

**ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE**

February 22, 2010

3:38 p.m.

MEMBERS PRESENT

Senator Bill Wielechowski, Co-Chair
Senator Charlie Huggins, Vice Chair
Senator Bert Stedman
Senator Gary Stevens
Senator Thomas Wagoner

MEMBERS ABSENT

Senator Lesil McGuire, Co-Chair
Senator Hollis French

COMMITTEE CALENDAR

SENATE BILL NO. 220

"An Act declaring a state energy policy; relating to energy efficiency and alternative energy; establishing the energy efficiency grant fund, an emerging energy technology fund, a renewable energy production tax credit, and an energy use index; and relating to a fuel purchasing cooperative, to energy codes and efficiency standards, to energy conservation targets in public buildings, to a state agency energy use reduction plan, to the alternative energy revolving loan fund, and to the renewable energy grant fund."

- HEARD AND HELD

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

PREVIOUS COMMITTEE ACTION

BILL: SB 220

SHORT TITLE: ENERGY EFFICIENCY/ ALTERNATIVE ENERGY

SPONSOR(s): RESOURCES

01/19/10 (S) READ THE FIRST TIME - REFERRALS
 01/19/10 (S) RES, FIN
 01/20/10 (S) RES AT 3:30 PM BUTROVICH 205
 01/20/10 (S) Heard & Held
 01/20/10 (S) MINUTE(RES)
 01/21/10 (S) RES AT 3:30 PM BUTROVICH 205
 01/21/10 (S) -- MEETING CANCELED --
 01/25/10 (S) RES AT 3:30 PM BUTROVICH 205
 01/25/10 (S) Heard & Held
 01/25/10 (S) MINUTE(RES)
 01/27/10 (S) RES AT 3:30 PM BUTROVICH 205
 01/27/10 (S) Heard & Held
 01/27/10 (S) MINUTE(RES)
 02/03/10 (S) RES AT 3:30 PM BUTROVICH 205
 02/03/10 (S) <Bill Hearing Postponed>
 02/11/10 (S) RES AT 3:30 PM BUTROVICH 205
 02/11/10 (S) <Bill Hearing Postponed to 2/15/10>
 02/15/10 (S) RES AT 3:30 PM BUTROVICH 205
 02/15/10 (S) Heard & Held
 02/15/10 (S) MINUTE(RES)
 02/17/10 (S) RES AT 3:30 PM BUTROVICH 205
 02/17/10 (S) <Bill Hearing Canceled>
 02/18/10 (S) RES AT 3:30 PM BUTROVICH 205
 02/18/10 (S) Heard & Held
 02/18/10 (S) MINUTE(RES)
 02/22/10 (S) RES AT 3:30 PM BUTROVICH 205

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

WITNESS REGISTER

GREG WINEGAR, Director
 Division of Investments
 Department of Commerce, Community and Economic Development
 (DCCED)

POSITION STATEMENT: Explained Amendment K.11 to CSSB 220(RES)
 version K.

MIKE PAWLOWSKI
 Aide to Senator McGuire

Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Commented on CSSB 220(RES) version K and SB 277.

SHARON LONG
Aide to Senator Huggins
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Explained Senator Huggins' amendment to CSSB 220(RES) version K.

BRIAN KANE, Legislative Attorney
Legislative Affairs
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Answered questions about Senator Huggins' amendment to CSSB 220 (RES) version K.

SARAH FISHER-GOAD
Alaska Energy Authority (AEA)
Anchorage, AK

POSITION STATEMENT: Had no comments on the Huggins' amendment, but she answered questions on how it pertains to either Power Project Fund or the AEA statutes.

BOB PICKETT, Chairman
Regulatory Commission of Alaska (RCA)
Anchorage, AK

POSITION STATEMENT: Commented on CSSB 220(RES) version K and SB 277.

STEWART GARY, Assistant Attorney General
Representing the RCA
Department of Law (DOL)
Juneau, AK

POSITION STATEMENT: Answered questions about RCA's role in CSSB 220(RES) version K and commented on SB 277.

DANIEL PATRICK O'TIERNEY, Chief Assistant Attorney General
Supervisor, Regulatory Affairs And Public Advocacy Section
Department of Law (DOL)
Juneau, AK

POSITION STATEMENT: Commented on SB 277.

JAMES KEEN, Chief
Engineering Section

Regulatory Commission of Alaska (RCA)
Anchorage, AK
POSITION STATEMENT: Commented on SB 277.

ETHAN SCHUTT
Cook Inlet Region, Inc. (CIRI)
Anchorage, AK
POSITION STATEMENT: Provided CIRI context for SB 277.

ACTION NARRATIVE

[3:38:43 PM](#)

CO-CHAIR BILL WIELECHOWSKI called the Senate Resources Standing Committee meeting to order at 3:38 p.m. Present at the call to order were Senators Wagoner, Huggins and Wielechowski. Senator Stedman arrived at 3:40.

