

**Joint Legislative Committee on Performance
Evaluation and Expenditure Review (PEER)**

Report to
the Mississippi Legislature



Regulation of Public Utilities in Mississippi

The current regulatory structure for public utilities in Mississippi consists of the Public Service Commission (a quasi-judicial and rule-making agency) and the Public Utilities Staff (a separate entity that is responsible for conducting investigations and collecting information pertinent to the regulation of public utilities).

During the 2009 legislative session, questions arose regarding the need for additional staffing for the Public Service Commission and the appropriate funding levels for both the commission and the Public Utilities Staff. House Bill 1, Third Extraordinary Session of 2009, directed the PEER Committee to study the regulation of public utilities and the best practices utilized by other states in the regulation of utilities.

Several provisions of state law require the Public Utilities Staff to provide advisory services to the Public Service Commission. In most instances, the law neither prohibits nor impairs the staff from providing the commission with recommendations on matters before the commission or informal support on matters within the commission's jurisdiction. Records of the Public Utilities Staff show that the staff provides guidance and support to the commission in carrying out its mandated functions.

PEER found no "best practices" for the structure of a regulatory program for utilities and found no single source that advocates either a separate staff or a combined staff and commission structure. Consequently, it appears that the unique needs and requirements of each state must be given priority in deciding how to structure a regulatory program.

PEER sees no need to change the current structure of the Public Utilities Staff and the Public Service Commission. After reviewing the operations of other states that have separate, independent public utilities staffs, PEER sees a limited role in Mississippi for commission-directed professional staff that would not result in impairment to the functions of the independent staff.

PEER: The Mississippi Legislature's Oversight Agency

The Mississippi Legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER Committee) by statute in 1973. A joint committee, the PEER Committee is composed of seven members of the House of Representatives appointed by the Speaker and seven members of the Senate appointed by the Lieutenant Governor. Appointments are made for four-year terms, with one Senator and one Representative appointed from each of the U. S. Congressional Districts and three at-large members appointed from each house. Committee officers are elected by the membership, with officers alternating annually between the two houses. All Committee actions by statute require a majority vote of four Representatives and four Senators voting in the affirmative.

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The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

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The Mississippi Legislature

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December 8, 2009

Honorable Haley Barbour, Governor
Honorable Phil Bryant, Lieutenant Governor
Honorable Billy McCoy, Speaker of the House
Members of the Mississippi State Legislature

On December 8, 2009, the PEER Committee authorized release of the report entitled
Regulation of Public Utilities in Mississippi.

A handwritten signature in cursive script that reads "Harvey Moss".

Representative Harvey Moss, Chair

This report does not recommend increased funding or additional staff.

Table of Contents

Letter of Transmittali

Executive Summary vii

Introduction 1

 Authority 1

 Problem Statement 1

 Scope and Purpose..... 2

 Method 3

The Public Service Commission and the Public Utilities Staff:
History, Statutory Authority, and Staffing 4

 The Public Service Commission..... 4

 The Public Utilities Staff..... 8

Support Provided by the Public Utilities Staff to the
Public Service Commission 16

Other States’ Regulation of Utilities..... 18

 Overview of Other States’ Utilities Regulation 18

 States with a Unified Regulatory Agency Model 18

 States with Statutorily Independent Staffs..... 20

The Role of Staff in States with Separate Public Utilities Staffs 21

 North Carolina 21

 South Carolina 22

 Vermont 23

 Summary of States’ Use of Independent Public Staffs..... 24

Policy Considerations for the Legislature..... 25

 Strengths of the Current Regulatory Structure 25

 Professional Advisory Staffing of Commissions in Those States
 with Independent Public Staffs..... 26

 A Proposed Role for Commission Technical Staff in Mississippi..... 29

Recommendation 31

Agency Responses 33

PEER Report #531 iii

List of Exhibits

1. Organizational Chart for the Public Service Commission, FY 2008..... 9
2. Organizational Chart for the Public Utilities Staff, FY 2008 13
3. Comparison of Commission Advisory Staffs in States with
Independent Public Staffs, by Type of Professional Staff 26

Regulation of Public Utilities in Mississippi

Executive Summary

Introduction

The current regulatory structure for public utilities in Mississippi consists of a Public Service Commission (hereafter referred to as the commission), a quasi-judicial and rule-making agency, and the Public Utilities Staff (hereafter referred to as the Public Staff), a separate entity that is responsible for conducting investigations and collecting information pertinent to the regulation of public utilities.

The Public Staff is responsible for making recommendations to the commission for action and, in some cases, becoming a party to assert the broad public interest of the state of Mississippi by balancing the interests of the citizens, consumers, the state and the utilities. The Public Staff includes the technical staff devoted to public utilities regulation, leaving the commission with attorneys as the sole professional staff knowledgeable in regulatory matters.

Problem Statement

During the 2009 legislative session, questions arose regarding the need for additional staffing for the Public Service Commission and the appropriate funding levels for both the commission and the Public Staff. Ultimately, the appropriations for the Public Service Commission and the Public Utilities Staff did not become effective until thirteen days after the beginning of FY 2010. House Bill 1, Third Extraordinary Session 2009, directed the PEER Committee to conduct this review.

Scope and Purpose

To comply with the statutory mandate, the PEER Committee focused on the issues that gave rise to the policy concerns and staffing issues that ultimately delayed the FY 2010 funding of both the Public Service Commission and the Public Utilities Staff. Specifically, this report addresses the following matters:

- the statutory authority of the Public Service Commission and the Public Utilities Staff;
- the type of support that the Public Utilities Staff provides to the Public Service Commission;
- the best practices for structuring and staffing regulatory bodies such as the Public Service Commission and the Public Utilities staff; and,
- in states where the public utilities staff is separated from the commission, the extent to which these states provide direct professional staffing to the commission.

The Public Service Commission and the Public Utilities Staff: History, Statutory Authority, and Staffing

The Public Service Commission

The Public Service Commission has the legal authority to adopt rules and regulations regulating public utilities and performs quasi-judicial functions relating thereto.

Although the Public Service Commission's statutory responsibilities have changed since creation in 1884 of its antecedent, the Railroad Commission, at present the commission oversees natural gas, water, sewer, telecommunications, and electric utilities (see MISS. CODE ANN. Section 77-3-1 et seq. [1972]). The commission consists of three elected commissioners, one from each of the state's three Supreme Court districts.

Chapters 1, 2, and 3 of Title 77, MISSISSIPPI CODE ANNOTATED, empower the commission to adopt rules and regulations, issue certificates of convenience and necessity (which are, in essence, licenses to operate a public utility in a particular geographic area), regulate rates, and establish utilities' accounting systems. The commission is also responsible for enforcement of the state's no-call list, pipeline safety, and quality of service of public utilities. As a quasi-judicial body, the commission makes decisions on certificates, rates, and other matters that come before it as tribunal acting on the record.

MISS. CODE ANN. Section 77-3-8 (1972) makes provision for the staff of the Public Service Commission. The commission's staff is responsible for gathering and analyzing information relating to all matters within the authority of the commission. CODE Section 77-1-29 prohibits the commission from employing personnel whose services would duplicate services provided by any employee of the Public Utilities Staff. As of June 30, 2009, the commission had sixty-nine filled positions, including the three commissioners and counsel to the commission.

The Public Utilities Staff

While originally under the authority of the Public Service Commission, the Public Utilities Staff is now independent of the commission's supervision and control and is responsible for investigative and advisory functions relative to the regulation of public utilities.

In 1983, the Legislature created the Public Utilities Staff. This staff was to operate as a unit, the personnel of which were to be appointed competitively by the commission and which was to provide the commission with a trained professional staff that was under the direction, management, and control of the commission.

In 1989, a commissioner and a former commissioner were indicted on federal charges arising out of their activities as commissioners. One pleaded guilty to an extortion charge, while the other was ultimately convicted of extortion. Some of the facts that gave rise to the prosecutions were:

- *ex parte* communications between commissioners and parties and, in one case, documented evidence of commissioners' extorting monies from officers of utilities;
- attempts at modifying reports and audits regarding the Grand Gulf Nuclear Plant to prevent Mississippi Power and Light from passing on certain costs of operations to consumers; and,
- attempts to force a settlement between an electric utility and a gas pipeline in a dispute over charges.

As a result, in 1990, the Legislature mandated considerable structural reform in Mississippi's utilities regulatory agency. Included in the act was language later codified as CODE Section 77-2-1, which established a Public Utilities Staff separate and independent from the Public Service Commission to:

. . . represent the broad interests of the State of Mississippi by balancing the respective concerns of the residential, commercial or industrial ratepayers, and the state and its agencies and departments, and the public utilities.

