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**TRANSFORMING PUBLIC UTILITY COMMISSIONS
IN THE NEW REGULATORY ENVIRONMENT:
SOME ISSUES AND IDEAS FOR MANAGING CHANGE**

by

David W. Wirick
Associate Director

Vivian Witkind Davis, Ph.D.
Senior Policy Analyst

Robert E. Burns, Esq.
Senior Research Specialist

Douglas N. Jones, Ph.D.
Director and Professor
of Regulatory Economics

THE NATIONAL REGULATORY RESEARCH INSTITUTE

The Ohio State University
1080 Carmack Road
Columbus, Ohio 43210
(614) 292-9404

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EXECUTIVE SUMMARY

In the face of sweeping changes in utility markets and regulatory practices, public utility commissions are being forced to change in fundamental ways--to substantially transform themselves rather than to make only incremental changes in their operations. Managing this process of radical change is complicated by the fact that for the foreseeable future some portions of utility markets (e.g., water utilities) will function much as they have before. Some envision commissions in the future that are more externally focussed, that rely more on dispute resolution than adjudicatory proceedings, that concentrate on identifying and understanding competitive markets, that are more automated, and that are more likely to question old assumptions and definitions.

If commissions fail to adapt to the new regulatory environment, the price will be high. They might lose resources, political support, the support of other agencies, and public support. They might also be subject to a "catastrophic termination" of the agency, and extensive wind-down, a loss of functions, or transfer of agency programs. At stake is the ability of the commission to protect consumers.

Said another way, public utility commissions are faced with a radical paradigm shift. For decades, commissions have operated under a regulatory model that valued stability and adherence to tried-and-true processes. Now commissions have realized that the regulatory paradigm has shifted. Ultimately, commissions will make the transition to the new paradigm and will learn to apply new methods of regulation. The transition from the old paradigm to the new paradigm is full of uncertainty. In the transition, commission productivity and morale may fall until the new direction is established.

Managing large-scale change in a public utility commission is particularly difficult for four reasons. First, because commissions must balance the interests of a wide array of stakeholders, it is difficult for the commission as a whole to identify a customer that can be served to the exclusion of others. As a result, no customer is likely to come

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to the aid of the commission in difficult times. Second, because of the inherent difficulty of identifying an external customer, the adversarial process employed by commissions, the resource and information differentials that exist between commissions and utilities, and philosophical differences between commissioners and staff about the efficacy of competition, commissions are sometimes plagued by internal divisiveness. This divisiveness is particularly harmful when unity of purpose is essential for creating large-scale change. Third, public utility commissions have little control over their agendas and, instead, must react to external events and forces. Examples of external forces that have shaped commission agendas are federal legislation and economic conditions. As a result, commissions must create organizations that are able to adapt to changed conditions and external forces. Fourth, commissions can find themselves under severe and simultaneous pressure to change radically and to do “business as usual.” While some commission stakeholders might view change as mandatory, others (e.g., representatives of small consumers) might prefer the maintenance of traditional processes. Utilities might also demand the end of regulation and the preservation of regulatory protection in issues like stranded costs.

It may be best that commission managers not attempt to push the private-sector analogy too far as they attempt to transform themselves. Though government entrepreneurship is highly encouraged by many, and increased efficiency and effectiveness are laudable goals, bureaucratic forms of organization ensure that subordinate staff are accountable to executives.

Management and organizational models exist for the creation of the adaptable and successful organizations. One of those models is “systems thinking,” pioneered by Peter Senge. Systems thinking incorporates other disciplines—personal mastery, mental models, shared vision, and team learning. In total, they describe the “learning organization,” which “is continually expanding its capacity to create its future...”

Systems thinking requires seeing the interrelationships among variables rather than linear cause and effect and identifying processes of change. Personal mastery

has to do with continual efforts to assess current reality and set individual priorities. Mental models are generalizations or theories that shape our perceptions but are not always articulated. Team learning helps organizations tap into the potential for many minds to be collectively “more intelligent” than one and develop trust.

Some of these concepts are not new and are embedded in more traditional organizational theories. Classical organization theory, which emphasized a top-down process of control to keep an organization focussed; inducements/contributions theory, which postulated the existence of a bargained contract between employees and employers based on the inducements offered employees and the contributions they are asked to make; and contingency theory, which placed new emphasis on the role of information and the environment, all have implications for the transformation of commissions. In addition, the Minnesota STEP program provides a model for implementing change that commissions might employ.

As commissions reorganize to accommodate changes in the industries they regulate, a number of issues specific to commissions arise. They include balancing due process concerns with the needs of new regulatory methods, the impact of externally imposed change, the identification of the appropriate staff mix, and identification of the appropriate organizational form.

As commissions restructure, they will need to insure that the mechanisms that have allowed due-process protection in the past are not eliminated. On the other hand, as commissions attempt to respond more quickly and become less adjudicatory, more open, and more legislative, due-process mechanisms may become more of an impediment to effective decision making than in the past. Due-process issues include ex parte rules, open meeting laws, and sunshine laws.

If commissions are changed by others, rather than changing themselves, three scenarios are possible. First, commissions could be subject to straight-line reduction of their resources. Second, commissions could be downsized until the trend was reversed several years out when necessary rehiring takes place as a result of revealed

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deficiencies in consumer protection. Third, commissions could be allowed to add staff in the short term to devise alternative regulatory regimes; examine, identify, and evaluate degrees of competition in the several sectors; classify markets as workably competitive, moving toward competition, or non-competitive; and generally administer the pace and kind of transition. In any of these scenarios, it is likely that the ultimate level of staffing will fall below current levels.

As commissions attempt to identify what mix of skills or fields of expertise should comprise the technical staff in the new context, a variety of considerations will weigh on the decision. This report (in Chapter 4) identifies those considerations for five traditional fields--engineering, law, accounting, economics, and financial analysis. The report also identifies the factors which point toward a sectoral (electric, gas, telecommunications, and water) arrangement of staff and those factors which point toward a functional approach (e.g., accounting, finance, and economics; engineering and facilities; reporting and record keeping; hearings, docketing, and case administration; etc.).

Lastly, the report (Chapter 5) applies a systems approach to transforming a public utility commission and summarizes the recommendations of the report within that context.

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FOREWORD

In the current turbulent environment for public utility commissions, managing change is a topic of major concern. When the NRRI approached the Staff Subcommittee on Executive Directors to find ways to be helpful to that subcommittee, managing change was identified as the most important issue on the subcommittee's agenda.

This report examines the transformation of commissions from a variety of perspectives--from organizational theory to specific issues of commission organization and procedure. It should provide information and analyses of interest to all involved.

Douglas N. Jones
Director, NRRI
Columbus, Ohio
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PREFACE

The Staff Subcommittee on Executive Directors at the Third Annual Regulatory Conference, held in Denver, Colorado in May of 1995, requested NRRI to prepare a paper regarding managing change. The subject was discussed further at a meeting of the Staff Subcommittee on Executive Directors at the NARUC Annual Meeting held in New Orleans, November 13-14, 1995.

The Staff Subcommittee on Executive Directors appreciates the work of NRRI and its assistance in making a presentation in Lexington, Kentucky, while the report was still in progress.

Raymond K. Vawter, Jr.
Chairman
Staff Subcommittee on
Executive Directors

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CHAPTER 1

THE MANDATE FOR COMMISSION CHANGE

Driven by a combination of forces, which include radical shifts in technology, finances, customer needs, and public policy, significant changes are sweeping the regulated utilities. In electricity, gas, telecommunications, and, to a lesser extent, water, the changes taking place are changes in kind and not just degree. Most importantly to state and federal public utility commissions, the introduction of market forces and competition into the utility industries may significantly supplant the need for continuing, comprehensive, and traditional public utility regulation.¹

Though the rate of change and the type of change is different in each utility sector, several trends are discernible in all. They include:

- Dichotomy of customers in core and noncore groupings.
- Unbundling and new service offerings.
- Deregulation of certain services and markets.
- Increased use of market-based pricing and incentive ratemaking.
- Large users seeking lowest-cost service providers.
- Shift from old regulatory compact re territorial exclusivity and assured recovery.
- Changing obligation to serve.
- Utility diversification into other businesses and use of holding company structures.

¹ The Staff of the National Regulatory Research Institute, *Missions, Strategies, and Implementation Steps for State Public Utility Commissions in the Year 2000: Proceedings of the NARUC/NRRI Commissioners Summit* (Columbus, Ohio: NRRI, 1995), 1.

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- Increasing business risk for utilities.
- Uncertainty as to continued attention to social goals.²

In the face of this revolution in utility markets and regulatory practices, regulatory commissions are being forced to change in fundamental ways. In many cases, commissions have already begun to react to their changing roles and circumstances. Some commissions have engaged outside consultants to examine their organization, mission, and regulatory methods. Others have begun to review their own missions and objectives and have begun the effort to change the organizational culture. Some have involved a wide circle of stakeholders in the effort to create new visions of commission roles. Many have experimented with alternative methods of dispute resolution (ADR). And many have employed structured management methods such as Total Quality Management (TQM) or its variants, to improve regulatory processes.

The current mandate facing public utility commissions to adapt differs from the past in both the pace and degree of change necessary. Commissions--like all

The change required today is in response to a fairly radical reshaping of the environment and, as a result, requires fundamental changes in the missions and operations of public utility commissions.

organizations, public and private--have consistently adjusted their practices to evolving circumstances and are not strangers to change. Today, however, the need to change is more pervasive, and the stakes are much higher. The change required of commissions today is not the familiar gradual evolution in

response to incremental changes in the external environment. The change required today is in response to a fairly radical reshaping of the environment and, as a result, requires fundamental changes in the missions and operations of public utility

² Ibid., 1-2.

commissions. To some extent, what is required of commissions today is the creation of what is not rather than the alteration of what is.³ As described in the report, commissions will need to go through three phases of change: identifying change, changing, and refreezing.

Managing change is complicated by the fact that, for the foreseeable future, some portions of utility markets (e.g., water utilities) will function much as they have before. As a result, commissions are also being challenged to identify which portions of their operations might not be substantially modified and which portions should be permanently and substantially altered. If commissions fail to meet the challenge, the stakes for the public and the commissions themselves are high.

When the NRRI asked the members of the National Association of Regulatory Utility Commissioners (NARUC) Staff Subcommittee of Executive Directors its preferences for research and analysis to support the Subcommittee, "managing change" was the issue thought most important. This report seeks to respond to that expressed need and shed some light on the difficult task of managing large-scale and fundamental change in public utility commissions.

In the remainder of this chapter, we examine some of the suggested directions for commission change and the consequences of failing to adapt regulatory commissions to new regulatory circumstances. In Chapter 2, we examine the impact on organizations of changing paradigms, some of the unique characteristics of regulatory commissions that make management of change particularly difficult, and the implications of the movement to make government more "entrepreneurial." In Chapter 3, we present one new model for creating adaptable organizations that may be of use to state commissions and examine the implications of more traditional organizational

³ From a presentation by Steve Joern titled "Taking Risk Out of Change" to the Great Lakes Conference of Public Utilities Commissioners and Mid-Atlantic Conference of Regulatory Utilities Commissioners, July 8, 1996, in Cleveland, Ohio. Mr. Joern drew this reference from Tracy Goss, Richard Pascale, and Anthony Athos, "The Reinvention Rollercoaster: Risking the Present for a Powerful Future," *The Harvard Business Review*, Volume 71, No. 6, January 1993, 98.

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models. In Chapter 4, we examine several specific issues involved in commission change, including several scenarios for externally-imposed downsizing, due process considerations in a changing environment, staffing decisions, and organizational forms. In Chapter 5, we present a systems model of change that incorporates the recommendations made throughout the report.

To a considerable extent, however, this report is descriptive rather than prescriptive. The political, managerial, and regulatory environment is different in each state. It is, therefore, impossible to define "best practices" for commissions in general. By examining some of the issues common to all commissions, it is hoped that each commission will find some information of interest and be able to select the set of solutions most appropriate to its circumstances.

A Change to What?

The current patterns of commission organization and the traditional practice of regulation did not develop by accident. They evolved over time in order to meet societal needs and to replace earlier forms of regulation that, to some extent, had failed. As a result, it can be argued that commissions were organized optimally to suit the then-existing environment. Today, new organizational models may be required.

When public utility commissioners gathered in Denver for the NRRI/NARUC Commissioners Summit, they made it clear that they embraced change as necessary to effective commission functioning in new regulatory environments and made it clear that they were prepared to direct that change. They envisioned a commission that is more externally focussed, that relies more on dispute resolution than adjudicatory proceedings, that concentrate on identifying and understanding competitive markets,

that is more automated, and that is more likely than before to question old assumptions and definitions.⁴

They identified five clusters of core missions for public utility commissions:

- Protection of those customers who would not reap the full benefits of competition.
- Support of competition balanced with an interest in fair and effective competition.
- The provision of timely and clear decisions to utility managers and allowing utilities the flexibility to adapt to new conditions.
- Preserving the commitment to social goals compatible with the competitive market.
- Addressing the impact of new corporate structures, jurisdictional changes, necessary changes in regulatory methods, and customer protection in the new environment.⁵

Within these missions, commissioners identified implementation steps for commission management and organization that included the following:

- Create a flatter organization.
- Recognize that as competition grows, the need for an advisory staff role grows and the need for an advocacy staff decreases.
- Make greater use of collaborative processes, use more mediation skills, use pre-litigation and pre-conflict resolution involving industry groups, and use public policy forums.

⁴ The Staff of the National Regulatory Research Institute, *Missions, Strategies and Implementation Steps for State Public Utility Commissions in the Year 2000*, 31.

⁵ *Ibid.*, 8-12.

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- Increase reliance on more alternative forms of information sharing (e.g., round tables, input for White Papers) combined with the tension for more stringent needs for information gathering.
- Shift to more of a marketplace referee/watchdog (Federal Trade Commission model) using less adjudication and more policy/industry structure rulemaking.
- Make the commission more proactive.
- Allow more staff interactions (such as using team approaches).
- Perform more future-oriented analyses (including planning).
- Implement automated information systems with ease of access. Provide more data mechanization and management.
- Find ways to measure service quality.
- Provide greater public input (e.g., teleconferencing).
- Become more efficient and nimble.
- Expand the public education effort.
- Establish an internal process of reculturation toward embracing competition.⁶

Though these implementation steps are only a representative sample of those identified by the commissioners at the Summit, they provide a flavor of the array of directions for change the commissioners envisioned.

Professor Charles Phillips has expressed a similar vision for commission adaptation. In 1993, he said:

...the great challenge to regulation is to improve its adaptability to a rapidly changing economic environment. Today regulation must be more than a

⁶ Ibid., 26-31.

protector. It cannot attain its objectives merely by protecting consumers from monopoly profits, utility investors from confiscation of their investment, or utilities from competition. It would be highly desirable if the goals and policies of regulation were more explicit and if the regulatory process could be stripped of its needlessly complex, costly and often confusing procedures, thus permitting greater flexibility. But above all, regulation needs to adopt dynamic standards to meet the needs of a changing economy and to evaluate both performance and policy.⁷

In actuality, the challenge for public utility commissions is two-fold. They must adapt to radically shifting environments by creating flexible and effective organizations. And they must also simultaneously convince elected officials that they are relevant and necessary to the protection of the public. Commission managers must make the right changes and then sell those changes to legislators and the public as an effective response to changing times.

The Price of Failure

Regulatory commissions remain relevant and in control of their environments by creating effective organizations, applying effective methods of regulation, and convincing others of their worth. Failure to adequately adapt to changing circumstances can cause them to lose control of their environments.

