LEGISLATIVE AUDIT COMMISSION

Review of
Illinois Commerce Commission
Two Years Ended June 30, 2005

622 Stratton Office Building
Springfield, Illinois 62706
217/782-7097

REVIEW: 4252
ILLINOIS COMMERCE COMMISSION
TWO YEARS ENDED JUNE 30, 2005

FINDINGS/RECOMMENDATIONS - 9

ACCEPTED - 6
IMPLEMENTED - 3

REPEATED RECOMMENDATIONS - 3

PRIOR AUDIT FINDINGS/RECOMMENDATIONS - 7

This review summarizes a report of the Illinois Commerce Commission for the two years ended June 30, 2005, filed with the Legislative Audit Commission April, 11, 2006. The auditors performed a compliance examination in accordance with State law and *Government Auditing Standards.*

The Illinois Commerce Commission regulates investor-owned telecommunications, electricity, natural gas, and water and sewer utilities, and competitive providers. In addition, the Commission also regulates and oversees household movers, towing companies which relocate trespassing vehicles, the enforcement of certain trucking insurance coverage laws, railroad grade crossing standards, rail movement of hazardous materials and gas pipeline safety.

The Public Utilities Act divides the regulatory authority of the Commission into two primary categories: the regulation of rates and service and the supervision of corporate transactions. The funds necessary to administer the Public Utilities Act are derived from three primary sources: a gross revenue tax imposed upon all regulated public utilities and telecommunications carriers, except electric utilities, the fees levied for the authorization to issue securities of all regulated public utilities and those telecommunications carriers subject to the Public Utilities Act, and the electricity excise tax collected by the Department of Revenue in which 3% of the tax received is deposited into the Public Utility Fund.

Under the authority of the Illinois Commercial Transportation Act, the Commission administers and enforces financial responsibility, insurance and safety fitness requirements for all public trucking companies in Illinois; regulates intrastate household goods carriers to assure compliance with rates and service territory; and registers all intrastate and interstate trucking companies in Illinois. The Electric Supplier Act directs the Commission to act as an administrative decision-maker in territorial service area disputes and to consider negotiated agreements between electric cooperatives and investor-owned public utilities. The Gas Pipeline Safety Act grants to the Commission safety jurisdiction of all pipeline facilities within Illinois transporting natural gas. Under the provisions of the Emergency Telephone System Act the Commission has been charged with the

responsibility for implementing the 911 emergency telephone systems on a statewide basis.

The Chairman of the ICC is the designee of the Governor and functions as one of five members of the Commission. Mr. Edward Hurley was the Chairman during the audit period. Mr. Marty Cohen served as Chairman from September 2005 through November 2005, but was never confirmed by the Senate. The Commission's current Chairman is Mr. Charles Box, serving since January 10, 2006. The Commission's Executive Director is hired by the Commissioners and is responsible for the daily operations of the Commission. Mr. Scott Wiseman was the Executive Director during the audit period and afterward until August 2, 2005. Then, Mr. Gene Beyer was Acting Director from August 3, 2005 until the current Executive Director, Tim Anderson, became Director in July 2006.

The average number of full-time employees is as follows:

	FY05	**FY04**	**FY03**
Chairman & Commissioners	13	12	14
Executive Director's Office	7	7	9
Bureau of External Affairs:	0	0	13
Consumer Services	17	19	11
Government Affairs	3	3	3
Public Affairs	3	3	3
Bureau of Transportation	52	55	65
Office of General Counsel	25	26	29
Bureau of Public Utilities:	1	1	43
Energy	19	21	16
Telecommunications	18	19	13
Financial Analysis	31	33	18
*Public Safety & Enforcement**	11	11	0
Administrative Law Judges	18	17	26
Bureau of Planning & Operations	2	1	28
*Records Management**	9	10	0
Administrative Services	17	18	24
*Information Technology**	18	19	0
Project Management	2	5	0
Total	266	280	314

*In FY04, The Commission changed its organizational structure and created four new divisions: Public Safety & Enforcement, Records Management, Information Technology, and Project Management. The Commission also reclassified some employees within their Bureaus.

