

# LEGAL SERVICES

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### MEMORANDUM

March 4, 2021

**SUBJECT:** Do AS 42.05.765 and AS 42.05.785 apply to independent power producers (SB 69; Work Order No. 32-LS0432)

**TO:** Senator Josh Revak  
Attn: Dirk Craft

**FROM:** Noah Klein   
Legislative Counsel

You asked whether AS 42.05.765 and AS 42.05.785 would apply to an independent power producer that meets the definition of a public utility if the legislature enacts SB 69. After the effective date of AS 42.05.765 and 42.05.785,<sup>1</sup> those sections respectively apply to (1) "[a]ll users, owners, and operators of an interconnected electric energy transmission network served by an electric reliability organization, including a user, owner, or operator that is exempt from other regulation under AS 42.05.711" and (2) "[a] public utility, including a public utility that is exempt from other regulation under AS 42.05.711 or another provision of this chapter, that is interconnected with an interconnected electric energy transmission network served by an electric reliability organization certificated by the commission." Because these sections expressly apply regardless of any other exemptions in AS 42.05.711, if an independent power producer is "a user, owner, or operator" described in AS 42.05.765 and a "public utility" described in AS 42.05.785 then, notwithstanding the exemption currently in AS 42.05.711(r) and extended by SB 69, the requirements in those sections will apply to the independent power producer. You may wish to consult with the RCA, the entity responsible for implementing and interpreting AS 42.05, to determine whether a specific independent power producer is subject to AS 42.05.765 or AS 42.05.785.

Please call with any questions or concerns.

NIK:lme  
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<sup>1</sup> July 1, 2021, ch. 29 SLA 2020 secs. 21, 24–25.