

HB

356

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

FOUCHY - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H Rules

2-15-88



Official Business

Alaska State Legislature

House of Representatives

Committee on Rules

P. O. Box V
Juneau, Alaska 99811

Phone:
(907) 465-3764
465-3765

AGENDA - HOUSE RULES COMMITTEE MEETING

MONDAY, FEBRUARY 15, 1988 / 8:00a.m.

HB 356 - "An Act relating to the authority of the Alaska Public Utilities Commission in connection with certain activities of the Alaska Power Authority and in connection with calculating power cost equalization; and providing for an effective date."

(Rules by Request of the Governor)

INDEX

- I. PROPOSED CSHB 356 (RULES)
- II. MEMO DATED FEBRUARY 9, 1988 TO REP. NAVARRE FROM REP. BROWN
- III. CSHB 356 (FINANCE)
- IV. CSHB 356 (JUDICIARY)
- V. GOVERNOR'S TRANSMITTAL LETTER AND (2) FISCAL NOTES

SUND
2/5/88

LETTER OF INTENT - HB 356

It is the intent of the Legislature in enacting AS 42.05.511(d) to codify some of the testimony of the utilities and the Alaska Public Utilities Commission as to how costs will be allocated under the Bradley Lake power sales agreement and wheeling contracts, and any amendments thereto. The intent is that the formula for cost allocation among the utilities, as spelled out in Appendix A to the wheeling agreement, would be beyond the authority of the APUC; the commission would not be able to mandate changes to that formula. The specific cost items to be allocated under the formula, however, would be subject to normal APUC review. Thus, for example, the percentage of a utility's administrative costs attributable to operating and maintenance expenses for wheeling could be reviewed, but, once those costs have been validated by the APUC, the method of allocation among the utilities, as specified by the formula in the contracts, would be exempt from APUC-mandated changes.

(02/11/88 revision)

AMENDMENT

Elimination of Excess Payments

Page 2, Line 25 through Page 3, Line 1:

Eliminate Section 5

Page 3, Line 2 through Page 3, Line 9:

Amend as follows (renumber section)

* Sec. 5. NEGOTIATIONS TO REMOVE EXCESS PAYMENT TERM. If the parties to the Bradley Lake Hydroelectric Project Agreement for the Sale and Purchase of Electric Power signed December 8, 1987 undertake negotiations to amend the agreement, the legislature intends that the amendments should enhance consumer benefits of the project. to be in keeping with the legislature's financing of the project partly through cash grants. Removal of section 29 of the power sales agreement without requiring the purchasing utilities to make other contract changes or concessions would be consistent with the legislature's intent [THE ALASKA POWER AUTHORITY MAY NOT WITHHOLD ITS AGREEMENT TO REMOVE THE REQUIREMENT TO MAKE THE EXCESS PAYMENTS AS DESCRIBED IN SECTION 29 OF THE WHOLESALE POWER CONTRACT, NOR MAY THE ALASKA POWER AUTHORITY REQUIRE CONCESSIONS FROM THE PURCHASERS AS A CONDITION OF THE REMOVAL OF THE EXCESS PAYMENTS PROVISION].

go0168hX

Cramer
2/10/88

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE RULES COMMITTEE

2 CS FOR HOUSE BILL NO. 356 (Rules)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the authority of the Alaska
7 Public Utilities Commission in connection with cer-
8 tain activities of the Alaska Power Authority, cer-
9 tain agreements among certain public utilities, and
10 calculating power cost equalization; and providing
11 for an effective date."

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

13 * Section 1. AS 42.05.431 is amended by adding a new subsection to
14 read:

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

16 (1) a wholesale agreement for the sale of power from a
17 project licensed by the Federal Energy Regulatory Commission on or
18 before January 1, 1987, and related contracts for the wheeling, stor-
19 age, regeneration, or wholesale repurchase of power purchased under
20 the agreement, entered into between the Alaska Power Authority and one
21 or more other public utilities or among the utilities after Octo-
22 ber 31, 1987, and before January 1, 1988, and amendments to the whole-
23 sale agreement or related contract, are not subject to review or
24 approval by the commission until all long-term debt incurred for the
25 project is retired; and

26 (2) a wholesale agreement or related contract described in
27 (1) of this subsection may contain a covenant for the public utility
28 to establish, charge, and collect rates sufficient to meet its obliga-
29 tions under the contract; the rate covenant is valid and enforceable.