Appendix A contains a summary of Illinois Commerce Commission activity measures for FY05, FY04, and FY03.

Expenditures From Appropriations

The General Assembly appropriated a total of $130,278,599 to the Commission in FY05. New appropriation sources, transferred from CMS, included $44.8 million from the Wireless Service Emergency Fund and $35.4 million from the Wireless Carrier Reimbursement Fund. Appendix B summarizes these appropriations and expenditures for the period under review. Total expenditures increased from $34 million in FY04 to almost $76 million in FY05, due primarily to the transfer of the responsibility for the Emergency Telephone Safety Act from CMS to the ICC. Expenditures from the Capital Development Fund were due to a one-time project for improvements for ten grade crossings in the city of Chicago. The Commission spent no GRF funds during the audit period because the Consumer Education program ended in FY03 and administration of the Retail Rate Law Contract was transferred to the Department of Revenue during FY04.

Lapse period spending was almost $4.5 million or 5.9% for FY05, and $1.6 million or 4.6% for FY04.

Cash Receipts

Appendix C provides a summary of the Agency's cash receipts for FY05-FY03. Total cash receipts were $45 million in FY03; $36.9 million in FY04; and $81.2 million in FY05. The sharp increase in FY05 was due to the transfer of responsibility of the Emergency Telephone Safety Act from CMS to the ICC. Further, the $8.4 million decrease in receipts between FY03 and FY04 was due primarily to increased telephone company compliance with the Commission's guidelines for levels of services, resulting in lower fees assessed.

State Property

Appendix D provides a summary of State property for FY05 and FY04. Total State property decreased from $5,727,241 as of July 1, 2003 to $5,161,206 as of June 30, 2005. All State property for the Commission is in the form of equipment.

Accounts Receivable

Appendix E summarizes the Commission's accounts receivable. The total net receivable, $41,719,000, is comprised of $41,308,000 in GRF; $236,000 in the Transportation Regulatory Fund; $83,000 in the Public Utility Fund; and $92,000 in the Underground Utility Facility Damage Fund. Gross accounts receivable was $42.4 million as of June 30, 2005, with an allowance for doubtful accounts of $691,000, for a net of $41.7 million. Net accounts receivable in FY04 was $47.2 million. The Commission uses the Comptroller's offset system, the Attorney General, and internal collection services to collect old receivable balances.

The vast majority of receivables, about $41 million, relates to public utility taxes and is owed to GRF. The receivables in the Transportation Regulatory Fund are related to transportation taxes, including gross revenue taxes and fees on each mile of railroad track crossing authorized by the Illinois Commercial Transportation Law. The receivables in the Public Utility Fund represent gross revenue taxes on public utilities, federal grants, civil penalties, authorization fees for the issuance of stock or indebtedness, and copy fees. The Underground Utility Facility Damage Fund relates to penalties on companies that did not call JULIE and severed an underground utility. All the money from fines is deposited into the Fund and then is paid to JULIE annually.

Accountants' Findings and Recommendations

Condensed below are the nine findings and recommendations presented in the compliance examination. There were three repeated recommendations. The following recommendations are classified on the basis of information provided by Jane Hughes-Jackson, Chief Internal Auditor of the Commission, in a memo received via electronic mail on January 18, 2007.

Accepted or Implemented

1. Only make payments for efficiency initiative billings from line item appropriations where savings would be anticipated to occur. Seek an explanation from the Department of Central Management Services as to how savings levels were calculated, or otherwise arrived at, and how savings achieved or anticipated impact the Commission's budget.

Finding: The Commission received three FY04 billings for a total of $402,415, and two billings in FY05 for a total of $200,555, for savings from efficiency initiatives. The Commission made payments for efficiency initiative billings from improper line item appropriations.

