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ALASKA CONSUMER ADVOCACY PROGRAM

P.O. Box 1093 Anchorage, Alaska 99510 272-6355

May 2, 1982

Senator Eob Mulcahy
Chairman - Senate Labor and Commerce Committee
And Members of the Senate Labor and Commerce Committee

Enclosed you will find a packet of consumer letters and copies of two motions filed by ACAP with the Alaska Public Utilities Commission, related to an existing APUC policy which requires intervenors petitioning to intervene in APUC proceedings to commit to assuming a share of hearing costs, before intervention is granted. The APUC is proposing to adopt a rule on this issue.

ACAP will be forwarding a letter of explanation of this issue Monday, May 3, 1982 to you and members of your committee, but in responding to a request by the sponsor of SB 883, which is currently assigned to your committee, wanted you to receive background information as soon as possible.

A Project of the Alaska Public Interest Research Group

Sandy Richards
Director

To: Senator Patrick Rodey
From: Sandy Richards
A.C.A.P.

April 22, 1982

To the Alaska Public Utilities Commissioners:

We are writing to you about the allocation of APUC hearing costs to ACAP (U-81-32 order #5, U-81-48 order #11). As you know, ACAP intervened in the recent GVEA rate case on the behalf of the Fairbanks Consumer Advisory Committee (FCAC). We chose to become involved in the rate hearing because we felt that the GVEA management's proposals were poorly or improperly constructed and did not reflect current changes in costs or the best interests of the GVEA membership. The information that we were able to present, including GVEA management practice, a GVEA membership use and interest profile, allocation of fuel costs, and an alternative rate design, we believe had a positive and important impact on the outcome of the hearing. We were fortunate to have the assistance and to be able to draw upon the resource of ACAP in addition to the many volunteer hours worked by our own membership.

We believe that any consumer or consumer group who can bring pertinent questions and factual data that may add significantly to the overall quality and information in a APUC hearing should be able to do so as an intervenor. As a community based organization we have been able to tap many volunteer resources within our community. Our work in the most recent GVEA case would have been severely handicapped without the volunteer effort and support of many people. As such we believe that it is possible for the FCAC to be capable of intervening in APUC hearing when appropriate even without the assistance of ACAP or a similar agency.

Furthermore, we believe that the APUC has the responsibility to maximize consumer and consumer group input. Commission staff because of their close utility connections and responsibilities to the Commissioners are an inadequate vehicle for consumer representation.

We feel that the assessment of hearing costs to ACAP in the GVEA and MEA cases sets a most dangerous precedent, which would in effect eliminate or severely restrict consumer group input in future APUC hearings. While we as a volunteer group could generate the support to present material to the Commission, it would be nearly impossible to raise funds to cover hearing costs. The probability that with each issue raised the over all costs and

"our share" of the hearing costs would increase could restrict our ability to raise important issues.

We urge you to avoid setting this precedent and to not assess any hearing costs on ACAP.

Yours truly,

Karen E. Eddy
Karen E. Eddy
FCAC Chairman

April 22, 1981

To the Alaska Public Utilities Commissioners:

We are writing to you concerning the rule changes proposed in docket number U-79-81. As you know, the proposed rule change would require that any party who petitioned to become an intervenor in an APUC hearing would be required to indicate a willingness to assume a portion of the hearing costs.

As a community based consumer group, we believe that we have and can continue to give valuable input as an intervenor in APUC hearings. Much of our ability to do so is based on volunteer work and support from our membership. Should the Commission adopt this rule we believe that it would virtually eliminate consumer group input as intervenors in any APUC hearing. While we can draw upon volunteer resources to develop our material and collect information, it would be most difficult to raise funds to pay for Commission hearing costs. The probability that each issue we raise in a hearing could increase our "share" of the costs would be most constraining.

The utilities involved in hearings obviously cannot represent an independent consumer view in addition to their own proposal. Commission staff, with their responsibilities to the Commissioners and close working relationships with utility staff, is also incapable of adequate consumer representation. For the Commission to have all pertinent information on which to base a decision balancing everyone's interests, it is important that consumers and consumer groups be able to participate fully in hearings. The effect of this rule would be to eliminate that possibility, except as casual public witnesses.

We oppose this rule change and urge that the Commission hold a public hearing on the proposed change so that all interested parties may give testimony on the proposed change.

Yours truly,

Karen E. Eddy
Karen E. Eddy
Fairbanks Consumer
Advisory Committee

April 22, 1982

Carolyn S. Guess, Chairman
Alaska Public Utilities Commission
1100 MacKay Building
338 Denali Street
Anchorage, AK 99501

Dear Chairman Guess:

We are very concerned about the direction the APUC is headed in relation to public interest. Recently we received copies of an order assessing costs of the MEA and GVEA rate hearings to the Alaska Consumer Advocacy Program (ACAP). We have also received a copy of the proposed regulation which would require that an intervenor must agree to pay a portion of rate hearing costs.

The Public Utilities Regulatory Policies Act (PURPA) gives the public the right to intervene in a rate hearing. Assessing the public for participation as an intervenor defeats the purpose of PURPA, which namely is to give the public a greater opportunity to participate. Public participation can be extremely beneficial for all parties concerned.

Ultimately the public bears the costs of APUC hearings, whether through taxation or utility rates. However, if an intervenor is assessed the general public may not bear the cost but rather a small group of consumers could ultimately assume the burden whereas the entire general public may benefit from the intervention.

