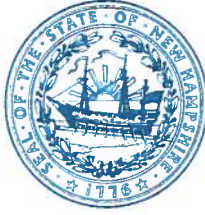


**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION
AND ITS ADMINISTRATIVELY
ATTACHED AGENCIES**

**PERFORMANCE AUDIT
APRIL 2012**



JEFFRY A. PATTISON
Legislative Budget Assistant
(603) 271-3161

MICHAEL W. KANE, MPA
Deputy Legislative Budget Assistant
(603) 271-3161

State of New Hampshire
OFFICE OF LEGISLATIVE BUDGET ASSISTANT
State House, Room 102
Concord, New Hampshire 03301

RICHARD J. MAHONEY, CPA
Director, Audit Division
(603) 271-2785

To The Fiscal Committee Of The General Court:

We conducted an audit of the Public Utilities Commission (PUC) as well as the Office of Consumer Advocate (OCA), and the Energy Efficiency and Sustainable Energy Board (EESE Board) to address the recommendation made to you by the joint Legislative Performance Audit and Oversight Committee. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require 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. The evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. The audit period was State fiscal years 2010 and 2011.

Our audit of the Public Utilities Commission and its administratively attached entities sought to answer the following questions:

1. Did the New Hampshire Public Utilities Commission fulfill its responsibilities in an efficient, effective, and economical manner?
2. How efficiently and effectively did the Office of Consumer Advocate fulfill its responsibilities?
3. How efficient and effective was the Energy Efficiency and Sustainable Energy Board?

This report is the result of our evaluation of the information noted above and is intended solely for the information of the PUC, OCA, EESE Board, and the Fiscal Committee of the General Court. This restriction is not intended to limit the distribution of this report, which upon acceptance by the Fiscal Committee is a matter of public record.

Office of Legislative Budget Assistant

Office Of Legislative Budget Assistant

April 2012

THIS PAGE INTENTIONALLY LEFT BLANK

TABLE OF CONTENTS

iii

APPENDICES

Appendix A: Scope, Objectives, And Methodology	A-1
Appendix B: Public Utilities Commission Response To Audit	B-1
Appendix C: Survey Of Utilities Operating In New Hampshire.....	C-1
Appendix D: Survey Of Other States' Utility Regulators	D-1
Appendix E: Consumer Complaint Survey Results	E-1
Appendix F: Energy Efficiency And Sustainable Energy Board Survey Results	F-1
Appendix G: Residential Ratepayers' Advisory Board Survey Results.....	G-1
Appendix H: Current Status Of Prior Audit Findings	H-1

LIST OF TABLES

Table 1: PUC Source Of Funds And Expenditures, SFYs 2010 And 2011	9
Table 2: OCA Source Of Funds And Expenditures, SFYs 2010 And 2011	10

ABBREVIATIONS

CAD	Consumer Affairs Division
COOP	Continuity Of Operations Plan
DAS	Department Of Administrative Services
DoIT	Department Of Information Technology
DoP	Division Of Personnel
ED	Electric Division
EESE Board	Energy Efficiency And Sustainable Energy Board
FEMA	Federal Emergency Management Administration
G&C	Governor And Council
GHGERF	Greenhouse Gas Emissions Reduction Fund
HSAS	Homeland Security Advisory System
IT	Information Technology
LPAOC	Legislative Performance Audit And Oversight Committee
NRRI	National Regulatory Research Institute
OCA	Office Of Consumer Advocate
PUC	New Hampshire Public Utilities Commission
RSA	Revised Statutes Annotated
SED	Sustainable Energy Division
SFY	State Fiscal Year
SJD	Supplemental Job Description

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

EXECUTIVE SUMMARY

Overall, we found the Public Utilities Commission (PUC) was efficient and effective in meeting its statutory obligations to act as the arbiter between the interests of consumers and regulated entities. The PUC's adjudicatory process strives to ensure a balance between these interests, and to ensure that balance is arrived at through due process (evidentiary hearings, examination of witnesses, and deliberation). The majority of utilities we surveyed reported the process for resolving utility petitions was effective. Despite overall satisfaction with the PUC's process, almost two-thirds of utilities we surveyed reported hearings and orders in some cases were not held or issued timely. PUC personnel also reported the requirements of due process may sometimes come at the price of decreased timeliness.

Utilities and consumers were generally satisfied with the level of service provided by the PUC's Consumer Affairs Division in resolving complaints. While at least two-thirds of consumers were satisfied with the level of service from the Consumer Affairs Division, and the vast majority reported their complaint was handled fairly, consumers indicated improved communication about the complaint process was needed. Consumers reported better communication regarding what to expect during the complaint process, more frequent updates about the status of the complaint, and understanding the final outcome could improve services.

We also found several areas where the PUC could improve its internal procedures to increase both its efficiency and effectiveness, as well as areas, such as personnel, where it could operate more economically.

We found the Office of the Consumer Advocate (OCA) was generally efficient and effective in its operations. Utilities reported the OCA's involvement had the greatest impact on rates and reliability of services, and approximately two-thirds reported the OCA's involvement affected the way they approach their filing. However, the OCA's effectiveness is hindered by its lack of direct access to consumer complaint data maintained by the PUC's Consumer Affairs Division. As a result, it cannot analyze information to identify trends in consumer complaints. We also found the Residential Ratepayer's Advisory Board provided advice to the OCA, but was not proactive in bringing concerns from its members' constituent groups to the OCA's attention.

The Energy Efficiency and Sustainable Energy Board (EESE Board) was established to promote and coordinate the State's energy efficiency, demand response, and sustainable energy programs. However, we found the all volunteer EESE Board's efficiency and effectiveness was constrained. The EESE Board generally had not fulfilled its statutory obligations due primarily to insufficient statutory authority and budgetary resources.

While we found the PUC and OCA were generally efficient and effective in their operations, the EESE Board was not able to operate effectively, due primarily to a lack of resources and authority. The recommendations in this report could improve operations of the PUC, OCA, and EESE Board.

THIS PAGE INTENTIONALLY LEFT BLANK

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

RECOMMENDATION SUMMARY

Observation Number	Page	Legislative Action Required	Recommendation	Agency Response
1	11	Yes	The Legislature should consider whether the PUC should seek Governor and Council (G&C) approval for contracts exceeding State policy thresholds or use competitive bidding to procure services over \$2,500. The PUC should include continuing contract and other estimable costs in its budget submissions.	Do Not Concur
2	13	No	Clarify Administrative Rules for safety inspections and establish criteria for inspections.	Concur
3	14	No	Review the use of secretarial letters to determine in what circumstances the letters should be issued, ensure letters conform to statutory requirements, and Commission expectations.	Concur In Part
4	16	No	Promulgate Administrative Rules addressing utilities' requests for rate case expense recoveries.	Concur In Part
5	17	No	Review utility analyst and hearings examiner job classifications, and update supplemental job descriptions; consult with the Department of Administrative Services (DAS) to identify more accurate position classifications; and reclassify positions as appropriate.	<u>PUC</u> Concur In Part <u>DAS</u> Concur
6	21	No	Periodically conduct agency-wide analyses of staffing needs and ensure salaries for applicants are at the lowest step necessary for recruitment. The DAS should consider amending Rules to require agencies to justify hiring applicants at greater than the minimum step.	<u>PUC</u> Concur In Part <u>DAS</u> Concur In Part
7	25	No	Establish written, division-level policies and procedures.	Concur

Recommendation Summary

Observation Number	Page	Legislative Action Required	Recommendation	Agency Response
8	26	Yes	Revitalize ethics board and supplement ethics policy with additional operating procedures. The Legislature may wish to consider amending statute establishing post-PUC employment restrictions on certain employees to reflect current PUC organizational structure.	Concur
9	28	No	Develop policies and procedures governing the use of audio equipment in hearing rooms; implement controls over access to audio equipment; and inform individuals in hearing rooms their discussions may be heard by others.	Concur
10	30	Yes	Utilize methods to improve timeliness of Commission orders. The Legislature may wish to consider establishing a timeframe for resolving non-rate cases.	Concur In Part
11	32	No	Consider transferring responsibility for CORE energy efficiency programs to the Sustainable Energy Division; consider delegating authority to a manager independent of utilities to monitor program between filings; utilize methods other than adjudication for reviewing CORE programs; create policies and procedures regarding CORE programs.	Concur In Part
12	35	No	Adhere to Department of Information Technology policies for IT assets; reduce portable IT assets not regularly needed; implement application transaction logging and edit controls; and revise, test, and fully document the Continuity of Operations Plan.	Concur In Part
13	38	No	Document review of complaint resolution outcomes and develop means to measure and document consumer opinion.	Concur In Part
14	39	No	Develop a manual of procedures for and train staff regarding the consumer contact database; establish procedures to ensure staff enters data timely and completely.	Concur In Part

Observation Number	Page	Legislative Action Required	Recommendation	Agency Response
15	43	Yes	The Legislature may wish to consider expanding the responsibilities of the Office of Consumer Advocate (OCA) to include Consumer Affairs personnel and responsibilities.	<u>OCA</u> Concur In Part <u>PUC</u> Do Not Concur
16	51	Yes	The Legislature may wish to reconsider whether the Energy Efficiency and Sustainable Energy Board's (EESE Board) lack of authority and resources constrain its ability to accomplish its mandate.	<u>EESE Board</u> <u>Chair</u> Concur

THIS PAGE INTENTIONALLY LEFT BLANK

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

BACKGROUND

The Public Service Commission was created in 1911 as a State tribunal and given broad supervisory and regulatory powers over public utilities and railroads in the State. The name was changed in 1951 to the Public Utilities Commission (PUC). Chapter 494, Laws of 1979, made the Commissioners full-time and generally amended the structure and guidelines of the PUC contained in RSA 363. In 1985, the Department of Transportation was created and the Commission's transportation functions were transferred there.

The PUC has general jurisdiction over rates, quality of service, finance, accounting, and safety for utilities including electric, telecommunications, natural gas, water, and sewer systems. It also regulates pipelines for transporting, distributing or selling gas, crude petroleum, refined petroleum products, or combinations of petroleum products. The PUC does not regulate cable television, cellular, out-of-state long distance, or internet service providers. The PUC's mission is to ensure consumers of regulated utilities receive safe, adequate, and reliable service at just and reasonable rates; to foster competition where appropriate; to provide necessary consumer protection; and to provide a thorough but efficient regulatory process that is fair, open, and innovative. To accomplish these charges, the Commission investigates and rules on issues ranging from existing or proposed rates, charges, and classifications; rules and regulations; debt financing; ownership of utility plants; and other utility regulatory matters. During State fiscal years (SFY) 2010 and 2011, the Commission opened 350 and 309 docketed cases and closed 324 and 346, respectively.

The PUC is governed by three Commissioners, appointed by the Governor and Council (G&C) for six-year terms. One Commissioner is appointed as chairman, who serves as the administrative head of the agency. The PUC is structured, in part, around three industry-specific divisions specializing in the types of utilities it regulates: Electric, Telecommunications, and Gas and Water. The PUC also has Administration, Audit, Consumer Affairs, Legal, Safety, and Sustainable Energy Divisions. In total, the PUC had 73 authorized positions – seven unclassified and 66 classified.

The goal of each industry-specific division is to ensure safe and reliable services at reasonable rates. Each division analyzes and advises the Commission on many aspects of their industry, including rate-setting, mergers and acquisitions, service quality, and financing. Each division is also responsible for analyzing and advising the Commission on industry-specific issues such as purchase power agreements, technological advances, and cost of gas, as well as to provide technical expertise to the Commissioners in adjudicating cases.

The Administration Division provides common business support functions, while the Audit Division provides support to each industry-specific division by conducting desk audits of utilities' annual reports and reviewing financial information for costs incurred in gas and rate increase filings. The Consumer Affairs Division (CAD) provides consumers with information about rules and regulations, utility companies, changes in the industry, and PUC proceedings and public hearings; provides tips on energy conservation; and assists consumers in setting up utility

bill payment plans. The CAD also helps to resolve disputes between the consumer and the regulated utility.

The Legal Division provides legal expertise to the Commissioners and staff. Legal Division personnel also coordinate with its industry-specific utility analysts to establish the PUC staff's position on a petition and present the position in proceedings before the Commission.

The Safety Division monitors and inspects gas utility construction and safety practices, operates the underground damage prevention program known as Dig Safe, and develops and maintains a geographic information system used by the entire PUC. The division is also responsible for investigating, among other things, electrical injuries resulting from contact with a utility's facility.

The Sustainable Energy Division was created in 2008 to assist the PUC in implementing legislative initiatives to promote renewable energy and energy efficiency; advance energy sustainability, affordability, and security; and aid the PUC in administering the Renewable Energy and the Greenhouse Gas Emissions Reduction Funds (GHGERF). The Division also manages the statewide energy building code program; sets energy efficiency standards for certain appliances; administers the electric renewable portfolio standard (RSA 362-F); and participates in the Regional Greenhouse Gas Initiative. One Division staff provides part-time support to the Energy Efficiency and Sustainable Energy Board (EESB Board).

