

HVB

539

HOUSE COMMITTEE REPORT

(11).

Date Referred: April 8, 1994

FURTHER REFERRALS:

Date of Committee Action: 4/26/94

The FINANCE Committee considered:

HB 539

HOUSE BILL NO. 539

APUC EXTENSION AND REGULATORY COST CHARGE

"An Act extending the Alaska Public Utilities Commission; and relating to regulation of public utilities and to regulatory cost charges."

RECOMMENDATIONS:

be replaced with CS HB 539 (Fin) the same title a new title

have attached amendments(s)

do pass

do not pass

10 recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

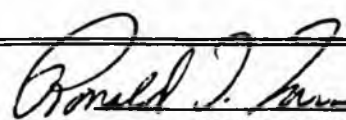
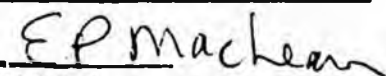
fiscal impact DCED

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) DOR, 4/8/94

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Ronald J. Larson</i> LARSON	<input checked="" type="checkbox"/>	<i>Eileen P. Machean</i> MACHEAN		<input checked="" type="checkbox"/>	
<i>Terry Martin</i> MARTIN	<input checked="" type="checkbox"/>	<i>Mark Hartley</i> HARTLEY		<input checked="" type="checkbox"/>	
		<i>Baron Gussendorf</i> GUSSENDORF		<input checked="" type="checkbox"/>	
		<i>Jean Partridge</i> PARTRIDGE		<input checked="" type="checkbox"/>	
		<i>Jan Brown</i> BROWN		<input checked="" type="checkbox"/>	
		<i>Mike Yawne</i> YAWNE		<input checked="" type="checkbox"/>	



 CHAIRMAN'S SIGNATURE

FISCAL NOTE

**STATE OF ALASKA
1994 LEGISLATIVE SESSION**

BILL NO. 5 HB 539 (L&C)

Revision Date: 4/7/94 Corrected
Title: Extending the Alaska Public Utilities Commission

Department Affected: Commerce and Economic Development
BRU: Alaska Public Utilities Commission
Component: _____

Sponsor: House Labor & Commerce
Requestor: _____

COMPONENT SERIAL NO. 364

Expenditures/Revenues:

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	0	60.7	60.7	60.7	60.7	60.7
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	60.7	60.7	60.7	60.7	60.7

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GI						
1005 GF/Program Receipts	0	60.7	60.7	60.7	60.7	60.7
1006 GF/MHTIA						
Other						
TOTAL						

Estimate of current year (FY 94) cost: \$ _____

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.)

An additional Assistant Attorney General (half-time) would be required to handle litigation resulting from the deletion of "liberally construed" from AS 42.05.141(a)(1). Therefore, an amount equal to one quarter of the current Reimbursable Services Agreement (RSA) with the Department of Law would be required.

The zero fiscal note for FY 95 reflects the July 1, 1995 effective date for this section.

Prepared by: Robert A. Lohr, Executive Director
Division: Alaska Public Utilities Commission

Phone: 276-6222
Date: 4/7/94 Corrected

Approved by Commissioner: Paul Fuhs 
Agency: Commerce and Economic Development

Date: 4-12-94

PREPARER TO PROVIDE A.I.L DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 539 (L&C)

Revision Date:

Dept. Affected: Revenue

Title: APUC Extension and Regulatory Cost Charge

BRU: Revenue Operations

Component: Income and Excise Audit

Sponsor: (H) L&C

Requestor: (H) FIN

COMPONENT SERIAL NO. 113

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

REVENUE FUND SOURCE: General	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------------	-----	-----	-----	-----	-----	-----

FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ 0.0

ANALYSIS: (Attach a separate page if necessary.)

(See Attached)

Prepared by:

Larry E. Meyers

Phone: 465-2320

Division:

Director

Date: April 12, 1994

Approved by Commissioner:

Darrel J. Rexwinkel

Date: April 12, 1994

Agency:

Department of Revenue

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information call the Governor's Legislative Office

Bill Analysis

(Analysis of sections which impact Department of Revenue only)

Sections 3 and 12 of this bill increase the maximum rate of regulatory cost charges (RCC) paid by regulated public utilities and pipeline carriers to the Alaska Public Utilities Commission (APUC) from .61% to .8% of gross revenue derived from operations in the state. The RCC is typically passed on to utility customers on their utility bills.

Section 4 of this bill allows electric utilities subject to RCC to reduce gross revenues by subtracting the cost of power for calculating RCCs paid to APUC. It also allows cable television utilities to include in gross revenue only revenue attributable to services regulated by APUC.

Sections 6 through 11 deal with provisions which exempt utilities from regulation and requirements to pay RCCs to APUC.

Operating Costs

Department of Revenue is currently charged with collecting and accounting for RCCs paid quarterly by approximately 100 public utilities and pipeline carriers. The Department does not anticipate that the rate increase will have an impact on its operating budget.

Revenue

According to APUC officials, increased revenue derived from rate increases authorized under this bill will be offset against revenue reductions from provisions for exempting utilities, allowing electric utilities to reduce gross revenues by cost of power and limiting the inclusion of revenue for cable television utilities for calculating RCCs. As a result, this bill is not expected to generate additional or reduced revenue.

AMENDMENT 6

Adopt

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSHB 539(L&C)

Page 3, following line 15, insert a new section:

****Sec. _____ AS 42.05.431(f) is amended to read:**

(f) In the establishment of rates of a utility furnishing solid waste material collection and disposal service, the commission shall permit recovery of

(1) reasonable, net capital and operating costs relating to solid waste recovery and recycling services after considering the utility's recovery of revenue associated with the service;
and

(2) a reasonable rate of return based on consideration of equity in recycling equipment.

Renumber following sections accordingly.

Page 5, line 17:

Delete "sec. 17"

Insert "sec. 18"

Amended

CS FOR HOUSE BILL NO. 539(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 4/8/94

Referred: Finance

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act extending and relating to the Alaska Public Utilities Commission; and
2 relating to regulation of public utilities and to regulatory cost charges; and
3 providing for an effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 36.30.850(b) is amended by adding a new paragraph to read:

6 (33) contracts for professional services or testimony related to
7 proceedings before the Alaska Public Utilities Commission, including the commission's
8 procurement of temporary legal counsel under AS 42.05.111(b).

9 * **Sec. 2.** AS 42.05.141(a) is amended to read:

10 (a) The Alaska Public Utilities Commission may do all things necessary
11 or proper, to carry out the purposes & exercise the powers
12 expressly granted or reasonably implied in this Chapter,
13 utility [SUCH A] business inside the state, except to the extent exempted by
14 AS 42.05.711; [, AND] the powers of the commission shall be those specifically
conferred by statute or necessarily implied by a statutory grant of authority]

A

1 [LIBERALLY CONSTRUED TO ACCOMPLISH ITS STATED PURPOSES];

2 (2) investigate, upon complaint or upon its own motion, the rates,
3 classifications, rules, regulations, practices, services, and facilities of a public utility
4 and hold hearings on them;

5 (3) make or require just, fair, and reasonable rates, classifications,
6 regulations, practices, services, and facilities for a public utility;

7 (4) prescribe the system of accounts and regulate the service and safety
8 of operations of a public utility;

9 (5) require a public utility to file reports and other information and
10 data;

11 (6) appear personally or by counsel and represent the interests and
12 welfare of the state in all matters and proceedings involving a public utility pending
13 before an officer, department, board, commission, or court of the state or of another
14 state or the United States and to intervene in, protest, resist, or advocate the granting,
15 denial, or modification of any petition, application, complaint, or other proceeding;

16 (7) examine witnesses and offer evidence in any proceeding affecting
17 the state and initiate or participate in judicial proceedings to the extent necessary to
18 protect and promote the interests of the state.

19 * Sec. 3. AS 42.05.253(a) is amended to read:

20 (a) A regulated public utility operating in the state shall pay to the commission
21 an annual regulatory cost charge in an amount not to exceed .8 [.61] percent of gross
22 revenue derived from operations in the state, as modified under (c) of this section if
23 appropriate. An exempt utility shall pay the actual cost of services provided to it by
24 the commission.

25 * Sec. 4. AS 42.05.253(c) is amended to read:

26 (c) In determining the amount of the regulatory cost charge imposed under (a)
27 of this section,

28 (1) a utility selling utility services at wholesale shall modify its gross
29 revenue by deducting payments it receives for wholesale sales;

30 (2) a local exchange telephone utility shall modify its gross revenue by
31 deducting payments received from other carriers for settlements or access charges;

1 (3) an electric utility shall reduce its gross revenue by subtracting
2 the cost of power; in this paragraph. "cost of power" means the costs of
3 generation and purchased power reported to the commission;

4 (4) a cable television utility shall include in gross revenue only
5 revenue attributable to services that the commission has authority to regulate
6 under this chapter.

