

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

March 22, 2010

1:33 p.m.

**MEMBERS PRESENT**

Senator Hollis French, Chair  
Senator Bill Wielechowski, Vice Chair  
Senator Dennis Egan  
Senator Lesil McGuire  
Senator John Coghill

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 239

"An Act relating to ignition interlock devices, to refusal to submit to a chemical test, and to driving while under the influence."

- MOVED CSSB 239(JUD) OUT OF COMMITTEE

SENATE BILL NO. 277

"An Act exempting from regulation by the Regulatory Commission of Alaska and by municipalities generators of electricity from renewable energy resources that sell electricity to regulated utilities."

- HEARD AND HELD

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 319(FIN)

"An Act relating to firearms; and providing for an effective date."

- HEARD AND HELD

SENATE BILL NO. 153

"An Act relating to manufactured homes, including manufactured homes permanently affixed to land, to the conversion of manufactured homes to real property, to the severance of manufactured homes from real property, to the titling, conveyance, and encumbrance of manufactured homes, and to

manufacturers' certificates of origin for vehicles; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 239

SHORT TITLE: IGNITION INTERLOCK DEVICES/DUI/CHEM. TEST

SPONSOR(s): SENATOR(s) MEYER

01/25/10	(S)	READ THE FIRST TIME - REFERRALS
01/25/10	(S)	JUD, FIN
02/24/10	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/24/10	(S)	<Bill Hearing Postponed>
03/01/10	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/01/10	(S)	Scheduled But Not Heard
03/12/10	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/12/10	(S)	Heard & Held
03/12/10	(S)	MINUTE(JUD)
03/22/10	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 277

SHORT TITLE: PUB. UTILITY EXEMPTION: RENEWABLE ENERGY

SPONSOR(s): ENERGY

02/12/10	(S)	READ THE FIRST TIME - REFERRALS
02/12/10	(S)	RES, JUD
02/22/10	(S)	RES AT 3:30 PM BUTROVICH 205
02/22/10	(S)	Heard & Held
02/22/10	(S)	MINUTE(RES)
02/25/10	(S)	RES AT 4:00 PM BUTROVICH 205
02/25/10	(S)	Moved CSSB 277(RES) Out of Committee
02/25/10	(S)	MINUTE(RES)
03/02/10	(S)	RES RPT CS 1DP 3NR NEW TITLE
03/02/10	(S)	DP: MCGUIRE
03/02/10	(S)	NR: WIELECHOWSKI, STEVENS, FRENCH
03/19/10	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/19/10	(S)	<Bill Hearing Postponed>
03/22/10	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 319

SHORT TITLE: FIREARMS

SPONSOR(s): HAWKER

01/29/10	(H)	READ THE FIRST TIME - REFERRALS
01/29/10	(H)	JUD, FIN

02/10/10 (H) JUD AT 1:00 PM CAPITOL 120  
02/10/10 (H) Moved CSHB 319(JUD) Out of Committee  
02/10/10 (H) MINUTE(JUD)  
02/12/10 (H) JUD RPT CS(JUD) 4DP 2NR  
02/12/10 (H) DP: LYNN, DAHLSTROM, GATTO, RAMRAS  
02/12/10 (H) NR: GRUENBERG, HERRON  
02/16/10 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
02/16/10 (H) Moved CSHB 319(FIN) Out of Committee  
02/16/10 (H) MINUTE(FIN)  
02/19/10 (H) FIN RPT CS(FIN) NT 7DP  
02/19/10 (H) DP: KELLY, THOMAS, DOOGAN, AUSTERMAN,  
FAIRCLOUGH, STOLTZE, HAWKER  
02/24/10 (H) TRANSMITTED TO (S)  
02/24/10 (H) VERSION: CSHB 319(FIN)  
02/26/10 (S) READ THE FIRST TIME - REFERRALS  
02/26/10 (S) JUD, FIN  
03/22/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

SENATOR KEVIN MEYER  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Sponsor of SB 239.

