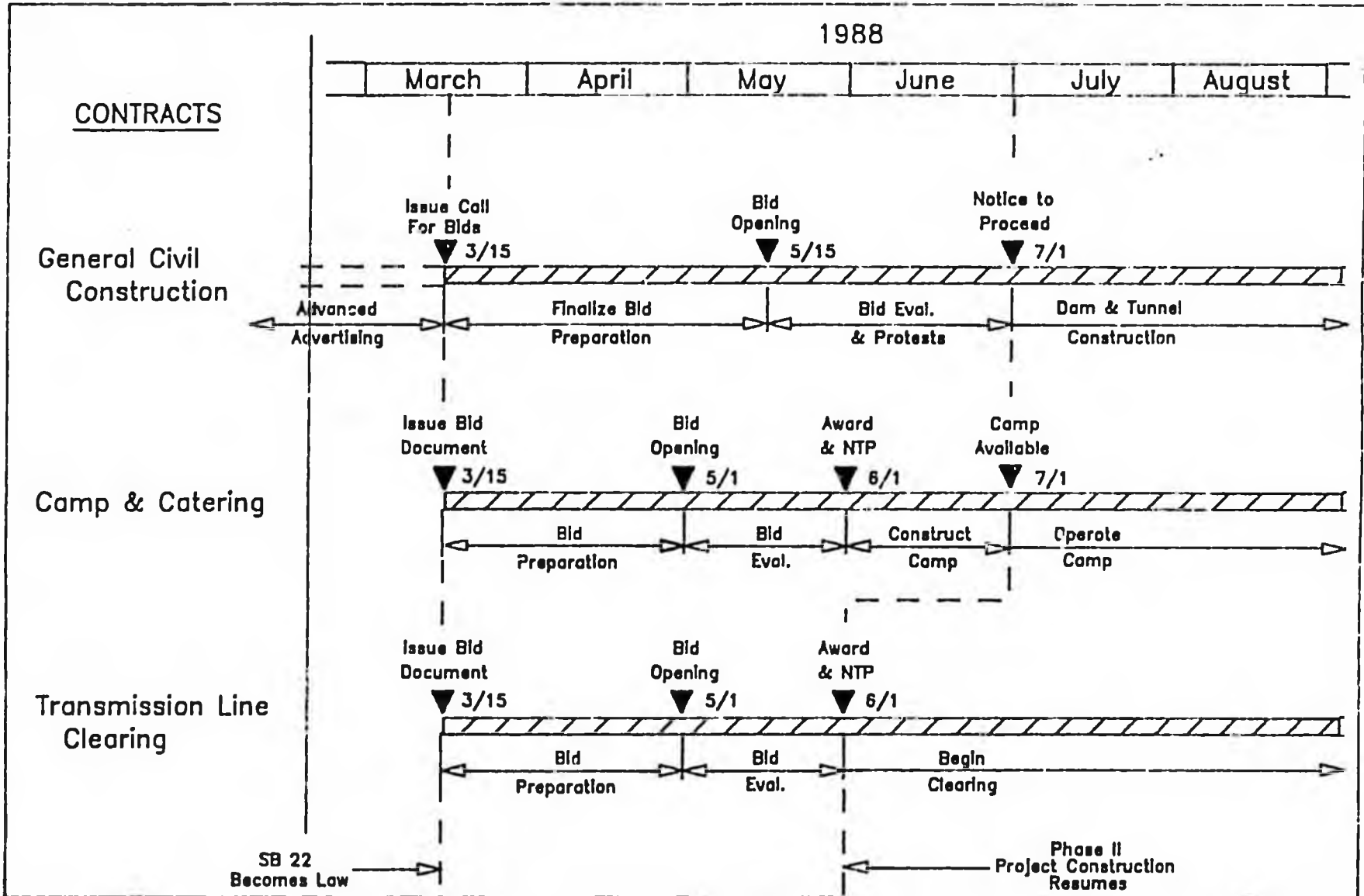


ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

5502 SRES HB 356 - HB 510

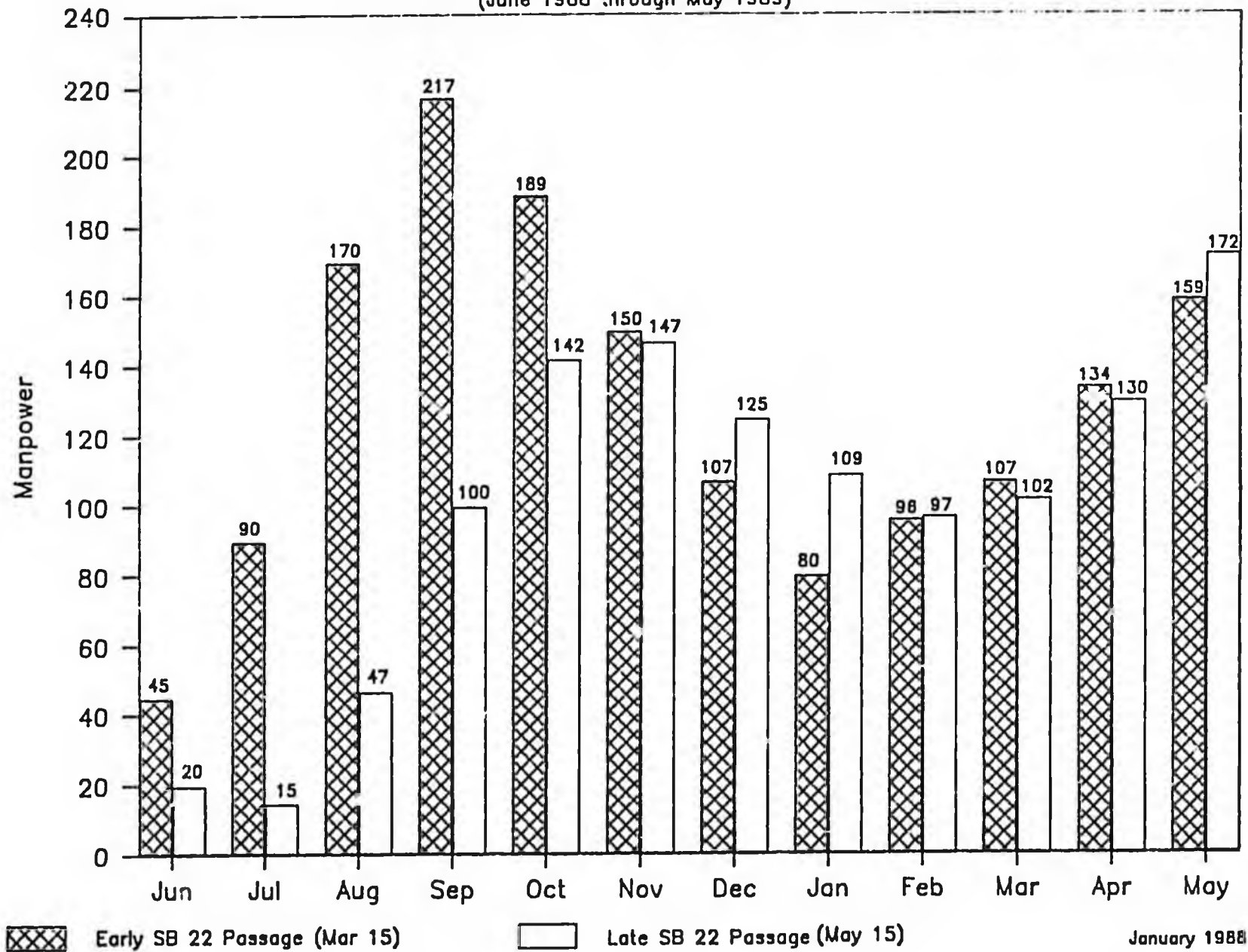
1074

Bradley Lake Hydroelectric Project 1988 Construction Schedule



Bradley Lake Hydroelectric Project Projected Manpower Requirements

(June 1988 through May 1989)



January 1988

Alaska State Legislature

Senate Resources Committee



Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-Chairman
Sen. Lloyd Jones
Sen. Arliss Sturgulewski
Sen. Jim Duncan
Sen. Fred Zharoff
Sen. Dick Eliason

Box V
Juneau, Alaska 99811
(907) 465-4907

February 17, 1988

Bob LeResche, Executive Director
Alaska Power Authority
P.O. Box AM
Juneau, AK 99811

RE: CSHB 356 (Rules) am

Dear Mr. LeResche:

The referenced bill with a letter of intent was referred to the Senate Resources committee. The committee is scheduled to hold hearings on February 29, 1988.

