

26-GH1041\S
Chenoweth/Bailey
3/24/10

CS FOR HOUSE BILL NO. 182()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act authorizing the organization of the Greater Railbelt Energy and Transmission**
2 **Corporation; relating to energy and transmission corporations, to exemption of energy**
3 **and transmission corporations from regulation by the Regulatory Commission of Alaska**
4 **and municipalities, and to the Alaska Energy Authority's contracting with energy and**
5 **transmission corporations to operate a power project; and providing for an effective**
6 **date."**

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 *** Section 1.** AS 29.35.070(a) is amended to read:

9 (a) The assembly acting for the area outside all cities in the borough and the
10 council acting for the area in a city may regulate, fix, establish, and change the rates
11 and charges imposed for a utility service provided to the municipality or its inhabitants
12 by a utility that is not subject to regulation under AS 42.05 unless that utility is
13 exempted from regulation under AS 42.05.711(a), (d) - (k), (o), [OR] (p), or (q), or is

1 exempted under regulations adopted under AS 42.05.810 from complying with all or
2 part of AS 42.05.141 - 42.05.721.

3 * **Sec. 2.** AS 42.05.431(c) is amended to read:

4 (c) Notwithstanding (b) of this section,

5 (1) a wholesale agreement for the sale of power from a project licensed
6 by the Federal Energy Regulatory Commission on or before January 1, 1987, and
7 related contracts for the wheeling, storage, regeneration, or wholesale repurchase of
8 power purchased under the agreement, entered into between the Alaska Energy
9 Authority and one or more other public utilities or among the utilities after October 31,
10 1987, and before January 1, 1988, and amendments to the wholesale agreement or
11 related contract, [AND] the wholesale agreement or related contract assigned by the
12 Alaska Energy Authority to a joint action agency formed under AS 42.45.310 that
13 purchases the project from the Alaska Energy Authority, **and a wholesale agreement**
14 **for the sale of power from a project owned or operated by a corporation**
15 **organized under AS 42.50, and related contracts for the wheeling, storage,**
16 **regeneration, or wholesale repurchase of power purchased under the agreement,**
17 **entered into between the corporation and one or more public utilities,** are not
18 subject to review or approval by the commission until all long-term debt incurred for
19 the project is retired, or, for a wholesale agreement or related contract assigned to a
20 joint action agency formed under AS 42.45.310, until all long-term debt incurred to
21 pay the purchase price to the Alaska Energy Authority is retired; and

22 (2) a wholesale agreement or related contract described in (1) of this
23 subsection may contain a covenant for the public utility to establish, charge, and
24 collect rates sufficient to meet its obligations under the contract; the rate covenant is
25 valid and enforceable.

26 * **Sec. 3.** AS 42.05.431 is amended by adding a new subsection to read:

27 (i) When setting or reviewing rates for an energy and transmission corporation
28 organized under AS 42.50.010, the commission may not disallow from a rate base or
29 revenue requirement amounts necessary for the corporation to fund a cost reasonably
30 anticipated to become a just and reasonable cost of producing and transmitting electric
31 power, energy, or other services, including costs

(1) for the repair, replacement, and retirement of a project owned or operated by the corporation; and

(2) incurred to permit the corporation to build reasonably necessary equity for future operations.

* **Sec. 4.** AS 42.05.711(l) is amended to read:

(l) A person, utility, joint action agency established under AS 42.45.310, or cooperative that is exempt from regulation under (a), (d) - (k), [OR] (o) or (q), of this section is not subject to regulation by a municipality under AS 29.35.060 and 29.35.070.

* **Sec. 5.** AS 42.05.711 is amended by adding a new subsection to read:

(q) A corporation organized under AS 42.50 is exempt from regulation under this chapter, including the requirement to obtain a certificate of public convenience and necessity under AS 42.05.221.

* **Sec. 6.** AS 42 is amended by adding a new chapter to read:

Chapter 50. Energy and Transmission Corporations.

Sec. 42.50.010. Energy and transmission corporations. (a) Four or more municipal or cooperative public utilities with electrically interconnected service territories may, if first authorized by law, organize an energy and transmission corporation

(1) to acquire, operate, or maintain power and transmission projects acquired or constructed as part of the former energy program for the state and owned by the Alaska Energy Authority under AS 44.83.396; and

(2) to plan for, recommend, coordinate, and otherwise address power generation and transmission for the electrically interconnected service territories as provided in this chapter.

(b) The purposes of the corporation are

(1) to ensure adequate, reliable, safe, and stable wholesale electric power to public utility members without undue discrimination, at the lowest reasonable long-term cost; and

(2) to be the primary recipient of state financial assistance provided to support the acquisition, construction, or development of generation and transmission

1 assets and ancillary services and assets for the public utility members of the
2 corporation.

