STATE OF LOUISIANA
LEGISLATIVE AUDITOR

Louisiana Public Service Commission
Baton Rouge, Louisiana

April 2003

Performance Audit

This document is produced by the Legislative Auditor, State of Louisiana, Post Office Box 94397, Baton Rouge, Louisiana 70804-9397 in accordance with Louisiana Revised Statute 24:513. Sixty-four copies of this public document were produced at an approximate cost of $624.00. This material was produced in accordance with the standards for state agencies established pursuant to R.S. 43:31. An executive summary of this document is available on the Legislative Auditor's Web site at www.lla.state.la.us.

In compliance with the Americans With Disabilities Act, if you need special assistance relative to this document, or any documents of the Legislative Auditor, please contact Wayne "Skip" Irwin, Director of Administration, at 225/339-3800.

Table of Contents

LPSC Oversight (Cont.)

Mississippi River Pilots

Exhibits

Exhibits (Cont.)

Appendixes

OFFICE OF
LEGISLATIVE **A**UDITOR
STATE OF LOUISIANA
BATON ROUGE, LOUISIANA 70804-9397

1600 NORTH THIRD STREET
POST OFFICE BOX 94397
TELEPHONE: (225) 339-3800
FACSIMILE: (225) 339-3870

April 29, 2003

The Honorable John J. Hainkel, Jr.,
President of the Senate
The Honorable Charles W. DeWitt, Jr.,
Speaker of the House of Representatives

Dear Senator Hainkel and Representative DeWitt:

This report provides the results of our performance audit of the Louisiana Public Service Commission. This audit was conducted under the provisions of Title 24 of the Louisiana Revised Statutes of 1950, as amended.

This performance audit report contains our findings, conclusions, and recommendations, as well as the Louisiana Public Service Commission's response (Appendix C). I hope this report will benefit you in your legislative decision-making process.

Sincerely,

Grover C. Austin, CPA
First Assistant Legislative Auditor

GCA/dl

[LPSC03]

Office of Legislative Auditor

Performance Audit
Louisiana Public Service Commission
Executive Summary

This audit reviews the Louisiana Public Service Commission's (LPSC) management oversight of electric and gas public utilities. Electric and gas utility companies received approximately $7.6 billion from their Louisiana ratepayers in 2000 based on rates set by the LPSC. We did not attempt to second guess the individual rates set by the LPSC. Instead, we reviewed the adequacy of the process used by the LPSC to set the rates. We also reviewed the LPSC oversight over the Mississippi river pilots. The results of the audit are as follows:

Electric and Gas Utility Rate Setting and Monitoring

- The LPSC generally has standard procedures for rate setting; however, we found that inconsistencies may exist in the methodology used to analyze rates.
- The LPSC could not provide documentation of all rate monitoring activities.
- The LPSC does not define the scope of work for consultants and outside counsel in detail.
- The LPSC could not provide documentation justifying selection of consultants and outside counsel.
- The LPSC does not adequately monitor or evaluate consultant and outside counsel performance.
- The LPSC does not review consultant or outside counsel billings.
- The LPSC uses consultants and outside counsel for a large amount of LPSC work, which are more expensive than using LPSC staff.

Electric and Gas Utility Monthly Adjustments

- The LPSC has not been performing the biannual audits of the monthly adjustments as required by LPSC General Order. As of December 31, 2002, the LPSC should have audited $8.7 billion in costs passed on to Louisiana ratepayers but has only audited approximately $320 million (3.7%) of this amount.
- The LPSC does not enforce the requirements of its general order for filing of monthly adjustments for some gas utilities.
- The LPSC staff accepts monthly adjustments without complete support for all costs passed on to Louisiana ratepayers.
- The LPSC has recently lost a large amount of experience in reviewing monthly adjustments.

Documentation and Independence

- The LPSC could not provide important documentation crucial to its oversight.
- The LPSC commissioners and staff accept gifts and meals from the companies they regulate.

River Pilots

- The LPSC implements the formula for determining pilotage fees and rates in a manner that does not provide assurance that the rates the pilot associations charge shippers are reasonable and just.
- The LPSC may have set the initial pilot compensation too high because of problems with its survey and compromises between the LPSC and the Crescent pilots association.
- The ATRAM (which automatically adjusts pilot fees and compensation annually) provides an incentive for pilot associations to increase expenses.
- Some costs and expenses passed on to shippers through the ATRAM are questionable.
- The LPSC has only reviewed two of the eight ATRAMS that the pilot associations have submitted over the last three years. The increases in shipping fees and pilot compensation based on the ATRAM are in effect even though they have not all been reviewed by the LPSC.
- We identified significant errors in the ATRAM filings, resulting in the pilot associations overcharging shippers by over $4 million since 2000.

Office of Legislative Auditor
Phone No. (225) 339-3800

Introduction

Audit Initiation and Objectives

We conducted this performance audit under the provisions of Title 24 of the Louisiana Revised Statutes of 1950, as amended. In accordance with these statutes, the Office of Legislative Auditor scheduled an audit of the Louisiana Public Service Commission (LPSC), which includes the Department of Public Service. This audit was approved by the Legislative Audit Advisory Council in February 2002. We focused this performance audit on LPSC regulation of electric and gas utility companies and state river pilots. We did not attempt to second guess the individual rates set by the LPSC. Instead, we reviewed the adequacy of the process used by the LPSC to set the rates. Appendix A contains a summary of our audit scope and methodology.

Our audit objectives were to answer the following questions:

- Does the LPSC exercise appropriate oversight over electric and gas public utilities to ensure fair and reasonable rates?
- Does the LPSC ensure that the fees and rates the Mississippi River pilots charge the shipping companies are "reasonable and just" as required by law?

Department Overview

Article IV, Section 21 of the Louisiana Constitution of 1974, as amended, establishes the Louisiana Public Service Commission (LPSC). The commission is comprised of five commissioners, one elected from each of five districts around the state, who serve overlapping terms of six years. Louisiana Revised Statute (R.S.) 36:721 establishes the Department of Public Service within the executive branch and mandates that the department shall be responsible for performing the functions of the LPSC. R.S. 36:722 states that the LPSC shall represent the public interest in administration of laws applicable to the LPSC and that the LPSC shall be responsible to the legislature and to the public. R.S. 45:1163 provides that the commission shall exercise all necessary power and authority over any street railway, gas, electric light, heat, power, waterworks, or other local public utility for the purpose of fixing and regulating the rates charged or to be charged by and service furnished by such public utilities. The LPSC has set goals to "promote fair regulation of the public utilities and motor carriers operating in the state of Louisiana" and to "continue to work towards ensuring affordable rates to customers." For fiscal year 2003, the department has 122 authorized positions and a budget of approximately $7 million as shown in Exhibit 1.

Exhibit 1

Louisiana Public Service Commission
2002 Expenditures and 2003 Appropriation

Program	Fiscal Year 2002 Actual Expenditures	Fiscal Year 2003 Appropriation	Fiscal Year 2003 Authorized Positions	% of Staff
Administrative	$2,110,981	$2,552,546	33	27%
Support Services	1,406,311	1,638,181	26	21%
Motor Carrier Registration	1,169,462	1,225,465	26	21%
District Offices	1,820,164	1,671,650	37	30%
Total	**$6,506,918**	**$7,087,842**	**122**	**100%***

***** Adding percentages for each program will not equal 100% because of rounding.

Source: Prepared by legislative auditor's staff using information from the Office of Planning and Budget in the Division of Administration.

The department consists of four executive budget programs, which include districts, divisions and one office, as shown in Exhibit 2. The four programs are listed below along with a brief description of its functions and how it is organized.

- The **Administrative Program** provides management oversight as well as technical and legal support to staff. This program consists of the Executive Division (includes the secretary of the LPSC), Management and Finance Division, and Office of the General Counsel.

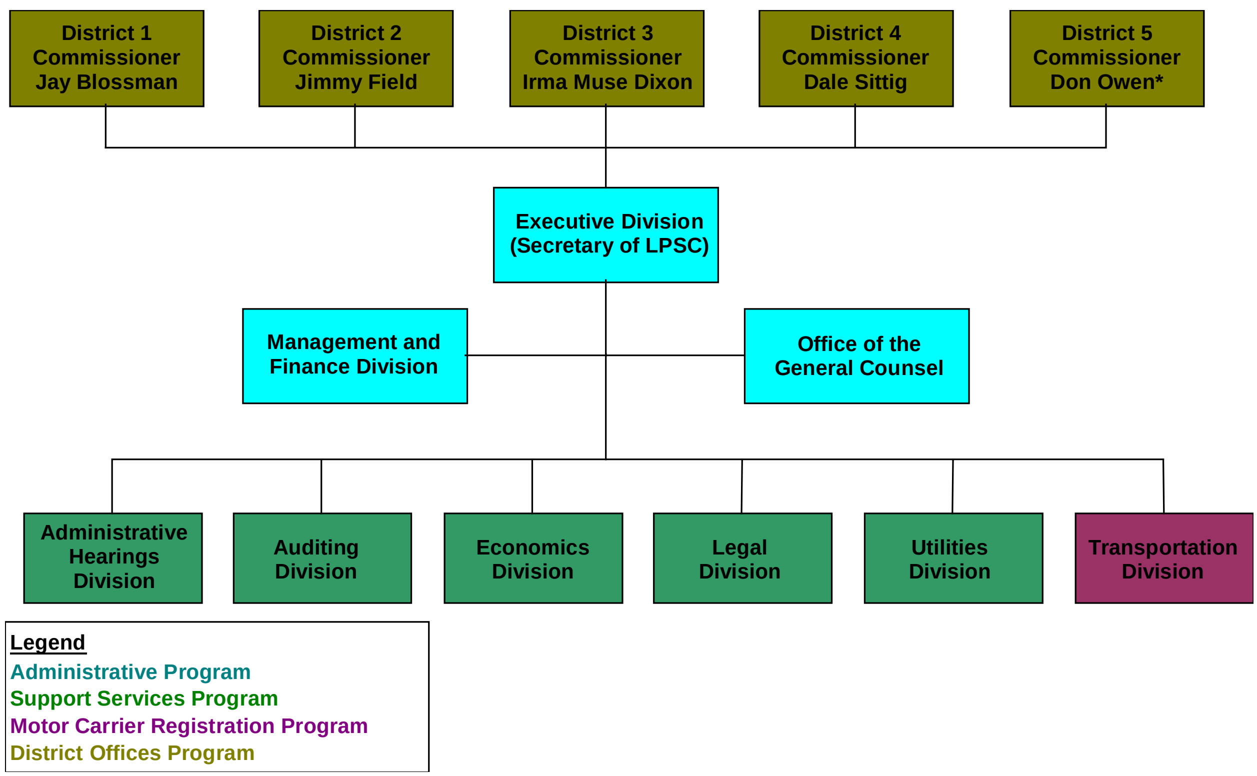
- The **Support Services Program** provides consulting functions to the PSC. This program gathers a variety of economical, legal, and statistical data that administrative law judges use in making recommendations to public service commissioners. The program's mission is to manage administrative hearings, provide the PSC with accurate information with respect to the financial condition of companies subject to the PSC's jurisdiction, and provide technical support. The Administrative Hearings Division, Auditing Division, Economics Division, Legal Division, and Utilities Division carry out the work of this program.

- The **Motor Carrier Registration Program** regulates companies that provide transportation services within and through the state. This program is comprised of the Transportation Division, which includes the Administrative and Enforcement sections.

- The **District Offices Program** serves a public relations function by handling consumer complaints and providing information to the public. Individual district offices serve as the personal office of each public service commissioner and his or her staff. Each district has one district office and one satellite office except district four, which has two satellite offices. Department staff operates the district and satellite offices.

The District Offices Program contains the commissioners, who ultimately make decisions regarding electric and gas utility and river pilot regulation. The Support Services Program contains the LPSC staff, who perform the analysis that allows the commissioners to make decisions regarding regulation. The Administrative Support Services Program provides oversight of the analysis conducted by the Support Services Program. The only program that is not involved in the regulation of electric and gas utility companies is the Motor Carrier Registration Program.

Exhibit 2
Public Service Commission Organizational Chart
During the Audit Period



* Foster Campbell was elected as commissioner in District 5 and took office in January 2003.

Source: Prepared by legislative auditor's staff using information from the LPSC.

Overview of LPSC Utility Regulation

Overview of LPSC Utility Regulation

Article IV, Section 21 (B) of the Louisiana Constitution of 1974, as amended, states that the LPSC shall regulate all common carriers and public utilities. Included in the LPSC's regulation is the review and approval of the rates that electric and gas utilities charge their customers (or ratepayers). Electric and gas utilities under the commission's jurisdiction include the following:

(1) 19 investor-owned electric and gas utilities conducting business in Louisiana;

(2) 11 electric cooperatives whose members elect to be regulated by the commission; and

(3) electric and gas utilities owned by towns, cities, parishes, or other political subdivisions of the state whose electors vote to be regulated by the commission (currently no companies in the category are regulated by the LPSC).

Appendix B contains a listing of the electric and gas utilities regulated by LPSC.

The LPSC goal is to set rates that are affordable to utility customers and that adequately compensate the utility. According to information obtained from the LPSC, electric and gas utility companies regulated by the LPSC received approximately $6.8 billion and $773 million, respectively, from their ratepayers in 2000 (the last year that complete information was available). So, while the total LPSC annual budget for regulating utilities and motor carriers is approximately $7 million, the commission sets the rates that result in over $7 billion in revenue from Louisiana ratepayers for the electric and gas utilities alone.

The Louisiana Constitution also states that the LPSC shall adopt and enforce reasonable rules, regulations, and procedures necessary for the discharge of its duties as provided by law. The LPSC does this by adopting orders through a majority vote of the commission. According to LPSC General Order No. 2, gas and electric rates are fixed by the commission to be charged, applied, and subject to review and revision any time a complaint is filed or the utility desires to change, modify, or cancel its rates.

Electric and gas utility companies often charge different rates to different types of ratepayers. For example, most companies charge different rates to residential and commercial ratepayers. Within the commercial class of ratepayers, utility companies often further subdivide ratepayers by the amount of electricity or gas they use and charge varying rates to these different subclasses. In addition, within each ratepayer class, the structure of the rate may have more than one component. For example, many gas utilities charge a flat fee plus an additional amount based on the volume of gas the ratepayer used. For each utility company, the document that shows the combination of the rates for each ratepayer class with all of their rate components is collectively referred to as a tariff. Thus, a utility company's tariff will show the rates to be charged for each ratepayer depending on the class and electricity or gas use.

The rates that electric and gas companies charge the ratepayers are made up of two components. They include the "base rate" and either the monthly fuel adjustment clauses or power cost adjustments for electric companies or the monthly purchased gas adjustments for gas companies (hereafter referred to as adjustments). Both the base rate and monthly adjustment rate are included on the ratepayers' monthly utility bills. The LPSC reviews and approves both of these rates.

Rates should be set so that the amount that the utility companies collect from the ratepayers through the base rate and adjustments is enough to cover all of the utilities' allowable expenses and to provide a reasonable profit. Allowable expenses are reasonable expenses necessary for the provision of electricity or gas to utility customers. The LPSC establishes the rates of the utility companies and is to review expenses to ensure that the profit stays within a certain acceptable range (e.g., 10% - 12%).

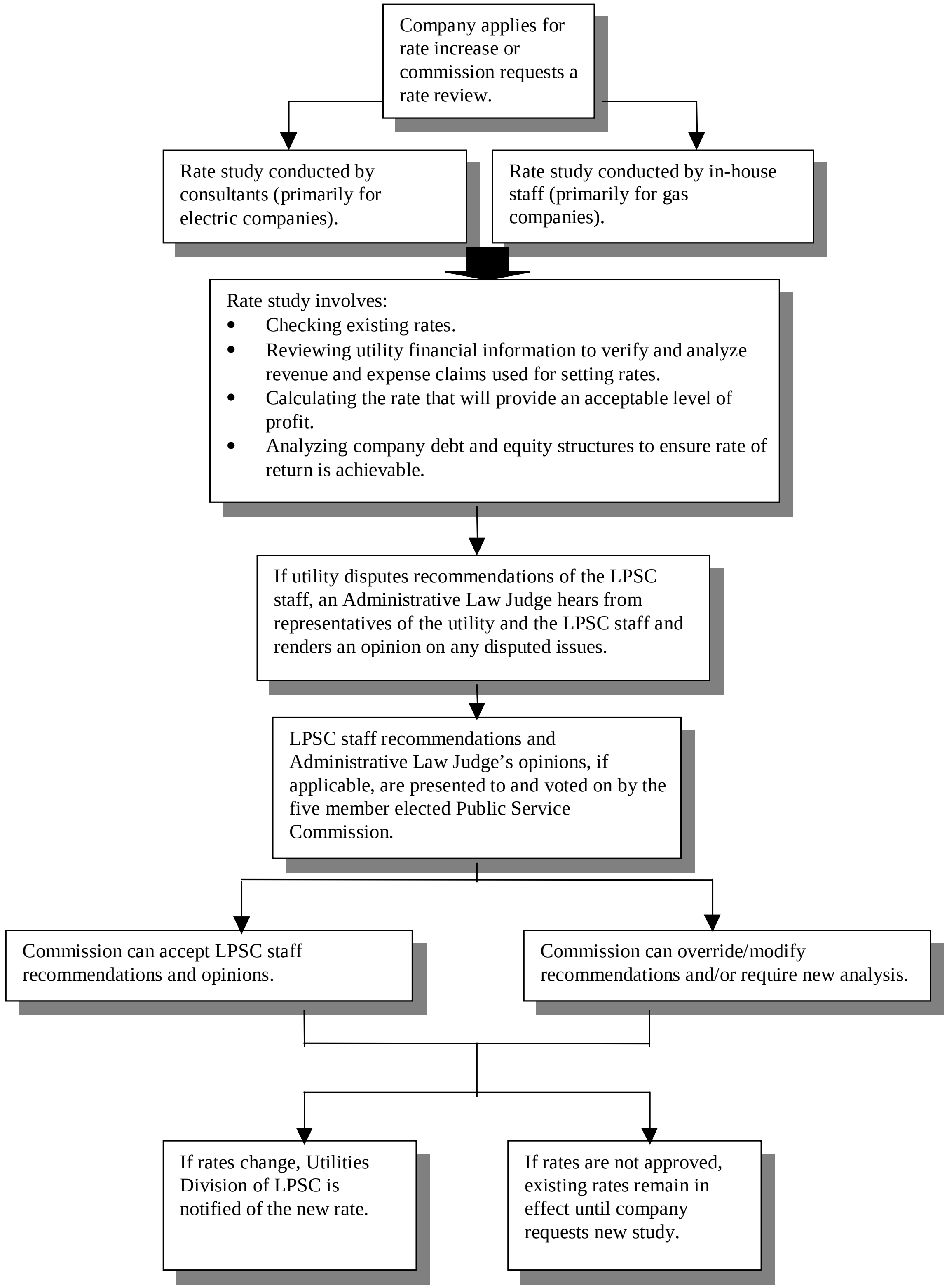
Base Rate

The base rate is the amount that a utility company charges all of its customers in order to pay for all allowable expenses, except for its fuel, purchased power, or gas costs, and still make the profit approved by the LPSC. Once the base rate is reviewed and approved by the LPSC it stays the same until the utility company requests a rate increase or decrease. Exhibit 3 summarizes the process used by the LPSC to review and approve the base rate.

The rate analysis can be performed by in-house LPSC staff or by hired consultants. When in-house LPSC staff conducts the rate analysis, the Auditing and Economics Divisions are the primary divisions involved. These divisions analyze the financial information of the utility under review. The Auditing Division is responsible for reviewing the utility's financial information to verify its accuracy, reviewing previous rate analyses and commission orders for their relevance to the present review, and calculating several measures of the rate of return received by the utility. The Economics Division is responsible for performing cost of capital studies to determine the utility's sources of capital and to compare the capital structure of the utility under review to a group of similarly situated utilities.

The Legal Division and Hearings Division are the primary divisions involved in the legal proceedings related to a rate review. The LPSC may use outside counsel to assist the Legal Division in some cases. Attorneys in the Legal Division conduct discovery, prepare motions and briefs, present testimony, and cross-examine witnesses at hearings. The Administrative Law Judges in the Hearings Division conduct status conferences, hold hearings, and render opinions on disputed matters related to the rate review.

Exhibit 3
An Overview of the LPSC Process for Setting Base Rates of Electric and Gas Utilities



Source: Prepared by legislative auditor's staff using information provided by the LPSC.

Monthly Adjustments

The monthly adjustment is the amount that utility companies charge all of its customers to recover the price they paid to produce or purchase electricity or gas. This amount should equal the exact amount the electricity, fuel or gas cost the company (the company should not make a profit off of the adjustment). Unlike the base rate, the amount charged for the adjustment varies each month according to the amount that the utility company paid for its electricity, fuel or gas.

The reasons that utility companies use the monthly adjustment to collect the cost of electricity, fuel or gas separately from the base rate is because these costs can fluctuate significantly from month to month. The base rate of the utility company stays the same unless the utility company applies to the LPSC for a rate change, which takes a significant amount of time to review and approve. If the costs of electricity, fuel or gas were included in the base rate, the utility company would need to come back to the LPSC every time the price of electricity, fuel or gas fluctuated greatly in order to change the rate to be able to recover all of its costs. Instead, the LPSC allows these costs to be included in the adjustments. Exhibit 4 summarizes the differences between the base rate and monthly adjustments charged to customers.

Exhibit 4

Differences in Base Rate and Fuel Adjustments

Base Rate	Fuel and Gas Adjustments
Rates charged to customers pay for: • All allowable costs (except for the cost of fuel) • Profit of utility company	Adjustments charged to customers pay for: • Cost of electricity, fuel or gas

Source: Prepared by legislative auditor's staff using information provided by the LPSC.

Exhibit 5 illustrates how electric and gas companies use the money collected from the ratepayers. This exhibit shows an example of a ratepayer's bill, including how the bill is broken down into base rate and adjustments. The exhibit then shows where the money goes that is paid by the ratepayer for each portion of the bill (whether it pays for fuel, gas, other costs of the utility company, or goes toward the utility companies' profits).

Exhibit 5
Example of Where Money Collected From Rate Goes

Amount Utility Charges Ratepayer

Example of Ratepayer Bill

Monthly Charge	Amount
Base Rate	$6
Adjustment	$4
Total Monthly Charge	**$10**

Where Amount Paid By Customer Goes

Utility Company Inc.
Revenues and Costs

	Amount
Total Revenue	**$10**
Costs	
Fuel or Gas	$4
All other Costs	$5
Total Costs	**$9**
Profit (Total Revenue minus Total Costs)	**$1**

Pays for actual cost of fuel or gas

Amount is enough to pay all other costs and have enough left over for profit.

Audit Results for Objective #1
Related to LPSC Management Oversight

LPSC Oversight

Does the LPSC Exercise Appropriate Oversight Over Electric and Gas Public Utilities to Ensure Fair and Reasonable Rates?

The LPSC does not provide sufficient oversight over public utilities to ensure customers that their rates are fair and reasonable. Throughout this audit, we identified deficiencies in the LPSC processes in establishing and reviewing rates and in reviewing monthly adjustments. We also noted a lack of available documentation for many oversight activities. Adequate oversight by LPSC over rate setting and monthly adjustments is important because electric and gas utility companies received approximately $7.6 billion from their Louisiana ratepayers in 2000. In addition, monitoring the work of consultants is important because the LPSC approved over $31.4 million in payments to these entities from fiscal years 1995 to 2002 and relies on the consultant's work to make decisions.

In addition, we identified several instances of gifts and meals provided to the LPSC commissioners and staff from the same electric and gas utility companies that they regulate. These gifts and meals may create a conflict of interest and/or give the appearance to the Louisiana ratepayers that LPSC staff are being influenced by the companies they are supposed to regulate. This potential conflict of interest, coupled with the lack of managerial oversight, give customers little assurance that the LPSC is an effective regulatory entity or that it is protecting the public's interest.

Summary of Audit Findings Regarding LPSC Oversight

Rate Setting and Monitoring

- The LPSC generally has standard procedures for rate setting; however, we found that inconsistencies may exist in the methodology used to analyze rates.
- The LPSC could not provide documentation of all rate monitoring activities.
- The LPSC does not define the scope of work for consultants and outside counsel in detail.
- The LPSC could not provide documentation justifying selection of consultants and outside counsel.
- The LPSC does not adequately monitor or evaluate consultant and outside counsel performance.
- The LPSC does not review consultant or outside counsel billings.
- The LPSC uses consultants and outside counsel for a large amount of LPSC work, which are more expensive than using LPSC staff.

Electric and Gas Utility Monthly Adjustments

- The LPSC has not been performing the biannual audits of the monthly adjustments as required by LPSC General Order. From 1997 to 2002, the LPSC should have audited $8.7 billion in costs passed on to Louisiana ratepayers but has only audited approximately $320 million (3.7%) of this amount.
- The LPSC does not enforce the requirements of its general order for filing of monthly adjustments for some gas utilities.

- The LPSC staff accepts monthly adjustments without complete support for all costs passed on to Louisiana ratepayers.
- The LPSC has recently lost a large amount of experience in reviewing monthly adjustments.

Documentation and Independence

- The LPSC could not provide important documentation crucial to its oversight.
- The LPSC commissioners and staff accept gifts and meals from the companies they regulate.

The summary on the previous page contains our findings contained in this audit regarding the management oversight at the LPSC. All of these findings lead us to our conclusion that the LPSC does not have sufficient oversight over public utilities to ensure customers that their rates are fair and reasonable. The following sections provide the details of the findings summarized on the previous page.

LPSC Generally Has Standard Procedures for Rate Setting; However, Inconsistencies May Exist in Methodology Used to Analyze Rates

While we found that three of the four LPSC divisions involved in rate setting have standard procedures to use in the rate setting process, we found that inconsistencies may exist in the methodology used to analyze rates. The analysis performed by the LPSC staff is the basis for the approximately $5 billion (does not include monthly adjustments) a year in electric and gas utility base rate costs for Louisiana ratepayers. Therefore, the rate reviews are key to setting rates that are fair to the utility companies and affordable to Louisiana ratepayers. Since the elected commissioners make the final decision regarding rate changes, it is their responsibility to ensure that rates are set based on sound analysis that is consistently applied.

