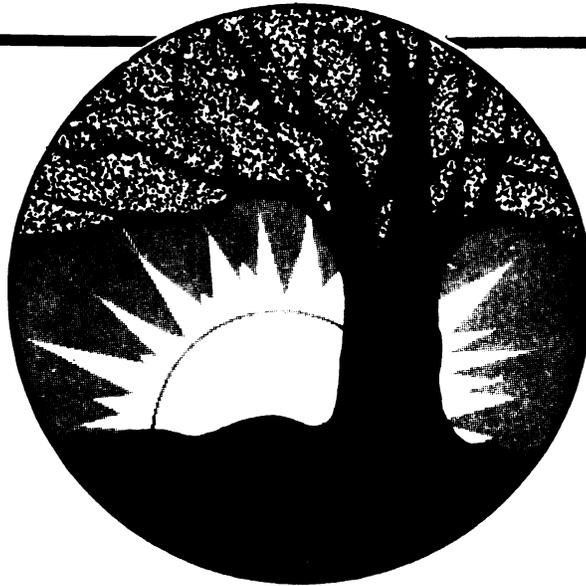


PERFORMANCE AUDIT

Tennessee Regulatory Authority
July 2012



Justin P. Wilson
Comptroller of the Treasury



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Comptroller of the Treasury
Department of Audit
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July 31, 2012

The Honorable Ron Ramsey
Speaker of the Senate
The Honorable Beth Harwell
Speaker of the House of Representatives
The Honorable Mike Bell, Chair
Senate Committee on Government Operations
The Honorable Jim Cobb, Chair
House Committee on Government Operations
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is the performance audit of the Tennessee Regulatory Authority. This audit was conducted pursuant to the requirements of Section 4-29-111, *Tennessee Code Annotated*, the Tennessee Governmental Entity Review Law.

This report is intended to aid the Joint Government Operations Committee in its review to determine whether the Tennessee Regulatory Authority should be continued, restructured, or terminated.

Sincerely,

Arthur A. Hayes, Jr., CPA
Director

AAH/dlj
12-051

State of Tennessee

Audit Highlights

Comptroller of the Treasury

Division of State Audit

Performance Audit
Tennessee Regulatory Authority
July 2012

AUDIT OBJECTIVES

The objectives of the audit were to follow up on the prior audit finding on organizational structure and report on the status of proposed legislation to change the authority's organizational structure; to assess the impact that proposed changes in the U.S. Pipeline and Hazardous Materials Safety Administration's rules could have on the authority's gas pipeline safety program and its funding; to evaluate the effectiveness of the "Call Before You Dig" program; to determine the timeliness of the issuance of final orders; to evaluate consumer-assistance programs including the Do Not Call, Do Not Fax, and telecommunications assistance programs; to determine emerging issues the authority has identified and the potential impact of those issues on the citizens of Tennessee; and to determine the status of the authority's monitoring of providers' compliance with the Uniform Access, Competition, and Consumer Fairness Act of 2011.

FINDING

Tennessee's Gas Pipeline Safety Division Lacks the Capacity to Meet the Proposed Federally Defined Requirements of an "Effective Damage Prevention Program"—Potentially Jeopardizing Future Grant Dollars and Undermining Public Safety

The Tennessee Regulatory Authority's Gas Pipeline Safety Division oversees the safety and reliability of all intrastate natural gas distribution and transmission pipeline facilities. The division conducts pipeline safety inspections across the state in an effort to minimize the risk to public health and safety resulting from an unintended release of natural gas. Additionally, the division promotes underground utility damage prevention and public awareness of gas pipeline safety issues. However, the division has no enforcement authority under Tennessee's Underground Utility Damage Prevention Act. A review of Tennessee's current damage prevention enforcement program reveals that it does not have a designated state agency with enforcement authority; its civil penalties are below federal civil penalty levels; there is no mechanism in place to learn about excavation damage, and damage reporting is not mandatory;

and the state lacks an investigative capacity to determine at-fault parties when damage to underground utilities occurs. Given these shortcomings, Tennessee's damage prevention enforcement program is inadequate according to proposed federal regulations currently out for comments. Failure to comply with the regulations, if they are adopted, could result in a funding reduction for the state's program (page 8).

OBSERVATIONS AND COMMENTS AND RESULTS OF OTHER AUDIT WORK

The audit also discusses the following issues: legislation passed in May 2012 that will change the authority's organizational structure; the effect of telemarketers' use of technology on the investigation of Do Not Call complaints; the improvement of the overall timeliness of orders although two orders took more than 300 days to publish; the authority's serving as a resource for other entities by researching emerging issues that may affect future regulation; the adequacy of the authority's monitoring of tariff filings required under the Uniform Access, Competition, and Consumer Fairness Act of 2011; the Telecommunications Devices Access Program's distribution of devices to assist hearing- and vision-impaired Tennesseans; and utility complaint investigations (page 14).

ISSUE FOR LEGISLATIVE CONSIDERATION

The General Assembly may wish to consider taking steps to strengthen Tennessee's damage prevention program in order to achieve greater federal compliance and to avoid future decreases in funding to the Gas Pipeline Safety Division. This may include explicitly authorizing damage prevention enforcement authority within the division and increasing civil penalties for pipeline safety violations to levels that are substantially the same as federal levels (page 27).

Performance Audit Tennessee Regulatory Authority

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Performance Audit Tennessee Regulatory Authority

INTRODUCTION

PURPOSE AND AUTHORITY FOR THE AUDIT

This performance audit of the Tennessee Regulatory Authority was conducted pursuant to the Tennessee Governmental Entity Review Law, *Tennessee Code Annotated*, Title 4, Chapter 29. Under Section 4-29-234, the Tennessee Regulatory Authority is scheduled to terminate June 30, 2013. The Comptroller of the Treasury is authorized under Section 4-29-111 to conduct a limited program review audit of the authority and to report to the Joint Government Operations Committee of the General Assembly. The audit is intended to aid the committee in determining whether the Tennessee Regulatory Authority should be continued, restructured, or terminated.

OBJECTIVES OF THE AUDIT

The objectives of the audit were

1. to follow up on the prior audit finding on organizational structure and report on the status of proposed legislation to change the authority's organizational structure;
2. to assess the impact that proposed changes in the U.S. Pipeline and Hazardous Materials Safety Administration's rules could have on the authority's gas pipeline safety program and its funding;
3. to evaluate the effectiveness of the "Call Before You Dig" program;
4. to determine the timeliness of the issuance of final orders;
5. to evaluate consumer-assistance programs including the Do Not Call, Do Not Fax, and telecommunications assistance programs;
6. to determine emerging issues the authority has identified and the potential impact of those issues on the citizens of Tennessee; and
7. to determine the status of the authority's monitoring of providers' compliance with the Uniform Access, Competition, and Consumer Fairness Act of 2011.

SCOPE AND METHODOLOGY OF THE AUDIT

The activities of the Tennessee Regulatory Authority were reviewed for the period January 2008 to May 2012. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Methods used included

1. review of applicable legislation and policies and procedures;
2. examination of the authority's records, reports, and information summaries;
3. interviews with department staff; and
4. interviews with the Office of the Attorney General's Consumer Advocate and Protection Division and the Department of Commerce and Insurance's Consumer Affairs Division.

HISTORY AND STATUTORY RESPONSIBILITIES

Created by statute in 1995, the Tennessee Regulatory Authority operates as the regulatory oversight of privately owned utilities serving Tennessee consumers. Through the convening of regularly scheduled conferences, the authority considers requests for rate increases, applications for authority to provide service, requests for approval of financing transactions, requests for approval of mergers, petitions for transfer of authority, and other matters. The authority's responsibilities also include consumer complaints, the Do Not Call Program, the Do Not Fax Program, the Telecommunications Devices Access Program (TDAP), the Life Line and Link Up telephone assistance program, and gas pipeline safety. The authority's mission is "to promote the public interest by balancing the interests of consumers and providers while facilitating the transition to a more competitive environment."

Leadership of the authority has consisted of four full-time director positions since 2002. Effective July 1, 2012, the authority will have five part-time director positions and an executive director.

The directors conduct the business of the authority through regularly scheduled authority conferences. The official minutes of the conferences are available to the public for inspection and on the authority's website. Each year the directors elect a chairman, whose term begins July 1, who assumes the responsibilities for managing the operations of the authority. Beginning in July 2012, the five part-time directors will elect a chair and vice-chair for a two-year term, and an executive director will manage the authority.

