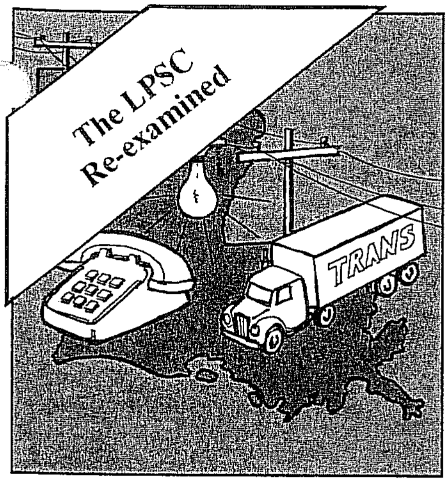


Number 286 May 1992

PAR ANALYSIS

PUBLIC AFFAIRS RESEARCH COUNCIL OF LA., INC.

The Gist of It

Louisiana's Public Service Commission (LPSC) should be provided an adequate in-house staff of hearing examiners, legal counsel, auditors, engineers and economic, financial and rate analysts. Comparisons with 10 other states of similar size indicate that Louisiana's Commission could use at least 16, and possibly as many as 77, more positions.

Lacking expert staff, the LPSC must rely heavily on outside legal counsel and consultants whose bills are charged to the affected utilities--$2.7 million in 1991. Even including consulting costs, Louisiana spends relatively little on utility regulation, but lacks the continuous monitoring and oversight found in other states.

The cost of staffing up the LPSC could be met by using utility supervision fees now being used for other state purposes and by reducing the use of consultants.

A 1985 study, "Improving Louisiana's Public Service Commission," found the LPSC overstaffed in its district offices and severely understaffed in its central office professional positions. LPSC staffing in engineering, auditing, rate analysis and legal staffing contrasted sharply, with much larger staffs used in many states of similar population size. The LPSC was dependent almost entirely on outside consultants for legal services and analytical expertise in major utility rate cases. The study noted that Louisiana also differed from most states in that its commissioners were elected and part-time.

In summary, the study recommendations were to:

- Centralize the district staffs.
- Abolish the two unclassified appointees for each commissioner.
- Expand the audit staff to conduct rate case audits and periodic compliance audits.
- Place utility inspection in the Engineering Division.
- Create a Legal Services Division with utility area specializations.
- Create hearing examiner positions.
- Staff a Division of Economic, Financial and Rate Analysis.
- Create a Consumer Services and Public Information Section with a small staff and toll-free number to handle complaints.
- Assess utilities the full amount appropriated for utility regulation.
- Reduce gradually the use of outside consultants as LPSC expands legal and expert staff.

Statutory Actions

Act 561 of 1985 created an Economics and Rate Analysis Division in the LPSC to be staffed with full-time auditing, economic, finance, engineering, accounting and legal experts. The act assessed a supplemental fee on gas, electric and telephone utilities (20% of the supervision and inspection fees paid) and dedicated the new revenue to a special fund to support the new division.

Act 700 of 1986 substantially increased the basic utility supervision and inspection fees--the high end of the scale was more than doubled.

Act 5 of the 2nd Special Session of 1988 abolished the special funds receiving utility fees and undedicated the supplemental fees assessed to upgrade the LPSC staffing. The fees continued to be collected but went to the state general fund.

1991 bill to require the LPSC to develop its in-house staff was narrowly defeated on the House floor.

PAR Study Update

To update its 1985 study, PAR reviewed and analyzed data prepared by the LPSC staff, billings for legal services and consultants employed since 1984, budgets and personnel data. Selected participants in the regulatory process were interviewed. PAR reviewed comparative state data published by the National Association of Regulatory Utility Commissioners (NARUC). The regulatory agencies in 10 states with populations within 20% (plus or minus) of Louisiana's were selected for closer examination and comparison.

State comparisons are complicated by the wide differences in regulatory agency structure, functions and operating philosophy. Even comparing a limited number of states, accurate spending and staffing averages cannot be computed from available data. A somewhat subjective composite can be drawn from the 10-state analysis indicating how the "typical" Public Utility Commission (PUC) for a state the size of Louisiana might look. (See Table 1.) For some PUC characteristics, there is no predominant type. For example, the 10 states are nearly split on the election or appointment of commissioners and on the inclusion of transportation divisions to regulate motor carriers.