The **Auditing Division** has a written procedure manual that identifies the standards used and describes the procedures to be followed when staff members analyze utility company financial information during rate reviews. The manual delineates the scope of the analysis and outlines the approach that is to be used. The procedures, as outlined in the manual, appear reasonable. Audit Division staff stated, however, that each rate review is unique. Therefore, the analysis that is performed is customized to the utility company under review. The professional judgment of the staff member, based on training and on-the-job experience, is used to decide how and when to customize the analysis. While this flexibility may be warranted, LPSC staff must exercise caution so that it does not result in inconsistent analysis results.

The **Legal Division** has a written procedure manual that lists the tasks to be performed by staff attorneys for rate reviews. Use of this manual helps to ensure that the legal work for rate reviews is complete and consistently performed. The **Administrative Hearings Division** follows a standard set of procedures when it processes rate review requests. The hearings and status conferences conducted by the Administrative Law Judges include representatives from the LPSC staff as well as the utility under review. This procedure helps to ensure that the Administrative Law Judges’ opinions are impartial.

The **Economics Division** does not have written procedures detailing how cost of capital studies are to be conducted at the LPSC. Division staff members rely on training, prior studies, and on-the-job-experience to guide them in their work. This lack of formal written procedures may lead to inconsistent cost of capital study results. For example, in one rate review we examined, staff analyzed the utility's financial information and recommended that the utility not receive a rate increase. Staff presented their recommendation to the commission, and the commission agreed. A few months later, the utility submitted another request for a rate increase. For this second request, staff recommended a rate increase, which was granted by the commission. In examining the documentation supporting the staff recommendation in each of these reviews, it appears that the methodology used shifted in emphasis from the first review to the second. The first review focused on the capital structure of the company in comparison to other similar utilities. The second review focused on the return on equity to the owners of the company in comparison to other similar companies.

In addition to the possible inconsistencies in rate reviews, the lack of written procedures causes problems with continuity planning. That is, if there is turnover within a division without written procedures, productivity will suffer as new staff attempt to continue the work of their predecessors.

The commission has the authority to override the LPSC staff recommendations and Administrative Law Judge opinions. Therefore, the elected commissioners have the responsibility of ensuring that the LPSC staff members have properly conducted the rate reviews. If the commission feels that the staff's analysis was not complete and consistent, it is up to the commission to take steps to correct the problem. Complete and consistent analysis by the LPSC staff is essential to setting fair and reasonable utility rates.

Recommendation 1: The LPSC should ensure that for all aspects of the rate setting process, written procedures are developed and followed. The development and use of these written procedures will help to ensure complete and consistent rate reviews and will reduce the chances of diminished productivity in the event of staff turnover.

LPSC Could Not Provide Documentation of All Rate Monitoring Activities

According to LPSC officials, commission staff do not analyze the annual financial reports of electric and gas utilities. LPSC General Order 2 requires that all companies submit annual reports on their financial and operating conditions. When we tried to obtain the annual reports for all 30 electric and gas utility companies to determine how much revenue each of these companies received from its ratepayers, we found that the LPSC did not have reports from 2001 for seven of the 30 (23%) companies.

> **Rate Stabilization Plans** are agreements between the LPSC and individual utilities that establish an acceptable profit range for the utility. The plans are in force for a predetermined number of years.
>
> Each year, utilities under rate stabilization plans submit financial information to the LPSC regarding their profitability. The LPSC staff review the information and if the LPSC determines that the utility received a profit that was above the level set by the commission, the company keeps a portion of the profit and must refund the remainder to the ratepayers.
>
> These plans are thought to encourage utility companies to operate more efficiently by allowing them to keep a portion of the profits generated through cost savings.

The LPSC claims that it annually reviews electric and gas utility companies under rate stabilization plans, but LPSC staff could not provide us with complete documentation of which companies are currently under these plans or documentation of some of the annual reviews. According to LPSC staff, eight of the 30 gas and electric utilities under the jurisdiction of the LPSC are currently operating under a rate stabilization plan. These eight utilities are responsible for 85% of the electric and gas service provided to Louisiana ratepayers. However, LPSC staff were unable to provide us with documentation showing that six of these eight utilities are currently under rate stabilization plans. All six of these utilities are currently under rate stabilization plans that have expired. One of the company's plan expired in 1994. LPSC staff asserts that the plans for the other five were extended, replaced, or under review but were unable to provide us with documentation verifying this.

For two of these companies, LPSC staff told us to contact an outside consultant to find the current status of the rate stabilization plans. We also encountered documentation problems with the LPSC when we tried to determine the date of the last review of the annual reports for companies under rate stabilization plans. As shown in Exhibit 6, we created a listing of the last rate review of each regulated electric and gas utility (either through formal rate review case or through annual rate stabilization review).

Exhibit 6

Date of Last Rate Review by LPSC of Gas and Electric Utilities
(Either through formal rate review case or through annual rate stabilization plan review)

Gas Utilities		Electric Utilities	
Company	**Date of Last Rate Review**	**Company**	**Date of Last Rate Review**
Atmos - LGS*	October 8, 2002	Beauregard Electric Cooperative, Inc.	September 8, 2000
Atmos - TransLA*	October 21, 2002	Claiborne Electric Cooperative, Inc.	June 21, 2000
Brown	Never reviewed	CLECO Corporation*	August 8, 2001
Elizabeth	Never reviewed	Concordia Electric Cooperative, Inc.	June 2, 2000
Evangeline	September 27, 2002	Dixie Electric Membership Corporation	September 8, 2000
Entergy Gulf States*	September 8, 1997	Entergy Gulf States*	December 18, 2002
Lake St. John	Never reviewed	Entergy Louisiana, Inc.*	June 17, 2002
Livingston	November 3, 1997	Jefferson Davis Electric Cooperative, Inc.	September 8, 2000
Nezpique	Never reviewed	Northeast Louisiana Power Cooperative, Inc.	May 15, 2001
Pierre Part	November 30, 1998	Pointe Coupee Electric Membership Corp.	June 2, 2000
Reliant - ArkLa*	December 6, 2000	South Louisiana Electric Cooperative Association	September 8, 2000
Reliant - Entex*	No documentation provided	Southwest Louisiana Electric Membership Corp.	June 2, 2000
St. Amant	August 8, 2001	Southwestern Electric Power Co.	December 29, 1999
South Coast	February 28, 2002	Valley Electric Membership Corp.	July 1, 2000
Starks	November 27, 1984	Washington-St. Tammany Electric Cooperative	September 8, 2000

*Companies currently under rate stabilization plans.

Source: Prepared by legislative auditor's staff from information provided by the LPSC.

LPSC officials told us that they do not check ratepayer bills against the rates listed on the utility tariffs to ensure that companies are charging ratepayers correctly. According to the LPSC, it relies on companies to charge the correct rates and ratepayers to complain if rates are incorrect. Because LPSC is responsible for setting and approving rates, ensuring that companies are charging approved rates is a responsibility that falls solely to LPSC as administrators of the rate setting process.

Monitoring all companies through reviews of annual financial reports and ratepayer bills would help the LPSC assess which companies should be more thoroughly audited to protect the ratepayer. Rate reviews resulting from a company requesting an increase in its rate are reactive rather than proactive and may not identify excessive rates as soon as practicable. Generally, the LPSC reviews rates companies when the company approaches LPSC for a rate change. Ongoing monitoring would help ensure that ratepayers are consistently charged fair rates.

We conducted two surveys of ten public service commissions in other states that are comparable to the LPSC. Appendix A provides a complete listing of all states included in our survey. Five states responded to questions on our survey regarding rate monitoring. These five states are Alabama, Arizona, Maryland, Missouri, and South Carolina. All five have monitoring and audit activities that help ensure that rates are appropriate. For example:

- All five states that responded stated that they require an annual report or other financial surveillance data to ensure that utilities meet the profit level set by their commissions.

- Alabama, Maryland, and South Carolina indicated that they have a process in place to ensure through audit or other verification that rates approved by their commissions are correctly charged to the ratepayers.

- Alabama and South Carolina indicated that they had a formal process in place to ensure through audit or other verification that commission ordered refunds actually occur. An additional state indicated that refunds are verified with a formal process but on a case-by-case basis.

Recommendation 2: The LPSC should develop policies and procedures that establish a systematic plan that requires staff to determine if rates are appropriate through the following:

- Review of annual financial reports to ensure company profit is within approved range

- Review of financial information to ensure that only allowable expenses are included in rate setting analysis

- Periodic review of ratepayer bills to ensure that utilities are charging correct rates

LPSC Could Not Provide Documentation to Justify Use of Consultant or Outside Counsel Instead of LPSC Staff

The LPSC could not easily provide documentation outlining its rationale for deciding to use consultants or outside counsel rather than LPSC staff. According to several high-ranking LPSC employees, the commission sometimes decides to use consultants or outside attorneys without input from the division director who oversees the corresponding LPSC staff. When we asked for information showing the rationale for using outside counsel or consultants, the only documentation provided showed the commission authorization to hire the particular consultants or law firms we inquired about. It did not state the rationale for the decision. The LPSC stated that the decision to hire consultants or outside counsel is discussed at the commission meetings. Therefore, the LPSC's transcript of the meeting would be the only documentation of the rationale. The LPSC did, however, provide us with its policy that states that consultants and outside counsel should only be hired when there is a shortage of staff or expertise. Without documentation related to a particular decision to hire consultants or outside counsel, there is no assurance that a consultant or outside counsel was needed.

LPSC Does Not Define the Scope of Work of Consultants and Outside Counsel in Detail

When LPSC contracts with a consultant or law firm it does not clearly define all of the work that is expected. The LPSC selects contractors through either a request for proposals (RFP) for contracts over $50,000 or from a list of preapproved contractors for contracts under $50,000. We reviewed several recent RFPs and letters to preauthorized contractors used to select consultants and law firms and these did not include details of the work expected. These documents provide details regarding the qualifications required for the consultants. The RFPs listed in detail the areas where consultants and outside counsel must show competence. However, they only included a general description of the work to be performed such as assist LPSC staff in a comprehensive review of the rates charged by the utility. Including the specific details of the work to be performed would help ensure that consultants and outside counsel perform quality work based on measurable criteria, which LPSC could use to monitor and evaluate consultants and outside counsel.

LPSC Has No Documentation Showing How Consultants and Outside Counsel Were Selected

The LPSC did not provide us with any documentation showing why one consultant or law firm was selected over another. LPSC should ensure that it keeps sufficient documentation outlining its rationale for selecting consultants and outside counsel. In the absence of this documentation, the public cannot be confident that consultants or law firms are chosen appropriately. In addition, documentation would help the LPSC defend itself against charges that its selection was based on merit rather than political or other influences.

LPSC Does Not Adequately Monitor or Evaluate Consultants and Outside Counsel

LPSC staff do not adequately monitor the work the consultants are performing or evaluate the work once it is completed. The LPSC assigns staff from the various divisions to rate reviews even when a consultant is hired. However, according to LPSC staff, with the exception of the Legal Division, they do not often interact with the consultant and usually do not attend the hearings where consultants present the results of their work. Thus, consultants work independently of LPSC staff. Also, the LPSC staff in the Economics and Auditing Divisions do not review the work of the consultant or evaluate the consultant's performance once the work is completed. The only documentation of the work performed by the consultant is the report that the consultant files with the LPSC as part of the rate review. Consultants' analyses are used as evidence to determine whether requested rate changes, including proposed rate increases for ratepayers, should be granted. If the quality of consultants' work is not verified through formal evaluations, the LPSC cannot be assured that ratepayers are protected from potentially excessive utility charges.

LPSC Does Not Review Consultant or Outside Counsel Billings

Although LPSC receives consultant and outside counsel billing statements before forwarding these bills to the utility company, it performs no verification of the bills. According to the Executive Secretary of the LPSC, it is the responsibility of the utility company paying for the consultant or outside counsel to review the bill. However, the consultant or law firm is performing the work for the LPSC. From the 1995 through 2001 fiscal years, consultants and outside counsel billed utility companies over $31.4 million for this work.[1] The LPSC is not ensuring that consultants are charging companies appropriate amounts.

R.S. 45:1180(A) allows the LPSC to charge the utility company for the consultants and outside counsel the LPSC uses to examine the utility. Standard practice at the LPSC is to forward the consultant and outside counsel bills received to the utility company under review for payment. LPSC stated that utility companies are allowed to include all reasonable consultant fees as allowable expenses when applying for rate increases. Since LPSC does not closely review consultant billings, there is little oversight to ensure that these fees are warranted.

The commission decides to hire a particular consultant or outside counsel with a vote at its public meeting. Sometimes, a letter is sent to the consultant or outside counsel informing them of their selection by the commission. We requested the authorizing documentation (i.e., meeting minutes or notification letter) for all consultants or outside counsel used from 1996 to 2001. Through the LPSC's audited financial statements for these years, we were able to determine that consultants and outside counsel billed utility companies for over $23 million during this time period. However, we were only provided documentation authorizing the hiring of consultants or outside counsel for $7.6 million of this $23 million. When we attempted to resolve this discrepancy, we were told that it could be due to a number of reasons. Possible explanations provided include:

- Authorizing documentation was not retained by the LPSC or cannot be found
- Previously authorized cases may continue to incur consultant charges (i.e., some cases may not have their own authorization)
- Omissions when the LPSC staff provided our staff with the documentation

These explanations highlight weaknesses in the LPSC's oversight of the consultants and outside counsel it hires.

Consultants and Outside Counsel Not Used Frequently in Other States

The five states responding to our survey questions regarding consultants indicated that they do not routinely use consultants or outside counsel to perform analysis related to rate reviews and monthly adjustments. The five states are Alabama, Arizona, Maryland, Missouri, and South Carolina. Alabama responded that it hired one legal consultant in the last five years and Arizona stated

[1] The $31.4 million includes payments to consultants for all regulated activities, not just for regulation of electric and gas utility companies.

that it uses consultants in 1% - 2 % of rate reviews. No other state has ever hired a consultant or outside counsel to perform work on rate reviews or monthly adjustments. States cited a variety of reasons for not hiring consultants or outside counsel, including the following:

- In-house staff is experienced and capable of doing work.
- Consultants and outside counsel are more costly and less efficient.
- Company (and ultimately the ratepayer) must pay for consultants' and outside counsels' learning curve.

Using Consultants and Outside Counsel Is More Expensive Than Using LPSC Staff

The average hourly rate that the LPSC pays for consultants is nine times greater than the hourly wages of LPSC staff. The LPSC approved consultant and outside counsel payments for nearly 47,000 hours of work, totaling $8.7 million, during fiscal years 2001 and 2002. Consultants receive compensation based on an hourly rate and are entitled to reimbursement for expenses. Based on the total hours billed over these two years, 11.3 full-time positions could have been filled and each paid an annual salary of $351,520. In contrast, the average annual salary of LPSC staff during this same time frame was $38,916. The hourly rates for these consultants and outside counsel ranged from $8.10 to $350.00 with an average hourly rate of $169.00. In contrast, the average hourly rate paid to LPSC staff that perform the same type of work as consultants and outside counsel is $18.70.

LPSC officials stated that they use consultants because of a lack of staff or a lack of staff expertise. As shown in Exhibit 7, the number of staff for the Support Services Program, which conducts work similar to that of consultants hired by the LPSC, has tripled from 1995 to 2002. However, as shown in Exhibit 8, there has not been a corresponding decrease in the amount of money spent on consultants.

Exhibit 7
Number of Positions in LPSC Support Services Program

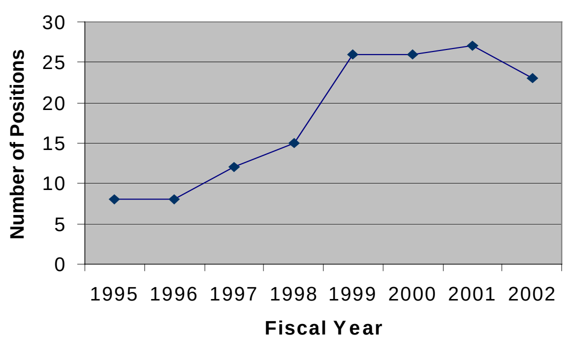
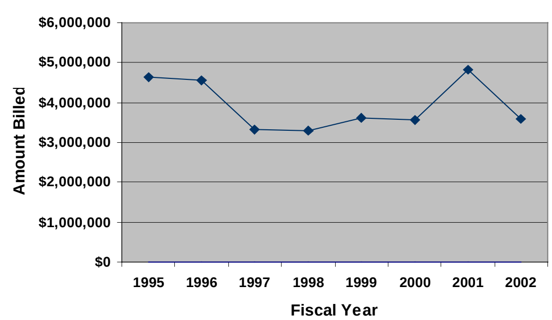
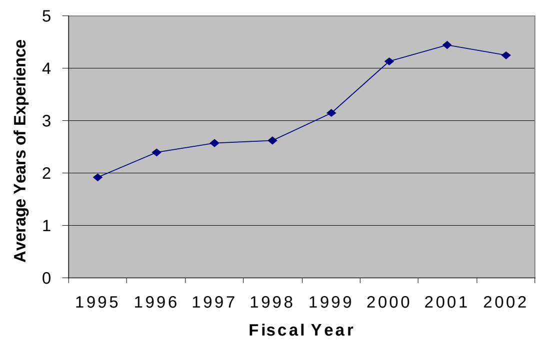


Exhibit 8
Amount Spent on Consultants by LPSC



We did find support for the LPSC statement that staff lack expertise. We reviewed the years of experience that staff have at the LPSC for the Support Services Program and found that there has only been a slight increase in years of experience at the LPSC from 1995 to 2002, as shown in Exhibit 9.

Exhibit 9
Years of Experience at LPSC for Support Services Program Staff



Much of the revenue used by the LPSC to regulate utilities is derived from two statutorily dedicated funds. At the end of fiscal year 2001, these funds had a combined balance of over $2.9 million. At the end of the 2002 fiscal year, the combined balance was approximately $5.8 million. Therefore, the LPSC could use some of this money to increase the size of the staff needed to conduct rate reviews or train existing staff, thereby alleviating the need for some of the consultants and outside counsel.

When the LPSC hires consultants and outside counsel to assist in rate reviews, the commission charges the fees and expenses incurred by the LPSC to the utility under review. A similar arrangement could be developed to charge utilities for the cost of in-house staff. This arrangement would allow the LPSC to further expand its staffing levels.

Recommendation 3: The LPSC should add specific criteria to RFPs used in the selection process, addressing the expected scope, timeliness, and methodology of work to be provided by consultants and outside counsel.

Recommendation 4: The LPSC should develop a consultant and outside counsel evaluation plan, using RFP requirements regarding the scope, timeliness, and methodology of work provided as criteria to measure the quality of work provided.

Recommendation 5: The LPSC should conduct a cost-benefit study to determine whether work currently outsourced to consultants and outside counsel could be more efficiently and effectively performed by LPSC staff. LPSC should consider further developing existing staff qualifications through training so that more complex rate reviews can be conducted by LPSC staff instead of by consultants and outside counsel. If deemed necessary, LPSC should ask the Department of Civil Service to conduct job analyses on targeted LPSC positions to determine if existing education and experience classifications, and thus, the associated pay levels, are sufficient for the desired work to be performed.

Recommendation 6: The LPSC should follow its own policy and only hire consultants and outside counsel when the LPSC staff do not have the resources or expertise to handle a rate review. This lack of resources and/or expertise should be documented in a format readily available for public review.

Recommendation 7: The LPSC should develop and implement procedures to review the consultant billings. These procedures should include a review by LPSC staff knowledgeable with regard to the particular work done. In addition, to strengthen controls over the payment process, the LPSC should require utility companies to submit payments for consultants to the LPSC. The LPSC could then pay the consultants.

Matter for Legislative Consideration 1: The legislature may wish to consider legislation that would allow the LPSC to directly charge the utilities reviewed for the cost of using in-house staff to perform rate review analyses and the related legal proceedings similar to the provisions that allow payments to consultants.

LPSC Has Not Been Conducting Required Two-Year Audits

Gas Utilities	
Group	**Number of Customers**
I	Greater than 25,000
II	500 to 25,000
III	Less than 500

The LPSC has only completed one audit of one utility company in the last three years. This completed audit was initiated because of the results of a lawsuit. The class action lawsuit resulted in a refund of $27 million to the company's ratepayers because of problems with the monthly adjustments. The LPSC initiated the audit to expand the work done on the lawsuit and resulted in an additional $506,000 in refunds. According to LPSC General Orders, every other year, the commission shall perform an audit of the prior year's monthly adjustment filings for all 15 electric utilities and the five Group I gas utilities. These audits are required to be done in addition to the limited monthly reviews of the adjustments, and according to LPSC staff, are intended to be a more in-depth review to catch any major problems missed by monthly reviews. The General Orders do not require biennial audits for Group II or Group III gas utilities (see Appendix B for a listing of the 30 gas and electric utilities).

LPSC has begun six other audits, five of which were initiated during our work on this performance audit (four began in January 2003). However, only three of these audits are for companies required by LPSC orders to have an audit (see Exhibit 10 for a schedule of these audits). Three of the companies receiving an audit are Group II or III gas utilities, which are not required by the General Orders to have an audit. In addition, these three companies are small gas utilities <u>that do not file</u> adjustments though required by LPSC General Orders.

Exhibit 10

Two-Year LPSC Adjustment Audits Completed or in Progress

Company Name	Utility Type	Required/Not	Start Date	Status
Citizens/Louisiana Gas Service	Group I - Gas	Required	7/19/00	Complete
Entergy Gulf States	Investor Owned - Electric	Required	7/19/00	In Progress
Reliant Energy - Entex	Group I - Gas	Required	7/29/02	In Progress
SWEPCO	Investor Owned - Electric	Required	1/17/03	In Progress
Brown Gas	Group III - Gas	Not Required	1/31/03	In Progress
Nezpique	Group III - Gas	Not Required	1/31/03	In Progress
Elizabeth	Group III - Gas	Not Required	1/31/03	In Progress

Source: Created by legislative auditor's staff using information provided by the LPSC.

The order for biennial audits of the monthly adjustment for electric utilities was adopted by the LPSC in November of 1997 and the order for the audits of the monthly adjustment for gas utilities was adopted in March of 1999. Based on these LPSC General Orders, each of the 15 electric utilities should be having its third audit in 2003 and each of the five Group I gas utilities should have had its second audit in 2002. Since the inception of these orders, the LPSC has allowed the utility companies to pass through $8.7 billion in monthly adjustments to ratepayers without having these costs reviewed in detail.

The LPSC General Orders for monthly adjustments state that ratepayers can be harmed if the utility companies were to manipulate or abuse the monthly adjustments and that even with monthly adjustments filings, the commission must have the ability to exercise full review over utility fuel costs. The orders also state that this ability to more closely review the costs passed through the adjustments is crucial to ensuring that ratepayers are protected. However, the LPSC cannot ensure that utilities are passing only "allowable" fuel costs to their ratepayers if it does not conduct the necessary in-depth audits of the monthly adjustments filed by their regulated utilities.

Recommendation 8: The LPSC should conduct all two-year audits of monthly adjustment filings for electric and gas utilities as required by LPSC General Orders dated November 6, 1997, and March 24, 1999.

Recommendation 9: The LPSC should amend the General Order dated March 24, 1999, to require audits of all Group II and Group III gas utilities in addition to the audits already required of Group I gas utilities. Because of the smaller size of Group II and Group III utility companies, it may not be necessary to audit them as often as Group I utilities, and the LPSC should set the appropriate time frame for these audits.

LPSC Does Not Enforce the Requirements of Its General Orders for Filings of Monthly Adjustments for Some Gas Utilities

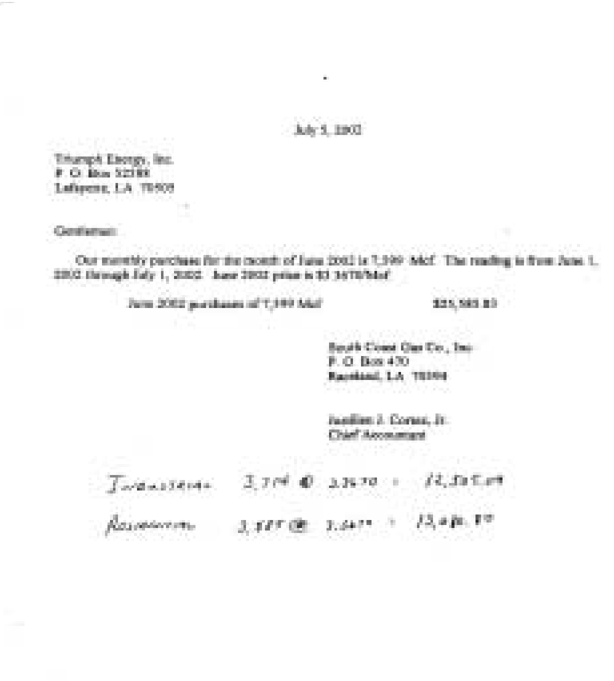
LPSC General Order dated March 24, 1999, requires all Group I and Group II gas utilities to file monthly adjustments but only requires the five Group III gas utilities to make filings with the commission no less frequently than every six months. We found no gas adjustments on file for any of the five Group III gas utilities. LPSC staff confirmed that these five companies do not file adjustments.

Recommendation 10: The LPSC should require all Group III gas utilities to file adjustments at least once every six months as required by the General Order dated March 24, 1999. The LPSC should enforce this requirement and implement penalties if necessary to ensure compliance of utilities.