Consistent with the theme of independence for the staff, the Legislature enacted several other statutory provisions to ensure that the staff would be able to make effective independent investigations and render recommendations that were not influenced by the commission, the most significant of which was codified as MISS. CODE ANN. Section 77-2-3 (1972). This section makes clear that the Public Utilities Staff is the principal investigative arm of the utilities regulatory structure, with the commission functioning as the adjudicator in the regulatory process.

As of June 30, 2009, the Public Staff had twenty-seven filled positions.

Support Provided by the Public Utilities Staff to the Public Service Commission

Records of the Public Utilities Staff show that the staff provides guidance and support to the commission in carrying out its mandated functions.

In reviewing the provisions of law enabling the Public Utilities Staff (generally, MISS. CODE ANN. Section 77-2-1 et seq.), PEER notes that several provisions require the staff to provide advisory services to the commission. In most instances, the law neither prohibits nor impairs the staff from providing the commission with recommendations on matters before the commission or informal support on matters within the commission's jurisdiction.

Because of the existence of the *ex parte* rule (MISS. CODE ANN. Section 77-2-13 [1972]), there are instances wherein the Public Utilities Staff takes a role as a party in a contested matter and staff persons involved in the work associated with advocating for the staff's position cannot be utilized to provide support or other communications to the commissioners or staff. In such cases, the Executive Director of the Public Utilities Staff may designate staff who are not involved in advocating the staff's position as advisory to the commission. The system appears to meet the requirements of law in that the commission can and does receive support from the Public Utilities Staff when necessary to assist the commission in carrying out its functions.

Additionally, the Public Staff's Legal Division has represented the Public Service Commission in litigation involving the Federal Energy Regulatory Commission and has, on occasion, represented the commission in other matters in chancery court. The Public Staff has also provided the commission with training programs on the role and function of public utilities regulatory bodies and background on the economic theory of public utility regulation--i. e., the natural monopoly that must be regulated in the public interest.

Other States' Regulation of Utilities

Four states, including Mississippi, utilize an independent utilities staff, with the remainder of states utilizing a staff that is under the direction and control of the regulatory body.

To comply with the statutory mandate, the PEER Committee reviewed literature regarding the structure and

role of regulatory bodies that oversee public utilities in the United States. PEER found that:

- there is no “best practice” for the structure of a regulatory program for utilities;
- regulatory bodies must be properly staffed; and,
- when organizational structure separates the management of the regulatory commission or body from the professional investigative staff, the regulatory commission or body retains some professional staff capabilities.

States’ utilities regulation takes one of two basic forms:

- a Public Utilities Commission (or equivalent) heads a single staff tasked with the various duties of regulation; or,
- a Public Service Commission heads a staff tasked with some duties of regulation and an independent Public Utilities Staff (or equivalent) carries out some or all investigative and analytic duties of utilities regulation, including ratepayer advocacy.

The majority of states regulate utilities through a single agency that operates with a single staff of expert advisers and ratepayer advocates. Some separation of duties and observation of *ex parte* communication requirements may be found across the states in various forms. The staffs are led by executive directors who are often appointed by the states’ governors and who must report to the commissions.

Four states, including Mississippi, have independent public staffs with directors who are neither appointed by, nor accountable to, the commission or board they serve.

The Role of Staff in States with Separate Public Utilities Staffs

Three states--North Carolina, South Carolina, and Vermont--have structures similar to the Mississippi structure for regulating utilities.

Each of these three states differs somewhat in the responsibilities it gives to the independent staff. All maintain separation between their commissions and public staffs for purposes of supervision and direction. Additionally, one in particular, South Carolina, maintains a very limited role for commission-directed staff in the regulatory process.

PEER has found no single source that advocates either a separate staff or a combined staff and commission structure. Consequently, it appears that the unique needs and requirements of each state must be given priority in deciding how to structure a regulatory program.

Policy Considerations for the Legislature

PEER sees no need to change the current structure of the Public Utilities Staff and the Public Service Commission. After reviewing the operations of other states that have separate, independent public utilities staffs, PEER sees a limited role in Mississippi for commission-directed professional staff that would not result in impairment to the functions of the independent staff.

Mississippi's current regulatory structure helps to ensure that the problems experienced in the late 1980s are not repeated. The separation of the Public Utilities Staff from the commission was the product of lessons learned involving corruption in the regulatory process.

States with independent public staffs generally provide some professional staff support to their commissions. Mississippi's commission does not have the direct professional support staff that the other three states have. This can be attributed to the fact that differing statutory responsibilities for the various public staffs and commissions give rise to different staffing needs in each of these states and also to Mississippi's strong public policy against duplication of activity.

Under Mississippi's current law, the Public Service Commission could utilize professional staff to carry out limited support activities in furtherance of the commission's quasi-judicial activities. The activities conducted should be limited to assisting the commission in carrying out its statutory functions as a quasi-judicial and rulemaking body. The commission's staff could be prohibited from conducting any type of independent investigative activity that would duplicate the efforts of the Public Staff.

The Legislature by appropriation gave the commission additional funds to reallocate three vacant Public Service Commission positions in 2009 to provide technical and professional support. The PSC has hired an additional attorney and is working with the State Personnel Board to establish two Special Staff Chief positions to provide technical assistance to the commission. PEER suggests that these positions could be beneficial to the commission provided that the commission may:

- identify the skills it needs in its personnel; and,
- ensure that the proper qualifications are set for the positions so that the staff hired meet the commission's needs.

Recommendation

In the event that the Legislature continues to appropriate funds for professional staff positions under the supervision and control of the Public Service Commission, it should amend MISS. CODE ANN. Section 77-3-8 (1972) to provide that the staff of the commission shall not *inspect, audit, or examine public utilities*. The inspection, auditing, and examination of public utilities is solely the responsibility of the Public Utilities Staff created by MISS. CODE ANN. Section 77-2-1 et seq. (1972). Such prohibitions should apply to all positions of the commission regardless of their source of funding. Such prohibitions shall not bar the commission's staff from conducting consumer service complaint investigations, pipeline inspections, or enforcement of no-call laws as conducted on January 1, 2009.

In the event that the Legislature continues to fund professional support staff positions for the Public Service Commission, it should amend MISS. CODE ANN. Section 77-3-8 (1972) to provide that the staff should only function in an advisory role for the commission when it is acting in a quasi-judicial role or when making rules, by assisting the commission in understanding filings made before the commission, and in preparing questions for open meetings.

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Regulation of Public Utilities in Mississippi

Introduction

Authority

In response to a directive from the Legislature in House Bill 1, Third Extraordinary Session of 2009, the PEER Committee conducted this review of utilities regulation in Mississippi. The Committee acted in accordance with MISS. CODE ANN. Section 5-3-51 et seq.

Problem Statement

Overview of the Current Structure for Regulating Utilities in Mississippi

The current regulatory structure for public utilities in Mississippi consists of a Public Service Commission (referred to as the commission), a quasi-judicial and rule-making agency, and the Public Utilities Staff (referred to as the Public Staff), a separate entity that is responsible for conducting investigations and collecting information pertinent to the regulation of public utilities. This structure came into existence in 1990 (see discussion on page 10).

The Public Staff is responsible for making recommendations to the commission for action and, in some cases, becoming a party to assert the broad public interest of the state of Mississippi by balancing the interests of the citizens, consumers, the state, and the utilities. The Public Staff includes the technical staff devoted to public utilities regulation, leaving the commission with attorneys as the sole professional staff knowledgeable in regulatory matters.

Recent Issues and Concerns Regarding the Structure for Utility Regulation

In the last two years, the members of the commission have raised concerns regarding whether the need exists for a

professional staff under the direct control of the Public Service Commission.

Additionally, in the 2009 regular legislative session, a bill was offered (House Bill 1090) that would have eliminated the Public Utilities Staff and returned all staff to the direction and control of the Public Service Commission, a regulatory structure that existed in Mississippi prior to 1990.

During the same legislative session, questions arose regarding the need for additional staffing for the Public Service Commission and the appropriate funding levels for both the commission and the Public Staff. Ultimately, the appropriations for the Public Service Commission and the Public Utilities Staff did not become effective until thirteen days after the beginning of FY 2010.