MICHAEL PAWLOWSKI, Staff  
to Senator Lesil McGuire  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Presented SB 277 on behalf of the sponsor.

ETHAN SCHUTT, Senior Vice-President  
Cook Inlet Region, Incorporated (CIRI)

**POSITION STATEMENT:** Testified in support of SB 277.

BOB PICKETT, Chairman  
RCA

**POSITION STATEMENT:** Answered questions related to SB 277.

STUART GOERING, Assistant Attorney General  
Civil Division  
Commercial and Fair Business Section  
Department of Law (DOL)

**POSITION STATEMENT:** Answered questions related to SB 277 as  
counsel assigned to the RCA.

MARILYN LELAND, Executive Director

Alaska Power Association

**POSITION STATEMENT:** Testified in opposition to SB 277.

DEAN THOMPSON, Legal Counsel

Alaska Power Association

**POSITION STATEMENT:** Testified in opposition to SB 277.

MARK A. FOSTER, Principle

Mark A. Foster and Associates

Anchorage, AK

**POSITION STATEMENT:** Testified that the committee should consider going the route proposed in SB 277, creating less regulation to encourage new players to get into the marketplace.

REPRESENTATIVE MIKE HAWKER

Alaska State Legislature

Juneau, AK

**POSITION STATEMENT:** Sponsor of HB 319.

SUE STANCLIFF, Special Assistant to the Commissioner

Department of Public Safety (DPS)

Juneau, AK

**POSITION STATEMENT:** Testified that DPS is neutral on HB 319, but it has concerns with certain provisions.

#### **ACTION NARRATIVE**

[1:33:42 PM](#)

**CHAIR HOLLIS FRENCH** called the Senate Judiciary Standing Committee meeting to order at 1:33 p.m. Senators Coghill, Wielechowski and French were present at the call to order. Senators Egan and McGuire arrived soon thereafter.

#### **SB 239-IGNITION INTERLOCK DEVICES/DUI/CHEM. TEST**

[1:34:25 PM](#)

**CHAIR FRENCH** announced the consideration of SB 239. [Version S was before the committee.] The bill was heard previously and public testimony was taken and closed.

**SENATOR KEVIN MEYER**, sponsor of SB 239, asked if the committee had received the updated information about the number of court-ordered ignition interlock devices that have been installed.

**CHAIR FRENCH** confirmed that the committee received the memo that pointed out that 1,245 ignition interlocks had been installed, which is closer to what he would have thought.

[1:35:32 PM](#)

SENATOR WIELECHOWSKI moved to report CS for SB 239 from committee with individual recommendations and attached fiscal note(s). There being no objection, CSSB 239(JUD) moved from the Senate Judiciary Standing Committee.

At ease from 1:35 p.m. to 1:36 p.m.

**SB 277-PUB. UTILITY EXEMPTION: RENEWABLE ENERGY**

[1:36:39 PM](#)

CHAIR FRENCH announced the consideration of SB 277.

MICHAEL PAWLOWSKI, Staff to Senator Lesil McGuire, said SB 277 attempts to streamline the regulatory process and clarify in statute that renewable independent power producers in Alaska are exempt from regulation by the RCA if the projects were placed in service before 2016, generate less than 65 megawatts, and do not receive state tax credits or grants. The experience in other states has been that streamlining the regulatory system facilitates the development of renewable power. In Alaska, independent power producers are a relatively new entrant into the market and the regulations are fairly new, but early on a project in South Fork and one in Eagle River received exemptions. According to the RCA, it took about five months to receive these exemptions.

[1:39:36 PM](#)

SENATOR MCGUIRE joined the committee.

