

HB 103  
REGULATION BY RCA

Prepared by the Alaska Department of Law, 15 February 2011

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Statutory Bases for Regulation/Exemption from Regulation:

1. AS 44.83.090(b) – AEA is not subject to jurisdiction by RCA, but that does not diminish RCA jurisdiction over utilities that purchase power from AEA projects. E.g., absent other exemption, RCA must approve a power sales agreement before a utility could purchase from an AEA power project. AS 42.05.431(b).

- a. AEA exemption is similar to treatment given other political subdivisions.

- AS 42.05.711(b) – a public utility owned by and operated by a political subdivision is not subject to RCA regulation under AS 42.05 (with limited exceptions) unless: (a) the governing body elects to be subject to AS 42.05, or (b) the political subdivision would directly compete with another utility.

2. AS 44.83.090(a) – mandates provisions that must be included in AEA power sales agreements. The contract must provide for payment of operating and maintenance costs, interest and amortization of bond debt, AEA monitoring of project, full disclosure of all cost factors so rates will be determined on basis of true cost data; periodic revision of rates based upon accurate cost data; security and default provisions.

- AS 44.83.396(e) – mandates that AEA when it contracts for operation of a power project, review and approve annual budgets for operation and maintenance, and assure that the project is being operated efficiently and in a manner consistent with national standards for industry and agreements with bondholders.

- a. These statutory mandates largely duplicate what RCA does under economic regulation for power sales to ratepayers.

- AS 42.05.381 & AS 42.05.431(a) require rates be just and reasonable, and not discriminatory. Rates based upon costs. RCA generally reviews costs after project is constructed, but may review before construction (e.g., South Anchorage facility). RCA does not monitor construction of projects.

AS 42.05.291 & AS 42.05.511 provide authority for RCA to investigate management, services and facilities for efficiency, safety, etc.

- b. The statutory mandates on AEA alleviate the need for what would include duplicative RCA regulation.
- 3. AS 42.05.431(b) – A wholesale power agreement between public utilities is subject to prior approval by RCA. This provision applies to utilities purchasing from AEA, absent another exemption.
- 4. AS 42.05.431(c) – provides that wholesale power and related agreements arising out of certain projects owned, or originally owned, by AEA are not subject to RCA review or approval until all long-term debt for the project is paid off.
  - a. Applies to Bradley Lake Hydroelectric Project, and the original Four Dam Pool Hydroelectric Project (currently Lake Tyee and Swan Lake owned by the SEAPA joint action agency).
  - b. Valid, approved power sales agreements will almost certainly be necessary to support financing a project.
  - c. The exemption of RCA review of wholesale power sales agreements for past projects eliminated the time necessary for RCA review and approval, including time that might have been involved with litigation challenging RCA's decision.
- 5. AS 42.05.431(b) – After RCA approves a wholesale power agreement and the agreement is in effect, RCA may not invalidate a sale under that contract. If sales under the contract make rates unjust or unreasonable, RCA can order parties to the agreement to negotiate or exercise dispute resolution mechanisms in the contract.
- 6. AS 42.05.431(a) – includes provisions that municipal and cooperative utilities may include rate covenants in bond and debt instruments, and RCA may not reject a rate necessary to satisfy debt covenants relating to rates.
  - a. This provision reduce scope of economic regulation and thereby offers assurances to creditors that the utility's debt will be repaid.
  - b. Application of this or similar provisions will likely be necessary for AEA financing of large projects.