7 * Sec. 5. AS 42.05.253(e) is amended to read:

8 (e) The commission shall administer the charge imposed under this section.
9 The Department of Revenue shall collect and enforce the charge imposed under this
10 section. The Department of Administration shall identify the amount of the
11 operating budget of the commission that lapses into the general fund each year.
12 The legislature may appropriate an amount equal to the lapsed amount to the
13 commission for its operating costs for the next fiscal year. If the legislature does
14 so, the commission shall reduce the total regulatory cost charge collected for that
15 fiscal year by a comparable amount.

16 * Sec. 6. AS 42.05.711(e) is amended to read:

17 (e) Notwithstanding any other provisions of this chapter, any electric or
18 telephone utility that does not gross \$50,000 annually is exempt from regulation under
19 this chapter unless [25 PERCENT OF] the subscribers petition the commission for
20 regulation under AS 42.05.712(h).

21 * Sec. 7. AS 42.05.711(f) is amended to read:

22 (f) Notwithstanding any other provisions of this chapter, an electric or
23 telephone utility that does not gross \$500,000 [\$325,000] annually may elect to be
24 exempt from the provisions of this chapter other than AS 42.05.221 - 42.05.281 under
25 the procedure described in AS 42.05.712.

26 * Sec. 8. AS 42.05.711(g) is amended to read:

27 (g) A utility, other than a telephone or electric utility, that does not gross
28 \$150,000 [\$100,000] annually may elect to be exempt from the provisions of this
29 chapter other than AS 42.05.221 - 42.05.281 under the procedure described in
30 AS 42.05.712.

31 * Sec. 9. AS 42.05.711(i) is amended to read:

1 (i) A utility that [WHICH] furnishes collection and disposal service of
2 garbage, refuse, trash, or other waste material and has annual gross revenues of
3 \$300,000 [\$200,000] or less is exempt from the provisions of this chapter, other than
4 the certification provisions of AS 42.05.221 - 42.05.281, unless [25 PERCENT OF]
5 the subscribers [OR SUBSCRIBERS REPRESENTING 25 PERCENT OF THE
6 GROSS REVENUE OF THE UTILITY] petition the commission for regulation under
7 AS 42.05.712(h). Notwithstanding AS 42.05.712(b) and (g), if subscribers
8 representing 25 percent of the gross revenue of the utility petition the commission
9 for regulation, the utility is subject to the provisions of this chapter.

10 * Sec. 10. AS 42.05.711(k) is amended to read:

11 (k) A utility that [WHICH] furnishes cable television service is exempt from
12 the provisions of this chapter other than AS 42.05.221 - 42.05.281 [,] unless [25
13 PERCENT OF] the subscribers petition the commission for regulation under
14 AS 42.05.712(h).

15 * Sec. 11. AS 42.05.712(h) is amended to read:

16 (h) A utility or cooperative that is already exempt from regulation under this
17 section or that is exempt from regulation under AS 42.05.711(e), (i), or (k) may
18 elect to terminate its exemption in the same manner.

19 * Sec. 12. AS 42.06.285(a) is amended to read:

20 (a) A pipeline carrier operating in the state shall pay to the commission an
21 annual regulatory cost charge in an amount not to exceed .8 [.61] percent of gross
22 revenue derived from operations in the state. A regulatory cost charge may not be
23 assessed on pipeline carrier operations unless the operations are within the jurisdiction
24 of the commission.

25 * Sec. 13. AS 42.06.285(c) is amended to read:

26 (c) The commission shall administer the charge imposed under this section.
27 The Department of Revenue shall collect and enforce the charge imposed under this
28 section. The Department of Administration shall identify the amount of the
29 operating budget of the commission that lapses into the general fund each year.
30 The legislature may appropriate an amount equal to the lapsed amount to the
31 commission for its operating costs for the next fiscal year. If the legislature does

1 so, the commission shall reduce the total regulatory cost charge collected for that
2 fiscal year by a comparable amount.

3 * Sec. 14. AS 44.66.010(a)(4) is amended to read:

4 (4) Alaska Public Utilities Commission (AS 42.05.010) -- June 30,
5 1998 [1994];

6 * Sec. 15. REPEAL OF SUNSET OF REGULATORY COST CHARGES. Sections 22,
7 26, 36, and 38, ch. 2, FSSLA 1992, are repealed.

8 * Sec. 16. APUC STAGGERED TERMS. Notwithstanding AS 42.05.030(a), after the
9 expiration in 1999 of the term of the member of the Alaska Public Utilities Commission with
10 a major or experience in engineering, the vacancy shall next be filled for a term of four years
11 in order to adjust the staggering of the terms of the members of the commission so that no
12 more than one commission member's term expires each year.

13 * Sec. 17. APPLICATION TO ONGOING PROCEEDINGS. The amendment to
14 AS 42.05.141(a), made by sec. 2 of this Act, applies to proceedings begun on or after the
15 effective date of sec. 2 of this Act.

16 * Sec. 18. Section 2 of this Act takes effect July 1, 1995.

17 * Sec. 19. Except as provided in sec. 17, this Act takes effect July 1, 1994.

"Liberally Construed"

HB 213 would extend the Alaska Public Utilities Commission and the Regulatory Cost Charge that funds it until 1998. An amendment may be proposed to delete the phrase "liberally construed" from the Commission's enabling statute. The Commission opposes this amendment.

The current language of Section 42.05.141 of Alaska Statutes, entitled "GENERAL POWERS AND DUTIES OF THE COMMISSION", states in part:

(a) The Alaska Public Utilities Commission may
(1) regulate every public utility engaged or proposing to engage in such a business inside the state, except to the extent exempted by AS 42.05.711, and the powers of the commission shall be liberally construed to accomplish its stated purposes;(emphasis added)

1. Does not expand the powers of the APUC.

In HEA vs. City of Kenai the Supreme Court said:

In sum, we have construed AS 42.05.141(a)(1) to mean that the actual areas in which the APUC may exercise its adjudicatory authority are quite narrow. Within those narrow areas, however, the APUC's powers to adjudicate are plenary, as broad as the specific provisions of the act permit....

This provision presents two guiding principles for determining the extent of the APUC's jurisdiction under specific provisions of the Act. On the one hand, it includes a principle of limitation, restricting the APUC's power to the specific jurisdictional areas of its "stated purposes." On the other hand, it includes a principle of expansion, mandating that the APUC's power to act within its specific areas of jurisdiction "is to be liberally construed." (emphasis added)

2. Benefits utilities.

Routinely the Commission allows interim rates to go into effect without requiring the utility to escrow funds or post a bond under AS 42.05.421(c). It does this by making rates interim refundable, which again benefits the utility. The authority for this is "liberally construed."

"Liberally Construed"

Page 2

The courts have not used the term "liberally construed" very often (only 8 times). Where they have, it has been to the benefit of utilities in half of the cases.

The Commission itself has only discussed the issue of "liberally construed" nine times in 25 years. In at least three of these cases the Commission acted to allow the intention of the utility or applicant for a certificate to be accomplished by waiving technical irregularities. In another the Commission found that it did not have statutory authority to recognize a doctrine of "retained rights" requested by a telephone utility under statute, despite "liberally construed".

3. Benefits customers.

Often the Commission has granted "temporary operating authority" to a utility while its application for a certificate is pending. Both the customers and the utility benefit, but the authority for temporary certificates is not explicit. It comes from "liberally construed".

Many utilities face increased competition as the result of changes in technology and federal law. The Commission needs the flexibility that "liberally construed" provides to allow existing utilities to compete on an equal footing.

4. Frees up Legislators from Regulating Utilities

Regulatory statutes are generally drafted broadly. Legislators cannot foresee every problem that will arise in administering a statute and the liberally construed language gives regulators the flexibility to resolve these problems. The legislature sets the goals and the policies, leaving the implementation of the program to the commission. The budget process and the sunset review process provide plenty of room for legislative oversight.

Justice Frankfurter recognized that administrative agencies were created to perform a task which neither courts nor legislatures could accomplish—to regulate the practices of industries in a rapidly changing world. The same considerations that led to the creation of the public utilities commission led the legislature to authorize their implied powers to be liberally construed.

Deletion of this phrase would lead to strict construction of implied powers. This means that legislation would be required

"Liberally Construed"

Page 3

whenever a court finds a gap in an agency's power. This forces the legislature back into the regulatory role that they sought to escape by creating the commission in the first place. Removing "liberally construed" from the Commission's powers and duties section would have impacts well beyond statutory construction in the courts.

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347

MEMORANDUM

TO: The Honorable Bill Hudson, Chairman
House Labor and Commerce Committee

FROM: Randy S. Welker
Legislative Auditor *Randy*

DATE: April 5, 1994

RE: APUC Regulatory Cost Charge (HB 539)

At the last committee meeting on the sunset-related legislation on the Alaska Public Utilities Commission, there was some discussion on the impact that the suggested change to the RCC would have on utilities.

