

**ALASKA STATE LEGISLATURE
JOINT MEETING
SENATE LABOR AND COMMERCE STANDING COMMITTEE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE
8:06 a.m.**

MEMBERS PRESENT

SENATE LABOR AND COMMERCE

Senator Joe Paskvan, Chair
Senator Joe Thomas, Vice Chair
Senator Kevin Meyer

HOUSE LABOR AND COMMERCE

Representative Kurt Olson, Chair
Representative John Coghill
Representative Robert L. "Bob" Buch
Representative Lindsey Holmes

MEMBERS ABSENT

SENATE LABOR AND COMMERCE

Senator Bettye Davis
Senator Con Bunde

HOUSE LABOR AND COMMERCE

Representative Mark Neuman, Vice Chair
Representative Mike Chenault
Representative Bob Lynn

COMMITTEE CALENDAR

Overview: Regulatory Commission of Alaska by Robert M. Pickett,
Chairman

PREVIOUS COMMITTEE ACTION

No previous action to consider

WITNESS REGISTER

ROBERT M. PICKETT, Chair
Regulatory Commission of Alaska (RCA)

POSITION STATEMENT: Presented RCA overview.

ACTION NARRATIVE

8:06:00 AM

CHAIR JOE PASKVAN called the joint meeting of the Senate and House Labor and Commerce Standing Committees to order at 8:06 a.m. Present at the call to order were Senators Meyer and Paskvan and Representatives Holmes, Coghill, Buch, and Olson.

REGULATORY COMMISSION OF ALASKA OVERVIEW

CHAIR PASKVAN announced the business before the committees is to hear an overview from the Regulatory Commission of Alaska.

8:06:49 AM

ROBERT M. PICKETT, Chair, Regulatory Commission of Alaska (RCA), presented the overview. He said the Commission was created in 1999 to regulate public utilities and pipeline carriers throughout the state; it replaced the old Alaska Public Utilities Commission. It has five commissioners appointed by the Governor for a six-year term. He was elected chair of the Commission in July 2008. The chairman is responsible for the administrative functions of the agency and makes sure the work flow continues; he is also the spokesperson for the Commission.

The Commission's authority comes from AS 42.05.990(a) that says the RCA may do all things necessary or proper to regulate every public utility engaged or proposing to engage in a utility business inside the state.

8:09:19 AM

The definition of public utility is in AS 42.05.990(4) that says a "public utility" or "utility" includes every corporation whether public cooperative or otherwise, company individual, or association of individuals, their lessees, trustees, or receivers appointed by the court, that owns, manages or controls any plant, pipeline or system for:

- (A) furnishing, by generation, transmission, or distribution, electrical service to the public for compensation;
- (B) deals with telecommunications, which he would answer question on;
- (C) furnishing water, steam, or sewer service to the public for compensation;

- (D) furnishing by transmission or distribution of natural or manufactured gas to the public for compensation;
- (E) furnishing for distribution or by distribution petroleum or petroleum products to the public for compensation when the consumer has no alternative in the choice of a comparable product at an equal or lesser price;

8:10:10 AM

The definition of "public" or "general public" is from AS 42.05.990(3) and says:

- (A) a group of 10 or more customers that purchase the service or commodity furnished by a public utility;
- (B) one or more customers that purchase electrical service for use within an area that is certificated to and presently or formerly served by an electric utility if the total annual compensation that the electric utility receives for sales of electricity exceeds \$50,000 - this impacts some alternative energy projects that are out there;
- (C) a utility purchasing the product or service or paying for the transmission of electrical energy, natural or manufactured gas, or petroleum products that are resold to a person or group included in (A) or (B) of this paragraph or that are used to produce the service or commodity sold to the public by the utility;

MR. PICKETT explained that their role starts with the Certificate of Public Convenience and Necessity (CPCN) and there currently are 650 CPCNs across the state. They cannot issue a certificate unless they find that the applicant is fit, willing and able to provide the utility services applied for and that the services are required for the convenience and necessity of the public.

