

ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE

June 13, 2002
10:10 a.m.

MEMBERS PRESENT

Senator Robin Taylor, Chair
Senator Dave Donley, Vice Chair
Senator John Cowdery
Senator Johnny Ellis

MEMBERS ABSENT

Senator Gene Therriault

OTHER LEGISLATORS PRESENT

Senator Gary Wilken
Senator Jerry Ward

COMMITTEE CALENDAR

Regulatory Commission of Alaska

PREVIOUS COMMITTEE ACTION

See Senate Judiciary Committee minutes dated 6/12/02.

WITNESS REGISTER

Mr. Jack Rhyner
TelAlaska
201 E. 56th Ave.
Anchorage, AK 99518

Mr. Earle Ausman
No address provided

Mr. George Gordon
Utility Services of Alaska, Inc.
Fairbanks, AK

Commissioner Nan Thompson, Chairwoman
Regulatory Commission of Alaska
701 W Eighth Ave Ste 300
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Commissioner Bernie Smith
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Commissioner Pat Demarco
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Commissioner Will Abbott
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Commissioner Jim Strandberg
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Ms. Elizabeth Hickerson
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ACTION NARRATIVE

TAPE 02-37, SIDE A

Number 001
#SB3001
#HB3001

CHAIRMAN ROBIN TAYLOR called the Senate Judiciary Committee meeting to order at 10:10 a.m.

[THE FOLLOWING IS A VERBATIM TRANSCRIPT]

CHAIRMAN TAYLOR: ...a quorum present, that being Senators Donley, Ellis, Cowdery and Chair Taylor. Upon recess or adjournment, I should say, last evening, we had offered an opportunity to testify to some members of the public who had not been on the invitation list but did want to testify. The first was Jack. Where are you at Jack? And he had to leave because of medical - if you'd come forward please, sir?

SENATOR WILKEN: Senator Taylor?

CHAIRMAN TAYLOR: Yes?

SENATOR WILKEN: This is Gary Wilken and I'm on teleconference network from Fairbanks and I'll be with you until you adjourn.

CHAIRMAN TAYLOR: Thank you Gary. Good to hear your voice.

SENATOR WILKEN: Thank you, Senator.

CHAIRMAN TAYLOR: Jack - would you raise your right hand please? Do you swear to tell the truth, the whole truth and nothing but the truth so help you God to this committee?

MR. RHYNER: I do Senator.

CHAIRMAN TAYLOR: Would you give us your full name and who you're representing?

MR. RHYNER: My name is Jack Rhyner - R-H-Y-N-E-R. I am currently employed by TelAlaska, Inc. I am currently employed in the position of president and CEO, a position I've held for 20 years and 34 years experience in rural telephony in the state of Alaska. I am currently serving as director of the Alaska Telephone Association and the past president of that organization, also a director of the Alaska Exchange Carriers Association and I chair the rate development committee for that organization. Senator, I did send you a letter last week stating my support for the reauthorization of the Commission.

I have a number of things that I'd like to go over here. While my company may be a small company in the state of Alaska compared to the Bell Companies and Horizon, who have millions of access lines and even in comparison to ACS who have several hundred thousand access lines, but my company is the third largest telephone company in the state of Alaska. Investors have \$42 million dollars invested in serving 26 communities throughout the state of Alaska, which is roughly ten percent of the communities outside of Anchorage and Fairbanks and Juneau.

With all due respect to the testimony given by Commissioner Furtchtgott-Roth yesterday, I still think that there's a risk involved in the certification for USF. The 14 telephone companies which receive universal service support in the state, if not certified by the Alaska Public Utilities - RCA - I'm sorry, I've been doing this too long - would have to apply directly to the FCC and we would be applying in as yet unknown process to those very same juvenile delinquents which the Commissioner referred to

yesterday. These are the people that developed the model that doesn't work and they still promote the use of that model. They're also the people that promote intellectually bankrupt concepts like multiple carriers of last resort and competitive neutrality so I still think that there's a risk involved in not being certified by a state commission.

SENATOR DONLEY: I think people are having a hard time hearing in the back.

CHAIRMAN TAYLOR: Well I guess we'll all just have to speak up because I don't think we have an amplification system - maybe we do. I've never held a hearing in this room. Annette, before you dash off could you distribute those letters and e-mails and so on because I want the committee members to have Jack's letter here and I'd forgotten to do that before you sat down but Jack had written to me and I had responded back and so on.

[DUE TO RECORDING DIFFICULTIES, THE COMMITTEE TEMPORARILY WENT OFF RECORD.]

CHAIRMAN TAYLOR: We are back on record. Apparently the technical glitch has been taken care of and I had interrupted your testimony Jack, and the purpose of that was to ask you a question and we had, as you know, significant testimony on that and I also wanted to acknowledge and invite to the table Senator Jerry Ward, who has also joined us. We have Senator Gary Wilken on line, we have several other, of course, people too, also on line across the state. Uh, but I wanted to ask you, you've been in business and were in business, went through this very same agency - went through its grace period year in 1994.

MR. RHYNER: That's correct.

CHAIRMAN TAYLOR: [Were] universal services available at that time or were you receiving funding for it?

MR. RHYNER: Yes we were.

CHAIRMAN TAYLOR: Was there any interruption in your receipt of universal services certification?

MR. RHYNER: No, there was not. The state commissions' did not certify, uh, the telephone companies for ETC status at that time.

CHAIRMAN TAYLOR: How long ago?

MR. RHYNER: It started last year.

CHAIRMAN TAYLOR: Did you have any problem with it, getting certified this year?

MR. RHYNER: No, we did not last year.

CHAIRMAN TAYLOR: That is a docket that actually moved quickly on?

MR. RHYNER: Yes.

CHAIRMAN TAYLOR: Any reason to believe they wouldn't move quickly on it in the future?

MR. RHYNER: Uh, no I don't but there is still an open rule making docket that the industry participated in and that was to streamline the process and we all know what the outcome of that was.

CHAIRMAN TAYLOR: I would hope if, if there is, if anyone takes that up and is interested in it, it would seem that would make the process more streamlined this year than it was last when you had no problems.

MR. RHYNER: That was our hope in getting through that process, yes.

CHAIRMAN TAYLOR: The only reason I interrupted you, I'd like to know where this word or rumor, or whatever it is, I can't seem to track it down, nobody yesterday could seem to tell me. Where are these statements coming from that somehow, uh, a rubberstamp operation, like basically the certification that yes, you are a rural telephone company and yes you should receive these funds - why in the world would that not occur?

MR. RHYNER: Well, I - first of all it's not a rubberstamp operation in that the Commission must certify that we're actually utilizing those funds for the intended purpose so they have to take some form of evidence to prove that before they make the statements to certify.

CHAIRMAN TAYLOR: I assume you make that in your application, don't you?

MR. RHYNER: What I refer to in my letter to you, which I copied before, was the fact that Chair Thompson at least raises the question as to whether or not in a wind down year the Commission would be able to address any new issues, which is what I stated in my letter.

CHAIRMAN TAYLOR: I think I faxed to you Jack Chenoweth's, uh, legal opinion which encompassed within it the legal opinion of the Attorney General in 1994, his staff too, on the very same subject.

MR. RHYNER: That's true, I don't think that anyone has suggested that the authority of the agency would be wind-down. I think that goes more to the resources and the legal obligation to close open the dockets during that period as to whether or not they have to go and open new dockets and address new issues.

CHAIRMAN TAYLOR: Well, that is covered in that opinion and they have such authority to open new dockets and, in fact, we can find no basis for why they would not, other than a self-inflicted wound, I guess, if they wish to as Commissioners refuse to take on new dockets. Uh, I think that would be rather bizarre. I can't imagine that they would do that but I can't imagine that the threats being made to utilities such as yourself on simplistic matters, like certification for purposes of pass-through of federal funds, I can't imagine that's being done in good faith either, since it never happened before when they went through a wind-down.

MR. RHYNER: I guess I wouldn't characterize the statement of obligations under the wind-down as being a threat, but...

CHAIRMAN TAYLOR: How else did you interpret it that motivated you to send the letter if you didn't feel that your company would be in jeopardy of not receiving those funds by such action?

MR. RHYNER: As I stated, I definitely read it as a risk.

CHAIRMAN TAYLOR: Yea, okay, go right ahead. I'm sorry I interrupted.

MR. RHYNER: The only other issue I had, and what I stated in my letter was, the Commission has opened a docket and is reviewing the functionality of the staff within the Commission and I have been a strong proponent of that for a number of years. In fact, I worked with Senator Pearce's staff in writing legislation that created the PAS, the Public Advocacy Section of the Commission. Unfortunately, at least in my opinion, that wasn't implemented in line with the intent of the legislation. So I, like the testimony you heard yesterday from ARECA and AT&T, agree that what needs to be done, rather than a wholesale change of the Commission which, by the way, was very disruptive for a number of years, it takes a new commission a year to eighteen months to get

up to speed with dealing with all these issues from varied utilities that they have to deal with and that is very disruptive, especially on the telephone side where things are moving so rapidly and changing so quickly. So one of the questions yesterday was specific suggestions for making it better, uh, I'd like to enter as evidence the comments that were followed by both the Alaska Telephone Association and Alaska Exchange Carriers Association as docket R-022. And that ends my testimony and I'd answer questions.

CHAIRMAN TAYLOR: Jack, I have a couple but - I mean I'll just start off by saying I want to thank you for the efforts you've put in because I also worked very closely with Senator Pearce. I think that's the first time I'd met you and there were several concerns that the legislature had at the time and doing that reorganization and probably the biggest concern of all was timeliness of decisions and streamlining the process in such a way that there would be a process that you could count upon that would render a decision within a six month or one-year period at the latest and that utilities could count on coming in and making rate filings and being able, within that budgeted year, to be able to do something. I believe, if I recall, you worked very hard on specific language that was put in to make certain that those timelines and timeframes were adhered to. Is that correct?

MR. RHYNER: That is absolutely correct. Over twenty years I have attempted, on numerous occasions, to get some type of timelines in place to make the process move faster. It has always been a problem.

CHAIRMAN TAYLOR: And where are we today as far as adopting any of those timelines?

MR. RHYNER: There are relatively few timelines that are actually hard and fast within the process.

CHAIRMAN TAYLOR: And is that encompassed within the recommendations that you have made?

MR. RHYNER: Uh, no. This has to do more with the organization and functionality of the staff within the Commission.

CHAIRMAN TAYLOR: Could you define that a little bit more? I don't know what you mean by...

MR. RHYNER: Uh, the concern that we brought forward to Senator Pearce when she was doing this legislation was the fact that, at least in our opinion, there was a considerable amount of ex-parte

contact that went on amongst the staff and the Commissioners on how to achieve the ability to settle some of the issues at times. It also put staff in the position where, uh, the new investigations from the utilities and the opinions for it to the Commission, which - we are not allowed to cross-examine to check their authority for whatever position that was taken - they were not allowed to cross examine them on their supposed expertise on those issues. What we're suggesting in these comments and in this docket that all of that functionality be turned over to a PAS, as it was envisioned, and I think what the intent of that legislation was so that there would be a party that would be doing that investigation rather than an internal part of staff at the Commission. An advisory staff then would be more in the - their duties would be more like a law clerk than a judge.

CHAIRMAN TAYLOR: Do you think it is important, Jack, that we do address and take a look at the autonomy of the Commission, both on ex-parte communication with staff and others and with conflict. Do you think that's, uh, something we could, should we insulate them more from the political process and turn them more into judges because they serve a quasi-judicial function?

MR. RHYNER: I think so.

CHAIRMAN TAYLOR: Good, I agree with that because I have been concerned too about the frustration I have heard from various utilities, uh, on ex-parte communication and, in particular, between staff and Commissioners that no one even knows about or has an opportunity to address until -poof- it shows up on a Monday morning and you're told what the order is and so I appreciate the candor of those comments very much. Senator Cowdery you had a question. I am sorry, go ahead.

SENATOR COWDERY: Well, getting back earlier to your comments about, uh, was you disruptive when we did away with APUC and when this came on, was that, I mean we had new staff and we had new staff at APUC at one time too, uh, probably several times.

MR. RHYNER: It was very disruptive. There were a number of rule making dockets that were on-going that languished during the wind down period. As I remember it, the thing that we all argued about the most and took up the most time was arguing about the collection of the RCC charge as to whether or not we should be actually collecting that for over a whole year or six months or whether we should collect a year's worth in six months. It was a lot of wasted time and effort.

SENATOR COWDERY: I'll follow up on that. Would you say that, uh,

not disbanding, not necessarily disbanding this but, that we have hearings that give more direction and more authority or whatever is needed to try and find a solution to more timely things existing. I don't think anybody here is, uh, they wish to stab the bodies here. I don't think we're to that point or have even suggested it although I guess that politically they are appointed positions but, anyway, do you think that this legislature, after hearing yesterday's testimony, should look into try to find ways to hurry-up the process? You know we have testimony that six years, uh, things like that...

MR. RHYNER: Senator, I have always been a proponent of trying to get some timelines into the process to move the process along faster.

SENATOR COWDERY: Do you think we can do that in a special session situation in two or three days or something like that?

MR. RHYNER: Anything can be done. I'd be happy to work on that.

CHAIRMAN TAYLOR: Yes, Senator Ellis?

SENATOR ELLIS: Jack are you, thank you for being here today. Are you familiar with the timelines that were, in fact, put in the House version of the legislation that came to this committee during the regular session?

MR. RHYNER: Uh, yes, I am.

SENATOR ELLIS: And do you have any comments, pro or con, about those?

MR. RHYNER: Well, we went through those and while we didn't support that effort completely, we certainly didn't object to it.

SENATOR ELLIS: I just wanted to make the point that that was discussed in the normal, the regular legislative process, came to this committee for consideration. Nothing happened until now.

CHAIRMAN TAYLOR: Let me just ask, you said in response to Senator Ellis's question, uh, you didn't support all of it but you didn't object. In other words, you knew that things were needed and can you tell me what parts you didn't?

MR. RHYNER: I don't have it before me.

CHAIRMAN TAYLOR: And I won't put you on the spot, Jack, that's fine. I just did want to indicate that maybe a good part, and I

think it's going to have to be a good part, of any legislation that passes on this subject because it's a continuing problem and has been for years and there needs to be some teeth in that. I don't know if one hearing, very brief, with, as Eric Yould said, because he's the one that brought that package forward and I appreciate that candor on his part. How do we know that's good? Maybe there are some decisions that do take longer, ya know, and just doing it in a slash-dash fashion doesn't appear to me to be a wise thing to be doing with utilities.

MR. RHYNER: I don't think you can do that and I do believe that it is going to be a balancing act. When you shorten those timelines, it is probably going to require considerable more effort to get through the process and that may well require additional staff at the Commission to be able to do that.

SENATOR COWDERY: When you talk about staff, I think yesterday we said that APUC, or the complaint was that the lack of staff they couldn't get things out, they had 41 employees and now I think they have 61 employees, had the same timelines or something. The reason I want to, I ask you, do you think like yesterday I know you had to leave early, but obviously you heard some of the testimony, do you think that is a ways we should just go on ahead and reauthorize this for four years or do you think the questions and testimony yesterday were worthwhile and hopefully the rest of today is something that should have been done?

MR. RHYNER: One of the things I state in my letter to the Senator and that I copied you on was the fact this process has been begun on how to reorganize the staff there. I think that is an issue that has been a fundamental problem of the state regulatory body for the twenty years I have been at this level, and if that process is moving forward, then I would hate to see that stopped in anyway at all once it's reorganized and it is functioning the way I believe the intent of the legislation was that authorized the RCA - and I don't know of any utility, at least on the telephone side, that would object to additional funding for the Commission staff if need be once it is reorganized that way.

CHAIRMAN TAYLOR: The Senate's concern about additional funding is, and it's great that you'd be willing to sacrifice your subscribers to that level, is that this is all pass through receipts funding and as a consequence when you say additional funding that means every person who has a telephone is gonna pay 5 or 10 cents more a month out there to make sure we pass through from your utility more money to the Commission.

MR. RHYNER: That's true Senator, but as you heard yesterday, uh,

rate cases and the proceedings before the Commission are extremely expensive and they're extremely time consuming. And, I think a minimal, uh, percentage charge on monthly service would be cheaper in the long run than the increase of the rates to pay for those proceedings.

CHAIRMAN TAYLOR: Understood. Jack, thank you very much. Other questions? It took a little longer but I think your testimony was very worthwhile and I appreciate you taking the time to bring those issues before us. Thank you very much. Earle, yesterday Earle Ausman, I had said - promised I'd give you a chance to talk because I jumped over ya on the list and didn't mean to.

MR. AUSMAN: I appreciate it Senator.

CHAIRMAN TAYLOR: If you'll raise your right hand. Do you swear the testimony you are about to give is the truth, the whole truth and nothing but the truth, so help you God?

MR. AUSMAN: I do.

CHAIRMAN TAYLOR: Thank you. Proceed.

MR. AUSMAN: My name is Earle Ausman and I'm an engineer. I own an engineering business here in Anchorage, I've been in alternative and other kinds of energy business for many years, started out with the Corps of Engineers back in the '60s on the Snettisham project. I've been dealing with the Regulatory Commission - both kinds of it since 1988 when we first tried to authorize a small hydroplant and I have a series of observations that I hope you Senators will take into regard and it's going to be a little bit difficult to present it in a coherent fashion but I'll start off with one of the things that I'm concerned about.

We do licensing for hydroelectric power plants along with design of hydroelectric power plants and a lot of work in the villages. And, Senator Murkowski managed to get through an operation that allows the state to take over FERC's process from zero to 5000 kilowatts - hydroplants. As I understand it, the Regulatory Commission was supposed to take over that process. That's a good idea. We are all for that because it's costing a lot of people a lot of money to do a lot of things that are not necessary for very small plants, for example like 40 kilowatts or something - or if somebody wants something for a lodge or small village or something else like that if it ends up in the FERC process, as it currently is, it is very, very expensive and kills a lot of small projects. The other problem with that though, on the other side of the coin, is that delay is the death of enterprise and the

Regulatory Commission, if it does take on this process, needs to do it promptly. It can't be something - and people have to know what the guidelines are what the timelines are and that brings me into the next step. We've had a docket before the - action before the Regulatory Commission since 1996 and that actually goes back to 1998. It was actually formalized in 1996, February 96, and is still pending. It's never been resolved. We've never been able to find out what the timeline is on any of this and everything. Of course things have changed radically in terms of, its a proposal to supply power to Matanuska Electric and things have changed radically since that time period, in terms of economics and regulations and everything else like that and still it goes on and you can never find an answer to time. We did find that there was a change in the way the project was looked at when it went from [RCA] to - the APUC - I am sorry - to [RCA] and there was actually a change so any change that creates changes in the personnel of [RCA] is going to cause delay in activities that go on, so I would like to see a modest extension of [RCA] but I would also like to see that there be conditions, like - it's been pointed out in this Commission to make them get some type of timeline on these things and that they attempt to deal with the timeline and that they put out the reasons why they can or can not deal with a timeline so people can make judgments on what they should do about their businesses. I mean nobody can run a business like this when you go from 1996 - 1992 - I mean 2002 - and never get an answer, never get a good answer, so that basically ends my comments for now.

CHAIRMAN TAYLOR: Thank you very much for coming in. Senator Cowdery?

SENATOR COWDERY: You know we have, uh, a wind down, they call it a wind down period, but this is not going to go away for a year if we don't extend it. Our concern, and the reason for these hearings, is to try to come up with some idea that we can give some guidelines during that wind down period and it can possibly be extended in the next session. You know, uh, as I understand, when the APUC, they kept on doing business, trying to clean there, give them an incentive, to clean their records up but obviously yours from 1990, some of the older ones didn't get cleaned up. But anyway I'm just - more of a comment, I think we got an automatic one-year thing here that we're talking about even if we didn't do anything.

MR. AUSMAN: I am concerned about this wind down because what I'm concerned about is people are going to leave. Anybody good, they're going to bail out early because that's good business. I'd like to see it but I do like to see the organization change. I

think it is the responsibility of the Governor to manage his organizations and this one is not being managed very well. That's the fact of the matter. And this organization needs better management to deal with these problems in terms of timing and things like that.

CHAIRMAN TAYLOR: Any questions? Earle, thank you very much and I appreciate you keeping it brief and thank you for coming back today too. I'd also like to note that the Senate President Rick Halford has joined us. Senator Halford, do you have it with you, because I didn't have it to distribute to the committee, a copy of the letter you sent to Commissioner Duncan on the \$300,000 study, where we appropriated the money, uh, a year ago in June? Could you give that to Annette and I'll have her run off copies so we can distribute them? Was there any further follow-up correspondence or...?

SENATOR HALFORD: Well, there was a lot of effort to avoid doing anything and it's finally getting started.

CHAIRMAN TAYLOR: Yea, I was aware that they tried to send out a public notice on intent to let the RFP, uh, so hopefully that \$300,000 study will get completed within this next year. The reason I wanted - go ahead.

SENATOR HALFORD: The letter is a year old.

CHAIRMAN TAYLOR: No, uh, it was last year that we funded it - a year ago and it was pursuant, I believe, to that letter to get direction to the department what the legislature was asking for and the fascinating part, the reason I wanted this committee to have it available, was that the letter addressed many, many of the issues that we are finding from testimony yesterday and already this morning are very important issues that needed to be investigated and looked at before this Commission went into its wind down year so that we'd have had the benefit of that study during the last year. That's why I wanted that letter distributed and I appreciate you coming in this morning. Although I didn't have him down yesterday, Dan did you want to testify too and then we'll get on with the regular agenda here?

MR. DIECKGRAEFF: Senator, I assume since you couldn't pronounce me - Dan Dieckgraeff with Enstar.

CHAIRMAN TAYLOR: You're going to have to do that again for me.

MR. DIECKGRAEFF: Okay, my name is Dan Dieckgraeff.

CHAIRMAN TAYLOR: Dieckgraeff, okay.

MR. DIECKGRAEFF: With Enstar.

CHAIRMAN TAYLOR: Yes. Okay, raise your right hand please. Do you swear the testimony you are about to give before this committee is the truth, the whole truth and nothing but the truth?

MR. DIECKGRAEFF: I do.

SENATOR COWDERY: Could we have him spell his last name?

MR. DIECKGRAEFF: Yes, I will.

MR. DIECKGRAEFF: My name is Daniel M. Dieckgraeff, D-I-E-C-K-G-R-A-E-F-F. I'm with Enstar Natural Gas Company, I'm the Vice-President of Finance and Rates. I've been with Enstar for 20 years. Enstar provides natural gas to about half of Alaska's population. We have over 109,000 homes and businesses that we serve. We have service from Kenai-Soldotna to Houston to the Mat Valley, to Girdwood and to Whittier. And, I thank you for the opportunity to testify. Enstar Natural Gas Company strongly supports the reauthorization of the Regulatory Commission of Alaska. The regulatory oversight allows utilities and pipelines essential governmental function to both the customers and the regulated entities. We reviewed the reauthorization bill that passed the House, the committee substitute HB 333, and we believe the new timelines for the issuance of final orders in the new settlement language incorporated in that bill have merit and we enthusiastically support it. We would like to see the RCA reauthorized for at least 2 years, preferably 4 more. Frequent sunset reviews are disruptive, take time and resources away from the RCA's real business of regulation as we have heard it takes time and a lot of things are backlogged there. It places more uncertainty on utility operations; it also proposed uncertainty on the financial markets. Markets want a stable regulatory environment and [this] certainly has a negative impact. The current situation is an issue in the financial markets, um, I have personally been involved with discussions with analysts, with lenders, and the sponsors of those lenders and concerning this current reauthorization and what effect it could or could not have. And, it is also a topic, frankly, of the investor - investment boards, for our utility as well as several others. Changes can be proposed and made to the Commission without sunseting it. This legislature has the power and authority to change the rules for the RCA anytime it wants to and has done that in the years in the past. The fact that the Commission is

being sunsetted is something that a lot of the financial markets just doesn't understand. It is alien to them.

SENATOR DONLEY: Can you remember the last time - because I remember when I first got elected I chaired the Labor and Commerce Committee and we were, back then, dealing with a sunset bill and the very first time we put timelines on telephone decisions was in that sunset bill.

MR. DIECKGRAEFF: Are you talking '94 or '99?

SENATOR DONLEY: I was talking about '88 - '89. Can you remember the last time we made a change, that either you - the old Commission or the new Commission, that wasn't in a sunset year, that was tied to sunset legislation?

MR. DIECKGRAEFF: Frankly I don't. I have not tracked it, especially on the telephone side.

SENATOR DONLEY: I suspect that although you are technically correct, the sunset process is a process that is used for making those kinds of reforms or revisions. That's why we go through the audit review and see the suggestions. So I think technically you're correct but I can't remember us really ever making any changes in other than a sunset format.

MR. DIECKGRAEFF: Uh, I'm not a student of the legislature so I don't know your exact history but I know you have the authority to do it.

SENATOR DONLEY: That's true.

MR. DIECKGRAEFF: I do recall the effect of the 1999 changes and how that affected investors and the financial markets in our particular case so I do - I am aware of what that impact had. There are many important issues for the RCA to deal with. Cook Inlet gas supply and its effect on the gas and electric companies - electric competition [indisc.] and inter-utility issues and the safe, reliable and economic utility service to remote areas, also TAPS and, if we're lucky, TAGS. Probably, you know, I don't know in my life time or not but hopefully. We would not like to see the Commission abolished and remade as it was in 1999. The education process would have to start all over again. That is a lot of wasted time and lost expertise. It has taken quite a bit of time for all the utilities to bring this Commission and these new Commissioners up to speed on the regulatory issues and the individual issues within the individual utilities. What happens in the meantime? Cases pile up even more, it takes time to get

up to speed, takes time to understand what's going on. There are new issues that continue to pop up that must be dealt with. Any type of a time out could be a real problem for the utilities and consumers. Enstar strongly supports the reauthorization. We liked HB 333. We think it worked. We like the procedures the Commission is going through in their bench bar to solicit comments from utilities - things to make better - and I thank you again for the opportunity to testify.

CHAIRMAN TAYLOR: Dan, I, uh, continually hear this mantra for which we have hired and employed several different attorneys both within our staff, obviously outside staff for the committee. We have reviewed every Attorney General's opinion we can find. We have asked every witness that has appeared that actually worked for or was with a utility or worked on the Commission - had testimony yesterday from a lady that was senior staff to the Commission. The wind-down year did not cause any of the horrors or problems or the sky is falling attitude, uh, that we have heard orchestrated both by the Administration and by the Commission. We can find no source for any of that, uh, paranoia, with the exception of those two sources. Everyone whose been through one of those said it worked just fine, business as usual, uh, and the most dramatic thing we ever did was to redo the entire Commission and I worked on that with Senator Pearce and I'm sure that did cause some disruption because you lost all of the institutional memory. There was a learning curve that had to go on but I've not heard throughout this entire process, either in the legislature or among any of my colleagues, any desire to kill this Commission. That paranoia is only coming from one place, it is not coming from this legislature and hasn't.

MR. DIECKGRAEFF: I'm glad to hear that first of all. Second of all, even in the remake of the Commission, as you said, it was extremely disruptive...