The committee received summary information from ARECA that showed a reduction to the RCC for electric utilities and an increase to other utility sectors. Representative Porter asked me if the analysis by ARECA appeared reasonable and if it would address the finding raised in the audit concerning equity between industry types. At that time, I had only given a cursory look at the ARECA information and stated to the committee that I felt that the change in section 2 of the bill would move the rate structure closer to the balance we felt necessary, but that it would not provide as exact an accounting as we would prefer.

Since that meeting, I have reviewed ARECA's information and additional information provided to me by the APUC. Upon closer scrutiny, some of the information provided by ARECA appears to be inaccurate, and I would urge you to use caution in relying on information provided in a March 30, 1994 information sheet titled "APPROXIMATE EFFECT OF REALLOCATING REGULATORY COST CHARGE." While the sheet is titled as approximate, the information (particularly the FY 93 numbers) does not match information provided by APUC and my calculations based on that information.

The information on the table below summarizes the RCC by industry for FY 93 and FY 94 based on existing statute, and also the FY 94 comparison amounts based on the language in HB 539. I have also included a column titled "Workload" that represented our estimate of the APUC work effort by industry. The percentage information next to the RCC amounts shows the percentage of the total RCC that each industry pays.

As you can see, the suggested change to the RCC will significantly reduce the amount and therefore, percentage the electric utilities will pay. That reduction will be spread among the other industries. It appears that the telephone industry will continue to pay significantly less than their proportion of the APUC workload, while the pipeline and gas industry will pay a greater disproportionate share of the RCC.

Regulatory Cost Charge (RCC) Analysis							
Industry	FY 93 RCC ¹		FY 94 RCC ²		FY 94 RCC (HB 539) ³		Workload ⁴
Electric	\$1,504,086	(39%)	\$1,600,965	(43%)	\$1,034,461	(28%)	34%
Telephone	884,577	(23%)	777,898	(21%)	986,579	(27%)	45%
Pipeline	574,300	(15%)	508,867	(14%)	645,377	(17%)	4%
Gas	572,107	(15%)	519,608	(14%)	658,999	(18%)	3%
Water	132,452	(3½%)	109,643	(3%)	139,056	(4%)	4%
Sewer	98,838	(2½%)	93,704	(2½%)	118,841	(3%)	2%
Refuse	91,493	(2%)	93,985	(2½%)	119,198	(3%)	4%
Cable	-0-	(-%)	2,286	(-%)	2,899	(-%)	3%

Source of Information:

¹ - Estimated FY 93 RCC from page 8 of Legislative Audit report.
² - APUC financial information using RCC rate of .455%.
³ - Calculated by Legislative Audit based on RCC rate of .577% and APUC financial information.
⁴ - Estimated APUC Workload calculation from page 8 of Legislative Audit report.

In summary, while the language in section 2 of HB 539 will reduce the amount paid by the electric utilities it will increase the charge to other utilities. There will remain a significant percentage disparity for telephone and gas utilities and pipeline carriers.

It remains our opinion that the only way to remove these inequities is to adjust the rates based on APUC work effort. Any other mechanism is purely coincidental, as would be any "cost charge" based on industry "revenues."

If you have additional questions or need further clarification, please contact me.

cc: The Honorable Brian Porter
Alaska State House

Bob Lohr, Executive Director
Alaska Public Utilities Commission

8-LS1849K.3 ✓
Cramer
4/25/94
fail

AMENDMENT 5

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSHB 539(L&C)

Page 2, line 19, through page 3, line 6:

Delete all material.

Insert new bill sections to read:

"* **Sec. 3.** AS 42.05.253(a) is amended to read:

(a) A regulated public utility operating in the state shall pay to the commission an annual regulatory cost charge in an amount determined by [NOT TO EXCEED .61 PERCENT OF GROSS REVENUE DERIVED FROM OPERATIONS IN THE STATE, AS MODIFIED UNDER (c) OF THIS SECTION IF APPROPRIATE. AN EXEMPT UTILITY SHALL PAY THE ACTUAL COST OF SERVICES PROVIDED TO IT BY] the commission by regulation.

* **Sec. 4.** AS 42.05.253(b) is amended to read:

(b) The commission shall by regulation establish a method to determine annually the amount of the regulatory cost charge for a public utility. The method shall be based on charging each type of utility regulated by the commission the proportion of the commission's budget that regulation of that type of utility costs the commission. If the amount the commission expects to collect under (a) of this section and under AS 42.06.285(a) exceeds the authorized budget of the commission, the commission shall, by order, reduce the percentages determined under this subsection [SET OUT IN (a) OF THIS SECTION] so that the total amount of the fees collected approximately equals the authorized budget of the commission for the fiscal year.

* **Sec. 5.** AS 42.05.253(g) is amended to read:

(g) The commission shall [MAY] adopt regulations under AS 44.62 (Administrative Procedure Act) necessary to administer this section, including requirements and procedures for reporting information and making quarterly payments.

The Department of Revenue may adopt regulations under AS 44.62 (Administrative Procedure Act) for investigating the accuracy of filed information, and for collecting required payments."

Renumber the following bill sections accordingly.

Page 4, line 19, through line 24:

Delete all material.

Insert new bill sections to read:

**** Sec. 13.** AS 42.06.285(a) is amended to read:

(a) A pipeline carrier operating in the state shall pay to the commission an annual regulatory cost charge in an amount determined by the commission by regulation [NOT TO EXCEED .61 PERCENT OF GROSS REVENUE DERIVED FROM OPERATIONS IN THE STATE]. A regulatory cost charge may not be assessed on pipeline carrier operations unless the operations are within the jurisdiction of the commission.

*** Sec. 14.** AS 42.06.285(b) is amended to read:

(b) The commission shall by regulation establish a method to determine annually the amount of the regulatory cost charge. The method shall be based on charging each type of utility regulated by the commission the proportion of the commission's budget that regulation of that type of utility costs the commission.

If the amount the commission expects to collect under (a) of this section and under AS 42.05.253(a) exceeds the authorized budget of the commission, the commission shall, by order, reduce the percentage set out in (a) of this section so that the total amount of the fees collected approximately equals the authorized budget of the commission for the fiscal year."

Renumber the following bill sections accordingly.

Page 5, following line 2:

Insert a new bill section to read:

**** Sec. 16.** AS 42.06.285(d) is amended to read:

(d) The commission shall [MAY] adopt regulations under AS 44.62 (Administrative Procedure Act) necessary to administer this section, including requirements and procedures for reporting information and making quarterly payments. The Department of Revenue may adopt regulations under AS 44.62 (Administrative Procedure Act) for investigating the accuracy of filed information, and for collecting required payments."

Renumber the following bill sections accordingly.

Page 5, after line 5:

Insert a new bill section to read:

"* **Sec 18.** AS 42.05.253(c), 42.05.253(d), 42.05.253(h)(1), (2), and (4), and AS 42.06.205(e) are repealed."

Page 5, line 17:

Delete "sec. 17"

Insert "sec. 21"

AMENDMENT

4 Adopted

OFFERED IN THE HOUSE

BY REPRESENTATIVE MARTIN

TO: CSHB 539(L&C)

Page 3, after line 15:

Insert new bill sections to read:

** Sec. 6. AS 42.05.431(a) is amended to read:

(a) When the commission, after an investigation and hearing, finds that a rate demanded, observed, charged, or collected by a public utility for a service subject to the jurisdiction of the commission, or that a classification, rule, regulation, practice, or contract affecting the rate, is unjust, unreasonable, unduly discriminatory or preferential, the commission shall determine a just and reasonable rate, classification, rule, regulation, practice, or contract to be observed or allowed and shall establish it by order. [A MUNICIPALITY MAY COVENANT WITH BOND PURCHASERS REGARDING RATES OF A MUNICIPALLY OWNED UTILITY, AND THE COVENANT IS VALID AND ENFORCEABLE AND IS CONSIDERED TO BE A CONTRACT WITH THE HOLDERS FROM TIME TO TIME OF THE BONDS. THE FINANCIAL COVENANTS CONTAINED IN MORTGAGES AND OTHER DEBT INSTRUMENTS OF COOPERATIVE UTILITIES ORGANIZED UNDER AS 10.25 ARE ALSO VALID AND ENFORCEABLE, AND RATES SET BY THE COMMISSION MUST BE ADEQUATE TO MEET THOSE COVENANTS. HOWEVER, A COOPERATIVE UTILITY THAT IS NEGOTIATING TO ENTER A MORTGAGE OR OTHER DEBT INSTRUMENT THAT PROVIDES FOR A TIMES-INTEREST-EARNED RATIO (TIER) GREATER THAN THE RATIO THE COMMISSION MOST RECENTLY APPROVED FOR THAT COOPERATIVE SHALL SUBMIT THE MORTGAGE OR DEBT INSTRUMENT TO THE COMMISSION BEFORE THE INSTRUMENT TAKES EFFECT. THE COMMISSION MAY DISAPPROVE THE INSTRUMENT WITHIN 60 DAYS AFTER ITS SUBMISSION. IF THE COMMISSION HAS NOT ACTED WITHIN

60 DAYS, THE INSTRUMENT IS CONSIDERED TO BE APPROVED.]

* Sec. 7. AS 42.05.431 is amended by adding new subsections to read:

(i) A municipality may covenant with bond purchasers regarding rates of a municipally owned utility, and the covenant is valid and enforceable and is considered to be a contract with the holders from time to time of the bonds. Rates set by the commission must be adequate to meet those covenants. However, the commission is not required to set rates for services regulated by the commission to recover the allocated costs and coverage requirements of services that are not regulated by the commission. Bonds or other debt issued to finance unregulated, competitive ventures by a municipally owned utility may not be incurred in a manner that would permit a creditor, on default, to have recourse to the assets of the basic regulated utility business.

