

SENATE BILL NO. 217

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE BY REQUEST

Introduced: 3/28/14

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the Regulatory Commission of Alaska."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 * **Section 1.** AS 42.05.141(c) is amended to read:

4 (c) In the establishment of electric service rates under this chapter the
5 commission shall promote the conservation of resources used in the generation of
6 electric energy and shall promote competitive and nondiscriminatory
7 procurement of electrical energy from and by public utilities, qualifying facilities,
8 and independent power producers.

9 * **Sec. 2.** AS 42.05.141 is amended by adding new subsections to read:

10 (e) The commission shall make regulatory decisions consistent with state
11 energy policy declared in AS 44.99.115. The commission shall

12 (1) promote the development of renewable and alternative energy
13 resources, including geothermal, wind, solar, hydroelectric, hydrokinetic, tidal, and
14 biomass energy, for use by residents of the state and for export;

15 (2) promote the development, transport, and efficient use of

nonrenewable and alternative energy resources, including natural gas, coal, oil, gas hydrates, heavy oil, and nuclear energy, for use by residents of the state and for export;

(3) work to identify and assist with development of the most cost-effective, long-term sources of energy for each community statewide; and

(4) create and maintain permitting and regulatory processes that encourage independent power producers to develop, finance, own, operate, and manage qualifying facilities and independent power producers.

(f) The commission shall require that the owner of a transmission asset located in the state allow a qualifying facility or independent power producer fair access to a transmission asset at the same cost as the owner or owning entity charges itself.

* **Sec. 3.** AS 42.05.151(a) is amended to read:

(a) The commission may adopt regulations, consistent [NOT INCONSISTENT] with state [THE] law including the state energy policy declared in AS 44.99.115, necessary or proper to exercise its powers and to perform its duties under this chapter.

* **Sec. 4.** AS 42.05.175(e) is amended to read:

(e) The commission shall issue a final order in a rule-making proceeding

(1) not later than 730 days after a complete petition for adoption, amendment, or repeal of a regulation under AS 44.62.180 - 44.62.290 is filed;

(2) [OR,] when the commission initiates a rule-making docket, not later than 730 days after the order initiating the proceeding is issued, except as provided in (3) of this subsection; or

(3) when the commission initiates a rule-making docket relating to a qualifying facility or the state energy policy declared in AS 44.99.115, not later than 365 days after the order initiating the proceeding is issued.

* **Sec. 5.** AS 42.05.211 is amended to read:

Sec. 42.05.211. Annual report. The commission shall, by November 15 of each year, publish an annual report reviewing its activities during the previous fiscal year and notify the legislature that the report is available. The report must

(1) address the regulation of public utility service in the state as of

June 30;

(2) [AND MUST] contain details about the commission's compliance with the requirements of AS 42.05.175(a) - (e), with the timeline extensions made by the commission under AS 42.05.175(f), and with other performance measures established by the commission; and

(3) list the avoided cost of each public utility issued a certificate under AS 42.05.221.

* Sec. 6. AS 42.05.221(d) is amended to read:

(d) In an area where the commission determines that two or more public utilities are competing to furnish identical utility service and that this competition is not in the public interest, the commission shall take appropriate action to eliminate the competition and any undesirable duplication of facilities. This appropriate action may include [, BUT IS NOT LIMITED TO,] ordering the competing utilities to enter into a contract that, among other things, would [:]

(1) delineate the service area boundaries of each in those areas of competition;

(2) eliminate existing duplication and paralleling to the fullest reasonable extent;

(3) preclude future duplication and paralleling;

(4) provide for the exchange of customers and facilities for the purposes of providing better public service and of eliminating duplication and paralleling; and

(5) provide [SUCH] other mutually equitable arrangements [AS WOULD BE] in the public interest, including, when applicable, a requirement that a public utility purchase electric energy or energy capacity from a qualifying facility or independent power producer at the avoided cost of the public utility unless that purchase results in a rate increase for the consumer.

* Sec. 7. AS 42.05.311(a) is amended to read:

(a) A public utility having sewers, conduits, utilidors, poles, pole lines, pipes, pipelines, mains, or other distribution or transmission facilities shall, for [A] reasonable compensation, permit another public utility, a qualifying facility, or an

1 **independent power producer** to use them when the public convenience and necessity
 2 require **the** [THIS] use, [AND] the use will not result in substantial injury to the
 3 owner, or **the use will not result** in substantial detriment to the service to the
 4 customers of the owners. The cost of modifications or additions necessary to a joint
 5 use shall be at the expense of the public utility, **qualifying facility, or independent**
 6 **power producer** requesting the use of the facilities.