CHAIRMAN TAYLOR: And nobody intends to do that from what I can tell. We are looking at some timelines. We are looking at some guidelines. We are trying to analyze what are the major problems and how the legislature might provide some assistance in that. We've heard people testify as though we are going to redo the entire Commission, throw out all the existing Commissioners. I don't know where this paranoia comes from but I think it has a lot to do with bringing pressure upon people like yourself and other utilities out there so that they will come in and endorse and support the continued reauthorization. I keep hearing the phrase ringing in my ears, four years and clean. That means they don't even get any timeframes like ARECA wanted. Just four years and clean. That's the Governor's bill that's going to be

presented to us.

MR. DIECKGRAEFF: I can't speak to the Governor's bill because I didn't propose it and I can't speak for other utilities because I'm not in their shoes. I watched what happened last time around. I - that was extremely disruptive and that would be an extreme problem. That's what I am concerned about. I know how the [indisc.] impacts and I know how it's impacting my company right now in the financial markets, the uncertainty. That's a big concern for Enstar and as you go back and look at it, it is very possible you could go back. What we have is the most recent history - is you did remake it and start all over again. That's not something we want to see. We strongly support the substitute bill that was passed by the House dealing with timelines and, most importantly, uh, I as well - was the settlement language - language to help encourage settlements, which would speed up - and I know the Commission in its bench bar discussions has had those types of discussions and that's a very nice way to start working on it.

CHAIRMAN TAYLOR: Thank you. Are there other questions? Senator Cowdery?

SENATOR COWDERY: Just yesterday we heard testimony that the - presently when we had the APUC, they had some delays, were finding those delays are the same now or even, in some cases, worse and we had testimony from Chugach Utility that financial planning, the same thing that you said, because of the delays so, uh, I guess my question is, do you think that we should just reauthorize this without any changes or any new guidelines and just leave it as it is so we continue to have - each of you think that we should try to work out some language that gives some timelines we have - that they have to deal with them, they have to give an answer. Ya know, I mean sometimes we, all sitting up here, have to make hard decisions and sometimes we'd like to walk away from a hard decision but it seems to be, to me, that what we're seeing in this thing is that when it comes to hard decisions they have big problems with making the decisions. So, anyway...

MR. DIECKGRAEFF: I can't speak entirely to Chugach's situation because I'm not working for Chugach. I will note that the case they are starting with actually started with the old Commission, it started in 1996. Enstar has had three cases that have been brought or made started with the new Commission. Its first was a transfer case, transfer of ownership to [indisc.]. The Commission responded to that and had an order issued for it within three and a half months of our application. We had a gas

supply case, first gas supply case for Enstar since 1988, first real gas supply case in front of APUC or RCA or - probably since 1992. It was done, final order was issued within a year of when it was filed, which is the timeline that the Commission, the old Commission actually, established for filing many, many years ago. We have a rate case that is pending now, that's a complicated issue. Part of the concern has been that the Commission has to start all over again. These are absolutely new issues for this group, nobody's talked about gas supply. There's a lot of education that's gone on. There are always ways you can improve things. Again, we are supporting the authorization or the reauthorization of HB 333, which did include additional timelines and items. So, to answer your question, yes we do support that. That's why we do support that version of the bill.

SENATOR COWDERY: We have looked at this here pile of things, or cases, and timelines and everything that I have looked at and I think most of the people - I hope- have looked at - been supplied to them. I appreciate your comments.

MR. DIECKGRAEFF: Thank you.

CHAIRMAN TAYLOR: Senator Donley.

SENATOR DONLEY: You've expressed concern about the time it took the RCA to get up and running. Do you think it was the right thing to do, to create the RCA?

MR. DIECKGRAEFF: When I look back, I observed and participated in a lot of proceedings before the Commission. We had a commission that, uh, part of its problem was its inability to work together. That is not an issue with this Commission but, and so, it was a drastic step and I'm not sure I even supported it at that point in time because of the institutional memory and the issues saw coming up before the Commission that [indisc. due to poor sound quality]. That hand has been dealt. Starting all over again would be a tremendous problem. Often times they don't get familiar with an issue until it actually comes before them. They had no reason to look at gas supply until we brought our gas supply case because they have a lot of other things - they inherited, what 500 or 700 cases?

SENATOR DONLEY: I guess I was trying to ask more of the big picture, do you think it was the right thing to create the RCA?

MR. DIECKGRAEFF: In hindsight, yes, but it was very, very disruptive.

SENATOR DONLEY: Yea, but in the long run you think it's working out better?

MR. DIECKGRAEFF: I think it's working out well.

CHAIRMAN TAYLOR: But obviously you support some modifications and some changes, as an example, the House bill that came over.

MR. DIECKGRAEFF: Yes.

CHAIRMAN TAYLOR: Okay, and I appreciate that very much and thank you for coming in and taking the time today. We will now turn to the Commission, um, oh yea, is George Gordon here? Yes, George, I'm sorry you're okay, right, thank you. We weren't able to get to you yesterday either on that list and I appreciate your coming back. If you'd give us your full name please after we swear you in? Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God before this committee?

MR. GORDON: I do. My name is George Gordon. I'm President/CEO of Utilities Services of Alaska, a total service company providing administrative and customer service support to regulated entities - Golden Valley Utilities and College Utilities, who are regulated by the RCA and provide water and wastewater services to the entire Fairbanks area. Our utilities do appreciate your efforts, uh, that you devoted to this issue. It's very important to utilities and maybe our concerns will not get lost in the normal rush of legislative business. This testimony is not to be considered approval of how the Commission has been conducting its business. There are several common threads that we find when speaking to other utilities. There is some general dissatisfaction about how the RCA operates. There is a tremendous reluctance to publicly speak out. There is a fear that expressing criticism or supporting sunset could result in negative regulatory action. There appears to be a lack of concern or awareness on the part of the Commission on the problems created by their actions or, in some cases, their inaction, i.e. there is not dialogue. Talking about dialogue, the ARECA resolution 02-19, seems to be right on point on many of the issues and I believe that was presented to you yesterday. Our utilities reluctantly support a one-year, perhaps even less, extension of the Commission's ability to operate. We believe, in the short run, a complete sunset at this point may exacerbate procedural problems. We're not 100 percent sure of that but the handwriting seems to be on the wall. In this one-year extension there has to be a concerted effort with industry participation to address RCA problems and fashion a remedy. Any extension larger than a year will not create an environment in which effective

change can occur.

MR. GORDON: What do we see as major problems? We think it takes too long to get action or decisions from the Commission. CS for HB 333 and the time frames incorporated in that bill are too long. This bill authorizes by statute the Commission's current inefficiencies. I don't think we need more time [indisc.]. There does not appear to be a recognition on part of the Commission that delay translates into lost revenue and lost opportunities for growing utilities. Delays mean lost revenue and lost opportunity. That's the long and short. Our utilities continue to experience substantial delay in processing relatively routine tariff changes, at least we think they're routine, they shouldn't take as long. And, this business of just issuing orders out of the blue and having to have them overturned frequently with reconsideration options [indisc. due to poor sound quality] costly and time consuming. There's no advancement of utility issues. RCA orders and inquiries and requests for actions on the part of the facility, in response to Commission staff or PAS, cause a great deal of time spent over what are really non-issues. It's a waste of time.

CHAIRMAN TAYLOR: George, I'd interrupt you there if I could. We've talked about orders out of the blue. We have a pile of matters pending, docketed and so on, and they seem to be taking, especially in the major cases, utility cases, rate cases, tariff cases, they seem to be taking forever. What are you talking about taking orders out of the blue? They're taking on other things?

MR. GORDON: No. During the conduct of cases, at various points during the case, there will be an order issued that appears to be based on little or no information - seeking - going down what I call rabbit-trails, without dialogue. I know it has happened to Chugach, to our company, it has happened to other companies. You have to stop the proceeding your in or put it on hold while you answer the elements of this order that don't appear to have a lot of foundation. It takes a lot of time and it costs a lot of money and the end result is the Commission is forced into the position to have to reconsider and perhaps do as much as a 180 on the order that they issued not 45 or 60 days before. It's happened to us and it's happened to other utilities and I think it's a waste of time. There used to be more thought given into orders of the issue.

CHAIRMAN TAYLOR: Thank you for that clarification.

MR. GORDON: There is no one for the utility to talk to and no

way to carry on a dialogue. This commission, I think, is dialogue-less. Form is elevated over substance. To me, this creates a lack of ability to fully define the issues. You can dot all of the *Is* and dot all the *Ts* and still not understand what all of the issues are and then you're working in a vacuum. To me *ex parte* should not be a problem. You could schedule meetings with all parties and talk. Don't screw anybody, don't hold them without full participation by everybody including consumers so you can talk and find out what the issues are and a lot of the hearings that I've been seeing - the issues are not brought to the - the system seems to be designed not to do that. Because of the foregoing, the process is too expensive. Rate cases are incredibly expensive now. I think the last witness just spoke to that. There is no feeling that the process is fair. While some will say that this is just dissatisfaction with RCA decisions, I disagree. I've been in this business over 35 years, far too long. I recognize you win some and lose some, that's ways of regulations and I accept that. But you have to have a belief that the process was fair before you can fully accept an adverse decision. If you don't feel the process is fair it's very tough.

What do we see as potential solutions that need to be examined in the perhaps one-year extension? I think there needs to be a new position created of executive director or chief-of-Staff or whatever you want to call it to run the day-to-day business affairs of the Commission. I don't think the Commissioners should have to do this. I think PAS needs to be reshaped and its mission defined. Is it there as a consumer advocate or is it supposed to be objective, acting on behalf of everyone? There should be more hearing officers - perhaps even contract hearing officers - and there should be the right and ability to disqualify a hearing officer the same way you do a judge. There should be shorter time frames, not longer, for requiring the Commission to do its work. If the Commission can't get its work done with the staff it has, then they should be required to demonstrate that and hire more staff. Delays cost an incredible sum of money and you are correct, our rate payers do pay a cost to the Commission but they also pay the cost of the rate case which goes up exponentially with delay and our customers pay for that also. And I think lastly, there has to be a mechanism for the solicitation of comments. You can't be pinned on people so that we can advance and have frank discussions. This kind of a forum is fraught with peril for all of us utilities. That is my prepared remarks and I thank you for your hearing.

CHAIRMAN TAYLOR: Senator Ellis - and could we get a copy of your prepared remarks? If you'll just give them to Annette, she will distribute them but before you leave Senator Ellis had a

question.

SENATOR ELLIS: George, you'll remember under the old APUC we had an Executive Director, and Senator Pearce was the prime architect [indisc.] RCA legislation and I guess Senator Cowdery and Senator Taylor worked on that - the detail of that legislation, and the legislature voted, most of us here if not all of us, voted explicitly to reject the old Executive Director set up and go to a managing partner/Commissioner, uh, for management of the agency. So you prefer the old APUC arrangement that brought a lot of criticism to the legislature and we explicitly examined that issue and changed it to what we have now?

MR. GORDON: I think that - my regulation experience goes back a long time and in ancient history the executive director worked, the concept worked very well. In recent years, the last years of the Commission, it didn't work very well and you were right to throw it out and try something new. I'd represent with - perhaps some kind of controls, some kind of a manager that's paid to manage that the utilities can talk to that's not a Commissioner might be better than what we have now.

SENATOR ELLIS: Thank you.

CHAIRMAN TAYLOR: Senator Donley?

SENATOR DONLEY: Can you spell your last name for me?

MR. GORDON: G-O-R-D-O-N

CHAIRMAN TAYLOR: Can you tell us, in the two utilities that you're here representing, College and Golden Heart, do you have matters pending right now and do you have some specifics that you can address that are frustrating your two utilities?

MR. GORDON: Well, yes we do have matters pending. We have, uh, routine tariff matters and a rate case, a general rate case pending for Golden Heart Utilities. And I tried very specifically to my comments, not to get into difficulties with cases and I want to be general and speak to procedure and to the process. I've already tried to speak to the process, how it works and how it doesn't work. I mean I can be dissatisfied with the decision if I thought the process was fair and worked - tough, that comes with our business. Sometimes the chips don't fall where you want them to but I'm trying to give a flavor of the failure of the process. I guess we could say that we are in a rate case that was filed in December 17. We asked for an interim and emergency refundable interim - to into effect in 30

days. It took 75. We lost two months of revenue, which was near a quarter million dollars. Real lost opportunities and there's no reason for that.

CHAIRMAN TAYLOR: I was very concerned by your first comments as you listed them, not only the dissatisfaction but the question of intimidation and the - as I mentioned to the committee yesterday - when I scheduled this thing for the first time in the Senate my telephone went into meltdown and not one of those people wanted to come forward and testify but every one of them were from utilities all across this state. They had horror stories they wanted to talk about but felt so intimidated by coming forward and talking before the Commissioners, uh, that somehow retaliation might occur against their utility.

MR. GORDON: I am not intimidated. I am not an easily intimidated person but I have a lot of concerns. These commissioners don't intimidate me. I've been in the business too long for that. They have an incredible amount of power, maybe even more than they know. They can draw a line in the sand and you stand toe to toe and if they don't like where the line is drawn they can redraw it 10 feet back. You've got no choice but to step back 10 feet. That's problematic. These kinds of things should have come out during the Legislative Budget and Audit review of the Commission and they didn't and so utilities are either forced to either step to the plate or keep their mouths shut. It's tough. It's very tough. They're our regulators. They have a lot of power over how we operate, whether we make money or lose money, how our customers are treated. It is a difficult situation for utilities and for me personally.

SENATOR DONLEY: When the Legislative Budget and Audit did its review, were you contacted by them for comment?

MR. GORDON: No, two people in our company contacted them but they never contacted us.

SENATOR COWDERY: You talked about the management and there's a need - seems to be poor management with scheduling. Do you have, is there anything when you, when they have a problem that you're interested in, do you have any information or have you had any information of a timeline of when you would have an answer or a guideline that says, we'll get back with you within 30 days or a year or five years or anything? Do you know?

MR. GORDON: There doesn't seem to be any. If they are there, I [indisc.] missing. Actually we're in a general rate case going on six months and we have yet had a pre-hearing conference and we

asked for one last week. Shouldn't take that long unless it's a really, really elaborate issue. Most rate cases are not necessarily elaborate - telephone utilities could be [remainder of sentence indisc.].

SENATOR COWDERY: So when you, say, when you have a problem, you communicate with RCA and say here's my problem and I'd like an answer to this. Do they ever communicate back and say we will have an answer on this by a certain date or anything like that, or acknowledge?

MR. GORDON: You have real difficulty trying to communicate. When you file your case, it's being heard and analyzed by the staff to come up with initial recommendations at which time the Commission makes a decision. Then they generally have PAS appointed as a party and then you can speak to PAS but you can't speak to the Commissioners and you can't speak to the staff that wrote up the recommendations. You can't talk to them anymore so then who can you talk to? PAS, who doesn't have any control, you can talk to a hearing officer and you can talk to a Commissioner but you have to be really, really careful what to say because of ex parte. You're sort of hung out to dry by the process because there is no dialogue. And, no, we don't get an answer as to when something will be done.

SENATOR COWDERY: Do you think staff is the largest influence in RCA?

MR. GORDON: They're big, a big influence. Of course, they are the preponderance of the people at the Commission. It's probably backwards. If you are going to have a PAS, they probably ought to be the people to investigate the staff on being an advisory role to the Commission, instead it's reversed.

SENATOR COWDERY: Thank you Mr. Chairman.

CHAIRMAN TAYLOR: Senator Donley.

SENATOR DONLEY: As you think of your experience dealing with cases before the RCA, let's just deal with the RCA right now. And the reason for delays, do you think that ...[END OF SIDE A]

TAPE 02-37, SIDE B

SENATOR DONLEY: ...let's just deal with the RCA for right now. The reason for delays - do you think that is the actions of the parties? What role does the action of the parties - I mean, there are some parties, I imagine, that it is to their advantage to

delay decisions. How does that relate to your concerns about the timeliness?

MR. GORDON: It does have some good effect. Interveners, as we all know, can cause delays. But the Commission has the power to force - to squash those and not give unlimited standing, for instance, to interveners who don't bring anything to the table and they should use that power. Hearing officials have power to cut off dilatory tactics at the hearings for instance, or rule on motions that would stop some of the nonsense and instead they just put it in the [indisc.] and rule at the end and let the whole process go forward with all this gray matter, this fuzz, this background noise and that, to me, uh, causes the issues to be hidden. You have to dig them up and that's not the way it's supposed to be. There should be x issues. You should stipulate up front to every possible issue you can with any party. I don't care if there's five parties. You could stipulate with two - at least you don't have to argue those two and three can duke it out. That just isn't done. They've got the power, it's not being used.

SENATOR DONLEY: Okay, thank you.

CHAIRMAN TAYLOR: Any other questions? Gordon, thank you very much for coming down from Fairbanks to provide that testimony and I appreciate your candor in your remarks.

SENATOR DONLEY: Hey, Gordon just for the health of the committee, do you have a business card because it's kind of hard to read your address?

CHAIRMAN TAYLOR: I would now like to invite the Commissioners themselves to come up and testify. We only have one chair. Yesterday we had a big table and we could spread you all out and I thought we'd probably have you all come up at once - maybe that would work, if you want to drag your chairs up there. The secretary will tell us if we're not getting a good clear record so at least I've asked her to interrupt us anytime she feels we are not getting a clean record. All raise your right hand, please. Do you swear the testimony you are about to give this hearing is the truth, the whole truth and nothing but the truth and do you do so aver and swear?

ALL COMMISSIONERS: I do.

CHAIRMAN TAYLOR: Let me start off first. I'll just start at one end and move through - would you give us your full name please and maybe a little background?

COMMISSIONER SMITH: My name is Bernie Smith. My background - I was appointed when the RCA got appointed in '99. I was a project manager and government affairs person for Tesoro for probably 16-17 years. Before that I was project engineer for E&C Company - that's what brought me to Alaska that built the refinery back in 1980. I am a graduate from Texas A&M with a degree in Engineering Technology.

CHAIRMAN TAYLOR: Well that would certainly provide you with some assistance in these complex matters I'm sure, and background but it's primarily in oil, right?

COMMISSIONER SMITH: That's correct.

CHAIRMAN TAYLOR: Bernie, you've heard the testimony of - did you sit through most of yesterday's testimony?

COMMISSIONER SMITH: Uh, yes I did.

CHAIRMAN TAYLOR: Actually, maybe I ought to start - this one to me is kind of incredible. We've got matters that have not been resolved, uh, and testimony to the effect that, as an example, Chugach Electric is still waiting on a rate filing and working under a temporary filing now. That is costing them \$200,000 and some thousand dollars a month and it's been over 6 years. How in the world could all of you take off the entire day yesterday and sit here with us? I mean maybe you could answer that one for me first and then I will - is there nothing else to do over there except come here and listen to and sit behind the people who are giving testimony?

COMMISSIONER SMITH: Well, it's definitely part of - it's good to understand what the issues are and I think that was very educational, for at least myself to sit here and listen to the testimony. I thought that was well worth it. And I did work after hours to do some stuff that I needed to do, as we all do. We all put in long hours.

CHAIRMAN TAYLOR: Bernie we are going to need to move you a little closer to that microphone or move the microphone to you.

[DISCUSSION ABOUT POSITIONING MICROPHONES.]

SENATOR ELLIS: Mr. Chairman, if I'm not mistaken, you invited the Commissioners to participate in these hearings.

CHAIRMAN TAYLOR: Oh, I did yes, and they accepted the invitation

and I assume that was so we didn't have to...

SENATOR ELLIS: And if they had not shown up to participate would you have said that they weren't interested in all the comments from the utilities?

CHAIRMAN TAYLOR: No, of course not. My concern was only that they show up when it was necessary for them to testify and they knew they were not on yesterday. They knew they were on for today and that's why we published an agenda.

SENATOR ELLIS: I think Bernie gave an excellent answer to your question.

SENATOR COWDERY: His answer was he wanted to know what the issues were, as I understand.

COMMISSIONER SMITH: It's important that - we're making decisions that are affecting the industry that we hear their side of the story. As you just heard from Mr. Gordon, it's not often that the industry actually talks to us so yes, it's important to sit and listen and get feedback from industry. That should be part of our job also.

CHAIRWOMAN THOMPSON: Senator Taylor? We're prepared to offer a response to some of the specific issues that were raised yesterday. We all participate in the decision making process.

[MORE DISCUSSION ABOUT MICROPHONES]

CHAIRWOMAN THOMPSON: Senator Taylor, I would like to let you know that we came prepared with some testimony to offer in response to the invitation and we would also like to be able to respond to some of the individual - the suggestions that were made yesterday in the testimony. The particular case you just identified, the Chugach one, would probably be most appropriate for one of the Commissioners that sat on that panel - would be best informed to respond to that. I don't believe Commissioner Smith is on that panel but, and I wasn't either so maybe Commissioner Abbott or Strandberg or Demarco could address your concerns about that docket.

SENATOR DONLEY: Mr. Chairman, I also want to say I saw that you were there yesterday and I appreciate you being here yesterday. I think it is part of the process we're going through here and I think we all concerned about have the Commission function well. But I think we also all appreciate the difficulties you're faced with, with these complex decisions and dealing with multiple

parties and I'm glad you had the opportunity to come yesterday and I appreciate that.

CHAIRWOMAN THOMPSON: Thank you.

CHAIRMAN TAYLOR: Back to Bernie, who we started with. Did you want to instead, Madam Chairman, just give us your prepared statements first before we ask questions?

CHAIRWOMAN THOMPSON: This is your hearing Senator Taylor. It was my understanding that that is what you wanted us to do and I am prepared to do that and I think in the context of those I would be happy to be interrupted with questions. I think it is good to have us all sitting here together because we all participate in the process and different Commissioners can better address different matters. So I think - I hope we can address all your concerns. But, yes, given the opportunity I'd like to start off with my prepared comments.

CHAIRMAN TAYLOR: Why don't we do that.

CHAIRWOMAN THOMPSON: Can you folks hear me in the back? I will try to speak loudly. I wanted to thank you for the opportunity to appear before this committee on the issue of reauthorization of the Regulatory Commission of Alaska. As you know, I'm Nan Thompson, the Chair of that agency, and I'm appearing here with the other Commissioners. We are all available to answer questions. You've heard yesterday, and will probably hear more today, some anecdotal information from several utilities. That's important information and I praise them all for being willing to come forward and testify. I urge you to carefully consider the agency's entire record when you're making a decision about our reauthorization. This agency has done a good job. This agency has done a very good job of working its way out of a mess that we inherited from the APUC in 1999. Many of you were in the Legislature and participated actively in the effort to abolish the APUC and create a new agency, an agency that was empowered with tools and a directive to do its job better.

In response to complaints from industry in the late 90's, the National Regulatory Research Institute, an organization that supports the work of state regulatory commissions nationwide, was hired to visit the APUC. It was hired to analyze its operation and to recommend improvements. A year after those recommendations were continued, the agency had still taken no action on them and the Legislature stepped in. The position of the Executive Director was eliminated, a public advocacy section was created, and the Commission was empowered to hire whatever kind of support

it needed to resolve cases more effectively. A management information system was funded. The chair was given administrative authority over the agency's operations. All of these changes were made in response to the specific problems identified by the National Regulatory Research Institute (NRRI) with the agency's operations. It's important to remember that 1999 was not a sunset year for the APUC. The Legislature has the power in any year to review the operations of any state agency and change the enabling statute. We don't need to do it only during a sunset year.

We invited - we being the Regulatory Commission - invited NRRI back in February of 2000 to see if the problems identified in 1998 had been adequately addressed by the Legislature's changes and the resulting Commission. The answer was yes. I have copies of the report available for members of the committee along with other documents that I'll provide to you at the conclusion of my testimony. NRRI found each of the areas identified in the first review as being in need of attention has experienced substantial improvements. This impartial body, NRRI, with expertise in the operations of utility regulatory agencies nationwide and experience, direct experience, with the problems that the APUC faced, found that the agency was back on track. The NRRI study also identified, the 2000 one, several areas of potential future concerns and we have followed up on their recommendations. We have invited them back to facilitate the development of a new mission statement for the agency. We invited them back again this summer to provide leadership and management training to staff and section heads. That's scheduled for July. We'd be happy to invite them back again to analyze and make recommendations on some of the specific issues that have been identified in the course of this hearing, such as the continuing debate about whether we should have an executive director or not, and looking for ways to reduce the agency's case load.

You've heard anecdotal stories about particular cases that have been portrayed as examples of the RCA operating poorly and we can and will address the specific cases that were identified in yesterday's testimony. I'd also like to share with the committee important information about how the agency as a whole handles its workload, which is substantial, as you noted Senator Taylor.

In 1999, when we walked in the door there were more than 500 open dockets, many had languished for years without action. We set about a task that I call triage, and see how many of them laugh when I say that, because what we did was divide those five hundred dockets by 5 and each got 100. Every Commissioner got an equal share with a directive to analyze the case and figure out

what it was that needed to be done to move it forward. This was a daunting task. Each of us had to work our way, sometimes through a file and sometimes through a file cabinet, for each of those cases, um, in order to understand the case. Commissioner Abbott fondly referred to this process as forced to take a drink of water from a fire hose, I think more than once. The problem we encountered was one that I don't think any of us anticipated when we agreed to take these jobs, which was there wasn't really before then a uniform agency-wide method for tracking filings within the agency. Shortly after we began, I unearthed a few hundred more cases or problems that should have been addressed and docketed and instituted a system to keep track of all the agency's work load that it would allow everyone in the agency easy access to a list of open cases and knowledge of who in the agency was responsible for those filings. Our agency caseload is now less than 400. From over 700 cases we worked our way down to 400. This has been a substantial challenge because we've been trying to keep abreast of the current filings and you heard about some of those that have come in. Those average - we get about 450 filings a month from the various utilities and consumers. We've been processing those filings timely while working through our old dockets at the same time and this has been a not insubstantial challenge. I think each of us individually can tell you what they do to try and squeeze in the extra hours required to do this work.

This change in the agency's case load, the reduction to less than 400 open dockets, represents a strong commitment to accomplish the directive of this legislature, excuse me not this legislature, that the legislature gave the agency in 1999. Evidence of that accomplishment is also found by looking at the number of substantive orders issued by the agency each year. That number has more than doubled and I prepared a graph to easily demonstrate that - copies of this are in the packet too. The previous years are on the right going over to the left, the last year that's complete, which is Fiscal Year 01, there were 741 substantive orders issued by the Commission. Now a substantive order is not extending time or something like that, it is an order where there is a written decision, a discussion, an analysis and it's prepared and published in written form and I'll tell you later on in my testimony how those orders get processed and written. I think that this chart demonstrates a substantial increase in the volume of work generated by our agency over time. All of these orders, it is important to know, are available to the public on our website and that's another important change that the RCA has instituted. If you haven't had the opportunity to visit our website, I encourage you to do so. It is a useful tool to inform the public and keep industry

advised - it's an important part of our process now, it will soon be modified to include access by the public through our MIS system to all the filings made with our agency as well.

SENATOR DONLEY: I heard you mention MIS, what does that stand for?

CHAIRWOMAN THOMPSON: MIS stands for Management Information System and in 1999 that was one of the things the legislature told us to do.

SENATOR DONLEY: In rural construction it's major investment studies so...

