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March 8, 2010

Senator Lesil McGuire
Alaska State Legislature
120 4th Street, State Capitol, Room 125
Juneau, AK 99801-1182

Re:: Senate Bill 277

Dear Senator McGuire:

The Alaska Power Association (APA) and its members have not yet had the opportunity to fully explore all of the potential impacts of the March 2, 2010, committee substitute for Senate Bill 277. However, based on its preliminary review, APA is concerned about the potential ramifications of this bill. At this point, APA cannot support SB 277 because of those concerns, but welcomes any opportunity to discuss those concerns with you or your staff. APA's concerns are summarized below:

General Concerns Regarding Statutory Exemption:

1. The exemption from RCA certification and regulation provided for in the bill may be unnecessary for the following reasons: First, under federal law, most renewable energy resource electric generation facilities that propose to sell power only to another electric utility can already become exempt from state regulation by becoming a "qualifying facility" ("QF"). See 18 C.F.R. § 292.602(c); 18 C.F.R. § 292.601(a), (b). Such facilities include all QFs that are a cogeneration facility, a geothermal or biomass small power production facility, or any other small power production facility (including hydroelectric, solar, and wind-power facilities) having a capacity of 30 megawatts (MW) or less. In general, all of the types of renewable energy resources facilities referenced in the bill would be eligible to become a QF. Such a facility can become a QF through a simple self-certification with FERC.

Second, regardless of whether a renewable energy resource facility is exempt as a QF, the facility can also become exempt from RCA certification and regulation through a petition to the Regulatory Commission of Alaska (RCA) that demonstrates that the exemption is “in the public interest.” *See* AS 42.05.711(d). In 2009, two small hydroelectric facilities obtained public interest exemptions from the RCA based on the facility’s generation source and small size, the fact that the facility would sell power only to an electric utility, and the cost and burden of certification and regulation. *See* RCA Order Nos. U-08-102(2) and U-08-132(2) (attached).

2. The proposed statutory exemption would impair the RCA’s ability to ensure that the facility’s rates, terms, and conditions of service are just, reasonable, and non-discriminatory, particularly when the facility sells power to multiple electric utilities. Although the RCA would have to approve the purchasing utility’s entering into a power purchase agreement with the facility, that so-called “indirect regulation” of the exempt facility would not give the RCA full access to the facility’s cost and financial information.

3. The proposed statutory exemption would divest the RCA of jurisdiction to adjudicate complaints by the purchasing electric utility against the facility for failing to provide adequate, non-discriminatory service. In addition, if the facility were regulated and a dispute arose regarding a rate issue or service issue that the facility and the purchasing electric utility did not clearly contemplate in their long-term power purchase agreement, the RCA would have jurisdiction to resolve that dispute. Without RCA jurisdiction, the purchasing electric utility would be limited to filing a lawsuit in court to address those types of issues, which involves significantly more cost and delay (and less adjudicator expertise over the subject matter) than a complaint filed with the RCA.

4. RCA certification of a renewable resources facility imposes an “obligation to serve,” which ensures that the facility cannot unreasonably refuse to provide service to a particular customer. The broad exemption proposed under the bill would preclude the RCA from enforcing such an obligation, thus allowing the facility to discriminate among potential power purchasers.

5. If a renewable resources facility is certificated and regulated by the RCA and the facility seeks bankruptcy protection, the RCA generally would have standing in the bankruptcy proceeding to help ensure that the public interest is protected. That measure of protection would not exist if the facility is categorically exempt from RCA jurisdiction by statute. That issue can be significant because a renewable energy resources facility may be (and likely will be) owned by a subsidiary corporation or subsidiary limited liability company in such a way that the

effective, ultimate “owner” of the facility is shielded from all liability for the debts and obligations of the facility. That is one of the reasons that the RCA carefully considers whether the legal owner of a proposed public utility is, in fact, “fit, willing, and able” to provide public utility service when the RCA decides whether to certificate the utility, or when the RCA decides whether to grant a public interest exemption from regulation. Under the broad exemption provided for in the bill, the RCA would lack jurisdiction to review such matters, particularly after the purchasing electric utility obtains RCA approval of the power purchase agreement.

6. The proposed statutory exemption would preclude affected electric utilities from having input regarding whether the exemption of a particular facility is justified. The existing RCA public interest exemption process allows utility input and public input and allows the RCA to determine on a case-by-case basis whether the facts and circumstances justify exemption for a particular facility. Related to that, until a power purchase agreement and the associated rates, terms, and conditions of service are negotiated regarding a particular facility, the utilities that are intended to purchase power from the facility may not have enough information to know whether an exemption from RCA certification and regulation is justified. The broad statutory exemption provided for in the bill would preclude affected electric utilities from making that determination when the facts and circumstances associated with a particular facility are known.

7. There has not been adequate time for APA and its members to fully explore all of the unintended consequences of the type of broad, absolute exemption provided for in the bill.

More Specific Concerns Regarding SB 277:

1. The bill’s 65 MW size restriction appears to be too high. The potential justification for exemption from RCA certification and regulation is very different if the exemption applies to a small 500 kilowatt (kW) renewable resources facility as opposed to a large 65 MW facility.

2. The bill would exempt a facility that sells its output to *any type* of regulated public utility, not just to a regulated *electric* public utility. That would allow the exempt facility to compete against the local electric utility for firm electric sales to non-electric utilities that are within the local electric utility’s certificated service area.

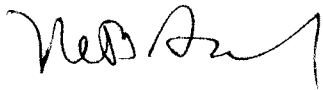
3. The bill would exempt a facility that sells its output to *multiple* regulated electric utilities. Sales to multiple electric utilities raise concerns about preventing the facility from discriminating among customers with respect to rates, terms, or conditions of service.

4. The bill would exempt a facility even if it is closely affiliated with a regulated electric utility to which it sells power. That raises additional concerns about the potential for discriminatory preferences among the electric utilities that purchase power from the facility.

5. The bill would exempt cogeneration facilities because "renewable energy resources" under AS 42.45.045(1) include "wasteheat recovery." Electric utilities have had contentious experiences with developers attempting to force the utility into uneconomic power purchases from proposed cogeneration plants.

Again, APA and its members have had only a limited amount of time to attempt to review the potential ramifications and unintended consequences of SB 277. APA and its members will continue their review of the bill and may have other concerns as they review it in greater detail. In the meantime, APA stands ready to discuss its concerns with you or your staff whenever is convenient for you. We suggest you initiate a meeting with all interested parties as soon as possible so that we can have a discussion of all the issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marilyn Leland', with a stylized flourish at the end.

Marilyn Leland
Executive Director