1 * Sec. 2. AS 42.05.511 is amended by adding a new subsection to read:

2 (d) Validated costs incurred by a utility in connection with the
3 related contracts described in AS 42.05.431(c)(1) must be allowed in
4 the rates charged by the utility. In this subsection, "validated
5 costs" are the actual costs that a utility uses, under the formula set
6 out in related contracts described in AS 42.05.431(c), to establish
7 rates, charges for services and rights, and the payment of charges for
8 services and rights. This subsection does not grant the commission
9 jurisdiction to alter or amend the formula set out in those related
10 contracts.

11 * Sec. 3. AS 44.83.090(b) is amended to read:

12 (b) The authority is not subject to the jurisdiction of the
13 Alaska Public Utilities Commission. Nothing in this chapter [AS 44.-
14 83.010 - 44.83.425] grants the authority [ANY] jurisdiction over the
15 services or rates of a [ANY] public utility or diminishes or otherwise
16 alters the jurisdiction of the Alaska Public Utilities Commission with
17 respect to a [ANY] public utility, including any right the commission
18 may have to review and approve or disapprove contracts for the pur-
19 chase of electricity by a public utility other than wholesale agree-
20 ments and contracts described in AS 42.05.431(c)(1).

21 * Sec. 4. AS 44.83.162 is amended by adding a new subsection to read:

22 (p) In calculating power cost equalization, the commission may
23 not consider validated costs or kilowatt-hour sales associated with a
24 United States Department of Defense facility.

25 * Sec. 5. NEGOTIATIONS TO REMOVE EXCESS PAYMENT TERM. If the parties
26 to the Bradley Lake Hydroelectric Project Agreement for the Sale and Pur-
27 chase of Electric Power signed December 8, 1987, undertake negotiations to
28 amend the agreement, the legislature intends that the amendments should
29 enhance consumer benefits of the project, to be consistent with the

1 legislature's financing of the project partly through cash grants. Removal
2 of section 29 of the power sales agreement without requiring the purchasing
3 utilities to make other contract changes or concessions would be consistent
4 with the legislature's intent.

5 * Sec. 6. Sections 1 - 4 of this Act are retroactive to November 1,
6 1987.

7 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Committee on Finance

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

II

MEMORANDUM

TO: Representative Mike Navarre

FROM: Representative Kay Brown

DATE: February 9, 1988 *Kay*

SUBJ: Amendments to HB 356:
APUC Exemption of Bradley Lake

The purpose of this memorandum is to explain the House Finance Committee amendments to CS HB 356 (Jud) regarding elimination of the "excess" payment requirement contained in Section 29 of the Bradley Lake Power Sales Agreement.

Section 29 - Excess Payments Required

Section 29 of the Power Sales Agreement requires payments from Railbelt consumers "in excess of actual debt service required for retirement of Bonds issued to pay Recoverable Construction Costs." The "excess" payments will commence upon retirement of the long-term revenue bonds and will be paid during the latter part of the 50-year contract period.

Assuming no amendments to the agreement as now proposed, the "excess" payments will cost Railbelt consumers hundreds of millions of nominal dollars, and about \$10 million in present-value dollars. The payments will be made to the APA for deposit into the Railbelt Energy Fund.

House Finance Amendment Regarding "Excess" Payments

During the House Finance Committee's consideration of the bill, an amendment addressing the "excess" payments provision was adopted in Sections 5 and 6 of the bill. This amendment:

1) conditioned the applicability of the APUC exemption of the Bradley Lake project sought in HB 356 so that it does not apply to contracts that contain provisions requiring "excess" payments; and

2) directed that if the contract were to be amended, the APA could not withhold its agreement to remove the "excess" payment provision, nor require concessions as a condition of that removal.

The intent of the amendment is to have the "excess" payment requirement eliminated by a simple amendment to the power sales agreement.

Reasons for Amendment to Eliminate the "Excess" Payments

The major reason for the amendment is to ensure that Railbelt consumers fully benefit from the state's cash contribution to the Bradley Lake hydroelectric project.

