

# Digest of A Performance Audit of the Committee of Consumer Services

## Chapter I: Introduction

The Committee of Consumer Services (CCS) represents the interests of small business owners, farmers and ranchers, and residential consumers of natural gas, electric, and telephone utilities in Utah. To fulfill its role, the CCS has the statutory authority to take independent positions before the Public Service Commission. The CCS is a policy board that is responsible for directing the operations of its small staff through its staff director.

## Chapter II: Legislature Should Revisit CCS' Statutory Structure and Organizational Placement

**Board Structure of the CCS Should Be Reconsidered.** The CCS is a policy board that deals with technical issues. We are concerned that the statutory requirements for membership on this board do not require technical expertise. We recommend that the Legislature consider either changing the statutory requirements for appointment to ensure greater technical expertise or consider making the CCS an advisory board. Regardless of the CCS' standing as a policy or advisory board, the Legislature should consider if the geographic requirements for appointment are ensuring adequate representation.

**Role of the CCS' Representative Should Be Considered.** The Legislature should consider revisiting the statutory responsibilities of the CCS' staff director because, currently, the *Utah Code* creates dual consumer advocates. We have been informed that, in the past, there has been conflict and confusion concerning the co-advocacy roles of the board and their director. If the Legislature decides to make the CCS an advisory board, then the CCS' director should become the state's utility consumer advocate appointed to terms. Appointing the CCS director to terms would give the person serving in this position the independence to act in his or her statutorily defined role and would allow for an orderly change if the Governor wanted to appoint a new utility consumer advocate.

**Organizational Placement of the CCS Should Be Reviewed.** As recommended in past Legislative audits, the Legislature should reconsider the organizational placement of the CCS. Statutorily, the CCS is created within the DPU, but because of the conflict of interest in having these two entities housed together, the Department of Commerce has separated them. The organizational placement of the CCS should reflect the

**Chapter III:  
The CCS Can  
Improve  
Operations**

*Utah Code.* Because the current placement creates a conflict of interest, this report includes options for consideration by the Legislature.

**Role of the CCS in Federal Utility Proceedings Should Be Considered.**

The Legislature should consider allowing the CCS to intervene in federal proceedings to ensure that consumers are afforded the same representation in federal proceedings that they are in state proceedings.

**Pertinent Parties View the CCS as an Effective Consumer Advocate.**

Insufficient documentation made it difficult for us to measure the overall effectiveness of the CCS, but pertinent parties involved in utility regulation have informed us that they believe the CCS has been effective in representing consumers.

**Some CCS Budget Items Should Be Reviewed.** From fiscal years 2000 to 2007, operating revenues exceeded operating expenditures by an average of about \$173,000, or 28 percent annually. In contrast, P&T expenditures exceeded P&T revenues in that same time period by about \$84,000, or 16 percent annually. Unspent monies in the CCS' operating budget lapse to its P&T budget, and the CCS' P&T budget is nonlapsing. The CCS currently has a nonlapsing P&T fund balance totaling over \$1.2 million but has plans to use these revenues. The Legislature could consider reviewing the amounts appropriated to the CCS' operating and P&T budgets to ensure proper funding for intended purposes. If the Legislature views the P&T balance as a concern, we recommend the Legislature consider working with the CCS to determine an appropriate cap on the CCS' P&T balance.

**The Effectiveness of the CCS Can Be Improved.** The efficiency and effectiveness of the CCS can be improved by the development and implementation of operating policies and procedures. Specifically, the CCS should develop policies clarifying how it assists consumers, how positions taken serve the majority, and how it selects cases and determines level of involvement. The CCS should also formally adopt policy and process improvements that the recently hired CCS director has been working on. The CCS can also improve its monitoring and evaluation of performance by improving its documenting, monitoring, and quantifying of operations and outcomes. Finally, the efficiency and effectiveness of the CCS can be enhanced through continued improvements in community outreach efforts.

REPORT TO THE  
UTAH LEGISLATURE

Number 2008-01

**A Performance Audit  
of the  
Committee of Consumer Services**

January 2008

Audit Performed By:

Audit Manager                      Darin Underwood

Audit Supervisor                    Brian Dean

Audit Staff                            Tim Bereece

August Lehman



# Table of Contents

Page

|   |    |
|---|----|
| Digest. . . . .   | i  |
| Chapter I   |    |
| Introduction. . . . .   | 1  |
| Utility Regulatory System Dependent On Multiple Entities.. . . . .                        | 2  |
| Audit Scope and Objectives. . . . .   | 4  |
| Chapter II  |    |
| Legislature Should Revisit CCS' Statutory Structure and Organizational Placement. . . . . | 7  |
| Board Structure of the CCS Should Be Reconsidered. . . . .                                | 8  |
| Role of the CCS' Staff Director Should Be Considered. . . . .                             | 13 |
| Organizational Placement of the CCS Should Be Reviewed.. . . . .                          | 14 |
| Role of the CCS in Federal Utility Proceedings<br>Should be Considered.. . . . .          | 20 |
| Recommendations. . . . .  | 21 |
| Chapter III   |    |
| The CCS Can Improve Operations.. . . . .  | 23 |
| Some CCS Budget Items Should Be Reviewed. . . . .   | 24 |
| The Effectiveness of the CCS Can Be Improved. . . . .                                     | 28 |
| Recommendations. . . . .  | 37 |
| Agency Response.. . . . .   | 39 |



# Chapter I

## Introduction

---

**The CCS represents the interests of residential and small commercial consumers in utility matters before the Public Service Commission.**

---

The Legislature’s purpose in creating the Committee of Consumer Services (CCS) in 1977 was to ensure that the interests of residential and small commercial consumers<sup>1</sup> were represented in utility matters before the Public Service Commission. The Legislature determined that large organizations could present their own interests in utility matters, but residential and small commercial customers typically did not have the resources to present their interests before the Public Service Commission.

The CCS has the statutory responsibility to “advocate on its own behalf and in its own name, . . . positions most advantageous to a majority of residential consumers . . . before the Public Service Commission.” While the CCS is to take positions that serve the majority, there has been confusion at times as to whether or not the CCS was fulfilling this mandate in some positions it has taken.

The CCS and its staff also assess the impact of utility rate changes, service changes, and other regulatory actions on residential, small commercial, and agricultural consumers. The CCS holds monthly public meetings to give utility customers the chance to present concerns and petition the CCS to take action. It also has the statutory mandate to assist residential consumers and small businesses in appearing before the Public Service Commission; however, the intent of this mandate is unclear.

---

**The CCS is a policy board appointed by the Governor.**

---

With consent of the Senate, the Governor appoints six board members to serve on the CCS for four-year terms. No more than three board members can be from the same political party. The members of this policy board are Utah citizens who represent the following interests:

- Retired persons
- Low-income residents
- Residential consumers
- Farmers/ranchers who use electric power to pump water

---

<sup>1</sup> (1) “Residential consumer” is a customer or user of a natural gas, electric, or telephone utility who maintains a permanent place of abode within the state of Utah.  
(2) “Small commercial consumer” is a person or entity conducting a business or agriculture, or other enterprise in the state of Utah having less than 25 employees or a gross income less than \$1,000,000 annually (UCA 54-10-1).

- Small commercial consumers
- Consumers from different geographic areas

While the CCS deals with technical issues involving utility regulation, there are no technical requirements to sit on this board, which is not consistent with requirements to sit on a majority of state boards. Therefore, we question whether the CCS should be a policy or an advisory board, or if the statutory makeup of this board should be revisited.