The Commission reported that it did not receive any guidance for the FY04 billings from CMS detailing where savings were to occur. Additionally, Commission staff reported that CMS provided no evidence of savings for FY04. Staff also stated that they were unable to determine any savings that occurred as a result of the efficiency initiatives.

The FY05 billings from CMS contained more detail on where CMS determined the Commission saved monies. However, it appeared the Commission did not always follow this detailed guidance in making payment. For instance, the Commission paid part of the procurement billing from an appropriation for electronic data processing when none of the detailed procurement billing detail indicated the use of that appropriation line.

Response: Accepted. ICC will work with CMS on future initiative billings to determine appropriate expenditure information and benefits to be derived from the payments.

2. Complete semi-annual time studies timely, ensure Transportation Regulatory Fund (TRF) expenditures are limited to the amounts allowed by the law, and maintain sufficient documentation to support the allocations to the TRF.

Finding: The Commerce Commission did not expend funds from the Transportation Regulatory Fund (TRF) in accordance with statutory requirements.

Expenditure allocations were overcharged to the TRF, insufficient documentation was maintained to support expenditure allocations, inappropriate methodology was used for some calculations, and a time study used to determine allocations was compiled untimely. Expenditures from the TRF totaled $13,404,306 and $13,292,334 in FY04 and FY05, respectively.

The auditors noted the following:

- The Commission overcharged the TRF by 6% of FY04 and 7% of FY05 for indirect expenses, Administrative Services Division (ASD), and Commissioner's Assistants.

- The Commission could not provide supporting documentation for allocating $54,474 (28%) of Information Technology Division (IT) expenditures tested to the TRF. As a result, in a sample of fifteen IT vouchers, the TRF was charged $18,617 more than the amount allowed by the law for allocating a portion of expenses to the TRF.

- In FY04, the TRF was overcharged $5,327 for building security services and $417 for express mail charges. Management stated that the amounts were not allocated properly due to oversight.

- One of four (25%) time studies was not compiled timely. The time study for October 2004 was not compiled until February 25, 2005, four months late. The law requires a time study updated at least once each 6 months of the portion of staff time spent exclusively on administration and enforcement of transportation regulation. Commission management stated the documentation was not timely completed due to other staff responsibilities.

- The Commission overcharged the TRF for payroll expenditures of employees who worked for multiple divisions. The auditors reviewed 5 of 48 (10%) pay periods and noted that in four (80%) pay periods, the Commission charged the TRF a total of $6,061 more than allowed by the law. Management stated the overcharges were due to variances in payroll from period to period, which are expected to average out over the fiscal year.

- Inappropriate methodology was used to calculate the headcount percentage used for some TRF allocations, including payroll. Management stated they were not aware that the methodology used did not comply with the law. Further, staff began using fiscal year averages after the auditors brought the matter to their attention in June 2005.

Accepted or Implemented – continued

- The Commission did not prepare and maintain sufficient documentation to support the calculation of facility expenses allocated to the TRF. Management stated they were not aware that reports of Springfield headcount used for the allocation should be maintained.

Response: Accepted. The Commission has not changed the method of allocation between the Public Utility Fund and the Transportation Fund or the level of supporting documentation maintained from previous audits. FIS will prepare a master list of expenses of and for the Administrative Services Division and the allocation methodology used. Time studies will be conducted and compiled on a timely basis. Allocation percentages will be reviewed and adjusted annually. Payroll expenditures will be closely monitored not to exceed the appropriate allocation percentage.

We have submitted legislative language to simplify the methodology used to compute allocations from TRF.

Updated Response: Implemented. The Illinois Commercial Transportation Law has been changed to simplify the methodology for allocation of expenses. We have amended our practices to comply with the revised language and will continue to conduct time studies semi-annually.