From a Railbelt consumer perspective, the "excess" payments cannot be justified. Although Section 29 states that the payments would be "in recognition of efforts to obtain" an intertie, payments are not contingent upon the success of such efforts. Furthermore, the intertie project has not been demonstrated as economically feasible, nor is it even likely to be relevant 30 years from now. Essentially, Section 29 requires Railbelt consumers to pay an extraordinary charge for essentially unknown future purposes.

To date, the legislature has appropriated a total of \$168 million to the Bradley Lake project with the expectation that these funds would be used as a cash grant for the project. The terms of the wholesale power agreement negotiated by the APA violate this intent by including the "excess" payment requirement in Section 29. This requirement effectively transforms the grant into a loan. In his testimony before the House Judiciary Committee, APA Executive Director Robert LeResche confirmed that the excess payment requirement would recover the state's equity.

The House Finance Committee amendment to condition the applicability of HB 356, and to direct the APA to drop Section 29 without trying to negotiate alternative concessions, was offered as a means of correcting the APA's deviation from legislative intent.

In addition, the APA does not have the statutory authority to require that the excess payments be deposited in the Railbelt Energy Fund, as Section 29 of the Bradley Power Sales Agreement provides. "Absent statutory authorization...an executive branch agency cannot circumvent the legislative decision-making power by entering a contract with private parties that earmarks state revenue for deposit in a particular account," according to an opinion from Legislative Counsel. (See Attachment 1.)

Comparison of Bradley Lake Financing with the Four Dam Pool

The proposed requirement that Railbelt consumers be forced to make surplus payments to the APA is especially inappropriate when one considers the precedent established by the Four Dam Pool project financing arrangements.

In the case of the Four Dam Pool, the state funded about 60% (\$293.3 million) of the project with cash equity grants and loaned the balance (\$191.2 million) at a subsidized, effective interest rate of 5.7%. By contrast, the Bradley Lake plan of finance calls for approximately 51% (\$181 million) of the project to be financed with state equity and the balance of the project, up to \$175 million, to be financed with market-rate, tax exempt bonds with an estimated interest rate of approximately 8.0%. In addition to the debt service payments on the market-rate bonds, Railbelt consumers are expected to repay the equity through the "excess" payments in Section 29.

In summary, Railbelt consumers are being asked to accept a financing plan for Bradley Lake that is substantially less favorable than the financing terms provided for the Four Dam Pool. In fact, a recent analysis of alternative financing costs for Bradley Lake prepared by the APA shows that if the state were to offer financing terms for Bradley Lake comparable to those offered for the Four Dam Pool the savings to ratepayers would be approximately \$146.5 million in nominal terms (or nearly \$80 million in 1992 dollars).

Although removal of the "excess" payments provision in the power sales contract would not result in having benefits accrue to the Railbelt consumers that are comparable to the subsidized financing terms of the Four Dam Pool, it would enhance the consumer benefits of this project significantly.

Legal Issues

Several legal issues have been raised with respect to the constitutionality of Secs. 5 and 6 -- 1) separation of powers; 2) special legislation; and 3) severability. (See attachments 2 and 3, memoranda by Assistant Attorney General James Baldwin and Legislative Counsel Teresa Cramer)

The first two issues are addressed by the modification to Secs. 5 and 6 proposed in Attachment 4, which I recommend that the Rules Committee adopt, assuming the Committee wishes to encourage elimination of the "excess" payments provision.

The changes proposed in Sec. 6 of the bill are intended to encourage, rather than require, the APA to take specific actions by clearly stating legislative intent and policy. This should be sufficient to address the concern that the Legislature is improperly participating in contract negotiations.

The changes proposed in Sec. 5 of the bill are intended to address the concern that its specificity may cause a court to consider it to be special legislation.

The last time I spoke with Ms. Cramer about the severability issue (prior to receipt of Baldwin's opinion), she said the general severability clause in AS 01.10.030 was sufficient, and that it was unnecessary to specify the severability of Secs. 5 and 6. However, it may be desirable to provide expressly for the severability of secs. 5 and 6 rather than leaving an unresolved legal issue.

Effect on Timing of Bradley Lake Construction

With these changes, I believe the bill would be a defensible, appropriate response that could lead to significant consumer savings. However, we must persuade the Administration that this change is in the public interest to accomplish the desired result. It is not my intention to delay this bill or the planned summer construction of Bradley Lake, and removal of the excess payments provision need not have that effect. I believe it would be in the best interest of all concerned, especially Railbelt consumers, if the APA and the utilities moved forward quickly to amend the power sales contracts and eliminate Section 29. As a practical matter, these amendments could be accomplished in a matter of days.