CHAIRWOMAN THOMPSON: Oh, okay. How that is defined, I can tell you a little bit about it and go off script here for a minute if you're interested, which is when we got that directive we started, we thought well, gee, what's that? So we contacted every state commission in every state of the nation and said, gee, this is what we want to do, we want a system that allows us to internally manage our process, know where the dockets are, what's the next step, and we also want a system that's going to allow the public to have access to the documents that are filed in front of us. And nobody had the software, nobody else had done it, so we ended up having the software written and are in the process - it's not a system that you flip the switch and it's on or off. Parts of the system are on and active and other parts are in the process of being tested and will soon become active. As to the status today, I can check, but basically it's a design to help us do our work better. So it's a tool, a technological tool, to cope with the workload. One of the important responsibilities we have is to review tariff changes for economically regulated utilities, and there was some confusion I believe, or perhaps after Ms. McPherrren's testimony about what regulated and not regulated is, um, I like to think of utilities, they're regulated if they are required to have a certificate but they are not economically regulated unless we have powers to review their rates but, anyway, any utility that is economically regulated has to file a request to change either its rates or terms of service with the RCA. Last year we got 576 of those requests, 85% of those were resolved within 45 days. Within that 45-day period, what happens is, the public is notified of the change, the staff analyzes the proposed filing, discusses any questions they may have with the utility, comments filed by the public are reviewed, a recommendation is written and presented to the Commissioners, the five Commissioners meet and vote and an order is issued.

And I have a chart that illustrates tariff, the pace of tariff filing to the - if you total those lines together it is about 576 filings. The first line, the long line, are the number of those filings that are handled within 45 days. The ones that aren't concluded within 45 days are ones that need further analysis for some reason - those that are suspended for further investigation.

Filings can be suspended if they raise significant issues that can't be adequately analyzed because we don't have the information from the utility or just don't have time to go through it. An example there is the Chugach filing in July of last year requesting a rate increase you heard a little bit about. I don't know if Joe Griffith is still here but I'd say that was at least two feet, probably three feet, high when we got it and there were a lot of significant issues and a lot of comments on that filing. When we get comments and we get requests to intervene from other parties, especially ratepayers, Chugach's ratepayers are Homer Electric, MEA - on the wholesale rate - large very sophisticated other utilities and they often comment and frequently comment in those filings. We have hearings so we can hear their perspective on the issues and allow them to comment on some of the policy issues raised in the filing. We have hearings to build an adequate record for making a good decision.

Another important responsibility the agency has is handling consumer complaints. We receive an average of more than 600 a year; those are people from, who call because they're having trouble with one of their utility companies. Our number's on the bill and they call us if they can't work it out themselves with the utilities. Now, of those consumer complaints, um, our role is to investigate. We first contact the utility for comment and relay what we've heard from the consumer, ask for input and then our staff will look at the relevant tariff law or tariff and the relevant law and work to resolve the complaint. This is one of the processes the legislative auditor looked at in detail and the legislative auditor found that the agency is quite responsive to consumer complaints. Of those more than 600 complaints, most are resolved in the first 15 days and I have a chart, by type of complaint, that illustrates that - it shouldn't have been all yellow, I guess it didn't get printed as well - but basically the big part of the pie chart on all these are the ones that are resolved in 15 days. I also want to show you how those complaints are divided by industry and the big stripe on this chart is telecommunications. Eighty percent of the complaints we get from consumers are from consumers of telecommunication services and that is an interesting fact to note. Soon after Congress decided there should be competition in that industry in

1996, the agency saw a dramatic increase in complaints. This illustrates how this agency's role changes as markets move to competitive. We have regulations that expedite the process for approving changes for rates in competitive markets. We spend less time monitoring their prices when consumers have real choices and more time addressing the consequences for consumers of competitive markets.

SENATOR COWDERY: Go back to something you said earlier about working or having hearings or discussing, do you discuss with the utility personally, discuss the problem to have a better understanding of what it is or do you do it as a group or individually or do the utilities have to deal with staff and never get you guys ear or how does that work?

CHAIRWOMAN THOMPSON: Well, probably the answer is all of the above. To your question though, you ask it depending on what the complaint is. For example I mentioned tariff filings, those are the requested change rates for terms of service. Before that tariff filing is determined by the Commission, it would be to a staff person that someone from the utilities would talk and they might get a call from staff saying, gee, I don't understand this or this spreadsheet doesn't tie out with what you filed in your other report - explain this difference to me and that's who they'd hear from. In a case that has been, a tariff that has been suspended, then we move into another role the agency has or acting like a judge and a concern is with ex parte contact. It is important when the parties want the process to be fair that all the information we have in front of us is available to everybody. It's not appropriate for any of us individual Commissioners to talk to a company about a case, an issue in a case, where there is an open docket. Any communications between the utility and the Commission has to be in a form that all parties are present; otherwise it is inappropriate, it's not fair to the other parties.

SENATOR DONLEY: Does the RCA function under your own administrative review guidelines there or are you under just the standard administrative procedures act when it comes to sitting in a quasi-judicial function?

CHAIRWOMAN THOMPSON: Uh, under the standard administrative procedures act, we don't have specific ex-parte regulations and it's something I thought might be a good idea for some time and listening to the testimony of yesterday there is a lot of confusion and frustration with either us talking to people we shouldn't be talking to or not talking to people we shouldn't be talking to and I think it would be helpful for us as an agency to

have regulations that clarify that for industry. The standard line on the standard procedure for all of us is that it is okay for any of us to talk with anybody about process or general policy questions at any time but it is not okay to talk about the issues in any specific cases, just because it's not fair if there is a contested case. That's a really difficult line to draw, as you can imagine.

SENATOR DONLEY: Does the Department of Law say you have the authority under existing law to adopt regulations to facilitate what you're just discussing there?

CHAIRWOMAN THOMPSON: Um, they're here, they can speak for themselves but I don't know why we wouldn't. They are shaking their heads, so yes we could. It's a matter of time and priorities, quite frankly. Again, priorities may be readjusted as a result of this process. When you think of our agency, you should think of us as a referee. We don't make the laws.

CHAIRMAN TAYLOR: Maybe I'm confused but I thought your answer was that you were under the Administrative Procedures Act.

CHAIRWOMAN THOMPSON: Like any other agency we operate under the administrative - there are other laws that apply too but Senator Donley asked specifically if we had - I thought the question was, do we have other separate rules that govern just our agency for operation. And we have, there's a lot of regulations that govern operation of our agency but we are also subject to the APA.

CHAIRMAN TAYLOR: As far as I know, you're exempt.

CHAIRWOMAN THOMPSON: From the APA?

CHAIRMAN TAYLOR: Yes, and your counsel back there is nodding yes.

CHAIRWOMAN THOMPSON: Okay, whatever my counsel says.

CHAIRMAN TAYLOR: Senator Donley's question, the answer should then be no and then the answer should be we haven't adopted any regulations yet internally on that issue. I think that would be correct.

CHAIRWOMAN THOMPSON: I think there is some confusion about the question. I didn't intend to mislead the committee; it is true that we don't have our own internal regulations on ex parte contact.

SENATOR DONLEY: This sounds strange to have the attorney in the background here.

CHAIRWOMAN THOMPSON: Would be helpful to have her come to the table and [indisc.]

SENATOR DONLEY: Just so I understand better, so you're not subject to the standard Administrative Procedures Act that most of the committees - or commissions and government that serve this quasi-judicial function, are subject to. You have the power to adopt your own regulations and haven't fully developed those regulations yet. Is that the status?

CHAIRWOMAN THOMPSON: I think I am understanding where you're going a little bit better now. We have, um, extensive regulations that govern our procedures within our agency. They talk about hearing processes, they talk about what utilities are required to file with certain - they want certain types of action, they set procedures for our own hearings. There are no ex parte regulations that are a part of that. It is something we could do and probably should do.

SENATOR DONLEY: And the reason you have the authority to do that is because you're exempt from the other provisions or the administrative procedures act?

CHAIRWOMAN THOMPSON: I'm gonna get in trouble with my lawyers again if you make me answer a legal question.

MS. HICKERSON: Thank you. I am Elizabeth Hickerson from the Attorney General's Office and actually substituting for Virginia Rush. I have represented the Commission over the years, um, previously the APUC and from time to time the RCA.

CHAIRMAN TAYLOR: We need to make a note that you should consider yourself sworn in and, as an officer of the court, I will accept that.

MS. HICKERSON: Thank you very much. Uh, specifically under AS 42.05.161, the administrative adjudication procedures of the APA do not apply. Those of you that are familiar with APA know that there are very specific terms and conditions contained and the Commission is not subject to that.

SENATOR DONLEY: One of the reasons I asked because under that it'd be very difficult to develop an ex parte communication scheme that would be unique and separate, where if you had powers intended for [indisc.] you might be able to do that.

MS. HICKERSON: Right, and Senator, through the Chair, certainly the APUC does have authority to adopt regulations, have extensive regulations on procedures. The general due process requirements that govern all administrative bodies govern the Commission. They are very concerned about affording due process to all parties, it has been my experience and while members of the public, perhaps utilities might wish to have more direct contact on a one-to-one communication, general procedures require that fairness prevail and that there are no inappropriate ex parte communications and actually they don't even have to have a regulation for that to apply, that is just general administrative law that applies to all their proceedings.

CHAIRMAN TAYLOR: Who enforces that?

MS. HICKERSON: Well, as far as enforcement goes, the Commission enforces its own procedures. In the event a party might feel that they are in anyway not being afforded due process, they can bring that to the attention of the Commission, um, and ask for an audience on the issue, if you will, by motion.

CHAIRMAN TAYLOR: So the answer to the question is, the Commission decides if the Commission has had improper ex parte communication.

MS. HICKERSON: Well, in a way it would be. The Commission is the body that renders decisions and if any party felt they were being denied due process, it would be appropriate and the remedy would be to bring a motion before the Commission on that very issue and for a proceeding to be held that is necessary to determine whether or not there was any inappropriate conduct. If a party then felt that the Commission failed to adequately - failed to address the question, they could appeal to court. But generally, it's the Commission that is required to enforce their own rules.

CHAIRMAN TAYLOR: How would anybody ever know?

MS. HICKERSON: How would anyone ever know what?

CHAIRMAN TAYLOR: If ex parte communication was or was not going on? How would you know that?

MS. HICKERSON: Well I think, as in any other administrative proceeding, as would be in court, it would be a party that would bring the issue before the body, before the Commission, before the court.

CHAIRMAN TAYLOR: So some other party, other than the one obviously doing the ex parte communications, would have to know of it or know that communication had taken place and they would have to raise the issue before the very panel that has had the communication.

MS. HICKERSON: Well, as basically, the rules of procedures that apply to all proceedings that if there is an alleged wrong doing, you bring it to the entity who has the jurisdiction to correct the problem. Certainly if any individual Commissioner had a concern, if the PAS has a concern, if any utility, a member of the public, you know the forum is there. Strict rules of procedures don't apply but the intent is so as not to prevent someone from having access. The intent is to provide a fair environment for all people to have their views reviewed.

SENATOR DONLEY: I just wanted to have a better understanding - we had witnesses yesterday and today talk about the desire for the ability to more informally address the Commission and I wanted to understand and explore the legal [indisc.] possibilities for that, so I think I got my question answered.

MS. HICKERSON: Okay.

SENATOR HALFORD: To close that, the provisions against improper ex parte communication are a matter of court cases, law, they are established, they are fairly clear, regardless of whether there is any administrative action by this entity or not. They are a principle of due process?

MS. HICKERSON: Yes, sir.

SENATOR HALFORD: They are there regardless of what is adopted?

MS. HICKERSON: That is right.

SENATOR HALFORD: The questions that we have been dealing with are the questions of how that is implemented in a commission or how you have information and so forth, but the principles are clearly established by court cases with regard to improper ex parte communications as a basic standard.

MS. HICKERSON: That is correct.

CHAIRMAN TAYLOR: One last thing, the distinction here is that in a court case you can preempt that judge and you can appeal that case to a higher authority if, in fact, you believe you've not

received a fair and impartial hearing on the disqualification of that judge. What standards do we have for the disqualification of a Commissioner?

MS. HICKERSON: Well, certainly if an entity felt it was not receiving fair review they could bring a challenge to the Commission and the Commission has the jurisdiction, primary jurisdiction, over administrative law in this whole area and if an entity felt that they were not receiving fair treatment, they could go to court immediately so there are remedies that are inherent with administrative law and court review.

CHAIRMAN TAYLOR: How long have you been advising them?

MS. HICKERSON: How long have I? I started out advising the APUC in 1997. I previously represented consumers back in '81 before the Commission. I represented the Commission, I think, for six and a half years. I've consistently been brought back to help assist the old APUC as far as the RCA.

CHAIRMAN TAYLOR: And in that history how many times was a commissioner ever disqualified or ever recused themselves?

MS. HICKERSON: To my knowledge I don't have any specifics. I think if there was ever - I can recall from time to time a commissioner not sitting on a panel because of a perceived conflict that they would bring themselves.

COMMISSIONER SMITH: I happen to be one of those commissioners. If you did remember one confirmation for myself in '99, I was asked on the floor - or not me, but it was asked on the floor, would I recuse myself from any case that Tesoro had been involved with and I stated I would and I have not been on any case that Tesoro has been involved with so just, as a point, I have recused myself from every issue.

MS. HICKERSON: Thank you.

CHAIRWOMAN THOMPSON: It's important to note also we have, in terms of talking to the Commission, there's a public meeting a couple of times a month depending on what the schedule is and what's on the calendar. Any party is free to offer any testimony they want to us then. As Commissioner Smith testified, there's been a practice in assigning cases to not - it's been my practice to apply the rules that apply to judges, in other words, not assign folks to cases where either they've asked to recuse themselves because of their connection with one of the parties or it's one where they've had experience, extensive experience, and knowledge that they might bring to bear that would be off the record that might taint the process somehow. That decision has

been the source of some friction, but our process is different. It's not - when we're making cases on decisions, it's not a political process. It's not one like you folks experience in Juneau where anybody that has an interest in something or wants to convince you of something can knock on your door and talk to you as long as you'll open it. At least when we're going through the process of decision making, we talk to each other, we talk to the staff that's supporting us in the analysis of the case and the only other information we have about the case is information that's in the record and the record is set up so that everybody knows all of what we're going to consider. That's an important part of fairness in the process.

SENATOR COWDERY: In staff recommendations - how often do you follow their recommendations?

CHAIRWOMAN THOMPSON: Sometimes. I don't know if I can characterize it by percentage.

SENATOR COWDERY: A majority of the time?

CHAIRWOMAN THOMPSON: Oh probably a majority of the time we do follow staff recommendations, but we don't always agree with them. Commissioner Demarco said that we often modify them, which is true. We'll put our own twist to what we've heard but staff's the one that spent - I mean they have fewer cases and more responsibility for doing a thorough analysis and making a recommendation to us. Senator Halford?

SENATOR HALFORD: So, just as a matter of policy, when you have these cases that are ongoing for years, you kind of have to treat them - everything as ex parte communication unless it comes before some kind of a formal hearing or something like that? You're kind of stuck with that standard for as long as those cases are open?

CHAIRWOMAN THOMPSON: Yes. When you're talking about communications, specifically about the issues in that case. As many utilities have testified, they have more than one thing going before us at any given time and we may be able to talk to them about something else but we can't talk to them about that case. It would be an inappropriate ex parte contact.

CHAIRMAN TAYLOR: How would we ever know?

CHAIRWOMAN THOMPSON: Commissioner Demarco - do you want to help?

COMMISSIONER DEMARCO: We take an oath to be fair and honest and I think all of us take that very seriously and I think without an understanding by the public, by the utilities that we regulate, and by everyone else, that we do adhere to high standards of

ethics in conducting this business. It doesn't work. You could not possibly either second guess people who are dealing with a three foot drawer full of records or people who are trying to cope with issues of this detail without having a certain element of trust that the process is being conducted fairly and according to the proper rules. We couldn't possibly have enough policing to do that.

CHAIRMAN TAYLOR: What I'm referring to - as the Chairman has mentioned three or four times now, that we still have ongoing communication between commissioners and, what I would call, litigants or applicants, I guess may be a better term - but we only talk about process, we never talk about the case or the specifics, and just the answer to Senator Halford, since there may not have been a hearing for some lengthy period of time where you could officially have the parties testifying in front of you. And my question to that was how would we ever know? How would anybody ever know whether or not the fine line between talking about the case and talking about the procedure on the case is not crossed?

CHAIRWOMAN THOMPSON: Well you've identified what's a very real problem for all of us and it's choices that we've all made individually as commissioners. Some have chosen to just not to talk to folks at all and are subject to criticism, some of which you've heard in your hearings about being unavailable and unapproachable because they're uncomfortable about the line. Others of us have chosen to communicate in an effort to be responsive and understand industry's concern and have to be put in the uncomfortable position personally of drawing the line when the utility goes over it because I think we all carefully explain when we have communications that this is a conversation about process, this is a conversation about policy. It's not a conversation about open docket. And sometimes you have to stop people in midstream and say we can't talk about that and the other commissioners can speak to their own personal experiences with that problem but it's a tough call and one choice you can make is just to not talk to anybody and being willing to be subject - or not to talk to any of the parties in industry and be willing to be subject to the criticism of being unavailable and unresponsive.

CHAIRMAN TAYLOR: And these communications would probably be oral? You run into somebody on the street?

CHAIRWOMAN THOMPSON: Uh huh.

CHAIRMAN TAYLOR: They're certainly not written, I would imagine, because unless they're written about what is the process and when will the process take place on my case and, if they are, I imagine those are shared, we probably also - do these people

communicate also by e-mail?

CHAIRWOMAN THOMPSON: Sometimes.

CHAIRMAN TAYLOR: So that would reflect whether or not communication was going on.

COMMISSIONER STRANDBERG: Senator Taylor - I'd like to - I am Jim Strandberg. Just to amplify a little bit on what Nan was saying - at a practical level, my personal feeling is that we really can't do our business as commissioners without talking to industry and I've - there are significant problems and you have to watch very carefully about ex parte - the potential for having an ex parte conversation because I think all of the parties in any of these cases watch us very, very closely and I mean they watch our body language in public meetings and in hearings and I just wanted to tell you that it's my mind, you know coming from private enterprise where I could pick up the phone and find something out in an engineering business, but here the ex parte rules are very, very important. Indeed if we don't live up to them, we can get into serious difficulties in any of these proceedings and so all I can say...

CHAIRMAN TAYLOR: What ex parte rules are we talking about? I thought that in the discussion that none [indisc] that the only ones that existed were those within existing case law within administrative...

CHAIRWOMAN THOMPSON: Well those are very real and I think at this time that - Senator Halford is shaking his head. He understands them as well. We don't have separate regulations specifically for our agency but we have - we're bound by the same principles that would apply to general administrative proceedings.

CHAIRMAN TAYLOR: And staff is also bound by those?

CHAIRWOMAN THOMPSON: Staff's role is different. Staff is not the ultimate decision maker. In many cases they can and are free to talk to industry more than us because they don't call the shots, we do.

CHAIRMAN TAYLOR: So staff goes and talks to industry, makes a decision, and then you and staff sit down and make the decision on the issue - right?

CHAIRWOMAN THOMPSON: Well it's - you're confusing two different cases or maybe I was confusing your earlier question. Staff talks to industry before. In a tariff filing, before it's suspended, when it's still under consideration, staff talks to industry openly and that's very useful. There are no other parties to the docket at that point in time. The agency - the Commissioners have

not yet considered it. They talk to industry freely in order to fully understand the filing and be able to make a recommendation. Their recommendation is reduced to writing, it's available to the public before the tariff action meeting at which we make a decision, and then we deliberate in public and make a decision on those matters. After a case has been suspended, staff's ability to communicate with industry is compromised because of the issue that you were insinuating at - that they would improperly influence staff who would communicate to us. Once a proceeding has been suspended and we have an open adjudicatory docket, everything is on the record. With regulations dockets, it's a little different. Regulations dockets - we're policy makers. We're acting more like the legislature does when it adopts legislation and there are communications between staff and members of industry about issues in those regulations dockets and, I imagine, perhaps with commissioners and members of industry about regulations dockets as well. The outcome is different. It's not one party versus another. In regulations dockets, we're implementing policies that will apply to every utility in the state.

CHAIRMAN TAYLOR: And I'm sure we understand that this week. Senator Ellis?

SENATOR ELLIS: Nan, on the subject of contact with you and other Commissioners, you know I can understand - there's millions of dollars at stake, utilities wanting to affect your opinions. What's been your experience with the Governor and legislators? Do you receive contacts from anyone other than the interested parties as utilities?

CHAIRWOMAN THOMPSON: I've never received a communication from the Governor or anybody in the Executive Branch about any open docket and the other Commissioners should be allowed to answer that question for themselves.

SENATOR ELLIS: Do legislators try and affect decisions?

CHAIRWOMAN THOMPSON: I've gotten calls from legislators. I have attributed that effort to a lack of understanding about the specific processes, which are complex. You can't be expected to know whether it's an R docket or a U docket, a distinction that's important in our minds but perhaps not in theirs. In many cases, the communication comes in the form of an e-mail or a letter and the appropriate way to address it is just to put that in the record and make it available to all of the other parties - make copies to other parties. If it isn't a written communication, I'll write or reduce the communication to writing and put that written record or that evidence of the communication in the record as well if it's a U docket that I got the communication about. I guess, again, that's something the other Commissioners

may be able to answer or should be able to answer for themselves. They may answer differently or not. I don't know.

COMMISSIONER DEMARCO: I don't have any legislator calls.

SENATOR ELLIS: Thank you.

CHAIRWOMAN THOMPSON: Okay. This...

CHAIRMAN TAYLOR: I'm assuming, though, you've had significant contact with the Governor's Office over the last month, month and a half. I see some old friends sitting out here and kind of wonder who they're being paid by but I - there certainly has been an extreme effort, to say the least, to go out publicly and to talk with utilities and others about the substance of this hearing today.

CHAIRWOMAN THOMPSON: I believe that the Governor recognizes the importance of this agency's work for the economy of the state and I believe that he understands the complexity of the cases that we handle and the importance that continuing the agency, in effect, and not subjecting us to a sunset year has. I think he understands clearly the disruption that it would bring to our ability to get our work done. I think he also understands because he's probably reviewed the annual report to the Legislature and some of the other information that's been provided about the volume of work we handle and this process has been very disruptive to our workflow. I believe that the Governor sincerely wants to avoid any further disruption. He wants us to be able to get back and do our work, to be able to do what the utilities that have testified before this committee have said is important, which is to process the cases timely.

CHAIRMAN TAYLOR: Senator Ward?

SENATOR WARD: Thank you Mr. Chairman. Through the Chair - I have a letter here from Senator Halford that refers to an appropriation that was made by not this legislature but the legislature before in May of 2001. When did you become aware of this appropriation for an outside audit to be done and who contacted you and is there some kind of a record?

CHAIRWOMAN THOMPSON: I honestly don't remember how I became aware of it. It was after the Legislature adjourned and then I remember being asked what it was for and I said I don't know and then being shown a copy of Senator Halford's letter sometime later.

SENATOR WARD: And then, if I might, Mr. Chairman, who asked you that? Who did you discuss it with?

CHAIRWOMAN THOMPSON: As best I can recall, and it wasn't, well -

as best I can recall, it was probably somebody from the Governor's Office but I'm not sure.

SENATOR WARD: Would you happen to know who - would you have an e-mail? As a Commissioner would you make a documentation of that discussion?

CHAIRWOMAN THOMPSON: Well, it wouldn't be an ex parte communication that I would have put in the record because there is no open case.

SENATOR WARD: That's not what I was asking. Is there a documentation as to when the first discussion was held - I'm trying to find...

CHAIRWOMAN THOMPSON: I don't know Senator Ward. I don't know if there is or not.

SENATOR WARD: Okay. Then I might ask any of the other Commissioners - have any of you had any discussion concerning the request for audit from the Legislature last year and, if so, who with?

CHAIRWOMAN THOMPSON: The request for audit? Are you talking about the referral to the Legislative Budget and Audit Committee or Senator Halford's letter?

SENATOR WARD: No, I mean the audit.

CHAIRWOMAN THOMPSON: The telecommunications study?

SENATOR WARD: The telecommunications study.

CHAIRWOMAN THOMPSON: Okay.

SENATOR WARD: All right. Are we unconfused now?

CHAIRWOMAN THOMPSON: Okay.

SENATOR WARD: Who first contacted you about it? You don't remember but does anybody else remember?

CHAIRWOMAN THOMPSON: I think my answer was I'm not sure that I remember specifically, but it was probably somebody from the Governor's Office because it showed up in the budget when they were reviewing it shortly after the session adjourned.

SENATOR WARD: And do you recall any kind of discussion as to implementing this whatsoever?

CHAIRWOMAN THOMPSON: The appropriation was to the Department of

Administration.

SENATOR WARD: I'm aware of that but since they contacted you and since it does have - referred to one of the things that was going to do - that's agency performance, they almost would have to contact you in that case and it appears that they have and since we can't remember who it was I was wondering if there might be some documentation as to that contact or if any of the other Commissioners - have any of the other Commissioners had any contact about this appropriation? Have you?

AN UNIDENTIFIED MALE COMMISSIONER: I remember when it was going through the legislation at the time. It was at the very end of the session but I didn't have any contact. I just remember about it.

SENATOR WARD: So we would have to ask the Governor's Office if they could recall who first approached you on it and what that discussion was and if there was any conclusions on it?

CHAIRWOMAN THOMPSON: Um hum. I'm trying to...

CHAIRMAN TAYLOR: What we're trying to figure out is how come the Legislature appropriates \$300,000 for a study on basically telecommunications and this Commission and it gets so slow rolled by the Administration that Commissioner Duncan doesn't even put out the RFP till the 15th of April with a response date the day after the next legislature adjourns. We're trying to figure out why that happened and who slowed it.

CHAIRWOMAN THOMPSON: I think that talking to Commissioner Duncan from the Department of Administration is the way to get the answer to that question. I don't know.

SENATOR WARD: Well, Mr. Chairman, all I was - I was just asking who you had contact with - if it was Commissioner Duncan then that would be fine but since you don't recall...

CHAIRWOMAN THOMPSON: I remember talking with Commissioner Duncan later. Your question was focused on the days right around after it was passed and I don't remember when it was, but some months later I remember hearing from Commissioner Duncan about it.

CHAIRMAN TAYLOR: Did you participate in meetings with Mr. Duncan or any other party relative to that expenditure and did you have discussions with anyone in this last year about whether or not that expenditure would occur and how it would occur and so on?

CHAIRWOMAN THOMPSON: Yes.

CHAIRMAN TAYLOR: With whom?

CHAIRWOMAN THOMPSON: I - when the process of issuing the RFP began, I was asked because of expertise in telecommunications to try to articulate, you know, what the study would look at and I participated with a group of people in a conference call where we were looking at a draft of the RFP. The effort was made to be responsive to the concerns raised in Senator Halford's letter and word the RFP in a way that we were responsive.

SENATOR WARD: Mr. Chair, if I could? And if you could, could you tell me when that teleconference was and who was on line?

CHAIRWOMAN THOMPSON: I can't, sitting here, tell you I'm going to remember everything exactly. It was relatively, well, it was within the last couple of months and there was a group of folks on line.

SENATOR WARD: And would you happen to have a log of who those people may be?

CHAIRWOMAN THOMPSON: I'm sure that the Department of Administration would because this RFP was their responsibility and they're really the ones that have the information that you seem to be seeking about it rather than this agency.

SENATOR WARD: You do not have it?

CHAIRWOMAN THOMPSON: No.

SENATOR WARD: Thank you Mr....

CHAIRMAN TAYLOR: And apparently that's the first discussion you recall having with either the Administration, Mr. Duncan, about this study?

CHAIRWOMAN THOMPSON: I got a letter from Senator Halford at some time earlier that I'm not entirely clear what prompted but he was suggesting that the money had been appropriated to the Department of Administration and that was the appropriate agency to handle it.