---

**The Governor also appoints a qualified person as the CCS' representative/staff director.**

---

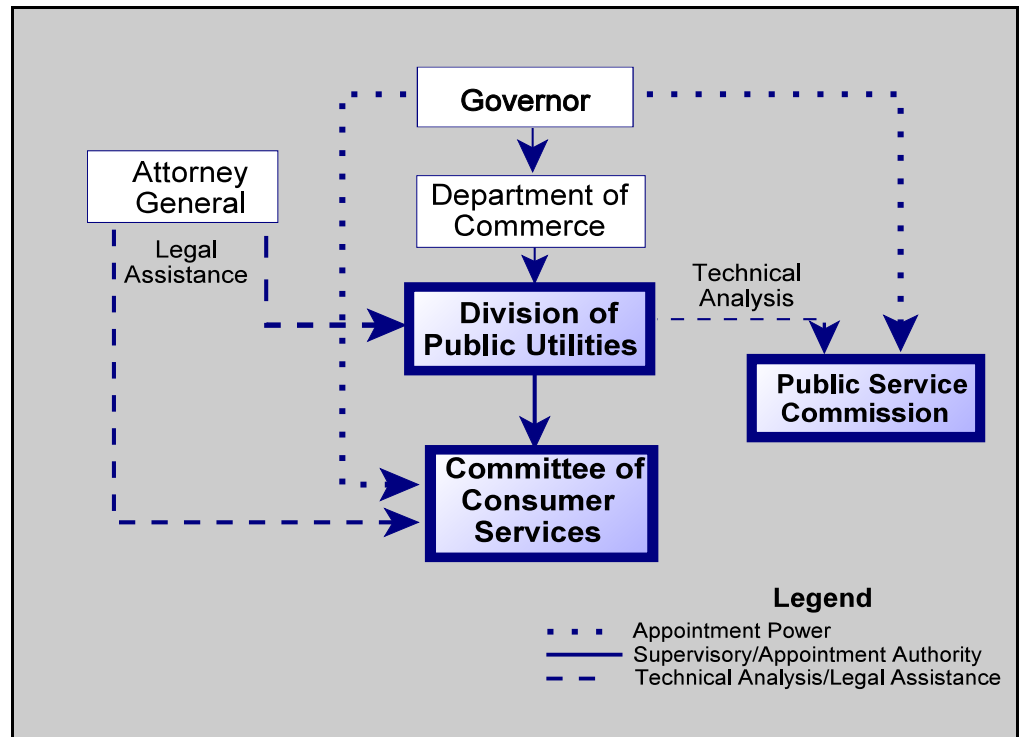
In addition to appointing the CCS board, the Governor also appoints “a qualified person in the field of public utilities who may carry out the policies and directives of the [CCS].” This director manages the committee’s small staff and represents residential and small commercial consumers of utilities in Utah. In addition to addressing the structure of the CCS board, we also address the overlapping roles of the board and the director in Chapter II of this report.

## **Utility Regulatory System Dependent on Multiple Entities**

Public utilities are private companies that are granted monopoly status by the government to provide gas, electric, and—to a lesser extent—telephone services. In exchange, the government reserves the right to regulate these monopolies to ensure the quality of service, the lowest possible price for consumers, and a fair rate of return for the utility provider. Figure 1.1 shows the utility regulatory system in Utah.



**Figure 1.1 Structure of Utah’s Utility Regulatory Entities.** The CCS is an integral part of Utah’s utility regulatory system because it advocates for small consumers who otherwise would not have representation.



*The three major parts of the Utility Regulatory System in Utah are the Public Service Commission, the DPU, and the CCS.*

**The Public Service Commission, the CCS, and the DPU all play integral roles in utility regulation.**

As Figure 1.1 shows, Utah’s public utility regulatory system is made up of three major parts: the Public Service Commission, the Division of Public Utilities (DPU), and the CCS. The Governor has supervisory powers over the Department of Commerce, as well as appointment authority for the Public Service Commission and the CCS. The DPU is a division within the Department of Commerce. The CCS is statutorily placed within the DPU but currently does not have any operational or administrative ties to the DPU. The Attorney General provides legal assistance to both the DPU and the CCS, and the DPU provides technical analysis to the Public Service Commission. The CCS can request the DPU to conduct an audit of a regulated utility but has never requested one. The statutory placement of the CCS under DPU was a concern of previous audits and is a concern of this audit.

To better understand these entities’ roles in utility regulation, it is helpful to put the entities in the context of a civil case, where a private utility company brings a case requesting a rate increase before a

---

**The Public Service Commission is the decision making body in utility regulation.**

---

---

**The DPU balances the interests of consumers and the utilities, whereas the CCS advocates for small consumers.**

---

“judge”—the Public Service Commission. The DPU is similar to the “police” that investigate the claims of the utility company, enforce the orders of the Public Service Commission, and monitor the public utilities. The CCS could be compared to the “public defender” for small consumers as a whole, for whom the rate increase and quality of service will have an impact.

The Public Service Commission is an independent agency consisting of three commissioners appointed to six-year terms by the governor. The Public Service Commission considers the information that has been brought to them by other parties and issues formal, written orders that regulate public utilities in the state. The Public Service Commission and its small staff do not carry out the daily monitoring and regulating of public utilities; this is the function of the DPU.

The DPU provides the Public Service Commission with objective and comprehensive information, evidence, and recommendations. They also have broad powers to investigate, audit, receive complaints, make policy recommendations, enter into stipulations, and take enforcement actions to ensure compliance. In carrying out its duties, the DPU is required to promote the efficient and reliable operation of public utilities, ensuring them a sufficient and fair rate of return, while protecting the long-term interest of consumers by maintaining adequate levels of service at the lowest cost.

In balancing the interests of consumers and utilities, the DPU must remain objective and represent the broad public interest. Utilities and large industrial consumers are well represented before the Public Service Commission, but small consumers lack the resources and individual incentives to have an effective voice before the Public Service Commission. This representation of small consumers is where the CCS fulfills an important need in protecting individual consumers, small businesses, and agriculture in advocating their interests before the Public Service Commission.

## **Audit Scope and Objectives**

The Office of the Legislative Auditor General was asked to review the CCS in order to evaluate their operational efficiency and effectiveness and

---

**The scope of this audit included a review of the CCS' board structure, organizational placement, role in utility proceedings and operational efficiency and effectiveness.**

---

determine if the CCS is effective in accomplishing its statutory role. In order to address these issues, we evaluated the following:

- The board structure of the CCS
- Organizational placement
- Role of the CCS in utility proceedings
- Operational efficiencies and effectiveness

In evaluating these areas, we reviewed the operations of the CCS, relevant statutes, history of the CCS, prior audits, budgets, committee meetings, and other records. We examined studies of state utility advocacy programs nationwide and also surveyed consumer advocates of other states. We also interviewed many interested and involved parties in the field of utility regulation, including the CCS, the DPU, the Department of Commerce, the Public Service Commission, utility representatives, and representatives for groups associated with various types of utility users.

Since the creation of the CCS in 1977, the regulatory environment has changed through deregulation, environmental concerns coming to the forefront, and more advocacy work being conducted through stipulations. While the CCS is only one actor in Utah's utility regulation program, the focus of our audit work was on the CCS and how it has operated in this changing regulatory environment.

The specific audit requests were to:

- Review the oversight and organizational placement of the CCS (Chapter II).
- Review the CCS' budgetary growth and operations (Chapter III).

**This Page Left Blank Intentionally**

## Chapter II

# Legislature Should Revisit CCS' Statutory Structure and Organizational Placement

The Legislature should consider revisiting the statutory structure and organizational placement of the Committee of Consumer Services (CCS) in order to improve the CCS' efficiency and effectiveness as the utility regulation consumer advocate. Specifically, the Legislature should consider the following:

- Revisiting the board structure of the CCS in order to determine one of the following; if the makeup of the board should be enhanced to provide for more technical expertise, or if the board should be made advisory rather than policy. The Legislature should also consider if the geographic requirements are sufficient.
- Revisiting the role of the CCS' staff director to eliminate the confusion of dual consumer advocates.
- Revisiting the organizational placement of the CCS because the statutory placement creates a conflict of interest, and the current operational placement does not reflect statute.
- Allowing the CCS to intervene in federal proceedings because the CCS currently does not have this statutory authority.

Many of these structural issues have been touched upon in two past legislative audits involving the CCS. In 1984, the Legislative Auditor General released an audit titled *A Sunset Audit of the Committee of Consumer Services*. While this audit found that the CCS should be reauthorized, it also noted several areas where the CCS' effectiveness could be improved. Those areas included the organizational placement of the CCS, a lack of operating policies and procedures, and the need for the CCS to seek more input from the public.

The organizational placement and independence of the CCS, which is discussed here in Chapter II, was also noted as an area of concern in the 1996 legislative audit titled *A Performance Audit of Public Utility Regulation In Utah*. Unlike the 1984 legislative audit which was focused

---

**Past legislative audits addressed some concerns presented in this report.**

---

on the CCS, the 1996 audit addressed the utility regulation process as a whole. The current opinion of the Public Service Commission is that “the CCS plays a critical and vital role in the utility regulation process.” In our opinion, while the CCS has been an effective consumer advocate, its effectiveness can be enhanced.

## **Board Structure of the CCS Should Be Reconsidered**

Currently, the CCS is a policy board, but its composition is that of an advisory board. The Legislature should consider either changing the composition of the board in order to provide for greater technical expertise, or consider making the CCS an advisory board. Most boards in the state of Utah require technical expertise, and very few states have a utility consumer advocate directed by a policy board. The CCS handles very technical issues involving utility regulation, and we are concerned that the current statutory composition of the CCS does not ensure adequate technical expertise.

The lack of technical expertise of the CCS board has hindered its ability to adequately deal with the technical issues of utility regulation. This is evident by the fact that the CCS is a policy board but has not developed sufficient operating policies or procedures in over 30 years of operation. This issue will be discussed in more detail in Chapter III of this report, but it was recommended in the 1984 legislative audit that the CCS implement written policies and procedures, and it has not done so.

It is difficult for a lay policy board to meet often enough to stay abreast of all issues involving utility regulation and formulate policy decisions on those issues. We reviewed over 10 years of meeting minutes to examine the information provided to the board and the discussions that surrounded those issues. While we acknowledge that more discussion may have taken place than was available for us to review, our review of over 10 years of meeting minutes found evidence that the board questioned the staff’s proposals in less than one percent of all motions passed.

