

ALASKA STATE LEGISLATURE

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SENATOR BILL WIELECHOWSKI

Sponsor Statement: SB 205 Utility Negligence

The intent of SB 205 is to prevent for-profit utilities from charging customers for their own negligent, reckless or illegal behavior. Under SB 205, The Regulatory Commission of Alaska (RCA) would be required to deny any request by a for-profit utility to charge its customers to recover costs associated with the company's negligence, recklessness, or intentional violation of the law.

A recent case pending before the RCA has shown current Alaska utility law to be unclear on this subject. SB 205 will add clarity and protect consumers by putting in statute a requirement that utilities must take responsibility for their own actions without attempting to burden consumers with the company's mistakes.

It is a basic principle of economics that businesses respond to incentives, and if utilities are forced to bear the costs of their own negligent, reckless, or illegal conduct then they have a strong incentive to implement responsible procedures to ensure this conduct does not happen. If utilities are allowed to pass these costs on to their customers, then they have little incentive to act responsibly.

Utility rates are regulated by the RCA to ensure that consumers are charged fair prices. In a competitive market, a business is not able to pass the costs of negligent, reckless, or illegal conduct on to their customers, because its prices would have to compete with its more responsible competitors. Utilities are, by definition, monopolies and consumers do not have the option of switching to a competitor when they raise their rates.

It is a well established principle of American and Alaskan jurisprudence that entities should not be rewarded for their negligence, recklessness, or intentional violation of the law. The party at fault should bear the costs of its own irresponsibility and take preventative measures to ensure the behavior is not repeated.

SB 205 would not apply to consumer owned cooperatives and municipal utilities due to the nature of those utilities.

Please join me in supporting this much needed legislation.

1 order. However, in an order established under this subsection that applies to a
2 public utility that is a commercial enterprise operating for profit, the commission
3 may not compensate the utility for its negligent conduct, recklessness, or
4 intentional violation of the law. A municipality may covenant with bond purchasers
5 regarding rates of a municipally owned utility, and the covenant is valid and
6 enforceable and is considered to be a contract with the holders from time to time of the
7 bonds. The financial covenants contained in mortgages and other debt instruments of
8 cooperative utilities organized under AS 10.25 are also valid and enforceable, and
9 rates set by the commission must be adequate to meet those covenants. However, a
10 cooperative utility that is negotiating to enter a mortgage or other debt instrument that
11 provides for a times-interest-earned ratio (TIER) greater than the ratio the commission
12 most recently approved for that cooperative shall submit the mortgage or debt
13 instrument to the commission before the instrument takes effect. The commission may
14 disapprove the instrument within 60 days after its submission. If the commission has
15 not acted within 60 days, the instrument is considered to be approved.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:

Bill Version:

SSSB205

() Publish Date:

Identifier (file name): SB205SS-CED-RCA-01-27-10

Dept. Affected: **DCCED**

Title **RCA Rate Change**

RDU **Regulatory Commission of Alaska (399)**

Component **Regulatory Commission of Alaska**

Sponsor **Sen. Wielechowski, Sen. French**

Requester **Senate Labor & Commerce**

Component Number **2417**

Expenditures/Revenues

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Personal Services	0.0		0.0	0.0	0.0	0.0	0.0
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	0.0		0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES							
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CHANGE IN REVENUES ()							
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2010) cost:

0.0

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

The proposed legislation would revise statutes addressing the power of the Regulatory Commission of Alaska (RCA) to fix rates. The revision would preclude the RCA from compensating a for-profit commercial public utility for negligent conduct, recklessness, or intentional violation of law.

(ANALYSIS CONTINUED)

Prepared by: Robert M. Pickett, Chairman

Division: Regulatory Commission of Alaska

Approved by: Emil R. Notti, Commissioner

Commerce, Community, and Economic Development

Phone 907.276.6222

Date/Time 01/25/10 3:50 p.m.

Date 1/25/2010

FISCAL NOTE


STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. SSSB205

ANALYSIS CONTINUATION

The RCA would be required to consider negligent, reckless, or intentional misconduct by a utility when establishing rates for commercial for-profit public utilities. The RCA may need to investigate allegations of reckless, negligent or intentional misconduct by for-profit utilities, and may be required to conduct hearings before determining whether the alleged action meets the statutory definition of the negligent conduct, recklessness, or intentional violation of law.

