New Jersey State Legislature
Office of Legislative Services
Office of the State Auditor

Department of the Treasury
Division of the Ratepayer Advocate

July 1, 2004 to May 31, 2006

Richard L. Fair
State Auditor
The Honorable Jon S. Corzine
Governor of New Jersey

The Honorable Richard J. Codey
President of the Senate

The Honorable Joseph J. Roberts, Jr.
Speaker of the General Assembly

Mr. Albert Porroni
Executive Director
Office of Legislative Services

Enclosed is our report on the audit of the Department of the Treasury, Division of the Ratepayer Advocate for the period of July 1, 2004 to May 31, 2006. The report identifies three areas of concerns, they are:

- Over assessment of utilities
- Unclear work scope for professional service contracts
- Untimely deposits of cash receipts

If you require additional information regarding the audit, please call me at (609) 292-3700.

Richard L. Fair
State Auditor
October 24, 2006
# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scope</td>
<td>1</td>
</tr>
<tr>
<td>Objectives</td>
<td>1</td>
</tr>
<tr>
<td>Methodology</td>
<td>1</td>
</tr>
<tr>
<td>Conclusions</td>
<td>2</td>
</tr>
<tr>
<td>Findings and Recommendations</td>
<td></td>
</tr>
<tr>
<td>Utility Assessments</td>
<td>3</td>
</tr>
<tr>
<td>Personal Services Contracts</td>
<td>4</td>
</tr>
<tr>
<td>Cash Receipts</td>
<td>5</td>
</tr>
<tr>
<td>Personnel Classifications</td>
<td>6</td>
</tr>
<tr>
<td>Auditee Response</td>
<td>7</td>
</tr>
</tbody>
</table>
Department of the Treasury
Division of the Ratepayer Advocate

Scope

We have completed an audit of the Department of Treasury, Division of the Ratepayer Advocate for the period July 1, 2004 to May 31, 2006. Our audit included financial activities accounted for in the state’s General Fund.

The prime responsibility of the Division of the Ratepayer Advocate is to ensure that essential services including electric, natural gas, water, wastewater, and telecommunications are available to all New Jersey residents, businesses, public institutions and industries at affordable rates. In fiscal year 2005 total appropriation for the division was approximately $5.9 million. Budgeted revenues of the division total $6.2 million annually and are provided through assessments of the regulated utilities and cable television companies.

In accordance with the Public Advocate Restoration Act of 2005, the powers and duties of the Division of the Ratepayer Advocate were transferred in January 2006 to the Division of Rate Counsel within the Department of the Public Advocate.

Objectives

The objectives of our audit were to determine whether financial transactions were related to the division’s programs, were reasonable, and were recorded properly in the accounting systems.

This audit was conducted pursuant to the State Auditor’s responsibilities as set forth in Article VII, Section 1, Paragraph 6 of the State Constitution and Title 52 of the New Jersey Statutes.

Methodology

Our audit was conducted in accordance with Government Auditing Standards, issued by the Comptroller General of the United States.

In preparation for our testing, we studied legislation, administrative code, circular letters...
promulgated by the State Comptroller, and policies of the agency. Provisions that we considered significant were documented and compliance with those requirements was verified by interview, observation, and through our samples of financial transactions. We also read the budget message, reviewed financial trends, and interviewed agency personnel to obtain an understanding of the programs and the internal controls.

A nonstatistical sampling approach was used. Our samples of financial transactions were designed to provide conclusions about the validity of transactions as well as internal control and compliance attributes. Transactions were judgmentally selected for testing.

**Conclusions**

We found that the financial transactions included in our testing were related to the division's programs, were reasonable, and were recorded properly in the accounting systems. In making this determination, we noted certain internal control weaknesses and matters of compliance with laws and regulations meriting management's attention.
Industry assessments should be adjusted for actual costs.

Utility Assessments

The responsibilities of the Division of the Ratepayer Advocate are to represent the interests of New Jersey ratepayers before regulatory and legal tribunals and decision making bodies, and to establish rates and State policies for the delivery of essential regulated services including natural gas, electric, telecommunications, water, wastewater, and cable television. The Ratepayer Advocate is also responsible for the oversight of their expenditures and the accounting of revenues received as statutory assessments from regulated utilities to cover the division’s cost of operations.

Annual assessments of regulated utilities are based on expected costs for the operation of the division. Our review of these assessments and operating costs for fiscal years 2001 through 2005 showed that during fiscal years 2003 and 2004, the division substantially over-budgeted their operating costs and as a result over-assessed regulated utilities. Assessments for these two fiscal years exceeded actual expenditures by $1.4 million. Instead of using these surplus monies to adjust following year assessments, the Department of the Treasury reduced appropriations by $697,000 in fiscal year 2005 and an additional $694,000 in fiscal year 2006.

A portion of the division’s operating cost is for employee fringe benefits. These employee benefits are not charged directly to the division but are appropriated and paid from the Department of the Treasury interdepartmental accounts. The allocation of these costs to the division is based on budgeted salaries and approved fringe benefit rates. We noted that there is no reconciliation of these expected costs to the actual at the end of fiscal year, and therefore no adjustment is made to utility assessments.