## Requirements for Utah's CCS Lack a Technical Component

We are concerned that the statutory makeup of the CCS does not ensure the necessary composition of technical expertise to aid the board in fulfilling their statutory responsibilities. While the CCS' staff have technical expertise, the *Utah Code* does not require any professional or technical background for the policy makers—the CCS board. Listed in Figure 2.1 is the statutory makeup of the CCS.

---

The CCS is a policy board that deals with technical issues, but there are no technical requirements for appointment.

---

---

**Figure 2.1 *Utah Code 54-10-2. CCS' Qualifications for Board Members Focus on Geographic and Demographic Requirements.*** The current statutory composition of the CCS does not ensure technical expertise for board membership.

---

(3) Members shall represent the following geographic and consumer interests:

- (a) one member shall be from Salt Lake City, Provo, or Ogden;
- (b) one member shall be from a city other than Salt Lake City, Provo, or Ogden;
- (c) one member shall be from an unincorporated area of the state;
- (d) one member shall be a low-income resident;
- (e) one member shall be a retired person;
- (f) one member shall be a small commercial consumer;
- (g) one member shall be a farmer or rancher who uses electric power to pump water in his farming or ranching operation; and
- (h) one member shall be a residential consumer.

The requirements for membership on the CCS are geographic and demographic. The geographic requirements are that one member has to live in either Salt Lake City, Provo, or Ogden; one member has to be from a city other than Salt Lake City, Provo, or Ogden; and, another member has to live in an unincorporated part of the state. These same committee members must also include a low-income resident, a retired person, a small commercial consumer, a farmer or rancher, and a residential consumer. While this makeup allows for some representation

of consumer interests, we are concerned that no technical requirements are in place for membership on this policy board. Examples of relevant technical expertise include economics, accounting, finance, engineering, and planning.

### **Few Other States Have Utility Consumer Advocate Policy Boards**

In contrast to Utah, very few states have public utility consumer advocate offices directed by policy boards. According to the National Regulatory Research Institute (NRRI), there are 45 consumer advocate offices nationwide. Of the 45 consumer advocate offices, only nine are administered by a policy board (including Utah). Of the nine consumer advocate offices that are administered by a policy board:

- Three have a requirement of technical expertise in order to be considered for the board.
- Three (Utah included) require no technical expertise to sit on the board.
- Three are nonprofit corporations with the membership electing the board of directors.

Because three of the nine consumer advocates that have policy boards are nonprofit corporations, they are not comparable to Utah's CCS. Of the six states that have public policy boards for their consumer advocates, only three (Utah included) require no technical expertise to sit on the board. In this regard, by having a policy board that requires no technical expertise, Utah is unlike most other states' public utility consumer advocates.

**Colorado Has a Technical Public Utility Consumer Advocate Policy Board.** An example of a state that has a policy board for their consumer advocate, but requires technical expertise, is Colorado. Their enabling statute states:

The board shall consist of eleven members appointed by the governor. Such members shall be appointed to represent residential, small business, and agricultural utility consumers. Such members shall, to the extent possible, be persons with expertise or experience in consumer utility matters, utilities management,

---

**While only a few states have utility consumer advocate policy boards, only three states (Utah included) have a nontechnical policy board.**

---



economics, accounting, financing, engineering, planning, or utilities law.

### Majority of Utah’s Boards Require Technical Expertise

We also reviewed all Utah boards appointed by the Governor and found that over 75 percent of them require board members to have some technical expertise. The Governor has the responsibility to appoint individuals to 281 boards currently operating in the state of Utah. Information concerning Governor appointed boards is shown in Figure 2.2.

---

**75 percent of the Governor appointed boards in the state of Utah require relevant technical expertise.**

---

---

**Figure 2.2 Most Governor Appointed Boards Require Technical Expertise.** While most boards in the state of Utah require technical expertise relevant to the board’s mission, appointment to the CCS does not have any technical requirements.

---

| Type of Board | Number of Boards | Requires Technical Expertise | Requires No Technical Expertise | Percent That Require Technical Expertise |
|---------------|------------------|------------------------------|---------------------------------|--|
| Policy        | 117              | 80                           | 37                              | 68.4%                                    |
| Advisory      | 91               | 69                           | 22                              | 75.8                                     |
| Licensing     | 60               | 59                           | 1                               | 98.3                                     |
| Nominating    | 13               | 4                            | 9                               | 30.8                                     |
| <b>Totals</b> | <b>281</b>       | <b>212</b>                   | <b>69</b>                       | <b>75.4%</b>                             |

Of the 281 boards appointed by the Governor, over 75 percent of them require technical expertise for appointment. Most of the 37 policy boards that do not require technical expertise are generally in non-technical fields. Because the CCS deals with technical issues, the Legislature should consider one of the following:

- Keep the CCS a policy board, but change the makeup of the CCS to ensure that relevant technical expertise is present, or
- Make the CCS an advisory board and empower the director (who possesses the necessary technical expertise) as the state’s consumer advocate.

---

**The Legislature should consider either changing the composition of the CCS board to provide for greater technical expertise, or consider making the CCS an advisory board.**

---

---

**At any given time, individual board members may have technical expertise; but statute does not make this expertise a requirement.**

---

At any given time, individual board members may have technical expertise that qualifies them to be consumer advocates; however, our concern is that the *Utah Code* does not make this expertise a requirement for appointment. If the Legislature decides to keep the CCS as a policy board but change the structure of this board, they may want to consider the balance of the board. We recognize that technical expertise alone does not ensure an effective consumer advocate board. So, the Legislature may also want to ensure that individuals from differing demographic groups, such as low-income residents, continue to be represented on this board.

### **Geographic Requirements of the Board Are Not Ensuring Adequate Representation**

While the statutory makeup of the CCS board lacks a technical component, we are also concerned that the geographic requirements are not ensuring adequate representation. Staff have reported to us that a primary goal for the CCS is to address the issues of most importance to the majority of their constituents. The idea behind having the board represent different geographic and consumer interests was that the board would be able to assess the majority's opinion. But as indicated in the 1984 legislative audit, "[consumer input] is limited to those individuals who know that the CCS exists and who the board members are."

The geographic requirements of the board, as stipulated in the *Utah Code*, are not sufficient to ensure adequate representation. As previously mentioned, *Utah Code* 54-10-2(3) states:

- (3) Members shall represent the following geographic and consumer interests:
  - (a) one member shall be from Salt Lake City, Provo, or Ogden;
  - (b) one member shall be from a city other than Salt Lake City, Provo, or Ogden;
  - (c) one member shall be from an unincorporated area of the state.

Currently, three committee members are from Salt Lake City, one is from Sandy, one comes from Brigham City, and another comes from Salem. Though the current committee makeup satisfies the statute for geographic and demographic diversity, it seemingly fails to ensure representation in large sectors of the state (i.e., currently southern and eastern Utah). The Legislature should consider revisiting the geographic requirements of the CCS regardless of their standing as a policy or advisory board to ensure

---

**The current requirements for membership on the CCS do not ensure adequate geographic representation.**

---

that the board is more representative of the geographic sectors of the state.

## **Role of the CCS' Staff Director Should Be Considered**

The role of the CCS' staff director/representative should also be clarified.<sup>2</sup> The *Utah Code* creates dual consumer advocates by giving statutory authority to “represent interests” to both the director and the board. How the Legislature revisits the role of the CCS' staff director is dependent on if the CCS is kept as a policy board or made an advisory board.

### **Statute Creates Dual Consumer Advocates**

Currently, there are conflicting roles for the director and the board because the statutory language of the *Utah Code* creates dual consumer advocates. The statutory language shown in Figure 2.3 can be interpreted to mean that there are two utility consumer advocates.

---

**Figure 2.3 *Utah Code* 54-10-5. Residential and Small Commercial Representative - Duties.** The Utah Code can be interpreted to mean that there are two utility consumer advocates.

---

---

**The statute can be interpreted as creating two consumer advocates, which has led to past conflict and confusion.**

---

- (1) The governor shall appoint, with the concurrence of the Committee of Consumer Services, a qualified person in the field of public utilities who may carry out the policies and directives of the Committee of Consumer Services.

(2) This person shall:

  - (a) represent residential and small commercial consumers of natural gas, electric, or telephone utilities in Utah; and
  - (b) represent the interests of residential and small commercial consumers, as directed by the Committee of Consumer Services.

The *Utah Code* can be interpreted to mean that there are two consumer advocates—the board and the director. The director is to

---

<sup>2</sup> For purposes of clarification, the terms “committee’s representative” and “staff director” are used synonymously in this report. Statute refers to the CCS’s director as a “representative” for a position usually termed “director.”