CHAIRMAN TAYLOR: What I've been trying to figure out is how come right at the end of the legislative session the Administration was strongly encouraging members of the House Finance Committee to reappropriate the \$300,000 over to a suicide prevention fund.

CHAIRWOMAN THOMPSON: Senator, I don't know anything about that. I'm sorry I can't answer your question. Well, we're an independent agency. We're not the Governor's Office and that ties right into - if you're done with that line of inquiry - to the next - where I was going to go next.

CHAIRMAN TAYLOR: I have a meeting at noon across the street and the hour has hit and I think it's appropriate we take a break right now and we'll return about 1:30.

CHAIRWOMAN THOMPSON: We'll be here Senator. Thank you.

CHAIRMAN TAYLOR: We'll get all of our affairs in order. We'll stand in recess until 1:30. [END OF TAPE]

TAPE 02-38, SIDE A

1:40 p.m.

CHAIRMAN TAYLOR: The committee meeting will come back to order. There being a quorum present, that being Senators Donley, Ellis, Cowdery and Chair Taylor. The Commissioners are back before us and I remind you - still under oath. You have not had a chance to complete your opening statement. We interrupted you with some questions. If you would complete your statement and wrap up in five or ten minutes because I'm sure there's a lot of questions that members have.

CHAIRWOMAN THOMPSON: I'll do that. Thank you Senator Taylor. It sounds like the sound system is working differently. I don't see a mic, but I don't think I need one right now. The RCA is a referee, and that is how folks should understand what we do. We don't make the laws, we apply them. It's our job to implement the directives reflected in the work of this Legislature and Congress that we get in the form of laws. We make sure that those laws are fairly applied and in that process there are winners and there are losers. Utilities and consumers are not always happy with the results. Our job is to make good decisions based on information presented to the agency that are consistent with the law and most of the companies that we regulate would probably agree with what Ms. [indisc] for AT&T Alascom said yesterday. They don't always like the results they get but they recognize the need to have a referee to make a decision and they believe that we're doing a good job as a referee.

Some of those companies testified in the House proceedings and many sitting in the audience of this proceeding have written letters of support. I have a group of those letters to give you and material to give out at the conclusion of my testimony. Some of those letters are from people who are here to testify. There's one from a fellow named Bill Nugent. He is the president of NARUC, the National Association of Regulatory Utility Commissioners. I don't know if you received that directly in your offices as well. I believe it was sent earlier this week. But he offered for the Legislature's information the importance of regulatory commissions in states and the roles that they play

nationwide. Dave Wirick, the auditor of the National Regulatory Research Institute, and Kathy Abernathy, the current FCC Commissioner, all wrote letters urging the reauthorization of the Commission. We also have letters from some of our more important consumers from industry - both large utilities, like Enstar, Waste Management, and smaller ones, like TelAlaska, that you heard from in the form of Jack Rhyner earlier today and Colville. For me, the most extraordinary letter in the packet is the one that was signed by 18 attorneys that consulted and regularly practice in front of us. It amazes me that this group of people who spend their lives disagreeing with each other in our hearing room all agreed on one thing and they all signed the same letter urging this Legislature to reauthorize us. The epic battles in both the telephone and electric industries were raised before the RCA and they are going to continue long after us. Our job is to protect the public interest.

CHAIRWOMAN THOMPSON: The public needs us to make sure that their interests are protected while these businesses are wrestling with their competitors and would-be competitors. We are the agency with the expertise to understand what people are fighting about and why and to make sure it's a fair fight and minimize collateral damage to consumers. Any effort to eliminate the agency because they have lost a round of the fight is like killing the referee, because they ruled against you. If any utility doesn't like our resolution, they have a remedy under the current process. There are several. First, they can ask for reconsideration and under the amendment to the statute in 1999, all five commissioners sat to rethink the entire record for the decision and decided if they, as well as any additional information provided by the utility or the plaintiff - and decided they agreed with what the previous panel thought. The decisions on reconsideration are due within 30 days of getting a request.

If the utility still thinks that we misapplied the law, they can appeal to the courts. The courts have reviewed 10 of the RCA's decisions - 10 decisions that we've rendered since the agency started operating as a group. In nine out of 10 cases, our decisions have been affirmed. That means that in nine out of 10 cases, we correctly applied the law. Yesterday, Mr. Furchtgott-Roth said that you should judge our effectiveness by the standards of administrative liberty and he defined that as consistently and fairly applying the law. I suggest that that record of nine out of 10 decisions affirmed proved that we are fairly meeting that test.

The process that the agency operates under has improved considerably and will continue to do so. The way we operate as an

agency is fundamentally different now than how the APUC operated. The filings are transmitted and shared electronically within the agencies, the model that's been issuing orders has been addressed by changes in that process that are designed to improve both the quality and the quantity of our orders. With the elimination of the executive director's position, sections have more responsibilities and more opportunities to develop professionally. We emphasize training and encourage supervisors to address and identify specific needs. The consolidation of administrative functions in the chair has enabled the other commissioners to focus on the substance of work at the agency and being more productive.

We've used the tools given to us by the legislature in 1999 effectively. We adopted regulations to put a dispute resolution process in place with strict deadlines in place to resolve disputes between telecommunications carriers. We actively encourage utilities to work with each other to resolve disputes that avoid expensive delays and litigation. Chugach Electric is a recent example to be commended for resolving a long-standing dispute with its wholesale customers by agreeing to a recommendation of an impartial expert they jointly hired. Golden Valley Electric, which hadn't been in for rate review for 18 years, faced a monumental task in preparing the rate case. They successfully filed it and settled with the public advocacy section, the other party in the docket, shortly before the hearing was to begin. We have consistently encouraged parties to actively work together to resolve their disputes.

The agency's processes will always be a work in progress. As the markets we regulate change, we need to change in response. We've actively sought input from industries in the bench and bar conferences. Mr. Yould noted those yesterday and several others have referred to them as well. We will continue that effort and can assign more time to the process as a result of that process. This process is an agreement that the commission needs to spend more time processing, working on its process and less time doing cases.

The balance we have struck as a group was based on the legislative priority to clean up the backlog and our efforts there have been successful. If the committee wants specific issues addressed, like the possibility of an E.D., we can invite merely to return and offer a recommendation from an expert, an impartial point of view. A review of the agency's processes by representative companies with filings pending before the commission for decision would be awkward and inappropriate. Mr. Yould had a suggestion that I know was offered in that effort to

be helpful, but we are very different from the private sector for one very fundamental reason. We don't always have control - in fact we usually don't over our workload. As an engineer in a private consulting firm, you put out a request for proposal and you can control what's on your plate. We don't. We do what the legislature through statute and the utilities through filings ask us to do. In order to be most useful, anyone reviewing the agency's processes and making recommendations needs to be impartial and knowledgeable about how agencies like ours operate.

Part of the process has been designed to produce fair and reasoned decisions. The committee has heard testimony that our process takes too long in some cases. I want to explain to you what the process is so you can understand why some cases take longer than others. When we adjudicate disputed cases, we act as [indisc.] and interested parties can participate either by attending hearings or filing comments or intervening as a party. We make our decisions based on facts in the record that parties have access to and we make all of our decisions as a group. We, as a commission, meet every week to discuss cases that are ripe for a decision. The docket managers, and that is individual commissioners, are responsible for putting the cases on a calendar and presenting them for discussing during our weekly meetings. We openly debate the possible result. Sometimes staff is present if necessary to answer questions and the attorney general is present to answer questions on whether the proposed result is consistent with the legal standards we have to apply. This is a great process because it allows each to bring our individual backgrounds to bear to resolve the difficult issues we face. After the discussion the panel members vote and a drafting assignment is made. Sometimes commissioners draft the orders and sometimes it's staff. All the orders are edited by paralegals and by an attorney. They are circulated amongst the panel. Each panel member must decide separately whether they want to sign up on the decision or not. Sometimes we change our minds when the decision that's circulating - we see it reduced to writing. Any commissioner who doesn't agree with the end result is free to write his own opinion. This process works effectively to render group decisions.

The last point I wanted to address before responding to concerns raised yesterday was the one that has been the subject of much debate during the process and that is what will happen on June 30, 2003 if the agency is not reauthorized. The language in the statute is clear and that's where I would go for insight rather than [indisc.]

CHAIRMAN TAYLOR: I'm sorry, you said June 30, 2003?

CHAIRWOMAN THOMPSON: 2002 is what I meant. I'm sorry. It says that the agency expires on that date if not reauthorized and the next sentence says that upon termination, it can essentially continue until June 30 of the next succeeding year while concluding its affairs. I know you are all familiar with the AG opinion and I saw it in the packet distributed yesterday that quoted from it. The conclusions of that opinion are pretty clear. It says that we have an obligation under the law to plan to conclude the agency's operation at the end of the year following termination and that's what we'll do. In the letter I wrote to you, Senator Taylor, toward the end of the session. I explained that how we would go about that would be to have some type of public process [indisc.] how they should set, how we should set the priorities for that concluding year and discuss it amongst ourselves [indisc.].

We recognize that during that concluding year we'll probably have to make adjustments. Staff that we have may seek more stable employment opportunities and may leave and our ability to handle cases may be diminished. While some of the [indisc.], we all recognize the importance of [indisc.]. They are and we'll do everything we can to make sure that that's done, but all of my staff [indisc.]. We are responsible to the FCC under recently adopted regulations. They were adopted after [indisc.] and he may not have been aware of it, but we have to certify that each [indisc.] is appropriately using it. In order for us to sign a certification, we need to do an honest job of reviewing information to make sure that we can sign that certification.

The RCA plays a crucial role in the state's economy. Allowing the agency to terminate by not reauthorizing it will at best create chaos; it will destroy the progress of the last three years and produce negative collateral damage. We've heard testimony this morning from a representative from one company about the disruption to their financial markets. I can assure you, these are often how our decisions have an impact there and I'm sure yours would as well. Most importantly, the legislature does not need to terminate the agency to affect a change. We could provide [indisc.] for specific changes to the agency, but this body, the legislature, has the power to do that regardless of whether it's a sunset year or not. We are a creature of statute and the legislature makes those statutes. As it did in 1999, the legislature can change the agency's [indisc.] or in statute without sunseting the agency.

Another final important impact is funding. This is a year for the legislature to face a challenge with funding for all programs.

None of our agency's budget comes from general funds. We're 100 percent funded by the regulatory cost charge collected from all utilities' consumers. If this agency is no longer in existence and some of its programs are transferred elsewhere in state government, the agencies to which they transfer will have to hire staff funded by general funds to perform the same duties. PTE is a good example of that.

CHAIRMAN TAYLOR: Let me stop you right there. Find that same sentence again - If this agency isn't funded and/or if this agency has to convey work to other agencies, they would have to receive that funding? Why do you think in the budget that we just passed fully funded you for the next year?

CHAIRWOMAN THOMPSON: I'm talking about after the end of the sunset year.

CHAIRMAN TAYLOR: At the end of the sunset year you would terminate, you would totally go out of business, you would no longer exist? That means that the next legislature and next governor who, after a four-month session of reviewing this, chooses to terminate this commission. I have heard no one suggest termination of this commission and if you can name a person who has suggested terminating this commission, I would appreciate it, because I'll call him in here to testify in front of this group. I think you're the only person suggesting this.

CHAIRWOMAN THOMPSON: Senator Taylor, I was referring to the words of the statute. The statute is very clear. The statute says, 'The agency will expire...' then it goes on to talk about the year following termination.

CHAIRMAN TAYLOR: How many more people do we need to have assure you that you are fully capable of continuing in your business as usual and we've had attorney general's opinions, we've had legislative legal's opinion's on it. We've had one witness after another who went through the sunset year on the APUC and the most they said was that the executive branch, the commissioners themselves, might have had to contemplate, if everything else falls apart, a disaster plan for the end of it, because nobody even at that time contemplated removing or using the words you do, terminate, die, these other emotional terms. Nobody has suggested that except you and this governor and I don't understand why you're doing this self-inflicted wound not only on yourselves, but on every one of these utilities.

CHAIRWOMAN THOMPSON: Senator Taylor, I'm sure you've had the opportunity to read the statute too, and the words 'expire and

terminate' are in the statute. There is the AG opinion that you've cited is one and it was also quoted by leg audit's opinion. I think the last paragraph has a conclusion in it [that] states very clearly what is to happen and it's consistent with what our message has been. It says, 'We conclude that the impact of AS 44.66.010(a)(4) on the Alaska Public Utilities Commission is to impose an additional duty to prepare for closing, but not to eliminate the commission's power to conduct its regulatory function,' and we agreed. We will still have the power to do our job. The commission should comply with sunset law by preparing for the contingency that it may be required to cease all activities, lay off all staffing and close the store at the end of the next fiscal year. That would be 2003. We've suggested that the commission could examine the time demands of their current workload and determine what additional investigations can be accomplished by the end of the sunset year. We're supposed to figure out what we can actually finish before the end of the year, to develop a plan to conclude as many matters as possible before the end of the year and publicize plans to wind down and phase out by June 30, 1995 - this was written some years ago. We emphasize that how to do this is within the commission's discretion, since the statutes offer little guidance. We take that as being our responsibility under the law to develop a plan to wind down the agency's operation.

CHAIRMAN TAYLOR: So, it's your responsibility under the law to tell people like Jack Rhyner and, in fact, you use the very same words, just a moment ago on universal services, we will try our best, but we might not be able to get to it. That is a level of coercion that is amazing to me that you would even be suggesting that to these people reliant upon those federal dollars for universal services in many of our rural communities and that the threat of not being able to get to that certification is obviously very real. Mr. Rhyner is very concerned about it. I'm concerned about it and why do you find it necessary to use those kinds of terms when no agency like you who has had to go through this process in the past has done so? I think it's very unusual and I'd like your explanation.

CHAIRWOMAN THOMPSON: I think Mr. Rhyner understood the process well. I've explained, and I will again, that I am relying on the words in the statutes and the opinion of the Attorney General. I think it's important and it's part of our responsibility to the public that we serve, which is the utilities and the consumers, to inform them of the possible conflict. It's what the letter said and what I've said here in testimony is that we would develop a plan for the agency's final year. We have scheduled a bench and bar. It was scheduled for shortly after the legislature

was intended to adjourn thinking the matter might be resolved in special session. That was June 5, I think, and we canceled it after the legislature didn't address our bill during special session, but it's our plan to talk to them. We believe you've heard the testimony from many utilities that stability and knowing what the rules are helps them do business and we think it's part of our responsibility to help them understand what the process is going to be like so that they can prepare for the next year.

SENATOR DONLEY: You've done all the duties you're charged with in this annual review process and the universal fee service is exactly the kind of thing that what you just read from instructed you to continue to do. So it seems like putting down a list was a red herring that would send up a scare to people that shouldn't have been scared even by the guidelines you were given by the Attorney General.

CHAIRWOMAN THOMPSON: At the time that letter was written, the threat to the agency, it wasn't clear and I'm glad we can clarify with you in here that no one has an intention to get rid of the agency. I have faith sunseting the agency would indicate an intention to get rid of it.

CHAIRMAN TAYLOR: No one has ever indicated in the past, in the 14 different times the legislature has taken it up, is that the next legislature could do a thorough review of that agency. The number of agencies actually terminated you could count on one hand with a lot of fingers left over. So, to suggest that because it might have been a possibility, that we have to go into this death spiral attitude and inform everyone of it seems awfully unique in that it seems like an attempt by the administration to merely pressure the legislature and justify the calling of the session when in fact we have a \$300,000 study out there we would like to have concluded and at least have the benefit of that information before moving forward and, believe me, I don't intend to be part of that process. I only get back there by losing. Many of these people get back there by winning and they're now involved in campaigns. I don't intend to be part of that process and I trust the next legislature and the next governor to carry that out.

The amazing part to me is that you keep saying that we could do these things, but, and then you come up with a scenario that I think any reasonable business person would be frightened of. I know of a gentleman sitting in the back room. All he needs is a simple little approval by you people to transfer and sell his business on the North Slope where he's got like 16, 17 customers. There is no protest; it should involve a very ministerial

function, but he's been told by you that he will not, maybe, be able to that, don't know if we can get to it. That dramatically impacts their financing right now on their ability to sell - solely because of the self inflicted wounds being caused by you as commissioners when you go out and tell people that you're going out of business and you won't be able to take their work up. We have a hard time understanding that when others have not had to do that in their grace period year.

CHAIRWOMAN THOMPSON: Senator Taylor, when you raised our issues in our testimony there, and I don't know who the gentlemen in the back of the room is, I haven't talked to anyone from the North Slope about selling a business, but perhaps I can get a chance to talk to him later. But, as I explained, we're going to do the best job we can under these circumstances to fulfill our obligations. [Indisc.] I think everyone in here doesn't want to be part of any political process where the administrative agency, we don't operate politically, whether or not anyone is running for office has nothing to do with how utilities are regulated in the state.

What we're concerned about - and you heard testimony earlier today about the volume of cases that we handle - our workload is extraordinary; we can barely keep on top of it. This process that you identified sitting in the hearing all day yesterday, as important as it was to the agency, our presence indicates its importance, was problematic for each one of us. This whole process has taken a lot of time away from what we've heard testimony that the utilities want us doing, which is processing cases. We need to be able to be free to do our own job and not have to spend another year spending as much time trying to justify our existence as we have during the last two months. We're very happy to work on processes. We instituted our own proceedings for doing that and we plan to continue and can accelerate this stage if that's needed, but you don't have to sunset us to make changes to our process. The legislature independently, any time it wants, can change our authorizing statutes and I hope that if there are concerns, they will be aired and studied at hearings and policy decisions fully discussed where we have an opportunity to hear both sides of the case.

SENATOR DONLEY: I know you've said that three times now that it's in the Constitution. It would take two-thirds of the legislature to do that if the governor didn't want to do it.

CHAIRWOMAN THOMPSON: Okay Senator Donley, I'll move on if I'm repeating myself...[END OF SIDE A]

TAPE 02-38, SIDE B

SENATOR DONLEY: ... that it's not just up to the legislature, the Governor's involved in this process too under the Constitution - any type of reorganization. If you had a governor that didn't want to do it, then it would take two-thirds of the legislators to do it. And also, I really think that that is not that convincing an argument because the track record, possibly with the exception of '99 - where everybody agreed we had a dysfunctional APUC and that something had to be done - has not indicated that the legislature or the governor has been able in non-sunset years to make systemic changes to the process very successfully. That was one of the questions I asked earlier. I just don't think that's occurred that frequently over the last couple of decades. Typically it occurs in a sunset - in a sunset context.

CHAIRWOMAN THOMPSON: Well, thank you for your clarification. I'll move on. I didn't mean to be repeating myself. We have accomplished - the focus of my testimony before was to highlight how we have accomplished the legislature's objectives in 1999 and I'll move on and respond to some of the specific issues that were raised in testimony yesterday and let some of my other Commissioners respond as well on some of them.

CHAIRMAN TAYLOR: Senator Cowdery had a question. I'm sorry.

SENATOR COWDERY: I'd just like - you know you've made your - I think - your opening remarks and I have a lot of questions and I think maybe the rest of us have but maybe individually could respond to before we run out of time here.

CHAIRMAN TAYLOR: Let's let her respond to the ones that she has raised [indisc.].

CHAIRWOMAN THOMPSON: One of the issues raised yesterday was about temporary rates. There was an allegation that we set temporary rates many, many years ago and hadn't fixed them. I looked at the order. It was entered in December of 1996 - that predates us obviously by some number of years - and the temporary rates referred to were the original UNE rates approved in a grant between ATU and GCI. In 1997, shortly after the Telecommunications Act was passed - actually it started before the AGC negotiated payment rate, and that process was formalized and they were described as temporary at the time because the FCC had not set out the rules for the Commission to do exactly what it did at the time. ACS bought ATU in 1999 and they bought those

UNE rates and that contract along with it and they have a right, under that order, to come back at any time they wanted the Commission to reexamine the rates - to do that. And they did that. It wasn't until the year 2000 that ACS came in and asked for an increase.

Since then, there's been a lot of debate and a docket about what standards to use and we've heard Commissioner Furchtgott-Roth testify yesterday about the model that we use. I have in your materials packet some information about models that other states have used. It's a very complex issue and is why it has been decided when litigated. There has been a case out of the United States Supreme Court issue, Verizon versus FCC, in which the FCC's method for determining pricing in the case was upheld where the question was: What standard should the information before the FCC [be that] you need to stop the prices that a competitor pays for the use of the incumbent's network? State commissions were given that responsibility under the Act. So to characterize that as some temporary rates that we set in 1996 that haven't been resolved yet is unfair. The truth is that it was the year 2000 that we were asked to reexamine the question. The docket was open and active still.

CHAIRMAN TAYLOR: So it's been two years?

CHAIRWOMAN THOMPSON: Yes. Some of the legal issues were resolved last month by the Supreme Court and that should help.

CHAIRMAN TAYLOR: Let me ask you about one of those legal issues. Has this Commission yet adopted the 8th Circuit ruling on burden of proof?

CHAIRWOMAN THOMPSON: That issue is being litigated before the Supreme Court now. We believe we have, and that was in another - that was an opinion. We believe that we have followed the law. ACS believes that we have not and they appealed our decision to the Alaska Supreme Court where it is pending for resolution.

CHAIRMAN TAYLOR: I thought the 8th Circuit had ruled on that issue and so had the Supreme Court in their determination to take that issue up but to decide the case of Verizon on other issues, which gave clarification to some price setting but confirmed the 8th Circuit, which had been a consolidated case we were told yesterday of several states and several other utilities that were trying to decide the very same issue of who bears the burden of proof and they came down with a totally different result than what you had come down with in that very case you're talking about.

CHAIRWOMAN THOMPSON: The issue you've outlined is not that clear. We made our decision based on a ruling from state court and we believe we had the legal authority to do that. One of the parties thinks we didn't and that ruling has been appealed and is pending before our state supreme court.

CHAIRMAN TAYLOR: I wasn't asking you if the Commission didn't have legal authority to differ from the FCC or from the 8th Circuit. I was asking you why - not whether or not you had the authority - why are you differing from the 8th Circuit and why are you not adopting their decision?

CHAIRWOMAN THOMPSON: We explained that reasoning in our ruling and I can provide you with a copy if you would like, and that...

CHAIRMAN TAYLOR: Sure. Did you have other matters you wanted to ...?

CHAIRWOMAN THOMPSON: I do. There was much discussion yesterday about the Chugach case and one of the other Commissioners can probably better address that than I because I'm not on that panel. If I could [indisc.] Commissioner Abbott ...

CHAIRMAN TAYLOR: Commissioner Abbott?

COMMISSIONER ABBOTT: Senator Taylor. I'm the docket manager on the Chugach case and as Commissioner Thompson said, when we arrived there, we divvied up some 500 dockets and, you know, I ended up with that one and it really is like drinking out of a fire hose but I had this big case to deal with that's been sitting there since 1996, just as Chugach had said. We came there in '99. It took a couple of months because we had a court case that we thought was going to affect it. It was pending from the old commission. We finally took that whole thing on. Over about the next, about 18 months, we dealt with three test years for three years of rates that Chugach had. This whole thing came about from a settlement agreement that the utilities - three of the utilities - Chugach, Matanuska and Homer, had signed which they were than unable to execute their own settlement agreement so we ended up being the battleground for that disputed settlement. Once we went through those, and each one of them had to have a hearing and we did that, we rendered the decisions on that and we got those finally out. The one decision that Chugach talked about, which was late, the six months, that was mine. That was a late decision - I'll 'fess up to that one. But, it all came out. Subsequent to getting those things done, then Chugach, properly so, then filed for a rate increase and, if I remember

right, the number's about six percent, we did the interim refundable hearings on that - or the determination, not hearing, and we had about 45 days to do that and when you're looking at a stack of paper about that deep and trying to wade through that and determine whether or not the rates are justifiable and interim refundable. We made one determination and Chugach contested that. We relooked at it again. We said okay, we'll wait on some of these things. We'll give you the interim refundable and we'll wait until we get the hearing to make a final determination on that. So we gave them about four percent - a rate increase that was interim and refundable and shortly after that we had a hearing - we had a meeting, what we call a scheduling meeting, and we all sat down around and we worked out a schedule for how that docket was going to go, all of the parties that were a part of it. Now people will tell you that the phone wars are the big ones here in town but I'm here to tell you that the utility wars in Southcentral Alaska are equally as big. They're very contentious and there's just paper flying around on those constantly - we get motions and petitions and what-not to do that. When we set that up, we made a decision, you know a lot of people talk about our progress on our process, well in that one we did, I think. For the first in the Commission's history, we limited the discovery. We said you only have so long and you only have so many discovery issues to bring up. Even that - it still ends up just as Chugach talked about - we end up with boxes of discovery and how we get total control over that - what I would say almost abuse of the discovery process, I don't know. It works all ways. It's not just one utility doing it - it works all ways. So, we tried it. We got that and it must have been successful because it made everybody unhappy but we're pressing along with that.

CHAIRMAN TAYLOR: Let me suggest something to you.

CHAIRMAN ABBOTT: [Indisc.].

CHAIRMAN TAYLOR: The court system faced exactly the same thing years ago. Carl Johnstone, judge, was called upon the Supreme Court to try to get some handle on it and my dear old friend, Murphy Clark was probably one of the great advocates for - but you got in a case with Murphy what you could expect in the mail was 350 interrogatories, even though you might be representing a man in a personal injury case or a woman, let's say, in a personal injury case, Murphy would still want to know all about the lady's military background for about ten pages worth of questions. And they became so abusive that the Supreme Court had to step in and do something about it and they did. They came down with rules that very clearly established how many questions you

got to ask, when you got to ask them and why in the world you can't do that - why this is such an extraordinary thing when we're hearing about cases involving about 600,000 pages and a staffer explaining to me they're sending people out to copy 43,000 documents because somebody intervened in a rate filing, somebody who may not have much to do with a rate filing and has now made some requests.

COMMISSIONER ABBOTT: And that's kind of this model that we used when we went to that so we did limit it down. The other thing that we put in there, which I believe the courts do use sometimes also, we put in a discovery master. We said the disputes over discovery will be resolved by the discovery master so they don't have to come to the whole panel of Commissioners. We have that discovery master. They have a dispute, a couple of days later they're sitting in front of her, she makes the determination on the discovery issues. Still it's not perfect. It's working better but...

CHAIRMAN TAYLOR: What you're explaining is a very difficult and complex case and we all understand that. It's been difficult and complex, apparently, since 1996 and yes, there have been some subsequent things occurred and some new filings. Our primary concern is that when the legislature, in 1999, created you, one of the major intents of that legislation was that a timeline and a timeframe system would be created. Why hasn't that been created yet, three years later?

COMMISSIONER ABBOTT: Senator Taylor, part of the problem is - and I'll move back to what Commissioner Thompson spoke of earlier, is that we really sit as referees, if you will, and we are decision makers and in a very complex case, occasionally we are not able to completely control the time if we get significant numbers of petitions, if we get one party that's - the process is such that people can slow it down and occasionally, and I'm not saying that anybody is slowing any of these cases down, it is fraught with those sorts of difficulties and it does take some very, very hard management in order to keep on any sort of time schedule and still afford people their right to disagree, to make filings, to demand equal time. I think what we're seeing is, especially in this case, we have extremely sophisticated customers, if you will, that want to look very carefully at many, many issues and when you get into those situations at a practical level to really push a proceeding like this, we have to deal with those issues.

