

**ALASKA STATE LEGISLATURE
SENATE RAILBELT ELECTRIC SYSTEM**

January 31, 2020
3:32 p.m.

MEMBERS PRESENT

Senator John Coghill, Chair
Senator Elvi Gray-Jackson
Senator Peter Micciche
Senator Cathy Giessel

MEMBERS ABSENT

Senator Mike Shower

OTHER LEGISLATORS PRESENT

Representative Grier Hopkins

COMMITTEE CALENDAR

SENATE BILL NO. 123

"An Act relating to the regulation of electric utilities and electric reliability organizations; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 123

SHORT TITLE: ELECTRIC RELIABILITY ORGANIZATIONS

SPONSOR(S): RAILBELT ELECTRIC SYSTEM

05/14/19	(S)	READ THE FIRST TIME - REFERRALS
05/14/19	(S)	RBE, FIN
01/24/20	(S)	RBE AT 3:30 PM BUTROVICH 205
01/24/20	(S)	Heard & Held
01/24/20	(S)	MINUTE(RBE)
01/27/20	(S)	RBE AT 3:30 PM SENATE FINANCE 532
01/27/20	(S)	Heard & Held
01/27/20	(S)	MINUTE(RBE)
01/29/20	(S)	RBE AT 3:30 PM SENATE FINANCE 532

01/29/20 (S) Heard & Held
01/29/20 (S) MINUTE (RBE)
01/31/20 (S) RBE AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

ANTONY SCOTT, Commissioner
Regulatory Commission of Alaska (RCA)
Anchorage, Alaska

POSITION STATEMENT: Answered questions and responded to concerns about SB 123 on behalf of the Regulatory Commission of Alaska.

MIKE CRAFT, Owner
Delta Wind Farm
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of SB 123 as a means to open the Railbelt grid to renewable energy projects.

JOEL GROVES, Member
Fishhook Renewable Energy
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 123 to help independent power producers gain access to the Alaska Intertie.

BERNIE SMITH, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 123.

BRIAN MURKOWSKI, Consultant
Ocean Renewable Power Corporation
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 123, as written.

TONY SLAPONBARKER, Vice President
Energy & Sustainability
Coffman Engineers
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 123.

SHAINA KILCOYNE, Energy and Sustainability Manager
Municipality of Anchorage
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 123.

PATRICE LEE, Citizens for Free Air
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of SB 123.

ACTION NARRATIVE

[3:32:10 PM](#)

CHAIR JOHN COGHILL called the Senate Special Committee on Railbelt Electric System meeting to order at 3:32 p.m. Present at the call to order were Senators Giessel, Gray-Jackson, Micciche, and Chair Coghill.

SB 123-ELECTRIC RELIABILITY ORGANIZATIONS

[3:33:04 PM](#)

CHAIR COGHILL announced consideration of SENATE BILL NO. 123, "An Act relating to the regulation of electric utilities and electric reliability organizations; and providing for an effective date."

CHAIR COGHILL stated that this is the fourth hearing on SB 123, including two joint hearings that were held with the House Energy Committee. The intention today is for RCA Commissioner Scott to review the process issues that were raised at previous hearings; discuss the difference between the RCA and state agencies adopting regulations; explain how SB 123 will intersect with the existing RCA tariff process; discuss the provisions in the bill that allow the RCA to modify standards and integrated resource plans; and discuss the pre-approval provisions in SB 123 for renewal versus expanded capacity.

He advised that he intended to open public testimony after the RCA PowerPoint presentation.

[3:35:16 PM](#)

ANTONY SCOTT, Commissioner, Regulatory Commission of Alaska (RCA), Anchorage, Alaska, said he would respond to the concerns raised in previous hearings and outline the commission's current practice and requirements relating to those concerns. He will also revisit some of the key bill principles that drive towards palatable, cooperative solutions. He acknowledged that some concern has been raised about modifying timelines in the bill, which seems reasonable. The RCA's main focus is to ensure that the bill passes so the process can move forward.

He referenced the point that Senator Micciche raised in an earlier hearing regarding reliability standards and the RCA's authorities under AS 42.05.291(c). He relayed that, to date, the RCA has not promulgated Railbelt-wide reliability regulations.

