

HOUSE BILL NO. 78

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES WILSON, Muñoz

Introduced: 1/23/15

Referred: House Special Committee on Energy, Labor and Commerce

A BILL

FOR AN ACT ENTITLED

1 **"An Act bearing the short title of the 'Alaska Competitive Energy Act of 2015'; and**
2 **relating to the Regulatory Commission of Alaska."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 SHORT TITLE. This Act may be known as the Alaska Competitive Energy Act of
7 2015.

8 * **Sec. 2.** AS 29.35.070(a) is amended to read:

9 (a) The assembly acting for the area outside all cities in the borough and the
10 council acting for the area in a city may regulate, fix, establish, and change the rates
11 and charges imposed for a utility service provided to the municipality or its inhabitants
12 by a utility that is not subject to regulation under AS 42.05 unless that utility is
13 exempted from regulation under AS 42.05.711(a), (d) - (k), [(o),] (p), or (r) [, OR IS
14 EXEMPTED UNDER REGULATIONS ADOPTED UNDER AS 42.05.810 FROM

1 COMPLYING WITH ALL OR PART OF AS 42.05.141 - 42.05.721].

2 * **Sec. 3.** AS 42.05.141(c) is amended to read:

3 (c) In the establishment of electric service rates under this chapter the
4 commission shall promote the conservation of resources used in the generation of
5 electric energy and the competitive and nondiscriminatory procurement of
6 electrical energy from and by public utilities, qualifying facilities, and
7 independent power producers.

8 * **Sec. 4.** AS 42.05.141 is amended by adding new subsections to read:

9 (e) The commission shall make regulatory decisions consistent with the state
10 energy policy declared in AS 44.99.115. In addition, the commission shall

11 (1) promote the competitive procurement and market-driven
12 development of renewable and alternative energy resources, including geothermal,
13 wind, solar, hydroelectric, hydrokinetic, tidal, and biomass energy, for use by residents
14 of the state and for export;

15 (2) promote the competitive procurement and market-driven
16 development, transport, and efficient use of energy resources, including fossil,
17 alternative, and renewable energy resources, for use by residents of the state and for
18 export;

19 (3) work to identify and assist with development of long-term, market-
20 driven sources of energy for each community statewide; and

21 (4) streamline, including reducing the time and cost of, permitting and
22 regulatory processes to promote private investment and encourage independent power
23 producers to develop, finance, own, operate, and manage qualifying facilities and
24 independent power producers.

25 (f) The commission shall require the owner of a transmission asset located in
26 the state to provide a qualifying facility, independent power producer, or public
27 facility fair, nondiscriminatory access to a transmission asset, including for joint use or
28 interconnection, in accordance with AS 42.05.311 and 42.05.321.

29 * **Sec. 5.** AS 42.05.151(a) is amended to read:

30 (a) The commission shall [MAY] adopt regulations, consistent [NOT
31 INCONSISTENT] with state [THE] law, including the provisions of

1 **AS 42.05.141(e) and the state energy policy declared in AS 44.99.115**, necessary or
 2 proper to exercise its powers and to perform its duties under this chapter.

3 * **Sec. 6.** AS 42.05.175(e) is amended to read:

4 (e) The commission shall issue a final order in a rule-making proceeding
 5 **(1)** not later than **365** [730] days after a complete petition for adoption,
 6 amendment, or repeal of a regulation under AS 44.62.180 - 44.62.290 is filed; or
 7 **(2)** [,] when the commission initiates a rule-making docket, not later
 8 than **365** [730] days after the order initiating the proceeding is issued.