As part of the review process, I would appreciate receiving written response to the following questions not later than the scheduled hearing:

1. Does CSHB 356 (Rules) am contain anything that will cause further delays to the Bradley Hydroelectric Project or increase the cost of revenue bond financing?
2. Has the bond counsel issued a written opinion supporting the above? If yes, please attach a copy.
3. Has the Attorney General issued a written opinion giving CSHB 356 (Rules) am a clean bill of health? If yes, please attach a copy.
4. Is the letter of intent redundant? If needed, does it require changes?

Based on a preliminary review, the bill does not appear to contain any fatal flaws. Unless some are discovered subsequently, my intention is to move the bill as is, in order to assure its timely passage by the Senate and approval by the Governor not later than March 15, 1988.

Sincerely,

A handwritten signature in black ink, appearing to be "J. Coghill".

Senator J. Coghill
Chairman

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE (907) 465-3650

February 24, 1988

Honorable Jack Coghill
Pouch V
Juneau, Alaska 99811

Re: CSHB 356 (Rules) am

Dear Senator Coghill:

At Bob LeResche's request on your behalf, I have reviewed CSHB 356 (Rules) am which amends AS 42.05 and AS 44.83 by excluding certain utilities or their activities from regulation or review by the Alaska Public Utilities Commission (APUC), and by revising the method of calculating eligibility for power cost equalization benefits. Since you have not asked a specific question of me regarding the bill, I will generally review the bill for you in this opinion.

As you know, the major provisions in this bill appeared last year in HCS CSSSSB 22. That bill was subsequently vetoed by Governor Cowper because it included a provision deregulating 67 small telephone and electric utilities. 1/ The current bill, HB 356, was introduced in the House at the request of the governor. 2/ Although the original bill has been somewhat amended since its introduction, I am advised that the Governor is comfortable with the house version of the bill and would like to see its passage in the current form.

CSHB 356 (Rules) am would limit the APUC's authority to review and approve the wholesale power agreement and related agreements concerning the Bradley Lake hydroelectric project entered into by the Alaska Power Authority (APA) and one or more public utilities until after long-term debt incurred for the

1/ In many respects, this opinion restates the opinion of this office contained in our legal review of HCS CSSSSB 22(Fin) for Governor Cowper. See Attorney General file 883-87-0062.

2/ For your convenience I am attaching a copy of the transmittal letter from the governor which accompanied HB 356 in its original form.

project had been retired. Meetings between the APA and public utilities concerning an agreement exempt from APUC review would, however, have to comply with the open meetings act. The bill incorporates the original language from SB 22 affecting power cost equalization benefits. The bill endorses a Bradley Lake power sales agreement that is partly financed with state equity contributions. I will address these provisions separately.

I. Regulation of APA Activities

Sections 1 -- 3 speak to the APUC's oversight of the agreement for the sale of wholesale power by the APA to public utilities, and the contracts between utilities for the distribution of that power. The perceived need for these changes arose as a result of a 1986 amendment to AS 42.05.431. That amendment, by adding AS 42.05.431(b), gave the APUC authority to review in advance and approve wholesale power agreements between public utilities entered into on or after June 7, 1986.

Section 1 of this bill amends AS 42.05.431(b) by excluding from APUC review wholesale power agreements and related contracts entered into between the APA and one or more utilities between October 31, 1987 and January 1, 1988. 3/ It also permits the utility to charge rates sufficient to meet its obligations under the agreement or related contracts. Meetings between the parties concerning these agreements are subject to the open meetings act. Section 2 then requires the APUC to allow the utility's rates to reflect the utility's validated costs under wholesale power agreements and related contracts. Section 3 makes minor changes to AS 44.83.090(b) to more precisely define what contracts are exempt from APUC review.

Similar provisions in HCS CSSSSB 22(Fin) were the subject of extensive review by the Department of Law after its passage. See Attorney General file No. 883-87-0062. 4/ We noted then that a bill which benefits only one hydroelectric project may be challenged as special legislation. Because the bill arguably addresses a matter that is unique but of statewide concern, we could not say that the bill was invalid. As to

3/ By definition, the only project affected would be the Bradley Lake Hydroelectric Project.

4/ For your convenience, a copy of the bill review letter is attached.

section 1 of CSHB 356 (Rules) am, we would note the same legal issue.

Section 1 contains several new provisions that were not a part of last year's bill:

(1) it allows 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;

(2) it expands the scope of the Bradley Lake regulatory exemption to include secondary contracts that are associated with the project, e.g., a wheeling agreement and an agreement to share transmission facilities, and to include future amendments to the sales agreement and secondary contracts;

(3) it requires meetings between the parties regarding the agreements be held according to the state open meetings law.

None of these new provisions raise any legal issues not covered in our letter reviewing HCS CSSSSB 22.

Section 2 adds a new subsec. (d) to AS 42.05.511, "Unreasonable [public utility] management practices," to specify that "[v]alidated costs incurred by a utility in connection with the related contracts [exempt from APUC review] must be allowed in the rates charged by the utility." The effect of sec. 2 is that the APUC has jurisdiction to validate the costs incurred by a utility and used in the wheeling and transmission rate formula but no jurisdiction to alter or amend that formula. This effect is clarified in the letter of intent passed by the House with the bill. Senate adoption of the letter of intent is recommended as well.

One final issue raised by secs. 1 -- 3 is whether the APUC will have jurisdiction under federal law to review the Bradley Lake power sales agreement, notwithstanding these changes in state law. As we noted in our 1987 review, the Public Utilities Regulatory Policy Act (PURPA) authorizes the APUC to conduct hearings on whether a co-generator or small power producer can provide energy at a cost equal to or less than the utility's current costs. 16 U.S.C. 824a-3(b). If alternate energy is available at equal or less cost, then the APUC may order the utility to purchase the alternate power.

Despite the fact that Congress passed this legislation 10 years ago, there are numerous unanswered questions regarding whether the APUC, or its federal counterpart FERC, could successfully order a purchaser of power from Bradley Lake to buy its power instead from a co-generator or small hydro producer. We are advised by our FERC counsel in Washington, D.C. that (1) a test case has been pending before FERC for six years as to whether FERC has jurisdiction to regulate state instrumentalities, and (2) FERC will not regulate if the rates and charges for the wholesale sale of power are set by an authorized agent of the state. Arguably, the APA is an authorized agent of the state. For all these reasons, we believe it is not clear whether the APUC could assert jurisdiction under PURPA over the APA.

