

**ALASKA STATE LEGISLATURE  
HOUSE LABOR AND COMMERCE STANDING COMMITTEE**

March 19, 2004

4:00 p.m.

**MEMBERS PRESENT**

Representative Anderson, Chair  
Representative Carl Gatto, Vice Chair  
Representative Nancy Dahlstrom  
Representative Bob Lynn  
Representative Norman Rokeberg  
Representative Harry Crawford

**MEMBERS ABSENT**

Representative David Guttenberg

**OTHER LEGISLATORS PRESENT**

Representative Bruce Weyhrauch

**COMMITTEE CALENDAR**

HOUSE BILL NO. 452

"An Act relating to licensing and regulation of sport fishing services operators and fishing guides; and providing for an effective date."

- MOVED CSHB 452(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 453

"An Act exempting from regulation under the Alaska Public Utilities Regulatory Act wholesale agreements for the sale of power by joint action agencies and contracts related to those agreements, and joint action agencies composed of public utilities of political subdivisions and utilities organized under the Electric and Telephone Cooperative Act."

- HEARD AND HELD

HOUSE BILL NO. 379

"An Act establishing an office of citizenship assistance in the Department of Labor and Workforce Development."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 421

"An Act relating to reconveyances of deeds of trust."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 452

SHORT TITLE: GUIDED SPORT FISHING

SPONSOR(S): REPRESENTATIVE(S) HEINZE

02/16/04	(H)	READ THE FIRST TIME - REFERRALS
02/16/04	(H)	L&C, JUD, FIN
03/17/04	(H)	L&C AT 3:15 PM CAPITOL 17
03/17/04	(H)	Heard & Held
03/17/04	(H)	MINUTE(L&C)
03/19/04	(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 453

SHORT TITLE: JOINT ACTION AGENCIES

SPONSOR(S): REPRESENTATIVE(S) HEINZE

02/16/04	(H)	READ THE FIRST TIME - REFERRALS
02/16/04	(H)	L&C, FIN
02/27/04	(H)	L&C AT 3:15 PM CAPITOL 17
02/27/04	(H)	Heard & Held
02/27/04	(H)	MINUTE(L&C)
03/05/04	(H)	L&C AT 3:15 PM CAPITOL 17
03/05/04	(H)	-- Meeting Canceled --
03/19/04	(H)	L&C AT 3:15 PM CAPITOL 17

**WITNESS REGISTER**

BEVERLY MINN, Owner

Sitka's Secrets

Sitka, Alaska

POSITION STATEMENT: Testified in opposition to HB 452.

JOEL HANSON

The Boat Company

Sitka, Alaska

POSITION STATEMENT: Voiced concerns with portions of HB 452.

ROB BENTZ, Deputy Director

Division of Sport Fish

Alaska Department of Fish & Game (ADF&G)

Juneau, Alaska

POSITION STATEMENT: Answered questions relating to HB 452.

THERESA WEISER

Sitka, Alaska

POSITION STATEMENT: Testified in opposition to HB 452 in its present form and suggested changes.

JOHN BELCHER

Sitka, Alaska

POSITION STATEMENT: Testified that he believes the penalties in HB 452 are harsh.

DWIGHT KRAMER, Chairman

Kenai/Soldotna Fish and Game Advisory Committee

Kenai, Alaska

POSITION STATEMENT: Testified that his organization is in support of CSHB 452.

KELLY HEPLER, Director

Division of Sport Fish

Department of Fish & Game

Juneau, Alaska

POSITION STATEMENT: Was available to answer questions on HB 452.

REUBEN HANKE, Owner

Harry Gaines Kenai River Fishing

Kenai, Alaska

POSITION STATEMENT: Testified in support of HB 452.

RON RAINEY, Chairman

Kenai River Sportfishing Association

Kenai, Alaska

POSITION STATEMENT: Testified that his association favors HB 452.

ANDREW SZCZESNY, Kenai River Guide

Soldotna, Alaska

POSITION STATEMENT: Concurred with Mr. Hanke's testimony regarding HB 452.

MARK GLASSMAKER, Vice President

Kenai Professional Guide Association

Kenai, Alaska

POSITION STATEMENT: Testified that CSHB 452 had unanimous support among their board of directors.

MARK K. JOHNSON, Commissioner, Chair  
Regulatory Commission of Alaska (RCA)  
Department of Community & Economic Development  
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 453.

DAVE CALVERT, Utilities Manager  
City of Seward  
Seward, Alaska

POSITION STATEMENT: Testified on HB 453, saying he was opposed to the JAA's being unregulated and didn't support the bill in its current form.

WILLARD DUNHAM, Member  
City Council  
City of Seward  
Seward, Alaska

POSITION STATEMENT: Testified that the council was opposed to HB 453.

RICK BALDWIN, General Counsel  
Homer Electric Association (HEA)  
Homer, Alaska

POSITION STATEMENT: Testified that HEA is opposed to the deregulation of wholesale power contracts as proposed by HB 453.

CHRISTINE PIHL, Vice President  
Seattle Northwest Securities Corporation  
Seattle, Washington

POSITION STATEMENT: Testified as a representative of Chugach Electric Association in favor of HB 453 and answered questions.

ERIC P. YOULD, Executive Director  
Alaska Power Association  
Anchorage, Alaska

POSITION STATEMENT: Testified that with the exceptions of Homer Electric Utility and Seward Electric Utility, his association is in favor of HB 453.

#### **ACTION NARRATIVE**

#### **TAPE 04-29, SIDE A**

Number 0001

**CHAIR ANDERSON** called the House Labor and Commerce Standing Committee meeting to order at 4:00 p.m. Representatives Anderson, Gatto, Dahlstrom, Lynn, and Crawford were present at

the call to order. Representative Rokeberg arrived as the meeting was in progress. Also present was Representative Weyhrauch.

HB 452-GUIDED SPORT FISHING

CHAIR ANDERSON announced that the first order of business would be HOUSE BILL NO. 452, "An Act relating to licensing and regulation of sport fishing services operators and fishing guides; and providing for an effective date." [Before the committee, adopted as a work draft on 3/17/04, was Version D, labeled 23-LS1619\D, Utermohle, 2/27/04.]

Number 0188

BEVERLY MINN, Owner, Sitka's Secrets, noted that she has operated a single charter boat in Sitka since 1986. Testifying against HB 452, Ms. Minn said she believes the bill is unnecessary; she and her husband already are overregulated. She also suggested this bill wouldn't increase safety or aid the industry, and would be costly and meaningless.

CHAIR ANDERSON asked Ms. Minn if there was any consensus they could come to or whether she was totally opposed to the bill.

MS. MINN said the bill as currently written is totally adverse to her business.

Number 0347

JOEL HANSON, The Boat Company, focused on the personal-possession clause, suggesting there needs to be a standard of reasonableness. He explained:

We operate small, open skiffs that are auxiliary boats to our larger vessels. ... The "personally possessed" clause in House Bill 452 would require our guides to actually have on them documents that even the Coast Guard doesn't require to have on them. I just checked with Juneau MSO [Marine Safety Office] ... and it turns out that the Coast Guard's requirements is for certain items to be available for inspection, is their terminology, which means reasonably available so that they can make sure that you are licensed. That would include things like a copy or an original of your captain's license, the proof of enrollment in a random

drug-testing program, first aid and CPR [cardiopulmonary resuscitation].