The RCA expects to implement the provisions of this legislation with existing resources. The RCA can incorporate the review of negligent, reckless, or intentional misconduct by a utility into the existing rate review process for commercial for-profit public utilities. While the RCA may see an increase in workload based on the need to investigate alleged reckless, negligent or intentional misconduct, the RCA anticipates addressing this workload with existing resources.



Difference between SB 205 and Sponsor Substitute for SB 205:

- The Sponsor Substitute for SB 205 changes the location of the text regarding compensation for the utilities negligent conduct, recklessness, or intentional violation of the law.
- It also clarifies that this language applies to a public utility operating for profit.

Senate Bill 205

Consumer Protection from Utility Negligence

Fact Sheet

Proposal:

Prohibit Alaskan utilities from charging their customers for their own acts of negligence, recklessness, or intentional violation of the law.

Background:

- The RCA currently has a mechanism under 3 AAC 48.170 for handling ethical standards and violations. However, there is no statute or regulatory mechanism currently enacted to prevent a utility from seeking compensation for its own negligent, reckless or illegal actions.
- Under free enterprise, businesses have an incentive to act responsibly in order to attract business.
- With regards to most utilities, customers do not have the option of selecting a utility based on cost analysis. Ratepayers must rely on the RCA to provide a just and reasonable rate for the utility services the customers require.
- Utilities regulated by the RCA are not operating under the definition of free enterprise because their prices are fixed and adjusted through regulation.

Analysis of Sponsor Substitute for SB 205:

- The Sponsor Substitute for SB 205 amends AS 42.05.43(a) to state that when the RCA is establishing a just and reasonable rate through order, the RCA may not compensate a for-profit public utility for its negligent conduct, recklessness, or intentional violation of the law.
- Cooperatively owned utilities are exempt from SB 205 because the ratepayers and owners are essentially the same people.
- Municipalities are exempt from SB 205 to prevent taxpayers from having to pay to cover costs for services which they may not actually use. Taxpayers and ratepayers are not always the same individuals.
- Utilities which are not regulated by the RCA are also exempt from SB 205.

RCA Regulation

✚ 3 AAC 48.170. Ethical standards, violations

✚ (a) Any person transacting business with the commission shall maintain at all times the respect due the commission, its presiding officers, legal counsel and its staff and shall never knowingly, by artifice, misstatement or silence, lead or allow them to believe in a false factual or legal proposition relevant to the discharge of their responsibilities. Members of the legal, accounting, financial and engineering professions shall also comply with the ethical standards of their respective professions.

(b) Depending upon the gravity of the violation and the source of responsibility for it, a violation of ethical standards may result in

(1) preclusion from further participation of the party or the party's authorized representative in the proceeding in which the infraction occurs or in any other proceeding before the commission;

(2) referral of the violation to the appropriate professional body or public authority for disciplinary action;

(3) a finding of unfitness of an applicant or utility or pipeline carrier with consequent revocation, suspension, or denial of operating authority; or

(4) the imposition of any sanction appropriate to the offense and consistent with law.

✚ **History:** Eff. 1/13/73, Register 44; am 6/29/84, Register 90

✚ **Authority:** AS 42.05.141

AS 42.05.151

AS 42.06.140 (a)

Economically Regulated Utilities in Alaska

Electric Utilities

For Profit

Alaska Electric Light & Power
 Alaska Power Company
 Aniak Light & Power Company
 Aurora Energy, LLC
 Bethel Utilities Corporation
 Central Electric, Inc.
 Chignik Lake Electric Utility, Inc.
 Doyon Utilities, LLC
 Egegik Light & Power Co.
 G&K, Inc.
 Gwitchyaa Zhee Utility Company
 Gustavus Electric Company, Inc.
 Kake Tribal Corporation
 McGrath Light & Power Co.
 Napakiak Ircinraq Power Company
 Sand Point Generating
 Tanana Power Company
 TDX Manley Generating LLC
 TDX North Slope Generating
 Teller Power Company

