

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 2, 2009

3:06 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative John Coghill
Representative Carl Gatto
Representative Max Gruenberg

MEMBERS ABSENT

Representative Nancy Dahlstrom, Vice Chair
Representative Bob Lynn
Representative Lindsey Holmes

COMMITTEE CALENDAR

OVERVIEW(S): REVIEW OF THE 2004 CONSENT DECREE ENTERED INTO BY THE STATE OF ALASKA AND CROWLEY MARINE SERVICE, INC., ET AL.

- HEARD

PREVIOUS COMMITTEE ACTION

No Previous Action to Report

WITNESS REGISTER

DAN LEINBERGER, Member
City Council
City of Bethel
Bethel, Alaska

POSITION STATEMENT: Provided comments during a review of the 2004 consent decree entered into by the State of Alaska and Crowley Marine Service, Inc., et al.

CLYDE (ED) SNIFFEN, JR., Senior Assistant Attorney General
Commercial/Fair Business Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Provided comments and responded to questions during a review of the 2004 consent decree entered

into by the State of Alaska and Crowley Marine Service, Inc., et al.

REPRESENTATIVE BOB HERRON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Asked questions and provided comments during a review of the 2004 consent decree entered into by the State of Alaska and Crowley Marine Service, Inc., et al.

MEERA KOHLER, President & CEO
Alaska Village Electric Cooperative, Inc. (AVEC)
Anchorage, Alaska

POSITION STATEMENT: Provided comments during a review of the 2004 consent decree entered into by the State of Alaska and Crowley Marine Service, Inc., et al.

MYRON P. NANENG, SR., President
Association of Village Council Presidents (AVCP)
Bethel, Alaska

POSITION STATEMENT: Provided comments during a review of the 2004 consent decree entered into by the State of Alaska and Crowley Marine Service, Inc., et al.

BOB CHARLES, Energy Development Coordinator
Association of Village Council Presidents (AVCP);
President
Nuvista Light and Electric Cooperative, Inc.
Calista Corporation
(No address provided)

POSITION STATEMENT: Provided comments and responded to questions during a review of the 2004 consent decree entered into by the State of Alaska and Crowley Marine Service, Inc., et al.

RAYMOND THOR WILLIAMS, Member
City Council
City of Bethel;
Member
District 9
Board of Directors
Alaska Municipal League (AML)
Bethel, Alaska

POSITION STATEMENT: Provided comments and responded to questions during a review of the 2004 consent decree entered into by the State of Alaska and Crowley Marine Service, Inc., et al.

REPRESENTATIVE BRYCE EDGMON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided comments and asked questions during a review of the 2004 consent decree entered into by the State of Alaska and Crowley Marine Service, Inc., et al.

ACTION NARRATIVE

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CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at 3:06 p.m. Representatives Ramras, Coghill, and Gatto were present at the call to order. Representative Gruenberg arrived as the meeting was in progress.

Overview(s): Review of the 2004 Consent Decree Entered into by the State of Alaska and Crowley Marine Service, Inc., et al.

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CHAIR RAMRAS announced that the only order of business would be a review of the 2004 consent decree entered into by the State of Alaska and Crowley Marine Service, Inc., et al.

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DAN LEINBERGER, Member, City Council, City of Bethel, explained that approximately five or six years ago, Yukon Fuel Company ("Yukon") was purchased by Crowley Marine Services, Inc. ("Crowley"), and a consent decree was negotiated by the attorney general's office. Now that some time has passed, the City of Bethel feels it would be prudent to review the consent decree regarding its effectiveness and whether competitive conditions within the Western Alaska fuel market still exist. Market capacity in Bethel for fuel is approximately 14 million gallons, and the decree mandates that 29 percent of that capacity be allocated to another competitor; in this instance, that would be Delta Western, Inc. ("Delta"). He mentioned that section XI of the decree addresses compliance inspections.

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CLYDE (ED) SNIFFEN, JR., Senior Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law (DOL), noted that he was largely responsible

for drafting the consent decree, that he'd investigated the purchase of Yukon by Crowley, and that in looking at the economic issues when crafting the decree, the DOL had assistance from Barry Pulliam of Econ One Research, Inc. ("Econ One"). He mentioned that the decree was reviewed by the court, and that there had been a considerable amount of opposition to the decree by residents of Bethel and "the Western Alaska fuel group." The court ultimately found that the decree was in the public interest and was subsequently court ordered.