SB 220-ENERGY EFFICIENCY/ ALTERNATIVE ENERGY

[3:39:29 PM](#)

CO-CHAIR WIELECHOWSKI announced SB 220 to be up for discussion purposes only since the committee didn't have a quorum [CSSB 220(RES), labeled 26-LS1197\K, was before the committee]. He said they had a couple of amendments before them; the first [labeled 26-LS1197\K.11, Kane] was to create a new loan program within the Department of Commerce, Community and Economic Development (DCCED) for businesses interested in alternative energy and energy efficiency.

26-LS1197\K.11
Kane

AMENDMENT K.11

OFFERED IN THE SENATE BY SENATOR MCGUIRE TO:
CSSB 220(RES), Draft Version "K"

Page 12, line 3, through page 13, line 18:

Delete all material and insert:

"* **Sec. 17.** AS 45.88.010(a) is amended to read:

(a) There is established in the Department of Commerce, Community, and Economic Development the alternative energy **conservation** revolving loan fund to carry out the purposes of AS 45.88.010 - 45.88.090. Loans made under AS 45.88.010 - 45.88.090 are to be used

(1) to develop means of energy production utilizing one or more alternative energy systems; and
(2) to purchase, construct, and install energy conservation improvements in commercial buildings [ENERGY SOURCES OTHER THAN FOSSIL OR NUCLEAR FUEL, INCLUDING, BUT NOT LIMITED TO, WINDMILLS, WATER AND SOLAR ENERGY DEVICES].

* **Sec. 18.** AS 45.88.010 is amended by adding a new subsection to read:

(e) The Alaska energy conservation revolving loan fund consists of

(1) money appropriated to the fund by the legislature;

(2) gifts, bequests, or contributions from other sources;

(3) principal and interest payments or other income earned on loans or investments in the fund and appropriated to the fund; and

(4) money chargeable to principal or interest that is collected through liquidation by foreclosure or other processes on loans made under AS 45.88.010 - 45.88.090 and appropriated to the fund.

* **Sec. 19.** AS 45.88.020(a) is amended to read:

(a) The department may

(1) make loans for the purchase, construction, and installation, in commercial buildings that are located in the state, of

(A) alternative energy systems; and

(B) energy conservation improvements;

(2) adopt regulations necessary to carry out the provisions of AS 45.88.010 - 45.88.090, including regulations to establish reasonable fees for services provided and charges for collecting the fees;

(3) collect the fees and collection charges established under this subsection.

* **Sec. 20.** AS 45.88.025 is amended by adding a new section to read:

Sec. 45.88.025. Eligibility. To be eligible for a loan under AS 45.88.010 - 45.88.090, an applicant must

(1) physically reside in the state and maintain a domicile in the state during 12 consecutive months prior to the date of application for a loan and may not have

(A) declared or established residency in another state; or

(B) received residency or a benefit based on residency from another state;

(2) be at least 51 percent owned by individuals described in (1) of this section if the applicant is a corporation, joint venture, or partnership; or

(3) be a nonprofit organization under AS 10.20.

* **Sec. 21.** AS 45.88.030(a) is repealed and reenacted to read:

(a) A loan made under AS 45.88.010 - 45.88.090 may not exceed \$50,000. If the requested loan amount exceeds \$30,000, the applicant must deliver to the department a document from a financial institution stating that

(1) the applicant has been denied a loan for the same purpose; or

(2) the loan from the financial institution is contingent on the applicant also receiving a loan from the fund.

* **Sec. 22.** AS 45.88.030(e) is amended to read:

(e) The rate of interest for a loan under AS 45.88.010 - 45.88.090 shall be the prime rate, as defined by AS 44.88.599, plus one percentage point, but may not be less than five percent a year [FOR AN ALTERNATIVE ENERGY SYSTEM IS FIVE PERCENT FOR THE FIRST \$15,000 OF THE LOAN AND 15 PERCENT FOR THE AMOUNT OF THE LOAN THAT EXCEEDS \$15,000].

* **Sec. 23.** AS 45.88.030 is amended by adding a new subsection to read:

(f) A loan under AS 45.88.010 - 45.88.090 must be secured by a mortgage or other security instrument in the real property to be improved and a lien on the improvements financed with the loan.

* **Sec. 24.** AS 45.88.090(a) is amended to read:

(a) In AS 45.88.010 - 45.88.090,

(1) "alternative energy system"

(A) [(1)] means a source of thermal, mechanical or electrical energy that [WHICH] is not dependent on oil or gas or a nuclear fuel for the supply of energy for space heating and cooling, refrigeration and cold storage, electrical power, mechanical power, or the heating of water;

(B) [(2)] includes

(i) [(A)] an alternative energy property as defined by 26 U.S.C. 48(a)(3)(A) (Sec. 301, P.L. 95-618, Internal Revenue Code);

(ii) [(B)] a method of architectural design and construction which provides for the collection, storage, and use of direct radiation from the sun;

(iii) [(C)] a woodstove with a catalytic converter or a catalytic converter for a wood stove; [AND]

(iv) [(D)] a steam, hot water, or ducted hot air central heating system that uses wood or coal for fuel; **and**

(v) a high efficiency wood pellet stove;

(C) [(3)] does not include

(i) [(A)] a stove that uses only wood, coal, or oil for fuel; or

(ii) [(B)] a fireplace or fireplace insert;

(2) "commercial building"

(A) means a building that is intended to be used for commercial purposes;

(B) does not include

(i) a residential structure or mobile home that contains one to four family housing units; or

(ii) individual units of condominiums or cooperatives;

(3) "energy conservation improvement" means

(A) structural insulation;

(B) thermal windows and doors;

(C) a furnace replacement burner designed to achieve a reduction in the amount of fuel consumed as a result of increased combustion efficiency;

(D) a device for modifying flue openings designed to increase the efficiency of operation of the heating system;

(E) an electrical or mechanical furnace ignition system that replaces a gas pilot light;

(F) an automatic energy-saving setback thermostat;

(G) a meter that displays the cost of energy usage;

(H) caulking and weather stripping of doors and windows;

(I) insulating shades and shutters;

(J) air and water recuperators."