According to the authority's most recent annual report on the Tennessee Regulatory Authority's website, public utilities under the authority's jurisdiction as of June 30, 2011, include

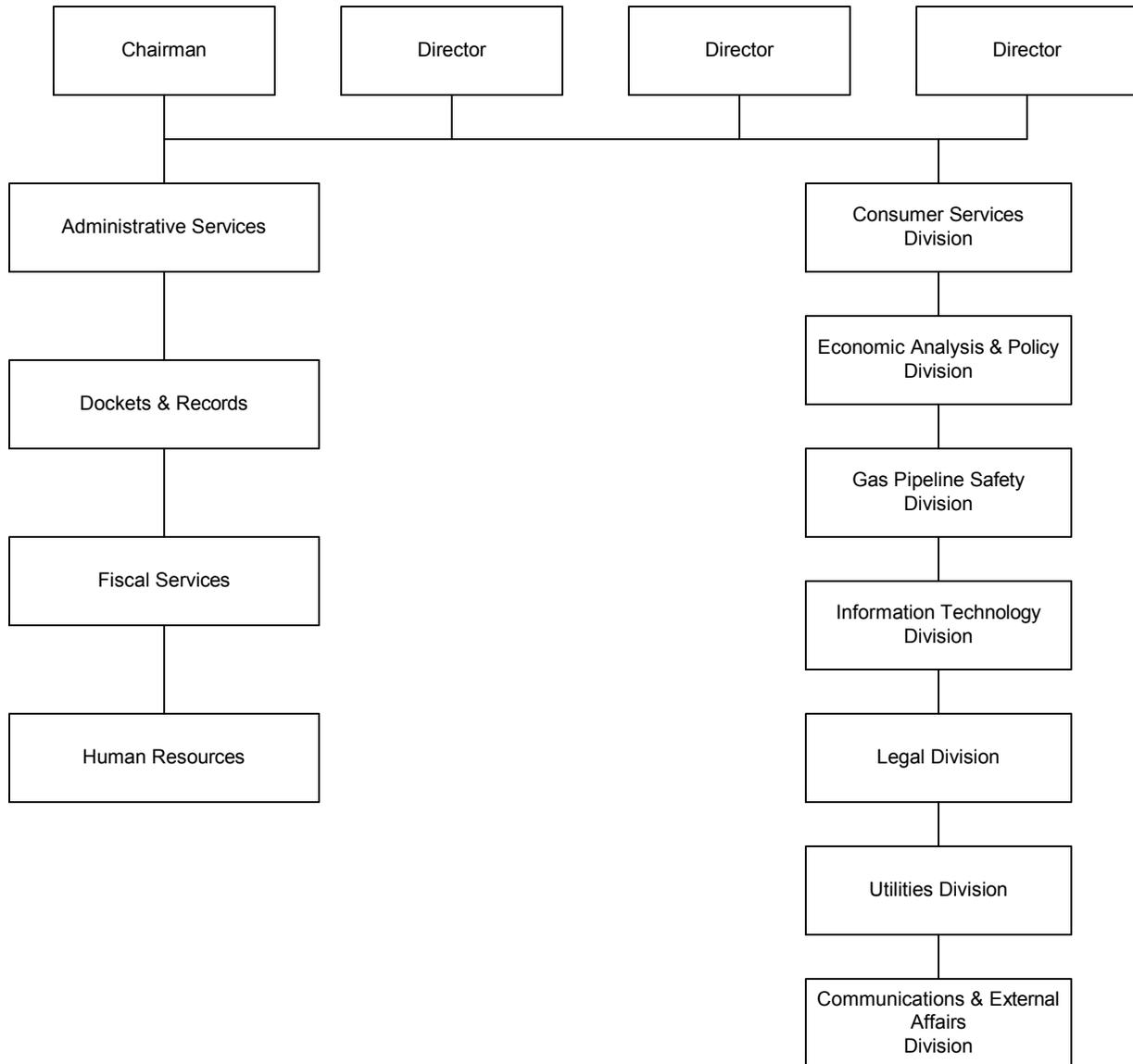
	Description	Number
Energy and Water	Electric	3
	Natural Gas	5
	Waste and Wastewater	18
	Methane Gas Provider	1
	Intrastate Pipeline	1
Telecommunications	Competing Telephone Service Providers	133
	Customer-Owned Coin-Operated Telephone Providers	90
	Incumbent Telephone Companies	27
	Resellers and Operators Service Providers	207
	Long Distance Facility Providers	6
Gas Pipeline Safety (regulated only to ensure compliance with Minimum Federal Safety Standards for the transmission of natural gas)	Direct Sales	16
	Intrastate Pipeline	18
	Liquefied Natural Gas Operators	2
	Master Meters	30
	Municipalities	72
	Utility Districts	25

Appendix 3 of this report compares the number of TRA-regulated utilities to the number of utilities regulated by utility regulatory agencies in states contiguous to Tennessee. See page 32.

ORGANIZATION

During the audit period, the authority had the following divisions (see organization chart on page 4).

Tennessee Regulatory Authority
Organizational Chart
May 2012



Office of the Chairman

The Office of the Chairman serves as the chief operating officer of the authority. To meet these responsibilities, the office maintains four administrative sections:

- Dockets and Records, which receives filings from regulated entities and prepares dockets for conference authorities, calls the docket of items to be heard at each conference, prepares and distributes conference agendas, and maintains the official minutes of all proceedings;
- Human Resources, which is responsible for payroll, benefits, and training;
- Fiscal Services, which is responsible for managing the authority's budget, purchasing, and fee collections; and
- Administrative Services, which is responsible for property management, security, and inventory of equipment and supplies.

Effective July 1, 2012, the chair's duties as chief operating officer will be transferred to the executive director.

Consumer Services Division

The Consumer Services Division manages the Do Not Call Program, the Do Not Fax Program, the Telecommunications Devices Access Program (TDAP), and the Life Line and Link Up telephone assistance program. The division investigates and mediates consumer complaints involving regulated utilities.

Communications and External Affairs Division

The Communications and External Affairs Division acts as the authority's legislative liaison, compiles the authority's Title VI Implementation Plan, and includes Consumer Education and Outreach, which develops and implements programs to educate the public.

Economic Analysis and Policy Division

The division provides economic research, analysis, and advice for the authority. Responsibilities include investigating and formulating recommendations on cost, pricing, rate design, allegations of anticompetitive practices, and other economic issues; identifying and analyzing market trends; and monitoring federal legislation and the natural gas, electric, and telecommunications policies of the Federal Energy Regulatory Commission and the Federal Communications Commission.

Gas Pipeline Safety Division

The federal Pipeline Safety Improvement Act of 2002, Title 49, *United States Code*, Chapter 601, requires the U.S. Secretary of Transportation to establish minimum federal safety standards for the transportation of gas and hazardous liquid, to establish safety standards for pipeline facilities, and to delegate to an appropriate state agency the authority to prescribe safety standards and enforce compliance with such standards over jurisdictional gas and hazardous liquid facilities. The Tennessee Regulatory Authority (TRA) has been designated as the state agency in Tennessee to enforce the federal Pipeline Safety Improvement Act of 2002. With safety jurisdiction over all natural gas distribution operators in Tennessee, the division employs a chief and five engineers, who inspect facilities and construction sites, review documents, investigate incidents, and issue violations of noncompliance. The division encourages the prevention of third-party damages to natural gas and other underground facilities, and educates local law enforcement agencies, who are responsible for enforcing Tennessee's Underground Utility Damage Prevention Act, and other entities via a program called "Dig Safely."

Information Technology Division

The Information Technology Division develops, implements, and manages information systems technology for the authority. In addition to developing systems used by staff to manage the consumer and regulatory programs of the authority, the division maintains the authority's website.

Legal Division

The Legal Division is responsible for providing in-house counsel to the directors and the TRA. Attorneys from this division also represent the TRA and the directors in their official capacities before the Chancery Courts, the Tennessee Court of Appeals, the Tennessee Supreme Court, the federal courts, the Federal Communications Commission, and the Federal Energy Regulatory Commission. Division staff prepare orders reflecting actions of the directors in specific cases.

Utilities Division

The Utilities Division assists the authority in establishing and implementing policy regarding Tennessee's gas, water, sewer, electric, and telephone companies to result in fair and responsible regulation for all utility companies and consumers in the state. The division includes engineers, accountants, rate specialists, and research analysts providing technical and financial advice to ensure the statutory responsibilities and rules of the authority are fulfilled.

REVENUES AND EXPENDITURES

The authority's revenues are inspection fees paid by the utilities it regulates, registration fees from telemarketers, and federal revenue for the pipeline safety program. The following tables present the sources, amounts, and percentages of revenues and expenditures.

Tennessee Regulatory Authority Revenue Sources For the Fiscal Year Ending June 30, 2011

Source	Amount	Percent of Total
Inspection Fees	\$6,352,575	79%
Telecommunications Devices Access Program	750,000	9%
Regulatory Fines and Penalties	130,858	2%
Do Not Call Telemarketer Registration Fees	297,226	4%
Federal Revenue	402,366	5%
Other	120,119	1%
Total	\$8,053,144	100%

Source: TRA Annual Report.

Tennessee Regulatory Authority Expenditures by Account For the Fiscal Year Ending June 30, 2011

Account	Amount	Percent of Total
Payroll	\$5,496,100	78%
Operational	1,512,400	22%
Total Expenses	\$7,008,500	100%

FINDING AND RECOMMENDATION

Tennessee’s Gas Pipeline Safety Division lacks the capacity to meet the proposed federally defined requirements of an “effective damage prevention program”—potentially jeopardizing future grant dollars and undermining public safety

The Gas Pipeline Safety Division of the Tennessee Regulatory Authority (TRA) oversees the safety and reliability of all intrastate natural gas distribution and transmission pipeline facilities. The division conducts pipeline safety inspections across the state in an effort to minimize the risk to public health and safety resulting from an unintended release of natural gas. Additionally, the division promotes underground utility damage prevention and public awareness of gas pipeline safety issues. However, the division has no enforcement authority under Tennessee’s Underground Utility Damage Prevention Act. A review of Tennessee’s current damage prevention enforcement program reveals that it does not have a designated state agency with enforcement authority; its civil penalties are below federal civil penalty levels; there is no mechanism in place to learn about excavation damage, and damage reporting is not mandatory; and the state lacks an investigative capacity to determine at-fault parties when damage to underground utilities occurs. As a result, Tennessee’s damage prevention enforcement program is inadequate according to proposed federal regulations currently out for comments. Failure to comply with the regulations, if they are adopted, could result in a funding reduction for the state’s program.