CHAIRWOMAN THOMPSON: It's important to remember that Chugach has - the customers are Matanuska Electric and HEA. Chugach, as Joe Griffith identified yesterday, is a wholesale power producer. It

produces mostly electricity generated in the Railbelt and so the impact of these decisions are very significant to consumers all up and down the Railbelt because these costs are passed on through by these wholesale purchasers. It's, as you identified, a very complex matter.

COMMISSIONER ABBOTT: And you know, that's all right. That's our job. We need to deal with those and we'll get there. We'll get this out and I think in a fairly reasonable time compared with all of the complexities that have come about with it. I mean, it's like Joe Griffith mentioned yesterday, April 15th, they put a little additional filing in there. Well, that - a little additional filing that \$180 million bond refinancing it and they - tens of millions of dollars reconstruction of the Beluga power plant in there which is certainly going to effect rates, and they actively reduced the amount of rate interest that they wanted. Well, that's, that's fine. We're glad that they brought that in. Now we've got the whole thing in there, but you know, we've still got to give the other parties a chance to look at that. So, it's going to delay it a couple of months to get to that. I wish it didn't. But I wish we'd have had the whole thing to start with. And we'll get through that. There is a schedule out there for that too. I want to make that point clear too. Each of us, as docket managers, try to put out that schedule and we had scheduled meetings with the parties at the start of these processes.

CHAIRMAN TAYLOR: I guess I'm confused. Because when I looked through the report that was done up on the pending cases - I don't have the thing right in front of me but it's a big thick thing and we've all got a copy of it - it appeared to me that we've got lots and lots of dockets that are being closed that if you really look at them they are nickel/dime stuff somebody calling in and this docket gets created. Then it gets closed out when somebody responds back. I can walk you through several of them, but the one with some, some party writes a letter to the commission saying, 'We'd like that our responses be kept confidential.' That's assigned a docket number. And a week later, or ten days later, when somebody from the Commission writes back and says, 'Yes, it will be confidential.' That's a closed docket. So it appears to me that we've got a whole lot of these maybe individual docket things. I don't know your business, but to me it sure looks like somebody is padding the sucker when you're trying to justify how many things we've really done and how many things of substance we've really done. I'll make you a bet, Chairman, that that's one of the substance things that you take credit for in doing this year because the entire

panel had to decide whether or not that would be kept confidential, which seems like a routine kind of thing to me.

COMMISSIONER ABBOTT: The confidential thing is controversial by itself. We had one company take us to court over the confidential issue, so we have to be sensitive to that and many of them are because of competitive concerns on their part. Usually, the confidential thing comes because they've already filed for something to be...

CHAIRMAN TAYLOR: Commissioner Abbott, I'm not talking about the substantive aspect of it. I'm talking about whether or not there are mainly ministerial aspects that get assigned a docket number and they seem to get taken care of and we take credit for it.

CHAIRWOMAN THOMPSON: You acknowledged that, you know, we understand the process better than you and it's important to us that you do understand it. Ministerial things don't get assigned a docket number. A docket number gets assigned if there's a formal complaint, not for every letter that comes in. Informal complaints, consumer complaints, don't get docket numbers. There's a procedure under our regulations for formal complaints. Those get docket numbers. If a matter is suspended, a tariff filing is suspended at the end of the 45-day period instead of ruled on. That gets a docket number. If something comes in, a proposal from the utilities to adopt regulations on something, that gets assigned a docket number but just to keep track of things that come in - confidentiality requests, sometimes those do or don't depending on whether there is already an open docket. We have a responsibility to maintain those records separately and we do that through a docket number system. We don't want - we want to be able to make sure that we're maintaining the confidentiality of all filings where we've been asked to do so and our process requires us to then use the docket system but most of the docket numbers that come in are for substantive cases. It is not every piece of paper that comes into the agency. The tariff filings don't get docket numbers until they're suspended.

CHAIRMAN TAYLOR: Let me just give you an example. Docket 91500 2000 - it took to 12/18 to get it resolved. It was assigned docket number U 00132, and it was docket type A and it says 'The Fox Run Campground Enterprises APLNF/NEW CPCMM to provide for a private pay telephone 1.' There's a docket number. What's the action being taken on one private pay telephone? I'm sure that shows up as a substantive matter within your...

CHAIRWOMAN THOMPSON: Well you're right that that's a pretty small case probably but I'm sure that case is very important to the owner of that campground.

CHAIRMAN TAYLOR: Well, no. As I go down through here I find lots and lots of that kind of thing and it just seems odd to me that we have cases of, what you said, is very important stuff and I agree with you and that is we have 58 suspended tariff cases and all 58 of those - timeline didn't mean anything. Every one of them got extended. They all got extended for quote, good cause. That's something we discussed yesterday and I think it's part of the reason there's a lot of angst and frustration out there in the regulated community is that when you got 58 tariffs suspended and they all get deferred off on good cause so that your time frames don't mean anything, where is there stability in the industry and what can they count on?

COMMISSIONER ABBOTT: Senator Taylor, if I could respond to that? We sit in tariff action meetings and typically we'll review a tariff and we - in that meeting we can either approve the tariff or suspend it for further investigation and I know - this is the way I feel and I believe there's similar feelings - whenever we look at the possibility of suspending a tariff - you know I look at every time we open up a docket, it costs money and, I mean, if you look at it like business, you'd think well, you know there's an overhead associated with that - and I think oftentimes, especially for the tariffs, because of our rules we need to ask the utility to extend the time for consideration if there are concerns that we may be able to get resolved just by asking questions. We work to try to minimize the number of dockets that we actually open. I believe that - that's an important point here is that if we didn't run the system right, we could just go huckledy-buck and have hundreds of dockets open. It would be very - I think inside of our organization we do work very hard not to see this number of dockets expand unreasonably.

SENATOR COWDERY: On that issue, there's 58 by the information I got - of these extended for good cause. That's causing the utility to lose dollars while these are in suspension. How many times do you need - it seems to me that maybe this good cause clause is being abused? Do you think - how many times do you think, how many times have you, do you do things? Why do we go on? I thought that we had eighteen months or something, or six months rather, and could somebody respond to that?

COMMISSIONER ABBOTT: Senator Cowdery, the timelines that ARECA is proposing - I think it had fifteen months to full-scale rate-case. That would mean that we would extend that tariff three

times, and with a six month timeline if we were to extend it three months, for three times and we only do it for six months at a time so we get it out there. So if we took the whole fifteen months, which is the time it would be, we'd end up on paper, extending that three more times.

COMMISSIONER DEMARCO: May I clarify, Sir? The problem is that when you suspend a tariff, and it's a two and a half, three foot, eight inch pile, you need to have time for a pre-hearing conference to establish a schedule for the filing, and hold a hearing to allow for digestion of all of that material. There isn't time within the six months, or within the first period sometimes, for all of that to happen. And it's a considerable amount that has to happen. Sometimes the extensions for good cause are at the request of parties. I have one of those cases. It's a small utility. They have requested, I think, for eight total extensions, and we have honored them, at their request. They are attempting to sell the company. They don't want to have a rate case going on while they are trying to sell the company and we have extended their tariff a number of times at their request. So just looking at extension for cause doesn't necessarily tell you the entire complexity of the issue. For these small companies, we would rather give them time to complete an audit, you know, or to complete a filing at their request. Many of those extensions are done at the utility's request or at the request of one of the parties so that we can have the due process completed in a proper manner. You know, it's a balancing act and we have on the one hand the need for expeditious treatment of cases and resolution to order, but we also have a requirement for due process, and they are both important.

CHAIRMAN TAYLOR: I understand anecdotally that those things can occur, and that those are good considerations and I applaud you for doing that sort of thing. It certainly doesn't explain what appears to be a trend when you get up to 58 of them. And suspending a tariff is different, isn't it, than extending a tariff or are they the same thing? Under one, doesn't - if you extend it, doesn't it continue to be a tariff that they can bill out, and if you suspend it, it is no longer a tariff that they can bill out?

CHAIRWOMAN THOMPSON: Suspended just means that the filing - we use the term suspension when there's a filing made and we're not ruling within the 45-day period. We want to continue to consider it longer. I think that Commissioner DeMarco may have used the wrong word and confused people, but that's okay.

CHAIRMAN TAYLOR: It gets marked as a TA, right on your...?

CHAIRWOMAN THOMPSON: TA stands for tariff action and we assign numbers to filings when they come in - TA numbers so that we can

keep track of which utility filed it, and which, by number, and how many that they filed over time.

COMMISSIONER SMITH: If I may?

CHAIRMAN TAYLOR: Yeah, go ahead.

COMMISSIONER SMITH: Through the Chair, Senator Cowdery. When we suspend a tariff, oftentimes there is not a rate involved. Occasionally, there's terms and conditions and we find oftentimes a suspension is indeed just to make sure the rights of the consumer are protected. Typical suspensions involve long-term contracts for telecommunications services, which if a customer would break out early they would get charged a large amount. I mean it's that sort of detail level that we deal with when we look at these tariffs; it's not always a rate. And more often than not, it is these terms and conditions to protect the consumers...

SENATOR COWDERY: This oftentimes, does that mean 50 percent of the time - 10 percent of the time - 80 percent of the time? What do you think?

COMMISSIONER DEMARCO: The rate? Gosh, it varies a lot.

CHAIRWOMAN THOMPSON: Yeah, it varies a lot. I want to go back and address a misconception about losing money because I heard some testimony that indicated that yesterday, and you repeated that today. It's not - I think that the testimony that you're referring to is probably from Gene Bjornstad from Chugach. I think he said that they were losing money. What he was talking about was the difference between what they asked to be able to recover and what we held, based on evidence that they had filed on an interim and refundable basis, they were entitled to. Until they have - we're not allowed under the statute to approve the rates until we make a finding that they are just and reasonable and in order to make that finding, we need a complete record. In Chugach's case, it has many customers that are actively involved in the case. You probably heard more about that Chugach case than you ever wanted to.

SENATOR COWDERY: They were sworn though to tell the truth, and you're saying now that they wasn't truthful?

CHAIRWOMAN THOMPSON: I'm saying his idea of losing money is based on an expectation that they might have been awarded the full amount that they asked for immediately. What we did was we went in and looked at what they filed and said, we know enough based on what you filed to give you on an interim basis until the case is over, at least this much. And under our standard, we are required - we are allowed to give out as much as we're pretty

sure they are going to recover in the end. We make it interim and refundable because if we're wrong, if the evidence in the end proves it out after everybody has had their say, that they were entitled to more, then they get more. If they were entitled to less they have to refund the difference

CHAIRMAN TAYLOR: There is no retroactivity.

CHAIRWOMAN THOMPSON: No.

CHAIRMAN TAYLOR: That is what he was referring to. Because there is no retroactivity their case may be very bona fide and that you, as a Commission, may all vote unanimously, who knows when, some distance time in the future, that this thing is now resolved and yes, they were entitled to that. And the customers and the ratepayers at Chugach lost \$276,000 a month while that went on.

CHAIRWOMAN THOMPSON: I think it's the utility's responsibility. None of them expect the rate filing the size of what they file and they acknowledged yesterday it was done in 45 days as was pointed out. In the ARECA deadline, it was 15 or 18 months, I don't remember. Anyway, it takes time. And they need to plan ahead enough to make the necessary filing...

CHAIRMAN TAYLOR: Wasn't ARECA's deadline something that was negotiated by you, the Administration and other people involved in this, participated in on the House side, weren't you consulted on that?

CHAIRWOMAN THOMPSON: I was. The administration wasn't involved. I worked with Eric Yould from ARECA directly. There were other industry representatives, Mr. Rowe from the Alaska Telephone Association was also involved in those discussions and folks from Senator - Representative Mulder's office were involved. And what we came up with was a set of deadlines that met the industry's concern about wanting predictability, wanting certainties, they wanted to know when the decision was made, and our concerns about making sure we had a complete record before the clock started ticking and that's the way the statute was written. They were deadlines we felt we could live with.

CHAIRMAN TAYLOR: The political compromise worked out between you, the Administration and Mr. Mulder, whoever the lobbyists were involved at the time, that's who came up with the compromise of 15 months. That's why the testimony we've had is, by several people, yes, that's a good start but not exactly where we wanted to go. And, in fact, the word political compromise was used in some of the testimony. Is that correct?

CHAIRWOMAN THOMPSON: There were no lobbyists involved. I

believe my testimony was the discussions were between industry representatives, Mr. Yould for the electric, Mr. Rowe participated some, although it was most actively Mr. Yould and I facilitated by someone in Representative Mulder's office that came up with these deadlines. Again, they are ones we felt we could live with and meet, and industry thought would address their concerns.

CHAIRMAN TAYLOR: What about other aspects of this? I mean, basically, I think you've kind of thrown the whole thing open and said that - I mean, in your comments to the press and to utilities, you've indicated, we might be disbanded and they might throw us all out and get new Commissioners. How in the world we could do that I don't know, but that's been the indication. So I guess that everything that has anything to do with the RCA is now on the table, and I would imagine that you and the other Commissioners have been consulted with, at least by the Administration, as to things to look out for, or look for. You have met with your attorneys, haven't you? You have two attorneys assigned to you.

CHAIRWOMAN THOMPSON: We actually have three attorneys assigned to the agency.

CHAIRMAN TAYLOR: Just for this.

CHAIRWOMAN THOMPSON: Oh no, not just for this. There are two here that are attending today. Our regular AG is on vacation so we have a substitute and she has a helper.

CHAIRMAN TAYLOR: And have you had discussions with the Administration on what they're willing to live with? I mean, I'm hearing four and clean. I don't know what you're hearing, but I assume that someone over there on your side of the table is participating in a process that's going on.

CHAIRWOMAN THOMPSON: I think those discussions are best had with the Administration.

CHAIRMAN TAYLOR: No. What I mean is asking you if you have had such discussions with the Administration, or with anybody in the Administration.

CHAIRWOMAN THOMPSON: I don't know what the Administration's current position is on that. I think you should ask them that.

CHAIRMAN TAYLOR: I'm not asking for their position. Let me be real clear on the question. I don't want to confuse you.

CHAIRWOMAN THOMPSON: That would be helpful.

CHAIRMAN TAYLOR: Have you had discussions, have you talked, had discussions with individual members representing or actually officers within the Administration about where this legislation is going and what your strategy is going to be?

CHAIRWOMAN THOMPSON: Strategy for the special session - strategy for the hearings? I'm still not clear on your question. I'm not trying to play games with you. I want to be responsive, but I don't understand. What are you really trying to get me to say?

CHAIRMAN TAYLOR: With whom of the Administration have you been working with and strategizing on what's going on right here? And have you had those types of discussions with those people? That's all I'm asking for.

CHAIRWOMAN THOMPSON: I've been talking to folks from the Governor's office about the fact that there was going to be hearings. We worked with them to try to get information about what the agenda would be, about what witnesses would be called so that we could adequately prepare for the hearing.

CHAIRMAN TAYLOR: And could you tell me who those people were?

CHAIRWOMAN THOMPSON: There's the attorneys that are sitting in the back of the room. I don't know if that's part of the Administration you're speaking of, have been involved in preparing.

CHAIRMAN TAYLOR: No.

CHAIRWOMAN THOMPSON: Okay.

SENATOR COWDERY: We're talking about people who are going to have some impact upon this process, not somebody who was told to go write a brief. So, what are the names of those people with whom you've had these discussions?

CHAIRWOMAN THOMPSON: I have personally, I don't know about the other Commissioners, they can speak for themselves. I have talked with Mr. Abbott, Mike Abbott, who is legislative liaison for the Administration, and Cindy Smith, who is the Boards and Commissions representative, when it was in the scope of her responsibilities as also being concerned about what's going to happen to the agency as a result of this process and work with them.

CHAIRMAN TAYLOR: Anyone else?

CHAIRWOMAN THOMPSON: Some of the communications have been by telephone and people on speakerphone. I don't know who else is always in the room in Juneau because I'm not there so I can't

swear that nobody else has ever been in the room. I haven't talked to the Governor recently, but towards the end of the legislative session I talked to him about this, or received a call from him about what would happen to the agency and what his plans were for calling a special session.

CHAIRMAN TAYLOR: In your retention of documents that we discussed earlier you talked about how you keep and record various ex parte communications. So those - would those conversations have been logged, or...?

CHAIRWOMAN THOMPSON: Well, they're not about cases. My discussion before was, and my practice is, and I assume my colleagues' is, but again, they can speak for themselves, I carefully record conversations with anyone about cases. And I wasn't talking about cases with the Governor. I never have discussed any cases with the Governor or anybody from his office.

CHAIRMAN TAYLOR: These would be - was there e-mail on this stuff going back and forth?

CHAIRWOMAN THOMPSON: What is 'this stuff,' Senator?

CHAIRMAN TAYLOR: Well, the discussions that you're having with these people within the Administration about this 'special session' and the outcomes of it.

CHAIRWOMAN THOMPSON: There's probably e-mail. I'm sure there is because that's a way that I use to communicate often with members of the Administration about the fate of this agency and the legislative process. Yes.

CHAIRMAN TAYLOR: Would any of those e-mails be from interested parties other than the Administration?

CHAIRWOMAN THOMPSON: Certainly. I received e-mails from the utilities, many of whom have testified here today. There's a lot of parties interested in the outcome of this legislation. [END OF SIDE A]

TAPE 02-38, SIDE B

CHAIRWOMAN THOMPSON: I think the attendance here is evidence of that.

CHAIRMAN TAYLOR: Were any of those - again, we're walking that fine line, aren't we, between what is a call having to do with this process and what is a call that has to do with a specific matter before you.

CHAIRWOMAN THOMPSON: This is not - this matter - what's going on

in this legislative process was not an open docket before, and I've talked to many utilities about this process.

CHAIRMAN TAYLOR: I know, and that's the substance of what I've been trying to get to for some time here. I'm sitting on the North Slope and I know I need to have your approval before I can sell my business. And you contact me, whether I file this filing or not you know the filing is coming, you contact me and say, 'Bob, don't know if we're going to be able to get to this if you don't support us on this extension.' Now are we talking about - are you talking at that point about just the extension of the RCA, which is a quote political matter? Or are you talking his specific case and whether or not it will receive treatment in time for his business needs?

CHAIRWOMAN THOMPSON: As I explained before, I haven't had contact with any North Slope utility, and I don't know who you're talking about, but the example you pose, it would be - I would agree it would be inappropriate for me to call up a utility that had a matter pending in front of me and encourage them in the context - of the same conversation saying, 'Gee, you have an application pending in front of us. Won't you come testify?' I didn't have any of those conversations.

CHAIRMAN TAYLOR: But you do draw a distinction apparently between the ones you have something pending in front of you, as you said, and those you know are coming before you. Because Mr. Rhyner certainly was told by you that his certification for essential services funds from the federal government might very well be in jeopardy should this Commission not be extended. So, it's okay apparently to in essence coerce him to get his support, but it wouldn't be okay if there was a matter pending before you. Is that correct?

CHAIRWOMAN THOMPSON: I believe that the answers I gave before would require a little further clarification of your characterization, which is - I explained that I won't talk to any utility about a matter - about a case that is actively pending before us. I see these people on the street and I see them other times and I say hello. There's other things we talk about, even though we don't talk about cases. And I don't think there's anything inappropriate with those contacts. In fact, those contacts are helpful. We've heard a lot about the agency needs to be responsive to industry and it's difficult for me to conceive of how we're going to understand utilities' concerns if we never talk to them. We don't talk to any utility about open dockets. I don't have conversations with a utility about a particular - either representing a particular position in a legislative hearing or something else in exchange for a decision on a docket. We just don't do that.

CHAIRMAN TAYLOR: But apparently those things that you know are coming to you, Mr. Rhyner's filing as an example, filings by people at ARECA - you certainly have contacted each of those people, and contacted them personally, asking for their support and to write letters. In fact, I've received unsolicited letters from FCC Commissioners. I don't even know this lady and out of the blue she writes to me to tell me in glowing detail what a great job you're doing and how concerned she is in Washington, D.C. that somehow this Commission might not be extended [indisc.]. I'm not sure where she got my address or name, but I can only assume that it's either you, or one of your Commissioners, or it's one of the lobbyists here in the room, or it's one of the utilities here in the room that may happen to know her very well and call for her assistance. The point I was trying to get at with you is at what point does this become an ex parte discussion? Is it when there is a specific docket pending and you tell them that their docket may not be heard in time if this Commission isn't extended?

CHAIRWOMAN THOMPSON: No, and I would be happy to explain the origin of the letter from Commissioner Abernathy. She's someone that sits on the joint board with me and I've had occasion to miss some of the meetings because I was involved in responding to requests for - I think the last one was a couple of weeks ago, and I wasn't able to attend and in explaining that, I explained what was going on here and she said, 'What can I do to help?' And I said, 'Letters of support.' We have on our website, because we've been asked by so many folks about what's happening, an update that's been updated regularly since we had information when the hearings would be held, as our bills through session and progressed or not, and as hearings were scheduled after the session in special session. That web site is available to anybody in the public. I didn't call Jack Rhyner, but Jack Rhyner may have looked at our website. He may do it on a regular basis. There's a lot of people - we, as an agency, try to share information that we have with everybody in the public. I believe that my letter to you was also on the website and was seen by - could be available to anybody there.

CHAIRMAN TAYLOR: That letter, as an example, that was an action taken by the Commission?

CHAIRWOMAN THOMPSON: It was something that was done with the - I signed the letter. I'm the only one that signed the letter.

CHAIRMAN TAYLOR: No, but I mean was it, did you bring this up in a meeting of the Commission? Read the letter and share it with your members? And then sign it and send it? Or was this an individual act on your part?

CHAIRWOMAN THOMPSON: The letter wasn't signed by the other

Commissioners. It was written over the weekend and sent off Monday because of timing. It was reviewed and approved by the Attorney General's office, but it wasn't signed by all five Commissioners. You can see that on the signature line.

CHAIRMAN TAYLOR: I don't read that part.

CHAIRWOMAN THOMPSON: It was written by me.

CHAIRMAN TAYLOR: Well, I was surprised by your answer just then because I assumed that you had shared that - stating a position on behalf of the Commission. Let me get back to the point I was trying to make earlier and that is, I sat for six years as a district court judge. I had to run for retention elections. Do you think there would have been anything ethically questionable about my conduct had I called up all the attorneys practicing in front of me and said to them, 'I need your recommendation. I need your support. I want you to go out there and support me. I want you to write letters to the newspaper?' Do you think there would be anything unethical about me doing that?

CHAIRWOMAN THOMPSON: Senator, I know there are judicial canons of ethics and you, as someone who's practiced as a judge, are more familiar with those than I. And that's where I'd go for the answer to your question. I just don't know off the top of my head.

CHAIRMAN TAYLOR: Well, that's why I'm asking you is I have a hard time understanding why I have heard from so many of the people either wanting to testify or wishing they could but frightened to do so - why these people have been called upon by you? Because they're the very people who have to stand in front of you in judgment on their rate cases, and to suggest that there is no quid pro quo assumes a level of naïveté that, believe me, I can't accept. I'll go out and call up only the people over whom I have life and death authority and ask for their support and then they will - I will see who is going to show up, who is going to testify. That's why I think it's an interesting line or distinction that you have drawn in determining what communications are ex parte and have to be disclosed to people and what communications are not. Because every one of these people that you regulate eventually will have a case in front of you, won't they?

CHAIRWOMAN THOMPSON: But these proceedings are not an open docket in front of us. I've explained before. I didn't - you know, the folks that are here to testify - I think that you underestimate the fortitude of some of the utilities and the parties that regulate here in front of us when you suggest that we're able to intimidate them. I think that just like this situation where you're...

CHAIRMAN TAYLOR: Those aren't my words. Believe me, those aren't my words. Those are the words of about five different people from the utilities that have testified and each one of them have said, 'We're very concerned about doing this but we think it's important enough that we're willing to risk this.' That's shocking testimony to me.

CHAIRWOMAN THOMPSON: We think that...

CHAIRMAN TAYLOR: No, go ahead.

CHAIRWOMAN THOMPSON: I've heard from folks who were intimidated about coming to testify before this committee who had said to me, 'We support you, but we were afraid to go. We were afraid to testify because the questions that are going to be asked of us by the committee. We're uncomfortable.' You're a judge, you understand that when you're sitting behind the bench and you're running the proceeding that others may feel uncomfortable. I'm sure you did special things in your courtroom to accommodate people. But it takes some courage to testify. I think there has been - I have personally overheard two people who said to me that they were uncomfortable testifying because of what other members of the association or other utilities might do to them as a consequence of saying something contradictory to their position. But that's not really the point here.

CHAIRMAN TAYLOR: No.

CHAIRWOMAN THOMPSON: At all.

CHAIRMAN TAYLOR: The point is the ethical question of which communications you determine to be ex parte and involved in a pending case and which communications are not ex parte, but are a request for help, or something else. And for me, as a former judge, that's very difficult to understand because that very same person that I'm asking for their help on that retention election may very well be standing in front of me on a DWI the next day, and to assume that there's no quid pro quo involved here I think is really rather naïve. Those who step forward and support will be supported. Those who have the courage to step forward and testify against, will not and that is a very real perception that these people under oath have testified to.

CHAIRWOMAN THOMPSON: We heard the testimony about retaliation too but you can ask us each individually. We don't have favorites, we don't retaliate. That's part of the benefit of the group process that I described. If one particular - we're all humans and someone may be offended or put off by something that's happened. I think the impact of our decision process involves three folks

and involves the full discussion and circulation of the written order - would tend to mitigate that type of fact. I'm confident that none of us are going to retaliate against any of the utilities because of anything they've said or not said in these proceedings.

CHAIRMAN TAYLOR: Well I'm glad to hear that and I appreciate it but let's go back to that comment you just made about three of us always make a decision on something. In fact though, you break up things among your different commissioners. You sit on every panel, don't you?

CHAIRWOMAN THOMPSON: No, I don't. I'm not on the Chugach case for example, the one we've just been talking about.

CHAIRMAN TAYLOR: There are three members on that case?

CHAIRWOMAN THOMPSON: Yes there are. I believe Commissioners Strandberg, Demarco and Abbott are deciding that case.

CHAIRMAN TAYLOR: And to get back to your point that we don't play favorites - I asked your former employee the same question yesterday. There are three different statutes under which your Commission members and yourself are regulated and I think those, if I remember right - I had some citations here, Alaska statute 39.52, which is the ethics law, 39.50 - conflict of interest, and 42.04.060, which is a further definition on the conflict of interest. That one says something very interesting. It says, a member - one of you folks - may not sit upon a matter in which a relationship, or someone with a relationship to the member, with any person, creates a conflict of interest and I want to skip - if you or one of your Commissioners have a relationship, that can be friends, it could be anything, but you can't sit on that matter. The other two statutes that I mentioned to you actually involve monetary benefits flowing to individuals, whether they be - especially over \$150 is kind of a value set as a benchmark and then whether or not those things are received. They're not supposed to be in the first place but if, in fact, someone has received something like that they're duty bound to give notice of that to their supervisor and to make a report. So let me start off with Bernie. Bernie have you ever filed such a report or had to recuse yourself in a case because of that ethical standard?

COMMISSIONER SMITH: Well, I file a APOC report every year that asks, you know, do I have stock in companies that I regulate and I don't anymore. So, no, I've never received the benefit over \$150 that I had to report on the APOC report. And yes, I have recused myself as I stated earlier for all cases that deal with any past knowledge that I would have ...