3. Establish a control system to ensure future reports are filed timely or seek legislative remedy to the statutorily required due dates of the annual reports. (Repeated-2003)

Finding: The Commission did not timely file annual reports, as follows:

- The annual report of expenditures to the General Assembly for the Transportation Regulatory Fund for FY04 and FY05. Commission management stated they waited until final expenditure data was available at the end of August in order to ensure accuracy. In addition, management stated that they consider the report timely as long as it is filed within 60 days after the end of the lapse period, rather than within 60 days after the end of the fiscal year. Management further stated that this report must be approved by the Commissioners prior to filing.

- The annual reports of Accidents/Incidents Involving Hazardous Materials on Railroads in Illinois for FY03 and FY04. Commission personnel stated that the reports were not completed until May because the data from the Federal Railroad Association, which is used to complete the reports, was not received until late March of each year. In addition, the reports must be approved by the Commissioners prior to filing.

Updated Response: Implemented. In regard to the annual report of expenditures for the Transportation Regulatory Fund, the ICTL has been amended to change the due date of the Annual Report of TRF Expenditures to allow inclusion of lapse period spending, as requested by the ICC.

In regard to the annual report of Accidents/Incidents Involving Hazardous Materials on Railroads in Illinois, the report was timely filed in April this year. We were still waiting for some final numbers from the Federal Railroad Administration, but this was noted in the report.

4. Comply with the statutory mandate by promulgating the required rules or continue to seek legislation that would eliminate the requirement for the rules. (Repeated-2003)

Finding: The Commission has not established rules or procedures to be utilized in evaluating how utilities are to recover and allocate costs incurred from the construction of generation or production facilities which have been cancelled.

Commission officials stated that the establishment of these rules is not necessary at this time because of the fundamental changes in the electric market including a lack of construction activity in regulated generation and production facilities. Commission officials further stated they have attempted several times to have the Act changed, including the filing of House Bill 3286 on March 1, 2001 which repealed this section, but the bill was not passed. Management stated they discussed the issue in subsequent years with legislators, but there was no interest in amending the mandate. Officials further stated that precedents for the recovery of cancellation costs have been addressed in the past with the Commission's orders in docketed proceedings.

Response: Accepted. Section 9-216 of the Act was adopted in 1986 when there were several multi-billion dollar electric generating facilities under construction. In 1997 the Electric Service Customer Choice and Rate Relief Law was passed and deregulated electric generation. Since that law became effective, most Illinois electric utilities have either sold or transferred their generating plants to third parties or unregulated affiliates. The 1997 law also amended Section 8-503 of the Public Utilities Act to eliminate the Commission's authority to order the construction of electric generating facilities. While generating facilities are currently being built in Illinois, they are being built either by unregulated affiliates of public utilities or by non-public utility companies. The Commission is not involved in the permitting process of these plants, nor will the costs of new generating capacity be able to be included in customer rates.

As a result of the significant changes in the electric industry and the statutory scheme under which the Commission now regulates electric utilities, the Commission believes that rules governing the allocation of costs of constructing cancelled electric generating facilities are no longer needed.

Accepted or Implemented - continued

The ICC has submitted legislation to amend and eliminate section 9-216. That legislation is pending before the legislature.

Updated Response: Accepted. The ICC has previously submitted legislation to amend and eliminate section 9-216. That proposal failed to win legislative approval in 2006.

5. Develop formal written polices and procedures to govern gross revenue tax return processing and receipt processing activities and to guide employees' actions. (Repeated-2003)

Finding: The Commission did not have adequate policies and procedures for the processing of gross revenue tax returns and other receipts. During testing the auditors noted the following weaknesses:

- The Commission did not have formal approved policies and procedures for checking the appropriateness of revenues reported and deductions taken on gross revenue tax returns. The Commission processed 913 and 1,039 quarterly, annual, or revised gross revenue tax returns, which produced approximately $8,802,000 and $9,558,000 in revenues, respectively, in FY04 and FY05.

- The Commission did not have formal policies and procedures for receipts processing. The Commission reported approximately $36,886,000 and $81,202,000 in receipts for FY04 and FY05, respectively.

