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ALASKA RURAL ELECTRIC COOPERATIVE
ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 301
ANCHORAGE, ALASKA 99503 • (907) 276-3235

May 3, 1985

The Honorable Peter Goll
Chairman, House Committee on
Community and Regional Affairs
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Goll:

House Bill 387 is scheduled for consideration by your committee on May 6th, but unfortunately I will have to be out of town on that date. Please accept this letter as expressing the views of our association.

We strongly support the concept of direct billing by the Alaska Power Authority as a means of qualifying revenue bonds issued by the APA for municipal tax exempt status for the Susitna Hydroelectric Project. What we want is a bill that does just enough to pass muster with the IRS, but not a bit more. It is going to take a lot of delicate fine tuning to get the bill just right, and it obviously needs a lot of work.

This bill was introduced so late in this session that I was frankly surprised it has been scheduled for consideration this year. The utilities have not had an opportunity since it was introduced to meet and consider this bill. We are not prepared to make suggestions based on a consensus at this time, but we will have substantive testimony at a later date. It makes no difference to us whether that work is later done in your committee or in a subsequent committee assignment.

Sincerely,

David Hutchens
Executive Director

BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 19, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to direct service charges for the sale of power by the Alaska Power Authority to retail consumers.

This bill addresses financing concerns with regard to future energy projects acquired or constructed by the Alaska Power Authority where the principal user of the power generated or transmitted by the authority is a non-governmental utility. Section 103(b) of the Internal Revenue Code restricts the use of tax-exempt bonds for financing power projects and transmission interties which are secured by payments to be made under power sales agreements with non-governmental utilities such as private investor-owned utilities, rural electric associations, and electric cooperatives.

This bill would facilitate the use of tax-exempt financing by authorizing the authority to impose and collect direct service charges from consumers, as an alternative to power sales agreements, as a method for securing and providing for the payment of bonds issued by the authority. Money collected by the authority from the imposition of direct service charges will constitute revenues to meet the costs of acquiring, financing, and guaranteeing power projects. The tax-exempt financing permitted by the use of direct service charges should help to reduce the capital costs of power projects.

After this bill is passed, the authority will seek a revenue ruling from the IRS to confirm that the use of direct service charges as security for revenue bonds will permit tax-exempt financing of power projects.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Sheffield".

Bill Sheffield
Governor

February 14, 1984

MEMORANDUM

TO: Honorable Bill Sheffield
✓ Governor

FROM: Norman C. Gorsuch
Attorney General

RE: Attached bill related to
direct service charges by
the Alaska Power Authority
Our file: 377-129-84

RECEIVED

Department of Law

FEB 2 1984

Office of the Attorney General
Anchorage Branch
Anchorage, Alaska

Attached is a bill that permits the Alaska Power Authority to make direct service charges to retail consumers for power generated or transmitted by means of facilities owned or financed by the authority. The bill was requested by the Alaska Power Authority and, I understand, was approved by John Shively.

A draft transmittal letter to the legislature is also attached. ✓

NGG:MAF:mg

cc w/enc.: Honorable Richard Lyon
Commissioner
✓ Department of Commerce &
Economic Development

Larry Crawford
Executive Director
Alaska Power Authority
334 W. 5th Ave., 2nd Fl.
Anchorage, AK 99501

5/18/83

PROPOSED JOINT DRAFT STATEMENT
OF WOHLFORTH & FLINT AND BORGE & PITT

THE DIRECT BILLING LEGISLATION

We have reviewed certain draft legislation which would authorize the Authority to charge direct service charges for or relating to the purchase of electric energy and the cost and expense of the generation and transmission of such energy, from any retail customer of electric energy generated or transmitted by means of facilities owned or financed by the Authority. The first proposed application of the statutory permission would be in respect of charges for the proposed Anchorage/Fairbanks intertie which would transmit electricity produced by private and public utilities in the railbelt to retail customers. The service charges contemplated would be an amount sufficient to pay principal and interest on bonds issued to construct the Anchorage/Fairbanks intertie and to pay costs of operation and maintenance of the intertie. A schedule of service charges would be established by regulation providing for charges to an individual customer based on consumption of power. All customers in the Area capable of being benefitted would be charged regardless of whether power is transmitted to a particular customer by virtue of the intertie transmission line. The benefit would be the potential of the supply of electricity via the intertie. The electric utilities providing power to the retail customers would collect the charges solely as agent of the Authority which would levy the charges. There would be no liability of any electric utility for payment of any of the direct charges.