LPSC Accepts Monthly Adjustments Without Complete Support for All Costs Passed on to Louisiana Ratepayers

We identified instances of missing or questionable invoices in our sample of monthly fuel and gas adjustments accepted by the LPSC that staff did not question. According to the LPSC General Orders, utility companies must file documentation sufficiently detailed to permit the commission, its staff, and customers to determine that costs listed in the monthly adjustments and passed through to the ratepayers are correct. The General Order for electric utilities requires companies to file invoices. The General Order for gas utilities makes no mention of invoices, but it does require detailed information identified on the schedules in the monthly adjustment filings. We reviewed one monthly adjustment filings from 2001 and one from 2002 for each of the 25 utility companies that file monthly adjustments and found 11 filings where utility companies did not provide invoices or submitted questionable invoices to support costs passed through to the ratepayers. We found some instances where energy companies submitted documents that were nothing more than a written letter as invoices as seen in the Exhibit 11. In another instance, the LPSC staff accepted a monthly adjustment that included costs of $1 million that were passed on to ratepayers based on a transaction summary sheet marked **"DO NOT PAY"** (see Exhibit 12). The LPSC had no other documentation on file to explain these missing or questionable invoices. When we asked LPSC staff about these missing or questionable invoices, they agreed that the invoices were questionable, that they could not be sure that the amounts passed to the ratepayers were correct without more documentation from the utility companies, and that they should have followed up

Exhibit 11: Example of a Letter Invoice


July 5, 2002

Triumph Energy, Inc.
P. O. Box [illegible]
Lafayette, LA [illegible]

Gentlemen:

Our monthly purchase for the month of June 2002 is 7,199 Mcf. The reading is from June 1, 2002 through July 1, 2002. June 2002 price is $3.[illegible]/Mcf

June 2002 purchases of 7,199 Mcf [illegible]

South Coast Gas Co., Inc.
P. O. Box 470
Raceland, LA [illegible]

[illegible]
Chief Accountant

on these cases. Yet, LPSC staff accepted these fuel adjustments without requiring the utilities to provide the missing invoices or documentation to support questionable invoices.

We identified instances where the LPSC accepted and did not question monthly adjustments with invoices that did not match the costs included in the adjustments. We found seven monthly adjustment filings in our review of 50 (14%) that had instances of invoices that did not match the amounts passed through to the ratepayers. The amounts passed through to the ratepayers that did not match the invoices totaled more than $16 million. Many of the amounts on the invoices that did not match were actually greater than the costs in the monthly filings. When we asked LPSC staff about the discrepancies, they stated that they could not reconcile the discrepancies without further information from the utility companies and agreed that they should have followed up on the discrepancy.

Exhibit 12: "DO NOT PAY" Transaction Summary

We were able to discuss discrepancies with only one of the utility companies. However, the company was not able to explain the reasons for the discrepancies. Based on our conversations with the utility company, it appears that the utility company overstated the monthly adjustment costs that are passed on to its ratepayers by nearly $2 million for three monthly adjustments we reviewed with them.

Initially, we intended to discuss the results of our review of monthly adjustments with representatives of all electric and gas utility companies. However, we were only able to discuss our review of monthly adjustment filings with representatives of three companies. This situation occurred because the LPSC issued conflicting letters to all of the utility companies. The first two letters issued by the LPSC stated that the utilities should comply with all of the auditors' requests. LPSC then sent another letter stating that the companies only had to provide information to the auditors that is normally or routinely filed with the LPSC. However, documentation on file with the LPSC was insufficient to explain the discrepancies we found because the public utilities do not normally and routinely file sufficient documentation to support rates and monthly adjustments. Because of the conflicting letters, the larger utility companies we were dealing with decided not to provide us any documentation other than what they normally and routinely filed with the LPSC.

In our sample of monthly adjustment filings, only two gas utilities we reviewed had any affiliate transactions identified, as required by the LPSC. An affiliate is a business entity that is owned or controlled by a supplier or its parent company and transacts business with that utility. The LPSC General Orders for gas and electric adjustments require all regulated electric and gas companies to report affiliate transactions to the LPSC by noting them in their filings and reporting them in annual reports. In our review of 50 monthly filings, we found only two companies that noted any affiliates in their monthly filings as required by the General Orders. In addition, we found that none of the electric and only two of the gas utilities file the required annual affiliate reports. LPSC staff stated that there are other companies that have affiliate transactions but do not note them on their monthly adjustment filings or file annual affiliate reports. LPSC staff cannot properly review monthly adjustments without requiring companies to comply with the General Order and file adequate documentation regarding affiliate transactions.

The LPSC review process for monthly adjustment filings is not detailed. This process consists of reviewing the calculations in the schedules of costs to be passed on to the ratepayers for accuracy and verifying that those costs match the invoices supplied by the energy companies. The LPSC has no policies and procedures for these reviews. LPSC staff stated that if the numbers add up and match the invoices they pass it along for approval.

Recommendation 11: The LPSC should develop and implement detailed written policies and procedures to document the process LPSC staff shall use when they review the monthly adjustments filed by the utility companies.

Recommendation 12: The LPSC should enforce the General Orders that require utilities to provide all documentation necessary to conduct comprehensive reviews of monthly adjustment filings and implement penalties if necessary to ensure compliance of utilities. The LPSC also should amend its General Order dated March 24, 1999, to require invoices for all gas adjustments.

Recommendation 13: The LPSC should require the utilities to file required documentation regarding affiliate transactions and properly review affiliate transactions as required by the General Orders. The LPSC should enforce this requirement and implement penalties if necessary to ensure compliance.

Recommendation 14: The LPSC should require all invoices and support documentation necessary for staff to ensure costs passed through to the ratepayers are allowable under the General Orders. The LPSC should enforce this requirement and implement penalties if necessary to ensure compliance of utilities.

Recommendation 15: The LPSC should require sufficient invoices that match and support all costs passed to ratepayers. If all costs passed to ratepayers do not have supporting invoices, the LPSC should require sufficient supporting documentation to be able to determine that the costs passed to ratepayers are accurate and allowable.

LPSC Has Recently Lost Staff With a Large Amount of Experience in Reviewing Monthly Adjustments

The LPSC has experienced turnover in recent years, resulting in a staff that is relatively new to reviewing monthly adjustments. As of January 2003, the two staff people who review monthly adjustments have an average of one year of experience with the LPSC. The only member of the Utilities Division that works on monthly adjustments that has a significant amount of experience is the head of the division with approximately 27 years of experience with the LPSC.

According to our survey, we found that other states have more experienced personnel reviewing monthly adjustments. For example, the monthly adjustment staff in other states has on average ten years of experience and the supervisors for monthly adjustments have on average 20 years of experience. We also found that the starting salaries of the LPSC staff and supervisors are significantly lower than the average starting salaries of the staff and supervisors in other states. The starting salaries of the monthly adjustment staff in other states are 34% higher than the starting salaries of the LPSC staff while the supervisors' starting salaries are 16% higher.

Exhibit 13 summarizes how the LPSC employees performing fuel and gas adjustments compare to their peers in other states.

Exhibit 13

Comparison of LPSC Adjustment Employees With Other States

	Average No. of Employees		Average Years of Experience		Average Starting Salary	
	Supervisors	Staff	Supervisors	Staff	Supervisors	Staff
LPSC	2	2	16	1	$38,438	$22,339
Other States	1	4	20	11	$45,876	$34,147

Source: Prepared by legislative auditor's staff with information obtained from survey results and LPSC staff. States that responded to the survey are Alabama, Arizona, Kentucky, Maryland, Missouri, and South Carolina.

Recommendation 16: The LPSC should request the Department of Civil Service to conduct a staffing study to determine if current compensation levels for fuel and gas adjustment personnel are equitable considering the amount/type of work that is done in order to attract and retain qualified employees. The LPSC should also consider enhancing the qualifications of fuel and gas adjustment staff through formal training and hiring of staff.

LPSC Could Not Provide Important Documentation Crucial to Its Oversight

Throughout this audit, the LPSC either did not have or could not provide auditors with adequate documentation for many of its oversight activities. During our evaluation of the LPSC rate setting process and review of monthly adjustments, we requested documents from the LPSC to support decisions made regarding these functions. Sufficient records should be maintained to ensure that management can defend, support, and justify its activities, as well as to readily provide information important to the public. However, the LPSC could not always provide us with the documentation we requested, as shown in Exhibit 14. Some of the documents the LPSC did not provide were internal LPSC documents, such as copies of contracts or letters of engagement with consultants. Other documents the LPSC did not provide were from utility companies, such as invoices to support monthly adjustments.

Since the LPSC did not have all documents we requested in its possession, we requested its assistance in obtaining these documents from the electric and gas utility companies. In some instances, such as monthly adjustments, the LPSC contacted the electric and gas utility companies to obtain the missing documentation and provided us with copies. However, the LPSC was not willing to help us obtain documents from the electric and gas utility companies to support the amount charged to ratepayers in the base rate. Initially, the LPSC sent letters to the utility companies asking them to fully cooperate with our document requests. Subsequently, the LPSC sent these companies letters telling them they only had to provide us with information that is normally and routinely filed with the LPSC. Following receipt of the subsequent letter, most companies chose to withhold the documentation we requested.

Exhibit 14

Instances of Lack of Documentation Identified During LPSC Audit

Rate Setting and Monitoring

- Documentation of policies and procedures used by the Economics Division for rate reviews
- Documentation of current rate stabilization plans for gas and electric utilities
- Documentation to determine date of last rate review for gas and electric utilities
- Annual financial reports of all electric and gas utilities to document the amount of revenue derived from Louisiana ratepayers
- Documentation to support the outcome of rate studies performed by consultants
- Documentation of the rationale used when deciding to hire consultants or outside counsel
- Evidence showing why particular consultants and law firms were hired
- Documentation of commission approval for a significant portion of consulting costs passed on to ratepayers
- Vague documentation regarding the scope, quality, timeliness, and methodology of work done by consultants

Monthly Adjustments

- Policies and procedures for staff review and approval of monthly adjustments
- All invoices to support costs passed on to customers in monthly adjustments
- Required affiliate transaction reports of regulated electric and gas utilities

River Pilots

- Source documentation for river pilot association expenses
- Internal memos documenting financial adjustments river pilots are required to make

Source: Prepared by legislative auditor's staff using information contained in this report.

In order to compel the utilities to provide documentation to the auditors, the Legislative Audit Advisory Counsel met and issued 31 legislative subpoenas to 29 of the 30 regulated gas and electric utility companies in Louisiana and two to one company that once owned a gas utility.[2]

Entertainment and Meals Provided to LPSC Commissioners by Companies They Regulate May Be Conflict of Interest

From the information we were able to obtain from the one major electric company we visited (CLECO), we identified $12,433 in expenses for the LPSC commissioners or their staff from January 2000 through June 2002.[3] The expenses we identified included meals, entertainment, gifts, fundraising supplies, and campaign contributions to LPSC commissioners and staff.

A breakdown of these expenses is as follows:

- $8,176 in meals, including $1,549 at various Ruth's Chris Steakhouses
- $3,426 in sporting events, including $2,800 worth of LSU sporting event tickets
- $564 in gifts, which was a trip to a spa
- $267 in campaign contributions distributed among three of the five commissioners

Exhibit 15: Ratemaking Seminar

RATEMAKING SEMINAR FOR THE LPSC STAFF

WHO: DR. MARK N. LOWRY

WHEN: MARCH 12, 2003
9:30 A.M.- 1:30 P.M.
(LUNCH IS INCLUDED)

WHERE: ENTERGY
446 NORTH BOULEVARD
BATON ROUGE
FIRST FLOOR CONFERENCE ROOM

HOPE TO SEE YOU THERE!

From the limited information we obtained, we found 109 meals provided to the LPSC Commissioners and their staff by one major electric company. The total amount for these meals was $8,176 for commissioners and their staff from January 2000 through June 2002. The staff that received these meals includes the staff that is responsible for annually reviewing this electric company's financial information to determine if it owes a refund to its consumers based on its rate of return. It may create a conflict of interest when staff of regulatory agencies accept meals and entertainment from the same companies they regulate.

As shown in Exhibit 15, we also identified one instance where an energy company regulated by the LPSC paid a consultant to provide a ratemaking seminar titled "Alternative Approaches to Utility Regulation" for the LPSC staff. In this instance, the LPSC staff received training in ratemaking through one of the companies whose rates they regulate.

---

[2] We did not send a subpoena to one electric cooperative utility because it provided us with all documentation requested during our site visit. The legislative subpoenas were issued by the Legislative Audit Advisory Council on March 24, 2003, with a return date of April 28, 2003. These subpoenas required the utility companies to provide our office with documentation of any thing of value related to, incurred for, for the benefit of, or on the behalf of any LPSC commissioner, employees, or their families. Our office did not receive the subpoenaed information at the time this report was issued.

[3] We conducted a site visit at CLECO to obtain answers to questions we formulated after reviewing its monthly adjustments. During this site visit, we asked for copies of any expenses paid to LPSC commissioners and staff. A CLECO representative stated that they would provide us with copies after they reviewed the information and redacted anything not related to the LPSC. CLECO staff then provided us with copies of some expenses for our records.

The LPSC *Employee Handbook and Policies Manual* states that the LPSC staff should follow the Louisiana Code of Governmental Ethics. This Code (specifically R.S. 42:1115) states that staff of regulatory governmental agencies are prohibited from accepting anything of economic value from entities they regulate. However, there is no such provision in the Code of Ethics for the elected officials of regulatory agencies, which includes the elected commissioners of the LPSC. Therefore, commissioners can receive travel, lodging, registration fees, sporting events, hunting trips, and other things of economic value from regulated companies as long as it is not incidental to regulatory activities, such as a utility conferences. The Louisiana Ethics Code excludes meals from the definition of a thing of economic value for commissioners and staff as long as a representative of the regulated company is present at the meal. Therefore, commissioners and staff can receive unlimited meals from regulated companies.

The information presented in this section is only for one company because we did not receive the responses to the legislative subpoenas of the remaining 29 gas and electric utility companies in time to include in this report. We cannot determine from the limited information we obtained from one utility company if any of these expenses constitute ethics violations. Nor could we conclusively determine from this information which of these expenses were passed on to the public through utility rates. We could not make these determinations because this one utility company refused to provide us further information. However, documentation we obtained from our site visit to this one major electric company shows some expenses for LPSC related activities such as a spa trip, meals for commissioners and staff, and sporting events were charged to accounts normally used by regulated utility companies for expenses passed on to their ratepayers.

According to the Louisiana Code of Ethics, it is essential to the proper operation of government that elected officials and public employees (their staff) are independent and impartial to ensure that the public has confidence in the integrity of government. The gifts and meals that we identify in this section could be viewed as influencing decisions LPSC commissioners and staff make when they regulate these utility companies. When regulated companies provide the LPSC with these benefits, it gives the appearance of impropriety. Furthermore, these gifts and meals may represent a conflict of interest between the LPSC and the companies it regulates.

Recommendation 17: The LPSC should institute its own management controls regarding the types of benefits LPSC staff can accept from the entities it regulates. These controls should ensure that the public perceives the LPSC's role in utility regulation as one of independence and objectivity. The LPSC should consult with the Louisiana Board of Ethics when creating these controls and should consult with the board on any matters that may be violations.

Matter for Legislative Consideration 2: The legislature may wish to consider the role of ethics in state government regulatory activities and make modifications to existing ethics law by instituting more stringent limitations on the amounts and types of expenses that LPSC commissioners and staff may receive from regulated companies. The legislature may wish to modify R.S. 42.1115 to reflect these limitations on elected officials of all regulatory agencies. These limitations should ensure that the public perceives the LPSC's regulatory role and the role of all officials of regulatory agencies as one that is independent and objective.

Overview of LPSC Oversight of River Pilots

Overview of LPSC Oversight of River Pilots

There are four active river pilot associations in Louisiana that are made up of state-commissioned pilots. They include:

- Associated Branch Pilots (more commonly known as "Bar" pilots)
- Crescent River Port Pilots Association
- New Orleans-Baton Rouge Steamship Pilots Association (NOBRA)
- Associated Branch Pilots of the Port of Lake Charles

The Branch, Crescent, and NOBRA pilots guide foreign vessels 288 miles from the mouth of the Mississippi River to Baton Rouge. The Lake Charles pilots operate on the Calcasieu River.

Before 1998, each pilot association had a separate fee commission with the authority to determine pilotage fees and rates. The fee commissions were comprised of four pilot association members and four steamship industry members. In 1998, members representing the steamship industry resigned their positions on all four fee commissions. As a result, the authority for determining the river pilots' fees and rates fell to the LPSC. Because the Lake Charles Pilots Association and the LPSC have not reached an agreement on how to determine pilotage fees and rates, our audit only addresses the three Mississippi River pilot associations.

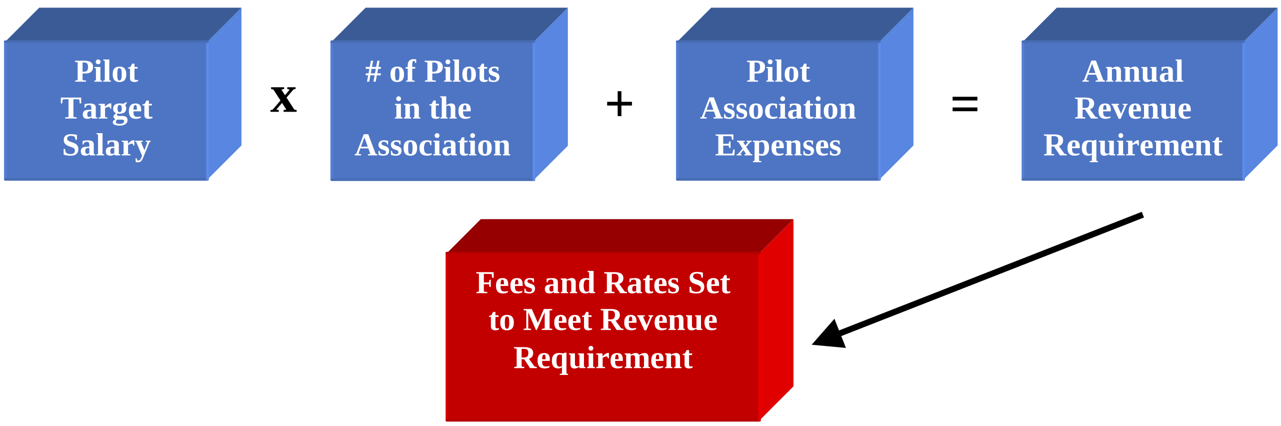
Exhibit 16 illustrates the areas the Mississippi River pilot associations cover.

Exhibit 16

Source: Prepared by legislative auditor's staff using information obtained from the LPSC.

While current law does not grant the LPSC full regulatory authority over the river pilots, R.S. 34:1121(C) and R.S. 34:1122(A) give the LPSC the authority to "constitute the fee commission" in times of dispute and to "fix and establish reasonable and just fees and rates" for pilotage services. The fees and rates charged to shipping companies are comprised of two criteria. First, the fees and rates must "provide for all ordinary and necessary operating and administrative costs and expenses" including, but not limited to, those listed in the statute. Second, the fees and rates must provide for "fair average annual compensation for a state ship pilot, in comparison to regulated state ship pilotage in other United States ports." Exhibit 17 shows the formula the LPSC uses to determine pilotage fees and rates for the Mississippi River pilot associations.

Exhibit 17
LPSC Formula for Determining Pilotage Fees and Rates



Source: Prepared by the legislative auditor's staff using information obtained from the LPSC.

Each pilot association has its own tariff, which lists that association's fees and rates, and is approved by the LPSC. These fees and rates are driven by the association's revenue requirement. This revenue requirement, which according to LPSC staff, is based on a certain level of shipping activity, is determined by multiplying the target salary for pilots by the number of pilots in the association and adding the estimated expenses for that year. The pilot associations then adjust their fees and rates to meet this revenue requirement. It should be noted that the Mississippi River pilot associations also receive additional revenues from shippers through various surcharges such as pension and vessel traffic services. The LPSC approves these surcharges.

The target salary, which is currently $335,000 per year, is intended to represent "fair average annual compensation" for the Mississippi River pilots and may or may not reflect actual annual pilot earnings. Actual pilot compensation is calculated by subtracting the expenses of a pilot association from the gross revenue and dividing the remaining amount of money among the individual pilots.

In an attempt to establish parity between the river pilot associations and to stop the pilot associations from having to request rate increases every year, the LPSC implemented the Automatic Tariff Rate Adjustment Mechanism (ATRAM). This mechanism provides for annual pilotage fee and rate adjustments based on increases in the cost of living, the addition of new pilots, and increases in operating expenses. Each year the pilot associations complete an ATRAM filing to calculate the rate adjustments. The pilot associations then adjust their fees and rates to meet their new revenue requirement and revise their tariffs accordingly.

Annually, each pilot association submits its ATRAM filing and revised tariff to the LPSC. The Auditing Division is responsible for reviewing the ATRAM filings and revised tariffs to ensure that the adjustments the pilot associations made to their fees and rates are accurate.

Audit Results for Objective #2 Related to LPSC Oversight of River Pilots

Mississippi River Pilots

Does the LPSC Ensure That the Fees and Rates the Mississippi River Pilots Charge the Shipping Companies Are "Reasonable and Just" as Required by Law?

The manner in which the LPSC implements the formula for determining pilotage fees and rates does not provide assurance that the rates the Mississippi River pilots charge shippers are reasonable and just. Specifically, we found that the LPSC may have set the initial pilot target salary too high because of problems with the survey it used to determine fair and average pilot compensation as well as compromises between the LPSC and the Crescent pilots association. We also found that the LPSC does not have a process for determining ordinary and necessary expenses and that some pilot associations' expenses are questionable. As a result of these problems, the initial revenue requirement and subsequent pilotage fees and rates for each of the Mississippi River pilot associations may have been set too high.

In addition, we found that the ATRAM is not an appropriate mechanism for annually adjusting a pilot association's tariff nor has it been implemented accurately or effectively. Problems with the ATRAM include its insensitivity to decreases in shipping activity and the LPSC's lack of oversight with regard to the ATRAM process. We also found that the formula the LPSC uses to determine pilotage fees and rates provides an incentive for pilot associations to increase their expenses. As a result, the current revenue requirements for each pilot association may be too high. Subsequently, the fees and rates the Mississippi River pilot associations charge shipping companies may also be too high.

From 1999 to 2001, the Mississippi River pilot associations have collected over **$248 million** from shippers through their rates, fees, and surcharges. As a result, it is imperative that the LPSC ensure that pilotage fees and rates are determined correctly.

Current Law Does Not Provide for Regulation of the River Pilots

When the members of the fee commissions representing the steamship industry resigned their positions in 1998, the LPSC took over the process of determining pilotage fees and rates. Current law only provides for the LPSC to intervene in disputes of the fee commission related to pilotage fees and rates or any other legitimate business of the commission. Specifically, R.S. 34:1121(C) states that if members representing the interests of the pilot associations and steamship industry are unable to resolve any dispute regarding pilotage fees, rates, or any other business, the LPSC "shall constitute the commission for the purpose of making a decision relative to the dispute."

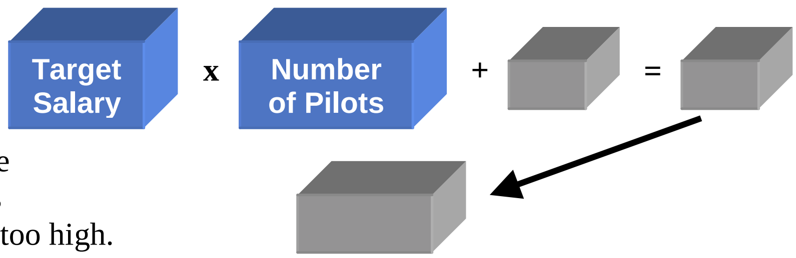
Because of deficiencies in the law, the river pilots constitute an unregulated monopoly in Louisiana. Without regulation, there is no mechanism in place to ensure that pilotage fees and rates are kept as low as possible, while still providing the shipping companies with quality service and the river pilots with fair annual compensation. Also, no formal process exists by which the shipping industry can voice concerns about pilotage rates or the services that the pilots provide.

Matter for Legislative Consideration 3: The legislature may wish to consider amending R.S. 34.1121 to give full regulatory authority over the state-commissioned river pilots to the LPSC.

LPSC May Have Set the Initial Target Salary Too High

Several problems exist with the way the LPSC determined the initial target pilot salary. As a result, the initial target salary and subsequent target salaries may have been set too high for the Mississippi River pilot associations. Consequently, the revenue requirement and resulting fees and rates for these pilot associations may also be too high.

Formula for Determining Pilotage Fees and Rates:



The sample used in the survey to determine the initial pilot target salary may not have been comparable to the Mississippi River pilots. R.S. 34:1122(B) provides that pilotage fees and rates shall provide for fair average annual compensation "in comparison to" other state regulated ship pilots in the United States. In addition, the Supreme Court of Louisiana stated that a rate order establishing a pilot fee schedule should include findings "as to the fair average annual compensation for a pilot operating under similar working conditions . . .", Giallanza v. Louisiana Public Service Commission, 412 So.2d 1369,1374 (La.1982). When determining fair average annual pilot compensation for the Crescent pilots association, the first pilot association to come to the LPSC for a tariff renewal, the LPSC designed and conducted a salary survey of approximately 60 state pilot associations throughout the country. Of the 60 associations surveyed, 23 (38%) responded.

While the LPSC staff adjusted the survey results for differences in the cost of living, they performed no other adjustments to ensure that the pilot associations surveyed were actually comparable to the Mississippi River pilot associations. For example, the number of pilots in the associations that responded to the survey ranged from two to 101 and the average revenue per hour, adjusted for the cost of living, ranged from $292 to $1,677. LPSC staff stated that while each pilot association had some characteristic that made it different from the other associations, they did not have a method in which to analyze or compensate for these differences.

As a result, the LPSC cannot provide assurance that the pilot associations surveyed were actually comparable to the Louisiana pilot associations. Subsequently, the LPSC cannot provide assurance that the initial target salary eventually agreed upon by the LPSC and the Crescent River Port Pilots Association represents fair average compensation for a Mississippi River pilot in comparison to other state pilots.