(j) The financial covenants contained in mortgages and other debt instruments of cooperative utilities organized under AS 10.25 are also valid and enforceable, and rates set by the commission must be adequate to meet those covenants. However, a cooperative utility that is negotiating to enter a mortgage or other debt instrument that provides for a times-interest-earned ratio (TIER) greater than the ratio the commission most recently approved for that cooperative shall submit the mortgage or debt instrument to the commission before the instrument takes effect. The commission may disapprove the instrument within 60 days after its submission. If the commission has not acted within 60 days, the instrument is considered to be approved."

Renumber the following bill sections accordingly.

Page 5, line 17:

Delete "sec. 17"

Insert "sec. 19"

faul
AMENDMENT 2

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSHB 539(L&C)

Page 1, line 9 through page 2, line 18:

Delete section 2

Page 5, line 13 through line 16:

Delete section 17 and section 18.

Renumber sections accordingly.

failed

AMENDMENT 1

OFFERED IN THE HOUSE
TO: CSHB 539(L&C)

BY REPRESENTATIVE BROWN

Page 2, line 19, through page 3, line 6:
Delete all material.

Renumber the following bill sections accordingly.

Page 4, line ~~19~~²⁴, through page 5, line 2:
Delete all material.

sec 12 & 3, 4

Renumber the following bill sections accordingly.

Page 5, line 17:
Delete "sec. 17"
Insert "sec. 13"

PFM

PUBLIC FINANCIAL MANAGEMENT, INC.

Financial and Investment Advisors

1000 SW Broadway, Suite 1500
Portland, Oregon 97208-3087
503-223-3325 (Fax) 503-223-7002

April 24, 1994

Melphine Reynolds
Kathy Dale
Anchorage Telephone Utility
600 Telephone Avenue
Anchorage, Alaska 99503
Via Fax 907-563-4023

Dear Melphine and Kathy:

Public Financial Management, Inc., has reviewed the amendment proposed by GCI regarding AS 42.05.431(a). We are concerned that it may affect your future access to the capital markets. There are two major areas of concern that should be noted.

During the last two financings we've discussed ATU's credit with the major rating agencies and bond insurers. The rating agencies continue to have difficulty understanding your credit. ATU is one of a very few municipally owned telephone utilities and one of very few municipal utilities which is regulated by an outside commission. The end result has been that the rating agencies have been very skeptical about ATU's ability to compete in the telecommunication industry given its governmental relationships. One of the strengths we've been able to discuss has been the separation of the Utility into a more free standing enterprise and the ability of ATU to move into facets of the telecommunications industry as needed to stay competitive. The concern that somehow either regulators or other forms of government would begin to restrict ATU's flexibility was discussed in our meetings with bond insurers during the last round of financing. Fears that increasing regulations and competition would drive ATU out of business caused one of the potential bond insurers to not bid on the Series 1994A Bonds. I believe that the proposed amendment could remove one of the two remaining insurers and would potentially result in a downgrade of ATU's underlying bond rating by S&P.

A more broad concern arises from the separation of the two sides of ATU's activities. The telecommunications industry is in a mode of rapid change. Daily news articles chronicle the advent of the information superhighway. It is clear that the future of telecommunications is unclear. I expect that Alaska will continue to lead the nation in technology use due to the remote locations and difficulty of travel. We should, therefore, see rapid changes in services over the next 5 to 10 years. I am concerned that any commission that regulates ATU will be challenged to stay up to speed with the changing

Atlanta Austin Boston Denver Fort Worth Hamburg Houston Los Angeles Memphis Minneapolis New York Orlando Philadelphia Portland San Francisco



An Affiliate of Marine Midland Bank, N.A.

P-000

15032237002

04-25-94 07:53AM P002 #20

Attachment
4125 194

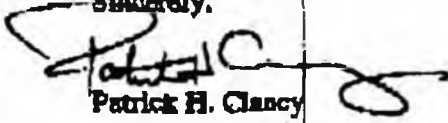
GCI Proposed Amendment

Page 2

changes. The more specifics that are written into the law, the slower the response will be as our concept of "telephone" service changes. By writing into law as specific division in what ATU can contract with bondholders, ATU is limited in its ability to compete in an ever changing environment. To survive, I believe ATU will need to be able to work rapidly within its limited resources to meet the challenges it will face to remain a viable player in telecommunications. The people who have been investors in ATU's bonds have believed in ATU management's ability to meet those challenges. The proposed amendment imposes a burden that clearly wasn't there before.

In summary, we believe the proposed amendment will seriously affect your access to the capital markets and should be rejected. If you have any further questions, please feel free to call me.

Sincerely,



Patrick H. Clancy
Managing Director

Notes

Am §

HB 539

1 AFTER ITS SUBMISSION. IF THE COMMISSION HAS NOT ACTED WITHIN
2 60 DAYS, THE INSTRUMENT IS CONSIDERED TO BE APPROVED.]

3 * Sec. 6. AS 42.05.431 is amended by adding new subsections to read:

4 (i) A municipality may covenant with bond purchasers regarding rates of a
5 municipally owned utility, and the covenant is valid and enforceable and is considered
6 to be a contract with the holders from time to time of the bonds. Rates set by the
7 commission must be adequate to meet those covenants. However, the commission is
8 not required to set rates for services regulated by the commission to recover the
9 allocated costs and coverage requirements of services that are not regulated by the
10 commission. Bonds or other debt issued to finance unregulated, competitive ventures
11 by a municipally owned utility may not be incurred in a manner that would permit a
12 creditor, on default, to have recourse to the assets of the basic regulated utility
13 business.

View

14 (j) The financial covenants contained in mortgages and other debt instruments
15 of cooperative utilities organized under AS 10.25 are also valid and enforceable, and
16 rates set by the commission must be adequate to meet those covenants. However, a
17 cooperative utility that is negotiating to enter a mortgage or other debt instrument that
18 provides for a times-interest-earned ratio (TIER) greater than the ratio the commission
19 most recently approved for that cooperative shall submit the mortgage or debt
20 instrument to the commission before the instrument takes effect. The commission may
21 disapprove the instrument within 60 days after its submission. If the commission has
22 not acted within 60 days, the instrument is considered to be approved.

23 * Sec. 7. AS 2.05.711(e) is amended to read:

24 (e) Notwithstanding any other provisions of this chapter, any electric or
25 telephone utility that does not gross \$50,000 annually is exempt from regulation under
26 this chapter unless [25 PERCENT OF] the subscribers petition the commission for
27 regulation under AS 42.05.712(h).

28 * Sec. 8. AS 42.05.711(f) is amended to read:

29 (f) Notwithstanding any other provisions of this chapter, an electric or
30 telephone utility that does not gross \$500,000 [\$325,000] annually may elect to be
31 exempt from the provisions of this chapter other than AS 42.05.221 - 42.05.281 under

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

DIVISION OF INVESTMENTS

P.O. BOX 34159
3032 VINTAGE BLVD.
JUNEAU, ALASKA 99803-4159
PHONE: (907) 485-2510
FAX: (907) 485-2103

MAR 22 1994

March 22, 1994

The Honorable George Jacko
Alaska State Senate
State Capitol
Juneau, AK 99801-1182

Dear Senator Jacko:

When considering loan requests under the Commercial Fishing loan program, the Department evaluates the entire financial makeup of the applicant including income from commercial fishing as well as all other sources. AS 16.10.310(c) states, "In determining whether an individual commercial fisherman is reasonably likely to be able to repay a loan made under AS 16.10.300-16.10.370, the commissioner shall consider the individual commercial fisherman's income from commercial fishing and from all other sources."

I hope this adequately answers your question.

Cordially,



Martin J. Richard
Director

Copy on file
5B251

**KETCHIKAN PUBLIC UTILITIES**

MUNICIPALLY OWNED ELECTRIC • WATER • PHONE

2930 TONGASS • KETCHIKAN, ALASKA 99901 • TELEPHONE 907-225-1000

April 18, 1994

Mr. Bill Miles
State Capitol, Room 508
Juneau, Ak 99801

Dear Mr. Miles:

As a municipally owned telephone utility that falls under APUC regulation for the intrastate portion of its business, we are concerned about Senate Bill S213 and the effect it may have on our ability to plan and provide certain unregulated services to the residents of Ketchikan. The amendment to Section 42.05.431(h) that came out of the Judiciary Committee, if enacted, may limit Ketchikan Public Utility's ability to include its revenue flows from intrastate operations for bonding purposes if the bonding were to finance unregulated business efforts such as cellular, personal communications service (PCS) or cable TV.