However, RCA Chair Pickett has made it clear that if the bill does not pass, the RCA will proceed to that process. He opined that everyone would agree that that approach would not be optimal. He characterized the RCA's regulatory process as "sticky" and relatively slow to respond as compared to the legislative process. He expressed hope that the bill moves forward so that the process outlined in SB 123 can be relied on and used.

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MR. SCOTT said he heard concern about the need to ensure that the processes outlined in SB 123 would be timely executed by the commission. In response, he pointed out that the bill makes it clear that the reliability standard is a tariff and will be filed as one. Therefore, the RCA has 45 days to accept, reject according to form and filing, or open a docket of investigation. If a docket is opened, the reliability standards would be decided within 270 days as per the timeline in existing statute, AS 42.05.175(b).

MR. SCOTT turned to Integrated Resource Plans (IRPs) and project pre-approvals. He said the bill contains language related to the RCA accepting, rejecting, or opening a docket of investigation to consider an IRP. He offered his belief that it is reasonable to specify an initial process or timeline and for the RCA to accept something without opening a docket of investigation. The existing statutory timelines are clear that once a docket is opened, the RCA has six months to make a final determination, he said.

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CHAIR COGHILL relayed a concern the Railbelt Reliability Council (RCC) voiced that the RCA might modify a proposal that is submitted before opening a docket. He asked for assurance that the RCA would provide feedback before opening a docket.

MR. SCOTT responded that if the RCA modifies anything, the commission is required to hold a hearing and that requires opening a docket. If the RCA wanted to modify reliability standards, it is very clear that the RCA must hold a hearing and have a docket of investigation that includes testimony. That is the RCA's standard approach to ensure that people are able to make their concerns known. He continued to explain that IRPs come to the commission as a petition for approval. He said it would not be unreasonable to specify that the RCA must accept an IRP, as filed, within a certain amount of time or open a docket

of investigation. He reiterated that under existing law, the RCA must make a final determination within six months.

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MR. SCOTT said he heard the concern about ensuring that the RCA does not make a modification to a standard or contents of an IRP that is not technically sound, which is totally reasonable. He reviewed the RCA's normal practices for tariff filings. When the RCA opens a docket of investigation, it has powers to set rates and establish reliability standards. Once the docket is opened and the RCA has made its ruling, the normal commission practice is to issue an order that requires the party to modify the tariff consistent with the commission's findings. The RCA also specifies a deadline for return. He said this is considered a compliance filing.

He said he appreciates that the language in SB 123 may raise concerns that the RCA would not necessarily need to do that. He explained that while the RCA does not need to send tariffs back for revisions, it has almost always been the commission's practice to do so. He said, if it's the legislature's desire, he didn't see any problem clarifying that an ERO has the opportunity to make revisions consistent with the commission's findings. However, it is important for the RCA to have a mechanism to ensure that the party will comply. He characterized it as a backstop in terms of the RCA's broader authority.

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SENATOR MICCICHE said the committee can discuss how an ERO filing fits into the tariff structure, but a new ERO with a traditionally strained relationship is different. He said he's concerned about the language 123 because this new effort is very important to all parties. He said he can imagine that the first rendition of a filing might be something the RCA wants to send back for amendments. However, the current law that allows the RCA to modify the filing without an appeal is a big problem. He described a hypothetical scenario in which the ERO presents a plan, the RCA amends it so significantly that the deal falls apart, and the ERO asks the legislature for a remedy.

He advocated for language that will provide an adequate process for an ERO and the RCA to "bounce something back and forth" without getting into the commission's formal process. That is imperative for this to be successful, said.

CHAIR COGHILL agreed with Senator Micciche.

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Representative Hopkins joined the committee.

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MR. SCOTT replied it's a valid concern but the question is how to design statutory mechanisms that ensure an outcome and clarify who has the final say. In terms of "back and forth dialogue," he recalled one provision of SB 123 would establish that the RCA had an ex officio seat on whatever governance structure an ERO established. The intent is to allow open and regular dialog in the ERO process to address any of the commission's potential concerns, he said. As he reads it, the bill provides a mechanism to ensure those conversations happen, while still providing certainty that decisions can be made and clarity as to who makes them.