We have been asked our opinion as to whether or not the interest on Authority bonds issued to finance the costs of the intertie which would be payable from the service charges would be exempt from Federal income taxation under Section 103(a)(1) of the Internal Revenue Code. The relevant question is whether or not such bonds would constitute "industrial development bonds" under Section 103(b) of the Code. Under that section of the Code an industrial development bond means

any obligation (A) which is issued as part of an issue all or a major portion of the proceeds of which are to be used directly or indirectly in any trade or business carried on by any person who is not an exempt person within the meaning of [Section 103(b)](3)), and (B) the payment of the principal or interest on which (under the terms of such obligation or any underlying arrangement) is, in whole or in major part (1) secured by any interest in property used or to be used in a

trade or business or in payments in respect of such property, or (ii) to be derived from payments in respect to property, or borrowed money, used or to be used in a trade or business.

We have examined the relevant regulations, particularly §1.103(7)(B)(3) and (4), as well as published rulings and private letter rulings of the Internal Revenue Service to determine whether or not the proposed bonds meet the description set forth in Section 103(b)(2)(B) which is commonly called the "security interest test". Based on the Internal Revenue Code and current regulations and rulings thereunder, in our opinion the proposed bonds would not be subject to Federal income taxation as industrial development bonds, because the proposed bonds would not meet the "security interest test".

You are advised, however, that the fact situation described above has not been directly addressed in published or private rulings of the Service. We further point out that the Service has shown no hesitation in recent years in overruling published rulings on tax exemption (see for example Revenue Ruling 81-216 which affected the taxability of industrial development bonds) and has on occasion amplified existing rulings in a way which could not be foreseen or ascertained from either the Code, regulations or earlier rulings. In this regard we particularly call your attention to the fact that the phrase "underlying arrangement" as used in the regulations to describe the "security interest test" has been used by the Service to broaden the thrust of the test since the regulations were enacted.

Subsequent events may well, therefore, dictate that a ruling be obtained before proceeding with the financing.

Introduced: 4/19/85
Referred: Community & Regional
Affairs, House Special Committee
on State Loans and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 389

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An act relating to direct service charges for the
7 sale of power by the Alaska Power Authority to retail
8 consumers."

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

10 * Section 1. AS 44.83 is amended by adding new sections to read:

11 Sec. 44.83.085. DIRECT SERVICE CHARGES. (a) The authority may
12 charge and collect direct service charges for or relating to the
13 purchase of power, and the cost and expense of the generation and
14 transmission of power, from a retail consumer of power that is gen-
15 erated or transmitted by means of facilities owned or financed by the
16 authority. "Retail consumer" means a customer of a distributor of
17 electricity as defined in AS 44.83.230, or a distributor of electric-
18 ity to the extent that that entity is a direct consumer of power
19 generated or transmitted by means of facilities owned or financed by
20 the authority.

21 (b) The authority shall by regulation prescribe, and revise as
22 necessary, a schedule of direct service charges. The money derived by
23 the authority from the imposition and collection of direct service
24 charges must be allocated among the projects for which the direct
25 service charges were instituted, and credited to the amounts which
26 must be charged under either the wholesale power rate formula in
27 AS 44.83.398 or any other power rate schedule applicable to the proj-
28 ect under the provisions of AS 44.83.

29 (c) Notwithstanding any other provisions of AS 44.83, the

1 authority is not required to enter into a power sales agreement with
2 respect to the power generated or transmitted by a project if it

3 (1) establishes a schedule of direct service charges with
4 respect to the electrical power or energy or transmission capacity or
5 service from the project; and

6 (2) determines that the imposition and collection of direct
7 service charges will result in the sale of that power at the lowest
8 reasonable price.