If I can answer any questions, please don't hesitate to call.

cc: House Rules Committee
House Finance Committee

STATE OF ALASKA
THE LEGISLATURE

POUCH STATE CAPITOL
JUNEAU ALASKA 99801
907 465 1800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 5, 1988

SUBJECT: Deposit of excess payments under the
Bradley Lake Power Sales Agreement into
the Railbelt energy fund (Work Order
No. 5-1728)

TO: Representative John Sund, Chairman
House Judiciary Committee

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

You have asked whether the provision in section 29 of the Bradley Lake Hydroelectric Project Power Sales Agreement, which states that excess payments from the purchasers are "for deposit in the Railbelt energy fund," is valid.

The excess payments are payments to be made by the purchasing public utilities after the retirement of bonds issued to pay for the construction of the power project. The bonds are expected to be retired 30 years after the project begins commercial operation and the excess payments are expected to continue for the remaining 20 years of the agreement.

In my opinion, the Alaska Power Authority (APA) does not have the statutory power to enter into an agreement requiring that the excess payments be deposited in the Railbelt energy fund.

Under AS 44.83.398(c), the APA is required to deposit money received from the sale of power from projects constructed under the energy program for Alaska in the general fund unless the money has been pledged or otherwise covenanted to secure bonds. The excess payments do not meet the requirements of the exception. The statute could be construed to allow the APA to deposit the payments in the Railbelt energy fund only if the Railbelt energy fund is considered to be the same as the general fund.

Representative John Sund, Chairman
House Judiciary Committee
Page 2
February 5, 1988

The Railbelt energy fund is an account within the general fund under AS 37.05.153. The statute provides

There is established in the general fund the Railbelt energy fund. The fund consists of money appropriated to it by the legislature. The Department of Revenue shall manage the fund. Interest received on money in the fund shall be accounted for separately and may be appropriated into the fund annually. The legislature may appropriate money from the fund to assist in meeting Railbelt energy needs.

The legislature has given the account a special purpose, even though the purpose is not binding on future legislatures. The setting aside of funds is a legislative function, implicit in the legislature's power of the purse. Therefore, deposit in the Railbelt energy fund does not constitute deposit in the general fund and does not satisfy AS 44.83.398(c).

The power to make deposits in the Railbelt energy fund is also restricted under AS 37.05.153. Under the terms of the statute, money is added to the fund by legislative appropriation. Therefore, the excess payments under section 29 of the Power Sales Agreement can only be added to the fund if the legislature appropriates them to it.

The appropriation of state revenue is a legislative function. Absent statutory authorization, as in the case of bonds or revolving loan funds, an executive branch agency cannot circumvent the legislative decision-making power by entering a contract with private parties that earmarks state revenue for deposit in a particular account.

If I may be of further assistance, please advise.

TBC:gc
WKG1:067

MEMORANDUM

State of Alaska
Department of Law

TO: Mary Halloran, Director
Division of Policy
Office of Management and Budget

DATE: February 8, 1987

FILE NO.:

TEL. NO.: 465-3600

SUBJECT: Proposed amendments to HB
356 -- Bradley Lake

FROM:


James L. Baldwin
Assistant Attorney General
Governmental Affairs-Juneau

You have requested our advice concerning the legal effect of amendments to HB 356 sponsored by Representative Brown. The amendments were adopted by the House Finance Committee on February 5, 1988. Specifically, you directed our attention to a proposed sec. 6 added to the Judiciary Committee substitute. Section 6 provides:

* Sec. 6. NEGOTIATIONS TO REMOVE EXCESS PAYMENT TERM. If the parties to the Bradley Lake Hydroelectric [project agreement] for the Sale and Purchase of Electric Power signed December 8, 1987 undertake negotiations to amend the agreement, the Alaska Power Authority may not withhold its agreement to remove the requirement to make the excess payments as described in Section 29 of the wholesale power contract, nor may the Alaska Power Authority require concessions from the purchasers as a condition of the removal of the excess payments provision.