3 (c) In furtherance of the purposes of the corporation, the corporation may plan
4 for, recommend, coordinate, and otherwise address

5 (1) the adequacy of fuel supply, fuel storage, and fuel transportation
6 resources required to meet the short-term and long-term electric power needs of the
7 service territory of the corporation;

8 (2) the adequacy of generation and transmission assets to prudently
9 meet local and regional short-term and long-term electric power and reliability needs
10 of the areas electrically interconnected to the service territory of the corporation:

11 (3) generation reserves to meet planning and operational requirements;

12 (4) base load generation in all parts of the service territory of the
13 corporation;

14 (5) generation and transmission power dispatch resources, including
15 the ability to connect dispatch resources of the public utility members;

16 (6) diversity in generation resources;

17 (7) renewable-energy-based generation resources;

18 (8) integration of renewable energy generation resources.

19 (d) The corporation shall operate on a nonprofit basis, offering its services
20 based on uniform rates for like services under standard tariffs or contractual
21 arrangements.

22 (e) The corporation has a separate and independent existence from the state.
23 The corporation may not be considered the state, a state agency, an administrative unit
24 of the executive branch of state government, a governmental unit of the state, a public
25 corporation of the state, a municipal corporation, or a political subdivision of the state.

26 (f) The exercise by the corporation of the powers granted by this chapter is
27 considered to be for a public purpose.

28 (g) The corporation is authorized to interconnect with and provide services to
29 electric utilities other than public utility members on terms and conditions approved
30 by the corporation's board of directors. The corporation may decline to interconnect
31 with an electric utility or any other entity that fails to meet standards for

1 interconnection adopted by the corporation.

2 **Sec. 42.50.020. Board of directors.** (a) The corporation shall be governed by a
3 board of directors consisting of

4 (1) two directors from each public utility members, one of whom shall
5 be the chief executive officer of the public utility member or the chief executive
6 officer's designee and one of whom shall be an individual appointed by the governing
7 body of the public utility member; and

8 (2) one public director appointed by the governor from a list of at least
9 three persons submitted by the directors appointed under (a)(1) of this section; if the
10 governor rejects an entire list, the directors appointed under (a)(1) of this section shall
11 submit a new list that includes at least three persons who were not included on a
12 previously rejected list.

13 (b) The term of a director representing a public utility member under (a)(1) of
14 this section expires when the public utility member notifies the board that the
15 individual has been removed as a representative of the utility on the board.

16 (c) The term of the director appointed by the governor under (a)(2) of this
17 section is four years. If a vacancy occurs, the governor shall appoint a director under
18 (a)(2) of this section to serve the remaining term of the director. The governor may
19 reappoint the director described in this subsection.

20 (d) The board may only remove a director for cause on two-thirds majority
21 vote of the full board. The bylaws must provide a mechanism for a public utility
22 member to appoint an alternative member if the chief executive officer of the utility is
23 removed from the board.

24 (e) A majority of the directors on the board constitutes a quorum for the
25 transaction of business and the exercise of the powers and duties of the board.

26 (f) The directors shall annually elect from among the directors on the board a
27 chair and vice-chair and other board officers as may be provided in the bylaws.

28 (g) Directors may not receive a salary, but the corporation may pay directors a
29 meeting fee, per diem, and travel expenses.

30 **Sec. 42.50.030. Board meetings; exceptions.** (a) A meeting of the board may
31 be attended by members of the corporation, ratepayers, and the public. The bylaws

1 must provide for participation of members and ratepayers at board meetings. Except
2 when a voice vote is authorized, a vote shall be conducted in a manner that the
3 members and ratepayers may know the vote of each director entitled to vote. The
4 board may conduct a meeting by teleconference or similar communications equipment
5 if the board gives reasonable notice of the meeting and if the members, ratepayers, and
6 public are able to attend the meeting and hear the meeting. This subsection applies
7 only to a meeting at which a quorum is present.

8 (b) The board may hold an executive session to discuss matters that come
9 within the exceptions contained in (c) of this section on a majority vote of the board.
10 Before holding an executive session, the board must first be convened as a regular or
11 special meeting. A subject that is not mentioned in the motion calling for the executive
12 session may not be considered at the executive session unless the subject is auxiliary
13 to the main question. Formal action may not be taken during an executive session.

14 (c) The following matters may be discussed in an executive session:

15 (1) matters the knowledge of which would clearly have an adverse
16 effect on the finances of the corporation;

17 (2) matters that tend to prejudice the reputation and character of a
18 person; however, the person may request a public discussion;

19 (3) matters discussed with an attorney for the corporation, the
20 knowledge of which could have an adverse effect on the legal position of the
21 corporation;

22 (4) matters that are required by law to be confidential;

23 (5) matters pertaining to a plan, a program, or procedures for
24 establishing, maintaining, or restoring security, or to a detailed description or
25 evaluation of systems, facilities, or infrastructure of the corporation, but only to the
26 extent that the discussion of the matter in open session

27 (A) could reasonably be expected to interfere with the
28 implementation or enforcement of the security plan, program, or procedures;

29 (B) would disclose confidential guidelines for investigations or
30 enforcement and the disclosure could reasonably be expected to risk
31 circumvention of the law; or

(C) could reasonably be expected to endanger the life or physical safety of an individual or to present a real and substantial risk to the public health and welfare.