In the event that at some future time KPU should become subject to APUC regulation (as Anchorage has) the effect could all but eliminate our ability to compete with a non-municipally owned business that decided to offer unregulated new technology services in the Ketchikan area. For these reasons we ask that the following wording be deleted from Bill S213:

"... and rates set by the commission must be adequate to meet those covenants. However the Commission is not required to set rates for services regulated by the commission to recover the allocated costs and coverage requirements of services that are not regulated by the commission. Bonds or other debt issued to finance unregulated, competitive ventures by a municipally owned utility shall not be incurred in a manner that would permit a creditor, on default, to have recourse to the assets of the basic regulated utility."

As we discussed earlier, I would appreciate your sharing this with the Senate Finance Committee members. Please call if you have any questions or if you require more detail on this subject.

Best Regards,

John A. Magyar
Telephone Division Manager

cc: Senator Robin Taylor
Thomas W. Stevenson

Alaska Telephone Association

4341 B Street, Suite 304
Anchorage, AK 99503
(907)563-4000
FAX (907)562-3776

Thomas R. Minnich
President

James Rowe
Executive Director

April 21, 1994

POSITION

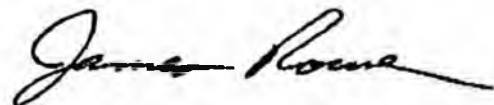
The Alaska Telephone Association (ATA) opposes the amendment to SB 213 supported by GCI and adopted by the Senate Finance Committee.

The proposed change to AS 42.05.431(a) places constraints on a utility to provide service by limiting its opportunities to incur debt for capital investment.

Federal legislative efforts to implement the "information superhighway" are founded on the premise of competition as the mechanism to deliver expanded service. The proposed amendment flies in the face of competition and passage could impede most telecommunications companies regulated by the Commission as they attempt to enter a competitive market.

This Association finds it curious that GCI, which in the past has been a staunch proponent of competition, would at a time when the national trend is toward that end, reverse its tradition and seek to limit the options available to the telephone customer.

ATA is comprised of all of the local exchange carriers in the State. The member companies of ATA are Anchorage Telephone Utility; Arctic Slope Telephone Association Cooperative; Bettles Telephone Company; Bristol Bay Telephone Cooperative, Inc.; Bush-Tell, Inc.; Copper Valley Telephone Cooperative, Inc.; Cordova Telephone Cooperative; Fairbanks Municipal Utilities System; GTE Alaska Inc.; Ketchikan Public Utilities; Matanuska Telephone Association; National Utilities, Inc.; North Country Telephone Company; Nushagak Telephone Cooperative, Inc.; OTZ Telephone Cooperative, Inc.; Summit Telephone Company, Inc.; TelAlaska, Inc.; PTI Communications; United Utilities, Inc.; and Yukon Telephone Company, Inc.



James Rowe

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

1010 WEST 8TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501-1888
PHONE: (907) 278-6222
FAX: (907) 278-0180
TTY: (907) 278-4533

ALASKA PUBLIC UTILITIES COMMISSION

April 7, 1994

The Honorable Bill Hudson
House Labor and Commerce Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Hudson:

In Mr. Dave Hutchens' letter of April 5, 1994, ARECA contends that it seeks to take the "liberally construed" language out of the APUC statutes only to bring the APUC's level of regulatory authority in line with other agencies. In fact, replacement of the "liberally construed" part of AS 42.05.141(a)(1) with the proposed ARECA amendment would have the effect of severely limiting the APUC's authority to regulate in comparison with other comparable state agencies.

I. THE APUC IS THE TYPE OF AGENCY FOR WHICH THE ALASKA SUPREME COURT HAS CONSTRUED POWERS LIBERALLY EVEN IN THE ABSENCE OF A SPECIFIC DIRECTIVE.

The Alaska Supreme Court has repeatedly held that certain statutes and constitutional provisions should be "liberally construed" even when the agency statute does not use that term because the subject matter is "remedial," or involves agency work that protects consumers, workers, or resources of the state. Included in this group are the following:

A. Unfair Trade Practices and Consumer Protection Act. AS 45.50.010--900. According to the court, this Act is a "remedial civil" statute which is to be accorded a liberal construction. State v. First Nat'l Bank, 660 P.2d 406 (Alaska 1982); State v. O'Neill Investigations, Inc., 609 P.2d 520 (Alaska 1980).

B. Laws regarding exemptions from seizure of property to satisfy judgments are "remedial" and should be "liberally construed." Gutterman v. First Nat'l Bank, 597 P.2d 969 (Alaska 1979).

C. Fish and Game Boards. AS 16.05.221. The court said "conservation laws" should be liberally construed. Kenai Peninsula

¹ We would also like to point out that review of ARECA's research shows that the phrase "liberally construed" does appear in one statutory scheme not mentioned by ARECA, the Alaska Employment Security Act, AS 23.20.005.

Fisherman's Association v. State, 628 P.2d 897 (Alaska 1981)

D. Alaska Workman's Compensation Act. AS 23.30.095. The court said law should be construed in accordance with "liberal humanitarian purposes" of the Act. Fluor Alaska Inc., v. Mendoza, 616 P.2d 25 (Alaska 1980).

E. The Alaska Supreme Court has also held that Constitutional and statutory provisions regarding initiative and referendum powers, should be "liberally construed" because people are exercising a power reserved to them. Municipality of Anchorage v. Frohne, 568 P.2d 3 (Alaska 1977).

Based on the above, the APUC, an agency whose purpose is to protect the public interest by assuring the reasonableness of utility rates and practices, is precisely the kind of agency for which the court would hold that powers should be liberally construed, even in the absence of a specific statement to that effect. However, the scene is considerably muddled if the legislature takes out the existing "liberally construed" language in AS 42.05.141(a)(1) because it will inevitably be argued that the legislature therefore intended to limit the APUC's powers, even though the legislature has not made specific any desire to limit the APUC's regulatory work.

II. THE AGENCY POWERS LISTED IN ARECA'S RESEARCH ARE MUCH BROADER THAN THE LANGUAGE ARECA'S AMENDMENT WOULD SUBSTITUTE FOR "LIBERALLY CONSTRUED."

In contrast with the agencies discussed above, many of the agencies whose statutes are discussed in the ARECA's research are for the most part not "remedial" agencies; they are economic development agencies.

More important, a close look at the agency statutes mentioned in ARECA's research shows that their powers are for the most part to be construed very broadly even though the words "liberally construed" do not appear. The statutes cited by ARECA direct that the agencies may do all things "necessary" or "desirable" or "proper" or "convenient" or have the powers "expressly and necessarily implied." This kind of statutory language is substantially broader than the words "as necessarily implied by those specific grants of authority" which are substituted in the bill before this committee.

Sincerely,



Don Schröer
Chairman
Alaska Public Utilities Commission

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 29, 1994

SUBJECT: Sectional Summary of CSHB 539 (L&C). (Extending the APUC and relating to regulation of public utilities and to regulatory cost charges)

TO: Representative Bill Hudson, Chair
House Labor and Commerce Committee

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1 increases the ceiling on the annual regulatory cost charge that the Alaska Public Utility Commission (APUC) may impose on regulated utilities from .61 percent of gross revenue to .8 percent of gross revenue.

Sec. 2 requires that in determining the regulatory cost charge for an electric utility, the utility shall reduce its gross revenue by subtracting the cost of power. "Cost of power" is defined as the cost of general and purchased power reported to the commission.

Sec. 3 requires the Department of Administration to identify the amount of money that the APUC lapses at the end of a fiscal year so that the legislature can, if it wishes, appropriate that amount to the commission for its next year's operating budget. If the legislature does so, then the commission is directed to make a comparable reduction in the total regulatory cost charge collected in the second year.

Sec. 4 provides that the subscribers of small electric and telephone utilities can petition to place the utility under APUC regulation by following the procedures set out in AS 42.05.712(h), which is amended by sec. 9 of the bill.

Representative Bill Hudson, Chair

March 29, 1994

Page 2

Sec. 5 permits electric and telephone utilities that do not gross \$500,000 annually to elect to be exempt from regulation by the APUC under AS 42.05.712. The current threshold is \$325,000.

Sec. 6 permits utilities, other than electric and telephone utilities, that do not gross \$150,000 annually to elect to be exempt from regulation by the APUC under AS 42.05.712. The current threshold is \$100,000.

Sec. 7 makes garbage collection utilities that gross \$300,000 or less exempt from rate regulation unless the subscribers petition for regulation under AS 42.05.712(h), amended by sec. 9 of the bill. The current threshold is \$200,000. The section retains the right of subscribers representing 25 percent of the gross revenue of a utility to petition the APUC for rate regulation.