Renumber the following bill sections accordingly.

Page 13, line 19, following "45.88.010(c),":

Delete "45.88.030(e)"

Insert "45.88.030(c), 45.88.030(d),"

Page 14, following line 10:

Insert a new bill section to read:

"* **Sec. 31.** The uncodified law of the State of Alaska is amended by adding a new section to read:

REVISOR'S INSTRUCTION. The revisor of statutes shall change the heading of art. 1 of AS 45.88 from "Alternative Energy Revolving Loan Fund" to "Alternative Energy Conservation Revolving Loan Fund."

GREG WINEGAR, Director, Division of Investments, Department of Commerce, Community and Economic Development (DCCED), explained that Amendment K.11 makes two fundamental changes to the bill. It adds conservation improvements as an eligible purpose along with alternative energy systems, which was in the original bill. The other major change is that the bill now targets commercial buildings as residential structures are eligible for a similar type of loan through AHFC. The thinking on commercial buildings was to avoid duplication as AHFC already has a program for residential type loans. So this bill will now target commercial buildings that are owned by Alaskan residents.

SENATOR STEDMAN joined the committee.

MR. WINEGAR said the loan limit was changed from \$30,000 to \$50,000 and this would allow borrowers to not only put in an energy system but also to take advantage of loans for conservation-type things.

[3:41:38 PM](#)

MIKE PAWLOWSKI, aide to Senator McGuire, said Mr. Winegar did a great job of explaining the purpose of the amendment. He pointed out that language in Section 21, on page 2, lines 22-28, asks applicants to work with their financial institution as a commercial entity if the loan is over \$30,000; they have to present a "turn down letter" to the department, something that is done in other programs to maintain where the state is supplementing rather than competing with the regular commercial loan sector.

[3:43:12 PM](#)

SENATOR STEVENS joined the committee.

CO-CHAIR WIELECHOWSKI remarked that he was very happy to see the definition of "energy conservation improvement." Finding no further questions, he set Amendment K.11 aside.

CO-CHAIR WIELECHOWSKI said that Sharon Long would explain the next amendment for its sponsor, Senator Huggins.

[3:43:46 PM](#)

SHARON LONG, aide to Senator Huggins, explained that this conceptual amendment strives to delete prohibitions in current Alaska statutes which prevent consideration of nuclear projects as part of the energy alternative projects by inserting "nuclear" after "including" on page 2, line 24 of CSSB 220(RES) version K.

She explained another amendment by Senator Huggins labeled 26-LS1197\K.10

26-LS1197\K.10
Kane

AMENDMENT K.10

OFFERED IN THE SENATE TO: CSSB 220(RES), Draft
Version "K"

Page 1, line 5, following "loan fund,":

Insert "to nuclear waste material, to nuclear energy production and facilities, to the definition of 'power project' or 'project' as it relates to rural and statewide energy programs and the Alaska Energy Authority, to the definition of 'alternative energy system,'"

Page 3, line 18:

Delete "sec. 15"

Insert "sec. 20"

Page 3, following line 20:

Insert new bill sections to read:

"* **Sec. 4.** AS 18.45.020 is amended to read:

Sec. 18.45.020. United States licenses or permits required. A person may not manufacture, construct, produce, transfer, acquire, or possess a special nuclear material, by-product material, special nuclear material facility, by-product material facility, production facility, or utilization facility, or act as an operator of a production facility or utilization facility, wholly within the state without first obtaining a license or permit for the activity in which the person proposes to engage from the Nuclear

Regulatory Commission if the commission requires a license or permit to be obtained by persons proposing to engage in the activities.

* **Sec. 5.** AS 18.45.025(a) is amended to read:

(a) A person may not construct a nuclear fuel production facility, nuclear utilization facility, utilization facility, reprocessing facility, or nuclear waste disposal facility in the state without first obtaining a permit from the Department of Environmental Conservation to construct the facility on land designated by the legislature under (b) of this section.

* **Sec. 6.** AS 18.45.025(b) is amended to read:

(b) The legislature shall designate by law the land in the state on which a nuclear fuel production facility, nuclear utilization facility, utilization facility, nuclear reprocessing facility, or nuclear waste disposal facility may be located. In designating the land in the state on which

(1) a nuclear utilization facility or utilization facility may be located, the legislature shall act in the interest of regulating the economics of nuclear energy;

(2) a nuclear fuel production facility, [NUCLEAR UTILIZATION,] nuclear reprocessing facility, or nuclear waste disposal facility may be located, the legislature shall act to protect the public health and safety.