Owned by a Political Subdivision

Municipal Light & Power (Anchorage)
 Goat Lake Hydro (State-owned)
 Kipnuk Light Plant (Village)
 Lime Village Traditional Council (Village)
 Nome Joint Utilities
 North Slope Borough Power and Light
 Unalaska, City of
 Yakutat Power Company

Cooperative

Alaska Electric and Energy Cooperative
 Alaska Village Electric Cooperative
 BBL Hydro
 Chugach Electric Association
 Cordova Electric Association
 Golden Valley Electric Association
 Homer Electric Association
 I-N-N Electric Cooperative
 Inside Passage Electric Cooperative
 Kotzebue Electric Association
 KWAAN Electric Energy and Cooperative
 Matanuska Electric Association
 Middle Kuskokwim Electric Cooperative
 Naknek Electric Association
 Nushagak Electric Cooperative
 Tanalian Electric Cooperative
 Unalakleet Valley Electric Cooperative

Local Exchange Carriers

For Profit

<p>Alascom, Inc. Alaska Communications Services Companies ACS of Anchorage ACS of Alaska ACS of Fairbanks ACS of the Northland Alaska Fiber Star, LLC Alaska Telephone Company Bettles Telephone, Inc. Bush-Tell Incorporated Clearwire Telecommunications Service, Inc. ComTec Business Systems, Inc.</p>	<p>France Telecom Corporate Solutions, LLC GCI Communication Corp. Interior Telephone Company, Inc. Level 3 Communications, LLC Mukluk Telephone Company, Inc. New Edge Network, Inc. North Country Telephone, Inc. Premiere Network Services, Inc. Summit Telephone & Telegraph Company TelAlaska Long Distance, Inc. United-KUC, Inc. United Utilities, Inc. Yukon Telephone Company YMAX Communications Corp.</p>
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Cooperative

Matanuska Telephone Association
 OTZ Telephone Cooperative

Interchange Carriers

Political Subdivision

City of Ketchikan d/b/a Ketchikan Public Utilities
University of Alaska Fairbanks - State owned

Cooperative

ASTAC Long Distance
Chugach Electric Association, Inc.
Copper Valley Long Distance
MTA Long Distance
OTZ Telecommunications Inc.

For Profit

Accessline Communications Corporation
ACS Long Distance
Alascom, Inc.
Alasconnect, Inc.
Alaska Call Connection, Inc.
Alaska Fiber Star, LLC
American Express Telecom, Inc.
AP&T Long Distance, Inc.
Bellsouth Long Distance, Inc.
Broadwing Communications, LLC
Business Telecom, Inc.
Comtel Telecom Assets LP
Deltel, Inc.
Direct One, LLC.
Entrix Telecom, Inc.
Evercom Systems, Inc. (Prison Pay Telephone)
Excel Telecommunications, Inc.
Federal Transtel, Inc.
France Telecom Corporate Solutions
GCI Communication Corp.
GCI Fiber Communications Co., Inc.
Global Crossing Telecommunications, Inc.
Gold Line Telemanagement, Inc.
Go Solo Technologies, Inc.
IDT America Corp.
Intellicall Operator Services, Inc.
International Telecom, Inc.

Inter-Tel NetSolutions, Inc.
ITC^Deltacom Communications, Inc.
JD Services, Inc.
Legacy Long Distance international, Inc.
Matrix Communications
Matrix Telecom Inc. d/b/a Trinsic Communications
New Edge Network, Inc.
Network Communications International Corp.
Network Operator Services, Inc.
One Call Communication, Inc.
Operator Services Co., LLC
Qwest Communications Company, LLC
SBC Long Distance
Sprint Communications Company LP
STiPrepaid, LLC
TelAlaska Long Distance, Inc.
Teltrust Communications, Inc.
Unicom, Inc.
US South and Incomm
Verizon Enterprise Solutions LLC
Verizon Long Distance LLC
Verizon Select Services, Inc.
Vocall Communications Corp
Wiltel Communications, LLC
World Telecom Group, Inc.
Yukon Long Distance Company

Natural Gas

Political Subdivision

Alaskas Intrastate Gas Company

For Profit

Alaska Pipeline Company
Doyon Utilities, LLC
Enstar Natural Gas Company
Milne Point Pipeline, LLC
Norgasco, Inc.