(d) The board shall give notice for all regular or special meetings of the board as provided in the bylaws.

Sec. 42.50.040. Officers and employees. (a) The board shall appoint a chief executive officer. The chief executive officer may not be a director and serves at the pleasure of the board.

(b) The board shall appoint officers as required by the bylaws and as the board determines to be necessary for the effective operation of the corporation.

(c) The chief executive officer may hire employees of the corporation as necessary for the efficient performance of the functions of the corporation. The board shall approve the range of compensation for employees. Employees of the corporation are not employees of the state and are not considered to be employees of a public organization for the purposes of AS 39.

(d) An employee of the corporation may not be a director.

Sec. 42.50.050. Membership. (a) The members of the corporation are the public utility members and other entities that purchase services from the corporation that the board of directors approves to become members. The corporation may provide member benefits solely to the members of the corporation.

(b) An entity that meets the qualifications of a public utility member under this subsection shall become a public utility member of the corporation if approved by a two-thirds majority vote of the board. A public utility member

(1) shall be a municipal or cooperative electric utility with a designated electric distribution service territory, holding a certificate of public convenience and necessity issued by the Regulatory Commission of Alaska;

(2) shall be electrically interconnected to the service territory of the corporation; and

(3) may not be an affiliated electric utility.

(c) An affiliated electric utility may become a member of the corporation under (a) of this section.

1 (d) A member, including a public utility member, may withdraw from the
2 corporation if the member

3 (1) pays or provides for the payment of all liabilities owed to the
4 corporation;

5 (2) demonstrates that the withdrawal will not have adverse tax
6 consequences to the corporation; and

7 (3) gives not less than six months' notice to the corporation.

8 (e) Withdrawal from the corporation does not affect a right or obligation in an
9 agreement between a withdrawing public utility member and the corporation. The
10 corporation shall hold equity contributed by a withdrawing public utility member to
11 the corporation for the account of the withdrawing public utility member and refunded
12 only in accordance with a long-range financial management plan adopted by the
13 board.

14 (f) A public utility member may withdraw from being a public utility member
15 of the corporation but remain a member of the corporation if the public utility member

16 (1) demonstrates that the withdrawal will not have adverse tax
17 consequences to the corporation; and

18 (2) gives not less than six months' notice to the corporation.

19 (g) When a public utility member gives a notice of withdrawal, the public
20 utility member loses the right to have a director on the board.

21 **Sec. 42.50.060. Articles of incorporation; change in location of principal**
22 **office.** (a) The articles of incorporation, and amended articles of incorporation, of a
23 corporation must recite that they are executed under this chapter and must state

24 (1) the name of the corporation;

25 (2) the address of the principal office of the corporation;

26 (3) the names and the addresses of the incorporators;

27 (4) the names and addresses of the directors.

28 (b) The articles may contain any provisions consistent with this chapter that
29 are considered necessary or advisable for the conduct of the business of the
30 corporation. The articles shall be signed and acknowledged on behalf of each initial
31 public utility member of the corporation. It is not necessary to recite in the articles of

1 incorporation the purpose for which the corporation is organized or the corporate
2 powers of the corporation.

3 (c) Articles of incorporation, and amended articles of incorporation, shall be
4 submitted to the commissioner for filing. Upon a finding that the articles conform to
5 the requirements of this chapter, and upon payment of the fees provided in
6 AS 10.25.530, the commissioner shall file the articles in the records of the
7 commissioner's office.

8 (d) A corporation may, upon authorization of its board of directors, change the
9 location of its principal office by filing a certificate reciting the change of principal
10 office, executed and acknowledged by its presiding officer under its seal, attested by
11 the officer designated by the board, in the office of the commissioner.

12 **Sec. 42.50.070. Bylaws.** (a) The board shall adopt bylaws for the corporation
13 for the governance and management of the affairs of the corporation. The board may
14 alter, amend, or repeal the bylaws.

15 (b) The bylaws must be consistent with this chapter and the articles of
16 incorporation.

17 (c) The bylaws must set out conditions that require the corporation to offer
18 public utility members an opportunity to serve an industrial customer before the
19 corporation may serve an industrial customer.

20 (d) The bylaws must include provisions governing financing arrangements
21 under AS 42.50.150 that include obligations exceeding 12 months.

