PERFORMANCE AUDIT

RESIDENTIAL UTILITY CONSUMER OFFICE

RESIDENTIAL UTILITY CONSUMER BOARD

Report to the Arizona Legislature
By the Auditor General
July 1986
86-6

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STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

July 24, 1986

Members of the Arizona Legislature
The Honorable Bruce Babbitt, Governor
Susan A. Williams, Director
Residential Utility Consumer Office
John Ahearn, Chairman
Residential Utility Consumer Board

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Residential Utility Consumer Office and Residential Utility Consumer Board. This report is in response to the July 26, 1985 resolution of the Joint Legislative Oversight Committee.

The report addresses several areas for the Office's improvement. We found that RUCO could increase its effectiveness in utility cases by improving its case preparation, limiting its workload and prioritizing its work. In addition, we found RUCO could have a greater impact on case outcomes by strengthening its legal writing. Finally, we found that RUCO appears to lack authority to investigate consumer complaints. The report also contains sunset factors regarding the Board's operations.

My staff and I will be pleased to discuss or clarify items in the report.

Respectfully submitted,

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RESIDENTIAL UTILITY CONSUMER OFFICE

SUMMARY

The Office of the Auditor General has conducted a performance audit of the Residential Utility Consumer Office (RUCO) and the Residential Utility Consumer Board in response to a July 26, 1985, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as part of the Sunset Review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

RUCO was established in 1983 by A.R.S. §40-462 (Senate Bill 1030, Chapter 308) to represent the interests of residential utility consumers in regulatory proceedings involving public service corporations before the Arizona Corporation Commission (ACC). RUCO frequently intervenes in utility cases involving telecommunications, gas, electric and water utilities.

RUCO Could Improve Its Effectiveness In Utility Rate Cases (see pages 9 through 27)

RUCO could increase its effectiveness in utility cases. RUCO serves an important function and has been clearly effective in some cases. Commissioners, representatives of utility companies, Arizona Corporation Commission staff and other intervenors have indicated the need for a residential consumer advocacy agency. RUCO has increased general awareness of issues that may affect residential consumers. Because RUCO has focused attention on such issues, the Commission and its staff have explored some issues in greater detail. In addition, knowledgeable parties agree that RUCO participation or intervention in several cases resulted in significant benefits for residential consumers.

In many of RUCO's cases, however, the Office has had little noticeable impact benefiting residential consumers. Auditor General staff reviewed opinions and orders issued by the Corporation Commission to measure RUCO's case effectiveness, because these cite factors that affected the Commission's final decision. We analyzed in detail 30 opinions and

orders, representing all RUCO cases in which the Commission issued final orders between May 30, 1984, and March 31, 1986, to determine RUCO's impact on case outcomes. RUCO had no identifiable effect in 17 orders (57 percent of all orders reviewed). In six (20 percent), RUCO had only limited effect on the outcome of the case. RUCO had considerable effect in seven (23 percent) of the orders. RUCO's impact by individual issue for each case was also limited. RUCO influenced issue outcomes in only seven of 55 issues it raised before the Commission.

Inadequate case preparation limits RUCO's impact. In many instances, inadequate evidence or analyses limited RUCO's ability to convince the Commission to accept its positions. Because the Commission must base its decisions on evidence that is presented, insufficient evidence has precluded the Commission from accepting some of RUCO's positions. Inadequate case preparation on RUCO's part has not only prolonged hearings but has also increased costs.

To improve case preparation, RUCO needs to limit its work load, prioritize its work and perform more on-site reviews. RUCO should review and prioritize cases so it can direct limited resources to the most important cases. In addition, RUCO should be more selective about the issues it brings before the Commission. For lower priority cases or issues, RUCO should consider less time consuming and less costly ways of addressing its concerns. Further, RUCO should conduct more frequent on-site reviews to collect more accurate and complete information more efficiently.

RUCO Could Improve Its Legal Writing To Increase Impact (see pages 29 through 35)

RUCO could have a greater impact on case outcomes by strengthening its legal writing. Well written legal arguments can have a positive impact on case outcomes. Because of the potential impact of RUCO's legal writing, we hired two consultants, working independently of one another, to evaluate the quality and persuasiveness of RUCO's legal writing. The consultants reviewed legal writing that RUCO had submitted before the Commission and the courts. Our consultants found that RUCO could improve its writing in several areas, including: 1) persuasiveness of arguments;

2) organization and use of transitions; 3) citations, grammar, typing and punctuation; and 4) clarity and conciseness. Because of the quality of RUCO's briefs, RUCO's ability to persuade the Commission and courts is decreased.

In addition to concerns with writing and organization, other problems were noted in written documents RUCO submitted to the courts. In a Superior Court case in which RUCO challenged a Commission decision, RUCO's brief did not establish legal grounds for action nor follow established rules of procedure. Consequently, the Court dismissed the case. Further, in a Special Action case filed with the Supreme Court, RUCO used weak legal arguments, and the Court declined to accept jurisdiction of RUCO's petition.

To improve the quality of its legal work, RUCO should increase the internal editing of documents, and initiate staff training to improve staff writing and legal skills. Further, RUCO should hire a consultant to work with its attorneys to improve their written documents. Moreover, RUCO should plan or modify its work schedule to allow adequate time to prepare documents.

RUCO's Investigation Of Consumer Complaints Is Inappropriate (see pages 37 through 41)

RUCO should not investigate consumer complaints. RUCO receives and investigates complaints from residential consumers against utility companies. However, according to a Legislative Council memorandum, RUCO does not appear to have the authority to investigate complaints. At the time RUCO was established, the Legislature specifically gave the authority for complaint resolution to the Arizona Corporation Commission. In addition, the ACC is better prepared to handle complaints since it provides some training for its investigators.

RUCO's investigation of complaints has left the Office without adequate clerical support. RUCO reclassified its only secretarial position to a consumer specialist in January 1985. Since that time, the consumer specialist has had to divide her time between clerical and complaint

functions. As a result, clerical tasks have backlogged, and some clerical tasks have fallen to professional staff.

RUCO should discontinue handling consumer complaints, and refer complaints requiring resolution to the ACC. RUCO should also request reclassification of the consumer service specialist position to a position that reflects the assigned tasks. In addition, RUCO should eliminate clerical responsibilities from the work load of professional staff, and reassign these tasks to appropriate staff.

RESIDENTIAL UTILITY CONSUMER BOARD

The Office of the Auditor General has also conducted a limited review of the Residential Utility Consumer Board in response to a July 26, 1985, resolution of the Joint Legislative Oversight Committee. This review was conducted as part of the Sunset Review set forth in A.R.S. §§41-2351 through 41-2379. An introduction, sunset factor evaluation and Board response is included.

The Board was established in conjunction with RUCO in 1983 by Senate Bill 1030, Chapter 308. The Board is required to "advise the office on all matters relating to rate making or rate design and involving public service corporations." The Board meets monthly to discuss decisions made by RUCO staff, and to give advice as to further action needed. Because discussion of actions contemplated and taken by the Office occur at monthly meetings, the Board is a valuable forum for the acquisition and dissemination of timely information to the media, public and utility company representatives in attendance. Moreover, RUCO's Director and staff have indicated that input gained from the Board is valuable in maintaining a consistent community perspective on issues facing residential utility consumers.

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INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit of the Residential Utility Consumer Office (RUCO) in response to a July 26, 1985, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as part of the Sunset Review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

RUCO was established in 1983 by A.R.S. §40-462 (Senate Bill 1030, Chapter 308) to represent the interests of residential utility consumers in regulatory proceedings involving public service corporations before the Arizona Corporation Commission. A.R.S. §40-464 defines the powers and duties of the Director in fulfilling RUCO's statutory mandate. The Director of RUCO may:

> . . . research, study and analyze residential utility consumer interests . . . Prepare and present briefs, arguments, proposed rates or orders and intervene or appear on behalf of residential utility consumers before hearing officers and the corporation commission. . . .

The Director is required to promulgate rules and regulations, and submit an annual report.

Staffing And Budget

For 1985-86 RUCO employed a total of nine full-time employees (FTE) to carry out its functions. The staff includes a Director, two attorneys, a consumer services specialist, an engineer, two rate analysts, an auditor and an administrative assistant. In addition, RUCO employs two part-time staff: a student intern and a legal intern. Although the primary function of the Office is to intervene in rate proceedings, RUCO also handles consumer complaints and conducts public speaking engagements.

Revenues for RUCO's operation are obtained from an assessment against public service corporations. The assessments are applied against corporations' gross operating revenues derived from intrastate operations

serving residential consumers. The revenues are limited to two-tenths of 1 percent of the gross operating revenues. The monies are placed into a Residential Utility Consumer Office Revolving Fund and may only be used by RUCO upon legislative appropriation.* Monies in the Revolving Fund do not revert to the General Fund. RUCO's operational expenditures for fiscal years 1983-84 through 1986-87 are shown in Table 1.

TABLE 1

RUCO EXPENDITURES
FISCAL YEARS 1983-84 THROUGH 1986-87
(UNAUDITED)

	Actual 1983-84(1)	Actual 1984-85	Estimated 1985-86	Approved 1986-87
FTE Positions	7	7	9	10
Expenditures:				
Personal Services	$137,546	$237,269	$308,000	$369,400
Employee Related	27,413	46,023	64,400	73,200
Professional and Outside Services	157,639	160,021	279,100	287,400
Travel				
In-State	6,016	8,178	17,600	12,200
Out-of-State	5,146	7,196	4,200	4,000
Other Operating	18,534	38,157	60,100	71,800
Equipment	26,778	10,775	3,000	4,600
TOTAL EXPENDITURES	$379,072	$507,619	$736,400	$822,600

(1) RUCO was funded for the 1983-84 fiscal year from a $400,000 General Fund appropriation.

Source: Residential Utility Consumer Office budget requests for fiscal years 1983-84 through 1986-87 and State of Arizona Appropriations Report, 1986.

Scope of Audit

Our audit focuses on RUCO's ability to perform its statutory duties. The audit report presents findings and recommendations in three major areas:

* Revenues placed in the Fund are equal to the amount of the legislative appropriation.

- The effectiveness of RUCO's intervention in rate cases,
- RUCO's need for improvement in its legal writing, and
- The appropriateness of RUCO's investigations of consumer complaints.

Due to time constraints, we were unable to address all potential issues identified during our preliminary audit work. The section Area for Further Audit Work describes this potential issue (see page 43).

We also made a limited review of the Residential Utility Consumer Board. The scope and results of this review are presented on pages 47 through 51.

The Auditor General and staff express appreciation to RUCO's Executive Director and employees for their cooperation and assistance during the audit.

SUNSET FACTORS

In accordance with Arizona Revised Statutes (A.R.S.) §41-2354, the Legislature should consider the following 12 factors in determining whether the Residential Utility Consumer Office (RUCO) should be continued or terminated.

1. The objective and purpose in establishing RUCO

   RUCO was established in 1983 by A.R.S. §40-462 (Senate Bill 1030, Chapter 308) to represent utility consumers' interests in regulatory proceedings involving public service corporations before the Arizona Corporation Commission (ACC). The intent of the legislature was stated in the act establishing RUCO, as follows.

   > It is the intent of the legislature to create a residential utility consumer office to represent the interests of residential consumers, critically analyze proposals made by public service corporations to the corporation commission, develop its own recommendations and present them to the commission.

2. The effectiveness with which RUCO has met its objective and purpose and the efficiency with which RUCO has operated

   RUCO could increase its effectiveness in case intervention. RUCO's intervention in several cases resulted in significant benefits to residential consumers. However, in many cases RUCO has had little noticeable impact benefiting residential consumers. Auditor General staff reviewed ACC opinions and orders issued between May 30, 1984, and March 31, 1986, for cases in which RUCO intervened. The review shows that RUCO had no impact on 57 percent of the orders, and only limited impact on 20 percent of the orders.

   RUCO's impact is limited by lack of adequate preparation. RUCO has not adequately prepared its cases for hearing, thus the cases lack needed evidence. RUCO's lack of preparation has led to longer hearings and increased costs. In order to be better prepared, RUCO needs to limit its work load, prioritize its work and conduct more

on-site reviews (see Finding I, page 9). In addition, RUCO could have greater impact on case outcomes by strengthening its legal writing. RUCO could make its legal writing more persuasive by improving the organization, clarity and conciseness of its documents. In addition, RUCO could improve the substantive content of the documents (see Finding II, page 29).

3. The extent to which RUCO has operated within the public interest

RUCO has operated within the public interest by representing residential consumers in rate cases before the ACC. Through intervention, RUCO attempts to protect residential consumers from unfair rate increases.

4. The extent to which rules and regulations promulgated by RUCO are consistent with the legislative mandate

This factor is not applicable since RUCO has not promulgated any rules or regulations.

5. The extent to which RUCO has encouraged input from the public before promulgating its rules and regulations and the extent to which it has informed the public as to its actions and their expected impact on the public

This factor is not applicable since RUCO has not promulgated any rules or regulations.

6. The extent to which RUCO has been able to investigate and resolve complaints that are within its jurisdiction

Although RUCO has investigated and resolved consumer complaints, it appears this function is not within its jurisdiction. When RUCO was established, authority for processing of residential consumer complaints was placed within the Consumer Services Section of the ACC. However, RUCO felt that its involvement was necessary, therefore, it converted a secretarial position to a consumer specialist position to handle complaints. We recommend that RUCO discontinue investigating complaints since this duplicates some services provided by the ACC (see finding III, page 37).

7. The extent to which the Attorney General or any other applicable agency of State government has the authority to prosecute actions under enabling legislation

This factor is not applicable since RUCO is not a regulatory agency.