Federal Program and Requirements

The U.S. Department of Transportation’s Pipeline and Hazardous Material Safety Administration (PHMSA) operates through the Office of Pipeline Safety and manages the national regulatory program, assuring the operational safety of both interstate and intrastate pipelines. The national pipeline safety program operates as a federal-state partnership combining centralized regulatory oversight with decentralized policy implementation and enforcement. Federal pipeline safety regulations are minimum performance standards as published in the *Code of Federal Regulations* (CFR Parts 190-199). Respective state pipeline safety programs may choose to enforce the federal regulations governing intrastate pipeline operators or adopt more stringent regulations under state law. U.S. Department of Transportation regulations state:

While the federal government is primarily responsible for developing, issuing, and enforcing pipeline safety regulations, the pipeline safety statutes provide for State assumption of the intrastate regulatory, inspection, and enforcement responsibilities under an annual certification. To qualify for certification, a state must adopt the minimum Federal regulations and may adopt additional or more stringent regulations as long as they are not incompatible. A State must also provide for injunctive and monetary sanctions substantially the same as those authorized by the pipeline safety statutes.

Federal laws authorize the Office of Pipeline Safety to reimburse a state agency up to 80% of the costs associated with implementing and carrying out state pipeline safety programs. PHMSA's Safety Program Base Grant is based on a performance evaluation which includes whether or not a state has adopted all minimum federal requirements, how a state asserts and enforces its safety authority over pipeline operators, and the number and qualifications of state pipeline safety inspectors.

Each state's annual grant allocation is based on a 100-point scale that reflects the results of the Annual Program Evaluation and Certification/Agreement Score—with each measure accounting for 50 percent of the total score. In 2010 and 2011, TRA's Gas Pipeline Safety Division received total evaluation scores of 94.95% and 100%, respectively; the division obtained 70% of requested federal funds in 2010 and 80% in 2011.

The 2006 PIPES (Pipeline Inspection, Protection, Enforcement and Safety) Act amended Title 49, *United States Code*, Chapter 601, by identifying nine elements of an effective state damage prevention program:

- Enhanced communication between operators and excavators;
- Fostering support and partnership of all stakeholders;
- Operator's use of performance measures for locators;
- Partnership in employee training;
- Partnership in public education;
- Enforcement agencies' role to help resolve issues;
- Fair and consistent enforcement of the law;
- Use of technology to improve the locating process; and
- Data analysis to continually improve program effectiveness.

In order to receive damage prevention program grants from the U.S. Department of Transportation, states must demonstrate compliance with the identified nine elements or show substantial progress toward implementation.

In 2009, PHMSA issued an advanced notice of proposed federal rulemaking which outlined the criteria for determining the adequacy of state damage prevention programs—a necessary precursor which could invite federal enforcement action against excavators as described in the 2006 PIPES Act. Under the act, if PHMSA determines that a state's enforcement program is insufficient, then PHMSA is authorized to pursue enforcement action against excavators within the state. In anticipation of the rule change, the Tennessee General Assembly passed Chapter 470, Public Acts of 2009, which required the Tennessee Advisory Commission on Intergovernmental Relations to study the effectiveness of the current underground utility damage prevention program. The commission's report was issued in October 2010 and—despite not recommending any definitive programmatic or legislative changes, because of the preliminary status of the proposed federal rule changes—the report identified a number of issues that would need to be addressed should PHMSA adopt the rule changes.

On April 2, 2012, the U.S. Department of Transportation issued a Notice of Proposed Rulemaking in the *Federal Register*, Vol. 77, No. 63, which aims to revise pipeline safety regulations pertaining to damage prevention programs. The deadline for interested parties to submit comments was June 1, 2012. Proposed action will

Establish criteria and procedures for determining the adequacy of state pipeline excavation damage prevention law enforcement programs; establish an administrative process for making adequacy determinations; establish the Federal requirements PHMSA will enforce in states with inadequate excavation damage prevention law enforcement programs; and establish the adjudication process for administrative enforcement proceedings against excavators where Federal authority is exercised.

Included in the notice of proposed rulemaking are the explicit criteria (see below) for determining the effectiveness of state damage prevention programs, as well as language confirming the potential for reduced grant funding if state damage prevention enforcement is deemed inadequate.

§ 198.55 What criteria will PHMSA use in evaluating the effectiveness of state damage prevention enforcement programs?

(a) PHMSA will use the following criteria to evaluate the effectiveness of a state excavation damage prevention enforcement program:

(1) Does the state have the authority to enforce its state excavation damage prevention law through civil penalties?

(2) Has the state designated a state agency or other body as the authority responsible for enforcement of the state excavation damage prevention law?

(3) Is the state assessing civil penalties for violations at levels sufficient to ensure compliance and is the state making publicly available information that demonstrates the effectiveness of the state's enforcement program?

(4) Does the enforcement authority (if one exists) have a reliable mechanism (e.g., mandatory reporting, complaint driven reporting, etc.) for learning about excavation damage to underground facilities?

(5) Does the state employ excavation damage investigation practices that are adequate to determine the at-fault party when excavation damage to underground facilities occurs?

(6) At a minimum, does the state's excavation damage prevention law require the following:

- a. Excavators may not engage in excavation activity without first using an available one-call notification system to establish the location of underground facilities in the excavation area.
- b. Excavators may not engage in excavation activity in disregard of the marked location of a pipeline facility as established by a pipeline operator.
- c. An excavator who causes damage to a pipeline facility:
 - i. Must report the damage to the owner or operator of the facility at the earliest practical moment following discovery of the damage; and
 - ii. If the damage results in the escape of any flammable, toxic, or corrosive gas or liquid that may endanger life or cause serious bodily harm or damage to property, must promptly report to other appropriate authorities by calling the 911 emergency telephone number or another emergency telephone number.

(7) Does the state limit exemptions for excavators from its excavation damage prevention law? A state must provide to PHMSA a written justification for any exemptions for excavators from state damage prevention requirements. PHMSA will make the written justifications available to the public.

(b) PHMSA may also consider individual enforcement actions taken by a state in evaluating the effectiveness of a state's damage prevention enforcement program.

In addition to its annually conducted program evaluations and certification reviews of state pipeline safety programs, PHMSA also plans to review state excavation damage prevention law enforcement programs on an annual basis. By using evaluation criteria contained in 49 CFR 198.55, PHMSA will determine whether a state's enforcement program is adequate. A state which is deemed to have an inadequate enforcement program will have five years to make programmatic changes that would bring the program into compliance with minimum federal standards. Failure to make improvements within the five-year time frame may result in reduced grant funding not to exceed 10% of the previous year's funding level as outlined in 49 U.S.C. Chapter 601.

Current Tennessee Enforcement

Based on interviews with Gas Pipeline Safety Division management and analysis of existing state law, Tennessee does not currently meet four of the evaluation criteria listed in the U.S. Department of Transportation's notice of proposed rule changes contained in *Federal Register*, Vol. 77, No. 63. The first unmet criterion is based on whether or not a "state agency or other body" has been designated as the authority responsible for enforcement of the state excavation damage prevention law. Tennessee has no central enforcement authority and, although state or local law enforcement can enforce penalties for violations of Tennessee's Underground Utility Damage Prevention Act, Gas Pipeline Safety Division management believe

that law enforcement views this responsibility as a low priority, given that violation enforcement is essentially non-existent.

The second unmet evaluation criterion is based on whether or not civil penalty levels are at “levels sufficient to ensure compliance” and if the state has made “available information that demonstrates the effectiveness of the state’s enforcement program.” Federal pipeline safety law enumerated in 49 U.S.C. Chapter 601 authorizes a maximum civil penalty of \$100,000 per violation for each day of noncompliance up to an aggregate total of \$1,000,000. However, Tennessee law departs significantly from federal civil penalty levels—with injunctive and monetary sanctions that are substantially less. For general pipeline safety violations listed in Section 65-28-108, *Tennessee Code Annotated*, any person who violates gas pipeline safety regulations is subject to a civil penalty not to exceed \$10,000 for each violation for each day that such a violation continues, to a maximum total of \$500,000. For violations specifically involving underground utility damage, Section 65-31-112 allows for a maximum civil penalty of \$2,500. (The Comptroller’s August 2007 performance audit of the authority found that Tennessee’s civil penalty limits for gas pipeline violations should be increased to reflect federal requirements.) Gas Pipeline Safety Division management stated that no information is available that could demonstrate the effectiveness of the Underground Utility Damage Prevention program—and that the act is very seldom enforced to the point where a penalty is assessed.

The third and fourth unmet criteria for an effective damage prevention program include whether the enforcement authority has a “reliable mechanism for learning about excavation damage” and if the state has an investigative capacity to determine fault following excavation damage. According to Gas Pipeline Safety Division management, the division is sometimes notified of “hits”—or damage to gas pipelines—by operators, but the division has no authority to investigate or to make determinations of cause or contributing factors. Management further stated that the causes of hits could be linked to any phase of the excavation process—including the failure to initiate a locate request, failure to wait the required time for location, an inaccurate or complete failure to locate, or failure to hand dig. Currently, utility damage is handled by the operator and the excavator who caused the damage, but the utility owner must initiate and pursue legal action in order to obtain injunctive relief or seek punitive remedies. In effect, according to division management, enforcement of the Tennessee Underground Utility Damage Prevention Act is basically nonexistent unless the utility owner takes action, and the \$2,500 civil penalty associated with violations of the act has seldom been enforced.