House Bill 1, Third Extraordinary Session of 2009, directed the PEER Committee to conduct this review. The specific charge to the committee is found at line 164, Section 11 of House Bill 1:

It is the intention of the Legislature that the PEER Committee shall study the regulation of public utilities and the best practices utilized by other states in the regulation of utilities, and report its findings to the members of the Senate Public Utilities Committee, Senate Appropriations Committee, House Public Utilities Committee and the House Appropriations Committee on or before January 1, 2010.

Scope and Purpose

To comply with PEER's mandate in House Bill 1, Third Extraordinary Session of 2009, the PEER Committee focused on the issues that gave rise to the policy concerns and staffing issues that ultimately delayed the FY 2010 funding of both the Public Service Commission and the Public Utilities Staff. Specifically, this report addresses the following matters:

- the statutory authority of the Public Service Commission and the Public Utilities Staff;
- the type of support that the Public Utilities Staff provides to the Public Service Commission;
- the best practices for structuring and staffing regulatory bodies such as the Public Service Commission and the Public Utilities Staff; and,
- in states where the public utilities staff is separated from the commission, the extent to which these states provide direct professional staffing to the commission.

Method

During the course of this review, PEER:

- reviewed documents of the Public Utilities Staff and the Public Service Commission;
- interviewed the three members of the Public Service Commission and the commission's attorney;
- interviewed the Executive Director of the Public Utilities Staff; and,
- reviewed information from other states regarding the regulation of public utilities.

The Public Service Commission and the Public Utilities Staff: History, Statutory Authority, and Staffing

The Public Service Commission

The Public Service Commission has the legal authority to adopt rules and regulations regulating public utilities and performs quasi-judicial functions relating thereto.

History and Authority

The Public Service Commission's antecedent, the Railroad Commission, was established in 1884. Over time, the commission's powers and duties have expanded and contracted. Originally empowered to regulate railroads, the commission's charge of authority was expanded to telephone and telegraph companies (1892), motor carriers (1926), and electric, water, and gas utilities (1956). Additionally, prison oversight was a part of the agency's authority from 1886 to 1906. At present, the commission oversees gas, water, sewer, and electric utilities, as included in the definition of a public utility in MISS. CODE ANN. Section 77-3-3 (1972). Railroad and motor carrier regulatory duties are no longer the responsibility of the commission.

The commission consists of three elected commissioners, one from each of the state's three Supreme Court districts. MISS. CODE ANN. Section 77-1-1 (1972) requires that commissioners be at least twenty-five years of age and be citizens of the state five years immediately prior to the general election, the same qualifications as those of the Secretary of State. Additionally, a commissioner may not operate or own stock in any utilities or carrier under the commission's jurisdiction.

Jurisdiction and Regulatory Activities

Jurisdiction

The commission has original jurisdiction over the intrastate business and property of public utilities (see MISS. CODE ANN. Section 77-3-5 [1972]). Section 77-3-3 (d) defines a public utility. Generally, a public utility is a person or corporation that conveys or transmits for sale to the public electricity, natural gas, water, sewer services, or

telecommunications services. Municipal utilities do not fall within this definition except in cases in which their services extend beyond one mile of the municipal corporate limits (see MISS. CODE ANN. Section 77-3-1 [1972]).

Major Regulatory Activities

Chapters 1, 2, and 3, of Title 77, MISSISSIPPI CODE ANNOTATED, set out responsibilities of the Public Service Commission with respect to the regulation of public utilities, although several other sections in other titles of the CODE also address certain specific subjects.

Generally, the commission is empowered to:

- *adopt rules and regulations*--MISS. CODE ANN. Sections 77-2-3, 77-3-45, and several other sections specifically related to rates and certificates of convenience and necessity refer to the rulemaking powers of the commission. The commission has the power to adopt rules and regulations reasonably appropriate to carry out the purposes of the statutes from which it derives its authority.
- *issue certificates of convenience and necessity*--These certificates are, in essence, licenses to operate a public utility in a particular geographic area. Construction of new plants and generating capacity must also be approved by the issuance of a certificate. Public utilities must agree to provide specified services for fair rates within the certificated service area. The commission also regulates the quality of such service. Certificates may also be cancelled by commission action. (See MISS. CODE ANN. Sections 77-3-13 through 77-3-19; other references may also be found throughout the CODE.)
- *regulate rates*--Another major area of regulation is rate approval. Because utilities are given a local monopoly of service, it is important to oversee their rates lest they charge excessive amounts to their customers. The commission must determine which rates are just and reasonable. (See MISS. CODE ANN. Sections 77-3-33 through 77-3-43 [1972].)
- *establish utilities' accounting systems*--MISS. CODE ANN. Section 77-3-31 (1972) requires the commission to establish a system of accounting to be utilized by public utilities. The establishment of utilities' accounting systems helps the commission and the Public Staff determine charges that are allowable for purposes of determining a just and reasonable rate for a utility.

Other Responsibilities

The commission also is responsible for the following:

- *enforcement of the state's no-call list*--The commission maintains a no-call list onto which Mississippians may add their names to prohibit telemarketers from calling them. The commission is responsible for managing the list and enforcing the provisions of the state's no-call list legislation. (See MISS. CODE ANN. Section 77-3-701 [1972].)
- *pipeline safety*--The commission operates a pipeline safety program that inspects gas pipelines to safeguard against risks posed by the transportation of gas and liquids transported by pipelines.
- *quality of service*--The commission also operates a consumer complaint and investigation function that reviews complaints regarding charges made by utilities and the quality of service.

Commission Hearings

As a quasi-judicial body, the commission makes decisions on certificates, rates, and other matters that come before it as tribunal acting on the record. The commission has the power to issue process to compel the appearance of witnesses and the production of records. Final decisions of the commission are appealable to the chancery court of the county wherein the utility's principal place of business is located. Rate cases, except for water and sewer cases, may be appealed directly to the Supreme Court of Mississippi.

Staff of the Commission

MISS. CODE ANN. Section 77-3-8 (1972) makes provision for the staff of the Public Service Commission. This section provides:

(1) There is established in the commission a public service commission staff, which staff shall be a unit, remain as a unit therein, and be responsive to the commission. The public service commission staff shall consist of a sufficient number of professional, administrative, technical, clerical and other personnel as may be necessary for the staff to perform its duties and responsibilities as hereinafter provided. All such personnel of the public service commission staff shall be recommended by the executive secretary and hired or rejected by the commission. Personnel shall be dismissed only for cause in accordance with the rules and regulations

of the State Personnel Board. The personnel of the public service commission staff shall be compensated and reimbursed for their actual and necessary expenses, including food, lodging and travel, by the commission from the Public Service Commission Regulation Fund established by Section 77-1-6, and as authorized by Section 25-3-41. The public service commission staff shall be responsible for gathering and analyzing information relating to all matters within the authority of the commission.

(2) The State Personnel Board shall establish and maintain entry-level salaries sufficiently competitive to attract competent, qualified applicants for the specialized skills and positions required by this section without regard to the salaries paid the commissioners and notwithstanding any other provisions of law to the contrary. The State Personnel Board shall authorize, where necessary, a range of salaries within which salary negotiations may be conducted for those positions for which specific knowledge, skills and abilities are set forth herein.

(3) The public service commission staff shall perform such duties as are assigned to them by the commission.

This section is somewhat restricted by the provisions of CODE Section 77-1-29, which provides:

*On or before the twentieth day of each calendar month, the commission shall pay into the State Treasury to the account of the "Public Service Commission Regulation Fund" all monies collected by it during the preceding calendar month, showing from whom collected, when collected and for what purposes collected. All disbursements made by the commission or from the regulation fund for any purposes, other than for salaries provided by law, shall be supported by a detailed and itemized statement approved by the commission for commission disbursements. **The commission shall not expend funds from the "Public Service Commission Regulation Fund" to employ personnel whose services would duplicate services provided by any employee of the Public Utilities Staff.***

[PEER emphasis added]

As the commission's revenues are deposited to this fund, the restriction set out on the non-duplication of staff functions would prohibit the commission from hiring staff that would duplicate the functions of the Public Utilities Staff.

As of June 30, 2009, the commission had sixty-nine filled positions, including the three commissioners and a counsel to the commission.

See Exhibit 1, page 9, for an organizational chart of the staff of the Public Service Commission.

The Public Utilities Staff

While originally under the authority of the Public Service Commission, the Public Utilities Staff is now independent of the commission's supervision and control and is responsible for investigative and advisory functions relative to the regulation of public utilities.