22 **Sec. 42.50.080. Indemnification of directors, officers, and employees.** The
23 corporation shall indemnify directors, officers, and employees in a manner consistent
24 with AS 10.06.490.

25 **Sec. 42.50.090. General powers of the corporation.** (a) The corporation may
26 (1) sue and be sued in its name;
27 (2) have perpetual existence;
28 (3) adopt and alter a corporate seal;
29 (4) participate with federal, state, and local governmental entities in
30 formulating and implementing policies relating to electric power, and in planning for
31 the development, construction, and operation of adequate electric power generation

1 and transmission facilities for the service territory of the corporation;

2 (5) accept, by grant, sale, contract, operating agreement, or any other
3 arrangement, assets from members of the corporation or other public or private
4 entities, persons, or governments;

5 (6) engage in a program to support the efforts of the public utility
6 members and affiliated electric utilities to enhance the development, efficiency,
7 reliability, safety, and price stability of electric power in the service territory of the
8 corporation;

9 (7) generate, manufacture, purchase, acquire, accumulate, transmit,
10 meter, and dispatch wholesale electric power and ancillary services, and sell at
11 wholesale, supply, and dispose of electric power to public utility members, members,
12 affiliated electric utilities, and other entities;

13 (8) generate, manufacture, purchase, acquire, accumulate, transmit,
14 meter, and dispatch retail electric power and ancillary services to an industrial
15 customer, and sell at retail, supply, and dispose of electric power to an industrial
16 customer

17 (A) not located in the certificated service territory of a public
18 utility providing electric service, under conditions established in the bylaws; or

19 (B) located in the certificated service territory of a public utility
20 providing electric service if the public utility gives its written consent before
21 the corporation enters an agreement to sell power to the industrial customer;

22 (9) procure fuel supplies, fuel storage capacity, and fuel transmission
23 resources;

24 (10) construct, buy, lease, or otherwise acquire, equip, maintain, and
25 operate, and sell, assign, convey, lease, mortgage, pledge, or otherwise dispose of or
26 encumber land, buildings, structures, electric power lines or systems, dams, plants and
27 equipment, and any other real or personal property, tangible or intangible, that is
28 necessary, convenient, or appropriate to accomplish the corporation's purposes;

29 (11) buy, lease, use, or acquire franchises, rights, privileges, licenses,
30 permits, and easements;

31 (12) sell, assign, convey, mortgage, pledge, exercise, or dispose of or

encumber franchises, rights or privileges, licenses, permits, and easements;

(13) borrow money, contract indebtedness, issue evidences of indebtedness, and secure payment of indebtedness by mortgage, pledge, deed of trust, or other encumbrance on its real or personal property, assets, franchises, or revenue;

(14) construct, maintain, and operate electric transmission lines, along, upon, under, and across publicly owned land and public thoroughfares, including, without limitation, all roads, highways, streets, alleys, bridges, and causeways;

(15) exercise the power of eminent domain as a public utility under AS 42.05.631, except the corporation may not exercise the power of eminent domain to take an electric power generation or transmission asset from a public utility;

(16) acquire by purchase, lease, bequest, devise, gift, exchange, the satisfaction of debts, the foreclosure of mortgages, or otherwise, personal property, rights, rights-of-way, franchises, easements, and other interests in land, and acquire by appropriation water rights that are located in the state, taking title to the property in the name of the corporation;

(17) hold, maintain, use, operate, improve, lease, exchange, donate, convey, alienate, encumber, or otherwise grant a security interest in, or authorize use or dispose of, land or personal property, subject to other provisions of this chapter;

(18) contract with and accept transfers, gifts, grants, or loans of funds or property from the United States or from the state or its political subdivisions, subject to other provisions of federal or state law or municipal ordinances;

(19) undertake and provide for the management, operation, maintenance, use, repair, renovation, and control of all of the property of the corporation;

(20) apply to the state, the United States, foreign countries, or other proper agencies for the permits, licenses, rights-of-way, or approvals necessary to construct, maintain, and operate electric power and related services, and obtain, hold, and reuse the licenses and permits in the same manner as other similar operators;

(21) enter into agreements with the state or a state agency or other instrumentality of the state;

(22) make all contracts necessary, convenient, or appropriate for the

1 full exercise of its powers;

2 (23) conduct its business and exercise its powers inside or outside the
3 state;

4 (24) develop operating standards applicable to all public utilities
5 electrically interconnected to the service territory of the corporation;

6 (25) do or perform any other act and thing and have and exercise any
7 other power that may be necessary, convenient, or appropriate to accomplish the
8 corporation's purposes; and

9 (26) create subsidiary corporations.

10 (b) The corporation may not require its members to enter into power purchase
11 agreements that restrict the ability of members to enter into bilateral power purchase
12 or wheeling agreements among themselves, except as a condition for participation in
13 specific new generation or transmission projects when the condition is reasonably
14 necessary in order for the corporation to finance the project.

