Alaska State Legislature
House of Representatives
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Interim
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Session
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SECTIONAL ANALYSIS

Alaska Competitive Energy Act of 2015

Sec. 1 - Uncodified law: Short title of legislation; has no substantive effect.

Sec. 2 – AS 29.35.070(a): Removes the cross-reference to an exemption for joint action agencies under AS 42.05.711(o). The exemption in .711(o) has been eliminated in this bill to ensure joint action agencies are subject to RCA regulation along with other utilities (see Sec. 26 below). The cross-reference needs to be removed here since the exemption for joint action agencies will no longer exist.

Sec. 3 - AS 42.05.141(c) amendment: Adds language emphasizing the goals of the legislation and making it the duty of the Regulatory Commission of Alaska (RCA) to promote competition in electric energy generation and to implement the nondiscrimination requirement already present and consistent in US law and applied in other states relating to qualifying facilities.[1] Calls upon the RCA to apply these competitiveness and nondiscrimination principles with respect to all energy producers, including qualifying facilities, independent power producers, and public utilities.

Sec. 4 - AS 42.05.141 new subsections (e) and (f): Subsection (e) authorizes and requires the RCA to ensure that its regulatory decisions are consistent with State energy policy, including the promotion of competition and market-based mechanisms for renewable, alternative, and fossil energy development and the reduction of regulatory burdens as a means to encourage private investment in independent power production.

Subsection (f) requires the RCA to ensure that transmission assets within the State are open and accessible to qualifying facilities, independent power producers, and public utilities on a fair and nondiscriminatory basis. Helps ensure consistency of State law with US law requirements relating to transmission access for competition of Alaskan qualifying facilities.

Sec. 5 - AS 42.05.151(a) amendment: Strengthens the language so that the RCA has both the authority and the duty to adopt regulations in order to carry out its responsibilities under this chapter. Revises the wording slightly to become more straightforward and avoid a double negative. Adds language clarifying that RCA regulations shall be consistent with State energy policy.

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[1] *See generally* 16 U.S.C. 824a-3; 18 C.F.R. Part 292. *See also* RCA regulations implementing US requirements at 3 AAC 50.750(b), .760(c); .770(c), .780(c). *Cf.* AS 42.05.301 (requiring utilities to provide electric service on a non-discriminatory basis).

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Sec. 6 - AS 42.05.175(e) amendment: Streamlines rule making proceedings by shortening the statutory timeframe for the RCA to complete a rulemaking proceeding from two years to one year. A two-year delay in the completion of regulatory rule making decisions can undermine their effectiveness because of the detrimental impact long delays can have on the development and private financing of beneficial private sector projects. Amendment is consistent with State Energy Policy of streamlining government regulatory practices.

Sec. 7 - AS 42.05.211 amendment: Adds numbering (1) and (2) for the items required to be included in RCA annual reports to the legislature. In addition to existing content, requires the RCA to include in each annual report a list specifying the avoided cost for each certificated utility for each source of electrical generation. This annual reporting requirement provides transparency for market costs and provides the ability and encourages competitive independent power production to meet and beat established generation costs to reduce the cost of power for Alaskans.

Sec. 8 - AS 42.05.221(d) amendment: Adds language clarifying that this section governs consumer level utility service and does not authorize the RCA to limit wholesale energy competition. Removes vague and subjective references to public interest. Replaces such language with objective language requiring a showing that competition between public utilities will not lower consumer costs before the RCA is authorized to intervene and impose limits on such competition. When intervention is appropriate, clarifies that the RCA is authorized to (among other things) require a public utility purchase energy from a qualifying facility or independent power producer at the avoided cost rate or a mutually satisfactory negotiated rate. Helps improve compliance with US laws relating to qualifying facilities and competitive power to lower electrical costs for end users.

Sec. 9 - AS 42.05.221 new subsection (g): Differentiates end user from wholesale, industrial, or bulk buyer of electricity.

Sec. 10 - AS 42.05.311(a) amendment: Revises language to address applicability of this subsection to electric utilities, qualifying facilities and independent power producers. Expands RCA authority such that upon a disagreement between a public utility and another requesting party on terms and reasonable compensation that the RCA may require a public utility to comply to terms and reasonable compensation for temporary use.

Sec. 11- AS 42.05.311 new subsections (d) through (i): The following new subsections are important for helping eliminate barriers for qualifying facilities and independent power producers in obtaining access to transmission facilities, and they will help improve compliance with US law requirements relating to competition and qualifying facilities.

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Subsection (d) requires public utilities and other transmission service providers to proceed with interconnection in a timely manner. Provides that this obligation applies where the requested interconnection is consistent with public convenience and necessity and with State energy policy, will not cause injury to the owner or users of the transmission facilities or to transmission services, and will not create safety hazards.