7 * **Sec. 8.** AS 42.05.311 is amended by adding new subsections to read:

8 (d) An electric utility shall permit connection to be made and service to be
 9 furnished between a system operated by it and the system or facilities operated by
 10 another public utility, qualifying facility, or independent power producer if the
 11 connection

12 (1) is required by the public convenience and necessity;

13 (2) is in accordance with AS 42.05.141(e) and the state energy policy
 14 declared in AS 44.99.115;

15 (3) will not result in substantial injury to the owner or other users of
 16 the facilities of the entities making the connection; and

17 (4) will not result in substantial detriment to the service provided by
 18 the entities making the connection.

19 (e) If a request for interconnection or joint use is made to the owner of a
 20 public utility for use of a facility located in the state that was financed in whole or in
 21 part with federal or state grants or loans and an interconnection or joint use study has
 22 not been performed in the five years immediately preceding the request, the owner of
 23 the public utility shall pay for the applicable study. If an interconnection or joint use
 24 study has been completed in the five years immediately preceding the request, the
 25 entity requesting interconnection or joint use may procure the applicable study at its
 26 own expense.

27 (f) When providing access to a transmission asset, a public utility may not

28 (1) discriminate between users of the transmission asset;

29 (2) employ an anticompetitive practice with a transmission asset; or

30 (3) use its management, ownership, or control of a transmission asset
 31 to increase the cost to or prevent use by a utility, qualifying facility, or independent

1 power producer attempting to use a transmission asset.

2 (g) A public utility may assess reasonable integration charges or credits to
3 another public utility, qualifying facility, or independent power producer connecting to
4 its system.

5 (h) A benefit resulting from a connection described in this section shall be
6 credited toward the connecting entity. Upon request of the commission or the
7 connecting entity, the owning public utility shall disclose the basis for the integration
8 charges or credits and shall bear the burden of demonstrating that the charges or
9 credits comply with this section.

10 * **Sec. 9.** AS 42.05.321 is amended to read:

11 **Sec. 42.05.321. Failure to agree upon joint use or interconnection.** (a) In
12 case of failure to agree upon the joint use or interconnection of facilities or the
13 conditions or compensation for joint use or interconnections, the public utility,
14 including any municipality, or an interested person may apply to the commission for
15 an order requiring the interconnection. If, after investigation and opportunity for
16 hearing, the commission finds that public convenience and necessity require the joint
17 use or connection, **that the connection is consistent with AS 42.05.141(e) and the**
18 **state energy policy declared in AS 44.99.115,** and that the use or connection will not
19 result in substantial injury to the owner utility or its customers, or in substantial
20 detriment to the services furnished by the owner utility, or in the creation of safety
21 hazards, it shall

22 (1) order that the use be permitted;
23 (2) prescribe reasonable conditions and compensation for the joint use;
24 (3) order the interconnection to be made;
25 (4) determine the time and manner of the interconnection;
26 (5) determine the apportionment of costs and responsibility for
27 operation and maintenance of the interconnection.

28 (b) **Notwithstanding an exemption from other regulation, this** [THIS]
29 section and AS 42.05.311 apply to **a utility, qualifying facility, or independent**
30 **power producer** [ALL UTILITIES WHETHER OR NOT THEY ARE EXEMPT
31 FROM OTHER REGULATION UNDER AS 42.05.711].

1 * **Sec. 10.** AS 42.05.381(a) is amended to read:

2 (a) All rates demanded or received by a public utility [,] or by any two or more
3 public utilities jointly [,] for a service furnished or to be furnished shall be just and
4 reasonable; however, a rate may not include an allowance for costs of political
5 contributions, costs of [OR] public relations, or costs related to actions against a
6 qualifying facility or independent power producer except for reasonable amounts
7 spent for

8 (1) energy conservation efforts;

9 (2) public information designed to promote more efficient use of the
10 utility's facilities or services or to protect the physical plant of the utility;

11 (3) informing shareholders and members of a cooperative of meetings
12 of the utility and encouraging attendance; [OR]

13 (4) emergency situations to the extent and under the circumstances
14 authorized by the commission for good cause shown; or

15 (5) a mediator, independent expert, or similar impartial analyst
16 used in good faith negotiations with a qualifying facility or independent power
17 producer.

18 * **Sec. 11.** AS 42.05.411 is amended by adding a new subsection to read:

19 (d) Upon the filing of a new or revised tariff, the commission shall review the
20 entire tariff for consistency with AS 42.05.141(e) and the state energy policy declared
21 in AS 44.99.115. If the new or revised tariff is not consistent with AS 42.05.141(e)
22 and the state energy policy, the commission shall direct the utility to revise the tariff to
23 be consistent with AS 42.06.141(e) and the state energy policy and submit the revised
24 tariff to the commission.