SENATOR MICCICHE said he sees two approaches to solve the issue, which is to either provide a mechanism that allows "back and forth" discussions between the ERO and the RCA or remove the "must have by" date. He emphasized that six utilities are on the verge of something really successful, so the legislature must develop statutes that work regardless of the specific commissioners who serve on the RCA.

CHAIR COGHILL related his understanding that Mr. Scott has agreed that this is necessary. He expressed interest in ensuring that the language in the bill will allow discussions between the ERO and the RCA to address issues and concerns. However, at the end of the day, the RCA has to [have authority]. He said he was committed to finding statutory language to accomplish this.

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MR. SCOTT recalled earlier concern about ensuring that the RCA not arbitrarily dismiss an IRP developed by the ERO. He responded to the concern by saying that the RCA would give "due weight" to the process that led to the IRP and the weighting of various minority proposals when the RCA decides whether to investigate or approve an IRP. That is what the RCA already does, so it merely reflects the current process. It's entirely possible new things could arise that had not been considered or contemplated, he said. However, it's reasonable that the RCA not change things willy-nilly, he said.

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MR. SCOTT recalled earlier comments that the ERO should be able to ensure needed projects can be built by non-incumbents. For example, if Chugach Electric Association, Inc. is not able to

build a facility within its service territory, but an IRP identifies it as being necessary, a vehicle should exist to ensure that the project gets built.

He said he was not clear that is needed because the RCA already has the authority, after a hearing, to order construction of projects needed by the system. Nothing in statute prevents infrastructure from being owned and operated by a new utility. The RCA does not have a statute that says, "Within the Chugach Service Territory there is no other electric utility that can operate." However, the current statutes state that the commission should try to ensure that there aren't duplicative facilities. He said this is precisely not a duplicative facility so he was unsure of the necessity to create express authority.

MR. SCOTT said he was surprised to see language that's been circulated that would give an ERO the authority to require new facilities. If he were an incumbent utility, he would want to preserve the ability to appeal to the commission rather than rely on an ERO to determine what the utility must construct. In fact, there may be some due process concerns with a non-profit organization with police power to mandate what must be constructed, although he did not think that was the intent.

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CHAIR COGHILL said that issue has not surfaced as a concern. He guessed that would be part of an ERO's discussion and planning process and is something the RCA would consider. He did not think language to address that concern needed to be added to this bill.

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MR. SCOTT said he heard concern that interested parties, including the utilities, would not have a clear voice in any regulatory process the commission initiates. He assured the committee that the existing regulation practice provides for this. The RCA is different from most agencies in that the five commissioners consider all regulations in a public process and any private or informal discussions on proposed regulations are prohibited. When the RCA opens a regulation docket, the issues are considered, draft regulations are noticed, and the commission must respond to all substantive comments in public. Any subsequent changes require more public comment. The RCA's process provides ample opportunity for all parties to be heard, and each regulation requires three votes to pass. Further, it is not uncommon for the commission to receive proposed draft regulations to adopt and he anticipates the RCC will do that.

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SENATOR MICCICHE asked how often regulations are adopted with a simple majority and whether it was rare for the commission to have a split decision.

MR. SCOTT responded that he is aware of some regulation projects that had split decisions but it happens both ways.

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MR. SCOTT discussed the governance structure. He said the RCA recommends maintaining flexibility for the commission to approve EROs with different governance structures. This is needed for the backstop to be effective and it recognizes that the Railbelt may continue to change.

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MR. SCOTT turned to project pre-approval. He explained that project pre-approval is a determination of need for and suitability of a given project. It is not a determination that the cost of that project, whatever it turns out to be, is prudent and collectable in rates. The standards that the commission would use to determine the need for a given project include whether it is safe and if it is needed to provide safe, reliable, and adequate service. These are existing standards under AS 42.04.291. An IRP would help the commission make that decision, he said. The bill provides that project pre-approval can be requested outside of an IRP process, which is an important backstop because IRPs go stale, new events may occur, and it might be necessary to act in a hurry. However, there is no obligation to build anything that comes from an IRP.