This bill would require all of those items to be actually carried on your person. And in a small, open boat that doesn't have a pilot's house, that doesn't have a place to keep documents, it would make you basically subject to a criminal fine and penalties if you didn't actually have those documents on you. So there needs to be a "reasonable" clause in here, a "reasonableness" clause of some kind.

CHAIR ANDERSON asked Mr. Hanson if he had Version D and could propose a change to address his concern.

Number 0510

MR. HANSON affirmed that he had [Version D] and referred to page 5, lines 13-14, subsection (e)(2), which read:

(2) the current licenses, tags and permits that are required to engage in the sport fishery for which the sport fishing guide services are being provided;

MR. HANSON said these lines would require that a guide have on his/her person a sport fishing license and a sport fishing king salmon tag, even though current regulations don't require these documents. He pointed out that guides aren't permitted to fish for king salmon.

CHAIR ANDERSON interjected that he thought Mr. Hanson was misinterpreting the law. He said, "I don't think it said it's mandated they carry a king salmon tag." He asked whether Mr. Hanson thought he could carry a license and a permit in an open boat.

MR. HANSON admitted this actually was not a problem. He then referred to page 5, lines 23-26, page 5, paragraph (6), which requires a guide to carry proof of licensure by the U.S. Coast Guard to carry passengers for hire. He pointed out that the Coast Guard requires an original document, not a copy; it also requires a letter as proof of enrollment in a random drug program, and first-aid and CPR cards. He recognized these weren't burdens either.

Number 0720

ROB BENTZ, Deputy Director, Division of Sport Fish, Alaska Department of Fish & Game, replied to Mr. Hanson's concerns:

Current licenses, tags, permits required to engage in the sport fishery are requirements for every sport angler. And one of the provisions of this bill is that any guide have a current sport fishing license. They would have to carry [it] just like any other sport-fishing angler in the state, other than children under 16. Proof of insurance, proof of licensing by the Coast Guard: they already have to carry their Coast Guard license on board, as I understand it.

MR. HANSON noted that the Coast Guard recognizes the difficulties of carrying original documents in small boats that are attached to a mother vessel. He said he'd spoken with the MSO in Juneau, who said the Coast Guard boarding officers wouldn't require the guide to carry that documentation on his or her person. He added, "There's a reasonableness that they're willing to abide by that this legislation does not recognize."

Number 0838

THERESA WEISER, Sitka, agreed with Mr. Hanson's concern about physical possession of documents. She said, "I think that there could be a better wording that would just say if it's on the grounds, so that it's nearby." As for the bill itself, she said:

I am not in favor of it unless there were some changes. One of the changes I see is the insurance line. If anybody in this town is doing charters for cruise ship passengers, they're required to have \$1 million per incident ... coverage. ... There's a lot of commercial fishermen out there that are fishing for a charter boat license, if it should ever go to limited entry, that are registered as charter boats. This bill isn't going to stop them from registering, but it might slow some of them down if that insurance requirement was up there where it should be anyway.

So, I would propose that the insurance requirements were raised to at least a minimum of [\$1 million]. ... They don't have near the amount of regulations that we already face, and I feel that this bill is like putting more regulations on us.

My last comment is in regards to the penalties. I think that they are very severe for what possibly could happen as a minor infraction. I think that needs to be looked at more closely before I would give my support to this bill. ... For an example, the part where it says if we know that a client has committed some kind of a violation, we would have to report that violation: there could be a violation the client has committed that we weren't any way part of. And the example I will give is that a client comes up and fishes with some outfit and catches three kings in May. He's caught his annual limit of kings and he comes back in August to fish cohos, but he buys a king stamp ... and he goes out with a different outfit or he goes out with the same outfit and he catches more kings.

If we know that, whether we overheard it in a bar ... or we witnessed it just across the water, are we now in the position of having to report this violation? We are not the enforcement officers, and I don't think we should be put in the position of having to act like enforcement officers.

Number 1026

REPRESENTATIVE LYNN suggested alternative wording such as "in close proximity" or "reasonably nearby".

MR. BENTZ said he knows the Department of Public Safety (DPS) and the Coast Guard have used discretion when they encountered incidents similar to the example Ms. Weiser had given.

MS. WEISER replied, "That is not our personal experience here with enforcement in Sitka, and we wish that that would be the way it would be, but it is not that way."

Number 1096

JOHN BELCHER, Sitka, spoke to the severity of what he called harsh penalties in HB 452, asking if these same penalties applied to commercial fishing. He inquired, "If I were to lose my guide license after three violations, does a commercial fisherman lose his ability to conduct his fishing for doing the same thing?"

MR. BENTZ responded:

We did compare the proposed penalties in House Bill 452 with existing penalties for some of the other natural resource violations. ... The maximum fine for a class A misdemeanor in this bill is up to \$10,000, one year in jail. Penalties and fines for violations of big-game guides have fines up to \$30,000 and one year in jail. For commercial fishermen, it's fines up to \$15,000 and one year in jail. So the proposed fines are somewhat less than those for the other two groups.

Number 1200

DWIGHT KRAMER, Chairman, Kenai/Soldotna Fish and Game Advisory Committee, testified in support of HB 452 on behalf of his organization. He said:

We realize this bill may change throughout the process, but we support it in principle and feel it may be an important piece of the puzzle in future efforts regarding guide industry issues. One suggestion we might make, where it talks about reports and says the department shall collect information from the fishing organizations, perhaps it doesn't need to be analyzed every year for every place. We're saying that the implementation costs and costs to collect and analyze that data, perhaps these costs could be reduced if data-analyzation needs were identified by discretionary areas on an annual basis.

Number 1250

KELLY HEPLER, Director, Division of Sport Fish, Alaska Department of Fish & Game, agreed with Mr. Kramer's comment and thanked him for the observation.

Number 1265

REUBEN HANKE, Owner, Harry Gaines Kenai River Fishing, testified in support of HB 452. He stated:

The guides on the Kenai River have been adhering to standards such as those found in House Bill 452 for the past 15 years. It's produced a more professional industry and helped our clientele feel safe about their Alaskan experience. I hope that you will pass

this bill in order to help standardize and professionalize the sport fish guiding industry. ...

As far as carrying credentials in open boats, in my business I have five 20-foot boats, and all of my guides are required to carry all of their permits and licenses on their person in the boat, and it's not a problem.

REPRESENTATIVE ROKEBERG asked what type of insurance Mr. Hanke has for his business.

MR. HANKE replied that he is required to have liability insurance with the same limits listed in HB 452. In further reply, he said his insurance is readily available and reasonably priced.