PHMSA continues to identify that excavation damage poses the single greatest threat to pipeline safety—as evidenced through extensive data collection efforts and the results from two previous studies including the 2005 *Integrity Management for Gas Distribution, Report of Phase I Investigations* (DIMP Report) and the more recent 2009 *Mechanical Damage Report*. From 1988 to 2010, excavation damage to PHMSA-regulated pipeline systems in the United States resulted in 1,613 incidents, 185 fatalities, 697 injuries, and \$438,785,552 in estimated property damages. Thus, PHMSA maintains that the best approach for improving overall pipeline safety is to focus on state damage prevention and enforcement programs. However, because there is no national comprehensive damage prevention law, there is considerable variation among states and their respective regulatory and legal requirements.

Other States' Programs

Industry stakeholders consider Georgia and Virginia to have model damage prevention programs. According to PHMSA data as shown in Table 1 below, both states have “in house” damage prevention enforcement capabilities and have been more prolific in both the issuance of violations and collection of penalties compared to surrounding states. Management of the TRA’s Gas Pipeline Safety Division noted that both the high percentage of violations issued and civil penalty amounts collected in Georgia are a direct result of the state’s effective damage prevention enforcement efforts. The 2009 Tennessee Advisory Commission on Intergovernmental Relations study identified that Georgia’s adoption of damage prevention enforcement laws and practices resulted in a 40% reduction in reported damages from 2006 to 2009. While partially explained by the decrease in construction activity, damage reduction was also likely a result of the Georgia Public Service Commission’s efforts. Gas Pipeline Safety Division management believes that the adoption of similar damage prevention enforcement practices in Tennessee would result in both an increase in the amount of civil penalties levied and violations issued.

Table 1
State Damage Prevention Program Data
2006-2010

State	Enforcement Authority	Collected Penalties	Probable Violations	Compliance Actions Taken
Virginia	State Corporation Commission	\$2,468,725	970	33
Georgia	Public Service Commission	\$1,171,350	3,000	5,431
Tennessee	Law Enforcement	\$13,000	506	267
Kentucky	None	\$10,000	1,042	291
Louisiana	Local Law Enforcement	\$9,000	301	111
Arkansas	Attorney General	\$7,500	1,509	528
Missouri	Attorney General	\$2,000	510	227
Mississippi	None	\$0	1,323	340
Alabama	Attorney General	\$0	281	179
South Carolina	Attorney General	\$0	77	85
North Carolina	None	\$0	70	70

Source: PHMSA.

Recommendation

The General Assembly may wish to consider taking steps to strengthen Tennessee's damage prevention program in order to achieve greater federal compliance and to avoid future decreases in funding to the Gas Pipeline Safety Division. This may include explicitly authorizing damage prevention enforcement authority within the division and increasing civil penalties for pipeline safety violations to levels that are substantially the same as federal levels.

Management's Comment

We concur and, if requested by the General Assembly, the TRA will assist in drafting legislation explicitly authorizing damage prevention authority within the division and increasing the civil penalties for gas pipeline safety violations in Tennessee to levels that are substantially the same as those imposed by the federal government. Statutory changes are needed to ensure that Tennessee receives the maximum federal funding available for its gas pipeline inspection program to protect public safety.

OBSERVATIONS AND COMMENTS

The topics discussed below did not warrant a finding but are included in this report because of their effect on the operations of the Tennessee Regulatory Authority and on the citizens of Tennessee.

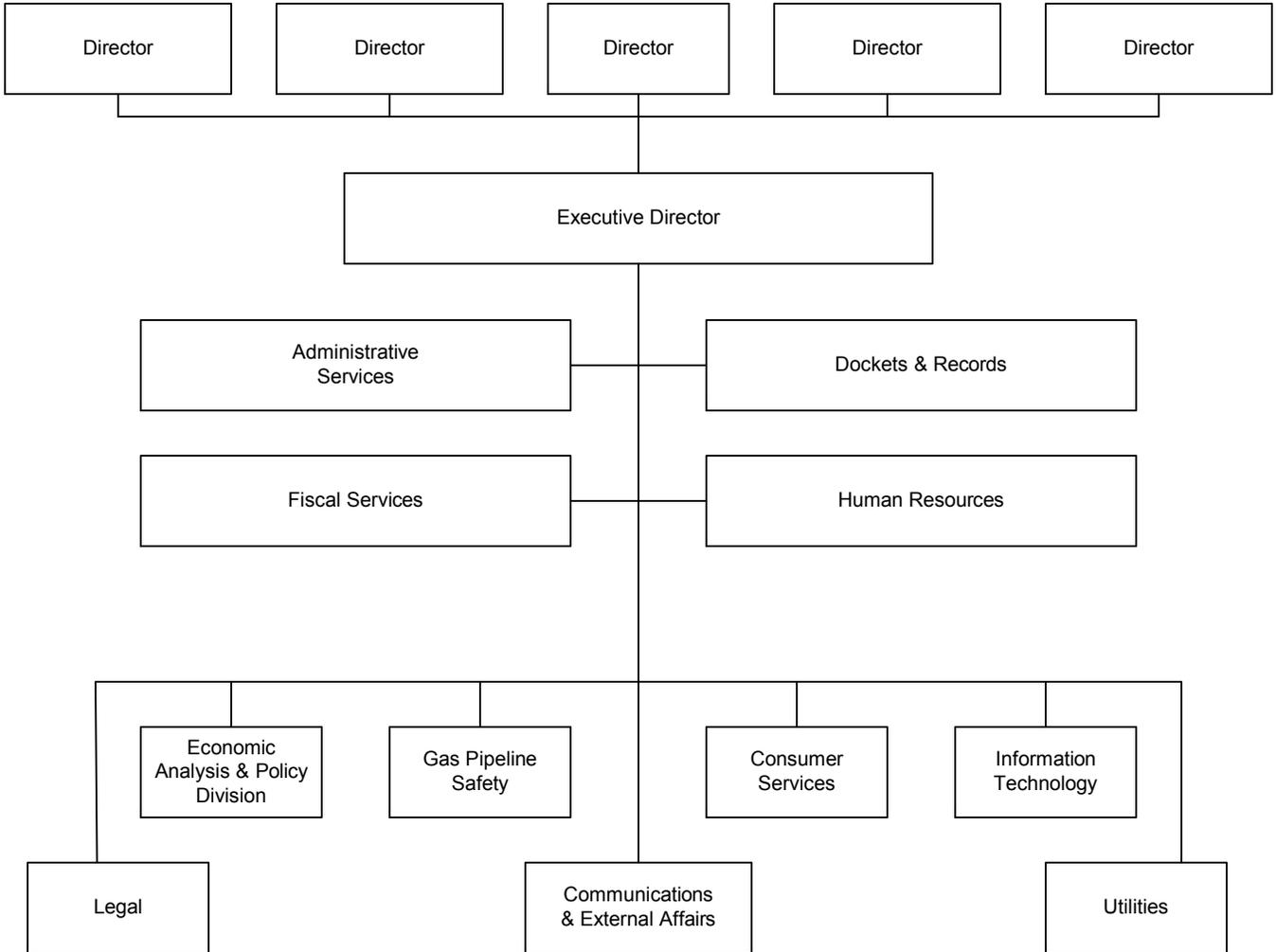
The General Assembly Passed Legislation in May 2012 That Will Change the Authority's Organizational Structure

Legislation passed by the General Assembly will restructure the Tennessee Regulatory Authority effective July 1, 2012. The changes include increasing the number of directors, converting director positions to part-time, and adding an executive director position. These changes are reflected in the organization chart on page 15.

Organizational Changes Reported in the Prior Audit

The 2007 performance audit report covered changes in the structure of the authority resulting from legislation passed in 2002. The position of executive secretary had been abolished and a fourth full-time director added. The duties of the executive secretary position, which included supervising and hiring administrative staff of the agency, were transferred to the director serving as chair.

Tennessee Regulatory Authority
Organizational Chart
Proposed Changes Effective July 2012



At the time of that audit and up until the recent changes, Section 65-1-104(a), *Tennessee Code Annotated*, stated that the directors would elect one director to be chair for a one-year term. The directors chose to rotate this chairmanship among the directors annually. This provided all directors a chance to serve as chair, even though a director could have been elected for consecutive terms.

As we reported in 2007, this annual change caused staff to readjust each year to a new management style and added additional responsibility to the director serving as chair. We recommended in that audit that the General Assembly might wish to consider reassessing the organizational structure of the TRA and that reinstating the executive secretary position was an option that might improve the continuity of management. During our fieldwork on this audit, management and staff said they preferred to have continuity either with a longer term for chair or an executive director.

Organizational Changes to the Authority to Be Effective July 1, 2012

The legislation, codified as Chapter 1070, Public Acts of 2012, changes the structure of the authority by

- creating five part-time director positions in lieu of four full-time directors;
- adding education and experience criteria applicable to the directors;
- stipulating that directors elect a chair and a vice-chair for two-year terms and the vice-chair assume the duties of the chair at the expiration of the chair's two-year term (prior statute stipulated a one-year term for the chair and did not require a vice-chair);
- stating that the chair and vice-chair may be removed by a majority vote of the disinterested directors;
- identifying the duties of the chair as formulating strategies, goals, objectives, long-range plans, and policies of the authority and conducting business in the name of the authority;
- requiring an executive director be appointed by joint agreement among the Governor and both Speakers for the initial term (by the directors thereafter), setting out education and experience requirements for the executive director, and providing for the authority to remove the executive director by a majority vote of the directors; and
- identifying the duties of the executive director such as implementing the strategies, goals, objectives, long-range plans, and policies of the authority; supervising and hiring staff members; administering, monitoring, and reviewing operations; recommending rules and policies as necessary; supervising expenditures; and other duties as required.