The PUC is funded primarily through assessments on the utilities it regulates. After the close of each fiscal year, the PUC must determine expenses incurred in performing its duties related to public utilities. To determine expenditures, the PUC must include the Office of the Consumer Advocate (OCA). Expenses related to investigations which have been or may be charged and recovered under the provisions of RSA 365:37 and RSA 365:38 are excluded from the determination. Utilities earning less than \$10,000 in gross revenues are exempt from assessments. The total expenditures for the PUC in SFY 2011 were \$16 million, a decrease of 29 percent from SFY 2010 due primarily to the reduction in the GHGERF funds available for grants. Table 1 shows the PUC source of funds and expenditures for SFY 2010 and 2011.

Office Of Consumer Advocate

The OCA is an independent agency administratively attached to the PUC consisting of the Consumer Advocate, an unclassified position, and four full-time classified staff including two utility analysts, one staff attorney, and one legal assistant. The Consumer Advocate is appointed by the G&C to serve a four-year term, or until a successor is appointed, while OCA classified staff are hired by the Consumer Advocate.

The OCA's mission is to advocate for reasonably priced, safe, and reliable utility services. It has the power and duty to petition for, initiate, appear, or intervene in any proceeding concerning rates, charges, tariffs, and consumer services before any board, commission, agency, court, or regulatory body in which the interests of residential utility consumers are involved. The OCA receives advice from the nine-member Residential Ratepayer's Advisory Board on matters concerning residential ratepayers. Members of the Advisory Board are appointed by the Senate President, Speaker of the House, and G&C. RSA 363:28 also authorizes the OCA to promote

consumer knowledge, education, and awareness regarding public utilities. Table 2 shows the OCA's source of funds and expenditures for SFY 2010 and 2011.

Table 1

**PUC Source Of Funds And Expenditures,
SFYs 2010 And 2011**

Source Of Funds	SFY 2010	SFY 2011
Greenhouse Gas Emissions Reduction Fund	\$16,653,827	\$8,095,284
Assessment On Public Utilities	7,516,131	8,231,983
Renewable Energy Fund	5,566,538	1,558,842
Federal Funds ¹	349,805	590,009
Transfers From Other Agencies	51,600	250,709
Revolving Funds	701	1,062
Total Source Of Funds	\$30,138,602	\$18,727,889
Expenditures	SFY 2010	SFY 2011
Personal Services – Permanent	\$4,083,162	\$4,098,206
Personal Services – Temporary	319,661	454,428
Benefits	1,878,534	2,031,281
Grants Non-Federal (Greenhouse Gas Emissions Reduction Fund)	12,158,749	5,785,130
Grants Non-Federal (Renewable Energy Fund Rebates)	1,529,089	1,264,252
Consultants	1,263,002	757,255
In-State Travel	9,821	16,682
Out-Of-State Travel	89,148	64,783
Other Expenditures ²	1,679,968	1,956,490
Total Expenditures	\$23,011,134	\$16,428,507
<p>Notes:</p> <p>¹ Federal Funds include ARRA funds, which were discontinued at the end of SFY 2011.</p> <p>² Other Expenditures include current expenses, rents and leases, maintenance, organizational dues, equipment, transfers to other agencies, indirect costs, audit fund, training, retiree health, and books/periodicals.</p> <p>Source: LBA analysis of PUC statements of appropriation.</p>		

Table 2

**OCA Source Of Funds And Expenditures,
SFYs 2010 And 2011**

Source Of Funds	SFY 2010	SFY 2011
Assessments On Public Utilities	\$650,257	\$685,829
Total Source Of Funds	\$650,257	\$685,829
Expenditures	SFY 2010	SFY 2011
Personal Services – Permanent	\$336,697	\$354,388
Benefits	147,097	154,269
Consultants	29,850	20,635
Litigation Expenses	39,088	72,142
Other Expenditures ¹	97,525	84,395
Total Expenditures	\$650,257	\$685,829
Notes:		
¹ Other Expenditures include current expenses, rents and leases, maintenance, organizational dues, equipment, transfers to other agencies, temporary personal services, indirect costs, audit fund, training, retiree health, and books/periodicals.		
Source: LBA analysis of OCA statements of appropriation.		

Energy Efficiency And Sustainable Energy Board

The EESE Board is a 25-member volunteer Board administratively attached to the PUC and receives part-time administrative support from the Sustainable Energy Division. The EESE Board was created in 2008 by RSA 125-O:5-a to “promote and coordinate energy efficiency, demand response, and sustainable energy programs in the [S]tate.” Among other things, statute requires the EESE Board to: review State energy efficiency, conservation, demand response, and sustainable energy programs and incentives, and compile a report of those resources; develop a plan to achieve energy efficiency potential for all fuels, including setting meaningful and achievable energy efficiency goals and targets; and develop a plan for economic and environmental sustainability of the State’s energy system, including high efficiency clean energy resources which are renewable or have low net-greenhouse-gas emission. The EESE Board was not appropriated any funds by the State during SFYs 2010 or 2011.

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

PUBLIC UTILITIES COMMISSION

As a State agency, the Public Utilities Commission (PUC) is responsible for ensuring it complies with applicable laws and regulations. The first four Observations in this section identify areas where the PUC should improve compliance or clarify the agency's contracting practices, safety inspections, use of secretarial letters, and its approach to utilities' requests for rate case expense recoveries.

PUC management is also responsible for ensuring program goals are achieved. An important factor in achieving desired goals and minimizing operational problems is to design and implement appropriate management controls. Management controls include the plans, policies, procedures, and methods used to meet mission, goals, and objectives. The last ten Observations in this section address areas in which the PUC could improve management of its operations. We found the PUC should review its staffing and some personnel practices including ensuring supplemental job descriptions accurately reflect duties performed, establishing and enforcing policies and procedures, considering alternate processes to improve adjudicatory timeliness, and improving the process for receiving and addressing consumer complaints.

Observation No. 1

Ensure Contracts And Expenditures Are Approved According To State Policy

The PUC contracts with consultants for a broad range of services related to utility regulation. Some contracts are paid from the budgeted consultant class line within the Office of the Commissioners' accounting unit. Others are paid from accounting units specially created for the individual contract outside of the budget process, which allow the PUC to assess the costs of experts related to a proceeding against the petitioner or other parties to a proceeding. We found 12 such contracts paid from specially-created accounting units over the audit period. The contracts go through the normal Department of Justice review process, but are not approved by the Governor and Council (G&C).

In SFY 2010, the PUC expended approximately \$1.25 million through the consultant accounting units, and just over \$674,000 in State fiscal year (SFY) 2011, without G&C oversight.

The PUC received guidance from the Department of Justice in December 2000 stating "if all fees due on the contract... are contingent upon payment by the utility, there is likely no expenditure or encumbrance of appropriated funds, and [G&C] approval is not required." However, the Department of Administrative Services (DAS) Administrative Rules state all contracts for consultant services totaling \$2,500 or more must be approved by G&C. Statute requires any money "appropriated or otherwise provided" to carry on the work of a Department is subject to approval of the Governor with advice of the Executive Council [emphasis added]. While not appropriated through the budget process, some contracts, such as those for consultants on retainer for technical and safety evaluations or cost of capital cases, are used over more than one budget cycle and could be anticipated.

We also found the PUC expended \$24,700 with one company in SFY 2010 for teleconferencing expenses with no contract in place. The PUC contract for teleconferencing now in place was not written on the State's P-37 standard contract form, nor was it approved by the G&C. DAS rules require service contracts over \$2,000 be competitively bid.

Recommendations:

We recommend the PUC include continuing contract costs and other estimable costs in its biennial budget submissions.

We also recommend the Legislature consider whether the PUC should be required to:

- **submit all of its contracts above State policy thresholds to the G&C for approval, and**
- **use competitive bidding to procure services over \$2,000.**

Auditee Response:

We do not concur.

The PUC ensures that contracts are approved according to state policy by submission to the Department of Justice and the Department of Administrative Services, when appropriate, consistent with a written opinion of the Attorney General's office under which the Commission has been operating since 2000. In spite of this legal opinion, the Observation asserts that consulting contracts related to adjudicative proceedings, entered into pursuant to RSA 365:37, should be approved by Governor and Council.

The Observation also incorrectly posits that teleconferencing services should not be used without a P-37 standard form or approval by G&C. Since 2002, the Commission has secured teleconference services through membership subscriber agreements, which do not require a P-37 or competitive bidding. The Commission sought guidance from the Bureau of Purchase and Property when teleconferencing services questions would arise and was informed that the correct vehicle for purchasing teleconferencing services is a subscription agreement. Other agencies such as Employment Security and the Bureau of Developmental Services use this service and do not encumber the funds on a P-37 or obtain G&C approval. With respect to the amount, \$24,700 in 2010, the number of case participants and interested parties to a proceeding created a spike in usage. The Commission prudently sought an alternate vendor and signed a new subscription agreement under new terms in 2011 with a base annual cost of \$2310.

In 2004, the LBAO conducted a financial audit of the Commission. The procedures for consultant contracts paid through a special assessment and teleconference membership service agreements were reviewed for compliance with state laws and regulations. There were no findings with respect to adherence to state laws, regulations or policy.

There is no indication that the Commission is acting in an inefficient, ineffective or uneconomical manner in following the AG's guidance and sufficient safeguards exist through the

bidding process and the existing oversight of the Department of Justice and the Department of Administrative Services. The Commission follows all state contracting practices in accordance with Administrative Rules and engages in competitive bidding for consulting services over \$2,500. The Observation fails to note that the Commission adheres to best practices for securing consulting services by issuing a widely disseminated Request for Proposals (RFP) with selection criteria delineated therein and disclosure of conflicts of interest required from bidders, an objective evaluation with scoring matrices conducted by Commission Staff, approval of Staff's recommendation by the Commission, and review by the AG's office as to form and execution of the RFP and contract. Finally, the current process comports with and supports the PUC's fundamental role as an independent regulatory agency.

The Recommendation that the Commission should be required to submit all of its contracts to the G&C for approval would only serve to undermine the Commission's independence in adjudicatory proceedings by making it possible for regulated utilities or other interested parties to lobby against the use of a particular consultant or limit the scope of inquiry in a proceeding.

LBA Rejoinder:

As noted in the Observation, the Department of Justice legal advice was not definitive regarding G&C approval for contracts.

Observation No. 2

Clarify Administrative Rules Regarding Safety Inspections

The PUC's Administrative Rules governing utility inspections are unclear. The Safety Division's two safety inspectors conduct inspections of gas pipelines; however, the Division does not conduct safety inspections on all electric, telecommunication, water, or sewer utilities.

PUC Administrative Rules governing electric, water, and sewer utilities state the Commission "shall, from time to time, inspect the works and system of each," while Administrative Rules for gas utilities state the Commission "shall inspect every [gas] utility..." Finally, Administrative Rules for incumbent local exchange carriers require the PUC to inspect, and requires providers to allow and assist the Commission during inspections.

According to the Administrative Rules Director for the Office of Legislative Services, establishing Administrative Rules stating the PUC "shall" inspect, without establishing exemptions or criteria to exempt utilities from the process, creates an expectation the PUC will inspect all utilities. According to the PUC Chairman, the Commission must consider what is achievable for the agency considering the number of staff conducting safety inspections. The Commission is in the process of transferring a position into the Safety Division.

Recommendation:

We recommend the PUC clarify its Administrative Rules regarding inspections and establish parameters defining when it will and will not inspect a utility to help ensure safe

and reliable service. The parameters could include factors such as potential risks posed by the system and risks of disruption of service.

Auditee Response:

We concur.

The Commission's Administrative Rules regarding inspections can be clarified to accurately reflect the scope of authority for each industry and utility service under the Commission's jurisdiction. Although there is no indication that the Commission has failed in its responsibility to insure safe and reliable service or that there has been any risk to ratepayers under current rules and practice, the Commission will evaluate its administrative rules regarding inspections and undertake appropriate rulemakings.

Observation No. 3

Review The Use Of Secretarial Letters To Issue Orders

The PUC utilized secretarial letters in lieu of Commission orders in some instances. The PUC Chairman during the audit period and the General Counsel stated secretarial letters were the equivalent of Commission orders. As issued, however, secretarial letters did not meet all components of an order required by statute. Neither RSA 363 (The Public Utilities Commission) nor PUC Administrative Rules appeared to address secretarial letters directly.

Secretarial letters were issued by the PUC Executive Director to parties in docketed cases. Secretarial letters stated the Commission's decision on an issue, were signed by the Executive Director, and did not indicate whether any of the three Commissioners approved the content of the letter. Although secretarial letters sometimes included explanation of the reasoning behind a decision, these explanations were typically brief and consisted of no more than a few sentences.

Seven of 187 secretarial letters (four percent) during the audit period appear to address substantive issues. The Executive Director reported receiving all three Commissioners' approval prior to issuing these letters, but did not retain documentation for five of these letters.

Statute requires the Commission issue a final order on all matters presented to it, including the reasoning behind the decision, and the concurrence or dissent of each Commissioner participating in the decision, among other elements. Statute also requires orders be made available after they have been "signed by a majority of the commission."

Recommendations:

We recommend the PUC review its intended and actual use of secretarial letters. This review should include:

- **when and under what circumstances a secretarial letter should be issued,**

- clarifying whether concurrence and dissent of Commissioners participating in the decision will be conveyed,
- ensuring secretarial letters are issued according to Commission expectations, and
- whether clarifying language is needed in statute or Administrative Rules.