Sec. 8 provides that the subscribers of cable television service utilities can petition to place the utility under APUC rate regulation by following the procedures set out in AS 42.05.712(h), which is amended by sec. 9 of the bill.

Sec. 9 permits the subscribers of a utility that is exempt from regulation under AS 42.05.711(e), (i), or (k) to use the procedures of AS 42.05.712 in an election to impose regulation.

Sec. 10 increases the ceiling on the annual regulatory cost charge that the APUC may impose on pipeline carriers from .61 percent of gross revenue to .8 percent of gross revenue. This section makes the same change that sec. 1 of the bill makes for public utilities.

Sec. 11 requires the Department of Administration to identify the amount of money that the APUC lapses at the end of a fiscal year so that the legislature can, if it wishes, appropriate that amount to the commission for its next year's operating budget. If the legislature does so, then the commission is directed to make a comparable reduction in the total regulatory cost charge collected in the second year. This section is comparable to sec. 3 of the bill.

Sec. 12 extends the sunset date for the Alaska Public Utilities Commission until June 30, 1998.

Sec. 13 repeals the separate sunset provisions for the regulatory cost charge.

Sec. 14 adjusts the way in which the terms of members of the APUC are staggered to ensure that no more than one commission member's term expires each year.

TBC:gc
94-225.glc



Electric Service for 300,000 Alaskans

Alaska

Rural

Electric

Cooperative

Association, Inc.

703 W. Tudor Rd., #200
Anchorage, AK 99503
(907) 561-6103
FAX (907) 561-5547

April 5, 1994

Rep. Bill Hudson, Chairman
House Labor & Commerce Committee
Juneau, Alaska

Dear Mr. Chairman:

Attached is a report from the law firm which represents this association. At our request, they examined Alaska state law to determine which other regulatory agencies have their statutes subject a directive that they be "liberally construed." They could not find any other instance where "liberally construed" was used. However, the directive was quite common that the statutes for these other agencies be "the powers expressly granted or necessarily implied..."

It is that same level of regulatory authority which we seek for the Alaska Public Utilities Commission. However, to assist the APUC in making the transition to this new statute, we ask that a special effective date be added for this section of July 1, 1995.


Sincerely,

David Hutchens

KEMPPEL, HUFFMAN AND GINDER, P.C.

MEMORANDUM

TO: Roger R. Kemppel

FROM: Donald C. Ellis 

DATE: March 31, 1994

SUBJECT: Research re "Liberally Construed" Powers

As requested, I have researched the powers granted to various state boards and commissions to determine if, akin to the APUC, their powers are to be "liberally construed."

I first asked Westlaw to identify all portions of the Alaska Statutes Annotated which use the phrase "liberally construed." The results of that research are attached. Other than the APUC, it does not appear that the phrase is utilized in any statutory section describing the powers of a state board or commission.

I have reviewed a number of the powers and duties clauses for various state boards and commissions. The results are as follow:

1. Alcoholic Beverage Control Board - AS 04.06.090
The board is vested with the powers, duties, and responsibilities necessary for the control of alcoholic beverages
2. Alaska Public Offices Commission - AS 15.13.030(10)
Adopt regulations necessary to implement and clarify the provisions of AS 24.45, AS 39.50, and this chapter, subject to the provisions of the Administrative Procedures Act.
3. Alaska Housing Finance Corporation - AS 18.56.090(23)
Do all acts and things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied in this chapter.

TO: Roger R. Kemppe
FROM: Donald C. Ellis
DATE: March 31, 1994
SUBJECT: Research re "Liberally Construed" Powers
PAGE: 2

4. Alaska Railroad Corporation - AS 42.40.250(30)

Do all things necessary or desirable to carry out the powers and duties of the corporation granted or necessarily implied in this chapter or other laws of the state or the laws and regulations of the federal government.

5. Department of Environmental Conservation - AS 44.46.020

Take actions that are necessary and proper to further the policy declared in AS 46.03.010.

6. Alaska Commercial Fishing and Agriculture Bank - AS 44.81.210(19)

Do what is necessary or desirable to carry out the corporate purposes and powers expressed or implied in this chapter.

7. Alaska Gas Pipeline Financing Authority - AS 44.82.080(8)

To enter into contracts or agreements with respect to the exercise of its powers, and to do all things necessary or convenient to carry out its purpose and to exercise the powers granted in this chapter.

8. Alaska Municipal Bond Bank Authority - AS 44.85.080(21)

Do all acts and things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied in this chapter.

9. AIDEA - AS 44.88.080(11)

To enter into contracts or agreements with respect to the exercise of any of its powers, and do all things necessary or convenient to carry out its corporate purposes and exercise the powers granted in this chapter.

TO: Roger R. Kempel
FROM: Donald C. Ellis
DATE: March 31, 1994
SUBJECT: Research re "Liberally Construed" Powers
PAGE: 3

There are two commissions which do not appear to have any similar expression of their powers. Those are Fish and Game, AS 16.05.241, and the State Commission for Human Rights, AS 18.80.060.

DCE:lka

Attachments

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 268-5100
FAX: (907) 278-3687

KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 451-2811
FAX: (907) 451-2846

P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 485-3800
FAX: (907) 485-6735

"RUSH"

Post-It™ brand fax transmittal memo 7671 # of pages >

To: Bill Hudson	From: W.A. Rusch
Co: House Labor	Co:
Dept: Commerce	Phone # 269-5171
Fax # 765-6790	Fax # 278-3458

IF LAW

GENERAL

April 4, 1994

The Honorable Bill Hudson
House Labor and Commerce Committee
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Representative Hudson:

This is a response to your letter requesting the Attorney General's opinion about the ramifications of amending AS 42.05.141(a)(1) to replace "the powers of the commission shall be liberally construed to accomplish its stated purpose" with "the powers of the commission shall be those specifically conferred by statute as necessarily implied by those specific grants of authority."

If the proposed substitute language is adopted, it will be harder for this office to advise the APUC about the extent of its authority or to predict the outcome of litigation over APUC authority. We think adoption of the substitute language is likely to encourage the relitigation of a number of issues that are now settled by court decisions, and to call into question the commission's authority for some actions it has taken in the past, including some which are now quite routine. Adoption of this substitute is also likely to restrict the APUC's ability to deal with newly arising problems even though traditional utility operations are changing rapidly in today's world.

In a number of cases interpreting the existing AS 42.05.141(a)(1), the Alaska Supreme Court has said that the language incorporates both a principle of limitation--a narrow limit on areas of APUC's authority--and a principle of expansion--broad authority to deal with those areas of authority. The proposed substitute language also appears to contain competing limitation and expansion principles, but we have no court guidance about the meaning of this new wording. What seems clear about the proposed amendment is that it would change the focus of any effort to interpret APUC authority. The key to interpretation would no longer be the stated purpose of the APUC Act; the key would become specific mention in the Act of a particular power.

The fundamental problem with this is that the powers statutorily conferred on the APUC are very unspecific. For

example, the APUC is supposed to "regulate" public utilities in the state.¹ General language like "regulate" is not unusual in agency statutes; both Congress and state legislatures often grant agency powers in general and ambiguous terms. Leading administrative scholars recognize that specific language spelling out agency authority is almost impossible to write.²

By limiting the APUC's authority to "powers. . . specifically conferred by statute as necessarily implied by those specific grants of authority," when the enabling statutes are not stated specifically, the legislature would probably severely limit the APUC's flexibility to react to unique or unforeseen circumstances.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: *Virginia A. Rusch*
Virginia A. Rusch
Assistant Attorney General

VAR/lmg

cc: Deborah Behr, Assistant Attorney General
Raga Elin, Legislative Liaison, Office of the Governor
Don Schöer, Chairman, Alaska Public Utilities Commission

¹ Another example is that AS 42.05.371 and AS 42.05.411 forbid utilities from collecting any rates that have not been approved by the Commission. The APUC is presumably supposed to enforce this prohibition, but nothing in the statutes confers specific authority for the APUC to order a utility to refund some or all of charges collected in the absence of an approved rate. The APUC has often ordered such refunds in providing consumer complaint assistance, and now is engaged in litigation over an order to refund telephone utility rates for untariffed services.

² See, for example, K. C. Davis and R. Pierce, Jr., Administrative Law Treatise, §§ 3.1, 14.2 (Third Edition, Little Brown and Co., 1994).



Alaska

Rural

Electric

Cooperative

Association, Inc.

703 W. Tudor Rd., #200
Anchorage, AK 99503
(907) 561-6103
FAX (907) 561-5547

Electric Service for 300,000 Alaskans

March 29, 1994

Rep. Bill Hudson, Chairman
House Labor & Commerce Committee
Juneau, Alaska

Dear Mr. Chairman:

Attached is a proposed conceptual amendment which this association believes should be a part of any legislation extending the APUC as a result of the current sunset review process. The purpose of this amendment is to remove the directive that the APUC's statutes shall be "liberally construed" and replace that with a more moderate directive.