ETHAN SCHUTT, Senior Vice-President, Cook Inlet Region, Incorporated (CIRI), said he is testifying in support of SB 277. CIRI believes this will help to set boundaries that will foster a fair regulatory environment and enable an independent power producer (IPP) to negotiate with utilities to sell a commercial block of power without having to run the regulatory gauntlet that was structured to regulate the public utilities that sit in the Railbelt today. These are utilities that have customers and monopoly service territories whereas IPPs have none of these things, he said.

MR. SCHUTT said CIRI believes that this version of the bill strikes the right balance. It will encourage rapid development of renewable power while protecting the public interest. With the modifications made in the prior committee, both of these

interests can be served. As currently written, this bill is good public policy, he said.

CHAIR FRENCH asked if the current law would in any way force a utility to buy power from the CIRI wind project.

MR. SCHUTT said no and that doesn't change under this bill. CIRI believes that the utilities have sufficient leverage to negotiate fair business points on their power purchase agreements and there is nothing that would compel them to buy power from CIRI.

[1:42:54 PM](#)

CHAIR FRENCH summarized if the utility reaches a point of impasse in their negotiations with CIRI, they can walk away and CIRI would be forced to change its business practice "get back in the ballgame."

MR. SCHUTT replied that's correct; if no compromise can be found on any particular point, the IPP can concede the point to the utility, find another customer, or find another project.

[1:44:16 PM](#)

MR. PAWLOWSKI said the March 18 letter from CIRI raised a concern about a qualifying facility (QF) under federal law. Whereas this bill regulates a person or a facility, federal law is specifically related to a facility and the type of power being generated. Both relate to renewable energy, but what is somewhat confrontational about qualifying facilities is that under federal law a qualifying facility has the power to compel purchase of their power. Absent something like SB 277, the de facto encouragement is for potential independent power producers to go the federal qualifying facility route. Although facilities of certain sizes can be exempt from state regulation through QF, the bill seeks an Alaska solution that is in between the QF status and still allows for commercial negotiations.

CHAIR FRENCH asked if the CIRI project is too large to be a qualifying project.

MR. PAWLOWSKI said that's correct.

CHAIR FRENCH asked for a summary of the 3/5/2010 legislative research report for the record and noted that it appears as though Alaska is an outlier with respect to the way it handles this kind of transaction.

MR. PAWLOWSKI said legislative legal offered the view that the regulatory environment in Alaska is somewhat interesting. If an individual facility sells power to another person and receives more than \$50,000 in income, the facility is regulated. Other states don't regulate that way, but the power market in the Lower 48 isn't stranded, it's much more competitive, and power has the ability to move across state lines. Even Hawaii, which is also stranded from a national grid, doesn't regulate in this manner.

The policy call in this legislation is to remove the regulatory impediments to renewable energy to incentivize private sector investment, which will encourage commercial negotiation between utilities and power suppliers.

[1:47:40 PM](#)

CHAIR FRENCH recapped that in the Lower 48 this type of project would be exempt from local regulation. FERC would be the regulatory body and would look at it as a matter of intrastate power sales. He asked if FERC would still regulate if an IPP in Colorado was selling to a utility with no intrastate aspect.

MR. PAWLOWSKI replied it would depend on the size of the facility and if it was a qualifying facility, but his understanding is that intrastate sales are not typically regulated.

SENATOR MCGUIRE pointed out that the research report indicates that some states specify that the local regulatory body regulates by virtue of regulating the utility that the IPP sells to, which is what this bill does. She agreed that if it doesn't cross a state line, FERC would not by definition have authority.

She emphasized importance of alternate energy to people here and pointed out that this is the first meaningful commercial-level project in the state. It's a project that could move forward, but it has an excessive regulatory burden that has the potential to add years to the project and could possibly kill it altogether. The consumer certainly has to be protected at some level, but that occurs because the utility is regulated and RCA oversees that utility. She asked the committee to think about a broad-level solution and noted that the philosophy that's been adopted by many other states is one of competition. The price to the consumer will ultimately decrease as more IPPs enter the marketplace and the supply of independent power increases, she said.