Our committee, the Mat-Su Valley Consumer Advisory Committee, could serve as an example of our point. Our committee is strictly a volunteer organization. We do not receive governmental funds, nor do we assess dues or membership fees. Any expenses incurred are absorbed by a small group of individuals. If ACAP had not existed during MEA's last rate case we could not have participated to the extent we desired. If the APUC were to adopt the proposed regulation our committee alone could not participate as an intervenor in any future rate hearings.

To adopt a blanket regulation requiring all intervenors to agree to cost assessment would definitely limit public participation. Such a regulation would discriminate against a large segment of the public since only those who have the financial resources to absorb the cost, the amount of which cannot be predetermined, would be able to apply the rights granted the public through adoption of PURPA. If the APUC chooses to allocate hearing costs to public intervenors possibly judicial proceedings will be the only avenue left open to the potential public intervenor.

We strongly urge the Commission to reconsider its position regarding assessing hearing costs to public intervenors.

Sincerely,

Wm. Harvey Bowers
Wm. Harvey Bowers

Sandra L. Bowers
Sandra L. Bowers

cc: Commissioners Weatherly, Knowles, Hall and Snowden
Representative Pat Carney

APRIL 22, 1982
BOX 2069
KODIAK, AK. 99615

APUC
1100 MACKAY BLDG.
338 DENALI STREET
ANCHORAGE, AK. 99501

APR 26 REC'D

DEAR COMMISSIONERS:

I AM THE CHAIRMAN OF THE CONSUMER ADVOCACY COMMITTEE HERE IN KODIAK AND AM WRITING FOR ALL OUR MEMBERS OF THE COMMITTEE.

WE ARE AGAINST ANY AND ALL COSTS BEING ASSESSED ACAP FOR BEING AN INTERVENOR ON BEHALF OF WE THE CONSUMERS WHEN APUC IS ASKED TO HOLD A PUBLIC HEARING ANYWHERE IN THE STATE OF ALASKA WHEN SOME UTILITY IS TRYING TO RIP US OFF AND NOT GIVE ADEQUATE SERVICE. WE ARE ALSO AGAINST ANY OTHER CONSUMER INTEREST INTERVENORS BEING ASSESSED COSTS OUR STATE PAYS YOU PEOPLE HIGH SALARIES TO DO THIS AND YOU COULD CUT DOWN ON SOME OFFICE HELP IN YOUR BUDGET AND ALLOW THOSE MONIES TO GO FOR PREPARATION OF TRANSCRIPTS AS WELL AS TRAVEL FOR COMMISSIONERS AND STAFF. WE KNOW WHAT HIGH SALARIES THE ATTORNEYS ON THE APUC GET SO YOU COULD PAY SOME COSTS YOURSELVES OR TAKE A CUT IN PAY AND PUT THE OTHER MONIES IN A TRAVEL FUND AND PUBLIC HEARING FUND. WE KNOW THE STATE GIVES YOU A GOOD SIZED BUDGET SO A CUT IN PAY WOULD BE IN ORDER.

WE WANT SENATE BILL 883; SECTION 1. AS 42.05.651 TO BE PASSED AS WE FEEL THIS IS YOUR RESPONSIBILITY AND NO ONE ELSE'S.

OUR CAC GROUP IN KODIAK WERE VERY THANKFUL FOR THE ACAP PEOPLE FOR THEIR HELP WITH US IN THE GLACIER STATE TELEPHONE COMPANY'S RATE INCREASES AND WE PLAN TO USE THEM AGAIN AS WE HEARD KODIAK ELECTRIC ASSOCIATION IS GOING TO ASK FOR A RATE INCREASE PRETTY SOON. THE ACAP PEOPLE DO A THOROUGH JOB ON INVESTIGATING THINGS WHERE THE APUC KIND OF SLOUGHS US OFF.

AGAIN WE ARE AGAINST ANY MONIES BEING ASSESSED THE ACAP BOARD AND ARE LETTING OUR SENATOR KNOW TOO.

THANK YOU FOR YOUR CONSIDERATION IN THIS MATTER.

SINCERELY,

Lena Lee Arndt

CHAIRMAN KODIAK
CAC

Ms. Kay Paddon
Box 41143
Anchorage, Alaska 99509

April 23, 1982

Mr. John Farleigh
Executive Director
Alaska Public Utilities Commission
1100 MacKay Building
338 Denali Street
Anchorage, Alaska 99501

Re: Proposed Rule to Require Consumers
Agree to Accept Hearing Costs Before
Hearings

Dear Mr. Farleigh:

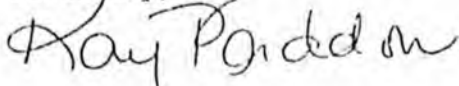
I am Kay Paddon, Chairman of the Anchorage Consumer Advisory Committee, which operates unfunded in the public interest. I am writing on behalf of this group to express my concern regarding this proposed rule. If such a ruling is to be ratified it would work a hardship on the ACAP and all consumer members of the public who appear to testify at Utility Hearings in defense of their rights. I cannot but see this as a move by the Commission to exclude the public and individual testimony from all hearings.

Certainly any information brought by testimony from the public to a Hearing is useful to the Commission in their deliberation on cases now or in the future. Since consumers are the reason for the existence of a State funded Commission before their voices can be heard. On the basis of one sided testimony--that of the utility company--it is hard to see how any impartial judgement can be made or the ends of justice served.

If the APUC is thus predisposed in favor of the Utility Companies it would be interesting to know what the word "Public" in its title might signify. "Public", according to my dictionary, is "of, belonging to or concerning the people as a whole". If my understanding of this proposed rule is incorrect, I would welcome clarification from you and some further basic information.