8:11:51 AM

He said there are some statutory exemptions for electric as follows:

- Exemptions from certification is any utility making less than \$50,000 unless their customers petition for regulation (AS 42.05.711(e))
- Any Joint Action Agency established by AS 42.45.310(AS 42.05.711(o))
- Possibly utilities that receive a Qualifying Facility (QF) designation from FERC

8:12:21 AM

SENATOR THOMAS joined the committee.

MR. PICKETT explained that another level of exemptions from economic regulation are:

- Utilities owned by a political subdivision with the exception of a utility the competes with a regulated utility (AS 42.05.711(b))

8:12:59 AM

REPRESENTATIVE BUCH asked for a definition of "qualifying facility".

MR. PICKETT answered that it is a category of electrical producers that the federal government has deemed important for the purposes of distributed generation encouraging the development of alternative energy. If an entity that is proposing to produce power self-certifies or goes through the formal FERC-certification process, and is trying to sell their power to an electrical utility and perhaps meets some reticence there, this is a "hammer" to force the utility into purchasing the power.

REPRESENTATIVE BUCH asked if the entity would be a generator, not a distributor of energy.

MR. PICKETT replied yes, and this is a federal designation.

8:14:37 AM

He continued explaining the exemptions from economic regulation:

- Utilities that make between \$50,000 and \$500,000 and they have that have a deregulation election (AS 42.05.711(f))
- Cooperatives that have a deregulation election (AS 42.05.711(h))
- Utilities that receive a QF designation from FERC) (18 C.F.R. 292.602(c))

8:15:06 AM

The RCA regulates:

Utilities

Natural gas distribution

Natural gas pipelines

Electric power generation, transmission and distribution

Water and sewer

Telephone

Solid waste

Pipelines

Crude oil pipelines

Petroleum product pipelines
Natural gas pipelines

8:15:32 AM

SENATOR THOMAS asked if Fairbanks Natural Gas is economically regulated.

MR. PICKETT replied that it continues to not be economically regulated. A number of legislators petitioned to open a docket to reevaluate that situation. Because it is an open docket, he couldn't say much other than the Attorney General has arrived at a stipulation with Fairbanks Natural Gas and the Commission would be acting on that shortly.

SENATOR THOMAS asked him why it was not initially economically regulated.

MR. PICKETT replied that it was believed that its size was too small at the time to sustain the financial burden. That designation was given with the understanding that it would be continually reevaluated as the utility grew.

SENATOR THOMAS added that there was also the aspect of competing with fuel oil and alternatives.

8:17:15 AM

MR. PICKETT said the Commission has a role in a couple of current energy supply issues and he would focus on three in particular: the Cook Inlet natural gas supply issue, the electric utility current infrastructure needs and the power cost equalization (PCE) program.

MR. PICKETT said the RCA does not regulate the producers of natural gas in Cook Inlet, but rather it evaluates gas sale agreements (GSA) between the utilities and the producers. Their standard of review considers whether the utility acted in a prudent manner, whether the terms of the GSA are reasonable and whether the GSA insures reliable and reasonably priced utility service.

CHAIR PASKVAN said they don't regulate producers, but on the page before he said they regulate the supplies and he asked him to explain that.

8:18:39 AM

MR. PICKETT replied that on the previous page he was outlining the overall Cook Inlet natural gas supply issue, because it's

important to recognize that it operates as a system and the utilities are but one part of that system. The RCA has nothing to do with the LNG plant or certain large commercial and industrial customers.

CHAIR PASKVAN asked if a producer's discoveries are regulated by the RCA or its information made available to it.

MR. PICKETT replied that the RCA does not regulate the operation of the gas fields in Cook Inlet. It works with DNR to try to assess situations with information that is public already. A lot of things are not known.

8:20:07 AM

REPRESENTATIVE BUCH remembered that the Kenai Peninsula Liquid Line (KPLL) was the first natural gas pipeline the Commission regulated and asked if that line was considered as a component of the Cook Inlet natural gas configuration.

MR. PICKETT replied yes.

REPRESENTATIVE BUCH asked what other pipelines they have purview over such as the one that comes from Beluga.

MR. PICKETT replied that Beluga has a tariff before the commission now so he couldn't comment, but yes it is under the RCA's jurisdiction.

REPRESENTATIVE BUCH asked what other pipelines they have purview over that pertain particularly to the Cook Inlet natural gas system.