Number 1355

RON RAINEY, Chairman, Kenai River Sportfishing Association, testified that his association favors HB 452 for the same reasons Mr. Hanke expressed. He felt it was better for the sport fishing public to have these regulations in place. He then said:

The lady that said we shouldn't be held responsible for people breaking the sport fishing laws around us in our vicinity, I totally disagree with that. I think we should all take responsibility for making sure that our fishing laws are adhered to and upheld. I would take strong exception to [Ms. Weiser's position on reporting violations]. We should absolutely get after those people that don't do that.

Number 1418

ANDREW SZCZESNY said he was a Kenai River Guide for 18 years and agreed with Mr. Hanke's testimony. He said, "Not only do I have to do a lot of the same things that this bill states, but also I deal with the [U.S.] Department of the Interior with the same type of stuff. I've never had a problem in 18 years of dealing with this stuff." He responded to questions from Representative Rokeberg, saying that carrying the logbook in a boat isn't a problem and that typically he fills out the information regarding the number of clients and their names five minutes before the trip starts. He didn't think adding information about the fish that were harvested would present a problem.

MR. BENTZ noted that currently the saltwater charter logbook policy allows for leaving the book in a vehicle at the boat launch; guides return from a trip and then fill out the logbook while the clients are still on site.

REPRESENTATIVE ROKEBERG expressed concern that the language in the bill was vague with regard to when the logbook had to be filled out.

MR. BENTZ indicated this is a policy decision and said, "We're not trying to make this an enforcement tool we beat up people on. We know people get cited for these type of things." He said the intention is to get the information, for better management."

REPRESENTATIVE ROKEBERG suggested adding the following: "The department shall periodically collect information".

MR. BENTZ replied that the guides record for every trip they take, usually filling out the reports at the dock afterwards.

MR. RAINEY said he didn't believe the logbooks had been a problem and that many guides kept detailed records.

REPRESENTATIVE ROKEBERG noted, "The department's comments say one thing, the bill says another, and then they are saying another thing. They have the right to make the regulations, so I want to make sure that this is clear and very well understood by anybody."

Number 1760

MARK GLASSMAKER, Vice President, Kenai Professional Guide Association, noting that he'd speak for other members of the association, testified that HB 452 had unanimous support from its board of directors. He characterized this legislation as a necessary first step, and mentioned professionalizing the sport fish guide industry statewide. He said:

We are very much in favor of the information-collection portion of the bill, as we feel the information provided will greatly assist Board of [Fisheries] and fisheries managers on establishing new regulations and assessing individual fisheries.

Finally, as you are well aware of, and as many of my colleagues have already pointed out to you, Kenai River guides have been abiding by stringent state park stipulations since 1985, and we are glad to see the remainder of the state adhere to many of the same standards of professionalism and safety.

CHAIR ANDERSON closed public testimony. He asked Representative Rokeberg whether he was still interested in making an amendment.

Number 1834

REPRESENTATIVE ROKEBERG explained, "It needs to be clear when the report should be done. It says under comments that they have to be filled out while still on site. It doesn't say that in the bill. When is it supposed to be done?"

MR. HEPLER responded:

I apologize for the confusion that we caused, because the response we gave back to the committee at that time was directed toward one person's comment that runs big boats. Our comment back focused on big boats. We didn't address the concern [Representative] Rokeberg brought, and that's what about if somebody's in a small boat somewhere on Prince of Wales Island. That's where Rob [Bentz] explained the other half is that we don't expect people to necessarily carry that with them and then, at the end of the day, before they put their boat on the trailer and take it back out, we want it filled out. That's what our intent is.

I understand your concern is that it doesn't say that clearly in here, so does that leave room, then, if we get a zealot coming in who's a protection officer, one of our own, to come in and cite people. That isn't the intent. We're not meant to harass people. I guess we can think of some language and tighten it up. That's what we're looking for: protection of the people so we don't unnecessarily cause them problems, while still getting our information.

CHAIR ANDERSON proposed that the suggested change be carried to the House Judiciary Standing Committee, the next committee of referral, where he is vice chair. He added that the current committee would defer to the sponsor and [Mr. Hepler].

MR. HEPLER offered to draw up some draft language.

Number 1986

REPRESENTATIVE LYNN moved to report CSHB 452, Version 23-LS1619\D, Utermohle, 2/27/04, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 452(L&C) was reported from the House Labor and Commerce Standing Committee.

HB 453-JOINT ACTION AGENCIES

Number 2020

CHAIR ANDERSON announced that the final order of business would be HOUSE BILL NO. 453, "An Act exempting from regulation under the Alaska Public Utilities Regulatory Act wholesale agreements for the sale of power by joint action agencies and contracts related to those agreements, and joint action agencies composed of public utilities of political subdivisions and utilities organized under the Electric and Telephone Cooperative Act."

CHAIR ANDERSON noted that Tuckerman Babcock of Matanuska Electric Association (MEA) and Jim Posey of Municipal Light and Power (ML&P)] had testified on 2/27/04 and were present to answer questions.

Number 2054

MARK K. JOHNSON, Commissioner, Chair, Regulatory Commission of Alaska (RCA), Department of Community & Economic Development, testified:

I did give brief comments the last time the committee considered this bill. The bill is, in our estimation, fundamentally flawed. It is a flawed response to an announced and perceived issue. ... We're interested in working over the long term with the utilities to solve the fundamental problems that exist with the supply of electric energy in the Railbelt. Unfortunately, we believe that the method and the form that has been embodied in this bill suffers from a number of very, very large flaws.

In Section 2 of the bill, the amendment to AS 42.05.711 to provide an exemption from RCA

jurisdiction for proposed joint action agencies [JAA] amounts to a blank check for entities that might be involved in such an agency. It removes all forms of state regulation from such entities. It would set this state on a path in terms of the provisioning of electric utility that would be unlike that which exists anywhere else in the country. In our estimation, it is not a responsible road to go down, and we're frankly disappointed in what we believe are well-run utilities with wise leadership pursuing and sponsoring and supporting this approach.

The last time that the bill was heard by the committee, I was a little surprised to hear a statement made by one of the utility heads that testified in favor of the bill that suggested that somehow the RCA did not have jurisdiction over and provide for review of wholesale power contracts. We believe that's an inaccurate statement of the law. AS 42.05.431(b) provides explicitly for that authority, and we choose to exercise it. I just want to get that on the record to clarify things.

Number 2182

MR. JOHNSON continued:

There are challenges facing electric utilities in the Railbelt. The infrastructure, the generation capacity, the turbines - largely powered by natural gas - that exist are aging. There will be a need for substantial investment in new [plants] in the years ahead.

From our perspective, the establishment of a regime that does not have any sort of review process in terms of the reasonableness of expenditures that might be incurred, or the scope of such projects, is, once again, just not good public policy. Understand that it is highly probable, should the bill be passed in its current form, or ... in amended form that I have seen, ... that the projects to be undertaken, once again, without any sort of measure of their size, the result would be that there would be no ability to control the largest ... cost component of electric service to the Railbelt.

Number 2233

MR. JOHNSON continued:

Our ability to review the wholesale electric-generation costs would be gone, and no entity would take our place. Once again, we simply don't believe that's responsible. We don't believe that's leadership on the part of the legislature. That's abandonment of what ought to be a reasonable role in terms of supervision of these very large, very capital-intensive public utilities.