These changes should provide staff with increased continuity in management and permit the directors to focus on preparation for proceedings before the authority. Our next review will include an assessment of any impact on authority conferences made by changing from full-time to part-time directors.

Investigation of Do Not Call Complaints Is Impeded by Telemarketers' Use of Technology

Pursuant to Section 65-4-401 et seq., *Tennessee Code Annotated*, the authority operates Tennessee's Do Not Call program. Persons who do not want to receive telephone solicitations can enroll their residential and cell phone numbers in the Tennessee Do Not Call Register; approximately 4.5 million Tennesseans have registered. Telemarketing companies pay an annual fee to the authority and obtain the list of registrants so that the telemarketers know numbers to not solicit. There are about 300 active telemarketers registered with the authority, and the authority receives about \$300,000 annually in revenue from the sale of the lists. Consumers who are registered on the Do Not Call list may lodge complaints about telemarketers by using an online complaint form or a printed form mailed to the authority. In fiscal year 2011, the division investigated 474 Do Not Call complaints.

The authority had 614 open Do Not Call complaints as of April 2, 2012 (39 of these open Do Not Call complaints were from 2010). See chart on page 19. Of those, 244 (40%) were lodged against the same business. However, the business used identity spoofing when making the calls and investigators have been unable to locate this business in order to take action.

Several technologies developed since the enactment of the Do Not Call statute are making it difficult to track and take action against telemarketers. Although Section 65-4-403, *Tennessee Code Annotated*, prohibits a solicitor from blocking or otherwise circumventing a resident's caller identification service, identity and caller identification spoofing is commonly used. Caller ID spoofing is the technique of masking the actual phone number that a call is coming from and, instead, displaying another number, or a general term like "customer service." Telemarketers might also display the name or number of a recognizable national brand or organization. Because the number is masked, it is difficult for consumers to know who is calling and harder for the Do Not Call programs to stop telemarketers who violate Do Not Call provisions.

In addition to caller ID, telemarketers may use Voice over Internet Protocol (VOIP), Subscriber Identification Module (SIM), and prepaid disposable phones to make it difficult to trace the source of the call. For instance, they might route a call onto the Internet and back onto the public telephone network, thereby masking the call's origin. Companies can also use free software or inexpensive services to have a fictitious name appear on caller ID.

Automated dialing technology, known as robocalling, which lets telemarketers place thousands of calls per second, has added to the problem of caller ID spoofing. In March 2012, the Federal Trade Commission ended a robocall operation through a settlement agreement. That telemarketing business made more than two billion calls selling worthless extended auto

warranties and credit card interest rate-reduction programs. The business called telephone numbers listed on the National Do Not Call Registry and, to make it difficult for consumers to identify the business, the robocalls transmitted deceptive caller ID information.

The authority collaborates with other states and the Federal Trade Commission to exchange information about violators. Investigators are finding that the violators have established their telemarketing operations outside of the United States, thus creating a jurisdictional challenge. In North Carolina, officials reported caller ID spoofing from companies promising to consolidate credit card debt and provide inexpensive medical products to treat diabetes. When state officials traced the origination of the calls, they found it could have been China, Panama, or the Philippines. The National Do Not Call Registry recently posted an online notice warning of scammers making phone calls claiming to represent the National Do Not Call Registry.

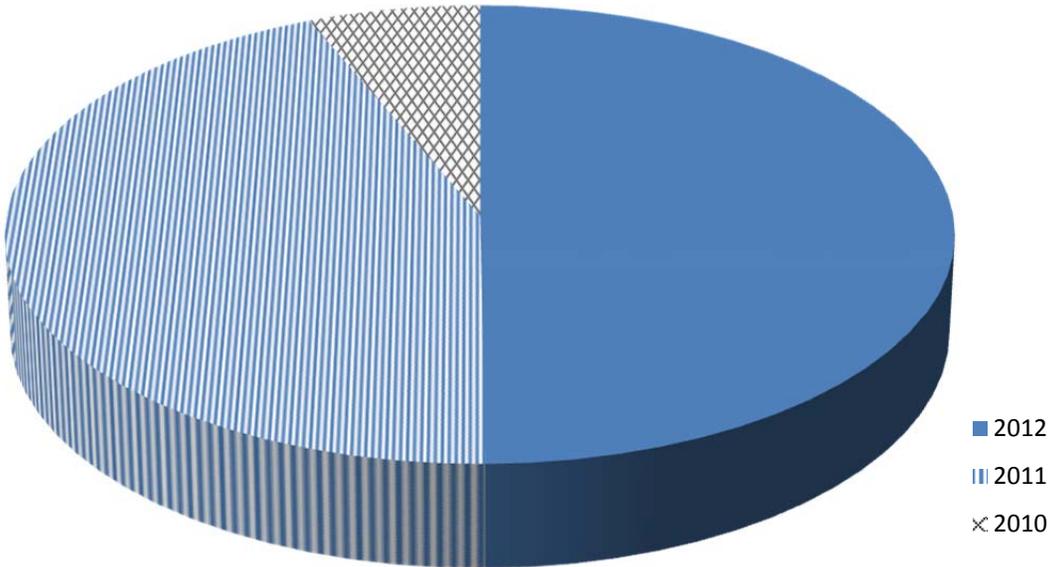
Under the Tennessee Do Not Call law, parties responsible for making illegal calls may be fined up to \$2,000 per call and prohibited from making further illegal calls. But if the companies cannot be found or are not under the authority's jurisdiction, there is little that can be done other than educating the public.

During fieldwork in the Consumer Services Division, auditors observed the Do Not Call investigators explaining to citizens who had lodged complaints how spoofing of caller ID worked and also warning them not to provide personal information over the phone to these callers. The authority's website includes questions and answers about these types of calls, what to do, and how to report violations. According to Consumer Services Division management, TRA's Consumer Outreach and Education Section conducted 83 statewide presentations in fiscal year 2011, to educate the public on recognizing unwanted telemarketing calls and filing complaints with the TRA. These presentations include information on reducing the chances of becoming a victim of telemarketing schemes that ask for personal information. During these presentations, skits are used as a tool to help the consumer be more proactive. The TRA also uses social media (Facebook and Twitter) to inform and educate consumers about the Do Not Call and Do Not Fax programs.

Although the Overall Timeliness of Orders Has Improved, Two Orders Took More Than 300 Days to Publish

At authority conferences, the directors of the Tennessee Regulatory Authority make decisions regarding a variety of issues related to utility regulation. Each case is brought to the authority by filing the necessary documents with the Dockets and Records Office. Cases are placed on the docket and scheduled for an authority conference heard by a panel of three directors. Following the decision of the directors, legal staff prepare a written order, circulate it among the directors for approval, and then publish it. The decision of the directors is effective on the date it is made, but the written order is the final and conclusive stage of the process. Until the written order is issued, the docket cannot be closed, the order cannot be appealed, and the hearing process is not over.

**TRA
Open
Do Not Call Complaints
April 2012**



Averages From the Prior Audit and the Current Audit

The August 2007 performance audit found that TRA’s timeliness had improved since the prior audit, with the average number of days between director action and final order publication declining for 2004, 2005, and 2006 (see table below).

Fiscal Year	Average Days
2004	56
2005	47
2006	31

See the table below for the average number of days between the deliberations and the published final order for calendar years 2008-2011.

Calendar Year	Average Days
2008	15
2009	18
2010	30
2011	24

Orders Published More Than 300 Days After Hearings

Although overall the average number of days to publish an order has decreased, we did find two dockets with orders that were published more than 300 days after the date of the hearing. Both dockets were rate increase cases for Tennessee American Water Company (TAWC).

Docket Number	Date of Authority Conference	Date of Published Order	Number of Days Between Hearing and Order
06-00290	5/15/2007	6/10/2008	385
10-00189	4/18/2011	4/27/2012	383

TRA approved a rate increase at the authority conference for Docket Number 06-00290. Before the order was published, TAWC requested another rate increase, filing Docket Number 08-00039 in March 2008. The first rate case was appealed by The City of Chattanooga and the Office of the Attorney General’s Consumer Advocate and Protection Division. In July 2010, the Tennessee Court of Appeals issued an opinion that the issues raised were moot because subsequent rate cases would have the same issues. Docket Number 08-00039 was heard in an authority conference in September 2008. TAWC appealed TRA’s decision in that docket asking for the court to approve higher rates than TRA approved. The state appeals court denied the increase.

When the second case was heard in April 2011, one of the directors on the panel dissented with the decision on Docket Number 10-00189. According to management, this delayed publishing the order as did turnover in the authority’s Legal Division Chief position.

The Authority Serves as a Resource for Other Entities by Researching Emerging Issues That May Affect Future Regulation

In addition to its regulatory and consumer service functions, the Tennessee Regulatory Authority researches and monitors issues that may affect Tennesseans such as broadband communications, utility pricing, local wastewater facilities, and natural gas production. Although the authority will not be responsible for these issues, it serves as a resource for information and consultation for other government entities.