[1:51:32 PM](#)

SENATOR COGHILL asked her to discuss the thought process for selecting 65 megawatts because the Alaska Power Association (APA) has indicated that it may be too high.

SENATOR MCGUIRE said it was a compromise. Senator Wielechowski in particular had concerns that regulations increase once a project reaches the 100 megawatt range. She said she's open to discussion because her view is that the consumer is protected by the very specific language about selling to a utility and Alaska law is very clear that utilities are regulated by RCA.

SENATOR COGHILL said his thought was that this is obviously for the utility in the Anchorage and Southcentral area so the assumption must be that 65 megawatts is reasonably possible.

SENATOR MCGUIRE said the previous committee received a number of letters from people in Fairbanks who want to participate in the market and sell power and she wonders if the net effect of the bill will be to open up more competition in places like that.

SENATOR COGHILL remarked that the problem in the small Fairbanks market is how to accept certain power and have a base load that can compensate for the fluctuations in wind power. He mused that somewhere along the line that's going to be an expensive problem to solve.

[1:56:07 PM](#)

MR. PAWLOWSKI said he would provide Senator Coghill's office with more information on the QF process because the bill is specifically trying to avoid situations where small players get to a place where they force local utilities to purchase their power.

CHAIR FRENCH asked for clarification that the bill doesn't rely on the FERC process to the extent that a qualifying power producer of 35 megawatts or less would bring a federal mandate for a power sales agreement with the utility.

MR. PAWLOWSKI said that's correct.

[1:56:58 PM](#)

CHAIR FRENCH asked him to discuss the timing aspect and the federal aid.

MR. PAWLOWSKI said the stimulus tax credits have a very short timeline within which to complete construction and he

understands that it takes about five months to get an exemption from the RCA.

SENATOR COGHILL noted that the state put about \$300 million into renewable power and asked the rationale for saying that an IPP that's state funded will be regulated.

MR. PAWLOWSKI said it's an important policy call to say that when the state contributes money to a project the RCA should be involved to ensure that the state's contribution travels through to the consumer. If the state doesn't have its private risk capital on the line, then having the RCA regulate the return on equity or the overall economics of the project is not appropriate. That should be left to the commercial negotiations between a regulated utility and the IPP.

SENATOR MCGUIRE added that that too was part of the compromise.

[2:00:13 PM](#)

BOB PICKETT, Chairman, RCA, said he's available to answer questions.

CHAIR FRENCH asked if he'd like to amplify or correct the record about anything he'd heard so far.

MR. PICKETT clarified for the record this will be a policy call for the Legislature. The RCA hasn't adopted a position on SB 277, but they have had conversations with the sponsor's staff to identify areas that should be considered.

CHAIR FRENCH asked if he agrees that five months is a realistic estimate for how long it might take to apply for and obtain an exemption.

MR. PICKETT replied, "Given our workload, a four to five month timeframe would not be unrealistic." The maximum statutory period is six months.

CHAIR FRENCH asked what factors RCA would consider when it analyzes the application.

MR. PICKETT replied it would essentially be a rate case.

[2:01:57 PM](#)

STUART GOERING, Assistant Attorney General, Civil Division, Commercial and Fair Business Section, Department of Law (DOL), informed the committee that he had been assigned to advise the

RCA. Responding to Senator French's last question about RCA approval of an exemption, he explained that the standard in AS 42.05.711(d), which is the RCA's power to partially or wholly exempt public utilities from regulation under the Public Utilities Regulatory Act, is a question of whether or not the exemption is in the public interest. The evidence presented by the applicant and other parties who might intervene in the process would certainly be included in the determination, but generally the public interest looks at factors that are similar to those in an application for a Certificate of Public Convenience and Necessity (CPCN). That is if there is a public need for the public utility service and if there is some demonstration that, even with the exemption, the applicant would be able to provide the public utility service on a reasonably continuous and reliable basis.