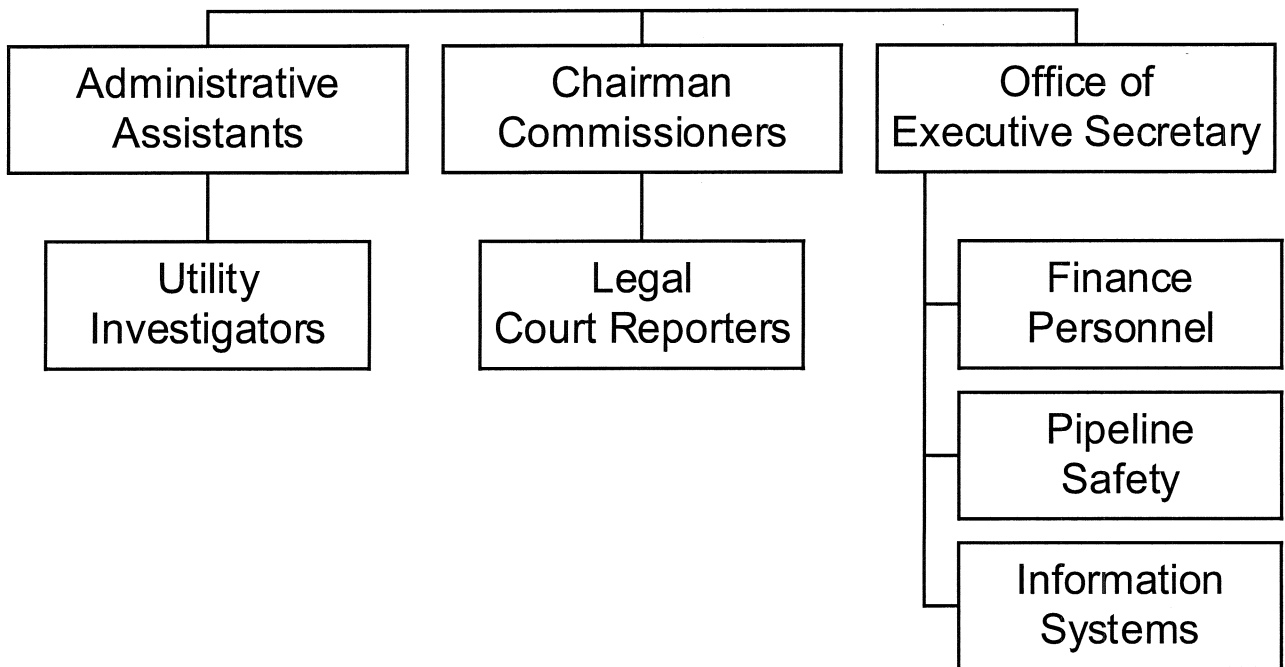
History

1983 Legislation

In 1983, the Mississippi Legislature adopted its first Public Utilities Staff legislation. Chapter 467, *Laws of 1983*, included a provision (now codified as MISS. CODE ANN. Section 77-3-8 [1972]) that created the Public Utilities Staff. This staff was to operate as a unit, the personnel of which were to be appointed competitively by the commission. The section further provided for the hiring of the Director of the Public Utilities Staff, counsel to the staff, an engineer, a certified public accountant, and a rate economist.

This section further empowered the Public Utilities Staff to make recommendations to the commission on rules and investigations and to conduct reviews, investigations, and studies regarding rates, construction, and other activities of utilities when the commission so directed. Thus the original Public Utilities Staff was established to provide the commission with a trained professional staff that was under the direction, management, and control of the three-member commission.

Exhibit 1: Organizational Chart for the Public Service Commission, FY 2008



SOURCE: Mississippi Public Service Commission.

Events of 1989 and 1990

In 1989, a commissioner and a former commissioner were indicted on federal charges arising out of their activities as commissioners. One pleaded guilty to an extortion charge, while the other was ultimately convicted of extortion.

Some of the facts that gave rise to the prosecutions were:

- *ex parte* communications between commissioners and parties and, in one case, documented evidence of commissioners' extorting monies from officers of utilities;
- attempts at modifying reports and audits regarding the Grand Gulf Nuclear Plant to prevent Mississippi Power and Light from passing on certain costs of operations to consumers; and,
- attempts to force a settlement between an electric utility and a gas pipeline in a dispute over charges.

These matters did not escape the scrutiny of the Legislature. During the closing months of 1989, the Mississippi Senate and House of Representatives collected information regarding the state's problems with public utilities regulation. Legislators studied such matters as utility staff independence, *ex parte* communications, staffing of the commission, and regulatory agency structure. Concerns that the legislators openly discussed were:

- the lack of an independent staff free from the political influences of the commission;
- no prohibition of *ex parte* communications between the commission and parties;
- no prohibition against campaign contributions from regulated utilities to commission candidates; and,
- lack of a centralized staff for the commission.

In 1990, the Legislature passed Chapter 530, *Laws of 1990*, which mandated considerable structural reform in Mississippi's utilities regulatory agency. Included in the act was language later codified as CODE Section 77-2-1, which provided, in part:

There is hereby established a Public Utilities Staff, which shall be completely separate and independent from the Public Service Commission and the Public Service Commission staff. Such staff shall consist of the personnel positions of the executive director, the economic and planning division, legal division, engineering division and accounting division with a State Personnel

Board organizational code of twenty thousand (20,000) or larger which were formerly authorized and appropriated under the provisions of Section 77-3-8, Mississippi Code of 1972. The executive director shall establish the organizational structure of the staff, and shall have the authority to create units as deemed appropriate to carry out the responsibilities of the staff. The Public Utilities Staff shall represent the broad interests of the State of Mississippi by balancing the respective concerns of the residential, commercial or industrial ratepayers, and the state and its agencies and departments, and the public utilities. The staff shall consist of a sufficient number of professional, administrative, technical, clerical and other personnel as may be necessary for the staff to perform its duties and responsibilities as hereinafter provided. All such personnel shall be competitively appointed by the executive director and shall be dismissed only for cause in accordance with the rules and regulations of the State Personnel Board. All equipment, supplies, records and any funds appropriated by the Legislature to the Public Service Commission for and on behalf of the Public Utilities Staff shall be transferred to such staff on September 1, 1990. The Public Utilities Staff shall be funded separately from the Mississippi Public Service Commission. Any appropriated funds to the Public Utilities Staff shall be maintained in an account separate from any funds of the Public Service Commission and shall never be commingled therewith. . .

Consistent with the theme of independence for the staff were several other provisions intended to ensure that the staff would be able to make effective independent investigations and render recommendations that were not influenced by the commission. Specifically, these provisions were:

- establishment of the position of Executive Director of the Public Staff appointed by the Governor for a term of six years, subject to the advice and consent of the Senate (see MISS. CODE ANN. Section 77-2-7);
- provision for a staff hired by the Executive Director (see MISS. CODE ANN. Section 77-2-9);
- prohibition against communications between the commission and parties (including staff when acting as a party) in contested matters, also known as the ex

parte communication rule (see MISS. CODE ANN. Section 77-2-13);

- a prohibition against the Public Service Commission's hiring of personnel whose functions or activities would duplicate those of the Public Staff (see MISS. CODE ANN. Section 77-1-29); and,
- a requirement that the Public Service Commission staff be managed as a unit (see MISS. CODE ANN. Section 77-3-8).

Perhaps the most significant provision of Chapter 530, *Laws of 1990*, was codified as MISS. CODE ANN. Section 77-2-3 (1972). This section provides:

(1) The public utilities staff created pursuant to Section 77-2-1 and the Public Service Commission and commission staff shall have and possess all of the rights and powers to perform all of the duties vested by this chapter.

(2) The functions of the commission, with the aid and assistance of its staff, shall be regulatory and quasi-judicial in nature. It may make such investigations and determinations, hold such hearings, prescribe such rules and issue such orders with respect to the control and conduct of the businesses coming within its jurisdiction. It may adjudicate all proceedings brought before it in which the violation of any law or rule administered by the commission is alleged.