Broadband Communications

Broadband communications are becoming an increasingly important determinant of economic growth and job creation—advancing education, healthcare, government, and other vital sectors in unprecedented and profound ways. While the private sector is the primary driver of broadband innovation, infrastructure, and service expansion, the Federal Communications Commission (FCC) is the exclusive governmental regulator and policy maker over broadband in the U.S. As a result of this singular federal oversight, the TRA has a very limited regulatory role in broadband communications—with this issue creating only minimal impact on the authority’s operational responsibilities. Yet, as the recognized expert state agency on broadband, the TRA has the ability to contribute toward advancements in broadband service within Tennessee.

In 2009, the FCC developed the National Broadband Plan to identify long-term goals related to broadband, which include increasing access, innovation, download speed, and available spectrum in an effort to ensure every citizen has “access to broadband capability.” Despite the various achievements and progress related to broadband service, the FCC pointed out that over 100 million Americans still did not have home broadband service. Data presented in an October 2011 FCC Report showed that, as of December 31, 2010, 29% of Tennessee households had high-speed Internet connections (of at least 3 mbps upstream and 768 kbps downstream), and 52% of households had an Internet connection with speeds of over 200 kbps in at least one direction. Despite improvement from 2006—when only 25% of Tennessee households had broadband—as of December 2010, Tennessee ranked 32nd in high speed Internet connections per household and 48th in connections over 200 kbps.

The TRA should continue to serve as a vital resource for information and consultation on broadband issues in Tennessee. By doing so, the TRA can help assure that Tennessee continues to make progress on improving broadband service and access to all citizens.

Trackers: Utility Rate Adjustment Mechanisms

Historically, utility rate adjustments have been based on the overall financial representation presented by a regulated utility when requesting a rate increase. However, there is a national trend, also being advocated by regulated utilities in Tennessee, referred to as “trackers,” which bases a rate increase on a single issue. This departure from using traditional rate cases as a regulatory cost-adjustment procedure may adversely affect consumers and potentially may upset an equitable balance between the public interest and regulated industries.

A rate adjustment mechanism known as a “tracker” is a method of cost recovery that utility companies can periodically impose on customers based on single, isolated issues ranging from fuel costs or storm damage to routine maintenance and infrastructure improvement. As noted in a September 2009 National Regulatory Research Institute (NRRI) report, *How Should Regulators View Cost Trackers?*, utility companies typically prefer the use of cost trackers to traditional ratemaking because this mechanism shortens regulatory lag and increases the certainty of cost recovery. By using trackers, companies can reduce the time between costs and recovery and better maintain expected rates of return—thus better protecting their financial position. However, state regulatory commissions have historically been circumspect when considering the use of cost recovery mechanisms. The 2009 NRRI report cites that trackers inherently shift risk away from utility companies and to consumers; they fundamentally weaken incentives to control costs, waste, and inefficiency. Most importantly, the use of trackers can allow utility companies to increase prices even when allowable rates of return are being met.

In Tennessee, in 2009, Chattanooga Gas Company was granted an experimental decoupling mechanism as part of an energy conservation program—which allowed rate increases to occur alongside reductions in natural gas usage by consumers. The most recent focus by the utility industry has been on infrastructure replacement cost recovery programs which, if adopted, would correspond to automatic repayment on the investment. In January 2012, the American Gas Association data presented to the TRA indicated that, as related to gas cost recovery, 18 states have full infrastructure cost recovery mechanisms; 2 states have limited infrastructure cost recovery mechanisms; and 3 states have pending infrastructure cost recovery mechanisms. Similarly, Tennessee American Water Company presented data showing that, as related to water costs recovery, at least 8 states currently have infrastructure replacement surcharges.

Wastewater Utilities

The Utilities Division assists the directors of the TRA in the regulation of investor-owned utilities—including gas, water, sewer, wastewater, electric, and telephone companies—through analyses, financial recommendations, and technical assistance. In order to become a regulated utility, a company must obtain from the TRA a Certificate of Public Convenience and Necessity (CCN) which incorporates a managerial, technical, and financial review. According to division management, the majority of new CCN applications have been submitted by prospective wastewater companies. Management further noted that small wastewater facilities are highly susceptible to financial hardships and face other problems because of their small customer base.

Division management stated that some small wastewater facilities are facing financial difficulties because of decreased lending opportunities from banks—which can jeopardize needed repair or replacement of infrastructure and continuity of service. Because small sewer companies typically serve a limited number of households, it is difficult for customers to absorb increased costs associated with infrastructure repairs or improvements (passing along these costs to customers would result in very high monthly bills). Additionally, customers do not have the ability to change providers if a company’s financial difficulties interrupt, terminate, or decrease the quality of service. The division is able to monitor the financial health of wastewater utilities through the submission of annual and quarterly reports. Because of the potential adverse effects

on customers, the financial stability of small wastewater companies is an emerging issue that warrants continued oversight by the TRA.

Fracking

Hydraulic fracturing (fracking) is a method for extracting oil and natural gas by creating hydraulic pressure as a means to break up subsurface rock formations. Millions of gallons of liquids composed of water, sand, or chemical additives are injected into underground geologic formations to promote the release of natural gas trapped in the rock pores. The proliferation of hydraulic fracturing techniques has significantly improved the energy industry's capability to extract natural gas and oil from shale formations located throughout the lower 48 states. With greatly expanded prospects for both recoverability and production, the U.S. Energy Information Administration projects shale gas production to increase from 5.0 trillion cubic feet in 2010 to 13.6 trillion cubic feet in 2035—amounting to 23 percent of total U.S. dry gas production in 2010 and 49 percent of total U.S. dry gas production in 2035.

While advances in shale gas exploration and production have steadily grown in the U.S., there is no consensus on the environmental danger that fracking may pose. However, some reports have linked fracking to environmental degradation—prompting the consideration of legislation on both the federal and state levels. For example, a Duke University study published in the May 2011 Proceedings of the National Academy of Sciences established a link between fracking and groundwater contamination in Pennsylvania and New York. Fracking is currently unregulated by the Environmental Protection Agency because of a special exemption in the 2005 Energy Policy Act. As a result, individual states have been left to address fracking on their own—attempting to determine the appropriate regulatory response amidst conflicting information and a lack of federal guidance.

Fracking in Tennessee

An estimated 86% of the total 750 trillion cubic feet of recoverable shale gas resources in the United States are located in the North East, Gulf Coast, and Southwest regions of the country. However, Tennessee does generate some oil and gas production, and the Tennessee Oil and Gas Association (TOGA) has pointed out that close to two-thirds of the state may have potential for shale gas exploration and recovery, with the greatest prospects lying in the Chattanooga Shale area, which covers much of the Cumberland Plateau and Highland Rim. Personnel from the Tennessee Department of Environment and Conservation (TDEC) stated that Tennessee has not yet had any problems related to hydraulic fracturing—yet TDEC is working on regulations for the future. According to TDEC, fracturing of oil and gas wells does occur in the state, but the techniques do not use large amounts (such as over 1 million gallons) of water; the typical amounts used are usually less than 100,000 gallons. Between 90 and 95% of hydraulic fracturing in the state uses nitrogen gas—the remaining operations use acid or water injections.

Energy companies holding oil and gas permits in Eastern Tennessee's Chattanooga Shale area have recently moved operations to more promising areas of exploration in the northeast. The general reduction in oil and gas production activity is evidenced by the decrease in the number of TDEC issued drilling permits over last few years (2007—417 permits; 2008—258

permits; 2009—113 permits; and 2010—105 permits). Tennessee’s most productive gas wells in 2010 were located in Scott, Morgan, and Anderson Counties. Industry stakeholders expect increased drilling to return to Tennessee when natural gas prices begin to climb back to more profitable levels.

The EPA and Other States

The Environmental Protection Agency (EPA) is concerned with balancing the potential economic, energy security, and environmental benefits of increased natural gas extraction (made possible through advances in horizontal drilling hydraulic fracturing techniques) with health and environmental safety. The EPA is currently conducting a national study aimed at trying to improve the scientific understanding of hydraulic fracturing and its impact on drinking water sources. An initial report is due in 2012, with a follow-up report slated for release in 2014.

The fracking debate has largely been taken up by state legislatures and centers around a multitude of concerns including job creation, costs to communities, environmental impact, public health concerns, fracking fluid spills and leaks, water withdrawals, wastewater disposal, air quality concerns, and linkage to seismic activity. In May 2012, Vermont became the first state to ban fracking—prohibiting the extraction of natural gas from shale. Many other states have introduced legislation addressing fracking practices. The National Conference of State Legislatures issued an April 2012 report—“The Fracking Debate: A Policymaker’s Guide”—which included an overview of fracking-related, state legislative proposals as of March 26, 2012. In summary,

- 137 bills have been introduced in 24 states this session that address hydraulic fracturing;
- 16 states have proposed chemical disclosure requirements;
- 11 states have proposed casing, well spacing, setback, water withdrawal, flow back, and waste regulation requirements to protect water resources;
- 11 states have proposed legislation to impose new, or amend existing, severance taxes;
- 9 states have proposed hydraulic fracturing suspensions, moratoria, or studies to investigate fracking impacts; and
- 7 states have proposed resolutions addressing hydraulic fracturing.

During the 2011 legislative session, the Tennessee House of Representatives passed a resolution (HR 98) encouraging TDEC, TOGA, and the public (represented by the League of Women Voters and the Tennessee Conservation Voters), to “meet with the purpose of proposing regulations to provide necessary oversight for the use of hydrological fracturing as a method of modern natural gas extraction in Tennessee.”