As chairman of the Alaska Consumer Advisory Committee, I request a full Public Hearing on this proposed rule, before adoption.

Sincerely,



Kay Paddon

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STATE OF ALASKA

THE ALASKA PUBLIC UTILITY COMMISSION

Before Commissioners:

Carolyn S. Guess, Chairman
Marvin R. Weatherly
Susan M. Knowles
Stuart C. Hall
Diana E. Snowden

In the Matter of Corrective)
Technical and Miscellaneous) U-79-81
Changes.)
_____)

STATEMENT OF VIEWS AND REQUEST FOR HEARING

On March 31, 1982, the Alaska Public Utilities Commission (Commission) noticed additional proposed changes to its regulations in the above docket opened last fall to process a number of proposed changes to their regulations.

Among those additional proposed changes, is listed an addition to the Intervention section, 3 AAC 48.110(b)(8), which would require that a petition to intervene in Commission proceedings must state in the petition:

The willingness of the petitioner to accept an equitable portion of the costs allocable under AS 42.05.651 or AS 42.06.710 and 3 AAC 48.157.

The Commission's notice accompanying this proposed rule change states that:

...the Commission has no present plans to hold an additional* public hearing on this subject prior to consideration of the adoption of these proposed regulations unless sufficient public interest warrants.

The Alaska Public Utilities Commission, upon its own motion or at the instance of any interested person, may adopt the proposals as permanent regulations substantially as described above without further notice or may decide to take no action on them.

*ACAP recognizes that public hearings have been held in this docket on other proposed rule changes, but not on this particular proposed change.

The Alaska Consumer Advocacy Program (ACAP) objects to the proposed change to the Intervention section of the regulations, believing that a consumer or consumer group wishing to intervene in a utility case pending

before the Commission, upon reading the proposed rule, would most likely forego intervention, in the face of an undefined amount of costs that could conceivably range from a few hundred to several thousand dollars.

ACAP believes, after a preliminary survey of Consumer Advisory Committee members around the State and in Anchorage, that the adoption of this proposed rule would have a devastating effect on future consumer decisions to intervene in utility cases--and thus on consumer access to the utility case decision-making process.

After only a cursory investigation of case law and Public Utilities Commission practice in the rest of the United States, ACAP has learned that the practice of charging consumer intervenors hearing costs is being replaced by the practice of awarding consumer intervenors costs to reimburse them for their expenses of participation in utility cases as parties.

ACAP believes this proposed rule is of such significant moment to utility consumers, that a public hearing on this proposed change is definitely warranted, and hereby requests a public hearing be held prior to adoption of the proposed rule. ACAP also believes that this issue rises to the level of a serious public policy question and urges the Commission to separately notice this issue to the community and appropriate officials.

ACAP recognizes the Commission's statutory authority to allocate hearings costs under AS 42.05.651. We further recognize that phrases in that statute such as "just under the circumstances", "ability to pay", and "mitigating circumstances" all give the Commission discretion in finally allocating a small or no portion of hearing costs, to consumer intervenors once a proceeding is over. However, that is precisely ACAP's objection to this new proposed change. Up front, at the beginning of a case, in the initial petition to intervene, a consumer or consumer group has to commit blindly to a share of undetermined costs and rely on any future-constituted Commission's discretion "after completion of a hearing or investigation" (AS 42.05.651), so long as this rule might be in effect.

ACAP, last of all, believes that the broad discretion granted under the Commission's statutory authority to allocate costs could operate to allow adoption of a regulation amendment clearly stating that individual consumers, or consumer groups, shall not be allocated hearing costs.

ACAP therefore in summary:

1. Registers its objection to this proposed addition to Commission's regulations at 3 AAC 48.110(b)(8); and,
2. Requests separate notice of and hearing upon this proposed rule change.

DATED this 22nd day of April, 1982

Respectively submitted:

By: Sandra L. Richards
Sandra L. Richards
Director
ALASKA CONSUMER ADVOCACY PROGRAM

STATE OF ALASKA

THE ALASKA PUBLIC UTILITIES COMMISSION

Before Commissioners:

Carolyn S. Guess, Chairman
Marvin R. Weatherly
Susan M. Knowles
Stuart C. Hall
Diana E. Snowden

In the Matter of filing of a)
Tariff Revision, Designated as)
TA28-13, by GOLDEN VALLEY ELECTRIC) U-81-48
ASSOCIATION, INC., for and)
Rate Redesign)

In the Matter of the Filing of a)
Tariff Revision, Designated as)
TA22-18, by MATANUSKA ELECTRIC) U-81-32
ASSOCIATION, INC., for an)
Interim and Permanent Rate)
Increase and Rate Redesign)

MOTION TO ENLARGE TIME

On March 12, 1982 the Alaska Consumer Advocacy Program (ACAP) filed a Petition for Reconsideration of Order No. 5 in Docket U-81-32 and Order No. 11 in Docket U-81-48, in which the Commission allocated hearing costs to ACAP of \$818.15 and \$5,134.81, respectively. In its petition, ACAP requested a hearing pursuant to AS 4.05.651, in addition to requesting reconsideration of allocated costs.

On March 24, 1982, the Alaska Public Utilities Commission (the Commission) granted a hearing:

"In view of the public policy questions raised in ACAP's petition...

and, "...the Commission believes that it would be in the public interest for a public hearing to consider the allocation of costs in these proceedings." (Page 2, U-81-32 (6); U-81-48(12).