---

**If the CCS were made an advisory board, then the CCS director should become the state's utility consumer advocate.**

---

---

**Having the state's utility consumer advocate appointed to terms would provide necessary independence and allow for an orderly change if needed.**

---

represent the interests of residential and small commercial consumers and represent those same interests as directed by the board. Legal counsel for the CCS has informed us that in the past, there has been conflict and confusion of the co-advocacy roles of the director and the board.

If the Legislature decides to keep the CCS as a policy board, then they should consider clarifying the *Utah Code* to eliminate the confusion of co-consumer advocates. If the Legislature makes the CCS an advisory board, then they should empower the director to be the only utility consumer advocate for the state of Utah.

### **Pending Legislative Action, the CCS Director May Be Appointed to Terms**

If the Legislature were to make the CCS an advisory board, then they should also consider having the CCS director appointed to terms. The CCS takes controversial stands in utility matters. Currently, the board is the entity viewed as taking those stands, and they are appointed to four-year terms. If the CCS was made an advisory board, the director would be the one taking the controversial stands and could benefit from appointed terms.

Interested parties have informed us that political isolation is important for the CCS to be effective. If the director were made the state's utility consumer advocate, having the position appointed to terms would help provide this isolation. This isolation would allow the director the independence to act in the statutorily defined role and also allow for an orderly change if the Governor wanted to appoint a new utility consumer advocate. Some states, like Nevada, New Hampshire, and Iowa, have individuals appointed as consumer advocates to terms.

## **Organizational Placement of the CCS Should Be Reviewed**

The Legislature should revisit the statutory placement of the CCS. *Utah Code* 54-10-2(1)(a) states: "There is created within the Division of Public Utilities of the Department of Commerce a Committee of Consumer Services." While, statutorily, the CCS is within the DPU, the CCS does not operate that way. The Department of Commerce has been treating the CCS as a quasi-independent division because of the conflict of

interest by having the CCS organizationally part of the DPU. While the Department of Commerce has worked internally to correct this conflict of interest, the statutory placement of the CCS should be reviewed by the Legislature.

### **Current Organizational Placement of The CCS Is Not in Line with Statute**

Just as we did in the 1984 and 1996 legislative audits, we encourage the Legislature to reconsider the organizational placement of the CCS. Placing the CCS within the DPU creates a conflict of interest because both entities are allowed to file independently of each other in proceedings, and both have different mandates. The CCS is supposed to take positions that are advantageous to the majority of individual and small business consumers, but the DPU is to balance the interests of consumers and the utilities. While having differing positions is healthy in the hearing process, it is inappropriate for one party to be organizationally part of the other.

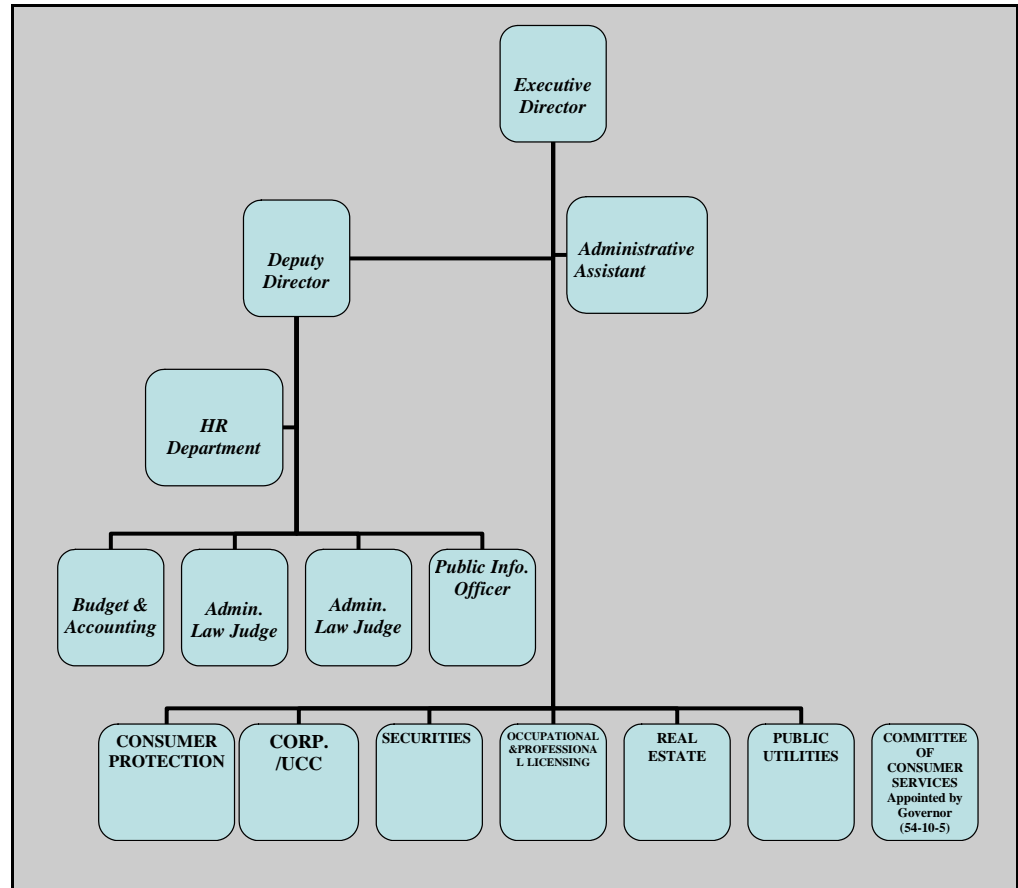
Figure 2.4 shows the current organizational placement of the CCS in the Department of Commerce.

---

**Statutorily, the CCS is created within the DPU, but this organizational placement creates a conflict of interest because the two entities have different missions.**

---

**Figure 2.4 The CCS Does Not Operate Under the DPU as it was Statutorily Created.** While statute puts the CCS under the DPU, the CCS operates independently of the DPU.



**To avoid the conflict of interest in having two entities with different missions, Commerce has separated the DPU and the CCS.**

The Department of Commerce has recognized the importance of separating the DPU and the CCS despite statutory language. While the Department of Commerce has treated the CCS as a quasi-independent division, their own organizational chart is evidence that they have not known how to treat the CCS.

Statutorily, the CCS should be shown on the above organizational chart underneath the DPU. Because of the conflict of interest that exists by having two entities that can file independently of each other and are sometimes adversarial to each other, the Department of Commerce has separated the DPU and the CCS. We concur with the actions of the Department of Commerce and feel that the CCS should be separate from the DPU. However, the organizational placement of the CCS should reflect the *Utah Code*, and therefore, the Legislature should revisit the issue.

---

**The Legislature should address the statutory placement and independence of the CCS.**

---

We have been told by interested parties that the independence of the CCS is essential, but the *Utah Code* does not mention independence anywhere in the CCS' enabling statute. The interpretation of the *Utah Code* is that the CCS is housed in the Department of Commerce for administrative purposes only; however, the level of oversight of the CCS by the Department of Commerce or the level of independence of the CCS needs to be clarified. For example, who is responsible for measuring the performance of the office? As will be discussed in Chapter III of this report, the Department of Commerce has developed a balanced scorecard for each of their divisions for purposes of measuring efficiency and effectiveness, but has not done so for the CCS because of the questions surrounding independence.

To clarify operations, the Legislature should consider addressing the statutory placement of the CCS and also consider the level of independence the CCS should have.

### **As Previously Recommended, Organizational Placement of the CCS Should Be Reconsidered**

The issues of organizational placement and independence were brought up in the 1984 and 1996 legislative audits and are still pertinent today. Figure 2.5 illustrates this point.

**Figure 2.5 Quote from 1996 Legislative Audit - A Performance Audit of Public Utility Regulation in Utah.** Organizational placement and independence of the CCS were issues also addressed in the 1984 and 1996 Legislative audits.

Because it is important that consumers be well represented, Legislators should consider ways that they might preserve the independent status of the committee. Specifically, we would like to reiterate some of the recommendations made in our 1984 audit report to the Legislature because they are still pertinent today. In 1984, and today, there is confusion over who oversees the committee. The administration of the Department of Commerce is concerned that the statute places the Committee of Consumer Services “*within the Division of Public Utilities,*” which implies that the committee staff should be accountable to the division head and department head. However, the statute also indicates that the representative of the six member committee shall be “*appointed by the governor with the concurrence of the Committee. . .*” and that he or she will “*carry out the policies and directives of the committee. . .*” This suggests that it is the committee, not the division director, that has management oversight of the [CCS].

Source: 1996 Legislative Audit page 43

The organizational placement of the CCS was also an area of concern in the 1984 and 1996 legislative audits.

As shown in Figure 2.5, there have been, and still are, problems and confusion over the organizational placement and independence of the CCS. To correct these problems, the Legislature should look at the statutory placement of the CCS, consider an alternative, and clarify the CCS’ level of independence.

