02-97(1) (Oct. 2, 2002), p. 2.

[13] Since the pattern of these complaints involving both ACS and GCI has become apparent, RCA has appropriately begun counting each as a single complaint for statistical purposes, rather than as two complaints involving two utilities. In the above discussion, we have adjusted both the statistics cited for FY 02 and the compared base of FY 01 statistics to reflect this clarification.

Anchorage consumers can choose between ACS and GCI for local service. GCI leases lines from ACS and depends on the latter to physically install the phone service to GCI's new customers, customers that would otherwise be ACS subscribers. GCI customers claim that ACS gives their new installations a lower priority (longer wait) than those of ACS' own new customers.

RCA has appropriately recognized the significance of this dispute, noting the agency to be *"troubled by this recent, dramatic increase in consumer complaints"* over telecommunications services.[14] RCA has conducted a public investigative hearing on the matter and reviewed the two utilities explanations. We understand that commissioners are now reviewing a draft of an order intended to address the pattern of customer complaints.

The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

RCA uses a variety of methods to notify the public of formal proceedings. All notices appear on the Internet. Some are also placed in newspapers in the affected areas, posted at a local post office, or included with customer billings.

Newspaper notices are still published in cases where that traditional method will be an effective means to reach the affected public. In Recommendation No. 2, we discuss the continuing need for RCA to verify that the intended newspaper notices actually get published.

RCA's web site is another tool for communicating with the public, with the counter currently showing approximately 4,200 visits per month. Notices of upcoming meetings and formal actions are posted along with detailed annual reports, discussions of major utility issues, and invitations for the public to comment. The process for filing a consumer complaint is explained. Also, members of the public can place themselves on the "courtesy list" and receive direct e-mail notices concerning topics they select.

RCA's office has a computer terminal that the public uses to research agency records such as docket pages, orders and transcripts. We encourage RCA to make this information available on the Internet.

Public participation is encouraged in several other ways. Since the prior audit, RCA has hired a publication specialist for its consumer protection section. Also, Alaska's attorneys have been invited to four part-day classes on RCA processes. Finally, RCA's public advocacy section continues to directly represent aggregated consumer interests in matters pending before the commission.

[14] RCA's Order Opening Investigation of Telecommunications Service Disparity Claims, U-02-97(1) (Oct. 2, 2002), p. 2.

The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

The state ombudsman has received no complaints about RCA since our sunset review a year ago.

Since RCA orders can be appealed to the courts by dissatisfied parties, the prevalence of such appeals is another pertinent indicator of RCA's relationship to the public. Since the prior sunset review, the Alaska Supreme Court has affirmed one RCA decision and reversed another. The superior court has affirmed one case and sent another back to RCA to remedy a procedural defect (lack of a hearing). Four appeals are currently pending before the superior court and one before the Supreme Court. In short, out of hundreds of cases handled by RCA, its workload is seldom challenged in, and even less frequently reversed by, the courts.

The extent to which the board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

Prior to granting a certificate of public convenience and necessity to a public utility, the commission determines that the applicant is fit, willing, and able to provide the service. To that end, it employs utility financial analysts and utility engineers to perform the appropriate analyses to make this determination.

In recent years, Alaska communities have received substantial state and federal funding to construct water and sewer systems. Nevertheless, a comparatively small number of new certificates have been awarded to operate such utilities. In our prior sunset review, we reported that 65 piped water systems and 65 piped sewer systems did not have the required certificate to operate a utility.[15] These systems were spread among 73 different operators, 52 (71%) of which were incorporated under Alaska law as second-class cities.

[15] Under RCA's enabling legislation, systems with at least ten paying customers are considered to be "utilities" for the purpose of the operating certificate requirement.

Since our prior review, RCA has chosen to neither solicit applications from, nor pursue enforcement against, such uncertificated utilities. RCA instead indicates its intention to ultimately address this matter through regulations that distinguish among the requirements imposed upon water-related utilities of various sizes and settings.

There is certainly merit to RCA's approach. Last April, the commission issued an order that invited public comment and contained a thoughtful, detailed discussion that candidly recognized both the gravity of the problem and the complexities that cloud its resolution (see Exhibit 3). The logistics (capacity development) and financial realities (sustainability) of operating a village utility are obviously quite different from those faced by a large urban one in the Railbelt. A system sponsored by a homeowners association justifies a different level of consumer protection than a business serving the general public. Regulation of systems that are heavily subsidized requires careful coordination with both environmental requirements and the policy aims of grantors. Recommendation No. 3 further discusses RCA's progress in addressing this issue.