Commission personnel stated that they are currently drafting formal policies and procedures for gross revenue tax returns and other receipts processing.

Response: Accepted. Receipt processing and reporting procedures are currently being drafted. Desk procedures are available to assist in evaluating revenues reported and deductions taken. Additional staff would be necessary to perform detailed reviews of all revenues and expenses reported.

Updated Response: Accepted. Procedures are in the review and approval process and should be fully approved by March 31, 2007.

6. Take appropriate measures to ensure performance evaluations are conducted annually as required by policy.

Finding: The Commission did not timely complete annual evaluations for 22 of 50 (44%) employees during the period. Employee evaluations were completed from 33 to 349 days late. In addition, there was no record of an annual evaluation for two employees during the

past two years, six employees did not receive an FY04 evaluation, and six employees had not received an FY05 evaluation.

Response: Accepted. The Commission will strive to complete evaluations on a timely basis.

7. Take appropriate measures to ensure that all administrative rules are consistent with existing laws. Periodically remind employees and commissioners of their responsibilities per laws and rules, and promptly inform them of any changes. Comply with the Open Meetings Act.

Finding: The Commission's administrative rules contained a section that was inconsistent with gift provisions of the Public Utilities Act. In addition, a luncheon meeting attended by two commissioners violated the Public Utilities Act and the Open Meetings Act. The following concerns were noted by the Office of the Attorney General in correspondence to the Commission dated February 23, 2005:

- In January 2005, two commissioners attended a luncheon with members of a Commission-regulated entity who initially paid for the meal. One of the commissioners stated he reimbursed the utility representative for the commissioner's portion of the luncheon upon returning to the office after the luncheon. The commissioner cited a provision of the Commission's administrative rules as permitting occasional acceptance of a business meal from regulated entity representatives.

  The Public Utilities Act states that no commissioner or person appointed or employed by the Commission shall solicit or accept any gift, gratuity, emolument, or employment from any person or corporation subject to the supervision of the Commission.

- The meeting was held to meet with a potential candidate for employment at the Commission. The two commissioners present represented a majority of a quorum since the Commission had only four commissioners at the time. One commissioner indicated that no public business was deemed to have been discussed at the luncheon.

  The Open Meetings Act (Act) (5 ILCS 120/1 et seq.) defines a meeting as any gathering of a majority of a quorum of the members of a public body held for the purpose of discussing public business and requires all meetings of public bodies to be open to the public unless closed in accordance with the Act.

In October 2005, the Commission adopted revised administrative rules to remove the section that allowed an occasional meal. In addition, Commission management stated commissioners and employees have been advised and received training regarding compliance with the above requirements of the Public Utilities and Open Meetings Acts.

Accepted or Implemented – concluded

Updated Response: Implemented. The Commission has addressed the issue of compliance with the Open Meetings Act in the following manner:

- The Office of the General Counsel conducted an Ethics presentation in March, 2005 and November 1, 2006 for all the Commissioners and their Staff. At that presentation, the administrative rules covering the Open Meetings Act was comprehensively covered and explained. The November 1 training also covered the new amendments to the Open Meetings Act that took effect on January 1, 2007.

- To ensure that employees and Commissioners know their responsibilities, the Illinois Commerce Commission's employee manual, which is available online to all persons in the agency, is promptly updated, as necessary, to incorporate changes in laws that govern Commission procedures.

8. Annually collaborate with the State Librarian to determine the amount of Program funding necessary and certify that amount to the State Treasurer prior to July 1st of each year. Ensure the Digital Divide Elimination Infrastructure Fund has sufficient funds or direct the ITAC to remit the appropriate amount for deposit to ensure adequate funding of the program.

Finding: The Commission did not determine and certify to the State Treasurer the amount of funding necessary to support the Accessible Electronic Information Service Program (Program) prior to July 1, 2005.

The Program provides grants for the provision of accessible electronic information service to blind and disabled persons throughout Illinois. The Commission held initial meetings with the Secretary of State (State Librarian) but did not determine and certify the amount needed by the mandated date.