MR. PICKETT replied the Cook Inlet Gas Gathering System (CIGGS), the South Kenai Peninsula Pipeline and the Enstar Pipeline System.

8:21:00 AM

He related that the RCA Standard of review is guided by AS 42.05.431(a). Under this subsection the RCA is required to determine whether a gas sale agreement or particular terms within such an agreement are unjust, unreasonable, unduly discriminatory or preferential. This determination must be viewed in the context of the Cook Inlet market, which is unique among regional natural gas markets in the United States.

He explained that gas markets in the Lower 48 are connected and interconnected by a very sophisticated and extensive series of

pipelines such that if one particular field is not producing the way folks think it should, there are alternatives. Cook Inlet doesn't have that nearly to the extent it is available Outside.

The reserve to production ratio for Cook Inlet is approximately 10:1, and, he said, this is in the same range as is typical for Lower 48 production areas. It's lower than past years just because there was such an abundance of natural gas that was found as a byproduct of looking for oil.

MR. PICKETT said that Cook Inlet is unique as the home of the only plant in the U.S. that liquefies natural gas and ships it out of the immediate areas as LNG. This is also the oldest LNG export facility in the world. The RCA in its last review of a natural gas sales agreement, EO 858, found that Cook Inlet is a natural gas production basin as opposed to a city gate or consuming type of area.

ConocoPhillips, Marathon and Union Oil of California, a division of Chevron (Union) control the vast majority of the natural gas supplies in the Cook Inlet. Of these three, ConocoPhillips and Marathon are the largest and these two own the Kenai LNG export facility as well.

The Cook Inlet market is vertically integrated with the two largest producers being the best customers through its sales to the LNG export facility.

[8:23:25 AM](#)

REPRESENTATIVE BUCH asked how they came to this situation again. In the 1920s this issue was resolved in a Supreme Court case against Standard Oil and vertical integration was considered a monopoly. So, now we are back to that same realm of operation where producers have that same access to all phases.

MR. PICKETT replied it is important to make the distinction that EO 858 the RCA in found for market power, which is not the same as a monopolistic finding. The RCA worked closely with the AG's office on a number of these issues and found no evidence that anything illegal is going on in Cook Inlet. Market power is legal and can be a business strategy. The point the Commission is making is when those conditions exist with an individual utility trying to get natural gas supplies, there is a mismatch at the negotiating table.

[8:25:13 AM](#)

MR. PICKETT said the Cook Inlet market is not an open and transparent gas market. It has few transactions and they tend to be somewhat intermittent - and some of them are not available in a public form. There is no commonly acceptable pricing mechanism in Cook Inlet, and that makes it a challenge, because in the 2001 RCA/Henry Hub Order a variety of pricing proxies were considered by the utilities, the producers, the AG and the RCA, but none of them were accepted by all of the parties that need to have that understanding. None of these pricing proxies has resulted in an RCA approved gas sale agreement that currently delivers gas to utility customers. "Given the fact that several of the utilities are headed for a cliff in terms of their gas supply agreements in the next couple of years and out, this is a matter of most serious public concern. In my opinion."

8:27:00 AM

REPRESENTATIVE COGHILL asked what has been the discussion about the export supplies and the utility need with regard to the RCA's regulation and knowing that natural gas is being exported.

MR. PICKETT replied that the RCA is very cognizant of the situation. That deal was entered into EO 858 because of the information it presented at that time. The RCA recognized the importance of the LNG export facility, because the utility rate payers and the amount of gas consumed there is not sufficiently large to create the incentives needed to encourage the exploration and production that would have to take place in the Inlet. "It's a very, very tricky situation."

The LNG plant is operating under a two-year export license starting next week, he explained. Within the 2008 settlement agreement with the state there were terms that indicated conversations were going on between the producers, DOE and the state for a five-year export license if sufficient quantities could be demonstrated.

Deliverability is a key issue within the Inlet now. Enstar came before the Commission with other utilities at a special public meeting in early January during the cold snap about their ability to deliver, because even two years before that they felt they were close to hitting the deliverability wall. These fields aren't like a big balloon with a valve on it that you can open it up to high. It's much more complicated than that, and storage is a big part of the issue.