The TRA should anticipate and remain knowledgeable of any pending federal or state legal changes that would necessitate the authority’s involvement in future regulatory efforts related to fracking. As a potential stakeholder, the TRA should foster communication and

coordination with other state agencies that any future legislation may require—this includes making any necessary structural, personnel, or budgetary adjustments that an expanded regulatory role would warrant.

By maintaining a knowledgeable and capable staff, the authority can maintain awareness of emerging issues, stay abreast of advancements in technology, and monitor pertinent regulatory changes that could impact the state. By doing so, the TRA can continue to balance the interests of utility consumers and providers—a necessary component for a growing and competitive economy in the 21st century.

RESULTS OF OTHER AUDIT WORK

The Authority’s Monitoring of Tariff Filings Required Under the Uniform Access, Competition, and Consumer Fairness Act of 2011 Appears Adequate

The “Uniform Access, Competition, and Consumer Fairness Act of 2011,” codified in Section 65-5-302, *Tennessee Code Annotated*, requires telecommunications companies providing services in Tennessee to reduce their intrastate access charges to achieve parity with interstate access charges, with a phase-in period of five years beginning April 2011, at a rate of a 20% reduction each year. The act requires entities that provide switched access services to file and maintain a tariff (price list) with the authority no later than April 1, 2012, indicating intrastate switched access rates and rate structure. Statute permits the authority to assess penalties for failure to comply.

In February 2012, the authority sent letters to telecommunications companies as a reminder of the April 1, 2012, requirement. We reviewed the process the authority uses to monitor receipt of the filings through interviews with staff, review of documentation, and observations. Below are the results of our review of companies’ compliance with statutory requirements.

Status of CLECs* Filing Tariff Lists With TRA as of May 8, 2012

Status	Number
Compliant	5
In Process	12
Does Not Offer Switched Access Services	66
Other	6
Filed	44
Total	133

* A competitive local exchange carrier (CLEC) is a provider company competing with other, established carriers.

Eighteen ILECs (incumbent local exchange carriers—local telecommunications companies in existence at the time of the breakup of AT&T) are regulated by the TRA. Of the 18 ILECS, 17 filed a tariff as required; one ILEC’s switched access rates were already at interstate levels. Nine of ten cooperatives filed with the TRA; cooperatives are not regulated by TRA, but statute required that they file with the TRA.

Based on our review, the authority appears to have reasonable systems and internal controls in place to ensure that entities file switched access tariff lists as required by statute.

The Telecommunications Devices Access Program (TDAP) Has Distributed Devices to Assist Hearing- and Vision-Impaired Tennesseans

The Telecommunications Devices Access Program (TDAP) is designed to distribute specialized telecommunications equipment to Tennessee residents with hearing, vision, mobility, and speech disabilities so that they may effectively use basic telephone service. TRA’s Consumer Services Division manages this program. The table below illustrates the revenues, expenditures, and devices distributed by the program.

**TDAP Revenues, Expenditures, and Devices Distributed
Fiscal Years 2009 - 2011**

	FYE 2009	FYE 2010	FYE 2011
Revenues (1)	\$750,000	\$750,000	\$750,000
Expenditures	\$592,744	\$564,604	\$401,448
Fund Balance at Year End	\$170,164	\$330,024	\$678,576
TDAP Equipment Distributed Cost	\$451,596	\$423,429	\$218,003
Number of Devices Distributed (2)	1,516	1,751	1,150

Source: TRA Fiscal Officer.

- (1) TRA regulated telecommunications entities contribute an annual amount to the program based on a pro rata share of total revenues for the company to total revenues from all regulated entities.
- (2) According to program management, the program does not have a waiting list as of March 2012.

We interviewed staff, reviewed the division’s procedure manual, and observed the process used by the Consumer Services Division’s TDAP program to review and approve applications for equipment. Based on our observations and review of documentation, the Consumer Services Division is complying with TRA rules and statute to determine eligibility for program assistance.

Utility Complaint Investigations

Pursuant to Section 65-4-119, *Tennessee Code Annotated*, the Consumer Services Division investigates and mediates consumer complaints filed with the TRA against authority-regulated utilities. Complaints are submitted online or by fax, telephone, mail, or e-mail and processed by intake staff. The complaints are assigned to specialists who contact the

complainant and company and work to resolve the issue. As of March 29, 2012, there were 77 open utility complaints that had been filed by consumers between January and March 2012. They were predominantly service and billing disputes. The table below details the number of utility complaints the division investigated during fiscal years 2009 through 2011.

**Consumer Services Division
Utility Complaints Investigated
Fiscal Years 2009 - 2011**

FYE	Number
2009	1,134
2010	1,252
2011	1,310

Source: TRA Annual Reports.

We interviewed staff, reviewed the division’s procedure manual, and observed the process used by the Consumer Services Division for intake, investigation, and closure of utility complaints. Based on our observations and review of documentation, the Consumer Services Division is complying with procedures the authority had adopted for the intake, investigation, and closure of utility complaints.

RECOMMENDATION

LEGISLATIVE

This performance audit identified an area in which the General Assembly may wish to consider statutory changes to improve the efficiency and effectiveness of the Tennessee Regulatory Authority’s operations.

The General Assembly may wish to consider taking steps to strengthen Tennessee’s damage prevention program in order to achieve greater federal compliance and to avoid future decreases in funding to the Gas Pipeline Safety Division. This may include explicitly authorizing damage prevention enforcement authority within the division and increasing civil penalties for pipeline safety violations to levels that are substantially the same as federal levels.

Appendix 1

Title VI and Other Information

All programs or activities receiving federal financial assistance are prohibited by Title VI of the Civil Rights Act of 1964 from discriminating against participants or clients on the basis of race, color, or national origin. In response to a request from members of the Government Operations Committee, we compiled information concerning federal financial assistance received by the Tennessee Regulatory Authority, and the authority's efforts to comply with Title VI requirements. The results of the information gathered are summarized below.

For fiscal year 2011, TRA received \$285,754 in federal funds from the U.S. Department of Transportation, to enforce the federal Pipeline and Hazardous Materials Safety Administration requirements. (The authority also applied for and received \$116,612 in ARRA funds, but decided not use the funds and sent them back.) The authority timely submitted its Title VI Implementation Plan to the Human Rights Commission on September 30, 2011. Statute requires submission by October 1 of each year. The TRA did not receive any Title VI complaints for fiscal years 2010 and 2011.

The Human Rights Commission is responsible for reviewing plans submitted by agencies and determining areas that need improvement or that are noncompliant. The results of the commission's review, completed on November 29, 2011, found the TRA met requirements for nine sections. The review said one area was noncompliant—the definitions section—and said the TRA needed to include definitions in the plan. According to TRA's Title VI Compliance Officer, definitions have been added to the plan.

The Human Rights Commission noted that four sections needed "further review and/or modification":

- data collection and analysis – should include population/racial demographics for the entire state in the plan;
- discriminatory practices – should include examples of potential discriminatory practices;
- Limited English Proficiency (LEP) – should include contact information for the state-contracted interpreter service; and
- training – should include the dates of training and a description of how TRA verified attendance.

Other Information

Detailed below is a breakdown of authority staff by job title, gender, and ethnicity.

**Tennessee Regulatory Authority
Staff by Job Title, Gender, and Ethnicity
As of May 7, 2012**

Title	Gender			Ethnicity			
	Male	Female	Total	Asian	Black	White	Total
Accounting Manager	0	1	1	0	0	1	1
Administrative Services Assistant 2	0	3	3	0	0	3	3
Administrative Services Assistant 3	2	3	5	0	1	4	5
Administrative Services Assistant 4	0	2	2	0	2	0	2
Administrative Services Assistant 5	1	0	1	0	0	1	1
Attorney 3	1	1	2	1	0	1	2
Attorney 4	0	2	2	0	1	1	2
Consumer Protection Assistant Director	0	1	1	0	1	0	1
Consumer Protection Specialist 1	1	0	1	0	0	1	1
Consumer Protection Specialist 2	2	1	3	0	1	2	3
Environmental Protection Specialist 3	4	1	5	0	0	5	5
Executive Administrative Assistant 2	2	2	4	0	2	2	4
Executive Administrative Assistant 3	1	2	3	0	1	2	3
General Counsel 3	0	1	1	0	0	1	1
HR Manager 1	0	1	1	0	0	1	1
Information Officer	1	0	1	0	1	0	1
Information Resource Support Specialist 2	0	1	1	0	0	1	1
Information Systems Director 1	1	0	1	0	0	1	1
Legal Assistant	0	3	3	0	0	3	3
Telecommunications Assistant Chief	0	1	1	0	0	1	1
Telecommunications/Utilities Consultant	4	2	6	0	2	4	6
TRA Consumer Services Chief	0	1	1	0	0	1	1
TRA Director	1	2	3	0	1	2	3
TRA Economic Analysis/MM Chief	1	0	1	0	0	1	1
TRA Economist	0	1	1	1	0	0	1
TRA Gas Pipeline Safety Chief	1	0	1	0	0	1	1
TRA Telecommunications Chief	1	0	1	0	0	1	1
Utility Rate Specialist 3	1	2	3	0	1	2	3
Utility Rate Specialist 4	0	1	1	0	0	1	1
Totals	25	35	60	2	14	44	60

Appendix 2 Performance Measures Information

As stated in the Tennessee Governmental Accountability Act of 2002, “accountability in program performance is vital to effective and efficient delivery of governmental services, and to maintain public confidence and trust in government.” In accordance with this act, all executive branch agencies are required to submit annually to the Department of Finance and Administration a strategic plan and program performance measures. The department publishes the resulting information in two volumes of *Agency Strategic Plans: Volume 1 - Five-Year Strategic Plans* and *Volume 2 - Program Performance Measures*. Agencies were required to begin submitting performance-based budget requests according to a schedule developed by the department, beginning with three agencies in fiscal year 2005, with all executive-branch agencies included no later than fiscal year 2012. The Tennessee Regulatory Authority began submitting performance-based budget requests effective for fiscal year 2009-10.