"Typical" PUC

The typical PUC (based on PAR's 10-state analysis) has an appointed or elected commission of three or five members. Louisiana has five elected. The PUC regulates gas, electric, telecommunications, and water and waste water companies, but motor carrier regulation may be in the PUC or in a separate department. The LPSC does regulate motor carriers.

Excluding the estimated expenditures for transportation regulation, the typical PUC spent $1.38 per capita in 1990, including most payments to consultants. (See Table 2.) Louisiana spent about 49 cents per capita or, if payments to outside counsel and consultants are included, 94 cents. If Louisiana had spent at the typical PUC level, it would have spent $1.8 million more on utility regulation, or $5.8 million, compared to the $4 million actually spent ($2.1 million in the LPSC, and $1.9 million for outside

TABLE 1
Utility Regulation Staffing: Louisiana and 10-State Comparison (1989 or 1990 Data)

		Positions					
				Utility Regulation and Administration		Utility Divisions Only[a]	
State	Population (Millions)	Department Total[b]	Transportation (T) and Non-Utility (NU)	Number	Per 1,000 Population	Number	Per 1,000 Population
Alabama	4.0	152	36 T	116	.029	82	.021
Arizona	3.7	226	87 NU	139	.038	77	.021
Kentucky	3.7	115	–	115	.031	78	.021
Maryland	4.8	135	27 T	108	.023	45	.009
Minnesota[c]	4.4	190[c]	–	190	.043	78+	.018
Missouri	5.1	186	–	186	.036	124	.024
South Carolina	3.5	150	65 T	85	.024	48	.014
Tennessee	4.9	283	188 T/9 NU	86	.018	29	.006
Washington	4.9	234	111 T	123	.025	68	.014
Wisconsin	4.9	185	–	185	.038	140	.029
10-State Average	4.4			133	.031	77	.018
Louisiana Actual	4.2	80	27 T	53	.013	9	.002
Louisiana Staffed at 10-State Average		157	27[d]	130		76	

a Utility regulation divisions including auditing, accounting, engineering, financial and rate analysis, economics and planning. Excludes all administration and support, legal counsel, hearing examiners, and consumer assistance units.
b Excludes commissioners.
c Combines commission staff and separate department of public service.
d Assuming transportation section remains unchanged.
SOURCE: 1990 Annual Report, NARUC and PAR telephone interviews.

TABLE 2
PUC Expenditures
Louisiana and 10-State Comparison
(1989 or 1990 Data)

State	Total (In Millions)	Transportation Regulation[a] Per Capita	Utility Regulation Per Capita
Alabama	$ 7.9	$ 0.46	$1.48
Arizona	5.6	--	1.52
Kentucky	5.0	--	1.36
Maryland	7.3	0.30	1.22
Minnesota[b]	6.5	--	1.48
Missouri	7.5	--	1.47
South Carolina	6.5	0.80	1.06
Tennessee	12.8	1.74	0.88
Washington	13.6	1.38	1.40
Wisconsin	9.3	--	1.90
10-State Average			1.38
LPSC--In House	3.1	0.25	0.49
LPSC--Consultants	1.9[c]		0.45
Louisiana Total	5.0	0.25	0.94

a Motor carrier regulation portion computed from share of total staff.
b Includes commission staff and separate department of public service.
c Outside legal and consultant fees paid directly by utilities.
SOURCE: NARUC and PAR computations.

counsel and consultants). In addition, Louisiana spent roughly $1.1 million on transportation regulation which, added to the projected $5.8 million, would have brought the total LPSC budget to $6.8 million.

The typical PUC would have a total of about 130 staff positions, exclusive of transportation regulation. Louisiana by comparison has 53 positions (80 less 27 in transportation and five commissioners).

Of the 130 positions in the typical PUC:

- 33 would be in executive and administrative services and 10 in consumer services; the LPSC has 41 in these areas combined.
- 77 would be in direct utility regulation functions including auditing, engineering, rate analysis, economics, research, policy, and specialists in energy, telecommunications, water and other areas; the LPSC, in sharp contrast, has only nine such positions.
- 10 would be divided among legal staff and hearing examiner units; the LPSC has two staff lawyers and no full-time hearing examiners.

