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VIA E-MAIL PDF FORMAT

The Honorable Liz Vazquez
Representative and Co-Chair of the House
Special Committee on Energy
State Capitol
Room 428
Juneau, AK 99801

Re: Questions posed by Members of the House Energy
Committee at the February 26, 2015 hearing on HB 78

Dear Co-Chair Vazquez:

At the hearing of the House Energy Committee on HB 78 held on February 26, 2015, several committee members, including yourself, asked questions of Carolyn Elefant, an attorney appearing on behalf of the Alaska Independent Power Producers Association. Unfortunately, before I had a chance to respond to the questions, the Committee ran out of time and adjourned the hearing. In an effort to efficiently respond to questions posed by the Committee Members (as best as I can recall them), I write with answers on behalf of Chugach Electric Association, Inc. ("Chugach") based on my almost 27 years of experience as an energy lawyer working with the Federal Public Utility Regulatory Policy Act of 1978 ("PURPA"). Because Chugach is a Railbelt utility, my answers focus on that region.

Through the Co-Chair, I offer the following answers on behalf of Chugach:

1. Co-Chair Colver asked: how Alaska is different from the other states when considering PURPA?

My answer: Alaska is different from most other states insofar as the Alaska Railbelt transmission system is owned largely by non-profit electric utilities. Most transmission systems in the United States are owned by for-profit investor owned utilities that must earn a profit to return to shareholders. Alaska's Railbelt transmission system, on the other hand, is primarily owned by four electric cooperative associations which are owned by their customers (Chugach, Golden Valley Electric Association, Inc., Homer Electric Association, Inc. and Matanuska Electric Association, Inc.) and two municipal utilities (Municipality of Anchorage d/b/a Municipal Light & Power and the City of Seward). In addition, the State of Alaska owns a portion of the system through the Alaska Energy Authority.

Notably, in other states where non-profit public power utilities dominate the state electric service areas, independent power producers own very little generation. For instance, Tennessee, due to the Tennessee Valley Authority, Nebraska, due to the fact that all of its utilities are public power districts, Missouri, Kentucky and South Carolina, due to the predominance of electric cooperatives, all have a lower percentage of electric generation capacity provided by independent power producers than Alaska. Enclosed as Attachment A is a chart that shows the comparable percentages. Those same states plus Utah, all have a lower percentage of energy produced from independent power producers. See Attachment A. In my experience, the reason for these low levels of generation and energy from independent power producers is largely due to the fact that non-profit utilities, including electric cooperatives and municipal utilities, have lower costs of capital and no need for returns for shareholders so that they mostly provide lower-cost generation than independent power producers.

Alaska is also different in that the Alaska Railbelt transmission system owners are part of a recently opened docket with the Regulatory Commission of Alaska ("Commission"), where the Commission requests each to answer questions around the Legislature's directive in Chapter 18 SLA 14 Section 31(b) to determine "whether creating an independent system operator or similar structure for electric utilities in the Railbelt area is the best option for effective and efficient electric transmission." Enclosed as Attachment B is the Commission's order dated February 27, 2015. In addition to the utilities that own the Railbelt transmission system, the Commission also asked the Attorney General, the Alaska Power Association, the Alaska Energy Authority, independent power producers, and other interested persons, to participate in the docket and answer the Commission's questions. I recall that Ms. Elefant mentioned that transmission systems in other states that have independent system operators provide opportunities to independent power producers to participate and compete on a non-discriminatory basis, a conclusion with which I agree.

2. Representative Claman asked: how PUPRA applies in Alaska?

My answer: Prior to 1982, the Alaska Legislature adopted statutes implementing PURPA, AS 42.025.361-42.05.441. Thereafter, in 1982, the Commission adopted regulations following the regulations issued by the Federal Energy Regulatory Commission ("FERC") implementing PURPA, 3 AAC 50.750-820. Most recently, in public hearings on February 11 and 25, 2015, the Commission considered in IPP Docket R-13-002, its staff's proposed new regulations that would bring Alaska up to date with the revised Federal regulations. Specifically, as set forth in the staff presentation of February 11, 2015, the proposed regulations (enclosed as Attachment C), among other things, would:

- require the same level of transparency and reporting obligations as FERC for about 20 Alaska utilities' "avoided cost;"
- address interconnection costs and integration fees in a reasonable, non-discriminatory way; and

- update the definition of avoided cost to include incremental cost as FERC does.

Notably as a backdrop for PURPA and FERC's regulations implementing PURPA, FERC and several Courts have found that states cannot adopt statutes, policies or regulations that would increase the costs to a utility's ratepayers (compared to the utility's costs without the PURPA project), including forcing a utility to buy capacity when not needed or energy at higher than the utility's avoided costs. Any such attempt would be preempted by PURPA.

3. Representative Claman asked: will HB 78 increase the potential for lawsuits.

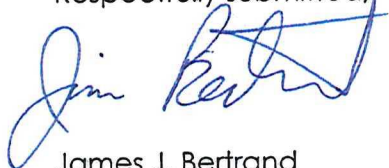
My answer: PURPA provides an opportunity to sue and in fact, FERC ruled on December 18, 2014 that the Alaska Power & Telephone Company d/b/a Ketchikan Electric Corporation in its capacity as agent for the Mahoney Lake Hydroelectric Company could "bring an enforcement action against the Southeast Alaska Power Agency in the appropriate court" in response to a Petition filed by Ms. Elefant at FERC in October 2014. Enclosed as Attachment D is FERC's order in that matter.

4. Co-chair Vazquez asked: how does HB 78 address transparency for avoided cost, interconnection fees and integration costs.

My answer: As noted above, the Commission is considering proposed regulations that increase transparency for avoided cost, interconnection fees and integration costs. If adopted, the proposed regulations would most likely eliminate the need for passage of HB 78. In addition, with the Commission's new docket for considering the Legislature's directive regarding an independent system operator for the Alaska Railbelt transmission system, it is possible that the benefits to competition that independent system operators have brought to many other states, as noted by Ms. Elefant, would be available in Alaska, also likely eliminating any need for passage of HB 78.

Thank you for the opportunity to present these answers and I stand ready to answer any other questions the Committee might have for me.

Respectfully submitted,



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Partner and
Co-chair of the Energy, Mining,
Transportation and Telecommunications Division

cc: Bradley Evans, CEO of Chugach Electric Association