EXHIBIT 3

EXCERPT FROM RCA ORDER R-02-4(1)

(Notice of Inquiry dated April 30, 2002)

We see the need for small Alaskan water and sewer utilities to apply for certification expressed in the large number of non-complying utilities that ADEC has reported, and the potential for harm to all residents that could occur if this is allowed to continue. ***It is important for existing utilities to be brought, over a period of time, to a standard where public health is assured.*** *In Alaska, this will require adequate funding and clear coordination with the ADEC's safe drinking water regulations. We realize our statutory certification standard, along with the EPA/ADEC Safe Drinking Water Act capacity development requirements, stand as major regulatory hurdles for small water and sewer utilities.* ***It is clear that in many cases, immediate compliance with our fit, willing, and able standard may not be practical.***

Our goal in this inquiry is to find ways to certificate rural water and sewer utilities under a phased program that is coordinated with the ADEC capacity development requirements, and that embraces the realities of utility operation in Alaska.

Emphasis added. Footnotes omitted. ADEC = Alaska Dept. of Environmental Conservation. EPA = U.S. Environmental Protection Agency.

The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

We found no evidence of RCA hiring practices or appointments that were contrary to state personnel practices. Since our sunset review a year ago, no complaints have been filed with any of the following: (1) DCED human resource manager; (2) Alaska Human Rights Commission; (3) U.S. Equal Employment Opportunity Commission; (4) Alaska Public Employees Association; (5) Alaska State Employees Association; (6) Office of Equal Employment Opportunity in the governor's office.

The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the Findings and Recommendations section.

APPENDIX A

Regulatory Commission of Alaska
Summary of Expenditures
FY 02 – FY 03
(unaudited)

Expenditures[16]	FY 02 Authorized (Original)	FY 02 Authorized (Revised)[17]	FY 02 Actual	FY 03 Authorized
Personal Services	$ 3,736,500	$ 3,586,182	$ 3,584,182	$ 3,982,900
Travel	55,000	55,000	38,007	60,000
Contractual	2,005,500	2,021,686	1,821,478	1,920,000
Supplies	62,500	83,031	82,997	62,500
Equipment	13,800	127,401	127,401	13,800
Total	$ 5,873,300	$ 5,873,300	$ 5,654,065	$ 6,039,200

Source: The information included in this summary was obtained from the State's accounting records.

[16] Under AS 42.05.254, RCA assesses utilities and pipelines a regulatory cost charge designed to recoup its costs.

[17] At year-end approximately $150,000 was reclassed from personal services to contractual services, supplies, and equipment. The reclass to supplies and equipment was for management information system enhancements; the reclass to contractual services was for management information system enhancements and purchases of additional adjudication services.

January 8, 2003

Pat Davidson, Legislative Auditor
State of Alaska
Legislative Budget and Audit Committee
Division of Legislative Audit
P. O. Box 113300
Juneau, Alaska 99811-3300

Re: Response to Preliminary Audit Report/Sunset Review of the Regulatory Commission of Alaska – November 26, 2002

Dear Ms. Davidson:

The RCA appreciates the audit's conclusion that our agency operates in a reasonably effective and efficient manner and should be extended for an additional two years, until June 30, 2005. We will work to implement the recommendations set out in the preliminary audit report. We take this opportunity to expand and clarify several issues you identified.

RCA Extension: Your recommendation was for a two-year rather than a four-year extension of the RCA. Although the reasons are not explicit, the report also notes that a review of how the agency is implementing the deadlines imposed by the legislature last session is premature. I agree that because of the effective date of that legislation, it is premature to evaluate our effectiveness in meeting the deadlines. We must report quarterly on our compliance with the deadline standards to the legislative budget and audit committee. AS 42.05.175(g). Therefore, the legislature will have access to compliance data even without another audit.

An extension for only two years instead of the allowed four is problematic because of the amount of the agency's time it takes to respond to the audit process, and more significantly at least last year, the legislature. If the legislature's goal is improving our productivity, time spent responding to performance reviews detracts from our ability to handle the issues presented by industry and the public. When the legislature required quarterly reports to

monitor whether we were meeting the deadlines or not, they created an effective tool to track our progress. The legislative budget and audit committee has the option of asking for an earlier review if these reports indicate a problem, and could ask for a specific report on deadline compliance in two years.

The regulations on the public advocacy section were forwarded to the Department of Law for review on November 18, 2002. They were assigned back to Assistant Attorney General Rusch, who has completed her review. The extent of her editorial changes necessitates another review and vote by the Commission. These regulations are scheduled for Commission final adoption at the January 29, 2003, public meeting.