In conclusion, if the LPSC were staffed at the average levels of the 10 comparison states, it would require 77 additional positions, mostly in direct utility regulation functions. This assumes the transportation division remained unchanged.

Commission

All 10 states analyzed have full-time commissioners, whether elected or appointed. Salaries range from $50,847 to $79,680. Louisiana is one of only two states in the U.S. which have part-time commissioners. Louisiana pays $37,800 but allows each commissioner to hire an assistant to serve as his alter ego at $35,668 a year, and a confidential assistant who is paid $32,328.

Functions of commissioners differ among states. Washington's three commissioners each head a major division in the agency. South Carolina commissioners take the place of hearing examiners. Arizona commissioners are each assigned rate cases to manage.

Non-Utility Functions

Five of the 10 state PUCs regulate motor carriers, as does the LPSC; the other five have separate agencies for this function. Transportation divisions range from 27 to 188 positions. Washington and Tennessee (111 and 188, respectively) are staffed heavily for inspection and enforcement. The LPSC has a minimal staff of 27, and motor carrier fees far exceed the regulatory expenditures.

Arizona's utility regulation shares a department with corporation and securities regulation, allowing a combined legal and hearings division. Tennessee's agency also assesses utility companies for property tax purposes.

District Offices

Three of the 10 states have offices outside the capitol. Arizona has one office in another major city. Missouri has two regional offices. Washington has five district offices which are used for its extensive transportation enforcement program. The LPSC's five district offices are geared primarily to handling consumer complaints and house the bulk of the agency's utility-related staff.

Consumer Services

Most of the 10 state PUCs have central consumer services offices to handle consumer complaints. These offices often have their own inspectors and range in size from five to 12 positions. The LPSC's district offices involve 30 positions, most of which have some role in dealing with consumer complaints.

Telecommunications

Most of the 10 states have telecommunications sections with staffs ranging from two to 33 positions. Alabama, which has a smaller population than Louisiana, has a telecommunications staff of 33 including auditors, engineers, rate analysts and various specialists. The LPSC has no telecommunications division.

Hearing Examiners

The number of hearing examiners or administrative law judges used by the 10 PUCs ranges widely: seven (Missouri), six (Arizona, Maryland), five (Washington), three (Alabama, Wisconsin), two (Tennessee), and one (Kentucky). In addition, Minnesota uses administrative judges from another state agency and South Carolina uses four examiners who are hired as needed. The LPSC uses its chief auditor part-time as an examiner.

Legal Staff

The 10 state PUCs typically have legal staffs of at least five attorneys (ranging from three to 16) in addition to those serving as hearing examiners. In three of the states, the attorney general's office provides six or more attorneys who conduct rate cases. In each of these three states, the PUC also has its own legal staff.

It appears that few, if any, of the 10 PUCs use outside counsel in cases before the commission, as does the LPSC. Some use outside counsel in cases before federal agencies or to defend the commission against suits. The attorney general is required to represent the PUC in court in several states. Most of the states have authority to hire outside counsel.

Consultants

The typical 10-state PUC uses outside consultants in rate cases, for special studies or to provide testimony in areas beyond the capacity of the inhouse staff. NARUC data does not provide a clear picture, but reported expenditures on legal and professional services combined indicate the typical PUC may spend about $300,000 a year. The LPSC has required utilities to pay an average of nearly $1.9 million a year for outside legal and consultant work since 1984.

Several of the PUCs indicate they make little or no use of outside consultants. However, most of them reported having required or paid for management audits over a recent five-year period--one exceeded $9 million, mostly for a nuclear plant construction management audit.

Public Counsel

All but one (Tennessee) of the 10 states have agencies independent of the PUC representing residential consumers in utility matters. Four are located in attorney general offices. Eight of these agencies have budgets ranging from $320,000 to $2.5 million, and staffs ranging from four to 14 (including two to seven lawyers). At least six may hire outside consultants as well. Louisiana has two part-time attorneys assigned by the attorney general to represent the interests of residential consumers.

