

PUBLIC SERVICE COMMISSION

REGULATORY ASSESSMENT FEES

AND

PRIOR AUDIT FOLLOW-UP

Operational Audit



PUBLIC SERVICE COMMISSION MEMBERS

The Public Service Commission is composed of five Commissioners appointed to four-year terms by the Governor, subject to confirmation by the Senate. Commission members serving during the period of our audit were:

Matthew M. Carter II, Chairman from January 2008

Lisa Polak Edgar, Chairman, January 2006 to January 2008

Katrina J. McMurrian

Nancy Argenziano

Nathan A. Skop

Mary Andrews Bane served as Executive Director during the period of our audit and was responsible for directing, planning, and administering the overall activities of the Commission staff.

The audit team leader was Danta M. White and the audit was supervised by Richard E. Munson, CPA. Please address inquiries regarding this report to David R. Vick, CPA, Audit Manager, by e-mail at davidvick@aud.state.fl.us or by telephone at (850) 487-4494.

This report and other reports prepared by the Auditor General can be obtained on our Web site at www.myflorida.com/audgen; by telephone at (850) 487-9024; or by mail at G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450.

PUBLIC SERVICE COMMISSION

Regulatory Assessment Fees and Prior Audit Follow-Up

SUMMARY

This operational audit of the Public Service Commission (Commission) focused on regulatory assessment fees, including the information technology resources utilized in the regulatory assessment fee process. Our audit also included a follow-up on audit findings included in audit report No. 2008-101.

REGULATORY ASSESSMENT FEE RATES

Finding No. 1: State law provides that, every six months, each regulated company under the jurisdiction of the Commission, shall pay to the Commission a fee based upon gross operating revenues for such period. The fee shall, to the extent practicable, be related to the cost of regulating such type of regulated company. Our audit disclosed that the Commission did not maintain documentation supporting a periodic review of the reasonableness of regulatory assessment fee rates.

PRIOR AUDIT FOLLOW-UP

The Commission had corrected or was in the process of correcting the findings included in report No. 2008-101.

BACKGROUND

The Commission is responsible for the regulation of investor-owned electric utilities, gas utilities, and telecommunications companies in the State. The Commission is also responsible for regulating investor-owned water and wastewater utilities in those counties that have opted to transfer regulatory jurisdiction to the Commission. Additionally, the Commission has limited jurisdiction over rural electric cooperatives and municipal-owned electric and gas utilities.

State law provides that, every six months, each regulated company under the jurisdiction of the Commission, shall pay to the Commission a fee based upon gross operating revenues for such period.¹ The fee shall, to the extent practicable, be related to the cost of regulating such type of regulated company. All regulatory assessment fees, licenses, and other charges collected by the Commission are to be deposited into the Florida Public Service Regulatory Trust Fund (Regulatory Trust Fund) to be used in the operation of the Commission.² During the 2007-08 and 2008-09 fiscal years, the Commission collected regulatory assessment fees totaling approximately \$33 million and \$32.5 million, respectively.

State law and Commission rules establish the amounts of penalties and interest that shall be charged to regulated companies.³ Penalties and interest assessed and collected by the Commission are to be deposited in the General Revenue Fund. The Commission utilized the Regulatory Assessment Fee System (RAFS) to record receipt of fees, penalties, and interest, as well as, to process notices of assessment and delinquency. According to Commission records, the Commission collected approximately \$49,000 and \$53,000 in penalties and interest during the 2007-08 and 2008-09 fiscal years, respectively.

¹ Section 350.113(3), Florida Statutes.

² Section 350.113(2), Florida Statutes.

³ Section 350.113, Florida Statutes, and Public Service Commission Rules, Chapter 25, Florida Administrative Code.

FINDINGS AND RECOMMENDATIONS**Finding No. 1: Regulatory Assessment Fee Rates**

As described under the BACKGROUND heading, Commission operations are funded by regulatory assessment fees (RAF) collected from Commission-regulated companies. While State law establishes the maximum RAF rates,⁴ Commission rules set the RAF rates to be assessed for each type of regulated company.⁵ EXHIBIT A shows, by regulated company type, the RAF rates assessed and the fees collected by the Commission for each of the 2004-05 through 2008-09 fiscal years. As shown by EXHIBIT A, with the exception of a rate change for the telecommunications companies during the 2004-05 fiscal year, the assessed RAF rates have remained at the same levels during the 2004-05 through 2008-09 fiscal years. In addition, as of March 2010, the same RAF rates were being assessed during the 2009-10 fiscal year.