According to Barry Mitnick, when regulatory agencies lose control of their environments, they can:

1. Lose resources. With fewer resources, the agency is less able to implement its powers, reward or punish the regulated industry, and provide stability in the environment.

⁷ Charles F. Phillips, Jr., *The Regulation of Public Utilities: Theory and Practice* (Arlington, VA: Public Utilities Reports, Inc., 1993), 890.

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2. Lose coordinative/linkage support. Other agencies critical to the regulatory mission may fail to support the regulatory agency. (Examples might be state attorneys general or governors' offices.)
3. Lose political support. This may hinder implementation of regulatory policies or threaten the existence of the regulatory agency.
4. Lose public support. Loss of public support can be manifested by public intervention in agency proceedings, letters to legislatures, and lack of compliance with agency directives.⁸

Many commissions can already cite examples of these types of losses.

Ultimately, loss of support can lead to near-total deregulation, which can take the form of:

1. A catastrophic termination of the agency.
2. A guided or unguided wind-down of the agency.
3. Stripping the agency of its functions, activities, and or programs.
4. Disintegration of the agency with the transfer of its programs.⁹

In Chapter 4, we will examine several scenarios for externally-imposed commission downsizing. Fortunately, for those employed in regulation and those who are protected by the exercise of regulatory authority, it is difficult to accomplish any of these actions. Mitnick notes that factors such as the difficulty of measuring even poor performance, the high costs of change, and opposition by those who benefit from regulation mitigate against these types of regulatory termination.¹⁰

⁸ Barry M. Mitnick, *The Political Economy of Regulation: Creating, Designing, and Removing Regulatory Forms*, (New York, NY: Columbia University Press, 1980), 421-422.

⁹ *Ibid.*, 428-430.

¹⁰ *Ibid.*, 430-431.

Nonetheless, regulatory commissions need to act vigorously to retain control of their environments. Whether or not the survival of the commission is actually at stake, at a minimum, the ability of the commission to protect consumers is is. One key to maintaining effectiveness is the skillful management of organizational change. The price of failure to both the public interest and the stakeholders of the currently regulated entities is significant.

CHAPTER 2

IMPEDIMENTS TO COMMISSION CHANGE

Creating and managing change is difficult in any organization. Fortunately, there is a considerable body of literature for managers of change to draw upon. Some of that literature will be helpful to regulatory commission managers, but regulatory commissions labor under some specific conditions and circumstances that make change particularly challenging. This chapter explores the difficulties created by a paradigm shift of the magnitude faced by public utility commissions today and some of the unique attributes of regulatory commissions that create special challenges for their managers and impediments to large-scale change. The attributes we will explore are:

- The difficulty inherent in identification of commission customers.
- The tendency toward fragmentation or “taking sides.”
- The lack of agenda control.
- The potential to be “whipsawed.”

Lastly, we will make a concluding comment about the particular problems inherent in creating change in government, as opposed to private, organizations.

Paradigm Shifts

To simplify our understanding of the world, we create mental models describing our environment. These models become the basis upon which we build the rules and processes that allow individuals and organizations to function in a complex society or a complex organization. Occasionally, our paradigms must be adjusted as major shifts in the environment create a disparity between the reality of the environment and the

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models we have developed to explain and simplify it. These changes are sometimes called paradigm shifts. Examples are the collapse of the former Soviet Union, which radically altered our understanding of the dynamics of world peace, and the spread of competition into former monopoly utility markets. Paradigm shifts require radical adjustment of behavior patterns.

The impact of a paradigm shift on an organization is illustrated in Figure 2.1.¹ Early in the life of a new paradigm, the organization undergoes a period of rapid learning and rapid productivity growth as it learns new processes and methods. Eventually, the organization reaches a mature state in which change and productivity growth slow. In this period, which for state public utility commissions has existed for decades, the organization relies on tried-and-true processes and tends to be rule-driven and procedure-driven. Staff who understand existing processes and who are comfortable with rule-driven agencies serve the agency best in this phase of the organization's life.

At some point, however, a paradigm shift occurs (Point A in Figure 2.1). Existing processes no longer match the external environment, and large-scale organizational change becomes necessary.

At some point, however, a paradigm shift occurs and large-scale organizational change becomes necessary.

Unfortunately, paradigm shifts can only be seen and accurately assessed in retrospect. Though changes in technology and observable changes in the external environment may indicate

that a shift is occurring, the appropriate organizational response to that change is a matter of prediction or guesswork. Point B is the point at which the organization realizes that a paradigm shift has occurred but is not yet responding to it.

¹ This figure and the description of it are drawn from a presentation by Dutch Leonard of the Kennedy School of Government to the NARUC Staff Subcommittee of Executive Directors, April 21, 1996, in Lexington, Kentucky.

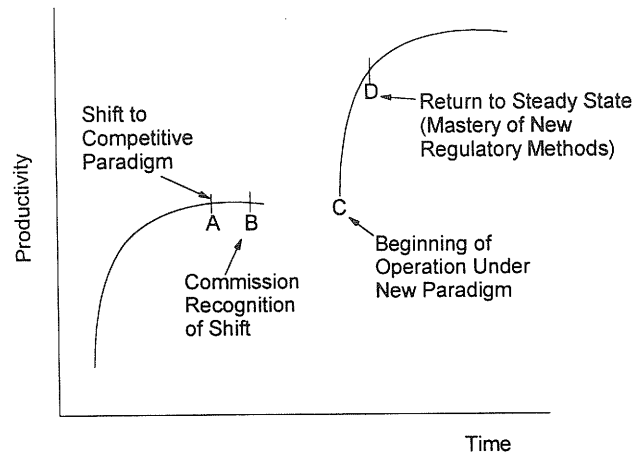


Figure 2-1. The Effect of a Paradigm Shift on Organizational Productivity.

Source: Adapted from a presentation by Dutch Leonard of the Kennedy School of Government to the NARUC Staff Subcommittee of Executive Directors, April 19, 1996, in Lexington, Kentucky.

Across the gap between the two paradigms is Point C. At C, the organization reenters a period of rapid adaptation and productivity growth similar to the one that characterized its early history. In this period, adaptable staff serve the agency best, and constant organizational learning is key. Ultimately, the organization will master the new paradigm and the technologies and processes that sustain it and will enter a steady state (D) much like before.

The most difficult period for the organization is the gap between B and C. In this period of extreme uncertainty, productivity and morale may plummet. In this period, the organization understands that a dramatic shift is necessary but

Leaders who were valued for their ability to provide definitive answers may only be able to provide new questions instead of the right answers.

cannot yet identify with certainty what changes are required. Staff, who were recruited and trained to operate in a stable, rule-bound system, will discover that the system that

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they served so well may disappear. Leaders who were valued for their ability to provide definitive answers may only be able to provide new questions instead of the right answers. (In actuality, the ability to ask the right questions in a period of rapid transition may be the appropriate role for leaders. Those questions may provide the context within which the organization can evaluate options for change.)

To successfully manage change requires a combination of both quality leadership and a firm grasp of the evolving regulatory and environment issues. One without the other will stifle the effectiveness of managing change.

In this period, organizational flexibility is critical. Though the organization may want to place a few "bets" on processes and methods likely to be useful under the new paradigm, it will also want to retain the flexibility to adapt to emerging conditions. For example, changing roles may require more generic descriptions of functions, such as renaming the Audit Division the Financial Analysis Division, to provide the additional flexibility necessary to make course corrections. Leaders will be challenged to maintain organizational vision and cohesion in the face of considerable uncertainty as to direction and ultimate organizational mission.

As competitive markets and legislative initiatives continue to unfold, it could be argued that many regulatory commissions are at B. Some new directions for operation under the new paradigm have been hypothesized though it is unclear to what extent competition will replace traditional forms of regulation. "Bets" (probably fairly safe ones) for operation under the new paradigm are being placed on antitrust considerations, the continued protection of core customers, quality-of-service regulation, and continued ratebase/rate-of-return regulation in areas that are unlikely to become competitive (e.g., water utility regulation). Potential transitional activities for commissions are identified in Chapter 5.

For all its descriptive strength, however, Figure 2.1 may be somewhat misleading. The traditional regulatory paradigm has existed for decades. Due to the turbulent nature of the times and the natural turbulence of competitive markets, the

new, competitive paradigm may last for only a short time, and commissions may find themselves involved in nearly constant adaptation to new paradigms. Once again, flexibility is the key.

Identification of Commission Customers

In recent years, the focus of much of the management literature has been on serving the customer. Total Quality Management (TQM), for example, presumes and demands that the organization identify its customers and determine their needs.

For offices or departments within commissions that provide services to other internal offices (e.g., management information systems offices), "internal" customers can be defined even if the office has no direct contact with "external" customers. In these areas, TQM has been productively applied by a number of commissions.²

Though commission offices can identify internal customers and effectively employ the customer-service paradigm in the redesign of internal processes, identifying the external customers of the commission as a whole is far more difficult.

Though commission offices can identify internal customers and effectively employ the customer-service paradigm in the redesign of internal processes, identifying the external customers of the commission as a whole is far more difficult.

Public utility regulatory commissions exist to serve the public at large, a public that is composed of groups with often contradictory goals. For state and federal public utility regulatory commissions, the "public" to be served consists of residential

² Vivian Witkind Davis, *Total Quality Management: A Survey of State Regulatory Commissions* (Columbus, OH: NRRI, 1993).

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ratepayers, small and large business consumers of utilities, utility shareholders and managers, consumer advocates, legislators, and the executive branch. Their goals range from inexpensive service to company revenue maximization with widely disparate ideas of "fairness." The objective of a public utility commission is not to maximize the interests of any customer but to prevent any customer from having its interests irreparably damaged. Because commissions exist to find a balance between these incompatible goals, it might be argued that the mission of commissions is *not to maximize customer satisfaction but to minimize customer dissatisfaction.*

This commission role is perhaps unique among business and even government organizations. Most organizations are able to identify a customer that they attempt to serve to the exclusion of others. Even other government organizations can often identify a clientele that they serve and frequently argue for resources for their programs, resources that in an environment of constrained resources must be taken from other agencies serving different customers. (For example, employees of state mental health

Though commissions are also bound by law, commissions seek to define and serve the interests of the parties affected.

agencies can become advocates for the mentally ill.) In most cases, both the interests of the agency and the interests of its clients are served if the agency is able to gather additional resources or protect the resources they have in an

environment of cost cutting. In the pursuit of resources, government agencies and their customers become allies. This is a natural reaction that may help create effective competition for resources among government agencies.

Commissions must seek balance rather than the betterment of specific customers. The commission role is even more complex than that of true judicial organizations they are partly modeled on. The courts operate within the constraints of fairly clearly defined law. Their concern is more with private *rights*. Though commissions are also bound by law, commissions seek to define and serve the

interests of the parties affected. By balancing the interests of the affected parties, commissions serve the public interest.

This unique role of public utility commissions creates impediments to managing change. First, because commissions do not serve a clearly defined, exclusive customer, no customer is likely to rally behind the commission and support its efforts to secure the resources necessary for performing its mission effectively. In the minds of each of the disparate elements of the commission's clientele, the commission could always "do better"

As a result, as a commission attempts to build external support for change, it will likely stand alone without the support of its customers.

than it has in the past. The commission can be viewed as an impediment to the full achievement of the individual clientele's goals, and as commissions enter periods of uncertainty, flux, and weakness, some members of the regulatory community may seize the opportunity to more fully maximize their goals to the detriment of others. As a result, as a commission attempts to build external support for change, it will likely stand alone without the support of its customers.

Second, without clearly defined customers it will be difficult for commissions to define effective measures of performance. It is axiomatic that as organizations implement change, new measures of performance must be created. No matter how extensive the change, personnel will behave exactly as they have before the change if the standards they are measured against remain the same.

It is hard to find performance measures for an organization whose proper objective is the pursuit of balance. In traditional regulatory environments, the best performance measures commissions have been able to apply have been low utility rates, infrequent reversal of decisions by the courts, the low overall cost of regulation, and benchmarking of commission performance against peer states. Each of these is flawed in one significant way or another.

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In more competitive utility markets, it will be no easier to define commission performance measures. Potential measures include the existence of competitive options for consumers, the achievement of social goals like universal service, low rates, and consumer satisfaction. None of these measures is adequate alone. Also, those potential measures may require significant efforts that may be more regional in nature. For example, to the extent that there is a move towards more regional markets, developing state-by-state statistics of annual customers bills survey for natural gas and electricity becomes more significant in determining the effects of changes on the markets between jurisdictions. Rate decreases in a high-cost jurisdiction may translate into rate increases in a neighboring low-cost jurisdiction.

Third, the lack of clearly defined customers exacerbates the tendency for the commission to become internally divided. In the absence of a clearly delineated customer, staff (and sometimes commissioners) may identify with specific elements of the public served by the commission. The result is that internal advocates can develop, and it becomes more difficult for the commission to perform its balancing function. In a period of dramatic change, these advocates may attempt to drive the change in a direction favorable to their specific, self-identified customer set, to the detriment of other customer groups.

One unintended outcome of the deregulation of utility markets may be that, when the dust has settled, public utility commissions may be better able to identify a clear customer. Ultimately, if the health of utility providers is determined solely by the market and is, therefore, beyond the purview of the commission and if some consumers are well-served by a competitive marketplace, commissions may serve only those who cannot easily reap the benefits of competition--the core customer.

The Difficulties Caused by Excessive Internal Divisiveness

In addition to the difficulties commissions face in identifying specific customers to be exclusively served, other factors contribute to the tendency of commission organizations to sometimes become internally divided. They include the emphasis on a judicial process that relies on a combative intellectual process, the vast resource and information differentials that exist between commissions and utilities, and competition in the public and legislative arenas between the ideals of protecting the public through regulation and social betterment through nearly unfettered competition.

These factors combine to create the perception that commissions and some of their stakeholders are in direct and continual conflict. In this environment, it is easy for regulators to view a rate increase

granted to a utility as a "loss." A rate decrease or freeze is a "win." Under traditional methods of regulation, this inherent combativeness of commissions ensured that some consumers were well represented in the regulatory process.

These factors combine to create the perception that commissions and some of their stakeholders are in direct and continual conflict.

Unfortunately, as times change, some regulators could view changes in regulatory methods as a complete abandonment of the field to "the enemy."³

In this culture, which has arisen naturally and predictably, it will be particularly difficult for commissions to implement change. If relaxed regulation is viewed as a

³ At the NARUC/NRRI Commissioners Summit, some commissioners expressed the sentiment that staff "just don't get it," where "it" referred to the need for change and the benefits of the new, more competitive market. This sentiment may have resulted from their belief that some staff hold the view that deregulation is a "loss" rather than a movement toward the use of competition as a regulator of prices and services. For a sustained military metaphor for commission operations, see David Wirick, "The Regulatory Battleground: A Briefing for Commanders," *NRRI Quarterly Bulletin*, Volume 16, Number 3, Fall 1995, 391-398.

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victory for the utilities and a loss for residential and other small consumers, the rational strategy would be to delay change as much as possible. If commissions split between those who believe in the positive effects of competition and those who see competition as a failure of the commission to accomplish its consumer-protection mission, the commission will bifurcate.

This is particularly harmful when unity of purpose is essential for creating large-scale change. Instead of being able to articulate new visions and lead the commission toward new organizational models, commission managers may find that some staff (or commissioners) embrace change while others regard it as anathema. Change is always resisted to some extent because of the power shifts that must occur; in this case, change may be opposed on philosophical grounds as well.