15 **Sec. 42.50.100. Public utility powers and regulation.** The corporation shall
16 have all of the powers and duties of a regulated electric public utility under AS 42.05,
17 except that the corporation

18 (1) may not make retail sales of electric power except to an industrial
19 customer under AS 42.50.090(a)(8);

20 (2) is not required to obtain a certificate under AS 42.05.221.

21 **Sec. 42.50.110. Integrated resource plan.** (a) The corporation shall adopt an
22 integrated resource plan for use with a long-range fuel supply plan under
23 AS 42.50.120 to determine the need for and selection of electric generation and
24 transmission projects to ensure delivery of safe and reliable electric power to public
25 utility members at the lowest reasonable long-term cost. The corporation shall
26 evaluate and consider recommendations made in an applicable state energy plan or
27 state integrated resource plan before in adopting and updating the plan. If the
28 corporation's integrated resource plan deviates from other state energy or resource
29 plans, the corporation's plan must include a report explaining the reasons for the
30 deviation.

31 (b) The board shall establish a schedule for review of the integrated resource

1 plan and update the plan at least once every five years.

2 (c) The corporation shall make the integrated resource plan available on the
3 Internet to members, the governor, the legislature, and ratepayers.

4 **Sec. 42.50.120. Long-range fuel supply plan.** (a) The corporation shall adopt
5 a long-range fuel supply plan to determine the need for and selection of fuel supplies
6 to be used by electric generation projects to ensure delivery of safe, reliable, and
7 sustainable electric power to public utility members at the lowest reasonable long-term
8 cost. The corporation shall evaluate recommendations made in any applicable state
9 energy plan or state integrated resource plan before adopting and updating the long-
10 range fuel supply plan. If the corporation deviates from recommendations in a state
11 plan, the adopted or updated long-range fuel supply plan shall include a report
12 explaining the reasons for the deviation.

13 (b) The board shall establish a schedule for review of the long-range fuel
14 supply plan and update the plan at least once every five years.

15 (c) The corporation shall make the long-range fuel supply plan available on
16 the Internet to members, the governor, the legislature, and ratepayers.

17 **Sec. 42.50.130. Long-range capital improvement plan.** (a) The corporation
18 shall adopt a long-range capital improvement plan. The plan must describe how the
19 corporation intends to accomplish the corporation's purposes and identify anticipated
20 capital improvements planned during each of the following 10 years. The plan must be
21 based on the principle of providing safe, reliable, and sustainable electric power to
22 public utility members at the lowest reasonable long-term cost.

23 (b) The board shall establish a schedule for review of the long-range capital
24 improvement plan and update the plan at least once every five years.

25 (c) The corporation shall make the long-range capital improvement plan
26 available on the Internet to members, the governor, the legislature, and ratepayers.

27 **Sec. 42.50.140. Long-range financial management plan.** (a) The corporation
28 shall adopt a long-range financial management plan. The plan must describe the
29 manner in which the corporation intends to accomplish the corporation's purposes and
30 the corporation's plans for acquisition, accumulation, and issuance of equity and debt
31 for the next 10 years. The plan shall be based on the principle of providing safe,

1 reliable, and sustainable electric power to public utility members at the lowest
2 reasonable long-term cost.

3 (b) The board shall establish a schedule for review and update the long-range
4 financial management plan at least once every five years.

5 (c) The corporation shall make the long-range financial management plan
6 available on the Internet to members, the governor, the legislature, and ratepayers.

7 **Sec. 42.50.150. Financing arrangements.** (a) The corporation may

8 (1) use any financing arrangements permitted by law in achieving the
9 purposes and objectives of the corporation; and

10 (2) develop financing arrangements for individual projects.

11 (b) The corporation may obtain assistance from state agencies with financing
12 projects through direct grants, debt guarantees, granting of a moral obligation of the
13 state to ensure payment of debt instruments, purchase of issued debt instruments, or
14 other financial methods appropriate to the projects or tasks.

15 **Sec. 42.50.160. Fuel supplies.** (a) The corporation may acquire long-term fuel
16 supplies as required to ensure electric power generation facilities can operate without
17 fuel-related interruption, including direct ownership of transportation and storage
18 facilities as required to fulfill the purposes of the corporation under AS 42.50.010(b).

19 (b) The corporation may acquire long-term fuel supplies under this section in
20 conjunction with other entities that are acquiring long-term fuel supplies for any
21 lawful purpose in any lawful manner.

22 **Sec. 42.50.170. Tax exemption.** The real and personal property of the
23 corporation and the assets, income, and receipts of the corporation are exempt from all
24 taxes and assessments of the state or a political subdivision of the state, except that
25 electricity sold at retail by the corporation is subject to the electric cooperative tax
26 under AS 10.25.540 – 10.25.570.