Refuse

For Profit

Alaska Pacific Environmental Service (Service in Nome, Juneau, Dutch Harbor)
Bartlett Industries
Colville, Inc.
Ramsey & Sons Trucking
Freedom Refuse

Water/Wastewater

Political Subdivision

Anchorage Water & Wastewater
City of Adak
City of Coffman Cove
Ketchikan Gateway Borough
Matanuska-Susitna Borough
North Slope Borough
City of Pelican

Cooperative

Barrow Utilities & Electric Cooperative, Inc

For Profit

Alpat Water Utility, LLC
Copper Valley Construction Company
Crystal Cathedra's Water & Sewer Systems
Dawn Development Corporation
Doyon Utilities, Inc.
Eagle Utilities
Golden Heart Utilities/College Utilities Corp.
Home Water, LLC
McKinley Utilities
Midtown Estates Water Utility, Inc.
Mile 8 Utilities, LLC
Nikishka Bay Utilities
Potter Creek Water Company
Sand Lake Services
Swiss Castle Estates Waterworks
Valley Water Company

Heat

For Profit

Doyon Utilities, LLC

Notes: This list may be incomplete.

Source: Richard Gazaway, Advisory Sectionh Manager, Regulatory Commission of Alaska, February 8, 2010.

STATE OF ALASKA

REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Robert M. Pickett, Chair
Kate Giard
Paul F. Lisankie
Anthony A. Price
Janis W. Wilson

In the Matter of the Tariff Revision Designated as)
TA172-4, Regarding a Proposed Gas Cost) U-08-142
Adjustment for 2009 Filed by ENSTAR)
NATURAL GAS COMPANY, A DIVISION OF)
SEMCO ENERGY, INC.)

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of August, 2009, true and correct
copies of the ATTORNEY GENERAL'S RESPONSIVE BRIEF were served by First
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RECEIVED

By the Regulatory Commission of Alaska on Aug 17, 2009

U-08-142

STATE OF ALASKA

REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Robert M. Pickett, Chair
Kate Giard
Paul F. Lisankie
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In the Matter of the Tariff Revision Designated as)
TA172-4, Regarding a Proposed Gas Cost) U-08-142
Adjustment for 2009 Filed by ENSTAR)
NATURAL GAS COMPANY, A DIVISION OF)
SEMCO ENERGY, INC.)

ATTORNEY GENERAL'S RESPONSIVE BRIEF

In response to Enstar's brief filed July 17, 2009 the Attorney General ("AG") submits that the Commission's regulations do not support Enstar Natural Gas Company's ("Enstar") request to recover through prospective rate increases via the GCA mechanism the \$5.7 million¹ in cost associated with gas sales to customers dating back to October 2004.

The Situation

At this stage, the known facts are that Enstar failed to properly calculate the Department of Defense's ("DoD") usage at the Fort Richardson laundry, thereby causing its gas transportation customers ConocoPhillips Alaska, Inc. ("CPA"), Marathon Alaska Natural Gas Company ("MANGCo") and Aurora Power Resources ("Aurora") to supply ten times as much gas as was being consumed by DoD. Enstar reportedly used the volumes associated with DoD mistaken consumption to meet its

¹ Not including the more than \$1.2 million for gas cost related to ConocoPhillips Alaska, Inc.'s payment to DoD for the period of October 1, 2002 through September 30, 2004

own system needs, but did not discover what had occurred nor settle up with the affected parties until recently, years after the gas had presumably been consumed by other Enstar customers. Enstar recently settled claims related to a large portion of the error affected period and requests that current and future customers pay an additional \$5.7 million² in cost associated with gas sales to customers dating back to October 2004.³

Ineligible Relief Requested

The GCA mechanism through which Enstar proposes to recover these costs on a dollar-for-dollar basis contemplates a “more contemporaneous and systematic submission” of gas costs than has occurred here. Enstar’s tariff at §708(d) (Tariff Sheet No. 88) expressly provides that Enstar will annually⁴ submit its GCA filing to incorporate changes in its cost of gas. AS 42.05.371 provides that the terms under which Enstar provides service to customers “shall be governed strictly by the terms of its currently effective tariffs.”