8. The extent to which RUCO has addressed deficiencies in the enabling statutes which prevent it from fulfilling its statutory mandate

RUCO's Director has indicated that there are two deficiencies in its enabling statute. RUCO would like the authority to intervene in Federal regulatory cases because of the large potential impact at the Federal level. At the State level, RUCO would like the authority to raise generic issues. Generic issues are those that affect a group of consumers facing a particular problem with a utility company. RUCO has not proposed legislation regarding either of these deficiencies. However, legislation was proposed in 1985 that would have given RUCO authority to intervene in Federal cases.

9. The extent to which changes are necessary in the laws of RUCO to adequately comply with the factors listed in the Sunset Law

Our review did not identify needed statutory changes.

10. The extent to which termination of RUCO would significantly harm the public health, safety, or welfare

Termination of RUCO could impact the welfare of residential utility consumers. RUCO's role is clearly an important one. The Legislature established RUCO to ensure that residential consumers would be represented in utility company cases heard by the ACC. Commissioners, representatives of utility companies, Arizona Corporation Commission staff and other intervenors have indicated the need for a residential consumer advocacy agency. Prior to RUCO's existence, ACC staff were responsible for considering residential consumers' needs when making recommendations to the Commission. However, because ACC staff were also charged with making recommendations that considered company and shareholder needs, they could not be as attentive to the residential consumers' needs. In addition, other intervenors representing residential consumers lacked resources, such as technical staff and

consultants, to prepare a comprehensive case. Since its inception, RUCO has been successful in increasing the general awareness of issues that affect residential consumers, and has had some impact on residential rates.

11. The extent to which the level of regulation exercised by RUCO is appropriate and whether less or more stringent levels of regulation would be appropriate

This sunset factor does not apply to RUCO since it is not a regulatory agency.

12. The extent to which RUCO has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished

RUCO frequently uses outside consultants in its case intervention. Because of the complexity of rate cases, RUCO contracts with experts to analyze and testify on rate issues. RUCO's use of outside experts is common practice in the field - both utilities and the Corporation Commission frequently hire experts for major rate cases. Consultant expenditures have increased steadily since 1983-84, as RUCO has intervened in more cases. Expenditures for 1983-84 through 1986-87 are as follows.

TABLE 2

EXPENDITURES FOR OUTSIDE CONSULTANTS
FISCAL YEARS 1983-84 THROUGH 1986-87
(UNAUDITED)

1983-84 actual	$157,639
1984-85 actual	160,021
1985-86 estimated	279,100
1986-87 requested	287,400

Source: RUCO budget requests for fiscal years 1985-86 and 1986-87.

A Legislative Council opinion dated February 11, 1986, states that RUCO is exempt from the Arizona Procurement Code when hiring experts who may appear as a witness or render services relating to a court case.

FINDING I

RESIDENTIAL UTILITY CONSUMER OFFICE COULD IMPROVE ITS EFFECTIVENESS IN UTILITY RATE CASES

The Residential Utility Consumer Office (RUCO) could increase its effectiveness in utility cases. RUCO serves an important function and has been clearly effective in some cases. In many cases, however, RUCO has had little impact on case outcomes. Poor case preparation impairs RUCO's effectiveness. In addition, RUCO needs to limit its work load and prioritize its work.

RUCO Has An Important Role And Has Been Very Effective In Some Cases

RUCO serves a necessary function, and the Office has had notable impact in some cases as well as significant impact on the outcome of several cases. RUCO's function is clearly needed.

RUCO function important - RUCO's role is clearly an important one. In 1983 the Legislature established RUCO to ensure that residential consumers would be represented in utility company cases heard by the Arizona Corporation Commission (ACC). As Arizona Revised Statutes (A.R.S.) §40-462.A states, RUCO's purpose is "to represent the interests of residential utility consumers in regulatory proceedings involving public service corporations before the corporation commission." Commissioners, representatives of utility companies, Arizona Corporation Commission staff and other intervenors have indicated the need for a residential consumer advocacy agency. Prior to RUCO's existence, ACC staff were responsible for considering residential consumers' needs when making recommendations to the Commission. However, because ACC staff were also charged with making recommendations that considered company and shareholder needs, they could not be as attentive to consumer needs as an agency specifically created to perform such a function. Other parties representing residential consumers, such as the Arizona Center for Law in the Public Interest, performed their work using limited resources which reduced the

scope of their work. Thus, RUCO was created to protect the interests of residential consumers.

In addition, RUCO has directed attention to potential issues affecting residential consumers. Commissioners, ACC staff and other intervenors with whom we addressed this area agree that RUCO has increased general awareness of issues that may affect residential consumers. Because RUCO has focused attention on such issues, the Commission and its staff have explored some issues in greater detail. For example, at RUCO's urging the Commission studied the Arizona Public Service Company fuel adjustor mechanism extensively in a recent case. Furthermore, a 1984 survey relating to public perceptions of the Corporation Commission, conducted by the Behavior Research Foundation of Phoenix, suggested that RUCO's presence may also have increased public confidence in the utility regulatory processes.

Effective in several cases - Knowledgeable parties have indicated that RUCO participation or intervention in several cases resulted in outcomes immediately benefiting residential consumers. These include cases involving the sale of the APS gas system to Southwest Gas, Mountain Bell's refund of over-collected monies, and rate setting for the Black Bill and Doney Park Water Users' Association.

- Transfer of APS gas system: RUCO, ACC staff, APS and Southwest Gas representatives negotiated a settlement providing APS with a $21 million rate increase, which was considerably lower than the company's $38.5 million request. Since pipeline safety was a concern then affecting residential consumers, the parties also made an additional $7 million increase contingent on safety-related plant improvements. Furthermore, settlement provisions froze Southwest Gas general rates until July 1987.

- Mountain Bell refund: RUCO brought this case to the Commission's attention and subsequently established the refund amount that the Commission ultimately adopted. RUCO also suggested that the Commission use unreturned refund monies* to fund a pilot program providing basic telephone service to needy persons (Lifeline Program).

* Estimates indicated that about half of the money would not reach customers because of expected difficulty in locating eligible customers.

- Black Bill and Doney Park Water Users' Association: RUCO, ACC staff and the Water Users' Association negotiated a settlement that applied innovative solutions to unique problems affecting the Association's 1,098 customers. For example, the Association wanted to encourage water conservation and at the same time raise sufficient revenue to meet operating expenses, but was uncertain how to meet these seemingly contradictory goals. Together the parties set winter and summer rate designs that would accomplish both goals.

RUCO may also have had some beneficial impact on Commission processes. RUCO's Director asserts that this is where the Office has had its greatest impact. Knowledgeable parties concur that RUCO has affected Commission processes to some degree. For example, the Commission studied the issues of back-billing and the APS fuel adjustor in more detail because RUCO directed attention to these issues. RUCO's Director also stated that the Office may bring up issues in hearings to stimulate thinking on such issues in order to elicit future changes, without the specific intent of trying to win the issue in the current case. For example, in the Mountain Bell refund case the Commission decision specifically rejected RUCO's recommendation to use nonrefunded monies to establish a Lifeline program. However, in part because of RUCO efforts after the hearing, the Commission subsequently held a workshop on the topic and ultimately decided to create a Lifeline program on a demonstration basis. According to another knowledgeable party, RUCO has also raised issues that have been subsequently analyzed by ACC staff.

RUCO Has Had Little Impact In Many Cases

In many cases, however, RUCO has had little noticeable impact benefiting residential utility consumers. Auditor General staff reviewed opinions and orders issued by the Corporation Commission to measure RUCO's case effectiveness because these cite factors that affected the Commission's final decision. Our review of opinions and orders showed that RUCO has had little impact in many cases.

Commission decisions used to assess impact - Auditor General staff reviewed written Commission decisions to assess RUCO's effectiveness. We used impact on case outcomes to evaluate RUCO's effectiveness because we

determined that affecting case outcomes should be RUCO's primary goal, based on its statutory mandate. We also used this method to measure RUCO's effectiveness because agencies performing functions similar to RUCO in other states (Ohio, Pennsylvania and Florida) also use final commission decisions (among other methods) to measure their effectiveness. Opinions and orders of the Corporation Commission indicate the extent of a party's impact on a case because they state reasons for Commission decisions. Written Commission decisions, or opinions and orders, generally discuss by topic specific issues reviewed in the case, as well as factors influencing Commission decisions on those issues. The Commission's hearing officers confirmed that the written decisions generally credit those parties who were instrumental in determining the final decision. Hearing officers perform a key role in the Commission's decision-making process, because they write proposed orders for Commission review. In addition, the hearing officer is the party most familiar with proceedings in which RUCO has intervened.

We attempted to compensate for any limitations our measure may have had. Written decisions occasionally failed to give RUCO due credit, or conversely, gave RUCO credit even though it appeared that RUCO had minor or minimal impact. We attempted to clarify ambiguous points and pinpoint RUCO's role through other sources such as hearing transcripts. We gave RUCO the benefit of the doubt whenever we had a question regarding RUCO's possible impact.

We rejected RUCO's own effectiveness measure as seriously flawed. Because RUCO usually makes recommendations for rate increases that are lower than those of ACC staff, RUCO determines the extent to which the Commission's recommendations are lower than ACC staff recommendations and then takes the entire difference as a measure of its success.*

However, RUCO's measure is defective because it presumes that nothing else influences Commission decisions. Yet several other factors affect Commission decisions.

* RUCO has used this measure in annual reports and press releases to demonstrate its effectiveness in rate case interventions.

- The independent judgment of the Corporation Commission. Observers note that recent Commissions have been increasingly sensitive to consumer needs.
- The independent judgment of the hearing officers who write proposed orders for Commission review.
- The effect of other parties in the case.
- Prior Commission orders and relevant case law.

In addition, RUCO's measure addresses only the total increase in rates that Commission decisions allow the company, rather than looking at its success by individual issue. Because the decision on the total increase results from the cumulative impact of decisions on individual issues, RUCO's effectiveness measure presumes that RUCO has had an impact on each issue leading to the decision.

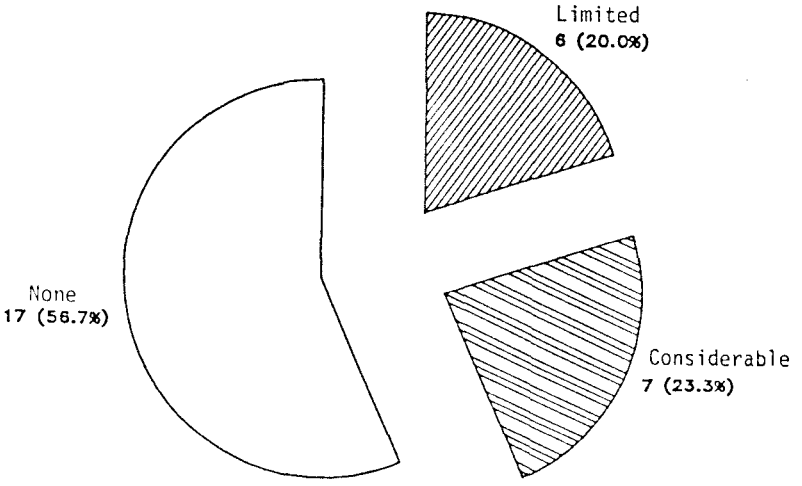
For example, in a 1984 APS rate case, RUCO's measure showed that it had saved consumers $11.4 million. However, review of the final Commission decision showed that other parties also affected the decision. For example, the Center for Law in the Public Interest introduced evidence showing that residential service charges were too high, leading the Commission to freeze several residential rate schedules. In fact, the Commission agreed with RUCO in only one of five issues.

Little impact in many cases - Our review of opinions and orders and other supporting documentation showed that RUCO has little impact in many instances. We analyzed in detail 30* opinions and orders, representing all RUCO cases in which the Commission issued final orders between May 30, 1984, and March 31, 1986, to determine RUCO's impact on case outcomes. Information from hearing transcripts as well as interviews with RUCO

* Although RUCO states that it has intervened in more than 70 cases between April 1983 and January 1986, some cases had not been heard and, thus, no written decision existed. Other cases had been heard but the Commission had not made a final decision. In one other case, RUCO filed to intervene but did not attend the hearing. Also, one Mountain Bell case combined nine dockets into one hearing, for which a single opinion and order was written. A single order combining two or more dockets was counted as one order. If more than one order covered the same docket, these were counted as separate orders. Amendments to prior orders were considered part of the original order.

staff, Commissioners, ACC staff, company officials, and other documentation supplemented information in the final orders. As shown in Figure 1, RUCO had no identifiable effect in 17 orders, or 57 percent of all orders reviewed.* In six (20 percent), RUCO had only limited effect on the outcome of the case.** In seven orders (23 percent) RUCO had considerable effect.

FIGURE 1
RUCO's Effect on Cases



RUCO's impact by individual issue was also minimal. Table 3 shows that RUCO can claim full credit for influencing issue outcomes in only seven of 55 issues it raised before the Commission. Table 3 also shows RUCO's issue impact by individual case. We distinguished between issues for which RUCO was solely responsible for affecting the outcome (sole impact) and issues for which other parties also influenced the outcome (shared impact).

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* Of the 17 orders showing no notable impact, ten did not directly affect residential rates. RUCO's Director stated that RUCO may participate in such cases mainly for informational reasons. Omitting orders relating to these cases, RUCO had no impact in the remaining seven out of 17 orders.

** Auditor General staff distinguished between limited and considerable impact using the following criteria: 1) number of issue outcomes RUCO influenced, 2) number of customers the decision affected, and 3) supplemental information regarding RUCO's performance in each case.