Auditee Response:

We concur in part.

The Observation states that the Commission uses secretarial letters in lieu of Commission orders at times. For purposes of this response, we assume the auditors are referring to the consecutively numbered orders that are issued under the Commissioners' signatures, posted on our website and distributed annually in a hard bound volume. These numbered orders meet the full terms of RSA 363:17-b and they are the principal tool the Commission uses to convey its determinations. The inclusion of the Commissioners' signatures is not a legal requirement but a format employed over the years. Like the State Supreme Court, the Commission could as easily note concurrence and dissent without actual signatures.

The Commission also uses secretarial letters, summarizing the issue and setting forth the Commission's determinations. They are used primarily to convey Commission decisions in abbreviated format on procedural matters, such as rescheduling a hearing date or time, extending a deadline for discovery to accommodate a witness, or memorializing the Commissioners' determination regarding intervention requests. They are also used to address compliance with applications for certification, and matters that go into effect by operation of law absent Commission action. There is no requirement that any decision be issued in the operation of law matters, but the Commission does so, for clarity and public awareness. The Commission posts all of its determinations on its website, whether a numbered order or a secretarial letter. The website is searchable and thus the contents of a secretarial letter are as easily accessed as a numbered order.

Secretarial letters are an efficient tool to communicate the Commission's determination on matters quickly. Though we have procedures for issuing secretarial letters, in response to the Observation we will review our use of secretarial letters and develop a practice guide that sets out written protocols for when and under what circumstances a secretarial letter will be issued.

The Observation also asserts that the Commission's use of secretarial letters conflicts with RSA 363:17-c. This assertion is not correct. RSA 363:17-c concerns meetings of the Commission, making clear that the Commission's deliberations are privileged and that written decisions or orders are not publicly available until they have been issued. The reference to signatures in this statute does not add a requirement to RSA 363:17-b but only makes clear that drafts of our numbered orders are not publicly available and it is only the final signed copy that is released.

Because RSA 363:17-b has been misconstrued, we do not concur with the Observation regarding compliance with that statute.

LBA Rejoinder:

RSA 363:17-c exempts Commission deliberations, including discussions concerning procedural, administrative, legal, and internal matters, from disclosure under RSA 91-A. However, it also states "Decisions and orders in adjudicatory proceedings and investigations shall be publicly available but only after they have been announced at a public meeting or hearing of the commission or reduced to writing, signed by a majority of the commission and served upon the parties." Since the Commission does not announce its decisions and orders in a public hearing or meeting, but rather reduces it to writing, the statute appears to require it be signed by a majority of the Commission.

Observation No. 4

Promulgate Administrative Rules Regarding Rate Case Expense Recoveries

The PUC had no Administrative Rules regarding utilities' requests for recovery of rate case expenses. Statute requires Rules. There were some commonalities in the way the PUC approached such requests, but it had no formalized, uniform approach to rate case expense recovery requests, opting instead to adjudicate such requests on a case-by-case basis.

A 2010 PUC staff-prepared report noted utilities had increasingly hired outside legal counsel over the past decade, and rate cases with expenses tended to involve large regulated public utilities and those using outside experts and legal counsel. The Commission had not systematically addressed whether and in what circumstances utilities should be required to competitively bid for legal and consulting services. Expenses approved for recovery by the Commission were passed along to the utilities' customers.

PUC Divisions treated utilities inconsistently regarding rate case expenses; two Divisions recommend the Commission reduce recoverable expenses because utilities had not engaged in competitive bidding, while one Division did not investigate whether utilities competitively bid and did not recommend reductions for that reason. Another Division had not had a rate case since 2005 and the Division Director was unsure whether the Division would recommend reducing expense recoveries for lack of competitive bidding. None of the Divisions had formal guidelines regarding when and how requests should be reduced in the absence of competitive bidding.

Without Administrative Rules regarding rate case recoveries, the Commission is noncompliant with statute. In addition, lack of standardization may result in the PUC treating utilities inconsistently, as well as allowing utilities to pass costs along to consumers that potentially should be absorbed by the utilities' shareholders.

Recommendations:

We recommend the PUC promulgate Administrative Rules addressing utilities' request for rate case expense recoveries under RSA 365:8, X. When developing Rules, the PUC should consider addressing utilities' competitive bidding practices, as well as enumerating the

specific elements utilities must provide when justifying proposed rate case expense recoveries.

Auditee Response:

We concur in part.

The Observation is correct insofar as it notes that the Commission has not adopted rules relative to the "determination and recovery of rate case expenses" as set forth in RSA 365:8, X. The heart of the recommendation is that the Commission adopt rules on rate case expense recovery, something the Commission determined was appropriate before the issue was raised in this audit.¹ Accordingly, the Commission opened a rulemaking docket on February 8, 2012. The rulemaking will establish rules setting forth the procedure that utilities must use to recover rate case expenses.

The Observation states that within divisions the staff analysts have differing views on some rate case expense elements, which is correct. It is never the goal of the Commission that the views of staff analysts be dictated by the Commissioners or that their analysis lead to a particular result. Their independence is a critical element of our process.

The important point is that there is no evidence that differing views among Staff or the absence of a written policy on rate case expense recovery have caused ratepayers to be charged inappropriately for rate case expenses. The Commission conducts a case by case analysis of the expenses submitted for recovery. The submissions include the types of service performed, time spent, hourly rates, the personnel involved, and itemization of other expenses. Parties to the proceeding have access to the rate case expense requests, subject to confidentiality, and have an opportunity to respond to the request. Under New Hampshire law the Commission is mandated to allow recovery of all prudently incurred utility expenses.

Our process, consistent with all of our rulemakings, will be to explore the issues with stakeholders, and address numerous questions, including the role for competitive bidding, and whether different utility industries or the size of a utility warrant different standards.

We will continue to conduct a case by case analysis of rate case expense requests pending the completion of the rulemaking.

Observation No. 5

Review Job Classifications For Utility Analysts And Utilize Hearings Examiners

Two positions within the PUC, the Consumer Affairs Division (CAD) Utility Analyst I and the Legal Division Hearings Examiner, do not perform key functions enumerated in State job

¹ See *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 25,280 at 13 (Oct. 25, 2011) stating a rulemaking proceeding would commence; see also *Pennichuck Water Works Inc.*, Order No. 25,278 at 19 (Oct. 21, 2011).

classifications and supplemental job descriptions (SJD). The job classifications and SJDs do not provide accurate criteria to measure cost and performance for these PUC personnel.

CAD Utility Analyst I personnel do *not* develop educational materials or provide training sessions, draft testimony, prepare interrogatory statements, or conduct site visits as described by the SJD and job classification. Nor do they directly supervise other employees performing similar functions, or make management-level decisions as outlined in the communication section of the job classification. Our review of State job classifications showed the Program Specialist I position more accurately describes duties and responsibilities assigned to CAD personnel. Similar to the Utility Analyst I, the Program Specialist I reviews and researches regulations, laws, plans, and policies to provide assistance to agency staff or the public; confers with other units on agency-wide issues; and reviews, clarifies, and explains program regulations and policies to personnel within the agency, other agencies, or the public. The Utility Analyst and Program Specialist positions have the same knowledge requirements and both positions require a Bachelor's degree. Additionally, the supervision requirements are similar for each. The CAD Utility Analyst I position is a labor grade 24, with an annual salary of \$42,842 to \$57,935. The Program Specialist I position is a labor grade 19 with an annual salary of \$34,866 to \$46,410, a difference of \$7,976 to \$11,525 per staff member, per year. If implemented, total salary savings for the five Utility Analyst I positions during the audit period would have been \$79,760 to \$115,250.

The PUC's five Hearings Examiners do *not* conduct prehearing examinations and hearings, qualify exhibits, rule on motions and admissibility of evidence, explore areas of potential agreement, or hear arguments or testimony as described by the SJDs and job classifications. Hearings Examiners manage procedural schedules; prepare witnesses; conduct direct and cross examination; present evidence and oral arguments; negotiate and draft settlement agreements; draft and revise final orders, rules, and regulations; and advise the Commission on legal, policy, and administrative questions.

Recommendations:

We recommend PUC management review the CAD Utility Analyst I and Legal Division Hearings Examiner job classifications, update supplemental job descriptions to accurately reflect actual job responsibilities, consult with the Division of Personnel to identify State position classifications which more accurately reflect the actual duties performed by these PUC personnel, and reclassify the positions as appropriate.

Auditee Response:

We concur in part.

Consumer Affairs Utility Analyst I's and Legal Division Hearings Examiners perform key functions enumerated in their State job classifications and supplemental job descriptions and are appropriately classified. We do not concur with the Observation's conclusion that the current classification and supplemental job description for the Utility Analyst I is inadequate to provide the Commission with accurate criteria to measure performance of its employees. The

Commission concurs, however, that the Consumer Affairs Utility Analyst I supplemental job descriptions should be updated. In addition, the Commission concurs with the auditor's conclusion that it should utilize its Hearings Examiners more frequently to conduct prehearing conferences and hearings.

Utility Analyst I

The Observation states that CAD Utility Analyst I (UA I) personnel do not perform certain elements of the job description such as developing educational materials, providing training sessions or directly supervising other employees and, therefore, concludes that the Program Specialist I position "more accurately describes duties and responsibilities assigned to CAD personnel." The conclusion that the Program Specialist I position is the more appropriate classification, however, is unfounded.

The UA I class specification is the most appropriate job description for a position that is unique to the Commission. It serves as the entry level position in a series of four positions with increasing complexity and responsibility at each level for the series, providing an opportunity for education in all aspects of utility regulation. We concur with the Observation to the extent that the current supplemental job descriptions for the UA Is should be updated to account for changes in daily responsibilities such as responsibility for reviewing the low income electric assistance program utility filings and reviewing requests for disconnection of accounts coded as medically necessary.

The Observation incorrectly assumes that because certain duties are present in both job descriptions one can easily be substituted for the other. The fact is, the appropriate classification and salary grade for a position is determined by a combination of components including characteristic duties, a rating of nine evaluation factors, and minimum qualifications. In other words, a characteristic duty is not the determinative factor in ascribing a particular classification and associated labor grade. It must be considered in light of the level at which the employee must perform the function. The UA I must skillfully communicate information of a complex and technical nature. Educating the public is not only a matter of developing brochures but of informing the public of their rights and responsibilities on subjects that are highly complex, and developing solutions to problems that are within the scope of agency policy, rules and state and federal law. Further, the Program Specialist position requires a Bachelor's degree and two years of professional or paraprofessional experience whereas a UA I requires a Bachelor's degree with three years of experience in the analysis, regulation or management of public or private corporations or the operational phases of public utilities (emphasis added). The UA I is considered a professional position requiring professional work experience.

In 1997, the Division of Personnel conducted an exhaustive examination of CAD positions which were classified as Informational Representatives, LG 21 at the time. This review included desk audits of each employee by a classification specialist, interviews with Commission management, and a review of other job classifications in the state. The Director of Personnel, in a Director's Decision Pursuant to Per 303.04 dated December 24, 1997, concluded that the job duties being performed by the position incumbents were consistent with five of the six characteristic duties and responsibilities of the Utility Analyst I position and "the level of functioning, as described by the Distinguishing Factors" was also consistent with the work being

performed by the incumbents. Accordingly, the Director determined that the positions in the Consumer Affairs Division were more appropriately classified as UA Is.

Finally, reclassifying the UA I positions would hinder recruitment of qualified individuals capable of performing the required tasks resulting in a less efficient and effective organization.

Hearings Examiner

The Observation states that the Commission's Hearings Examiners "do not conduct prehearing examinations and hearings, qualify exhibits, rule on motions and admissibility of evidence, explore areas of potential agreement, or hear arguments or testimony" as described in their job classification and, thus, should be utilized more frequently. We concur with this conclusion. It is correct that during the audit period, Hearings Examiners did not routinely preside over hearings. The frequency in which a Hearings Examiner will perform this function changes with the composition of the three-member Commission. In light of our efforts to improve our adjudicatory process, the Commission has designated Hearings Examiners as presiding officers in a number of recent prehearing conferences and will continue to do so.

Department Of Administrative Services Response:

We concur.

The Division of Personnel strongly supports, through administrative rule and general professional practice, agencies, supervisors and employees having and working under an accurate representation of an individual supplemental job description. As per the Administrative Rules of the Division of Personnel, Per 301.03 (a), 'The duties and work assignments for each position or group of positions in the state classified service shall be defined by a supplemental job description in the format established by the rule' and (b) 'The supplemental job description shall be developed and updated by the appointing authority or the supervisor assigned by the appointing authority to oversee the work assignments of the position.' Supplemental job descriptions (SJD) serve a variety of important purposes within the state classified system in the areas of recruitment, job performance, compensation, and layoff. The SJD should be a document that is reviewed frequently with the employee, usually during the Annual Performance Evaluation process. As per Personnel Rule 801.02, Minimum Requirements for All Evaluations, 'each evaluation shall measure the employee's performance in relation to the performance expectations of the position. At a minimum, these expectations shall include each accountability listed in the employee's supplemental job description required by Per 301.03 (d)(8), which shall be attached to the evaluation.'

