

HB 120: Amending the Attorney General’s public advocacy function to include participation in matters before the Federal Regulatory Energy Commission (FERC)

Department of Law

In 2004 the legislature established a “public advocacy” function within the Department of Law (Department). AS 44.23.020(e). That 2004 statute charges the Attorney General with participating as a party in matters that *come before the Regulatory Commission of Alaska* (RCA) when such participation is in the public interest.¹ To pay for this work, the legislature amended AS 42.05.254 (for utilities) and AS 42.06.286 (for pipelines) to allow costs incurred by the Department to be paid from the Regulatory Cost Charge (RCC).² The RCC is a charge assessed by the RCA on utilities and pipelines to fund administrative regulation and may be passed on to ratepayers and shippers. The total amount of RCCs assessed cannot exceed 0.7 percent of the gross revenue of all regulated utilities and pipelines to fund the RCA and 0.17 percent to fund the Department’s public advocacy function.

Effect of this Bill.

This bill would amend AS 44.23.020(e) to add participation in FERC matters (work already done by the Department) to the Department’s public advocacy function; thereby allowing a portion of those costs to be covered by RCC funds. This amendment would not increase the total amount of RCC funding available to the Department. That amount is limited in statute and ultimately is set by the legislature. This amendment will, however, allow the Attorney General to include some costs associated with work before FERC when it certifies its costs to the RCA for review.

The Department of Law’s work before FERC primarily consists of advocating for just and reasonable tariff rates for shipping oil on the Trans Alaska Pipeline System

¹ The RCA is the quasi-judicial body that regulates public utilities and pipelines in the state.

² The public advocacy function was housed within the RCA when the RCA was established in 1999; the function was transferred to the Department of Law in 2003. Both as part of the RCA and as part of the Department, the public advocacy function has always been paid for through the RCC.

(TAPS). TAPS tariff litigation typically occurs in joint proceedings before both the RCA and FERC. But, the foundational work generally takes place before FERC first and is later applied in the RCA proceedings. Thus, participation in the FERC proceedings significantly reduces the workload in the RCA proceedings both for the public advocacy team and for the RCA itself. The state also benefits from the Attorney General's participation in FERC matters because TAPS tariff rates – both intrastate rates set by the RCA and interstate rates set by FERC – have a direct impact on producers developing resources in the state as well as royalty and production tax revenue.

Talking Points:

- The Attorney General is currently authorized to use RCC funds for TAPS intrastate tariff matters before the RCA. If not for the work before FERC, these matters would require extensive proceedings before the RCA. This amendment recognizes that much of that work done for the FERC proceedings benefits the RCA when the same issues are later considered in relation to the intrastate rates.
- By ensuring just and reasonable pipeline tariffs, the Attorney General's advocacy function benefits the state by protecting ratepayers currently shipping oil and gas and by lowering the economic barriers for future resource development by others. The legislature recognized these benefits when it created a RCC mechanism for pipelines in addition to a RCC for utilities.
- There is already general recognition that RCCs should fund the state's participation in regulatory matters before FERC. AS 42.06.140(a)(7) authorizes the RCA to participate in any FERC matters that affect the interests of the state – costs incurred directly by the RCA would be paid from RCCs. Further, AS 42.06.140(a)(10) requires the RCA to provide “all reasonable assistance to the Department of Law” in intervening and participating in FERC proceedings involving a pipeline carrier that affects the interests of the state.