I want to mention, just in general, I have seen a proposed amendment. If anything, the revised version of this legislation is worse than the original. I have asked the attorneys at the Department of Law to take a look at it. They believe that fundamental changes would be accomplished to the existing joint action agency that deals with the complex and extremely problematical Four Dam Pool joint action agency.

The ... changes to the proposed ... [AS] 42.05.431(c), paragraph (3), ... page 2, line 15, the redesignated paragraph (2) that would now be paragraph (3), adds, very quietly, additional language that says, "or (2)" at the end of that line.

The attorneys at the Department of Law advised me that that probably opens up a wide potential field of action for the Four Dam Pool joint action agency under this legislation that I don't think is intended - or if it is intended, it's something that the legislature needs to consider with great deliberation.

Number 2350

MR. JOHNSON continued:

It was enormously complex to put together the agency and solve some of the problems associated with Four Dam Pool. And, from my perspective, ... to make adjustments to that situation at this point in the game is a very, very dangerous thing to do. I don't think the committee wants to go there. I'm a little reluctant to share them too much, in that I have not

asked for a formal opinion from the Department of Law, but I have communicated with my attorney, who did an analysis of a proposed CS [committee substitute], which was provided me by the sponsor.

Number 2358

CHAIR ANDERSON referred to page 2, line 15 [paragraph (2)]. He asked Mr. Johnson what he thought it meant in regard to the Four Dam Pool.

MR. JOHNSON replied:

That is what's not certain. Once again, if we're dealing with a CS and I'm trying to analyze the three pages of comments which [the sponsor] put together, I believe that the conclusion is that the proposed new subsection [paragraph] (2) will make the limited exception provided to the Four Dam Pool ... [tape ends mid-speech].

**TAPE 04-29, SIDE B**

Number 2370

MR. JOHNSON expressed concern that the Four Dam Power Pool Agency would be exempt from the new AS 42.05.431(c)(2).

CHAIR ANDERSON replied, "So it would debilitate operations of Four Dam Pool."

MR. JOHNSON agreed and recommended enormous caution. He continued:

We appreciate that the utilities are trying to develop an approach to financing and otherwise making investments in new plant and equipment. One of the things ... is, we're not necessarily a barrier to that investment. We do review it, and we do check it for reasonableness. We ensure that a variety of issues are reasonable and prudent in the course of those activities. At the same time, our activities also provide, in our estimation, a lot of stability to the marketplace; they provide a lot of certainty to lenders. I'm sure we could hear arguments that our actions sometimes generate uncertainty. That is the nature of regulation, I suggest.

I can only speak for myself on the commission, but my interest is to provide stability and certainty to industry to make necessary investment. I don't believe that simply excising RCA jurisdiction and doing away with that supervision or regulation is the way to get there.

I don't believe that the utilities have put a whole lot of work into this as yet. I indicated when I testified before the committee two weeks ago that we're disappointed in this effort. It falls short of what we think is probably necessary to solve the problems. I guess ... solutions are out there; solutions can be achieved. They will not be achieved through a compressed timeframe. I'd be interested in establishing a framework so we could work with utilities.

Number 2255

MR. JOHNSON concluded:

I'm a public employee. ... We regulate - we don't run - these utilities. We ... also regulate telecommunications, which is enormously complex in its own right, as well as setting intrastate pipeline tariffs. There's a lot of work that could be done. We don't believe that this legislation ... is at all "ready for prime time". This is a plane, which if allowed to take flight, will not fly for very long or very well.

REPRESENTATIVE ROKEBERG asked if current statutes prohibit regulation of wholesale power sales.

MR. JOHNSON said no. He paraphrased a portion of AS 42.05.431(b), which read in part, "A wholesale power agreement between public utilities is subject to advance approval of the commission." He said there is no qualification in that statute. He said RCA examines wholesale power agreements and, to his understanding, in the Lower 48 the Federal Energy Regulatory Commission (FERC) reviews such agreements.

REPRESENTATIVE ROKEBERG pointed out that the statute goes on to say the commission may not invalidate any portion or sale

obligation of the agreement unless it finds that the rates set are not just and reasonable.

MR. JOHNSON replied that the RCA may not invalidate such an agreement, but "if the rates are not just and reasonable, they're not just and reasonable." He added, "Those costs would represent an imprudent expenditure for an entity that was purchasing wholesale power."

REPRESENTATIVE ROKEBERG suggested the statute was ambiguous. He asked Mr. Johnson if, as commissioner, he had full jurisdiction for the approval of these agreements.

MR. JOHNSON affirmed that. He said he didn't believe any of these agreements had come before the RCA during his tenure, so he could not claim personal experience; however, it was his understanding that the RCA has jurisdiction.

REPRESENTATIVE ROKEBERG asked if the RCA relied on its jurisdiction being allowed in contractual agreements or derives its authority from state statutes.

MR. JOHNSON replied, "I do not believe that the statements that are being made to the effect that 'allows our review' is an accurate one. That statement is not what the statute permits."

Number 2130

REPRESENTATIVE ROKEBERG asked if the statute means the RCA must approve an agreement; or would the RCA "go out and take jurisdiction" if the utilities entered into a contract, he further asked.

MR. JOHNSON replied that he'd rely on legal counsel's interpretation, but his interpretation was that the law gives the RCA the jurisdiction to review contracts for reasonableness.

REPRESENTATIVE ROKEBERG noted that the statute indicates that the RCA doesn't set the rates; rather it requests renegotiation.

MR. JOHNSON replied that if the RCA found the proposed rates weren't just and reasonable, it wouldn't approve the agreement.

REPRESENTATIVE ROKEBERG asked if the RCA allows for rate adjustment during the course of a contract.

MR. JOHNSON said he believed so; he referred to a docket before the RCA that recently dealt with this issue, but said he wasn't sufficiently familiar with it.

REPRESENTATIVE ROKEBERG asked if it was the testimony of Mr. Johnson that the RCA has jurisdiction for prior approval and that HB 453 would repeal that jurisdiction.

MR. JOHNSON replied that the proposed amendment to AS 42.05.711 in Section 2 of the bill clearly takes away the RCA's jurisdiction with regard to JAAs.

Number 2019

REPRESENTATIVE GATTO stated:

When we look at just private industry, we talk about a willing buyer and a willing seller, and we have a willing seller and if the buyer doesn't agree, there's no transaction. We certainly don't want to impose any obligations on a buyer [so] that the seller is able to set the price. They have to be a willing buyer, because, I imagine, had the reverse been true, can you imagine that a buyer gets to set the price on a willing seller? ... Unless we have a willing buyer and a willing seller, there is no agreement.

In the case of utilities, which I refer to sometimes as monopolies, we give them monopolistic powers for the sole purpose of keeping the cost to the consumer down. Our job is mostly to protect the consumer against excessive costs, because anybody who has monopolistic power has huge power to simply say, "We have an unwilling buyer, but we don't have to worry about that." There's no place where an unwilling buyer should be forced to accept the price of a willing seller. In this case, if we don't have a regulatory commission, we have an unwilling buyer.