Application of the GCA mechanism further provides that cost elements in a GCA must be “beyond the control of the utility.” As discussed above, it is beyond

² The AG has no reason to dispute Enstar’s assertion in filings with the Commission that the unit price of both the MANGCo and Aurora gas as settled out with DoD was lower than would have otherwise been available for purchase by Enstar during the relevant time period. The \$5.7 million figure does not include the more than \$1.2 million of CPA gas for which Enstar has yet to settle related to the period October 1, 2002 through September 30, 2004.

³ In the event that it ultimately settles claims with CPA, that prior period subject to requested prospective adjustment would extend back to July 2002.

⁴ While a shorter period is permitted under §708(d)(2) of Enstar’s tariff (“but not more often than quarterly”), the tariff does not contemplate that changes in the cost of gas shall be reflected through the GCA mechanism on less than an annual basis. *See* §708.

1 dispute that Enstar was entirely accountable for the subject \$5.7 million in gas costs not
2 being properly and timely flowed through the GCA mechanism, starting as early as July
3 2002. Accordingly, it is untenable for Enstar to now pass on such costs to its 2009 and
4 2010 customers, regardless of when the cost was incurred.

5 There may be some merit in Enstar's argument regarding the timing of
6 qualifying events for gas cost flow-through – as far as it goes. But Enstar's analysis
7 leapfrogs a threshold problem: the Commission's regulations do not support Enstar's
8 request to recover those costs where their submission was not "beyond the control of the
9 utility." In short, Enstar's gas costs in this case do not fall within the definition of the
10 GCA regulations and thus are ineligible for recovery by that mechanism.

11 If, instead, Enstar had simply misplaced an invoice that it had received
12 for gas purchased for a period of time during 2004-2007 and just now discovered (and
13 paid) that invoice, the cost presumably would be excluded from consideration under a
14 current GCA filing pursuant to 3 AAC 52.502(a)(2). Yet, that is essentially what Enstar
15 would now accomplish by including the \$5.7 million in gas costs in its current GCA,
16 charging 2009-2010 customers for gas that was consumed as much as five or more years
17 earlier. Such operation of the GCA mechanism is neither contemplated nor permitted
18 under the current regulations.

19
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1 **Conclusion**

2 Accordingly, if the Commission cannot reconcile Enstar's request to
3 recover the \$5.7 million in gas costs in its current GCA with governing regulations, it
4 must be denied.

5 Respectfully submitted this 17th day of August 2009, at Anchorage,
6 Alaska.

7 DANIEL S. SULLIVAN
8 ATTORNEY GENERAL

9
10 By: 
11 Glenn M. Gustafson
12 Assistant Attorney General
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Enstar wants customers to pay for billing mistake

Posted: Sep 22, 2009 11:13 AM

Updated: Sep 22, 2009 11:14 PM



Enstar wants to charge its customers a fee for a billing mistake it made seven years ago. (Shawn Wilson/KTUU-DT)

by Ted Land
Tuesday, September 22, 2009

ANCHORAGE, Alaska -- A costly mistake already has Enstar Natural Gas customers paying extra, and the utility is asking for more.

A meter error overcharged one of Enstar's customers by millions of dollars, and it affected gas rates.

Seven years ago, Enstar incorrectly calibrated a gas meter at Fort Richardson. Since then, it's cost the company millions of dollars, and it says that customers owe them money for its mistake.



The laundry center at Fort Richardson was erroneously charged for 10 times the gas it actually used. (Shawn Wilson/KTUU-DT)

In July 2002 Enstar replaced a gas meter at the laundry facilities on Fort Richardson. The old meter was set to record gas delivery on a 1,000 cubic feet-basis. The new meter was erroneously set to record on a 100 cubic feet-basis.

The mistake went unnoticed for five years, but by that time Fort Richardson had been charged 10 times what it should have been, and it added up to \$5.7 million in gas it never received.

Enstar and the gas producers quickly paid back the Department of Defense.