TABLE 3

RUCO'S IMPACT ON CORPORATION COMMISSION DECISIONS
(FROM COMMISSION OPINION AND ORDERS, ISSUED
FROM MAY 30, 1984, THROUGH MARCH 31, 1986)

	Issues Raised By RUCO (1)	Successes (Sole impact)	Successes (Shared impact)
Rate cases			
American Public Service (Casitas Bonitas)	1	0	0
American Public Service (Sierra Entrada)	3	0	0
APS (electric-phase I)	5	1	0
APS (electric-phase II)	4	0	2
Cottonwood	6	3	0
Dysart	1	0	0
Hidden Valley	1	0	0
Highland Pine	1	1	0
Mountain Bell	16	1	2
Southwest Gas (rates)	5	0	1
Sunny Boy	1	0	0
White Hills	0	0	0
Whitlow Dam	1	0	0
APS (gas-phase I)	Note (2)	0	Note (2)
APS (gas-phase II)	Note (2)	0	Note (2)
Doney Park	Note (2)	0	Note (2)
TRICO Electric Cooperative	Note (3)	0	Note (3)
Subtotal	45	6	5
Cases not directly involving rate increases (4)			
Allnet Communications	0	0	0
APS (corporate restructuring)	0	0	0
APS (financing)	0	0	0
APS (fuel adjustor)	3	0	0
Arizona Water Company	4	Note (5)	Note (5)
AT&T	0	0	0
Generic Hearing (CAP surcharge)	0	0	0
Generic Hearing (intrastate interexchange competition)	0	0	0
GNT Automatic	0	0	0
GTE Sprint	0	0	0
Mountain Bell (refund)	3	1	1
APS (sale of gas system)	Note (2)	0	Note (2)
Southwest Gas (sale of gas system)	Note (2)	0	Note (2)
Subtotal	10	1	1
TOTAL	55	7	6

(1) Number of issues as recorded in the opinions and orders, and clarified by subsequent interviews and review of documents. RUCO may have discussed other areas in hearings but was unable to develop them into viable issues for consideration in the final decision.

(2) The decision reflected a negotiated settlement among major parties. Thus, the opinion and order related to this case does not consistently identify the specific parties who brought up each issue. However, as noted on page 10, these cases were among RUCO's most successful cases.

(3) Since RUCO supported issues brought by the company in this case, it was difficult to identify the specific issues RUCO impacted. However, the decision supported the company on one contested issue.

(4) Since these were not rate cases, the outcomes did not directly affect residential rates. According to RUCO's Director, RUCO may participate in such cases for information that may be useful in future rate cases.

(5) All four issues RUCO raised were determined to be not applicable because the Commission based its decision on overriding legal considerations.

Source: Arizona Corporation Commission opinions and orders and hearing transcripts, supplemented by interviews with Commissioners and Commission staff.

Poor Case Preparation Decreases RUCO's Effectiveness

Inadequate case preparation limits RUCO's impact. Because of inadequate preparation, RUCO may have failed to gather adequate evidence to support its case in many instances. Inadequate preparation has not only limited RUCO's impact, but has prolonged hearing time and increased hearing costs and costs to other parties.

Inadequate evidence - In many instances, inadequate evidence or analyses limited RUCO's ability to convince the Commission to accept its positions. Because the Commission must base its decisions on evidence that is presented, insufficient evidence has precluded the Commission from accepting some RUCO positions. RUCO has been unable to develop adequate evidence for a number of reasons.

- RUCO has developed most of its smaller cases entirely through cross-examination and has used hearing time to gather information from opposing witnesses, which should have been obtained prior to the hearing, during discovery. In the past, RUCO frequently used cross-examination instead of developing its case using its own technical staff as witnesses, i.e., through direct testimony. More recently, RUCO has been making increased use of direct testimony. However, even when RUCO has used direct testimony, its technical staff may testify only on a portion of RUCO's case. Developing cases through cross-examination decreases RUCO's effectiveness because it is more difficult to get information from opposing witnesses. Performing discovery during the hearing also decreases RUCO's effectiveness because RUCO must simultaneously research and develop its case.

- RUCO has prepared for some cases only shortly before the hearing because the Office does not have a formal process for scheduling cases staff should work on. Yet, scheduling is important because utility companies can file a rate request at any time throughout the year. In recent years, large companies such as APS or Mountain Bell have requested a hearing at least once a year. In addition, RUCO staff may work on more than one case at a time. Even when staff know what case(s) they are assigned to, they may not know sufficiently in advance the specific issues they should work on. As a result, staff may have no choice but to prepare for cases at the last minute.

- RUCO sometimes takes positions that cannot realistically affect case outcomes. For example, RUCO has taken some positions that have been unimportant and, therefore, did not affect case outcomes. In addition, RUCO routinely recommends rate increases that are lower than any other party making recommendations. Such recommendations appear extreme, in part because RUCO analyses have been inadequate to support its conclusions. Because recommendations on rate increases are bottom line measures, RUCO must be able to perform adequate analyses at every step to support its conclusions.

- RUCO's consultants may also have been precluded from performing adequate analyses at times because of limited time and resources, given the complexity and scope of analyses they have to perform.

We found many instances in which RUCO lacked adequate evidence or analyses. Final Commission orders cited lack of evidence or inadequate analyses as reasons the Commission could not support RUCO positions. For example, the order for a 1984 APS rate case characterized one RUCO recommendation as "arbitrary." Other instances of insufficient RUCO analyses include the following.

- APS (Phase I of a $78 million request,* approximately 500,000 customers): In a recent case, a RUCO staff witness concluded from ACC company filings that APS was using its coal-fired plants inefficiently. He concluded that mismanagement was the reason for the inefficiency, even though he acknowledged under cross-examination that he drew his conclusion without investigating the reasons for the results. Instead, he asserted that it was unnecessary to explore the reasons because the results were all he needed to look at. Yet, according to APS rebuttal, power outages, planned maintenance, unusual weather conditions and other events could have affected the way APS operated plants. Under further examination by the hearing officer, RUCO's witness conceded that after hearing and reading the testimony of other witnesses, other factors not related to mismanagement were likely to have affected the results.

- Mountain Bell ($89 million request,** more than 1 million customers): In this case, RUCO recommended that Mountain Bell receive only a $2.6 million increase, even though ACC staff recommended $22 million. Furthermore, RUCO announced in a press release that Mountain Bell might actually owe its customers money

* APS subsequently reduced its request in the hearing to $54.6 million.
** Mountain Bell subsequently reduced its request to $76 million during the hearing.

because its consultant stated that additional downward adjustments might be "appropriate" in areas which RUCO did not examine. Yet, under cross-examination, RUCO's own expert witness conceded that it would be unwise to decrease rates. In addition, the decision cited several instances of inadequate evidence or analyses. For one issue, the decision stated that RUCO made an "unsupported assertion" which "cannot substitute for the type of meticulous review" undertaken by ACC staff and the City of Phoenix.

In another area, RUCO looked at individual accounts in an attempt to compare Mountain Bell's pre-divestiture and post-divestiture expenses and identify areas where current costs were excessive. Had RUCO been successful in this major area, RUCO's consultant stated it could have resulted in additional impact of over $10 million for RUCO. As it was, however, the opinion and order stated that RUCO's analysis had several shortcomings. For example, the divestiture resulted in "obvious" diseconomies which RUCO's analysis did not account for.

- American Public Service ($53,400 request, 70 customers): RUCO developed most of this case through cross-examination. RUCO cross-examined company witnesses extensively, trying to show that the business relationship between the parent company and its subsidiary utility company was inappropriate or unlawful. RUCO spent over half its cross-examination time (equivalent to nearly one-fifth of the entire hearing transcript) attempting to establish foundation and elicit evidence to support its point, but to no avail. The opinion and order stated that there was no evidence to show that the business relationship was inappropriate or unlawful.

  Furthermore, in a post-hearing memorandum, RUCO cited a Kansas statute as the legal basis for arguing that the parent company and its subsidiary should be closely scrutinized. The opinion and order specifically rejected this argument because Arizona had no such statute, and the Arizona Legislature had refused to enact such a statute in 1984.

- Hidden Valley ($2,904 request, 8 customers): Hearing transcripts revealed that RUCO's major purpose in this case, which RUCO developed entirely through cross-examination, was to argue that not all of the company's rate base was "used and useful." However, RUCO's cross-examination on this issue ended rather abruptly when an ACC staff witness pointed out that this issue "really wasn't important" for this case. The final opinion and order affirmed that this argument was not important because the company was only seeking recovery of out-of-pocket expenses. Because of inadequate research prior to the hearing, RUCO did not realize that this issue was unimportant. Since this was the only issue RUCO brought forth, RUCO had no impact on the outcome of the case.

- Cottonwood (request of approximately $78,000, 2,199 customers): Even though Cottonwood Water Works filed its application on September 14, 1984, and the hearing date was set on May 21, 1985, RUCO did not request intervention until July 8, 1985, one and one-half weeks prior to the hearing. As a result, the consultant* RUCO hired for the case worked intensely shortly before the hearing to prepare her analysis. One day before the hearing, Cottonwood's attorney took a deposition of RUCO's consultant. Excerpts from the deposition reflect the extent of last minute preparation on RUCO's part.

  Q. (By Mr. Smith, company attorney) Right now, as of the time we sit here, which is 6:30 p.m. tonight, you have no opinions and conclusions to present to the Arizona Corporation Commission in this case. Isn't that true?

  A. (RUCO consultant) You are correct, yes.

  Q. Whatever you present to the Arizona Corporation Commission is going to be determined between you and your counsel tonight and then presented tomorrow morning. Isn't that true?

  A. Yes.

- Racrest ($96,953 request, 1,400 customers): Even though the ACC approved RUCO's participation in this case on April 2, 1985, RUCO apparently did not prepare most of its case until shortly before the hearing, in November of 1985. On November 6, 1985, eight days before the scheduled hearing, RUCO requested, and the ACC granted, a delay in the hearing date to November 21, 1985.

  In part, last minute preparation may have resulted in numerous errors in RUCO exhibits and testimony. For example, during one portion of the hearing, RUCO's attorney and witness used hearing time to recalculate figures to determine what a number should have been. In addition, RUCO's witness relied on ACC staff working papers for her analysis without discussing the justification for accounting adjustments with either ACC staff or the company. Since RUCO withdrew its testimony and exhibits before the hearing ended, RUCO's participation resulted in limited impact on the outcome of the case.

Inadequate preparation prolongs hearings and increases costs - Inadequate case preparation on RUCO's part has not only prolonged hearings but has also increased costs. As stated previously, RUCO has developed many of its smaller cases largely through cross-examination. Not only is it more difficult to obtain information from opposing witnesses, but it takes

* This person was subsequently hired by RUCO as a permanent employee.

longer. In addition, preparing shortly before the hearing may prolong hearings because additional time may be needed to clarify hastily prepared exhibits. For example, RUCO's participation in the Racrest case involved 40 percent of the transcript length. In addition, significant added costs were incurred: the company's consultants estimated that they expended an additional $15,000 as a direct result of RUCO's participation. Because companies may legitimately pass hearing costs on to ratepayers, inadequate preparation on RUCO's part may have actually increased costs to residential consumers.

In other cases, the Commission may not have even held a hearing were it not for RUCO's decision to intervene. The Commission may dispense with a hearing whenever company gross revenues based on proposed rates are below $250,000. However, the Commission usually dispenses with a hearing for companies with gross revenues less than $50,000, unless RUCO requests participation. RUCO has requested participation in seven rate cases in which companies had gross revenues of less than $250,000 at the time of application. Four of the seven had gross revenues of less than $50,000. Partly because of inadequate preparation, in only one of the seven cases did RUCO have any impact.

To Improve Case Preparation, RUCO Needs To Limit Its Work Load, Prioritize Its Work And Perform More On-Site Reviews

RUCO should limit its work load, prioritize its work and conduct more on-site reviews to improve the preparation of its cases. RUCO should review and prioritize upcoming cases so sufficient resources are allocated to the most important cases. In addition, RUCO needs to limit the number of issues it works on to allow staff and consultants to perform adequate analyses. Furthermore, RUCO should perform more on-site company reviews to increase the quality of the information it gets and the efficiency by which it obtains its information.

RUCO should review and prioritize upcoming cases - RUCO should regularly review and prioritize upcoming cases so it can direct limited resources to the most important cases. Although the ACC and consumer advocacy agencies

in other states plan for and prioritize their cases, RUCO does not adequately prioritize its upcoming cases. RUCO should establish a system for prioritizing cases to limit participation to cases where its impact will be greatest.

RUCO does not adequately prioritize upcoming cases. The Arizona Corporation Commission regulates nearly 500 utility companies. Utility companies may file a rate request with the Commission at any time. Large companies have filed requests at least yearly in recent years, and smaller companies file less frequently. RUCO routinely participates in all cases involving larger companies, and becomes involved in numerous small cases at consumer request. RUCO's Director has stated that the Office must remain flexible because of the dynamic nature of the regulatory environment. As a result, however, RUCO may become involved in more cases than its resources allow, and consequently, may spend inadequate time and resources preparing for cases that may have the greatest impact on residential consumers. For example, RUCO's Director stated that since she has already obligated all monies for professional and outside services, she has no funds left in fiscal year 1985-86 to hire a consultant for a major case involving Mountain Bell later in 1986.