2:03:10 PM

SENATOR EGAN joined the committee.

CHAIR FRENCH asked if in this case it would be a factor in the RCA's considerations that the IPP is selling power to a utility in an arm's length transaction and that the resulting power selling agreement is subject to RCA approval.

MR. GOERING said that has been a consideration in the past and was found to be a compelling factor in the Fishhook Renewable Energy application for an exemption. In that case the RCA specifically found that the sole customer of the project was going to be a sophisticated regulated utility and therefore there was no public interest reason to regulate the project as a public utility. He emphasized that in any given situation the RCA's determination is based not only on past considerations, but also by the factual evidence that's brought by the contracting parties and other interveners. He noted that in this case, no interveners had problems with the analysis, but it's difficult to say that the RCA would handle every exemption application in the same way.

2:05:34 PM

CHAIR FRENCH said that's an important caveat. He asked how much power was at stake in the Fishhook application.

MR. PICKETT answered it was a small, 2 megawatt hydro project that had firm and dispatchable power, as opposed to intermittent power. He added that it hasn't been discussed, but there has to be an interconnection agreement between the IPP and the utility,

and the utility's perspective may be that expenses may be required to connect and maintain system reliability.

CHAIR FRENCH asked if that negotiation would be separate from the power sales agreement.

MR. PICKETT said the technical issues would have to be addressed in a separate interconnection agreement.

SENATOR MCGUIRE asked if the commission had discussed adding positions or establishing a separate section within the RCA to deal with renewable energy.

MR. PICKETT replied the RCA has received 3-4 year stimulus funding for two positions to target this subject. One position is a financial analyst and the other is an engineering position.

2:08:12 PM

MARILYN LELAND, Executive Director, Alaska Power Association, said APA is the trade association for more than 30 utilities in the state. She related that APA members provide power to most Alaskans and she is testifying in opposition SB 277. She asked that the letter that APA sent to the sponsor when the bill was initially filed be made part of the record. It details some of APA's concerns and states that they couldn't support the bill at that time. Since then the APA board has met to discuss the bill more thoroughly and they voted unanimously to oppose the bill for the reasons stated in the letter.

APA believes that the exemption may not be necessary. Under federal law, renewable energy utilities that propose to sell power only to another electric utility can already become exempt from state regulations by becoming a qualifying facility. They can also petition the RCA to become exempt by demonstrating that the exemption would be in the public interest.

MS. LELAND said a primary concern is that the exemption may impair the ability of the RCA to ensure that the rates, terms, and conditions of service are just, reasonable, and non-discriminatory. In the case of a utility entering into a power purchase agreement with an exempt facility, the RCA would have to approve the agreement because the utility is regulated. However, the RCA could not compel the IPP to provide full access to its costs. This could be particularly problematic if the exempt facility was selling power to more than one utility. The big concern there is that the IPP could broker different deals with different utilities. That is not in the public interest.

One suggestion the commission made to the sponsor was to hold a meeting of all interested parties to discuss the issues. We're again making that suggestion, she said.

[2:11:13 PM](#)

DEAN THOMPSON, Legal Counsel for Alaska Power Association, said he also represents several electric utilities that are members of APA and he regularly practices before the RCA. He clarified that APA's concern is to ensure that the public interest is protected and that the RCA is equipped to protect the public interest in these cases.

MR. THOMPSON reiterated Ms's Leland's statement that a majority of renewable resources facilities would be able to be exempt from RCA regulation by becoming a qualifying facility. Earlier he heard a statement that facilities don't want to go that route because that involves forcing the utility to purchase power from the IPP, but that need not be the case. There are qualifying facilities that enjoy the benefits of exemption from regulation by RCA, but if they have a product to sell at a price and under terms and conditions that a utility would find beneficial, they are free to do that. He said he understands the dichotomy between qualifying facilities and independent power producers, but he doesn't see that becoming a qualifying facility is unappealing. It's a simple self-certification process with FERC.