Subsection (e) specifies who shall bear the cost of an interconnection study, and it aims to allocate such burden to a public utility when the transmission asset involved has been paid for with public monies. Where a request for interconnection is made to a public utility, the transmission assets were financed with public monies, and there has been no interconnection study in the past five years, the public utility is required to bear the cost. Where there has been study within the past five years, the party seeking interconnection may obtain such a study at its own expense.

Subsection (f) requires public utilities to provide open access to transmission assets on a fair and non-discriminatory basis and without using its control of such assets to discriminate or impede access by qualifying facilities and independent power producers.

Subsection (g) confirms the ability of utilities and other transmission service providers to impose interconnection and integration charges. At the same time, it requires such charges to be reasonable and not excessive.

Subsection (h) requires any system benefits resulting from an interconnection to be credited to the party seeking connection and used to offset any fees charged by the public utility or other transmission service provider.

Subsection (i) provides that, when requested by the RCA or a party seeking connection, the public utility or other transmission service provider must disclose the basis for its proposed interconnection and integration charges and must demonstrate that such charges are fair, reasonable, nondiscriminatory, and otherwise in compliance with this chapter.

Subsection (j) provides that the RCA may impose a fine against a public utility for failing to comply with this section.

Sec. 12 - AS 42.05.321 amendment to subsections (a) and (b): The following amendments impose duties on the RCA to take action to ensure qualifying facilities and independent power producers shall obtain access to transmission facilities. These provisions will help improve compliance with competitive requirements relating to qualifying facilities.

Subsection (a) amendment expands the list of entities which may seek an RCA order requiring interconnection to specifically include qualifying facilities, and independent power producers, although these were likely already encompassed by "interested person." Requires the RCA to issue an interconnection order where it finds that this would be consistent with [rather than required by] public convenience and necessity, consistent with State energy policy, and will not cause injury to the owner or users of the transmission facilities nor create safety hazards.

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Adds a new subsection (b) which provides that, notwithstanding an exemption from other regulation, this section and other interconnection provisions in AS 42.05.311 shall apply to all utilities, qualifying facilities, and independent power producers.

Sec. 13 - AS 42.05.321 new subsections (c) through (e): The following amendments require the RCA to ensure that fees charged by transmission asset owners for interconnection constitute "reasonable compensation" as defined in the new AS 42.05.990(20) described below. Also requires the RCA to ensure that system charges constitute "reasonable integration charges" as defined in the new AS 42.05.990(21) described below. Emphasizes the portion of the latter definition requiring a transmission asset owner to assess fees to connecting parties on the same basis as it allocates integration costs to its own facilities.

Subsection (c) requires the RCA shall ensure that a fee charged for interconnection is reasonable and that reasonable integration charges are determined in the same manner that transmission owning entity charges or allocates to itself. If the transmission asset owning entity fails to provide sufficient cost information, the RCA may temporarily assign a cost of zero.

Subsection (d) requires the RCA to issue a temporary interconnection within 90 days of receiving a request to do so, or provide a statement it cannot do so and specifying the actions that may be taken to facilitate approval of a joint use or interconnection.

Subsection (e) requires the RCA to issue a permanent interconnection order within one year after receiving a request to do so, or provide a detailed statement of findings demonstrating why it cannot do so.

Sec. 14 - AS 42.05.381(a) amendment: Existing provision limits the types of costs that public utilities can pass on to ratepayers. Amendment adds language providing that utilities generally cannot pass on to ratepayers the costs associated with actions against qualifying facilities or independent power producers, except for the cost of mediators and experts involved in negotiations leading to a mutually satisfactory resolution of such an action, thereby incentivizing mutual cooperation and resolution.

Sec. 15 - AS 42.05.411 new subsection (d): Authorizes and requires the RCA to review new or revised tariffs for consistency with State energy policy and, when found inconsistent, requires the RCA to direct the utility to revise the tariff to eliminate such inconsistency and submit the revised tariff for RCA approval.

Sec. 16 - AS 42.05.431(c) amendment: Amends paragraph 1 to add that any agreement under this paragraph is not exempt from the open access and anti-discriminatory sections provided in AS 32.05.311 or 42.05.321.

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Adds a new paragraph (3) establishing that a wholesale power agreement between a public utility and a qualifying facility or independent power producer is valid and enforceable where the cost of power is at or below the utility's avoided cost. Helps ensure compliance with competitive requirements relating to qualifying facilities.

Adds a new paragraph (4) exempting a wholesale power agreement from RCA review or approval where, at the time of the initial agreement, the power generator is not a utility and the power purchaser is not located within the boundary of any utility's certificated area. Such agreements are generally beyond the scope of RCA jurisdiction already. This provision clarifies that the RCA's lack of jurisdiction continues even if a utility later expands its certificated area in a manner that might otherwise nullify or intrude upon the wholesale power agreement originally entered into between non-regulated entities.