The Commission also stayed payment of hearing costs by ACAP, pending completion of its reconsideration of the issues in this proceeding. In its "Order Establishing Date For Public Hearing on Petition for Reconsideration of Orders Allocating Costs to Intervenor Alaska Consumer Advocacy Program", the Commission further established a briefing schedule calling for a supplemental brief by ACAP due not later than 4:00 pm, April 9, 1982. The Commission further established April 20 and 30, 1982 as due dates for supplemental argument by MEA, GVEA or staff and a final reply brief by ACAP, respectively. The Commission further ordered May 6, 1982, as the date for public hearing on the issue of allocated costs.

On April 2, 1982, the Commission, in its Order No. 11, U-81-52, established May 5 and 6, 1982 as the date for public hearings for the Chugach Electric Association (Chugach) request for an Interim and Permanent Rate Increase, as well as establishing a May 10, 1982, beginning date for presentation of direct cases regarding the Chugach permanent rate increase request. (It is ACAP's understanding that 8 days have been calendared by the Commission for the Chugach rate case, taking us to May 18, 1982.) ACAP as an intervenor in U-81-52 bears the responsibility of thorough preparation for those hearings scheduled in that docket.

However, ACAP also believes the Hearing Cost Allocation issue is a serious public policy question with potentially devastating effects on future consumer decisions to intervene in Commission utility decision-making proceedings. As a foundation issue to consumer participation, it requires full and precise review and briefing by all parties.

A coincident hearing schedule for both the Hearing Cost Allocation issue and the Chugach rate case inflicts a burdensome and conflicting work load and schedule on our consumer office. (It is now ACAP's understanding that the Commission also has a schedule conflict with the May 6 hearing date, pursuant to telephone conversation with Virginia Rusch, Esq., APUC staff counsel.)

In addition ACAP notes with serious concern and objection that, since filing our "Request for Hearing and Petition for Reconsideration of Orders Allocating Costs to Intervenor Alaska Consumer Advocacy Program (ACAP) on March 12, 1982, the Commission has on March 31, 1982, noticed in its "Additional Proposed Changes in the Regulations of the Alaska Public Utilities Commission" an addition to 3 AAC 48.110, entitled Intervention, which would require that a petitioner for intervention must state:

" (b) (8) the willingness of the petitioner to accept an equitable portion of the costs allocable under AS 42.05.651 or AS 42.06.710 and 3 ACC 48.157."

The Supreme Courts of some states have begun ruling in favor of awarding costs of intervention^{to} consumer or public interest intervenors in a trend opposite this proposed regulation. (Consumer Lobby Against Monopolies v. PUC, 25 Cal 3d 891 (1980).) The notice accompanying this proposed change does not announce or contemplate a public hearing; invites comment through May 1, 1982; and , further announces that:

"The Alaska Public Utilities Commission, upon its own motion or at the instance of any interested person, may adopt the proposals as permanent regulations substantially as described above without further notice or may decide to take no action on them."

While ACAP has a specific interest in seeing hearing costs for U-81-48 and U-81-32 either reduced or eliminated from the final orders in those proceedings, ACAP also has a deep concern that the rules and regulations of the Commission do not operate to in anyway foreclose consumer input to its decisions.

Accordingly, ACAP respectfully moves the Commission to re-set the hearing date for the Hearing Cost Allocation issue to some date convenient to the Commission, beginning with the week of May 24, 1982, and; ACAP further moves the Commission to adopt an ammended briefing schedule appropriate to that later hearing date, and; ACAP further moves the Commission to consider delaying adoption of the proposed change in its regulations to 3 AAC 48.110 (b) and consolidating the issues of costs specifically allocated to ACAP in U-81-48 and U-81-32 with consideration of the adoption of proposed paragraph (8) to be added to 3 AAC 48.110 (b), or, in the alternative, that the Commission delay adoption of the proposed change in Intervenor regulation, pending the results of the hearing on costs allocated to ACAP in U-81-48 and U-81-32.

DATED this 9th day of April, 1982.

ALASKA CONSUMER ADVOCACY PROGRAM

By:

Sandra L. Richards

Sandra L. Richards
Director

Am Jur. references. — 18 Am. Jur., Electricity, § 34; 43 Am. Jur., Public Utilities and Services, §§ 194, 195, 205.

Sec. 42.05.651. Expenses of investigation or hearing. After completion of a hearing or investigation held under this chapter, the commission shall allocate the costs of the hearing or investigation among the parties, including the commission, as is just under the circumstances. In allocating costs, the commission may consider the results, ability to pay, evidence of good faith, other relevant factors and mitigating circumstances. The costs allocated may include the costs of any time devoted to the investigation or hearing by hired consultants, whether or not the consultants appear as witnesses or participants. The costs allocated may also include any out-of-pocket expenses incurred by the commission in the particular proceeding. The commission shall provide an opportunity for any person objecting to an allocation to be heard before the allocation becomes final. (§ 6 ch 113 SLA 1970)

Sec. 42.05.661. Application fees. With each application relating to a certificate the applicant shall pay the commission a fee of \$50 which shall be deposited in the general fund of the state. (§ 6 ch 113 SLA 1970)

Sec. 42.05.671. Public disclosure of information. Facts and information in the possession of the commission are public, and reports, files, books, accounts and papers of every nature in its possession except records which by regulation are designated to be of a nonpublic or privileged nature are open to public inspection at reasonable times. However, a person may make written objections to the public disclosure of information contained in an application, report or document filed under the provisions of this chapter or of information obtained by the commission under the provisions of this chapter, stating the grounds for the objection. When an objection is made, the commission shall order the information withheld from public disclosure if the information would adversely affect the interest of that person and is not required in the interest of the public. (§ 6 ch 113 SLA 1970)

Sec. 42.05.681. Validity of certain certificates. No certificate issued before July 29, 1968, to a public utility for the generation, transmission, or distribution of electric energy and power, or for the furnishing of telecommunications may be considered as terminated, or voided, for the sole reason that the utility did not or would not produce an annual gross income in excess of \$25,000. (§ 6 ch 113 SLA 1970)

Sec. 42.05.691. Utility classes. The commission may by regulation provide for the classification of public utilities based upon differences in annual revenue, assets, nature of ownership and other appropriate distinctions and as between these classifications, by regulation, provide for different reporting, accounting and other regulatory requirements. (§ 6 ch 113 SLA 1970)

Section 701. J 711. J

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EXAMPLE FOR FIGURING FWW SALARY:

Week 1 - 115 hours worked and \$750 bonus.