The inherent divisiveness of staff and the sometimes combative approach to regulation is doubly difficult in an era that demands cooperation and mediation instead of head-to-head conflict. At the NARUC/NRRI Commissioners Summit, recurrent

The inherent divisiveness of staff and the sometimes combative approach to regulation is doubly difficult in an era that demands cooperation and mediation instead of head-to-head conflict.

themes included the use of more alternative methods of dispute resolution, better public relations and education, recognition of the roles of other players in the regulatory process, and more participation with others. These models of operation are in direct opposition to the combative modes of operation that were successful in the past.

An organization can be thought of as a rope consisting of strands of technology, politics, and culture.⁴ Commission managers must change the organization of the

⁴ Noel M. Tichy, *Managing Strategic Change: Technical, Political, and Cultural Dynamics* (New York, NY: John Wiley and Sons, 1983), 10.

commission and its processes and technology, and they must also effect a profound culture change. Changing culture, to the degree necessary for state public utility commissions, requires energy, skill, and, most of all, time. Yet time may be a luxury that the commissions lack, given the current pace of external change.

The Lack of Agenda Control

It is commonly assumed that most business organizations and some public organizations in the midst of aggressive change rely on their ability to identify for themselves what is most important to the organization and to set goals for themselves. With those goals in mind, they can take action to further the aims of the organization. Within resource constraints, they can develop new product lines, drop other products, serve one market niche versus another, or take any other variety of initiative. In short, the organization itself identifies its own goals and agenda and then proactively works to convert the agenda to action.

Public utility commissions, however, do not have such control over their own priorities and agendas. Their agendas are often imposed externally. Events that have created commission agendas are (not in order of their occurrence):

- State legislators and executives adopted the view that competition is an effective regulator.
- The costs of nuclear power plants exceeded levels acceptable to the public.
- Inflation eroded the profitability of utilities.
- The combination of federal legislation requiring safe water and an aging water infrastructure led to the potential for dramatic increases in water costs.
- Technology allowed for competition in previously-monopoly markets.

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- Mergers and acquisitions created powerful, multi-jurisdictional utilities.
- The Financial Accounting Standards Board required that postretirement benefits be accrued as costs in the utility's financial statements.
- The Telecommunications Act of 1996 and The Energy Policy Act of 1992 created a more competitive environment for telecommunications and electricity.

In each of these instances, commissions were (and in some cases, still are) required to react to an external, agenda-shaping event. In each of these circumstances, it was difficult (or impossible) for the commission to plan for and to lay the organizational groundwork for the appropriate reaction to events in advance. And even if events could be forecast with some certainty, legislative and judicial constraints may have limited the range of commission action.

As a result of the lack of agenda control, commission staffing and organization

Commissions are burdened by past problems for the simple reason that the next problem cannot concretely be anticipated.

must often be reactive to the most recent externally-imposed problem. Like armies that train to fight the last war, commissions are burdened by past problems for the simple reason that the next problem cannot concretely be anticipated. Hypotheses can be made

and contingency plans can be drawn, but the next challenge (like the next war) cannot be planned or chosen.

While this inability to articulate a priori goals may seem like a crippling weakness of public utility commissions, there are those who argue that many or all organizations actually function in this manner. Cyert and March argue that:⁵

⁵ R. M. Cyert and J. G. March, *A Behavioral Theory of the Firm* (Englewood Cliffs, NJ: Prentice-Hall, 1963), 43 as cited in Edward Harvey and Russell Mills, "Patterns of Organizational Adaptation: A Political Perspective," in Mayer N. Zald, ed., *Power in Organizations* (Nashville, TN: Vanderbilt University

...the goals of a business firm are a series of more or less independent constraints imposed on the organization through a process of bargaining among potential coalition members and elaborated over time in response to short-run pressures.

Harvey and Mills argue further that organizations have ongoing, general goals that become the context in which the specific goals are developed. The most meaningful goal-setting process is the development of specific goals in response to the perception of the problem.⁶ The most important function of organizations in this context is adaptation to external events or constraints.

New management theories, such as the Learning Organization which will be described later in this report, place a high premium on the ability of an organization to adapt to external stimuli.⁷

Commissions are familiar with this adaptive process and will need to employ it in the future. In the current, rapidly shifting environment, uncertainty is the only sure thing commission managers can plan for. The flexibility to adapt to developments requires multi-purpose enabling legislation, the

The flexibility to adapt to developments requires multi-purpose enabling legislation, the ability to assemble resources quickly, minimal organizational barriers, constant training, open and ubiquitous information systems, adaptable technology, a willingness to embrace change, and the ability to imagine and rapidly create new paradigms for organizational design.

Press, 1970).

⁶ Edward Harvey and Russell Mills, "Patterns of Organizational Adaptation: A Political Perspective," 195.

⁷ Peter M. Senge, *The Fifth Discipline: The Art and Practice of The Learning Organization* (New York, NY: Doubleday, 1990).

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ability to assemble resources quickly, minimal organizational barriers, constant training, open and ubiquitous information systems, adaptable technology, a willingness to embrace change, and the ability to imagine and rapidly create new paradigms for organizational design.

As an interim strategy, commissions might organize their resources to counter the potential outcomes that have the capability to most endanger consumers. As competition becomes more pervasive, commissions can empower consumers to fend for themselves and develop methods for monitoring the impact of competition on consumers. Movement in this direction has begun at several commissions. In Colorado, the Public Utilities Commission has developed a consumer's bill of rights, and other state commissions are working on similar bills of rights. In Ohio, the Public Utilities Commission has surveyed consumers to solicit input for revision of the minimum telecommunications service standards.

And commissions could articulate those general, a priori goals spoken of earlier that provide the context for the development of specific objectives that can guide the adaptive process.

The Potential To Be Whipsawed

As mentioned, the key to coping with a changed external environment is creating and maintaining the flexibility to adapt rapidly to opportunities or requirements. All organizations, for good reason, invest heavily in organizational structures, technologies, and processes that support their current method of operation. When large-scale change is necessary, these investments, and the staff behaviors that support the investments, can get in the way of change.

Much of the resistance of staff to change can be attributed to their defense of the organization's investments in the status quo. Large-scale change requires adjustment of power relationships, changes in communication patterns, and remarketing or

repositioning the organization with external stakeholders.⁸ Many of those internal to the organization and external parties with a stake in the organization will likely rally to defend the existing processes and organizational arrangements that have been effective in the past and that they are comfortable with. As some parts of the organization are successfully defended against change, the range of change becomes limited and chances for successful adaptation are diminished.

That is not to say that some portions of the organization may not remain the same following the implementation of large-scale change. No organizational change is absolute; some things change and some do not. Everything the organization does, however, should be fair game for consideration. If all the elements of the organization that appear to work in the current environment are declared “off limits” to change, successful adaptation in changing times may be impossible.

Because of the influence of external stakeholders on state public utility commissions, the likelihood of being torn between radical change and “business as usual” is substantial. The adjudicatory process under which commissions have operated for decades is deeply institutionalized. Staff have learned to operate within its constructs, and some parties to cases may feel less able to participate without the clear constraints of the current system. For example, consumers’ counsels may prefer the adjudicatory process over other forms of conflict resolution because under the adjudicatory process, they can combat the fundamental problem of information asymmetry through legal discovery and are able to respond to a clear, limited, and written record. In other instances, utilities may almost simultaneously demand the end of regulation and the preservation of regulatory protection in issues like stranded costs.

The result is that while the impetus for change bombards commissions from some directions, the demand to continue to perform as they have before is also strongly

⁸ An excellent publication on change which addresses some of these factors is: The Price Waterhouse Change Integration Team, *Better Change: Best Practices for Transforming Your Organization* (Burr Ridge, IL: Irwin Professional Publishing, 1995).

articulated. Indeed, in some areas (e.g., water utility regulation) commissions will

The result is that while the impetus for change bombards commissions from some directions, the demand to continue to perform as they have before is also strongly articulated.

continue to employ ratebase/rate-of-return regulation for some time. Under the competing pressures to continue to perform traditional regulatory functions and adapt to increasing levels of competition, organization paralysis could set in, thus preventing successful adaptation to the new environment.

A Special Note on Changes in Government Organizations

Those who manage government agencies often lament peculiar aspects of those agencies that make large-scale change particularly difficult. Impediments to changing government agencies include civil-service and sometimes bargaining-unit protection of staff, the inability to recruit rapidly, and limitations on the purchase of advanced technology. For state commissions, the frequent turnover of commission leadership (particularly chairs and commissioners) is an impediment to sustaining a vision for change. Frequent policy changes at the state executive or legislative levels can also have a significant impact.

In recent times, government managers have tried to make government "more businesslike," in part to facilitate government change. Their objective, as articulated by the Clinton-Gore initiatives to reinvent the federal government, is to make government more responsive to its customers, to empower employees, and to foster excellence.⁹ Among the premises embedded in those objectives are the ideas that:

⁹ Ronald C. Moe, "The Reinventing Government Exercise: Misinterpreting the Problem, Misjudging the Consequences," *Public Administration Review*, 54, no. 2 (1994): 111.

- The government and the private sector are similar in their essentials and respond similarly to incentives.
- Agencies should be viewed as entrepreneurial bodies that function best under competition.¹⁰

This federal initiative, which is being repeated in many states, replaces the “bureaucratic paradigm” that has been the operating norm of government for years with the “entrepreneurial paradigm.”¹¹ It replaces a system that values compliance with law and process with one that values results above all else.¹²

Even though government entrepreneurship is useful at some levels as a performance benchmark, the premises of the entrepreneurial paradigm would overturn several premises upon which government has been based. Above all, government agencies have been organized to provide accountability to the executive and legislative branches. They are an outgrowth of the fact that this is intended to be a government of laws, whether those laws are wise or unwise.¹³ The Hoover Commission, in fact, stated that its objective was to:

Establish a clear line of control from the President to those department and agency heads and from them to their subordinates.....cutting through the barriers which have in many cases made bureaus and agencies partially independent of the chief executive.¹⁴

To date, government has been organized to ensure that subordinate staff are very much limited in their independent discretion; the movement to entrepreneurial

¹⁰ Ibid., 113.

¹¹ Ibid., 112.

¹² Ibid., 115.

¹³ Ibid., 112.

¹⁴ Ibid.

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government overturns this basic premise and, instead, places a premium on independent action.

All of this is to say that commission managers should not attempt to push the private-sector analogy too far as they reorganize. Though the proliferation of offices, departments, rules, and standard procedures can stifle communication and limit flexibility, they also protect the commission from the harmful effects of undue independent action on the part of staff. Increased efficiency and effectiveness are laudable goals, but they should not be pursued at the expense of the mission of the commission, which must be articulated from the top of the organization and complied with throughout.

CHAPTER 3

ORGANIZATIONAL MODELS FOR COMMISSION CHANGE

The Learning Organization

Much of the preceding material has asserted that maintaining flexibility, at a time when flexibility is key, is a significant challenge for state regulatory commissions. Management and organizational models do exist for the creation of adaptable and, therefore, successful organizations. One of those is "systems thinking" which is best explained by Peter Senge in his book, *The Fifth Discipline*, subtitled "the art and practice of the learning organization."

Systems thinking enhances and incorporates other disciplines--personal mastery, mental models, shared vision, and team learning. Each will be discussed in turn. A learning organization "is

continually expanding its capacity to create its future. For such an organization it is not enough merely to survive."¹ Systems thinking requires seeing the interrelationships among variables rather than linear cause and

Systems thinking requires seeing the interrelationships among variables rather than linear cause and effect and identifying processes of change rather than snapshots.

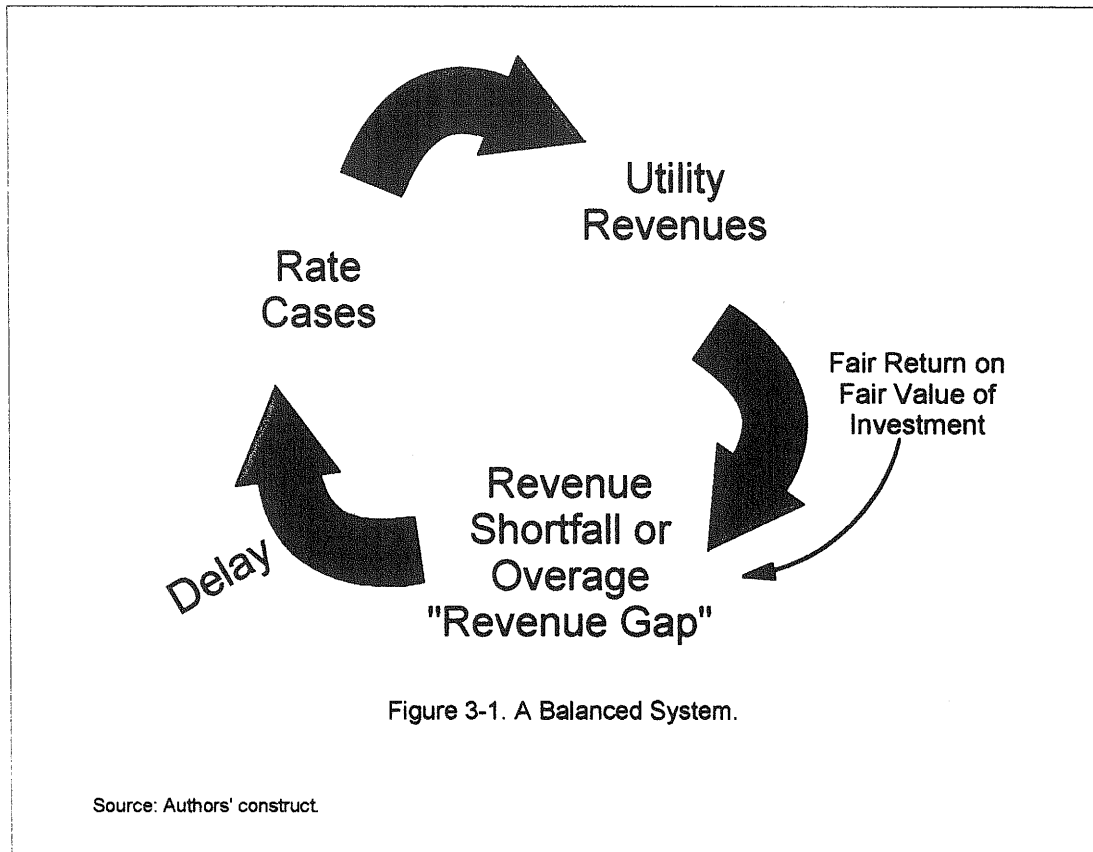
effect and identifying processes of change rather than snapshots. The concept of feedback is essential to systems analysis. Senge suggests that many problems in government policy arise from a lack of understanding of feedback loops. Many systems seek stability, or balance, using self-correction to reach a goal or target.² Classic public utility regulation is an example of a balancing system. Figure 3.1 shows the balancing

¹ Peter M. Senge, *The Fifth Discipline* (New York, NY: Doubleday, 1990), 14.

² *Ibid.*, 84-88.

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process of traditional regulation, using Senge's method of diagramming, where the lines with arrows are read as "influences." In reading such a diagram, he recommends starting at the "gap," the shortfall between what is and what is desired.