CHAIRMAN TAYLOR: I'm not referring to our APOC reports. We all have to fill that out and that's about how we make a living and what investments we have and so - what I am referring to is the gift report of a client has to be made to your supervisor if, in fact, someone is giving you a gift of hospitality - travel, lodging, whatever.

COMMISSIONER SMITH: No I have never had to.

CHAIRMAN TAYLOR: Okay. Commissioner? No? Commissioner?

CHAIRWOMAN THOMPSON: I have.

CHAIRMAN TAYLOR: You have? Okay. Commissioner?

COMMISSIONER ABBOTT: No.

COMMISSIONER DEMARCO: I did one. I have a small consulting contract for a quarterly, usually, telephonic board meeting in Connecticut not related to anything here. It's advisory, usually verbal.

CHAIRMAN TAYLOR: And who provides for the travel or transportation or benefits there?

COMMISSIONER DEMARCO: They do. Eastern Connecticut or I take personal time. I do not ...

CHAIRMAN TAYLOR: It's by an agency or group?

COMMISSIONER DEMARCO: It's a university.

CHAIRMAN TAYLOR: University group? Uh huh. And you file a report on that?

COMMISSIONER DEMARCO: Yes.

CHAIRMAN TAYLOR: And you said, Commissioner, you had a report that you had filed also?

CHAIRWOMAN THOMPSON: Oh there's several.

CHAIRMAN TAYLOR: Who do you file those with?

CHAIRWOMAN THOMPSON: I file them with the Ethics Officer that I'm assigned to which is in the Governor's Office. His name is Michael Nizich.

CHAIRMAN TAYLOR: Michael Nizich?

CHAIRWOMAN THOMPSON: Um hum.

CHAIRMAN TAYLOR: Would Michael Nizich have copies of those?

CHAIRWOMAN THOMPSON: I assume he would.

CHAIRMAN TAYLOR: You do also? Can we obtain copies?

CHAIRWOMAN THOMPSON: I probably have copies of all of them.

CHAIRMAN TAYLOR: And when did you file your first one?

CHAIRWOMAN THOMPSON: I don't remember well enough without going back and digging out the file and what succession there were. I can tell you generally that at least three or four that deal with speaking engagements. I've gone to Florida State University and New Mexico State to speak and present to either classes or forums of some sort and accepted no speaker's fee but they paid for my hotel and travel to go down there. I do that because it's a way of receiving training that benefits - it's an education enhancement for me at no cost to the Commission because the travel is paid by somebody else. I've been a speaker at the National NCTA - the cable association convention one year and the same thing - they paid my airfare and hotel to go. I've gone to Telecommunications Policy Institute in California and I filed a report over that.

CHAIRMAN TAYLOR: Were there any others you filed a report on?

CHAIRWOMAN THOMPSON: I also filed a report - there was in the summer of 2000, I, at the request of Senator Steven's office to work and meet with the new telecommunications policy aide, Lisa Sutherland, I went to a fishing lodge owned by GCI in Western Alaska but that was not a gift. It was originally reported as a gift, but I paid for the trip. When it was originally arranged, I thought it was going to be more policy discussion and it ended up being more fishing than policy discussion so I paid for the trip myself.

CHAIRMAN TAYLOR: When did you make that decision and pay for the trip?

CHAIRWOMAN THOMPSON: It was within a week or so after I went and it was in the summer of 2000. I'm sorry I don't remember the exact date. It was probably July because there were kings.

CHAIRMAN TAYLOR: Did you take anyone else with you?

CHAIRWOMAN THOMPSON: My children went with me. There were kids from - I don't remember if Lisa's kids were there or not too, but there were other kids there.

CHAIRMAN TAYLOR: How long were you out there?

CHAIRWOMAN THOMPSON: I would think it was - it was at least - I think it was two days. I remember going out there that the flight got cancelled so there was some delay in getting out there but I think we were out there a couple of days.

CHAIRMAN TAYLOR: And this - your travel out back and your expenses had been paid by GCI?

CHAIRWOMAN THOMPSON: And I wrote a check to reimburse GCI because, like I said, when I got back I realized that it was more of a fishing trip. I went at the request of Senator Stevens' office to meet with - to take advantage of the opportunity, which for me was a good one, because Senator Stevens' office has been very helpful to the state on telecommunications policy. He had Lisa Sutherland, who had been doing appropriations work for him was recently reassigned to do telecommunications and she was going to be out there and that's why I went so I could talk to her and give her background on telecommunications policy issues in the State of Alaska.

CHAIRMAN TAYLOR: And when it turned out not to be that, you reimbursed them. Can you remember or recall what the reimbursement was?

CHAIRWOMAN THOMPSON: No, but I'm sure I've got a copy of the check somewhere.

CHAIRMAN TAYLOR: Would you mind providing that along with a copy of the report?

CHAIRWOMAN THOMPSON: No, I wouldn't.

CHAIRMAN TAYLOR: The reason I ask is because it's just to make sure that we're talking about the same thing and if, in fact, that went on and Lisa was there, did she make the same determination, I'm wondering?

CHAIRWOMAN THOMPSON: I don't know what Lisa paid for the trip.

CHAIRMAN TAYLOR: Well, that's what I'm getting at. Who else was

there besides Lisa?

CHAIRWOMAN THOMPSON: There were - there were a couple of folks from GCI - Jimmy Jackson, who is their attorney was out there and Dana Tindall, who - I don't know what Dana's title is but she's in senior management at GCI. Her children were there too.

CHAIRMAN TAYLOR: Senator Cowdery, did you have a question?

SENATOR COWDERY: Yea. Did you, on this trip, you said you paid, but these lodges or stuff - pretty spendy I understand, a thousand bucks a day or so. Did you pay the full retail price?

CHAIRWOMAN THOMPSON: I paid - it was - it's a privately owned lodge and I paid the rate, the same rate that Lisa Sutherland paid. We were told what the rate was because Lisa, as I understood it, as a congressional employee had an ethical duty to, you know, pay for it herself. So they told us what the rate was and that's what I paid.

SENATOR COWDERY: Do you think you had special rate over anybody else that went there?

CHAIRWOMAN THOMPSON: I don't know. I asked for what the rate was. We asked as I recall and we were given the same answer and that's what we paid. I don't know how that compares to what anybody else pays. I don't know if anybody else even pays when they go out there.

SENATOR COWDERY: But you knew this was owned by GCI?

CHAIRWOMAN THOMPSON: Yes I did.

SENATOR COWDERY: When you went did you deal with GCI?

CHAIRWOMAN THOMPSON: Yes I did.

SENATOR COWDERY: And you talked with attorneys out there for GCI?

CHAIRWOMAN THOMPSON: I didn't talk about any particular cases. I spoke to Mr. Jackson.

SENATOR COWDERY: No, I mean you talked with attorneys?

CHAIRWOMAN THOMPSON: Yep. Mr. Jackson is an attorney and I talked to him while I was out there.

SENATOR COWDERY: I find this pretty incredible but you know,

we're subject to the same ethics thing, but different maybe than the Administration, but we're held to a pretty tight thing.

CHAIRMAN TAYLOR: It's a totally different standard. It was favor disclosure because of the quasi-judicial nature of their duties and the ... yes, Senator Ellis?

SENATOR ELLIS: To the Commissioners I would just sort of - leads us into the whole subject of why we're dragged in here today and yesterday had a lot to do with charges floating around that you all maliciously or intentionally or through effect are out to get ACS or run them out of business or ruin them financially. Can we just bring it all here in the public and have you respond to those charges that I think have sort of pushed these committee hearings yesterday and today?

SENATOR COWDERY: Mr. Chair, if I could just respond?

CHAIRMAN TAYLOR: Yes.

SENATOR COWDERY: We're not here - this hearing is not here for ACS or GCI. I think most of this time's been taken up by other utilities from Fairbanks, from Chugach Electric. I mean we're not focused on one thing. I think that's another thing, if somebody's trying to put some words or why we're here I don't think that's - that's not my intention or my - the reason I'm here.

CHAIRWOMAN THOMPSON: We're not here for ACS or GCI either.

CHAIRMAN TAYLOR: None of us are, but I'll guarantee you there's been enough money spent on lobbyists and other attorneys and other folks floating around here just by GCI and probably about the same amount by ACS, that it's certainly - it certainly indicates to me that the Governor has a very strong reason for calling this special session and, for the life of me, I'm still trying to figure out why, other than the horror stories I keep hearing that you people are circulating, which amazes me that you're doing that but...

SENATOR ELLIS: So, Mr. Chairman, my question and the ability of the Commissioners to respond I think is just as legitimate as fishing trips and catching king salmon.

CHAIRMAN TAYLOR: Go ahead. Well I don't know, not if you're filing reports on it, it isn't. But go right ahead. I think your question's real legitimate, Senator Ellis, and I didn't mean to demean it in any way. Commissioner, go right ahead.

SENATOR ELLIS: Thank you.

CHAIRMAN TAYLOR: Senator Donley?

SENATOR DONLEY: Well I was just...

CHAIRMAN TAYLOR: I wasn't sure what the question was, but if he...

SENATOR ELLIS: Yes, I wanted to give the Commissioners an opportunity to respond to the charges flying around that the Commission has taken some sort of inappropriate action through intentional action or affect of their actions trying to harm ACS as a business operating in our state.

UNIDENTIFIED MALE COMMISSIONER: I'll take a first crack at it. I'm certainly not offended by it because that's why we're sitting in this position and I was going to hear allegations like that. But I've been around far too long to try to sit in a position like this and not keep my objectivity. If I did not have my objectivity, I would recuse myself from the process.

SENATOR ELLIS: Thank you.

COMMISSIONER STRANDBERG: I will speak next. I was honored to be asked to serve and I hold the duties and our obligations very close to my heart. I am both - I am in the business of being a decision maker of making decisions on a record that - of solving problems and certainly I never came into this with any preconceived notions or any leanings for any one of these companies that are before us.

CHAIRWOMAN THOMPSON: Go ahead Pat.

COMMISSIONER DEMARCO: I'm a scientist by training and my interest in most cases that come before me are that our decisions and our orders be very well documented so that if there were a need to reexamine them, they have the basis of our orders well defined in writing in plain English. This has been a challenge as you might imagine when you have a full docket. The other concern is that the consumers, or our silent participants, be protected because a lot of times they are not at the table. The PAS can only represent a fraction of the issues that necessarily could be raised if we had the public. I'm sure you have heard so many more of the general public in these proceedings than we often get in the case before us. The average small business spends 25 to 30 percent of their operating costs on utilities - necessary utility services. We hear from very, very few of them in our proceedings.

And if you talk about being concerned for those who are intimidated by any of these procedures, my concern is for the men in the street and the women in the shop who have no clue that this is going on and that our proceedings and the utilities before us affect their daily life. So, yeah, I come to it with a bias for the small business customers, for the residential customers of the state, not for any particular company.

SENATOR COWDERY: Did you go on this fishing trip?

COMMISSIONER DEMARCO: Me?

SENATOR COWDERY: Yes.

COMMISSIONER DEMARCO: You don't want me around trying to fish and my husband will testify to that. I do fish on occasion, but ...

SENATOR COWDERY: But you didn't go to fish up...

COMMISSIONER DEMARCO: No, and I must tell you, I forgot, I did attend the ATA Symposium as a speaker. They paid for my travel and my hotel, but I paid for the rest of it and I didn't pay for the bouquet of flowers that I received for my birthday.

CHAIRMAN TAYLOR: Just to get back ... Who invited you on this trip?

CHAIRWOMAN THOMPSON: I don't remember. I think it was - I think the contact was from GCI. I remember talking to Lisa about the fact she was going to be there too, but I don't remember. I think it was probably GCI that called me first. And I'd like to answer ...

CHAIRMAN TAYLOR: From Dana or one of the other...?

CHAIRWOMAN THOMPSON: It was probably Dana. It was probably either Dana or Jimmy Jackson - Dana Tindall. I'd like to get a chance to respond to Senator Ellis's question and give Commissioner Smith one as well, which is I've never had any intention to harm or particularly benefit any company. We've explained, I hope in enough detail so folks can understand what the process is we have here and we all understand the importance of the process. It's just the fact that there's so much testimony and so much controversy about the way we do business I think underscores how important it is that we be fair and we make every effort to be fair and I don't have any particular bias and as I said I certainly have no intention to harm any particular company. I don't know if Commissioner Smith wants to respond to that

question as well.

COMMISSIONER SMITH: I'm not here to harm any companies. I would like to be here to make sure the companies have a fair chance of surviving, especially when they're competing with each other. I'm not here to harm anybody. I'm here to make decisions based on the record, that's it.

SENATOR ELLIS: So you would say that ACS and GCI have been treated fairly by the Commission?

COMMISSIONER SMITH: Yes, based on the record that they have presented to us.

SENATOR ELLIS: Thank you.

SENATOR DONLEY: I want you to know, Mr. Chairman, I just feel like I should say I went on a trip to see the Red Dog Mine last year and we were hoping to go fishing, but we didn't get a chance to and, I don't know, I also feel like I should mention that I've known Bernie and Patty for years and that I consider them friends of mine. So I feel a little uncomfortable with all of this.

CHAIRMAN TAYLOR: Well, I do too. That's why I went through the questions to see if anybody had any because they're held to a different standard than you and I are and it's a significantly different standard because of the quasi-judicial nature of their work. And, several times, both from the utilities and from the commissioners themselves we've heard that this is a difficult line to determine and I think there are concerns there. I think they're valid concerns when we find the Commission itself going out and recruiting assistance from the very people that have to stand before it and then insisting that those people need to respond to this legislature in a certain fashion. I think that is probably epitomized by what happened in the legislative process this last year. The small utilities were very concerned, and are very concerned, and there are deadlines and docketing and other things that were supposed to have been done three years ago have not been done. And when you start participating in the political process, then you do subject yourself to that same political examination and I think that's a fair examination, no matter how far that needs to go. I appreciate your candor in responding. I'll appreciate receiving a copy of each of those filings that you have made and I - yes, Senator Cowdery?

SENATOR COWDERY: Yes, I'd like an answer - this here. I have heard, and of course rumors are pretty rapidly [indisc.], have there been any recommendations recently or in the past from

either inside or outside the Commission to replace the Chair before the four-year term?

CHAIRWOMAN THOMPSON: That's something you should probably go - it's been the subject of discussion amongst the Commissioners and I suggest you ask somebody other than me.

SENATOR COWDERY: I'll just ask you directly. Do you know of any of that type of discussion?

CHAIRWOMAN THOMPSON: There was discussion of that issue.

SENATOR COWDERY: I'm not doing this to embarrass you. I'm just asking.

CHAIRWOMAN THOMPSON: Yes. I think I answered you twice, sir. I wasn't very clear.

SENATOR COWDERY: Okay.

CHAIRMAN TAYLOR: I don't know what that means but I'll just start at this end. What are we talking about here?

COMMISSIONER SMITH: Well, there were discussions amongst the Commissioners of how to, at least in discussion form, how to resolve the issue before we came to this hearing. If we could get something resolved within our own Commission, hopefully we would just have - not a hearing.

CHAIRMAN TAYLOR: Was that put in any kind of draft form?

COMMISSIONER SMITH: There were some drafts circulated. That's correct.

CHAIRMAN TAYLOR: Do you have a copy of any one of them? Could you provide us with a copy?

COMMISSIONER SMITH: I probably would not because it was confidential. It was meant to only be circulated for discussion purposes. I guess you can arrest me. I can tell you the gist of it. I'd be happy to do that. The gist was again, to try to resolve these hearings and get finality within the sunset bill. And there were three things in there that were basically talked about. One was to extend us for at least a year, possibly two years, with a new administration and a new legislature to review the situation so that we remove ourselves from the sunset trials. The reason for that - the main reason for that - is not for the Commissioners, it was for staff. It is very difficult for staff

to have this uncertainty that they have knowing that possibly they are going to be out of a job 14 months - 13 months, whatever the time is.

SENATOR COWDERY: I know the feeling.

CHAIRMAN TAYLOR: What else was discussed?

COMMISSIONER SMITH: And let me finish up with the staff part. I worked in private industry pretty much all of my life except for this last two and a half, three years. We have an extremely talented and very dedicated staff and it's very difficult to find staff to replace when somebody leaves. So that, I think, is the main reason in doing this. The second thing was, I personally, and other Commissioners have different opinions, but I personally did not have a problem of having an oversight committee that was non-partisan and non-industry to come in here and look at our business procedures. We've had them before. We've had - NRRI came in here and did it. We had a legislative audit. Each time we did it, we learned something. We improved. So I don't have a problem. We do our job good. We work hard. We do a good job. So, I don't have a problem putting that on the table to say. And the third thing was to rotate the Chair and that...

CHAIRMAN TAYLOR: Who was that correspondence to be addressed to, or that draft to be given to?

COMMISSIONER SMITH: It was addressed to the Commissioners and addressed to the Governor if the Commissioners would agree to it, but it wasn't going to go out without the rest of the Commissioners agreeing to it and they didn't.

CHAIRMAN TAYLOR: Let me just ask. You had certainly agreed to it and worked on this draft as you said, Commissioner. Did you?

COMMISSIONER ABBOTT: No.

CHAIRMAN TAYLOR: And since you were being replaced as Chair in this thing, I don't imagine you agreed with it. Commissioner?

COMMISSIONER STRANDBERG: I agreed with some parts of it. I thought that, at this time, I had to weigh the consideration of what effect this sunseting would have, not only on the Commission but on industry and what I was weighing was really whether if we were able to make some changes within the Commission we wouldn't lose our talent but we [indisc.] might be able to avoid a disruptive process here because, you know, it really does - it really is affecting the work process and,

indeed, with Commissioner Smith I was quite concerned about retention of staff because it's very hard to get good people and to keep them, even under the best of circumstances. So those were the issues I was weighing but I - in the end, I did back off from it. But again, it's an internal deliberation within the Commission. It's a proper thing to do to consider what we might be able to do to assist in the particular circumstance we are in right here and it's a deliberative process.

CHAIRMAN TAYLOR: Changing the Chair was seen as at least a partial solution or a solution that might be offered?

COMMISSIONER STRANDBERG: Well that was one of the considerations here.

CHAIRMAN TAYLOR: Ms. Demarco?

COMMISSIONER DEMARCO: It's difficult when you have a collegial group of people who have constraints on the circumstances in which they may all sit down and talk about things. Any time you have three or more Commissioners together in a room, it's considered a public meeting and, except for adjudicatory deliberations, we have restraints upon that. Sometimes in order to have a discussion go forward, you float a trial balloon and circulate it in writing as an internal draft memorandum for purposes of discussion among the Commissioners. It didn't get all the way around to all five Commissioners before it left the Commission. And I regret that the thing ever was remanded to writing and I'm sorry that it has caused grief and aggravation in these quarters. To me, it is necessary sometimes for the Commissioners to talk among each other, especially about matters that have to do with pending legislation and other such things. Unfortunately, our attorneys have advised that such kinds of discussions are a public matter and must happen in a public meeting. How to have a collaborative process with five people - and three of them together constituting a public meeting is very, very frustrating. And I don't know that you have those kinds of constraints. You have caucuses of all sorts. We have this Public Meetings Act and we try to adhere to it to the point of pain and this is one of those points of pain. I did not and would not sign such a thing.

CHAIRMAN TAYLOR: Well, how much longer are you with the Commission?

COMMISSIONER DEMARCO: My term officially expires at the end of this month.

CHAIRMAN TAYLOR: And what are your plans?

COMMISSIONER DEMARCO: I am making prudent contingency plans. I have requested reappointment in formal writing by a letter to the Governor in January and I await his disposition.

CHAIRMAN TAYLOR: Are you actively pursuing the job of Director of Science and Technology?

COMMISSIONER DEMARCO: I became aware that Jamie Kenworth has announced his retirement. I have inquired. I have not done anything further about it. I was a candidate for that position before.

CHAIRMAN TAYLOR: And that position is still open, isn't it?

COMMISSIONER DEMARCO: It has not been posted.

CHAIRMAN TAYLOR: How did you come to Alaska? What brought you here?

COMMISSIONER DEMARCO: The very short version - my husband's plant closed and he had a buy-out from General Motors and said he was going to Alaska for the rest of his life fishing and if I wanted to come we'd get married. [Laughter] The process involved looking for a job in Alaska from Connecticut, which, as you might imagine, is extremely difficult given the circumstances of Alaska. The Alaska Science and Technology Foundation position was posted in the Wall Street Journal. My son sent me the ad. I sent in an application. I came here three different times for a vacation and twice for interviews. By the second visit, I was sure I would never leave. In fact, the time I came for a vacation I extended my stay by 48 hours twice, so that the company that I was working for asked me if I planned to come back and I told them only long enough to resign, which I did. We drove here leaving via Pittsburgh on Labor Day of 1995 - arrived here just before the frost and I applied for the Anchorage Economic Development Corporation position, [indisc.] and I got that position and there we are.

CHAIRMAN TAYLOR: Who was on the board at that time?

COMMISSIONER DEMARCO: Of the AEDC?

CHAIRMAN TAYLOR: Um hum.

COMMISSIONER DEMARCO: I believe the Chairman was Max Lowe, Carpenters, Phil Thingstad (ph), Denise Owens, Ernie Hall, Mel

Nickels (ph), Mike Brady, Ron Duncan, Lee Gorsuch, Jan Fredericks and Mayor Mystrom. There had been some changes in the board over the time I was there.

CHAIRMAN TAYLOR: And when you were recommended to the Governor for the position you currently hold, was Mr. Duncan one of those recommendations also?

COMMISSIONER DEMARCO: I believe I had a lot of recommendations. I did not lobby for this position and I told all of the people who talked to me, which included Mr. Gordon from Fairbanks, whom I have never met, that, you know, in fact I would consider it. I did not lobby for the position. I was honored to be asked and I've been honored to serve, not the least of which because these people are wonderful colleagues. It has been a good experience to work with them.

CHAIRMAN TAYLOR: Did you understand my question though?

COMMISSIONER DEMARCO: Yes.

CHAIRMAN TAYLOR: So Mr. Duncan was one of the people recommending you for the position?

COMMISSIONER DEMARCO: I believe so but I didn't ask him to.

CHAIRMAN TAYLOR: This draft we were talking about of a letter to the Governor calling for the changing of the Chair - did you have a discussion about that with the Chair?

COMMISSIONER DEMARCO: I did.

CHAIRMAN TAYLOR: And what was the substance of that discussion?

COMMISSIONER DEMARCO: I found out that she had received it after I had been away at lunch and I apologized that it had gone out of the office.

CHAIRMAN TAYLOR: Under oath, that's all that you said? That's all that took place?

COMMISSIONER DEMARCO: I don't know. I think I was crying at the time so I don't remember exactly the entire content and I consider it privileged discussions - discussions within the Commission to be privileged and that would be one of them.

CHAIRMAN TAYLOR: Well, I'm shocked about this and from Senator Cowdery's question that - apparently several, at least three of

the members here felt that the Commission could be improved by rotating the Chair and if we're looking for solutions to problems within RCA and how to benefit and help this Commission, if rotation of the Chair is something that at least three of you believed might be beneficial, I would certainly hope that you would - that you would reaffirm that statement if, in fact, that was seen as one possibility.

COMMISSIONER DEMARCO: And we have to be clear to you. This was a document put forward as a discussion tool, not as an expression of opinion or affirmation. I did not sign it. It was not signed - as I explained to you, a point of discussion that we wished to have that we could not have with five people in the room.

CHAIRMAN TAYLOR: No, I understand that. All I'm talking about is, it was obviously seen as a matter that should be discussed and it was put in draft form and if, in fact, rotation of the Chair on a more frequent basis than every four years - I am taking this from the positive aspect, not from the negative, that something was attempted that never occurred. I'm looking at it as to how we can best assist this Commission in being a better Commission in the future and if rotation of the Chair on one or two or three years, as opposed to the current four year rotation, is something that some of you as Commissioners believe is a good idea, I would hope you'd share that with us other than just say, well it's something we discussed but since we never signed it, it doesn't mean anything.

COMMISSIONER DEMARCO: The discussion didn't go far enough to have an opportunity for resolution, so I don't think it's appropriate to talk about it.

SENATOR DONLEY: Instead of trying to dive into some internal thing - because I would feel the same way. If I had a discussion with you Senator Taylor, you know, that was, you know, off the record to explore a concept, I wouldn't want to go through the full details as if it was an idea that I was fully endorsing. But we could discuss it as a theoretical idea towards the sunset issue that's before the Committee, I would think and I would...

CHAIRMAN TAYLOR: That's what I'm trying to get back to.

SENATOR DONLEY: ...and not ask people, you know, any particular conversations they had but, on the other hand, I think it would be appropriate to have their opinion whether they thought rotation of the Chair was a good idea or not.

CHAIRMAN TAYLOR: That's what I...

SENATOR DONLEY: ... sound fair to other members of the committee?
I mean is that a more ...?

CHAIRMAN TAYLOR: ...because rotation of the Chair has not been mentioned by any of the witnesses so far and if it's something that you guys had at least contemplated or thought about a little bit, whether it came to fruition or not, I mean do you think rotation of the Chair is a good idea on a more frequent basis than every four years?

COMMISSIONER DEMARCO: I said I hadn't thought about it.

CHAIRMAN TAYLOR: You don't?

AN UNIDENTIFIED COMMISSIONER: No.

CHAIRMAN TAYLOR: You think a strong Chair that continues to sit is better? More consistent and all that?

COMMISSIONER STRANDBERG: I'm not sure that I've seen enough to come to that conclusion. I believe that the Commission really has worked very well and we do have a very solid Chair now. I believe that time will tell and I don't think we've given us enough time. I want to be really frank in explaining to you - the reason why I considered that option was to resolve a political issue. I think the current Chair is functioning very, very well. I believe we have, you know, good relations but our relationships between Commissioners are continuing to evolve also. I think we should give it some time.

CHAIRMAN TAYLOR: Commissioner, how do you feel about rotating the Chair?

AN UNIDENTIFIED COMMISSIONER: More frequently.

CHAIRWOMAN THOMPSON: I'd probably say the same thing as Patty, which is I think it's not something I thought about enough to express an opinion.

CHAIRMAN TAYLOR: Did you have a strong opinion on it when you found the letter was being circulated that might go the Governor asking for your resignation as Chair?

CHAIRWOMAN THOMPSON: Not about that aspect of the letter but I did have a strong opinion about the letter.

CHAIRMAN TAYLOR: And what was that?

CHAIRWOMAN THOMPSON: The way that the oversight committee was explained in the letter, as I recall, had our operations reviewed by representatives of industry and as I testified earlier today, I think that's inappropriate to have folks who have cases pending in front of us trying to help us revise our process. I am, and I remain, open to suggestions about how our process can improve. I've explained, very carefully in testimony how we've done that in interactions with industry and how we've continued to involve NRRI, which is a consultant that works lots of the regulatory industries nationwide to help us improve our processes. But I don't think that an industry oversight committee is the right way to do it.

COMMISSIONER ABBOTT: I think it was a wise decision to make a strong Chair. I think four years is an appropriate timeframe to do that. I have no problem with the Chair whose sitting there. A more rapid turnover is going to cause more turbulence within the staff and staff is going to end up looking forward to the changes or what might come down. I think a four-year is entirely appropriate. Bernie?

COMMISSIONER SMITH: First off, on the oversight committee that was drafted, it was nonpartisan and non-industry people, and it was based on non-regulation. In other words they would have no authority over the regulation or our decisions on regulation and it would be just to look at our business procedures to improve within our agency. So, it wasn't any industry recommendation that I came up - maybe somebody out of the University - or NRRI is a good one for me and I have no problems with it Senator Taylor.