Recommendation 18: The LPSC staff should revise the survey methodology to adjust the salary amounts for differences between the pilot associations. The LPSC should then adjust the Mississippi River pilots' target salaries to reflect the average salary amount found in the survey, adjusted for the cost of living.

The law regarding how the LPSC should determine "fair average annual compensation" for the Mississippi River pilots is vague. R.S. 34:1122(B) states that "pilotage fees and rates shall provide for fair average annual compensation for a state ship pilot, in comparison to regulated state ship pilotage in other United States ports." Because the law does not define "state ship pilot," it is unclear whether or not the LPSC is required or even allowed to look at the pilot salaries of private river pilot companies in Louisiana, such as the Federal Pilots Association, when determining "fair average annual compensation" pilot compensation.[1] Consequently, the LPSC staff did not include the Federal pilots in the survey.

According to LPSC staff and the Federal Pilots Association, however, pilots for the Federal Pilots Association guide domestic vessels along the same bodies of water as the state-commissioned river pilots and perform the same services. As a result, the Federal pilots may provide for a more accurate comparison to the Mississippi River pilots, when determining "fair average annual pilot compensation."

Matter for Legislative Consideration 4: The legislature may wish to consider revising R.S. 34:1122(B) to define the term "state ship pilot" and to specifically include the salaries of the other Louisiana river pilots when determining fair average annual pilot compensation as these pilots provide more comparable pilotage services to those provided by the Mississippi River pilots than do other states.

[1] The Federal Pilots Association is a private Louisiana company that is owned and operated by 16 river pilots. These pilots guide U.S. flagged vessels along the Mississippi River from the sea buoy to Baton Rouge. Whereas the state-commissioned river pilots have three associations, each covering a different section of the Mississippi River, the Federal Pilots Association covers the whole route itself.

The process the LPSC used to reach an initial target salary of $314,100 involved questionable compromises between the LPSC and the Crescent pilots association. According to LPSC staff, the average Crescent pilot salary in 1997 was $224,092 with benefits. When the Crescent pilots association went to the LPSC for its tariff renewal in 1998, however, it requested a target salary of $284,000 without benefits as the Crescent pilots claimed that they were underpaid compared to other pilot associations.

According to the LPSC's Pilot Association Survey, the national average salary of state pilot associations, not including the Crescent pilots association, was $248,635 with benefits. However, LPSC staff recommended the commission accept the Crescent pilot association's request for a target salary of $284,000 with benefits. According to LPSC staff, the main reason for this 26.6% increase was that Crescent pilot compensation per bridge hour and mile was substantially lower than the national and regional averages.

Since the $284,000 salary figure was based upon 1997 survey results, the figure was adjusted for inflation for 1998 and 1999 prior to implementation. Instead of basing the inflation adjustment on the Consumer Price Index for urban consumers of the South, which was 2.8% in 1998 and 2.5% in 1999, LPSC staff averaged each of these percentages with the 6% adjustment figure requested by the Crescent River Port Pilots Association. As shown in Exhibit 18, this compromise resulted in actual inflation adjustment figures of 4.4% and 4.25%, respectively.

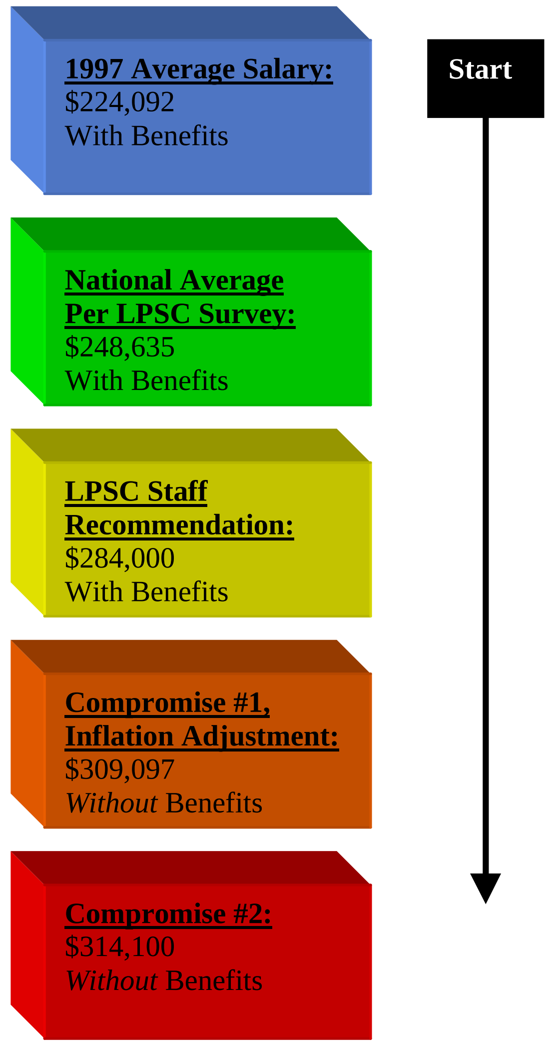
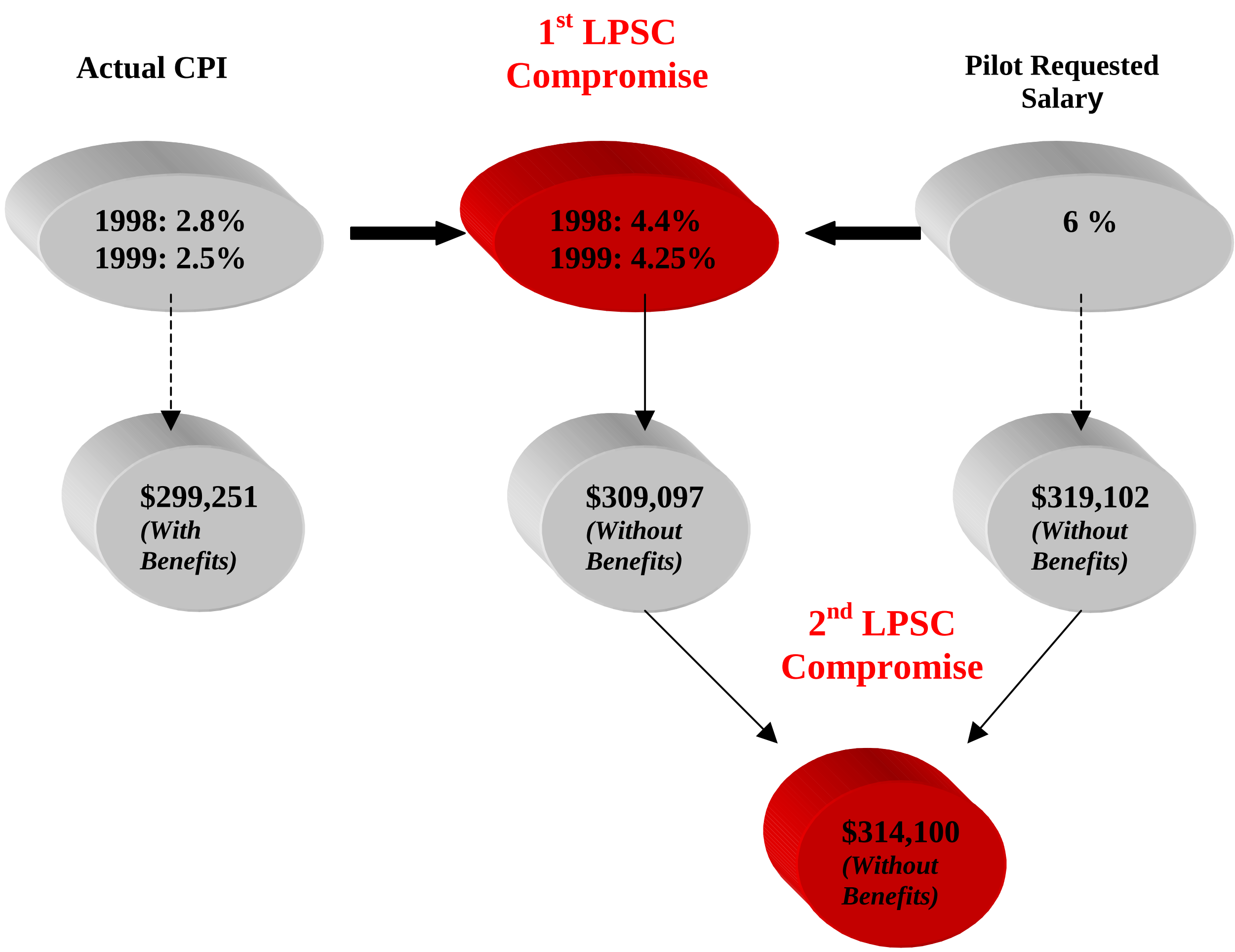


Exhibit 18
LPSC Compromises in Setting the Initial Target Salary



Source: Prepared by the legislative auditor's staff using information obtained from LPSC staff and LPSC Order T-23268, Appendix A.

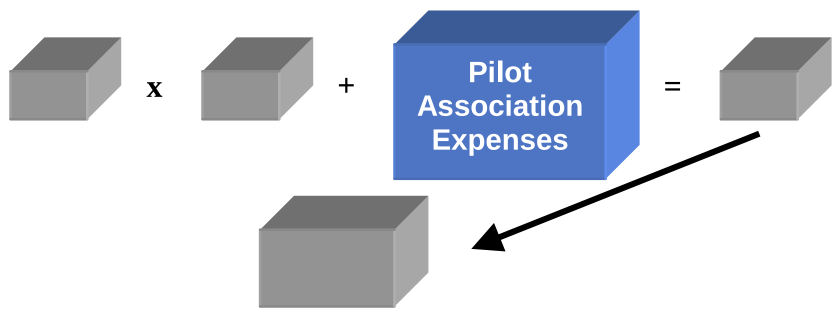
This first compromise resulted in an initial target salary of $309,097 without benefits, rather than the $299,251 with benefits that would have been set if the LPSC had used the actual consumer price index percentages and had not dropped pilot benefits from the salary figure. LPSC staff further compromised with the Crescent pilots by "splitting the difference" between their target salary request of $319,102 (using the 6% adjustment figure) and the $309,097 figure the LPSC calculated, arriving at an initial target salary of $314,100 without benefits. We cannot determine exactly where or why pilot benefits were dropped from the final target salary.

As a result of these compromises, the Mississippi River pilot associations collected $14,849 ($314,100 - $299,251) of additional revenue per pilot from shippers in 1999 alone. Since 1999, the pilot associations have collected from shippers approximately $9.4 million in extra revenues because of these compromises.

Recommendation 19: The LPSC should adjust the Mississippi River pilots' initial target salary using the consumer price index instead of the negotiated percentages.

Some of the Expenses Reported by the Pilot Associations Are Questionable

Formula for Determining Pilotage Fees and Rates:



Several problems exist with the expense component of the formula the LPSC uses to determine pilotage fees and rates. Specifically, the LPSC has no formal process for determining which fees are "ordinary and necessary." In addition, the formula provides an incentive for pilot associations to increase their expenses. Consequently, the revenue requirement and subsequent fees and rates for the Mississippi River pilot associations may be too high.

The ATRAM (Automatic Tariff Rate Adjustment Mechanism) provides an incentive for pilot associations to increase expenses. Currently, pilot associations must report an increase in expenses to the LPSC in order for the ATRAM to increase the expense component of the fee and rate formula. Because they must report an increase in expenses to increase pilotage fees and rates, there is no incentive for the pilot associations to minimize their expenses.

Also, the pilot associations paid some expenses for services rendered by pilots. Based on notes to the financial statements from audit reports for each of the pilot associations, all three associations rent office space from companies made up of some, if not all, of the same pilots in their associations. Two of the three pilot groups rent crew boat services from companies made up of substantially all or some of the same pilots in their associations. These facts again illustrate that pilots have no incentive to minimize expenses. Based on records filed at the LPSC, we are unable to determine that the expenses being claimed for office rent and crew boat services by the various associations are at fair market value.

Recommendation 20: The LPSC should revise the ATRAM to ensure that pilot associations are minimizing expenses.

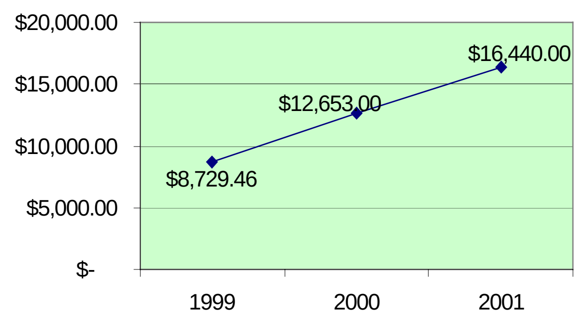
The LPSC does not have an order listing "ordinary and necessary" expenses for the Mississippi River pilot associations. R.S. 34:1122(B) states that pilotage fees and rates must provide for all "ordinary and necessary operating and administrative costs and expenses." The statute also contains a listing of expenses, but qualifies it with the statement, "including, but not limited to." Without a specific order stating which expenses are truly "ordinary and necessary," it is difficult for

LPSC audit staff to determine which pilot association expenses are appropriate and allowable and which ones are not.

Recommendation 21: The LPSC should issue an order that defines the term "ordinary and necessary operating expenses" and list the expenses that it will allow when establishing a pilot association's fees and rates.

Some of the costs and expenses passed on to shippers through the ATRAM are questionable. R.S. 34:1122(B) states that "pilotage fees and rates shall provide for all ordinary and necessary operating and administrative costs and expenses." However, we found that some of the pilot associations' expenses as well as the related costs of these expenses are questionable. For example, the NOBRA pilots reported that their "group insurance" cost over $22,000 per pilot per year for 2001 and 2002. In addition, as illustrated in Exhibit 19, the cost of the Crescent pilots' health insurance has nearly doubled in the last three years.

Exhibit 19
Crescent Pilots' Health Insurance Costs (Per Pilot)
1999-2001



Source: Prepared by legislative auditor's staff using information obtained from the Crescent Pilots' 2000-2002 ATRAM filings.

In addition to these high health insurance costs, the Crescent pilots listed "union dues" as another expense. Since each river pilot association is a monopoly, there does not appear to be a need for a pilot union. Furthermore, the LPSC order setting up the ATRAM for the Crescent pilots states that the association "is structured as a partnership consisting of independent contractors." Therefore, we question the appropriateness of the $408,937 in revenue the Crescent pilots collected from shippers for union dues from 2000 to 2002.

The Crescent pilots also listed "interest on working capital" as an expense. The LPSC audit manager stated that he "had no idea" what "interest on working capital" represented. While R.S. 34:1122(B) allows for "reasonable return on investment of pilot stations," the ATRAM does not provide sufficient detail to show that "interest on working capital" as presented in the ATRAM filings is for pilot stations. Also, the LPSC Order setting up the Crescent pilots' ATRAM, which according to the audit manager should list all allowable expenses did not list this item. As a result, we could not determine if the $1,174,029 in revenue the Crescent pilots collected from shippers for this expense from 2000 to 2002 was appropriate.

In addition, the NOBRA pilots charged shippers for a "pilot reimbursement expense" in 2001 and 2002. While the LPSC audit manager stated that this expense included a $250 per day stipend for individual pilot expenses such as meals and transportation, the NOBRA ATRAM filings did not include an explanation or any detail regarding this item nor did it list what specific expenses were reimbursed. Again, the LPSC Order setting up the NOBRA pilots' ATRAM does not list the "pilot reimbursement expense." As a result, we could not determine if the $510,000 in revenue the NOBRA pilots collected from shippers for these expenses in 2001 and 2002 was appropriate.

Exhibit 20 summarizes the amount of money two of the pilot associations collected for questionable expenses from shippers from 2000 to 2002.

Exhibit 20

Money Collected by the Pilot Associations From Shipping Companies for Questionable Expenses

Pilot Association	Expense	Amount
Crescent (2000 to 2002)	Union Dues	$408,937
Crescent (2000 to 2002)	Interest on Working Capital	$1,174,029
NOBRA (2001 and 2002)	Pilot Reimbursement Expense	$510,000
Total		**$2,092,966**

Note: The NOBRA pilot association did not file its first ATRAM until 2001.

Source: Prepared by legislative auditor's staff using information obtained from the LPSC.

While we attempted to contact the Crescent and NOBRA pilot associations concerning these questionable expense items, no one returned our calls. Therefore, we could not determine if these expenses were indeed "ordinary and necessary."

Recommendation 22: The LPSC should require source documentation for all pilot association expenses. Furthermore, the LPSC should disallow the charges for "union dues," "interest on working capital," and "pilot reimbursement expenses" until the respective associations can justify their existence.

The ATRAM Has Not Been Implemented Accurately or Effectively

The Crescent River Port Pilots Association, in collaboration with the LPSC, developed the ATRAM (Automatic Tariff Rate Adjustment Mechanism) to annually adjust pilotage fees and rates for the following:

1. Increases in cost of living
2. Increases in operating expenses
3. Addition of new pilots

We found that the ATRAM filings the Mississippi River pilot associations submitted from 2000 to 2002 were inconsistent in terms of content, contained at least $4 million of errors in favor of the pilots, and lacked sufficient detail to justify the expenses passed to shippers. In addition, the LPSC had no formal guidelines for ATRAM review, had not reviewed 75% of the ATRAM filings it received, and had allowed the pilot associations to implement their fee and rate increases before reviewing them.

If the pilot associations properly compiled and submitted their ATRAM filings, the LPSC could use this information to verify that the amount of revenues collected by the pilot associations did not exceed their needs for pilot compensation and expenses. The ATRAM could also verify that any compensation amount that exceeded the target salary figure was due to increases in shipping activity and not due to pilotage fees and rates being set too high.

Recommendation 23: The LPSC should develop policies and procedures that address the process its audit staff should follow when reviewing the ATRAM filings, the process for reconciling errors, and the time frame for completing the review.

Tariff adjustments are in effect until the ATRAMs are reviewed by the LPSC audit staff. The LPSC allows the pilot associations to calculate their own ATRAM adjustments, convert their new revenue requirements into the pilotage fees and rates, and adjust their tariffs accordingly. The LPSC also allows the fee and rate adjustments to go into effect prior to the PSC audit staff reviewing the ATRAM filing. As a result, any errors the pilot associations make when calculating their annual revenue requirements are passed on to shippers in the form of higher fees and rates until they are discovered by the LPSC during the ATRAM review. The LPSC audit manager identified significant errors during his review of the NOBRA ATRAM filings. However, he was unable to provide us with a copy of the memo he sent to the NOBRA pilot association containing the corrections and subsequent adjustments the association was supposed to make to its ATRAM and tariff.

Exhibit 21 shows the amount of revenues the Mississippi River pilot associations have collected from shippers from 1999 to 2001.

Exhibit 21

Mississippi River Pilot Associations' 1999-2001 Revenue Collected From Shippers

Pilot Association	1999	2000	2001
Bar	Not Available	$21,872,556*	$21,695,431*
NOBRA	Not Available	$32,071,289*	$36,498,045*
Crescent	$43,614,295**	$45,541,171*	$46,735,414*

* Data obtained from Pilot Association financial statements.
** Data obtained from Pilot Association ATRAM filings.

Note: We were unable to obtain 1999 data for the BAR and NOBRA associations.

Source: Prepared by legislative auditor's staff using information obtained from the LPSC.

Recommendation 24: The LPSC should review the ATRAM filings in a timely manner and prohibit the pilot associations from adjusting their fees and rates until these adjustments are reviewed by the Auditing Division.

The LPSC has only reviewed two of the eight ATRAMs (25%) the three Mississippi River pilot associations have submitted over the past three years. According to the LPSC audit manager, lack of appropriate staffing has resulted in delays in reviewing the ATRAM filings, which would ordinarily take only two to three weeks to complete. As a result, some ATRAMs have been in effect for three years without the LPSC Audit Division ever having reviewed them. Exhibit 22 shows the current status of the LPSC's ATRAM reviews.

Exhibit 22
Has the ATRAM Review Been Performed by LPSC Audit Staff?

ATRAM Year	NOBRA Pilot Association	Crescent Pilot Association	Bar Pilot Association
2000	N/A	No	No
2001	(Completed in January 2003)	No	No
2002	Yes (Completed in January 2003)	No	No

Note: The NOBRA Pilot Association submitted its first ATRAM in 2000.

Source: Prepared by legislative auditor's staff using information obtained from LPSC audit manager.

Recommendation 25: The LPSC audit staff should conduct ATRAM reviews in a timely manner to ensure that rate adjustment errors are not passed on to the shipping companies.

The ATRAM filings contain significant errors that have resulted in the Mississippi River pilot associations overcharging shippers by over $4 million since 2000. Upon review of the NOBRA ATRAMs, the LPSC found two significant errors. During our review of all three pilot associations' ATRAMs, we found four additional errors. These errors have resulted in the NOBRA pilot association overcharging shippers by $1.8 million since 2001 and the Bar pilots overcharging shippers by $2.2 million since 2000.

1. The 2002 Bar pilots ATRAM reported a *decrease* in operating expenses, yet they increased the expense component of the ATRAM as if they had experienced an *increase* in expenses. This was accomplished by treating the expense limitation amount *as an actual increase in expenses, while disregarding the expense decrease that they calculated and reported.* The effect of this error is $214,484 in the pilots' favor.

2. The 2001 Bar pilots ATRAM contains an error of unknown cause in the calculation of the pilot compensation adjustment. The result of this error is $759,896 in the pilots' favor.

3. The 2000 Bar pilots ATRAM contains an error of unknown cause in the calculation of the revenue increase. The result of this error is $1,221,455 in the pilots' favor.

4. Both the 2001 and 2002 NOBRA ATRAMs include salaries and expenses for six Vessel Traffic Service (VTS) pilots, which are paid out of a separate VTS surcharge. The inclusion of these pilot salaries and expenses amount to $714,190 of excess charges in both ATRAMs.

5. The LPSC audit manager discovered that the 2001 NOBRA ATRAM contained annualized figures rather than actual, year-end data. This error resulted in the NOBRA pilot association collecting $124,752 of excess revenues from shippers.

6. The LPSC audit manager discovered that the 2002 NOBRA ATRAM contained $106,323 in excess administrative expense as well as $242,782 of "certain expense items" that were disallowed by LPSC staff. We were unable to obtain an explanation or detail of what these two errors specifically entailed from the LPSC.

The aggregate result of these errors increased the fees charged to shippers by $4,019,128, as illustrated in Exhibit 23.

Exhibit 23

Summary of Over Charges Through the ATRAM 2000-2002

Pilot Association	2000	2001	2002	TOTAL
Crescent	No Errors Found	No Errors Found	No Errors Found	**$0**
Bar	$1,221,455	$759,896	$214,484	**$2,195,835**
NOBRA	N/A	$838,942	$984,352	**$1,823,294**
Total				**$4,019,129**

Notes: NOBRA totals include amounts calculated by PSC staff and Office of Legislative Auditor. Some NOBRA errors were not found by both parties.
NOBRA's first year under the ATRAM was 2001.

Source: Prepared by legislative auditor's staff based on analysis of information provided by LPSC staff.

Recommendation 26: The LPSC's audit staff should adequately review the ATRAMs for errors and require the re-submission of erroneous ATRAMs by the pilot associations when they are discovered.

The content of the ATRAM filings is not consistent, and the filings possess insufficient detail to justify the expenses passed on to shippers. In preparing their ATRAM filings, pilot associations do not follow a consistent format nor do they include all of the necessary information. During our review, we identified two vital components of the ATRAM that were not consistently present or were based only on partial year data:

- Shipping Activity Reports: Provide various indicators of shipping activity (e.g., miles piloted, bridge hours, number of turns, etc.) for the year.

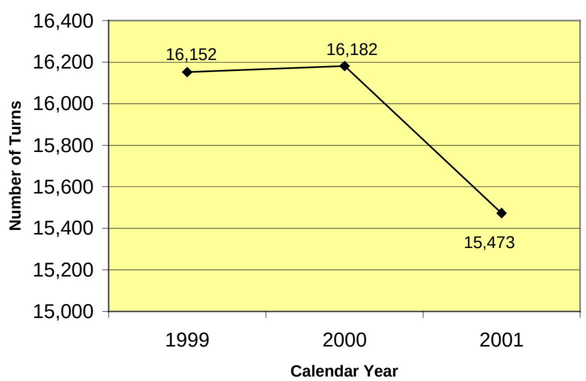
- Operating Expense Breakdowns: Detail the increases in operating expenses (e.g., health insurance, union dues) that are passed on to shippers through the ATRAM.

Only six of the eight ATRAM filings we reviewed (75%) possessed the appropriate shipping reports, while only two of the eight (25%) possessed the appropriate operating expense breakdowns. In addition, some associations calculated their shipping activity and operating expense breakdown reports based on six months of annualized data, rather than using actual year-end figures. Without consistent content and sufficient detail, the LPSC staff cannot properly review the ATRAM filings and determine if the associated rate adjustments are "reasonable and just" as required by R.S. 34:1122(B).

Recommendation 27: The LPSC should include in its order for each association a requirement for source documentation that the pilot associations must provide regarding the expenses they passed on to shippers. These orders should also define the concept of "ordinary and necessary operating expenses" and list only those expenses the LPSC allows when establishing a pilot association's fees and rates.

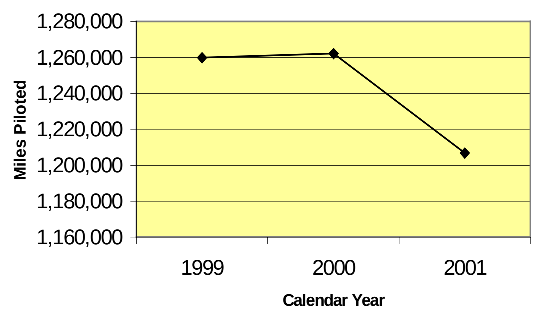
The ATRAM is not sensitive to decreases in shipping activity. Actual shipping activity plays no direct role in the ATRAM (Automatic Tariff Rate Adjustment Mechanism) fee adjustments. Instead, pilotage fees and rates may increase even when shipping activity decreases. For example, we found that while shipping activity for the Crescent pilots decreased from 1999 to 2001 in terms of the number of turns, miles piloted, and bridge hours, the operating expenses of the Crescent pilots association increased by 42%. Exhibits 24, 25, and 26 illustrate the relationship between shipping activity and operating expenses for the Crescent pilots association.