Recommendation

We recommend that sums assessed to the public utility industry not exceed costs required for
operation of the division. Any overassessments should be credited in subsequent periods.

---

**Personal Services Contracts**

The division contracts with outside consultants and independent contractors to assist the staff in its proceedings before the Board of Public Utilities. Approximately 28 percent of the division's annual cost of operations is for consultants and independent contractor services. Our review disclosed that independent contractual agreements did not always clearly define the services to be provided. Many contracts simply stated that the contractor will perform services for the Ratepayer Advocate on an hourly basis on such matters as will be assigned. These contracts include an hourly pay rate and a restriction of the number of hours to be worked in any seven day period. However, we noted one contract for legal services where there was no restriction on the hours to be worked. The contract did not define what was deemed to be legal services. Our review of supporting documentation questioned whether services were of a legal nature. The hourly rate of pay was $125 and the average hours worked per week by the individual, a former employee, was 29 hours. Over a 33 month period from July 2004 to March 2006 this independent contractor received $520,000. Department of Treasury Circular Letter No. 98-14-OMB, states in part under Agency: Pre-Contract Planning: that the agency “define project objectives, scope of work, deliverables and preliminary schedule needed to meet the agency’s needs”. The agency should also “identify funding source and estimate cost, staffing and resource needs....”
**Recommendation**

We recommend that the division, comply with Treasury Circular Letter No. 98-14-OMB for all contracts with independent contractors. Contracts should clearly define project objectives, scope of work, deliverables, and preliminary schedule needed to meet the division’s needs. We further recommend that all contracts for professional services with independent contractors set working hour limitations in order to estimate contract cost and needed funding.

---

**Cash Receipts**

Revenues for the division totaled $6.2 million during fiscal year 2005. The division was successful in collecting all but $1,000 in assessed revenues. Treasury Circular Letter 94-24-OMB states that agencies are to ensure that all moneys are deposited on the same day as received and that agencies are responsible for retaining all documentation relating to the deposit. Our review of the fiscal year 2005 assessment collections showed that checks were not deposited timely. One hundred thirty-four of 235 checks received were deposited two to nine business days after collection. In addition, the division was not consistent when handling overpayment checks. Two checks were deposited and refunds issued to the companies. However, eight other checks totaling over $16,000 were, according to the division, forwarded to the Board of Public Utilities or returned directly to the companies for replacements. There was no documentation for the returned checks. We mailed out confirmation letters to the companies in question but received only two responses supporting $3,800 in refunds. Our review of revenue collections also showed that a check log kept by the division was incomplete. Five checks provided to us in support of deposits could not be traced to the log.

**The division should deposit revenue timely.**
Recommendation

We recommend that the division deposit receipts daily including any overpayments and that refunds be issued when necessary. We also recommend that the division maintain a complete log of incoming checks and reconcile it to daily deposits.


The Division should employ staff under appropriate title.

According to New Jersey Administrative Code, Title 4A:3-3.4, "No person shall be appointed or employed under a title not appropriate to the duties to be performed nor assigned to perform duties other than those properly pertaining to the assigned title which the employee holds, unless otherwise provided by law or these rules."

In March 2004, the division hired an employee in a Principal Clerk title, who has worked in a capacity of a driver. The employee had worked as a Clerk Driver since 1992, for two other state agencies.

When reviewing travel expenses incurred by the employee, we noted that most of the miles charged on his travel vouchers between July 2004 and January 2006 were in the capacity of a chauffeur for the Director.

The Department of Personnel experience requirement for the title of Principal Clerk is two years of experience in general clerk work or one year experience involving the supervision of the work of other clerical employees. The employee's past work history does not meet this criteria.

Recommendation

We recommend that the division hire employees under titles appropriate for the duties to be performed.
October 10, 2006

Richard L. Fair  
State Auditor  
Office of the State Auditor  
Trenton, NJ 08625

Re: Audit Response - Division of Rate Counsel

Dear Mr. Fair:

Thank you for conducting the enclosed audit of the Division of Rate Counsel (formerly the Division of the Ratepayer Advocate, an in-but-not-of agency under the Department of the Treasury) covering the period of July 1, 2004 to May 31, 2006. I am very pleased that the Division’s financial transactions included in the testing periods were found to be reasonable and recorded properly in the accounting system. Moreover, corrective measures have been taken to rectify the noted internal control weaknesses found in the audit.

I have attached the Division's response and respectfully request that it be included in the report. If you have any additional questions or concerns, please do not hesitate to contact me.

Sincerely,

Seema M. Singh, Esq.  
Director

Enclosure  
c: File
Utility Assessments

1. The Division can appreciate your concerns with respect to the amount assessed to utilities. In normal years, the sums assessed to the utilities do not exceed the costs required for the operation of the division. However, during the Testing Periods the Division incurred surpluses and the carry forward monies because of the State mandated hiring freeze. A very large portion of the Division’s budget is utilized for salaries. Since the Division was not permitted to draw from its budget to fulfill its staffing needs and is currently operating below its approved staffing level, it incurred a large sum in carry forward monies. Once the hiring freeze is lifted and the Division is permitted to hire, these surpluses will be drastically reduced.