Week 2 - 120 hours worked and \$875 bonus.

Weekly guarantee - \$290/week (hourly minimum - \$5.80)

WEEK 1

\$290 (guarantee) plus \$750 (bonus) = \$1040 divided by 115 hours = \$9.04 hourly rate.

115 hours worked minus 40 (regular hours in a workweek) = 75 (overtime hours)

75 divided by 2 = 37.5 (extra hours paid) + 115 hours worked = 152.5 payable hours.

152.5 (payable hours) X \$9.04 = \$1378.60 TOTAL FOR FIRST WEEK.

WEEK 2

\$290 (guarantee) plus \$875 (bonus) = \$1165 divided by 120 hours = \$9.71 hourly rate.

120 hours worked minus 40 (regular hours in a workweek) = 80 (overtime hours)

80 divided by 2 = 40 (extra hours paid) + 120 hours worked = 160 payable hours.

160 (payable hours) X \$9.71 = \$1553.60 TOTAL FOR SECOND WEEK

TOTAL PAYCHECK FOR TWO WEEKS WORKED ON THE NORTH SLOPE WOULD BE \$2932.20 - *if income is low*

NOTE: HOURLY RATE CAN BE HIGHER THAN BUT NEVER LOWER THAN HIS \$5.80 MINIMUM.
IN OTHER WORDS, IF HIS HOURS WORKED EQUALED LESS THAN 40, HIS HOURLY
RATE WOULD FALL NO LOWER THAN \$5.80.

ADDITIONAL INCOME

\$500 per month isolated location (approx)

900 per month Alaskan Allowance

\$1400 TOTAL divided by 2 = \$700

TWO-WEEK PAYCHECK FOR NORTH SLOPE	-	\$2932.20
TWO-WEEK ADDITIONAL INCOME	-	<u>700.00</u>
		\$3632.20

5. Not allowing the FWW plan to be used increases the cost of services to many industries including the oil industry in this State. This cost will be passed directly onto the customer and will not result in increased pay for the worker. For example, if an oil company wishes to have service performed at a rig in the Beaufort Sea and the employees are called out to do a certain job no one knows exactly how long it is going to take. If the oil service company has to charge the customer more to pay standby time to the employee, then the oil company will have to pass that increase onto the customer at the gas pump. Under the FWW plan, service companies routinely allow up to 96 hours free standby time if their employees have to wait out at the job site. Without the FWW plan, such free time would be cut to only 12 or 24 hours. The employees who go out to an oil rig and find themselves with an unexpected delay under the FWW plan are paid up to 22 hours a day even though they may be sleeping or off duty. Without the FWW plan they would simply be paid their straight 8 hours a day and not paid for sleeping or off duty time.

6. 29 U.S.C. § 203 (Fair Labor Standards Act) in Federal law allows the flexible work week and below payment plans. Under s. 63 of 29 U.S.C. § 207 numerous cases and examples are given.

ARGUMENTS

Section (d)(1) of 8 AAC 15.100 should be annulled in order to allow the use of a flexitime work schedule in Alaska for the following reasons:

1. This will bring Alaska law into conformance with the Federal Law. 29 C.F.R. 778.114 allows the fluctuating work week payment method to be used as long as it does not result in paying less than the minimum wage to any employee.

2. By allowing employees to have a certain guaranteed amount of pay each month, it will make it easier for the employees to budget their income on a regular basis and to make applications for house loans, car loans and loans for other items which require a basic nonfluctuating income.

3. The fluctuating work week (FWW) avoids having an employee face the possibility of varying income and the difficulties in budgeting his own income and expenses.

4. For those employees who work a one week on one week off or similar schedule, the FWW plan assures him that he will be paid a certain amount of dollars in the event he is sick for a week and not covered by workmen's compensation. Otherwise the employee might be on R&R one week, get sick during his normal work week, be on R&R the next week and be faced with a three week period zero income if he is not on the FWW plan.

Flex-time law assures 3-day weekends

by Susan Andrews
Times Writer

The state's new flexible work week law promises dreamy three-day weekends for employees but nightmares for personnel managers who have to juggle the schedules.

The law, signed by Gov. Jay Hammond last week, allows employees to work up to 10 hours a day, four days a week without overtime pay. Any hours worked over 10 hours a day or 40 hours a week would require overtime.

The voluntary agreements between employees and employers must be filed with the state Department of Labor, which must then issue a certificate.

At least two additional state employees will be needed to handle the paperwork, according to Department of Labor estimates.

Until the new law was passed, the state required overtime pay for any time over eight hours in a single day. Federal law requires overtime pay for any time over 40 hours in a week but doesn't limit the number of hours that can be worked in one day, according to Dale Cheek of the state Department of Labor.

The new law takes effect Aug. 10. In the meantime, the Department of Labor must draft regulations, a process that requires public hearings, and that could take six months, Cheek said.