9 * **Sec. 7.** AS 42.05.211 is amended to read:

10 **Sec. 42.05.211. Annual report.** The commission shall, by November 15 of
 11 each year, publish an annual report reviewing its activities during the previous fiscal
 12 year and notify the legislature that the report is available. The report must

13 **(1)** address the regulation of public utility service in the state as of
 14 June 30;

15 **(2)** [AND MUST] contain details about the commission's compliance
 16 with the requirements of AS 42.05.175(a) - (e), with the timeline extensions made by
 17 the commission under AS 42.05.175(f), and with other performance measures
 18 established by the commission; **and**

19 **(3)** **list the avoided cost of each public utility issued a certificate**
 20 **under AS 42.05.221, including reporting the costs of production, capital, debt,**
 21 **fuel, operation, and maintenance for each source of electrical generation.**

22 * **Sec. 8.** AS 42.05.221(d) is amended to read:

23 (d) In an area where the commission determines that two or more public
 24 utilities are competing to furnish **an** identical utility service **to end users** and that this
 25 competition **does not lower electrical costs for end users** [IS NOT IN THE PUBLIC
 26 INTEREST], the commission shall take appropriate action to **limit access to the retail**
 27 **market and** eliminate [THE COMPETITION AND] any undesirable duplication of
 28 facilities, **but the commission may not limit wholesale competition.** This
 29 appropriate action may include [, BUT IS NOT LIMITED TO,] ordering the
 30 competing utilities to enter into a contract that, among other things, would [:]

31 (1) delineate the service area boundaries of each in those areas of

1 competition;

2 (2) eliminate existing duplication and paralleling of infrastructure
3 serving end users to the fullest reasonable extent;

4 (3) preclude future duplication and paralleling of infrastructure
5 serving end users;

6 (4) provide for the exchange of customers and facilities for the
7 purpose [PURPOSES] of providing lower electrical costs for end users [BETTER
8 PUBLIC SERVICE AND OF ELIMINATING DUPLICATION AND
9 PARALLELING]; and

10 (5) provide [SUCH] other mutually equitable arrangements to lower
11 electrical costs for end users, including, when appropriate, a requirement that a
12 public utility purchase electric energy or energy capacity from a qualifying
13 facility or independent power producer at the avoided cost of the public utility or
14 at a mutually agreed upon rate [AS WOULD BE IN THE PUBLIC INTEREST].

15 * **Sec. 9.** AS 42.05.221 is amended by adding a new subsection to read:

16 (g) In this section, "end user" does not include a purchaser of electricity for
17 wholesale or industrial use or a bulk buyer of electricity.

18 * **Sec. 10.** AS 42.05.311(a) is amended to read:

19 (a) A public utility having sewers, conduits, utilidors, poles, pole lines, pipes,
20 pipelines, mains, or electric or other distribution or transmission facilities shall, for
21 [A] reasonable compensation, permit another public utility, a qualifying facility, or
22 an independent power producer to use them when the use is consistent with public
23 convenience and necessity [REQUIRE THIS USE] and the use will not result in a
24 demonstrated and substantial injury to the owner, or in a demonstrated and
25 substantial detriment to the service of [TO] the end users [CUSTOMERS OF THE
26 OWNERS]. The actual cost of modifications or additions necessary to accommodate
27 a joint use shall be at the expense of the public utility, qualifying facility, or
28 independent power producer requesting the use of the facilities. Except as provided
29 in (d) of this section, if a public utility and another party requesting use under
30 this section cannot agree on terms of use or reasonable compensation, the
31 commission may determine and require a public utility to comply with the terms

of service and compensation for the use for up to 90 days.

* **Sec. 11.** AS 42.05.311 is amended by adding new subsections to read:

(d) Upon receiving a request for joint use or interconnection from a public utility, qualifying facility, or independent power producer, a public utility having electric distribution or transmission facilities shall, within a reasonable time, permit the joint use or interconnection to be made if the joint use or interconnection

(1) is consistent with public convenience and necessity;

(2) is consistent with AS 42.05.141(e) and the state energy policy declared in AS 44.99.115;

(3) will not result in demonstrated and substantial injury to the owner or other users of the facilities of the entities making the connection;

(4) will not result in demonstrated and substantial detriment to the service provided by the entities making the connection; and

(5) will not create safety hazards.

(e) If a request for interconnection or joint use is made to a public utility for use of a facility located in the state that was financed in whole or in part with federal or state grants or loans and an interconnection or joint use study has not been performed in the five years immediately preceding the request, the public utility shall pay for the applicable study. If an interconnection or joint use study has been completed in the five years immediately preceding the request, the entity requesting interconnection or joint use may procure the applicable study at its own expense.