In comparison, Auditor General staff identified several consumer advocacy agencies in other states with systems for case selection. For example, South Carolina selects cases for intervention through a case selection report on each docketed case. South Carolina's form considers such issues as the chances of winning the issue, the frequency of rate requests and agency case load constraints. Ohio also uses a form (among other considerations) for prioritizing smaller cases. Ohio's form considers factors such as the number of customers the case affects, the dollar amount involved and scheduling information. A third state, Nevada, performs case planning and work load scheduling weekly, quarterly and annually. The weekly planning and work load scheduling allows the agency to deal with the uncertainties of the regulatory environment. Cases selected for intervention are prioritized, based primarily on the number of people and dollars involved, and then integrated into the work load schedule.

The ACC also performs routine planning and scheduling in this dynamic regulatory environment. The ACC performs long-term work load planning by contacting large utility companies to ascertain whether and when they will be filing rate requests for the upcoming fiscal year. The ACC also obtains estimates of the amount companies plan to request and uses this information to justify its requests for consultant funding. In addition, ACC staff contact company officials throughout the year to update its information. ACC staff managers said they would share this information with RUCO at its request.

To use its resources most effectively, RUCO should establish a system for prioritizing cases and limit participation to cases in which it will have the greatest impact. The Center for Law in the Public Interest, considered by many to have been a successful intervenor in spite of limited resources, has recognized its resource constraints and avoided working on issues that exceed its resource capabilities. The Ohio Consumer's Counsel, one of the nation's largest state utility consumer advocacy agencies, similarly recognizes its resource constraints and has a system for determining the importance of each case. RUCO's resources are also limited. Using resources most effectively would require RUCO to prioritize cases and limit participation to cases in which it is likely to have a significant impact.

In cases in which RUCO's full participation cannot be justified, less costly and less time consuming options are available. Where applicable, RUCO should consider participating in only critical portions of a case, and stipulating* to the facts of a case (in accordance with Commission rules and regulations) to decrease hearing costs. For issues of general

* A stipulation is an agreement or concession made by parties in a judicial proceeding relating to a matter before the court (or in this case, the Commission).

concern, RUCO should consider bringing issues to the Commission through workshops the Commission holds weekly to discuss policy issues, generic hearings,* or informal conversations with Commissioners** or Commission staff.

RUCO should limit issues - RUCO should also be more selective about the issues it brings before the Commission. RUCO has shown an increasing tendency to cover many issues. However, attempting to present too many issues may decrease RUCO's impact on Commission decisions.

RUCO's tendency to address many issues in large and complex cases has increased as the Office has matured. According to RUCO's Director, formerly the Office relied mainly on its consultants to decide what topics to analyze in a case. However, as RUCO has gained more experience, its own staff has played a greater role in deciding what RUCO will study. The increasing number of issues RUCO has tried to address is reflected by its efforts in the most recent APS and Mountain Bell cases. The Mountain Bell opinion and order indicates that RUCO brought up 16 issues. By comparison, the 14 other intervenors averaged less than four issues per intervenor. For example, the City of Tucson selected three issues to present before the Commission.

RUCO's extensive involvement in cases may be reflected in the voluminous data requests it submits. We reviewed data requests submitted by RUCO and other parties relating to a recent APS case, as shown in Table 4.

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* The Commission holds generic hearings to discuss general issues affecting more than one company.

** In accordance with ex parte rules.

TABLE 4

DATA REQUESTS AND QUESTIONS SUBMITTED TO APS
THROUGH FEBRUARY 20, 1986 (DOCKET NO. 1345-85-156)

Participant	Data Requests	Questions
RUCO	37	1,268
ACC staff and consultants	31	401
Coalition for Responsible Energy Education	10	211
Department of Defense	5	149
Southwest Gas	2	76
Association of Industries, et al.	4	24

Source: Data requests, Arizona Public Service Company.

As the Table shows, RUCO submitted more data requests than any other party. The number of questions RUCO asked exceeded even those of ACC staff and consultants, who present the most comprehensive case. Indeed, RUCO asked over 400 more questions than all other parties combined.

However, attempting to look at too many issues may decrease RUCO's effectiveness. In developing a case, RUCO may expand some issues while adding other new issues. In part, covering many issues may decrease effectiveness because it prevents RUCO from focusing on specific issues until later in the process. As a result, staff and consultants may have much less time to analyze specific issues in depth. Covering many issues may also, in and of itself, limit RUCO's effectiveness. RUCO's consultant for the Mountain Bell case addressed both expanding and addition of issues in a March 13, 1985, letter to RUCO's Director. The letter, written only two months before the deadline (at the time) for filing RUCO's testimony, responded to discussion within RUCO to have the consulting firm study additional issues.

> . . . We would certainly be willing to do [more] . . . but I do not recommend it. . . . It has been our experience that the larger the number of issues being debated in a rate case, the lower the possibility of winning any one issue. We are already recommending that RUCO pursue numerous specific issues which are very technical. As a result, our testimony will be long, and highly technical, even without adding any additional issues. . . . As you may recall, we have

already expanded the scope of your testimony far beyond that envisioned in our RFP and our proposal. . . . Accordingly, I recommend that no additional issues be added. . . ." (emphasis added)

On-site review leads to better information - Under certain circumstances on-site review would allow RUCO to collect more accurate and complete information more efficiently. Although all nine states contacted by Auditor General staff use data requests as their primary information source, seven of the states routinely use on-site review to supplement information for cases. An official at New Mexico's utility consumer advocacy agency stated that the agency has begun to develop relationships with the company because of time constraints on a hearing. Florida takes its depositions at company offices and may at that time also conduct an on-site review of the company's books. Use of on-site review in Nevada is second only to its use of data requests. Pennsylvania visits the company in particularly complex cases. In addition, Ohio and Arkansas also regularly use on-site review. In contrast, RUCO rarely conducts on-site reviews of a company or company documents. At present, RUCO relies almost exclusively on company written responses to data requests, company filings at the Commission and depositions to develop its case. Although RUCO staff cited various reasons for not using this method, on-site review would allow RUCO to collect more complete and higher quality information more efficiently.

- Some RUCO staff stated that current methods are superior or adequate. However, current methods rely largely on what a company reports, whereas on-site review would allow RUCO to determine in some cases whether that information is complete. For example, according to its director, New Mexico's consumer advocate has actively developed relationships with companies and thereby has improved the content of its information.

- One RUCO employee stated that RUCO saves time by not having to visit companies in person. However, on-site reviews would allow RUCO to save time by obtaining information more efficiently. RUCO develops its larger and more complex cases using data requests, to which the company must provide a written response within a reasonable time. For example, in the current APS case the company (as well as other parties) has ten working days to respond to a data request. RUCO's data requests in the most recent APS case contained

from two to 243 questions per request, for an average of 34 questions per request. Without visiting the company, however, RUCO can follow up on responses only by submitting another data request. In the current APS case this means the company will have another ten days to respond. Follow-up may be needed because RUCO may have additional questions or because the company misunderstood the question, gave an incomplete response, or considers the requested information voluminous or confidential. Follow-up could occur more quickly through an on-site visit, because RUCO would not have to wait days merely to discover, for example, that the information is voluminous or that the company misunderstood the question.

- Some RUCO staff believed it was illegal or unethical to contact a company directly without prior permission. However, RUCO may request an on-site review through a data request. In the event that RUCO cannot obtain permission to conduct on-site reviews, RUCO could file a motion requesting that the hearing officer direct company officials to open its records to RUCO and allow RUCO on-site to conduct reviews.

CONCLUSIONS

RUCO could increase its case effectiveness. RUCO's function is important and necessary. Although RUCO has been effective in some cases, it has had little impact in many cases. RUCO's effectiveness has been impaired because of poor case preparation. In addition, RUCO should limit its work load and prioritize its work.

RECOMMENDATIONS

1. RUCO should develop a more accurate method of evaluating its effectiveness in case intervention.

2. RUCO should develop a system for determining whether its participation is warranted so resources can be directed to cases on which it is likely to have the most significant impact.

3. RUCO should develop a method to prioritize those cases and issues within cases in which participation is justified. RUCO should actively participate only in higher priority cases or issues that available time, resources and staff can handle.

4. For lower priority cases or issues, RUCO should consider less time consuming or less costly ways of addressing its concerns. When concern is over a policy issue or other general issue, RUCO should consider bringing these issues to Commission attention through workshops, informal discussions with Commissioners or ACC staff, or a generic docket. When an issue is case specific, RUCO should consider limiting participation to critical portions of the hearing, or attempt to stipulate to facts of a case.

5. When RUCO does actively intervene, RUCO should increase its probability for success by:

    a. Selecting issues for analysis in which RUCO is likely to have a significant impact, and gathering evidence to persuade its audience.

    b. Identifying issues early in the process, and limiting subsequent work and analysis to those issues.

    c. Performing more frequent on-site review and inspection of companies as needed to obtain more accurate and comprehensive information.

    d. Using direct testimony more frequently.

FINDING II

RESIDENTIAL CONSUMER UTILITY OFFICE COULD IMPROVE ITS LEGAL WRITING TO INCREASE IMPACT

The Residential Consumer Utility Office (RUCO) could have a greater impact on case outcomes by strengthening its legal work. RUCO could make its legal writing more persuasive by improving the organization, clarity and conciseness of its documents. In addition, RUCO could improve the substantive content of its documents.

Background

Well written legal arguments can influence case outcomes. Parties to a case submit written legal arguments to the Arizona Corporation Commission (ACC) under certain circumstances. For example, after a hearing officer issues a recommended opinion and order, parties can try to change the Commission's decision by writing exceptions to the recommended order. Since the Commission has final decision-making power, persuasively written exceptions can change portions of the final order. The Commission may also ask parties to submit briefs at the beginning or end of major cases to summarize arguments that they have brought or will bring forth. Since briefs should concisely summarize a party's major arguments and when appropriate, rebut opposing arguments, they can also affect Commission decisions. In addition, because Commissioners are not at all hearings at all times, briefs and exceptions may also assist the Commission in understanding complex cases.

Persuasiveness is even more important for documents submitted in court actions. Since the court does not have prior familiarity with Commission cases, it must base its decision to proceed mainly on the documents submitted before it. RUCO has submitted legal documents in four court actions against the Commission, and has sought court action in three cases filed with the Maricopa County Superior Court and in one Special Action filed with the Arizona Supreme Court.

Because of the potential impact of RUCO's legal documents, we hired two consultants, working independently of one another, to evaluate the quality and persuasiveness of RUCO's legal writing. Both consultants are professors of law at Arizona State University and were recommended for their expertise in legal writing. (Copies of the consultants' reports and resumes are available upon request.)

The consultants reviewed legal writing RUCO had submitted before the Commission and the courts. Both consultants reviewed three samples of legal writing that RUCO submitted to the Commission in the most recent Mountain Bell and Arizona Public Service (APS) general rate cases: its opening brief (initial post-hearing brief) and reply in a 1985 Mountain Bell case, and written exceptions to a recommended opinion and order in a 1984 APS general rate case.* The consultants also reviewed RUCO documents from two court cases: a RUCO case filed before Maricopa County Superior Court related to a Commission decision in a 1984 Southwest Gas case, and RUCO's Special Action filed before the Arizona Supreme Court regarding the Commission's decision in a 1985 APS fuel adjustor case.

RUCO Could Improve
Its Legal Writing

RUCO could increase its persuasiveness and effectiveness by improving its legal writing in several areas.

Persuasiveness of arguments - Both consultants noted problems with persuasiveness in RUCO documents they reviewed. One consultant felt that the "almost neutral" format of RUCO's initial post-hearing brief for the Mountain Bell case (resulting from RUCO's decision to write an executive summary of its positions in lieu of a traditional brief) rendered it ineffective. The other consultant felt that problems existed, even without considering whether RUCO's decision not to write a traditional brief "makes sense." Both consultants pointed out that RUCO's arguments

* This was the most current APS general rate case in which the Commission had issued a final opinion and order.

were not clearly evident, either at the beginning or in each section of the brief. Both consultants also had concerns with one of RUCO's arguments in the APS case. RUCO wanted the Commission to award attorney fees and costs for work Arizona Corporation Commission staff and other intervenors (including RUCO) had completed on issues that APS subsequently withdrew from the case. The consultants concluded that RUCO's argument was not only ineffective and unclear, but did not focus on the critical issue of whether the Commission was authorized to make such an award. Indeed, the Commission decision stated, ". . . The power to award . . . attorneys' fees is an inherent judicial power which can only be conferred . . . by specific legislative or constitutional enactment. Therefore, RUCO's motion . . . will be denied."

Organization and use of transitions - Organization problems appeared throughout both Mountain Bell and APS briefs. For example, both consultants stated that RUCO could have improved its exceptions in the APS case and its initial post-hearing brief in the Mountain Bell case if it had summarized its arguments at the outset.

Organization is especially important in long documents and technical arguments. RUCO's initial post-hearing brief in the Mountain Bell case was 59 pages long,* excluding 33 pages of appendices, and summarized a highly technical case in which transcripts were more than 6,000 pages in length. One consultant noted that he tended to "lose sight of the forest for the trees" while reading the post-hearing brief. The other cited paragraphs that "string one after the other without any conclusions."

Inadequate citations, and errors in grammar, typing and punctuation - Both consultants noted inadequate citations to the record and other errors in typing and grammar. For example, in one brief the consultant showed that RUCO quoted testimony without citing to the record and mentioned a case without citing to it. In addition, in one document filed before Maricopa County Superior Court, RUCO made an apparent typing error in referring to

* Procedural orders limited the length of this brief to 60 pages for all parties.

"ARS 40-454" as the legal basis for RUCO's request for a "trial de novo." However, Arizona Revised Statutes does not contain a §40-454. RUCO was apparently referring to A.R.S. §40-254. Because the document in which this error appeared was not very long, one consultant commented that there was "no excuse for such sloppiness in a five page document upon which the Superior Court will judge the propriety of a trial de novo."