MR. SNIFFEN explained that the purpose of the decree was to [maintain a competitive marketplace for delivery of fuel consistent with Alaska's antitrust laws], and that to effect that, the decree required Crowley to sell two sets of barges and tugs to Delta; to divest itself of 4 million gallons' worth of storage space in Bethel; and to make storage capacity available at its Nome, Kotzebue, and Saint Michael terminals. Additionally, other actions on the part of Crowley were also required by the decree. He explained that section XI of the consent decree serves to ensure compliance with the aforementioned requirements, and that Delta would be the primary beneficiary of a lot of those requirements. He pointed out that neither Delta nor any other competitor has complained to the DOL regarding a lack of compliance by Crowley - which is also required by the consent decree to submit reports to the DOL - and thus there doesn't appear to be any problem at this time.

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REPRESENTATIVE BOB HERRON, Alaska State Legislature, asked whether there was any consideration given to including in the consent decree "an automatic reopener" or a scheduled independent review.

MR. SNIFFEN said there was not, and remarked that such is not typically done in the antitrust realm when resolving issues pertaining to asset acquisition; instead, finality in the process and a reliance on the marketplace are preferable over providing any lingering authority to "overturn the applecart." Again, the consent decree requires Crowley to provide the DOL with compliance reports; furthermore, should it be determined at some point that Crowley is engaging in conduct inconsistent with the decree requirements, the DOL could act at that time.

REPRESENTATIVE HERRON asked whether those reports would be public documents.

MR. SNIFFEN said it would depend on what information Crowley provided in those reports, though the DOL prefers to keep as much information public as possible; for example, if the DOL requested proprietary information from Crowley, the DOL would make public as much of the ensuing information as it could that was not proprietary. In response to comments and questions, he said that regardless that folks in Western Alaska are dissatisfied with the amount of competition, unless something illegal is actually going on, the DOL is not in a position to take any action, and so would only be investigating allegations of illegal activity such as collusion or price fixing or other types of illegal conduct. A simple lack of competition - which wasn't much even before the decree was ordered - and rising fuel prices - which are rising everywhere, he noted - won't warrant an investigation, and there isn't a lot that the DOL could do about those things anyway.

REPRESENTATIVE HERRON, referring to the City of Bethel's Resolution 09-16, said he doesn't believe that there is any actual collusion occurring; instead, the concern is that there is a sort of "lazy collusion" or "indifferent collusion" occurring.

MR. SNIFFEN said it can be difficult to find violations of state law in instances where a company simply isn't actively attempting to keep prices down. He then offered his understanding of some of the effects of and responses to the "bidding markets."

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MEERA KOHLER, President & CEO, Alaska Village Electric Cooperative, Inc. (AVEC), relayed that the AVEC provides electric service to 53 villages, the bulk of which are in the Yukon-Kuskokwim Delta (Y-K Delta) area, and buys about 5-5.5 million gallons of fuel per year.

[Chair Ramras turned the gavel over to Representative Gatto.]

MS. KOHLER, recounting the steps that the AVEC took once it got wind of the proposed [purchase of Yukon by Crowley] and the steps it's since taken, explained that what the AVEC has noticed is that the fuel transportation costs appear to have doubled what they once were before Crowley purchased Yukon, adding that this dramatic increase seems quite excessive and will have a significant impact on the area's villages. In conclusion, she elaborated, "It is clear that there have been some very

significant increases in the cost of transporting fuel; to what extent those are because of lack of competition, and to what extent they are because costs have gone up, I don't know and I can't speculate, but it's certainly ... a huge burden in Western Alaska."

[Representative Gatto returned the gavel to Chair Ramras.]

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MYRON P. NANENG, SR., President, Association of Village Council Presidents (AVCP), after mentioning that the AVCP represents 56 villages in the Y-K Delta, explained that these villages have seen a dramatic increase in the price of fuel and are affected by it, some to the point of having to choose between buying food and buying fuel. He also recounted an incident to illustrate that in Bethel, the [amount of storage space] the consent decree requires Crowley to provide its competitor is insufficient to meet the demand of those who wish to pay a lower price than Crowley is charging. Last fall, for example, a lack of competition in the area resulted in Kwethluk and Napaskiak on the Kuskokwim River, and Emmonak on the Yukon, running out of fuel even before "freeze up" occurred. Something has to be done, he concluded, to reduce the cost of fuel in Bethel. The AVCP, therefore, supports a review of the consent decree.