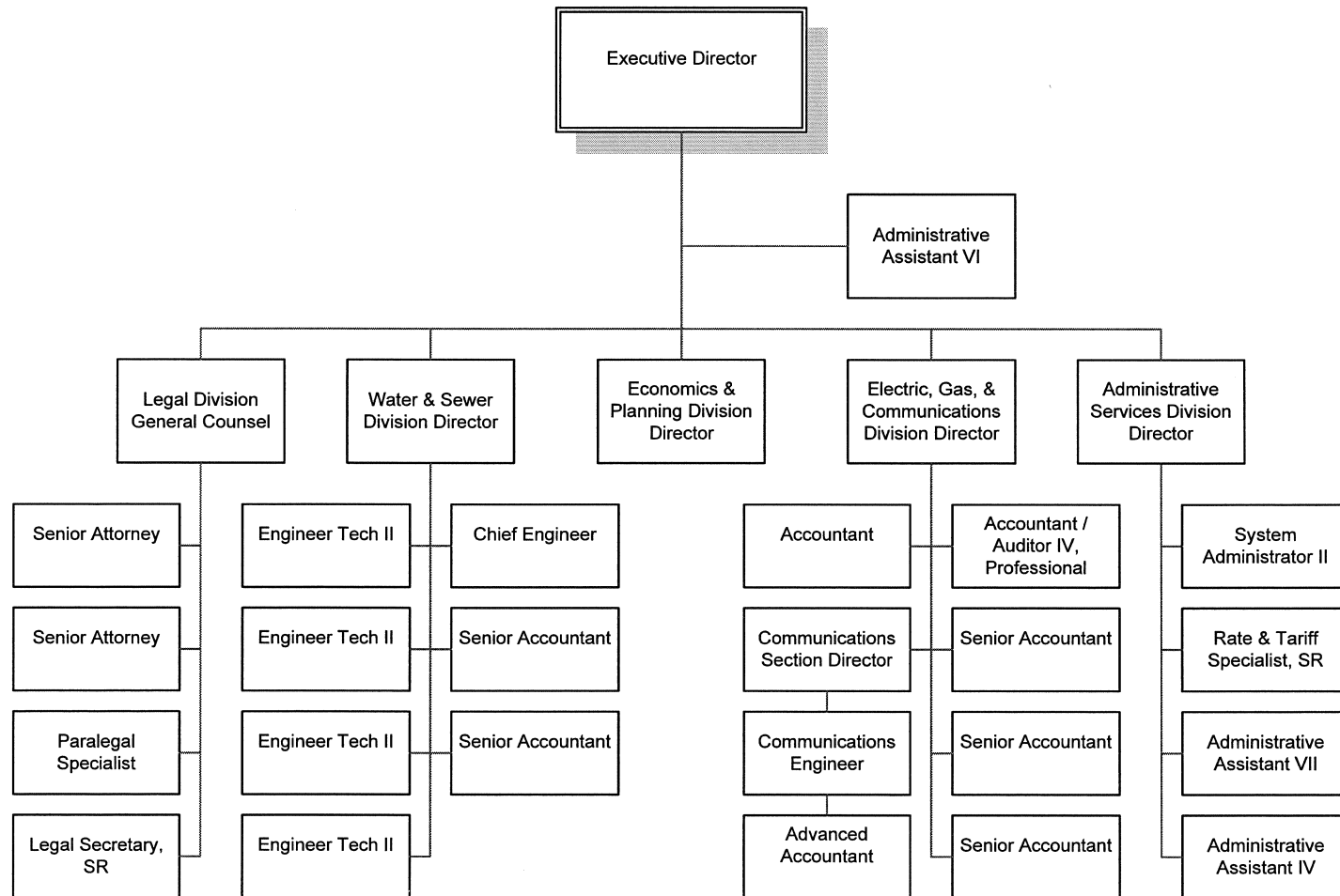
(3) The primary functions of the public utilities staff shall be investigative and advisory in nature.

This provision makes clear that the Public Utilities Staff by law is the principal investigative arm of in the utilities regulatory structure, with the commission functioning as the adjudicator in the regulatory process.

The Public Utilities Staff as Currently Constituted

As of June 30, 2009, the Public Staff had twenty-seven filled positions, including the Executive Director, three attorneys, a chief engineer, a Director of Economics and Planning, and an advanced accountant. (See Exhibit 2, page 13, for an organizational chart of the Public Utilities Staff.)

Exhibit 2: Organizational Chart for the Public Utilities Staff, FY 2008



Overview of Responsibilities

The Public Utilities Staff is responsible for the following:

- investigating and reviewing contested matters before the Public Service Commission and making recommendations with respect to the reasonableness of rates charged or proposed to be charged by utilities;
- reviewing, investigating, and making recommendations with respect to services furnished or proposed to be furnished by public utilities; and,
- making recommendations regarding all commission proceedings affecting the rates, service, or area of public utilities when deemed necessary and in the broad public interest.

Divisions of the Public Utilities Staff

At present, the Public Utilities Staff has five divisions. These divisions are:

- *Administrative Services*--This division provides the staff with support services and also maintains up-to-date geographic information systems maps of utilities' certificated areas. The personnel of this division also review financial information of all regulated utilities and serve as a liaison between the staff and the general public as well as federal regulatory agencies.
- *Electric, Gas, and Communications*--This division provides investigatory and advisory services to the Public Service Commission and to regulated utilities under the jurisdiction of the commission. This division informs utilities and other interested parties of the regulatory requirements of the state and investigates matters related to rates, service areas, and other miscellaneous matters under the commission's jurisdiction. Investigations are conducted to determine if the matters being requested by the utilities are necessary and in the public interest. This division's staff also provides recommendations to the commission regarding matters before the commission and provides testimony in contested matters before the commission. The staff also conducts regular fuel audits of the utilities.
- *Water and Sewer*--Utilities that provide water and sewer service also must have their service areas and rates reviewed and approved by the commission, with the exception of municipal utilities operating no farther than one mile outside the corporate limits. This division's staff reviews plans for construction, service area changes, and rate schedules for these

utilities. Additionally, this staff analyzes the financial position of these utilities to determine their viability for the receipt of Community Development Block Grants and also conducts analysis for both the Department of Environmental Quality and the Department of Health for eligibility to participate in loan or grant programs associated with water and sewer systems.

- *Economics and Planning*--This division is responsible for conducting economic analysis such as rates of return, financing rate structures, and costs of service filings. This support helps the commission determine the long-term impact of utilities' proposals on Mississippi ratepayers. Staff of the division also provide testimony in hearings in matters before the commission.
- *Legal*--This division represents the staff in hearings before the commission and also provides advice to the commission when the Public Staff has not chosen to be a party in a contested matter. In some instances, this division may function in both an adversarial and advisory capacity, with necessary safeguards provided to ensure that the same staff attorneys are not carrying out both functions. The legal staff works with the staff and the commission on matters to be presented at commission meetings and also works on settlements of matters that would otherwise be brought before the commission for adversarial hearing.

This staff also makes recommendations to the commission on proposed rules and amendments thereto, draft legislation, and prepares proposed orders in matters to be heard by the commission.

The staff also monitors state and federal legislation that would have an impact on utilities regulation and represents the commission before the Federal Energy Regulatory Commission, the Federal Communications Commission, and the Securities and Exchange Commission, when necessary.

Support Provided by the Public Utilities Staff to the Public Service Commission

Records of the Public Utilities Staff show that the staff provides guidance and support to the commission in carrying out its mandated functions.

As noted earlier, commission members have raised concerns about their need for access to staff to assist them in carrying out their functions as regulators of public utilities. Because of this concern, it was imperative for PEER to review the work of the Public Staff to determine how it assists the commission in carrying out its functions. Several sections of law dealing with the Public Staff require them to advise the commission or to make recommendations to the commission regarding regulatory matters.

In reviewing the provisions of law enabling the Public Utilities Staff (generally, MISS. CODE ANN. Section 77-2-1 et seq.), PEER notes that several provisions require the staff to provide advisory services to the commission. As noted earlier, the divisions of the staff may provide advice on regulatory matters before the commission dealing with service area, quality of service, rates, or on matters that generally impact the public interest of the state of Mississippi.

In most instances, the law neither prohibits nor impairs the staff from providing the commission with recommendations on matters before the commission or informal support on matters within the commission's jurisdiction. Indeed, in many cases, the Public Utilities Staff has provided the commission with assistance in areas dealing with consumer complaints, a function for which the Public Service Commission has considerable staff resources with which the commission may provide assistance to the public.

Because of the existence of the *ex parte* rule (MISS. CODE ANN. Section 77-2-13 [1972]), there are instances wherein the Public Utilities Staff takes a role as a party in a contested matter and staff persons involved in the work associated with advocating for the staff's position cannot be utilized to provide support or other communications to the commissioners or staff. In such cases, the Executive Director of the Public Utilities Staff may designate staff who are not involved in advocating the staff's position as advisory to the commission. In recent hearings regarding the petition of the Mississippi Power Company to construct a new generating plant in Kemper County, the Executive Director of the Public Staff assigned staff to support the commission who were separate and distinct

from those provided to advocate for the staff's position. PEER staff notes that in such cases staff assigned to advocate for the staff's position may be more familiar with the particular regulatory issues at hand in a proceeding than those assigned to support the commission.