II. Power Cost Equalization Calculations

Section 4 of the bill states that the APUC may not consider validated costs or kilowatt hour sales to a Department of Defense facility when determining the level of a utility's power cost equalization benefits. This section would nullify an APUC order that the sales should be so included. Inclusion of these sales to a federal facility, we are informed, has resulted in reducing the power cost equalization benefits paid to at least one utility's consumer-members and has resulted in repayment of excess power cost equalization subsidies received by the utility.

III. Excess Payment Term

Section 5 adds a new provision to the bill. It refers to a provision in the Bradley Lake power sales agreement which requires the utilities' to continue making payments to the state after long-term debt incurred for the project is retired. Section 5 is a legislative endorsement of an amendment to the agreement which would reflect the legislature's support of the project's financing partly through cash grants. Since the provision as written does not direct the APA to renegotiate the agreement, it avoids any possible constitutional issues regarding the separation of powers or abrogation of contracts.

IV. Effective Date

Section 6 of the bill makes secs. 1 -- 4 retroactive to November 1, 1987 with one exception. The requirement that meetings be conducted under the open meetings act is not included in the retroactive provision. Thus, an APUC proceeding initiated after that date to review a power sales or related agreement regarding the Bradley Lake project would be void. In addition, any inclusion of kilowatt hour sales to federal defense

Honorable Jack Coghill

February 24, 1988
Page 5

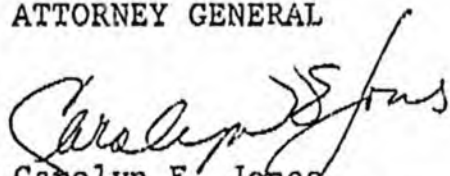
facilities in the power cost equalization computation from November 1, 1987 to the present also would be void.

In conclusion, although some constitutional or other legal questions are raised by this bill, I believe that there are no constitutional or legal problems in it that would require amendment by the Senate. I offer no recommendation on the policy issues in the bill.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:


Carolyn E. Jones
Assistant Attorney General

CEJ:sw

Enclosures

June 3, 1987

Honorable Steve Cowper
Governor
State of Alaska
P.O. Box A
Juneau, AK 99811

Re: HCS CSSSSB 22(Fin) -- exempt
certain utilities from APUC
regulation and review
Our file: 883-87-0062

Dear Governor Cowper:

At Bob Evans' request on your behalf, we have reviewed HCS CSSSSB 22(Fin), which amends AS 42.05 and AS 44.83 by excluding certain utilities or their activities from regulation or review by the Alaska Public Utilities Commission (APUC), and by revising the method of calculating eligibility for power cost equalization benefits.

Originally, this bill would have simply exempted from APUC regulation telephone and electric utilities with less than 250 subscribers. (That amendment, with some modification, has remained in all versions of the bill.) Senator Coghill, SB 22's sponsor, subsequently added several sections to the bill to limit the APUC's authority to review and approve wholesale power agreements between the Alaska Power Authority (APA) and another public utility. SSSB 22. A provision affecting power cost equalization benefits was subsequently added by the Senate Finance Committee. CSSSSB 22(Fin), sec. 7. We will address these three substantive changes separately. (HCS CSSSSB 22(Jud) and HCS CSSSSB 22(Fin) made additional modifications, with the latter raising the 250-subscribers exemption to 500.)

I. Regulation of Small Utilities

Section 4 of the bill amends AS 42.05.711(a) to exempt from APUC regulation those electric or telephone utilities that have fewer than 500 retail subscribers. We understand that this section would affect 67 of 307 certificated utilities.

Under current law, electric or telephone utilities that gross less than \$50,000 annually are exempt from APUC regulation.

AS 42.05.711(e). Moreover, a telephone or electric utility that grosses less than \$325,000 annually may elect to be exempt from APUC regulation. AS 42.05.711(f); AS 42.05.712.

Proponents of sec. 4 have argued that the cost of regulating utilities with fewer than 500 retail subscribers outweighs the benefits of regulation. Opponents of the exemption, including the APUC, argued that the current statute is superior to the proposed amendment because it allows consumers of small electric and telephone utilities the choice of whether the benefits of regulation outweigh the costs of regulation.

II. Regulation of APA Activities

Sections 1 -- 3, 5, and 6 speak to the APUC's oversight of costs associated with the sale of wholesale power by the APA to a public utility. The perceived need for these changes arose as a result of a 1986 amendment to AS 42.05.431. That amendment (adding AS 42.05.431(b)) gave the APUC authority to review in advance and approve wholesale power agreements between public utilities. 1/ It is our understanding that both the APA and the APUC have submitted, directly to you, their views on the policy wisdom of these sections of the bill. We will not repeat the arguments here.

Section 1 of this bill amends AS 42.05.431(b) by excluding from APUC review those wholesale power agreements identified in sec. 2 of the bill (proposed AS 42.05.431(c)). Section 2 then describes the excluded wholesale power agreements as those between the APA and a public utility for the sale of power from a project licensed for construction by the Federal Energy Regulatory Commission (FERC) before January 1, 1987. Section 6 amends the APA's enabling legislation to the same end, although the amendment is awkward and probably unnecessary to achieve the

1/ AS 42.05.431(b) was part of a complex, lengthy, and controversial package of amendments in the "sunset" reauthorization bill for the APUC. The effect of the amendment on the APA, its wholesale power agreements, and the Bradley Lake power sales agreement in particular, was not specifically addressed by the 1986 legislature. The meaning of AS 42.05.431(b) is plain and unambiguous, and clearly authorizes the APUC to review and approve wholesale power agreements between the APA and another public utility. 1987 Inf. Op. Att'y Gen. (663-87-0365; February 18).

goals of this bill.

While the language of sec. 2 speaks in general terms, the Bradley Lake hydroelectric project is the only APA project that will benefit from this change in the law. (Wholesale power agreements entered into by June 7, 1986 have already been excluded from the ambit of AS 42.05.431(b). See sec. 8, ch. 104, SLA 1986.) Thus, the principal legal issue raised by sec. 2 is whether this change in the law would be viewed as "special" legislation in contravention of art. II, sec. 19, of the Alaska Constitution. That section states in pertinent part: "[t]he legislature shall pass no local or special act if a general act can be made applicable."

There is a possibility that a court would rule that sec. 2 is "special" legislation affecting only the Bradley Lake hydroelectric project and is therefore unconstitutional. However, it can be argued that sec. 2 addresses a matter that is unique, but of statewide concern, and is therefore constitutional. See State v. Lewis, 559 P.2d 630, 643 (Alaska 1977), cert. den. 432 U.S. 901, 97 S.Ct. 2943 (1977). Legislation may affect only one area and yet relate to a matter of statewide concern or common interest, and therefore be valid. Abrams v. State, 534 P.2d 91 (Alaska 1975). Thus, even though sec. 2 of the bill may raise a constitutional question, we cannot say that it is invalid.

Section 3 adds a new subsec. (d) to AS 42.05.511, "Unreasonable [public utility] management practices," to specify that power costs "incurred by a utility in connection with a contract with the Alaska Power Authority that is exempted from [APUC] review" by sec. 2 of the bill "shall be allowed in the rates charged by the utility." As noted above, the only APA project to which sec. 2 applies is Bradley Lake. The effect of sec. 3 is that Bradley Lake power costs will be passed through to utility customers without APUC review as to whether the resulting rates are "just and reasonable" under AS 42.05.381 and 42.05.431, and without APUC review to determine whether the power sales agreement is "necessary and consistent with the public interest" under AS 42.05.511(c). The Senate version of the bill included power costs, wheeling charges for facilities owned or leased by the state, and overhead costs associated with the contract. In the final version of the bill, however, only the utility's power costs incurred in connection with the power sales agreement are not automatically allowed in the rates charged by the utility.