Regulatory Process

Neither this nor PAR's earlier study attempted an in-depth analysis of the regulatory process. Several different basic approaches to setting rates are represented among the 10 states. Most of the state PUCs decide on an approved rate of return for a company through an adversarial hearings process with the company, the PUC staff and other parties involved.

The Alabama Public Service Commission (APSC) uses an alternative ratemaking process based on an administrative rather than a hearings process. The APSC uses a Rate Stabilization and Equalization (RSE) process for its three largest utility companies. A rate of return range (e. g., 13%-14.5%) is used rather than a fixed rate. The company's rate of return is checked quarterly. If it falls below the range, it may reset rates to achieve the mid-range return. There is a 4% cap on rate increases. The RSE requires more auditing and monitoring, but reduces the need for outside consultants. The RSE removes politics from the process, according to the APSC, and gives rate stability as an attraction for industrial development. Incentive regulation also is employed, whereby rate decreases due to operating efficiencies are shared by the company and consumer.

Minnesota separates the prosecution and judicial functions by having a separate department manage the case and provide testimony. The commission has its own staff to review the evidence and make a final decision in cases.

Arizona Example

Arizona, one of smaller comparison states, provides a good example of a PUC which recently has undergone a major expansion and reorganization. In recent years, Arizona expanded and developed its utility regulation functions within its Arizona Corporation Commission (ACC). Beginning with a minimal staff, the initial aim was to develop the capacity to contract competently with consultants. This goal was judged to have been reached within two years when the basic utility staff reached about 50 positions. Aiding the changeover was the fact that the core of the original staff had retired within three years. Since then, the agency has been fine tuned through selective additions.

Currently, the utility division has 89 positions. In addition, the division shares the administration (29 positions), legal section (15), and hearing examiner unit (nine) with the smaller corporation and securities divisions in the ACC. In effect, Arizona devotes a total of 139 positions to utility regulation (it does not regulate motor carriers). By contrast, the LPSC has 53 comparable positions.

The ACC Utility Division includes accounting and rates (nine auditors and rate analysts, and nine accountants), economics and research (staff of eight), engineering (11 certified engineers with specialties in telephone, electricity, water and sewerage, and a technical support person) and consumer services (12) which handles complaints, does some inspections and mediates conflicts.

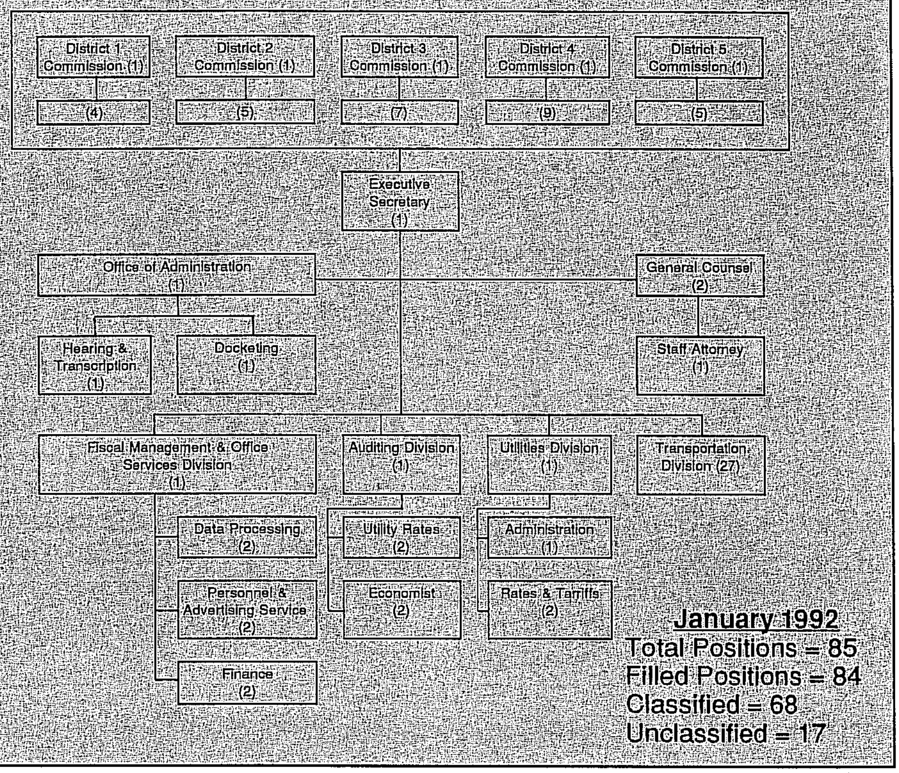
Rate cases are handled through a team approach. A case manager is selected and legal staff assigned. The chiefs of engineering, economics and accounting review the case and determine what can be done in-house. The team then drafts a Request for Proposal (RFP) for the work that needs to be contracted out. Consultants' proposals are ranked and evaluated on an established point system. The consultant is selected and the case processed. The consultant is expected to provide training for in-house staff where appropriate.