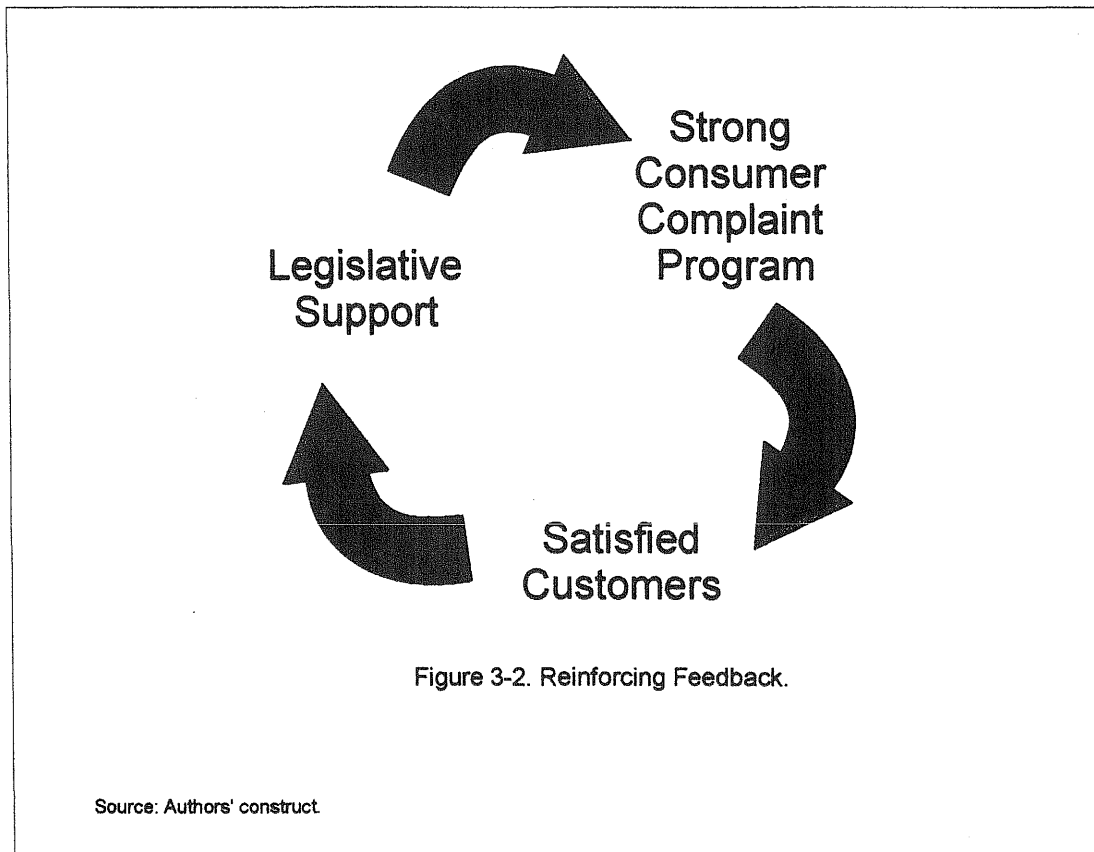
In our example the revenue shortfall or overage leads to a rate case that adjusts utility revenues based on the goal of a fair return on the fair value of the utility's investment. Senge notes the importance of delay in such a balancing system.³ Regulatory delay has been both praised and blamed. It has been blamed both for perpetuating rates that are too high and for failing to make companies whole quickly enough, particularly during the energy crisis of the late 1970s. It has been praised for giving companies a hidden, but strong, incentive to be efficient. Whether it works for

³ Ibid., 89-92.

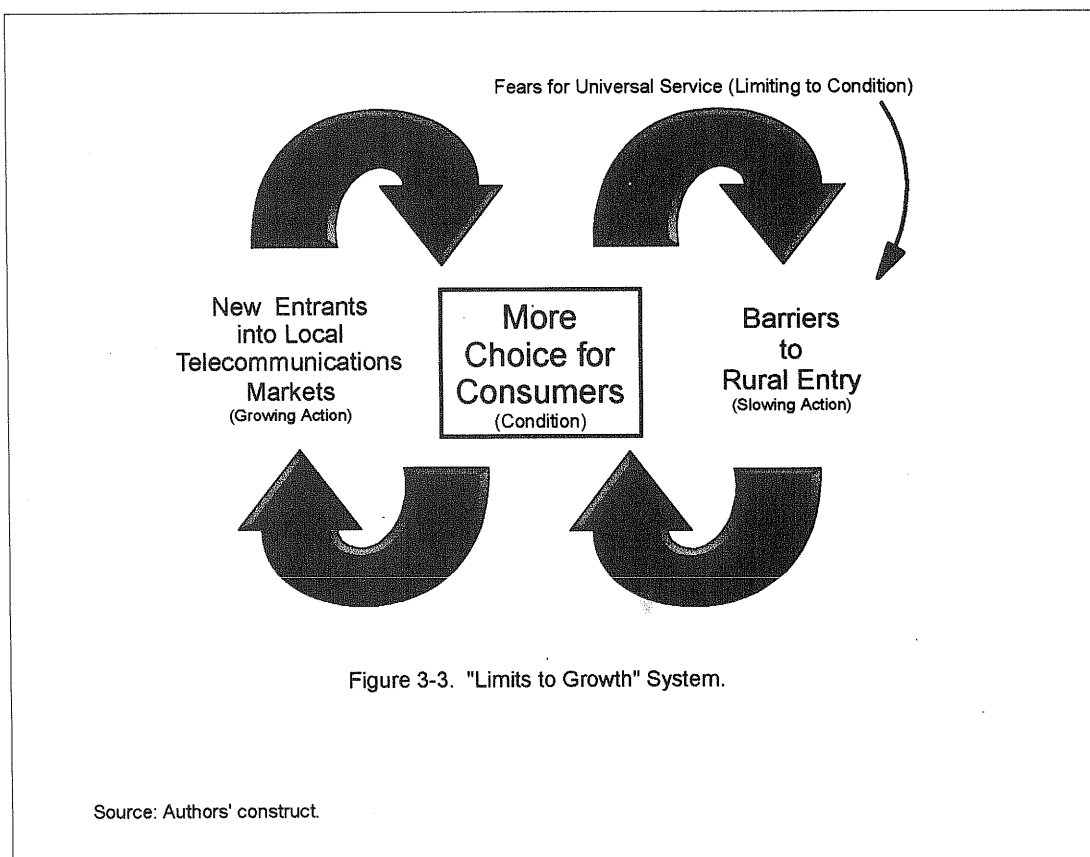
good or ill, there is no doubt that delay is an important factor in the balancing system of public utility regulation.

When systems are not in balance, a reinforcing or amplifying process is at work, and things "snowball," sometimes for better and sometimes for worse. Figure 3.2 shows reinforcing feedback for a commission consumer complaint program. Here well-handled complaints lead to consumer satisfaction that leads to increased support from the legislature, which in turn leads to a stronger consumer complaint program.

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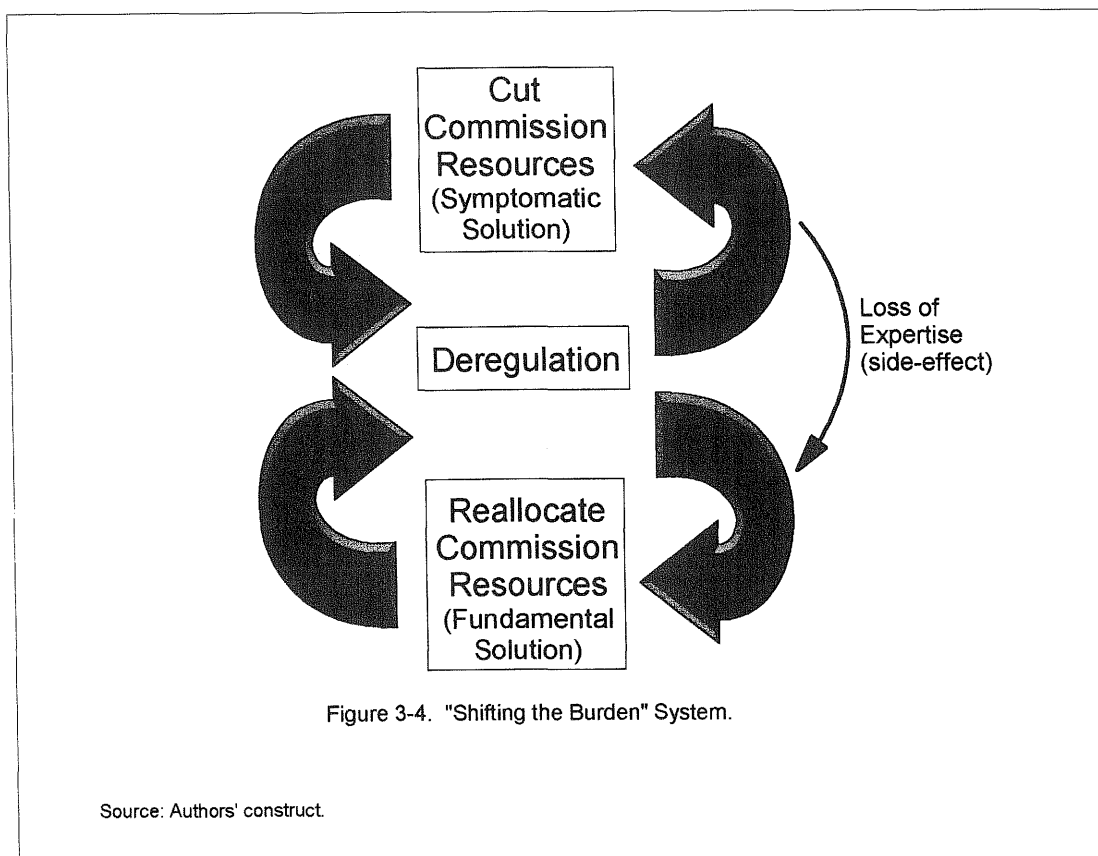


Balanced systems and amplifying systems work together to tell more complicated stories. One such basic archetype is the "limits to growth" model.⁴ Figure 3.3 shows such a scenario. New entrants in the market for local telecommunications services, as promoted through the Telecommunications Act of 1996, may lead to more choice and lower prices for consumers, which in turn could encourage more new entrants offering greater variety. One "limiting condition," however, is the fear that universal service goals cannot be met under competition. The Act sets up several conditions that will make it more difficult to enter rural telecommunications markets. These conditions are "slowing actions" that are likely to impede (perhaps for good policy reasons) the development of competition in some areas of the country.



⁴ Ibid., 95-104.

A second archetypal concept is "shifting the burden."⁵ To illustrate, we can go back to one of the scenarios laid out in Chapter 1 for the future role of state commissions. Figure 3.4 identifies the deregulation of services and markets as a "problem symptom." A "symptomatic solution" for this problem is to cut back commission resources. A "fundamental solution" would reprioritize commission



mission and reallocate resources. Sharp cutbacks would have an important side effect of lost expertise and institutional memory.

The diagrams in *The Fifth Discipline* and those used here for illustration simplify complex processes. More elaborate systems models must be developed to adequately

⁵ Ibid., 104-113.

capture the dynamic complexity of change in the regulatory arena. Systems analysis is

Systems analysis is a way of seeing both the forest and the trees, says Senge.

a valuable tool for managing change

because much information can be

presented simply and clearly--it is a way

of seeing both the forest and the trees,

says Senge, and a means to enable

organizations to learn. By using systems

thinking, small interventions can be used to produce big results; areas of high leverage are often not obvious without systems thinking.⁶

The four other disciplines identified by Senge are personal mastery, mental models, shared vision, and team learning. **Personal mastery** has to do with continual efforts to assess current reality and set individual priorities.⁷ Organizational learning cannot take place without individual learning, says Senge. Managers' most basic task is to provide the conditions that enable their employees to lead the most enriching lives they can. Senge cautions, however, that personal mastery is not something that can be forced on people. Rather than requiring employees to attend personal development training courses, Senge suggests that leaders:

Work relentlessly to foster a climate in which the principles of personal mastery are practiced in daily life. That means building an organization where it is safe for people to create visions, where inquiry and commitment to the truth are the norm, and where challenging the status quo is expected.⁸

In public organizations even more than in private ones, it is difficult to find support for efforts that promote personal growth. It is easy to dismiss Senge's first

⁶ Ibid., 114-135.

⁷ Ibid., 139-173.

⁸ Ibid., 172.

discipline as well meaning but "soft," as well as impossible to implement. But Senge's point that learning organizations are built through having people who learn is hard to ignore. This is one of the fundamental problems for public utility commissions that should be addressed rather than avoided through short term solutions.

Mental models are generalizations or theories that shape our perceptions but are not always articulated.⁹ Because they lie below the surface of awareness there is a danger that mental models will thwart organizational changes that are called for through systems thinking. According to Senge:

Contemporary research shows that most of our mental models are systematically flawed. They miss critical feedback relationships, misjudge time delays, and often focus on variables that are visible or salient, not necessarily high leverage.¹⁰

An example of a mental model that could sometimes be at work in public service commissions might be phrased by commissioners as "Staff simply does not understand the need to change how we do business." Further analysis might suggest that many staff do have an understanding of the forces of change, but do not commit themselves to change efforts for other reasons. They might fear it, think they can tough it out, or have reasons to carry forth strands of past practice that commissioners themselves do not fully understand. Dialogue among lower level staff, senior staff, and commissioners might help to articulate some of the hidden assumptions about change so that key decisions can be based on shared understanding.

Shared vision is another of the five disciplines.¹¹ Senge remarks that corporate leaders have worked hard in recent years to develop vision and mission statements that

⁹ Ibid., 174-204.

¹⁰ Ibid., 203.

¹¹ Ibid., 205-232.

everyone in the organization is expected to commit to. In many cases, these have not led to the increases in productivity that were promised. Senge suggests that the visioning movement has largely failed, not because the idea is flawed, but because it has not been built into systems thinking. He says many organizations are hampered by a mental model that says, "We cannot create our future." Thus, vision statements impose a thin veneer of optimism over deeply held reactive views. For public service commissions, developing and sticking to a vision is difficult at any time, but today, when they are being buffeted by often conflicting external demands, it may be even more challenging to believe in the ability to have meaningful control over the future.

Team learning helps organizations tap into the potential for many minds to be collectively "more intelligent" than one and develop trust so that team members

complement each other's actions.¹²

Teamwork develops through practice, suggests Senge, and can be effective only when the teams deal with dynamic complexity using systems analysis.

Teamwork develops through practice, suggests Senge, and can be effective only when the teams deal with dynamic complexity using systems analysis. In the world of the public service commission, staff teamwork has often been used in a linear way to get through

rate cases and other routine decision making. The adjudicatory nature of regulatory process has inhibited its use, however. When commissioners are not allowed to meet without declaring it an open session, it is impossible on the strategic level to develop an effective team. And at many commissions it is impossible due to ex parte rules for commissioners and staff to work together as a team when a particular rulemaking or other proceeding is underway. Since most of commission work is bound up in cases, it is difficult to create time for team building that can be applied to fundamental decisions:

¹² Ibid., 233-269.