Commission officials stated they were given an estimate in FY05 from the State Librarian that the Program would likely cost between $150,000 and $400,000 annually, but no further contact was made by either agency to implement the Program or certify the amounts to the State Treasurer.

Response: Accepted. On September 9, 2004 several members of the Commission staff met with the State Librarian to discuss appropriate funding levels for this program. The purpose of the meeting was to provide the State Librarian status information regarding the Digital Divide Elimination Infrastructure Fund and to establish points of contact in the event that the State Librarian decided to make a request upon the ICC.

The appropriate amount needed for FY06 was not given to the Commission until November 2005. The $40,000 requested will be paid in FY06.

The Commission accepts the auditors' recommendation and as recommended, this process will consist of an annual collaboration with the State Librarian to determine the amount of funding necessary, and certify that amount to the State Treasurer prior to July 1 of each year. If the Digital Divide Elimination Infrastructure Fund has insufficient funds, we will direct ITAC to remit the appropriate amount.

Updated Response: Implemented. The FY06 amount was paid during FY06. The FY07 amount was certified prior to July 1, 2006.

9. Establish a program to monitor the level of telecommunications subscriber connection within each exchange and report the results in their annual report to the General Assembly.

Finding: The Commission does not have a program in place to monitor the level of telecommunications subscriber connection within each exchange in Illinois. Therefore, a report with the results of such monitoring was not filed with the General Assembly, as required by State law.

Commission officials stated that due to competition in the telecommunications market in recent years, phone companies have resisted releasing information regarding the level of telecommunication subscribers. The Commission is currently analyzing this issue and hopes to resolve it within the next fiscal year.

Response: Accepted. ICC will request this information from certified carriers offering service in Illinois. However, it should be noted that in most, if not all exchanges, there is no way to know how many potential subscribers there are. Exchange boundaries do not necessarily follow census blocks or municipal boundaries. Further, subscriber levels would be distorted by wireless and Voice over IP carriers. In addition, the ICC has found in the past that it is difficult to get accurate information from many carriers in light of the competitive landscape.

The information that we will be requesting here is far more detailed than we have successfully received in the past. However, we will impress upon the carriers that this is a statutory mandate. We will include the results in next year's annual report.

Updated Response: The ICC has issued a docket and request for information to be received by March 1, 2007. This information will be included in our next report to the General Assembly.

Emergency Purchases

The Illinois Purchasing Act (30 ILCS 505/1) states that "the principle of competitive bidding and economical procurement practices shall be applicable to all purchases and contracts ..." The law also recognizes that there will be emergency situations when it will be

impossible to conduct bidding. It provides a general exemption for emergencies "involving public health, public safety, or where immediate expenditure is necessary for repairs to State property in order to protect against further loss of or damage ... prevent or minimize serious disruption in State services or to insure the integrity of State records, or to avoid lapsing or loss of federal or donated funds. The Chief procurement officer may promulgate rules extending the circumstances by which a purchasing agency may make 'quick purchases', including but not limited to items available at a discount for a limited period of time."

State agencies are required to file an affidavit with the Auditor General for emergency procurements that are an exception to the competitive bidding requirements per the Illinois Purchasing Act. The affidavit is to set forth the circumstance requiring the emergency purchase. The Commission receives quarterly reports of all emergency purchases from the Office of the Auditor General. The Legislative Audit Commission is directed to review the purchases and to comment on abuses of the exemption.

During FY04 and FY05, the Commission filed no affidavits for emergency purchases.

Headquarters Designations

The State Finance Act requires all State agencies to make semiannual headquarters reports to the Legislative Audit Commission. Each State agency is required to file reports of all its officers and employees for whom official headquarters have been designated at any location other than that at which official duties require them to spend the largest part of their working time.

As of July 2005, the Illinois Commerce Commission had 32 employees who spent the largest part of their working time at locations other than their assigned headquarters.