The Division of Personnel is responsible under RSA 21-I:42 for "managing a centralized personnel operation which shall provide for the recruitment, appointment, compensation, promotion, transfer, layoff, removal and discipline of state employees." In addition, we are responsible for preparing, maintaining and periodically revising a position classification plan and allocating the position of every employee in the classified service to one of the classifications in the classification plan. The Division also relies on agencies and employees accurately describing actual work duties and responsibilities. Both classification titles, Utility Analyst and Hearings Examiner, have been used by the PUC and approved by the Division of

Personnel for many years. Should those titles not actually reflect actual day-to-day work duties and responsibilities the Division of Personnel will work with PUC administration to identify more appropriate classification titles as necessary.

LBA Rejoinder:

According to the State of New Hampshire Human Resources job classification, the basic purpose of a Utility Analyst I is "to research, investigate, and provide preliminary recommendations on rate structures, services, policies and economic issues regarding the regulation of public utilities." CAD Utility Analysts I we interviewed reported they do not perform these duties and responsibilities.

The PUC states the Division of Personnel conducted a review of the Utility Analyst I position in 1997; however, the Division of Personnel updated the Program Specialist I job classifications in 2001. The PUC states the Utility Analyst I position requires experience in analysis, regulation, or management experience. CAD utility analysts reported they do not perform analyses of utility filings, and one defined the function as a customer service representative.

Observation No. 6

Periodically Re-Evaluate Staffing Needs And Practices

The PUC has not performed a comprehensive agency-wide analysis of staffing needs since its 2001 reorganization. Rather, the Commission reviews staffing when new responsibilities are legislatively mandated or when there is a vacancy to determine whether the position is needed in its current division or elsewhere in the agency. Periodically conducting analyses of staffing needs helps ensure an agency has an appropriate number of personnel performing key functions to accomplish its mission, goals, and objectives.

Hiring Personnel Above Minimum Step

The PUC hired personnel with minimum job and educational qualifications at higher than the minimum step on the classified pay schedule. We reviewed 16 personnel files and found six instances where applicants possessing minimum education and work experience requirements were hired at steps 02, 03, 05, and 06.

In August 2009 and again in August 2011, the Director of the Division of Personnel (DoP) issued guidance to agency human resource and payroll staff outlining what must be included when agencies submit requests for starting salaries at higher than the minimum step. The PUC received DoP approval to reclassify one position from labor grade 30 to labor grade 26, to hire an applicant as a UA II step 06. The PUC's proposal also included promoting the applicant two labor grades after one year, then two more after another year. Personnel Rules require agencies to request temporary reclassifications to accommodate trainees *prior* to posting positions, but the DoP waived the requirement and approved the request. According to the DoP Director, requests to temporarily downgrade a position *one* labor grade may be approved if an applicant is missing

one year of experience; however, in this case the applicant was missing two years of work experience.

DAS rules allowed the DoP Director to determine if recruiting difficulties necessitated placement at a higher step than minimum, upon request from an agency. Rules did not require agencies document the recruitment process or define "difficulties in recruitment," although specific guidance in the form of email memoranda were provided to agencies with information to be included with all requests to hire above the minimum step. The PUC requested exceptions, but did not submit documentation of its recruitment difficulties.

Offering applicants higher-than-minimum steps for starting salary resulted in higher compensation for employees throughout their State service. The applicant hired for the temporarily downgraded position actually received a starting salary higher than if hired at the original labor grade minimum.

Recommendations:

We recommend the PUC periodically conduct agency-wide analyses of staffing needs and organization. We further recommend the PUC ensure salary for every applicant is at the lowest step increment necessary for recruitment.

We recommend the DAS Division of Personnel consider amending its Rules to require agencies provide documentation of the need to offer applicants more than the minimum step for recruitment, including the number of qualified applicants and the reasons which resulted in the agency's request to hire above the minimum step.

Auditee Response:

We concur in part.

The Commission concurs with the recommendation that the Commission should periodically conduct a comprehensive agency-wide analysis of staffing needs and organization, though we do not accept all of the analysis on which the observation relies. The Observation makes no mention of the fact that the Commission's staffing levels have not changed for twenty years despite fundamental changes in regulation and a corresponding expansion of our core mission, particularly in the areas of pipeline safety, storm response and renewable energy and greenhouse gas emissions fund programs. The Commission is satisfied that its organizational structure is effective and that personnel classifications are appropriate to meet its mission.

We agree that periodic review of staffing needs is important and we do so during the development of its biennial budget process, in response to legislation or other regulatory events, and whenever a vacancy arises. However, the Commission believes that the recommendation to perform a comprehensive agency-wide analysis of staffing needs and organization is good practice.

Hiring Personnel Above Minimum Step

Recruiting individuals with experience in utility regulation, utility or administrative law, or with professional credentials such as economists or engineers, is particularly difficult. The education and work experience requirements associated with these positions are significant, requiring 6 years' work experience in addition to a college or advanced degree. Yet we offer compensation levels that a college graduate with minimal experience can secure at a private firm or company. The Commission often has little choice but to offer higher-than-minimum steps as a starting salary. In each instance cited by the auditors, a request was made of the Division of Personnel (DoP) for a higher entrance salary with a justification based on the applicant's credentials, the difficulty in recruiting qualified candidates or a combination of the two. Occasionally, to recruit a qualified candidate short the number of years required by the job specification we have resorted to "downgrading" a position for a period of time. In the example used by the Observation, the individual in question was employed as a consultant by a national firm specializing in energy matters for three years and an electric power company for a year and a half before joining the Commission. Even with a Master's Degree, she failed to meet the minimum qualifications for a Utility Analyst IV because she was short 1 ½ years' direct experience, though she had other valuable experience not counted by the DOP towards the work experience requirement. The DOP worked cooperatively with the Commission and devised a compensation schedule that was tied to the work experience component of the job description thereby allowing the Commission to recruit an exceptional employee.

DAS Response:

We concur in part.

Agencies have the authority to hire what they believe is the best candidate for the vacant position. They must conform to the Rules of the Division of Personnel in the posting and recruitment process; however, when it comes down to the final candidate agencies and appointing authorities are best suited to determine if the candidate meets all of the criteria they seek to fill the job opening.

The Division of Personnel takes its responsibilities very seriously to safeguard the State's funds in matters surrounding agency higher step requests. As per Personnel Rule 901.02, Beginning Salary, 'For original appointments, the appointing authority shall set the beginning salary at the minimum step established for the class, unless the director or his or her designee, at the request of the appointing authority, determines that difficulties in recruitment necessitate placement at a higher step than the minimum.' While it may be considered a vague statement, the phrase 'difficulties in recruitment' can be interpreted to mean many things. Since 2007 classified state employees have not received a cost of living salary increase, resulting in agencies requesting higher step requests to maintain competitive starting salaries for some of the State's higher level positions. It is an accurate statement that candidates that enter state service at a higher minimum step result in higher compensation throughout their State career; however, the alternative would be for agencies to fill the position with a candidate lacking those skills the appointing authority considers critical or leaving the position vacant for an extended period of time leaving the duties and responsibilities incomplete. As a result of memoranda provided by the DOP, agencies are required to provide specific information necessary for the Director to

determine if they have faced difficulties in recruitment; if the agency does not provide the information as described by the memo, the higher step will not be approved.

As per Personnel Rule 405.01 (a), Certification Review Process, 'The director or his or her designee shall review all applications for employment filed under Per 401 and certify in writing to the appointing authority whether the applicants meet the minimum educational, experience and examination requirements which are stated in the class specification and/or supplemental job description...' In this case, the PUC has had, for many years, the designated authority to review and certify their own applications for employment for all of their agency employment vacancies. A review of the specific situations referenced in the observation demonstrates that three candidates were hired meeting the minimum qualifications required for each classification title. Three other applications had PUC agency notations in the "For Official Use Only" section of the application indicating the candidate met the minimum qualifications. A review of the candidates' actual application demonstrates that three applicants did not certify as meeting the minimum qualifications and should not have been certified. In addition, while correct that all of these specific six were hired at higher than minimum step, Personnel records indicate that the PUC requested and received the required appropriate approval providing appropriate narrative articulating the PUC's difficulty in recruitment as well as justification specific to the candidate. The Division plans to reach out formally to the PUC regarding the certification process, return the responsibility to the Division for a period of time until training in the certification process is complete.

The audit identified a situation in which the PUC requested and received approval to temporarily downgrade a Utility Analyst position. In the request, the PUC extensively articulated their rationale and justification, stating that for this particular opening they had received over 50 applications, the composition of the interview and selection committee, and steps utilized during the selection process. In addition, the PUC provided narrative specific to the candidate. Although the candidate did not meet the minimum qualifications on the classification specification, she did possess sufficiently similar work experience in areas such as energy consulting, renewable energy, conservation programs and a posting within city government in the area of sustainability and economic development.

The audit is correct in identifying that the request for trainee status to temporarily downgrade the Utility Analyst position was not made prior to posting. The position of Utility Analyst IV was established on October 7, 2009 and the PUC initiated the recruitment process. The request to temporarily downgrade the position was submitted to the Division of Personnel on March 23, 2010; six months after the PUC had accepted applications, conducted interviews and had a hiring recommendation. The decision was made that the PUC did submit the request after fully attempting to recruit and hire a candidate that met the minimum qualifications and approval was granted.

Observation No. 7

Ensure Division-Specific Policies And Procedures Are Adequate

The PUC had no specific formal policies and procedures for training CAD personnel or for using the CAD database. It also did not have Division-specific policies and procedures for recommending approval of a rate or other utility filing and for recommending approval of cost recovery petitions. The PUC had agency-wide administrative policies, including an employee manual, policies regarding ethics and sexual harassment, and utilized the Department of Information Technology (DoIT) standards for information technology policies. Neither the Commissioners nor the Executive Director approved Division-specific policies and procedures. Administrative Rules exist to formalize PUC interactions with regulated utilities and define its conduct in the furtherance of its statutory responsibilities. Several Division Directors and management personnel reported Administrative Rules guide staff interactions with the public and utilities, and acted as official policy. However, Rules do not adequately address internal procedures.

Management directives, whether agency-wide or Division-specific, are required to ensure the mission and goals of the PUC are carried out according to those directives. Without formal Division-specific policies and procedures, senior management may not be able to ensure adequate controls exist for Division-specific duties, responsibilities, and practices. Additionally, PUC management may not be able to ensure all petitions are reviewed consistently among Utility Analysts.

Recommendations:

We recommend each Division establish written policies and procedures to ensure management directives are consistently carried out. PUC senior management should review and approve all Division policies and procedures, ensuring consistency between Divisions when appropriate.

Auditee Response:

We concur.

The Observation recommends that "each Division establish written policies and procedures to ensure management directives are consistently carried out." Because the Observation refers to rate filings and cost recovery, we assume the recommendation relates to substantive areas of utility analysts' review, rather than administrative or office policies.

As noted in the Observation, there are a number of Commission-wide policies and standard operating procedures that govern both administrative and docket related procedures, such as disposition of confidential materials, record retention and contracting procedures. In addition, there are forms and checklists that guide an analyst's review of Division specific utility filings that have been approved by senior management such as competitive electric and gas supplier

registrations, telecommunications special contracts and tariff filings, and accident investigations.

What is not reduced to writing are the steps taken to evaluate a change in rates and/or rate structure, which is a complex intellectual exercise that will vary according to the particular facts and requests in each case. Many analysts come to their work with advanced degrees or experience with the economic, financial and engineering principles at play in ratemaking and do not need instructions on how to analyze a filing. This does not mean, however, that rate cases are without structure or limitations. Rate filings are reviewed in the context of an adjudicative proceeding and, accordingly, have milestones and deadlines that must be met by an analyst. A procedural schedule is a legitimate form of control over the execution of an analyst's responsibilities and serves as a vehicle for management to monitor the performance of an analyst. Beginning with identification of the issues presented by the petition before the prehearing conference, followed by discussion and agreement between the analyst and their supervisor and attorney assigned to the case on the substance of discovery, to the final step of authoring conclusions and recommendations in the form of testimony or memoranda that is reviewed and approved by the analysts' supervisor and/or attorney, each of these activities are enumerated in the procedural schedule as required actions to review a rate petition and do not need further written procedures for their conduct. To the extent each Division were to write a substantive policy regarding the approval of a rate filing, it would either be so brief as to be effectively meaningless (e.g. "follow all rules, legal authorities and ratemaking principles") or so extensive as to be the equivalent of the texts that Staff now consults.

The Commission concurs, however, with the Observation's recommendation that the Commission reduce to writing wherever possible policies and procedures to ensure a Division is carrying out its responsibilities in a manner consistent with management directives.

Observation No. 8

Improve Ethics Policies And Procedures

The Commission's ethics policy stated there was an inherent conflict arising from the need for staff to act variously as "an impassioned advocate, an unbiased arbiter, an informed adviser, an aggressive investigator or a forthright mediator." We found the PUC's ethics policies and procedures needed improvement.

Ethics Board

The PUC's ethics policy identified a three-member Ethics Board "representative, to the extent possible, of all Commission staff" and serving as a "confidential advisor regarding specific ethical questions brought to it on a case-by-case basis." However, by December 2011, the Board had been functioning with one member for two years.