MR. JOHNSON replied:

Certainly, the option would remain for the buyer to construct their own plants, but that, obviously, requires enormous lead-time and financing and enormous investment. That's the option: you're either going to take what's offered to you under a wholesale sale situation, or you're going to have to go through the

process o putting together your own plants, ... or do without.

These are problems that are inherent in a capital-intensive industry such as the generation of electric power. By and large, these utilities -- and I know they have their differences, but they are all pretty well run. I will say that.

Number 1945

REPRESENTATIVE GATTO said:

I know I'm asking the wrong person, but I intend to ask the question again: Is there any conceivable reason why a seller, who has all the privileges they've had for all this time, to insist that "we do such a good job that we would rather not have regulation; we're just that good an industry and you can trust us."

MR. JOHNSON replied that to his knowledge, generation of electric power is the most capital-intensive industry in the United States.

REPRESENTATIVE GATTO asked when removing the regulatory commission would be advantageous to a consumer. Does the RCA add so much to the cost of electricity that the consumer would be better off if the RCA's regulation were removed, he further asked.

MR. JOHNSON admitted that if the projects were constructed "perfectly" in terms of scaling, location, and construction, the cost of electricity could be advantageous to the consumer. He said the point is that these projects would be based on faith, since there would be no review mechanism in place if this bill passes.

Number 1804

DAVE CALVERT, Utilities Manager, City of Seward, testified that he is not opposed to the JAA, but is opposed to the JAA's being unregulated. Seward buys its wholesale power from Chugach Electric Company, which he said has provided assurance that this [legislation] wouldn't affect their contract. He said he thought Joe Griffith [of Chugach Electric Company], Jim Posey [of ML&P], and Steve Haagenson [of Golden Valley Electric

Company] were reputable and trustworthy gentlemen. "But people change and I'd like to have it in writing and I want the consumers of Seward protected with RCA regulation on anything that the JAA comes up with for power generation," he remarked.

CHAIR ANDERSON asked if Mr. Calvert supported the three entities but not the bill in its current form.

MR. CALVERT affirmed that.

Number 1751

WILLARD DUNHAM, Member, City Council, City of Seward, testified that the council opposes the change that the bill would bring about. He noted that Seward has its own generation plant capabilities. The city owns the line to 38 miles out of town; it services its own customers out 24 miles, and then Chugach Electric Company "picks them up". He agreed with Mr. Calvert in that his concern is for the possible effect on the small utility in Seward from the consortium that would be formed from the three large utilities. They do have the capability of generating their own electricity, but it's cost-prohibitive at the present, which is why they buy a power block from Chugach Electric Company. Mr. Dunham also voiced opposition to losing the RCA's oversight and said, "When you talk about utilities ... you should talk about all the utilities, not just a specialized group."

Number 1675

RICK BALDWIN, General Counsel, Homer Electric Association (HEA), noted that HEA is a cooperative of about 25,000 members and said:

HEA has always supported the notion of cooperative arrangements. But this bill goes far beyond just cooperative arrangements, and HEA is opposed to the deregulation of wholesale power contracts as proposed by the bill. In fact, wholesale power contracts have been regulated by the RCA and the [Alaska Public Utilities Commission (APUC)], its predecessor, for over 20 year, and they actually assumed jurisdiction of those contracts about 20 years ago.

There's only one exception to deregulation of wholesale power rates, and that's the Bradley Lake project. But the Bradley Lake project had all

Railbelt utilities as participants, and each utility still has a voice in the operation, management, and rates on the project.

This really points to the reason HEA is so concerned that the wholesale power market remain regulated. Right now, the ownership of generation resources is concentrated in a small number of utilities, and the other utilities who lack the market power are really, or would be, at their mercy, absent a regulation. Simply amending HB 453 just to allow nonmember utilities to demand regulation wouldn't solve the problem.

It might solve the issue of fair rates. There are issues, circumstances that may not even apply. It doesn't ensure that power would even be available to nonmember utilities. Second, it doesn't assure that any power available after the joint action agency members "skim the cream," so to say, from the project would be of the same quality, reliability, and value as that enjoyed by the dominant members.

Number 1560

MR. BALDWIN continued:

HEA's concern here is not merely academic. We understand that the three large utilities have met and negotiated the terms of a joint action agency [JAA] agreement. They've excluded from that dialog, as we understand it, the three members of the Railbelt most dependent upon the purchase of wholesale power to serve the needs of their retail customers.

The JAA is now uniquely positioned to use the information garnered from the most recent Railbelt energy study HEA participated in and actually provided proprietary information. To use that information now to move forward with construction with those projects, potentially to the exclusion of the other utilities, if that's the case, the other utilities' only practical resource would be to purchase power from the joint action agency or its members. If that's the case, we certainly need regulation.

Number 1533

It's been suggested that in the absence of RCA regulation, a utility would have [recourse] to the courts for any unfair treatment. Yes, it's poor legislation indeed that is enacted with the expectation that it would generate litigation. The court system is burdened enough without having to adjudicate the inevitable antitrust and rate disputes that might arise from the proposed amendments. ... The courts are simply not equipped to deal with the complex rate matters as efficiently and competently as the RCA.

I don't think I need to explain to the committee how the RCA is uniquely constituted to adjudicate rate matters, how the RCA commissioners are appointed, and what their backgrounds have to be. The RCA also employs professional staff with expertise in the areas of management, financial engineering, and ratemaking. The commissioners have opportunities for specialized training. RCA has rules that are intended to streamline the adjudicatory process.

Contrast that with the courts. The judge may not have any expertise in any area germane to the issue of utility rates or operation. His staff typically consists of a secretary and a law clerk fresh out of law school. Procedural and evidentiary rules are more cumbersome. It just defies logic to argue that substituting superior court oversight for RCA oversight makes for greater competence or improved efficiencies in dispute resolution. I think just the opposite would be the case.

There's no reason that the matter has to be resolved in this session. Reason exists for deferring the action. ... Inexpensive, reliable power is at the heart of the present and future economic development of every area in the Railbelt, not just where the big utilities reside.

CHAIR ANDERSON asked if Seward, Homer, and Matanuska were the three power customers excluded [from discussion about organizing the JAA] that Mr. Baldwin referred to in his testimony.

MR. BALDWIN said that was his understanding.

Number 1393

CHRISTINE PIHL, Vice President, Seattle Northwest Securities Corporation, representing Chugach Electric Association, testified that she'd been working in the business for 19 years, has assisted in the issuance of over \$8 billion worth of debt, and has advised public utilities throughout the West Coast and Texas on financial matters. She said:

I'm here to give you a perspective and largely, actually, a rating-agency perspective, so I have a lot of quotes from them because they are an independent evaluator of the financial strength of a utility. ... What's being proposed here is not suggesting that you let a bunch of wild horses out of the barn. It's actually very much in keeping with what happens in public power.