CHAIR FRENCH asked if the CIRI project is too large to qualify under that federal statute.

MR. THOMPSON said if the CIRI project is above 30 megawatts it wouldn't have exemption from state regulation, but that goes to another issue with the bill, which is that the limitations are very broad. It applies to a CIRI wind farm and all sorts of projects that could be developed in the next several years. Moreover, it would apply to facilities that use waste heat energy. This could mean cogeneration, which means the Ship Creek Power Plant that uses natural gas for a thermal purpose when the real goal is to use natural gas to produce electricity to sell to the utilities.

[2:15:09 PM](#)

CHAIR FRENCH asked if the Ship Creek facility would generate electricity entirely from renewable energy including the cogeneration portion.

MR. THOMPSON replied he believes that would be the case since the statute referenced in the bill includes waste heat recovery.

He explained that often the electric cycle of cogeneration is produced from the leftover heat from a thermal cycle, but at bottom the thermal cycle is fueled by natural gas or diesel or some other fossil fuel. He said he realizes that particular aspect probably wasn't intended, it was simply convenient to reference that statute. That demonstrates how broad this exemption actually is and it's a concern, he said.

CHAIR FRENCH said he doesn't see how you get to "entirely" if the thermal cycle is fueled from natural gas, which wouldn't qualify.

MR. THOMPSON said the thermal process typically wouldn't be a regulated utility service. He continued:

Say the facility is producing heat to warm fish hatchery water, so they use the fossil fuel to generate that heat process. That's not typically regulated by the RCA and then whatever waste heat that results from that, they convert that to electricity and sell that. In the Lower 48 there are a number of processes like that that make sense and Alaska hasn't seen those types of projects. Typically it's difficult to find a truly useful and beneficial thermal process, but the developer wants to sell the electricity so they invent a thermal process in order to either get qualifying facility status to compel the utilities to purchase power as we discussed earlier or in this case it would be to enable them to become exempt from RCA's regulation.

CHAIR FRENCH asked him to continue with his prepared testimony.

[2:18:12 PM](#)

MR. THOMPSON restated that APA's interest is to ensure that the RCA has the ability to protect the public interest. They have the expertise to do that. He related that the main argument he's heard for this bill is that RCA regulation is a large impediment to development of renewable resources facilities, but having gone through certificate proceedings, rate cases, and public interest exemption cases, he questions how large the burden is. He said he has heard that it's a four to five month timeline to grant an exemption from regulation, but the commission can move faster than that if there's a good reason. A request for expedited consideration in some cases requires a certificate of public convenience and necessity, which isn't difficult but it does take time. You have to prove that you're able to provide

the service and you have to prove that it's in the public interest.

MR. THOMPSON said the goal of rate regulation is to ensure that the utility and ultimately the utility's end use customers don't pay rates that are unjust or unreasonable. Typically the utility will enter into a long-term, 20 plus year, contract with the IPP because that's the only way these projects get financed. Ordinarily the commission looks at the rate adjustment procedures in the contract or how that contract compares to other contracts to other customers to ensure that the public is protected.

MR. THOMPSON pointed out that in some cases the utilities that want to purchase power from an IPP will support the request for an exemption, but this broad statutory fix would put an absolute exemption on whatever project. It may not always be a good idea and the utility isn't always going to know if it's in the public interest for the entities to be unregulated until the contract is negotiated or close to that point in time. But once this statute is adopted, the RCA will lack jurisdiction to regulate service.

He said the problem with the argument that the public utility can protect its rights when it negotiates the contract with the IPP is that it doesn't adequately contemplate unforeseen circumstances and unresolved disputes. When the utility is regulated and there's an unresolved dispute, the utility can go to the RCA and complain and the RCA can review the situation. With this broad statutory exemption, the utility's only recourse is to file a complaint in state or federal court. This is costly, involves huge delays and sometimes a request for injunctive relief. Ultimately you're dealing with an adjudicator who doesn't understand the subtleties of utility rate making or cost allocation. Whereas the RCA is a very convenient forum for adjudicating complaints in these very long-term contracts.