That means it will be at least November before anyone can make ap-

plication to the state for a flexible work plan certificate.

The new law, co-sponsored by Reps. Sam Cotten, D-Eagle River, and Joe Hayes, R-Anchorage, was introduced at the request of the airline industry. The seafood industry and banks also had requested it, according to Cotten's office.

The law is aimed at the private sector, either through voluntary agreements or collective bargaining agreements.

The Alaska Railroad tried the four-day, 10-hours-a-day work week for five months but has decided to drop the plan. There were complaints that service was faltering on Mondays and Fridays when crews were at half strength. The plan affected 200 shop and railroad yard employees in Anchorage.

Murray, Bradley and Rockey, an advertising firm here, experimented with a four-day work week eight or nine years ago but it lasted only six months.

Partner Ron Bradley said the firm at that time had a small staff and simply closed the office on Mondays. The plan might work now, he said, with a staff that's large enough to have two shifts, with some people off on Fridays and others on Mondays.

Guy Russo of Western Airlines said the company's union contract provides for flexible work plans and those have been in effect in California. Alaska law up to now has prohib-

ited such plans here and the airline employees asked for the change in the law. It may mean Western will have to hire extra people to provide seven-day-a-week coverage, he said.

Retail clerks would like a flexible work arrangement, said Larry Buchholz, business agent for the clerks union.

But for most retail clerks, the shortened work week wouldn't mean three days off in a row. "We're still trying to get two consecutive days off," Buchholz said.

Construction workers probably wouldn't want that arrangement, however, he said, because of their short work season. They want all the overtime they can get.

Bettl Stevens, personnel manager for Nordstrom, and Becky Boyer, personnel manager for Welch's and Snooty Fox, both said four 10-hour days would offer advantages for businesses because they would have a continuous staff into the evening hours. But it could work a hardship on some employees.

"That's a long time to be on your feet," Miss Stevens said.

It would present some new problems to work out, too, she pointed out, such as how many breaks and how long the lunch hours would be.

The plan hasn't been proposed at the Anchorage store.

The U.S. Environmental Protection Agency in Anchorage has been working under a variation of flexible time for about six months.

Jim Sweeney, director of the Anchorage operations office, said the plan is great for most employees but hard for supervisors, who have no one to replace them on their day off.

The EPA staff works mostly nine-hour days, with a three-day weekend every other week. They choose either Friday or Monday as their extra day off.

Ray Morris, who's in charge of oil spill cleanup operations for the EPA, finds less traffic and it's easier to find a parking place when you come in earlier in the morning.

Earl Kari, the EPA's authorized officer at federal gas line inspector's office in the Fifth Avenue Building, is the only one in his office working the flexible schedule.

8 AAC 15.050. DEDUCTIONS FROM AN EMPLOYEE'S WAGES. Repealed. (12/9/78, Reg. 68)

8 AAC 15.060. PLACE OF EMPLOYMENT FOR PURPOSES OF RECORD KEEPING. Repealed. (12/9/78, Reg. 68)

8 AAC 15.070. DEFINITIONS OF MISCELLANEOUS TERMS USED IN AS 23.10.050 - 23.10.150. Repealed. (12/9/78, Reg. 68)

(d) The following are not acceptable methods of complying with the payment of overtime provisions of AS 23.10.060:

(1) guaranteed weekly pay for variable hours plan ("Belo" contracts) established under sec. 7(f) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207(f) as implemented in 29 C.F.R. 778.402 - 778.414);

(2) compensatory time off in place of payment for overtime; and

(3) flex-time or flexitime plans established under 29 C.F.R. 778.114 providing a fixed salary for fluctuating hours up to a predetermined maximum number of hours in a workweek. (Eff. 12/9/78, Reg. 68)

Authority: AS 23.10.060
AS 23.10.085

ARTICLE 2.
MINIMUM WAGES AND OVERTIME

Section

100. Payment for overtime

105. Minimum wage

8 AAC 15.100. PAYMENT FOR OVERTIME.

(a) An employee's regular rate is the basis for computing overtime. The regular rate is an hourly rate figured on a weekly basis. Employees need not actually be hired at an hourly rate; they may be paid by piece-rate, salary, commission or any other basis agreeable to the employer and employee. However, the applicable compensation basis must be converted to an hourly rate when determining the regular rate for computing overtime compensation.

8 AAC 15.105. MINIMUM WAGE. As used in AS 23.10.065, "prevailing Federal Minimum Wage Law" means that rate established in Sec. 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206(a)(1)) as the minimum wage generally applicable to employees subject to that Act. (Eff. 12/9/78, Reg. 68)

Authority: AS 23.10.065
AS 23.10.085

(b) The regular rate referred to in (a) is that fixed hourly amount determined from an employee's hourly wage, salary, commission, piece-rate or other basis of compensation that he is to be paid for all contract hours up to the daily or weekly maximum, established under AS 23.10.060, that he is regularly employed to work during a workweek.

(c) When computing an employee's hours for the purpose of determining overtime, the employer shall count all hours the employee worked during that week including periods of "on call" and "standby or waiting time" required for the convenience of the employer which were a necessary part of the employee's performance of his employment. However, if the employee is completely relieved from all duties for a certain period during which he may use the time effectively for his own purposes, then those periods need not be counted.