Given the importance, ... reliable and affordable electricity plays a large role in our lives. It's in the public interest to want your electric utility to be of sound health and have access to capital at cost-effective rates. A utility's credit rating is a proxy for its cost of borrowing. Electric utilities, particularly those with generation assets, rely heavily on long-term borrowing to finance projects, just as you borrow to fund a large expense like a car or a home mortgage.

Credit ratings, like from Standard & Poor's and Moody's and Fitch, provide an independent opinion on the financial health and position of a utility, particularly in comparison to other utilities. So, you could say it's a free-market checks and balance on the financial oversight of the utility. The publications that these folks put out are widely read by investors, I'd say, on a daily basis. Anybody who buys public power bonds or invests in public power credits reads these things. ...

The regulatory environment is a key factor in evaluating the creditworthiness of a utility. For example, being regulated is viewed as constraining a utility's ability to respond to changes and financial circumstances. If the utility isn't free to respond quickly and timely, especially in today's power market - which, as you all know, has been quite volatile and

quite evolving - a rating analyst can't be certain that a utility's financial goals or policies will come to fruition. It's really important to have some certainty in rating the utility, because you want to know their ability to pay back bonds that are being issued in the future.

Number 1259

MS. PIHL continued:

When there is a regulatory presence, and if there's a history of favorable regulatory treatment, the effects of regulation can be somewhat muted. Standard & Poor's recently did a survey of state regulators. The survey revealed significant shifts in regulator priorities. The responses indicate that utilities' financial profiles mattered greatly to state regulators, at least in the short term. Regulators overwhelmingly said utilities need to maintain strong financial profiles. That goes directly to their ability to set rates quickly and respond to the changing market.

In a situation where the regulatory body has a history of being neutral, the threat of regulatory interference may be somewhat lessened, but it's still acknowledged that it exists.

The most difficult situation is when there's been a precedent of negative regulatory treatment. This conveys a great deal of uncertainty to investors and lenders, and all of this can undermine the regulatory environment.

MS. PIHL cited an example involving Chugach Electric Company and gave details. She suggested it illustrated that the "greater universe out there, the national capital markets community, lives and dies by what the RCA says" with regard to credit ratings and so forth.

Number 1090

CHAIR ANDERSON asked whether HB 453 would create superior ratings or whether the same scrutiny would remain. He surmised that Mr. Johnson would say, "Well, you do it yourself, and there's still going to be scrutiny for the rating."

MS. PIHL replied that the rating agencies would always scrutinize but would also note that with HB 453, Chugach Electric Company would have better tools to respond to changing financial conditions. She stated, "If you tie the hands of the people making the decisions and the people who are closest to the matter, then they are saying that you're going to constrain the financial wherewithal of the utility."

Number 1048

REPRESENTATIVE CRAWFORD asked why now is such a critical time, since very low interest rates apply.

MS. PIHL agreed interest rates are at historical lows, making the cost of borrowing cheaper than ever before. She also said the electric utility industry is more volatile now, with talk of deregulation and alleged market manipulations by Enron Corporation. Thus, it's a different marketplace for public power than it was 10 years ago.

REPRESENTATIVE CRAWFORD said he thought the instability was due to deregulation in the power markets. He recalled more stability prior to deregulation. He asked, "Aren't we moving in the wrong direction?"

MS. PIHL agreed with his analysis and added:

Possibly, but I think the genie's out of the lamp. We are where we are in the power markets, and I don't know that this issue can address that issue. But I think you're right. They used to be stable. They're not stable, and deregulation definitely had a hand in that.

REPRESENTATIVE CRAWFORD commented:

I've got some real severe qualms here. I think that because we're not on the grid, the national power grid, that we don't have the ability to purchase wholesale power from other entities. We only are able to purchase power here from our Railbelt entities. ... I'm not real sure that deregulation is a good thing in the wholesale power market. You're telling us that it is because it's the most critical time ever because of deregulation. I'm just not sure that this is tracking with me.

Number 0897

MS. PIHL replied that credit-rating agencies feel local control and responsibility provide sufficient oversight. She added:

Public power is a fundamentally different business than an investor-owned utility who has to make a margin for an investor - someone who doesn't live in the region, someone they're not providing power to. Public power, around the nation, is viewed as somebody who is responsible to their constituents, so there is a different governing board and a different structure in an IOU [investor owned utility].

CHAIR ANDERSON asked if she was saying, looking at "the speculation from past," that this change would increase the rating.

MS. PIHL replied, "It will lower the rating because it's viewed as a negative constraint. Regulation ... inhibits a utility to be nimble and respond to whatever changes come about. Also, who knows better the debt covenants than a utility? ... Because they are generation-intensive, the cost of capital is a big factor in their underlying financial results."

Number 0759

REPRESENTATIVE GATTO asked how many utilities were blacked out on the East Coast recently.

MS. PIHL said it was hundreds.

REPRESENTATIVE GATTO referred to the fact that Alaska has a handful of utilities and only one major airline operating out of Juneau, whereas the Pacific Northwest has "thousands of utilities" and numerous options for buying and selling.

Number 0631

MS. PIHL responded:

Competition hasn't really taken over in the rest of the nation; in particular, in Washington there's public utilities and there's investor-owned utilities but there's not a choice option. If you're served by your public utility and you have a complaint, your

recourse is to go to your elected public utility commissioners. ... The difference between a utility here in Alaska and, say, an airline here in Alaska is the airline is in business to make a profit, and a public utility is not. Their basic articles of incorporation, if you will, or the basic mission statement is fundamentally different than a profit-motivated entity, and they are governed by their customers. That puts them in a different arena.

REPRESENTATIVE GATTO asked Ms. Pihl if she was familiar with the lawsuit against Chugach Electric Company brought by MEA. He explained that Chugach Electric Company had apparently overcharged MEA, and the judgment resulting from the litigation provided for a refund to MEA. He was one of the people who received payment as a result of this suit, he noted, and said:

That's a check I could never get, even though I was entitled to it, because we were overcharged by the big corporation. So why would I expect ... to give them the authority to say, "You can raise the rates and we cannot sue you," and trust them now, after litigation indicated that we couldn't trust them before?

MS. PIHL replied that she wasn't familiar enough with the litigation to comment. She went on to say:

Generally speaking, competition hasn't really come to fruition in the Lower 48. It certainly doesn't exist in Washington or Oregon. That hasn't really taken root in Texas. It was a failure in California. I, as a ratepayer, don't have a choice who I get power from.

Number 0417

REPRESENTATIVE GATTO responded that she may not have a choice, but the utility she buys from has a choice of whom they buy power from.

MS. PIHL agreed and continued with her testimony:

It's become more evident that state regulators elsewhere have an increasing interest in financial profiles and, to the extent that Alaska's regulatory environment does not support this thinking, it creates a big red flag in the capital markets. ... It's important ... that there's a favorable environment

but, right now, there's an impression to the rest of the world that there's an unfavorable environment, and that's definitely costing ratepayers money in Alaska because it's going to cost more to build generation or to finance generation.

