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MEMORANDUM

March 26, 2010

SUBJECT: Draft CSHB 182(), draft version "S", authorizing organization of the Greater Railbelt Energy and Transmission Corporation -- sectional analysis (Work Order No. 26-GH1041\S)

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

FROM: Jack Chenoweth
Assistant Revisor

This measure is based on an administration-initiated bill proposing establishment of the Greater Railbelt Energy and Transmission Corporation ("the corporation") claiming a membership among as many as six identified public utilities.¹

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In the draft as provided, an understanding of the effective dates for the measure's various provisions is critical. The authorization of various public utilities to form the transmission corporation (bill section 13) and the conditional effect provisions (section 14) are to take immediate effect. If, under bill section 14, the principal condition is met by the time of the established deadline, then

(1) permanent law provisions bearing on initial organization and operation of the corporation that are set out in bill sections 3, 6, and 11 would take effect August 16, 2010; and

(2) delayed amendments relating principally to deferred adjustment of the Regulatory Commission of Alaska's oversight of the corporation as set out in the remaining codified bill sections and the one repeal section would take effect August 16, 2015.

¹ The committee is encouraged to review and may rely on the transmittal letter of explanation provided and reprinted at 2009 House Journal 437 - 441 (March 12, 2009) as an authoritative comment and explanation of the bill in the form in which it was introduced.

I

If this measure is enacted into law, these provisions would be given immediate effect:

-- an authorization, spelled out in **bill section 13**, a temporary law provision, by which at least any four of the six utilities identified in subsection (a) would be authorized to incorporate the Greater Railbelt Energy and Transmission Corporation, subject to obligations periodically to complete management audits (subsection (b));

-- a time contingency spelled out in **bill section 14**, another temporary law provision: not later than close of business July 30, 2010, at least four of the identified utilities must sign a letter of intent "in the form and substance acceptable to the Alaska Energy Authority" to meet the requirements of becoming a public utility member of the authorized corporation.

II

If the contingency described in **bill section 14** is met, then these provisions take effect August 16, 2010 --

Bill section 6 is the measure's principal permanent law provision. This section proposes to add a new chapter, AS 42.50, that generally sets out in law the powers, duties, and obligations of the new corporation intended to operate as a Railbelt area energy and transmission corporation "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 . . . , and to plan for, recommend, coordinate, and otherwise address power generation and transmission for the electrically interconnected service territories" of the various utilities that are the corporation's members. The material set out in various sections of proposed AS 42.50, added by **bill section 6**, sets out in detail the organizational form of the corporation; provisions specific to its directors, its officers and employees, and its membership; the content of the corporation's articles of incorporation and bylaws; its general powers; and other corporate matters; authorizes development of an integrated resource plan; specifies that it will have the powers and duties of a regulated electric public utility under the Alaska Public Utilities Regulatory Act (AS 42.05); and prescribes various obligations relating to the corporation's involvement in long-range planning. There are provisions included covering tax exemption, financing arrangements, reports, examination of corporate books and records, and audits, and a separate provision covering internal resolution of disputes.²

² For the record, we're not at all sure how, under this measure, the proposed corporation may be fairly characterized, or whether it may be held accountable to outside authority. It is not a public entity: proposed AS 42.50.010(e) disclaims its status as a public corporation ("The corporation may not be considered . . . a public corporation of the state . . . or a political subdivision of the state."), even though the next subsection, AS 42.50.010(f), establishes that "[t]he exercise by the corporation of the powers granted

The administration is in better position to respond to questions concerning any or all of these topics.

Other provisions that would take effect August 16, 2010, appear in --

-- **bill section 3**, establishing a limitation on the ability of the Regulatory Commission of Alaska as it sets or reviews rates proposed by the corporation ("the commission may not disallow from a rate base or revenue requirement amounts necessary for the corporation to fund a cost reasonably anticipated to become a just and reasonable cost of producing and transmitting electric 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"); and

-- **bill section 11**, amending a section to expand a power of the Alaska Energy Authority in order to allow the corporation and one or more of its constituent members to substitute for the authority in operating a power project held by the authority as successor to the former Energy Program for Alaska.

III

If the contingency described in **bill section 14** is met, then these provisions take effect August 16, 2015 --

-- **bill section 5** extends an exemption to the corporation from regulation under the Alaska Public Utilities Regulatory Act (AS 42.05); **bill section 1** extends the exemption to municipal regulation under AS 29.35.070(a); **bill section 4** makes a conforming amendment;

-- **bill section 2** extends to the corporation's wholesale agreement for the sale of power from a corporation-owned-or-operated project the exemption from commission oversight "until all long-term debt incurred for the project is retired";

by this chapter is considered to be for a public purpose." At the same time, while the measure directs that "[t]he corporation shall have all of the powers and duties of a regulated electric public utility," proposed AS 42.50.100(1), because of the corporation's broad exemption under the Public Utilities Regulatory Act, AS 42.05, it cannot fairly be characterized as the equivalent of a private authority otherwise subject to commission oversight. See AS 42.05.711(q), proposed to be added by bill section 5:

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.

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-- **bill section 7** adds an exemption for the corporation from rate approval by the Regulatory Commission of Alaska and the commission-imposed regulatory cost charge; **bill section 8** belatedly burdens the corporation with principles and requirements contained in AS 42.05.441 - 42.05.491 (property valuation; accounts, records, and reports) as if the corporation were a regulated public utility, and belatedly subjects the corporation to the jurisdiction of the commission under AS 42.05.311 (joint use and interconnection of facilities) and 42.05.321 (failure among utilities to agree to joint use or interconnection) regarding an interconnection or joint use of facilities; **bill section 9** adds additional requirements by which the corporation may enter into agreements and contracts with its member utilities to provide services and add fees and administrative expenses upon its member utilities; and **bill section 10** adds an extensive provision governing procedures and standards applicable to the determination of rates for power, energy, and services that the corporation may recover from its members and customers; and

-- **bill section 12** belatedly repeals AS 42.05.431(i), the subsection enacted by bill section 3 establishing a limitation on the ability of the Regulatory Commission of Alaska to set or review rates proposed by the corporation for the repair, replacement, and retirement of a project owned or operated by the corporation or incurred to permit the corporation to build reasonably necessary equity for future operations.

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Bill sections 15 - 17 prescribe the measure's effective dates.

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