Section 5 provides that the APA is not a public utility under the Alaska Public Utilities Commission Act (AS 42.05). In

our 1987 memorandum of advice mentioned above, in footnote 1, we concluded that the APA was a public utility within the meaning of AS 42.05, but that the APA was specifically exempt from APUC jurisdiction. See page 1 of that memorandum. Thus, under current law, the APUC has the authority to review a power sales agreement between the APA and another public utility even though the APA itself is not subject to APUC jurisdiction. If sec. 5 becomes law, the APUC's jurisdiction under AS 42.05.431(b) to review power sales agreements between public utilities will no longer extend to agreements to which the APA is a party.

The principal legal issue raised by sec. 5 is whether the APUC will have jurisdiction under federal law to review power sales agreements to which the APA is a party, notwithstanding these changes in state law. The Public Utilities Regulatory Policy Act (PURPA) was passed by Congress in 1978 to encourage conservation and efficiency in energy use and provide incentives for industrial co-generators and small power producers. See e.g., House Ad Hoc Com. on Energy, National Energy Act, H. Rep. No. 95-543, 95th Cong., 1st Sess., I at 8, 10, 21 (1977); Senate Com. on Energy and Natural Resources, Public Utility Regulatory Policy Act of 1977, S. Rep. No. 95-422, 95th Cong., 1st Sess., at 20 (1977). Under PURPA, the APUC is authorized to conduct hearings on whether a co-generator or small power producer can provide energy at a cost equal to or less than the utility's current costs. 16 U.S.C. 824a-3(b). If alternate energy is available at equal or less cost, then the regulatory agency may order the utility to purchase the alternate power.

Despite the fact that Congress passed this legislation nine years ago, there are numerous unanswered questions regarding whether the APUC or FERC could successfully order a purchaser of power from Bradley Lake to buy its power instead from a co-generator or small hydro producer. We are advised by our FERC counsel in Washington, D.C. that (1) a test case has been pending before FERC for five years as to whether FERC has jurisdiction to regulate state instrumentalities and (2) FERC will not regulate if the rates and charges for the wholesale sale of power are set by an authorized agent of the state. Arguably, the APA is an authorized agent of the state. For all these reasons, we believe that it is not clear whether the APUC could assert jurisdiction under PURPA over the APA.

III. Power Cost Equalization Calculations

Section 7 of the bill states that the APUC may not consider validated costs or kilowatt hour sales to a Department of Defense facility when determining if a utility is eligible for

power cost equalization benefits. This section nullifies an APUC order that ruled that the sales should be so included. Inclusion of these sales to a federal facility, we are informed, has resulted in raising the costs of power to at least one utility's consumer-members and has resulted in repayment of power cost equalization subsidies by the utility.

IV. Effective Date

Section 8 of the bill makes secs. 1, 2, 5, 6, and 7 retroactive to June 7, 1986. Thus, an APUC proceeding initiated after that date to review a power sales agreement in which the APA is a party would be void. 2/ We understand that none was initiated. In addition, any inclusion of kilowatt hour sales to federal defense facilities from June 7, 1986 to the present would also be void.

In conclusion, although some constitutional or other legal questions are raised by this bill, we believe that there are no constitutional or legal problems in it that would require a veto. We are offering no recommendation on the policy issues in the bill.

Very truly yours,

Grace Berg Schaible
Attorney General

GBS:CEJ:kmb

2/ Power sales agreements entered into before June 7, 1986 were previously excluded from APUC jurisdiction. Sec. 8, ch. 104, SLA 1986.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

RECEIVED
DEPT. OF LAW

JAN 12, 1988

January 13, 1988

TIME to 3:34

The Honorable Ben Grusserdorf
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 CSSSSP 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.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

ALASKA PUBLIC UTILITIES COMMISSION DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

420 "L" STREET
SUITE 100
ANCHORAGE, ALASKA 99501
(907) 276-6222

February 24, 1988

Senator John B. Coghill
Chairman
Senate Resources Committee
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Dear Senator Coghill:

I am writing to respond to the questions that you have asked with respect to CSHB 356 (Rules) which is currently pending before the Senate Resources Committee.

1. The Commission did not have oversight over the APA before AS 42.05.431(b) was passed in 1986 and does not have oversight over the APA today. Rather, the Commission's jurisdiction is limited to utilities and the ratemaking consequences of any actions they take, including the purchase of power. The 1986 legislation did, however, make explicit, rather than discretionary, the Commission's authority to require advance approval of wholesale power contracts. At the same time it limited the extent of the Commission's ability to review contracts after they were in effect. CSHB 356 (Rules) eliminates both the advance approval and subsequent review of the Bradley Lake power sales agreement.

2. In our assessment, CSHB356 (Rules) and CSCSSSB22 (Finance) would result in essentially equivalent limitations on APUC oversight over wholesale power contracts between utilities and the APA. However, the new bill substantially reduces regulation over agreements solely between regulated utilities that affect common plant and common costs for Bradley Lake and non-Bradley Lake power transmission.

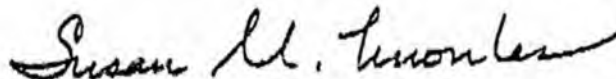
3. By exempting the Bradley Lake power sales agreement from Commission approval and guaranteeing rates sufficient to meet covenants, CSHB356 (Rules) appears to eliminate any regulatory oversight which could be deemed to delay construction or increase repayment uncertainty for bondholders. It is unclear, however,

Senator John B. Coghill
February 24, 1988
Page 2

what effect this legislation may have on any federal requirements under PURPA. In any event, we hope that you did not mean to imply that by some action taken to date the Commission has purposefully contributed to either: a delay in the project or an increase in its costs. The facts are that the Commission was obligated to fulfill the functions previously delegated by the Legislature, including advance approval of wholesale power contracts, and was not responsible for the flaws in CSCSSSB22 (Finance) which resulted in the Governor's veto.

If you would like additional information from the Commission, please do not hesitate to contact me.

Sincerely yours,



Susan M. Knowles
Chairman

Alaska State Legislature

Senate Resources Committee



Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-Chairman
Sen. Lloyd Jones
Sen. Arliss Sturgulewski
Sen. Jim Duncan
Sen. Fred Zharoff
Sen. Dick Eliason

Box V
Juneau, Alaska 99811
(907) 465-4907

February 17, 1988

Susan Knowles, Chairperson
Alaska Public Utilities Commission
420 L St., Suite 100
Anchorage, AK 99501

RE: CSHB 356 (Rules) am

Dear Ms. Knowles:

The referenced bill with a letter of intent was referred to the Senate Resources committee. The committee is scheduled to hold hearings on February 29, 1988.

As part of the review process, I would appreciate receiving written response to the following questions not later than the scheduled hearing:

1. Assuming CSHB 356 (Rules) am becomes law as is, will APUC have more or less oversight over APA than before the inadvertent passage of the 1986 legislation?
2. Compared to SB 22 which attempted to restore the historical jurisdictional balance between APA and APUC and was vetoed by the Governor, and assuming CSHB 356 (Rules) am becomes law as is, will APUC have more or less oversight over APA?
3. Does CSHB 356 (Rules) am contain anything that would cause or allow APUC to delay the Bradley project further or to increase the revenue bond financing costs by increasing the uncertainty level of the investors?