Bob Hall with Fort Richardson public affairs says that Enstar refunded the money in 2008. (Shawn Wilson/KTUU-DT)

"It was right after they found out -- I believe they found out in November of 2007, and sometime in 2008 it was paid back," said Bob Hall of Fort Richardson Public Affairs.

During those five years gas producers sent 10 times the amount of gas Fort Richardson was using into the system. Enstar based customers' rates on that higher supply of gas, and it says the price to consumers was lower as a result.

So Enstar says it wants customers to pay back the difference of what the gas should have cost, which equates to about \$32 a year for an average household.

"The calculation for their bill, the calculation for the cost of gas was not high enough, it did not include this amount of gas that should've been in there," said Dan Dieckgraeff of Enstar rates and regulatory affairs.

It's already coming out of your bill. Enstar says the losses were included in the 22 percent rate increase from fall of last year, but it's on an interim basis.

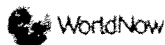
The Regulatory Commission of Alaska is investigating, and if it finds that Enstar was out of line, it would have to pay customers back the erroneous proportion of the increase, along with interest.

"This happened years ago and for them to come now seven years later after they made their first initial mistake and request this from all Southcentral consumers I think clearly violates RCA regulations," said state Sen. Bill Wielechowski, D-Anchorage.

Enstar says it has since reviewed its metering process to make sure mistakes like this don't happen again.

The RCA will hold its first hearing on this matter Oct. 6, and it should have a decision by the end of the year.

Contact Ted Land at tland@ktuu.com



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Providing coverage of Alaska and northern Canada's oil and gas
industry
October 2009

Vol. 14, No. 41

Week of October 11, 2009

Enstar fights to keep laundry overbilling snafu in tariff

**State, gas suppliers, politicians, ratepayers tell
RCA company shouldn't be able to recover \$5.7
million**

Kristen Nelson

Petroleum News

The battle continues over who should bear the burden of Enstar Natural Gas Co.'s \$5.7 million overbilling of the U.S. Department of Defense for natural gas deliveries.

For several years Enstar's billing system incorrectly indicated that measurement from a single meter was in hundreds of cubic feet rather than the correct thousands of cubic feet and gas volumes from that meter were billed at 10 times the actual rate of usage.

Enstar, the Southcentral Alaska local gas distribution company, has included the reimbursement it paid to the department in its tariff and customers are paying it as part of monthly gas bills. Approval of Enstar's tariff — including the \$5.7 million — is before the Regulatory Commission of Alaska.

Enstar argued in filings with the RCA that its customers got the benefit of reduced natural gas costs when it won a settlement in an unrelated court suit. The reverse, Enstar said, is that customers should pay the amount Enstar had to pay Defense for the utility's overbilling for natural gas delivered to the department.

Enstar also argued that the natural gas was used by other customers and those other customers should pay for the gas.

Alaska legislators have joined the fray.

Sen. Bill Wielechowski, D-Anchorage, said in a statement that RCA should reject Enstar's "request to add \$5.7 million to the heating bills of Southcentral households and businesses this coming year to compensate for an error it made from 2002 to 2007."

He called Enstar's request "outrageous."

"Why is Enstar asking all customers to pay for a mistake it made in overbilling one customer?" Wielechowski asked. "There is no claim that gas meters in people's homes and businesses were inaccurately recording how much gas was being consumed, so how can Enstar come back now and say consumers used more than their meters recorded back then?"

Rep. Pete Petersen, D-Anchorage, said that as a small businessman he knows how important it is for businesses to take responsibility for their actions.

"Enstar made a mistake, and I do not believe that their customers should have to pay for it," he said in a statement, adding that he will monitor RCA's decision and if the commission "rules that under current law Enstar is allowed to pass these charges on to consumers I will introduce legislation to prevent this from happening in the future."

"Thanks to Enstar, our local natural gas company, for reminding us why it needs to be regulated," Rep. Les Gara, D-Anchorage, said in an e-mail to constituents.

Gara said that if Enstar gets its way, it will mean some \$30 added to consumers' natural gas bills this year.

"They're billing you now, and retroactively seeking legal permission for it" from RCA, he said.