Expert consultants typically are used in major rate cases to fill in gaps in staff expertise. However, the Arizona Utility Division does not use outside counsel in rate cases, as it can rely on the relatively large ACC legal staff. A Washington, DC law firm is kept on retainer to assist in federal regulatory agency proceedings.

The Arizona agency is funded by a flexible assessment on utility companies (up to a maximum rate). Unused funds of up to $500,000 may be carried forward to contract for audits and special studies.

Arizona's situation differs somewhat from Louisiana's--for one thing, much of its caseload involves water cases. While it may not provide the "ideal" model for Louisiana, the development of Arizona's Utility Division is instructive. If the LPSC is to make a similar development, it will need a strong commitment from the commission and staff, a substantial expansion in its in-house professional staff, and a new approach to handling cases.

FIGURE 1
LPSC Current Organization and Staffing (Number of Positions)



LPSC Since 1984

Since PAR's earlier study, there has been little apparent change in LPSC structure, operation, staffing, funding or use of contract counsel and consultants. (See Figure 1.) Specific findings are:

- The LPSC staff remains heavily concentrated in the district offices with an extremely small central staff of utility regulation experts.
- Overall staffing of the LPSC is quite low relative to staffing in other states--LPSC staffing in utility experts and attorneys is far below the norm in states of similar population.
- The Economics and Rate Analysis Division created in 1985 operated with three positions, including a Ph.D. economist and a CPA financial analyst, until early 1988 when it dissolved due to vacancies and budget cuts. The division was reinstituted in 1991 as a two-man office when the economist position was filled.
- The use of outside legal services and consultants has averaged nearly $1.9 million in billings to affected utilities each year since 1984. (See Table 3.) Billings for 1991 reached a record high $2.7 million.
- The heavy use of contract help since 1984 is due largely to fallout from the AT&T breakup, gas price

TABLE 3
Outside Legal and Consultant Fees Assessed to Utilities by LPSC

Year	Attorneys	Consultants	Total
1991	$1,662,503	$1,007,798	$2,670,301
1990	847,054	1,045,530	1,892,584
1989	1,259,969	635,969	1,895,938
1988	1,519,063	676,100	2,195,163
1987	1,058,971	276,075	1,335,046
1986	902,525	1,184,106	2,086,631
1985	782,579	326,409	1,108,988
1984	1,098,808	586,864	1,685,672

SOURCE: Compiled by PAR from LPSC records.

TABLE 4
LPSC Expenditures and Self-Generated Revenues

	LPSC Expenditures *		Self-Generated	
Fiscal Year	Amount (In Millions)	Percent Increase Over Prior Year	Revenues (In Millions)	Expenditures as Percent of Revenues
1980-81	$2.4	21.5	$3.2	75.0
1981-82	2.6	6.7	3.4	75.0
1982-83	2.6	2.0	5.0	52.6
1983-84	2.4	-7.4	5.5	44.3
1984-85	2.7	10.5	6.1	44.5
1985-86	2.8	4.5	7.4	38.0
1986-87	2.8	-1.2	9.1	30.6
1987-88	2.9	5.0	8.4	34.8
1988-89	3.0	3.4	8.1	37.3
1989-90	3.1	3.7	8.4	37.1

* Does not include payments made directly by utility companies for outside attorneys and consultants hired by LPSC.

SOURCE: State of Louisiana Executive Budget for various years. Data for 1983-84 provided by the LPSC.

deregulation, and placing on line three nuclear energy plants. Most of the contract work has been on relatively few but very large cases.

