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MEMORANDUM

March 18, 2010

SUBJECT: Greater Railbelt Energy and Transmission Corporation; drafting issues (CSHB 182(), Work Order No. 26-GH1041\E)

TO: Representative Charisse Millett
Co-Chair of the House Special Committee on Energy
Attn: Jeff Turner

FROM: Dennis C. Bailey
Legislative Counsel

This memorandum accompanies the draft CS requested. Please review the new draft carefully to ensure that the editing has not changed your intent. Please note the following issues that arose during drafting.

Give attention to the effective dates particularly in sec. 11 of the bill. The sections cited are not subject to a contingency, only a delayed effective date so we've eliminated contingency language. We have also consolidated all of the effective dates in secs. 10 - 12. In general, the effective dates need to be clarified. Using repeal language may be an additional option to consider.

AS 42.05.431(h)(1) and (2), bill section 3, use "cost" instead of "funding" for consistency with the leading paragraph.

AS 42.05.711(q), added by sec. 5, states that a corporation organized under AS 42.50 is exempt from regulation under AS 42.05. This does not seem consistent with AS 42.05.431(i), added by sec. 3 or AS 42.50.100(b)(2). AS 44.83.396, referred to in sec. 42.50.010, requires that projects acquired or constructed as part of the former energy program for Alaska are owned and administered by the Alaska Energy Authority. Should this section be cross referenced, or an exception placed in AS 44.83.396?

Sec. 42.50.010(c) states that the corporation shall operate on a not for profit basis, but sec. 42.50.010(d) disclaims the application of AS 10.20 (Alaska Nonprofit Corporations Act). Do you also intend to disclaim application of AS 10.06? If not, it may apply. In a similar vein, I expect that you are aware that "members" is not normally a term used in the context of a corporation.

In sec. 42.50.050(b), can the directors decline to approve a public utility member for any reason?

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In sec. 42.50.050(c), is a vote required to allow an affiliated utility to become a member of the corporation?

Sec. 42.50.050(f) is confusing. Does it mean that a public utility member may withdraw but still be a member?

Under sec. 42.50.060(d), the members can authorize a change to the location of the principal office. Is this the only place where the membership acts in the place of the board? I suggest removing the reference to the member action in this subsection.

In sec. 42.50.070(b), the last sentence refers to other laws that apply. Does this mean other laws that apply to corporate bylaws? If other laws apply it is preferable to identify them by reference.

Sec. 42.50.180(b)(4)(B) seems to duplicate sec. 42.50.180(5). Can one or the other be removed?

Sec. 42.50.180(b)(7) is redundant and should be deleted.

In sec. 42.50.190, should the tax apply to electricity sold at retail by members, as well as the corporation?

Sec. 42.50.200 requires the board to publish its report, including audited financial statements on the Internet. Sec. 42.50.220 requires that the audit report be submitted to the legislature and governor within 30 days after receipt of the report by the corporation. While the provisions may not technically conflict, is a cross reference or clarification advisable?

Sec. 42.50.240(3) presents an ambiguity. Paragraph (3) states a mandatory requirement for dispute resolution, but permissively allows the bylaws to allow or not allow binding arbitration. Also, under sec. 42.50.240(4), if binding arbitration is required, litigation may be prohibited. I am not sure how to resolve these issues without further direction.

AS 42.50 may be subject to challenge as special legislation in violation of art. II, sec. 19 of the state constitution. Whether a measure amounts to local or special legislation, barred by the constitution is to be evaluated according to the test applied to nonsuspect classifications in equal protection cases. *State v. Lewis*, 559 P.2d 630, 643 (Alaska 1977) (upholding a three-way exchange of land, and the minerals it contained, among the State of Alaska, the United States, and a regional Native corporation); *Boucher v. Engstrom*, 528 P.2d 456, 463 (Alaska 1974) ("The classification must bear a reasonable and proper relationship to the purposes of the act and the problem sought to be remedied."). Thus, the court has said, when the legislature has singled out an area or group, it will examine the legislative goals and the means used to advance them [to] determine whether the legislation bears a "fair and substantial relationship" to legitimate purposes. If this

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standard is satisfied, the bill will not be invalid because of incidental local or private advantages. Legislation need not operate evenly in all parts of the state to avoid being classified as local or special. *Lewis*, 559 P.2d at 643 (footnotes omitted).

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Enclosure