25 * **Sec. 12.** AS 42.05.431(c) is amended to read:

26 (c) Notwithstanding (b) of this section,

27 (1) a wholesale agreement for the sale of power from a project licensed
28 by the Federal Energy Regulatory Commission on or before January 1, 1987, and
29 related contracts for the wheeling, storage, regeneration, or wholesale repurchase of
30 power purchased under the agreement, entered into between the Alaska Energy
31 Authority and one or more other public utilities or among the utilities after October 31,

1 1987, and before January 1, 1988, and amendments to the wholesale agreement or
 2 related contract, and the wholesale agreement or related contract assigned by the
 3 Alaska Energy Authority to a joint action agency formed under AS 42.45.310 that
 4 purchases the project from the Alaska Energy Authority, are not subject to review or
 5 approval by the commission until all long-term debt incurred for the project is retired,
 6 or, for a wholesale agreement or related contract assigned to a joint action agency
 7 formed under AS 42.45.310, until all long-term debt incurred to pay the purchase price
 8 to the Alaska Energy Authority is retired; [AND]

9 (2) a wholesale agreement or related contract described in (1) of this
 10 subsection may contain a covenant for the public utility to establish, charge, and
 11 collect rates sufficient to meet its obligations under the contract; the rate covenant is
 12 valid and enforceable;

13 **(3) a wholesale agreement between a public utility and a qualifying**
 14 **facility or independent power producer, for the sale of power at or below the**
 15 **avoided cost of the public utility, is valid and enforceable; and**

16 **(4) a wholesale agreement for the purchase and sale of electricity is**
 17 **not subject to review or approval of the commission if, at the time the initial**
 18 **agreement is made, the entity providing the electricity is not a utility and the**
 19 **purchaser is a person located outside a certificated service area of a utility,**
 20 **regardless of whether the purchaser subsequently becomes part of a certificated**
 21 **service area of a utility.**

22 * Sec. 13. AS 42.05.431(e) is amended to read:

23 (e) Validated costs incurred by a utility in connection with the related
 24 contracts described in (c)(1) of this section must be allowed in the rates charged by the
 25 utility. In this subsection, "validated costs" are the actual costs that a utility uses, under
 26 the formula set out in related contracts described in (c) of this section, to establish
 27 rates, charges for services and rights, and the payment of charges for services and
 28 rights. This subsection does not grant the commission jurisdiction to alter or amend
 29 the formula set out in those related contracts, **except that the commission may alter**
 30 **or amend the formula to ensure that the contracts are consistent with**
 31 **AS 42.05.141(e) and the state energy policy declared in AS 44.99.115.**

1 * **Sec. 14.** AS 42.05.511(a) is amended to read:

2 (a) The commission may

3 **(1) investigate the management of a public utility, including [BUT**
 4 **NOT LIMITED TO] staffing patterns, wage and salary scales and agreements,**
 5 **investment policies and practices, purchasing and payment arrangements with**
 6 **affiliated interests, for the purpose of determining inefficient or unreasonable practices**
 7 **that adversely affect the cost or quality of service of the public utility;**

8 **(2) review emergency backup, mid-term, and long-term fuel**
 9 **supply plans for reasonableness;**

10 **(3) investigate suspected discriminatory or anticompetitive**
 11 **practices in the procurement of wholesale power from a qualifying facility or**
 12 **independent power producer.**

13 * **Sec. 15.** AS 42.05.711(r) is amended to read:

14 (r) A plant or facility **owned or operated by an independent power**
 15 **producer** [THAT GENERATES ELECTRICITY ENTIRELY FROM RENEWABLE
 16 ENERGY RESOURCES] is exempt from regulation under this chapter if

17 (1) the plant or facility

18 (A) is first placed into commercial operation on or after
 19 August 31, 2010, and before January 1, **2025** [2016]; and

20 (B) does not generate more than **80** [65] megawatts of
 21 electricity; **and**

22 (2) the **net** electricity generated by the plant or facility is sold only to
 23 one or more electric utilities that are regulated by the commission **or to one or more**
 24 **customers who are located outside a certificated service area of a utility and who**
 25 **are not the "public," as that term is defined in AS 42.05.990** [; AND

26 (3) THE PERSON THAT CONSTRUCTS, OWNS, ACQUIRES, OR
 27 OPERATES THE PLANT OR FACILITY HAS NOT RECEIVED FROM THE
 28 STATE

29 (A) A GRANT THAT WAS USED TO GENERATE THE
 30 ELECTRICITY FROM THE RENEWABLE ENERGY RESOURCES; OR

31 (B) A TAX CREDIT RELATED TO THE GENERATION OF

1 ELECTRICITY FROM THE RENEWABLE ENERGY RESOURCES].

2 * **Sec. 16.** AS 42.05.711 is amended by adding a new subsection to read:

3 (u) A qualifying facility that generates less than 80 megawatts of electricity is
4 exempt from regulation under this chapter.