Based on a preliminary review, the bill does not appear to contain any fatal flaws. Unless some are discovered subsequently, my intention is to move the bill as is, in order to assure its timely passage by the Senate and approval by the Governor not later than March 15, 1988.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Jack Coghill".

Senator J. Coghill
Chairman

Alaska State Legislature

Senate Advisory Council



P.O. Box V
State Capitol
Juneau, Alaska 99811
Phone: (907) 465-3114

MEMORANDUM

TO: Senator J. Coghill, Chairman
Senate Resources Committee

FROM: Kurt S. Dzinich *KSD*
Senior Advisor

DATE: February 23, 1988

SUBJECT: CSHB 356 (Rules) am IR # 88-003235

In response to your request, following is an analysis of CSHB 356 (Rules) am.

Before proceeding with specifics, it is worthwhile to recall that this bill was introduced at the request of the Administration and that it was in lieu of SB 22 which was vetoed in 1987. The purpose of SB 22 was to restore the APA's statutory exemption from APUC oversight that had existed since its inception but was inadvertently removed without any substantive hearings in 1986 legislation. The legislature had wisely provided that exemption in the APA's enabling legislation in order to allow for least cost revenue bond financing and in order to preclude duplication or even triplicate oversight which always resulted in unnecessary delays and cost increases. The legislature's intent was clear i.e. once it approved a project in accordance with AS 44.83.185, it did not want further delays or second guessing by APUC.

While SB 22 attempted to restore APA's exemption from APUC oversight that existed prior to the 1986 legislation, CSHB 356 (Rules) am only exempts the Bradley Lake Hydroelectric Project from APUC overview and then only until all long-term debt for the project is retired. After that point, APUC would have jurisdiction over APA and Bradley related issues. Furthermore, APUC would have overview of all subsequent APA projects after the Bradley project and to the extent that power sale agreements were required.

The overriding question is whether the committee and the Senate should go along with CSHB 356 (Rules) am thereby allowing the Governor to sign the bill before March 15, 1988 in order to allow the project to be restarted this summer without further delays or whether to go back and address the basic jurisdictional dispute between APA and APUC. This latter course would most likely result in missing of the March 15, 1988 deadline leading to further delays and cost increases to the project.

Senate Advisory

Sectional Analysis CSHB 356 (Rules) am

Section 1, subsection (c)(1) amends AS 42.05.431 pertaining to powers of the APUC by exempting APA's wholesale power agreements for the sale of power and related contracts (these are for wheeling services over HEA and CEA owned portions of the transmission system) for a project licensed by FERC (Federal Energy Regulatory Commission) before January 1, 1987, and entered between the APA and the utilities after October 31, 1987 and before January 1, 1988. This time bracket covers the Bradley Lake project agreements. The exemption terminates when all long-term debt on the project is retired.

Subsection (c)(2) establishes a public utilities' right to include a covenant for collecting sufficient revenues to pay for debt service under the power sale agreement.

Subsection (d) mandates that meetings between APA and public utilities related to power sale agreements or other matter exempted from APUC review under subsection (c)(1) above are subject to AS 44.62.310 (open public meetings law).

Section 2 amends AS 42.05.511, pertaining to APUC's jurisdiction, to allow utilities to include validated costs in their rates if incurred as part of contracts described by the proposed AS 42.05.431(c). While APUC would validate the costs, the commission is specifically prohibited from amending or otherwise altering the formulas set out in current contracts.

Section 3 amends AS 44.83.090(b) pertaining to APA, clarifies that the relationship between APA and APUC is not modified except for wholesale power agreements and related contracts described in the proposed AS 42.05.431(c)(1) i.e. APUC has no jurisdiction to review or approve these.

Section 4 amends AS 44.83.162 pertaining to the APA's power cost equalization (PCE) program to exclude validated costs or kilowatt/hour sales associated with U.S. Department of Defense facilities. The net effect would be to decrease the costs to the ratepayers and increase the cost of the PCE program.

Section 5 expresses the legislature's intent that if the power sale agreement is amended then section 29 should be removed for the benefit of the consumers. Section 29 requires that the utilities keep paying the same debt service for an additional twenty years after the 30 year revenue bonds are paid off. This provision was agreed to in lieu of rate reopeners such as in the four-dam pool agreement. In terms of real dollars, the effect would be that the ratepayers would pay back to the state about \$10 million (present value) for the \$175 million in equity that the state contributed to the project.

Senator J. Coghill, Chairman
February 23, 1988
Page 3

Section 6 makes sections 1 - 4 of the proposed bill except AS 42.05.431 (d) retroactive to November 1, 1987 in order to cover all power sale agreements and related contracts signed for the Bradley project.

Section 7 is the effective date clause.

Summary & Conclusion. If the objective is to restart the Bradley Lake Hydroelectric project without further delays this summer, the Governor must sign the enabling legislation not later than March 15, 1988. In order to accomplish that, and minimize further delays and cost increases, it is essential that the already concluded power sale agreements and related contracts be exempted from further lengthy and uncertain APUC review and approval process and as was originally intended by the legislature when it authorized the project in accordance with AS 44.83.185 in 1984.

The objective of completing Bradley without further delays and at least cost can now best be attained thru passage of CSHB 356 (Rules) am. In its present form the bill does not contain any fatal flaws and would accomplish the immediate task of restarting the project. Other related issues would best be handled seperately from this bill.

Alaska State Legislature

Senate Advisory Council



P.O. Box V
State Capitol
Juneau, Alaska 99811
Phone: (907) 465-3114

MEMORANDUM

TO: ALL SENATORS

FROM: Kurt S. Dzinich *KSD*
Senior Advisor

DATE: January 27, 1988

RE: Bradley Lake Project Update

For your information, following is a brief summary of the current status of the Bradley Lake Hydroelectric project.

As you probably recall, in early 1987 the APA Board of Directors decided that no further contracts would be awarded to continue construction of the Bradley project until the Railbelt utilities had signed unconditional power sale agreements for 100% of the energy output. Project completion at that time was 22%.

The power sale agreement negotiations were complicated by the position of the Railbelt utilities that they would not sign the power sale agreements unless the legislature committed to the completion of the Railbelt intertie system between the Kenai Peninsula and Fairbanks.

As the 1987 legislative session progressed, a second complication arose due to an attorney general's opinion that the 1986 legislation dealing with APUC had extended its powers to APA. The APA had previously been statutorily exempted from APUC oversight since its inception in the late 1970's. An attempt to restore the pre-1986 jurisdictional balance between APA and APUC failed when the Governor vetoed SB 22 and the legislature failed to override the veto in the 1987 special session.

As a result of the above activities, the Bradley project remained on hold in 1987 incurring about a year's delay in its construction completion schedule.

By the end of 1987, the APA Board of Directors and the governing boards of the Railbelt utilities (except the Fairbanks Municipal Utility whose share was picked up by the GVEA) had ratified the unconditional power sale agreements. In addition, the utilities had among themselves completed the necessary wheeling agreements which would allow each utility to be able to receive its share of the Bradley energy over the existing intertie system containing sections owned by CEA and HEA. The power sale agreement is conditioned on these wheeling agreements.

ALL SENATORS
January 27, 1988
Page 2

After the failure of SB 22, the APA Board stipulated that the Bradley project would remain on hold until the APUC had completed its review and approval process. This process was expected to take six months or longer depending on whether the APUC decision would be appealed in the courts.

As he had indicated earlier when vetoing SB 22, the Governor introduced a "clean" version of that bill as HB 356. The bill is assigned to the House Judiciary and Finance committees with initial hearings scheduled for January 27, 28, and 29, 1988. Essentially, this bill would exempt the Bradley Lake power sale agreements and related wheeling contracts from APUC review.