REPRESENTATIVE COGHILL asked if the RCA as a regulator will require storage or does the Legislature need to give them authority.

MR. PICKETT replied the RCA doesn't regulate the producers and each one of them has its own business model to determine its level of investment. Many of these companies are international, and with the collapse of commodity prices and the implosion of the financial markets, it's a very challenging environment. He emphasized there needs to be some sort of agreement on how to price gas in Cook Inlet that is fair to the rate payers and is defensible based on some sort of record through the RCA or the Legislature. Somehow the producers must have sufficient incentives to explore and produce more gas in Cook Inlet.

[8:32:03 AM](#)

REPRESENTATIVE COGHILL asked if the capacity to fill the need and convenience of the customer base that has already been set put pressure on the state to support the companies' sales agreements in selling LNG on the market.

[8:32:28 AM](#)

MR. PICKETT replied that is a factor that can be considered. The producers also know it is in their interests to have utility gas sales agreements in place, because that makes a stronger case for the five-year extension - "And you don't want the utilities going before, as they are right now, the Ninth Circuit Court of Appeals attempting to overturn."

REPRESENTATIVE COGHILL said that LNG requires a lot of storage and that could be the reason behind the collapsing balloon for the winter season in Anchorage. But he asked, "Should we be selling our gas when we so desperately need it?"

[8:34:08 AM](#)

CHAIR OLSON asked if part of the problem is that Enstar has peak demand only for about 10 weeks during the winter and the sales to the Tokyo Electric Utility is the same volume every two weeks. Right now nothing else needs that volume of gas outside of the 10 week period.

MR. PICKETT believed that to be true. The diversion of gas from the LNG plant into the utility in January/February 2009 is what provided the cushion in the past. But now Enstar's 2009 figures show that period took away most of its margin. That's why gas storage is a critical issue in the Inlet. Several producers have their own storage by pumping gas into essentially what are old

fields. DNR is looking to have RFPs and offerings for potential storage sights on the Beluga field.

8:36:07 AM

REPRESENTATIVE BUCH asked what he saw as the RCA's role in resolving this dilemma and asked for an outline of their plan.

MR. PICKETT said the RCA would keep the Legislature appraised of how both the storage and natural gas pricing dockets are proceeding by putting members on a modified distribution list.

8:38:18 AM

CHAIR PASKVAN asked if his comment about a cliff in the coming years meant that supplies are going to be scarce in the coming years.

MR. PICKETT responded that it is important to not be over-alarmist. Cook Inlet still has gas; it's a matter of price and what it will take to get it produced. The drop off is much sooner without more exploration and investment.

CHAIR PASKVAN asked if he was trying to regulate pricing based upon a perception that it could be whatever someone wants it to be in a vertically integrate market.

MR. PICKETT replied there is an element of truth to that, and the information they get is highly imperfect.

8:40:45 AM

SENATOR THOMAS asked if Cook Inlet gas is worth more to the producers for instate use or for export.

MR. PICKETT replied that markets are moving targets. It depends on the length of contracts for one thing. Before there was a shortage of both supply and boats, but now Japan has released tankers from service, as has Korea, Taiwan and Spain. So the LNG market has a lot of excess capacity right now.

8:43:21 AM

MR. PICKETT continued talking about the electric utility infrastructure needs primarily focusing on the Railbelt. Alaska Railbelt Electrical Grid Authority Study (REGA) released in 2008 estimated a cumulative capital investment requirement ranging from \$2.5 to \$8.1 billion over the next 30 years. The transmission infrastructure in the Railbelt is aging, and investment is needed for generation and transmission replacement and expansion.

8:45:00 AM

He showed charts of installed and existing Railbelt generation along with proposed projects. They indicated the dominance of natural gas for generation purposes in the Railbelt, which ties back to the issue of natural gas supplies in Cook Inlet. Of all the proposed projects the Susitna Hydro Project would dwarf anything else. He also remarked that the Fire Island Project would eek out a little more power with its new configuration.

REPRESENTATIVE BUCH said the new configuration for Fire Island is 100 MW instead of 30 MW.

8:46:37 AM

MR. PICKETT said some regulatory issues have to be dealt with as new generation comes on, particularly with the alternative energies and more distributed forms of generation.