Section 6 is complimented by sec. 5, which was also added by Representative Brown's amendment. Section 5 has the effect of nullifying other provisions of the bill which exempt certain power sales agreements from the regulatory jurisdiction of the Alaska Public Utilities Commission (APUC).

The bill applies to agreements made by the Alaska Power Authority (APA) that were negotiated during a two-month period in late 1987. Therefore, the bill has a very narrow operative effect. It appears to apply to only one power sales agreement, that being the agreement with utilities who will be purchasing power generated by the Bradley Lake hydroelectric project. You informed us that the agreement was negotiated by APA and the utilities and that it is desirable to avoid lengthy review by APUC. The agreement has the effect of adding amounts to rates charged to consumers in excess of the usual cost items that make up the base rate. These amounts are attributed to a provision in

Mary Halloran, Director
OMB Division of Policy
Re: Proposed ams to HB 356 (Bradley Lake)

February 8, 1988
Page #2

the agreement that requires the utilities to make "excess payments" of approximately \$11 million.

Sections 5 and 6 constitute an attempt to force APA to renegotiate the Bradley Lake hydroelectric project power sales agreement. Section 5 denies an exemption from regulatory oversight for an agreement that has a provision requiring "excess payments." Section 6 attempts to control the negotiating position of APA if the Bradley Lake negotiations are reopened. Section 5 has the effect of reversing the main purpose of the bill because the agreement as written could not be exempted from APUC jurisdiction.

We believe that secs. 5 and 6 contain provisions that raise substantial legal questions. If enacted, these provisions may delay affected projects until litigation is resolved. The provisions of sec. 6 embody an attempt to direct the exercise of discretion to negotiate power sales agreements granted by law to the Alaska Power Authority. The legislature may not do that. Springer v. Philippine Is., 277 U.S. 189, 202 (1928). It may set the limits of power of an agency to act but it may not attempt to direct how the agency exercises its statutory powers. APA is empowered to negotiate with utilities. It is not appropriate for the legislature to direct it to agree to one term or another. Clearly, the legislature may generally limit APA's power to make certain types of agreements. However, it cannot direct APA in the positions or concessions it must undertake during the course of negotiations.

Section 5 may add enough specificity to this bill to cause a court to consider it to be special legislation. In our view, the bill, without secs. 5 and 6, was carefully worded and narrowly drafted so that it probably qualified as general, not special, legislation. However, only a judicial determination can conclusively establish that legislation is special or general. Abrams v. State, 534 P.2d 91 (Alaska 1975). Section 5 directly refers to the Bradley Lake agreement and appears to lead to the conclusion that this section and perhaps the entire bill is special legislation. It is arguable whether the Bradley Lake hydroelectric project has statewide interest or impact. See State v. Lewis, 559 P.2d 630 (Alaska 1977), cert. denied, 432 U.S. 901 (1977). We believe that sec. 5 must be substantially amended before it would be considered a provision of general application.

You also requested our comments concerning the severability of secs. 5 and 6 if they are found to be invalid by a court. When a court considers the severability of provisions making up a law, the most important consideration is legislative

Mary Halloran, Director
OMB Division of Policy
Re: Proposed ams to HB 356 (Bradley Lake)

February 8, 1988
Page #3

intent. Lynden Transp., Inc. v. State, 532 P.2d 700 (Alaska 1975). The court attempts to determine if the legislature would have enacted the entire law if it knew that one of the constituent parts was invalid. Here, the question is whether the legislature would have exempted the agreement from APUC jurisdiction if limitations on the inclusion of the excess payment provision is declared void. It is difficult to predict the answer that a court would supply to that question. We presume there exists legislative history to show that the exemption and secs. 5 and 6 are closely related. This history would lend support for a finding that, if secs. 5 and 6 are determined to be invalid, these provisions are not severable and that all provisions in the bill are void. We believe that the general severability clause set out in AS 01.10.030 will not suffice to resolve this question.

Let us know if you need further assistance on this matter.