Everything that I've said here I've attributed to Standard & Poor's, Fitch ratings would echo. ... They downgraded Chugach two notches again, citing the regulatory environment. Clearly, there's some sort of connection between a lower credit rating, a higher cost of capital, and an unfavorable regulatory environment.

My conclusions were that regulatory oversight is viewed as a constraint to financial flexibility, particularly in these times of evolving markets, when timely response is important. Negative regulatory environment casts a long shadow over the credit quality of the bodies that they regulate, so that's hoped to be avoided.

A lower credit rating means higher borrowing costs, and ML&P and Chugach both have very good relationships with the credit-rating agencies. If they were to fall below the "A" category into the triple "B" category, that's going to put them in a whole unfavorable realm of financing, which is going to be a significant cost. This notch was a cost, but if they get dropped one more time, it's going to put them in a whole other league of basically bad news.

By and large, around the nation, public utilities are not subject to state regulatory oversight but are left to the oversight of their members, their customers, and the people who have a direct vested interest in the stability of the utility. I think subjecting JAA to state regulatory oversight will, in the long run, ... cost you more in financing your capital, so it's going to mean higher rates to the ratepayers throughout Alaska.

Number 0218

REPRESENTATIVE ROKEBERG asked Ms. Pihl to clarify what she does professionally.

MS. PIHL replied that she is an underwriter and a financial advisor for Seattle Northwest Securities Corporation and goes to the rating agencies with utilities.

REPRESENTATIVE ROKEBERG asked if, as Ms. Pihl had testified, the regulatory environment was responsible for the downgrading of Chugach's bond rating, or whether it was a result of the finding by the RCA that impacted its balance sheet and financial condition.

MS. PIHL replied that both played a part.

REPRESENTATIVE ROKEBERG said the U.S. is broken down into five regional grids, and Ms. Pihl is from the western area. He asked if there is regulation on wholesale sales of power in the western grid.

MS. PIHL replied that there was no regulation on these sales.

REPRESENTATIVE ROKEBERG asked if this deregulation applied to both industrial utilities and public co-op utilities.

MS. PIHL replied that it did, and that many utilities had surplus energy to sell. She said, "Folks freely sell power back and forth from one utility to another without oversight."

REPRESENTATIVE ROKEBERG pointed out that state utility commissions regulate the retail sales traditionally.

MS. PIHL added, "Only of investor-run utilities, not public power or co-ops."

REPRESENTATIVE ROKEBERG noted that all of Alaska's utilities are publicly owned, with a few exceptions. He went on to say that one of the problems in the national grid right now is lack of regulation in wholesale power. One of the biggest problems in the country is the breakdown and failure of the national transmission system. He said [blackouts] are a result of, or a symptom of, the deterioration of the national grid because there isn't regulation.

**TAPE 04-30, SIDE A**

Number 0010

REPRESENTATIVE ROKEBERG continued, saying the incentive goes into generation investment and capacity, not necessarily the transmission capacity.

Number 0037

REPRESENTATIVE DAHLSTROM asked Ms. Pihl if she had ever worked as a consultant or advisor for any Alaskan utility.

MS. PIHL replied that she'd worked for Chugach Electric Company and on a Bradley Lake "refunding".

REPRESENTATIVE DAHLSTROM asked if it was common for Alaska utilities to go to Wall Street for financing.

MS. PIHL replied that Chugach Electric Company and ML&P had done so. In order to be able to go to Wall Street for financing, a company must have the right credit rating and a certain size. She said smaller utilities have access to capital through the Rural Utility Service (RUS), under the U.S. Department of Agriculture, and these smaller utilities are being encouraged to get credit ratings in order to speed up the process for loan approval.

REPRESENTATIVE DAHLSTROM asked Ms. Pihl if she was currently employed by Chugach Electric Company.

MS. PIHL replied, "I do consulting work for them from time to time."

Number 0275

ERIC P. YOULD, Executive Director, Alaska Power Association, testified that he represents the majority of the electric utility industry in Alaska. He said:

The members that I do represent generate about 90 percent of the electricity throughout the state. The testimony that I've heard today has kind of thrown me off stride. ... I'm particularly upset and disturbed with the testimony of Mr. Mark Johnson. I don't think that he gave you the full picture on what we're dealing with here in the state of Alaska. I'd hoped that we could get into some of the issues of, let's say, monopolies and that sort of thing.

We have taken a position of favoring joint action agencies in the state of Alaska. We have done that by resolution. Since that resolution was passed, then this bill came along, which is a different question of

"do you favor a joint action agency or not." This particular piece of legislation would actually allow the utilities to create a JAA without regulatory oversight of its wholesale contract as it relates to certain assets in their portfolio.

The trade association itself has taken a position of being in favor of this bill. I say that, however, because, for the purpose of full disclosure, I have to tell you that two of my utilities, both Seward and Homer Electric, do not favor this bill. Frankly, when my group got together to discuss this particular bill, these two utilities, for whatever reason, did not participate in that discussion. But, nevertheless, we tried to make sure that the pros and cons of this bill were properly presented, and, as a result of that, my body decided that they were in favor of this bill.

Number 0418

MR. YOULD continued:

There is a concern that we get the best financing for entities such as joint action agencies, as a for instance, the Four Dam Pool. After they were actually allowed to go into existence, their attorneys came back and basically said, "You really need to get out from underneath the jurisdiction of the Regulatory Commission of Alaska in order to get the best financing." So, they came back to the legislature and the legislature gave them that authority. I've got to tell you that they're doing a damn good job.

Another example is the Alaska Power Authority, which was created in the late '70s, early '80s, when their statutes were first put in place. They are very similar to a joint action agency; they're basically a political subdivision of the State of Alaska with limited authorities. They also were required by their bond counsel - in this case, Wohlforth and Flynt - to come back to the legislature and request specific exemption from regulation by the regulatory body at the time, which was the Alaska Public Utilities Commission.

The legislature granted it. And, quite frankly, that entity went on to develop the Four Dam Pool,

Anchorage-Fairbanks Intertie - which was not publicly financed, by the way - Bradley Lake, and other projects. The entity behaved itself very credibly.

The most frustrating thing that I heard in Mr. Johnson's testimony is the implication that without regulatory oversight, the utility is going to go out and gouge the general public. The simple truth of the matter is, we are a public state. We are a public power state. Seventy percent of the electricity in the state is generated by cooperatives; whether it's Matanuska Electric Association or Chugach Electric Association or Homer, these are all public bodies.

These are bodies who have a singular purpose: they have the purpose of providing the lowest-cost power for the people that own the cooperative itself. They don't have the policy and desire to go out and charge as much as they can possibly get away with in a monopolistic setting so that they can provide dividends going back to some disparate bondholder or stockholder in the Lower 48. So 70 percent of the electricity comes from cooperatives; another 20 percent comes from municipal utilities, also owned by the general public.

Number 0607

I would agree with Mr. Johnson 100 percent when he says you'd be handing a blank check to the electric utility industry if we were investor-owned utilities. But we are not. We have a specific responsibility on behalf of those that we serve to provide the lowest-cost power with the best service to those that we serve. That's what they put us there for. That's why we have cooperatives. The reason we don't have more IOUs in the State of Alaska is because they couldn't see the profit margins up here that they see in the more cloistered areas in the Lower 48.