Sec. 17 - AS 42.05.431(e) amendment: Existing provision requires the RCA to allow utilities to pass on to ratepayers certain "validated costs" in connection with "related contracts" associated with pre-1987 Federal Energy Regulatory Commission-licensed projects and a pre-1988 Alaska Energy Authority project until after the long-term debt is retired. Amendment adds language making an exception allowing the RCA to alter or amend the formula for validated costs in these related contracts in order to ensure consistency with State energy policy.

Sec. 18 - AS 42.05.511(a) amendment: Adds paragraph numbering. Expands RCA oversight and investigatory authority by adding paragraph (2) authorizing the RCA to review public utility fuel supply plans for reasonableness, and by adding paragraph (3) authorizing the RCA to investigate suspected discriminatory or anticompetitive practices by public utilities in the procurement of wholesale power from qualifying facilities and independent power producers.

Sec. 19 - AS 42.05.711(b) amendment: Deletes cross-reference to exemption for joint action agencies in (o) that will be repealed under Sec. 26. Expands inclusion of any entity whose primary function is to control, operate, and maintain transmission facilities of 69 kilovolts or more (generally known as high voltage) so that they are subject to this chapter.

Sec. 20 – AS 42.05.711(*l*) amendment: Removes cross-reference to exemption from regulation for joint action agencies. Since that exemption will no longer exist (see Sec. 26), the cross-reference to it should be eliminated as well. **Sec. 21 - AS 42.05.711(r) amendment:** Modifies terms of an existing exemption from regulation under this chapter for certain types of power plants and facilities. Eliminates conditions relating to power being generated entirely from renewable resources and the plant or facility not having been funded with State grants or tax credits. Modifies remainder of existing exemption to apply to (1) a plant or facility placed into operation between 2010 and 2025 [rather than 2016] that is smaller than 80 megawatts [rather than 65 megawatts] and sells all of its power either to a regulated public utility [as in existing law] or to a

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purchaser outside any utility's certificated area that does not constitute the "public" as defined in AS 42.05.990. Also creates a new exemption in paragraph (2) for a plant or facility that sells more than half of its power to purchasers outside of Alaska.

Sec. 22 - AS 42.05.711 new subsection (u): Exempts from regulation under this chapter all qualifying facilities smaller than 80 megawatts. Helps ensure compliance with competitive federal requirements relating to qualifying facilities.

Sec. 23 - AS 42.05.990(6) amendment: Amends the definition of "public utility" or "utility" to include a "joint action agency."

Sec. 24 - AS 42.05.990 new paragraphs (14) through (22): Adds several new defined terms to this chapter.

Paragraph (14) defines "anticompetitive practice" using language based on commonly accepted legal standards for this term.

Paragraph (15) defines "avoided cost" using commonly accepted language derived from and designed to help ensure compliance with competitive requirements relating to qualifying facilities.

Paragraph (16) defines "distribution lines" by reference to their function in delivering power to retail customers.

Paragraph (17) defines "independent power producer" to include a broad array of types of entities and to include entities, other than qualifying facilities, which generate wholesale power for sale to public utilities or for use by customers outside the certificated area of a public utility.

Paragraph (18) defines "joint action agency" by cross-referencing AS 42.45.300 and the exemption in AS 42.05.711(o).

Paragraph (19) defines "qualifying facility" to include renewable, alternative, and cogeneration energy facilities located in the State of the type that would generally constitute "qualifying facilities" under commonly accepted principles and consistent with US law. Also includes facilities whose primary energy source originates in the state, even if this source does not constitute renewable or alternative energy, as a means to implement the "pro Alaskan energy" perspective taken in the State Energy Policy.

Paragraph (20) defines "reasonable compensation" to include a reasonable return on a transmission asset owner's private equity as well as maintenance costs.

Paragraph (21) defines "reasonable integration charges" to establish criteria for determining the appropriateness and lawfulness of such charges in order to help improve access for qualifying facilities and independent power producers and ensure compliance with competitive requirements relating to qualifying facilities. Definition provides that, in order to be considered reasonable, integration charges must be fair, reasonable, nondiscriminatory, directly attributable to the system connection, reasonably necessary for safety and reliability, in excess of other utility costs, not duplicative of other fees, offset by credits for system benefits attributable to the connection, and determined in the same manner as the utility allocates integration costs to its own facilities.

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Paragraph (22) defines "transmission asset" to distinguish these from distribution lines and to refer to facilities involved in the movement of bulk electricity from the generation source to distribution lines.

Sec. 25 - AS 42.45.300 amendment: Modifies language to provide that a joint action agency "may be regulated as" (rather than "has the powers of") a public utility. Helps clarify that the RCA has regulatory jurisdiction over joint action agencies to the same extent as other public utilities.

Sec. 26 – AS 42.05.711 (o) amendment: Repeals an exemption for joint action agencies from regulation under this chapter.

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