(f) When providing access to a transmission asset, a public utility may not

(1) discriminate between users of the transmission asset;

(2) employ an anticompetitive practice with a transmission asset; or

(3) use its management, ownership, or control of a transmission asset to increase the cost of or prevent use by a utility, qualifying facility, or independent power producer attempting to use a transmission asset.

(g) A public utility may assess reasonable integration charges or credits to another public utility, qualifying facility, or independent power producer connecting to its system.

(h) A benefit resulting from a connection described in this section shall be

1 credited toward the connecting entity.

2 (i) Upon request of the commission or the connecting entity, the owning
3 public utility shall

4 (1) disclose the basis for the interconnection or integration charges or
5 credits;

6 (2) bear the burden of demonstrating that the interconnection or
7 integration charges or credits comply with this section;

8 (3) demonstrate that the interconnection or integration charges and
9 credits are fair, reasonable, and nondiscriminatory and comply with this chapter.

10 (j) The commission may fine a public utility for failure to comply with this
11 section.

12 * **Sec. 12.** AS 42.05.321 is amended to read:

13 **Sec. 42.05.321. Failure to agree upon joint use or interconnection.** (a) In
14 case of failure to agree upon the joint use or interconnection of facilities or the
15 conditions or compensation for joint use or interconnections, a qualifying facility, an
16 independent power producer, a [THE] public utility, including any municipality, or
17 an interested person may apply to the commission for an order requiring the
18 interconnection. If, after investigation and opportunity for hearing, the commission
19 finds that the joint use or interconnection is consistent with public convenience and
20 necessity [REQUIRE THE JOINT USE OR CONNECTION], that the use or
21 connection is consistent with AS 42.05.141(e), 42.05.311, and the state energy
22 policy declared in AS 44.99.115, and that the use or connection will not result in
23 demonstrated and substantial injury to the owner utility having a transmission asset
24 or [ITS] customers of an owner utility, [OR] in demonstrated and substantial
25 detriment to the services furnished by the owner utility having a transmission asset,
26 or in the creation of safety hazards, the commission [IT] shall

27 (1) order that the use be permitted;

28 (2) prescribe reasonable conditions and compensation for the joint use;

29 (3) order the interconnection to be made;

30 (4) determine the time and manner of the interconnection;

31 (5) determine the apportionment of costs and responsibility for

operation and maintenance of the interconnection.

(b) **Notwithstanding an exemption from other regulation, this** [THIS] section and AS 42.05.311 apply to **a utility, qualifying facility, or independent power producer** [ALL UTILITIES WHETHER OR NOT THEY ARE EXEMPT FROM OTHER REGULATION UNDER AS 42.05.711].

* **Sec. 13.** AS 42.05.321 is amended by adding new subsections to read:

(c) The commission shall ensure that a fee charged under this section for joint use or interconnection by a public utility owning a transmission asset is reasonable and that system charges constitute reasonable integration charges and are determined in the same manner that the public utility owning the transmission asset charges or allocates those costs to itself. The commission may temporarily set a fee charged under this section to zero if a public utility does not provide sufficient information for the commission to determine whether a fee charged under this section is reasonable.

(d) Within 90 days after a request for an order requiring joint use or interconnection is filed with the commission under (a) of this section, the commission shall issue a temporary order requiring joint use or interconnection or a statement explaining why the order was denied and actions that may be taken to facilitate the approval of a subsequent request for joint use or interconnection.

(e) Within 365 days after a request for an order requiring joint use or interconnection is filed with the commission under (a) of this section, the commission shall issue a permanent order requiring joint use or interconnection or a detailed finding explaining why the order was denied.