JLB/pjg

cc: Art Peterson
Legislation Attorney
Department of Law

STATE OF ALASKA
THE LEGISLATURE

POUCH STATE CAPITOL
BUREAU ALASKA 99511
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 8, 1988

SUBJECT: CSHB 356 (Finance)
(APUC jurisdiction over certain activities)

TO: Representative Al Adams
Chairman
House Finance Committee

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

Enclosed is the Committee Substitute you requested. Section 6 of the bill, limiting the Alaska Power Authority's conduct during renegotiations over the excess payments provision in the Bradley Lake Power Sales Agreement, is arguably unconstitutional, either as a violation of the prohibition on enactment of "local or special legislation" under article II, section 19 of the state constitution, or as a legislative intrusion into the prerogative of the executive responsibility to conduct negotiations on behalf of the state, a violation of the separation of powers first recognized in Bradner v. Hammond, 553 P.2d 1 (Alaska 1976).

It would be possible to remedy the problem if the legislature were to enact a general law that subjected to Alaska Public Utility Commission jurisdiction, APA contracts that required utilities to make excess payments. Excess payments could be defined as payments not required for the operation and maintenance of a project or for the retirement of debt owed on the project.

If I may be of further assistance, please advise.

Enclosure

TBC:bb
wkb2/060

(02/11/88 revision)

AMENDMENT

Elimination of Excess Payments

Page 2, Line 25 through Page 3, Line 1:

Eliminate Section 5

Page 3, Line 2 through Page 3, Line 9:

Amend as follows (renumber section)

* Sec. 5. NEGOTIATIONS TO REMOVE EXCESS PAYMENT TERM. If the parties to the Bradley Lake Hydroelectric Project Agreement for the Sale and Purchase of Electric Power signed December 8, 1987 undertake negotiations to amend the agreement, the legislature intends that the amendments should enhance consumer benefits of the project. to be in keeping with the legislature's financing of the project partly through cash grants. Removal of section 29 of the power sales agreement without requiring the purchasing utilities to make other contract changes or concessions would be consistent with the legislature's intent [THE ALASKA POWER AUTHORITY MAY NOT WITHHOLD ITS AGREEMENT TO REMOVE THE REQUIREMENT TO MAKE THE EXCESS PAYMENTS AS DESCRIBED IN SECTION 29 OF THE WHOLESALE POWER CONTRACT, NOR MAY THE ALASKA POWER AUTHORITY REQUIRE CONCESSIONS FROM THE PURCHASERS AS A CONDITION OF THE REMOVAL OF THE EXCESS PAYMENTS PROVISION].



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 13, 1988

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box 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 the authority of the Alaska Public Utilities Commission (APUC) in connection with certain activities of the Alaska Power Authority (APA) and in connection with calculating power cost equalization.

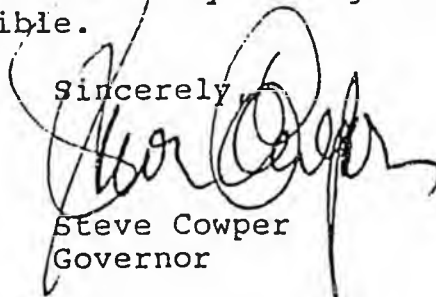
As you know, last session I vetoed HCS CSSSSB 22(Fin) on this subject. However, as stated in my June 15, 1987 veto message (1987 Senate Journal, p. 1731), my reason for vetoing that bill was its inclusion of provisions that would remove APUC regulation over some 67 small public utilities in the state. Existing law adequately provides for them. The attached bill deletes that section. Section 5 of HCS CSSSSB 22(Fin), which would have removed from the APUC's jurisdiction the review of all wholesale power agreements to which APA is a party, by declaring that the APA is not a public utility, has also been deleted. Section 1 of the attached bill provides an exemption from such APUC review and approval for the Bradley Lake project.

Two provisions in the attached bill were not contained in the vetoed bill. First, the bill proposes to amend AS 42.05.431 and 42.05.511 to allow the APA to contract with utilities to guarantee that the utilities will charge sufficient rates to cover the APA's bond obligations regarding the Bradley Lake project. Second, these same amendments expand the scope of the Bradley Lake regulatory exemption to include secondary contracts that are associated with the project. These related contracts include an agreement for wheeling and related services between Bradley Lake power purchasers and Chugach Electric Association, Inc., and an agreement for the sharing of transmission facilities between Bradley Lake power purchasers and Homer Electric Association, Inc.

Finally, like HCS CSSSSB 22(Fin), the attached bill includes the provision that prohibits power cost equalization calculations from including rates paid on military bases.

The Bradley Lake project has been the subject of extensive review by the legislative and executive branches of state government. The state has approved the Bradley Lake project and is committed to the financing of the project. This legislation implements that commitment by making long-term financing of the project feasible.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the typed name and title.