Clear and concise - The consultants found problems with clarity and conciseness in all the documents. For example, one or more of the documents were wordy, used the passive voice unnecessarily, or used legal jargon and overly complex sentences. One consultant stated that a particular brief "distracts the reader with an absent-minded series of incomplete sentences." The other consultant pointed out that another brief "wastes time in developing an irrelevant point in a confusing manner."

In the recent Mountain Bell case, one Commissioner expressed appreciation to all but one party for keeping the exceptions to proposed Commission orders short, due to time constraints on Commission review. In this instance, RUCO's exceptions were the lengthiest - longer than the proposed opinion and order to which it was responding.

The poor quality of RUCO's briefs decreases its ability to persuade the Commission and the courts. Although some concerns appear minor when viewed individually, together they produce a negative effect. Consultants cited a variety of possible reasons why RUCO documents are generally deficient, including insufficient editing, failure to read the material from the perspective of an outside audience, time constraints, and inadequate legal writing programs in school. In addition, RUCO attorneys have worked without secretarial resources for more than a year, due to reclassification of the RUCO secretarial position. A legal secretary has been approved for the 1986-87 budget year.

Other Concerns Characterize Legal Writing

In addition to concerns with writing and organization, other problems were noted in written documents RUCO submitted to the courts. RUCO exhibited

difficulty in providing sufficient grounds for action and in following rules of procedure in a Superior Court case, and in establishing grounds in a Special Action before the Arizona Supreme Court.

Difficulties in Superior Court case - RUCO had difficulty establishing legal grounds for action and following established rules of procedure in a Superior Court case in which RUCO challenged a Commission decision in a Southwest Gas case. In this case, RUCO's "notice of appeal" listed five points upon which RUCO sought Court action. Opposing parties argued that RUCO failed to state any legal claims upon which the Court could act and, therefore, the case should be dismissed. On November 6, 1984, the Court issued this decision.

> THE COURT FINDS that Plaintiff's [RUCO's] "Notice of Appeal," read in the light most favorable to Plaintiff, states one legally [re]cognizable claim . . . Plaintiff's allegations regarding post-test year CWIP, future projected expenses, MAP, and tax normalization, fail to state claims upon which relief can be granted and are hereby dismissed. Plaintiff's allegations regarding increases in customer charges . . . do not state a claim and are hereby dismissed for the reason that Plaintiff's Motion for Re-Hearing on this point was not sufficiently specific. Instead, the Motion . . . made a vague, general reference to previous "briefs", "arguments", and "exceptions." (emphasis added)

RUCO also twice failed to follow rules of procedure in this case, thereby delaying the case and increasing costs to other parties. RUCO filed the original appeal in July 1984. In May 1985 the Superior Court ordered RUCO to file certain documents (Motion to Set and Certificate of Readiness) by July 23, 1985, or face dismissal of the action. On July 23, 1985, RUCO submitted one document so labeled. Both Commission and Southwest Gas attorneys stated the document did not meet the requirements of Rule V of the Uniform Rules of Practice of the Superior Court. In separate motions, both parties stated that RUCO's motion was not preceded by the submission of a list of witnesses and exhibits as required by Rule V. The Court found that RUCO failed to comply with the rules and ordered RUCO to file a proper motion by October 18, 1985. On that date RUCO filed another defective document, which was still not in compliance with Rule V. In both

instances, records indicate that RUCO did not respond earlier than the day prior to the deadline given by court order. In both instances, RUCO's documents were defective. The Court dismissed the case on March 5, 1986. One consultant* stated:

> I find RUCO's failure to respond properly to the Court's order(s) inexplicable. The case has been pending since November 1984. The documents reflect no action by RUCO. If they do not intend to pursue the case, they should withdraw it. If they intend to pursue it, they should get on with it. . . . RUCO's behavior is costly to the Commission, Southwest Gas, and the Court. . . .

Special action - RUCO's Special Action Petition was also deficient. One of our consultants stated that because the Supreme Court does not often grant a Special Action, the petitioner (RUCO) must convince the Court of a compelling need to hear the case, based on strong legal arguments. However, she pointed out that RUCO's argument focused on factual arguments more appropriately made to the Commission than to the Court in a Special Action. In addition, RUCO based most of its legal arguments on a single Arizona Court of Appeals case, Scates v. Arizona Corporation Commission. Whether or not this case supports RUCO's argument,** RUCO did not address the critical issue of why the Court should adopt the reasoning of Scates. RUCO needed to address this issue because the Supreme Court of Arizona is not bound by decisions of the (intermediate) State appellate court. Subsequently, on November 26, 1985, the Arizona Supreme Court declined to accept jurisdiction of RUCO's petition.

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* The other consultant indicated that he noted this aspect of RUCO's work but did not include it in his report because he did not feel it was within the scope of his assignment.

** Other documents indicate that it does not. In addition, only two months before RUCO filed this case, an Arizona Capital Times article indicated that RUCO's Director said she would not challenge the Commission's decision in court because its authority in fuel adjustment cases was so clearly established.

CONCLUSIONS

RUCO could increase its effectiveness by improving its legal work. RUCO could make its legal writing more persuasive by improving the organization, clarity, and conciseness of its documents. In addition, RUCO could improve the substantive content of its court documents.

RECOMMENDATIONS

RUCO should implement the following procedures to improve the quality of its legal work.

1. Increase the internal editing of briefs, exceptions and other documents written by its attorneys.

2. Initiate staff training to improve writing and legal skills.

3. Plan ahead or modify its work schedule to allow adequate time to prepare required documents.

FINDING III

RESIDENTIAL UTILITY CONSUMER OFFICE'S INVESTIGATION OF CONSUMER COMPLAINTS IS INAPPROPRIATE

The Residential Utility Consumer Office (RUCO) should not investigate consumer complaints. RUCO's investigation of consumer complaints duplicates some services provided by the Consumer Services Section of the Arizona Corporation Commission (ACC). Moreover, the investigation of consumer complaints has left RUCO without needed clerical support.

RUCO receives both written and telephone complaints against utility companies from residential consumers. Complaints can relate to a consumer's specific billing or utility service problems, or to general utility rate concerns. In order to resolve complaints, RUCO's consumer service specialist has contacted utility companies or the ACC to investigate circumstances of consumer complaints, and has also mediated resolutions. Because not all incoming telephone calls are recorded, it is not possible to ascertain the exact number of calls concerning various forms of complaints. However, review of RUCO files shows that between January 1985 and February 1986 RUCO recorded approximately 190 telephone* and 140 written complaints.

RUCO Duplicates Some Services Of The ACC

RUCO's investigation of residential consumer complaints duplicates, in part, the efforts of the Consumer Services Section of the ACC. RUCO does not appear to have authority to investigate complaints. The Consumer Services Section of the ACC has jurisdiction over complaint resolution. Further, RUCO does not need to resolve complaints to identify public concerns.

* The number of telephone calls could be higher because 44 telephone calls had no recorded date.

RUCO lacks authority for complaint resolution - RUCO does not appear to have the authority to investigate consumer complaints. The responsibilities of RUCO's Director, as set forth in Arizona Revised Statutes (A.R.S.) §40-464.A.1, are as follows.

A. The director may:

1. Research, study and analyze residential utility consumer interests.

2. Prepare and present briefs, arguments, proposed rates or orders and intervene or appear on behalf of residential utility consumers before hearing officers and the corporation commission as a party in interest and also participate as a party in interest pursuant to §40-254 in proceedings relating to rate making or rate design and involving public service corporations.

3. Make and execute contracts and other instruments as necessary to perform his duties.

4. Hire employees as necessary to carry out this article and contract for special services as needed.

5. Employ such attorneys as are required to represent the interests of residential utility consumers.

According to a Legislative Council memorandum dated February 24, 1986, RUCO's mediation of consumer complaints does not appear to be authorized by A.R.S. §40-464. Legislative Council further notes that the Legislature had the option to place complaint mediation authority within RUCO, but gave the Corporation Commission this function. Specifically, the statutory interpretation states:

> RUCO's mediation between utility companies and consumers regarding complaints does not appear to be authorized either as a research function under A.R.S. §40-464, subsection A, paragraph 1, as making presentations before the Corporation Commission under paragraph 2 or as employing attorneys to represent the interests of consumers under paragraph 5. Also, this function was specifically given to the Corporation Commission utilities division by A.R.S. §40-110, which was enacted in the same measure which created RUCO (Laws 1983, Chapter 308, Section 6).*

* For the complete text of the opinion, see Appendix.

ACC has authority to mediate complaints - Authority for complaint resolution lies within the Consumer Services Section of the ACC. As previously noted, A.R.S. §40-110, enacted in the same measure that established RUCO, placed responsibility for complaint investigation within the utilities division of the ACC. In 1983 the Legislature established a Consumer Services Section to "receive and investigate consumer complaints and to provide information concerning utility rates and regulatory proceedings of public service corporations regulated by the commission." The Section employs nine investigators, who handled 11,600 consumer inquiries in fiscal year 1984-85.

The ACC is better prepared than RUCO to address consumer complaints. Commission investigators receive training in complaint investigation, in which they learn to properly log a complaint, complete follow-up with a utility company, and interpret ACC rules, regulations and company tariffs. Conversely, RUCO's consumer specialist has not been trained in utility complaint investigation. According to the RUCO consumer specialist, she has not received training on ACC rules and regulations. Therefore, when a question has arisen regarding tariffs or ACC rules and regulations, she has contacted ACC staff or the utility company to obtain pertinent information.

RUCO's complaint involvement is unnecessary to identify public concerns - RUCO does not need to handle consumer complaints to identify public concerns. Although RUCO's Director acknowledged that the ACC is responsible for processing complaints, she believes that RUCO's involvement is important to identify public concerns. However, it is questionable whether RUCO can consistently identify consumer concerns through its complaint process. A review of the complaint process found that thorough records have not been maintained. The consumer specialist indicated that she does not record all calls received. Moreover, RUCO could identify consumer concerns through other means, such as continual informal contact with ACC consumer specialists and through Residential Utility Board meetings. In addition, when RUCO needs to identify public concerns on specific rate cases, it could sponsor a public comment meeting or attend an ACC sponsored meeting.

RUCO's Director also indicated, as a reason for addressing consumer concerns, that legislators refer constituents to RUCO. However, in a review of written responses to consumer complaints, we found that only three cases appeared to follow a prior legislative contact. Furthermore, those cases of specific consumer problems should be referred to the ACC because of the Commission's authority to investigate complaints.

Complaint Investigation Has Displaced Needed Clerical Services

Because RUCO reclassified its secretarial position to handle consumer complaints, it lacks needed clerical support. Prior to January 1985, RUCO had an administrative secretary II position. However, the position was reclassified to a consumer service specialist in early 1985 to allow RUCO to handle complaints. This reclassification eliminated RUCO's only secretarial position. Because RUCO was left without secretarial staff, the specialist divides her work time between addressing consumer inquiries and clerical tasks, although her primary responsibility is responding to consumer inquiries. However, the specialist is unable to complete both the consumer complaints and the clerical tasks. For example, as of March 7, 1986, the specialist had a backlog of 71 written consumer complaints dated between January 1985 and March 1986.

Due to the volume of clerical work handled by the consumer specialist, some clerical tasks have been delegated to professional staff. The professional staff regularly answer the telephones, run errands, type the final draft copy of documents and photocopy materials. In addition, some professional staff have done basic bookkeeping data entry for travel and consultant expenditures. However, use of these higher paid professional staff to do clerical work is not cost efficient.

RUCO has requested a legal secretary III position in its fiscal year 1986-87 budget. If funded, this may alleviate the need to use professional staff for clerical work.

CONCLUSION

RUCO's investigation of consumer complaints duplicates some services provided by the Consumer Service's Section of the Arizona Corporation Commission. In addition, RUCO's handling of consumer complaints has displaced needed clerical support.

RECOMMENDATIONS

1. RUCO should discontinue handling consumer complaints and refer complaints requiring resolution to the Consumer Services Section of the ACC.

2. RUCO should reassign the consumer service specialist position to other duties and, if necessary, request reclassification of the position.

3. RUCO should eliminate clerical responsibilities from the work load of professional staff and reassign clerical tasks to appropriate staff.

AREA FOR FURTHER AUDIT WORK

During the course of our audit we identified a potential issue that we were unable to pursue due to time constraints.

- Should the Residential Utility Consumer Office (RUCO) be granted authority to intervene in the Federal utility regulatory process?

Some Residential Utility Consumer Board members and RUCO's Director have indicated that RUCO's intervention at the Federal level of utility regulation could have a large impact on Arizona consumers' utility costs. According to an attorney for the Federal Energy Regulatory Commission (FERC), the Commission can regulate from 1 to 100 percent of natural gas and oil interstate costs. According to RUCO's Director, RUCO does not presently have the statutory authority to intervene in Federal cases. However, all 13 of the state advocacy offices that responded to an Auditor General survey have or are presently intervening at the Federal level. Since 1984, Arizona consumers have been represented in Federal cases by the Arizona Corporation Commission (ACC), according to ACC staff. Further audit work is needed to determine what effect RUCO would have at the Federal level and whether it should also have intervention authority.

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July 21, 1986

Douglas R. Norton
Auditor General
Office of the Auditor General
2700 N. Central, Suite 700
Phoenix, Arizona 85004

Dear Mr. Norton:

This letter and the attached comments are provided for inclusion with the text of the Performance Audit of the Residential Utility Consumer Office and Board, as part of RUCO's Sunset Review. Our response to your 128 page report must unfortunately be reduced to fit the 15 page limit imposed by your procedures.