* **Sec. 7.** AS 18.45.025(c) is repealed and reenacted to read:

(c) The Department of Environmental Conservation shall adopt regulations governing the issuance of permits required by (a) of this section. However, a permit may not be issued until the municipality with jurisdiction over the proposed facility site has approved the permit."

Renumber the following bill sections accordingly.

Page 7, following line 28:

Insert a new bill section to read:

"* **Sec. 15.** AS 42.45.990(4) is amended to read:

(4) "power project" or "project" means a plant, works, system, or facility, together with related or necessary facilities and appurtenances, including a divided or undivided interest in or a

right to the capacity of a power project or project, that is used or is useful for the purpose of

(A) electrical or thermal energy production [OTHER THAN NUCLEAR ENERGY PRODUCTION];

(B) waste energy utilization and energy conservation; or

(C) transmission, purchase, sale, exchange, and interchange of electrical or thermal energy, including district heating or interties;"

Renumber the following bill sections accordingly.

Page 12, following line 2:

Insert a new bill section to read:

"* **Sec. 22.** AS 44.83.990(6) is amended to read:

(6) "power project" or "project" means a plant, works, system, or facility, together with related or necessary facilities and appurtenances, including a divided or undivided interest in or a right to the capacity of a power project or project, that is used or is useful for the purpose of

(A) electrical or thermal energy production [OTHER THAN NUCLEAR ENERGY PRODUCTION];

(B) waste energy utilization and energy conservation; or

(C) transmission, purchase, sale, exchange, and interchange of electrical or thermal energy, including district heating or interties;"

Renumber the following bill sections accordingly.

Page 13, following line 18:

Insert a new bill section to read:

"* **Sec. 27.** AS 46.11.900(1) is amended to read:

(1) "alternative energy system"

(A) means a source of thermal, mechanical, or electrical energy that is not dependent on oil or gas [OR A NUCLEAR FUEL] for the supply of energy for space heating and cooling, refrigeration and cold storage, electrical power, mechanical power, or the heating of water;

(B) includes

(i) an alternative energy property as defined by 26 U.S.C. 48(a)(3)(A); and

(ii) a method of architectural design and construction that provides for the collection, storage, and use of direct radiation from the sun;"

Renumber the following bill sections accordingly.

Page 13, line 19:

Delete "AS 45.88.010(c)"

Insert "AS 18.45.027; AS 45.88.010(c)"

Page 13, line 20:

Delete "sec. 15"

Insert "sec. 20"

Page 13, line 21:

Delete "sec. 11"

Insert "sec. 16"

Page 13, lines 21 - 22:

Delete "sec. 12"

Insert "sec. 17"

Page 13, line 27:

Delete "sec. 13"

Insert "sec. 18"

MS. LONG explained that new language on page 1, line 5, aligns the title of the bill with the changes that are made later in it. The amendment inserts a new Section 4 that speaks to federal licensing and permits; AS 18.45 only speaks to federal aspects of atomic energy. It includes "special nuclear material facility, by-product material facility" in order to cover more projects or activities in this section for which a license or permit may be needed from the Nuclear Regulatory Commission (NRC).

She continued explaining that it adds new sections 4, 5, 6 and 7 on page 3 of the bill.

CO-CHAIR WIELECHOWSKI interrupted to ask if lines 14-18 in Section 4 on page 1 of the amendment that say, "A person may not manufacture, construct, produce, transfer, acquire, or possess a special nuclear material, by-product material, special nuclear material facility..." meant that they are expanding what a person cannot produce.

MS. LONG answered yes; it repeals the prohibitions "if the commission requires a license or permit to be obtained by

persons proposing to engage in these activities." [page 1, lines 20-21 of Amendment K.10].

CO-CHAIR WIELECHOWSKI asked Brian Kane, Legislative Drafting Attorney, to explain what that language was attempting to do.

3:47:27 PM

BRIAN KANE, Legislative Affairs Attorney, explained that these sections in AS 18.45 have a lot of terms that were previously used and mismatched throughout - sometimes it would have a full phrase with "facilities" and sometimes "facility" wasn't there. The goal here was to cover every possibility that the Nuclear Regulatory Commission could cover, because as it stood it was just special nuclear material and by-product material. Adding "facility" adds the possibility of a special nuclear facility or by-product material facility in connection with the actual material. Then a person has to obtain that permit from the federal government before they can take any further steps.

CO-CHAIR WIELECHOWSKI asked him to talk about the interplay between federal and state regulation regarding nuclear facilities and energy.

MR. KANE answered that he had done some reading on the Atomic Energy Act and said that basically the federal government has a pretty long and complex list of permits and applications to even start the process of putting together a nuclear facility or producing any kind of nuclear energy. Basically the Atomic Energy Act preempts everything a state could do with the exception of economic regulation, which comes a little later in this amendment. The idea is to fulfill all of the federal obligations first, then you would proceed to the different state permitting processes.

CO-CHAIR WIELECHOWSKI said it seems that section 4 is changing that you couldn't own a special nuclear material facility without getting permission from the Nuclear Regulatory Agency.