Steve Cowper
Governor

**STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE**

No. 1

REQUEST: Rules Committee

Bill Version: HB 356 CS (JJD)
Publish Date: HOUSE 1/13/88

Revision Date: _____
Title: APUC authority in connection with
activities of the Alaska Power Authority
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: AK Power Authority
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL	(50)	(150)	(19,150)	-0-	-0-	-0-
REVENUE						

FUNDING: (Thousands of Dollars)


GENERAL FUND						
FEDERAL FUNDS						
OTHER *	(50)	(150)	(19,150)	-0-	-0-	-0-
TOTAL						

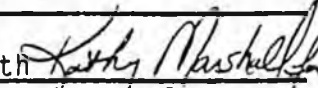
POSITIONS: *Railbelt Energy Fund

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

(See attached page)

Prepared by: Robert E. LeResche  Phone: 465-3575
Division: Alaska Power Authority Date: 1/8/88

Approved by Commissioner: J. Anthony Smith  Date: 1/8/88
Agency: Department of Commerce & Economic Development

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

PROGRAM SUMMARY

◦ Expenditures

It is estimated that approximately \$200,000 of additional legal fees will be incurred due to the PUC hearings process.

It is further estimated that the PUC hearings process would delay the Bradley Lake project by a year. The resulting increase in construction costs and interest during construction on the long-term debt would increase the total project costs by an estimated \$19.15 million.

◦ Funding

It is assumed that any additional Bradley expenditures would be funded by the Railbelt Energy Fund.

◦ Economic Impact

In addition to the increased costs described above and below, a delay in the Bradley Lake project would reduce the number of jobs available on the Kenai Peninsula this summer and next.

◦ Impact on Railbelt Electricity Consumers

Not passing this bill would increase the interest rate on the long-term debt for Bradley Lake in two ways. First, debt would have to be issued earlier in the construction schedule (the IDB allocation to Bradley Lake expires on 12/31/90), and completion risk becomes more of a factor. Second and perhaps more important, present law allows the PUC to reopen the contracts at any time in the future. The interest rate penalty from these two factors is estimated to be 1/2 percent. Such a penalty would increase debt service \$750,000 per year, or \$22,500,000 over the life of the bonds.

Additionally, the utilities are expected to incur approximately \$500,000 of legal expenses due to the PUC hearings process. This would be borne by the Railbelt Electricity Consumers.

- In summary, the total additional costs incurred from this bill not passing would be approximately \$42,350,000.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: APUC Commission authority re APA
and re PCE
Sponsor: Rules Committee by request of
Requestor: Governor

Agency Affected: Commerce & Economic Development
BRU: APUC
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

See attached

Prepared by: T.S. Moninski II Executive Director Phone: 276-6222
Division: Alaska Public Utilities Commission Date: 1/6/88
Approved by Commissioner: *Lesly Marshall for J. Anthony Smith* Date: 1/6/88
Agency: Commerce & Economic Development

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

HB 356
1/13/88

January 6, 1988

The proposed legislation amends AS 42.05.431(b), which established the Commission's authority to review and approve wholesale power contracts entered into between the Alaska Power Authority and other public utilities.

When Section .431(b) was enacted in 1986, no fiscal impact was forecasted and the Commission did not receive any additional resources. The expectation was that the Commission would respond to filings pursuant to this section with existing staff. Therefore, no resultant fiscal impact is projected in response to the changes included in this bill.

go0168hX

Cramer
2/10/88

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE RULES COMMITTEE

2 CS FOR HOUSE BILL NO. 356 (Rules)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the authority of the Alaska
7 Public Utilities Commission in connection with cer-
8 tain activities of the Alaska Power Authority, cer-
9 tain agreements among certain public utilities, and
10 calculating power cost equalization; and providing
11 for an effective date."