9 (d) If the authority enters into a power sales contract with a
10 distributor of electricity, the authority may waive, modify, suspend,
11 or reduce the direct service charge that would otherwise be charged by
12 the authority to retail consumers.

13 Sec. 44.83.086. COLLECTION OF DIRECT SERVICE CHARGES. (a) The
14 authority may enter into one or more agency agreements with a distrib-
15 utor of electricity, relating to the billing and collection of direct
16 service charges authorized under AS 44.83.085. The distributor of
17 electricity may act as agent of the authority for the billing and
18 collection of direct service charges. Each distributor of electricity
19 may do anything necessary or desirable to carry out every such agency
20 agreement.

21 (b) Each municipality and other public agency of the state shall
22 promptly pay to the authority all direct service charges that the
23 authority may charge to it, as a consumer of power, in accordance with
24 AS 44.83.085, and shall provide for the payment in the same manner as
25 other obligations of the municipality or public agency.

26 (c) If a direct service charge is not paid when due, interest
27 accrues and is due to the authority on the unpaid balance at the rate
28 of one and one-half percent a month until the direct service charge
29 and the accrued interest are fully paid to the authority.

1 (d) If any direct service charge is not paid when due, the
2 unpaid balance and all interest accrued, together with attorney fees
3 and costs, may be recovered by the authority in a civil action.

4 (e) In the event of default by a distributor of electricity
5 under a power sales contract between the authority and the distributor
6 of electricity, the authority may charge and collect, as if the con-
7 tract had not been made, direct service charges against the customers
8 of the distributor of electricity sufficient to meet any default or
9 deficiency in payments to be made under the power sales contract.

10 * Sec. 2. AS 44.83.195(a) is amended to read:

11 (a) When a project is operated by the authority, the authority
12 shall derive revenues from the operation of the project by the im-
13 position and collection of direct service charges under AS 44.83.085 and
14 44.83.086, or by entering [ENTER] into one or more contracts for the
15 sale of electrical power, energy, transmission capacity, or service
16 from the project. Unless the contract is entered into under AS 44.-
17 83.380 -- 44.83.425, a contract entered into under this section must
18 [SHALL] meet all requirements of AS 44.83.090.

19 * Sec. 3. AS 44.83.230 is amended by adding a new paragraph to read:

20 (10) "distributor of electricity" means

21 (A) a municipality or other public agency that oper-
22 ates an electric utility;

23 (B) a rural electric, cooperative electric, or private
24 electric utility; or

25 (C) any other person authorized by law to engage in
26 the distribution of electricity.

**STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date: _____

REQUEST -

HB 389

FISCAL DETAIL

Bill/Resolution No. _____

Agency Affected: ALASKA POWER AUTHORITY

Title: An act relating to the direct serv

Program Category Affected: _____

charges for the sale of power by the Alaska Power Authority

Sponsor: Senate Rules Committee

BRU, Program or Subprogram(s) Affected: _____

Requestor: Governor

Date of Request: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES			- 0 -			
200 TRAVEL						
300 CONTRACTUAL			NOT APPLICABLE			
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING						

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
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FUNDING: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
GENERAL FUND			- 0 -			
FEDERAL FUNDS			NOT APPLICABLE			
OTHER						
TOTAL						

POSITIONS:

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
FULL-TIME			- 0 -			
PART-TIME			NOT APPLICABLE			
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Robert D. Heath
Division: Alaska Power Authority

Phone: 276-0001
Date: 4/12/85

Approved by Commissioner: _____
Agency: _____

Date: _____

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

8/103 JEC

HB 189

"An Act relating to direct service charges for the sale of power by the Alaska Power Authority to retail consumers."

was read the first time and referred to the Community & Regional Affairs, House Special Committee on State Loans, and Finance Committees.

A zero fiscal note was attached.

The Governor's transmittal letter, dated April 19, 1985, appears below:

"Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to direct service charges for the sale of power by the Alaska Power Authority to retail consumers.

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After this bill is passed, the authority will seek a revenue ruling from the IRS to confirm that the use of direct service charges as security for revenue bonds will permit tax-exempt financing of power projects.

Sincerely,

/s/
Bill Sheffield
Governor"

Didn't Congress vote this?



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

7/25/89
Date