

LEGAL SERVICES

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MEMORANDUM

February 16, 2010

SUBJECT: Independent power producer (Work Order No. 26-LS1353\E)

TO: Senator Lesil McGuire
Attn: Mike Pawlowski

FROM: Brian J. Kane *BJK*
Legislative Counsel

As a follow-up to the memorandum I sent to your office on February 12, 2010, you have asked: If an independent power producer sells to less than 10 customers, would it be a utility and therefore subject to regulation under AS 42.05?

Assuming that the definition of "public" or "general public" in AS 42.05.990(3) is being read as (A) or (B) or (C), then the answer to your question is that it is possible the independent power producer described could be subject to regulation. AS 42.05.990(3) has an option for the definition of "public" that reads:

(B) one or more customers that purchase electrical service for use within an area that is certificated to and presently or formerly served by an electric utility if the total annual compensation that the electrical utility receives for sales of electricity exceeds \$50,000;

If an independent power producer has one or more customers but fewer than 10 *and* meets the other requirements of the definition in (B) -- namely receiving sales of electricity that exceed \$50,000 -- then the independent power producer would be regulated under AS 42.05 since it sells to the "public." However, if the producer sells to fewer than 10 customers and does not exceed the \$50,000 sales mark, then that producer is not subject to regulation under AS 42.05, as the producer would not be selling to the public, which is a requirement of AS 42.05.990(4)(A) to be a public utility.

BJK:ljw
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