RUCO appreciates the audit report's conclusion that "RUCO serves an important function and has been clearly effective in some cases." We also are pleased that the report acknowledges that "RUCO has increased general awareness of issues that may affect residential consumers" and RUCO's role in raising policy considerations. The report recognizes RUCO's negotiated settlements with utility companies on some issues as being of significant benefit to the residential consumer.

While RUCO and the Board agree also with the majority of the audit report's Recommendations, we object to a number of its other conclusions. The analysis demonstrates extraordinary naivete concerning the nature of adversarial proceedings and a failure to comprehend critical aspects of the regulatory process. In places, conclusions are simply not supported by any facts.

RUCO challenges the validity of an audit which disregards assessments of performance other than those made by adversaries. From RUCO's own research, the opinions of neither RUCO's clients, the residential ratepayers, nor other public interest representatives in the regulatory process were included in the analysis. Instead, the auditors depended upon two major sources for their critique of RUCO: the utility companies, which stand to lose millions of dollars when RUCO is successful; and the staff of the ACC, which is frequently RUCO's adversary in the proceedings and competes with RUCO for its funding under the two-mill levy limitation of the Utilities Assessment Tax. Such inherent bias prejudices the conclusions of this audit.

The audit report's sole quantitative measure of RUCO's success is the number of times that RUCO is mentioned in ACC Final Orders. Given the complexity of issues, the length of many hearings, the varying positions of all the different parties, and the philosophical perspectives of the decisionmakers, a count of the number of times a party is credited with winning any specific issue is an unrealistic means to measure effectiveness. Further, a mere count cannot acknowledge an advocacy agency's success in introducing issues or in preserving the due process rights of its clients through procedural reforms.

Further, the timeframe selected for analysis prevents review of two major RUCO victories, the 1983 APS emergency rate request in which RUCO saved ratepayers $75 million and the 1984 Mt. Bell emergency rate request in which RUCO saved ratepayers at least $18 million. Oddly, although the ACC had issued Decision No. 54894 in February, 1986, the audit also disregards RUCO's success in instituting a rate review of Citizens Utilities Company by the ACC, a major RUCO effort.

Because RUCO's full-time staff has been restricted to nine persons, RUCO has been forced to prioritize its caseload. During its first years, RUCO has focused on its intervention in the major rate cases which affect the greatest number of people. RUCO has tended to utilize nationally renowned experts to prepare and present testimony in these cases. Yet the audit report makes little comment on RUCO's performance in these major cases (other than the erroneous identification of issues as discussed at length in our Response to Findings attached). Instead, the report focuses its unsupported conclusions about the quality of RUCO's case preparation on the first few months of RUCO's in-house preparation in small water cases. From approximately 8% of RUCO's efforts then, the audit report inappropriately generalizes to all RUCO case preparation.

Concerning RUCO's legal writing skills, RUCO has concerns with the potential conflict of interest of one of the two consultants hired by the auditor's staff to evaluate the Agency's attorneys since this person has been hired as a consultant by a major law firm which represents utility companies. Further, the consultants are clearly not familiar with the practices and procedures of the ACC or with the procedure involved in a Special Action before the Arizona Supreme Court. In any event, the audit findings exaggerate the statements of the experts hired by the audit staff.

RUCO acknowledges that, as analyzed by the Legislative Council in the memorandum attached to the report, a legitimate question exists as to whether the Legislature intended RUCO to assist individual consumers. There exists, however, a public expectation that the State's consumer advocate office will assist consumers in resolving complaints with utility

companies. Typically, the assistance provided by RUCO to consumers relates to encouraging the consumer to work with a representative of the company in assisting the consumer to maintain service when cut-off is threatened. Oftentimes it has been RUCO's finding that these matters can be worked out amicably -- so that service is not cut-off for a needy individual (disabled, handicapped, elderly) and the utility receives payment. RUCO has found that through cooperative efforts with utility companies, we were able to resolve many issues before it was necessary for the consumer, the utility, and the ACC to expend time and money on the formal complaint process. Legislators have referred consumers to RUCO. The staff of the ACC Consumer Section has referred dissatisfied consumers to RUCO. RUCO concludes, therefore, that a role exists which the Agency must play in order to meet the public expectation.

RUCO also believes that its powers should be expanded to allow it to raise generic issues of concern to residential consumers as a class, as the audit reports.

As the report also notes, RUCO believes it is imperative that the Agency have the power to participate in the utility regulatory process at the federal level since an increasing number of utility issues are decided by federal jurisdictions (i.e. Federal Energy Regulatory Commission and Federal Communications Commission). As the audit notes, all of the other similar state consumer advocacy agencies contacted by the auditor's staff have such power.

To prevent any competition for funds between the ACC and RUCO adversely interfering with the duties of RUCO and the Utilities and Legal Divisions of the ACC, the two-mill limit of the Utilities Assessment Tax should not be a common funding limitation. While the Utilities Assessment Tax can continue to fund both agencies, RUCO recommends separate limitation amounts.

Since the report concludes that the Residential Utility Consumer Board performs a vital function in providing, among other things, a "consistent community perspective" to RUCO, the Board accepts the audit report's conclusions about the function and performance of the Board.

The other specifics of the Auditor General's Report are discussed in greater detail in the attached comments.

Sincerely,

Susan A. Williams
Director, Residential
Utility Consumer Office

John L. Ahearn
Chairman, Residential
Utility Consumer Board

RESPONSE TO AUDITOR GENERAL'S RECOMMENDATIONS

FINDING I

1. RUCO agrees that, to assure that appropriate qualitative and quantitative measures are applied, it should take the time to develop further measures of the Agency's effectiveness.

2. RUCO recognizes that it should write out its criteria for case selection so that auditors can be assured that RUCO does, indeed, have a system for prioritizing the critical issues in its intervention in rate cases.

3. RUCO will develop the appropriate checklists and forms to assure that intervention is justified. RUCO will continue to prioritize according to the importance of issues and availability of time, resources and staff with the awareness that:

a) ratepayers contribute to support RUCO through the Utilities Assessment Tax;

b) RUCO has an obligation to those ratepayers who receive service from the smaller utilities as well as those ratepayers of the larger utilities; and

c) issues can be equally important even if the utility is small.

4. Since RUCO's ability to raise policy issues directly with Commissioners is limited by both the ex parte rule and by due process considerations, RUCO agrees that it needs the power to raise issues of concern to the residential class through a generic docket. Workshops and other informal processes are initiated only by the ACC. These are approaches which RUCO has utilized when possible in the past and will continue to explore.

Stipulation to facts, as recommended by the Report, is possible where facts are not in dispute; however, in most rate cases it is precisely the accounting issues that are the crux of the litigation.

5. RUCO will continue to look for ways to increase the probability of success in cases by:

a. Selecting issues for analysis in which RUCO is likely to have a significant impact and by continuing to gather the relevant evidence.

b. Identifying issues early in the process. RUCO necessarily limits the scope of its work to those issues critical to the residential ratepayers' interests.

c. RUCO has no inherent authority to perform on-site reviews. Were the Legislature to grant RUCO the power to investigate and to inspect the records of the utilities (a power granted to the ACC by the Constitution, and to other consumer advocate offices by their respective state legislatures), RUCO would be pleased to conduct on-site reviews and inspection of utility companies. RUCO is willing to seek any appropriate methods within the scope of the powers granted to it by the Legislature to obtain more accurate and comprehensive information from utility companies.

RUCO is bound, however, at present by the lack of such power and by the canons of the Code of Ethics enacted by the Arizona Supreme Court which prevent RUCO auditors, accountants and engineers from speaking directly to their counterparts with utility companies without pre-clearance by each party's attorneys for each item of information. The procedural bounds of the administrative process call for specification of the items to be reviewed through Data Requests for any issue that is in litigation.

d. RUCO is eager to comply and use direct testimony as frequently as it can afford the outside consultants or as frequently as its staff of nine has the opportunity to prepare direct testimony.

RUCO must also, however, continue to depend upon cross-examination since the record in the hearing process is developed through the constitutionally guaranteed opportunity to cross-examine opposing witnesses. ACC decisions must be based solely on the record, of which pre-filed direct testimony is just one part.

FINDING II

1. Regarding the editing and review of legal work products, all major motions, pleadings, etc., are carefully reviewed by the technical staff and by the Director. The document is subject to changes and modifications which are made by the team of staff members who worked on the project. Through this process the document is subject to an exhaustive review. Additionally, the arguments presented within the document are reviewed by the team members and the Director to make sure that the arguments are supported by the evidence in the proceeding and are in accordance with the development of progressive and modern regulatory policy. Only after such an in-depth review are major

pleadings filed with the ACC or the courts.

2. RUCO agrees that training of all staff members, including the attorneys, is critical to effective participation in the regulatory process. The Director's policy has been, and will continue to be, to send staff members to the key training seminars offered yearly and to other important seminars as time and resources permit.

3. RUCO agrees that, as it has done in the past, it must plan ahead so that no unanticipated or unplanned for actions by the utilities or the ACC will surprise it.

FINDING III

1. RUCO agrees that, until further legislative clarification is obtained, the Agency will inform consumers of the Auditor General's position that RUCO must discontinue helping individual consumers who write or call the Agency for assistance, and that it will continue to refer all individual consumer complaints back to the Consumer Services Section of the ACC for that agency's further attempts at resolution.

2. The technical staff positions of RUCO were changed from exempt status to merit status in August 1985. At that time, the consumer services specialist position was modified to a Program and Project Specialist. Since the public has an expectation that RUCO will act to effectively represent residential utility ratepayers, it is important that this position continue to exist in order to respond to the generic consumer concerns of the residential utility class. The Program and Project Specialist meets this need by researching the relevant tariffs filed by the utilities and by studying the rules and regulations of the ACC in order to prioritize issues and to prepare RUCO's case on generic issues and to assist in identifying issues of concern to the residential class in the coming rate cases.

3. As of the new fiscal year, RUCO has been allocated a new staff position which will allow for clerical assistance to RUCO's nine professional staff members. RUCO agrees that, to the extent possible, all clerical tasks can then be assigned to that one full-time clerical staff member, with assistance from RUCO's part-time student interns.

RESPONSE TO FINDINGS OF PERFORMANCE AUDIT

FINDING I

While Finding I acknowledges the importance of RUCO's role in the regulatory process and credits the Agency with achieving "significant impact on the outcome of several cases" and "notable impact" on the outcome of other cases, RUCO is concerned with the extremely limited nature of the analysis of the Agency's performance.

Cites to RUCO in ACC Orders

While "affecting case outcomes should be RUCO's primary goal, based on its statutory mandate," a count of the number of times that RUCO is cited in Commission Orders cannot accurately reflect the impact of its participation in the regulatory process. Hearing Officers, who draft the Orders after hearing dozens of witnesses during the weeks of a proceeding, cannot possibly address the positions taken by each party or even all of the "factors influencing Commission decisions on those issues" in an Order. Nor will a cursory review of hearing transcripts of cross-examination of witnesses aid the uninitiated auditors in deciphering the complexities of legal and substantive argument on each issue.

Thus, it is not surprising that the audit and its attempt to analyze 30 Commission Opinions issued between May 30, 1984 and March 31, 1986 "to determine RUCO's impact on case outcomes" has some serious flaws. For example, in Table 3 on page 15, the auditors assume that RUCO raised 16 issues in Docket E-1051-84-100, the most recent Mt. Bell rate case, but concludes that RUCO was only successful in three. While RUCO might be acknowledged three times in the Final Order, an examination of the full record would have revealed that RUCO succeeded on the following issues which the audit report quantified but did not credit to RUCO:

a) Cost of Common Equity - This was a major RUCO success, particularly in terms of dollar impact on ratepayers. RUCO was the only party to submit testimony showing that a rate of return of less than 14% would be fair and equitable to the company. RUCO's testimony was at the crux of the Commissioners' discussion on the day of the decision, leading to the compromise grant of 13.75%. Since Commissioners cannot exercise judgment independent of facts on the record (unlike the audit's uninformed statement on p. 13), RUCO's position was the key to saving ratepayers millions of dollars in the cost of common equity.

b) Disconnect Provision - The ACC limited the disconnect

provision to apply only to another regulated entity to which Bell sells its billing services. The ACC thus acknowledged RUCO's concern on this issue.

c) Message Rate Service - Both Bell and the ACC Staff wanted to eliminate this service; RUCO opposed its elimination. The ACC did not eliminate the service.

d) Compression - Both Bell and the ACC Staff argued to compress the three existing residential rate groups in the state into two groups. RUCO argued to retain the three rate groups. The ACC retained three groups.

e) Regrade multi-party service - The company wanted to eliminate multi-party service. RUCO argued that the service provided greater flexibility to the residential ratepayer, and that it should still be available to customers, particularly to those who contracted for the service in the past. The Commission allowed Bell to reduce the service as a future offering but grandfathered in the existing multi-party service.

The analytical approach taken by the audit also fails to account for RUCO's success in shaping issues. For residential ratepayers, the paramount issues in telecommunications relate to attempted cost shifts from toll usage to the local consumer. RUCO precluded Bell from requesting "end-user" access charges in the above-referenced rate case by prompting public discussion of the issue during the months before the company filed. While admittedly difficult to measure, RUCO's greatest impact on the regulatory process may well be to shift it from one which is solely reactive to utility-sponsored requests to a more pro-active one.