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

13 * Section 1. AS 42.05.431 is amended by adding a new subsection to
14 read:

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

16 (1) a wholesale agreement for the sale of power from a
17 project licensed by the Federal Energy Regulatory Commission on or
18 before January 1, 1987, and related contracts for the wheeling, stor-
19 age, regeneration, or wholesale repurchase of power purchased under
20 the agreement, entered into between the Alaska Power Authority and one
21 or more other public utilities or among the utilities after Octo-
22 ber 31, 1987, and before January 1, 1988, and amendments to the whole-
23 sale agreement or related contract, are not subject to review or
24 approval by the commission until all long-term debt incurred for the
25 project is retired; and

26 (2) a wholesale agreement or related contract described in
27 (1) of this subsection may contain a covenant for the public utility
28 to establish, charge, and collect rates sufficient to meet its obliga-
29 tions under the contract; the rate covenant is valid and enforceable.

1 * Sec. 2. AS 42.05.511 is amended by adding a new subsection to read:

2 (d) Validated costs incurred by a utility in connection with the
3 related contracts described in AS 42.05.431(c)(1) must be allowed in
4 the rates charged by the utility. In this subsection, "validated
5 costs" are the actual costs that a utility uses, under the formula set
6 out in related contracts described in AS 42.05.431(c), to establish
7 rates, charges for services and rights, and the payment of charges for
8 services and rights. This subsection does not grant the commission
9 jurisdiction to alter or amend the formula set out in those related
10 contracts.

11 * Sec. 3. AS 44.83.090(b) is amended to read:

12 (b) The authority is not subject to the jurisdiction of the
13 Alaska Public Utilities Commission. Nothing in this chapter [AS 44.-
14 83.010 - 44.83.425] grants the authority [ANY] jurisdiction over the
15 services or rates of a [ANY] public utility or diminishes or otherwise
16 alters the jurisdiction of the Alaska Public Utilities Commission with
17 respect to a [ANY] public utility, including any right the commission
18 may have to review and approve or disapprove contracts for the pur-
19 chase of electricity by a public utility other than wholesale agree-
20 ments and contracts described in AS 42.05.431(c)(1).

21 * Sec. 4. AS 44.83.162 is amended by adding a new subsection to read:

22 (p) In calculating power cost equalization, the commission may
23 not consider validated costs or kilowatt-hour sales associated with a
24 United States Department of Defense facility.

25 * Sec. 5. NEGOTIATIONS TO REMOVE EXCESS PAYMENT TERM. If the parties
26 to the Bradley Lake Hydroelectric Project Agreement for the Sale and Pur-
27 chase of Electric Power signed December 8, 1987, undertake negotiations to
28 amend the agreement, the legislature intends that the amendments should
29 enhance consumer benefits of the project, to be consistent with the

1 legislature's financing of the project partly through cash grants. Removal
2 of section 29 of the power sales agreement without requiring the purchasing
3 utilities to make other contract changes or concessions would be consistent
4 with the legislature's intent.

5 * Sec. 6. Sections 1 - 4 of this Act are retroactive to November 1,
6 1987.

7 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29



COMMITTEE: HS RULES
2-15-88
DATE:

Subject of meeting:
HB 356

SIGN-IN

NAME	ADDRESS	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
MARY HALLORAN	DIV. POLICY, GOVERNOR'S OFFICE	-3568	GOV'S OFFICE	IF THE COMMITTEE DESIRES
JACK KREINBERGER	" "	"	"	"
KURT DZINICH	Senate Advisory Council	465-3114	SAC	NO
KEN JOHNSON	ARECA 175 S. FRANKLIN JUNEAU	463-4992	ARECA	ANSWER QUESTIONS
Pat Smutz	124 Front St. Juneau	586-1620	AK AFL-CIO	No
Dow ROULEAU	Juneau	586-3101	Post Community Health	NO
Terry Cramer	Legislative Legal Services	465-2450		ANSWER QUESTIONS
D. J. Jochle	Rep	465-2689		NO

HOUSE COMMITTEE REPORT

(7)

Date referred: 2/11/88

FURTHER REFERRALS:

DATE: 2/15/88

The Rules Committee has considered HB 356

"An Act relating to the authority of the Alaska Public Utilities Commission in connection with certain activities of the Alaska Power Authority and in connection with calculating power cost equalization; and providing for an effective date."

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published 1/13/88
- zero fiscal note same as previous zero fiscal note published 1/13/88
- zero with analysis

SIGNING DO PASS:

Mike Favore

Ben Sussman

Mark Mendenhall

SIGNING OTHER RECOMMENDATIONS:

James Huber No Rec.

Larry Martin No Rec.

Mike Favore
Chairman's signature