Nonetheless, the system established appears to meet the requirements of law in that the commission can and does receive support from the Public Utilities Staff when necessary to assist the commission in carrying out its functions.

Additionally, the Public Utilities Staff's Legal Division has represented the Public Service Commission in litigation involving the Federal Energy Regulatory Commission and has, on occasion, represented the commission in other matters in chancery court.

The Public Utilities Staff has also provided the commission with training programs on the role and function of public utilities regulatory bodies and background on the economic theory of public utility regulation--i. e., the natural monopoly that must be regulated in the public interest.

Other States' Regulation of Utilities

Four states, including Mississippi, utilize an independent utilities staff, with the remainder of states utilizing a staff that is under the direction and control of the regulatory body.

To comply with the mandate of House Bill 1, Third Extraordinary Session of 2009, the PEER Committee reviewed literature regarding the structure and role of regulatory bodies that oversee public utilities in the United States.

Overview of Other States' Utilities Regulation

In summary, PEER found the following:

- there is no “best practice” for the structure of a regulatory program for utilities;
- regulatory bodies must be properly staffed; and,
- when organizational structure separates the management of the regulatory commission or body from the professional investigative staff, the regulatory commission or body retains some professional staff capabilities.

Utilities regulation in other states takes one of two basic forms:

- a Public Utilities Commission (or equivalent) heads a single staff tasked with the various duties of regulation; or,
- a Public Service Commission heads a staff tasked with some duties of regulation and an independent Public Utilities Staff (or equivalent) carries out some or all investigative and analytic duties of utilities regulation, including ratepayer advocacy.

Four states, including Mississippi, utilize an independent utilities staff, with the remainder of states utilizing a staff that is under the direction and control of the regulatory body.

States with a Unified Regulatory Agency Model

The majority of states regulate utilities through a single agency that operates with a single staff of expert advisers and ratepayer advocates. Some separation of duties and observation of *ex parte* communication requirements may be found across the states in various forms. The staffs are

led by executive directors who are often appointed by the states' governors and who must report to the commissions.

While not exhaustive, the following describes the regulatory structure found in states in the Southeast:

- *Arkansas*--Arkansas's Public Service Commission of three governor-appointed commissioners is supported by a staff of administrative law judges, attorneys, information technology personnel, administrative personnel, and personnel with specialized knowledge in telecommunications, electric, natural gas, and water industries, as well as in economic, legal, and accounting matters. The General Staff of the Utilities Division, led by an Executive Director, work in particular service utility areas (e. g., electric, water), cost allocation, financial analysis, customer service, audits, and legal concerns. Attorneys on the General Staff represent that staff's members in proceedings before the commission and represent the commission in proceedings outside the commission.
- *Louisiana*--The Louisiana Public Service Commission consists of five statewide elected commissioners serving terms of six years. A Chief Executive Officer of the commission or Executive Secretary is appointed by the commissioners and is answerable to them concerning day-to-day operations of the commission staff. The commission staff's divisions include legal, utilities, audits, administrative hearings, and economics.
- *Alabama*--Alabama's Public Utilities Commission consists of three elected commissioners. The work of the commission is carried out by a technical staff in eight divisions: Administrative, Advisory, Telecommunications, Gas Pipeline Safety, Legal, Enforcement, Energy, and Transportation.
- *Tennessee*--Four directors appointed by the Governor, Lieutenant Governor, and Speaker of the House head the Tennessee Regulatory Authority. A staff of professionals from various disciplines (accountancy, administration, law, consumer relations, economics, engineering, information technology, and policy) has four divisions: Consumer Services, Gas Pipeline Safety, Economic Analysis, and Utility.
- *Kentucky*--Kentucky's Public Service Commission is a three-member body of commissioners appointed by the governor. The commission appoints an Executive Director who is responsible for day-to-day operations of the commission staff. During rate case procedures, the burden of proof is on the utility to prove that suggested increases are justified and reasonable.

- *Florida*--Florida's Public Service Commission is a body of five commissioners appointed by the governor and serving four-year terms. The staff of the commission is divided into two offices: (1) the Office of the Executive Director, which advises the commission on all technical and policy matters under the commission's jurisdiction; and (2) the Office of General Counsel, which is not under the supervision of the Executive Director and provides legal counsel to the commission as well as presenting the position of the commission staff in proceedings before the commission. (This includes cross-examination of witnesses and presenting staff testimony.)

States with Statutorily Independent Staffs

Like Mississippi, Vermont, North Carolina, and South Carolina maintain statutorily independent public utilities staffs. The functions of these commissions and staffs will be discussed in the following chapter.

The Role of Staff in States with Separate Public Utilities Staffs

Three states--North Carolina, South Carolina, and Vermont--have structures similar to the Mississippi structure for regulating utilities. All have independent public staffs with directors who are neither appointed by, nor accountable to, the commission or board they serve.

Each of these three states differs somewhat in the responsibilities it gives to the independent staff, as may be seen from the following summaries.

North Carolina

North Carolina's Public Staff represents the public interest in utility matters and works to resolve consumer complaints.

Since 1977 (North Carolina General Statutes § 62-15[b]), North Carolina's Public Staff has been an independent agency not subject to the supervision, direction, or control of the state's Utility Commission. The Public Staff also has considerable interaction with the Utilities Commission in consumer complaints and rate-increase proposals.

Public Staff represent the using and consuming public while the commission is the regulatory body. The Executive Director of the Public Staff is appointed by the governor for a six-year term and is answerable only to the governor. Staffing divisions include Communications, Electric, Natural Gas, Water and Sewer, Transportation, Accounting, Consumer Services, Economic Research, and Legal. The Public Staff responds to informal complaints made by individual ratepayers against utilities and seeks resolution on their behalf. In rate cases, the commission hears testimony from the Public Staff regarding its analysis and recommendations regarding proposed rates changes, as well as testimony from utilities proposing rate changes.

North Carolina's Utilities Commission is a quasi-judicial body supported by a staff of at least twenty-seven advisors plus administrators that hears proceedings regarding utility activities. In such hearings, the Public Staff's analysis is intended to advocate for the public, while the Commission Staff's analysis seeks substantiation for rate changes. In preparation, the Commission Staff conducts its own analysis and advises commissioners accordingly for purposes of decisionmaking. Also, consumer complaints that cannot be resolved through informal action by the

Public Staff are handled as formal complaints by the Commission Staff.

In the case of proposed rate increases, the Public Staff makes a recommendation to the commission based on its analysis. The Commission Staff considers the recommendation in its own analysis in rate-increase proceedings. The Public Staff also make recommendations regarding policies, standards, and regulations that come from the commission.

South Carolina

South Carolina utilizes a structure and assignment of duties similar to Mississippi's.

Act 175 of 2004 (South Carolina Code of Laws § 58-4-10) established South Carolina's Office of Regulatory Staff and assigned the separate roles of utilities regulation to the staff and the Public Service Commission accordingly. An oversight body, the State Regulation of Public Utilities Review Committee (composed of six General Assembly Members and four members of the general public) oversees both the Office of Regulatory Staff and the Public Service Commission and reviews both agencies' performance annually.

South Carolina's Office of Regulatory Staff is responsible for the non-adjudicative functions related to utility regulation. The Regulatory Staff is not subject to supervision or control of the Public Service Commission. The Executive Director of the Office of Regulatory Staff must be a qualified attorney and is appointed by the Governor after nomination from the State Regulation of Public Utilities Review Committee. He or she is removable only for cause. The Regulatory Staff is organized into nine divisions: Consumer Services; Electric and Natural Gas; Telecommunications; Transportation; Water/Wastewater; Legal; Communications; Auditing; and Internal Operations. Personnel from these divisions inspect, audit, and examine public utilities, including their provision of rates and services.

The Public Service Commission's role is quasi-judicial, primarily carried out in hearing cases and disputes involving utilities and other regulated companies. The commission's staff is composed of the Administrative Staff, Advisory Staff, Docketing Staff, and Legal Staff. Advisory Staff include six lawyers and four technical advisers who review and critique testimony delivered at hearings in order to advise commissioners. Outside of hearings, the Advisory Staff examines rate applications that come before the commission.