MR. KANE answered yes; it's just making that clear by adding it to the list of things the federal permit is required for.

3:50:57 PM

MS. LONG explained that she found out that the state has no regulations and no permit requirements right now for nuclear energy. The Nuclear Regulatory Commission has a step process where a person first has to have a licensed nuclear power unit. You have to get an early site permit and do a lot of scientific

field work. So far, there are no small licensed nuclear power units.

CO-CHAIR WIELECHOWSKI asked if she found that most states have a fairly complex set of regulations on top of the federal regulations or do they mostly rely on the federal regulations.

MS. LONG and Mr. Kane said they didn't know what the other states are doing.

Back to the amendment, she said Section 5 speaks to the state licensing permits and requirements and adds "nuclear utilization facility" to conform with other definitions. Section 6 of the amendment amends AS 18.45.025 to say that when the Legislature designates the land in the state on which a nuclear utilization facility may be located, it must act only in the interests of regulating the economics of nuclear energy. This is based on a series of court cases that Mr. Kane could explain.

MS. LONG said Section 7 of the amendment deletes a line that states that a permit may not be issued unless approved by the Governor, leaving only a requirement for approval by the Department of Environmental Conservation in the municipality. So, this section retains local approval for a project that might be in any particular area, but removes the Governor's part in it. Any project would still be dealing with the NRC, DEC, AEA and a local political subdivision.

[3:53:39 PM](#)

SENATOR HUGGINS clarified that Section 7 allows some degree of local control.

MS. LONG added that the people she talked to surmised that it would probably be a local political subdivision that would bring this kind of project forward to the state.

CO-CHAIR WIELECHOWSKI clarified that a permit has to go through the DEC and the municipality with jurisdiction over the proposed facility. If it was in Anchorage, it would have to go through the Anchorage Assembly.

MS. LONG said yes.

CO-CHAIR WIELECHOWSKI asked what happens if it's in an area without a local government.

MS. LONG answered that after discussions with Mr. Kane, her sense was that they would be dealing with the NRC and DEC. A community in the unorganized borough would go directly to the state.

She said Section 15 adds a new section to page 7 of the bill that amends the definition of "power project" that deletes the exclusion of nuclear energy in relation to statewide energy programs.

Section 22 of the amendment amends the definition of "power project" to delete the exclusion of nuclear energy in relation to the Alaska Energy Authority (AEA) on page 12, line 2 of the bill. This will allow the AEA to consider power projects that depend on a thermal, mechanical or electrical system that depends on nuclear power. Now those projects can't be considered.

Language on page 4, line 11, of the amendment eliminates the prohibition of transporting nuclear waste material. Section 27 on page 3, lines 25-30 of the amendment deletes "or a nuclear fuel" - another exclusion.

CO-CHAIR WIELECHOWSKI asked her to explain it a little bit more.

MS. LONG explained that the state currently prohibits transportation of nuclear waste material. This would eliminate that. A nuclear power project generates nuclear waste and that would have to be transported somewhere. She said that the state allows use of nuclear power for medical purposes and she needed to check on how that was dealt with.

[3:57:59 PM](#)

MR. KANE added that AS 18.45.027 has part (A) and part (B); part (B) actually has an exclusion for radioactive materials used in medicine, education or scientific research as an exception to the high level nuclear waste material that can be transported.

CO-CHAIR WIELECHOWSKI asked who would be able to transfer nuclear material under the proposal on page 4, and if they would have to be regulated by the RCA or the NRC.

MR. KANE answered that state law would then be silent to that situation.

CO-CHAIR WIELECHOWSKI said it would be important to figure out what the federal regulations are for transportation in case they

need to enact some other state law or regulation to control who transfers nuclear material.

[3:59:44 PM](#)

MS. LONG said the remaining sections of the amendment are renumbering.

SENATOR HUGGINS commented that Galena was attempting to look at a small nuclear module, but every time it was brought up there, it was suddenly found to be prohibited. This removes that prohibition and puts the skeletal structure in place for further regulation. He said the French use nuclear for about 7 percent of their power and Japan is number 2 internationally and that further, "We ought to at least have a system that allows us to have that conversation in some reality if it comes to fruition."

CO-CHAIR WIELECHOWSKI agreed that it is a conversation that is worth having - if it can be done safely and cost effectively. He asked Ms. Long if she had idea of cost for building a nuclear plant.

MS. LONG said she had no idea, but she knows that Westinghouse and Toshiba would like to license a small unit that would be appropriate for the Galena project. She explained that because of court cases, the state has regulatory authority over economics only for these things while the NRC has control over health and safety issues.

[4:02:13 PM](#)

CO-CHAIR WIELECHOWSKI asked if the RCA or NRC would set rates on a nuclear power plant.

MR. KANE replied that would be something the RCA could potentially control.

CO-CHAIR WIELECHOWSKI asked Sarah Fisher-Goad if the AEA had any comments on this amendment.

[4:03:26 PM](#)

SARAH FISHER-GOAD, Alaska Energy Authority, responded that AEA had no comments on the amendment, but said she would answer questions on how it pertains to either the Power Project Fund or the AEA statutes.

CO-CHAIR WIELECHOWSKI asked for a quick overview of its relationship to those two things.