The policy stated the Ethics Board would serve as a confidential advisor regarding specific ethical questions brought to it on a case-by-case basis. It also stated ultimate rulings on the propriety of a specific action would be made by the Chairman of the Commission. The policy did

not specify which cases the Board would keep confidential versus which would be brought to the Chairman.

Operating Procedures

While the ethics policy establishes disciplinary action for violations and ethics training is provided annually, we found no standard operating procedures regarding: 1) guiding a Division Director's response to an employee regarding ethics concerns, 2) public and private comments by staff which could unfairly prejudice a party or prejudice a proceeding, or 3) removing staff advocates' access to PUC network drives related to proceedings.

The Chief Hearings Examiner reported there had been no need for written policies or procedures regarding staff disclosures of potential conflicts of interest or bias because staff had professional judgment and knew they should protect the reputation of the PUC. The PUC discussed changes to the ethics policy, but they had not been formalized during the audit period.

Outdated Statute

Statute prohibited Commissioners, the Executive Director, Finance Director, General Counsel and Chief Engineer from accepting employment with any utility under the control of the Commission until one year after becoming separated from the Commission. However, the statute had not been amended since a PUC-wide reorganization which eliminated the Finance Director and Chief Engineer positions.

Recommendations:

We recommend the PUC revitalize the ethics board and supplement the ethics policy with additional operating procedures to guide staff, Division Directors, and the Ethics Board.

We also recommend the Legislature consider amending RSA 363:12-b to reflect the current PUC organization and positions prohibited from accepting employment with any utility under the control of the PUC within one year of separation from PUC employment.

Auditee Response:

We concur.

The Commission concurs with the Observation regarding the need for legislative change to RSA 363:12-b to reflect the internal reorganization of the Commission and the need to designate two additional members to serve on the Commission's Ethics Board; as well as updating its ethics policy by incorporating additional procedures.

The Commission developed an ethics policy and an Ethics Board to establish a culture of ethical conduct and to provide guidance to employees who might face situations with ethical consequences. The Commission's reputation for high ethical standards is something that many regulatory agencies in the country do not have. Indeed, the Observation finds no violation of

ethics requirements and merely points up areas that require updating, some of which have already occurred.

The Ethics Policy was issued in 1996 and has been updated periodically since then. The most recent revisions, completed after the conclusion of the auditors' interviews, reflect legislative changes to state ethics requirements and the establishment of new resources for obtaining information regarding such requirements.

The Observation recommends that the Commission "revitalize" the Ethics Board by designating two members to fill vacant seats. This has been done. While the membership should not have lapsed, there is no indication that the responsibilities of the Ethics Board have been impaired, or that the Commission has been disadvantaged, by not having a full complement of members.

The Observation also recommends that the Commission "supplement the ethics policy with operating procedures to guide staff, Division Directors and the Ethics Board." The Ethics Policy sets out procedures in a number of areas but particularly for disciplinary action in cases of violations. In addition, the Commission holds annual ethics training sessions for Staff and ethics requirements are routinely addressed during a new hire's orientation sessions with Staff. The Observation has identified areas, however, where we could better inform our employees on certain procedural aspects of compliance with the Ethics Policy. We will incorporate such advice and further develop our protocols.

The final recommendation is for the legislature to consider amending RSA 363:12-b which sets forth restrictions on certain staff and Commissioners upon leaving the Commission's employ. We concur with this recommendation as the statute reflects an organizational structure and job titles that have changed.

Observation No. 9

Develop and Implement Policies and Procedures For Using Audio Equipment In PUC Hearing Rooms

The Commissioners and the General Counsel had audio speakers located in their offices, and linked to microphones in Hearing Rooms A and B. Equipment located in locked closets in the hearing room controlled microphones in the hearing rooms, such as on parties' tables, witness chairs, and the Commissioners' bench. The microphones were turned on for each hearing and some technical sessions. One Commissioner stated the speakers were rarely used, while the General Counsel reported using the speaker to listen to hearings to identify where parties were heading early in a case and to pinpoint potential legal issues.

The keys to the closets housing the audio speakers were located on a cubicle wall in the Clerk's Office. There was no sign-out sheet and the keys were accessible to all PUC employees, creating the risk unauthorized persons could access and activate the audio system.

The sound system remained on during confidential portions of hearings, but Commissioners were present at such times. The sound system was reportedly off during settlement conferences

or during technical sessions, which were open to the public, unless a party requested participation by telephone. The Commissioners did not attend technical sessions.

The sound system may or may not have been off during a hearing recess, depending on the length of the break. Confidential settlement hearings and private conversations held in the hearing rooms could be overheard purposely or inadvertently. The public and parties to hearings may not have been aware their conversations could be overheard during private discussions occurring in the hearing rooms.

According to statute, a person is in violation of State law if, without the consent of all parties to the communication, a person willfully intercepts or endeavors to intercept any telecommunication or oral communication; willfully uses any electronic, mechanical, or other device to intercept any oral communication when such device is affixed to, or otherwise transmits a signal through, a wire, cable or other like connection used in telecommunication.

The PUC did not have policies or procedures governing the appropriate use of the audio equipment, control of keys to closets housing audio equipment, or to ensure parties and individuals were aware conversations in the hearing rooms could be overheard.

We did not find any instances of misconduct regarding the use of audio equipment during the audit period.

Recommendations:

We recommend the PUC develop and adhere to strict policies and procedures governing the use of audio equipment in the hearing rooms and implement controls over the keys to the audio equipment closets. We also recommend the PUC inform parties and individuals in the hearing rooms their discussions and private conversations may be heard by others not present in the hearing rooms when the audio system is in use.

Auditee Response:

We concur.

Though we find nothing improper in the use of audio equipment in the Commission hearing rooms, we concur with the Observation's finding that policies or procedures should be developed regarding use of speakers connected from the Commission Hearing Room A. We note, in addition, that the Commission will change to a new system, broadcasting its hearings over the web in June 2012, as set out in the Commission's FY 2012-2015 Strategic Information Technology Plan. Accordingly, the speakers in the Commissioners' and General Counsel's offices will be disconnected.

We concur with the Observation's conclusion that there is or has been a risk of unauthorized persons accessing and activating the audio system, however, we believe this risk has been minimal for the following reasons. The Commission has procedures governing the appropriate use of the audio equipment. The hearing room clerk has written instructions to turn on the

system at the start of a hearing and turn off the system at its conclusion. Pending web broadcasting of its hearings, the clerk will also turn off the system during a hearing recess regardless of its length. The keys to the closet housing the audio system are only accessible to staff who are authorized users of the sound system. The fact that sound is broadcast in the hearing room when the system is turned on means that all parties to the hearing or meeting will be aware that the sound system is activated. As a result, it is highly unlikely that activation by an unauthorized person would go undetected.

Observation No. 10

Improve Adjudicatory Timeliness

The PUC closed 119 cases by Commission Order during the audit period. From the date a petition was filed to the date an order was issued took an average of 254 calendar days and a median of 204 days (29 weeks). Of the 97 cases for which we were able to identify a final hearing date, the PUC took an average of 58 days and a median of 30 days, between the final hearing and the order being issued. According to statute, the PUC had a one-year timeframe to resolve rate-related cases; there were no statutory timelines for issuing orders in non-rate-related cases.

The PUC Chairman during the audit period reported the adjudicatory process is time-consuming. Six of 11 (55 percent) utility representatives responding to our survey stated the PUC's adjudicatory process was not efficient, cases "last too long" and the PUC should use "a more streamlined approach."

Seven of 11 (64 percent) respondents reported hearings were not held timely and final orders were not issued timely in non-rate cases. Some non-rate cases closed during the audit period took over two years from the time they were filed to the final order. Factors contributing to timeliness in five cases showed:

- Utilities or PUC staff requested, and the Commission granted, 19 extensions citing, at least once in each case, that granting the request would "not unduly delay" the proceedings.
- The 19 extensions included 11 instances where hearing dates were postponed.
- Not including hearings rescheduled through extension requests, the Commission rescheduled three hearings on its own accord.
- In one case, the Commission granted a utility two extensions to file a plan; however, the utility still exceeded the extended date by four months without Commission approval.
- In one case, after a requested extension, the Commission required the parties file an amended procedural schedule within two weeks. No procedural schedule was filed one and a half years later; however, the parties submitted a settlement agreement.

According to one former Commissioner, if parties cannot agree to a schedule during the discovery process, Commissioners can establish one and it could be beneficial if the PUC had

authority to direct a compressed hearing schedule. New Hampshire rules of civil procedure allow Courts to issue an Order containing a procedural schedule after a Structuring Conference. However, the PUC allowed parties to establish procedural schedules without penalties for missed deadlines.

Four of six states we surveyed hold expedited hearings for certain issues. Other methods states have implemented to increase timeliness include:

- Three states hold technical sessions via teleconferencing or videoconferencing.
- Four states use hearings examiners – two between 76-100 percent of the time, one state 51-75 percent of the time, and one state up to 25 percent of the time.
- One state uses administrative law judges for hearings 26-50 percent of the time for water cases and for minor telecommunications, gas, and electric cases.

The PUC's Hearings Examiners were not used to hold hearings during the audit period, and tele- or videoconferencing were rarely used.

The PUC Chairman during the audit period stated the Commission always tries to reach consensus before issuing orders; however, investing time in reaching consensus may delay issuance of the order. Also, according to PUC personnel, staff attorneys, Division Directors, utility analysts, General Counsel, and the Executive Director may all participate in deliberations.

Recommendations:

We recommend the PUC consider methods to improve the timeliness of orders by:

- **implementing teleconferencing or videoconferencing;**
- **streamlining the hearing process, including using only one or two Commissioners, or hearings examiners;**
- **reducing the number of postponements or extensions of filings, testimony, briefs, and hearings; and**
- **only including necessary staff in deliberative sessions.**

We also recommend the Legislature consider establishing a timeframe for resolving non-rate cases.

Auditee Response:

We concur in part.

The Observation asserts that the Commission has not been as timely as it might have been in certain instances and recommends that the Commission explore mechanisms used in other states. The Commission concurs in part and agrees that it is always important to identify ways to make resolution of our cases more efficient. We continually strive to improve our processes.

The number of days a docket is open does not necessarily reflect the Commission's efficiency. For example, a docket number is assigned when a company sends a letter noticing its intent to file a rate case, but this does not mean the rate petition has been filed or that the Commission is able to take any action. Similarly at the end of a case, an order may have been issued, but with rehearing requests, appeal to the Supreme Court, and remand for further proceedings, a docket may remain open for months or even years, and significant periods of time may be out of the Commission's hands. Likewise, the bankruptcy filing of a company caused numerous cases to be suspended, pending resolution of the bankruptcy petition. Each case will have its own set of complications, and while we strive to accelerate the review time and final resolution in all of our cases, analyzing efficiency is not so simple a matter as counting days from opening and closing of dockets.

The record of the Commission is actually far better than the auditors' numbers suggest. The auditors note 119 cases closed by order, but fail to note an additional 493 matters closed by letter or administrative action during the audit period. In addition, the Auditors calculated the median time to issue orders following a hearing at 30 days. Given the time needed for transcripts, deliberations, and drafting of orders that will withstand the scrutiny of New Hampshire Supreme Court review, this is a good result. Having said that, however, our intention is to be as prompt as we can, within the confines of due process, and we will continue to search for ways to reach final resolution in a timely fashion. Towards that end, we will evaluate the case management tools we now use to determine if they can be modified to assist in flagging cases that have been delayed. Finally, the Commission will find ways to indicate in its case management records, cases which have been phased, consolidated or appealed so that any metrics regarding length of time to dispose of a case account for these circumstances.

The Observation also states that the Commission should consider tools used by other states to accelerate our processes. We continue to explore opportunities to meet the requirements of due process in a more expeditious way and have taken steps to implement the recommendation, holding a session for stakeholders to make suggestions based on their experience in other states, with other agencies or simply based on their experiences at the Commission. Finally, the Observation recommends greater use of videoconferencing (though we have no funds to purchase such facilities) and teleconferencing. We will explore the suggestions and implement them if they are effective, but they will do nothing to accelerate the process. We have agreed in response to another Observation to make greater use of Hearings Examiners.

Observation No. 11

Consider Changing Oversight Responsibilities For CORE Energy Efficiency Programs

The CORE Energy Efficiency Program is a set of common products and services offered to consumers by the State's gas and electric utilities. The electric portion is funded primarily through the System Benefits Charge paid by electric customers in accordance with statute. The gas programs are funded through the Local Distribution Adjustment Charge for gas customers, as established in PUC proceedings. Utilities manage the *overall* program via a CORE Program Management Team, containing representatives from each utility, with one member designated as the liaison to the PUC's Electric Division (ED). Utilities manage *their own* CORE Energy

Efficiency Programs and file quarterly reports with ED staff for monitoring and review. The ED hires contractors to conduct monitoring and evaluation of the CORE programs.