State law requires that the RAF rates, to the extent practicable, be related to the cost of regulating each type of regulated company.⁶ To determine whether the Commission periodically related the assessed RAF rates to the costs of regulating each company type, we requested documentation of any RAF rate reviews or cost analyses performed by the Commission. In response to our audit inquiry, Commission management indicated that RAF rates are reviewed on an annual basis by Commission management to determine whether rate adjustments are necessary; however, documentation of the reviews is only maintained for approved rate changes. Therefore, the only rate review documentation available for the 2004-05 through 2008-09 fiscal years was for a January 1, 2005, increase in the telecommunications companies' rate. Because no documentation of the annual RAF rate reviews was maintained, the Commission lacked a basis for readily demonstrating the extent to which RAF rates related to the cost of regulation.

In the absence of Commission documentation evidencing review of the RAF rate assessments, we analyzed the 2004-05 through 2008-09 fiscal year-end cash balances in the Regulatory Trust Fund to determine whether those balances demonstrated that the amount of fees collected were reasonably related to the costs of regulation. For purposes of this analysis, we viewed a relatively stable trend in the amount of year-end cash balances as being reflective of RAF rates that were related to costs. We also compared the year-end cash balances to the \$6.6 million minimum cash reserve amount determined by the Commission as necessary to ensure adequate cash flow for the continued operation of Commission regulatory functions. Fiscal year-end cash balances in excess of \$6.6 million may indicate that fees have not been commensurate with the costs of regulation.

As shown in Table 1, our analysis disclosed increasing fiscal year-end cash balances. As further shown by Table 1, we also found that the Regulatory Trust Fund cash balances for each of the fiscal years we analyzed were in excess of \$5 million and, for each of the fiscal years ended June 30, 2006, through June 30, 2009, the balances exceeded the Commission-established \$6.6 million minimum cash reserve balance. EXHIBIT B shows a breakdown of the Regulatory Trust Fund cash balances by regulated company type.

⁴ Chapters 350, 364, 366, and 367, Florida Statutes.

⁵ Public Service Commission Rules, Chapter 25, Florida Administrative Code.

⁶ Section 350.113(3), Florida Statutes.

Table 1
Cash Balances Compared to Required Cash Reserve
(Before Appropriated Transfers to the General Revenue Fund)

Regulatory Trust Fund	Amounts at Fiscal Year End (in dollars)				
	2004-05	2005-06	2006-07	2007-08	2008-09
Cash Balance	5,809,229	9,248,016	14,469,826	17,985,497	20,854,577 ^a
Required Cash Reserve	6,600,000	6,600,000	6,600,000	6,600,000	6,600,000
Cash in Excess of Required Reserve	(790,771)	2,648,016	7,869,826	11,385,497	14,254,577

^a During the fiscal year ended June 30, 2009, a total of \$7.5 million was transferred from the Regulatory Trust Fund to the General Revenue Fund pursuant to Chapters 2008-152 and 2009-1, Laws of Florida. After these transfers, the cash balance at June 30, 2009, totaled \$13,354,577.

Source: Commission records.

We recognize that RAF collections may not equal the costs of regulation on an annual basis and that RAF rates must be sufficient to cover any projected increases in the costs of regulation; however, over time, the RAF collections for each company type should approximate the costs of regulating those companies. Absent documentation supporting Commission’s performance of annual RAF rate reviews, and given the increasing cash balances and the accumulated Regulatory Trust Fund cash balances in excess of the established minimum cash reserve amount, the correlation between the costs of regulation and the assessed RAF rates was not apparent.

Recommendation: We recommend that the Commission perform and maintain documentation of its periodic reviews of RAF rates. Based on these reviews, RAF rates should be adjusted to ensure that the fees relate to the costs of regulating each type of regulated company.

PRIOR AUDIT FOLLOW-UP

As part of our audit, we determined that the Commission had corrected or was in the process of correcting the findings included in audit report No. 2008-101.

OBJECTIVES, SCOPE, AND METHODOLOGY

The Auditor General conducts operational audits of governmental entities to provide the Legislature, Florida’s citizens, public entity management, and other stakeholders unbiased, timely, and relevant information for use in promoting government accountability and stewardship and improving government operations.

We conducted this operational audit from February 2009 through June 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This operational audit focused on the assessment and collection of regulatory assessment fees (RAF). The overall objectives of the audit were:

- To evaluate the effectiveness of selected internal controls in achieving management’s control objectives in the categories of compliance with controlling laws, administrative rules, and other guidelines; the economic,

efficient, and effective operation of State government; the relevance and reliability of records and reports; and the safeguarding of assets.

- To evaluate management's performance in achieving compliance with controlling laws, administrative rules, and other guidelines; the economic, efficient, and effective operation of State government; the relevance and reliability of records and reports; and the safeguarding of assets.
- To determine whether management had corrected, or was in the process of correcting, all applicable deficiencies disclosed in report No. 2008-101.
- To identify statutory and fiscal changes that may be recommended to the Legislature pursuant to Section 11.45(7)(h), Florida Statutes.