While some have intimated that the removal of the APUC from the APA's project approval process is tantamount to eliminating public or ratepayer oversight, the fact of the matter is that all of the Railbelt utilities are owned and controlled by their ratepayers through their elected governing boards or assemblies. In addition, since the project was assumed by the APA from the Corps of Engineers in early 1983, there have been numerous public hearings by the APA, the FERC, and the Legislature with more than ample opportunity for public comment and oversight.

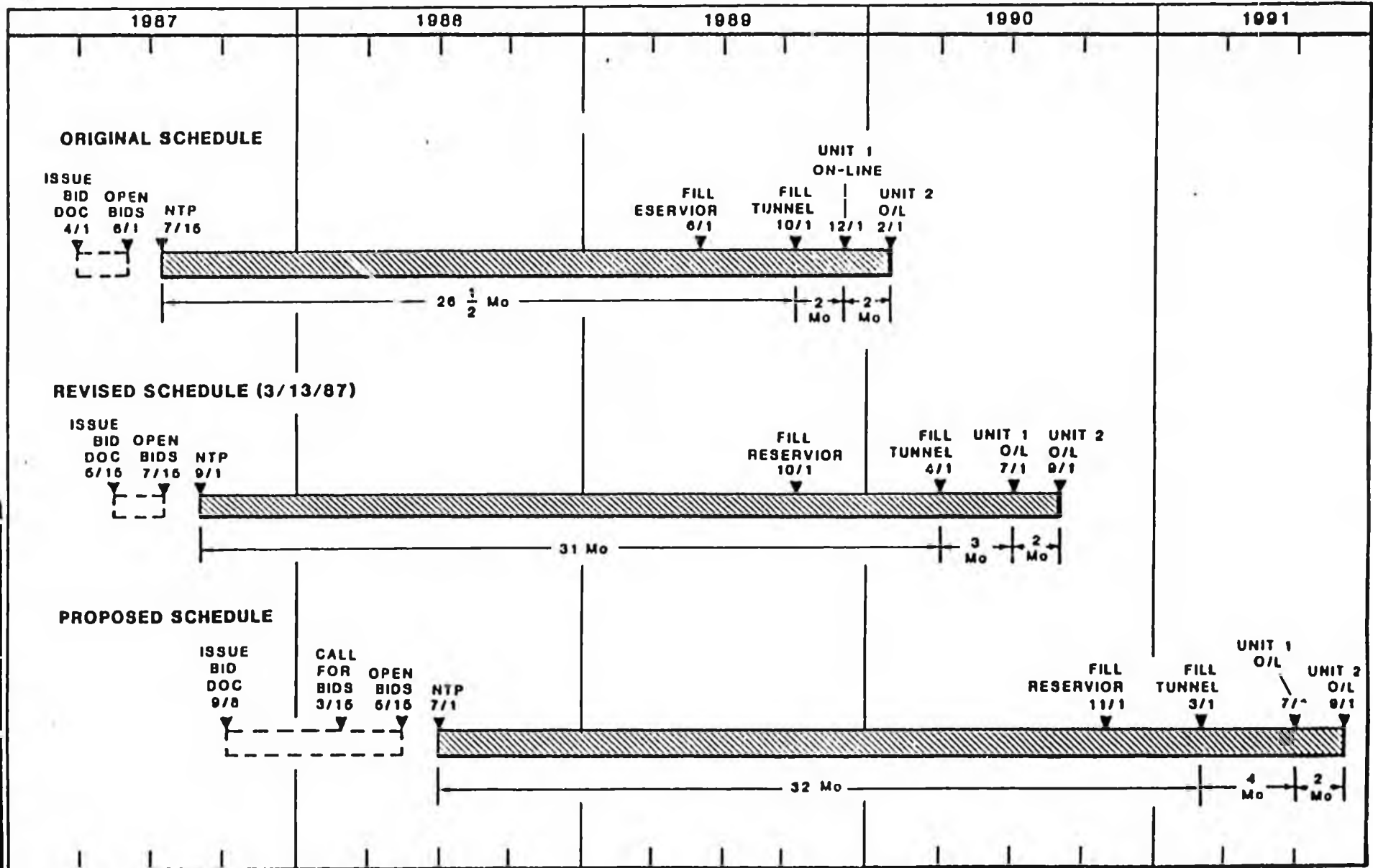
In order not to lose yet another construction season (1988), it is essential that the Governor sign HB 356 by the middle of March 1988. This would allow APA to complete the bid solicitation, review and award process and allow for start of construction by mid-summer. This new schedule would result in a completion date of September 1991 or some 19 months later than the original project schedule, or 12 months later than the March 13, 1987 revised schedule. Attached is a copy of the schedule comparison.

In summary, timely passage of HB 356 without "killer amendments" and signing by the Governor by mid-March of 1988 are critical to being able to restart the project this summer and completing it without further needless delays and cost increases.

Please let me know if you have any questions.

Attachment:

Alaska Power Authority
BRADLEY LAKE SCHEDULE COMPARISON



ATTACHMENT A



Tom Fink,
Mayor

Municipal Light & Power

1200 EAST FIRST AVENUE — ANCHORAGE, ALASKA 99501-1685
TELEPHONE (907) 279-7671
TELECOPIER (907) 278-2961



February 25, 1988

Alaska State Legislature
Senate Resources Committee
Hon. John B. Coghill, Chairman
Box V
Juneau, Alaska 99811

Subject: CSHB 356 (Rules) am

Dear Senator Coghill:

In reply to your request of February 16, 1988 I offer the following testimony:

- Q. Does the letter of intent accurately portray the utilities' understanding of this issue based on testimony to date on HB 356?
- A. Yes. The letter of intent by Representative Sund and adopted by the House accurately portrays my understanding of the intent of the wheeling contract ML&P entered into.
- Q. Is the letter of intent redundant given CSHB 356 (Rules) am?
- A. Yes, I believe the subject bill in Section 2 also accurately portrays the intent of the wheeling contract.
- Q. Are you satisfied with the CSHB 356 (Rules) am? If not, why not?
- A. Yes. I do not believe contracts between the State and a utility should ever be subject to review by another State agency because I believe the State has the obligation to internally resolve it's differences and not require the public to expend considerable cost and energy in what could and should be resolved by the State Administration. And to give the State Administration credit, they are in this case trying to do exactly that.

I also hope and expect that long before the time the Bradley Lake long-term debt is paid off the Legislature will come to understand that State regulation of public power utilities, both municipals and REA co-op, is not in the public interest and I feel that regulation of these utilities which are already subject to local control, over time, tend to result in higher, not lower rates.

Thank you for the opportunity to state my views on this matter. I certainly support and applaud your effort to have this bill enacted into law in the near future.

Sincerely,


Thomas R. Stahr
General Manager

PROVIDE FOR TOMORROW, SAVE ENERGY TODAY.

AM 1 4 P

Alaska State Legislature

Senate Resources Committee



Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-Chairman
Sen. Lloyd Jones
Sen. Arliss Sturgulewski
Sen. Jim Duncan
Sen. Fred Zharoff
Sen. Dick Eliason

Box V
Juneau, Alaska 99811
(907) 465-4907

February 16, 1988

Tom Stahr, General Manager
Anchorage Municipal Light & Power
1200 East First Avenue
Anchorage, AK 99501

RE: CSHB 356 (Rules) am

Dear Mr. Stahr:

The referenced bill with a letter of intent was referred to the Senate Resources Committee. The committee is scheduled to hold hearings on February 29, 1988.