More active management by the PUC outside the adjudication process could benefit the CORE Program. For example,

- The Commission's auditors found one utility inappropriately withheld funds at the beginning of the program year for its own use for three years, making \$869,000 unavailable for CORE energy efficiency projects. The utility did not file required reports, preventing PUC staff from properly monitoring or evaluating the programs. Statute allows the utility to use *unused* CORE Energy Efficiency Program funds in this manner, not to exceed two percent of the prior year's total funds. However, statute does not allow the utility to *withhold* funds. A Secretarial Letter issued in November 2010 allowed the utility to continue withholding these funds.
- Utilities used varying methodologies for making the same calculations and there were inconsistencies among utilities' programs. Our conclusion from reviewing audits performed by PUC audit staff indicated a need for more robust operating policies and procedures on which to base operational procedures. Policies and procedures are critical tools to help an agency meet its objectives, and are necessary to minimize operational problems.

Once each year the utilities file their program proposals for the following year on the PUC docket for approval. From there, the filing follows a process similar to most docket filings, with petitions for intervention, an order of notice, discovery, one or more hearings before the PUC, technical conference(s), rebuttal testimony, a settlement conference, and an order by the PUC. The independent study of New Hampshire's energy policy and energy efficiency programs concluded "adjudicated regulatory proceedings are perhaps the least effective forum for contemplating program design changes..." to the CORE energy efficiency programs.

Additionally, the PUC's adjudicatory process was lengthy, and potentially adversarial and contentious. The adjudicated approach was also reactive, considering issues as they were proposed, rather than proactive by setting comprehensive policies, monitoring results, and making changes as needed. The amount of time the PUC took to consider and approve the CORE filing increased from 65 work days for the 2009 program year to 108 work days for the 2011/2012 program years. In addition, 2010 CORE docket filings indicated a need to start the adjudicatory process earlier in the year, so the programs could be fully considered before the start of the new program year.

CORE Energy Efficiency Programs appear more aligned with the Sustainable Energy Division's (SED) mission and expertise. The SED was created in 2008 to assist the PUC in implementing legislative initiatives to promote renewable energy and energy efficiency; advance energy sustainability, affordability, and security, whereas, according to the ED Director, the goal of the ED is to ensure safe, reliable electricity service at reasonable rates, balancing the interests of the utilities and the consumers.

Recommendations:

We recommend the PUC consider delegating some of its authority to a manager independent of the utilities to monitor the program between annual (now biennial) filings, consider transferring responsibility for the CORE Energy Efficiency Programs from the ED to the SED, and utilizing a methodology other than the adjudicatory process for review and approval of the CORE programs.

We further recommend the SED create policies and procedures for the CORE Energy Efficiency Programs, monitor performance, and ensure timing and reporting requirements are fulfilled by the utilities.

Auditee Response:

We concur in part.

The gas and electric energy efficiency programs are known as the CORE programs, and are operated by the state's gas and electric utilities, pursuant to a budget and common set of programs approved by the Commission. Until 2010 this approval was done annually. To bring about greater efficiency, however, we went to a two year budgeting process and are now in the second year of the current budget.

Electric Division or Sustainable Energy Division

We do not believe the Sustainable Energy Division should, or would be able to take responsibility for the CORE programs and thus do not concur with the recommendation that the programs be shifted. The Commission staff assigned to CORE program review are from the Electric Division, because they have the expertise to evaluate the accounting and rate allocation filings associated with the program. The Sustainable Energy Division has no economist, financial accountant or rate specialist to scrutinize the programs' expenditures and compliance with Commission directives. Unless additional technical staff is added to the Sustainable Energy Division, the programs cannot be shifted. The two divisions, however, can work together bringing the energy efficiency and renewable energy expertise of the Sustainable Energy Division to the watchdog function of the Electric Division.

Policies and Procedures

The Observation is correct in noting that some of the calculations and methodologies employed vary by utility, and we concur with the recommendation that some policies and procedures not now in writing could aid in monitoring performance and ensuring that regulatory requirements are fulfilled, though we disagree with the recommendation that the Sustainable Energy Division be the entity responsible for creating such policies and procedures, as noted above. The Commission will undertake a joint effort between the two Divisions to identify calculations, procedures or other protocols not currently in writing and develop drafts for collaborative stakeholder input and, ultimately, Commission adoption.

Adjudicatory Process

The Observation notes some of the difficulties inherent in the adjudicatory process, but fails to recognize the collaborative elements used in the CORE dockets to allow all stakeholders the opportunity to air issues prior to formal Commission hearings. Ironically, the parties felt they were spending too much time in these stakeholder sessions, and the Commission granted their request to go from monthly to quarterly meetings. We believe the real issue is not whether we should employ a collaborative versus an adjudicatory process, but rather find ways to explore the "big picture" issues of program design and energy efficiency goals. We have taken steps to create opportunities for stakeholders to engage in these discussions early on in the process, well before the more formal adjudicatory phase is underway. Whether an outside manager contracted to oversee these programs would be better remains to be seen, but use of outside consultants is seldom the preferred way to satisfy our obligations. The Commission will continue to explore how we oversee these programs, however, and take action as appropriate.

Irrespective of who provides the oversight, we remain firm in our belief that a \$26 M program (for gas and electric utilities) should be governed by orders of the Commission, developed after adjudication with full rights of participation by intervenors and appeal by affected parties. Thus, while we are always open to improvements in our process, we do not concur in the recommendation to consider utilizing a non-adjudicatory decision-making process for final authorization of the CORE program budgets and inclusion of those costs in rates.

Observation No. 12

Information Technology Improvements Needed

The PUC relied heavily on information technology (IT) to accomplish its mission. We found IT-related issues posing risks to the PUC's effective operations. We noted the following conditions:

Control Over IT Assets

DoIT policies establish controls over State-owned IT assets and makes agency heads or designees responsible for enforcing these policies. The PUC did not adhere to DoIT policies over its portable devices. Two thumb drives were initially reported as "lost/destroyed" but later reported found. Thumb drives lacked encryption and used weak password control. A PUC-owned personal computer was stolen from an employee's home during a burglary during the audit period.

Application Controls

Software applications developed in-house, such as the *Case Management System* and the *CAD's Contact Tracking System*, did not use common application IT controls such as transaction logging to capture changes made to data files or databases, or edit controls to detect input errors before a transaction was added to a database or submitted for processing.

Continuity Of Operations Plan

The Federal Emergency Management Agency (FEMA) recommends procedures to contact all employees in the event of an emergency and alternatives for employee contact if the emergency disrupts the primary means of communication. The FEMA also recommends entities test their continuity plans to assess, evaluate, and improve their ability to execute the plan under emergency conditions.

The PUC's *Continuity of Operations Plan* (COOP) was generally complete and up to date. However, the plan had never been tested, which may have revealed plan limitations. We observed the COOP relied on employee personal cell phones for communication, yet the personnel contact list contained home phone numbers and State-assigned email addresses, but only a few personal cell phone numbers, and no personal email addresses. The plan did not contain a dedicated website or unlisted telephone number for emergency access, and referenced an outdated U.S. Homeland Security Advisory System (HSAS).

Recommendations:

We recommend PUC management:

- **Review its protocols for portable IT-related assets, including requiring encryption of removable media, using strong passwords, limiting data storage on such devices, and defining the circumstances allowing laptops and other portable IT assets to be taken home, particularly when they will be left unattended.**
- **Reduce the number of portable IT assets not regularly needed, assign portable assets to specific individuals to maintain accountability, maintain an inventory supporting documentation of its IT assets, and dispose of devices according to DoIT policy.**
- **Implement application transaction logging and edit controls in software applications critical to its core mission, in conjunction with the DoIT.**
- **Revise the COOP to include complete and current contact information for PUC managers and staff, consider creating a dedicated, secured website and telephone number for access to critical information in an emergency, and update the COOP to reflect the latest HSAS.**
- **Fully test, document, and revise the COOP at least annually or when major changes to the PUC's core business processes or technology changes.**

Auditee Response:

We concur in part.

Control over IT Assets

All portable IT assets including laptops, flash drives and projectors are accounted for in the Commission's inventory records as required by DoIT's Mobile Device Security Policy. All

portable IT assets are now assigned to specific employees by use of a log sheet maintained by DoIT. The Observation is correct in noting that there were errors in the inventory records with respect to two thumb drives and that older thumb drives issued by DoIT lacked encryption and used weak password controls.

These thumb drives are slated to be destroyed pursuant to DoIT's Media Sanitization Policy and, pursuant to that policy, have been delivered to DoIT. Likewise, all Commission user passwords meet criteria established by DoIT in its User Account and Password Policy. The personal computer referred to in the Observation was stolen during a burglary when thieves broke into a locked (secured) house. The theft was immediately reported to the police and the Commission. While the Commission believes that the controls it has in place to protect its portable IT assets are sufficient, the Commission will adopt those recommendations set forth in the Observation that improve the Commission's control over its IT assets.

Application Controls

The current version of the software applications that are the subject of this Observation, the Case Management System and the Consumer Affairs Contact Tracking System, were developed in 2003 before there were statewide IT policies on application security standards. The Commission's IT priorities are focused on maintaining operations in compliance with all statewide policies and standards. As part of its Strategic Information Technology Plan, the Commission is scheduled this next biennium to undertake a review of its custom applications in conjunction with its SharePoint based e-government. At that time, the Commission will work with DoIT and perform a cost analysis and risk assessment to determine if a rewrite of these custom applications to include transaction, audit and edit controls is cost effective.

Continuity of Operations Plan

We agree that the Commission's COOP has not been tested and that the personnel contact list is not up to date. The COOP will be revised to include personal cell phone numbers and personal email addresses (if the employee has a personal email account). If an employee does not have a personal cell phone, we will require at least one alternate telephone number. Further, the COOP will be revised to reflect the elimination of the U.S. Homeland Security Advisory System in favor of the National Terrorism Advisory System.

The COOP was scheduled to be tested in the summer of 2011. With the departure of the Director of Administration in August, 2011, the testing was postponed. A new Director of Administration joined the Commission in January 2012; the Commission intends to test its COOP no later than the summer of 2012. The test will help the Commission identify any needed revisions (including the auditors' recommendation to create a dedicated, secured website and telephone number to determine whether this recommendation strengthens the COOP) and any interdependencies with other state agencies, such as DoIT.

Observation No. 13

Improve Consumer Complaint Process

The PUC's consumer complaints process should be improved, including establishing written procedures and better documentation requirements. We found an ineffective system to track and monitor consumer contacts, outcomes, or how competently and proficiently Utility Analysts handled consumer service. Additionally, the CAD Director does not follow up with consumers about their experiences with the CAD.

Our survey of consumers who filed complaints, both written and verbal, with the PUC demonstrated communication could be improved between the PUC and consumers. Because of the low response rate to our survey, the results could not be generalized to the entire population of complainants. Nonetheless, at least one-quarter of consumers responding to the survey reported the PUC did not explain the complaint process, update them on the status of their complaints, provide them with utilities' responses to their complaints, or make them aware of the resolution of their complaints. Additionally, consumers reported the PUC did not address all of their concerns or reported the PUC could have done more to help them resolve complaints.

According to the U.S. Government Accountability Office, effective management of an organization's workforce is essential to achieving results and an important part of internal control. Qualified and continuous supervision should be provided to ensure that internal control objectives are achieved.

Recommendations:

We recommend CAD management:

- **document the review of complaint resolution outcomes to ensure results are appropriate;**
- **establish means to measure and document consumer opinion, and adjust control activities as necessary.**

Auditee Response:

We concur in part.

The Observation recommends a new mechanism to document complaint resolution outcomes to ensure results are appropriate. We do not concur with this recommendation. The database used by the Consumer Affairs Division to track contacts with the Commission is effective. Processes are built into the database to assist the Consumer Affairs Division's utility analysts in monitoring their open contact memos including reminders for follow-up that appear when the analyst first enters the database. The Director of the Consumer Affairs Division ensures the results of a particular consumer complaint or series of complaints on the same subject are appropriate through daily communications with the utility analysts as well as regular meetings at which she communicates her expectations regarding interactions with customers. Additional

documentation would impose greater demands on the analysts and the Director without necessarily improving the complaint resolution process.

The Observation also recommends the Commission establish a means of measuring consumer opinion, something which we are willing to explore. It should be kept in mind, however, that the Consumer Affairs Division, like the Commission, must balance the interests of the consumer with the interests of the regulated utilities. As a result, consumers may not always be satisfied with the resolution to their complaint and, similarly, utilities may not always be satisfied. The Observation refers to the results of a survey the Audit staff conducted of consumers who had filed complaints with the Commission. From this survey, the Audit staff concluded that communication between the Commission and consumers could be improved. Because of the low response rate, there is no statistical support for interpreting the responses to be reflective of the larger group of consumers filing informal complaints with the Commission, and caution should be used when drawing conclusions from the survey results in light of the extremely low response rate. In fact, the Observation itself notes that the results cannot be generalized to the entire population of complainants. We agree, however, that conducting a periodic survey of customers who have filed informal complaints with the Commission could provide useful feedback on our complaint resolution process and concur with the Observation's recommendation in this regard.