ARTICLE 3.
EXEMPTIONS

Section

120. Minimum wage exemption for handicapped persons

125. Minimum wage exemption for student learners

130. Exemption for searching for placer or hard rock minerals

135. Exemption for individuals under 18 who are part-time employees

140. Determining the number of employees for purposes of AS 23.10.060(1)

145. Small mining operations

8 AAC 15.120. MINIMUM WAGE EXEMPTION FOR HANDICAPPED PERSONS.

(a) An application to employ a person at less than the minimum wage established under AS 23.10.065 must be made either on a form provided by the department or by filing an

BY THE LABOR AND COMMERCE
COMMITTEE BY REQUEST

1 IN THE SENATE

2 SENATE BILL NO. 886

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act retroactively authorizing certain methods for
7 the payment of overtime; and providing for an effective
8 date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 23.10.060 is amended by adding a new subsection to read:

11 (b) Nothing in this section prevents the use of the following
12 methods for the payment of overtime:

13 (1) a guaranteed weekly pay for variable hours plan estab-
14 lished in accordance with 29 U.S.C. 207(f) and 29 C.F.R. 778.402 -
15 778.414 (Fair Labor Standards Act of 1938, as amended (52 Stat. 1060);

16 (2) a fluctuating workweek plan established in accordance
17 with 29 U.S.C. 207(a) and 29 C.F.R. 778.114 (Fair Labor Standards Act of
18 1938, as amended (52 Stat. 1060).

19 * Sec. 2. AS 23.10.060(b) added by sec. 1 of this Act is retroactive to
20 December 9, 1978, and extinguishes any penalty, forfeiture, or liability in-
21 curred or right accruing or accrued under 8 AAC 15 100(d)(1) and (3), adopted
22 under AS 23.10.065 and 23.10.085 to prohibit the use of the overtime payment
23 methods authorized by AS 23.10.060(b) added by sec. 1 of this Act.

24 * Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-
25 070(c).

(11) an individual under 18 years of age employed on a part-time basis not more than 30 hours in a week. (§ 2(1) ch 171 SLA 1959; am § 1 ch 2 SLA 1962; am § 1 ch 50 SLA 1972); am § 2 ch 124 SLA 1978)

Cross references. — As to gratuity for institutional work by prisoners, see § 33.30.225.

Effect of amendments. — The 1978

amendment added "including prisoners not on furlough detained or confined in prison facilities" to the end of paragraph (5).

NOTES TO DECISIONS

Employees covered by and exempt from Fair Labor Standards Act. — AS 23.10.050 — 23.10.150 apply to both employees covered by the Fair Labor Standards Act, 29 U.S.C. §§ 201-219, and those who are, because of insufficient connections to interstate commerce, exempt from the Fair Labor Standards Act. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

Prisoners excluded from operation of chapter. — See *McGinnis v. Stevens*, Sup. Ct. Op. No. 1207 (File Nos. 2255, 2312), 543 P.2d 1221 (1975).

Applied in *Alaska Int'l Indus., Inc. v. Musarra*, Sup. Ct. Op. No. 1966 (File Nos. 3652, 3676), 602 P.2d 1240 (1979).

Cited in *Dresser Indus., Inc. v. Alaska Dep't of Labor*, Sup. Ct. Op. No. 2415 (File No. 5625), P.2d (1981).

Sec. 23.10.060. Payment for overtime. No employer who employs employees engaged in commerce, or other business, or in the production of goods or materials in Alaska may employ an employee not acting in a supervisory capacity, either male or female, for a workweek longer than 40 hours or for more than eight hours a day, except that if the employer finds it necessary to employ an employee in excess of 40 hours a week or eight hours a day, compensation for the overtime at the rate of one and one-half times the regular rate of pay shall be paid, and this provision is considered included in all contracts of employment. This section does not apply with respect to

(1) an employee employed by an employer employing less than four employees in the regular course of business, as regular course of business is defined by regulations of the commissioner;

(2) Repealed by § 33 ch 127 SLA 1974.

(3) Repealed by § 1 ch 243 SLA 1970.

(4) an employee employed in handling, packing, storing, pasteurizing, drying, preparing in their raw or natural state, or canning agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products;

(5) an employee of an employer engaged in small mining operations where not more than 12 employees are employed, if the employee is employed not in excess of 12 hours a day or 56 hours a week during a period or periods of not more than 14 workweeks in the aggregate in a calendar year during the mining season, as the season is defined by the commissioner;

(6) Repealed by § 1 ch 45 SLA 1972.

- (7) an employee engaged in agriculture;
- (8) an employee employed in connection with the publication of a weekly, semiweekly, or daily newspaper with a circulation of less than 1,000;
- (9) a switchboard operator employed in a public telephone exchange which has fewer than 750 stations;
- (10) an employee of an employer engaged in the business of operating taxicabs;
- (11) an employee in an otherwise exempted employment or proprietor in a retail or service establishment engaged in handling telegraphic, telephone, or radio messages for the public under an agency or contract arrangement with a telegraph or communications company where the telegraph message or communications revenue of the agency does not exceed \$500 a month;
- (12) an employee employed as a seaman;
- (13) an employee employed in planting or tending trees, cruising, or surveying, or bucking, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by the employer in the forestry or lumbering operations does not exceed 12;
- (14) an individual employed as an outside buyer of poultry, eggs, cream, or milk in their raw or natural state;
- (15) casual employees as may be liberally defined by regulations of the commissioner;
- (16) an employee of a nonprofit hospital;
- (17) work performed by an employee under a flexible work hour plan if the plan is included as part of a collective bargaining agreement;
- (18) work performed by an employee under a voluntary flexible work hour plan if
- (A) the employee and the employer have signed a written agreement and the written agreement has been filed with the department; and
- (B) the department has issued a certificate approving the plan which states the work is for 40 hours a week and not more than 10 hours a day; for work over 40 hours a week or 10 hours a day under a flexible work hour plan not included as part of a collective bargaining agreement, compensation at the rate of one and one-half times the regular rate of pay shall be paid for the overtime. (§ 3 ch 171 SLA 1959; am § 1 ch 3 SLA 1962; am § 1 ch 243 SLA 1970; am § 1 ch 45 SLA 1972; am § 33 ch 127 SLA 1974; am § 1 ch 31 SLA 1980)

Opinions of attorney general. — The Fair Labor Standards Act, 29 U.S.C. §§ 201-219 does not expressly preempt the AS 23.10.050 — 23.10.150 on the question of whether airline employees are excluded

from the mandatory overtime directive of this section. April 15, 1980, Op. Att'y Gen.

