

SB 180

for:

Senate Resources 5/9/2025

by:

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This bill repeals AS 42.05.711(v)
It repeals an exemption to 42.05

Chapter 05. Alaska Public Utilities Regulatory Act.

Secs. 42.05.010 — 42.05.131. Establishment of Public Utilities Commission. [Repealed, § 5 ch 113 SLA 1970; § 24 ch 25 SLA 1999.]

Sec. 42.05.141. General powers and duties of the commission.

(a) The Regulatory Commission of Alaska may do **all things necessary** or proper to carry out the purposes and exercise the powers expressly granted or reasonably implied in this chapter, including

(1) regulate every public utility engaged or proposing to engage in a utility business inside the state, **except to the extent exempted by [AS 42.05.711](#)**;

What are these exemptions?

What are these exemptions in 42.05.711?

- (a) water, gas or petroleum products by tank, wagon, or similar conveyance
- (b) public utilities owned and operated by a political subdivision of the state
- (c) Owners of stock in a utility
- (d) God Squad* provision— “The commission may exempt a utility, a class of utilities, or a utility service from all or a portion of this chapter if the commission finds that the exemption is in the public interest.”
- (e) Any electric or telephone utility <50k revenue..(but can try to get in)
- (f) Electric or telephone utility <500k revenue is NOT exempt, but can try...
- (g) non-electric, non-telephone <150k is NOT exempt, but can try....
- (h) A cooperative organized under AS 10.25 may elect to be exempt [from rate regulation...] [but not from sec 221-281]
- (i) Trash utilities <300k revenue (but may opt in)
- (j) Waste heat sales...
- (k) Cable TV exempt, can opt in
- (l) No double jeopardy at the hands of local govt:(l) A person, utility, joint action agency...that is exempt from regulation under (a), (d) — (k), (o), or (r) of this section is not subject to regulation by a municipality
- (m) municipal waste pickup
- (n) North slope gas pipelines
- (o) A joint action agency established under AS 42.45.310 (SEAPA?)....
- (p) regional solid waste management authority.....

*The Endangered Species Act Committee, authorized to override designations under the Endangered Species Act, 1979 Amendments

exemptions in 42.05.711, continued

(q) North Slope gas storage....

(r) **?Fire Island Wind?**.....A plant or facility that generates electricity entirely from renewable energy resources...and also.....

(s) An **in-state natural gas pipeline** subject to [AS 42.08](#)

(t) A utility that provides telecommunications**partially** exempt....**BUT**.....(u) **Exception** to exemption (t):
RCA **does** regulate rates charged to **prisoners**...

And finally,

(v) A liquefied natural gas import facility under the jurisdiction of the Federal Energy Regulatory Commission is exempt from this chapter.

SB 180 repeals this subsection (v)

So What? Can't we just live with retaining this exemption?

- RCA addressed this at length in Order #5 of U-25-004, after asking several parties for their considered opinions.
- RCA asserted that it retains jurisdiction over **gas sales** from the import facility to be built by Glenfarne, (also over stranded Enstar costs if the project is not built).
- RCA found Enstar's analogy persuasive:

Enstar: "Ultimately, **these costs are no different from a Commission jurisdiction standpoint than ENSTAR's costs to negotiate and enter into a gas sales agreement with an unregulated (by the Commission) Cook Inlet gas producer.** Like an LNG import terminal, the Commission does not have jurisdiction over the siting or construction of Cook Inlet producers' platforms and pipelines, but it does have jurisdiction to regulate ENSTAR as a **utility-offtaker** of those facilities...any necessary gas purchase agreements or terminal use agreements, are all firmly within this Commission's jurisdiction."

RCA: "We find ENSTAR's analogy to our current jurisdictional boundaries for our review of Cook Inlet gas supply contracts useful." (Order #5 p. 34)

RCA said, we're OK with the exemption, because gas from the terminal would be like gas from a well. RCA also said repeal of the exemption would clarify this jurisdiction over costs of gas from the facility.

So far, so good. But,
The U-25-004 situation is only one scenario, a scenario now underway.
We identified two other scenarios that may merit consideration.....

Scenario A:

If the exemption is NOT repealed, what if Enstar, not Glenfarne, builds an LNG import facility....or Chugach....

What if they supply gas to themselves without any gas sales contract. Would this exemption insulate them from RCA scrutiny of the rates emanating from this gas supply?

That is maybe one risk of not repealing.

Scenario B:

If the exemption IS repealed, might a Glenfarne be subject to being declared a public utility?

RCA appealed to statutory guidance *and* to legislative history of HB 50 when it declined RAPA's suggestion to exercise jurisdiction over the LNG facility under the "Hinshaw Amendment" to the Natural Gas Act. (Order 5 p. 31)

HB 50 history: Senate Resources added companion language to the exemption...

SCS CSHB 50(RES) by Senate Resources (5/6/2024):

(p) For rate-making purposes, the commission shall consider the investment of a public utility in a liquefied natural gas import or export facility as utility property, even if the liquefied natural gas import or export facility is exempt from regulation by the commission. In this subsection,

Senate Finance took it out.*

*5-12-24, Amendment 4 to Work Draft T. Per S Fin Minutes, "Senator Bishop relayed that he had problems with the amendment. He asked that members pay close attention to the topic going forward. He expressed concern that the price of imported LNG would be higher than expected and that ratepayers would bear the burden.

Back to Scenario B: If the exemption IS repealed, might a Glenfarne be subject to being declared a public utility, or directly regulated by RCA?

RCA: “Not only does this subsection’s express language appear to clearly bar our assumption of jurisdiction, but the legislative history underlying its enactment reinforces this conclusion.¹²⁷ Therefore, if we were to assert LNG facility oversight under the Hinshaw Amendment which RAPA suggests is possible, we would be disregarding the jurisdictional side boards imposed on us by the legislature. We decline to do so.” (Order 5 U-25-004, p. 31)

Were this guidance changed, might current or future RCA choose or be pressured to assert this jurisdiction?

Summary. In our view, SB 180:

- Removes a broad exemption from a broad statute
- Removing the exemption helps clarify that RCA has jurisdiction over prices/rates for LNG supplied by a 3d-party facility to a regulated utility
- Hence, removing the exemption might also help the RCA deal with the case where Enstar, Chugach, etc. is the Builder and self-supplies.
- Removes sideboards that RCA currently defers to, which might enable (or force?) RCA to regulate LNG facilities, potentially conflicting with FERC.

Additional material

Potential analogy to CINGSA

CINGSA* has a CPCN**, according to which it qualifies as a public utility under 42.05.990(6)(G) (6) “public utility” or “utility” includes every corporation whether public, cooperative, or otherwise, company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that owns, operates, manages, or controls any plant, pipeline, or system for
...(D) furnishing by transmission or distribution of natural or manufactured gas to the public for compensation;
...(G) furnishing the service of natural gas storage to the public for compensation; (←from HB 50)

*Cook Inlet Natural Gas Storage Alaska, LLC

**Certificate of Public Convenience and Necessity

Potential guidance from economic theory

Regulate natural monopolies.

(Natural gas transmission and distribution in AK)

????? Stuff in the middle. (IPP's selling to one buyer,
Cook Inlet gas producers)

Do not regulate competitive markets.

(electricity generation in Texas or CA...)