Detailed below are the authority’s performance standards and performance measures, as reported in the September 2011 *Volume 2 - Program Performance Measures*. Also reported below is a description of the agency’s processes for (1) identifying/developing the standards and measures; (2) collecting the data used in the measures; and (3) ensuring that the standards and measures reported are appropriate and that the data are accurate.

Performance Standard 1

Ensure the rates charged to consumers are fair and reasonable by adjudicating all utility cases within the statutory requirement.

Performance Measure

Percent of adjudicated cases within the statutory requirement

Actual (FY 2010-2011)	Estimate (FY 2011-2012)	Target (FY 2012-2013)
100%	100%	100%

Tennessee Code Annotated and Tennessee Regulatory Authority Rules have time requirements for hearing and completing rate cases. The Utilities Division chief lists these cases in an electronic spreadsheet with associated docket number, caption, controlling statute/rule, time requirement, the date the docket was filed, and the date the case was deliberated. Extensions of time for cases about gas rate adjustments are allowed by rules. The number of cases adjudicated timely divided by the total number of cases for the time period is used to calculate a percentage.

Performance Standard 2

Ensure consumers are receiving an adequate level of service from the regulated companies by resolving consumer complaints, including Do Not Call and Do Not Fax complaints, within the agency’s guidelines.

Performance Measure

Percent of Do Not Call and Do Not Fax complaints resolved within agency guidelines

Actual (FY 2010-2011)	Estimate (FY 2011-2012)	Target (FY 2012-2013)
65%	75%	75%

The Consumer Services Division manages the Do Not Call and Do Not Fax Programs, and investigates and resolves consumer complaints involving these programs. Complaints are entered and monitored using an access database. Dates complaints are received and closed are fields in the database information, and that information is used to calculate the length of time to resolve complaints.

To calculate whether the programs have functioned “within agency guidelines,” each fiscal year the Consumer Services Division calculates the weighted average days to complete the Do Not Call and Do Not Fax complaints closed during the fiscal year. That calculated weighted average is determined to be “within agency guidelines.” The percentage of complaints resolved within agency guidelines is calculated by dividing the number of complaints closed within the weighted average days by the total number of complaints closed during that fiscal year.

Appendix 3 Comparison of TRA-Regulated Entities to Other States

Utility Regulatory Agencies/Commissions Comparison - Communications

Name	Number of Commissioners (1)	Communications (2)																					
		ILECs (4)	CLECs(5)	Intrastate long-distance	Interconnection agreements	Local resellers	COCOTs(6)	Alternative operator services	Pole attachments	Prepaid phone or calling cards	Wireless/cellular/mobile	Alternative access vendors	Shared tenant-provider	Toll resellers	Institutional telecom services	Telecom relay services	Emergency service telecom	Data local exchange carriers	Broadband, ISP, or VIP	Paging services	Commercial telecom services	Automatic dialing or announcement	Telecom equipment
Alabama Public Service Commission	3	29	150	61	703	48	40			12			30	223							Yes		
Arkansas Public Service Commission	3	Yes	Yes	Yes	Yes		Yes																
Georgia Public Service Commission	5	35	486	157	1,615	1,089	1,400	243						66								242	506
Kentucky Public Service Commission	3	20	147	34	Yes		382	61	Yes	46										4			
Mississippi Public Service Commission	3	20	113	7		235		4		Yes				17				Yes					
Missouri Public Service Commission	5	43	117	312			60					12							34				
North Carolina Utilities Commission	7	17	188	338	Yes	Yes	108	Yes				Yes	20		Yes	Yes	Yes						
Tennessee Regulatory Authority (3)	4	18	117	6	606	221	9,126																
Virginia State Corporation Commission	3	13	154	104	Yes		151	9															

Source:

1. Michigan State University, Institute of Public Utilities, March 2012.
2. Michigan State University, Institute of Public Utilities, August 2011.
3. Effective July 1, 2012, five part-time directors.

Definitions:

4. ILEC - incumbent local exchange carrier, usually the original monopoly.
5. A competitive local exchange carrier (CLEC) is a provider company competing with other established carriers.
6. COCOTs - customer-owned coin-operated telephones.

**Utility Regulatory Agencies/Commissions
Comparison - Electricity**

Name	Electricity (2)													
	Number of Commissioners (1)	Private, investor-owned utilities	Transmission certification	Electric cooperatives	Power plant certification	Energy efficiency standards	Renewable portfolio standards	Transmission siting	Municipal utilities	Independent producers	Intrastate trans. operators	Steam heating or cooling	District or authority	Hydroelectric power production
Alabama Public Service Commission	3	1	Yes		Yes								1	Yes
Arkansas Public Service Commission	3	4	Yes	18	Yes			Yes		1	1			
Georgia Public Service Commission	5	1		42	Yes				52	1				
Kentucky Public Service Commission	3	4	Yes	21	Yes									
Mississippi Public Service Commission	3	2	Yes	29	Yes				15	Yes				
Missouri Public Service Commission	5	5	Yes	47	Yes	Yes					2			
North Carolina Utilities Commission	7	3	Yes	31	Yes	Yes	Yes	Yes	73	898				
Tennessee Regulatory Authority (3)	4	4				Yes								
Virginia State Corporation Commission	3	3	Yes	13	Yes	Yes		Yes						

- (1) Michigan State University, Institute of Public Utilities, March 2012.
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Utility Regulatory Agencies/Commissions Comparison – Natural Gas and Petroleum

Name	Number of Commissioners (1)	Natural Gas and Petroleum (2)															
		Private investor-owned utilities	Municipal utilities	Propane distribution systems	Retail supplier/marketer aggregator	Petroleum prod., transportation, or distribution	Cooperatives	District or authority	Liquefied natural gas	Methane gas systems	Associations	Gas pipeline safety	Intrastate pipeline operations	Safe Digging	One-call Enforcement	Hazardous liquid pipelines	Gathering pipeline systems
Alabama Public Service Commission	3	3	86			11		13	2		1	150	Yes	Yes		Yes	2
Arkansas Public Service Commission	3	3									1	361	Yes	Yes			
Georgia Public Service Commission	5	2	84		10							Yes			Yes		
Kentucky Public Service Commission	3	28										Yes	43			Yes	
Mississippi Public Service Commission	3	3	33				3	4				Yes	3			Yes	
Missouri Public Service Commission	5	7	42									Yes					
North Carolina Utilities Commission	7	4	8						3			Yes	1				
Tennessee Regulatory Authority(3)	4	5	72					25		1		168	1	Yes			
Virginia State Corporation Commission	3	8		Yes								167	Yes	Yes	Yes	Yes	

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Utility Regulatory Agencies/Commissions

Comparison – Other Types of Regulation	Water (2)	Wastewater (2)				Combined (2)	Other (2) (3)					
		Number of Commissioners (1)	Private-IOU	District or authority	Associations			Municipal utilities	Wholesale systems	Private-IOU	Associations	District or authority
Name												
Alabama Public Service Commission	3	4	2	2			6					Yes
Arkansas Public Service Commission	3	3										Yes
Georgia Public Service Commission	5											Yes
Kentucky Public Service Commission	3	8	122	22	Yes		Yes	Yes	20		22	Yes
Mississippi Public Service Commission	3	48	45	506	120		137	35	32	31	Yes	
Missouri Public Service Commission	5	30	Yes				20		Yes		27	Yes
North Carolina Utilities Commission	7	125				732	105				66	Yes
Tennessee Regulatory Authority	4 (4)	11		1			7				5	
Virginia State Corporation Commission	3	Yes					Yes				Yes	Yes

(1) Michigan State University, Institute of Public Utilities, March 2012.

(2) Michigan State University, Institute of Public Utilities, August 2011.

(3) Includes transportation, manufactured housing, housing authorities, insurance, and securities registration.

(4) Effective July 1, 2012, five part-time directors.

Appendix 4
Comparison of Tennessee Electric Utilities Not Regulated by TRA to TRA-Regulated Electric Utilities

Description	Number	Customers	Additional Information
Municipal-Owned Electric Utilities (1)	60	70% of Tennessee's electric consumers; 75% of power sold	Memphis, Nashville, Knoxville, and Chattanooga municipal utilities serve 1.1 of the 2.1 million customers; Memphis (largest municipal has 422,559 customers and Smithville, smallest, has 2,579.
Electric Cooperatives (2)	24	17 percent of Tennessee's population; 1.1 million homes, farms, businesses and institutions	Meters in 73 of Tennessee's 95 counties
TRA Regulated Electric (3)	3	41,108	

- (1) Source: Tennessee Municipal Electric Power Association – purchases from TVA and TVA approves rate structure in conjunction with a municipal board.
(2) Source: Tennessee Electric Cooperative Association – purchases from TVA and TVA approves rate structure as does a board elected by member customers.
(3) *Tennessee Regulatory Authority 2010-2011 Annual Report.*