### **Statutory Placement of the CCS Makes Utah an Anomaly**

Placing the CCS within the DPU makes Utah an anomaly when compared to other states. An October 2003 study conducted by the DPU found that only seven states have their respective public service commission’s advisory staff (DPU equivalent) separate from their state’s Public Service Commission staff, as Utah does. Of those seven states, only three states—Utah, New York, and Vermont—have their consumer advocate as part of their commission’s advisory staff (DPU equivalent).

While we reiterate that the CCS serves an important function in the field of public utility regulation, we feel that their current organizational placement within the DPU should be addressed. The Legislature could consider different options for reorganization. According to the National



Regulatory Research Institute (NRRI) of the 50 states and the District of Columbia:

- Twenty-seven are represented by an independent consumer representative.
- Fifteen are represented by the state attorney general.
- Three are represented by a nonprofit public corporation.
- Six have no independent consumer representation.

Of the 27 states (inclusive of the District of Columbia) that have an independent consumer representative, two are located within the Legislative branch of state government, and one is found within the governor's office.

Among the different options, we feel that moving the CCS to the Attorney General's Office would just replace one conflict of interest with another. This would happen because the Attorney General is charged with the responsibility of providing legal representation to the DPU and the CCS.

We also feel that making the CCS a nonprofit public corporation could weaken consumer representation, as illustrated by the CCS in their response to the 1984 legislative audit:

The CCS objects to the possible placement of consumer representation in a private consumer utility board (CUB) because it would add the function of fund raising and weaken consumer representation. CUBs survive on donations and solicited memberships. Funds raised by such organizations come from consumers and go first to the organization survival and second to consumer representation.

Because of the reasons stated in 1984, and since only three states use nonprofit corporations for consumer advocacy, we do not believe making the CCS a nonprofit corporation is the best option for change at this time. Instead, given the relatively small size of the CCS, we would recommend either making it an independent division within the Department of Commerce or organizationally moving it to the Governor's Office while keeping it in the same physical proximity with the Public Service Commission and the DPU.

---

**The Legislature should consider making the CCS an independent division within Commerce or moving them to the Governor's Office.**

---

## **Role of the CCS in Federal Utility Proceedings Should Be Considered**

The Legislature should consider whether the CCS should have a role in federal utility proceedings. According to the NRRI, 62 percent of state consumer advocates have the authority to advocate in federal utility proceedings. Currently, the DPU has the statutory authority to intervene in federal proceedings. In contrast to the DPU, the CCS has only the authority to bring original actions before the Public Service Commission and any court having appellate jurisdiction over the Public Service Commission, such as the Utah Supreme Court.

The staff director of the CCS provided us with an example to illustrate why it would be beneficial for the CCS to intervene in federal utility proceedings. This example is quoted, in part, below:

Questar Pipeline Company is an interstate business, [which] is regulated by the Federal Energy Regulatory Commission (FERC) and not by state regulators. . . . The types of policies and contracts filed at FERC are often long-term in nature. Thus, a missed opportunity would have long-term consequences. Often, utilities will argue that tariffs and policies set by FERC must be passed through to the consumers because they are somewhat unchangeable. Therefore, it is important that consumer advocates have the opportunity to raise concerns directly to FERC in order for those concerns to be considered in setting policy at the federal level.

Because the DPU is charged with balancing the interests of the consumers and the utilities, a situation is created where consumers are not assured that their interests are fully represented in federal utility proceedings.

As will be discussed in Chapter III of this report, pertinent parties believe that the CCS has been an effective voice for utility consumers in state proceedings. The consumer utility advocacy model used in state proceedings has been determined to work, as evidenced by the Public Service Commission's response that the "CCS plays a critical and vital role," and also by the fact that Utah has employed this advocacy structure for 30 years. We therefore recommend that the Legislature consider allowing a similar structure in federal utility proceedings. To enact this change, the Legislature would need to give the CCS the statutory

---

**To ensure adequate representation for consumers, the Legislature should consider allowing the CCS to intervene in federal proceedings.**

---

authority to intervene in federal proceedings when the CCS deems necessary.

## **Recommendations**

1. We recommend that the Legislature consider one of the following changes to the structure of the CCS Board:
  - Keep the CCS as a policy board, but revisit the makeup of the board to ensure that a desired level of technical expertise is present, or
  - Make the CCS an advisory board, and empower the director to be the state's utility consumer advocate appointed to terms.
2. We recommend that the Legislature consider revisiting the geographic requirements of the CCS—regardless of its standing as a policy or advisory board—to ensure that the board is more representative of the geographic sectors of the state.
3. We recommend that the Legislature revisit the statutory duties of the CCS' staff director in order to clarify the dual utility consumer advocacy roles.
4. We recommend that the Legislature reconsider the organizational structure of the CCS and its independence. Options to consider include:
  - Making the CCS an independent division within the Department of Commerce, or
  - Organizationally moving the CCS under the Governor's Office, but keeping them in the same physical proximity of the Public Service Commission and the DPU.
5. We recommend that the Legislature consider allowing the CCS to intervene in federal utility proceedings.

**This Page Left Blank Intentionally**

## Chapter III

# The CCS Can Improve Operations

The budgetary growth of the CCS was one of the initial concerns that prompted this audit. While our review of the CCS' expenditures did not raise any significant concerns, this chapter does address budgetary issues such as funding levels and the amount of nonlapsing revenue that can be accrued as an area that the Legislature may want to review with the CCS.

Beyond the budget, we also found that the effectiveness of the CCS can be improved through:

- The development of operating policies and procedures
- Improved monitoring and evaluation of performance
- Continued enhancement to community outreach efforts

While the recently hired director has been working on policy and process improvements, more action can be taken to enhance the efficiency and effectiveness of the CCS' operations.

### **Pertinent Parties View the CCS as An Effective Consumer Advocate**

In general, it is difficult to measure the level of effectiveness of one party in utility regulation proceedings, but insufficient documentation made it even more difficult for us to measure the CCS' effectiveness in advocating for consumers. Pertinent parties have told us, and we concur, that the CCS has been an effective utility consumer advocate.

Representatives from various organizations involved with utility regulation have informed us that they believe the CCS has been an effective consumer advocate. One pertinent party described the CCS to us as “advocat[ing] well for their constituents.” Other pertinent parties have stated that “[The CCS] has kept utility rates low for small consumers,” and “The appointed committee [CCS] and staff have continued to be vigilant in their representation of Utah customers.” Pertinent parties have also recognized the qualifications and professionalism of the CCS staff.

We were able to observe the CCS in a recent hearing before the Public Service Commission and found that the CCS and its attorney were

---

**Pertinent parties believe that the CCS has been an effective utility consumer advocate.**

---

effective at presenting its points and arguments before the commissioners. In discussions with the Public Service Commission, they also felt that the CCS, independent of any cases, “provides an important perspective and evidence in all rate cases and new resource procurement cases.”

### **Some CCS Budget Items Should Be Reviewed**

The CCS receives a portion of the Public Utilities Regulation Fee (PURF) to fund its operations. Our review of CCS expenditures did not raise any significant concerns, but it did highlight areas for further review. When the CCS did receive budgetary increases, they spent the money in accordance with legislative intent. However, the recent absence of an attorney, coverage of one-time moving expenses, and an increasing fund balance may warrant legislative review with the CCS regarding budgetary policies.

#### **Utility Regulation Funded by Consumer Paid Fee**

In order to fund Utah’s regulatory agencies, the Legislature created the PURF, which is charged to the utilities. The enabling statute for this fee is shown in Figure 3.1.

**Figure 3.1 Utah Code 54-5-1.5. Special Regulation Fee.** The PURF is assessed to utilities who in turn pass these costs on to consumers. The fee covers the cost for utility regulation in the state of Utah.

- (1) (a) A special fee to defray the cost of regulation is imposed upon all public utilities subject to the jurisdiction of the Public Service Commission.
- (b) The special fee is in addition to any charge now assessed, levied, or required by law.
- (2) (a) The executive director of the Department of Commerce shall determine the special fee for the Department of Commerce.
- (b) The chair of the Public Service Commission shall determine the special fee for the Public Service Commission.
- (c) The fee shall be assessed as a uniform percentage of the gross operating revenue for the preceding calendar year derived from each public utility's business and operations during that period within this state, excluding income derived from interstate business. Gross operating revenue shall not include income to a wholesale electric cooperative derived from the sale of power to a rural electric cooperative which resells that power within the state.

---

**The Public Utility Regulation Fee (PURF) defrays the cost of utility regulation in the state of Utah.**

---

The Public Service Commission and the Department of Commerce determine the fee amount and then assess each utility based on the percent of their gross revenues from the preceding year. The funds are then distributed among the Public Service Commission, the DPU, and the CCS for their operations. The Department of Commerce and the Attorney General's Office also receive some of these funds to cover costs for their involvement in the utility regulatory process.

Next, Figure 3.2 shows the PURF funds collected from utilities since 2000 and the CCS' allocation of PURF funds. The PURF is a fee that varies annually depending on the revenues generated by the regulated utilities. In fiscal year 2008, the PURF amounted to just over \$8 million dollars with 18 percent, or nearly \$1.5 million dollars, going to the CCS. Though the CCS budget has increased 50.6 percent over the past nine years, the percent of total PURF dollars that has gone to the CCS has remained relatively constant during that time at an average of 18.5 percent.