The RCA took public testimony Oct. 5 and heard arguments from Enstar and other parties Oct. 6-7.

What does the state say?

The state said RCA's regulations do not support Enstar's request to recover "through prospective rate increases" the cost associated with natural gas sales dating back to October 2004.

Enstar failed to properly calculate natural gas usage at the Fort Richardson laundry, the state said, "causing its gas transportation customers ... to supply ten times as much gas as was being consumed by" the Department of Defense.

"Enstar reportedly used the volumes associated with (Department of Defense) mistaken consumption to meet its own system needs, but did not discover what had occurred nor settle up with the affected parties until recently, years after the gas had presumably been consumed by other Enstar customers," the state said.

In a filing with RCA the state said Enstar recently settled claims from the Department of Defense related to a large portion of the overpaid amount "and requests that current and future customers pay an additional \$5.7 million in cost associated with gas sales to customers dating back to October 2004."

The state said it has no reason to dispute Enstar's assertion that the unit price of natural gas from Marathon and Aurora — gas oversupplied to Enstar by those producers and overbilled to the Department of Defense — was "lower than would otherwise have been available for purchase by Enstar during the relevant time period." The state also said the \$5.7 million does not include more than \$1.2 million worth of ConocoPhillips Alaska gas from Oct. 1, 2002, through Sept. 30, 2004, for which Enstar has yet to settle.

Gas cost adjustment not appropriate

The state said Enstar's proposal to recover costs through its gas cost adjustment is not appropriate because the gas cost adjustment in the utility's tariff provides for an annual submittal of changes in the cost of gas.

The gas cost adjustment also provides that cost elements in the adjustment must be "beyond the control of the utility," the state said.

"As discussed above, it is beyond dispute that Enstar was entirely accountable for the subject \$5.7 million in gas costs not being properly and timely flowed through the GCA mechanism, starting as early as July 2002. Accordingly, it is untenable for Enstar to now pass on such costs to its 2009 and 2010 customers, regardless of when the cost was incurred," the state said.

While there may be some merit to Enstar's argument on the timing of qualifying events for the gas cost adjustment, the state said, "Enstar's analysis leapfrogs a threshold problem: The Commission's regulations do not support Enstar's request to recover those costs where their submission was not 'beyond the control of the utility.' In short, Enstar's gas costs in this case do not fall within the definition of the GCA regulations and thus are ineligible for recovery by that mechanism."

The state said that if Enstar had misplaced an invoice for gas purchases made in 2004-07 "the cost presumably would be excluded from consideration" under a current gas cost adjustment filing based on the agency's regulations.

The state said that is essentially what Enstar is doing by including \$5.7 million in gas costs in its current gas cost adjustment and charging 2009-10 customers for gas consumed as much as five years ago.

“Such operation of the GCA mechanism is neither contemplated nor permitted under the current regulations,” the state said.

ConocoPhillips

Von Hutchins, in pre-filed testimony for ConocoPhillips Alaska, said the purpose of his testimony was to ensure that the factual record in the case, as it relates to ConocoPhillips, is correct, and that RCA “does not inadvertently characterize the facts in a way that jeopardizes” ConocoPhillips’ claims against Enstar in separate litigation.

After Enstar discovered its error, the Department of Defense demanded \$1,903,971.19 from ConocoPhillips for overcharges for gas supplied to the department from Oct. 1, 2002, to Sept. 30, 2004.

This is in addition to the \$5.7 million for overpayment of gas contracted through other producers.

Hutchins, director of gas supply and marketing for ConocoPhillips’ Cook Inlet gas assets, said that since Enstar caused the error, ConocoPhillips has demanded reimbursement of the \$1.9 million from Enstar, but Enstar has refused to reimburse ConocoPhillips.

He said Enstar does not deny that there was an error, but maintains that its tariff provides that it is only required to “adjust for billing errors up to 36 months from the date of any invoice,” and these invoices are older than 36 months.

Hutchins said this was not a billing error: “The bills themselves were accurate because the amounts billed correctly calculated the product of volumes consumed multiplied by a rate,” and thus ConocoPhillips “could not have known of the error because the bills, on their face, were mathematically correct.”