Exhibit 24
Crescent Pilots Association
Number of Turns, 1999-2001



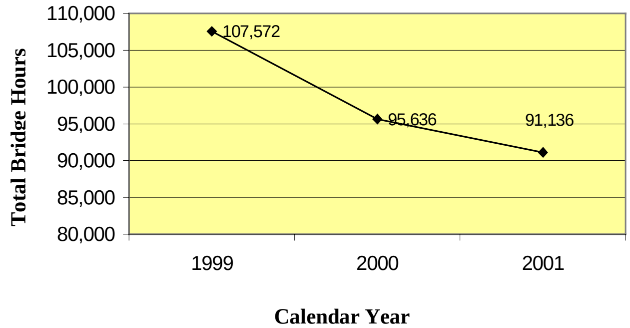
Source: Prepared by legislative auditor's staff using information obtained from the Crescent Pilots' 2000-2002 ATRAM filings.

Exhibit 25
Crescent Pilots Association
Miles Piloted, 1999-2001



Source: Prepared by legislative auditor's staff using information obtained from the Crescent Pilots' 2000-2002 ATRAM filings.

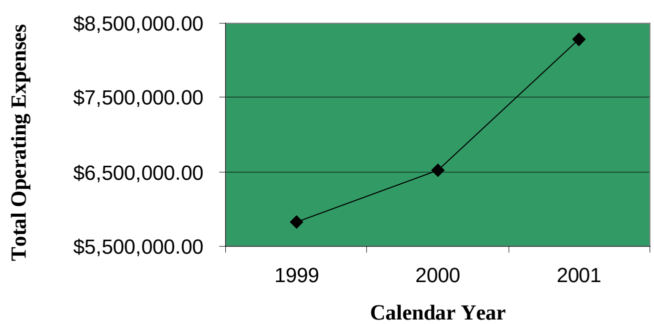
Exhibit 26
Crescent Pilots Association
Total Bridge Hours, 1999-2001



Source: Prepared by legislative auditor's staff using information obtained from the Crescent Pilots' 2000-2002 ATRAM filings.

As illustrated above, the Crescent pilots have experienced a significant decrease in shipping activity over the past three years. The number of turns (jobs performed by pilots) has decreased by 4.2%, the total number of bridge hours has decreased by 15.3%, and miles piloted have decreased by 4.2%. However, as illustrated in Exhibit 27, operating expenses for the Crescent pilots association have increased by 42% over the same time period.

Exhibit 27
Crescent Pilots Association
Operating Expenses, 1999-2001



Source: Prepared by legislative auditor's staff using information obtained from the Crescent Pilots' 2000-2002 ATRAM filings.

Recommendation 28: The LPSC should incorporate a mechanism to ensure that adjustments to tariff rates are representative of changes in shipping activity.

Appendix A

Audit Scope and Methodology

Appendix A: Audit Scope and Methodology

We conducted this performance audit under the provisions of Title 24 of the Louisiana Revised Statutes of 1950, as amended. We followed the applicable generally accepted government auditing standards as promulgated by the Comptroller General of the United States. Preliminary work on this audit began in April 2002.

Scope

This audit focused on the management oversight activities of the LPSC as well as LPSC oversight of the river pilots in Louisiana. The audit covered rate setting and regulatory activities for fiscal years 1997 through 2002. Specifically, we addressed the following areas:

- Management oversight over electric and gas public utilities regulated by the LPSC including rate setting and monitoring, monthly adjustments, and documentation and independence when conducting regulatory activities

- Process used by LPSC to determine the rates of the Mississippi River pilots (Associated Branch Pilots, Crescent River Port Pilots Association, and the New Orleans-Baton Rouge Steamship Pilots Association)

Methodology

LPSC Management Oversight

To determine whether the LPSC exercises appropriate oversight over electric and gas public utilities to ensure fair and reasonable rates, we performed the following procedures:

- Researched applicable state laws relating to the LPSC
- Interviewed LPSC staff regarding the rate setting process for gas and electric public utilities
- Reviewed examples of staff documents related to rate reviews including staff reports, commission orders, rate tariffs, and correspondence between the utility and the LPSC to determine the rate setting process used by LPSC for electric and gas utilities
- Reviewed examples of documents related to the selection of consultants and outside counsel
- Interviewed LPSC staff regarding the audit and review process for monthly adjustments filed by gas and electric public utilities
- Interviewed representatives of three public utility companies regulated by the LPSC and received certain documents from the companies
- Reviewed examples of monthly adjustments filed by gas and electric public utilities

<u>LPSC Oversight of River Pilots in Louisiana</u>

To determine whether the LPSC ensures that the fees and rates the Mississippi River pilots charge the shipping companies are "reasonable and just" as required by law, we completed the following procedures:

- Reviewed state law pertaining to the Mississippi River pilots
- Interviewed LPSC staff regarding the process the Mississippi River pilots use to set their rates
- Documented how the LPSC determined the initial pilot target salary of $314,100
- Analyzed the pilot association expenses from fiscal year 2000 to 2002
- Analyzed the ATRAM filings for the Mississippi Pilot Associations for fiscal years 2000, 2001, and 2002

<u>Survey of Other States Public Service or Utility Commissions</u>

To compare the structure and activities of the LPSC with comparable Public Service Commissions of Other States, we conducted two surveys of ten states, which included the following procedures:

- Selected comparable states based on the states selected for review in the 1992 study of the Louisiana Public Service Commission published by the Public Affairs Research Council (PAR). These states include:
    - Alabama
    - Arizona
    - Kentucky
    - Maryland
    - Minnesota
    - Missouri
    - South Carolina
    - Tennessee
    - Washington
    - Wisconsin
- Prepared questions related to the structure and activities of other states, as well as the procedures followed by their staff with regard to purchased gas adjustments (PGA), fuel adjustments, and rate cases.
- Sent the first survey in November 2002 to all ten states and received responses from seven (70%) of them. The three states that did not respond were Minnesota, Tennessee, and Washington.
- Sent the second survey in February 2003 to each of the seven states that responded to the first survey and received responses from six (85.7%) of them. Only Kentucky did not respond.
- Conducted follow-up and performed analysis to compare surveyed states to Louisiana's Public Service Commission.

Appendix B

Revenues of Electric and Gas Utility Companies Regulated by the LPSC

Appendix B: Revenues of Electric and Gas Utility Companies Regulated by the LPSC

Electric Utility Companies

Company Name	Type of Utility	Rate Recovery 2001	Monthly Adjustment Recovery 2001
CLECO	Investor Owned	$578,439,135	$297,360,086
Entergy - Gulf States	Investor Owned	1,326,221,308	772,215,511
Entergy - Louisiana	Investor Owned	1,886,307,966	944,393,748
SWEPCO	Investor Owned	290,151,584	114,412,260
Beauregard	Cooperative	44,153,887	28,197,055
Claiborne	Cooperative	31,532,368	21,867,239
Concordia	Cooperative	12,902,591	6,984,084
DEMCO	Cooperative	103,181,120	64,382,648
Jefferson Davis	Cooperative	14,456,457	8,491,180
Northeast Louisiana	Cooperative	16,737,805	10,362,443
Pointe Coupee	Cooperative	13,395,876	8,638,112
SLECA	Cooperative	28,031,106	18,168,664
SLEMCO	Cooperative	103,287,512	67,153,087
Valley	Cooperative	37,233,806	24,308,091
Washington-St. Tammany	Cooperative	50,122,499	32,342,580
Subtotal Electric		**$4,536,155,020**	**$2,419,276,788**

Gas Utility Companies

Company Name	Type of Utility	Rate Recovery 2001	Monthly Adjustment Recovery 2001
Atmos Energy - LGS (*2000)	Group I	$154,088,473	$86,596,257
Atmos Energy - Trans LA (*2000)	Group I	55,487,124	31,285,364
Entergy - Gulf States	Group I	57,371,216	45,173,495
Reliant Energy - ArkLa (Now Centerpoint)	Group I	105,865,936	93,070,728
Reliant Energy - Entex (Now Centerpoint)	Group I	82,668,632	55,390,926
Evangeline (*2002)	Group II	2,615,739	1,787,996
Livingston/French Settlement (*2000)	Group II	601,180	286,515
Pierre Part	Group II	484,175	335,977
South Coast	Group II	9,256,876	6,517,048
St. Amant (*2000)	Group II	289,060	192,962
Brown	Group III	11,165	7,082
Elizabeth	Group III	**Did Not File**	**Did Not File**
Lake St. John	Group III	99,933	54,125
Nezpique	Group III	182,909	120,316
Starks	Group III	**Did Not File**	**Did Not File**
Subtotal Gas		**$469,022,418**	**$320,818,791**
Total Electric and Gas Utilities		**$5,005,177,438**	**$2,740,095,579**
Grand Total All Revenues		**$7,745,273,017**	

Note: * We could only obtain recovery information for the year indicated.
According to LPSC officials, there are two other electric cooperatives under LPSC jurisdiction that they do not regulate.

Source: Prepared by legislative auditor's staff using information provided by the LPSC.

Appendix C

Louisiana Public Service Commission’s Response

Louisiana Public Service Commission

POST OFFICE BOX 91154
BATON ROUGE, LOUISIANA 70821-9154

Telephone: (225) 342-9888

April 29, 2003

VIA HAND DELIVERY

David Greer, Assistant Legislative Auditor
Louisiana Legislative Auditor
1600 North Third Street
P.O. Box 94397
Baton Rouge, Louisiana 70804-9397

Re: Response to Performance Audit Report

Dear Mr. Greer:

In accordance with the agreement made in our telephone conversation on April 22, 2003 and confirmed by my letter to you dated April 23, 2003, enclosed is the Response of the Louisiana Public Service Commission to the draft Performance Audit Report received by the Commission from your office on April 8, 2003.

As referenced in your letter dated April 7, 2003, we are submitting this Response to be appended to, and thereby made a part of, the final Performance Audit Report. We reserve the right to supplement this Response if any further revisions are made to your Report.

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

Sincerely,

Lawrence C. St. Blanc
Executive Secretary

Enclosure
LCStB:ahs

cc: Commissioner Blossman
Commissioner Dixon
Commissioner Sittig
Commissioner Field
Commissioner Campbell

CONFIDENTIAL

Office of the Legislative Auditor – Performance Audit Division
Checklist for Audit Recommendations

Instructions to audited agency: Please check the appropriate box below for each recommendation. A summary of your response for each recommendation will be included in the body of the report. The entire text of your response will be included as an appendix to the audit report.

RECOMMENDATION(S)	AGREE	PARTIALLY AGREE	DISAGREE
Recommendation 1: LPSC should ensure that for all aspects of the rate setting process, written procedures are developed and followed. The development and use of these written procedures will help ensure complete and consistent rate reviews and will reduce the chances of diminished productivity in the event of staff.			X See LPSC Response
Recommendation 2: LPSC should develop policies and procedures that establish a systematic plan that requires staff to determine if rates are appropriate.		X See LPSC Response	
Recommendation 3: LPSC should add specific criteria to RFPs used in the selection process, addressing the expected scope, timeliness, and methodology of work provided as criteria to measure the quality of work provided.		X See LPSC Response	
Recommendation 4: LPSC should develop a consultant and outside counsel evaluation plan, using RFP requirements regarding the scope, timeliness, and methodology of work provided as criteria to measure the quality of work provided.		X See LPSC Response	
Recommendation 5: LPSC should conduct a cost-benefit study to determine whether work currently outsourced to consultants and outside counsel could be more efficiently and effectively performed by LPSC staff. LPSC should consider further developing existing staff qualifications through training so that more complex rate reviews can be conducted by LPSC staff instead of by consultants and outside counsel. If deemed necessary, LPSC should ask the Department of Civil services to conduct job analyses on targeted LPSC positions to determine if existing education and experience classifications, and thus, the associated pay levels, are sufficient for the desired work to e performed. This would reduce the reliance upon consultants and outside counsel to perform complex rate		X See LPSC Response	

reviews.			
Recommendation 6: LPSC should folow its own policy and only hire consultants and outside counsel when the LPSC staff do not have the resources or expertise to handle a rate review. This lack of resources and/or expertise should e documented in a format readily available for public review.		X See LPSC Response	
Recommendation 7: LPSC should develop and implement procedures to review the consultant billings. These procedures should include a review by LPSC staff knowledgeable with regard to the particular work done.		X See LPSC Response	
Recommendation 8: LPSC should conduct all two-year audits of monthly adjustment filings for electric and gas utilities as required by LPSC General Order dated November 6, 1997 and March 24, 1999.		X See LPSC Response	
Recommendation 9: LPSC should amend the General Order dated March 24, 1999 to require audits of all Group II and Group III gas utilities in addition to the audits already required of Group I gas utilities. Because of the smaller six of Group II and Group III utility companies, it may not be necessary to audit them as often as Group I utilities, and the LPSC should set the appropriate timeframe for these audits.		X See LPSC Response	
Recommendation 10: LPSC should require all Group III gas utilities to file adjustments at least every six months as required by the General Order dated March 24, 1999. The LPSC should enforce this requirement and implement penalties if necessary to ensure compliance of utilities.		X See LPSC Response	
Recommendation 11: LPSC should develop and implement detailed written policies and procedures to document the process LPSC staff shall use when they review the monthly adjustments filed by the utility companies.		X See LPSC Response	
Recommendation 12: LPSC should enforce the General Orders that require utilities to provide all documentation necessary to conduct comprehensive reviews of monthly adjustment filings and implement penalties if necessary to ensure compliance of utilities. The LPSC should also amend its General order dated March 24, 1999 to require invoices for all gas adjustments.			X See LPSC Response

Recommendation 13: LPSC should require the utilities to file required documentation regarding affiliate transactions and properly review affiliate transactions as required by the General Orders. The LPSC should enforce this requirement and implement penalties if necessary to ensure compliance.		X See LPSC Response	
Recommendation 14: LPSC should require all invoices and support documentation necessary to ensure costs passed through to the ratepayers are allowable under the General orders. The LPSC should enforce this requirement and implement penalties id necessary to ensure compliance of utilities.		X See LPSC Response	
Recommendation 15: LPSC should require sufficient invoices that match and support all costs passed to ratepayers. If all cpsts passed to ratepayers do not have supporting invoices, LPSC should require sufficient supporting documentation to be able to determine that the costs passed to ratepayers are accurate and allowable.		X See LPSC Response	
Recommendation 16: LPSC should request the Department of civil Service to conduct a staffing study to determine if current compensation levels for fuel and gas adjustment personnel are equitable considering the amount/type of work that is done in order to attract and retain qualified employees. The LPSC should also consider enhancing the qualifications of fuel and adjustment staff through formal training and hiring of staff.		X See LPSC Response	
Recommendation 17: LPSC should institute its own management controls regarding the types of benefits LPSC staff can accept from the entities it regulates. These controls should ensure that the public perceives the LPSC's role in utility regulation as one of independence and objectivity.		X See LPSC Response	
Recommendation 18: LPSC staff should revise the survey methodology to adjust the salary amounts for differences between the pilot associations. The LPSC should then adjust the Mississippi River pilots' target salaries to reflect the average salary amount found in the survey, adjusted for the cost of living.		X See LPSC Response	
Recommendation 19: LPSC should issue an order adjusting the pilot target compensation levels for inflation using the consumer price index.		X See LPSC Response	

Recommendation 20: LPSC should revise the ATRAM and remove the incentive for pilot associations to increase their expenses.			X See LPSC Response
Recommendation 21: LPSC should issue an order that defines the term "ordinary and necessary operating expenses" and list the expenses that it will allow when establishing a pilot association's fees and rates.			X See LPSC Response
Recommendation 22: LPSC should require source documentation for all pilot association expenses. Furthermore, the LPSC should disallow the charges for "union dues," "interest on working capital" and "pilot reimbursement expenses" until the respective associations can justify their existence.		X See LPSC Response	
Recommendation 23: LPSC should develop an order that specifically addresses the ATRAM process. The order should specify the content of the ATRAM filing, the process the pilot associations must follow when completing their reports, and the timeframe in which the reports must be submitted. The LPSC should also develop policies and procedures that address the process its audit staff should follow when reviewing the ATRAM filings, the process for reconciling errors, and the timeframe for completing the review.		X See LPSC Response	
Recommendation 24: LPSC should review the ATRAM filings in a timely manner and prohibit the pilot associations from adjusting their fees and rates until these adjustments are reviewed by the Auditing Division.		X See LPSC Response	
Recommendation 25: LPSC audit staff should contact ATRAM reviews in a timely manner to ensure that rate adjustments errors are not passed on to the shipping companies.		X See LPSC Response	
Recommendation 26: LPSC audit staff should adequately review the ATRAMs for errors, and require the re-submission of erroneous ATRAMs by the pilot associations when they are discovered.			X See LPSC Response
Recommendation 27: LPSC should issue an order that specifies the content of the ATRAM filing, including the documentation the pilot associations must provide regarding the expenses they passed on to shippers. This order should also define the concept of "ordinary and necessary operating expenses" and list the expenses the LPSC allows when establishing a pilot associations' fees and rates.			X See LPSC Response

Recommendation 28: LPSC should incorporate a mechanism to ensure that adjustments to tariff rates are representative of changes in shipping activity.			X See LPSC Response

RESPONSE OF LOUISIANA PUBLIC SERVICE COMMISSION

APRIL 29, 2003

TO THE PERFORMANCE AUDIT REPORT DATED APRIL 7, 2003 SUBMITTED BY THE LOUISIANA LEGISLATIVE AUDITOR CONDUCTED MAY 2002 – APRIL 2003

TABLE OF CONTENTS

RESPONSE OF THE LOUISIANA PUBLIC SERVICE COMMISSION

SECTION 1: INTRODUCTION

PREAMBLE

The Louisiana Public Service Commission ("Commission" or "LPSC") submits this Response ("Response") to the Performance Audit Report ("Report"), submitted by the Office of Legislative Auditor ("Auditor"), to this Commission on April 8, 2003, which Response, in its entirety, is to be appended to, and made a part of, the Report. [Auditor Letter dated April 7, 2003 attached as Exhibit A]. The Commission appreciates the recommendations made in the Report. However, a number of responses and clarifications to the Report are necessary. ***In addition, to the extent any revisions are made to the Audit Report subsequent to the submission of this Response, the Commission reserves the right to supplement this Response and have it appended to the final version of the Report.***

The Louisiana Public Service Commission is the Constitutionally created body authorized and empowered to regulate the rates charged and services rendered by all public utilities and common carriers subject to its jurisdiction within the State. The Commission's unique expertise in the areas of ratemaking has consistently been recognized by the Louisiana Supreme Court. The Auditor's Report notes what it believes are some technical shortcomings in the Commission's reporting and record keeping requirements. In some instances, the Auditor is incorrect in those observations. The Report, however, suffers from two much more fundamental flaws. First, the Auditor second-guesses the Commission's ratemaking methodologies and ratemaking decisions. The Auditor has neither the experience nor the expertise to judge the Commission's performance in that regard. Second, and possibly most importantly, the Legislative Auditor fails to analyze the Commission's performance according to the two most important criteria: the level of rates and the quality of service. As the facts set forth below will demonstrate, Louisiana ratepayers enjoy safe reliable utility service at extremely affordable rates. Not only do the rates in Louisiana compare favorably with those of utilities nationwide, but the Commission continues to reduce rates to their lowest reasonable levels consistent with safety, reliability and the opportunity for the regulated utilities to earn their fair rates of return. Contrary to the impression that might be left by the Auditor's Report. The Commission, though severely understaffed, and with its employees underpaid, is doing a superb job of protecting Louisiana ratepayers and ensuring the constituted delivery of reliable utility service.[1]

In the *Introduction*, the Commission will address the methodology and contents of the Report as a whole. The *Responses to the Auditor's Recommendations* will address each Recommendation individually. Additionally, the *Table of Factual Errors in the Legislative Audit Report* will address page-by-page, the numerous errors of fact contained within the Report. The *Table of Documents and Information Provided to the Auditor* demonstrates the cooperative nature of the Commission throughout the Performance Audit and refutes allegations within the Report that the Commission was not forthcoming with information. This Table is, or can be, substantiated by written statements of Commission employees. Finally, the Commission has attached certain Exhibits necessary to supplement this Response.

[1] The Auditor acknowledges both the need for additional staffing and increased compensation for Commission employees.

METHODOLOGY AND CONTENTS OF REPORT

The Auditor has Received the Full and Complete Cooperation of Commission

The Auditor has been engaged in a "Performance Audit" of the Commission since May 8, 2002. Tens of thousands of pages of materials have been made available to and/or copied by the Auditor. In addition, full and unrestricted access to Commission employees was given to the Auditor during the entire audit period. Initially, the Auditor removed numerous boxes of the Commission's original documents and the Commission was forced to ask for the return of these originals repeatedly, in writing, some months later. The Auditor refused to provide the Commission written requests for the documents it sought, nor would it provide written acknowledgment of any copies made of Commission documents. For record-keeping purposes, the Commission began to compile a table of many Auditor requests for copies and information ("Table"). This Table is attached to, and is an integral part of, this Report at Section 4. The Commission was forced to take this action not only to ensure the integrity of its records but especially due to the repeated misrepresentations made by the Auditor to the public, including the press, about the cooperation of the Commission. These repeated breaches of the confidentiality of the audit process may reflect a lack of impartiality of the Auditor, and may also constitute violations of La. R.S. 24:513 and 44:6 which state that reports of the Auditor are not public records until three days after completion of the final report. Many requests for copies and/or information from the Commission were made multiple times, and the copies and information were given to multiple Auditor employees. [See Table @ Section 4 of this Response]. Although a waste of taxpayer money and Commission resources, the Commission complied with all of these redundant requests.

The Louisiana Constitution Grants the Commission Exclusive Rate-Making Authority Over the Rates Charged and Services Rendered By All Public Utilities and Common Carriers in the State

The Commission was created by the people and is a creature of the Louisiana Constitution, not the Legislature. The Louisiana Supreme Court has also repeatedly recognized the Commission's broad grant of authority and expertise in the area of utility ratemaking. Neither the courts nor the legislature can set rates for utilities, a concept repeatedly affirmed by the Louisiana and U.S. Supreme Courts. *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333 (1944); *Gulf States Util. Co. v. Louisiana Pub. Serv. Comm'n*, 578 So. 2d 71 (La.), *cert denied*, 1212 S. Ct. 637 (1991); *Cajun Elec. Power Co-op. v. Louisiana Pub. Serv. Comm'n,* 544 So.2d 362 (La. 1989); *Bowie v. Louisiana Pub. Serv. Comm'n,* 627 So.2d 164 (La. 1993); *Louisiana Consumers' League v. Louisiana Pub. Serv. Comm'n,* 351 So.2d 128 (La. 1977); Attorney General Opinion 96-249].

The Commission's Regulation of River Pilot Groups is Temporary and Unlike Utilities the Commission's Regulation of the Pilots is Constrained by Legislative Mandate

More than one-third of the Report critiques the Commission's regulation of the River Pilots even though the LPSC does not normally regulate those associations. The Commission has been charged with the *temporary* duty of regulating the state commissioned pilot groups for approximately 4 years. In addition, unlike its plenary authority to regulate public utilities and common carriers, the Legislature has prescribed what are and what are not appropriate expenses for the pilots and what methodology must be used in setting their fees. This has occupied a tremendous amount of LPSC Staff time and expense, especially due to the contentious issues which have arisen during the course of these proceedings. ***The LPSC has received no additional funding or staffing to handle these cases***. As a result, a significant shortage of manpower has been experienced at the Commission during this time. These cases have put a great strain on the Commission and its Staff. However, the Report then recommends that the LPSC be "given full authority over the state-commissioned river pilots." This seems to indicate that the Auditor has confidence in the LPSC's ability and expertise to regulate the pilots. If the LPSC had done a poor job in this endeavor, the Auditors would not make this recommendation. For these reasons, the LPSC submits that it is inappropriate and unfair to conduct a Performance Audit of the Commission with regard to the Pilots.

The Auditors' Fiscal Audits of the Commission Have Always Produced Exemplary Results

For the past five years, the Fiscal Audits conducted on the Commission's records by the Auditor have produced extremely positive results, including statements that the Commission should be "proud" of the results. Any such references to the positive "performance" of the Commission are absent from the Report, as well as the fact that approximately $5,000,000.00 is generated each year by the Commission for the State Treasury, in excess of the cost of running the Commission.

The Commission's "Performance" in Maintaining Reliable Service and Reasonable Rates is Excellent

The Legislative Auditor labels its evaluation of the LPSC a "performance audit," but it pointedly omits reference to the most important aspect of a regulatory agency's performance – the *results it achieves for consumers.* The Legislative Auditor was informed of these results and received documentation of the results, but chose not to include them in the performance audit. Further, although the Legislative Auditor compared the LPSC's use of the consultants and outside counsel to the use of these resources by supposedly "comparable" regulatory commissions in other states, the Legislative Auditor never compares the *results achieved* in Louisiana to the *results achieved* in other states.

The Legislative Auditor reports that electric and gas utilities received $7.6 Billion from consumers in 2000 and that outside consultants were paid $31.4 million between 1995 and 2002 in the regulation of these utilities. The Legislative Auditor omits reference, however, to the results achieved by the LPSC in the regulation of electric and gas utilities over this period. The LPSC has reduced utility rates to Louisiana consumers repeatedly over the past eight years. The LPSC has reduced rates of major utilities by hundreds of millions of dollars per year, providing cumulative benefits to Louisiana consumers amounting to approximately $3 Billion over the eight year period. The process used to accomplish these reductions requires sophisticated analysis and often contentious litigation and the LPSC has found that experienced outside counsel and consultants substantially aid the effort to provide benefits to consumers.