**Figure 3.2 Total Revenues from Public Utility Regulation Fee and Amounts Distributed to the CCS.** The CCS receives about 18.5 percent of PURF revenue for their operations.

| Fiscal Year   | PURF Revenue         | CCS Allocation       | CCS Allocation as Percentage of PURF Revenues |
|---------------|----------------------|----------------------|---|
| 2000          | \$ 5,772,771         | \$ 973,700           | 16.9%   |
| 2001          | 5,774,069            | 1,010,400            | 17.5  |
| 2002          | 6,159,065            | 987,600              | 16.0  |
| 2003          | 6,716,508            | 1,338,500            | 19.9  |
| 2004          | 7,025,310            | 1,351,900            | 19.2  |
| 2005          | 6,660,549            | 1,351,600            | 20.3  |
| 2006          | 7,180,280            | 1,377,100            | 19.2  |
| 2007          | 7,376,272            | 1,417,000            | 19.2  |
| 2008          | 8,163,363            | 1,466,600            | 18.0  |
| <b>Totals</b> | <b>\$ 60,828,187</b> | <b>\$ 11,274,400</b> | <b>18.5%</b>                                  |

Note: The CCS has two budgets, an operating budget and a professional and technical (P&T) budget. The CCS allocation includes both the operating and P&T budgets.

**The CCS receives about 18.5 percent of the PURF to cover their operations.**

The CCS budget is broken down into an operating budget and a Professional and Technical (P&T) budget. As with most state agencies, the operating budget for the CCS covers personnel costs, training, travel and office equipment. Any money left over from the operating budget at the end of each fiscal year lapses into the CCS' P&T budget for the next year.

The P&T budget for the CCS is used to provide professional and technical services beyond what is available through other department/committee resources. Due to the irregular frequency and high expense of rate case analysis, the P&T fund is nonlapsing. So, any money left over at the end of the fiscal year lapses into the next year's P&T budget.

**Expenses Follow Intent, but Funding Adjustments May Be Needed**

As previously mentioned, while collections through PURF have increased, the percentage of PURF revenues going to the CCS have



Since 2000, the percentage of PURF revenues going to the CCS has remained relatively constant.

remained relatively flat. Figure 3.3 breaks down the appropriations and expenditures to the CCS from 2000 to the present.

**Figure 3.3 CCS Operating and Professional & Technical (P&T)**

**Revenues and Expenditures.** The CCS receives two appropriations from the PURF for operating and P&T expenditures. Each year, unspent monies in the CCS’ operating budget lapses into their P&T budget; the CCS’ P&T budget is nonlapsing.

| Fiscal Year | CCS Revenue |            | CCS Expenditures |            | CCS P&T Balance |
|-------------|-------------|------------|------------------|------------|-----------------|
|             | Operating   | P&T        | Operating        | P&T        |                 |
| 2000        | \$ 638,700  | \$ 335,000 | \$ 474,625       | \$ 486,495 | \$ 12,580       |
| 2001        | 675,400     | 335,000    | 574,899          | 354,021    | 94,060          |
| 2002        | 652,600     | 335,000    | 552,114          | 372,518    | 157,028         |
| 2003        | 838,500     | 500,000    | 617,785          | 560,337    | 317,406         |
| 2004        | 851,900     | 500,000    | 743,579          | 784,790    | 140,938         |
| 2005        | 851,600     | 500,000    | 716,830          | 616,432    | 159,276         |
| 2006        | 877,100     | 500,000    | 559,296          | 681,832    | 295,248         |
| 2007        | 917,000     | 500,000    | 680,674          | 316,651    | 714,922         |
| 2008        | 966,600     |            | ----             | ----       | 1,214,922       |

Changes in the CCS’ operating budget are aligned with changes in the PURF revenue. The one significant exception was fiscal year 2003, when the Legislature increased the operating budget of the CCS by 28.5 percent. The increase was intended to facilitate the move of the CCS within the Heber Wells Building and to acquire additional legal services through the Attorney General’s Office. In addition, the Legislature also increased the CCS’ P&T appropriation by \$165,000 at that time, which increased their annual appropriation from \$335,000 to \$500,000. The CCS eventually changed offices in fiscal year 2004. In addition, the CCS also hired a second attorney, who was assigned to them through the Attorney General’s Office in 2005, and retained the services of both attorneys until 2007 when the original attorney retired.

While reviewing the employee expenses, a reduction in personnel costs was discovered in 2006. This was during a time when the CCS was

---

**Since 2000, CCS' operating revenues exceeded expenditures by an average of 28 percent annually, while P&T expenditures exceeded revenues by 16 percent annually.**

---

---

**The Legislature may want to consider reviewing appropriated amounts with the CCS, and placing an appropriate cap on the CCS' P&T balance if this balance is viewed as excessive.**

---

---

**While pertinent parties have stated that the CCS has been effective, they can still improve.**

---

experiencing a higher level of employee turnover. The CCS still has vacant positions in its operating budget that have not been filled. Expenditures from the P&T budget are closely tied with consultant costs. Consultant costs account for 94.8 percent of the P&T fund's costs. These costs are driven by the relative size and frequency of cases before the Public Service Commission.

The CCS currently has a nonlapsing P&T fund balance totaling over \$1.2 million but has plans to use these revenues. In fiscal year 2008, the CCS will be engaged in two simultaneous rate cases and anticipates spending most, if not all, of the current P&T balance. This demonstrates a need for the current funding structure, but appropriated amounts to the CCS' operating and P&T budgets may need to be revisited. From fiscal years 2000 to 2007, operating revenues exceeded operating expenditures by an average of about \$173,000, or 28 percent annually. In contrast, P&T expenditures exceeded P&T revenues in that same time period by about \$84,000, or 16 percent annually. It is important to note that the CCS' P&T expenditures exceeded actual revenues in every year we reviewed except for fiscal year 2007.

As previously mentioned, unspent monies in the CCS' operating budget lapse to its P&T budget, which is nonlapsing. The CCS has been using unspent operating revenues to cover P&T deficits and carrying forward the remaining balance. Therefore, we recommend that the Legislature consider reviewing the amounts appropriated to the CCS' operating and P&T budgets to ensure proper funding for intended purposes. If the Legislature views the high P&T balance as a concern, then we recommend that the Legislature consider working with the CCS to determine an appropriate cap for the CCS' P&T balance.

## **The Effectiveness of the CCS Can Be Improved**

As previously mentioned, pertinent parties believe that the CCS has been an effective utility consumer advocate. However, the efficiency and effectiveness of the CCS can still be improved by the development and implementation of operating policies and procedures. Further, the CCS can improve its monitoring and evaluation of performance. Finally, the efficiency and effectiveness of the CCS can be enhanced through continued improvements in community outreach efforts.

## **The CCS Needs to Further Develop Policies and Procedures**

Over the years, the CCS has not adopted sufficient operating policies and procedures. The 1984 legislative audit recommended that the CCS implement written policies and procedures, but to date, this has not been done. While the current director and staff are working to correct this problem, we are concerned that the board has not taken action to implement previous audit recommendations.

**Sufficient Action Has Not Been Taken on Past Recommendations to Create Operating Policies and Procedures.** The response of the CCS to the audit recommendations made in the 1984 audit is cited below.

---

**Even though it was recommended in a 1984 legislative audit, the CCS has yet to develop sufficient operating policies and procedures.**

---

The recommendations that can be implemented by the CCS without legislative or budgetary changes will be done as rapidly as possible. Those improvements that require budget increases or legislative changes will have our support.

We are concerned that in 30 years of existence, no actions have been taken to formalize the operations of the CCS. This concern was brought up by a board member in a CCS meeting back in 1997. The board member's statement is quoted, in part, below.

My motion is that this Committee assign some people from the staff and Commerce Department and whoever needs to be on that Committee to come up with some kind of policy statement that we can all live by so we know what the rules and regulations are and we don't have to make them up as we go along.

While the board member's motion passed, we found no evidence of sufficient policies and procedures ever being developed.

**The CCS Should Develop Policies Clarifying How It Assists Consumers.** The current statutory role of the CCS is vague, and policies need to be created by the CCS to formalize their current practice. Part of CCS' statutory responsibility is to assist consumers before the Public Service Commission. *Utah Code* 54-10-4(2) states:

The committee shall assist residential consumers and those engaged in small commercial enterprises in appearing before the Public Service Commission of the state of Utah.

Currently, the CCS is interpreting this requirement as providing assistance by helping consumers to understand the process. The CCS does not provide legal representation to individual consumers because that would conflict with their responsibility of serving the majority.

The 1984 legislative audit also addressed the vagueness of the statutory language concerning assistance. The audit stated:

The CCS is supposed to assist consumers who want to appear before the [Public Service Commission]. However, the statute is unclear about how much and what type of assistance the CCS is allowed to give, because it also requires that the CCS advocate positions most advantageous to a majority of consumers.