5 * **Sec. 17.** AS 42.05.990(6) is amended to read:

6 (6) "public utility" or "utility" includes every corporation whether
7 public, cooperative, joint action agency, or otherwise, company, individual, or
8 association of individuals, their lessees, trustees, or receivers appointed by a court, that
9 owns, operates, manages, or controls any plant, pipeline, or system for

10 (A) furnishing, by generation, transmission, or distribution,
11 electrical service to the public for compensation;

12 (B) furnishing telecommunications service to the public for
13 compensation;

14 (C) furnishing water, steam, or sewer service to the public for
15 compensation;

16 (D) furnishing by transmission or distribution of natural or
17 manufactured gas to the public for compensation;

18 (E) furnishing for distribution or by distribution petroleum or
19 petroleum products to the public for compensation when the consumer has no
20 alternative in the choice of supplier of a comparable product and service at an
21 equal or lesser price;

22 (F) furnishing collection and disposal service of garbage,
23 refuse, trash, or other waste material to the public for compensation;

24 (G) furnishing the service of natural gas storage to the public
25 for compensation;

26 (H) furnishing the service of liquefied natural gas storage to the
27 public for compensation;

28 * **Sec. 18.** AS 42.05.990 is amended by adding new paragraphs to read:

29 (14) "anticompetitive practice" means

30 (A) a practice that directly or indirectly manipulates the
31 purchase or sale of electric energy, access to an electric transmission facility,

the cost of electric energy, the price paid for wholesale electric energy, or the charges or credits allocated to a qualifying facility or independent power producer, including interconnection, integration, wheeling, and demand ratchet charges or credits;

(B) an act, practice, or scheme by a utility to defraud; or

(C) making an untrue statement or omission of material fact in a communication published by a public utility for use by the commission, a qualifying utility, an independent power producer, or the customers of the utility;

(15) "avoided cost" means the incremental cost to an electric utility of electric energy or electric capacity or both that, but for the purchase of that unit from a qualifying facility or independent power producer, a public utility would have to generate itself or purchase from another source;

(16) "distribution lines" means low voltage transmission lines that deliver power to retail customers;

(17) "independent power producer" means a corporation, person, agency, authority, or other legal entity other than a qualifying facility that owns or operates facilities for the generation of electricity for wholesale delivery to a public utility or for use by customers outside the certificated service area of a utility;

(18) "joint action agency" means a joint action agency established under AS 42.45.300, except as otherwise provided in AS 42.05.711(o);

(19) "qualifying facility" means

(A) a small power production facility located in the state that generates 80 megawatts of electricity or less and whose primary energy source

(i) is a renewable or alternative energy resource, including geothermal, wind, solar, hydroelectric, hydrokinetic, tidal, or biomass energy; or

(ii) originates in the state; or

(B) a cogeneration facility located in the state that sequentially produces electricity and another form of useful thermal energy, including steam or heat, in a manner that is more efficient than the separate production of

1 both forms of energy;

2 (20) "reasonable compensation" means a return on the private equity of
3 the owning public utility or joint action agency for the portion of the facility that is
4 jointly used plus the cost to the owning public utility or joint action agency of the
5 capacity of the sewer, conduit, utilidor, pole, pole line, pipe, pipeline, main, or other
6 distribution or transmission facility that is jointly used;

7 (21) "reasonable integration charges or credits" means the
8 nondiscriminatory costs that are directly attributable to the system connection,
9 reasonably necessary to maintain safe and reliable operations of the utility system, in
10 excess of the corresponding costs that the public utility would have otherwise
11 incurred, not duplicative of costs already charged related to the system connection,
12 and determined in the same manner as the utility allocates the charges to itself;

13 (22) "transmission asset" means an asset used to move bulk electricity
14 from where it is produced or generated to distribution lines.

15 * **Sec. 19.** AS 42.45.300 is amended to read:

16 **Sec. 42.45.300. Joint action agencies.** Two or more public utilities may form
17 a joint action agency for the purpose of participation in the design, construction,
18 operation, and maintenance of a generating or transmission facility and to secure
19 financing for carrying out the design, construction, operation, and maintenance of the
20 facility. A joint action agency may request the Alaska Industrial Development and
21 Export Authority to issue revenue bonds for projects of the agency. A joint action
22 agency may be regulated as [HAS THE POWERS OF] a public utility under
23 AS 42.05.