Interaction between the Regulatory Staff and the Commission Staff is limited to procedural matters and information sharing regarding non-contested matters such as survey requests from utility companies. Safeguards against *ex parte* communication are observed strictly between the commission and the Office of Regulatory Staff regarding cases and formal proceedings.

The Executive Director of the Office of Regulatory Staff reports that this organizational structure and the separation of regulatory duties are an improvement over the previously unified structure of a single regulatory staff under the Public Service Commission. He reports that, due to strict separation of duties, there is no duplication of effort between the expert staff of the Commission and the Regulatory Staff.

Vermont

Vermont's public staff housed in the Department of Public Service is responsible for representing the public interest in utility matters.

Established in 1981 (Vermont's Statutes Annotated § 30-1-1), Vermont's Department of Public Service is charged with representing the public interest in matters regarding energy, telecommunications, water, and wastewater. The department is a statutorily separate agency from the Vermont Public Service Board. In this state's organizational structure, both agencies carry out some of the executive responsibilities of utility regulation.

The role of the Public Service Staff in Vermont consists primarily of consumer advocacy and complaint resolution, but the staff also implements the policies established by the Public Service Board. A commissioner appointed by the governor leads the Department of Public Service, which is organized into eight divisions. Those divisions are: Consumer Affairs and Public Information; Energy Efficiency; Engineering; Finance and Economics; Planning; Public Advocacy; Telecommunications; and Administration. The staff represents the public interest in utility cases before the Public Service Board, federal regulatory agencies, and state and federal courts. Staff duties also include conducting facility inspections, addressing informal consumer complaints (formal complaints are handled by the Public Service Board), reviewing facility investment plans, and analyzing utility petitions.

The role of the Public Service Board is quasi-judicial and also includes other oversight activities such as supervising utility and telecommunication rates and service, monitoring dam safety, evaluating financing of decommissioned facilities and waste storage, and overseeing state energy efficiency programming. Fourteen

persons support the Service Board as legal, financial, and policy advisors. Advisory staff act as hearing officers in board proceedings and advise the Service Board members (equivalent to commissioners in Mississippi) regarding issues concerning siting of facilities, financing for proposed projects, and energy efficiency programming.

The Public Service Board staff reports no interaction between agencies except for infrequent recommendations regarding uncontested utility issues and utility financing approval.

Summary of States' Use of Independent Public Staffs

In summary, the three states discussed above differ somewhat from Mississippi in their distributions of responsibilities between their public staffs and commissions. All maintain separation between their commissions and public staffs for purposes of supervision and direction. Additionally, one in particular, South Carolina, maintains a very limited role for commission-directed staff in the regulatory process.

Regarding structure, PEER has found no single source that advocates for either a separate staff or a combined staff and commission structure. Consequently, it appears that the unique needs and requirements of each state must be given priority in deciding how to structure a regulatory program.

Policy Considerations for the Legislature

PEER sees no need to change the current structure of the Public Utilities Staff and the Public Service Commission. After reviewing the operations of other states that have separate, independent public utilities staffs, PEER sees a limited role in Mississippi for commission-directed professional staff that would not result in impairment to the functions of the independent staff.

In reviewing the regulatory structures of other states that separate the Public Utilities Staff from the commissions they serve, PEER finds that these states have found a role for some use of technical staff supporting the commissions. While some use of commission staff may be derived from the fact that each state varies somewhat in the duties assigned to staff and the commission, at least one state, South Carolina, appears to mirror Mississippi's assignment of functions between public staff and commission in many ways. South Carolina has found a role for commission staff to assist the commission in carrying out its quasi-judicial duties.

This report's description of Mississippi's public utilities regulatory activities and the practices utilized by other states raises the following questions:

- Should the regulatory structure currently in place (an independent Public Utilities Staff and a Public Service Commission) be modified?
- Should the current practice of housing virtually all technical and professional staff in the Public Utilities Staff be retained?
- If the Public Service Commission is allowed to have additional professional and technical staffing, what limits the use of this staff?

Strengths of the Current Regulatory Structure

The current regulatory structure helps to ensure that the problems experienced in the late 1980s are not repeated.

PEER sees no basis for recommending that the current legal separation of the Public Utilities Staff from the Public Service Commission be changed.

As noted above, the separation of the Public Utilities Staff from the commission was the product of lessons learned involving corruption in the regulatory process. One preventive measure taken in 1990 was to remove the staff from the control of the commission. This helps to ensure that the staff will be independent of the commission and

not be pressured into going on the record in hearings in support of positions held by the commission.

PEER notes that a recent memorandum prepared by the National Regulatory Research Institute has criticized Mississippi’s current strategy respecting regulation. This criticism is directed more toward the staffing of the commission and the Public Utilities Staff and not the separation of the two staffs. The institute expressed a concern that Mississippi lacks staffing for the commission to aid it in its statutory obligations to make decisions related to public utilities. The report pointed out that North Carolina, South Carolina, and Vermont give their commissions and boards staffing to assist them in resolving matters related to utilities regulation.

In view of the history of utilities regulation in Mississippi and the lack of a clearly articulated best practice supporting the reconsolidation of the two functions, PEER sees no basis for reconsolidation of the commission and the Public Utilities Staff.

Professional Advisory Staffing of Commissions in Those States with Independent Public Staffs

States with independent public staffs generally provide some professional staff support to their commissions.

As noted previously, the states with independent public staffs do allow some professional staffing for their commissions. Exhibit 3, below, shows the staffing available in each of these states for direct support of the public service commissions or boards.

Exhibit 3: Comparison of Commission Advisory Staffs in States with Independent Public Staffs, by Type of Professional Staff

	Legal	Financial	Policy	Technical	Total
Mississippi*	1				1
North Carolina	6			21	27
South Carolina	6			4	10
Vermont	5	4	5		14

*Following the Third Extraordinary Session of 2009, the Legislature authorized the re-allocation of three existing PSC positions for direct professional support of the commission.

SOURCE: PEER analysis of agency website information.

As shown in Exhibit 3, Mississippi’s commission does not have the direct professional support staff that the other three states have. This can be attributed to the following factors:

- differing statutory responsibilities for the various public staffs and commissions give rise to different staffing needs in each of these states; and,
- Mississippi's strong public policy against duplication of activity.

Differing Statutory Responsibilities for the Various Public Staffs

While each of the three states are, like Mississippi, served by both quasi-judicial boards that adjudicate matters related to public utilities and separate, independent staffs charged with the duty to advocate and recommend in utility matters brought before the commission, the scope of duties for the independent staffs and the commissions are varied.

- The Vermont Department of Public Service, created in Title 30, VRS Section 2, has broad authority to carry out legal mandates related to the regulation of utilities. It is not charged with the responsibility of advising the Public Service Board. Additionally, in rate matters, its role is to represent the interests of the consumer. This gives the staff a narrower set of responsibilities than that of the Mississippi Public Staff, which is responsible for advising the commission and is generally charged with the following responsibility:

The Public Utilities Staff shall represent the broad interests of the State of Mississippi by balancing the respective concerns of the residential, commercial or industrial ratepayers, and the state and its agencies and departments, and the public utilities. . . .

(See MISS. CODE ANN. Section 77-2-1.)

- The North Carolina Public Staff has a mandate similar to that of the Mississippi Public Utilities Staff in that it makes recommendations to the commission on various matters under the jurisdiction of the commission and has broad authority to investigate matters regarding rates and services of utilities. Regarding initiation of proceedings of the commission or on intervention matters, the staff may only proceed when it is in the best interests of the using and consuming public. The latter is a narrower mandate than that of the Public Utilities Staff in Mississippi.
- Regarding the powers of the Utilities Commission in North Carolina, PEER notes that the commission has broad authority to oversee the utilities that it regulates. While the public staff makes recommendations and reports to the commission, it appears that much of the support to the commission must be provided by its own subordinate staff.

- Most similar to Mississippi's regulatory structure is that of South Carolina. South Carolina has an Office of Regulatory Staff and a Public Utilities Commission. Section 58-3-50, Code of South Carolina, sets out guidelines for staff of the two bodies. Specifically, this section provides:

(A) The commission is authorized and empowered to employ: a chief clerk and deputy clerk; a commission attorney and assistant commission attorneys; hearing officers; hearing reporters; and such other professional, administrative, technical, and clerical personnel as the commission determines to be necessary in the proper discharge of the commission's duties and responsibilities as provided by law. The chairman must organize and direct the work of the commission staff. The salaries of the chairman, the commissioners, and the chief clerk shall not be construed as limiting the maximum salary which may be paid to other employees of the Public Service Commission. The commission staff shall not appear as a party in commission proceedings and shall not offer testimony on issues before the commission.