Rate reductions ordered by the LPSC in the period 1994-2002 include the following:

TOTAL RATE DECREASES AND RATEPAYER SAVINGS
MAJOR LOUISIANA UTILITIES
JANUARY 1994 THROUGH MARCH 2003

UTILITY TYPE	AMOUNT OF RATE DECREASE/REFUNDS	CUMULATIVE $$ SAVED
ENTERGY GULF STATES	$251.29M	$561.39M
ENTERGY LOUISIANA	$253.65M	$1,085.54M
CLECO	$5.45M	$20.45M
CAJUN	$229.39M	$568.65M
TRANSLA/LIG/LGS	$37.96M	$37.96M
SWEPCO	$11.9M	$39.67M
BELLSOUTH	$217.91M	$860.95M
TOTAL ALL COMPANIES	**Approx. $1 BILLION**	**Approx. $3.2 BILLION**

Note: See Exhibit B for further rate reductions and refunds.

These reductions and refunds compare very favorably to the performance of other state regulatory agencies, including those identified as comparable by the Legislative Auditor. According to recent information published by the United States Department of Energy, Energy Information Administration, in September, 2002, overall electric rates for all customers in Louisiana averaged 15% below the national average. (*See* www.eia.doe.gov/cneaf/electricity/epm/epmt53pl.html). Apparently the Legislative Auditor did not seek information concerning actual performance in other states, content instead to ask only about staffing, manuals and outside consultant expenses. The LPSC has attempted to gather information on this subject and, based on inquires to the "comparable" state commissions, has discovered that the ***LPSC's "performance" in reducing rates and granting refunds far exceeds the performance in the other states.***

Based on discussions with representatives of the five responding state commissions that were deemed "comparable" by the Auditor, the LPSC has determined that those commissions ordered fewer and smaller rate reductions than the LPSC in the same period. The Legislative Auditor apparently did not seek to determine the "performance" of the five supposedly comparable state commissions in producing rate reductions for consumers. The LPSC attempted to do so in telephone conversations with representatives of these agencies. These representatives stated that the agencies *generally do not conduct rate reviews for the purpose of decreasing rates*, absent a filing by a utility or some other outside party.[2] As shown below, few rate reductions were found to have been ordered in the states deemed comparable by the Legislative Auditor.

[2] Unlike the LPSC, which conducts annual rate reviews for many Louisiana utilities.

	RATE DECREASE	TOTAL AMOUNT
ALABAMA	1 (Alabama Power, 2002)	$75 MM
ARIZONA	None	$0
MARYLAND	1 (Baltimore G & E 1999)	$50.2 MM
MISSOURI	3 (Missouri Pub. Serv. 1998) St. Joseph L & P 1999) Kan. City P & L 1999)	$34.4 MM
SOUTH CAROLINA	1 (Carolina Elec. & Gas 1998)	$22.7 MM

In these states the agencies also granted *rate increases*, which offset the effect of these decreases on an overall basis.

In a "performance" audit the Legislative Auditor at least should have compared the ultimate measure of performance – savings to consumers. The Legislative Auditor failed to do so, which calls into question the entire Report.

SECTION 2: RESPONSES TO AUDITOR REPORT RECOMMENDATIONS

Recommendation 1 (Rpt. p. 15): The LPSC should ensure that for all aspects of the rate setting process, written procedures are developed and followed. The development and use of these written procedures will help to ensure complete and consistent rate reviews and will reduce the chances of diminished productivity in the event of staff turnover.

The Auditor contends that the Commission "does not have written procedures for determining how cost of capital studies are to be conducted by the Commission "and suggests there are "inconsistent" cost of capital results. [Rpt. p.14]. This criticism reveals a misunderstanding of the ratemaking process, and particularly the establishment of the cost of capital. Determining the cost of debt in a utility's capital structure is relatively easy – the bonds or other debt reflect stated interest rates, which can be weighted to produce an average debt cost. But the cost of equity is a matter of expert judgment, based on capital markets that change over time. A "written procedure" cannot be formulated for determining the cost of equity at any given time, because changes in financial markets cannot accurately be anticipated.

Further, the Auditor's criticism of a "shift in emphasis" from capital structure to return on equity shows an oversimplified view of ratemaking. [Rpt. p. 14-15]. Both issues are essential to deciding the fair return on equity. The capital structure must be balanced for safety and economy – with adequate but not excessive debt and a sufficient amount of equity to provide "safety" while not causing excessive cost to customers. The return on equity allowance drives the overall return allowance because the cost of debt is a fixed, identifiable rate.

The recommendation that "written procedures" be developed for "all aspects of the rate setting process" also reflects this oversimplified view of ratemaking. First, rate setting is not identical for all utilities. Different issues arise in electric versus gas versus telecommunications rate cases. Even among electric utilities, issues differ depending upon, whether the utility is a stand alone company or part of a holding company system. In addition, for some utilities the lowest rates and best service can be achieved through the use of traditional rate base/rate of return regulation, while in other cases various forms of "incentive" ratemaking would best achieve these goals and in yet other cases "rate caps" might be appropriate. The cookie cutter approach suggested by the Auditor reflects an oversimplified view of ratemaking and could cause harm to ratepayers. Experienced consultants are essential in complex rates cases because utilities spare no effort or expense concerning new rationales for including costs in rates that should not be included. A standardized procedure might well handicap the Commission's consultants and Staff in countering these efforts. Moreover, much of the rate-setting process involves contentious litigation, and litigation cannot be scripted in advance. The procedures employed in rate cases are reflected on the face of orders issued by the Commission and in the records developed by the parties, however, and were explained in detail to the Auditor's representatives.

Recommendation 2 (p. 17): The LPSC should develop policies and procedures that establish a systematic plan that requires staff to determine if rates are appropriate through the following:

- • **Review annual financial reports to ensure company profit is within approved range.**
- • **Review of financial information to ensure that only allowable expenses are included in rate setting analysis.**
- • **Periodic review of ratepayer bills to ensure that utilities are charging correct rates.**

The Commission does all of the above, as explained to the Auditors. All regulated utilities that are operating under a rate stabilization or similar type of plan are required to make annual filings reflecting the results of operations and earnings of those utilities for the prior year. These filings are reviewed by the Commission to determine if the company has earned within the Commission-authorized range. To the extent that a utility has earned above the authorized range, rates are decreased prospectively or refunds are required, depending on the specifics of the plan. These terms and conditions are established in the Commission Orders that authorize the companies to operate under such plans. Throughout this report, ***unsubstantiated*** statements are used criticizing the LPSC's rate-making methodology. Longstanding practices are used in rate cases based on well-established regulatory theory. The Report fails to provide any alternatives to the practices currently used by LPSC Staff, which practices have consistently been approved by the courts of this state.

It is also apparent that the Auditors failed to review the Audit Manual that was provided to them during the course of their audit. During an interview with Auditor on March 6, 2003, the Commission provided a copy of the Audit Plan that contained twenty-seven (27) audit steps that are used by the Commission's Audit Division during rate reviews (which includes rate investigations or rate cases filed by the utility). These steps include the following:

No. 4. Reviewing financial data included in rate applications.

No. 7. Review financial data and request additional information where needed and submitting data requests, requesting additional financial data as needed during the course of a rate review.

No. 10 Review financial statements and prepare comparative financial schedules of revenues and expenses for the test year and previous twelve (12) months, showing percentage increases/decreases by account, and analyzing for significant variances and determine the reasons why.

No.12. Obtain and review the company's detailed transaction registers of revenues and expenses and review for questionable and/or disallowable items (i.e. non-utility operating expenses, country club memberships, non-utility subscriptions).

No. 17. Obtain a copy of the Monthly Billing Register and determine:

a. If the number of bills compare to the number of customers.
b. If the amounts charged to customers are consistent with the approved tariffs.
c. If the cumulative monthly billed revenue compare to the annual revenue reported for the test year.

The Commission Staff follows, among other things, these steps during rate reviews.

Recommendation 3 (p. 22): LPSC should add specific criteria for RFPs used in the selection process, addressing the expected scope, timeliness, and methodology of work to be provided by consultants and outside counsel.

The LPSC Defines Scope of Work in RFP for Consultants and Outside Counsel ("Contract Employees" or "Consultant")

RFPs were not required to be used until October 1993. Some of the RFPs requested by the Auditors predated that requirement. However, even older versions of LPSC RFPs set forth minimum qualifications for Contract Employees and specific tasks to be performed. The Commission's General Order dated October 25, 1993, as amended January 17, 2003, outlines the specific criteria to be used when issuing RFPs and analyzing Proposals. The RFPs issued by the LPSC also use specific criteria. Also, since the consultants are assisting Commission Staff, the Staff attorney involved monitors the work, modifies existing assignments and sets additional tasks as they become necessary. The RFPs set forth qualifications, scope of work, phases of work, and require that Proposals specify such phases with associated fees, expenses and timelines. A number of RFP's were requested by the Auditors and last provided to them on February 14, 2003. These RFPs contained all of the elements aforementioned. The scope is also often defined by one or more relevant orders that dictate the process. The RFP together with the Proposal submitted in response to the RFP and the Commission's discussion and vote taken at the Business & Executive Session, comprise the agreement between the Commission and the Contract Employee. An engagement letter is also sent which confirms the understanding as well as the conditions set forth in the Commission's General Order dated October 25, 1995 (now amended January 17, 2003). It is also important to note that the Contract Employee is only compensated for actual time spent on a case and actual costs incurred.

Process Used to Select Outside Counsel and Consultants

All applicants are pre-qualified by Commission General Counsel and/or Staff Attorneys. The Commission has compiled a list of qualified Contract Employees over the years as a result of placing advertisements in trade journals, the newspaper and the Commission Official Bulletin soliciting firm resumes from consultants. In accordance with the Commission's General Order dated October 25, 1993 (now amended General Order January 17, 2003) ("General Order"), the prospective Consultant must submit resumes together with a representative client list to the Commission. Thereafter, the resumes are examined, and references verified, to confirm the ability of the Consultant to meet the minimum requirements set forth in the General Order. Once an RFP is issued, all applicants must provide proof they meet (1) the minimum requirements and (2) the specific requirements set forth in the RFP. Applicants must also disclose any possible conflicts of interest. The Auditor has been provided all of this information. The Commission is not bound to select the lowest bidder. However, historically, the Commission has sought to select one of the lower bidders as long as that bidder possesses the qualifications necessary to satisfy the requirements of the RFP. To avoid any potential conflict of interest, the Commission, with assistance from its General Counsel, has begun the process of clarifying in writing the types of representation for outside counsel and consultants which creates a conflict.

The LPSC Possesses and Provided Documentation Justifying Selection

The prospective Contract Employees (applicants) must be pre-qualified prior to selection. Therefore, the Commission has the applicant's resume on file and receives additional evidence of the applicant's qualifications in its Proposal in response to the specific RFP. Once the Proposals are reviewed, they are provided to the Commissioners with a detailed explanation of the qualifications of each Consultant, as well as the Consultant's proposed work plan. The Commissioners also review the Proposals and consult with Staff regarding the decision as to which consultant to choose for the particular task. The transcript of the Business & Executive Session at which the Commission votes to retain the Consultants and the conditions are also part of the documentation. The Auditors have been provided all of this information.

<u>Recommendation 4 (p. 22):</u> LPSC should develop a consultant and outside counsel evaluation plan, using RFP requirements regarding scope, timeliness, and methodology of work provided as criteria to measure the quality of work provided.

The Commission provided documentation and explanations to the Auditor supporting the retention of Contract Employees over the past seven years, and beyond. In some instances, the Commission chose to use the same Contract Employees for continuing annual reviews of particular utilities and reflected these decisions in formal orders. This action permitted informed, efficient and concise analysis and produced the rate reduction, refund and cumulative ratepayer savings results reflected in the Introduction of this Response. The Auditor apparently chose to view the continuing retention as a "discrepancy" in the documentation, although the Commission decisions were reflected in its orders. A Commission Staff member from each division, if applicable, is assigned to the docket on which the Consultant is working. As explained to the Auditor by letter February 11, 2003, the Staff attorney serves as a liaison between the Consultant and the Commission. The Staff attorney assists the Consultant in setting the scope of the proceeding and monitors the tasks performed. Also, everything the Consultant does is recorded on the case file history sheet of the docket on which he is working. These actions assist the

Commission in its assessment of the quality of work. The results shown in this Response, especially when compared to other states, are also evidence of the quality of work.

Recommendation 5 (p. 22): LPSC should conduct a cost-benefit study to determine whether work currently outsourced to consultants and outside counsel should be more efficiently and effectively performed by LPSC staff. LPSC should consider further developing existing staff qualifications through training so that more complex rate reviews can be conducted by LPSC staff instead of by consultants and outside counsel. If deemed necessary, LPSC should ask the Department of Civil Service to conduct job analyses on targeting LPSC positions to determine if existing education and classifications, and thus, the associated pay levels, are sufficient for the desired work to be performed. This would reduce the reliance upon consultants and outside counsel to perform complex rate reviews.

The Commission appreciates the suggestions made by the Auditor that it seek reallocations of job grades from the Department of Civil Service ("Civil Service") in order to better guarantee the longevity, and thus experience, of its Staff. However, the Commission has, on more than one occasion, attempted to achieve this objective without success.[3] Nevertheless, the Commission plans to continue to seek better paying positions for its Staff. The Commission also participates in professional seminars and belongs to professional organizations such as National Association of Regulatory Utility Commissioners ("NARUC") and Southeastern Association of Regulatory Utility Commissioners ("SEARUC") to further its expertise and insure that the Commission is up to date on current trends in utility regulation. The Commission also has access to a number of professional research associations, such as the National Regulatory Research Institute ("NRRI").

The Auditor reports that the Commission uses Contract Employees more than they are used in "comparable" states and that these Consultants are more expensive than in-house Staff. [Rpt. p. 20]. Again, the Auditor ***fails to report the results achieved*** in the proceedings in which the Commission used Consultants. The cost of these Contract Employees and the results can be compared as follows:

Consultant/Counsel Cost 1995-2002	Impact of Reductions/Refunds
$31.4 Million (per report)	$3.17 Billion

The cost to ratepayers of achieving rate reductions and refunds was about one cent per dollar of savings – a ***net of 99 cents per dollar***. The Auditor fails to report the potential loss to ratepayers that might result if specialized expert help were not available in the ratemaking process. Also, the comparison made between hourly consultant ***charges*** and hourly LPSC staff ***wage rates*** is unrealistic especially given the Auditor's recognition that LPSC Staff is grossly underpaid.

Additionally, the ratemaking process is extremely complex, requiring specialized expertise that is only achieved through experience. The legislature recognized that reality when

[3] One of the reasons expressed by Civil Service for denial has been the small size of this Commission. That argument is somewhat circular since the size of the Commission is due to the lack of staffing.

it authorized the Commission to retain counsel and consultants to aid in its work. Utilities spend scores of millions of dollars annually on consultants, counsel and in-house staff to achieve regulatory objectives. The fact that the Commission can even the playing field somewhat, to protect consumers, should not be a source of criticism.

<u>Recommendation 6 (p. 22):</u> LPSC should follow its own policy and only hire consultants and outside counsel when the LPSC staff do not have the resources or expertise to handle a rate review. This lack of resources and/or expertise should be documented in a format readily available for public view.

The Commission does follow its own policy. The Commission only hires consultants or outside counsel when the LPSC staff lacks the resources, staffing or expertise to handle a case. However, every case must be examined on its own merits to decide its complexity, and the current work load and/or expertise of the staff at the time a case is filed.

La. R.S. 45:1163.3(B) authorizes the Commission to retain attorneys and consultants to assist the economics and rate analysis divisions in evaluating, etc. matters affecting services and rates charged by utilities to Louisiana customers. La. R.S. 45:1180(B) also authorizes the Commission to retain attorneys or special counsel to assist the economics and rate analysis division. La. R.S. 45:1180(A) provides that all expenses incurred by the Commission to assist the economics and rate analysis division shall be paid by the party so examined.[4] The statute places ***no restrictions*** on when the Commission has to issue RFP's. The statute merely provides that the Commission develop rules under which RFP's shall or shall not be used, the procedure for requesting proposals, and the selection criteria. The Commission developed a comprehensive set of rules through its General Order dated October 25, 1993 (amended January 17, 2003).

The Auditor suggests that the Commission did not adequately monitor its consultants as they performed ratemaking analysis and provided recommendations. The report states that only the legal division interacts frequently with outside consultants. [Rpt. p. 19]. But the Auditor fails to report that the legal staff interacts with and oversees the consultants and indeed participates in hearings in which the consultants appear. This oversight is appropriate and consistent with the litigation process. There need be but one Staff member assigned to monitor the progress of the Contract Employee. Otherwise, one of the reasons for engaging such Contract Employee (lack of staffing) would be exacerbated since Staff members' time would be occupied monitoring the Contract Employee.

<u>Recommendation 7 (p. 22):</u> LPSC should develop and implement procedures to review the consultant billings. These procedures should include a review by LPSC staff knowledgeable with regard to the particular work done.

The Commission staff does, in fact, review consultant bills. As explained to the Auditors in writing, when the bill is received, it is recorded under the particular case number. The amounts are calculated to ensure that the consultant has not exceeded the cap set by the Commission. Also, all bills are checked for substantiating documentation such as receipts. The Secretary reviews the bills prior to certifying them and forwarding them to the utility. The utility

[4] Note that this does not involve an expenditure of "public funds."

then reviews the bills for any discrepancies and may request clarification or additional documentation, and has the right to challenge the bills certified to it (since it is the utility, not the Commission, paying for the consultant services). If there are questions, the Secretary may consult some or all of the Staff members assigned to the case, as well as the billing Consultant.

<u>Matter for Legislative Consideration 1 (p. 22):</u> The Legislature may wish to consider legislation that would allow the LPSC to directly charge the utilities reviewed for the cost of using in-house staff to perform rate review analyses and the related legal proceedings similar to the provisions that allow payments to consultants.

This is presently done on a limited basis through the Inspection and Supervision Fees and the Admin/Economics Fee. It is not a direct fee to utilities for a specific proceeding. The annual number of rate cases and many other type cases is variable over time. It would be impossible to guarantee funding each year for permanent staff. Further, smaller companies could not likely afford to come in for a rate case that may take up as much time as a case for a large company.

<u>Recommendation 8 (p. 24):</u> The LPSC should conduct all two-year audits of monthly adjustment filings for electric and gas utilities as required by LPSC General Orders dated November 6, 1997 and March 24, 1999.

The Commission makes its best effort to accomplish this procedural goal. It should be noted that the audits called for in the Commission General Orders dated November 6, 1997 and March 24, 1999 were initially scheduled in a number of planning sessions in coordination with the Secretary of the Commission. The audit time line originally established has been modified and extended from time to time by the Commission, which has authority to change the original schedule, based on the personnel available, the training required of these personnel, docketed proceedings and pending litigation. It is important to note, that although the audit schedule has been extended for certain utilities, the Commission has the authority to alter the audit dates based on the circumstances of the individual utility and availability of Commission resources. Utility fuel and gas audits that are extended will include any periods which do not fall within the original two year review period. The Commission has already concluded fuel audits of Citizens/LGS, Entergy Louisiana and CLECO. Additional audits are currently underway for Atmos/LGS, Centerpoint Energy-Entex, Brown Gas, Nezpique Gas, Elizabeth Gas, SWEPCO, Entergy Gulf States, Entergy Louisiana and CLECO. Further, ratepayers are fully protected. If any improper charges are found, the General Orders authorize the Commission to require refunds, with interest. This authority has been upheld by the Louisiana Supreme Court. *TransLa vs. Daily Advertiser*, 594 So.2d 546 (La.App. 3 Cir. 1992) *rev. pt.* 612 So.2d 7 (La. 1993). [See Electric and Natural Gas Two-Year Audits attached as Exhibit C.]

<u>Recommendation 9 (p. 24):</u> The LPSC should amend the General Order dated March 24, 1999 to require audits of all Group II and Group III gas utilities in addition to the audits already required of Group I gas utilities. Because of the smaller size of Group II and Group III utility companies, it may not be necessary to audit them as often as Group I utilities, and the LPSC should set the appropriate time frame for these audits.

The Commission's General Order dated March 24, 1999 ***does establish*** that periodic audits of Group II and Group III gas utilities will be conducted as ordered by the Commission. Additionally, the General Order establishes a "recommended" designated review period for all gas utilities. The recommendation that Group II & III utilities be included in the two year audit requirement of the LPSC March 24, 1999 General Order will be reviewed by the Commission. As noted above and in the General Order, the Commission recognized that these smaller gas utilities must be scrutinized periodically, and the Commission is doing just that. Audits of three Group III gas companies, Brown, Nezpique and Elizabeth, are currently underway.

Recommendation 10 (p. 24): The LPSC should require all Group III gas utilities to file adjustments at least once every six months as required by the General Order dated March 24, 1999. The LPSC should enforce this requirement and implement penalties if necessary to ensure compliance of utilities.

The Commission's General Order dated March 24, 1999 does require Group III gas utilities to file information relating to their gas supply costs. These small distribution systems in most cases make their purchases from one natural gas supplier at a contracted price and do not have the staff/employees necessary to adequately adhere to the various regulatory reporting requirements. The Commission is mindful of these facts when attempting to strictly enforce the rules under which it regulates these systems.

In addition, of the approximately 725,000 customers of natural gas local distribution companies regulated by the Commission, about 1,500 take service from Group III utilities. This amounts to roughly ***0.002% of the total customers that receive gas service*** from Commission-regulated gas utilities. The Commission takes each individual jurisdictional customer very seriously. However, to implement harsh fines and penalties on these small utilities may not be in the public interest as doing so could result in higher expenses for the utility and thus higher rates and, in some cases, force some of these gas utilities out of business. The Commission has exercised its discretion to work more cooperatively with the Group III utilities and use common sense in its regulatory approach such as analyzing the volume of complaints (which is ***extremely*** low) received against these utilities when determining how often to conduct periodic reviews.

Recommendation 11 (p. 26): The LPSC should develop and implement detailed written policies and procedures to document the process LPSC staff shall use when they review the monthly adjustments filed by the utility companies.

The Electric Fuel Adjustment and the Natural Gas Purchase Gas Adjustment General Orders of November 6, 1997 and March 24, 1999, respectively, address in great detail the requirements of electric and gas utilities regarding the format and procedures to be followed when submitting to the Commission the monthly fuel, power cost, and gas adjustment filings. The Staff's experience, education, and the knowledge of utility law and regulations provide the tools needed for the Staff members reviewing the monthly filings with the procedures to be utilized when conducting the monthly review. The Commission is in agreement with the audit recommendation, on page 27 of the Report which addresses the need to improve the qualifications, experience and low level of compensation authorized by state civil service for the employees assigned to review these monthly filings. The Commission continues to make these requests of the Department of Civil Service.

<u>Recommendation 12 (p. 26):</u> The LPSC should enforce the General Orders that require utilities to provide all documentation necessary to conduct comprehensive reviews of monthly adjustment filings and implement penalties if necessary to ensure compliance of utilities. The LPSC also should amend its General Order dated March 24, 1999 to require invoices for all gas adjustments.

The Commission's General Orders that address the monthly Purchase Gas Adjustment and Fuel Adjustment filing requirements were not intended to provide a comprehensive review of the monthly adjustment filings made by the regulated utilities each and every month. The monthly filings are designed to reflect increases and decreases in fuel costs monthly, to provide for a timely recovery of the fuel and gas cost incurred by the utility and to recover this cost from those customers that caused that cost to be incurred. The Commission Orders that address the monthly FA & PGA filings are designed to provide guidance as to the procedures to be followed when filing the monthly reports and to provide for uniformity with respect to the format and content of the reports. The review made by the Staff each month is to check the accuracy of the filings and to require that corrections be made when errors are detected, if such corrections are warranted. Within the conduct of its review the Staff or the Consultant has the authority in accordance with Commission's regulations to request any additional information or data that it feels is necessary to document or clarify the contents of the filing. Those items identified as needing clarification and under dispute by the utility can be referred to a docket and/or addressed in the periodic audits. The Commission does have the authority to assess fines and penalties against utilities that fail to comply with its regulations and orders; however, in each case, finding of fault by a utility must be documented by the Commission and the utility given due process when such matters are in dispute. This occurs through the hearing process before an Administrative Law Judge. The Commission review procedures covered above have been upheld by the Louisiana Supreme Court.

The comment made by the Auditors stating the Commission approves monthly adjustments without complete support for all cost passed on to Louisiana ratepayers is inaccurate. The Commission does ***not*** "approve" FA/PGA filings on a monthly basis. The Staff simply "accepts" filings verified by a responsible officer subject to biennial/periodic audit per Commission Orders (See *TransLa vs. Daily Advertiser*, 594 So.2d 546 (La.App. 3 Cir. 1992) *rev. in part on other grounds* 612 So.2d 7 (La. 1993)). Final approval is granted only after a Commission audit of the utility's procurement practices has been conducted and the findings of the audit have determined the accuracy and prudency of the purchases to be justified. Any amount disallowed as a result of the audit will be credited or refunded to the ratepayers with accrued interest. Although a few of the filings reviewed by the Legislative Audit staff had some documentation missing, the LPSC Staff, at the request of the Auditor, conducting the review, either had the utility supply a copy of the missing documentation or provide the additional support needed to confirm the purchase amounts listed in the monthly statements. The Utilities Department alone processes approximately 12,000 pages of information per year solely for the FA and PGA filings.[5]

---

[5] In addition, since the Auditor removed thousands of original documents from the Commission premises, the whereabouts of any such documents cannot be definitely accounted for. [See Receipts at Exhibit D].