MS. GOAD answered if this amendment were to be incorporated into SB 220, the Power Project Fund would be an eligible financing vehicle for a nuclear project. With respect to the AS 44.83 change that would allow "nuclear" to be included as a definition of "power project," she mentioned that AEA has other statutes that do not allow them to own new projects. If the desire was to allow them to own a future new project, be it any project, the statutes would have to be changed.

SENATOR HUGGINS said it appears that under AEA's authority and responsibility she would want a reasonable portfolio of energy projects and capabilities to choose from, not that nuclear should be number 1 or number 29, but it would just become one option among others. He asked if she any difficulty with having it as part of a portfolio.

MS. GOAD answered that this amendment allows them to consider nuclear; right now they don't have a position with respect to whether that should be included or not. But if this amendment were adopted they would consider nuclear projects through either the Power Project Fund or through administering a grant through a program on a future project. It is a policy call that she said she was not prepared to answer. She wanted her testimony to describe how nuclear would be considered if it was included. Right now they don't have nuclear projects to consider. If AEA would have to be involved in a project like this, they would have additional costs, but not now.

MS. LONG said Mr. Pawlowski just passed her a note that says Title 42.05.990 (Public utilities and carriers) does say that RCA would regulate nuclear rates.

CO-CHAIR WIELECHOWSKI asked Mr. Pickett from the RCA if he had any comments.

[4:08:09 PM](#)

BOB PICKETT, Chairman, Regulatory Commission of Alaska (RCA), said that other RCA members would answer those questions.

RICHARD GAZAWAY, Administrative Law Judge, Legislation/Regulation, Regulatory Commission of Alaska (RCA), Department of Commerce, Community and Economic Development (DCCED), said he was trying to figure out what section of AS 42.05.990 Mr. Pawlowski was referencing when he said they would regulate the nuclear facility.

MR. PAWLOWSKI said he was referencing AS 42.05.990 that says a utility that serves one or more customers and makes more than \$50,000 a year is regulated by the RCA. So, presuming that a nuclear facility sold more than \$50,000 in electricity a year it wouldn't be rate regulated by the RCA.

[4:09:16 PM](#)

STEWART GARY, Assistant Attorney General Representing the RCA, Department of Law (DOL), agreed with that assessment. To the extent that a nuclear facility is generating and providing electric power for compensation it would be within the definition of a public utility - specifically in AS 42.05.990(4)(a) which provides that every entity that owns, operates, manages or controls any plant, pipeline, or system for furnishing by generation, transmission or distribution, electrical service to the public for compensation. It doesn't specifically mention nuclear. Electrons are electrons; if electrical power generation is being provided to the public for compensation it's going to meet that definition.

CO-CHAIR WIELECHOWSKI asked if they see any concerns that would require the Legislature to enact any other legislation. Should they adopt this amendment or another one that allows for nuclear energy production in Alaska?

MR. PICKETT answered that this amendment, specifically, hadn't been analyzed, but probably not. He said he would look it over by Wednesday.

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SENATOR WAGONER withdrew Amendment K.6 [introduced on 2/18/10]. He said he was going to develop it into a committee bill or wait until next year. There were no objections and it was so ordered.

SB 277-PUB. UTILITY EXEMPTION: RENEWABLE ENERGY

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CO-CHAIR WIELECHOWSKI announced SB 277 to be up for consideration.

MR. PAWLOWSKI, staff to Senator McGuire, explained that SB 277 addressed the section of law they were just talking about with the Regulatory Commission of Alaska (RCA). That is the definition of public utility, which is relatively circular. The definition of "utility" refers to "public" which then refers to "utility" which refers back to "public." So there is some

confusion about what the appropriate role of independent power producers is. Traditionally, Alaska has had large locally owned cooperatives or municipally owned utilities serving in a regulated marketplace. Senator McGuire discovered through her research that the rate of penetration of renewable energy sources within regulated and unregulated markets is fundamentally different. He said their packets contained information about competitive electricity markets; the author suggested that the difference in approach to a project's risk profile is fundamentally different between a regulated monopolistic utility versus an investor owned utility.

SB 277 attempts to exempt from the regulations that are explicitly in statute now independent power producers that generate entirely from renewable energy sources and then sell to a regulated utility. The theory being that the layer of protection available to the consumer comes at the regulated utility level, but in a familiar way as in gas contracts in Cook Inlet where the producer of the gas is not regulated but the contract for gas is regulated. Looking at that type of model for renewable power in Alaska, he said, Senator McGuire believes will encourage the development of renewable energy in Alaska, and removing some of what could be considered duplicative regulation in statute could open the door for private investment in the sector so that the goal of 50-percent renewable energy could be met by 2020.

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He said the bill is actually fairly simple. Sections 1 and 2 on page 1, line 10, and page 2, line 1, insert conforming language to the exemption that is prepared in Section 3. The exemption is from the RCA authority over the renewable energy generator when they sell to one or more utilities that are regulated by it.

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DANIEL PATRICK O'TIERNEY, Chief Assistant Attorney General (AG), Department of Law (DOL), Supervisor, Regulatory Affairs and Public Advocacy Section, said he was available for questions on SB 277. He explained that his section performs the AG's public advocacy role in regulatory matters under AS 44.23.020(e).