Some states, like Wyoming, Nevada, and Florida, specifically prohibit their consumer advocates from representing individuals or individual entities. Wyoming statute states:

The consumer advocate shall not advocate for or on behalf of any individual, organization or entity.

The CCS is interpreting its requirement of assisting consumers as informing/educating individuals of how proceedings work, but it does not provide legal representation. With regard to consumer assistance, the criteria suggests that the CCS should not be in the business of providing legal representation to an individual or an individual entity because that puts them at risk of not fulfilling their statutory mandate of serving the majority.

Currently, the CCS provides guidance for those seeking assistance and forwards most consumer complaints on to the DPU. Starting in 2005, the CCS started tracking consumer contacts with the CCS, and since that time, only 101 complaints have been filed. More than half of the filed complaints involved the firing of a past CCS director and the hiring of a new one. Records indicate that, since 2005, the CCS has typically answered consumers' questions.

---

**The CCS should develop policies that reflect its interpretation of assisting consumers.**

---

To clarify operations and improve its effectiveness, the CCS should develop policies that reflect its current interpretation of assisting consumers. If the Legislature does not agree with the CCS' current interpretation of assisting consumers, they may want to clarify the statute.

**The CCS Should Create Policies Stating How Its Positions Serve The Majority.** The CCS should create policies that clarify how its positions are “most advantageous to a majority of residential consumers.” *Utah Code* 54-10-4(3) states, in part:

The committee shall be an advocate on its own behalf and in its own name, of positions most advantageous to a majority of residential consumers as determined by the committee and those engaged in small commercial enterprises.

This statutory requirement has caused confusion over the years as to why the CCS is taking a stand one way or another. For example, the 1984 legislative audit illustrated a case where the CCS took a stand that was beneficial for only 23 families.

Earlier this year, the CCS supported a stipulated agreement that would cause the majority of ratepayers to pay a little more to ensure services at a reasonable price to a minority of rural users. The newly appointed CCS director defended this position to us after the filing because the CCS felt that the pricing scheme was discriminatory to some of its consumer population. While we do not question the stand of the CCS, we feel that if it had policies that stated its statutory position up-front on how its positions are most advantageous to a majority, it would have avoided confusion over why they represented such a small number of consumers.

**The CCS Should Formalize Policies on Case Selection and Involvement.** Another example of where operational policies and procedures would improve the efficiency and effectiveness of the CCS is in their assessment of which cases before the Public Service Commission merit CCS involvement. While the CCS has told us that they review all open cases before the Public Service Commission, insufficient documentation of these reviews exists. The CCS has no formalized means to determine which cases merit CCS involvement. The problem is that the current system relies heavily on the institutional knowledge of staff, and the ability of the CCS to function in terms of case selection and involvement could be significantly impacted due to turnover.

---

The manner in which the CCS has fulfilled their statutory requirement of taking positions advantageous to the majority has caused confusion over the years.

---

---

The CCS should formalize means to determine which cases merit its involvement.

---

A performance audit of Arizona’s Residential Utility Consumer Office (RUCO) recommended that RUCO formalize their case selection guidelines. An excerpt from that audit is cited in Figure 3.4.

---

**Figure 3.4 Performance Audit of Arizona’s Residential Utility Consumer Office.** Utah’s CCS should also formalize means to assess involvement in utility cases.

---

Although RUCO has a basic process in place for case selection, which incorporates key factors and relies on the experience and judgment of staff, it has not formalized this process. Currently, RUCO considers the size of the utility company, amount of rate increase sought, number of customer complaints involving the company, importance of case issues, and the availability of resources in determining when to intervene in a case. However, RUCO has not formalized this process, a process that also relies on the experience and judgment of current staff. Should RUCO lose any staff that assist in this process, its ability to continue to appropriately select cases for intervention may be impacted. Therefore, RUCO should document its process and criteria used for selecting cases for intervention.

*Source: Arizona’s Auditor General pages 12-13.*

While the CCS has an informal means of reviewing cases, it should formalize this process in order to improve the efficiency and effectiveness of the office. If not, the CCS is at a similar risk as Arizona’s RUCO, in that their ability to effectively assess and intervene in cases could be significantly impacted due to turnover.

### **Recently Hired Director Is Working on Policy and Process Improvements**

The current CCS director and staff are also working on developing additional operating policies and procedures to enhance the efficiency and effectiveness of the office. Examples of these policies and procedures that are in the works include:

- Procedural list for committee meetings
- Policies and procedures for filing submissions
- Policies and procedures for participation in Public Service Commission hearings
- A case responsibility list
- The development of central files

---

**The CCS director and staff have started to develop operating policies and procedures.**

---

In addition to making policy improvements, the current CCS director and staff are working to improve procedural efficiencies and effectiveness. Examples of these process improvements include the elimination of a chief-of-staff liaison between the director and other staff, the assignment of a lead and a backup on every case, and the use of weekly reports.

The CCS has a very small staff of seven, and removing the extra layer of hierarchy (elimination of a chief of staff) has appeared to improve overall communications and distribution of work. Having a lead and a backup assigned to every case allows the CCS to better maximize the benefits of their internal expertise.

The use of weekly staff reports will enhance the monitoring and tracking of staff's work on various cases. The CCS never effectively tracked or documented what staff were working on. In June 2007, the CCS director implemented a process that requires weekly reports of staff that tracks what projects they are working on and the amount of time spent on those projects.

The policies, procedures, and process improvements that have recently been initiated, and the ones being developed, will improve the operations of the CCS. Therefore, once completed, the CCS should formally adopt these measures for all current and future employees of the CCS.

### **The Monitoring and Evaluation of Performance Can Be Improved**

The CCS needs to develop a methodology to monitor and evaluate its operational efficiencies and effectiveness. The American Society of Public Administration states that performance measurement is an important aspect of accountability in government. As previously mentioned, the CCS recently implemented weekly staff reports, but the CCS has not developed any means to sufficiently document or monitor the operational efficiencies and effectiveness of the office.

In connection with the Governor's initiative, in 2006, the Department of Commerce developed and adopted the Balanced Scorecard Program to better track efficiencies and effectiveness across all divisions within the department. While a balanced scorecard was developed for each division, one was not developed for the CCS even though they are treated as a quasi-independent division within the Department of Commerce.

---

**The CCS has yet to develop sufficient means to monitor and evaluate the performance of the office.**

---

Balanced scorecards for each of the divisions within the Department of Commerce are tailored to the unique roles and responsibilities of that division. For example, the balanced scorecard for the DPU measures their level of:

- Customer satisfaction,
- Employee improvement,
- Productivity, and
- Efficiency.

For the DPU's balanced scorecard, customer satisfaction is measured by surveying the Public Service Commission and regulated utilities. Employee improvement is measured against an employee standard for training and development. Productivity is measured by action requests of the Public Service Commission completed on time, the number of customer complaints processed on time, audits and inspections completed, and pipeline safety performance (number and quality of inspections). The efficiency measurement of the DPU's balanced scorecard measures the utilization of resources and measures service to other constituents.

A similar set of measures should exist for the CCS, and the balanced scorecard is one of many methods to measure efficiency and effectiveness. We therefore recommend that the CCS develop and implement a means to document and measure the performance of its operations in order to improve its operational efficiency and effectiveness.

In order to assess the CCS' effectiveness, we reviewed all cases categorized as major dockets by the Public Service Commission for the last five years, and the CCS has filed in:

- 66 percent of electricity cases
- 40 percent of natural-gas cases, and
- 23 percent of miscellaneous cases (policy/other issues).

While the Public Service Commission rules on a significant number of cases each year, our review focused on cases categorized as major dockets. Our review of cases that the CCS filed in showed their involvement, but it was often difficult to measure the CCS' effectiveness based only on the available documentation. We were unable to determine the level of CCS involvement in cases where minimal or no official filing occurred due to insufficient documentation. While the CCS does have an annual report

---

**The CCS should begin documenting and measuring its effectiveness.**

---

---

**While the CCS does highlight some successes in their annual report, more efforts should be made to track and report operational effectiveness.**

---



that usually highlights some successes, more efforts should be made to document, monitor, and quantify operational effectiveness. Over time, this monitoring and evaluating of performance will allow the CCS to develop a historical perspective and better assess its impact.

**Other States' Utility Consumer Advocates Document and Measure Their Effectiveness.** In contrast to the CCS, other states' consumer advocates monitor and measure their program's effectiveness. For example:

---

**In contrast to the CCS, other states utility consumer advocates actively monitor and measure operational effectiveness.**

---

- Wyoming has a strategic plan that shows from year to year how many cases they intervened in and in how many they prevailed. They also track the cases where they reached an agreement with the utility and settled.
- Colorado calculates savings to consumers and records benefits on every project.
- Indiana assigns individuals and provides time lines for work products. They track each project and use the results to measure performance.