The "liberally construed" language has been a part of this statute since the APUC was created in essentially its present form in the 1960's. Historically, this language has been used numerous times by the commission. Sometimes those uses have been for the benefit of the utility involved; sometimes they have been for the detriment of the utility. On several occasions, those uses of "liberally construed" have resulted in appeals to the courts. The result of those appeals is about evenly divided between the commission and the utilities.

Although most of the uses of "liberally construed" are relatively minor in nature, we strongly feel that this change is very important. A classic illustration of why we feel that way came up in 1992 when the commission was considering the licensing of the Healy Clean Coal Project. The position was advocated that, using "liberally construed" as their authority, the commission should write new law by requiring the feasibility study to include calculations of "environmental externalities." Two of the then five commissioners agreed to this position. Fortunately, they were the minority, but a different set of individuals could very easily produce a different result. In fact, that case is currently on appeal by Trustees For Alaska.

Whenever the authority of the APUC needs to be expanded, it should be the legislature, not the commission that makes that decision.

Sincerely,

David Hutchens

Proposed Amendment for

HB 539 Extending the APUC and RCC

Replace "the powers of the commission shall be liberally construed to accomplish its stated purpose" in AS 42.05.141(a)(1) with "the powers of the commission shall be those specifically conferred by statute or necessarily implied by those specific grants of authority".

(Proposed by ARECA, supported by ATA)

M E M O R A N D U M

TO: Kent Dawson
FROM: Mike Roberge
DATE: March 28, 1994
RE: Senate Bill #213 & House Bill #539

=====

Senate Bill #213, and companion House Bill #539, propose to extend the sunset of the Alaska Public Utilities Commission ("APUC").

Both of these bills contain amendments which would assess the Regulatory Cost Charge ("RCC") on the gross revenues of cable television systems whose rates are regulated by the APUC.

The definition of gross revenues has been previously amended to adjust the gross revenues of; (i) utilities selling services at wholesale [AS 42.05.253(c)(1)]; and (ii) local telephone exchange settlement and access charges [AS 42.05.253(c)(2)]. SB #213 & HB #539 also contain a proposed adjustment of gross revenues for electric utility cost of power [AS 42.05.253(c)(3)].

Alaska Cablevision, Inc. ("ACI") would propose and support an adjustment of gross revenues for cable television systems whose rates are regulated by the APUC, to that which would only include the revenues derived from services in which the APUC has statutory authority to regulate.

As a result of the passage of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act"), the Federal Communications Commission ("FCC") has established rules which define the role of local franchising authorities. These new rules allow for the regulation of rates for; (i) the entry level of service (ie. basic); (ii) equipment charges; and (iii) installation fees. All other service revenues are regulated by the FCC. Therefore, the RCC should only be applied against the service revenues actually regulated by the APUC.

This would make a big difference to cable subscribers, as the RCC will ultimately become a pass through charge. Consumers should not be saddled with a much larger RCC assessment based on total revenues which include un-regulated revenues and service revenues regulated at the FCC.

It should also be noted that ACI systems have, and will continue to be in full compliance with the new Federal guidelines on rates. The APUC must (and has) adopted the FCC's rules regarding the regulation cable television rates. Therefore, it remains to be seen what direct benefit the cable subscriber receives, as the RCC assessment will merely become an automatic cost of such regulation.

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

ALASKA PUBLIC UTILITIES COMMISSION

1016 WEST 6TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501-1963
PHONE: (907) 276-6222
FAX: (907) 276-0160

March 10, 1994

Honorable Tim Kelly
Chairman
Senate Labor & Commerce Committee
via telecopier 465-3756

Dear Senator Kelly:

Ref: Statutory caps on Regulatory Cost Charge Rates

AS 42.05.253 and 42.06.285 set a cap on the Regulatory Cost Charge (RCC) rate that the Commission may charge. It is currently .61% of jurisdictional gross revenues for regulated utilities and pipeline carriers.

I understand that the proposed language in the Labor & Commerce Committee substitute 3/5/94 work draft found at page 2, lines 6-8 of the bill would allow electric utilities to reduce their "cost of power" from gross revenues for purposes of calculating the regulatory cost charge to be paid to the State of Alaska. In order to cover the Commission's authorized budget as provided in .253(b), the amount of RCC lost by providing this exclusion would have to be made up by raising the RCC rate for all utilities and pipeline carriers, including electric utilities.

The current RCC rate of .4% of gross revenues would increase to approximately .54% (a 35% increase), based on the workdraft definition of "Cost of power" as the "costs of fuel and purchased power". If the definition were expanded to exclude "total power production expenses" from electric gross revenues, the RCC rate would be higher than .54%.

If the statutory cap on RCC rates were raised an equivalent percentage, the cap would rise from .61% of gross revenue to .82%. Section 2 of the work draft bill proposes to amend the cap from .61 to .8% of gross revenues. The RCC cap for pipelines is increased in like manner in Section 11, page 3, lines 19-24.

Sincerely,



Don Schröer

APPROXIMATE EFFECT OF REALLOCATING
REGULATORY COST CHARGE
As Provided In HB 539

If Change Were Made For FY 1994

<u>Sector</u>	<u>1994 RCC</u>	<u>Change</u>	<u>1994 RCC Rev.</u>
Electric	\$1,600,965	(426,600)	\$1,174,365
Telephone	777,898	157,575	935,473
Pipeline	508,867	103,079	611,946
Gas	519,608	105,254	624,862
Water	109,643	22,210	131,853
Sewer	93,704	18,981	112,685
Refuse	93,985	19,038	113,023
Cable	2,286	463	2,749

If Change Were Made For FY 1993

<u>Sector</u>	<u>1993 RCC</u>	<u>Change</u>	<u>1993 RCC Rev.</u>
Electric	\$1,311,670	(349,413)	\$962,257
Telephone	1,736,033	241,901	1,977,934
Pipeline	154,314	21,502	175,816
Gas	115,736	16,127	131,863
Water	154,314	21,502	175,816
Sewer	77,157	10,751	87,908
Refuse	154,314	21,502	175,816
Cable	115,736	16,127	131,863

(Data bases used for this calculation: Legislative Audit Report for FY 93 and APUC document for FY 94)

Prepared by ARECA
March 30, 1994

CHANGE IN REGULATORY COST CHARGE

HB 539, Sec. 2

Audit Report -- FY 1993

RCC for Electric	39%
Workload from Electric	<u>34%</u> (3 year average)
Overcharge to Electric	5%
Total RCC	\$3,857,853
	<u> x 5%</u>
Overcharge to Electric	\$192,893

Updated Information -- FY 1994

RCC for Electric	43%
Workload from Electric	<u>30%</u> (higher than most recent year)
Overcharge to Electric	13%
Total RCC	\$3,706,957
	<u> x 13%</u>
Overcharge to Electric	\$481,904

Comparison of Overcharge to Amount of Cost Shift in Sec. 2

Overcharge to Electric	\$481,904
Cost Shift in Sec. 2	<u>426,600</u>
Remaining Overcharge	\$55,304

Submitted to House L & C
by ARECA
March 29, 1994

**Chairman Schröer's Remarks to the
Senate Labor & Commerce Committee Hearing
Juneau, Alaska, Tuesday, February 8, 1994 1:30 p.m.**

Sunset Hearing Testimony

Introduction

I welcome the opportunity to speak to you as you mark up Sunset Legislation for our agency. The Commission supports SB 213 and has recommended several amendments to it.

I. General Commission Overview

The APUC is responsible for regulating Alaska's public utilities and pipeline carriers. Our mission statement says:

The Alaska Public Utilities Commission protects and promotes the public interest by certificating and economically regulating only qualified public utilities and pipeline carriers. It oversees the availability, affordability and quality of the utility services which are essential to Alaska's economic development.

It does this by making timely decisions that balance the competing interests of various parties.

The APUC issues certificates of public convenience & necessity to utility service providers and pipeline carriers who are fit, willing and able to provide service. We approve the rates, terms and conditions of service to the public. The Commission also does the rate-setting for the power cost equalization program, which helps out to cover a portion of the bill for high-cost electrical service to almost 69,000 customers.

The Commission consists of five members, each appointed by the Governor for a six-year term. We have a budget of \$3.6 million and a staff of 36. I am proud of the work of the Alaska Public

Utilities Commission.

II. Legislative Recommendations

A. Regulatory Cost Charge

The regulatory cost charge should be made permanent, rather than simply extending the repeal date by four years. I believe that this funding source is with us to stay. If problems occur in the future, the Commission sunset review is adequate to address them. If the Commission were zeroed out of the budget, the authority and the agency responsible to impose an RCC would both disappear.

Utilities have expressed concern about the possibility of overcollection of RCC beyond the amount of the Commission's. Currently the statute directs the Commission to change the rate as required to avoid overcollection. The problem is one of timing: by the time the fiscal year's results are known it is too late to adjust the rate. If the fourth quarter payment is split and only that amount required to balance the budget is applied to the fiscal year, the balance would apply to the subsequent fiscal year. The Commission would be required to reduce the RCC rate to take this balance into account.