Senge's book may seem full of platitudes to the experienced manager, especially when presented here in digest form. One of the major products of "learning organization" thinking is *The Fifth Discipline Fieldbook*, which is based on fifth discipline principles.¹³ The *Fieldbook* offers strategies and tools for building a learning organization. These include solo exercises, team exercises, guiding ideas, and stories that incorporate systems archetypes. The variety and usefulness of the *Fieldbook's* tools suggests that Senge's insights have to be used to be fully appreciated. Among the reasons for using the *Fieldbook*, which include to improve quality and serve customers, is change management:

If there is one single thing a learning organization does well, it is helping people embrace change. People in learning organizations react more quickly when their environment changes because they know how to anticipate changes that are going to occur... and how to create the kinds of changes they want. Change and learning may not exactly be synonymous, but they are inextricably linked.¹⁴

Despite his emphasis on corporations, many of Senge's lessons could be applied to public service commissions. Among his suggestions are:

- Look at feedback loops and interrelationships, not merely cause and effect
- Look for *fundamental* problems
- Do not rely on quick fixes
- Look for high leverage solutions

¹³Peter M. Senge, Art Kleiner, Charlotte Roberts, Richard B. Ross, and Bryan J. Smith, *The Fifth Discipline Fieldbook* (New York, NY: Doubleday, 1994).

¹⁴ Senge, et al., 11.

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According to Senge's paradigm, public utility commissions in the current, rapidly changing regulatory environment may have an advantage because of the magnitude of required adaptation and widespread recognition by commissioners and staff that they need to start adjusting now. Senge tells the cautionary tale of the boiled frog.¹⁵ If you put a frog in a pot of boiling water it will try as hard as it can to climb out, he says. But if you put a frog in a pot of lukewarm water and gradually turn up the heat, the frog will do nothing. It will seem perfectly comfortable even as the water becomes quite hot. Eventually the frog becomes groggy, and then groggier still, until it is unable to climb out of the pot and sits still as it boils.

The need for radical organizational change is difficult to identify, even when the cumulative effect of incremental changes in the organization's environment threatens its life. Organizations, like frogs, are better at making big leaps when the environment suddenly becomes hostile and the need for change is undeniable. The challenges for commissions today are increasingly obvious and must be responded to swiftly and adaptively.

Applications of Traditional Organizational Theory

While Senge's insights may be helpful in beginning to envision the public service commission of the future, it is worthwhile to look at the idea of the "learning organization" in the context of other, older approaches to organizational transformation. Senge's theory encourages us to think of organizational structure as highly flexible and of authority as ultimately deriving from individual self-mastery. His insights are helpful but not necessarily new.

¹⁵ Senge, *The Fifth Discipline*, 22.

It behooves us to look at traditional organization theories because there may be something to learn from them. It also may be useful because many public service commissions today do not closely resemble the learning organization. To begin to change them, we must recognize commissions for what they are--well-functioning

We must recognize commissions for what they are--well-functioning bureaucracies in the best sense of that much-maligned term.

bureaucracies in the best sense of that much-maligned term. In the process of change, it would not be wise to throw out what has worked well if it is still appropriate in today's environment.

For about a hundred years, or since the rise of large corporations and government agencies, administrative theorists have addressed fundamental problems of organizational design. In this section of the report, we will offer some concepts from older theories of organization that may give executive directors and others ideas for adapting commissions to today's needs. We have not attempted to be exhaustive, but only to highlight theoretical insights that seem especially relevant to the situation of the commissions. The major frameworks we will attempt to draw lessons from are classical organization theory, inducements/contributions theory, and contingency theory.

All organizations, large or small, public or private, have to solve similar problems. To produce a good or service (the "task" of the organization) there must be a way to ensure that steps are taken in the right order and the right time, without undue conflicts or overlaps (a "control process" to manage the "production process"). The people included in the organizational venture must be willing and able to contribute to the production process. The organization does not exist in a vacuum, but in a "task environment" of outside individuals and other organizations. Resources must be acquired from the organization's environment to be able to do the job. And organizations must attend to changing demand and new opportunities through planning

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and innovation. Public organizations, of course, have special problems of accountability to the citizenry through legislatures, courts, and executive agencies.

Classical Organization Theory

Classical organization theory emphasized a top-down process of control to keep an organization together and focusing on its primary tasks. Hierarchical structure, detailed rules and programs, and planning methods that emphasized setting long-run goals and priorities are the primary tools in this sort of approach. In a classical approach to administration, division of work is an essential principle. Jobs are assumed to be capable of precise definitions. Work flows through a scalar process, with authority and responsibility running "in a clear, unbroken line from the highest executive to the lowest operations employee."¹⁶ Command is unified; authority and responsibility are equal at any level. All decisions are assigned to some level of the organization, with decisions that cannot be made at one level referred higher up the ladder.

Bureaucracy is the highest form of organization in traditional administrative theory. When an organization must be large in order to accomplish its tasks, whether producing automobiles or fair rates for public utilities, the bureaucratic form ensures efficiency. A bureaucracy has been defined as an organization large enough that the highest ranking members know fewer than half of the other employees, employees are full-time, employees are assessed based on their performance in the organization and the organization does not respond directly to a market for its services.¹⁷ A public service commission is a bureaucracy, as might be, for example, the advertising department in a traditionally organized division of General Motors. Other attributes of

¹⁶ H. Randolph Bobbitt, Jr., et al., *Organizational Behavior: Understanding and Prediction* (Englewood Cliffs, NJ: Prentice-Hall, 1974), 35.

¹⁷ Anthony Downs, *Inside Bureaucracy* (Boston: Little Brown, 1967), 24-25.

bureaucracy, such as extensive use of rules and hierarchy, impersonality, and complexity of administrative tasks, may be derived from these primary characteristics.¹⁸

Bureaucracy is not likely to evaporate anytime soon. It is a pervasive organizational form because the tasks of modern society are often large and complex and require intricate, highly intertwined effort to be accomplished. More likely than dismantling their bureaucracies, commissioners and senior staff need to consider ways to make them more responsive to customers and able to adapt more quickly. This implies fewer rules and less hierarchy, rather than their total elimination.

Commissioners and senior staff need to consider ways to make the bureaucracies more responsive to customers and able to adapt more quickly.

Inducements/Contributions Theory

Employees in classical organization theory are assumed to need a great deal of oversight to get them to perform correctly and to be motivated primarily by the need for money and other compensation and the fear of being fired or reduced in status. This “theory X” approach was challenged by the human relations school, which recognized the limitations of a reward system based on the premise that people are naturally lazy. “Theory Y” is much closer to a “learning organization” approach, and says that you will get more out of human beings if you understand the complexity of their motivation and general willingness to work. McGregor and others of this school preached that work is

¹⁸ Ibid., 25.

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as natural as play to people; they generally want to contribute to organizational goals if their contributions are rewarded appropriately and they like to take on responsibility.¹⁹

Chester Barnard's inducements/contributions theory, elaborated on by Herbert Simon, conceptualized as a bargained contract an individual's decision to participate in an organization and the organization's decision to include him or her.²⁰ Individuals will choose to participate in the organization (and thus promote organizational survival) "only so long as the inducements offered him are as great or greater (measured in terms of his values and in terms of the alternatives open to him) than the contributions he is asked to make."²¹

Senge's emphasis on personal mastery, team learning, and shared vision can be evaluated in the context of inducements/contributions theory. The learning

The Barnard-Simon inducements/contributions theory suggests that commissioners and executive directors who are seeking to change commissions take into account the varying motivations of staff in organizational redesign.

organization treats people's love and need for work for its own sake as itself an inducement. By identifying the ability to make changes as an incentive to be productive, the inducement becomes the contribution, clearly a win-win situation.

But there may, and in a bureaucracy probably are, staff who do not want to participate in the new *modus operandi*. It is tempting to assign them to

traditional duties. The risk here is that other, and perhaps newer, staff will not easily benefit from the experience and expertise of the staff that does not see the learning

¹⁹ Bobbitt et al., 82-3, citing Douglas McGregor, *The Human Side of Enterprise* (New York: McGraw-Hill, 1960).

²⁰ Chester Barnard, *The Functions of the Executive* (Cambridge, MA: Harvard University Press, 1938 and 1968).

²¹ March and Simon, *Organizations*, 84.

organization as beneficial to them. The Barnard-Simon inducements/contributions theory suggests that commissioners and executive directors who are seeking to change commissions take into account the varying motivations of staff in organizational redesign. If change is too chaotic, or simply poorly managed, and staff is not persuaded to participate, the risk is that the people who will be most needed in a new regime will leave. Motivated staff are essential to organizational equilibrium. Identifying changing patterns of inducements and contributions is vital to a *controlled* transformation of commissions.

Contingency Theory

"Contingency theory" placed new emphasis on the role of information and environment. Galbraith, in *Designing Complex Organizations*, summed up the then-recent research as showing that there is no one best way to organize and that different ways of organizing are not equally effective.²² Organizations are faced with varying amounts of uncertainty internally and as imposed by their task environments. Uncertainty here means the relative difference in the amount of information required and the amount possessed by the organization. An organization may confront greater uncertainty because of technological change, increased competition, higher performance standards, or a diversified product line. Public service commissions are faced today with greater uncertainty from all of the sources Galbraith mentions. The implication of contingency theory is that better ways of handling information flows are needed.

²² Jay Galbraith, *Designing Complex Organizations* (Reading, MA: Addison-Wesley, 1973), 2.

Galbraith identified four ways of adjusting for increased task uncertainty. The first two call for reductions in the amount of information that has to be processed by creating self-contained tasks or slack resources. The latter method would rarely be considered today when the emphasis is on doing more with less. The preferred strategy would be the former, and team approaches may be considered an example of reducing uncertainty by creating self-contained tasks. The other two approaches call for increasing the amount of information that is processed, either through investment in

Identification of new needs for information and applying methods to reduce or increase the information that is processed may be needed

vertical information systems (such as better management information systems) or creation of lateral relations. By increasing discretion at lower levels, lateral relations improve the ability of an organization to process information and make decisions. Techniques of

enhancing lateral relations, from least to most expensive, include direct contact between managers who share a problem, establishment of liaison roles, creation of temporary task forces, creation of permanent teams, creation of a new integrating role, creation of a linking-managerial role, and establishment of a matrix design, where dual authority exists at critical points.²³

As public service commissions are faced with greater uncertainty about their roles and how to pursue them, identification of new needs for information and applying methods to reduce or increase the information that is processed may be needed. For example, commissions have important new responsibilities under the Telecommunications Act of 1996 for reviewing interconnection agreements. This may be an area where vertical information systems, a self-contained team approach, or creation of new lateral relationships is called for. The tools may be used in

²³ Ibid., 48.

combination. A vertical information system that tracked the process of reviewing interconnection agreements might enable top management to monitor progress. A team with skills in engineering, accounting, economics, and law might be created solely for the review of interconnection agreements. The team might be buttressed by the establishment of liaisons to other teams or units, such as those working on universal service issues and local competition in telecommunications, as well as similar teams at other state commissions.

At the core of contingency theory is a recognition that the task environment of an organization can vary significantly in stability and cohesiveness and that this affects how the organization should be structured.²⁴ In such an environment, the independent regulatory commission thrived. It was never really independent but blessed by a singularly placid environment in which interdependencies were limited and easily manageable. The commissions were generally left alone because they did their task well and there was no reason to change the task. Today's regulatory environment is considerably more turbulent and requires negotiation of complex relationships. In the process, the public's need for, and indeed the legitimacy of, the commission's tasks must be reevaluated. This requires new activism by commission leadership in many arenas to affirm commission roles in fostering competition and protecting consumers.

Thompson distinguished types of organizations depending on the type of task.²⁵ Long-linked technologies, like factory assembly lines, require serial independence, meaning that action Z can only be completed after action Y has taken place. Mediating technologies link clients or customers who are interdependent, such as banks which link borrowers and depositors. Standardization and bureaucratic techniques apply most clearly to organizations built around this sort of task. Intensive technologies must

²⁴ Jeffrey Pfeffer and Gerald R. Salancik, *The External Control of Organizations* (New York: Harper & Row, 1978), 64 .

²⁵ James D. Thompson, *Organizations in Action* (New York: McGraw-Hill, 1967), 15-19.

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draw upon a variety of techniques to produce change. The example Thompson gives is of a general hospital. An emergency admission may require not only various medical specialties, but pharmacy, x-ray, laboratory, and housekeeping services.

Whatever the technological core of the organization, it needs to be buffered from environmental contingencies. This does not mean that change is prohibited, only that the production process must be able to operate while change is taking place.

As the market moves from monopoly to competition, commissions retain the important responsibility of regulating residual monopoly, yet are faced with new, complex and seemingly crisis situations. It is as if they are trying to run a full-service bank in a hospital emergency room.

Thompson's categorizations have implications for the transformation of public service commissions. In the distinction between core and noncore customers, commissions are facing two different environments. As the market moves from monopoly to competition, commissions retain the important responsibility of regulating residual monopoly, yet are faced with new,

complex and seemingly crisis situations. It is as if they are trying to run a full-service bank in a hospital emergency room.

Perhaps the primary lesson of contingency theory is that an early step, if not the first one, in transforming a commission is to assess information needs. Implications for structure and personnel can be derived from an understanding of the uncertainties being faced. The first item of business in such an effort would be to take a hard look at the demands of the task environment by reviewing the requirements of governing documents, including enabling legislation, federal legislation, and court decisions. In doing so, the commission is reviewing the nature and extent of its accountability. The documents establishing commission tasks are the hard side of the assessment; a commission may also wish to examine the interests of new players and new complexities in the task environment for their indirect contribution to task uncertainty

and to evaluate opportunities in the environment that have not yet shown up in hard requirements. For example, there may not be an explicit mandate to provide extended consumer information services, but that may seem like a good area in which to devote some resources. From the assessment of the written words that set the commission's tasks, procedures, and limitations, the commission can see what old tasks continue to be required and what new tasks are called for and begin to define how to carry them out.

An organization ridiculed for lack of flexibility and bombarded with calls to change might be tempted to change everything at once or try a compromise approach, such as moving ahead, but slowly. Neither of these approaches is advisable:

The reason for the instability of organizational arrangements, and the reason they must be continually reaccomplished, is that the requirements for flexibility and stability are mutually exclusive...Flexibility is required to modify current practices so that nontransient changes in the environment can be adapted to...But total flexibility makes it impossible for the organization to retain a sense of identity and continuity. ...Stability provides an economical means to handle new contingencies; there are regularities which an organization can exploit *if* it has the memory and the capacity for repetition.²⁶

The solution is either to alternate between flexibility and stability or for adaptation to proceed in one part of an organization while routines continue in another.²⁷ This alternative is of special interest to commissions. A major difficulty for public service commissions in responding to the demands of the new regulatory environment is to continue to conduct the routine tasks that are still required, like rate cases for water utilities. Some units of a commission could be redesigned as multi-disciplinary teams to handle fast-moving situations, while others could continue

²⁶ Karl E Weick, *The Social Psychology of Organizing*, (Reading, MA: Addison Wesley, 1969), 39.

²⁷ *Ibid.*, 39.

production processes that are still needed. Where old routines must be continued, the

Once an inventory of information needs is completed, the commission might consider which approaches would best close the gap--vertical information systems, slack resources, lateral relations, or creation of self-contained tasks.

easiest option is to keep them the way they are and, in fact, to buffer them from change. This should not be done lightly, however, and not without the application of systems thinking. Once an inventory of information needs is completed, the commission might consider which approaches would best close the gap--vertical information systems, slack

resources, lateral relations, or creation of self-contained tasks.

Producing Innovation from Within

A review of the concept of the learning organization and lessons from earlier organization theory provides ideas to think about in transforming the public service commission. Missing from the discussion so far is more practical advice on making change happen. Minnesota's program for innovation in government organizations, "Strive Towards Excellence in Performance," or "STEP," is a model that commissions might look to in implementing change. *Managing Change: A Guide to Producing Innovation from Within*²⁸ by Hale and Williams documents the achievements of the STEP program, which "promotes innovation as a way to produce measurable improvements in the quality, quantity, or cost-effectiveness of state government programs."²⁹ STEP was begun in 1984 as an initiative of Governor Rudy Perpich and

²⁸ Sandra J. Hale and Mary M. Williams, eds, *Managing Change: A Guide to Producing Innovation from Within* (Washington, DC: Urban Institute Press, 1989).