Observation No. 14

Ensure Consumer Contact Database Is Complete

Some fields in the CAD consumer contact database are incomplete and inaccurate. The CAD Director and staff use the database to track consumer contacts, including complaints, referrals, and requests for information. The database included 9,814 consumer contacts during the audit period. We found 5,130 contacts (52 percent) with missing street addresses, and 4,285 contacts (44 percent) had missing city or towns. Smaller percentages did not include consumer first names, last names, or reason for contact, or the fields contained information which was not useful for the intended purpose (e.g., "unknown" as the "reason for contact," and "no name" in the name fields). In 88 percent of the 110 files reviewed, we also found CAD personnel did not include their initials when entering a note after speaking with consumers, and did not include the date they spoke with consumers in 20 percent of the files. Finally, 14 of 26 consumers who received an adjustment from the utility had no adjusted amount reported in the CAD database.

The CAD has no manual of procedures for using the database or identifying required fields. According to the Government Accountability Office, to control its operations an entity must have relevant, reliable, and timely communication, including information sharing. The Division's ability to adequately identify trends in consumer complaints is constrained by an incomplete database.

Recommendations:

We recommend the CAD:

- develop a manual of procedures for the consumer contact database including identifying required fields,
- train staff regarding standard consumer contact database procedures to ensure all pertinent consumer contact information is entered into the database, and
- establish procedures to more closely monitor staff to ensure data are entered timely and completely into the database.

Auditee Response:

We concur in part.

We concur that the Consumer Affairs Division (CAD) should develop a manual of procedures for the consumer affairs database. In fact the Consumer Affairs Division has developed a procedures manual. We do not concur with the Observation's conclusion that the Division's ability to adequately identify trends in consumer complaints is constrained by an incomplete database.

We disagree with the Observation's conclusion that the lack of certain required fields (such as name and address) prevents the CAD and the Commission from identifying customer trends. Certain data entry fields in the database are designated as "required fields" and must be completed by the CAD staff before the record can be entered into the database. The following are the required fields: date received, time received, reason for contact, the utility code and the staff responding. These required fields allow the CAD to efficiently resolve consumer complaints and to identify trends in consumer issues. The label grievance is used to describe a contact in which the consumer is dissatisfied but no action is required. As an example, consumers frequently contact the CAD following an increase in utility rates. The consumer is dissatisfied, the CAD utility analyst discusses the rate case process and the reason for the increase in rates with the consumer, and the contact is finished. There is no need to take any further action, and name and contact information is not required for effective resolution. Contacts labeled as investigation do require some action; and in those contacts, consumer name and contact information was always obtained. The Commission has reviewed the consumer contact records for the audit period and has found no inaccurate records and no records where the required fields were not completed.

Contrary to the Observation, we do not believe that customer name and address should be required fields; however, we will review our required fields and our intake process to determine whether it is appropriate to designate additional fields as required.

LBA Rejoinder:

Some complaints missing information were categorized by CAD personnel as an investigation or a grievance. For effective resolution, names and contact information, at a minimum, would be necessary for follow up in these instances.

In addition, the PUC's own Administrative Rule requires each utility to keep a record of each complaint it receives to include: "(1) the name, address, and telephone number, if known and available, of the complainant; (2) the date and character of the complaint; and (3) the resolution of the complaint, if any."

THIS PAGE INTENTIONALLY LEFT BLANK

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

OFFICE OF CONSUMER ADVOCATE

The Office of Consumer Advocate (OCA) was established as an independent agency administratively attached to the Public Utilities Commission (PUC). It receives advice from the nine-member Residential Ratepayers' Advisory Board. Despite the Board's responsibility to advise the OCA on issues affecting residential ratepayers, the majority of members we surveyed reported actually obtaining information about issues affecting ratepayers through the OCA. Members also indicated the need for increased contact with ratepayers. As the OCA's mission is to advocate for reasonably priced, safe, and reliable utility services for residential ratepayers, its ability to achieve this mission is hampered by lack of access to general ratepayer and consumer complaint information, and a resulting inability to identify trends in consumer complaints.

Observation No. 15

Consider Moving The Consumer Affairs Division And Responsibilities To The Office Of Consumer Advocate

We found the OCA's ability to fulfill its statutory function was limited as it had no direct access to consumer information.

New Hampshire consumers reported complaints directly to the PUC, and the CAD exclusively received and mediated residential utility consumers' complaints about utilities. With no obligation on the part of the PUC to report consumer complaints to the OCA, the OCA had no direct access to consumer complaints and had to submit requests for information to the PUC under the State's Right-To-Know law, as consumer information, including name, street address, telephone number, and email address, is considered confidential. The OCA could not access consumer complaint information unless it was part of an adjudicatory proceeding.

According to the National Regulatory Research Institute (NRRI) 2004 report, *The Role of Utility Consumer Advocates In A Restructured Regulatory Environment*, consumer advocates focus exclusively on consumer issues and advocate on behalf of consumers, while state PUCs have a broader mandate and quasi-judicial functions. The NRRI reported the role of consumer advocates had expanded from being initially focused on advocacy in rate hearings to consumer complaints, consumer education, and outreach programs, as well as monitoring complaint trends.

Without adequate input from residential ratepayers or direct access to consumer complaints, the OCA could not effectively identify trends in consumer complaints. By relocating consumer complaint functions and personnel to the OCA, the PUC could maintain focus on its quasi-judicial and regulatory functions, and the OCA could have access to consumer complaint information and interact directly with all consumers having complaints with regulated utilities. This direct interaction with consumers could enhance the efficiency and effectiveness of the OCA's advocacy on behalf of residential ratepayers.

Recommendation:

We recommend the Legislature consider amending RSA 363:28 and other applicable statutes to expand the functions and responsibility of the OCA by transferring CAD personnel and responsibilities to it.

OCA Response:

We concur in part.

The Office of the Consumer Advocate (OCA) concurs with what we believe is the goal of this Observation: to provide the OCA with full access to consumer complaint information in the possession of the Public Utilities' Commission (PUC). The OCA does not take a position at this time on the recommendation that the Legislature "consider amending RSA 363:28 to expand the functions and responsibility of the OCA by transferring [Consumer Affairs Division] personnel [of the PUC] and responsibilities to [the OCA]" as a means to increase OCA access to consumer information and thereby enhance the OCA's effectiveness.

We agree that the OCA's ability to fulfill its statutory charge to represent the interests of residential utility customers would be enhanced by our ability to access unredacted consumer complaint information in the possession of PUC. See RSA 363:28, II ("The consumer advocate shall have the power and duty to petition for, initiate, appear or intervene in any proceeding concerning rates, charges, tariffs, and consumer services before any board, commission, agency, court, or regulatory body in which the interests of residential utility consumers are involved and to represent the interests of such residential utility consumers.") We also agree that without access to consumer complaints it is more difficult for our office to identify trends in or patterns of service to NH's ratepayers, or to proactively raise issues in the context of PUC proceedings, or to request new proceedings at the Commission, related to issues that arose in the context of consumer complaints. In sum, providing the OCA with full access to consumer complaints is both consistent with our statutory duties and would greatly enhance our agency's ability to advocate on behalf of residential utility customers in the future.

The OCA currently has limited access to the consumer complaint information in the possession of the PUC (unless we obtain a customer's authorization to release this information as described below). Generally, the OCA has received reports containing very general and aggregated information from the PUC, on an irregular basis, showing types of complaints by industry. For example, in a summary of 2010 complaints related to a telecommunications company, the Consumer Affairs report lists 36 "Reason[s] for Contact" which include "Billing," "Information" and "Referral" and beside each reason lists the total number of complaints. Without additional information, the OCA is unable to discern the nature or details of the complaints, and is unable to use the reports in fulfilling its statutory duties, particularly the duty to act proactively on behalf of customers when a pattern of consumer complaints develops.

The Observation states that "the OCA could not access personal identifying consumer complaint information unless it was part of an adjudicatory proceeding." In fact, the Commission has not provided unredacted consumer complaint information to the OCA even in adjudicative

proceedings. The OCA has received unredacted consumer complaint information, but only when we obtained an authorization for release of that information from the customer. In the recent past the OCA has requested consumer complaint information from the PUC in two different ways, regardless of whether the request was made in the context of an adjudicative proceeding. One way was to file a formal Right-to-Know request. The second was to send an email to the PUC general counsel and consumer affairs director requesting certain information. In response to both types of requests, and regardless of whether the request was made within the context of an adjudicative proceeding, the OCA received hard copies of complaints with certain information redacted.

The OCA takes the position that having full unredacted access to consumer complaint information is not only consistent with our enabling statute, it is also consistent with RSA 91-A. The OCA, like the PUC, is a state agency governed by RSA 91-A. As such, the OCA, like the PUC, is required to protect confidential information from disclosure to the public. To the extent that information in the possession of the PUC is exempt from disclosure because it is confidential information concerning a residential utility customer, the OCA, like the PUC, would be required to keep it confidential. The OCA has established policies and practices to safeguard confidential information, which, by statute, we are required to receive directly from other parties in adjudicative proceedings. RSA 363:28, VI. Therefore, we do not believe that any statutory or rule changes are necessary in order for the PUC to provide unredacted complaint information to the OCA.

In addition, it is our understanding that other New Hampshire agencies share complaint information (including personal information) with each other when necessary to resolve complaints. For example, notwithstanding its statutory duty to maintain the confidentiality of consumer complaints, the Attorney General's office routinely provides complaint information to appropriate agencies (e.g., Banking Commission, Department of Insurance) to facilitate the referral of these complaints for resolution. The AG's office has a statement on its complaint form to notify the public that their complaint information may be shared with appropriate agencies or organizations.²

In response to the OCA's continuing requests for better access to consumer complaint information in the past several years, the PUC recently notified the OCA that we would have electronic access to the PUC Consumer Affairs Database. While all OCA personnel do not yet have this access, we did receive training on how to access some portion of that database. Based upon this training and subsequent discussions with PUC staff, it is our understanding that the consumer information available to the OCA through this electronic portal will only provide the OCA with electronic access to redacted customer complaint information, and at a general level. This appears to essentially be the same type of information that has been provided to the OCA by the PUC in recent years, and it is minimally useful to the OCA. Fully detailed, unredacted

² The AG's office form may be found at <http://www.doi.nh.gov/consumer/documents/consumer-complaint.pdf>. The form includes the following language: "I have no objection to the contents of this complaint being forwarded to the business or person the complaint is directed against, or to other governmental or law enforcement agencies, or public interest consumer advocates, including the Legal Advice and Referral Center, New Hampshire Legal Assistance, Franklin Pierce Law Center Legal Practice Clinic, Better Business Bureau and the Pro Bono and Lawyers Referral Programs of the New Hampshire Bar Association."

access to this information would be much more useful to the OCA in fulfilling our obligation to represent the interests of residential customers. While we appreciate the PUC's efforts to work with us to explore how the OCA could access customer information, the OCA continues to request full access to consumer complaint information at the PUC. The OCA is open to considering options for gaining this access on a consistent basis and takes no position on whether the transfer of the Consumer Affairs Division functions from the PUC to the OCA is the most effective and efficient way of accomplishing this goal at this time. In addition to facilitating the OCA's proactive advocacy, access to the Consumer Affairs Division's customer information – or transferring the Consumer Affairs Division's functions to the OCA – could improve the OCA's efforts to fulfill other statutory duties including the duty "to promote and further consumer knowledge and education" (RSA 363:28, VI). Also, incorporating the Consumer Affairs Division within the OCA, would likely result in less confusion for consumers, who often contact the OCA when seeking assistance for their individual utility-related complaints or inquiries.

Finally, if the Recommendation in this Observation is implemented, many changes would need to take place in addition to amending certain statutes and PUC rules. Those changes would include, but not be limited to, additional personnel and office space for the OCA. Another consideration for the Legislature would be related to whether the OCA's authority – which is currently limited to advocacy on behalf of residential utility customers – should be expanded to include advocacy on behalf of all utility customers.

PUC Response

We do not concur.

The Observation recommends specific changes to the OCA's access to the Consumer Affairs Division (CAD) database and a significant structural change by moving the CAD complaint function to the OCA. We are working to resolve the access issue. We do not concur with the recommendation to move the complaint function to the OCA.

Access to Database

The Observation finds that "the OCA's ability to fulfill its statutory functions was limited as it had no direct access to consumer information." The Observation erroneously assumes that consumer information must include individual complaints in order for the OCA to effectively identify trends in consumer complaints. The Observation fails to account for the summary reports that the Consumer Affairs Director provides promptly at the request of the OCA, generated from the CAD database. Such summary reports indicate the time period for the complaint, the names or types of utilities involved, and the nature of complaints, all of which provide sufficient data to identify trends in consumer complaints. These summary reports are provided to the OCA outside of the adjudicative process.

The information the OCA requested in adjudicative proceedings were the contact memos which include notes of conversations between consumers and members of the CAD staff. While any personally identifying information such as name, street address, telephone number and account number was redacted, the remaining information was provided including the town where the

complaint originated. From the redacted contact memos, the OCA can identify how issues affect individual residential ratepayers as well as trends in complaints. These reports and contact memos have provided the OCA with the same information as is available to the Commission.

The Observation also fails to account for the ongoing effort to provide the OCA with direct access to sections of the CAD data base and fails to acknowledge that the Commission procured software development assistance in order to provide the OCA with such direct access. Although there are certain technical issues that need to be resolved, the process is nearly complete, and we anticipate the OCA will be able to query the database and run summary reports within the next few weeks. Providing the OCA direct access to the CAD database will enable the OCA to identify and monitor trends in complaints more efficiently. Further, the Commission commits to working on a memorandum of understanding with the OCA to improve ease of access to the CAD database.