27 **Sec. 42.50.180. Reports and publications.** The board shall publish an annual
28 report on the Internet. The report must include financial statements audited by
29 independent auditors, a discussion of the corporation's circumstances and operations
30 during the period covered by the report, and any other information requested by the
31 legislature. The board may publish other information or reports it considers

appropriate.

Sec. 42.50.190. Right to examine books and records. (a) Except as provided in (c) of this section, members and ratepayers may, at a reasonable time and for any proper purpose, examine and make copies of the books and records of the corporation at the principal office of the corporation.

(b) The corporation may charge a requestor an amount equal to the actual cost of finding and duplicating documents requested under this section.

(c) The corporation may withhold books and records concerning the following subjects:

(1) records required to be kept confidential by law;

(2) personnel records, to the extent that the records are not required to be publicly disclosed by a state or federal agency;

(3) records that are proprietary, privileged, or a trade secret;

(4) records or information pertaining to a plan, a program, or procedures for establishing, maintaining, or restoring security, or to a detailed description or evaluation of systems, facilities, or infrastructure of the corporation, but only to the extent that the production of the records or information

(A) could reasonably be expected to interfere with the implementation or enforcement of the security plan, program, or procedures;

(B) would disclose confidential guidelines for investigations or enforcement and the disclosure could reasonably be expected to risk circumvention of the law; or

(C) could reasonably be expected to endanger the life or physical safety of an individual or to present a real and substantial risk to the public health and welfare; or

(5) specific matters that were prepared for or during an executive session of the board, and not subsequently made public by the corporation.

Sec. 42.50.200. Audits and examinations of corporation. The corporation shall be audited annually by an independent auditor. The board shall engage the auditor, who shall be responsible to the board. The corporation shall submit copies of each report of the auditor to the legislature and governor within 30 days after receipt

1 of the report by the corporation.

2 **Sec. 42.50.210. Dissolution, merger, consolidation, and disposition of**
3 **assets.** Without prior legislative approval, the corporation may not

4 (1) dissolve;

5 (2) merge or consolidate; or

6 (3) dispose of corporate assets other than in the ordinary course of
7 business.

8 **Sec. 42.50.220. Procedures for dispute resolution.** The corporation shall
9 establish a dispute resolution process in its bylaws. The dispute resolution process
10 must include, at a minimum,

11 (1) a requirement that disputes be initially brought before the board for
12 resolution;

13 (2) a requirement that the parties shall attempt to resolve a dispute that
14 is not resolved by the board through mediation;

15 (3) a requirement that the corporation and the disputing party shall
16 attempt to resolve a dispute that is not resolved by the board and is not resolved
17 through mediation through binding arbitration if allowed by the bylaws of the
18 corporation; and

19 (4) if not resolved by the board, through mediation, or through binding
20 arbitration, if allowed, a provision for resolution of the dispute through litigation in a
21 court of competent jurisdiction.

22 **Sec. 42.50.900. Definitions.** In this chapter, unless the context otherwise
23 requires,

24 (1) "affiliated electric utility" means an electric utility that is wholly
25 owned by one or more public utility members and by or through which one or more
26 public utility members obtain electric power or electric generation or transmission
27 services;

28 (2) "board" means the board of directors of the corporation;

29 (3) "commissioner" means the commissioner of commerce,
30 community, and economic development;

31 (4) "cooperative" means an entity organized under AS 10.25;

(5) "corporation" means an energy and transmission corporation organized under this chapter;

(6) "electrically interconnected" means interconnected at a minimum transmission level of 69 kilovolts;

(7) "electric power" means electric energy and capacity;

(8) "electric utility" means a public utility, as defined in AS 42.05.990 that furnishes electrical generation, transmission, or distribution service;

(9) "member" means a member of the corporation under AS 42.50.050, including public utility members;

(10) "public utility member" means a municipal or cooperative electric utility that has an electric distribution service territory, that holds a certificate of public convenience and necessity issued by the Regulatory Commission of Alaska, that is one of the electric utilities that organizes an energy and transmission corporation or that becomes a public utility member of the corporation under AS 42.50.050(b), and that does not withdraw from being a member or public utility member under AS 42.50.050(d) or (e);

(11) "ratepayers" means the ratepayers of the public utility members of the corporation;

(12) "service territory of the corporation" means the combined service territories identified in the certificates of public convenience and necessity issued by the Regulatory Commission of Alaska for each of the public utility members of the corporation.

* **Sec. 7.** AS 42.50.100, as enacted by sec. 6 of this Act, is amended to read:

Sec. 42.50.100. Public utility powers and regulation. The corporation shall have all of the powers and duties of a regulated electric public utility under AS 42.05, except that the corporation

(1) may not make retail sales of electric power except to an industrial customer under AS 42.50.090(a)(8);

(2) is not required to obtain a certificate under AS 42.05.221;

(3) is exempt from payment of a regulatory cost charge under AS 42.05.254; and

(4) is exempt from rate regulation under AS 42.05.431.