As part of the review process, I would appreciate receiving written response to the following questions not later than the scheduled hearing:

1. Does the letter of intent accurately portray the utilities' understanding of this issue based on testimony to date on HB 356?
2. Is the letter of intent redundant given CSHB 356 (Rules) am?
3. Are you satisfied with the CSHB 356 (Rules) am? If not, why not?

Based on a preliminary review, the bill does not appear to contain any fatal flaws. Unless some are discovered subsequently, my intention is to move the bill as is, in order to assure its timely passage by the Senate and approval by the Governor not later than March 15, 1988.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Coghill", written over a large, stylized flourish.

Senator J. Coghill,
Chairman



ALASKA RURAL ELECTRIC COOPERATIVE
ASSOCIATION, INC.

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

February 24, 1988

Dear Senator Coghill:

In response to your letter of February 16th, this is to inform you that our association strongly supports HB 356 and has no objection to the form of that bill before your committee, CSHB 356 (Rules) am.

The letter of intent which the House adopted with the bill does accurately represent our understanding of that portion of the bill which it addresses. This letter is probably useful in that it clearly tells the APUC to keep their hands off the cost allocation formula agreed to by the utilities as an essential element of the services and wheeling contracts.

We understand that there is presently some confusion as to whether passage of HB 356 would somehow cause the wholesale power contracts entered into between the APA and the "4-dam pool communities" to become subject to the jurisdiction of the APUC. It is our opinion that this bill does not affect the "4-dam pool" in any way, and that the existing "4-dam pool" contracts, including "rate reopeners" contemplated by the terms of the contracts, are not and will not become subject to APUC jurisdiction. In support of this position, we submit the enclosed letter of July 22, 1987 from Commissioner Carolyn Guess for the APUC to Mr. Robert LeResche of the Alaska Power Authority, and Attorney General opinion letters dated Feb. 12, 1988 and Feb. 22, 1988 addressed to Senator Fred Zharoff and signed by Carolyn Jones. We are not requesting an amendment to HB 356 for our members in the "4-dam pool" because we do not believe it to be necessary.

We commend you for your intention stated in your letter to pass this bill as is in order to assure its timely passage by the Senate and approval by the Governor not later than March 15, 1988. We encourage you to proceed in accordance with your stated intention.

Respectfully,

David Hutchens
Executive Director

DEMOCRACY IN ACTION

Δ Ρ Ε C Α

STATE OF ALASKA

July 22, 1987

ALASKA PUBLIC UTILITIES COMMISSION

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

RECEIVED
STATE OF ALASKA
JUL 27 1987

JUL 27 1987

ALASKA POWER

420 "L" STREET
SUITE 100
ANCHORAGE, ALASKA 99501
(907) 276-6222

RECEIVED

JUL 27 1987

ALASKA POWER
AUTHORITY

Mr. Robert E. LeResche
Executive Director
Alaska Power Authority
P.O. Box AM
Juneau, Alaska 99811

Re: Interpretation of AS 42.05.431(b) as it applies to contracts between regulated utilities and the Alaska Power Authority (APA)

Dear Mr. LeResche:

This letter responds to your inquiry of June 24, 1987, in which you raise several questions regarding the above-referenced matter.

In order to make sure that all the inquiries in your letter have been addressed, this response is divided into four sections: the Four Dam Pool Contracts; Intertie Agreements; Waste Heat Agreements; and the Bradley Lake Wholesale Power Agreements.

Four Dam Pool Contracts:

The Commission believes it is clear that the 1986 legislative amendment to AS 42.05 which created subsection .431(b) (hereinafter .431(b)) does not apply to contracts in place prior to its enactment. Therefore, the Commission has no basis to assert jurisdiction over the existing Four Dam Pool contracts.

Amendments and "re-openers" to these contracts pose a somewhat different question. To the extent that a re-opener is purely "formula" in nature, and clearly within the contemplation of the parties to the original agreement, it is probable that Commission approval would not be required. On the other hand, amendments which result in substantial changes to the agreements may be subject to Commission review. At this time, the best guidance we can offer is to suggest that all changes to these contracts be submitted to the Commission for preliminary evaluation to determine the appropriate application, if any, of .431(b).

Intertie Agreements:

The Commission initially determined that .431(b) had questionable application to intertie agreements and requested the Department of Law to review the issue. With an opportunity for only a preliminary review, the Department of Law has indicated that the services provided within the context of an intertie agreement do not appear to constitute a transaction for wholesale power as contemplated by the statute.

During the Open Meeting of July 17, 1987, at which the Commission met to discuss a response to your letter, a concern was raised regarding an intertie agreement associated with an APA power project. If the intertie is an integral part of the overall wholesale power transaction, an argument can be made that such agreements do require Commission approval.

Based on the Department of Law's advice and the Commission's own analysis, we conclude that, as a general matter, intertie agreements are not subject to Commission approval. However, the Commission will seek further review by the Attorney General on the question of intertie agreements which are negotiated in conjunction with an otherwise jurisdictional wholesale power agreement.

The APA is hereby informed that no action will be taken in response to the filing of the Craig/Klawock intertie agreement; this project may proceed without further Commission involvement. It should be noted, however, that costs associated with APA projects will be subject to the Commission's review in determining revenue requirements for utilities subject to economic regulation.

Waste Heat Sales Agreements:

The provisions of .431(b) apply to wholesale power agreements "between public utilities." It is not necessary to reach the question of whether the sale of waste heat fits under the definition of a wholesale power agreement because the agreements cited by the APA include nine waste heat projects that result in a direct relationship between your agency and the ultimate consumer (i.e. school districts, hospitals etc.). Since these agreements are not "between public utilities," they are not subject to Commission approval.

Bradley Lake Wholesale Power Agreements:

The provisions of .431(b) clearly apply to Bradley Lake contracts. While the Commission understands and appreciates the critical nature of the APA contract approval process, we hope you will appreciate that the regulatory process is subject to a wide variety of considerations beginning with a statutory requirement for a reasonable period of public notice of the contracts requiring approval. In the event an individual or entity seeks to intervene in a Commission proceeding, our procedures must accommodate a schedule which provides reasonable response time for all parties. In addition, as I am sure you are well aware, Commission decisions are subject to judicial review, the timing of which is totally beyond this agency's control.

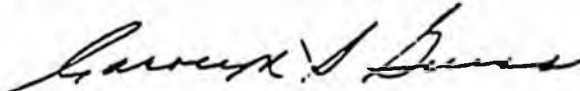
Notwithstanding the constraints of the regulatory process, it is the Commission's intent to respond as timely as possible to the Bradley Lake filings. To that end, any party to a Bradley Lake contract can submit its agreement for initial Commission staff review upon the signing of the general manager commitment letter. However, the Commission would not proceed with the formal approval process until the agreement has been fully executed by the

utility's governing board. As the Commission indicated in its Open Meeting, we believe that the staff review and analysis process could be furthered if your designated staff and ours have communication prior and subsequent to the filing of any contract. It is our experience that on occasion delays can be caused by a lack of relevant information timely provided to Commission staff. Because your staff may not be familiar with the kinds of data normally submitted in analyzing wholesale power agreements, we strongly suggest that communication between our staffs begin immediately.

I believe this letter fully responds to your inquiries. If you have additional questions or clarifications, please contact me or Ted Moninski, the Commission's Executive Director.