Finally, it is incorrect to infer that the LPSC General Orders require the Commission to conduct comprehensive reviews of monthly adjustment filings each and every month. As referenced previously, the Supreme Court of Louisiana in its decision in *Daily Advertiser vs. TransLa* upheld the Commission's conclusion that the LPSC's allowance of monthly cost adjustments pursuant to automatic fuel clauses does not constitute "rate making" as such adjustments, of necessity, go into effect without antecedent reasonableness reviews. It would literally take hundreds of man-hours every month to comprehensively review the fuel adjustment filings made by the 17 electric and 15 gas utilities subject to the Commission's jurisdiction. The Court held that the LPSC is not precluded from subsequently examining and modifying such adjustments. Moreover, the Supreme Court also agreed therein that by allowing a utility to collect fuel costs close to the time that such costs are incurred and thereby ameliorate regulatory lag, the LPSC should not be held to have divested itself of jurisdiction to review such costs at a later time. Commission Orders establish periodic reviews during which "antecedent reasonableness reviews" are conducted. This is precisely the process approved by the Louisiana Supreme Court. The acceptance by the LPSC Staff of the monthly fuel adjustment filings does not constitute final approval of the filing.

The Report alleged that there were a number of instances where the invoices did not match the amount included in the adjustment calculations. However, only two instances were specifically identified (Rpt. Exhibits 11 & 12, Rpt. p. 25). With respect to each of the cited invoices, the ***Auditor was provided an explanation*** and/or provided additional documentation supporting the amount in question. The following should clarify the Commission's compliance with the applicable Orders:

Rpt. Exhibit 11: South Coast Gas Co., Inc. and Triumph Energy, Inc.: "Example of a letter invoice". South Coast Gas Co., Inc. is a gas distribution company that submits to the Commission each month its purchase gas adjustment calculations. Included in these filings each month is a copy of a letter invoice drafted by South Coast that is remitted to its supplier Triumph Energy along with payment for the natural gas delivered. Staff explained to the Auditor that, under the terms of the contract between South Coast and Triumph, South Coast is to install, read and maintain the metering facilities that measure the flow of natural gas from its supplier. South Coast in turn remits the information (letter invoice) to Triumph along with payment for the natural gas delivered. This is a ***common practice*** with respect to the purchase of natural gas. In some instances contractual arrangements of this type serve as a method of ***reducing the price*** of gas delivered into a distribution system.

Rpt. Exhibit 12: Louisiana Gas Service (Atmos Energy) and Enron North America Corp. invoice marked "DO NOT PAY": At the times the Auditor reviewed this invoice and questioned Staff, it was ***explained to the Auditor on multiple occasions*** that this invoice, from Enron North America Corp., was in dispute due to the fact that Enron was in bankruptcy and actually owed the company in question, Atmos, money. The amount due Enron was simply netted against the amount owed Atmos.

The company denoted on the invoice the notation "DO NOT PAY" for internal purposes only. Additional documentation was requested by the auditors with respect to the "DO NOT PAY" notation. Documentation was provided further indicating that Enron had filed for bankruptcy in December 2001 and that Atmos Energy Corp. had reviewed its net position at the corporate level before releasing any payments to Enron. Since Atmos' net position was negative, all payment due Enron were withheld to net against Enron's liabilities to Atmos.

<u>Recommendation 13 (p. 26):</u> The LPSC should require the utilities to file required documentation regarding affiliate transactions and properly review affiliate transactions as required by the General Orders. The LPSC should enforce this requirement and implement penalties if necessary to ensure compliance.

The Commission has extensive rules on prohibited affiliate transactions. The Commission requires affiliate transaction reporting of electric utilities as covered in the Commission's General order dated November 6, 1997, Part IV, paragraph S. The Order only allows the utility to recover the lower of actual cost or market for costs incurred through an affiliated party, except as specifically provided for in Section III. C. of the Order. Recoverable cost is determined on the same basis as if the electric generation utility incurred the cost directly. This section establishes an annual reporting requirement. The Commission has recently conducted a comprehensive analysis of affiliate purchased power transactions by Entergy Louisiana, Inc. In addition, it is currently investigating affiliate transactions regarding fuel and purchased power for both CLECO and SWEPCO.

The requirement addressing the affiliate transaction reporting requirement of gas distribution utilities is not addressed in the Commission's General order dated March 24, 1999. Only Part IV Paragraph Q of this Order covers purchase gas cost from affiliates. This section, similar to the electric General Order, only allows the utility to recover the lower of actual cost or market for costs incurred through an affiliated party. Recoverable cost is determined on the same basis as if the gas utility incurred the cost directly.[6]

<u>Recommendation 14 (p. 26):</u> The LPSC should require all invoices and support documentation necessary for staff to ensure costs passed through to the ratepayers are allowable under the General Orders. The LPSC should enforce this requirement and implement penalties if necessary to ensure compliance of utilities.

This is being done. The monthly adjustment filings made by the utility companies and monthly reviews conducted by the Commission Staff are designed to allow the utility to recover the fuel and gas cost as closely as possible from those customers that are responsible for that cost. Those fuel costs are recovered on a dollar for dollar basis with no profit earned by the utility. Both increases and decreases in fuel costs are reflected each month and the costs and savings are passed through to ratepayers. The monthly filings reviewed by the Commission Staff are not designed to be comprehensive audits regarding the utility company's operations and purchasing procedures. Comprehensive audits, as mentioned in this Report, and as covered in Commission Orders, are conducted by this Commission every few years. The Commission is

---

[6]Because of the potential for abuse, purchases of gas from affiliated entities must be closely monitored and scrutinized. However, as discussed in Section III, E ("RATE STABILITY") above, the Commission will not exercise hindsight and penalize gas utilities if, through the use of best cost gas procurement policies, prudent purchases made in advance at the then prevailing market price are priced higher than the market price at the time of delivery. This is so even if the purchase is made from an affiliated entity. Similarly, the Commission will not reward gas utilities if purchases made in advance from an affiliated entity are priced lower than the market price at the time of delivery.

aware of the importance of documenting utility fuel and gas cost and has authorized the Commission Staff, through its General Orders, to require the production of any additional information or data needed to support the filings. The Commission's General Order dated March 24, 1999 Part V Paragraph C addresses, in detail, the issue of documentation, as does the Commission's General Order dated November 6, 1997. All of these Orders are readily available on the Commission's web site at *www.lpsc.org*.

Recommendation 15 (p. 27): The LPSC should require sufficient invoices that match and support all cost passed to ratepayers. If all costs passed to ratepayers do not have supporting invoices, LPSC should require sufficient supporting documentation to be able to determine that the cost passed to ratepayers are accurate and allowable.

The Commission does require invoices that match and support all costs passed to ratepayers. On a monthly basis, thousands of pages of approximately twenty-seven (27) electric and gas adjustments must be reviewed. The Commission acknowledges that, due to human error, some invoices/documents may be inadvertently overlooked or missed. Hence, the biennial/periodic audit is established by Commission Orders to allow for a more in-depth audit and review of the fuel costs passed on to customers. Again, it should be noted that if the Commission, its Staff or consultants, at any time, has questions concerning any of the information contained in the utility's filings or the utility's gas purchase practices or policies, it will request additional information or data and such information or data must be provided by the gas utility within ten business days from the date of request. Again, any missed information is discovered in the periodic audits. If any costs passed to consumers are later found to be improper, these amounts will be returned to the ratepayers by refund with interest.

Due to the huge volume of filings, the Commission uses its discretion and judgment to determine the manner in which invoices and other support documentation must be provided with each filing. For example, for very small companies, the filing may initially consist of a letter. In contrast, for the large companies, such a requirement to provide all invoices and supporting documentation would result in thousands of pages of supporting documentation being filed every month. As a result, the Commission may only require a computer print out listing the invoices in order that the Commission may track the invoices and request them during the periodic audit or at some other later date.

Recommendation 16 (p. 28): The LPSC should request the Department of Civil Service to conduct a staffing study to determine if current compensation levels for fuel and gas adjustment personnel are equitable considering the amount/type of work that is done in order to attract and retain qualified employees. The LPSC should also consider enhancing the qualifications of fuel and gas adjustment personnel staff through formal training and hiring of staff.

First, the statement contained in the Auditor's report that indicates one of the two supervisors over the Staff that reviews the monthly adjustments transferred from another area within the Commission and had no prior experience with the utility industry is inaccurate. Both supervisors have worked with the Utilities Division since their hire dates. Additionally, both were promoted to supervisory positions in accordance with Civil Service rules and regulations and with the requisite utility experience.

The Commission agrees with the Auditor's recommendation that a staffing study be conducted.

The Commission continually reviews all its job classifications in an effort to be competitive in the compensation of its employees who perform job duties similar to those with other State of Louisiana agencies, other state public service/utilities commissions and the utilities it regulates. The Commission has experienced difficulty in attempting to maintain continuity in the PSC Specialist positions (the Staff members who review monthly fuel filings) due to the existing pay scale under which these positions are classified. Over the past several years, the Commission has lost two PSC Specialists from within the Economics Division to comparable though higher-paying positions with the Texas Public Utilities Commission. The Commission has long believed that in order to remain productive, it must retain an experienced, technical staff rather than continually being faced with training recent college graduates who are inexperienced in utility issues and regulation.

Whereas other state commissions have larger staffs and the luxury of hiring analysts who are able to train and specialize in a specific area of utility regulation such as solely electric or exclusively telecommunications, due to the small staffing of the PSC Specialist series, the Louisiana Staff is unable to focus on only one task such as reviewing the monthly fuel filings. The Staff is required to perform many functions relating to the regulation of water and sewer utilities and telecommunications service providers as well as perform their duties regarding the electric and gas utilities.

As a matter of fact, in November of 1999 the Commission filed with the Louisiana Department of Civil Service a request that a job study of the PSC Specialist job series be performed to increase pay. Included in this request were proposed new job descriptions that suggested more stringent minimum qualifications in terms of quantitative degree requirements and length of service for promotional eligibility. Unfortunately, ***Civil Service denied the request***. Additional information that the Commission collected subsequent to being turned down by Civil Service and since that time indicates that the pay for utility specialists with the Commission is falling ***increasingly behind*** the salaries paid utility specialists with other state utility commissions in the southern and southeastern United States.

The denial of this job study request has been discouraging considering the fact that the Commission is a State agency that receives its financial support from self-generated funds such as registration and application fees, Inspection and Supervision fees and fines; and, therefore, the Commission ***does not draw from the State General Fund***. Rather, the ***Commission contributes millions of dollars annually to the General Fund.*** To increase the pay of the entire PSC Specialist job series, a Commission-specific job title having consisted of no more than eight incumbents at any one time and one not employed by any other State agency, would require only a minimal amount of additional funding. According to the Audit Report's "Exhibit 13", the pay for the LPSC Staff performing the monthly fuel filing review is, on average, $22,339 as compared to $35,480 per year paid to comparable staff with other states polled by the Legislative Auditor. Until the disparity in pay is eliminated by the Department of Civil Service, the LPSC expects that its turnover rate in the PSC Specialist job series will continue to be high. The Commission welcomes the Auditor's recommendation to again submit a request to the Department of Civil Service for applicable job studies and pay increases.

<u>Recommendation 17 (p. 31):</u> The LPSC should institute its own management controls regarding the types of benefits LPSC staff can accept from entities it regulates. These controls should ensure that the public perceives the LPSC's role in utility regulation as one of independence and objectivity.

<u>Matter for Legislative Consideration 2 (p. 31):</u> The Legislature may wish to consider the role of ethics in state government regulatory activities and make modifications to existing ethics law by instituting more stringent limitations on the amounts and types of expenses that LPSC commissioners and staff may receive from regulated companies. The Legislature may wish to modify R.S. 42:1115 to reflect these limitations on elected officials of all regulatory agencies. These limitations should ensure that the public perceives the LPSC's regulatory role and the role of all officials of regulatory agencies as one that is independent and objective.

The Legislature, in its adoption of the Louisiana Code of Governmental Ethics ("Code of Ethics"), not the Commission, establishes the law as it relates to the acceptance by public officials or employees of any "thing of economic value" from any person or other source that conducts operations or activities that are regulated by the public employee's agency. La. R.S. 42:1102 defines "thing of economic value" as money or any other thing having economic value, except promotional items, food, drink, or refreshments consumed by a public servant, including reasonable transportation and entertainment incidental thereto, while the personal guest of some person.

The Commission's constitutional obligation requires it to afford the utilities it regulates a reasonable opportunity to earn a fair rate of return. The establishment of rates of return and ratemaking are technical in nature, subject to changes regionally and nationally. The Commission has constitutional duties to both ratepayers and the utilities it regulates. Interaction between the Commission, its staff and its regulated entities is essential to perform such activities as the handling of complaints and the gathering of information.

In Louisiana, Public Service Commissioners are elected, unlike many states which have appointed Commissioners. Louisiana Commissioners are ultimately responsible to the public, which elects the Commissioners deemed qualified and having the integrity to interact with ratepayers and regulated entities.

<u>Matter for Legislative Consideration 3 (p. 39):</u> The legislature may wish to consider amending R.S. 34.1121 to give full regulatory authority over the state-commissioned river pilots to the LPSC.

Despite the criticism given by the Auditor as to the Commission's handling of the regulation of the River Pilots, the Auditor recognizes the potential benefit of granting full regulatory authority over the Pilots to the Commission, as opposed to the private negotiations of the Fee Commission. The Commission would also suggest that if the Legislature grants such jurisdiction to the Commission, funds also be granted to the LPSC to provide for additional staffing and other resources needed to regulate the River Pilots.

<u>Recommendation 18 (p. 40):</u> **LPSC staff should revise the survey methodology to adjust the salary amounts for differences between pilot associations. The LPSC should then adjust the Mississippi River pilot's target salaries to reflect the average salary amount found in the survey, adjusted for the cost of living.**

More than one-third of the Report critiques the Commission's regulation of the River Pilots even though the LPSC does not normally regulate those associations. The Commission has been charged with the *temporary* duty of regulating the state commissioned pilot groups for more than 4 years. This has occupied a tremendous amount of LPSC Staff time and expense, especially due to the contentious issues which have arisen during the course of these proceedings. ***The LPSC has received no additional funding or staffing to handle these cases.*** As a result, a significant shortage of manpower has been experienced at the Commission during this time. These cases have put a great strain on the Commission and its Staff. However, the Report then recommends that the LPSC be "given full authority over the state-commissioned river pilots." This seems to indicate that the Auditor has confidence in the LPSC's ability and expertise to regulate the pilots.

In reviewing the survey pilot associations, there is very little that can compare to the River Pilot Associations in terms of numbers, geography, services, and types and number of ships served. The Commission has discovered through experience that pilot associations located in states other than Louisiana are extremely hesitant to volunteer any kind of information regarding their business activities, and the Commission has no authority to demand such data.

<u>Matter for Legislative Consideration 4 (p. 41):</u> **The legislature may wish to consider revising R.S. 34:1122(B) to define the term "state ship pilot" and to specifically include the salaries of the other Louisiana river pilots when determining fair average annual pilot compensation as these pilots provide more comparable pilotage services to those provided by the Mississippi River Pilots than do other states.**

<u>Recommendation 19 (p. 44):</u> **LPSC should issue an order adjusting the pilot target compensation levels for inflation using the consumer price index.**

Pilot target compensation levels ***are*** currently adjusted using the consumer price index. The terms and conditions for the Automatic Tariff Rate Adjustment Mechanism (ATRAM) are included in the Orders that were issued for each pilot association authorizing them to operate under an (ATRAM). The purpose of the ATRAM is to adjust the pilots target salary for inflation using the five (5) year moving average of the Consumer Price Index (CPI) for urban consumers of the South.

The Report states that one of the problems of the ATRAM is its "insensitivity to shipping activity." This is incorrect, because, the target earnings for the pilots is just a target. If shipping goes down, revenues and earnings go down, with less pilot earnings. In addition, in the pilot salary analysis, the measure of earnings per bridge hours was adjusted for local cost of living. This is based on an assumption that shippers should be paying for their time on the bridge. If this assumption is correct, the Crescent pilots were paid ***less*** than the survey average.

<u>Recommendation 20 (p. 44):</u> The LPSC should revise the ATRAM and remove the incentive for pilot associations to increase their expenses.

This is inaccurate. Pilot earnings come out of the net (revenue less expenses). Because their earnings come out of the net, it is in the interest of the pilots to keep expenses ***low***. The ATRAM does ***not*** provide any incentive for the associations to increase their expenses. As described above, the ATRAM is a mechanism for the associations to adjust their tariffs to provide for cost of living increases for salaries, additional pilots and the historical expense growth that the association experienced during the five (5) years prior to filing with the Commission. This expense growth is capped to the percentage that the growth represented to the test year revenue. In addition, the ATRAM's are subject to annual reviews by the Staff.

<u>Recommendation 21 (p. 45):</u> The LPSC should issue an order that defines the term "ordinary and necessary expenses," and list the expenses it will allow when establishing a pilot association's fees and rates.

The Commission is not at liberty to regulate the Pilots according to traditionally accepted ratemaking principles. The Commission is ***bound*** by Revised Statue 34:1122, enacted by the Louisiana Legislature. This Law identifies each expense line item that is considered "ordinary and necessary" that each pilot association can incur during the course of its operation while providing pilotage service on Louisiana waterways. A copy of this Revised Statue was provided to the Auditor. The Commission has no authority to deviate from these legislative mandates.

<u>Recommendation 22 (p. 46):</u> The LPSC should require source documentation for all pilot association expenses. Furthermore, the LPSC should disallow the charges for "union dues," "interest on working capital" and "pilot reimbursement expenses."

The Commission has shown that all source documentation needed to review Pilot group expenses is requested and obtained. The Commission conducts annual reviews of each ATRAM filing. This review process involves issuing data requests for documents and financial records, and conducting site visits to the association's home offices and interviewing fiscal personnel. During these visits the Staff obtains copies of all source documents it deems necessary during the course of its review. In addition, the Staff obtains copies of other internal accounting records deemed necessary to satisfy the authenticity and actual occurrence of any items reported in the ATRAM filing. The Staff has on file copies of source documents that it has accumulated during its reviews over the past three (3) years. During its reviews, the Staff rejects any and all expenses that it believes to be inappropriate within the confines prescribed by the Legislature.

<u>Recommendation 23 (p. 47):</u> The LPSC should develop an Order that specifically address the ATRAM process. The Order should specify the content of the ATRAM filing, the process the pilot associations must follow when completing their reports, and the timeframe in which the reports must be submitted. The LPSC should develop policies and procedures that address the process its audit staff should follow when reviewing the ATRAM filings, the process for reconciling errors, and the timeframe for completing the review.

The Commission issued an Order at the conclusion of each of the association's rate proceedings. In each Order, the ATRAM is addressed, outlining the components, the filing requirement, and the review requirements. The Auditor was provided with a copy of each Order for each association that is currently operating under an ATRAM. The ATRAM reporting forms were developed in-house by the Commission Audit Staff, after receiving comments from each association affected by the ATRAM. The first year a set of forms was delivered to each association under cover letter from the Executive Secretary advising each association of its filing requirement and the deadline for the filing. The Commission Audit Division has audit policies and procedures in place that are used to conduct all type of reviews including ATRAM reviews.

Recommendation 24 (p. 48): The LPSC should review the ATRAM filings in a timely manner and prohibit the pilot association from adjusting their rates and fees until these adjustments are reviewed by the Audit Division.

The Commission has shown, through its Audit Division, that it has been conducting annual reviews of each of the pilot associations over the past three (3) years. The mechanism is set up to permit the association to revise its tariffs at the time of its filing, subject to refund. This is a normal process that has traditionally been used in regulating utilities. The allegation that the Commission has only reviewed 2 of the eight ATRAM filings over the past three years is *incorrect*. The Staff has completed review of six of the eight ATRAM filings and would be more current in its review if sufficient staff was in place.

The statement that the Commission Audit Manager was unable to provide the Auditor with a copy of the Memo sent to NOBRA containing corrections and adjustment made to the NOBRA ATRAM is inaccurate. The Commission provided the Auditor with a copy of the report, along with Exhibits NOBRA 1 and NOBRA 2, which was prepared describing, in detail, all of the adjustments and corrections that were made to the filing. In addition, the adjustments made to the NOBRA's filing are available in our work papers.

Recommendation 25 (p. 49): LPSC audit staff should conduct ATRAM reviews in a timely manner to ensure rate adjustment errors are not passed on to the shipping companies.

The Commission is confident that a higher level of performance could be achieved in this area, provided the appropriate funding and staffing were available. Also, see No. 24. Additionally, the Bar pilots are entitled to an expense increase adjustment per Commission Order, as well as the NOBRA pilots and the Crescent pilots. All adjustments made by staff to the NOBRA Report were contained in the report provided to the Auditor.

In addition, the statements that NOBRA and the Bar Pilots have overcharged shippers by approximately $4 million are inaccurate. Although there were some overcharges assessed to customers, they were far less than half of the amount alleged and, more importantly, such overcharges are currently being refunded or credited to customers.

Recommendation 26 (p. 50): The LPSC staff should adequately review the ATRAMs for errors and require re-submission of erroneous ATRAM's by the pilot associations when they are discovered.

The Commission has shown that Staff performs comprehensive annual reviews of each ATRAM filing. As discussed in the response to Recommendation 25 above, overcharges were found during Staff reviews and are currently being credited to their customers. There is no point for the association to file corrected ATRAMS. Any corrections are performed by Staff during its review and refundable amounts, if necessary, are calculated.

<u>Recommendation 27 (p. 51):</u> The LPSC should issue an order that specifies the content of the ATRAM filing. Including the documentation the pilot associations must provide regarding the expenses they pass on to shippers. This order should also define the concept "ordinary and necessary operating expenses' and list the expenses the LPSC allows when establishing associations rates and fees.

See responses Nos. 19 and 21.

<u>Recommendation 28 (p. 52):</u> The LPSC should incorporate a mechanism to ensure that adjustments to tariff rates are representative of changes in shipping activity.

This is done. The Report states that: "Actual pilot compensation is calculated by subtracting the expenses of a pilot association from the gross revenue and dividing the remaining amount of money among the individual pilots on a per 'turn' or trip basis." ***This is inaccurate.*** Association expenses are subtracted from the Association revenues for the month. The remainder is divided by the total number of pilot days worked that month resulting in a pilot-day pay. If a pilot works all days during his shift for the month he gets the number of that month's days. If he takes off for sick or personal reasons, he loses two days and the pilot who takes his place gets two days. After any adjustments for days not worked, the individual pilot will get, for example, 31 pilot days times the pilot-day pay. If he was sick one day, he will get 29 days times the base pay, and the substitute pilot will get paid for the lost day. Each Association is different, but this is the general compensation calculation. Pilots are ***not*** directly paid by the turns they take.

SECTION 3: TABLE OF DIRECT REFERENCES TO LEGISLATIVE AUDIT REPORT DATED APRIL 7, 2003

Section/Page(s)	Auditor Comment	LPSC Response
6	"10 electric coops. . . "	***This is inaccurate.*** There are 11 electric coops listed in Appendix B. However, there are actually 13 coops under LPSC regulation.
27	Exhibit 13	The Report fails to specify which states it is using to compare. If the comparable states are the same as above, are these states actually comparable? The LPSC also questions the use of averages in this table because of the possibility that the data may be skewed.
28	LPSC not willing to help obtain documents from electric/gas companies to support base rates	See Section 4 of this Response. ***Repeated*** requests for the ***same*** information by Auditors; Staff never withheld access to records or assistance in obtaining them.
29	Exhibit 14, Instances of Lack of Documentation Identified During LPSC Audit	Suggests that lack of documentation is a failure by the LPSC in document control. Documentation on consultants has not been previously required, thus it is not on hand. Also, the policy for retention of documents is 3 to 5 years after the conclusion of a proceeding at the discretion of the Division supervisor. Auditors requested, in 2003, documents back to 1997 (6 years previously).
34	"There are four state-commissioned pilot associations in Louisiana."	***This is inaccurate.*** There are five associations including the Morgan City, Berwick Pilots Association as set up under La. R.S. 34:1102, which is inactive at this time.
39	"We also found that the formula the LPSC uses to determine pilotage fees and rates provides an incentive for pilot associations to increase their expenses."	***This is inaccurate.*** It should be remembered that pilot earnings come out of the net (revenue less expenses). Because their earnings come out of the net, it is in the interest of the pilots to keep expenses ***low***.
39	"when the fee commissions disbanned (sic) in 1997, . . . "	***This is inaccurate.*** The industry fee commissions resigned causing a lack of a quorum. Industry did not send recommendations for the Governor to appoint new fee commissioners.