Under firm vs. non-firm power supplies, Mr. Pickett said by definition firm power is a predictable source of power that can be scheduled by a utility and that offsets both fuel and generation capacity expenses. In this category you see some hydro, co-generation, geothermal. Essentially you have a switch that you can flip and the "power is going to be there."

Non-firm power is a more unpredictable source of power that cannot be scheduled by a utility. The provision in non-firm power only offsets the use of fuel by the utility. Generation capacity needs to be maintained to provide power when the non-firm power is unavailable. RCA regulations require spare capacity to be available at all times.

8:47:24 AM

REPRESENTATIVE COGHILL asked how much they require.

MR. PICKETT replied, "It has to do with the largest generation unit that you have if it were to go off line." Beluga is actually a series of generators - the theory being if some generation goes off line, the ability to make it up is there.

8:49:05 AM

The RCA has a number of unfunded mandates given to it by the federal and state governments. Under the Power Cost Equalization (PCE) program, the state pays a portion of the electric bills for consumers served by utilities participating in the program. A regulatory cost charge (RCC) of .7 percent is on a utility's

bill indicating its contribution. Over 150 communities participate in this program.

Different industry groups have a different calculation as to how much of that is applicable, but most of the small utilities in the PCE program are not regulated. So, in essence, the rate payers and the regulated utilities are paying for the PCE program. The RCA has made OMB aware of this and he thought the administration would provide some relief through a cooperative agreement with the Alaska Energy Authority (AEA).

REPRESENTATIVE COGHILL asked what a rebate to the RCA would look like for those several utilities.

MR. PICKETT replied that he hopes to pick up a couple of staff equivalents to do the filings and work with some of the small struggling utilities that have difficulty getting their paperwork together to eligible for the program. "It's a staffing problem, primarily."

AS 42.45.110(c)(2) provides that the Commission during each fiscal year adjust the power costs for which PCE may be paid to an electric utility based on the weighted average retail residential rate in Anchorage, Fairbanks and Juneau - subject to the statutory ceiling, whatever that is at that point in time. The actual PCE, itself, is administered by the AEA.

[8:51:02 AM](#)

REPRESENTATIVE HOLMES asked if the RCA made an adjustment when Juneau went to use diesel last winter.

MR. PICKETT said the Commission made a one-time adjustment for that situation.

[8:51:28 AM](#)

MR. PICKETT went on to explain that the RCA opened Dockets R-09-1 and R-09-2 to consider net metering and interconnection standards with regard to renewable and alternative energy. He explained that in the 2005 Energy Policy Act, the federal government mandated that all commissions consider standards that include net metering, interconnection, smart grid and things of that nature. The RCA conducted a two-year proceeding on that and elected not to adopt any of the federal standards, because they were not appropriate for Alaska conditions. That is when they opened these two dockets and those are currently under way. The RCA's goal in the R-09-1 docket on net metering is "to create an Alaskan rule that will encourage the development of distributed

small-scale renewable generation while maintaining system integrity and fairly apportioning costs among consumers and consumer/producers."

The RCA had technical workshops on that in late February and last week on the interconnection standards. The industry is heavily engaged in that with the utilities, proponents of net metering and some of the alternative energy. They have had more input on the net metering docket than any other docket in the last couple of years.

REPRESENTATIVE COGHILL asked when the RCA rejected the federal standards, did it come up with a "packet of rationale," because that might help the Legislature in its deliberations on net metering standards.

[8:53:30 AM](#)

MR. PICKETT replied that when they declined to accept the federal standards they provided a rationale in their order. The issues are fairly well clarified at this point.

REPRESENTATIVE OLSON asked him what kind of time frame they are working with.

MR. PICKETT replied when the Commission declined to adopt the federal standards, they committed to as expedited a process as possible. The issues are fairly clear at this point.

REPRESENTATIVE BUCH asked him to make those available to the chairman.

CHAIR PASKVAN said there is an alternative method other than net metering - some sort of a tariff system.

MR. PICKETT replied maybe he was referring to the SNAP program that Golden Valley has instituted.

CHAIR PASKVAN said that Germany adopted this system that is like phased-in tariffs.

MR. PICKETT said he wasn't familiar with that.