Sincerely,

ALASKA PUBLIC UTILITIES COMMISSION



Carolyn S. Guess
Acting Chairman

P.S. I note that your letter to the Commission was specifically directed to Commissioner-elect Peter Sokolov. While the Governor has appointed Mr. Sokolov to the position recently vacated by the retirement of former Chairman Marvin Weatherly, he has not yet named a new, permanent APUC Chairman. During the interim, the Governor has asked that I assume the responsibilities of Acting Chairman.

CORRESPONDENCE DISTRIBUTION	
ACTION:	INFORMATION:
_____	B. N. Reuel M. Hubbard
_____	D. Shira C. Jones
_____	G. Manni J. Swenfeld
_____	D. Ebele
DATE REC'D:	DATE DUE:

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0303
PHONE: (907) 465-3600

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL
February 12, 1988

Honorable Fred F. Zharoff
Pouch V
Juneau, Alaska 99811

Re: APUC Review/ "4 Dam Pool"
Power Sales Agreement
File No. 661-88-0329

Dear Senator Zharoff,

You have asked our opinion whether the Alaska Public Utility Commission (APUC) is authorized to review the Long-Term Power Sales Agreement 4 Dam Pool - Initial Project of the Alaska Power Authority ("the Agreement").

As you know, the Alaska Power Authority ("the APA"), 2 electric cooperatives and three cities in southeast Alaska signed the Agreement in October, 1985. The Agreement provided for the sale over 45 years of hydroelectric power from 4 state-owned hydroelectric projects collectively known as the Initial Project. See Agreement, Sec. 2(b). The Agreement requires the power purchasers to resell the power at a rate sufficient to pay the costs of operating and maintaining the projects and the cost of debt service. 1/ See Agreement, Sec. 5(b). The Agreement also provides, as required by law, for the parties to renegotiate the debt service component of the wholesale power rate in the years 2000 and 2015. See AS 44.33.625; Agreement, Sec. 9. This provision is commonly referred to as "the rate reopener."

In 1986 the legislature amended AS 42.05.431 by adding a new subsection which provided that a wholesale power agreement between public utilities is subject to advance approval of the APUC. AS 42.05.431(b). 2/ Moreover, the APUC may order the parties to negotiate an amendment to a wholesale power agreement when the APUC finds that the rates set in accordance with the

1/ The debt service component is paid to the APA to retire a loan between the Department of Commerce and Economic Development and the APA for the purpose of constructing and acquiring the 4 Dam Pool hydroelectric projects.

2/ This office has previously determined that sec. 431(b) applies to wholesale power agreements to which the APA is a party. 1987 Inf. Op. Att'y Gen. (February 18; 663-87-0365).

agreement are not just and reasonable. Id. The only comment I have found on the purpose of subsection (b) is in a letter from Attorney General Brown to Governor Sheffield, reviewing HB 314 after it was passed by the legislature. The letter states, "[t]he commission's authority to approve wholesale power agreements would be made explicit by AS 42.05.431(b)." Letter, June 4, 1986, A.G. File No. 883-86-0135.

At the same time that the legislature adopted AS 42.05.431(b), however, the legislature further provided that subsection (b) "applies only to wholesale power agreements entered into on or after June 7, 1986." Sec. 8, ch. 104, SLA 1986. Since this Agreement was entered into prior to June 7, 1986, section 431(b) does not apply to the existing Agreement.

The more difficult question is whether the APUC acquires jurisdiction over this 45-year Agreement if the parties exercise their rights under the rate reopener provision of the existing Agreement and voluntarily elect to amend the Agreement in the year 2000 or 2015 as to the rates to be charged under the Agreement. By the terms of the existing Agreement, they may reopen the Agreement as to the debt service component of the wholesale power rate. See Agreement, sec. 9. The Agreement provides an elaborate procedure for determining whether the debt service component should be revised. As long as the parties proceed under the provisions of section 9 of the existing Agreement, such activity should not produce a new agreement subject to APUC review under AS 42.05.431(b).

This opinion does not address whether the APUC would have jurisdiction over the agreement should the parties decide to amend the Agreement regarding a subject not contemplated by the original Agreement. Nor does this opinion address whether the APUC would acquire jurisdiction if the parties so modified and amended the original Agreement as to create a new agreement.

I hope this opinion has answered your question. Please let me know if I can be of further assistance.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 

Carolyn E. Jones
Assistant Attorney General

cc: Susan Knowles, APUC
Elizabeth Hickerson, AGO
Art Peterson, AGO

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE ALASKA 99501-1994
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS ALASKA 99701-4679

P O BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

February 22, 1988

Honorable Fred F. Zharoff
Pouch V
Juneau, Alaska 99811

Re: APUC Review/ "4 Dam Pool"
Power Sales Agreement
File No. 661-88-0329

Dear Senator Zharoff:

In my letter dated February 12, 1988 I advised you that the Alaska Public Utility Commission (APUC) would not have jurisdiction over the Long-Term Power Sales Agreement 4 Dam Pool - Initial Project of the Alaska Power Authority ("the Agreement") if the parties exercised their rights under the rate reopener provision of the Agreement. This opinion was based on the fact that the Agreement contemplated a rate reopener period and provided an elaborate procedure for a reconsideration of the rates charged under the Agreement. As such, the Agreement was specifically excluded from APUC review.

I expressed no opinion on whether the APUC would acquire jurisdiction over the Agreement should the parties decide to amend the Agreement regarding a subject not contemplated by the original Agreement. Nor did I address whether the APUC would acquire jurisdiction if the parties so modified and amended the original Agreement as to create a new agreement. Your memorandum of February 15, 1988 asks me to address these two questions as well.

Without having an actual amendment to the Agreement and an actual set of facts before me, it is not possible to give you a definite answer. I do not, however, want to foreclose the possibility that at some point the parties to the Agreement may so amend the Agreement that it no longer resembles the Agreement which the legislature exempted from APUC review. Should that

Honorable Fred F. Zharoff

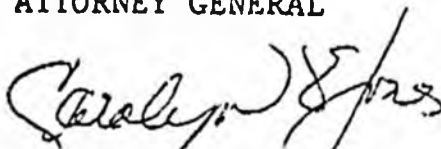
February 22, 1988
Page 2

eventuality occur, then the APUC may well successfully assert jurisdiction over the amended Agreement.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:



Carolyn E. Jones
Assistant Attorney General

CEJ:sw

cc: Susan Knowles, APUC
Elizabeth Hickerson, AGO

Alaska State Legislature

Senate Resources Committee



Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-Chairman
Sen. Lloyd Jones
Sen. Arliss Sturgulewski
Sen. Jim Duncan
Sen. Fred Zharoff
Sen. Dick Eliason

Box V
Juneau, Alaska 99811
(907) 465-4907

February 16, 1988

Dave Hutchens, Executive Director
ARECA, Inc.
237 E. Fireweed Lane, Suite 301
Anchorage, AK 99503

RE: CSHB 356 (Rules) am

Dear Mr. Hutchens:

The referenced bill with a letter of intent was referred to the Senate Resources Committee. The committee is scheduled to hold hearings on February 29, 1988.

As part of the review process, I would appreciate receiving written response to the following questions not later than the scheduled hearing:

1. Does the letter of intent accurately portray the utilities' understanding of this issue based on testimony to date on HB 356?
2. Is the letter of intent redundant given CSHB 356 (Rules) am?
3. Are the utilities satisfied with the CSHB 356 (Rules) am?
If not, why not?

Based on a preliminary review, the bill does not appear to contain any fatal flaws. Unless some are discovered subsequently, my intention is to move the bill as is, in order to assure its timely passage by the Senate and approval by the Governor not later than March 15, 1988.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Jack Coghill".

Senator J. Coghill
Chairman