

## HB 4/RCA Background

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Furnished by Alaska Department of Law

### 1. Purpose of 90 Day Review with 180 Day Suspension Period for the Initial Recourse Tariff

The initial recourse tariff will undoubtedly be the most complex pipeline tariff, and probably the most complex tariff of any kind, ever submitted to the RCA. It will implement a completely new concept (contract carriage), and contain rate designs, terms and conditions of service, and rules and regulations never before seen in a tariff (e.g., initial and expansion open season procedures). It will be both the blueprint and the benchmark for the operation of the pipeline for 20-30 years. In addition, unlike all other tariffs, it will not be subject to review or change by the RCA at any later point under AS 42.08.220(c)(2), unless the carrier elects to file a revision (perhaps in advance of an expansion open season). A bifurcated process (90 day notice period, followed by an optional investigation and suspension period) accomplishes the necessary review most efficiently by allowing the RCA to work with the in-state natural gas pipeline carrier during the notice period, and then presiding over an adversarial investigation process with parties presenting evidence and arguments if necessary. In other words, the RCA gets only one chance to get the recourse tariff right, and it needs at least minimally adequate time to do so.

### 2. General RCA Tariff Review Process and Differences and Similarities with HB 4

Currently, both initial pipeline and utility tariffs are subject to the bifurcated process (notice period possibly followed by investigation/suspension). The purpose of the notice period is to perform an initial “form and filing” review, take public comment and to decide whether there is a need to conduct an investigation of the filing. If there is no reason to investigate, the tariff takes effect on the date specified (i.e., at least 90 days or 45 days after the date of filing). The timeframe for pipelines is a 90 day notice period, initial suspension up to six months, additional suspension for one year (good cause standard), and a further indefinite suspension period (lack of evidence standard). For utilities, the notice period is 45 days, initial suspension up to six months and a further indefinite suspension period (good cause standard). Utility tariffs are subject to an overarching 450 day timeline (about 15 months). In both pipeline and utility tariffs, the RCA has the authority to, and routinely does, grant interim rates during the suspension period that are subject to refund. Under current law, the RCA is required to “fix” any defects in the tariff to bring it into compliance with the “just and reasonable, not unduly discriminatory or preferential” standard.

The primary differences between existing law and HB 4 are:

- HB 4 is front-loaded (initial recourse tariff approval, open season, and precedent agreement approval may, and are expected to, occur before certification, which must occur before construction). This contrasts with current law for utilities and common carrier pipelines: Initial utility tariffs are typically submitted and approved as part of the certification process, which may occur after construction is already underway. Pipeline carriers must have a certificate before construction, but the initial tariff is not usually approved until the pipeline is ready to commence operation.
- HB 4 provides no opportunity for the RCA to conduct an orderly bifurcated process that allows both the carrier and the public (in this context, principally potential shippers) the

opportunity for meaningful input, and to provide a full evidentiary record on which the RCA can base a rational decision. Instead, the RCA would have to do all the analysis with its own staff, and without the assistance of the real parties in interest that presumably more-readily recognize the critical issues and what evidence will be necessary to decide them.

- Under HB 4, the RCA is not permitted to “fix” problems, but only allowed to approve or deny.
- Under HB 4, there is no authority for an interim recourse tariff.

The primary difference between current HB 4 and our proposal is that our proposal restores the bifurcated process, and allows a minimal suspension period in which to hear evidence and arguments, and to complete the investigation. The approve or deny decision (i.e., no ability for the RCA to “fix” defects) and lack of RCA authority to order an interim tariff are not affected by our proposal.

### 3. Issues with Instituting a Non-Bifurcated Process

The significance of a single period for both notice and investigation is that it eliminates (practically, if not legally) the RCA’s ability to work with the carrier before deciding whether to investigate. Effectively, the RCA will have to start its investigation immediately, at which point ex parte rules will prevent RCA staff from working directly with the carrier to resolve questions and possibly have the carrier voluntarily fix problems that have been identified. There are unique advantages to both cooperative and adversarial processes, one of which would be lost.

### 4. Average Review Time for Tariffs

The RCA is compiling this information, and we will get it to you as quickly as possible.