[8:55:41 AM](#)

He continued saying that Docket R-09-2 is to create an interconnection standard that recognizes Alaskan conditions and provides uniformity in interconnection requirements of Alaskan electric utilities and simplifies the interconnection process

for small distributed resources. Some real technical issues have to be dealt with, because a large project can throw a small utility into imbalance quickly. Even some of the larger utilities have concerns about system integrity as this issue progresses.

Another issue is that the AEA is requiring that all independent power producers receiving renewable energy grants from the state obtain a Certificate of Public Convenience and Necessity (CPCN) from the RCA. The RCA has had discussions with the AEA about what protections they might want in addition to the CPCN.

REPRESENTATIVE COGHILL asked given the standards, what is the timeline for the certificate.

MR. PICKETT replied that would depend on how many certificate requests it gets at the same time; the RCA is severely stressed in terms of staff. "If it's a handful, they will be handled expeditiously subject to our workload and the statutory deadlines and all of our other dockets. If we were to receive 30 or 40 of them simultaneously, that would be an entirely different matter, and I would not be able to give you a clear answer on that."

REPRESENTATIVE COGHILL said the Office of Legislative Budget and Audit (LB&A) would be watching those closely; so they need to have a good handle on what is coming and what staff needs will be.

REPRESENTATIVE OLSON asked how the new timelines are working out.

MR. PICKETT replied that the RCA is meeting the statutory deadlines although they have had to be extended occasionally. They are frustrating for the Commission in one sense, but they have a way of focusing attention.

[8:59:09 AM](#)

REPRESENTATIVE BUCH asked for an outline today of how the price of natural gas is established for the consumer, and how it comes to Alaskans - within the realm of the commodity pricing structure of the United States.

[9:00:08 AM](#)

MR. PICKETT replied in Alaska it's fair to say the pricing of natural gas is determined by the contracts between the utilities and the producers. Some of these contracts have been going on

for many, many years, if not decades. Each one has a different pricing mechanism imbedded within it. Some are tied to the price of crude oil or to Henry Hub, for instance. The RCA did not approve the latest Enstar gas supply agreements that were restructure for two years, because under the terms of their existing tariff, there is the weighted average cost of gas in Cook Inlet (WACOG) option, which looks at all of these contracts and comes up with a weighted average depending on the price and volumes associated with the contract. As long as they came in under the WACOG, they had the ability to claim those gas charges.

CHAIR PASKVAN said he is interested in how broadband can be brought to Alaska - in relation to federal stimulus moneys - so Alaska can be competitive in a business environment.

9:01:44 AM

MR. PICKETT replied that the RCA has been involved in receiving a broadband grant from the U.S. Department of Agriculture (USDA) Rural Utility Services for a couple of years. The original figure was \$15 million and they have roughly \$7.5 million left because of the conditions that go along with it and the definitions of broadband that are way too low - totally inadequate. People who had dial-up or very slow service were not eligible to upgrade. The system has some gaps; for instance, an area of the state has some of the most sophisticated telemedicine in the nation that is linked to a network that is microwave-based, but then it comes to a point of having a satellite uplink, and that's the bottleneck for the whole system. Another part of the state has a gap on the ground to where you can't interconnect to undersea cable, and that would seem to be a very logical type of project if stimulus funds were to be available.

He said the RCA provided a lot of comments on the stimulus package, but the federal side has some unresolved issues. Some of the funds would go directly to the telecommunications companies, but rules and regulations have not been established for prioritizing funding. It would be helpful if the state had a comprehensive broadband vision. The RCA regulates some of these entities which puts it in a tenuous position; they can't be picking winners and losers and regulate them at the same time.

9:04:15 AM

REPRESENTATIVE BUCH asked if other states have set this up, and can Alaska follow another existing model.

MR. PICKETT replied a number of states have, particularly those that are more rural. He couldn't emphasize enough, however, that when it comes to telecommunications, Alaska is in a league of its own.

REPRESENTATIVE BUCH asked how many dockets the RCA has open.

MR. PICKETT replied around 150.

[9:06:01 AM](#)

CHAIR PASKVAN thanked Mr. Pickett and adjourned the meeting at 9:06 a.m.