In the case of pilots, flight crews, and other interstate air carrier employees whose activities are directly and substan-

(B) the Department of Labor has issued a certificate approving the plan which states the work is for 40 hours a week and not more than 10 hours a day; for work over 40 hours a week or 10 hours a day under a flexible work hour plan not included as part of a collective bargaining agreement, compensation at the rate of one and one-half times the regular rate of pay shall be paid for the overtime.
(am § 33 ch 127 SLA 1974; am § 1 ch 31 SLA 1980)

Effect of amendments. — The 1980 amendment added paragraphs (17) and (18).

Legislative history reports. — For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

As the rest of the section was not affected by the amendments, it is not set out.

NOTES TO DECISIONS

Article not void. — The Alaska Wage and Hour Act merely requires higher minimum and overtime pay than the Fair Labor Standards Act, 29 U.S.C. §§ 201-219. Although compliance with both is more expensive than compliance with the federal act, it is not, in any sense, impossible so as to make the Alaska law void. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

Or preempted. — Since, under the Alaska Wage and Hour Act, the number of hours required for the overtime rate is less than that under the Fair Labor Standards Act, the Alaska act provides for a lower maximum workweek within the meaning of 29 U.S.C. § 218(a) and consequently,

comes within the express saving clause so as not to be preempted by the federal law. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

Definition of "supervisory" in the Alaska Administrative Code, that the term as used in this section means a person who directs the activities of other employees and who does not perform duties which are regularly performed by the employees supervised, except for brief periods of time not to exceed more than eight hours in the supervisor's work week, is reasonable and not arbitrary. *Alaska Int'l Indus., Inc. v. Musarra*, Sup. Ct. Op. No. 1966 (File Nos. 3652, 3676), 602 P.2d 1240 (1979).

Sec. 23.10.065. Minimum wages. An employer shall pay to each of his employees wages at a rate of not less than 50 cents an hour greater than the prevailing Federal Minimum Wage Law or \$2.60 an hour, whichever is greater, for hours worked in a pay period, whether the work is measured by time, piece, commission or otherwise. No employer may apply tips or gratuities bestowed upon employees as a credit toward payment of the minimum hourly wage required by this section. Tip credit as defined by the Fair Labor Standards Act of 1938 as amended does not apply to the minimum wage established by this section. (§ 4 ch 171 SLA 1959; am § 2 ch 2 SLA 1962; am § 1 ch 41 SLA 1974)

Effect of amendments. — The 1974 amendment added the language beginning "or \$2.60 an hour" to the end of the first

sentence and added the second and third sentences.

(c) The director may delegate his powers, functions and duties under AS 23.10.050 — 23.10.150 to a duly authorized representative. (§ 6(1) ch 171 SLA 1959)

Sec. 23.10.080. Powers and duties of division. The director, or his authorized representative, shall

(1) investigate and ascertain the wages and related conditions and standards of employment of any employee in the state;

(2) enter the place of business or employment of an employer at reasonable times for the purpose of inspecting payroll records which relate to the question of wages paid or hours worked;

(3) require and subpoena from an employer a statement in writing, when the director or his authorized representative considers it necessary, of hours worked by and the wages paid to a person in his employ, and the commissioner may require the employer to make his statement under oath;

(4) question an employee in his place of employment during work hours with respect to the wages paid and the hours worked by the employees;

(5) compel the attendance of witnesses and the production of books, papers and documents by subpoena when necessary for the purpose of a hearing or investigation provided for in AS 23.10.050 — 23.10.150. (§ 6(2) ch 171 SLA 1959)

Sec. 23.10.085. Scope of administrative regulations. (a) The director may issue, amend or rescind such administrative regulations not inconsistent with the purposes and provisions of AS 23.10.050 — 23.10.150 which are necessary for the administration of AS 23.10.050 — 23.10.150.

(b) The regulations may, without limiting the generality of (a) of this section, define terms used in AS 23.10.050 — 23.10.150, and the restriction or prohibition of industrial homework or of the other acts or practices which the director finds appropriate to carry out the purpose of AS 23.10.050 — 23.10.150, or to prevent the circumvention or evasion of AS 23.10.050 — 23.10.150.

(c) The regulations may permit deductions by an employer from the minimum wage applicable under AS 23.10.050 — 23.10.150 to his employees for the reasonable cost, as determined by the director on an occupation basis, of furnishing board or lodging if board or lodging is customarily furnished by the employer and used by the employee. (§ 6(3) ch 171 SLA 1959)

NOTES TO DECISIONS

This section and AS 23.10.095 constitute a delegation of authority from the legislature to the agency to formulate policies, leaving to the agency's discretion

the issue whether federal definitions of "regular rate of pay" and other terms can be applied consistently with AS 23.10.050 — 23.10.150. *Dresser Indus., Inc. v.*