Moving Consumer Complaint Function to OCA

The Observation states that, "by relocating consumer complaint functions and personnel to the OCA, the PUC could maintain focus on its quasi-judicial and regulatory functions and the OCA could have access to consumer information." We believe there is a fundamental difference between the role of the Commission and the OCA and the individual complaint function better rests with the Commission. The OCA is an advocacy organization focused on participating in adjudicatory proceedings on behalf of residential ratepayers as a group. Moving the CAD to the OCA would not only create an internal conflict at the OCA by introducing a mandate to balance interests into its advocacy role, but would deprive the Commission of a division that is integral to its core mission of ensuring just and reasonable utility service to ratepayers.

The CAD addresses complaints brought by residential as well as business consumers. As in all of the Commission's responsibilities, the CAD must be an arbiter between the consumer and the utility to seek a balanced and fair result. In addition to its work with consumer complaints, the CAD works to educate consumers about utility issues; develops rules governing utility customer relations; ensures utility adherence to such regulations, provides recommendations and advice to the Commission on policy matters and adjudicative proceedings; and works with subject matter experts within other divisions outside of proceedings, all of which assist the Commission in its role as arbiter between the interest of the utilities and their ratepayers.

Statutory Basis for Commission's Handling of Consumer Complaints

RSA 374:3 grants the Commission general supervisory power over all public utilities and their plant. RSA 365:1-7 provides the Commission with the authority and the duty to receive complaints about utilities' services or actions, to require responses to complaints, to investigate complaints, and to inspect the utility's records and plant. RSA 365:8, II requires the Commission to promulgate rules for streamlined review or other alternative processes to enhance the efficiency of the Commission and to respond to the needs of the utility's ratepayers and shareholders. Further, because of the statutory exemption for utility complaints from the Consumer Protection Act and the inability of the Department of Justice to take those complaints, we have developed a vehicle for utility customers to make complaints in an informal way, in an effort to provide them assistance in resolution of problems and reduce the number of disputes that must rise to the level of formal investigation and adjudication.

Pursuant to this authority, the Commission established rules to govern the interaction between a utility and its customers. The CAD was given responsibility to see that the rules were followed and to assist in the supervision and regulation of the public utilities it regulates. The CAD also maintains a data base of all consumer complaints which tracks complaints by utility name and type, location of service and type of complaint. The data gathered provides the Commission with information concerning both consumer and utility issues which may need investigation or further rulemaking. Although the complaint function of the CAD may overlap somewhat with the OCA's consumer outreach, the CAD functions are an integral part of the Commission's regulation of public utilities and do not belong in the OCA.

Statutory Basis for OCA's Advocacy

The OCA's primary purpose is as an independent litigation advocate, for residential consumers only. As set out in its enabling statute:

The consumer advocate shall have the power and duty to petition for, initiate, appear or intervene in any proceeding concerning rates, charges, tariffs, and consumer services before any board, commission, agency, court, or regulatory body in which the interests of residential utility consumers are involved and to represent the interest of such residential utility consumers.

RSA 363:28, II

In order to represent residential consumer interests in litigation, the OCA needs to be aware of consumer issues generally. The direct access which will soon be available to the OCA should afford the OCA a quick and efficient way to check for trends in consumer utility complaints which in turn should guide the OCA's litigation activities without the need to request such information from the Commission.

In addition to litigating on behalf of consumers, the OCA has the authority to promote consumer education and to publicize the Link-Up New Hampshire and Lifeline Telephone Assistance programs. RSA 363:28, IV and V. This consumer education function overlaps somewhat with the CAD's consumer education functions. However, the OCA and the CAD work cooperatively on these issues, drafting and issuing joint press releases designed to promote consumer awareness and convening joint meetings with regulated telecommunications providers to address outreach initiatives for the federally funded Link-Up and Lifeline programs. With direct access to the CAD data base, the OCA should be able to track consumer complaint trends to determine whether additional outreach or education may be needed.

We do not concur with the recommendation to shift the functions of the CAD to the OCA. Any difficulty the OCA may have experienced in accessing information is being addressed. To go beyond that would be a mistake. The roles performed by the two entities are different, each with their own value, and should not be melded into one. Although there is the potential for some confusion between the two offices, the benefits of a CAD function under the Commission, separate from the advocacy function of the OCA, are far greater than the occasional confusion between the two. As noted in the NRRI paper cited in the Observation:

Consumer Advocates carry out a unique function among consumer representatives. They have the funding and expertise that many private consumer interest groups lack. They have the power to appeal public utility commission decision. Their expertise and consumer-oriented focus also allows them to disseminate information to better inform consumers, and to monitor and investigate complaints in order to track particular issues. The consumer affairs divisions of public utility commissions are also responsible for this, so some overlap may occur. Nonetheless, such an overlap of functions and responsibilities serves as a double layer of protection for consumers.

NRRI, The Role of Consumer Advocates in a Restructured Regulatory Environment, Sept. 2004 at executive summary.

There is a need to share information efficiently, and the Commission will continue to work with the OCA to ensure that direct access to the CAD database is achieved and in developing a memorandum of understanding with regard to customer complaint information. The Observation has not, however, established a basis for shifting functions currently assigned to the CAD.

THIS PAGE INTENTIONALLY LEFT BLANK

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

ENERGY EFFICIENCY AND SUSTAINABLE ENERGY BOARD

The Energy Efficiency and Sustainable Energy Board (EESE Board) was established to promote and coordinate the State's energy efficiency, demand response, and sustainable energy programs. While the volunteer EESE Board worked on energy efficiency and sustainable energy programs, it has not developed and promoted demand response programs. Also, although the Board has been charged with such diverse tasks as developing a plan to achieve the State's energy efficiency potential for all fuels, coordinating efforts between funding sources, and reviewing investment strategies for energy efficiency and renewable energy resources, we found the Board has been given little statutory authority and no budgetary resources to accomplish these tasks. Furthermore, some EESE Board responsibilities overlapped with other entities making it unclear where the Board's responsibilities lay and the Board has not developed performance measures to determine whether its work has influenced energy efficiency and sustainable energy initiatives in the State.

Observation No. 16

Reconsider EESE Board Statutory Obligations And Functions

Statute enumerates numerous EESE Board responsibilities, however, the Board did not have sole authority in many areas and the Legislature did not appropriate funds for it. As a result, while the EESE Board has been a clearinghouse for information sharing and exploration of relevant energy issues, it has not fulfilled all of the duties outlined in its enabling statute.

- The EESE Board was established to promote and coordinate the State's energy efficiency, demand response, and sustainable energy programs. Members indicated the Board had focused its attention on energy efficiency and sustainable energy, creating relevant working groups to promote education and outreach, municipal efficiency, and renewable investments, but had not done much to promote or coordinate demand response. Demand response is defined as changes from normal energy consumption patterns in response to changes in the price of electricity at different times. According to a study from the Massachusetts Institute of Technology, "[m]ore responsive demand can improve system efficiency and reduce costs." According to the former Chairman, the Board had no authority to implement demand response because requiring or even allowing utilities to implement smart meters or other tools is the PUC's purview, not the Board's.
- Statute required the EESE Board compile a report on available energy efficiency, conservation, demand response, and sustainable energy programs and incentives. No resources were available for the work until Chapter 335, Laws of 2010 authorized the PUC to spend up to \$300,000 for an independent consultant selected and managed in consultation with the EESE Board.
- The Board was required to report annually on its activities and provide policy recommendations to the Governor, legislative leadership and key committees, and the

PUC. The Board made few policy recommendations related to policy for energy efficiency, sustainable energy, or demand response programs. However, in its Fourth Annual Report, the Board included the seven major recommendations for transforming energy markets in New Hampshire and optimizing economic and environmental benefits from energy efficiency and sustainable energy contained in the independent consultant's report, *Independent Study of Energy Policy Issues*. The Board reported it has formed a working group to review these recommendations and will identify its own potential recommendations over 2012.

- The Board did not develop required plans to achieve the State's energy efficiency potential for all fuels, or for the economic and environmental sustainability of the State's energy system. A majority of Board members reported that a lack of buy-in from the Legislature and insufficient resources and authority given to the Board were major barriers to achieving energy efficiency and sustainable energy in New Hampshire. Also, a majority of Board members gave the Board low ratings on the thoroughness of its ability to coordinate funding sources and to expand upon State government's efficiency programs.
- The Board was charged with investigating and coordinating potential funding sources for energy efficiency, sustainable energy development, and delivery mechanisms, but had no authority over the numerous entities offering energy efficiency financing. Nineteen of 20 Board members reported the lack of coordination of financial incentives was a barrier to achieving energy efficiency in the State. The independent consultant's report on available energy efficiency, conservation, demand response, and sustainable energy programs and incentives noted, with so many programs, "the result is a fairly fragmented set of offerings that customers must understand and negotiate."
- Board members varied widely on how thoroughly the Board had accomplished four of its other duties.

Half of EESE Board members reported the Board had insufficient resources, and one-third responded it did not have sufficient authority, to accomplish its responsibilities. The Board received approximately 13 hours per month in administrative support from the PUC.

Some EESE Board responsibilities overlapped with other entities making it unclear where the Board's responsibilities and authority lay. The EESE Board was charged with developing a plan for the economic and environmental sustainability of the State's energy system; however, the Office of Energy and Planning, Department of Environmental Services, and the PUC also created or implemented energy efficiency and sustainable energy-related policy, plans, or programs.

The EESE Board did not establish performance measures to determine whether its work affects energy efficiency and sustainable energy initiatives in the State. The EESE Board recommended guidelines to the PUC for allocating rebates and grants from the funds administered by the PUC as required by statute, but never formally determined whether the PUC followed the guidelines. The 2011 annual report indicated the Board planned to work with the Sustainable Energy

Division to assess its recommendations in the coming year. Internal control standards require agencies establish activities to monitor performance measures and state management should track major achievements and compare these to plans and objectives.

Recommendations:

The Legislature may wish to reconsider whether the EESE Board's purpose, objectives, and functions can be accomplished with the limited authority and resources available to it.

Auditee Response:

The former and founding Chair and the current acting Chair and Vice Chair concur with the recommendation. They also note that this recommendation regarding the Board's limitations in fulfilling its statutory charge should not be considered a reflection on the considerable effort and commitment of its volunteer members to accomplish the Board's mission as best they could, given the noted constraints of lack of resources, staff, and authority. The EESE Board's views on this performance audit recommendation will be included with the EESE Board's forthcoming recommendations to the Legislature pursuant to Chapter 335, Laws of 2010, which requires, in part, that the EESE Board provide recommendations to the Legislature regarding the 2011 comprehensive, independent energy study.

THIS PAGE INTENTIONALLY LEFT BLANK

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

OTHER ISSUES AND CONCERNS

In this section, we present issues we consider noteworthy, but were not developed into formal observations. The Public Utilities Commission (PUC) and the Legislature may wish to consider whether these issues and concerns deserve further study or action.

Consider Designating Decisional Staff To Mitigate Risk Of Ex-Parte Communication

The PUC does not designate decisional staff for cases in which there is a staff advocate. Two attorneys litigating before the PUC stated when someone is designated a staff advocate in a proceeding, the staff assigned to the case should be designated as a decisional employee, defined in part as someone assigned to assist or advise the Commission in a proceeding, to emphasize the prohibition on ex-parte communication. Staff not designated decisional employees can participate in informal communications with any parties to the case at any time. If the PUC does not designate decisional employees, staff's physical proximity to co-workers, including day-to-day interaction and historical working relationship, could give staff advocates undue influence over staff's recommendation to the Commission. During the audit period, the PUC designated staff advocates in two cases but did not make a corresponding decisional employee designation, making it unclear when the rules of ex-parte communications apply.

We suggest the PUC reconsider its practice to ensure staff are designated decisional employees, when necessary, to delineate ex-parte communications and to prevent undue influence.

Consider Making Audit Reports Available To The Public

Audits performed on public utilities are not posted on the PUC website, nor is there indication on the website the audit reports exist or are available. According to PUC staff, the Commission discussed posting the audit reports but was concerned consumers may misunderstand the reports. According to the Audit Division Director, audit reports are made available to those who request them; however, there is no indication on the website which audits have been performed and which reports are available.

We suggest the PUC consider making the audit reports available or indicate which audits have been performed so reports may be requested as needed.

Ensure State Vehicles Are Used Before Reimbursing For Private Vehicle Mileage

Department of Administrative Services policy requires agencies not reimburse employees for private vehicle mileage if a State car is available, as driving a State car is generally cheaper than reimbursing employees for mileage in private cars. We found at least 21 instances during the audit period where personnel were reimbursed for private mileage when a PUC car was available. Additionally, according to PUC management, if two employees must travel on the same day, the employee traveling the fewest miles would be reimbursed for using their private

vehicle while the one traveling furthest would use the State vehicle. We found at least 19 instances where the employee traveling the longer distance was reimbursed for private vehicle mileage.

We suggest the PUC not allow reimbursement for private mileage when a State vehicle is available. Additionally, we suggest the PUC ensure employees traveling the longer distance use the State vehicle.