

RCA Response to SRES questions, provided by email from [paige.brown@akleg.gov](mailto:paige.brown@akleg.gov) on Friday, April 24, 2026, at 9:55 AM.

**1. How the RCA currently accesses and reviews confidential or proprietary information when evaluating utility contracts?**

Answer: Information filed with the Commission is considered public unless a utility requests information it files be held confidential. Commission regulations codified at 3 AAC 48.040-.049 guide this practice. In general, if a utility wishes to keep information filed confidential, the materials would be filed under seal together with a petition asking the materials filed under seal be held confidential. After evaluating the petition, and any opposition, the commission would determine if the utility has shown “good cause” justified keeping the information submitted confidential. Good cause includes a showing that (1) disclosure of the record might cause the petitioner to be competitively or financially disadvantaged or harmed or have a trade secret revealed and (2) the need for confidentiality outweighs the public interest in disclosure. This standard requires the Commission to balance the interests of the party seeking confidential treatment against the public interest in disclosure.

**2. Are there any limitations on the RCA’s ability to obtain or rely on [confidential] information, particularly from third parties. For example, if project developers maintain key information under confidentiality agreements, would statutory authority ensure RCA access?**

Answer: The Commission has subpoena power. See AS 42.05.151(c). Use of this authority to compel production of third-party records must be within the Commission’s jurisdiction and exercise of this authority can be constrained by the courts. In general, it is parties in Commission proceedings that develop a Commission record for decision. It would normally be a party who would make an application to the Commission for a subpoena to access third party records to develop a party’s affirmative case. For entities that are parties before the Commission, responses to discovery requests can be compelled by Commission order if needed. Once information, confidential or otherwise, is submitted to the Commission, it can be relied on for a decision. See AS 42.05.191.

**3. How the RCA’s confidentiality practices may interact with proposed statutory changes.**

Answer: We will need more time to review this question and will follow-up with a response to the committee as soon as we are able.

**4. How the RCA uses confidential data to assess pricing, cost structures, and risk to ratepayers?**

Answer: Confidential evidence would be used in the same manner as non-confidential evidence in evaluating any utility request to include costs in consumer rates.

Pricing, in the context of a gas supply agreement is reviewed by the Commission under the standards imposed by AS 42.05.141(d). This statute provides an evaluation factor involving ratepayer risk. See subsection (d)(2).

All costs incurred by a utility that it seeks to include in rates must also be “prudently” incurred. While utility expenditures carry a presumption of prudence, this evidentiary presumption may be overcome when presented evidence creates “serious doubt” as to the prudence of an expenditure. Once serious doubt is established, the burden shifts to the utility to dispel those doubts and demonstrate a prudent utility manager would have made the questioned expenditure based on what was known or should have been known at the time the decision was made. Imprudently incurred costs are not recoverable through rates.

There are numerous other ratemaking standards that apply to Commission review of costs that a utility seeks to include in rates. Without specific facts, we cannot answer if a specific cost or “cost structure” would or would not be allowed in rates.

**5. What is the RCA’s role in evaluating and enforcing contract provisions intended to protect consumers, including price caps or limits on cost overruns?**

Answer: The Commission has broad authority under AS 42.05.141 to enforce utility and public interest requirements within its specific jurisdiction. Enforcing potential statutory requirements imposing price caps or limits on cost overruns would be subject to prudence standards, other Commission ratemaking requirements, and constitutional requirements mandating the Commission set rates at a level that is not confiscatory. See *Golden Heart Utilities v. RCA*, 2024 WL 3964916 at \*10 (Alaska 2024) (“Public utilities bear a heavy burden to prove that a rate is confiscatory, and GHU/CUC have not carried that burden here. When analyzing whether a rate amounts to an unconstitutional taking, we assess the “impact of the rate order,” not the ratemaking methodology or other “economic niceties” involved in the ratemaking proceeding. Accordingly, we have declined to find that a rate is confiscatory in the absence of a showing that the rate “threatens [the utility’s] financial integrity.”) See also *Bluefield Waterworks & Improvement Co. v. Pub. Serv. Comm’n*, 262 U.S. 679, 690 (1923).

**6. FERC previously authorized an LNG export facility that included the pipeline. Under a phased development approach, the pipeline (Phase 1) could be constructed and operated for a period of time before the LNG facility (Phase 2) is completed. If the pipeline operates independently as an**

## **intrastate pipeline, does FERC's jurisdiction over the export facility continue to apply?**

Answer: It is unclear if FERC jurisdiction would or would not apply to the fact scenario stated, and we cannot opine on a matter we have not adjudicated or that is unclear from our knowledge of existing jurisdictional determinations. FERC has stated it has jurisdiction over the Alaska LNG project as that project was presented to it. See 171 FERC 61,134 (FERC 2020). But in our brief review of the FERC Order, it did not address the fact scenario presented, and only referred to potential intrastate offtakes in two places: paragraph 241 and footnote 5. Other case law addresses different aspects of FERC's Section 3 jurisdiction and might guide future determinations made on this issue. For example, in *Sierra Club v. FERC*, 145 F.4<sup>th</sup> 74 (D.C. Cir 2025), the Court stated:

“FERC has jurisdiction when natural gas crosses the nation's border (its § 3 jurisdiction) and when it crosses state lines (its § 7 jurisdiction). Meanwhile, state regulators have the power to regulate intrastate natural-gas infrastructure. See [Associated Gas Distributors v. FERC, 899 F.2d 1250, 1255 \(D.C. Cir. 1990\)](#) (“FERC lacks jurisdiction over the transportation of gas in intrastate commerce; the states regulate such transportation.”); see also [15 U.S.C. § 3301\(16\)](#) (definition of “intrastate pipeline”). So, as a general matter, FERC handles interstate and international pipelines, and state regulators handle intrastate pipelines.

But sometimes there's overlap: Some intrastate pipelines carry interstate gas, and other intrastate pipelines connect with international pipelines or terminate at liquified-natural-gas terminals for natural-gas exports abroad. In those situations, special rules apply.

*First*, under § 311 of the Natural Gas Policy Act, FERC “may ... authorize any *intrastate* pipeline to transport natural gas on behalf of ... any *interstate* pipeline” without thereby bringing the intrastate pipeline within FERC's § 7 jurisdiction. [15 U.S.C. § 3371\(a\)\(2\)](#) (emphases added); *id.* § 3431(a)(2)(A).

*Second*, an intrastate pipeline that transports natural gas to a domestic liquified-natural-gas terminal for export abroad — even a lengthy pipeline entirely within a single state — is subject to FERC's exclusive jurisdiction. See *id.* § 717a(11) (definition of liquified-natural-gas terminal includes “all natural gas facilities located onshore ... that are used to ... transport ... natural gas that is ... exported to a foreign country”); *id.* [§ 717b\(e\)](#) (“exclusive authority” over liquified-natural-gas terminals).

And *third*, when an otherwise intrastate pipeline runs to the border and connects with an international pipeline, FERC has § 3 jurisdiction over that pipeline, but FERC may cede its authority over the intrastate portion of the pipeline to the state regulator. See [\*Distrigas Corp. v. Federal Power Commission\*, 495 F.2d 1057, 1064 \(D.C. Cir. 1974\)](#). In practice, FERC has almost invariably done so — generally ceding jurisdiction over all but 1,000 feet or so of border-crossing pipeline to state regulators.”