You'll find in the Lower 48 that the investor-owned utilities are all cloistered around the large metropolitan areas because they don't have to build infrastructure out to the rural parts of the country.

MR. YOULD replied to a question from Chair Anderson:

We have some excellent IOUs in the state of Alaska. We have AEL&P [Alaska Electric Light and Power] right here in Juneau. We have Alaska Power and Telephone, which is actually a Washington-headquartered company who runs power plants in a number of communities in rural Alaska; they are an excellent utility. Another one would be Bethel Utilities. Another one would be TDX [Tanadgusix Corporation], which provides power to Saint Paul and to Deadhorse. All four of these are excellent utilities, but, quite frankly, I would not suggest to you that they should be out from underneath economic regulation.

Number 0715

MR. YOULD continued his testimony:

The co-ops and the municipal utilities should. As a matter of fact, ... there's ... in excess of 1,000 co-ops across the United States. They're not in every state of the Union, but they're throughout the Lower 48 as well as the state of Alaska. They don't have quite the presence in the Lower 48 as they have up here in Alaska, but of the states that do have cooperatives, most are not regulated. They are not subject to economic regulation, primarily because they are public bodies.

As a matter of fact, 23 of the states do not regulate their cooperatives; 8 of the states give the co-ops the option of being regulated or not; 2 are partially regulated; and 11 of the states regulate their co-ops. Interestingly enough, one state that does not regulate their co-ops is the State of California.

California is one where you had both Southern Cal Edison and PG&E [Pacific Gas and Electrical Company] spiking the hell out of the cost of electricity. Their rates went through the roof, but you didn't see the rates in the municipal utilities nor in the cooperative utilities following suit. They all stayed down where they should be, because they were adhering to the philosophy of those that own them, that is, the general public, of keeping the cost of electricity down.

Number 0790

REPRESENTATIVE ROKEBERG commented that one reason for the spiking was as a result of action by the California legislature that partially deregulated the utility industry.

MR. YOULD continued:

Understand that the legislation that's before you today is not a deregulation bill. Deregulation is where you eliminate the service territories of the utilities themselves. Every utility in the state of Alaska has a certain territory in which they can sell power. Another utility can't come into that service territory and cherry pick their customers. That's deregulation. This is not deregulation. This is a question of whether you are going to economically regulate or not, at the wholesale level, the contracts of a joint action agency.

You've heard the previous speaker testify in favor of exempting joint action agencies from economic regulation at the wholesale level. Understand, that's different than retail level. At the present time ... the Alaska Power Association agrees with that concept. We also highly respect the dissent provided by both Homer Electric and Seward [Electric] and we also understand that Matanuska Electric Association does not agree as well.

Nevertheless, the testimony of Mr. Johnson, in addition to discussing the wholesale power agreements, that somehow they have regulatory authority over, certainly they have the authority to adjudicate differences in those wholesale power contracts. Rarely have I seen a contract come before the commission in advance of their being executed for review by the commission itself.

Without getting into reading the written testimony that's been provided to you by Mr. Johnson, one of the things that the RCA implies in their written testimony ... [is] that, under the current statutes, a regulated utility must obtain prior review and approval by the RCA to install new generation unit, including siting, size, fuel source, cost analysis, and so forth. That's patently not true. There's nothing in their statutes that allow them that sort of authority.

Number 0941

Quite frankly, I've been developing power projects in the state since 1973. I've been in the electric power industry that long, and I've developed a number of projects throughout the state, including the Anchorage-Fairbanks Intertie, Four Dam Pool, Bradley Lake, ... and I can say that I have never seen a project come before either the old APUC or the RCA for prior approval, siting, anything else.

They certainly have the authority, after the fact, to make sure that the utilities are properly administering their business, that their management is correct, that they're not overcharging, and that sort of thing, and I'll certainly grant them that authority and that right and the statutes therefore. But they do not have, as implied by their testimony, this authority to give some prior approval to develop our projects.

Number 0965

MR. YOULD, in response to a question from Chair Anderson, said MEA isn't a member of his association; most small utilities in the state aren't. The largest small utility in the association is AVEC [Alaska Village Electric Cooperative, Inc.], which provides power to 51 villages, and the smallest single utility in the association is Levelock [Electric Cooperative, Inc.].

REPRESENTATIVE ROKEBERG asked when the trade association had changed its name and whether Mr. Johnson believes a wholesale power agreement is subject to prior approval by the commission. He asked Mr. Yould if this was his understanding of the current statute.

MR. YOULD replied that the trade association acquired a new name about a year ago. He further said no, that was not his understanding of the current statute.

REPRESENTATIVE ROKEBERG quoted from the statute, "subject to advanced approval", and asked what the practice had been.

MR. YOULD said he'd never seen a contract go before the commission for prior approval. He did admit that the commission

has authority to adjudicate differences of opinion by two consenting utilities that have entered into an agreement.

REPRESENTATIVE ROKEBERG referred to Mr. Baldwin's feeling that relying on the superior court to adjudicate would be a mistake because of its lack of expertise. He asked Mr. Yould to comment.

Number 1145

MR. YOULD answered, "Mr. Baldwin is an attorney. I'm an engineer. ... He probably makes a valid point."

REPRESENTATIVE ROKEBERG said he'd support the establishment of some type of integrated authority or responsible party for the whole Railbelt intertie system from Bradley Lake to North Pole. He said it was his understanding that the various utilities maintain the transmission line in the grid, with the exception of the Anchorage-Fairbanks Intertie.

MR. YOULD agreed that the Anchorage-Fairbanks Intertie extends from Healy to Willow, and that utilities have lines that interconnect on either end. He also agreed that it is currently the responsibility of utilities to maintain the lines in their area. He said the Alaska Industrial Development and Export Authority (AIDEA) has contracted with the utilities to maintain those lines because of a shortage of staff.

Number 1196

REPRESENTATIVE ROKEBERG wondered if a JAA could be established for the maintenance, repair, upgrade, and investment in the actual grid and transmission system.

MR. YOULD affirmed that. He said he believes a JAA, if it received these assets, would assume the responsibility of maintaining these facilities, either through a third party or with its own resources.

REPRESENTATIVE ROKEBERG said, "That's not in this bill, though."

MR. YOULD responded, "I think it's implicit in the bill."

REPRESENTATIVE ROKEBERG disagreed and said, "You need to be explicit if you're going to do that. Are we transferring title here in statute? ... I thought we were getting deregulation of

wholesale authority here, not establishing the authority to repair and maintain the grid."

MR. YOULD replied, "If the state wanted to transfer their assets to a joint action agency, they would have to come to the legislature for approval in the first place. I believe that those sort of details would be included in any kind of transfer of authority."

REPRESENTATIVE ROKEBERG said he thought that was an excellent idea.

MR. YOULD said essentially this was what occurred when the Four Dam Pool JAA was given authority to maintain its own facilities. [HB 453 was held over.]

#### **ADJOURNMENT**

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 6:00 p.m.