Enstar’s error, he said, “was in its internal recording of the amount of gas consumed.”

Error predated Conoco contract

That error began before ConocoPhillips began supplying gas to the Department of Defense, so “the error was already embedded in the baseline meter readings by the time CPAI started to provide gas” to the department in 2002, Hutchins said.

ConocoPhillips contracted with Defense to provide the natural gas and then separately contracted with Enstar to provide transportation and Hutchins said the transportation contract required Enstar to maintain and operate measuring facilities and to test the accuracy of measuring equipment monthly.

He said the meter in question was one of eight separately itemized in the

November 2002 bill to the Department of Defense and deliveries of gas at that time "overwhelmingly were directed to the power plant that was still in use."

Of volumes in November 2002 — had Defense been billed correctly — the total would have been 160,478 thousand cubic feet or mcf; of that total, 76 mcf or 0.05 percent was for the meter with the error, had that volume been shown correctly.

He said the ten-fold error from the one meter, meter 118, was such a small percentage of the total, 0.4 percent, as to be "a nearly imperceptible ... blip on the total bill for the example month highlighted."

The bills were too high when ConocoPhillips began supplying gas, he said, "and there was no sharp ten-fold increase in the bills" after the company took over that reflected Enstar's error.

Aurora wants gas

Scott Pfoff, president of Aurora Power Resources, said in filings with RCA that Aurora has sued Enstar in Superior Court over more than 800,000 mcf of Aurora's gas which Enstar received as a result of incorrect billings from the laundry meter.

He said that in compliance with its agreements with Enstar and with Enstar's tariff, Aurora has requested the return of the oversupplied gas and a credit for transportation charges for the oversupplied volumes.

"Enstar ignored Aurora Power's request for over six months and thereafter denied Aurora's requests," he said.

The gas transportation agreement governing Enstar's transportation of gas specifies filing of actions in Superior Court, Pfoff said.

Pfoff said Enstar's response to the filing was to move for dismissal of Aurora's complaint or for transfer of the litigation to RCA for a determination of the issues. While the Superior Court refused to dismiss the complaint, it did grant the jurisdictional motion in part, "effectively transferring the matter to the RCA for its review and comment."

Pfoff said the problem with the Enstar meter occurred before Aurora began its gas supply contract with the Department of Defense, so Aurora did not have a frame of reference to compare usage before the meter change with usage after, and it "had no reason to question, or to be alarmed by the volumes of gas that Enstar reported as being delivered to the (Department of Defense) laundry meter."

Resolution, Pfoff said, lies in return by Enstar of the oversupplied gas. He characterized this as a measurement error and said there have been numerous such errors over the years "similar to this one, albeit not as large." In those cases

Enstar has credited or debited the invoice to Aurora Power for the transportation billing portion of the error and debited or credited the gas imbalance account.

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On behalf of the Alaska Public Interest Research Group, I'd like to express my support for Senate Bill 205 to prevent for-profit utility companies from raising their customers' rates to make up for their negligent, reckless, or illegal behavior.

Utility rates are regulated, but utility companies are a monopoly for their consumers. This means that regulation is often needed to provide consumer protections for abuses that competition might provide in other kinds of markets.

If my local coffee shop were to raise the price of my daily cup because, through their own negligence, they spent a lot of money buying the wrong kinds of beans, I'd likely go to the shop down the street. The loss of my business is a big incentive for the company to avoid passing the costs of their mistakes on to me, and to avoid costly mistakes in the first place.

The utility market is a different animal, and consumers don't have the option to go down the street to get the natural gas or electricity to heat their homes. We need other incentives to make sure utility companies don't act recklessly or negligently, and don't try to pass the costs of those mistakes on to consumers. By not allowing rate increases for consumers due to negligent, reckless, or illegal behavior, SB 205 does just that.

But in addition to the necessary incentives that this regulation would provide, it's just good sense to not reward utility companies for their errors. It's good policy to make companies bear the costs of their mistakes in their profits, and not by further burdening Alaskan families by increasing the already high cost of heat and electricity.

We strongly urge your support.

Matt Wallace
Executive Director
Alaska Public Interest Research Group