CO-CHAIR WIELECHOWSKI asked if he has experience with this or indirect regulation of power producers or energy suppliers.

MR. O'TIERNEY answered that he assumed he meant that this posed no direct regulation on a cost basis of an independent power producer (IPP). The IPP's provision of power would be submitted

in a contract form with the utility to the commission for approval. The commission would engage the contract at that point in the process. If that is what he meant, he said he had some experience with it.

CO-CHAIR WIELECHOWSKI asked if Enstar purchasing gas from a Cook Inlet provider would be a correct analogy in deciding whether or not the RCA can look at the costs of getting that gas to Enstar.

Mr. O'TIERNEY replied that he thought it was similar in the sense that direct regulation would be focused upon a cost basis for the purposes of determining revenue requirement and related rate base return that yields rates in a regulated environment. When a contract is submitted to the commission for its review, from his perspective in practicing before the RCA, it would apply its just and reasonable standard, but it doesn't have the capability of scrutinizing the costs involved in providing the service. So, it's then faced with having one party to a contract submitting a contract and not having jurisdiction over the other party in the contract. It's the party that has produced the power and presumably has the related costs that normally is not reviewed by the commission. He said he would leave it to the Commission to speak to how it has dealt with the difficulties involved in reviewing contracts under this standard.

CO-CHAIR WIELECHOWSKI asked if he believed the public's interest could be adequately protected under this bill through the process of exempting IPPs from regulation.

MR. O'TIERNEY answered that any end user of a commodity or product wants some assurance that the price it's paying is price-disciplined in some fashion. In a capitalist economy, competition usually provides that price discipline and regulation is a proxy for marketplace price competition to the extent there is no market or there isn't an effective market to do that job. Usually regulation is a substitute for free market competition to the extent that there is no market or no effective market to do that job. If he were looking at this proposal, he would be asking the question: is there sufficient competition in the market that would produce independent power contracts for provisioning utilities that are sufficiently market-disciplined. If not, then he would have some concerns and one would ask why they wouldn't be regulating that service.

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CO-CHAIR WIELECHOWSKI asked him to submit an opinion on this bill over the next few days.

MR. O'TIERNEY agreed and added that generally you have to be able to compare apples to apples. So, if markets outside involving IPPs are generally unregulated you have to compare and contrast what our marketplace looks like for this service here in order to be able to determine whether that is a relevant factor in determining how to handle it in Alaska. He is not the person to provide that analysis, but there are certainly some who could.

CO-CHAIR WIELECHOWSKI said he is the person who is charged with protecting consumers.

MR. O'TIERNEY said he is not an expert on IPP status in outside jurisdictions.

CO-CHAIR WIELECHOWSKI said he understood that, but still wanted his input.

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BOB PICKETT, Chairman, Regulatory Commission of Alaska (RCA), said this would also mean that IPPs wouldn't file for a Certificate of Public Convenience and Necessity (CPCN). A CPCN makes findings, for instance, that this utility service is actually needed by the public at this particular location, point and time and that the financial managerial and operational capacities are there to provide the service that is applied for.

He said the FERC issued a Notice of Inquiry a few weeks ago to address a lot of these issues in the renewable energy arena. It wants to promote renewable energy resources but in a way that guarantees just and reasonable rates while eliminating the impediments to these resources accessing the grid in the Lower 48.

As Mr. O'Tierney stated, Mr. Pickett said, Alaska has an "island grid" that is disconnected and for all practical purposes is not under the jurisdiction of the FERC. The FERC has taken used market forces as a proxy for regulation in the Lower 48 and they focus on the competitive wholesale electric markets. They continuously monitor these markets and then enforce market rules as needed with a fairly well established regime. They have also come to the conclusion that system reliability is critically important and that is the purpose of the Notice of Inquiry.

MR. PICKETT said he understood their concerns about timing with a lot of the IPPs that many times find themselves without

significant public subsidy - whether that be from the state, the federal government, direct subsidies or tax credits or whatever - for projects that will not pencil out or make sense and could not provide power at a competitive rate to the regulated utilities. He said Fishhook, a small hydro project, petitioned the RCA earlier for a strategy to address some of these.

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JAMES KEEN, Chief, Engineering, Regulatory Commission of Alaska (RCA), explained that last year the Commission released two different orders exempting small IPPs from certification on the basis that it would see these utilities come forward through the regulated utility they would be selling power to in a power purchase agreement. The RCA believes it could serve the public interest by simply looking at the power purchase agreement, alone, regulating that rate to make sure a fair price is flowing through to the ultimate consumers, but removing the burden of certification and economic regulation from the IPP. This was done in the case of Fishhook Renewable Energy, which is putting in a small river hydro in Hatchers Pass, and South Fork Hydro in Eagle River. Both of those would be selling power to Matanuska Electric Association (MEA).

MR. PICKETT added that another approach is a qualifying facility (QF) qualification under the FERC in which an IPP fills out the application. If the FERC grants QF status, the state jurisdiction is preempted. Then the QF will sell power to the regulated utilities at an avoided cost basis.