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MR. SCOTT said a recent superior court ruling by Judge Lamoureux creates a need for this process. He said he would skip over this due to time constraints today, but he would provide a copy of the ruling to the committee. He said the IRP planning process and the large project pre-approval process will ensure that utilities get cost recovery. It will also provide safe harbor against unfortunate court decisions.

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MR. SCOTT said project pre-approval can happen outside an IRP, but since an IRP considers alternatives, it will basically "grease the skids." He said the strong language in the bill provides deference to any project that is consistent with an IRP. He noted that some suggestions have been made to modify the

scope of projects requiring pre-approval, clarifying that the commission would not be involved in routing or specific project siting.

He pointed out that although other states may identify the location of a transmission line, the RCA is not interested or involved in that process in Alaska. He noted that some interest has been expressed in clarifying the scope of what counts as a large project includes battery storage or reactive power devices. He said that is reasonable, as is the adjustment of appropriate transmission length from five miles to ten.

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CHAIR COGHILL said some concern about reliability and managing power fluctuations or interruptions arises at both ends of the Railbelt. There was also concern about investing in something that the bill would bar. He said he's looked for ways to provide some comfort that the utilities can take care of their constituencies while working in the ERO. He asked if one avenue would be to raise the issue with the ERO and put it in the planning process. Additionally, the RCA could open a docket to address the issue, based on recommendations from the ERO.

MR. SCOTT answered that the bill absolutely provides the avenue for any utility to come before the commission and say, "We need to do this." This can be done outside an IRP process. For example, a utility may have a project it thinks is necessary, even if the IRP does not think it is needed. He reiterated that the commission exists to provide an avenue for approval of such a project.

CHAIR COGHILL responded that when the utilities put themselves together in a reliability organization, they will have a reliability council that is bound by certain contractual agreements. It is up to them to seek flexibility, he said. He added that he'd try to find ways to address this in statute but if a reliability organization is approved under this statute and it becomes an RRC, the reliability council must specifically state their needs. He said he wants to send a signal that this should not be the only place it is taken up. He asked the record to reflect that it is the committee's intention to find suitable language.

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MR. SCOTT addressed concerns about scope of projects requiring project pre-approval, especially if the project is refurbishing something that already exists. He said that seems reasonable,

but you don't want a refurbishment clause to swallow the process. He cited the example of resource performance reviews of the Clean Air Act. He suggested that fine distinctions would be better addressed in regulation. Although the commission does not currently have a definition of what constitutes refurbishment, the RCA could be directed to establish one. It would allow the commission to collect information to help it determine where it is reasonable to draw those lines and craft language that is consistent.

CHAIR COGHILL said he's tried to protect the authority of the ERO but he also wants the public to understand the interaction between the ERO and the RCA as the regulator. Many approaches can be taken, but his goal is to provide clarity as to the respective roles.

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MR. SCOTT advised that the last slide in the presentation reiterates his previous testimony about the incentives for collaborative efforts in SB 123. He related that as currently drafted, the RCA would not delegate its authority for reliability and planning to the ERO. However, the commission would assign most of the work to the ERO and create incentives for the reliability organization to replicate public interest weighing and assessments the RCA would engage in so the commission could easily adopt them.

CHAIR COGHILL said this tells the utilities to collaborate, develop a workable plan, and the RCA will work with it. He said this is a new authority because the legal structure calls for collaboration under the ERO, but the RCA will still be part of the process.

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SENATOR MICCICHE opined that public pressure provides adequate motivation for these organizations to succeed in this effort. He said he was pleased to hear that the commission would not create redundant work when talent exists in the organizations, because the utilities had that fear. He commented that a new technical branch of the RCA is needed.

CHAIR COGHILL said he was pleased with the confidence in this structure.

He again highlighted that the Southeast Alaska Power Agency (SEAPA) has its own structural grid but has still voiced concern that it could be affected by the bill even though Legislative

Legal Services has said the bill clearly does not apply to SEAPA. He asked Mr. Scott to give his perspective.