- Outside attorneys and experts are used by utilities and most other participants in cases involving the LPSC.

- Louisiana's overall expenditure on utility regulation, including outside contract work, appears relatively low compared with the norm for other states.

- LPSC operating expenditures have not risen in real terms since fiscal 1984. From fiscal 1984 to 1990, expenditures rose 28% while inflation rose 26%.

- LPSC expenditures were only 37% of self-generated revenues in fiscal 1990 compared to 45% in fiscal 1984. (See Table 4.)

- LPSC self-generated revenues (motor carrier fees, inspection and supervision fees, and supplemental economic and rate division fees) currently are treated as general fund revenues.

- In fiscal 1990, LPSC expenditures were $3.1 million. Self-generated revenues were $8.4 million ($3.1 million in utility fees and $5.3 million in motor carrier fees). Assuming utility regulation comprises two thirds of the LPSC costs, then roughly $1 million in utility fees and $4.3 million in carrier fees went to the general fund. The supervision charges are being treated as tax revenues rather than as fees.

- The state has other costs related to motor carrier regulation in addition to the LPSC, including the operation of weight stations and traffic enforcement by the state police.

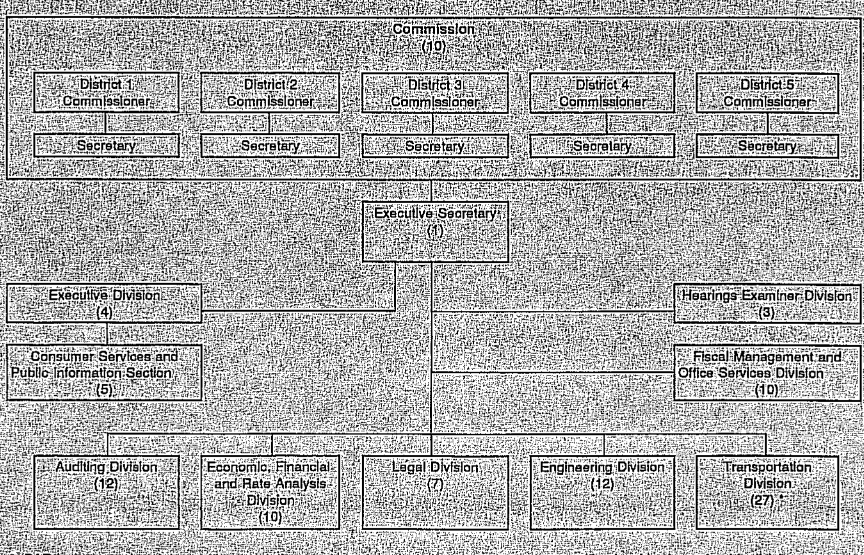
Recommendations

Little has changed in the way the LPSC is organized, staffed, funded and operated which would alter the recommendations made in PAR's 1985 study. However, some clarification is needed of the major recommendations.

Organization and Staffing

An expanded utility regulation staff is necessary, not simply to reduce the LPSC's reliance on outside attorneys and consultants, but to allow it to function more effectively The LPSC needs the capacity to regularly audit, monitor and inspect utility operations, and forecast or recognize trends. An adequate utility staff should be able to participate significantly in rate cases.

FIGURE 2
Recommended Basic LPSC Staffing and Organization: Options Without District Offices



* PAR has not analyzed the staffing needs for transportation regulation; thus, the present staffing level is shown for this division.

The central staff could be organized in functional divisions or divisions geared to the utilities regulated. Initially, however, functional divisions should be developed: auditing, economics and rate analysis, and engineering. Hearing examiner and legal counsel divisions would be required in any case. If the district offices could be reduced or eliminated, a central consumer assistance office could be created.

PAR's earlier staffing recommendation called for shifting 25 of the 30 positions in the district offices to the central staff, the substitution of new types of positions for some existing ones, and the addition of at least 16 positions. This would create a central office staff of 64, excluding transportation. (See Figure 2 and Table 5.) This still appears to be a reasonable initial goal. From that point, workload experience would dictate further development.