In conducting our audit we:

- Interviewed Commission personnel and reviewed Commission policies and procedures.
- Obtained an understanding of internal controls and examined key processes and procedures related to the Commission's administration of the RAF process.
- Obtained an understanding of information technology (IT) controls related to RAFS and, to the extent necessary to accomplish our audit objectives, tested the effectiveness of relevant controls.
- Obtained an understanding of Commission procedures utilized to set and adjust RAF rates.
- Requested Commission records evidencing the periodic review of RAF rates to determine whether the rates, to the extent practicable, related to the cost of regulation by industry type.
- Examined Commission records for 70 of the 1,385 regulated companies that were required to pay RAF during the period January 2008 through December 2008, to determine whether the Commission timely sent notices and timely deposited and properly recorded receipts. For the companies included in our tests, the Commission had timely sent notices and properly deposited and recorded receipts.
- Performed inquiries, inspections, and observations relating to the RAF audit process to evaluate Commission procedures for selectively auditing utility RAF payments.
- Examined Commission records for 30 of the 227 regulated companies that were delinquent in paying RAF as of August 31, 2008, to determine whether the Commission took appropriate action, including the assessment and collection of applicable penalties. For the companies included in our tests, the Commission assessed and collected applicable penalties.
- Evaluated Commission actions taken to correct the deficiencies disclosed in audit report No. 2008-101.
- Performed various other auditing procedures, including analytical procedures, as necessary, to accomplish the objectives of the audit.

AUTHORITY

Section 11.45, Florida Statutes, requires that the Auditor General conduct an operational audit of each State agency on a biennial basis. Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.



David W. Martin, CPA
Auditor General

MANAGEMENT'S RESPONSE

In a response letter dated June 30, 2010, the Executive Director of the Commission concurred with our audit findings and recommendations. The Executive Director's response is included as EXHIBIT C.

EXHIBIT A
REGULATORY ASSESSMENT FEE RATES ASSESSED
AND FEES COLLECTED DURING THE
2004-05 THROUGH 2008-09 FISCAL YEARS

Regulated Company Type	Regulatory Assessment Fee Rates and Collections by Fiscal Year				
	2004-05	2005-06	2006-07	2007-08	2008-09
Telecommunications:					
RAF Rate	0.15% ^a	0.20%	0.20%	0.20%	0.20%
Fees Collected	<u>\$ 9,026,664</u>	<u>\$11,893,048</u>	<u>\$11,131,986</u>	<u>\$10,982,180</u>	<u>\$10,103,498</u>
Electric:					
Investor-Owned					
RAF Rate	0.072%	0.072%	0.072%	0.072%	0.072%
Fees Collected	\$10,206,664	\$11,159,180	\$13,681,321	\$13,525,113	\$13,504,479
Municipals/Rural Electric Cooperatives					
RAF Rate	0.015625%	0.015625%	0.015625%	0.015625%	0.015625%
Fees Collected	<u>653,349</u>	<u>761,847</u>	<u>853,384</u>	<u>897,128</u>	<u>967,517</u>
Totals - Electric	<u>\$10,860,013</u>	<u>\$11,921,027</u>	<u>\$14,534,705</u>	<u>\$14,422,241</u>	<u>\$14,471,996</u>
Gas:					
Investor-Owned					
RAF Rate	0.50%	0.50%	0.50%	0.50%	0.50%
Fees Collected	\$ 2,380,328	\$ 2,757,904	\$ 2,817,535	\$ 2,649,942	\$ 2,684,990
Municipals/Districts					
RAF Rate	0.1919%	0.1919%	0.1919%	0.1919%	0.1919%
Fees Collected	<u>449,017</u>	<u>526,580</u>	<u>553,463</u>	<u>512,236</u>	<u>568,884</u>
Totals - Gas	<u>\$ 2,829,345</u>	<u>\$ 3,284,484</u>	<u>\$ 3,370,998</u>	<u>\$3,162,178</u>	<u>\$ 3,253,874</u>
Water & Wastewater:					
RAF Rate	4.50%	4.50%	4.50%	4.50%	4.50%
Fees Collected	<u>\$ 3,990,188</u>	<u>\$ 4,013,203</u>	<u>\$ 4,480,892</u>	<u>\$ 4,488,441</u>	<u>\$ 4,622,343</u>
Totals - All Industries	<u>\$26,706,210</u>	<u>\$31,111,762</u>	<u>\$33,518,581</u>	<u>\$33,055,040</u>	<u>\$32,451,711</u>

^a The Commission increased the RAF rate for regulated telecommunications companies from .15 percent to .20 percent, effective January 1, 2005.

Source: Commission Records.