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BOB CHARLES, Energy Development Coordinator, Association of Village Council Presidents (AVCP); President, Nuvista Light and Electric Cooperative, Inc., Calista Corporation, explained that the local, small, individual utility companies in the region have seen their fuel prices skyrocket well over 100 percent from 2007, and this in turn has resulted in increased costs to the communities as well as to the State of Alaska. The people, utilities, and fuel operators and buyers in the region, therefore, have been asking questions regarding whether the consent decree has had the desired effect on fuel prices; these questions - several of which he listed - deserve some consideration because the effectiveness, or lack thereof, of the consent decree is having an impact on both Western Alaska and the state economy. In response to questions, he concurred that it would be worthwhile for the DOL to investigate the effectiveness of the consent decree, particularly with regard to whether there is sufficient competition in the market.

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RAYMOND THOR WILLIAMS, Member, City Council, City of Bethel; Member, District 9, Board of Directors, Alaska Municipal League (AML), noting that the AML's District 9 includes a lot of small, Native communities that are very much impacted by the consent decree and the cost of the energy they must purchase in order to heat, feed, and educate their children, surmised that because of a lack of competition in the Bethel area, the costs for State services are increasing extremely quickly, and that if this continues, things will soon get to the point where some of the villages won't be able to keep going. He asked the committee to request that the DOL investigate these issues and evaluate whether the consent decree is still in everyone's best interest. He suggested that the consent decree was agreed upon because it would make it easier for some corporations to make money rather than because it would ensure sufficient competition. In response to questions, he agreed that fair trade practices in Bethel and surrounding communities have become an issue; offered a comparison between fuel prices in Bethel and fuel prices in Nome; and surmised that the higher prices in Bethel are the result of a lack of competition.

REPRESENTATIVE HERRON disclosed that up until 1998, he owned a gas station in Bethel, that he was the city manager in Bethel when the consent decree was proposed, and that his son works for Delta.

MR. SNIFFEN, in response to a question, said it would be helpful to receive specific examples of insufficient competition, and acknowledged that the issue of whether sufficient storage capacity has been provided for via the consent decree is one that the DOL could look into.

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REPRESENTATIVE BRYCE EDGMON, Alaska State Legislature, questioned whether the terms "unfair practices" and "legitimate business practices" have been defined specifically to address today's [fuel pricing] environments.

MR. SNIFFEN explained that those are terms of art that encompass a broad range of potential activities, both obvious and subtle, and that investigating such issues is a broad charge for both regulators and the courts. In response to a question, he outlined the steps the DOL might take and the questions it might ask in investigating the effectiveness of the consent decree, noting that the DOL has broad investigatory authority under

Alaska's antitrust and consumer protection statutes. In response to a further question, he explained that the term "market power" is generally defined as the power of an entity to control prices or restrict competition, but pointed out that having market power isn't against the law in and of itself - at issue instead is whether such market power is obtained via illegal behavior. Some costs are just very high, and fuel companies have to pass those costs on, and they are not necessarily making a large profit, though collusion among companies to keep prices high is something that would be of concern to the DOL and could engender an investigation.

REPRESENTATIVE HERRON made some suggestions for questions the DOL could ask during an investigation, offered his understanding of how Crowley and Delta conduct their businesses in various locations around the state, and relayed that people want the DOL to conduct an investigation in order to determine whether the consent decree is still functioning as intended.

CHAIR RAMRAS suggested that both the DOL and the Regulatory Commission of Alaska (RCA) ought to investigate these issues further.

REPRESENTATIVE EDGMON, in conclusion, surmised that people in Western Alaska are simply questioning what factors are causing their fuel costs to be so high.

REPRESENTATIVE HERRON, in conclusion, characterized the price of fuel products in Western Alaska as volatile, and reiterated his understanding of how Crowley and Delta conduct their businesses, surmising that some people are concerned that Crowley has a competitive advantage in Bethel.

CHAIR RAMRAS, in conclusion, indicated that the committee would be issuing a formal request for the DOL to undertake an investigation into this matter.

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ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 4:25 p.m.