²⁹ *Ibid.*, 2.

Sandra Hale, Commissioner of the Department of Administration. The program induced innovations in many state agencies and in 1986 was named a winner in the Ford Foundation/Harvard University Innovations in State and Local Government Awards Program. *Managing Change* presents case studies of applications of STEP in six state agencies.

A major lesson of STEP is that the process of change is not merely one of planning a change and then implementing it. Necessary actions identified through the program are:

- Determine and create an awareness of the need for change.
- Assess the work environment before designing the change.
- Design the program.
- Assess the impact.
- Organize for change.
- Maintain the momentum.
- Celebrate the change.
- Evaluate the change process.
- Fine-tune the process.³⁰

As public organizations work up the ladder to achieving and maintaining change, Hale and Williams suggest eight "pieces of wisdom."³¹

- Employee ownership of the change is a must.

³⁰ Ibid., 9-21.

³¹ Ibid., 22.

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- Change must be visibly promoted by top management.
- Change must have visible and effective results.
- Change takes a long time.
- Mistakes must be considered opportunities for corrective action or refinement.
- Training and technical assistance must be provided.
- The change process must be managed.
- Any change must have a clearly stated, realistic goal.

Conclusion

The 1995 NRRI/NARUC Commissioners Summit was a team exercise and was successful in identifying the variables that might make up a new mission statement for commissions, as well as identifying mental models that need to be questioned. What the summit could not accomplish in a limited time was a systematic analysis of the interrelationships of the variables and how fundamental solutions might be applied to current problems. This is a job for commissioners and staff to pursue at their individual commissions.

CHAPTER 4

SPECIAL ISSUES IN COMMISSION REORGANIZATION

As commissions reorganize to accommodate changes in regulated industries, a number of issues specific to public utility regulatory commissions arise. Each of those issues is considered in turn in this chapter.

Due Process, Open Meeting, and Sunshine Law Concerns

As state public service commissions reorganize and restructure, compliance with legal mandates concerning due process, ex parte communications, and open meetings requirements is both a necessary

outcome of the reorganization process and a constraint on the options for reorganization. As commissions restructure and adopt new processes for serving the public, they will need to ensure that the mechanisms that have allowed due-process participation in the process in the past are not eliminated.¹

As commissions restructure and adopt new processes for serving the public, they will need to ensure that the mechanisms that have allowed due-process participation in the process in the past are not eliminated.

On the other hand, as commissions attempt to respond more quickly and become less adjudicatory, more open, and more legislative in their approach to issues, due process mechanisms may become more of an impediment to effective decision making than they have been in the past.

¹Due process, open meeting, and sunshine law concerns could be of significant concern with the turnover of commissioners. As new commissioners come on, they may find it easiest to come up to speed on the issues by briefings with special interest and utility company representatives. This has the potential of initially influencing new commissioners outside the open meeting process.

Chapter 4 -- Special Issues in Commission Reorganization

This section begins with a brief background of the unique legal status of state public utility commissions and an explanation of why that status should be maintained. It then addresses the difficult problems faced by commissioners as they attempt to obtain information from staff. In particular, ex parte communication requirements concerns are addressed. Finally, the possible effects of open meeting and sunshine laws on commission restructuring is explored. For each issue addressed in this section, options for commission organization or practice are presented and briefly evaluated.

The Unique Legal Status of State Public Utility Commissions

State public utility commissions are unique among state agencies. As shown in table 4.1, all state public utility commissions are independent agencies, a status that is necessitated by the unique role of the state public utility commission. As a state agency, the commission not only sets rates for utilities, but also, through its rules, orders, and decisions, makes prospective economic policy.² Although some state public service commissions are nested as independent agencies within another state agency,³ in no state is the decision of a state public service commission subject to revision by a higher administrative authority.⁴

² A complete discussion of the types of prospective financial and economic policy making that state commissions engage in is contained in Robert E. Burns, *Administrative Procedures for Proactive Regulation* (Columbus, Ohio: The National Regulatory Research Institute, 1988).

³ For example, the Missouri Public Service Commission is an independent agency nested within the Missouri Department of Economic Development, the Utah Public Service Commission is nested within the Utah Department of Commerce, and the Michigan Public Service Commission is nested within the Michigan Department of Commerce.

⁴ In Rhode Island, legislation was originally proposed in February 1996 to take away the independence of the Rhode Island Public Utilities Commission as a part of broader legislation dealing with retail access. However, this portion of the legislation appeared to be ill-conceived. See the analysis of the bill in "A Description and Analysis of the Utility Restructuring Act of 1996 and the Act to Create the Retail Electric Licensing Commission and Their Effect on the Rhode Island Public Utilities Commission," (Columbus, Ohio: The National Regulatory Research Institute, 1996), memo. A substitute bill has recently been introduced to replace the original bill. The substitute bill appears to maintain the independence of

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TABLE 4.1

LEGAL STATUS OF AGENCY

Agency	Constitutional Body	Solely Statutory Body	Arm of Legislature	Part of Executive Branch	Agency is Independent	Decision Subject to Revision by Higher Administrative Authority	Exercises Quasi-Judicial Power	Exercises Quasi-Legislative Power
ALABAMA PSC	No	Yes	Yes	No	Yes	No	Yes	Yes
ALASKA PUC	No	Yes	No	Yes	Yes	No	Yes	Yes
ARIZONA CC	Yes	No	No	No	Yes	No	Yes	Yes
ARKANSAS PSC	No	Yes	No	No	Yes	No	Yes	Yes
CALIFORNIA PUC	Yes	No	No	No	Yes	No	Yes	Yes
COLORADO PUC	Yes	No	No	Yes	Yes	No	Yes	Yes
CONNECTICUT DPUC	No	Yes	No	Yes	Yes	No	Yes	No
DELAWARE PSC	No	Yes	No	Yes	Yes	No	Yes	Yes
D.C. PSC	No	Yes	No	No	Yes	No	Yes	Yes
FLORIDA PSC	No	Yes	Yes	No	Yes	No	Yes	Yes
GEORGIA PSC	Yes	No	Yes	No	Yes	No	Yes	Yes
HAWAII PUC	No	Yes	No	Yes	Yes	No	Yes	Yes
IDAHO PUC	No	Yes	Yes	No	Yes	No	Yes	Yes
ILLINOIS CC	No	Yes	No	Yes	Yes	No	Yes	Yes
INDIANA URC	No	Yes	No	Yes	Yes	No	Yes	Yes
IOWA UB	No	Yes	No	Yes	Yes	No	Yes	Yes
KANSAS SCC	No	Yes	Yes	No	Yes	No	Yes	Yes
KENTUCKY PSC	No	Yes	No	Yes	Yes	No	Yes	Yes

the Commission, while bifurcating much of the current staff (i.e., the Division of Public Utilities and Carriers) from the commission. The Division is placed within the Department of Business Regulation while the Commission remains a quasi-judicial tribunal.

Chapter 4 -- Special Issues in Commission Reorganization

TABLE 4.1

LEGAL STATUS OF AGENCY

Agency	Constitutional Body	Solely Statutory Body	Arm of Legislature	Part of Executive Branch	Agency is Independent	Decision Subject to Revision by Higher Administrative Authority	Exercises Quasi-Judicial Power	Exercises Quasi-Legislative Power
LOUISIANA PSC	Yes	No	No	Yes	Yes	No	Yes	Yes
MAINE PUC	No	Yes	Yes	No	Yes	No	Yes	Yes
MARYLAND PSC	No	Yes	Yes	No	Yes	No	Yes	Yes
MASSACHUSETTS DPU	No	Yes	No	Yes	Yes	No	Yes	Yes
MICHIGAN PSC	No	Yes	No	Yes	Yes	No	Yes	Yes
MINNESOTA PUC	No	Yes	No	Yes	Yes	No	Yes	Yes
MISSISSIPPI PSC	No	Yes	Yes	No	Yes	No	Yes	No
MISSOURI PSC	No	Yes	No	Yes 1/	Yes	No	Yes	Yes
MONTANA PSC	No	Yes	No	Yes	Yes	No	Yes	Yes
NEBRASKA PSC	Yes		No	No	Yes	No	Yes	Yes
NEVADA PSC	No	Yes	No	No	Yes	No	Yes	Yes
NEW HAMPSHIRE PUC	No	Yes	Yes	No	Yes	No	Yes	Yes
NEW JERSEY BPU	No	Yes	No	Yes	Yes	No	Yes	Yes
NEW MEXICO PUC	No	Yes	No	Yes	Yes	No	Yes	Yes
NEW MEXICO SCC	Yes	No	No	Yes	Yes	No	Yes	Yes
NEW YORK PSC	No	Yes	No	Yes	Yes	No	Yes	Yes
NORTH CAROLINA UC	No	Yes	Yes	No	Yes	No	Yes	Yes
NORTH DAKOTA PSC	Yes	No	No	Yes	Yes	No	Yes	Yes
OHIO PUC	No	Yes	No	No	Yes	No	Yes	Yes
OKLAHOMA CC	Yes	No	No	Yes	Yes	No	Yes	Yes
OREGON PUC	No	Yes	No	Yes	Yes	No	Yes	Yes

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TABLE 4.1

LEGAL STATUS OF AGENCY

Agency	Constitutional Body	Solely Statutory Body	Arm of Legislature	Part of Executive Branch	Agency is Independent	Decision Subject to Revision by Higher Administrative Authority	Exercises Quasi-Judicial Power	Exercises Quasi-Legislative Power
PENNSYLVANIA PUC	No	Yes	No	No	Yes	No	Yes	Yes
RHODE ISLAND PUC	No	Yes	No	Yes	Yes	No	Yes	Yes
SOUTH CAROLINA PSC	No	Yes	Yes	No	Yes	No	Yes	Yes
SOUTH DAKOTA PUC	No	Yes	Yes	No	Yes	No	Yes	Yes
TENNESSEE PSC	No	Yes	No	No	Yes	No	Yes	Yes
TEXAS PUC	No	Yes	No	Yes	Yes	No	Yes	Yes
TEXAS RC	Yes	No	No	Yes	Yes	No	Yes	Yes
UTAH PSC	No	Yes	No	Yes	Yes	No	Yes	Yes
VERMONT PSB	No	Yes	No	No	Yes	No	Yes	Yes
VIRGINIA SCC	Yes	No	No	No	Yes	No	Yes	Yes
WASHINGTON UTC	No	Yes	No	Yes	Yes	No	Yes	Yes
WEST VIRGINIA PSC	No	Yes	Yes	No	Yes	No	Yes	Yes
WISCONSIN PSC	No	Yes	No	Yes	Yes	No	Yes	Yes
WYOMING PSC	No	Yes	No	Yes	Yes	No	Yes	Yes

Source: National Association of Regulatory Utility Commissioners, *NARUC Yearbook of Regulatory Agencies 1994-1995* (Washington, D.C.: National Association of Regulatory Utility Commissioners, 1996, 424-25).

1/ Independent agency within Department of Economic Development.

State public service commissions obtain their legal status from a variety of sources. To some degree all commissions are creatures of the state legislature

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because they are created by enabling statutes enacted by the state legislature. However, several state commissions have a constitutional basis for authority in that their establishment is codified by the state constitution. The Arizona Corporation Commission, the California Public Utilities Commission, the Colorado Public Utilities Commission, the Georgia Public Service Commission, the Louisiana Public Service Commission, the Nebraska Public Service Commission, the New Mexico State Corporation Commission (which regulates telecommunications), the North Dakota Public Service Commission, the Oklahoma Corporation Commission, the Texas Railroad Commission (which regulates gas), and the Virginia State Corporation Commission are constitutional bodies. As shown in table 4.1, state commissions that are not constitutional bodies vary as to whether they are considered an arm of the legislature or a part of the executive branch. And, in some cases state commissions that have a constitutional basis are still considered an arm of the legislature or a part of the executive branch.

Table 4.1 also shows that all state public service commissions exercise quasi-judicial power. This is to be expected because of the quasi-judicial, adversarial process used in rate cases. All but two of the state commissions (the Connecticut Department of Public Utility Control and the Mississippi Public Service Commission) also report exercising quasi-legislative powers. This supports the contention that state commissions often handle prospective policy issues that are more legislative in nature. When such issues arise, it is appropriate to use procedures such as notices of inquiry, negotiated rulemaking, technical conferences, workshops, task forces, and collaboratives, as well as the more traditional notice-and comment rulemaking.⁵

The unique legal status of state public utility commissions, which emphasizes commission independence subject to judicial review, is made necessary because of the degree of expertise required to do public utility regulation, the complexity involved in

⁵ Generally, see Burns, *Administrative Procedures for Proactive Regulation* (1988).

balancing the interests of various classes of customers against each other and against the interests of the utility, and the quasi-legislative nature of the prospective policy issues now faced by the state commissions. In the future, it is essential that the independence of the state public service commission be maintained so that it can continue to protect the consumer and to serve the public interest in the more complex regulatory environment.

The Problems Created by Ex Parte Rules

As commissions change, it is critical that commissioners obtain the information that they need to make an informed decision from staff experts, but the ability to gather information is hindered by ex parte rules, which vary from state to state. In some state commissions, a portion of the staff is permanently separated or bifurcated from the commission and is designated as investigative or advocacy staff.⁶

It is critical that commissioners obtain the information that they need to make an informed decision from staff experts, but the ability to gather information is hindered by ex parte rules.

This type of staff structure allows for a separation of the investigatory and the advisory functions so that the same staff that is putting on a case is not the same staff that is advising the commissioners or administrative law judges as to what their decision should be. Prominent legal scholars, including Kenneth Culp Davis, have contended that procedural due process in an administrative setting requires such a separation of functions to avoid any appearance of impropriety.

⁶ This portion of the staff is typically designated as a party in all contested cases and sometimes in rulemakings. A remaining, often small, portion of the staff is designated as the advisory staff.

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Indeed, in some states maintaining a separation of functions between investigatory or advocacy staff and the commission decisionmakers or advisory staff is required by statute.⁷ The problem with such a bifurcated staff approach for solving separation of functions concerns is that, for states with ex parte communication rules,⁸ the commissioners or administrative law judges are isolated from the staff that has the most expertise on the issue.

Isolating the decisionmaker from the staff that has developed a position mitigates the argument that the influence of staff is too strong. It makes the commissioners completely reliant on the record developed by the parties and on their own advisory staff, if such a staff exists.

The ideal advisory staff would be a senior experienced member of staff with a full range of public utility regulatory experience in accounting, economics, finance, law, and public policy, who also possess the common sense needed to serve commissioners in an advisory role. Such individuals are rare. There is an additional problem if the investigatory or advocacy staff is provided rewards based on the number or size of "wins" in contested cases. As suggested in Chapter 2, when that is the case a staff

⁷ For a much fuller description and analysis on separation of functions at public utility commissions, see Susan D. Simms, "Restructuring Utility Commissions Influenced by Legislative and Judicial Due Process Determinations: Walls of Division," presented at the 19th Annual National Conference of Regulatory Attorneys, Clearwater, Florida, June 5, 1996.