CHAIRMAN TAYLOR: What about rotating the Chair?

COMMISSIONER SMITH: Rotating the Chair? I have the greatest respect for Nan. She is a very intelligent person. She's a workaholic. She works probably night and day but in this case, I think a rotation of the Chair is not a bad idea because she has so many duties, especially with the FCC and other committees that she's involved with and also having the administration portion of this plus the dockets that she's on. I think rotation of the Chair is not a bad idea.

CHAIRMAN TAYLOR: The Chair decides, apparently, from earlier testimony, all contracts?

COMMISSIONER SMITH: No. That's not true either. The Chair - if it's under \$5,000 she has the right to do that...

CHAIRMAN TAYLOR: But has that been the case in [indisc.] that you voted you voted on?

COMMISSIONER SMITH: I know I voted on some contracts that were issued in public meetings, I know that.

CHAIRMAN TAYLOR: Maybe - let me rephrase the question. Are there contracts of which you are aware that were greater than \$5,000 that you never voted on?

COMMISSIONER SMITH: I don't know.

CHAIRMAN TAYLOR: You don't know or you don't recall or ...?

COMMISSIONER SMITH: I really don't know. I mean if there was, it wasn't shared with me. I want to make one other point here and that's on the letter that she wrote to you. It kind of implies - and you have implied it yourself - that it's the Commission that agreed to that letter and that's not true.

CHAIRMAN TAYLOR: She clarified that.

COMMISSIONER SMITH: I know but you said a couple of times, and she's the one who wrote the letter. I personally don't agree with the process that she has laid out in that letter. I am going back to the attorney general's [indisc.] and Jeff Landry's summary that was issued in '95 - '94 that basically says we have the discretion to carry our business on as is and toward the end, you might have to make arrangements to sunset, but I disagree that we are going to put industry in a box and basically not do what needs to be done in a timely manner. I don't agree with that at all. So, I just want to make sure that letter was not part of - whether all of the Commissioners agreed - you'd have to ask them.

CHAIRMAN TAYLOR: Even when the Chair doesn't apparently sit on every single three-person group, doesn't the Chair make the assignment on all of the cases?

COMMISSIONER SMITH: Oh sure.

CHAIRMAN TAYLOR: So knowing how fellow Commissioners may or may not view a particular subject, that's a tremendous power that the Chair has, isn't it? What about travel? Do you all travel about the same? Do you all go...?

COMMISSIONER SMITH: We've had a very strict travel budget and we do travel. There's a traveling - I committee meetings - conferences once a year and I rotate with Bernie and Patty. We

do, you know, we travel. Actually, two years ago in our budget we asked for a higher travel budget just because of that reason so that the Commissioners could get out especially not only in visiting with other state's regulatories and also within our own state to places that we could see.

CHAIRMAN TAYLOR: Part of the concern that I have, and I think has been expressed, is that once this Commission was started, just three short years ago that, with the exception, I guess, of you Chair Thompson, there was very little knowledge or expertise of regulating telephone companies, regulating electrical companies and so on.

COMMISSIONER DEMARCO: I did work for the Connecticut Commission for a number of years and I worked for the Connecticut Municipal Electric Energy Cooperative for five years. I was a loaned executive by them to a company that I was serving [indisc.].

CHAIRMAN TAYLOR: So you had some background in the electric?

COMMISSIONER DEMARCO: About 12 years.

CHAIRMAN TAYLOR: Did you have background in some utility management?

COMMISSIONER STRANDBERG: Only as an engineering design consultant but nothing in the regulatory...

CHAIRMAN TAYLOR: Nan, you've worked there for how long? You were a staffer over there for a long time.

CHAIRWOMAN THOMPSON: No I wasn't a staffer. My background is as a practicing attorney and that's - 20 years ago I graduated from law school and have been probably half the time in private and half in public. I served once before on the Public Utilities Commission for 14 months, I believe, and you may recall because I think you were in the legislature at the time of the controversy with Tim Cook. As I committed to the legislature when I was confirmed, the day that the Supreme Court ruled that the job wasn't mine, I left and went back to the practice of law. I've had - when I was in private practice represented utilities at various times during that 20 years.

CHAIRMAN TAYLOR: But you didn't have any particular background either then in utility management?

CHAIRWOMAN THOMPSON: Well, as you know, because you practiced law for many years too, Senator Taylor, is that you learn a lot about

your clients' business when you represent them and I had clients who were different types of utilities - telecommunications utilities, refuse utilities, I did some work for a number of utilities. One of the private firms I practiced with had many utility clients. I had in fact practiced in front of the Commission for several years at the time, years ago when I practiced.

COMMISSIONER ABBOTT: The only thing I ever regulated was a fighter aircraft, Senator, but I don't know, I guess within about six months or something like that after I came on to the Commission I went to a one-week training program back in Chicago and that was part of the drill to try to get us up to speed. Some of the others went to, what is called, Camp Nara (ph) for a couple of weeks.

CHAIRMAN TAYLOR: Bernie had already answered that question and I appreciate all of your answers but people have testified repeatedly that it took awhile to get everybody kind of up to speed in the background of these very technical matters. Have you had a chance to go to any other schools because that was something I was concerned about?

COMMISSIONER ABBOTT: I didn't request to go to any of the other schools for a number of reasons. One is I am pretty busy where I am and, you know, going away - to go off to a one-week, two-weeks, stuff like that gives you a great background but it doesn't give you that experience as sitting there working stuff at your desk and we're here. So I do not feel that I have been slighted as far as my ability to go to training or the opportunity to go to other training.

CHAIRMAN TAYLOR: The point I was trying to make was that as we contemplate some changes, and there has been almost unanimous testimony that the ARECA timelines are something you've compromised with and agreed upon and that others say may have to be in there. Some are talking about an oversight committee, as you mentioned in your letter, a proposed draft to the Governor. It just seemed to me that since there is such a level of sophistication in this field, that maybe we also need to consider the level of training and expertise and background. If we're going to rewrite this thing, maybe we need to rewrite it so that you end up with - much like we do at the Oil and Gas Commission and we have great arguments about who is a down-hole engineer and who isn't a down-hole engineer, maybe we need people with more expertise and background in these fields so that they won't take so long and maybe we also need a bigger travel and training budget too at the same time.

CHAIRWOMAN THOMPSON: A bigger travel and training budget we wouldn't turn away. I think it's important to note that one of the ways we try and use our travel money efficiently as a state agency is to bring experts in. That way we can have all of our staff and all of the Commissioners have the benefit of training. We've done that on several occasions. On the telecommunications field we hired someone. We hired, I'm embarrassed to say, Arthur Andersen to come up and do our rate case training that we allowed members of industry to attend also. So we've tried - it would be great to have more of a travel and training budget. There's no doubt. But we've had, just because folks haven't traveled to it, doesn't mean they haven't gotten it. We've provided opportunities here as well.

SENATOR COWDERY: I would like to make you go through - you know when we talked about a possible conflict of Nanette going to a lodge with her family. Even though she paid, we don't know if she paid retail or what, but I'd just like to ask each one of the members of their thoughts on if you had had that opportunity, would you have went or do you think of rethinking it?

COMMISSIONER SMITH: Well, I would say - I don't know if I wouldn't have went to that fishing lodge but I would have definitely - if Senator Stevens' called - the NRRI staff had called me and said I really want you to introduce yourself to my telecommunications person, I would make every effort to do that. Maybe not go to that particular fishing lodge but...

SENATOR COWDERY: But you didn't need a vacation to get that introduction, you would have tried to use other means to get that introduction?

COMMISSIONER SMITH: I don't know that Commissioner Thompson thought it was a vacation either.

SENATOR COWDERY: Well, she took her family, that's why I say that. Will, what do you think of that?

COMMISSIONER ABBOTT: As Bernie said, if Senator Stevens' office calls and says that they want to go - whether Senator Stevens' office or Senator Murkowski's office or your office - calls me and says you ought to go fishing this person and see if you can hook up, I would certainly do that. Whether I'd go out there to - knowing I was going out to GCI's lodge or not, well, that would be a tough call, I would probably say no, but I'm not telling you right now that I'm committed to that.

COMMISSIONER STRANDBERG: That's a tough call. You all know the Senator Stevens' connection is important and it really helps the

state when we are able to relate to these people. As far as, you know a, an invitation to go out to the fishing lodge, I think I'd have to agree with Commissioner Abbott on, that would be a tough call for me. [END OF TAPE]

TAPE 02-39, SIDE A

COMMISSIONER DEMARCO: Senator Stevens likes to have people from Washington experience the real Alaska and making arrangements to meet with people in an environment that's conducive to that wouldn't surprise me on his part. Again, it is very difficult to say no to Senator Stevens because he's so generous to the state and is so committed to having people understand Alaska. It would be very hard to make that decision. I think all the ramifications wouldn't immediately occur to me, it would occur to me first, Senator Stevens is trying to get this person here and we want to accommodate them and worry about the rest of it later and I think that's exactly what Nan did.

CHAIRMAN TAYLOR: Well that would be true if, in fact, that's who invited her. It isn't. Her testimony is that she was invited by Dana and, at that point, finds out that Lisa is going to be there and it would be a good opportunity to meet and work with her. Dana initiated that, isn't that correct?

CHAIRWOMAN THOMPSON: Almost. When the initial - when the invitation was originally extended, it was made clear to me what the purpose of the trip was and I was able to verify that independently.

CHAIRMAN TAYLOR: So, as I said, Dana calls you, or contacts you, and lets you know that this would be a good opportunity to meet with Stevens' staff, right? That's how you find out about it, then you confirm it later by making another call.

CHAIRWOMAN THOMPSON: I wanted to make sure that it was - the opportunity that had been represented to me to be available and that the request that had been extended through her was actually being made - that there really, there was reason for me to believe that this was something that Senator Stevens' staff was recommending happen, that I meet with her and talk with her about the Alaska Telecommunications Act.

CHAIRMAN TAYLOR: So it wasn't a call from Senator Stevens or his office to you that initiated this, it was a call from Dana who asks you to go and says that Lisa is going to be there. You then confirmed that with subsequent phone calls, right?

CHAIRWOMAN THOMPSON: That's correct.

CHAIRMAN TAYLOR: Okay, so it isn't Ted Stevens calling up and

saying let's get together as everyone has answered. Unfortunately, I think it's a difficult decision ethically. It's one that we're going to have further information on and we can discuss later, I guess. It's a long ways of water under the bridge, as far as I'm concerned. We're supposed to be here to find out what's happening to RCA and whether or not these people are properly insulated from the types of conflicts that can occur in a small state like ours where we have a close relationship with these people. I think we ought to discuss these things openly as we have and I appreciate very much your candor on this. But is that necessarily, and that's why I had a legal opinion drafted on it, is that necessarily something that we should consider in legislation? Should we provide the commissioners with some greater level of safeguards and standards for that purpose, much like we do with judges. For those times when you sit as judges, shouldn't you have the same kind of protections that we provide judges with? And so I appreciate that discussion very much.

CHAIRMAN TAYLOR: I do have a concern about the question of email. And I have one example here that was provided to us. And basically - well maybe I should just hand this to you and you can explain what this one's all about. Because I don't understand why, from my impression, it appears as though the person sending the email is a Jennifer Robertson who works for RCA. Excuse me, let's back this thing up, Robin Boyson, who works for RCA, GCI and Ms. Boyson is indicating that she "was reviewing this filing with Lori and she suggested that you might want to know that ACS recently has been restricting their TLS bandwidth availability. In two different filings they basically made 1.5 unavailable as well as 20 and 50 kbps. Though we are actually glad to see more available at the lower levels available to customers, we thought you should be aware of the trend."

[Indisc.]

CHAIRMAN TAYLOR: My concern is it appears from that email that we have a staff person sending what may be proprietary information within these filings, if these filings are confidential, and indicating to the competitor that they should be aware of these trends. How do you sign up for that service?

CHAIRWOMAN THOMPSON: Senator, there's nothing in the filing or this email that indicates that its proprietary information at all. I will certainly check.

CHAIRMAN TAYLOR: That's my first question is, is that proprietary information within those filings or are they confidential?

CHAIRWOMAN THOMPSON: I would believe, I don't - I will be happy to go back to this particular TA file, the reference is a TA

number, so that indicates to me that this is a tariff filing, and that this is an instance of a staff person, Robin Boyson, communicating with Jennifer Robertson via her GCI email address, but a lot of people do. I don't know where she works, I don't know Jennifer Robertson. And I'm assuming that the information that she is sharing with her is public information. The terms and conditions, the type of information that's here, two different filings, the filings that they made would be public. The would be public record available to anybody who comes to our office to request a copy or who collected the information over the internet. If it's something that's filed with us, a request for rate increase, that's public information. And what she's describing here are terms and conditions that describe services that they have. I would be happy to verify, and I can by reference to this TA number, what it is that you are talking about. But I am confident, knowing Robin Boyson to be a person of integrity, that she is not sharing confidential information with somebody from another company. That would be cause for serious, certainly cause for concern for me, if that's happening. But I have no reason to believe, based on what you showed me, that it is. It looks to me that she's giving her information about something that's already under public records.

SENATOR COWDERY: But why would she do that? What was the purpose of giving this information if it was?

CHAIRWOMAN THOMPSON: Because of the standards by which we review - as I explained, when we're looking at filings by a utility company in a competitive environment, one of the standards for reasonableness, rather than requiring them to submit the pricing information that they normally would have to submit in support of a request to make a particular offering, we look at what the market says, we use as our standard of reasonableness whether or not it's within the range of prices that other people are offering the same services for. So we're not knowing anything more about this than what I read right here. That's what she's doing, she's giving this other person an indication of what the market information is and what type of standards she's going to be applying when she evaluates the filing to make her recommendation to us. I would be happy to submit, to pull this file, and submit an explanation to the committee in writing.

CHAIRMAN TAYLOR: Her second paragraph, it sounds as though Ms. Boyson is a staff person and she is a staff person who apparently makes recommendations to you, as commissioners, on cases - pending cases. Her concluding sentence of paragraph two is, "At this point I would have to recommend suspension of that aspect of the tariff, pending clarification."

CHAIRWOMAN THOMPSON: What she's doing is communicating with the utility about - and this is again - before this has come to us in

a TA meeting. I can verify that by looking at the dates, and I have the dates it was acted on when I get back to the office, but this type of communication is the one that staff regularly has with any utility that has a tariff filing pending. Robin is trying to understand the terms of it and she's telling the utility what her recommendation might be. What she sees when she reads that's going to cause her concern in her recommendation to us and she's providing an opportunity for the utility to clarify or consider changing that term in order to avoid a suspension.

SENATOR COWDERY: Do you, just following up on this, do you advise ACS of any GCI trends or have you ever did that in your office?

CHAIRWOMAN THOMPSON: I don't personally because I don't handle, I don't see these TA filings, they are processed by staff until they come to a recommendation. But I am certain that staff would do the same thing.

SENATOR COWDERY: They do that, too?

CHAIRWOMAN THOMPSON: Yes.

SENATOR COWDERY: They advise ACS of the trends of GCI?

CHAIRWOMAN THOMPSON: I would feel confident that would happen. And I would happy to go back and try and dig out an example of that if that would be help you, Senator Cowdery.

SENATOR COWDERY: That would be helpful, I would appreciate that.

CHAIRWOMAN THOMPSON: Pardon me, I didn't understand.

SENATOR COWDERY: Examples or copies of where they did that.

CHAIRWOMAN THOMPSON: Okay. I'll add it to my list.

CHAIRMAN TAYLOR: That would be probably done the same way, through an email.

CHAIRWOMAN THOMPSON: Yes. Our staff uses email to communicate a lot just because people are away - it's just an easier and more effective way and that way we have a written record of what the communications are.

SENATOR COWDERY: Who is the records custodian of RCA emails?

CHAIRMAN TAYLOR: Or do you have one?

SENATOR COWDERY: Or do you have one?

CHAIRWOMAN THOMPSON: We have a records custodian for the agency,

I don't know that it's any different for email. We have a records and filing section that keeps track of all the paper that goes through the agency.

SENATOR COWDERY: They're stored somewhere else?

CHAIRWOMAN THOMPSON: I don't know where the emails are stored.

CHAIRMAN TAYLOR: I think the question had been asked earlier, maybe I'm wrong, has there been, to your knowledge, any attempt to erase or delete email?

COMMISSIONER DEMARCO: No. [Indisc.]

CHAIRMAN TAYLOR: What I'm talking about is emails that are communications between the Commission and other parties.

COMMISSIONER DEMARCO: If you look at the very top line, where it says subject, it says "For the Mailsheet." That would say to me that, you know, this was entered by the staff person into the docket records for that date. Every day, we have posted on the - I don't know, it goes on our computer, the mailsheet for the day, which is every document that comes into this agency which is pertaining to dockets. If, for example, you make an electronic ruling on a motion and say yes we grant you ten more days to get in your answer or yes we accept your late file thing as you requested. The person who makes that ruling, either a paralegal or staff member or the lawyer, will put a note like this in the file saying, you know, posted to this docket on the mailsheet, we made this ruling telephonically, here's the email transcript so, it becomes part of the docket record. It looks like that's what she did with this email.

CHAIRMAN TAYLOR: So this one is part of the docket record?

COMMISSIONER DEMARCO: Yes. It says for the mailsheet and the TA number. So I would presume that that's what this was.

COMMISSIONER SMITH: When the TA's actually comes to us for approval, we would have a packet for that TA number and it would have emails that were sent back and forth to try to get information back from the utilities. So that the TA's -

CHAIRMAN TAYLOR: So the TA's a Tariff -?

COMMISSIONER SMITH: Tariff action. So we get the information that we need to make the decision. And that's one of the few times that our advisory staff actually gets to talk directly to the industry to work out the differences and get the information so that we can make the proper decision. Once it is suspended as you heard before it goes into a docket and it gets more difficult

for our advisory staff to communicate back and forth to industry.

CHAIRMAN TAYLOR: From the judicial aspect, [indisc.] we go through that ex-parte discussion again. As you indicated, I do all my own email, too. I'm sitting there and I'm typing away and I get some spam and I delete that stuff and then I type away and I send a little message back to a friend. And then I do another thing and it goes to the secretary or somebody to type up. Not all email correspondence goes on this mail sheet, right?

CHAIRWOMAN THOMPSON: It does if it relates to a docket, and that's why she has a TA number referenced here. It was probably off the mail sheet that the ACS legal department got this.

CHAIRMAN TAYLOR: Say I type up and say, 'Commissioner Demarco, love to take you lunch, see you over at the Cook at noon' and I send that to her at 10 o'clock. And she comes in and says, 'Hi Robin, yeah great, meet you at lunch.' That one does not go on the mail sheet, does it?

CHAIRWOMAN THOMPSON: No. It doesn't relate to a docket.

CHAIRMAN TAYLOR: Right. Like the communication that you had with all the utilities about what might happen with them in the future. That wasn't on a docket, was it?

CHAIRWOMAN THOMPSON: No.

CHAIRMAN TAYLOR: Was that done, some of it, through email?

CHAIRWOMAN THOMPSON: Probably. I remember communicating with - I communicated with ATA and their representatives via email.

CHAIRMAN TAYLOR: Would you provide that to the committee please?

CHAIRWOMAN THOMPSON: Sure. And like I said, I think what I communicated in that form would probably be very similar to what's available, and they're probably still up, it says flashing sunsets highlights or sunset updates or something, on our website that's got current information about the process that the agency was going through.

CHAIRMAN TAYLOR: Let's go back to about the time the special session was [indisc.]. Senator Halford, do you have a question?

SENATOR HALFORD: Well, it's a different topic. Going back to the letter a year ago, it took apparently eight or ten months before there was a meeting that you participated in by teleconference to try and decide what to do with the money. It sounds like you said only a couple of months ago that you actually were in that teleconference.

CHAIRWOMAN THOMPSON: Only a couple of - pardon me, what?

SENATOR HALFORD: It sounded like awhile ago you said it was only a couple of months ago that that teleconference on what to do with that study occurred?

CHAIRWOMAN THOMPSON: As best as I recall, yes, we received a communication from the Department of Administration about that. And, like I said before, I think they're the - that's the best place to focus your questions about...

SENATOR HALFORD: Who do you recall being in that teleconference?

CHAIRWOMAN THOMPSON: Well, Jim Duncan was in it. I think Larry Walsh, who's also in Department of Administration.

SENATOR HALFORD: Were you the only member - the only person on the Commission side?

CHAIRWOMAN THOMPSON: Yes.

SENATOR HALFORD: Was it all Department of Administration people, or Governor's office, or anybody from outside the state government, or what?

CHAIRWOMAN THOMPSON: Nobody from outside of state government, I don't remember anybody from the governor's office about participating in the call.

SENATOR HALFORD: I'm curious how it took so long to get everything going on this study.

CHAIRWOMAN THOMPSON: I wish I could answer your question, Senator Halford, but I can't, I'm sorry.

CHAIRMAN TAYLOR: On the study, does the Commission support it?

CHAIRWOMAN THOMPSON: I think it's a good - well, let me just start over here - I think it's a good idea to get advice about what policies should be implemented within the state to encourage the goals of affordable telecommunications statewide.

CHAIRMAN TAYLOR: Shouldn't we have that information before we proceed to draft statute law concerning your Commission on those very subjects?

CHAIRWOMAN THOMPSON: I don't think that that's necessary, because the question asked by the study talks about policy in general, it doesn't talk about whether or not we should have a regulatory agency to help regulate telecommunications. As I said before,

the legislature's authority to modify our enabling statute is not limited to sunset years.

CHAIRMAN TAYLOR: That isn't the question. The question is, should or shouldn't we have the information available to us, the study that you support, shouldn't we have that available to us before we draft legislation that may very well affect telecommunications? Because we're talking about timelines within which you have to do things that could be something that has a significant effect. I don't know, I don't do telecommunications.

CHAIRWOMAN THOMPSON: I think it would be a good idea to get and consider advice before you draft legislation that affects telecommunications. I agree.

COMMISSIONER SMITH: But I might add, I agree with that also, but to tie that into the sunset I think is kind of illogical. I believe, if you want to tie it into something, give us a year, give us two years, and then have the study, have this oversight committee, and then have that information come back to you. But to put the industry and our staff in a position that they perceive, I don't personally perceive it that way, but they perceive that is a difficult decision to make if we start losing people. Our industry starts - investors start dropping out who invest in the industry. So, I think it's a compromise; legislation is a compromise most of the time as you well know. Give us a chance to get the sunset out of the way, get these studies done, get this oversight committee, if that's what you decide to do, put it in there, and let's get on with our business. [Indisc.]

COMMISSIONER STRANDBERG: Indeed. We can oftentimes make changes within the enabling statutes. It may well be that there are things that come up with that report that we could, with the letter, we could implement new regulations without changing the statute, we don't know that.

CHAIRWOMAN THOMPSON: Your small water and sewer regs project is probably a good example of that. It may be helpful to explain what that's all about and how that might respond to some of the comments yesterday.

CHAIRMAN TAYLOR: From the testimony we have, if you have the right banker show up next to your subdivision - that you and the local folks paid to put in a water system unregulated by this Commission - decides then to file an application with the Commission and the Commission jumps through hoops for about two or three years trying to figure out how they can then regulate that and provide him with that water. That's the testimony we heard. And then we find out that half the water and sewer systems in the state aren't regulated, but arbitrarily the other

half are. And there doesn't seem to be any distinction between who gets regulated and who doesn't. Maybe you could explain that one for us.

SENATOR ELLIS: Mr. Chairman, is that the Ed Grasser testimony from yesterday? Is that what you're referring to?

CHAIRMAN TAYLOR: Mr. Stancliff.

UNIDENTIFIED SPEAKER: Oh, Mr. Stancliff.

COMMISSIONER STRANDBERG: As a matter of fact, I wanted to directly address that. I did make some copies of the actual Crimson View order. And I did give that to your assistant there, and I made copies so, if you wouldn't mind, could you distribute this packet? And in as much as I am the docket manager for the small water regulations project that we have going right now, and I just happen to have been the docket manager for that Crimson View project, I thought it would be good to talk you through this really quickly, maybe from a slightly different perspective. I wanted to express to you that we inherited that docket from the APUC, and so it was one of the first dockets that we got when we hit the ground running. And I'll be the first to say that, as an engineer, I didn't have a lot of regulatory experience and I read the statute and you know our statute right now is certainly not perfect. Clearly, the outfit had more than ten people and really did comply with what our definition of what a public utility is. But the reality of the situation is that many, many of these small systems are - we don't know about them and they're in operation. Some of them work well, some of them don't work so well. We hear about some of them in our formal complaint process. But the net effect is that we went through a process with the Crimson View people and the adjoining utility wanted to create a slightly larger utility and have centralized facilities, which, as an engineer, that seemed reasonable to me. Well, we went through a long process and it became clear that the two groups just didn't want to co-exist. And in the order, we basically declined jurisdiction because what happened is they got into arguments with a lot of other issues and it really became clear that the public utility issue was only a small part of that. It was early in our tenure. That was about our first year.

So, I think our decision worked. You know, they were able to go forward and settle their problems and not have a regulatory yoke around their head. And maybe it did take us a little bit too long on that, to come to that realization, but again we were just coming into being a commission. Since that time, we have been working with a number of small water systems and the concept of exempting homeowners - homeowner associations from our regulation, even though they may comply with the definition of a public utility, we've talked about that a lot within the

commission. In fact, there's been at least two cases where we've done just that in the recent past. And our reasoning is we want to make sure that the rate payer is really protected but we want to let these people go do their business without a regulatory yoke.

Oftentimes, I characterize our jurisdiction and our power, if you will, with a great big shovel in gardening where you can move big mounds of dirt, but when you just want to tend around a small flower, it's kind of hard to use that big shovel. Clearly there is a - we've come to the grave realization that we have to use that power with great restraint.

CHAIRMAN TAYLOR: Additional testimony yesterday was that Representative Ogan had filed legislation and that legislation to deregulate was pending and that the commission, through the administration, basically negotiated a resolve with Representative Ogan that you hadn't made up your mind yet about what size of water and sewer utility - water utility I guess this is - that you wanted to regulate, that that was still kind of in the mix and that he then withdrew that bill upon the order of declining jurisdiction coming up. And that was the testimony; at least, I stand corrected if somebody thinks it was different.

COMMISSIONER STRANDBERG: My best recollection of our deliberations was I believe that we heard that there was legislative viewing of this. But in our deliberations, truly, we were looking at this, scratching our heads and you know it's this big shovel in a garden, we were really feeling that and seeking a way to equitably - to equitably reach a decision that would benefit those people. I think that's where we were at in our deliberations.

CHAIRMAN TAYLOR: I just wanted to let you know what all he said.

COMMISSIONER STRANDBERG: Since that time, there's been a federal act, the Safe Drinking Water Act of 1996. Some would call these unfunded mandates where there's significant tightening restrictions on basic water quality for all of our water systems and these homeowners' associations fall under this federal mandate. And not only is the federal government going to require strict water testing, but they're also going to require that these utilities, small associations, comply with technical, managerial, and financial standards meaning that they're not only going to tell them, you make the water good, but they're going to tell them how to do it - and their hammer is that they're coming down through Alaska Department of Environmental Conservation with revolving loan funds, and if they don't comply with the basic standards, the money doesn't come. And so we assume that these small utilities are going to come under the yoke of these federal programs. We have instituted a notice of inquiry and we, on our

own actions, have begun a process to develop reasonable regulations so that we can allow these organizations to continue to make water for their residents and to have appropriate yoke - very, very light yoke, or no yoke at all - depending on if we can work it out so that the public's protected. Anyway, this order 02-04 in it also considers whether to exempt homeowners' associations completely from our regulations. We're seeking inquiry on that. And I think this is an example of how the commission is growing and maturing in our thought processes and realizing just how big that damn shovel really is. So you have a copy of this order right here.