2. The Division works in cooperation with the Office of Management and Budget ("OMB") to determine the dollar amount that should be assessed to utilities for the operation of the Division. The Division will work with the Department of Treasury, OMB to make sure that the regulated utilities are not over-assessed going forward. The Division will also make a recommendation to Department of Treasury, OMB, that all carry forward funds be applied to Rate Counsel programs to avoid over-assessment to the regulated utilities.

3. As recommended, Rate Counsel will work with the Department of Treasury, OMB regarding the appropriate manner in which to charge the cost for employee fringe benefits.

Personal Services Contracts

1. The contract in question was for necessary and legal services. The Division employed an attorney in the capacity of a consultant who performed the following legal and necessary services:

   A) Legal Research and Writing;
   B) Preparation of the Legal Reports and Publications;
   C) Responded to consumer inquires and complaints; and
   D) Appropriately resolved their issues and concerns.

The salary cited was paid to this consultant over a 33 month period and was consistent with the salaries of existing consultants also hired by the Division at the hourly rate of $125.

2. However, as per your recommendations for all future engagement of independent contractors, Rate Counsel will define the project objectives, scope of work, deliverables
and preliminary schedule and funding sources. Rate Counsel will also establish working hour limitations to estimate contract cost needed to meet the Division objective.

3. Rate Counsel is now a division under the Department of the Public Advocate. The Division has recently received directives from the Department that the Division comply with the Department of Treasury’s Circular Letter No. 98-14-OMB when preparing contracts for services rendered by independent contractors. The Division will follow your recommendations and the Department’s directives.

Cash Receipts

1. During the course of the audit, the Division discovered that one of its staff members who was directly responsible for depositing all checks received on a daily basis failed to do so on a daily basis but instead deposited the checks received on a later date. That employee received a verbal reprimand. As recommended, Rate Counsel is ensuring that all checks are deposited on a daily basis or within two (2) days of receipt of the checks.

2. Rate Counsel is making sure that all revenue checks received at the Division are recorded in the Cash Receipts Log and are reconciled with the daily deposits.

3. Rate Counsel is following your recommendation in handling of overpayment checks received. Previously the Division returned directly to the BPU or to the Companies any checks with the incorrect amounts or with overpayments for a replacement check. However, now as per your recommendation we are now depositing all checks including any with overpayments and then issuing refunds whenever necessary.

Personnel Classifications

1. The Division employs staff under appropriate titles. The employee in question was hired for the position of Principal Clerk and is serving as a provisional employee under that title awaiting a test date to be provided by DOP. The employee’s Job Description is attached hereto as ATTACHMENT “A”. One of the employee’s duties as the Principal Clerk is to attend and assist the Director at the Division of Rate Counsel’s Consumer Education and Outreach presentations conducted throughout the State of New Jersey by transporting, setting up and handing out materials. He did not serve as a chauffer for the director. Instead, the employee accompanied the Director and other Division Staff in the state assigned vehicle for these presentations. In being fiscally conservative, the employee as well as other Division staff would collectively travel in the state vehicle with the director to these presentations in order to
drastically reduce the amount of travel expenses (mileage and tolls) per employee. There were instances in which the employee in this position also used his personal vehicle and thus incurred mileage. As per the Department of Treasury Circular Letter 06-02-OMB Travel Regulations, the employee in question including all the other state employees similarly situated, are entitled to travel reimbursement for mileage and tolls.
Job Responsibility
Organize and maintain inventory of office publications supplies and materials for presentations and events.

Standard for Satisfactory Performance
Publications and materials are stocked at all times in a neat and orderly fashion.

Job Responsibility
Attend and Assist the Division at the Consumer Education and Outreach presentations throughout the State and other public events to transport, set up and hand out materials.

Standard for Satisfactory Performance
Display materials are set up, publications and materials are distributed to the audience prior to the start of each event.

Job Responsibility
Deliver all outgoing Division mail to the post office and assist with hand delivery of Division filings to the Board of Public Utilities, Federal, State and Administrative courts and other legal offices.

Standard for Satisfactory Performance
All outgoing documents are posted and delivered daily by close of business.

Job Responsibility
Store and maintains office displays and audio/visual equipment.

Standard for Satisfactory Performance
Office displays and equipment are kept in good repair and readily accessible for events.

Job Responsibility
Assist in requisitioning, storing and distributing office supplies.

Standard for Satisfactory Performance
Office supply closet and copy rooms are neat and well stocked at all times.

Job Responsibility
Ability to comprehend modern office and clerical methods, practices, routines, machines and equipments and the internal organization, policies, procedures and regulations.

Standard for Satisfactory Performance
Memorandums regarding polices are maintained in a filing system and referred to periodically.

**Job Responsibility**
Demonstrates and ability to read, write, speak, understand and communicate in English sufficiently to perform duties for this positions.

**Standard for Satisfactory Performance**
Registers and completes a course in ESL (English as a Second Language).