As other states' utility consumer advocates document and measure their effectiveness, so should the CCS. Our *Best Practice for Good Management* manual states that a performance measurement is:

A method of measuring the progress of a public program or activity in achieving the results or outcomes that clients, customers, or stakeholders expect.

The CCS can decide what it will track and use as outcome measures, but these measures should be documented, results oriented, relevant and useful.

### **The CCS Should Continue to Enhance Community Outreach Efforts**

The CCS should continue to enhance community outreach efforts. In recent years, the CCS has made significant strides in improving its community outreach in addition to publishing an annual report. The CCS has:

---

**Continued improvements in community outreach will help raise the effectiveness of the CCS.**

---

- visited a number of local organizations,
- created a brochure, and
- developed a quarterly newsletter.

The CCS is also in the process of revamping its website in order to be more consumer friendly. These are all steps in the right direction of educating and informing its consumers of utility matters, but the CCS can still further enhance its community outreach efforts in order to enhance its effectiveness as a consumer advocate.

One of the primary purposes of the CCS is to take positions most advantageous to a majority of residential and small commercial consumers. If the CCS is to do this effectively, they need to encourage more input from the public. As with recommendations mentioned earlier, this was also suggested many years ago in a previous audit. Our 1984 legislative audit stated:

The CCS needs to seek more input from the public. The intent of the Legislature is that regulatory agencies encourage public input into the formation of its rules. In addition, since the CCS is a consumer advocate, it is important that consumers be aware of the CCS' existence and have the opportunity to participate in its activities.

One way that the Public Service Commission is reaching out to their constituents is by holding some meetings or open houses in different areas of the state to allow consumers easier access. This was also a recommendation made in the 1984 legislative audit to the CCS. In 2000 and again in 2001, the CCS discussed holding meetings in various locations of the state but did not act on these discussions. Holding meetings or open houses in various locations of the state is only one means to enhance community outreach.

According to a recent study, consumer outreach is being given more attention by consumer advocates nationwide. Much of this is due to the increasing competition in the utility industry, which requires more information by consumers to make informed decisions and more information on consumers needs and desires for the consumer advocate. In our phone survey, 7 of 10 states reported consumer outreach efforts such as: websites, booths at fairs and expos, speaking engagements, school conservation programs, fact sheets, brochures, newsletters, radio

interviews, annual reports, and conferences and seminars. We recommend that the CCS evaluate its community outreach efforts and implement means to better assess positions advantageous to the majority of its consumers.

## **Recommendations**

1. We recommend that the Legislature consider reviewing the amounts appropriated to the CCS' operating and P&T budgets to ensure proper funding for intended purposes.
2. We recommend that if the Legislature views the CCS' P&T balance as a concern, that they consider working with the CCS to determine an appropriate cap on the CCS' P&T balance.
3. We recommend that the CCS formally adopt policies and procedures that address the following:
  - Clarifying assistance to consumers
  - How its positions serve the majority
  - Case selection and involvement
  - Other policy and process improvements currently in process
4. We recommend that the CCS develop and implement a means to monitor, document, and measure the performance of its operations in order to enhance operational efficiencies and effectiveness.
5. We recommend that the CCS evaluate its community outreach efforts and implement means to better assess positions advantageous to the majority of its consumers.

**This Page Left Blank Intentionally**

**Agency Response**

**This Page Left Blank Intentionally**



JON M. HUNTSMAN, JR.  
*Governor*

GARY R. HERBERT  
*Lieutenant Governor*

State of Utah  
Department of Commerce  
Committee of Consumer Services

FRANCINE A. GIANI  
*Executive Director, Commerce*

MICHELE BECK  
*Director, Committee of Consumer Services*

COMMITTEE MEMBERS

Dee Jay Hammon, Chair  
Franz Arnussen  
Kelly Casaday  
Robert McMullin  
Andrew Riggle  
Betsy Wolf

January 18, 2008

Mr. John M. Schaff, CIA, Auditor General  
Office of the Legislative Auditor General  
W315 Utah State Capitol Complex  
Salt Lake City, UT 84114-5315

Dear Mr. Schaff:

Thank you for the opportunity to respond to the "Exposure Draft" of **A Performance Audit of the Committee of Consumer Services** (Report No. 2008-01.) As you know, a public meeting is convened whenever a majority of the Committee members meet for any purpose. Thus, in order to maintain the confidentiality of the exposure draft, I met individually with each Committee member and compiled their feedback into this single response.

The Committee members are pleased that the audit's overall findings confirmed the effectiveness of the Committee of Consumer Services in representing small consumers. The Committee members also noted with interest the suggestions for possible improvements. These recommendations came in two general forms: those that could only be implemented through legislative changes and those that could be addressed and implemented internally.

If the legislature chose to pursue some of the audit recommendations requiring legislative action, then the Committee would look forward to additional discussions and analysis on these issues cooperatively with the legislators. The Committee members strongly support some of the recommendations, such as considering allowing the Committee to intervene in federal proceedings. This could enhance the Committee's ability to represent small consumer interests.

However, the Committee members each had concerns about the recommendation to consider a change from a policy board to an advisory board. The members note that not only do they represent the interests of different communities of small consumers,

but statutorily they themselves are from those communities. In their view, it is this close tie that helps them to best represent consumer interests and any changes to the structure or requirements of the Committee should be carefully considered to maintain this close relationship with consumers.

The Committee members also had concerns about one option presented for organizational placement of the Committee. The Committee members were pleased that the audit recognized the need for Committee independence in order to achieve its goals. They agree with the audit that the statutory placement creates a conflict of interest. However, they are concerned with one of the potential solutions to have the Committee report directly to the Governor's Office. This change could politicize the activities of the Committee in such a way that detracts from its mission.

Ultimately, the Committee members are committed to their statutory responsibility of representing small utility consumers and would be pleased to work with the legislature in considering changes that enhance this goal.

Several of the audit's recommendations can be addressed internally under the current structure. These relate to suggestions for the implementation of additional policies and procedures as well as tools for performance measurement. These suggestions are well timed, as the Committee staff has been going through a period of transition and over the past year has spent considerable efforts on implementing and documenting policies and procedures at the staff level. I will incorporate the suggestions of the audit as we continue these efforts and also work with the Committee members to formalize policies and procedures at that level. On the subject of measurement tools, we have begun discussions with other Utah state agencies, as well as with other states' utility consumer advocates, to identify measurements that would be most meaningful for our work.

I specifically noted in the audit a sense of frustration that these types of policies and procedures had not been implemented after two previous audits and thirty years of Committee existence. I would like to assure the legislature that we will implement and formalize these policies and procedures in a timely manner.

Finally, the audit made a recommendation that we evaluate our outreach. Both Committee members and I recognize the importance of outreach efforts and have discussed efforts to improve our efforts in this regard. We have a long history of forming alliances with other stakeholder groups who share our issues and have plans to improve those types of communications. We also have plans in place to increase our efforts toward consumer education, beginning with the new website which will be launched soon. However, it is important to note that outreach and consumer education is not part of our statutory mandate, so we must carefully manage these efforts and prioritize the use of our internal resources focusing on our mandates, such as the analysis of utility rate findings. If the legislature concurs that we need additional focus on outreach and education, we may need to also consider additional funding to support those efforts.



Again, thank you for the opportunity to provide this response. We appreciate the professionalism of your staff in conducting the audit as well as the recommendations for improvement of our operations. We look forward to implementing some of these changes and working with the legislature to further address others.

Sincerely,

A handwritten signature in black ink, appearing to read "Michele Beck", with a stylized flourish at the end.

Michele Beck

Director, Committee of Consumer Services



JON M. HUNTSMAN, JR.  
*Governor*

GARY R. HERBERT  
*Lieutenant Governor*

## State of Utah Department of Commerce

FRANCINE A. GIANI  
*Executive Director*

THAD LEVAR  
*Deputy Director*

December 21, 2007

John M. Schaff, CIA  
Auditor General  
Office of the Legislative Auditor General  
P.O. Box 145315  
Salt Lake City, UT 84114-5315

Dear Mr. Schaff,

Thank you for the opportunity to comment on **A Performance Audit of the Committee of Consumer Services** (Report No. 2008-01). I appreciate the work your audit team put into this project and the professional manner in which they reviewed the important work of the Committee. I share the goal of the audit team to help the Committee best accomplish its mission.

The audit team developed two sets of recommendations. One set recommends that the Legislature revisit the Committee's statutory structure, roles, and placement; the other set recommends primarily internal improvements related to the Committee's efficiency and effectiveness. I support both sets of recommendations. The Department of Commerce will provide whatever information and help is necessary as the Legislature considers any statutory changes. With respect to internal improvements, I pledge any assistance the Department of Commerce can provide the Committee as it considers and implements the recommendations.

Sincerely,

FRANCINE A. GIANI, EXECUTIVE DIRECTOR  
UTAH DEPARTMENT OF COMMERCE