MR. SCOTT said to form an ERO requires the interconnection of at least two utilities, one or which is subject to the RCA statutes. None of the SEAPA utilities are subject to AS 04.240.291, which is the RCA statute governing quality of service. He said he cannot see any possible way that there would be nexus with SEAPA. He added that the bill is clear that for an electric system that requires an ERO, there must be interconnected entities. They are not necessarily public utilities, but must comply with the reliability requirements under this statute. That's very important, he said, because an entity that is exempt from the statute can't be part of an interconnected system. For example, Cook Inlet Region, Inc. (CIRI) is exempt, but because it interconnects with the system, it would be subject to the reliability requirements of the system as a whole.

CHAIR COGHILL stated, "At this point, SEAPA is not rate regulated."

MR. SCOTT confirmed that SEAPA is not subject to the provisions that would require an ERO. However, if SEAPA wanted to form an ERO, it could apply and the RCA would consider it.

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SENATOR MICCICHE asked if this would prevent a utility from deciding to go out to its membership to no longer be regulated by the RCA.

MR. SCOTT answered no.

SENATOR MICCICHE related his understanding that the utility would still need to meet the reliability standards because the utility is interconnected to the transmission network, but every other process will no longer be under the RCA's jurisdiction.

MR. SCOTT answered that none of the ratepaying processes would be subject to the RCA. For example, if a co-operative chose to no longer be regulated, it would still have a certificate and some of the RCA statutes would apply. However, the co-operative would be exempt from the rules requiring tariff filings and approval for tariff changes.

[4:18:08 PM](#)

CHAIR COGHILL asked the record to reflect that SEAPA is not regulated and not part of the requirements in SB 123.

MR. SCOTT agreed that is correct.

[4:18:50 PM](#)

CHAIR COGHILL opened public testimony on SB 123.

[4:19:47 PM](#)

MIKE CRAFT, Owner/Operator, Delta Wind Farm, Fairbanks, Alaska, stated that since the wind farm went online 13 years ago as the first grid-scale wind project on the Railbelt grid, it has been limited to two megawatts, in part due to integration of the power. He said SB 123 is important because it will open the grid to renewable energy projects on the Railbelt grid. He added that he does have concern with the lack of efficiencies in the current power distribution system due to pancake transmission fees and up to 40 percent in line loss.

He said SB 123 will diversify fuel sources, which will improve reliability and improve energy security related to service interruption due to snow slides and earthquakes. He pointed out that the bill does not address the state's aspirational energy policy, and acknowledged that it might not be the right mechanism to do so. He offered his belief that public benefit cannot be measured by cost alone since the benefits must also consider security and environmental attributes. He said Fairbanks and North Pole suffer from air pollution as a result of thermal inversion, so bringing renewable energy online could help alleviate this problem. He said independent power producers have been waiting to move renewable energy projects forward for ten years. During this time, Fairbanks has developed technology and the workforce to do the work, so the community currently has shovel-ready projects. In closing he said that SB 123 might be the way for these projects to happen.

[4:24:17 PM](#)

JOEL GROVES, Member, Fishhook Renewable Energy (FRE), Anchorage, Alaska, stated that FRE is an independent power producer (IPP) that has worked on new hydropower in Southcentral Alaska since 2006. He said he believes that the six utilities should be commended for their efforts to address the Railbelt energy issues. The [proposed] RRC represents a real milestone since six utilities have come together to reach agreement, but it also highlights the RRC structural deficiencies that still need to be addressed.

MR. GROVES said SB 123 is vital to move some reforms forward. From the IPP perspective, market conditions remain decades behind the Lower 48; IPPs lack open access transmission tariffs, non-discriminatory access, and independent governance of an integrated regional grid. He characterized the state's aspirational energy policy as "toothless." From a public interest perspective, the Railbelt grid has excess generation capacity, deficient transmission capacity, and inefficient operation of its existing assets. This results in higher rates in the Railbelt and statewide since the Power Cost Equalization Program subsidies are based on Railbelt and Juneau rates for electricity. He pointed out that when the Railbelt suffers, everyone in the Bush also suffers. SB 123 will benefit everyone, he said. In closing, he endorsed Mr. Craft's comments.