⁸ Ex parte rules are required by procedural due process in most states because if a communication with the decision-maker occurs out of the presence of the other parties, the other parties have no notice of the communication and are denied an opportunity to be heard concerning the communication. The essence of procedural due process is notice and opportunity to be heard. Most state commissions are subject to ex parte rules. A notable exception is the California Public Utilities Commission. Arguably ex parte rules may be less necessary if a state commission views itself as principally a quasi-legislative body. For those states with ex parte rules, the rules fall into two rough categories, those states with ex parte prohibitions and those states with ex parte rules that contain a cure for ex parte contacts. The ex parte rules that are simple prohibitions, while absolute, may be somewhat naive. No matter how well-intended the parties are ex parte contacts occur. And when they occur, it is better to have a means to cure the due process problem that occurs because of an ex parte contact. A typical cure for ex parte communications is to issue a memorandum stating that an ex parte contact occurred and summarizing its content. Then, the other parties should be given the opportunity to test the veracity of the communication or to present testimony to the contrary.

culture grows which emphasizes advocacy in the adversarial process, instead of emphasizing sound, thorough, and coherent decisionmaking.

The approach just described is "clean" from a due process point of view, presuming that the primary administrative process used at the commission is adversarial. However, it is duplicative and requires more staff resources than other approaches. In commissions where the entire staff is considered a party for ex parte communication purposes, when staff intervenes in a case as a party, the problem of commissioners being isolated from the most knowledgeable staff is compounded.

A similar approach, which designates only some staff as being bound by ex parte requirements, does not isolate the commissioners from knowledgeable staff as thoroughly as the method just discussed. If a portion of the staff is putting on the case and there is no permanent bifurcation or separation of advocacy or investigatory staff from the commissioners, then the commission might decide that the ex parte rules only apply to those staff who are actually testifying or preparing the case. The commission is then faced with the challenge of making certain that ex parte communications do not occur on a staff-by-staff basis. Staff who are party in a case can be identified by memorandum, effectively creating a Chinese Wall that should prevent ex parte communication problems from arising.

While this approach may tend to minimize the need to create two separate staffs and may minimize the degree to which commissioners are isolated from knowledgeable staff, some due process advocates are likely to argue that this approach is not as "clean" as it should be because staff communicate with each other and there is likely to be some leakage between staff who put on a case and the remaining staff. This may be the case if both categories of staff answer to the same supervisor. Some will also argue that this approach still leaves the staff too strong.

Another approach is to allow staff to provide information and advice to the commissioners so long as the advice does not furnish additional evidence or argument, diminish the evidence or arguments, or modify the evidence and arguments on the

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record. In other words, there is nothing improper about staff advising the commissioners about positions that the commissioners can reach based solely on the record. However, this approach requires both staff and commissioners to walk a very thin line. As a practical matter, it would be difficult matter to provide commissioners with sought after advice without supplementing or modifying the record.

Finally, there are state commissions that simply ignore the problem of separation of functions. In their view, it is the job of staff to develop a position that is in the public interest and it is also the job of staff to advise the decision-makers, whether they be commissioners or administrative law judges. In these states, staff is in a strong position to advocate its position if it so chooses, which can cause due process concerns because of separation of functions problems and also because the other parties do not have an opportunity to be heard on communications that take place outside of their presence. As an alternative, staff could be allowed to advise the commission as the commissioners or decision-makers seek information *only after the case is in the deliberation state*. While some might feel that this approach has the appearance of impropriety, it allows the commissioners or decision-makers the maximum amount of access to staff or information, particularly if staff understand that advocacy is improper. To minimize the possibility of ex parte problems, one could issue a memorandum identifying which staff is putting on a case and then only rely for advice on other staff members with the same or similar expertise.

To try to minimize the due process problems that can arise in states that are subject to strict ex parte communications rules, but where none of the above suggestions seem helpful, other forms of administrative procedures that are more proactive in nature and designed for prospective policymaking could be used. Several of these procedures use consensus-building and alternative dispute resolution techniques to gather information, to build consensus, and to narrow the issues for the commissions. Other procedures, such as the use of technical conferences and round tables, can be used to gather information for later use in rulemaking or adjudicatory

procedures. There is no reason not to use these procedures to collect information from staff before a proceeding.⁹

The Effect of Open Meeting and Sunshine Laws

Open meeting and sunshine laws also affect the operation of a commission in a manner that might be undesirable. Although they vary from state to state, typical open meeting and sunshine laws require that there must be prior public notice of a meeting when a majority of commissioners or a majority of a quorum of commissioners is present.¹⁰ In some states these laws apply whenever commissioners are meeting to discuss issues related to a particular case or rulemaking. In other states, these laws apply to any public utility matter, whether or not the issue is pending before the commission in a current case or rulemaking.

One problem with these laws is that in many states commissioners are reluctant to meet and deliberate in public. Another problem, particularly in states with three commissioners, is that any communication between commissioners relevant to a case is prohibited without prior public notice. In order to get around the provisions of these laws, often commissioners have advisory staff or aides perform shuttle diplomacy to try to engage in an iterative process of give-and-take necessary in a deliberative process. Such an approach is extremely inefficient as it requires numerous contacts for each subsequent revision or draft of a proposed order or rule.

⁹ These procedures are reviewed in detail in Burns, *Innovative Procedures for Proactive Regulation* (1988).

¹⁰ There are three related types of laws, which are usually discussed together. There are open meeting laws, sunshine laws, and open record laws. Sunshine laws can be a different name for open meeting and/or open record laws. They are so named because they require an agency to operate in the sunshine of public scrutiny. In this section we discuss only the "open meeting" aspects of open meeting and sunshine laws.

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One approach for dealing with open meeting and sunshine laws is simply to comply with the law and hold as many open meetings as would be necessary to deliberate and make decisions. As the number of open meetings increases, the interest and scrutiny of the media and public may decrease, at least on routine matters.

Some contend that open meeting laws and sunshine laws are generally undesirable because they inhibit collegial discussion among commissioners, increase costs, encourage circumvention, discourage substantive discourse, emphasize process

However, it can be strongly argued that the benefits of these laws are outweighed by their cost when the commission is in deliberation.

at the expense of outcomes and are more useful to special interest groups than to the public.¹¹ Nevertheless, sunshine and open meeting laws serve a useful due process function by ensuring that the public has notice of deliberations and by allowing all parties to have an

opportunity to be heard on all issues. It also serves the democratic process by allowing a free press to cover newsworthy events. However, it can be strongly argued that the benefits of these laws are outweighed by their cost when the commission is in deliberation. After all evidence has been taken, commissioners need to be able to deliberate in private to engage in the give-and-take necessary to reach a result that properly balances the public interest. Indeed, it can be argued that during deliberations commissioners are in a quasi-judicial role, similar to a panel of judges. Court deliberations are not held in public, because it would undercut the collegial nature of the court. The same collegial relationship is required for an efficiently operating commission. Under this court model of operating, the final order or rule would be

¹¹ Douglas N. Jones, "Utility Oversight in the Sunshine: Who Benefits?" *Forum for Applied Research and Public Policy* (Summer 1992), 96-105.

publicly announced with the reasoning behind the decision. One commission that operates in this manner is the Michigan Public Service Commission.

Some commissions that provide regular and frequent notice of meetings, even notice of those meetings in which information necessary to decision making is gathered, have found open meetings and sunshine laws to be only a minor inconvenience. As the public utility regulatory environment becomes more subject to competitive forces, it is expected that such information gathering could increasingly occur in technical conferences, workshops, and consensus-building forums.

The point of the previous three sections is that commission restructuring must occur in such a way that due process and other legal concerns are met. As discussed in Chapter 2, state commissions are not private businesses. Any commission restructuring must occur within the applicable legal environment to assure that the process is fundamentally fair and open.

The Risks of Having Change Come from the “Outside”

The ideal method of creating change in commissions is to allow commissioners and senior staff to make an assessment of necessary change and implement that change from inside the commission. Unfortunately, legislators and others, often under pressure by utilities to remove perceived regulatory obstacles, do not have the patience to wait for internal change. As a result, staffing levels for public utility commissions may be more often mandated from outside the commission (typically by the state legislature) than determined from within.

Three scenarios for external change are pictured and described here. They consider the likely directions of staffing levels over the coming years and are intended to be illustrative for purposes of exposition and not as predictions.

Scenario #1 is a straight line decline as legislatures cut commission budgets as they perceive the role of regulatory commissions to be reduced. Legislatures behaving

this way have accepted the argument in one form or another that "Regulation is a

Scenario #1 is rooted partly in the mistaken idea that public utility regulation has no constructive role of its own and must be viewed merely as "a last resort," something society establishes only in the face of "market failure."

grudging substitute for desired competition, and now that competition has arrived we can substitute it for regulation." This simple logic-- ceaselessly propounded by those who see themselves benefitting from dismantling utility regulation--is added to the general current antipathy toward government intervention of nearly any

kind and makes up a powerful force, indeed. It is rooted partly in the mistaken idea that public utility regulation has no constructive role of its own and must be viewed merely as "a last resort," something society establishes *only* in the face of "market failure." Acting on these perceptions legislatures would prescribe a line indicated in Figure 4.1, believing (one presumes) that consumer protection would be as good (or better) in 2006 through the effective functioning of competition.

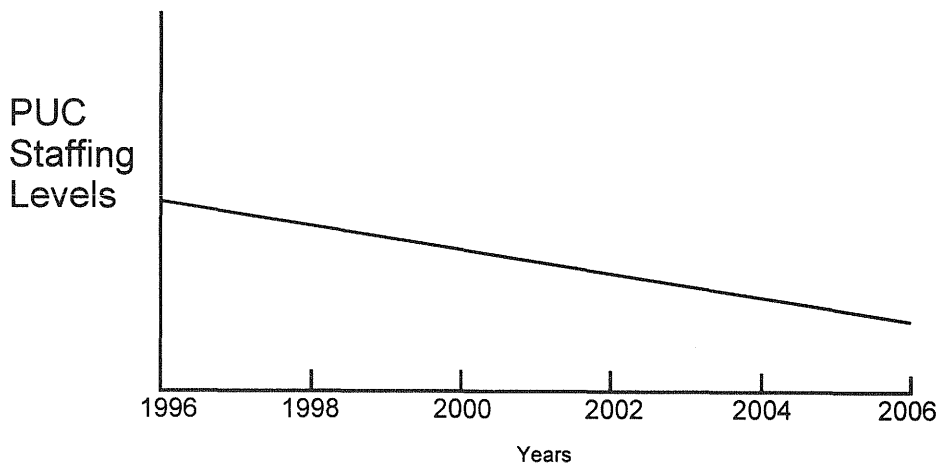


Figure 4-1. Scenario 1.

Downsizing, of the type anticipated in Scenario #1 (Figure 4.1) has become the modus operandi of business organizations. Unfortunately, it is an inefficient way to do business. According to Robert Tomasko:

- Of 1000 businesses that had downsized, only 191 reported increases in competitive advantage.
- Almost all companies reported the need to replace staff they had dismissed.
- Downsizing diminishes the loyalty of staff who survive the downsizing.
- Even with early retirement programs, eighty percent of firms report losing good performers that they wanted or needed to keep.¹²

Scenario #1 is attractive to legislators, however, because budget cuts are the most effective tool at the disposal of legislators who demand change. It is, however, particularly disruptive to commissions in that staff are not perfectly substitutable. The staff most useful to the operation of the commission in new regulatory environments is not necessarily the staff that would be retained in a large-scale cutback. The best staff may leave of their own volition as the inevitable decline in morale that accompanies downsizing makes the commission a difficult place to work. Or, due to civil service or other legal requirements, the most useful staff may be eliminated while other, more senior staff whose skills may not be as useful remain. As commissions are downsized externally, they lose the flexibility to adapt to new missions.

Scenario #2 (Figure 4.2) depicts an early decline in staffing levels (as above), but with the trend arrested and partially reversed several years out when necessary rehiring takes place as a result of revealed deficiencies in consumer protection and subsequent heat being felt by legislatures to "do something." These deficiencies could be exposed by the claims for competition far exceeding their realization, by undue profit taking and

¹² Robert M. Tomasko, "Restructuring: Getting It Right," *Management Review*, April, 1992, 10-15.

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price gouging, by unshared benefits among customer classes, by outright scandal, or by a major downturn in the national economy. Note that the line is not drawn back to the original staffing level, indicating at least a partial substitutability of competition for direct oversight.

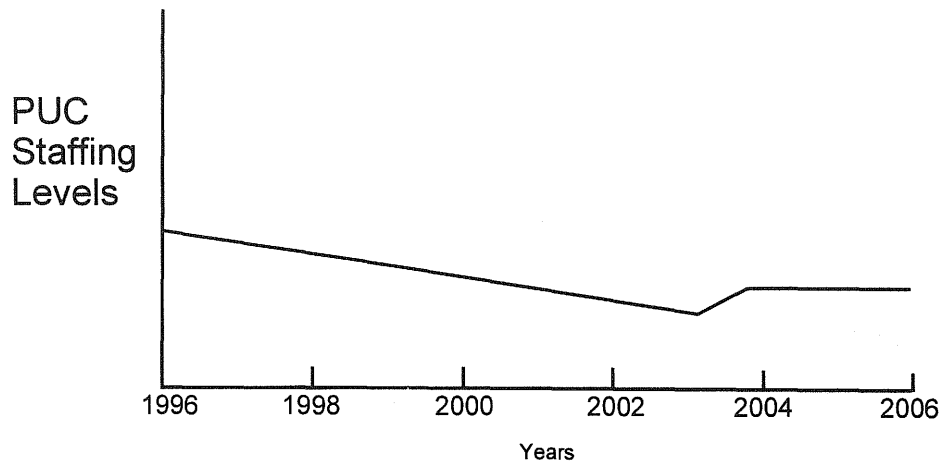


Figure 4-2. Scenario 2.

Of greater concern than the impact on the commission, in Scenario #2 the consumer suffers before an effective regulatory regime is reestablished. These negative impacts on consumers could include paying higher prices for service, suffering from low service quality, and uneven distribution of service and the resulting economic dislocation. Rebuilding an effective regulatory organization is far more difficult than simply reconfiguring an existing one.

Scenario #3 (Figure 4.3) is portrayed as the “correct” legislative response to current changes in three of the utility sectors. Here it is recognized that “getting it right,” as regulatory commissions transition from continuous oversight to substantial reliance on competition, is an extremely difficult management and policy task. Society is at least as likely to err on the side of overdoing regulatory retrenchment as it was earlier in

overdoing intervention. It is also recognized that getting from “here” to “there” will require high order and adroit maneuvering not likely to be possible with a flash cut of staffing levels. In fact, a temporary increase in staff may be required to devise the alternative regulatory regimes; examine, identify, and evaluate degrees of competition in various services in the several sectors; classify markets as workably competitive, moving toward being competitive, or non-competitive; and generally administer the

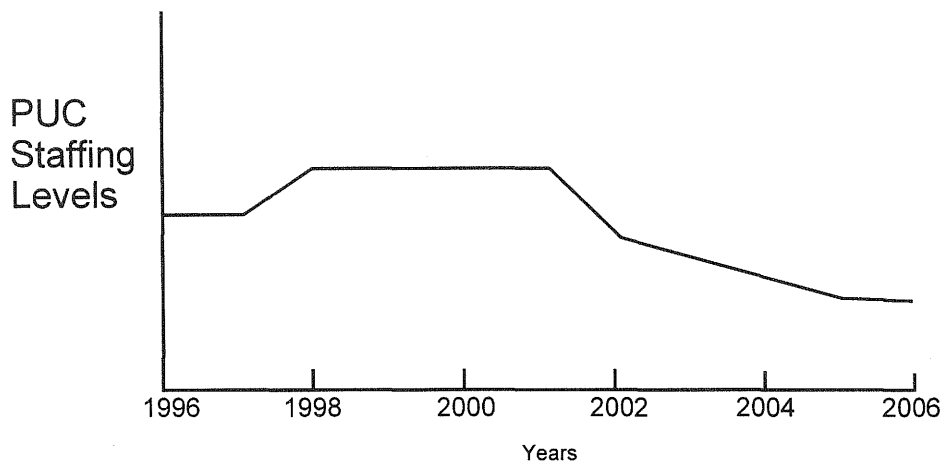


Figure 4-3. Scenario 3.

pace and kind of transition. Note again that the line ultimately drops to a lower level of staffing when the transition phase is ended (and in fact somewhat lower than in Scenario #2 after the restoration of regulatory safeguards).