If the commissioners are unwilling to give up their personal staffs and the district offices are retained as is, it would require at least 36 additional positions to staff the central office initially. If the "typical" 10 state PUCs are any indication, as many as 77 positions beyond the current staff ultimately could be required.

The LPSC should not be given a blank check for staff expansion. A manpower utilization plan should be required to support the initial staffing, and workload measures should be developed to support any future additions.

Contract Services

Even with the initial staff expansion suggested above, it is unlikely that the LPSC will be capable of handling some of its major rate cases without outside help. Even when it is fully staffed, it still will need the flexibility to fill in the gaps through contracting. Special counsel and expert consultants will continue to be required in some instances, i. e., when the LPSC staff faces an abnormally large workload, or when a highly technical or complex case requires specialized expertise unavailable within the LPSC.

HB 1998 of 1991 would have allowed the use of consultants while giving the utility the right to challenge the reasonableness of that use. A challenge procedure is appropriate as long as it cannot be used to unduly delay proceedings. The proposal also limited the use of outside counsel to cases in the courts or before other agencies. Developing the in-house capacity to conduct rate cases should be a high priority. But, the commission should have the flexibility to call in outside counsel if the need arises.

The cost of outside contractors should continue to be assessed against the affected utility; however, payments should flow through the LPSC

TABLE 5
LPSC Staffing Alternatives

Functions	Current Staffing[a]	Staffed at 10-State Average	Recommended Minimum Staffing: With District Offices	Recommended Minimum Staffing: Without District Offices
Commissioners	5	5	5	5
Commissioner's Offices	30	5	30	5
Consumer Assistance		10		5
Executive Office	4	28	15	15
Administration and Support	6			
Total Administration	46	49	50	30
Legal	3	10	7	7
Hearing Examiners	0		3	3
Total Legal and Hearing Examiners	3	10	10	10
Auditing	3	76	12	12
Economic and Rate Analysis	4		10	10
Utility Engineering	2		12	12
Total Utility Regulation	9	76	34	34
Transportation Regulation	27	27[b]	27[b]	27[b]
Total Positions	85	162	121	101
Additional Positions	--	77	36	16

a. As of January 1992.

b. Assumes continuation of existing staffing. PAR has not analyzed staffing needs for regulating motor carriers.

and be appropriated as a line item or program expenditure to allow annual budgetary review and control.

LPSC Funding

Funding for the LPSC's utility regulation functions should be fully covered by supervision and inspection fees assessed against the regulated utilities. These fees should be adjusted annually to cover the amounts appropriated for utility regulation in a given year and to reflect any prior-year surplus. Any year-end surplus should not revert to the general fund.

Separate program appropriations need to be established for utility and transportation regulation, with an appropriate allocation of the LPSC's administrative costs among the two areas.

The cost of staffing up the LPSC could be met in large part by the roughly $1 million in excess utility supervision fees now being diverted to the general fund. Over time, the upgraded staff could allow a substantial reduction in the nearly $2 million in annual charges to utilities for outside counsel and consultants.

Conclusion

Compared to other states its size, Louisiana spends relatively little on utility regulation even when outside consulting costs are figured in. However, this approach has its costs. Operating with a minimal staff and relying on outside consultants and counsel, Louisiana does not provide the continuous monitoring and oversight found in many other states, nor is there a well-defined ratemaking process to provide a clear understanding of how decisions are made in all cases. As a result, ratemaking is confrontational, adversarial and often highly political. The process also fails to provide for the level of public representation typically found in other states.

To adequately staff the LPSC will cost more money and will require a substantial increase in positions--at least 16 and as many as 77 additional positions if the experience in other states is any guide to staffing requirements. It will require the general fund to give up $1 million in fees which have been used for other programs and may even require additional fees. However, it should be remembered that an added $2 million in regulatory costs is less than 50 cents per capita and represents an infinitesimal percentage of utility bills statewide. Utility consumers who now are paying the supervision fees through their rates deserve to have those fees spent on effective regulation, not treated as taxes and siphoned off into the state's general fund.

To move ahead with staffing the LPSC will require a major commitment on the part of the state and, more importantly, the commission itself. If the commission is unwilling to improve its ratemaking process and make use of an expert staff, no amount of money or number of positions will make a difference.

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