In the Bell case RUCO also successfully introduced two concepts which the ACC, while not immediately implementing either, said the parties would be required to address in the next Bell case: a hypothetical capital structure for Bell, given the diversified, non-utility ventures of the parent holding company of Bell, U.S.West, and the ULLS formula approach for access charge determination, presented by RUCO witness Dr. Ben Johnson. The audit analysis concluded that RUCO had "no impact" on these issues, yet RUCO succeeded in establishing them as critical issues for consideration once additional, post-divestiture data becomes available.

Thus, in the Bell case alone, the audit staff's limited analytical methods precluded an appropriate assessment of RUCO's impact on the process. This occurred not only because the staff failed to understand the issues argued by various parties, but also because it would not recognize that a consumer advocate agency such as RUCO can impact the regulatory system by introducing issues for consideration even if they are not immediately adopted.

In addition to the audit's failure to analyze the regulatory issues in sufficient depth, the chart on page 14 (Figure 1) unfairly summarizes RUCO's effect on cases. Where the actual text states that "RUCO can claim full credit" for certain issues, the pie chart reduces the RUCO success to "Considerable." When the text states that RUCO has had "shared impact" on other issues, the chart diminishes that success to "Limited."

Further, while the text acknowledges as RUCO's greatest successes the Bell refund case and the two negotiated settlements, neither Figure 1 nor Table 3 attempt to quantify the successes, much less the money saved consumers. As the report notes, RUCO has intervened in ten cases for informational purposes only. Yet Figure 1 includes these ten cases in its conclusion that RUCO had no effect in 17 cases. Only in a footnote does the report acknowledge that RUCO did not intend to influence issue outcomes in these ten cases. Preparation of such a misleading chart refutes the report's broad, but unproven, statement that RUCO had little impact in many cases.

Audit Report's Use of Comments by Utilities and ACC Staff

The report states on page 14 that the audit staff evaluated RUCO's performance by supplementing ACC Final Orders with comments by utility company officials and ACC staff. Such an approach reflects a complete failure to comprehend the adversarial nature of the proceedings before the ACC. Considering that each issue involves potentially large financial impacts on the utility, the relationship between vigorous adversaries precludes impartial evaluation and lends itself to biased appraisal.

Further, it is RUCO's understanding that the audit staff never consulted with RUCO's clients, the residential consumers.

Timeframe of Analysis

The audit report ignores a substantial RUCO effort within the timeframe chosen by the audit staff, even though the ACC issued an Order relating to RUCO's efforts: the Citizens Utilities case. The Order, Decision No. 54894, was issued by the ACC on February 11, 1986, thus falling within the timeframe of the audit report.

In addition, the time period selected by the audit for review of RUCO's performance is inappropriate, particularly in light of RUCO's brief history. By failing to review cases prior to May 30, 1984, the audit did not consider major RUCO victories in 1983 and early 1984. For example:

APS Emergency Rate Request - In December, 1983, the ACC held a hearing on the APS request for an increase of $163.5 million.

The ACC staff recommended that the company be granted $135 million. RUCO presented testimony showing that neither increase was necessary to preserve the company's financial health. The one other intervenor offered no financial analysis. The ACC granted $60 million, substantially less than the ACC staff's recommendation of $135 million. RUCO's intervention clearly saved ratepayers $75 million.

Mt. Bell Emergency Rate Request - In February, 1984, the ACC held a hearing to determine whether Mt. Bell needed a $37.5 million emergency rate increase. The ACC staff recommended an $18 million increase. RUCO was the only other party to present testimony and argued against any increase at that time. The Commissioners denied any increase. RUCO, therefore, appropriately claims a savings for ratepayers of $18 million.

RUCO is puzzled that the audit staff, while claiming to be comprehensive in its assessment of RUCO's performance, has omitted some of RUCO's greatest successes, such as those above.

Measurement of Success in Terms of Dollars Saved

As to RUCO's attempt to measure the dollar impact of its participation, the audit is correct that RUCO cannot claim total responsibility for every dollar saved. However, RUCO made its calculations with an extremely conservative approach, taking credit merely for the difference between the recommendation of the ACC staff (the other major party) and the Commissioners' final decision. A better approach, as the audit suggests, would be to calculate the money saved according to each issue. RUCO plans to implement that recommendation.

The one example used by the audit to discredit the RUCO approach must, however, be corrected. The report credits the Center for Law with having saved $11.4 million dollars in Phase I of the 1984 APS rate case through its testimony on the appropriate level for a residential service charge. However valuable the Center's testimony on an appropriate level for the residential service charge, it in no way affected the $11.4 million revenue requirement savings which RUCO claims it impacted through its revenue requirements testimony. This example serves to demonstrate, however, that rate case issues are complex and difficult even for staff of the Auditor General's Office to comprehend without specific training in the intricacies of rate-making.

Assessment of RUCO Case Preparation

While it is true that RUCO's small staff is overworked and often prepares cases shortly before hearings, the audit report's discussion of evidentiary questions and substantive issues beginning at page 13 is more dispositive of the lack of legal training of the audit staff than of useful conclusions about RUCO's performance.

The audit's conclusion that cross-examination is an ineffective technique for development of a record in an administrative hearing is absurd. Since direct testimony is limited to a brief summary as a witness takes the stand, all testimony having been pre-filed, approximately 95% of the ACC hearing time involves cross-examination. Further, while it would be pleasant were a party able to gather all necessary information during the discovery phase of a rate case, the reality is that utility companies are not always forthcoming with the requested data and parties are forced to resort to cross-examination to prove points on the record of the hearing.

On page 17, the audit report makes totally unsupported assertions concerning what it considers to be unrealistic and "unimportant" positions in rate cases, but without reference to any specific bases for the conclusions. Where the report does utilize examples, the auditors have failed to understand the issues in litigation or the procedure. For example:

<u>APS - 1986 Phase I</u> The analyst has attempted to critique a RUCO witness's testimony on planned and unplanned maintenance and on other reasons for power outages on the APS system. The auditor apparently takes at face value the APS cross-examination as being determinative of the value of the RUCO position.

<u>Mt. Bell - 1985</u> - Apparently not comprehending that parties can adopt the testimony of other parties when appropriate after testing the validity of that party's position, the auditor blames RUCO for adopting the ACC staff testimony in areas that RUCO did not have monies to analyze. The report also inappropriately takes the RUCO witness's statement out of context and misquotes him.

<u>American Public Service</u> - Although the case involved a small company, RUCO focused on an issue critical to current utility policy: cross-subsidy by utility ratepayers of non-utility parent companies. Further, while the Legislature did not enact an affiliate interest statute in 1984, that fact does not relieve the ACC from its constitutional duty to examine affiliate relationships to assure that ratepayers do not cross-subsidize non-utility services.

<u>Hidden Valley</u> - Again, RUCO focused on a fundamental regulatory principle: that a utility has <u>no</u> right to recover "out of pocket expenses" or any other costs of investment for plant that is not "used and useful" to the consumers.

<u>Cottonwood</u> - RUCO intervened close to the date set for hearing for two reasons. First, consumers contacted RUCO shortly before the hearing. Second, only on July 1 did RUCO receive legislative authorization to hire an accountant for water case issues. Since RUCO was able to find a CPA soon after the new

fiscal year but was unable to arrange for specific utility ratemaking training until the week following the hearing, RUCO did not propose to submit direct testimony of the accountant. Thus, the audit report's quote from deposition questions by a utility attorney do not prove poor preparation on RUCO's part but rather careful preparation to the best of our ability under the circumstances.

Racrest - RUCO must often rely on ACC staff workpapers as do other parties. All witnesses frequently work up calculations while on the witness stand. The failure to understand these procedures is matched by the failure to report all facts: RUCO withdrew a portion of its testimony and had to cut short its presentation because the RUCO witness became seriously ill and had to be placed under a medical doctor's care. The audit again apparently takes at face value the utility company's unsubstantiated assertion that RUCO caused additional rate case expenses even though the ACC Order does not reflect the company's claim.

RUCO Should Limit its Workload

RUCO agrees with the audit that a limited workload would be preferable. There exists, however, a public expectation that RUCO fulfill its mandate to represent the ratepayer not only in a couple of major cases each year which affect the largest number of consumers, but also in cases impacting consumers of smaller utilities as well. That distiguishes RUCO from some of the state agencies interviewed by the auditors is that RUCO is funded statewide by consumers of many utilities.

Concerning RUCO's review and prioritizing of cases, RUCO is forced to prioritize issues because its staff is small and its resources for hiring outside experts are limited. The reality is, however, that the critical issues in utility regulation are many. Even with an ACC staff of 41 in the Utilities Division and 15 in the Legal Division, the ACC staff has difficulty in finding adequate time to address its caseload.

The auditors' criticism that RUCO raises more issues than other parties fails to acknowledge that RUCO is the only party other than the ACC staff with a legislative mandate to represent a class of customers. Further, unlike the ACC staff, RUCO does not have the authority to investigate or audit the books of utilities. RUCO can analyze utility data only through data requests. Therefore, in order to adequately prepare a case, RUCO is forced to issue more data requests than other parties. This fact alone counters the report's bald assertions that RUCO is poorly prepared for hearings. As in Phase I of the current APS rate case, RUCO was the only party to prepare a comprehensive analysis of disputes of the company's generation system.

Despite repeated explanations, the audit staff apparently still failed to grasp the procedural protections for utility companies which prevent RUCO from conducting on-site reviews of company books. Like the ACC, those other state agencies referred to in the audit report are either divisions of the Attorney General's Office, with implicit power to investigate, or are state agencies with explicit legislative authority to inspect company books and records. RUCO has no such grant of power and therefore must continue to utilize data requests as its discovery procedure. As established in the Code of Ethics enacted by the Arizona Supreme Court, RUCO staff can seek specific information from their counterparts in a utility company only after the respective attorneys have approved the specific request for data. Until the State Legislature grants RUCO power to inspect the books and records of utilities under the jurisdiction of the ACC, RUCO is bound by these procedural and ethical rules.

FINDING II

The audit analysis of the performance of the RUCO attorneys criticizes the few actual briefs that RUCO has filed but ignores any specific analysis of the other 95% of the work of the RUCO attorneys. The limited nature of the review failed to take into consideration the following responsibilities of the two attorneys:

a) Initial screening of cases to determine whether issues exist which require RUCO intervention;

b) Identification and analysis of key issues in each case;

c) Selection and direction of outside consultants;

d) Coordination and direction of the RUCO staff in preparation of data requests, of in-house analysis, and of written testimony;

e) Preparation of all motions, pleadings, cross-examination of all witnesses, opening and closing arguments, and post-hearing memoranda for all assigned cases;

f) Alternative to or simultaneous to case preparation, the identification and negotiation of any settlement options;

g) Consultation with the RUCO Director on long-range regulatory policy directions;

h) Consultation on a daily basis with RUCO staff on administrative procedures involving procurement practices, Requests for Proposals, contracts, personnel rules,

generic consumer complaint issues, the Open Meeting Law as it applies to the RUCO Board, and interpretation of current and proposed legislation;

i) Continuing education on the most recent developments in utility regulation and accounting procedures.

Against this workload, the audit focuses upon less than 5% of the attorneys' function since RUCO's inception and critiques editorial lapses and failure to draft perfect transition sentences. Regarding the recommendation that RUCO provide continuing educational opportunities, it has been and will continue to be the policy of the RUCO Director to make available to all RUCO staff, including the attorneys, the training necessary to assure high quality performance.

Audit Report's Use of Outside Consultants

Concerning the observations of the legal writing professors hired to evaluate the RUCO briefs, RUCO has a preliminary concern with one of the consultants chosen by the auditors since he has been hired as a consultant in the past by the law firm Evans, Kitchel & Jenckes, P.C., the legal representative of a number of utilities in the state. It is difficult to believe that this consultant does not have a conflict of interest.

Moreover, the consultants are clearly not familiar with the practices and procedures of the ACC or with the procedure involved in a Special Action before the Arizona Supreme Court.

As regards procedures before the ACC, the consultants blame RUCO for failing to link sections in RUCO's Exceptions with proper transitions. Such a criticism is completely misplaced since, by their nature, Exceptions address specific points in the Hearing Officer's Proposed Order to which the party objects.

Regarding the Special Action, both the Petition and the Memorandum were filed in exact conformity with the format and style outlined in the Arizona Appellate Handbook, a compilation recognized as authoritative by the Arizona Supreme Court and lower courts.

As to substance, the clarity of the RUCO filing was exemplified by the comment of a Supreme Court Justice in the meeting with RUCO, APS, and the ACC attorneys. The Justice said that oral argument was not necessary at that time since the arguments were clearly set out in the Petition and Memorandum.

Illustrative of the consultants' lack of experience and competence in procedure is the criticism that RUCO failed to file for a stay of the ACC Order implementing the rate increase

and failed to file for attorneys fees. Article XV, Section 17 of the Arizona Constitution specifically prohibits any court from entering a stay of an ACC Order. Under A.R.S. 12-348.A.5., the award of attorneys fees to a state agency is prohibited by statute.

FINDING III

RUCO does not "investigate" consumer complaints since it has no power to investigate granted to it by statute. A public expectation exists, however, that RUCO, as the consumer advocate agency, assist consumers who have been unable to resolve their difficulties with utilities on their own. While it is true, as the audit notes, that the Consumer Section of the ACC has a mandate from the Legislature to resolve consumer complaints, the reality is that consumers seek RUCO's assistance after the ACC has failed to resolve the issue to their satisfaction. Further, the ACC Consumer Section has often referred consumers to RUCO.