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CO-CHAIR WIELECHOWSKI asked if a company is not directly regulated, does the RCA have access to information regarding power production costs when it is reviewing a contract between the IPP and a regulated utility.

MR. PICKETT answered no.

CO-CHAIR WIELECHOWSKI asked if Cook Inlet natural gas had created pricing issues for the RCA.

MR. PICKETT answered that it has created some intense challenges. While several contracts have been recently approved, it depends on how a case is presented, what interveners after the filing is noticed become parties, and the strength of the evidence presented in their arguments. Everybody's due process rights are protected, but there is uncertainty, for sure.

CO-CHAIR WIELECHOWSKI asked if he had concerns over regulating IPPs.

MR. PICKETT answered that he wouldn't speak for the Commission on adopting a formal policy on any particular piece of legislation or offer direct input; that takes an action at a public meeting. But just speaking from what he has seen in his time as commissioner and chairman, it does raise some question marks, particularly if timing is a big issue. It's going to depend on the nature of what the IPP brings in for the interconnection agreement, which they will have to negotiate with a regulated utility. Price is not the only issue. System stability is very important. On the price side, they need to negotiate the power sale agreement with the utility and then present it to the RCA. The agreement will be reviewed as a whole as to its reasonableness, and whether it is in the public interest.

SENATOR STEDMAN asked if someone was to come in and build a 50 mgW hydro, would they need at CPCN if this bill passed.

MR. PICKETT replied their read is that they would not need a CPCN.

SENATOR STEDMAN asked if he should be concerned about that.

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STEWART GARY, Assistant Attorney General Representing the RCA, Department of Law (DOL), clarified that his role is found in AS 42.04.040(a), where it says it the responsibility of the Attorney General to provide legal counsel to the Commission. So, from the Commission's perspective he would echo what Mr. Pickett said - the IPP would not be required to apply for or receive a CPCN from the Commission. But other questions about the extent that other provisions might apply are open, particularly related to interconnection.

SENATOR STEDMAN asked again if he should be concerned.

MR. GARY answered yes. The CPCN process is a gatekeeper function. For practical purposes, it determines what someone as an individual investor decides to build is something that the public actually needs - the public convenience and necessity part of it. The other aspect is the fit, willing and able part - is the proposed party financially capable of doing it, are they managerially capable of doing it, and are they operationally capable of doing it. CPCNs protect the public from interruptions

in utility service. Society has come to expect public utilities to meet a higher standard and that is to provide their services reliably 24 by 7. The only way to do that is to put up a threshold across which the utility has to pass. Yes, he would be concerned.

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MR. PICKETT said he would stand by for questions.

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ETHAN SCHUTT, Cook Inlet Region, Inc. (CIRI), said he wanted to provide some context on SB 277. It is important in making regulatory fit amenable with the private development of renewable resources for IPPs while striking a balance to protect the public interest to make sure the rate is fair and the service is reasonable.

He said that the status quo is that they only have public utilities providing electrical service on the Railbelt. The CPCN, the rate case and regulatory oversight functions that take place with the RCA are entirely appropriate given that public utilities have been established in areas where they have a monopoly service for electricity. So to the degree that a public utility makes good or bad business or financial judgments or investments or that they are operationally efficient or not, the cost and benefit of all that decision making, he said, the bottom line is that existing public utilities have a rate case. So, for better or worse, their decision making as it affects their cost structure gets passed through to their customers who can't do anything about it.

CIRI is not proposing to have retail customers, but rather developing a project and then having to go through a negotiated process for power sales through PPAs with two or more existing public utilities in order to sell their power to a commercial customer who happens to be a regulated utility. They envision as part of that process, that the utilities will demand a certain amount of information justifying their own costs into the project. That same package of information that they use for their own purposes for the negotiation will also be used in making their case to the RCA - why this contract is allowed to be put into their rate and be part of their rate base as part of their regulated function.

RCA staff and lawyers have testified that they won't have any ability to look at costs, but that from a strictly absolute interpretation. It's a little misleading in that these utilities

aren't just going to buy power without being able to look at certain financial and cost information.

MR. SCHUTT pointed out in the notion of a market that the cost is not the only piece of the puzzle on the financial side. A significant amount of risk is allocated to the IPP side of the table that remains long after the contract has been entered into. Some of the more significant risk that remains in the case of a wind project is the resource risk. In their case they have 10 years, a long history, of data from Fire Island, much longer than the two or three years that are commercially used in many locations of two or three years. If the IPP gets that wrong in negotiating its price of power, and the wind resource is actually less than what the modeling indicates it should have been, that loss falls on the IPP side of the ledger. There is no real way to allocate that risk any differently through a long term contract.

IPPs also maintain the long term risk of equipment failure, cost overruns or other executional issues in the construction or operation of the plant itself. By contrast, if this was a project that was developed by a public utility, all of those risks would be borne directly by the rate payer.

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MR. SCHUTT said the current structure proposed by SB 277 fairly allocates risks and rewards for an IPP with a renewable resource when the only customers are a regulated utility.

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CO-CHAIR WIELECHOWSKI said that he would keep public testimony open. Finding no further questions, he adjourned the meeting at 4:44 p.m.