[2:23:50 PM](#)

CHAIR FRENCH asked him to comment on Ms. Leland's concern that there could be situations in which an IPP has brokered different deals with different utilities, and why that would be a concern.

MR. THOMPSON said some of the most contentious rate cases he's participated in at the RCA were between Chugach Electric Association and its wholesale customers. They have long-term power sales agreements, but when they have a dispute it's about rates and costs and all the things the RCA looks at. In

addition, there have been allegations from one wholesale customer that Chugach cut too good a deal for one of the other wholesale customers, which is discriminatory. The most recent case involved how firm the service was to one customer. Chugach and that customer agreed that the rate and the interruptibility were reasonable, but the other wholesale customer thought that the deal they cut was too good. That dispute was taken to the RCA for adjudication.

In the IPP context it might be that a subsequent customer imposes degradation of the reliability of service to the other customers. Then you'd have to look at the contract to see the reliability of service that was contracted. To sort this out you have to get into the operational data of the facility and compare the contracts. The RCA does a good job at this sort of analysis.

MR. THOMPSON said he understands that it's a completely different situation for IPPs in the Lower 48 because they're supplying power into a very robust competitive grid with regional transmission organizations. This is mostly interstate commerce so FERC has jurisdiction, but FERC has allowed IPPs to set market-based rates because the market is regulating wholesale transactions. He said he can't speak for Hawaii, but in Alaska wholesale competition is not robust. There are few buyers and even fewer sellers and the market can't be depended upon to do the regulating. The RCA is charged by statute to do that and has been doing so for the last 30 years for these types of transactions.

[2:28:30 PM](#)

MARK FOSTER, Principle, Mark A. Foster and Associates, said his testimony represents his own views and not necessarily any past, present, or future client. He related that he was an APUC commissioner when the telecommunications market was opened to competition. Subsequent to that he worked in the energy industry and other regulated industries looking at transactions between IPPs, industrial buyers, and the utilities. He said he was struck by how much of the testimony on this legislation parallels the conversations about telecommunications competition in Alaska in the '80s and '90s.

MR. FOSTER encouraged the committee to review AS 42.05.800 for the findings of the bill that opened the market to competition and some of the purported benefits. He suggested they think back on that and look at today's market and realize that there were a number of benefits that were generated from opening the market

to new players. It basically changed the pricing around and let new and innovative things come into the marketplace. As a general proposition I would encourage the committee to consider moving in the direction of SB 277 and create less regulation for the new players to get into the marketplace, he said.

MR. FOSTER mentioned the particulars in Section 3 and suggested that instead of placing a narrow timeframe as it does on lines 9-10, another alternative is to extend that out to allow more opportunity for biomass, geothermal, tidal, or hydro IPPs because project development lead time takes a fair amount of time. Keeping it narrow might unduly narrow the availability of IPPs to take advantage of this light regulation scheme. "Ultimately if you sell to a regulated utility, there will be limits on the kinds of deals you can cut and the utility getting those approved, as we've learned all too well in the gas markets in Cook Inlet," he said.

CHAIR FRENCH said he's been analyzing this from the perspective that the utility and the IPP are sophisticated business entities that are operating in an arms-length transaction and with the ability to agree to or reject the offerings that will take place in the course of negotiating their power sales agreement. He asked Mr. Foster if he sees this as a protection for consumer that's built into the negotiating process.