Instead of "investigating" consumer complaint concerns, RUCO works closely with the consumer representatives of the utility companies to resolve issues in contention. RUCO also serves a referral function, directing consumers to other agencies that can be of further assistance to them. This function has been useful for two reasons. One, the information garnered during the process of referral alerts RUCO to generic concerns of the residential class. While the report suggests that identification of such class concerns should reside with the Consumer Section of the ACC, the Consumer Section rarely raises generic issues for the residential class. Two, under its interpretation of its mandate, the Consumer Section does not represent the individual consumer in the actual complaint process. Instead it attempts to play a balancing role with the utility company. Thus, individual consumers are, at present, totally unrepresented in the complaint process as it goes to hearing unless the individual hires, usually at great expense, an attorney trained in utility law.

Because of the fact that RUCO receives many calls from residential consumers, some referred to RUCO by their legislators, it was necessary to preserve the time of other staff members by assigning one staff person primary responsibility for referring consumers to the proper forum for resolution of their complaints and for researching issues of generic concern to the residential class. Thus, the Director established the consumer specialist position to meet the public expectation that RUCO had been established to represent consumers.

The staff position of consumer specialist has been changed to Program and Project Specialist and is now in accord with the findings of the Legislative Council. The Program and Project

Specialist researches the tariffs filed by the utilities at the ACC and reviews the ACC rules and regulations as part of RUCO's preparation of issues.

REPRESENTATION OF RESIDENTIAL CONSUMERS NEEDED AT THE FEDERAL LEVEL

As the audit report observes, up to 100% of natural gas costs are determined at the federal level before the Federal Energy Regulatory Commission (FERC). Similarly, all wholesale electric rates, even those involving utilities within Arizona, are set by FERC. All major telecommunications policy issues are being established by the Federal Communications Commission. Thus, to adequately fulfill the mandate to represent the residential ratepayer, RUCO needs authority to intervene at the federal level in order to protect ratepayer interests. The audit is in error when it states that "since 1984, Arizona consumers have been represented in Federal cases by the Arizona Corporation Commission." Despite the plethora of issues being litigated at the federal level, the ACC has intervened in only one issue before the FCC and in four issues before FERC. The Arizona consumers are not being adequately represented. As the audit report notes, all other state consumer agencies contacted by the auditors have authority to intervene at the federal level.

RESIDENTIAL UTILITY CONSUMER BOARD

INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a limited review of the Residential Utility Consumer Board in response to a July 26, 1985, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as part of the Sunset Review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The Board was established in conjunction with the Residential Utility Consumer Office (RUCO) in 1983 by Senate Bill 1030, Chapter 308. The Board is required to "advise the office on all matters relating to rate making or rate design and involving public service corporations" and to assist RUCO in preparing its budget request. The Board may also instruct RUCO's Director to withdraw any filed court action the Board deems unnecessary. In addition, the Board may advise the Governor and Legislature on all matters relating to RUCO.

The Board consists of five members appointed by the Governor, who serve five-year terms. The Board is required to meet at least monthly and has met in various areas of the State. The members are eligible to receive compensation for each day of actual service on the Board, pursuant to A.R.S. §38-611. The Board's expenditures for fiscal year 1983-84 are unavailable; however, for fiscal year 1984-85, the Board incurred estimated expenditures of $2100.

Scope of Audit

The scope of our audit included a review of the Board's operations and functions. Our major audit objective was to respond to sunset factors set forth in A.R.S. §41-2354.D.

The Auditor General and staff express appreciation to the Residential Utility Consumer Board members for their cooperation during the audit.

SUNSET FACTORS

In accordance with Arizona Revised Statutes (A.R.S.) §41-2354, the Legislature should consider the following 12 factors in determining whether the Residential Utility Consumer Board should be continued or terminated.

1. Objective and purpose in establishing the Board

   The Residential Utility Consumer Board was established to advise the Residential Utility Consumer Office (RUCO) on all matters relating to rate making or rate design and involving public service corporations. The Board can also instruct RUCO's Director to withdraw any court action filed by the Office. In addition, the Board may advise the Legislature and Governor on all matters relating to the Office.

2. The effectiveness with which the Board has met its objective and purpose and the efficiency with which the Board has operated

   The Board has generally met its prescribed objective and purpose. Due to time constraints, RUCO's staff are sometimes required to make decisions regarding rate cases without Board input. To keep members informed, RUCO staff maintain contact with the Board throughout the month regarding significant issues. During monthly meetings, the staff update the Board as to the actions taken on specific rate cases. At that time, the Board is given the opportunity to discuss decisions and give advice as to further action needed.

3. The extent to which the Board has operated within the public interest

   The Board's role is limited to advising RUCO on rate-making matters. To the extent that the Board advises RUCO on these matters, it functions within the public interest by promoting fair utility rates for residential utility consumers. In addition, the Board has pursued significant issues beyond the scope of rate hearings that impact the residential consumer. For instance, one Board member has been active

in the development of Lifeline legislation for telephone customers. Lifeline legislation is being developed to assist the economically disadvantaged in paying for telephone service.

4. The extent to which rules and regulations promulgated by the Board are consistent with the legislative mandate

The Board's responsibilities do not include the promulgation of rules and regulations.

5. The extent to which the Board has encouraged input from the public before promulgating its rules and regulations and the extent to which it has informed the public as to its actions and their expected impact on the public

The Board has not promulgated rules and regulations.

6. The extent to which the Board has been able to investigate and resolve complaints that are within its jurisdiction

The Board has no authority to investigate complaints filed by residential consumers.

7. The extent to which the Attorney General or any other applicable agency of State government has the authority to prosecute actions under enabling legislation

The purpose of this Board is to act as an advisor, therefore, it has no regulatory authority, and consequently, no enforcement powers.

8. The extent to which the Board has addressed deficiencies in the enabling statutes which prevent it from fulfilling its statutory mandate

The statutes establishing the Board and its functions have not been changed since the Board was created in 1983. According to Board members, the enabling statutes do not need modification.

9. The extent to which changes are necessary in the laws of the Board to adequately comply with the factors listed in the sunset law

Our review did not identify needed statutory changes.

10. The extent to which the termination of the Board would significantly harm the public health, safety or welfare

Elimination of the Board would not harm the public health, safety or welfare. Because RUCO and its Director have made decisions autonomously from the Board, they could function without Board oversight. However, because discussion of actions contemplated and taken by the Office occur at monthly meetings, they have been a valuable forum for the acquisition and dissemination of timely information to the media, public and utility companies in attendance. Moreover, RUCO's Director and staff have indicated that input gained from the Board is valuable in maintaining a consistent community perspective on issues facing residential utility consumers.

11. The extent to which the level of regulation exercised by the Board is appropriate and whether less or more stringent levels of regulation would be appropriate

This sunset factor does not apply to the Board because it has no regulatory authority.

12. The extent to which the Board has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished

The Board has not used the services of private contractors. However, because RUCO uses private contractors, this question is addressed in RUCO's sunset factors, (see page 5).

ARIZONA LEGISLATIVE COUNCIL

FEB 1986
RECEIVED
AUDITOR
GENERAL

MEMO

February 24, 1986

TO: Douglas R. Norton, Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (0-86-1)

This memo is sent in response to a request made on your behalf by William Thomson in a memo dated January 10, 1986.

FACT SITUATION:

The Residential Utility Consumer Office (RUCO) represents the residential consumer within the utility regulatory process.

The RUCO staff performs various activities in addition to its involvement in rate making cases. The activities include:

1. Consumer complaints. RUCO responds to consumer complaints against utility companies which are made to its office. It attempts to mediate between the utility company and the consumer.

2. Conciliation. RUCO has initiated a process of conciliation through the Corporation Commission for small water companies and their customers. The purpose of the conciliation process is to obtain rate modifications for small companies that may not have the financial resources to request a full rate hearing.

3. Public education. RUCO's director educates utility consumers on issues regarding utility rates. In this capacity she attends, upon request, various speaking engagements in the community and on television and radio.

QUESTION PRESENTED:

Under the provisions of Arizona Revised Statutes (A.R.S.) section 40-464, does RUCO have the authority to engage in consumer complaints, conciliation and public education?

ANSWER:

See discussion.

DISCUSSION:

The primary purpose of RUCO is to represent the interests of residential utility consumers in regulatory proceedings involving public service corporations before the Corporation Commission (A.R.S. section 40-462, subsection A).

The powers and duties of the director, as outlined in A.R.S. section 40-464, are:

> A. The director may:
>
> 1. Research, study and analyze residential utility consumer interests.
>
> 2. Prepare and present briefs, arguments, proposed rates or orders and intervene or appear on behalf of residential utility consumers before hearing officers and the corporation commission as a party in interest and also participate as a party in interest pursuant to section 40-254 in proceedings relating to rate making or rate design and involving public service corporations.
>
> 3. Make and execute contracts and other instruments as necessary to perform his duties.
>
> 4. Hire employees as necessary to carry out this article and contract for special services as needed.
>
> 5. Employ such attorneys as are required to represent the interests of residential utility consumers.
>
> B. The director shall:
>
> 1. Promulgate administrative rules necessary to carry out the purposes of this article.
>
> 2. Submit a report to the governor, speaker of the house of representatives and president of the senate by November 1 each year describing the activities and accomplishments of the office.

Another source of information in interpreting the permissible authority of RUCO is the legislative intent section of the original act creating the office, which provides:

> It is the intent of the legislature to create a residential utility consumer office to represent the interests of residential utility consumers, critically analyze proposals made by public service corporations to the corporation commission, develop its own recommendations and present them to the commission.

Laws 1983, chapter 308, section 1.

The statement in the legislative intent that RUCO's function includes representing "the interests of residential utility consumers" is broader and more general than the authority granted in A.R.S. sections 40-462 and 40-464.

Although A.R.S. section 40-464, subsection A, paragraph 2 appears to limit RUCO involvement to representation of consumers "before hearing officers and the corporation commission", paragraph 5 of the subsection allows the RUCO director to "employ such attorneys as are required to represent the interests of residential utility consumers" which is a broader authority.

The RUCO enabling legislation is conflicting and confusing regarding the permissible role in representing residential utility consumers. An examination of the three annual reports that have been submitted by the office indicates that

although a great majority of the activities of RUCO involve intervention in rate proceedings, RUCO has interpreted its legislative mandate to also include public participation in forums throughout the state and general consumer advocacy, such as dealing with consumer inquiries and complaints. In this latter function, RUCO created and filled a full-time consumer specialist position in January, 1985.

A review of the legislative process that culminated in the creation of RUCO in 1983 shows that at least seven revisions or substantial amendments were used to arrive at the final RUCO statutes. The proposal originated in a Senate Government Committee "strike-everything" amendment on March 16, 1983 in which a "Residential Utility Users Bureau" was created with the duty to "represent the immediate and long term interests of residential utility consumers before legislative bodies and other public bodies" including intervention in proceedings before the Corporation Commission and the courts. Later, the duties were modified in the final Senate version to limit the director to representing consumers' interests in proceedings before the Corporation Commission and some court involvement. On April 5, 1983, the House of Representatives Committee on Government Operations rewrote the measure to include a "legislative intent" to limit the office to representing consumers before the Corporation Commission. This version of the proposal also allowed RUCO to make available to consumers "information on studies and research in areas relevant to the rates charged. . . ." It is instructive to note that this House version of the bill specifically limited the office, by statute, to representing consumers "before the Corporation Commission" whereas the Senate version gave broad authority for "representing and protecting the interest of utility rate payers". This distinction was maintained and appears in the current law (A.R.S. section 40-462, subsection A). The final version of the bill constructed by a Free Conference Committee on April 22, 1983 contained three provisions that are notable for purposes of this discussion:

1. The legislative intent section was broadened to include general RUCO representation of consumer interests while the statutory sections retained the restrictive limitations on representation before the Corporation Commission.

2. A consumer complaint services section was established within the utilities division of the Corporation Commission to receive and investigate consumer complaints and provide information to consumers. (This was carried over from the original House version.) (A.R.S. section 40-110.)

3. The "public information" function for RUCO which had appeared in the Senate bill was dropped.

Tracing the development of the RUCO bill, therefore, shows some general indication of restriction of the role of RUCO in the areas of consumer representation and in providing public information for residential utility consumers.

Applying the language of A.R.S. sections 40-462 and 40-464 together with the legislative history of the laws to the three activities currently being conducted by RUCO as stated in the fact situation above indicates the following results:

1. Consumer complaints. RUCO's mediation between utility companies and consumers regarding complaints does not appear to be authorized either as a research function under A.R.S. section 40-464, subsection A, paragraph 1, as making presentations before the Corporation Commission under paragraph 2 or as employing attorneys to represent the interests of consumers under paragraph 5. Also, this function was specifically given to the Corporation Commission utilities division by A.R.S. section 40-110, which was enacted in the same measure which created RUCO (Laws 1983, chapter 308, section 6).

2. Conciliation. Obtaining rate modifications for small water companies through the Corporation Commission is clearly authorized in section 40-464, subsection A, paragraph 2 as "proposed rate/s/ . . . before . . . the corporation commission . . . in proceedings relating to rate making or rate design and involving public service corporations".

3. Public education. As described in the fact situation, this is currently less of a RUCO public education function than it is a public speaking engagement function of the RUCO director. However, to the extent that RUCO engages in any regular formal public education program regarding residential utility consumer interests, no apparent authorization is given in the law and there is an indication that such a function was not granted by the Legislature because a similar proposal was specifically deleted from the bill in the House of Representatives' deliberations.

CONCLUSION:

It appears that RUCO is exceeding its statutory authority in mediating consumer complaints between utility companies and consumers and to the extent it is engaging in public education programs. RUCO is operating within its authority in regard to small water company rate conciliation activities.

cc: William Thomson, Manager
Performance Audit Division