* **Sec. 8.** AS 42.50.100, as enacted by sec. 6 of this Act, is amended by adding a new subsection to read:

(b) The corporation

(1) shall comply with the principles and requirements contained in AS 42.05.441 - 42.05.491 as if the corporation were a regulated public utility; and

(2) is subject to the jurisdiction of the Regulatory Commission of Alaska under AS 42.05.311 and 42.05.321 regarding joint use and interconnection of facilities.

* **Sec. 9.** AS 42.50, as enacted by sec. 6 of this Act, is amended by adding a new section to read:

Sec. 42.50.155. Administrative costs and other services. (a) The corporation may annually assess and collect a fee for just and reasonable administrative expenses from members of the corporation.

(b) The corporation may enter into contracts with members of the corporation for services rendered by the members to the corporation and for services provided to the members.

* **Sec. 10.** AS 42.50, as enacted by sec. 6 of this Act, is amended by adding a new section to read:

Sec. 42.50.165. Rates for electric power, energy, and services. (a) The corporation shall establish schedules of rates and charges for electric power, energy, and other services provided by the corporation, which become effective on adoption by the board of directors of the corporation using the procedures set out in (d) of this section.

(b) The rates and charges included in a schedule

(1) must comply with AS 42.50.100(b)(1);

(2) may be established for individual projects that are owned or operated by the corporation; however, the corporation may not grant an unreasonable preference or advantage to a customer or subject a customer to an unreasonable prejudice or disadvantage;

(3) may provide for uniform rates and charges in order to extend the

benefits of an integrated generation and transmission system and encourage the equitable distribution of the electric power, energy, and other services developed by the corporation;

(4) may not establish or maintain an unreasonable difference between localities or classes of service;

(5) must be based on the principle of the recovery of just and reasonable costs of producing and transmitting electric power, energy, or other services, including

(A) operation and maintenance costs;

(B) administrative expenses not assessed under AS 42.50.155;

(C) the amortization of the capital investment over a reasonable period of years;

(D) margins required by financial covenants contained in mortgages or other debt instruments of the corporation;

(6) must consider, and not duplicate recovery for, administrative expenses assessed under AS 42.50.155;

(7) may include amounts necessary to fund costs reasonably anticipated to become just and reasonable costs of producing and transmitting electric power, energy, or other services, including costs

(A) for the repair, replacement, and retirement of a project owned or operated by the corporation;

(B) to permit the corporation to build reasonably necessary equity for future operations.

(c) The corporation shall determine, after the conclusion of each fiscal year, the actual annual project costs for a project owned or operated by the corporation for the fiscal year, including

(1) the amounts used to fund anticipated costs under (b)(7) of this section;

(2) the annual payment obligation of each purchaser of the electric power, energy, or services for the fiscal year; and

(3) the amount of payment or refund required for each purchaser to

1 ensure that the total amount of payments received from each purchaser for the fiscal
2 year is equal to that purchaser's actual annual payment obligation for that asset for that
3 fiscal year; a payment or refund obligation must be paid or refunded as soon as
4 practicable using a rate adjustment.

5 (d) The corporation shall use the following procedures to establish a schedule
6 for rates and charges:

7 (1) notice of a proposed schedule of rates and charges must include a
8 statement of the justifications and reasons supporting the new or amended schedule;

9 (2) the notice shall be published at a time and in a manner that will
10 reasonably inform members and ratepayers of the proposed rates and charges and must
11 state the deadline for timely filing of comments to the schedule;

12 (3) the deadline for submitting comments to a proposed schedule of
13 rates and charges may not be less than 30 days after the date of the notice;

14 (4) the corporation shall conduct one or more hearings under
15 procedural rules adopted by the board; the procedural rules must provide for the
16 development of a record that includes all timely submitted comments related to the
17 proposed rates and charges; the procedural rules must provide for the examination of
18 evidence regarding just and reasonable costs at the hearing;

19 (5) the corporation may republish notice of proposed rates and charges
20 in the schedules if the corporation proposes significantly different new or amended
21 rates and charges following consideration of timely filed or submitted comments;

22 (6) the corporation shall make a final written decision establishing or
23 amending the schedule of rates and charges based on the record; the decision must
24 include a full and complete justification supporting the final rates and charges;

25 (7) the decision of the corporation becomes effective 90 days after the
26 corporation issues notice of its final written decision;

27 (8) a member may appeal a final rate decision of the board under the
28 dispute resolution process in AS 42.50.220; during the appeal process, the corporation
29 may implement the new or amended rates and charges in the schedules on an interim
30 and refundable basis if the board determines that the interests of the ratepayers can be
31 reasonably protected;

(9) the corporation may establish other procedural rules consistent with this subsection to protect the interests of ratepayers.