The agency has gradually been integrating the management information system into our processes. Because of our public records obligations and statutory timeline requirements we have cautiously transitioned our processes to ensure that the flow of work continues. We recognized early in the design process that the management information system would be dynamic. It was not something to be switched on one day and remain the same forever. We completed our work with the contractor who designed the system for us during this audit period and began using the system to electronically store and process all filings. We have used this system to make all filings with the agency available electronically through our website. The system is flexible and has the potential to simplify more of our processes. We continue to find new ways to use it to improve the agency's operations.

The preliminary audit report makes three specific recommendations.

1. RCA should propose legislation to clarify statutes enacted last session. We agree. During the process of implementing the timelines internally we have discovered several anomalies not addressed by the current timelines. For example, the statutory timelines say nothing about pipeline filings and are inconsistent with existing deadlines in regulations for interexchange carrier applications. Should the same, or different timelines apply to those dockets? We have formed a staff working group to draft clarifying amendments.

2. RCA's chair should ensure that the publication of notices of formal proceedings is monitored.
   I agree. After last year's recommendation the agency adopted a new procedure that was not consistently followed throughout the agency. The auditor's review highlighted the problem. We learned that many of the proofs of publication are not filed in the case files because our former administrative manager changed the procedure for paying the invoices that accompany the proofs of publication without understanding the importance of filing copies of the affidavits in the case files. These proofs

of publication were sent to Juneau with the invoices. We have requested that any originals still available be returned to us, but they cannot be easily retrieved.

To address the problem long-term, our Information Systems department is writing a program to integrate the verification process into our MIS so that in the future, we will be able to generate reports that verify publication of notices. We anticipate completion of this project during the first quarter of 2003.

3. RCA should either require smaller water and sewer utilities to be certificated or establish a meaningful exemption system by regulation. After the recommendation in the last audit, the RCA began the process of adopting a meaningful exemption system by regulation. We held a public hearing and asked for comments. We have coordinated our efforts with the other state agencies involved in the design and construction of these systems. In order to adopt regulations, we must use a public meeting process and its associated timelines. We have prioritized this project, balancing the impact on consumers and the necessity of coordinating amongst other affected agencies. Because local governments own most of the uncertificated utilities they will be exempt from economic regulation. The rates paid by consumers will not be affected by certification. We have worked with DCED/RUBA to modify an accounting software program for use by these new water systems so that they will maintain good financial information when they begin operations. We have worked with the other public and private entities that are funding construction of these systems to encourage the new utilities to get started financially on the right path. We expect the process of finalizing an exemption system by regulation to be completed by the end of 2003.

The recently opened docket to address the increased consumer telecommunications complaints in Anchorage was referenced in your report. This proceeding is consistent with the experience of other commissions across the nation as markets transition from monopoly to competitive. Our role in protecting consumers from the consequences of a competitive market increases, and our role in reviewing rates decreases. We issued an order in November 2002 designed to ensure that consumers continue to receive requested services. The incumbent carrier has appealed our decision.

The agency has regulations that change our rate review responsibilities that are effective in the markets open to competition: Anchorage, Juneau and Fairbanks.[1] On October 23, 2002 we voted at a public meeting to open a docket to review

[1] Carriers operating in competitive markets can decrease their rates by providing the RCA with notice. We review rate decreases for discrimination only, and do not require cost justification. In competitive markets, only rate increases must be supported by proof of costs.

and consider modifications to our competitive market regulations. A notice requesting comments was issued on November 21, 2002 with an initial comment deadline of January 31, 2003 and a reply comment deadline of February 28, 2003. After analyzing the comments, we may change the current competitive market rules.

Thank you for your consideration of these comments. We appreciate your diligence and the time spent to prepare your findings and recommendations.

Sincerely,

REGULATORY COMMISSION OF ALASKA

G. Nanette Thompson
Chair

January 9, 2003

Members of the Legislative Budget
and Audit Committee

We have reviewed the response to our preliminary audit on the Department of Community and Economic Development, Regulatory Commission of Alaska (RCA). Nothing contained in this response gives us cause to reconsider our findings.

However, we would like to comment on one statement made by RCA in its response. The Commission believes that our recommended two-year extension is too short and states that the newly required quarterly reports will allow the legislature to fully monitor the status of RCA's deadlines.

We appreciate RCA's desire to avoid the disruption of too frequent sunset reviews. However, RCA's internally-generated quarterly reports are not an adequate substitution for a meaningfully evaluation of the impacts of the recent and significant legislative changes on RCA's operations.

In summary, we reaffirm the findings and conclusions presented in the report.

Pat Davidson, CPA
Legislative Auditor