* **Sec. 14.** AS 42.05.381(a) is amended to read:

(a) All rates demanded or received by a public utility, or by any two or more public utilities jointly, for a service furnished or to be furnished shall be just and reasonable; however, a rate may not include an allowance for costs of political contributions, **costs of** [OR] public relations, **or costs related to formal or informal adjudicatory proceedings or judicial actions against a qualifying facility or independent power producer** except for reasonable amounts spent for

(1) energy conservation efforts;

(2) public information designed to promote more efficient use of the

1 utility's facilities or services or to protect the physical plant of the utility;

2 (3) informing shareholders and members of a cooperative of meetings
3 of the utility and encouraging attendance; [OR]

4 (4) emergency situations to the extent and under the circumstances
5 authorized by the commission for good cause shown; or

6 (5) a mediator, independent expert, or similar impartial analyst
7 used in good faith negotiations with a qualifying facility or independent power
8 producer if the negotiations result in a mutually agreed upon resolution of the
9 formal or informal adjudicatory proceeding or judicial action, including a
10 settlement or a power purchase agreement.

11 * **Sec. 15.** AS 42.05.411 is amended by adding a new subsection to read:

12 (d) Upon the filing of a new or revised tariff, the commission shall review the
13 entire tariff for consistency with AS 42.05.141(e) and the state energy policy declared
14 in AS 44.99.115. If the new or revised tariff is not consistent with AS 42.05.141(e)
15 and the state energy policy, the commission shall direct the utility to revise the tariff to
16 be consistent with AS 42.05.141(e) and the state energy policy and submit the revised
17 tariff to the commission for approval under this section.

18 * **Sec. 16.** AS 42.05.431(c) is amended to read:

19 (c) Notwithstanding (b) of this section,
20 (1) a wholesale agreement for the sale of power from a project licensed
21 by the Federal Energy Regulatory Commission on or before January 1, 1987, and
22 related contracts for the wheeling, storage, regeneration, or wholesale repurchase of
23 power purchased under the agreement, entered into between the Alaska Energy
24 Authority and one or more other public utilities or among the utilities after October 31,
25 1987, and before January 1, 1988, and amendments to the wholesale agreement or
26 related contract, and the wholesale agreement or related contract assigned by the
27 Alaska Energy Authority to a joint action agency formed under AS 42.45.310 that
28 purchases the project from the Alaska Energy Authority, are not subject to review or
29 approval by the commission until all long-term debt incurred for the project is retired,
30 or, for a wholesale agreement or related contract assigned to a joint action agency
31 formed under AS 42.45.310, until all long-term debt incurred to pay the purchase price

to the Alaska Energy Authority is retired, except that an agreement under this paragraph or related contracts or amendments are not exempt from AS 42.05.311 or 42.05.321; [AND]

(2) a wholesale agreement or related contract described in (1) of this subsection may contain a covenant for the public utility to establish, charge, and collect rates sufficient to meet its obligations under the contract; the rate covenant is valid and enforceable;

(3) a wholesale agreement between a public utility and a qualifying facility or independent power producer for the sale of power at or below the avoided cost of the public utility is valid and enforceable; and

(4) a wholesale agreement for the purchase and sale of electricity is not subject to review or approval by the commission if, at the time the initial agreement is made, the entity providing the electricity is not a utility and the purchaser is located outside the certificated service area of a utility, regardless of whether the purchaser later becomes part of the certificated service area of a utility.

* Sec. 17. AS 42.05.431(e) is amended to read:

(e) Validated costs incurred by a utility in connection with the related contracts described in (c)(1) of this section must be allowed in the rates charged by the utility. In this subsection, "validated costs" are the actual costs that a utility uses, under the formula set out in related contracts described in (c) of this section, to establish rates, charges for services and rights, and the payment of charges for services and rights. This subsection does not grant the commission jurisdiction to alter or amend the formula set out in those related contracts, except that the commission may alter or amend the formula to ensure that the contracts are consistent with AS 42.05.141(e) and the state energy policy declared in AS 44.99.115.

* Sec. 18. AS 42.05.511(a) is amended to read:

(a) The commission may

(1) investigate the management of a public utility, including [BUT NOT LIMITED TO] staffing patterns, wage and salary scales and agreements, investment policies and practices, purchasing and payment arrangements with

1 affiliated interests, for the purpose of determining inefficient or unreasonable practices
2 that adversely affect the cost or quality of service of the public utility;

3 (2) review emergency backup, mid-term, and long-term fuel
4 supply plans of a public utility for reasonableness;

5 (3) investigate suspected discriminatory or anticompetitive
6 practices in the procurement of wholesale power from a qualifying facility or
7 independent power producer by a public utility.