[4:27:42 PM](#)

BERNIE SMITH, representing self, Anchorage, Alaska, spoke in support of SB 123. He agreed with Commissioner Scott that the bill needs to move forward. He said he has been involved in the Railbelt issues since the late 1990s, serving as a commissioner on the RCA, as staff to the Energy Policy Task Force in 2003, and holding other positions in the energy field. He said the bill and the RCA letter dated January 15, 2020 work hand-in-hand to allow the six Railbelt utilities to unite to create an efficient electric reliability group. All six utilities have signed a Memorandum of Understanding (MOU) to form the RRC with 12 shareholders. SB 123 will add an initiative for the utilities and stakeholders to continue to work together, he said. It will give the RCA power to oversee and ensure that the Railbelt electric customers have a reliable system. He agreed with an earlier testifier that in the past five years, the Railbelt utilities have seen great improvement in their working relationships. He commended the committee for helping to make this happen.

[4:30:53 PM](#)

BRIAN MURKOWSKI, Consultant, Ocean Renewable Power Corporation Anchorage, Alaska, stated that he has 25 years of local energy and finance experience and he encourages the committee to pass SB 123 in its original form. He expressed concern that the committee could get bogged down with amendments and the bill could lose momentum. SB 123 will provide needed stability in pricing, reliability, and security, he said. He echoed previous testimony from Mr. Craft and Mr. Smith. This bill will allow new entrants to contribute to the available power grid and reduce the cost of power to consumers. The governance structure may not be ideal, but those details hopefully could be negotiated by

stakeholders outside the legislature. He said Alaska has the highest cost of energy in North America and this bill could help reduce those costs. He offered his belief that inexpensive power will positively benefit consumers and the economy and should be encouraged.

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TONY SLAPONBARKER, Vice President, Energy & Sustainability, Coffman Engineers, Anchorage, Alaska said he has been a member of the Rural Energy for America Program (REAP) for 10 years and participated in the policy committee. He is speaking as a lifelong Alaskan who wants the state to be successful. SB 123 is an excellent start to modernize the Alaska grid, since it will provide diversification of Alaska energy production, improve security and geographical distribution, while also providing for multiple fuel sources. Further, it will allow the most efficient power generation to be used at any one time. This should help save money, provide better access to the grid for IPPs, and reduce pollution. It could help assist with backup power and allow utilities to share resources across the grid. He related several examples, including wind power on Fire Island, to illustrate his point.

[4:36:43 PM](#)

SHAINA KILCOYNE, Energy and Sustainability Manager, Municipality of Anchorage, Anchorage, Alaska, stated that the Municipality of Anchorage assembly passed the Anchorage Climate Action Plan, which is a road map for reducing greenhouse gas emissions and preparing for the impacts of climate change. This effort includes work to reduce energy use, improve public health, promote energy independence, strengthen the economy, and build more livable and resilient communities. The MOA recognizes it is limited in its efforts to meet emission goals so it readily works with utilities as well as state and regional partners. In its climate action plan, MOA seeks to support a system operator to provide regional planning, improve system efficiency, and increase opportunities for independent power producers. While an ERO is different than a system operator, SB 123, as written, will get MOA closer to its energy goals by requiring regional planning, improving system efficiency, and increasing opportunities for independent power producers. It is an important step forward in bringing more stable-priced non-fuel dependent renewable energy to Alaskans. Southcentral Alaska is very fortunate to have moderately-priced natural gas, with three new natural gas plants generating over 80 percent of Anchorage's electricity. Even though the energy efficiency of these new plants reduces fuel usage, it is critical to have collaboration

and regional planning with the utilities to bring on more renewable energy, which is something the Railbelt utilities recently have been working towards. SB 123 will help achieve this more quickly and this will benefit Anchorage ratepayers.

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PATRICE LEE, Citizens for Free Air, Fairbanks, Alaska, stated that the Interior needs affordable, reliable, and renewable energy because of challenges associated with poor air quality that leads to health issues. Her organization is counting on SB 123 to bring a more reliable energy system to the state and reduce energy costs to Interior residents. She expressed concern that a five member team might not be large enough to accomplish the work necessary to be successful.

CHAIR COGHILL agreed that SB 123 is designed to obtain as much collaboration as possible.

[SB 123 was held in committee with public testimony open.]

[4:45:45 PM](#)

There being no further business to come before the committee, Chair Coghill adjourned the Senate Special Committee on Railbelt Electric System meeting at 4:45 p.m.