COMMISSIONER DEMARCO: You're also eligible to comment on our dockets. Any member of the public, and if you have opinions about that that you think would be valid or helpful, we'd be happy to hear from you.

CHAIRMAN TAYLOR: Commissioner Demarco, that would be more than the blind trying to lead the blind, I guarantee you. I appreciate the depth of work you obviously put in on that file, it's an incredible opinion. But, in essence, you guys just haven't made up your mind about whether you're going to regulate or not regulate and what sizes you're going to regulate. Are you kind of waiting for DEC to figure out what they're going to do and then you guys will kind of figure out what you're going to do on this?

COMMISSIONER STRANDBERG: We have made our mind up on two early cases where we looked at specific circumstances and did agree to exempt. Now we're seeking to see if we can widen that into a regulation and resolve that issue.

CHAIRMAN TAYLOR: Are there further questions for the Commissioners?

SENATOR DONLEY: I had a couple real quick. Yesterday there was a discussion - and I forget who mentioned it - about the regulatory charges that go on consumers' bills and that not all - I got the impression, okay - that not all consumers were being charged the bill for that. Did I misunderstand that somehow?

CHAIRWOMAN THOMPSON: The utilities, I guess I don't remember the testimony exactly, but the way the statute reads, and the way the obligations are, the utility is required to remit it. We calculate the amount that they each owe based on their gross revenues, the standards are different depending on the industry - for electricity, it has to do with the amount of power. Anyway, we figure out based on the number of hours our staff spends and they keep track of that in-house, to allocate the agency costs according to these different standards amongst the industries. They can charge the customers, and most of them do, put it on the

bill as a separate line item regulatory cost charge. If they want to pay it elsewhere, they can but the ...

SENATOR DONLEY: But are all utilities doing that? Are there small utilities that are being regulated that aren't charging?

CHAIRWOMAN THOMPSON: Now I understand. There's an exempt - some utilities are exempt under 711, because they're...

SENATOR DONLEY: When you say 711?

CHAIRWOMAN THOMPSON: 42.05.711 has the standards for exemption. For example, it is a matter of policy, the legislature decided some years ago that municipally-owned utilities did not need to be regulated because there was enough input and protection for consumers through that public process. Utilities can vote to become deregulated. I can remember - we just did Tatitlek, there was an election up on the North Slope for a telephone company recently. Any time the consumers - and there are standards and statutes for what the votes have to be and to make sure that the ballots are delivered - they can decide, as members of a community not to have - as utility rate payers - not to have that utility regulated.

SENATOR DONLEY: But are there any that are regulated that are not participating in paying for the cost of the regulation?

CHAIRWOMAN THOMPSON: No. I think that the issue raised yesterday was cost allocation in dockets and some suggested that we weren't allocating cost when we could. Is that what you're talking about?

SENATOR DONLEY: Uh, yeah, I think that was part of it.

CHAIRWOMAN THOMPSON: Okay, and that was Ms. McPherrren's testimony. Recently, we have tried to get our old accounting records cleaned up as well and, in closing old dockets, there are some that were many years old where the parties didn't have fair notice for the Commission's incurred costs. The one that I can think of as I'm sitting here had to do with the acquisition of the utilities in Fairbanks. At the end of any case, we look at our costs and we allocate them. If the utility is already paying regulatory cost charges, we absorb the cost. In other cases, where a party may represent the public interest, we also sometimes absorb the cost. In several recent cases, because the dockets were so old, we felt like it wasn't fair to send somebody a bill for thousands of dollars after the fact, we also agreed to absorb the cost. But generally, when we close dockets, we go back and look, and by costs in this case I mean things like court reporter fees if there was a hearing, or any special travel expenses incurred. I think that was why the bill was so high in

connection with the Fairbanks proceeding because, again, it wasn't us, it was the previous commission, so that tells you how old the bill was, flew to Fairbanks had had hearings on that docket. But we charge the cost of our - the cost that we can fairly allocate and document and collect them from parties who don't pay regulatory cost charges. If they're already paying it, we figure they're paying their share already.

SENATOR DONLEY: So, I think I feel I got my question answered. I want to make sure that there is nobody out there that is using the services of the Commission that isn't part of the statutory scheme for paying for these services.

CHAIRWOMAN THOMPSON: Right. In things like - there are a lot of unregulated utilities that, for example, do PCE filings. Well, they write a check, every time they send in their PCE filing. We bill them. Many of those are small utilities, owned and run by the community, and they're not economically regulated, so they don't pay RCC but they pay for us to process their filing.

CHAIRMAN TAYLOR: Let me just follow up on that for a minute. 42.05.254, right? And you cited us to (d)?

CHAIRWOMAN THOMPSON: 711(d). 42.05.711(d), is the exemption provision.

CHAIRMAN TAYLOR: Where the 711 comes in, I'm not in on that one, I guess. I'm on 42.05.254. What I'm curious about is, how do you disregard (a) because (a) specifically says, 'An exempt utility shall pay the actual cost of services provided to it by the commission.' And, in fact, the APUC had done that. And those legislative words are shall, they're not you may do it.

CHAIRWOMAN THOMPSON: I think I just explained, in response to Senator Donley's question, that we do that on a regular basis when there are specific services we perform for unregulated utilities, they pay the cost.

CHAIRMAN TAYLOR: But you're not doing that in all instances because that's the testimony we had from staff yesterday.

CHAIRWOMAN THOMPSON: I don't believe that's exactly what she said. I believe Ms. McPherrren's testimony was that she had not recently been involved in our adjudicatory deliberations and she wasn't fully aware of that. If - I would like to have the opportunity to ask - I don't know off the top of my head - I don't have in front of me the statute you're reading from, Senator, so I can't really respond to the question and I would like to have the opportunity to ask the AG if there are other statutes that apply as well before I answer your question. I was talking about a different statute.

CHAIRMAN TAYLOR: The reason I was the question is because it had been raised in discussions and in testimony yesterday and I know for a fact that Fairbanks didn't pay. Tlingit-Haida, on their electric dispute, didn't pay. And both of those were very expensive matters. Somebody had to make the decision; I'm going to enforce this law against this group, I'm not going to enforce this law against that group. And if the legislature says shall pay, I'd like to know where the discretion comes on the part of you as chair or the commission itself to arbitrarily make decisions among who's going to pay and who isn't going to pay. And if you need the Attorney General to assist you on that, that would be fine too.

CHAIRWOMAN THOMPSON: Actually, I'd like to look in the statute too. But, in Fairbanks, the utility that purchased the Fairbanks utilities are economically regulated and do pay regulatory charges. You heard from one of them today, Golden Heart Utilities.

CHAIRMAN TAYLOR: Before they were purchased, wasn't there a case that they were not charged for?

CHAIRWOMAN THOMPSON: Why don't you just answer?

COMMISSIONER SMITH: I believe it was - FMUS was one of the parties and...

SENATOR DONLEY: I'm sorry, what is FMUS?

CHAIRWOMAN THOMPSON: Fairbanks Municipal Utilities Service.

COMMISSIONER SMITH: That was the actual Fairbanks Municipal Utility Commission, which was an arm of the City of Fairbanks and they sold the system to Golden Heart Fairbanks Sewer and Water. And there was a question about whether or not they should absorb costs and, to be frank with you, I don't recall - I think there's actually two separate statutes where you go back and forth between those. I think that we just need time to respond to -

CHAIRWOMAN THOMPSON: I'd be happy to look up the orders. you said the [indisc.] case and that Fairbanks case -

CHAIRMAN TAYLOR: And the other was the Tlingit-Haida - that was U94-002, the City of Fairbanks was U96-114. And basically, because the decision was made not to make any attempt to have the non-regulated industry contribute to the budget, all of those that are regulated had to subsidize that cost as against their utility ratepayers. I don't know why that was being done. And that was the reason for the question.

CHAIRWOMAN THOMPSON: Senator Taylor, I'd like to have the opportunity to look up the order and review the record completely so I can provide you with a good answer to your question. I would be happy to do that in writing.

SENATOR DONLEY: I'd like to know that too, because I want to make sure that my constituents aren't paying for services received by somebody else. I think they're paying for the services they receive, but they're entitled not to have to pay for somebody else to get the services.

CHAIRMAN TAYLOR: Senator Donley, that's exactly the subject that came up three years ago when we created this RCA, that telephones were paying more than electric utilities, who were paying different from water and sewer, and that we ought to keep track of that and that's why I think the MIS was created, wasn't it? So you could keep track of times and who was spending it on what case.

CHAIRWOMAN THOMPSON: That was one of the reasons the MIS was created.

CHAIRMAN TAYLOR: That was one of the reasons, the other of course was timelines, as we've discussed. But did either of you have a comment on that question of subsidizing these non-regulated. You were kind of nodding your head -

COMMISSIONER SMITH: I was just going to make the same couple of comments that one of them made about the PCE program and our staff does non-regulated PCE requirements. I just wanted to let you know that that has happened.

CHAIRMAN TAYLOR: So the PCE kicks in. But apparently these two didn't, and so if you can follow up with us on that and just let us know how come because it is a point that was raised earlier about are we're doing it one way or another and we ought to be consistent. However we're going to do it, we ought to do it the same way. Go ahead, Senator Donley.

SENATOR DONLEY: On these streamlining process issues that have come up over the last couple of days, we talked a little bit about the reduction in discovery. The other two items that I had some notes on were focusing on key issues, trying to keep extraneous issues out of these rate cases, and also, some sort of definitive timeline so that all of the parties know that unless something gets done by a certain time, they're not going to be happy with what happens, I mean, so that everybody has a stake in getting the thing resolved within a certain amount of time. I'm really interested in these. I strongly understand it's better to have a good delayed decision than a prompt bad decision. I understand that concept but at the same time I'd like to explore

this kind of possibility, as we're going through the sunset process here, of how to streamline that process. We talked a little bit earlier today about limits on discovery. What kind of limitations did you institute on discovery and that process?

COMMISSIONER SMITH: We told them they could have, in that particular case, they could have two rounds of discovery with thirty - discovery and thirty interrogatories, thirty productions and thirty interrogatories. And to comment on your thing about timelines - one reason I don't mind the timelines, and I think they might be helpful to us, is that part of that process is that if we've got a statute behind us, it's harder for people to argue that we're pushing too hard for discovery when we've got a statutory timeframe that we must comply with. So, that really doesn't bother me at all, that timeline, and we can just push on and it's going to impact the other parties but that's fine, it gets everybody.

UNIDENTIFIED MALE COMMISSIONER: It's so well defined, I mean I agree. You called it a negotiation, which it probably was, there's nothing wrong with negotiations, truly. And it serves the purpose of forcing the parties to adhere to the timeline. And it also forces our staff and forces us to make decisions. So, I think that's a good thing.

SENATOR DONLEY: Do you have any suggestions about this idea of focusing on the key issues? We heard a lot a lot about that yesterday where the parties would try to put a lot of extraneous issues into cases, slow the process down for somebody's advantage, whoever perceived it. Do you have any ideas about that?

CHAIRWOMAN THOMPSON: I think some of the procedures that have been used in the court system we've done in a couple of cases, sometimes with success and sometimes not. And that's holding pre-hearing conferences that require the parties to come forward and identify the issues early in the case. Senator Taylor will tell you too, it makes you think your case through and figure out what's really important early. And I think that's a good practice. That's a process we talked about in the bench and bar conference that we had with industry about ways to improve our processes a couple of months ago. And that's something we've talked about internally instituting, having regular pre-hearing conferences after a TA has been suspended within a regular interval and then having one of the items on the agenda be identifying issues early so the parties will know what it is they're supposed to be litigating.

SENATOR DONLEY: And obviously, from our point of view, to craft something like that in the statute, we'd need some guidance about what cases that would make sense in and what small little cases

you don't have to go through that process on.

CHAIRWOMAN THOMPSON: Right. There's a lot of small utilities and small cases that appear in front of us, and we're very conscious of making our processes so complex that we're going to keep people away that need help. And you're exactly right in the significance of making the processes appropriate for all the types of cases that we handle.

COMMISSIONER SMITH: Another point is that it's a bit confusing within the industry of stipulations and we have a bench and bar I think that cleared up some of that. If the industry can get together, competing parties and stipulate, that's a very good way to handle that. Of course now, you've got to have the staff, in this case the PAS, to be able to handle this kind of work - the piles and piles of information so that they can get ready to stipulate. But that is something that's been brought up by the industry and I think it's something that we're working on to try to have the ability to do that.

COMMISSIONER ABBOTT: I did hear about one of - a due process problem that we had and that was one of those was mine again. What I was doing was trying to get to where we could reach an agreement with the utility on their rates without having to go to a hearing, without having to go through all the [indisc.]. They give us their filing, we work through the filing and work out an agreement with them. And the problem with that good idea, if we had made it, it was a great idea - the trouble is we ran into a couple of spots where we just couldn't agree. So, then it says okay now we've got to have a hearing and do all this and they came rolling in and said, due process, we've got to have cross-examination of the staff and all this other kind of stuff. What I had done is I just pushed that a little too hard trying to get to finish there and I didn't make it, but that's a process that I think we need to be perfect. And I don't know if there's any way we can write statute or regulation to get us closer to that and not butt up against peoples', the parties', due process in there. If there's a way, that's a big help. You know. It's just like Mr. Gordon was talking about. We need to be able to talk to staff and work this through. We can keep to them a little longer with a reasonable assurance that we can get to a finality within the staff, then once we turn it loose from the staff, then the staff has to stay out of it and once it becomes, you know, turn it over the public advocacy section and all that, then, staff has to stay out of it.

COMMISSIONER DEMARCO: Also, you have to careful with stipulations, because we had a case recently where the parties stipulated to a whole bunch of issues, and then there were a number of others that were litigated during a case. We issued an order with a focus on those issues that had been litigated. We

didn't deal too thoroughly with the ones that had been stipulated, because they weren't contested during the case.

The customers had issues with some of those stipulated matters that could not be raised during the stipulation and we had to reconsider and open it and do a whole bunch of stuff afterwards, because the customers had weighed in on something after the fact. This is a problem we find quite often - is the customers don't get involved until the effect of the whole thing is over and I don't know whether it's because the notice process is as good as it could be or it could be because people just aren't - you know, they're all running around running their lives. Utilities aren't the top issue on their agenda. So, situations have to be examined pretty carefully and justified substantively in the order, even if they are accepted as stipulations. We want to make sure that everybody involved knows what's going on so it's a mess sometimes.

SENATOR DONLEY: One of the drafting problems we've encountered when we've tried to set deadlines for RCA action before APUC action because what's the penalty, what's the deterrent? I mean, okay you've got to get done in two years. What happens if it doesn't get in two years has always been the most challenging problems.

[GENERAL NOISE]

COMMISSIONER ABBOTT: I guess the thing is we have to sit in front of you like today.

CHAIRMAN TAYLOR: Because you've been through three different admonitions - or amendments just on Chugach alone. So, I mean that doesn't cut it. In fact, Senator Donley and I had legislation pending the last couple of years on how do we get the Supreme Court to issue orders and have worked very closely with Dana and others there to try and improve that process. They have now set up their own internal timelines and I think are getting better at it. With judges, we don't pay them. If it's more than six months that they've had it under advisement, they have to file an affidavit to get their paycheck and, if they can't file the affidavit, they don't get paid. If we are serious about these timelines, and if you're serious about ARECA and serious about the ones they put in on the House side, let's put some teeth in it. If it's over six month, it's, you know, you've been assigned it and you haven't been able to get to a decision, yet, you don't get paid. It acts as a very significant motivator to try and get things resolved, both on the part of the Commission and, I would think, on the part the parties, if you start enforcing the discovery rules.

SENATOR DONLEY: I guess I could ask for your suggestions. We're

going back to Juneau in a couple of weeks here it looks like and I'd appreciate any guidance you all could give me on those kind of questions we've been going through here. I'd appreciate your thoughts on them. There have been challenges we've faced on them for over a decade, I know, but I'd like some ideas on how to reasonably craft something along those lines of things you think would help you.

CHAIRWOMAN THOMPSON: We'll think on it.

SENATOR ELLIS: We may provoke a no per diem for legislators who don't get their business finished. You might want to be careful with that.

CHAIRMAN TAYLOR: You might want to figure out who made them late. We could all assess the penalty on somebody on the third floor.

SENATOR DONLEY: [Indisc.] reserve.

CHAIRMAN TAYLOR: Did you have any further questions?

SENATOR DONLEY: No.

CHAIRMAN TAYLOR: Just to clarify, I have asked you, and I'm not sure if you said yes or no, if you have a draft of a letter you were sending to the governor, I'm requesting a copy of it.

COMMISSIONER STRANDBERG: I said no.

CHAIRMAN TAYLOR: Ms. Demarco, I was talking with you about a conversation you had where you said you were in tears. I'm going to make a suggestion that that conversation was a threatening one and that...

COMMISSIONER DEMARCO: It was not a threatening conversation. It was a frustration on my part.

CHAIRMAN TAYLOR: Did it not involve discussion of your future?

COMMISSIONER DEMARCO: No.

CHAIRMAN TAYLOR: Would you like to elaborate further or do you wish to keep that one, as you said earlier, confidential?

COMMISSIONER DEMARCO: I was embarrassed and one of the ways I being embarrassed is that I cry. I don't want to elaborate any more or you'll find the experience in your lap.

SENATOR DONLEY: If we get into the phone war battle issue, I'd like some guidance from you all about - do you have an on-going docket on this issue that we heard from yesterday on this model

that seems to be the root of this problem, somehow? Are we allowed, under the Administrative Act, what are the barriers that we have in discussing that?

CHAIRWOMAN THOMPSON: I don't know whether it's under the Administrative Act...

SENATOR DONLEY: Any time you've got a judicial question under consideration, you've got limitations about who you can talk to.

CHAIRWOMAN THOMPSON: We don't discuss open dockets with anybody but each other or staff or the parties if we're in a setting where all the parties are present.

SENATOR DONLEY: So, there may be somehow a legal barrier between you all and us, a legal barrier. It's not your fault; it's not our fault. It's just part of the rules that the courts have adopted in dealing with those kind of issues as a quasi judicial body on trying to explore the merits of the some of the testimony we heard yesterday on structuring, this model and some of those issues that we have been seeing in the press too.

CHAIRWOMAN THOMPSON: Yes. There would be. We'd be happy to - I can provide you with a record of the case so far. I don't know how deep that one is. If that would be helpful, we can tell you where we've gotten so far but we can't discuss any of the issues that are currently pending on the docket.

SENATOR DONLEY: Okay, so that's one of the reasons I have to restrain myself from asking you about some of the testimony yesterday because I thought we might be running into that problem.

CHAIRMAN TAYLOR: Nothing prevents this Commission from revisiting on its own - that issue - sua sponte - you can take it up, you can make a decision that that model is a model that does not work and that whole matter becomes resolved, doesn't it? The litigation becomes moot.

CHAIRWOMAN THOMPSON: The issue of choice of an appropriate model is still pending before us.

CHAIRMAN TAYLOR: That's what I meant. Since it is still pending.

CHAIRWOMAN THOMPSON: We don't have to do it on our own. It's already before us. The parties have ...

CHAIRMAN TAYLOR: If it's already pending, you could take that up and make that decision and thus the issue being litigated would be moot, wouldn't it?

COMMISSIONER SMITH: It's in our hands right now. We've taken it up.

CHAIRMAN TAYLOR: I know, but it's also being litigated at the Supreme Court level.

CHAIRWOMAN THOMPSON: That's a different issue. That's the burden of proof issue that you're talking about.

SENATOR DONLEY: I know I've said this before, but I do have another issue. Earlier, when we discussed how you all work among yourselves, which of course to lawyers is always fascinating because the Supreme Court - same issue, right? At what point do the justices - you know - do they talk one on one? Do they talk as a group? Could you give me a little more insight on how the Commission is functioning now? I mean how do you all handle that when you get to that decision making point.

CHAIRWOMAN THOMPSON: I think the answer might be different for each of us so, I suggest that you ask folks differently, but at least on cases where I'm docket manager, I work, I have a paralegal to support me in that endeavor to make sure that when a case is ripe for a decision, it's brought for decision and all the relevant documents are put in a packet that we all get before the adjudicatory meeting. I try and read through the record and the motions, the briefs both ways and think through what my decision is going to be. And then, I don't generally talk to people before the adjudicatory - the other Commissioners or the adjudicatory member about - meeting about what my recommendation might be. I tend to give it to the whole group at the same time and then we discuss it.

SENATOR DONLEY: Do you have like a panel of three?

CHAIRWOMAN THOMPSON: Usually, for efficiency purposes, we all kind of sit there, even if it's not your docket, you're sitting through the discussion and sometimes participate. You have the opportunity and some Commissioners do regularly and some don't regularly to read everything that's going to be discussed. You just can't vote if you're not on the panel but there's participation in the discussion sometimes.

SENATOR DONLEY: So if you're the person who has that docket, it's almost like something I could relate to more and how a court of appeals would work, a multiple member court of appeals. That's kind of like whoever is in charge of the court of appeals assigns writing the case to a particular justice. So, it's sort of like you've been the justice assigned to write that decision.

CHAIRWOMAN THOMPSON: Exactly.

SENATOR DONLEY: Then at that point, once you've got that, then you show it to the other members and they either like it or don't like it. They comment on it, make suggestions?

CHAIRWOMAN THOMPSON: It gets circulated. It's - you know - probably more often staff drafts than Commissioners and the - all orders after they're drafted get reviewed by the paralegals to make sure they're in the right format and citation formats, and all that, the AG looks at it for writing style. Again, we've tried to improve the quality. One of the things that's important for us to do in all our decisions is to explain why and how the decision can be supported by the record and that's what the AG does says you didn't explain that well enough, you know, I don't want to have to defend this one if it gets appealed and sends it back and it gets more reasoning added and then it gets circulated and every panel reads the order, puts in the edits they want to into it or not and signs off or not. If they don't agree, they can write a separate opinion or a dissent.

CHAIRMAN TAYLOR: Thank you.

COMMISSIONER SMITH: A lot of that happens during adjudication and points that are brought in adjudication can change panel members' minds and people may come in with one set idea. In adjudication, when you bring up all the points that are out there, somebody else might have a different point of view and then things change. So...

SENATOR DONLEY: Some of you were expressing concern earlier about the challenges of living within the Open Meetings Act and still trying to get a decision where you reach a consensus.

COMMISSIONER SMITH: The problem I have - this draft letter - it was one on one and then one on another and then another on one and that kind of thing. You couldn't meet together. What I would prefer to have done is had a public meeting and invited - posted it the seven days in advance and have industry come in here and make their comments in five minutes or whatever time you want to have them and then have us discuss it in, you know, amongst the public. That's the correct way of doing it. And that's probably what we will do after we decide, after you all decide which way we're heading - sunsetting or giving us an extension. I would have preferred to do that prior to the sunset so everybody understands where different commissioners may or may not be.

SENATOR DONLEY: Oh, I see. Now you're discussing the letter about what the ramifications might be.

COMMISSIONER SMITH: Right.

CHAIRMAN TAYLOR: Any further questions?

SENATOR DONLEY: No.

CHAIRMAN TAYLOR: It's been a long afternoon and I really appreciate your patience and your candor with us on all the different subjects, many of which were difficult. I also want to take the time to thank you for your service to the state for the last three years. I'm not really sure why we find ourselves here, but somebody motivated the Governor, hence he has now called us and I think it's a bit arrogant of those who called the special session to merely assume that we're going to rubber stamp some early extension for four years and not take up the other problems that have been addressed for the last two days and I assume will be addressed at future hearings. We can't, in good conscience, take up the question of extension of the RCA without taking up the very serious concerns that have been raised by the different utilities. So, I'm assuming that whatever legislation may come out of this special session is going to be a reworking of this Commission, at least modified as significantly as ARECA has indicated or as others have suggested. Maybe we'll rotate the chair, as your letter indicated; maybe we do other things, but to suggest that we're all going to be dashed back to Juneau just to rubber stamp so you get four years extension, I think is rather naïve and I think it's also somewhat arrogant to disregard the significant level of testimony that we've had already heard in this matter. So, I'm appealing to each of you to provide us, the legislature, with your very best recommendations on those matters that need to be resolved. If you want a timeline, give us a timeline - ARECA already has - and tell us which one you'll support. If you want to rotate the chair, three of you do or two of you don't, we need to know that. If there are other procedural things that we can assist you as a legislature by doing, that will expedite the cases in front of you, then we need that information. Without it, we will be acting without the benefit of your assistance. I think that would be dangerous. You're the people who have the greatest expertise on this. So, any suggestions you have for us, we'd be happy to accept them and I'm happy to have legislation drafted that will comport with those ideas. Thank you very much. [END OF SIDE A]

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CHAIRMAN TAYLOR: ...the benefit of your assistance and I think that would be dangerous. You're the people who have the greatest expertise on this so any suggestions you have for us we'd be happy to accept them. Thank you very much. We appreciate your good work. Anything further you wish to say? If not, we...

CHAIRWOMAN THOMPSON: Senator Taylor there's a number of documents you asked for and there was also a document I cited earlier in my testimony and I'd be happy to provide those along with a written

copy of my comments and the ones - because of the hour we won't be able to get to today. I'll get them to your office in Anchorage? Your office in Juneau, wherever...

CHAIRMAN TAYLOR: Just submit them to Senator Cowdery's office - we're using him, his staff and so on to circulate stuff. And that would be fine.

CHAIRWOMAN THOMPSON: All right, thank you.

CHAIRMAN TAYLOR: And we'll decide whether or not we need to get back into that once we've had a chance to review those documents, but we're both faced with a very brief timeframe. We've got between now and the 24th to really do anything that we're going to do on this subject and I realize it affects you guys and it certainly affects us, but thank you again for that cooperation. I appreciate it very much. Anything further, Madame Chair?

CHAIRWOMAN THOMPSON: No.

CHAIRMAN TAYLOR: Commissioners? Members?

[No]

CHAIRMAN TAYLOR: We're going to take about a 10-minute break and we've been here for far too long. When we come back, GCI will be up and then ACS.

SENATOR DONLEY: It's the main event.

CHAIRMAN TAYLOR: We're at ease.

[Meeting reconvened]

CHAIRMAN TAYLOR: Back to order. We had no idea that the discussions would last as long as they have today and many people have indicated to me their difficulties in staying longer this evening, plus staff and then I'm losing part of a quorum, too - they had dinner plans and other things. What we will do is we will recess the meeting to the 20th, at which time we will reconvene for through the 20th and the 21st and if we will keep with the same schedule as far as the people listed yet to be heard from and right now such other matters as occur at that time and those people who have already signed up on the sign up sheets will be accommodated a first priority at that time also so your time will not be totally wasted today. I thank you all for appearing.

SENATOR COWDERY: I just hope that the information that we had requested today and yesterday will be in our hands prior to that. That would be very helpful.

CHAIRMAN TAYLOR: Yep. Anyone wishing to further supplement the record send [the] written testimony to Senator Cowdery's office here in Anchorage and his office will make distribution for the committee. Anything further? We are recessed until the 20th.
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