8 * **Sec. 19.** AS 42.05.711(b) is amended to read:

9 (b) Except as otherwise provided in this subsection [AND IN (o) OF THIS
10 SECTION], public utilities owned and operated by a political subdivision of the state,
11 or electric operating entities established as an [THE] instrumentality of two or more
12 public utilities owned and operated by political subdivisions of the state, are exempt
13 from this chapter, other than AS 42.05.221 - 42.05.281 and 42.05.385. However,

14 (1) the governing body of the [A] political subdivision may elect to be
15 subject to this chapter; and

16 (2) a utility or electric operating entity that is owned or [AND]
17 operated by a political subdivision and that directly competes with another public
18 utility, joint action agency, qualifying facility, independent power producer,
19 transmission utility whose primary function is to control, operate, and maintain
20 transmission facilities of 69 kilovolts or more, or electric operating entity is subject
21 to this chapter [AND ANY OTHER UTILITY OR ELECTRIC OPERATING
22 ENTITY OWNED AND OPERATED BY THE POLITICAL SUBDIVISION IS
23 ALSO SUBJECT TO THIS CHAPTER; THIS PARAGRAPH DOES NOT APPLY
24 TO A UTILITY OR ELECTRIC OPERATING ENTITY OWNED AND
25 OPERATED BY A POLITICAL SUBDIVISION THAT COMPETES WITH A
26 TELECOMMUNICATIONS UTILITY].

27 * **Sec. 20.** AS 42.05.711(l) is amended to read:

28 (l) A person, utility, joint action agency established under AS 42.45.310, or
29 cooperative that is exempt from regulation under (a), (d) - (k), [(o),] or (r) of this
30 section is not subject to regulation by a municipality under AS 29.35.060 and
31 29.35.070.

1 * **Sec. 21.** AS 42.05.711(r) is amended to read:

2 (r) A plant or facility **owned or operated by an independent power**
 3 **producer** [THAT GENERATES ELECTRICITY ENTIRELY FROM RENEWABLE
 4 ENERGY RESOURCES] is exempt from regulation under this chapter if **the plant or**
 5 **facility sells more than 50 percent of the net electricity it generates to purchasers**
 6 **located outside the state or**

7 (1) the plant or facility

8 [(A)] is first placed into commercial operation on or after
 9 August 31, 2010, and before January 1, **2025** [2016];

10 **(2) the plant or facility** [AND (B)] does not generate more than **80**
 11 [65] megawatts of electricity; **and**

12 **(3) [(2)] the net** electricity generated by the plant or facility is sold
 13 only to one or more electric utilities that are regulated by the commission **or to one or**
 14 **more purchasers who are located outside a certificated service area of a utility**
 15 **and who are not the public, as that term is defined in AS 42.05.990** [; AND

16 (3) THE PERSON THAT CONSTRUCTS, OWNS, ACQUIRES, OR
 17 OPERATES THE PLANT OR FACILITY HAS NOT RECEIVED FROM THE
 18 STATE

19 (A) A GRANT THAT WAS USED TO GENERATE THE
 20 ELECTRICITY FROM THE RENEWABLE ENERGY RESOURCES; OR

21 (B) A TAX CREDIT RELATED TO THE GENERATION OF
 22 ELECTRICITY FROM THE RENEWABLE ENERGY RESOURCES].

23 * **Sec. 22.** AS 42.05.711 is amended by adding a new subsection to read:

24 (u) A qualifying facility is exempt from regulation under this chapter.