SECTION 4: TABLE OF DOCUMENTS PRODUCED TO THE LOUISIANA LEGISLATIVE AUDITOR BY THE COMMISSION

Updated 4/10/03

- **does not include documents provided between May 8, 2002 and September 10, 2002**
- **does not include unlimited access to all Commission documents available to the public on the website www.lpsc.org**
- **these entries are only estimated representations of information given, as Auditors have refused to sign for copies made**

DATE GIVEN	ACQUIRING AUDITOR(S)	LPSC DEPT/ EMPLOYEE	DOCUMENTS/INFORMATION PRODUCED	COPIES/ ORIGINALS
09/11/02	Andrea Gaudet John Morehead	**Utilities**	1. Fuel Adjustment packets (11/00 to 6/02 for 11 coops; 7/01 to 6/02 for 4 investor-owned) 2. Purchase Gas Adjustments (7/01 to 6/02)	1. Originals (approx. 14,130 pages) 1. Originals (approx. 3,270 pages)
10/10/02	John Morehead	**Utilities** Arnold Chauviere	1. 17 electric company correspondence files 2. 8 gas company correspondence files	1. Originals (approx. 7,500 pages) 2. Originals (approx. 2,000 pages)
11/06/02	John Allen John Morehead 2 others	**Records** Terri Lefebvre	Emailed entire docket U-21496 (CLECO)	Email
11/07/02	John Allen John Morehead	**Utilities** Donnie Marks	LPSC letters dated 10/25/02 and 11/1/02.	
11/07/02		**Executive** Joan Holley	Two large expanding folders of Secretary St. Blanc's reading files	Originals
11/07/02	Carole Jordan	**Executive** Joan Holley	All of Secretary St. Blanc's files on General Orders dated February 28, 1990 and October 13, 1993 (years 1998-2002)	Copies made by Ms. Holley
11/08/02	John Morehead	**Utilities**	Auditors had **originals** for Claiborne Power Cost Adjustment reports for 2001-02; LPSC requested the documents; Auditors returned **copies** to the LPSC	Copies from Auditors to LPSC
11/08/02	John Allen	*Executive* Cheryl Capello	Original billing invoices for 2000-2002	Originals (approx. 9 boxes of documents, or 18,000 pages)

11/08/02		*Management* Pat Lumbard	Employee travel expenditure requests and reimbursements for fiscal year 2001-2	Originals (approx. 2,522 pages)
11/12/02	John Allen	*Auditing* Theresa Thomas	CLECO's 2001 Rate Stabilization Plan filing	Copies
11/13/03	John Allen	*Utilities* Donnie Marks	List of all gas and electric companies regulated by LPSC.	Copies
11/13/03	John Allen	*Auditing* Stan Perkins	U-21496 Earnings Review for Company and Commission Outside Counsel	Information
11/14/02		*Utilities* Donnie Marks	Monthly fuel adjustment filings for SWEPCO, Entergy Gulf States, Entergy, CLECO, and DEMCO	1,315 copies
11/14/02	John Morehead	*Auditing* Deborah Smith	Docket U-23702, Town and Country	Copies
11/21/02	John Allen	*Records* Terri Lefebvre	Faxed Order U-19082	Copies
11/25/03	Kerry Fitzgerald Anya Glusman Mike Battle	*Utilities* Arnold Chauviere Buddy Stricker Abbey Millet	Two hour meeting regarding gas purchases for universities according to General Order dated October 5, 1989	Information
12/03/02	Carole Jordan	*Executive* Joan Holley	Reports regarding outside consultants and attorneys from approximately 16 utilities for an average of four years	Copies
12/04/02	David McCrory John Morehead	**Executive** Cheryl Capello	Cases prior to 1995 with outside counsel still billing	Copies
12/04/02	David McCrory John Morehead	**Executive** Cheryl Capello	Information regarding the hiring of outside special counsel and consultants	Copies
12/05/02	John Allen	**Auditing** Stan Perkins	1. NOBRA ATRAM filing for June 30, 2002 2. NOBRA tariff effective March 1, 2001 3. Order and Proposed Stipulation for Docket T-23689 (Bar Pilots) 4. Order for Docket T-23268 (Crescent Pilots)	Copies
12/05/02	John Allen Jay Oliver David McCrory	**Economics** Brian McManus	Various information regarding river pilot cases	Access to originals (given full use of small Plaza Level

				conference room for several weeks)
12/10/02		**Transportation** Bill Withers	Bond schedule for roadside violations	Copies
01/08/03	Wendy Martin	**Utilities** Buddy Stricker	Rate schedules of gas distribution companies (changes in base rates and Commission Orders).	Copies
01/16/03	John Allen	**Utilities** Arnold Chauviere	Allen called to discuss Times-Picayune article of 1/16/03 regarding river pilot pay	Information
01/22/03	John Morehead Wendy Martin	**Utilities** Buddy Stricker	Tariffs for ALL electric and gas utilities, C-1 schedules, for 2001-02, over/under calculation sheets. List of questions from Martin to Abbey Millet and answers on Brown Gas, Elizabeth Natural Gas, Lake St. John, Nezpique Gas, and Reliant Energy-ARKLA.	Copies/ answers from Millet
01/23/03	Wendy Martin	**Utilities** Donnie Marks	Last rate increase for electric coops, Order U-17735-A, U-11735-C, and service list for U-17735.	Email
01/23/03 to 01/24/03	John Morehead John Allen Various others	**Economics** Brian McManus	1. PGA audits 2. Consultant's fee billings	Access to originals (again, full access to conference room; Mr. McManus was told by John Allen to **remove all pilot information**)
01/23/03 to 01/30/03	John Morehead Various others (4 auditors in 2 copy rooms 1/23 and 1/24; 2 auditors in 1 room 1/27, 1/28, 1/29, and 1/30)	**Executive** Cheryl Capello	Original billing invoices for 2000-2002 (approximately 9 boxes of documents, or 18,000 pages)	Access to originals (after having possession of these originals for approx. 2 months, returned to copy this **same information**; made over 10,000 copies)
01/24/03	Nicole Edmonson	**Economics** Brian McManus	Various information regarding river pilot cases	Copies (after John Allen

				stating the audit on the river pilots was complete, Ms. Edmonson requested **duplicate** information already given)
01/27/03	John Morehead	**Auditing** Deborah Smith	1. Guidelines for Cost Allocations and Affiliate Transactions 2. Accounting for Public Utilities 3. Accounting for Non-Accountants 4. Public Utilities Manual	Copies
01/27/03		**Transportation** James Gray	1. Tariff for Branch Pilots of NOLA (approx. 15 pages) 2. Tariff for Branch Pilots of Lake Charles (approx. 9 pages) 3. Tariff for NOBRA (approx. 7 pages) 4. Tariff for Crescent Pilots (approx. 29 pages)	Copies
01/28/03	Nicole Edmonson Jeff Lacour	**Economics** Brian McManus	1. Methodology and survey used in setting river pilot rates 2. General Orders for river pilot cases	Copies (**duplicate** information already produced to John Morehead, etc.)
01/29/03	Nicole Edmonson Jeff Lacour	**Economics** Brian McManus	Various questions and requests for information regarding pilot fee surveys and methods	Copies (**duplicate** information already produced to John Morehead, etc.)
01/30/03	Nicole Edmonson Jeff Lacour	**Economics** Brian McManus	1. LPSC Internal Procedures for Work Paper Indexing	Copies (**duplicate** information

			2. Audit plan and other forms for internal LPSC staff use	already produced to John Morehead, etc.)
01/30/03	John Morehead	**Records** Terri Lefebvre	1. Docket U-16125 (pages) 2. Docket U-16145 (46 pages)	Copies
01/30/03	Carole Jordan John Allen	**Utilities** Buddy Stricker Donnie Marks Abbey Millet	Two hour meeting (3:30pm until 5:30pm) discussing monthly PGA reviews, etc.	Information/ copies
01/30/03	Nicole Edmonson Jeff Lacour	**Auditing** Stan Perkins	1. 2000 ATRAM reports for Crescent Pilots, Branch Pilots of NOLA, and NOBRA	Copies (**duplicate** information already produced to John Morehead, etc.)
01/31/03	Nicole Edmonson	**Economics** Brian McManus	1. Pilot survey questionnaires 2. LPSC Auditing analysis tables 3. Written testimony of Brian McManus	Copies (**duplicate** information already produced to John Morehead, etc.)
01/31/03	Carole Jordan John Allen	**Utilities** Donnie Marks	Fuel adjustment filings questions, method of reviewing filings	Power presentation previously shown to Auditors sent via email (**duplicate** information)
01/31/03	John Allen	**Utilities** Arnold Chauviere	Purchase gas adjustments filed by local gas distribution systems	Copies (on 3 CD's)
02/04/03	Kyle Farrar	**Executive** Tubby St. Blanc	Emailed over two pages full of questions for various staff members; specifically wanted information and copies on South Coast Gas, CLECO, Gulf States, PGA Audits, Brown Gas, Elizabeth Natural Gas, Lake St. John, Nezpique Gas, and Reliant Energy-ARKLA, and ALL River Pilot	Copies (questions on gas companies and pilots were **duplicate** information given **at least twice** already

			associations	to auditors)
02/05/03	Nicole Edmonson Jeff Lacour	**Economics** Brian McManus	1. Emailed answers to questions on river pilots 2. Copies of appendices for Crescent order T-23268	Copies
02/07/03	Kyle Farrar	**Economics** Brian McManus	Asked some of the SAME questions as immediately above posed by Edmonson and Lacour	Answered in meeting (**duplicate** information)
02/11/03	Kyle Farrar Nicole Edmonson Jeff Lacour Wendy Martin	**Staff** Eve Gonzalez Tubby St. Blanc Amanda Smith Brian McManus Stan Perkins Buddy Stricker	Meeting providing copious amounts of information to questions posed by Auditors.	Copies
02/12/03	John Allen	**Utilities** Arnold Chauviere Donnie Marks Abbey Millet	Four hour meeting (10am – 2pm) regarding various questions on PGA.	Information/ copies
02/13/03	John Allen	**Utilities** Donnie Marks	Atmos Order U-25117 concerns regarding a sum that will be repaid to the ratepayers	Information
02/14/03	John Allen	**Utilities** Arnold Chauviere Donnie Marks	Meeting regarding questions on filings of electric companies	Information
02/20/03	Nicole Edmonson	**Auditing** Stan Perkins	Edmonson sends Perkins email asking "how much longer is it going to take?" to get certain information, when it had been waiting for her for a week	Copies
02/20/03	John Morehead	**Auditing** Stan Perkins	Various auditing manuals, including "Documentation on the Operating Ratio Method for Ratemaking, LPSC Audit Manual, Public Utilities Manual, and FERC Accounting and Reporting Requirements	Copies
02/20/03	John Allen	**Utilities** Donnie Marks	Emailed U-17735 and U-17735-C regarding coops (provided previously to Carole Jordan)	Information/ email (**duplicate** information)
02/21/03	Kyle Farrar	**Executive** Eve Gonzalez	Requested to speak with a rate review consultant regarding their criteria, procedures and interaction	Ms. Gonzalez arranged conference

			with the LPSC	with Tom Catlin
02/25/03	John Morehead	**Economics** Harold Lasserre	Customer information, base revenue, fuel revenue, rate schedules for gas and electric companies for past 5 years	Copies
02/26/03	Jeff Lacour	**Auditing** Stan Perkins	Various MORE questions regarding NOBRA ATRAM; a copy of the Marwick report of 1999	Copies
02/26/03	Todd Galloway	**Utilities** Donnie Marks	Residential/commercial bill comparisons for 2001, 02, and 03 emailed	Email
02/26/03	John Allen	**Utilities** Buddy Stricker	Revenues for base rates for gas companies for years 1997-present	Copies
02/27/03	John Morehead	**Utilities** Buddy Stricker	Requested PGA revenues for EVERY gas company for the years 1997-present (**same** information as requested by Allen, above)	Copies of all documents in LPSC possession (**duplicate** information)
02/27/03		**Economics** Brian McManus	Annual Reports of electric and gas companies from 1997-present	Viewed originals
03/03/03		**Economics** Brian McManus	Information on state and federal river pilots	Telephone call from Brian
03/03/03	Jeff Lacour	**Auditing** Stan Perkins	**More** questions on NOBRA ATRAM	Information from Stan
03/03/03	Todd Galloway	**Utilities** Donnie Marks	Residential/commercial rate schedule questions; made copies of old rate schedules	Copies
03/05/03	Kyle Farrar	**General Counsel** Eve Gonzalez	Requested an RFP for U-27103	Copies
03/05/03	Todd Galloway	**Utilities** Buddy Stricker	Meeting from 9am – 11:30am regarding fuel adjustments and PGA's. Documents indicating original approval date of Richie Gas Systems (Brown Gas) original tariff (NOTE – this information was already provided at the 02/11/03 meeting with Staff).	Information/ copies (**duplicate** information)
03/06/03	Kyle Farrar	**Utilities** Arnold Chauviere	Asked for various information regarding rate cases of gas and electric utilities. Chauviere suggested he email a list of questions. The list included a request for information on **every** gas and electric company regulated by the LPSC. This is the **identical**	Copies

			information provided by Perkins, below.	
03/06/03	John Allen	**Utilities** Donnie Marks	Faxed Claiborne and Pointe Coupee invoices for August 2001	Copies
03/06/03	Emmanuel Gill	**Auditing** Stan Perkins	Various information on EVERY gas and electric company, **identical** to that asked of Chauviere, above. List of Auditing Division Assignments, including docket numbers.	Copies (**duplicate** information)
03/07/03	Kyle Farrar	**Utilities** Abbey Millet	Farrar called Millet to check status of information on **every** gas and electric company. Arnold Chauviere told Farrar that this is **identical** information to that already provided multiple times, including by the Auditing Division the previous day. Farrar also indicates that Martin had not been attempting to match Orders with utility rate schedules, but was looking for information on outside consultants. When Chauviere told Farrar this information could have been provided by General Counsel, Farrar says no one informed Martin of that fact.	Information (**duplicate** information)
03/07/03	Kyle Farrar	**Utilities** Arnold Chauviere	More specific information requested than on 03/06/03. Asked for CenterPoint ARKLA rate schedule and Chauviere explained, backup for this rate schedule, backup for CenterPoint Entex rate stabilization clause, ATMOS-Transla rate schedule, approval letter and rate stabilization/backup, ATMOS-LGS rate stabilization/backup, Starks Water and Gas order U-16145, Nezpique rate schedule/backup.	Copies
03/10/03	John Allen	**Utilities** Arnold Chauviere	Requested information regarding LPSC authority. Chauviere faxed LPSC General Order 2.	Copies
03/12/03	David McCrory Kyle Farrar	**Executive** Cheryl Capello	Stated to Capello that totals from the outside counsel hire letters did not match the yearly fiscal auditor reports. Capello explained that only **some** letters had been asked for and provided and that the totals would not be **close** to the same. Bobby	Information

			Trahan of the Legislative Auditors office signs off on the comparison yearly.	
03/13/03		**Economics** Harold Lasserre	Rate recovery and fuel/purchase recovery for 10 gas companies and 7 electric companies	Copies
03/13/03	Kyle Farrar	**Auditing** Stan Perkins	Perkins met with Farrar for about 1 ½ hours to discuss comments on the LPSC Audit process. Farrar asked for copies of the Rate Stabilization Plan companies' LPSC Orders (ARKLA, Entergy-Gulf States, Transla, and CLECO).	Information/ copies
03/14/03	John Allen	**Utilities** Donnie Marks	Faxed Entex August 2001 PGA with invoices and explanation of B-3.	Copies
03/17/03	Kyle Farrar	**General Counsel** Eve Gonzalez Amanda Smith	Asked for justification of using "just and reasonable" standard for setting rates. Faxed statutes and cases showing universal use of this standard in ratemaking world.	Copies
03/18/03	Kyle Farrar	**Utilities** Abbey Millet	Faxed Commission letter dated 9/6/02 to LGS referenced in Atmos letter of 9/16/02.	Copies
03/25/03	John Allen	**Utilities** Arnold Chauvierre	Information on types of electric and gas companies regulated by LPSC	Information
03/26/03	John Allen	**Utilities** Arnold Chauvierre	Information on annual reporting of electric and gas companies	Information
04/03/03	Kyle Farrar	**Utilities** Arnold Chauvierre	Information regarding rate schedules of Northeast Louisiana Power Coop.	Faxed copies
04/03/03	Kyle Farrar	**Auditing** Stan Perkins	Answered questions regarding Entergy, CLECO, Valley Electric, Northeast La Power, Atmos-TransLA, Entergy Gulf States, Reliant ARKLA, and Reliant Entex rate stabilization plans. Some of these were **duplicate** requests.	Information/ Copies
04/04/03	John Allen	**Economics** Harold Lasserre	Requests for Annual Reports of ARKLA, ATMOS, Entergy Gulf States, Evangeline Gas, Lake St. John, Livingston Gas.	Copies

OFFICE OF
LEGISLATIVE AUDITOR
STATE OF LOUISIANA
BATON ROUGE, LOUISIANA 70804-9397

1600 NORTH THIRD STREET
POST OFFICE BOX 94397
TELEPHONE: (225) 339-3800
FACSIMILE: (225) 339-3870

April 7, 2003

Mr. Lawrence C. St. Blanc, Secretary
Department of Public Service
One American Place, Suite 1630
Post Office Box 91154
Baton Rouge, Louisiana 70821-9154

Dear Mr. St. Blanc:

Enclosed is a draft of our performance audit report on the Louisiana Public Service Commission. This document is not yet public and is subject to further review and revision. Therefore, I ask that you keep its contents confidential until the report is finalized and released to the public.

We would like to obtain feedback on the draft by Monday, April 14, 2003. Based on your feedback, we will make any necessary revisions and then provide you with a copy of the revised draft. We want your written response to include in the report by Monday, April 21, 2003.

I would like to take this opportunity to thank you and your staff for your cooperation and assistance during this audit. If you have any questions, please do not hesitate to contact me at 339-3865, or Mr. Patrick Goldsmith, Audit Manager, at 339-3848.

Sincerely,

David K. Greer

David K. Greer, CPA, CFE
Assistant Legislative Auditor and
Director of Performance Audit

DKG:dkc

Enclosure

CONFIDENTIAL

EXHIBIT
A

EXHIBIT B TO RESPONSE OF THE LOUISIANA PUBLIC SERVICE COMMISSION

ENTERGY GULF STATES, INC. (EGSI)
BASE RATE DECREASES AND REFUNDS
JANUARY 1994 THROUGH MARCH 2003

YEAR	AMOUNT OF DECREASE (or Refund)	CUMULATIVE $$ SAVED (Rate Decreases and Refunds)	COMMENTS
1994	$26.20M	$26.20M	Refund
1996	$19.83M	$126.91M	Rate Reduction
1996	$23.91M	$23.91M	Refund
1997	$13.12M	$13.12M	Refund
1998	$104.99M	$514.14M	Rate Reduction
1999	$26.19M	$26.19M	Refund
2000	$11.11M	$33.30M	Rate Reduction
2000	$83.00M	$83.00M	Refund
2002	$32.77M	$32.77M	Refund
TOTAL	**$341.12MILLION**	**$879.54MILLION**	

ENTERGY LOUISIANA, INC. (ELI)
BASE RATE DECREASES
JANUARY 1994 THROUGH MARCH 2003

YEAR	AMOUNT OF DECREASE/REFUND	CUMULATIVE $$ SAVED	COMMENTS
1995	$47.0M	$332.9M	5% Base rate reduction R.O.E. reduced to 11.2%
1996	$16.5M	$100.37M	1st Formula Rate Plan Review
1997	$58.9M	$299.39M	2nd Formula Rate Plan Review
1998	$2.9M	$9.95M	Return on equity reduced to 10.5%
1999	$21.4M	$42.6 M	4th Formula Rate Plan Review.
2000	$24.95M	$47.68M	5th Formula Rate Plan Review
2001	$5.0M	$10.0M	6th Formula Rate Plan Review
2001	$72.0M	$72.0M	*Delaney* refund
TOTAL	**$253.65MILLION**	**$1,085.54MILLION**	

EXHIBIT
B

ELECTRIC COOPERATIVES
FLOW-THROUGH OF REDUCTIONS FOR
CAJUN ELECTRIC POWER COOPERATIVE, INC.
BASE RATE DECREASES
JANUARY 1994 THROUGH MARCH 2003

YEAR	AMOUNT OF DECREASE/REFUND	CUMULATIVE DOLLARS SAVED	COMMENTS
1994	$30.2M	$208.31M	5.6 mill Rater reduction (54.4 to 48.8)
1996	$29.4M	$169.82M	5 mill Rate reduction (48.8 to 43.8)
1999	$19.23M	$39.42M	Rate reduction
2000	$151.1M*	$151.1M	Refund
TOTAL	**$229.93 MILLION**	**$568.65 MILLION**	

CENTRAL LOUISIANA ELECTRIC COMPANY (CLECO)
BASE RATE DECREASES
JANUARY 1994 THROUGH MARCH 2003

YEAR	AMOUNT OF DECREASE OR REFUND	CUMULATIVE DOLLARS SAVED	COMMENTS
1996	$3.0M	$18.0M	Rate reduction
1998	$2.0M	$ 2.0M	Refund
2000	$.45M	$ .45M	Refund
TOTAL	**$5.45MILLION**	**$20.45MILLION**	

SOUTHWESTERN ELECTRIC POWER COMPANY (SWEPCO)
BASE RATE DECREASES
JANUARY 1994 THROUGH MARCH 2003

YEAR	AMOUNT OF DECREASE	CUMULATIVE DOLLARS SAVED
1999	$11.9M	$39.67M
TOTAL	**$11.9MILLION**	**$39.67MILLION**

BELLSOUTH
BASE RATE DECREASES AND REFUNDS
JANUARY 1994 THROUGH MARCH 2003

YEAR	AMOUNT OF DECREASE OR REFUND	CUMULATIVE DOLLARS SAVED BY RATEPAYERS	COMMENTS
1994	$51.88M	$412.45M	Rate reduction
1996	$23.38M	$169.51M	Rate reduction
1997	$25.024M	$156.40M	Rate reduction
1998	$23.38M	$122.59M	Rate reduction
TOTAL	**$217.91MILLION**	**$860.95MILLION**	

EXHIBIT C TO RESPONSE OF THE LOUISIANA PUBLIC SERVICE COMMISSION

Electric and Natural Gas Two-Year Audits

Company Name	Utility Type	Docket No.	Docket File Date	Order Date	Description
Citizens/LGS	Natural Gas Group I	U-23812	12/16/1998	12/13/2000	Investigation to determine if improper cost were passed through the PGA. (Rhodes)
Citizens/LGS	Natural Gas Group I	U-25117	7/19/2000	5/21/2002	PGA Audit pursuant to General Order dated March 24, 1999
Citizens/LGS	Natural Gas Group I	U-25117-A	7/19/2000	2/25/2003	PGA Audit pursuant to General Order dated March 24, 1999 (Rhodes Issues)
Atmos/LGS	Natural Gas Group I	U-25727	7/2/2001	In Progress	Petition requesting the approval of an increase in the facilities charge to be included in the Purchased Gas Costs of Atmos.
Atmos/Woodward	Natural Gas Group I	U-26756	8/28/2002	In Progress	Application for approval of certain Purchased Gas Costs in the PGA of Atmos Energy Louisiana
Centerpoint Energy Entex	Natural Gas Group I	U-26721	7/29/2002	In Progress	PGA Audit pursuant to General Order dated March 24, 1999
Brown Gas	Natural Gas Group III	U-27132	1/29/2003	In Progress	PGA Audit pursuant to General Order dated March 24, 1999
Nezpique Gas	Natural Gas Group III	U-27131	1/29/2003	In Progress	PGA Audit pursuant to General Order dated March 24, 1999
Elizabeth Gas	Natural Gas Group III	U-27130	1/29/2003	In Progress	PGA Audit pursuant to General Order dated March 24, 1999
SWEPCO	Electric Investor-Owned	U-23327 Subdocket B	1/17/2003	In Progress	Investigation of SWEPCO; Fuel Audit conducted pursuant to Merger Order U-23327 (and General Order No. U-21497), Docket No. U-23327, Subdocket B.
Entergy Gulf States	Electric Investor-Owned	U-25116	7/19/2000	n/a	Commission Audit of Fuel Adjustment Clause Filings Pursuant to General Order dated November 6, 1997.
Entergy Gulf States	Electric Investor-Owned	U-27103	1/31/2003	In Progress	Commission Audit of Fuel Adjustment Clause Filings Pursuant to General Order dated November 6, 1997.
Entergy Gulf States Entergy Louisiana	Electric Investor-Owned	U-27167	2/28/2003	In Progress	Investigation into the facilities charges of Entergy Louisiana and Entergy Gulf States.
Entergy Louisiana	Electric Investor-Owned	U-23356	5/29/1998	12/13/2000	Investigation into overcharges by Entergy Louisiana through the fuel adjustment clause since January 1, 1975.
CLECO	Electric Investor-Owned	U-23969	10/27/1998	12/2/1999	Request for approval of rate change pursuant to U-21497 in order to realign certain fuel costs from fuel adjustment recovery to base rate recovery.
CLECO	Electric Investor-Owned	U-26994	12/20/2002	In Progress	Investigation into the electricity trading, affiliate transactions, and fuel adjustment clause practices of Cleco and its affiliates.

EXHIBIT

C

LEGISLATIVE AUDITOR
CONTROL OF EVIDENCE

File No.

Date: SEPTEMBER 11, 2002

Project: PUBLIC SERVICE COMMISSION

Date Acquired:	**Acquired From:**
9-11-02	

Acquiring Investigative Auditor:	**Senior Investigative Auditor:**
ANDREA GAUDET	JOHN MOREHEAD

Description of Property (Be Specific) .

FUEL ADJUSTMENTS PACKETS
NOV 2000 – JUNE 2002 FOR 11 COOPERATIVES
JULY 2001 – JUNE 2002 FOR 4 INVESTOR-OWNED

PURCHASE GAS ADJUSTMENTS
JULY 2001 – JUNE 2002

EXHIBIT
D

Location of Property: This property is maintained in the investigative file as specified above. Documents in the possession of the Investigative Audit Division are confidential as provided by LSA-R.S. 44:4(6).

Received from: [signature]

STATE OF LOUISIANA · UNION JUSTICE CONFIDENCE · LEGISLATIVE AUDITOR

LEGISLATIVE AUDITOR
CONTROL OF EVI[illegible]CE

File No.

Date: 10/10/0[illegible]

Project: PUBLIC SERVICE COMMISSION

Date Acquired:	Acquired From:
10/10/02	ARNOLD CHAUVIERE

Acquiring Investigative Auditor:	Senior Investigative Auditor:
JOHN L. MOREHEAD	JOHN L. MOREHEAD

Description of Property (Be Specific)

17 ELECTRIC COMPANY CORRESPONDENCE FILES

8 GAS COMPANY CORRESPONDENCE FILES

Location of Property: This property is maintained in the investigative file as specified above. Documents in the possession of the Investigative Audit Division are confidential as provided by LSA-R.S. 44:4(6).

Received from: [illegible]

STATE OF LOUISIANA · UNION · JUSTICE · CONFIDENCE · LEGISLATIVE AUDITOR

Louisiana Public
Service Commission

Foster L. Campbell
Commissioner

P.O. DRAWER E
SHREVEPORT, LA 71161-0010
318/676-7464

RESPONSE BY COMMISSIONER FOSTER CAMPBELL TO THE LEGISLATIVE AUDIT DRAFT REPORT ON THE PUBLIC SERVICE COMMISSION

The scope of this legislative audit of the Public Service Commission is the period 1997 to 2002, before I took office January 1, 2003. Constructive criticism contained in the draft audit report should be received as such. The Commission's response does not have my full support. Therefore, I respectfully dissent from the Commission's response and reserve my right to offer a response at a later date.

Foster Campbell

Foster Campbell 30 April 2003