MR. FOSTER replied a utility that is considering buying from an IPP or a QF will evaluate their avoided cost for each option. If an IPP has the better idea and a power block that they can sell at less cost, they have leverage in the negotiation. The utility can look at it as an opportunity to get lower cost power to their rate payers. The tension that you ultimately face is the extent to which someone can compel you to buy cheaper power. In that regard, there is certainly the federal qualifying facility regime. In the history of the APUC and RCA there are instances of other entities going directly to the RCA saying they are offering the better deal and the utility should therefore be buying their power. There is that tension but utilities basically have a concern about spending a lot of money defending those kinds of cases. He suggested that one way to get through that is to ultimately ask the RCA to streamline that process rather than taking them on an ad hoc basis, one at a time. That may be an area where additional regulatory clarity would be helpful, he said.

CHAIR FRENCH closed public testimony and announced he would hold SB 277 in committee.

HB 319-FIREARMS

[2:35:33 PM](#)

CHAIR FRENCH announced the consideration of HB 319. [CSHB 319(FIN) was before the committee.]

REPRESENTATIVE MIKE HAWKER, sponsor of HB 319, characterized the bill as another opportunity to reaffirm the Second Amendment rights of Alaska's citizens. It also cleans up some sections of statute pertaining to concealed handgun permits. Specifically, it clarifies that when a concealed handgun permit expires or a permit holder leaves the state, the holder doesn't need to surrender the permit; it provides that an expired concealed handgun permit may be displayed as long as the permit holder doesn't represent it as being valid; it requires that the Department of Public Safety (DPS) send permit holders a letter, at least 90 days before their permit expires, notifying them that their permit is about to expire; it allows DPS to post the various regulations and statutes electronically rather than mandating paper transactions; and it requires the chief law enforcement officer in a jurisdiction to execute, within 30 days, the federal firearms forms required for the transfer of certain types of firearms including short barreled rifle shotguns, sound suppression devices, and automatic firearms.

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The form, in part, requires the chief law enforcement officer to certify that he/she has no information that the transferee of the firearm will use the firearm or device for other than lawful purposes, and no information that the receipt or possession of the firearm or device would place the transferee in violation of state or local law.

CHAIR FRENCH asked if the Department of Public Safety had taken a position on the bill.

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SUE STANCLIFF, Special Assistant to the Commissioner, Department of Public Safety (DPS), reported that DPS is neutral on HB 319, but is happy to work with the sponsor and provide Second Amendment rights to individual Alaskans. Last session the Legislature passed legislation authorizing renewal notices on an individual's birthday and that hasn't had much time to go into effect. The bill requires the department to send a letter notifying a permit holder that their permit is about to expire and DPS would be happy to do so for the nearly 8,000 concealed carry permit holders.

MS. STANCLIFF said the only real concern DPS has with the bill relates to maintaining reciprocity with other states. Kansas and Colorado are just two of a number of reciprocity states that will only recognize an Alaska concealed hand gun permit if the permit holder remains a resident of the state of Alaska. That provision may need further clarification. She reiterated that DPS is neutral on the bill, but does support Second Amendment rights and doing whatever is necessary to accommodate the process that makes it easier for individuals to exercise this right.

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CHAIR FRENCH encourage her to submit suggested language to address her concerns through Representative Hawker's office.

MS. STANCLIFF agreed to do so within the next 24 hours.

REPRESENTATIVE HAWKER said he's had extensive conversations with the western region representative for the National Rifle Association (NRA), Mr. Brian Judy, about the reciprocity matter and Mr. Judy has opined that it isn't an issue. In fact, some states don't require a person to be a state resident in order to receive the initial permit. Florida and Utah, for example, don't require state residency in order to obtain a concealed carry permit and Colorado recognizes reciprocity from both these states. Certainly there will always be reciprocity issues in some jurisdictions, but the concerns articulated by DPS don't rise to the level to impede the progress of this bill, he concluded.

CHAIR FRENCH clarified that the bill has a further referral to the finance committee and announced he would hold HB 319 in committee.

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There being no further business to come before the committee, Chair French adjourned the meeting at 2:56 p.m.