(B) Subject to Section 58-3-580, the commission must be staffed and equipped to perform the functions set forth in this title except for those responsibilities and functions reserved to the Office of Regulatory Staff. The expenses must be paid from the assessments collected pursuant to Section 58-3-100. The chairman, within allowed budgetary limits and as otherwise allowed by law, must authorize and approve travel, subsistence, and related expenses of personnel incurred while traveling on official business.

(C) The commissioners shall not supervise the Office of Regulatory Staff.

(D) The commission shall not inspect, audit, or examine public utilities. The inspection, auditing, and examination of public utilities is solely the responsibility of the Office of Regulatory Staff.

[PEER emphasis added]

Thus in South Carolina, the Office of Regulatory Staff performs investigations and the commission performs quasi-judicial functions. The commission's staff may

not appear as a party in proceedings before the commission and may not conduct examinations or audits of utilities. The commission's staff is there solely to provide technical and professional guidance to the commission.

In general, it appears that the utility regulatory programs of Vermont and North Carolina, while utilizing a separate public staff and commission, are considerably different from Mississippi's, thereby creating a clear separate role for commission staff and public staff. South Carolina, with a structure and regulatory program quite similar to that of Mississippi, finds a limited role for commission-directed regulatory staff.

Mississippi's Strong Public Policy against Duplication of Activity

As cited above, MISS. CODE ANN. Section 77-1-29 (1972) prohibits the commission from expending funds for activities that duplicate those of the Public Utilities Staff. Absent a specific legal mandate, it would appear that the law gives little opportunity for the commission to find a use for professional staff that would not violate the non-duplication clause of this section.

A Proposed Role for Commission Technical Staff in Mississippi

Professional staff could provide limited guidance and advice to Mississippi's Public Service Commission to assist it in rulemaking and adjudication.

Under the current law, the Public Service Commission could utilize professional staff to carry out limited support activities in furtherance of the commission's quasi-judicial activities. Such activity could include:

- reviewing matters on the commission docket and preparing questions to be directed to parties in contested cases; and,
- in matters involving joint stipulations, wherein the Public Staff and the utility essentially settle a matter, staff could help prepare questions for the utility or the Public Staff to assist the commission in understanding the matters and issues before it.

In general, the activities conducted should be limited to assisting the commission in carrying out its statutory functions as a quasi-judicial and rulemaking body. The commission's staff could be prohibited from conducting any type of independent investigative activity that would duplicate the efforts of the Public Staff.

PEER notes that the Legislature by appropriation gave the commission additional funds to reallocate three vacant Public Service Commission positions in 2009 to provide

technical and professional support. The Public Service Commission has hired an additional attorney and is working with the State Personnel Board to establish two Special Staff Chief positions to provide technical assistance to the commission. PEER suggests that these positions could be beneficial to the commission provided that the commission may:

- identify the skills it needs in its personnel; and,
- ensure that the proper qualifications are set for the positions so that the staff hired meet the commission's needs.

Recommendation

In the event that the Legislature continues to appropriate funds for professional staff positions under the supervision and control of the Public Service Commission, it should amend MISS. CODE ANN. Section 77-3-8 (1972) to provide that the staff of the commission shall not *inspect, audit, or examine public utilities*. The inspection, auditing, and examination of public utilities is solely the responsibility of the Public Utilities Staff created by MISS. CODE ANN. Section 77-2-1 et seq. (1972). Such prohibitions should apply to all positions of the commission regardless of their source of funding. Such prohibitions shall not bar the commission's staff from conducting consumer service complaint investigations, pipeline inspections, or enforcement of no-call laws as conducted on January 1, 2009.

In the event that the Legislature continues to fund professional support staff positions for the Public Service Commission, it should amend MISS. CODE ANN. Section 77-3-8 (1972) to provide that the staff should only function in an advisory role for the commission when it is acting in a quasi-judicial role or when making rules, by assisting the commission in understanding filings made before the commission, and in preparing questions for open meetings.

Agency Responses Mississippi Public Service Commission



LYNN POSEY, Chairman
UNION CHURCH - FIRST DISTRICT
BRANDON PRESLEY, Vice-Chairman
NETTLETON - THIRD DISTRICT
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GAS PIPELINE SAFETY

December 1, 2009

VIA HAND DELIVERY

Dr. Max Arinder
Executive Director
PEER Committee
501 N. West Street, Suite 301 A
Jackson, Mississippi 39201



RE: PEER Committee Report on Regulation of Public Utilities in Mississippi

Dear Dr. Arinder:

After review of the above referenced draft report, we believe that the Committee's findings support our contention regarding the necessity of additional professional staff. The report notes that our professional advisory staff consists of one attorney. While we have received authorization from the Legislature to hire an additional attorney and two additional professional advisors, other States with independent public staffs have from ten to twenty-seven professional advisors. This comparison confirms our assertion that an increase in the number of professional advisory staff would benefit the Commission and the constituents we serve.

We appreciate the cooperative spirit of the PEER Committee representatives during the preparation of this report.

If you have any further questions or concerns, please do not hesitate to contact me.

Sincerely,

Lynn Posey, Chairman
Mississippi Public Service Commission

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LARRY GREER, DIRECTOR
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November 19, 2009



Max K. Arinder, Ph.D., Executive Director
Joint Committee on Performance Evaluation and Expenditure Review
Woolfolk State Office Building, Suite 301-A
Jackson, MS 39201

Dear Dr. Arinder:

Thank you for the opportunity to respond to PEER's report entitled *Regulation of Public Utilities in Mississippi* prepared in compliance with House Bill 1, Third Extraordinary Session of 2009. I appreciate the professionalism and thoroughness of Mr. Ted Booth, General Counsel of the Peer Committee, who conducted the PEER review. Since mid-September, Mr. Booth has reviewed volumes of information from our records pertaining to the operation of the Public Utilities Staff (Public Staff) since its inception in 1990.

The report addresses the newly elected commissioners' 2009 legislative agenda, as expressed in their January 15, 2009 fuel orders, to reorganize the regulatory structure in this state which took the form of a general bill to place the independent Public Utilities Staff under the commission's control (which the Legislature did not enact) and an appropriation bill to allow the commissioners to hire additional staff with technical expertise to work under their direction (which the Legislature enacted to allow the reallocation of three (3) vacant positions for such purpose and to call on PEER to "study the regulation of public utilities and the best practices utilized by other states in the regulation of utilities)."

The report explains the 1983 legislation which created the original Public Utilities Staff "to provide the commission with a trained professional staff that was under the direction, management, and control of the three-member commission." It then explains the events that led to the 1990 legislation establishing the current Public Utilities Staff completely separate and independent from the commission. Among other concerns discussed by the Legislature in formulating the legislation was "the lack of an independent staff free from the political influences of the commission."

PEER's research of other states' utility regulation found that practices vary. While noting that four states, including Mississippi, utilize an independent utilities staff, PEER pays particular attention to the regulatory structure in South Carolina which has had an independent staff similar to ours since 2004. The report states that "In view of the history of utilities regulation in Mississippi and the lack of a clearly articulated best practice supporting the reconsolidation of the two functions, PEER sees no basis for reconsolidation of the commission and the Public Utilities Staff."

PEER concludes that the current regulatory structure in Mississippi, which has been in place since 1990, has worked effectively; confirms our interpretation of the statutes creating the Public Staff and defining our duties; and validates our compliance with those statutes.

Specifically, PEER states that "Records of the Public Utilities Staff show that the staff provided guidance and support of the commission in carrying out its mandated functions" and that "PEER sees no need to change the current structure of the Public Utilities Staff and the Public Service Commission." PEER addresses the commissioners' desire for technical staff of their own by stating that "under current law, the Public Service Commission could utilize professional staff to carry out limited support activities in furtherance of the commission's quasi-judicial activities."

I view this report as a commendation of the Public Staff, whose employees' hard work and dedication to the public interest have contributed greatly to the stable, constructive regulatory environment that Mississippi has achieved heretofore. My staff has always represented our agency and the Public Service Commission appropriately and vigorously, and will continue to do so to have a stable, constructive regulatory environment for the benefit of consumers and investors alike.

I think the report is very well organized, concise and factually correct. PEER's findings and recommendations are reasonable, and I have no revisions to the report.

Sincerely,



Bobby Waites
Executive Director

BW/mnm

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