For anything like Scenario #3 to become reality, a great deal of education of legislators must be carried on by public utility commissions, their senior staffs, governors' offices, academics, “good government” organizations, and the informed media. The effort would be large, indeed, but so are the consumers' stakes in a public interest outcome. Unfortunately, in the meantime the shape of Scenario #3 may approximate the workload of commissions while staff resources provided may more resemble Scenario #1.

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Scenario #1 is the scenario most likely to be preferred by those who believe strongly that competition will insure efficient operation of the utility marketplace and, overall, the betterment of consumers. Scenario #1 would also be preferred by those who believe that regulators should be gotten "out of the way" of competition as soon as possible. Scenario #3 is the one that would be most likely to be preferred by those who are more suspect of competition and who want to leave consumer protections in place until competition proves itself for the delivery of utility services.

When legislatures and commissions consider changes in staffing levels, they should not, however, consider only their expectations for the effectiveness of

If commissions are reduced in size without waiting to see if effective competition develops, the risk is that consumers will be harmed before the need for regulation can be proven and effective regulatory processes can be put back in place.

competition as a market manager. They should also consider the risk inherent in each scenario. If commissions are reduced in size without waiting to see if effective competition develops, the risk is that consumers will be harmed before the need for regulation can be proven and effective regulatory processes can be put back in place. If they adopt a more

cautious approach (Scenario #3) and allow commissions to retool themselves while competition develops, the biggest risk is that public funds might be overspent in the transition.

Identification of Staff Mix and Commission Organization

In addition to the question of the macro level of staffing of public utility commissions is the consideration of what mix of skills or fields of expertise should comprise the technical staff in the new context. What is attempted below (Table 4.2) is

a summarizing of the pros and cons for more or fewer staff members in five traditional fields--engineering, law, accounting, economics, and financial analysis.¹³

TABLE 4.2

FIELD	ARGUMENTS FOR MORE	ARGUMENTS FOR LESS
Engineering	<p>Shift from financial regulation to quality of service regulation, including safety and reliability focus.</p> <p>Interconnection, dispatch, facilities usage questions are bigger.</p>	<p>Competition will take care of quality concerns just as it will price concerns.</p> <p>Utilities know best about technical design and operations matters.</p>
Law	<p>More arbitration, mediation, dispute resolution. More antitrust review. Monitoring of interconnection agreements and contract arrangements.</p> <p>More contract pricing and fewer tariffs.</p>	<p>Proceedings that are less trial-like.</p> <p>More quasi-legislative and less quasi-judicial activity.</p> <p>Fewer dockets, lower case load.</p>
Accounting	<p>Monitoring of affiliate transactions; intra-company dealings, accounting separation.</p> <p>Price cap and incentive schemes require these skills for verification.</p>	<p>Fewer tariff construction and rate design issues.</p> <p>Fewer audits and reporting requirements.</p> <p>Less emphasis on costs.</p>

¹³ Note that the analysis considers the need for more "engineering" rather than "engineers," for example. Staff persons of varied backgrounds are sometimes substitutable, particularly with training. In many states, however, those practicing engineering, law, or accounting are required to be licensed. Commissions need to take local professional requirements into account when substituting personnel.

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Economics	<p>Action focus is on individual organization and market structure; the determination and measurement of competition in markets; PBR and incentive regulation, design. More antitrust review of utility behavior.</p> <p>Special need for quantitative analysis.</p>	<p>Competition's results lessen need for the economists' oversight skills.</p>
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Source: Authors' construct.

Then there is the special case of Consumer Affairs personnel. On the side of greater needs it could be argued that service complaints may be so frequent and sustained that much more attention should be devoted to this activity at commissions. With freer entry and more players, with customers facing greater complexity and more confusion, and with (arguably) an incentive for utilities to cut corners in the face of competition for sales, there could well be a major rise in customer complaints. On the side of a lessened need for such personnel, the logic would be that competition will adequately and broadly protect consumers with respect to service as with everything else.

There remains the question of how state public utility commissions might best be organized in the current ambiguous circumstance where jurisdictional utilities in three of the sectors (not water) are generally operating partly regulated and partly "free." The academic literature on agency organization structure has much to say about topical versus functional design arrangements. Here it is perhaps useful to list what forces in the new regulatory environment favor sectoral organization (electric, gas, telecommunication, and water sectors) and what forces favor a functional approach (e.g., accounting, finance, and economics; engineering and facilities; reporting and record keeping; hearings, docketing, and case administration; compliance; etc.).

Those factors pointing toward a sectoral arrangement would seem to include the following:

- Different utility sectors have their own requirements of special expertise.
- Jargon, legal underpinning, and components differ.
- Different sectors are in varying stages of change (and rates of change).
- Commission/industry relationships are easy, familiar, and clear cut.
- The water sector is not caught up in transformation, hence it requires separate treatment.
- Managerial lines, authorities, and responsibilities may be simpler and more readily understood.

Those factors pointing toward a functional organization would seem to include the following:

- Market structure and competition analyses are generic.
- Common issues characterize the sectors, e.g., bottleneck facilities, access, sharing of customer benefits.
- Industry structures are actually similar with respect to main components, i.e., organization, transmission, distribution.
- Core and non-core considerations are the major forces that cross industry boundaries.
- Greater concentration of talent and effort can be brought to bear.
- Efficiency gains can come from multi-sector deployment of resources (utilization advantages).
- There exists the danger of possible "coziness" that attends sustained dealings with particular constituencies lessened.

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- Recruitment and retention of staff may be enhanced by greater breadth of job responsibilities across several utility sectors.

It should, of course, be acknowledged in considering which is the preferable organizational arrangement for a commission that size is a very important element. This is to say that very small state commissions may effectively be precluded from having a choice--they may not be large enough to "afford" a sectoral breakout with separate supporting personnel. If overall change is seen as sorely needed, it can be argued that, whatever the individual merits of sectoral versus functional structures, a commission now organized functionally should be reorganized sectorally, and vice versa. Such a "shakeup" can be a catalyst for accomplishing the new orientation, cultural change, and tasks required in the new regulatory environment.

CHAPTER 5

SUMMARY AND RECOMMENDATIONS

In several parts of this report we have provided recommendations for making large-scale change within public utility commissions. This chapter recaps those recommendations within a systems approach to transforming commissions. It also makes some recommendations for how to begin the transformation to a new regulatory paradigm.

A Systems Approach to Transforming the Public Utility Commission

The fifth discipline, and the one that gives direction and meaning to the learning organization, is systems thinking. To synthesize the ideas in this report, it makes sense to view them in the context of a systems model. Considered as a system, any organization is made up of three components--inputs, internal components and processes, and outputs. The organization also functions within a task environment. Figure 5.1 illustrates the systems model as applied to a public utility commission. Production processes, which include information, structure, and people, under the guidance of control processes lead to outputs. The products of the commission are rates (under forms of regulation that do not rely on competition to set rates) or policies that support the commission's mission. The external environment of the commission consists of state, federal, and local government bodies; electric, gas, telecommunications, and water utilities; the press; consumers; and others.

Two recommendations can be drawn from the NARUC/NRRI Summit that address the overall efficiency of the commission as a system. First, commissioners suggested that commissions be more adaptable, and second they suggested that commissions handle more information from the task environment and manage it better.

Task environment: state, federal, local government;
regulated industries; press; consumers

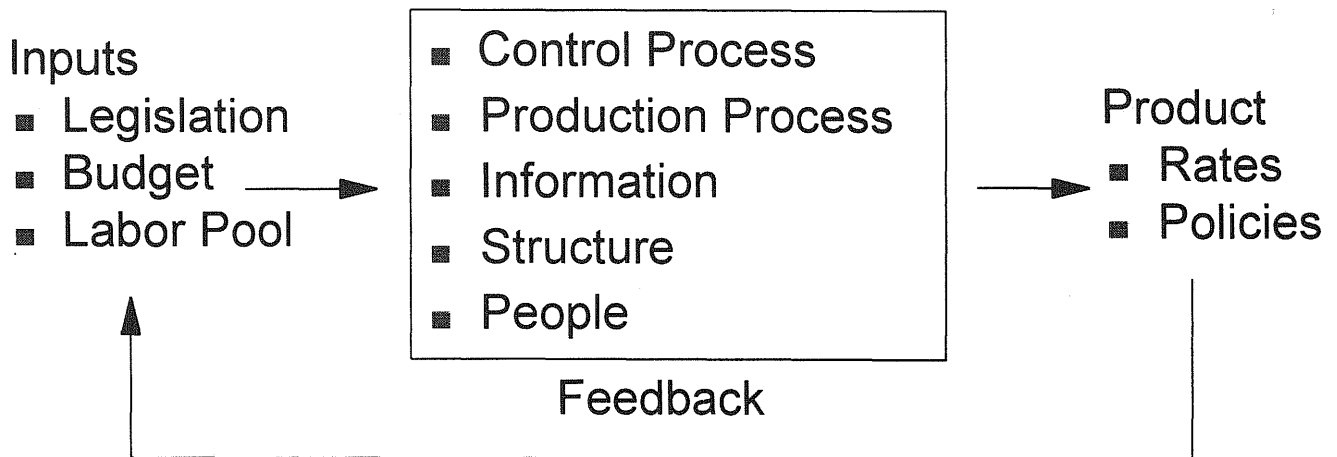


Figure 5.1. The commission as a system.

Source: Authors' construct.

The goal of these two recommendations is to create more elastic organizations within which commission managers can flesh out new visions of commission operations.

The other recommendations of the Summit and many of the recommendations of this report can be incorporated into a systems model. Recommendations that address the **overall control process for internal commission relationships** are:¹

¹ The chapter in which the recommendation was made is listed in parentheses.

- Apply systems thinking including the identification of feedback loops, fundamental problems, and high-leverage solutions. Recognize that there are no quick fixes. (Chapter 3)
- Use structured methods of improving processes, such as TQM, which can be viewed as an approach to systems thinking. (2)
- Develop broad goals within which adaptation to the external environment can take place. (2)
- Develop the ability to imagine and rapidly create new paradigms of organizational design. (2)
- Continue to rely on bureaucracy as a valid form of organization to the extent that it remains the most cost-effective alternative. (3)

Recommendations that address the **task environment (external relationships)**

are:

- Identify customers, especially external ones. (2)
- Define and serve the interests of affected parties. (2)
- Involve a wide circle of stakeholders in the effort to create new visions of commission roles. (1)
- Establish better public relations and public education programs. (2)
- Recognize the roles of other players in the regulatory process. (2)
- Create more opportunities for participation with “others” involved in the process. (2)
- Establish multi-purpose enabling legislation. (2)
- Establish or adjust existing power relationships. (2)
- Remarket or reposition the organization with external stakeholders. (2)
- Educate legislators. (4)

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- Maintain adequate levels of independence to protect the process. (3)
- Establish new activism by commission leadership in many areas of the task environment to affirm commission roles in fostering competition and protecting consumers. (3)

Report recommendations that address the **structure of the control process** include:

- Derive the structure of the organization from information needs. (3)
- Create mechanisms that enable the commission to assemble resources quickly. (2)
- Minimize organizational barriers. (2)
- Identify which portions of operations might not be substantially modified by the changing regulatory environment and which portions should be permanently and dramatically altered. (1)
- Consider a sectoral versus functional approach to structure. (4)
- Consider the issue of separation of investigatory and advisory functions in the context of ex parte rules. (4)
- Address problems of collegiality in the context of due process and open meetings requirements. (4)
- Create structures to manage information overload: self contained tasks, slack resources, vertical information systems, lateral relations. (3)
- Create structure that handles both the need for flexibility and the need for stability. (3)

The recommendations that address **information needs** are:

- Create new performance measures. (2)
- Create open and ubiquitous information systems. (2)

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- Develop the means to monitor the impact of competition on consumers. (2)
- Survey consumers to help revise service quality standards. (2)
- Change internal and external communication patterns. (2)
- Obtain new sources of information necessary to support decision making. (4)

The recommendations related to **human resources** are:

- Change the organizational culture. (1)
- Provide constant training and retraining. (2)
- Exhibit a willingness to embrace change. (2)
- Identify a staff mix appropriate to the new commission role. (4)
- Encourage personal mastery. (3)
- Identify the pattern of inducements and contributions (and changes to the existing pattern). (3)

Recommendations that address the **production process** include:

- Experiment with alternative methods of dispute resolution. (1)
- Use more alternative methods of dispute resolution. (2)
- Employ notices of inquiry, negotiated rulemaking, technical conferences, workshops, task force collaboratives, and notice and comment rulemaking. (4)

The recommendations that address the **commission product** include:

- Empower consumers to fend for themselves. (2)

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- Establish a consumer bill of rights. (2)
- Establish a means of continuing old tasks while taking on new ones. (3)

Getting Started

As commissions make the transition to the new regulatory paradigm (see Chapter 2), they will want to identify activities that must be undertaken in the transition between the old paradigm and the new one and activities that may be necessary under the new paradigm. Table 5.1 lists potential commission activities for the transitional stage (B to C in Figure 2.1 of Chapter 2) and within the new paradigm (C to D).

TABLE 5.1

Potential Commission Activities During the Transition to the New, Competitive Paradigm and Potential Activities Under the New Paradigm

Transitional Activities	New Paradigm Activities
Training in collaborative techniques	Antitrust protection
Creation of flexible organizational form	Market evaluation
Creation of flexible information systems	Identification of consumer satisfaction
Identification of barriers to change	Identification and protection of core customers
Modification of staff orientation	Measuring service quality
Creation of a learning organization	Evaluation of affiliate transactions
Shift to more policy-making and less adjudication	Provision of consumer information
Strengthening public and legislative linkages: increasing the emphasis on public education	

Source: Authors' construct.

Other initial steps recommended by this report are:

- Begin to use more systems thinking. (3)
- Review commission missions and objectives.
- Assess new commission information needs. (3)
- Review requirements of governing documents. (3)
- Examine the interests of new players. (3)
- Analyze new complexities in task environments for contribution to task uncertainty. (3)
- Decide whether outside consultants are needed to examine organizational mission and regulatory methods. (1)
- Consider everything that the organization does as fair game for change. (2)
- Don't push the private sector analogy too far. (2)
- Allow commissioners and senior staff to make an assessment of necessary change and implement that change from inside the commission. (4)
- If possible, temporarily increase staff to handle the transition. (4)
- Make sure the technical core of the commission can operate while change is taking place. (3)
- Evaluate opportunities for new commission roles in the new environment. (3)
- Determine which old tasks continue to be required and what new tasks are called for. (3)

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The challenges facing commissions are huge and the environment may be hostile. But commissions always have found ways to protect the public. Committed to flexibility and embracing change as a constant, they will continue to serve the public well.