EXHIBIT B
FLORIDA PUBLIC SERVICE REGULATORY TRUST FUND
CASH BALANCES BY REGULATED COMPANY TYPE
FOR THE FISCAL YEARS ENDED JUNE 30, 2005, THROUGH JUNE 30, 2009

	Cash Balance Amounts at Fiscal Year End				
	2004-05	2005-06	2006-07	2007-08	2008-09 ^a
Telecommunications	\$ (67,032)	\$ 459,071	\$ 1,051,788	\$ 1,769,944	\$ 3,511,594
Electric:					
Investor-Owned	\$ 6,565,100	\$ 6,926,406	\$ 9,375,602	\$ 9,817,029	\$ 9,280,676
Municipals/Rural Electric Cooperatives	(970,346)	(475,143)	58,850	623,760	1,299,892
Totals - Electric	<u>\$ 5,594,754</u>	<u>\$ 6,451,263</u>	<u>\$ 9,434,452</u>	<u>\$10,440,789</u>	<u>\$10,580,568</u>
Gas:					
Investor-Owned	\$(2,927,644)	\$(1,659,126)	\$ (335,659)	\$ 700,784	\$ 1,303,698
Municipals/Districts	448,112	786,224	1,114,868	1,320,425	1,610,285
Totals - Gas	<u>\$(2,479,532)</u>	<u>\$ (872,902)</u>	<u>\$ 779,209</u>	<u>\$ 2,021,209</u>	<u>\$ 2,913,983</u>
Water & Wastewater	<u>\$ 2,761,039</u>	<u>\$ 3,210,584</u>	<u>\$ 3,204,377</u>	<u>\$ 3,753,555</u>	<u>\$ 3,848,432</u>
Totals - All Industries	<u><u>\$ 5,809,229</u></u>	<u><u>\$ 9,248,016</u></u>	<u><u>\$14,469,826</u></u>	<u><u>\$17,985,497</u></u>	<u><u>\$20,854,577</u></u>

^a During the fiscal year ended June 30, 2009, a total of \$7.5 million was transferred from the Regulatory Trust Fund to the General Revenue Fund pursuant to Chapters 2008-152 and 2009-1, Laws of Florida. After these transfers, the cash balance at June 30, 2009, totaled \$13,354,577.

Source: Commission records.

EXHIBIT C
MANAGEMENT'S RESPONSE

COMMISSIONERS:
NANCY ARGENZIANO, CHAIRMAN
LISA POLAK EDGAR
NATHAN A. SKOP

STATE OF FLORIDA



EXECUTIVE DIRECTOR
TIMOTHY J. DEVLIN
(850) 413-6068

Public Service Commission

June 30, 2010


David W. Martin, CPA
Auditor General
G74 Claude Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

Dear Mr. Martin:

Enclosed is the Public Service Commission's response to the preliminary and tentative audit findings and recommendations resulting from your operational audit for the period July 2007 through February 2009, and selected actions taken through March 2010. We appreciate your review and believe the audit information will assist us as we work to improve Commission operations.

If you have questions or require additional information, please contact Mr. Steven Stoltz, our Inspector General, at 413-6071, or at ssoltz@psc.state.fl.us.

Sincerely,


Timothy J. Devlin
Executive Director

TJD:sjs

Enclosure

cc: Steven Stoltz
Chuck Hill

EXHIBIT C
MANAGEMENT'S RESPONSE (CONTINUED)

**RESPONSE TO OPERATIONAL AUDIT OF THE PUBLIC SERVICE COMMISSION FOR THE PERIOD
JULY 2007 THROUGH FEBRUARY 2009, AND SELECTED ACTIONS TAKEN THROUGH MARCH 2010**

JUNE 30, 2010

Recommendation: We recommend that the Commission perform and maintain documentation of its periodic reviews of RAF rates. Based on these reviews, RAF rates should be adjusted to ensure that the fees relate to the costs of regulating each type of regulated company.

Response: We agree that the Commission should improve documentation of its periodic analyses of revenue collections and cost trends for the purpose of assessing and adjusting RAF rates. While the report correctly points out that cash balances did accrue and increase in the trust fund, management determinations not to reduce RAF rates during the 2004 – 2009 period were based on indications that balances were largely due to short-term conditions that increased revenue or reduced Commission costs. These include spending restrictions and delays in filling positions required by past trust fund shortages, along with storm restoration surcharges and volatility in fuel prices that temporarily increased revenues. Such time-limited conditions did not warrant amendment of administrative rules to adjust rates. Our current review of detailed data from this period validates the correlation between increased trust fund balances in specific industries and the duration of these conditions. On an ongoing basis, these data indicate that most RAF collections by industry correlate closely with the costs of regulation, and that revenues for more recent periods are stable to declining for many regulated industries. In addition, a significant portion of the prior accumulated balances in the trust fund have been transferred to general revenue. However, we appreciate the need to perform and document review of trust fund balances and RAF rates in a systematic and documented manner, and will initiate adjustments to those rates where warranted.