25 * **Sec. 23.** AS 42.05.990(6) is amended to read:

26 (6) "public utility" or "utility" includes every corporation whether
 27 public, cooperative, **joint action agency**, or otherwise, company, individual, or
 28 association of individuals, their lessees, trustees, or receivers appointed by a court, that
 29 owns, operates, manages, or controls any plant, pipeline, or system for

30 (A) furnishing, by generation, transmission, or distribution,
 31 electrical service to the public for compensation;

1 (B) furnishing telecommunications service to the public for
2 compensation;

3 (C) furnishing water, steam, or sewer service to the public for
4 compensation;

5 (D) furnishing by transmission or distribution of natural or
6 manufactured gas to the public for compensation;

7 (E) furnishing for distribution or by distribution petroleum or
8 petroleum products to the public for compensation when the consumer has no
9 alternative in the choice of supplier of a comparable product and service at an
10 equal or lesser price;

11 (F) furnishing collection and disposal service of garbage,
12 refuse, trash, or other waste material to the public for compensation;

13 (G) furnishing the service of natural gas storage to the public
14 for compensation;

15 (H) furnishing the service of liquefied natural gas storage to the
16 public for compensation;

17 * **Sec. 24.** AS 42.05.990 is amended by adding new paragraphs to read:

18 (14) "anticompetitive practice" means

19 (A) a practice that directly or indirectly manipulates the
20 purchase or sale of electric energy, access to an electric transmission facility,
21 the cost of electric energy, the price paid for wholesale electric energy, or the
22 charges or credits allocated to a qualifying facility or independent power
23 producer, including interconnection, integration, wheeling, and demand ratchet
24 charges or credits;

25 (B) an act, practice, or scheme by a utility to defraud; or

26 (C) making an untrue statement or omitting a material fact in a
27 communication published by a public utility for use by the commission, a
28 qualifying facility, an independent power producer, or the customers of the
29 utility;

30 (15) "avoided cost" means the incremental cost to an electric utility of
31 electric energy or electric capacity or both that, but for the purchase of that unit from a

1 qualifying facility or independent power producer, the utility would have to generate
2 itself or purchase from another source;

3 (16) "distribution lines" means low voltage transmission lines that
4 deliver power to retail customers;

5 (17) "independent power producer" means a corporation, person,
6 agency, authority, or other legal entity other than a qualifying facility that owns or
7 operates facilities for the generation of electricity for wholesale delivery to a public
8 utility or for use by customers outside the certificated service area of a utility;

9 (18) "joint action agency" means an entity established under
10 AS 42.45.300;

11 (19) "qualifying facility" means

12 (A) a small power production facility located in the state that
13 generates 80 megawatts of electricity or less and whose primary energy source

14 (i) is a renewable or alternative energy resource,
15 including geothermal, wind, solar, hydroelectric, hydrokinetic, tidal, or
16 biomass energy; or

17 (ii) originates in the state; or

18 (B) a cogeneration facility located in the state that sequentially
19 produces electricity and another form of useful thermal energy, including
20 steam or heat, in a manner that is more efficient than the separate production of
21 both forms of energy;

22 (20) "reasonable compensation" means the cost of maintenance plus a
23 return on the private equity of the owning public utility or joint action agency for the
24 portion of the sewer, conduit, utilidor, pole, pole line, pipe, pipeline, main, or other
25 distribution or transmission facility that is jointly used;

26 (21) "reasonable integration charges or credits" means the fair,
27 nondiscriminatory costs that are directly attributable to the system connection,
28 reasonably necessary to maintain safe and reliable operations of the utility system, in
29 excess of the corresponding costs that the public utility would have otherwise
30 incurred, not duplicative of costs already charged related to the system connection,
31 offset by credits for benefits attributable to the system connection, and determined in

1 the same manner as the utility allocates the charges to itself;

2 (22) "transmission asset" means an asset used to move bulk electricity
3 from where it is produced or generated to distribution lines.

4 * **Sec. 25.** AS 42.45.300 is amended to read:

5 **Sec. 42.45.300. Joint action agencies.** Two or more public utilities may form
6 a joint action agency for the purpose of participation in the design, construction,
7 operation, and maintenance of a generating or transmission facility and to secure
8 financing for carrying out the design, construction, operation, and maintenance of the
9 facility. A joint action agency may request the Alaska Industrial Development and
10 Export Authority to issue revenue bonds for projects of the agency. A joint action
11 agency may be regulated as [HAS THE POWERS OF] a public utility under
12 AS 42.05.

13 * **Sec. 26.** AS 42.05.711(o) is repealed.