* **Sec. 11.** AS 44.83.396(c) is amended to read:

(c) The authority shall enter into a contract or lease under reasonable terms and conditions to permit the applicant utility to operate the power project when the applicant utility is the only wholesale power customer to be served directly by the power project, or is a corporation organized under AS 42.50.010 and one or more public utility members of the corporation is a wholesale power customer to be served directly by the power project, unless the authority determines the [A] utility or corporation making application for a contract or lease to operate a power project is not a qualified utility or is not capable of operating that power project efficiently and in a manner that is consistent with national standards for the industry and with agreements with bondholders.

* **Sec. 12.** AS 42.05.431(i), enacted by sec. 3 of this Act, is repealed.

* **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to read:

AUTHORIZATION TO FORM GREATER RAILBELT ENERGY AND TRANSMISSION CORPORATION. (a) Any combination of four or more of the following public utilities may organize the Greater Railbelt Energy and Transmission Corporation, as an energy and transmission corporation under AS 42.50:

- (1) Homer Electric Association, Inc.;
- (2) the City of Seward, Electric Utility Department;
- (3) Chugach Electric Association, Inc.;
- (4) the Municipality of Anchorage d/b/a Municipal Light and Power;
- (5) Matanuska Electric Association, Inc.; and
- (6) Golden Valley Electric Association, Inc.

(b) This section is contingent on the obligation that the corporation shall conduct, under the direction of the Legislative Budget and Audit Committee, a management audit of the corporation to be commenced on June 30, 2013, 2016, and 2020. The management audit shall be conducted under methodologies and principles set out in volumes I (1988 ed.), II (1992 ed.) and III (1995 ed.) of the Management Audit Manual published by the National

1 Association of Regulatory Utility Commissioners, Washington, D.C. The results of the
2 management audit shall be transmitted to the Legislative Budget and Audit Committee 180
3 days after the commencement of the audit. This obligation to conduct a management audit
4 shall be in addition to any audit obligation that may be required under an appropriation to the
5 corporation.

6 (c) This section authorizes the organization of the Greater Railbelt Energy and
7 Transmission Corporation, as required under AS 42.50.010(a), enacted by sec. 6 of this Act.

8 * **Sec. 14.** The uncoded law of the State of Alaska is amended by adding a new section to
9 read:

10 **CONDITIONAL EFFECT.** (a) Sections 3, 6, and 11 of this Act take effect only if four
11 or more of the listed public utilities deliver to the Alaska Energy Authority before 4:30 p.m.
12 on July 30, 2010, a letter of intent in the form and substance acceptable to the Alaska Energy
13 Authority, under which the listed public utility agrees to become a public utility member of
14 the Greater Railbelt Energy and Transmission Corporation. Each listed public utility that
15 meets the conditions described in this subsection shall, effective August 16, 2010, be a public
16 utility member of the Greater Railbelt Energy and Transmission Corporation. The listed
17 public utilities are as follows:

- 18 (1) Homer Electric Association, Inc.;
- 19 (2) the City of Seward, Electric Utility Department;
- 20 (3) Chugach Electric Association, Inc.;
- 21 (4) the Municipality of Anchorage d/b/a Municipal Light and Power;
- 22 (5) Matanuska Electric Association, Inc.;
- 23 (6) Golden Valley Electric Association, Inc.

24 (b) The executive director of the Alaska Energy Authority shall notify the lieutenant
25 governor and the revisor of statutes when any of the conditions described in (a) of this section
26 are met.

27 (c) Sections 1, 2, 4, 5, 7 - 10, and 12 of this Act take effect only if secs. 3, 6, and 11 of
28 this Act have taken effect.

29 (d) In this section, unless the context otherwise requires,

- 30 (1) "Alaska Energy Authority" means the authority created in AS 44.83.020;
- 31 (2) "Greater Railbelt Energy and Transmission Corporation" means the

1 corporation organized as an energy and transmission corporation under AS 42.50, enacted by
2 sec. 6 of this Act, as authorized by sec. 13 of this Act;

3 (3) "public utility member" has the meaning given in AS 42.50.900, enacted
4 by sec. 6 of this Act.

5 * **Sec. 15.** If secs. 3, 6, and 11 of this Act take effect under sec. 14(a) of this Act, they take
6 effect August 16, 2010.

7 * **Sec. 16.** If secs. 1, 2, 4, 5, 7 - 10, and 12 of this Act take effect under sec. 14(c) of this
8 Act, they take effect August 16, 2015.

9 * **Sec. 17.** Sections 13 and 14 of this Act take effect immediately under AS 01.10.070(c).