The Commission has proposed language to ensure that overcollection of RCC and lapsing into the general fund does not happen. Section 32 of the Operating Budget will ensure that no RCC funds collected this fiscal year lapse into the general fund. I recommend similar permanent language in AS 42.05.253 and 42.06.285.

B. Power Cost Equalization

Traditionally the Commission has been responsible for setting the electric rates for PCE-eligible utilities. SB 106, the intertie bill, transferred the power cost equalization responsibilities formerly handled by the Alaska Energy Authority to the Dept. of Community & Regional Affairs. However, through a drafting error some references to the "Commission" were inadvertently changed to "department" (DCRA). The bill as passed transferred the PCE calculations to DCRA, but this was not the legislative intent. A revisor's bill has been prepared to correct this error. Meanwhile, the Commission will continue to carry out its assigned responsibilities under this program.

C. Cable Television Regulation

The Commission has received authority from the Federal Communications Commission to regulate the basic tier of cable utilities currently regulated by the Commission under state law. This would apply only the BC Cable Company in Juneau at this time. The City & Borough of Juneau has expressed interest in regulating cable companies, but state law does not allow this at this time. A change in statutes would be needed to allow local governments to regulate Cable TV.

D. Pipeline Legislative Recommendations

This is described in the annual report. In the interest of time I will not restate it.

E. Commission procurement of expert witnesses

The Commission recommends adding an exemption to the Procurement Act, 36.30.850 to allow it to hire its expert witnesses for cases in a timely manner.

The Commission has been unable to procure the professional services of expert witnesses in a timely fashion. The deadlines established in proceedings do not permit the procurement process to operate to produce a successful bidder in time for the contractor to properly prepare the case. Other parties to the proceedings utilizing private sector procurement procedures are able to hire their expert witnesses on a timely basis, the Commission is not. This either delays the processing of cases, or forces the Commission's witness to rush the preparation of a case, thus affecting the accuracy and credibility of the work, as well as costing the state more for overtime.

Next I would like to respond to each of the legislative changes suggested by the ARECA.

(1) **Liberally Construed:** The phrase "liberally construed" appears only once in AS 42.05. It is found in section 141, our powers & duties section:

SECTION 42.05.141. GENERAL POWERS AND DUTIES OF THE COMMISSION. (a) The Alaska Public Utilities Commission

may

(1) regulate every public utility engaged or proposing to engage in such a business inside the state, except to the extent exempted by AS 42.05.711, and the powers of the commission shall be liberally construed to accomplish its stated purposes;...

In HEA vs. City of Kenai the Supreme Court said:

In sum, we have construed AS 42.05.141(a)(1) to mean that the actual areas in which the APUC may exercise its adjudicatory authority are quite narrow. Within those narrow areas, however, the APUC's powers to adjudicate are plenary, as broad as the specific provisions of the act permit....

This provision presents two guiding principles for determining the extent of the APUC's jurisdiction under specific provisions of the Act. On the one hand, it includes a principle of limitation, restricting the APUC's power to the specific jurisdictional areas of its "stated purposes." On the other hand, it includes a principle of expansion, mandating that the APUC's power to act within its specific areas of jurisdiction "is to be liberally construed."

The Alaska Supreme Court has dealt with this provision eight times. In four of those cases the Court found the Commission lacked authority. (over Yellow page ads, borough regulation of rights-of-way, attorney cost allocation, and to refuse a rate increase required by bond covenant).

In another (Colville) Environmental Services vs North Slope Borough the Court concluded that the Commission's action "fell squarely within the adjudicatory authority granted the Commission by AS 42.05.271."

In these cases half the time utilities have used the "liberally

construed" as part of their own legal arguments and the courts have ruled in their favor about half the time.

The way I read it, this language does not confer upon the APUC any jurisdiction outside of its powers listed in the statute. If the APUC were a country, would do nothing to expand our borders. Instead, it operates only within the statutory powers granted. I do not support deletion of this provision.

The Commission has only discussed the issue of "liberally construed" nine times in all the orders we issued during our first 25 years on the job! In at least three of these cases the Commission acted to allow the intention of the utility or applicant for a certificate to be accomplished by waiving technical irregularities. In another the Commission found that it did not have statutory authority to recognize a doctrine of "retained rights" requested by a telephone utility requested under statute, despite "liberally construed".

(2) The second issue is Negotiated rulemaking. I think this is an interesting idea from the federal government that bears close examination. However, under the Constitution it cannot mean delegation of the rulemaking powers of the Commission to another body. The negotiating group must be treated as a state agency for purposes of the open meetings and public records acts. The process of developing regulations is terribly slow already, and I would not like to see it slowed further.

it seems that this technique would work best with highly controversial issues. Many of the Commission's recent regulations resulted from legislative mandates. This is true of simplified ratemaking, TRS (telephone service to the deaf community), Intrastate phone service, and the regulatory cost charge. It is not clear to me how these regulatory proceedings would have benefitted from negotiated rulemaking. If this becomes an issue much more research will be necessary.

(3) **Lower RCC rates for Electric Utilities:**

The Commission responded to the Legislative Audit On March 1, 1993 Recommendation No. 1, in the Sunset Audit stated; Alaska Statute 42.05.253 should be amended to require APUC to periodically adjust the regulatory cost charge (RCC) on an industry by industry basis. Further, the automatic repeal date of this statute should be deleted.

The Commission agrees that the program should be made permanent by deleting the automatic repeal date for the Regulatory Cost Charge Program (RCC). Last year the Legislature switched the funding source for the Commission from general funds to this regulatory assessment. The Commission expended significant resources in developing regulations and procedures to make the program work and to make compliance by affected

entities as straightforward as possible. The program is in place and running smoothly.

However, the Commission cannot support the recommendation to require itemization of the rates under the RCC program by utility/pipeline carrier type. Although in theory the recommendation has some merit, it is not at all clear to the Commission that it would be either practical or cost-effective to attempt to implement at this time.

Individual RCC rates would require full and direct allocation of the Commission's costs. The recommendation, if implemented as drafted, would substantially increase the cost of the RCC program. Full cost allocation would be expensive, especially during the year when it was implemented. A permanent increment to the Commission's budget would be required. The Commission would face a new administrative burden of setting individual RCC rates and handling protests to the rates.

One of the key principles guiding the development of the RCC was simplicity. This was true both for the utilities and carriers, their customers, as well for the efficient administration of the program. The Commission has been able to absorb the ongoing costs of the RCC program from its existing budget, because the program has been kept

simple and workable. The auditors' recommendation for further refinement of the RCC would require the statutory cap of .61% of adjusted gross revenues (AS 42.05.253(a)) to be substantially increased. Based on their estimates by utility type for purposes of discussion, the current authorized budget for the Commission would require increasing the cap to .85% for certain utility groups, at a minimum.

From the perspective of most utility customers facing a regulatory cost charge bill of less than \$20 per year, different rates for different utility types would not have a measurable effect on their total bill.

III. A.P.U.C.'s Response to the Recommendations of the Legislative Auditor

The Alaska Public Utilities Commission concurs with the legislative auditor's finding that the Commission is meeting its public purpose and supports extension of the sunset date at least four years.

A. Regulatory Cost Charge

The Commission opposes required readjustment of the RCC on an industry by industry basis. Keep it small. Keep it simple. And keep it uniform. The administrative expense of making this change would far exceed any value of individualization of rates.

As I stated in our response to the Legislative Audit recommendation:

From the perspective of most utility customers facing an RCC bill of less than \$20 per year, different rates for different utility types would not have a measurable effect on their total bill.

B .Easier Access for Utility Consumers to Opt In or Out of Regulations

I support increasing the cutoff from \$325,000 to either \$500,000 or \$1,000,000 for economically regulated electric utilities to be eligible to vote for deregulation. This 1 million dollar ceiling would mean that nine more electric utilities would be able to hold deregulation elections. Also one additional local telephone companies would qualify under this standard.

C. Timekeeping System

The Commission agrees that this recommendation is worthwhile to pursue. If accomplished for internal management purposes, the system could be designed relatively economically. However, if the system is required to serve as the basis for billings, such as those recommended in the auditors' first recommendation, it would be considerably more costly. In either case a fiscal note would be required to carry out this recommendation.

D. Commissioner's Access to Adequate Staff Support

I am proposing to beef up the staff support available to

Commissioners on regulatory policy issues. When Commission Staff is named as a party to a proceeding, the judicial ex parte rule prevent Commissioners from seeking their advice or research, except as formally presented in the case on the record. Specifically we are proposing to upgrade one position and create one new slot to serve as Commissioners' Policy Analysts. Details of this proposal will appear in the Commission's FY 95 budget request.

E. Stagger Commissioner's Terms

The Commission supported this one, but a statutory change would be needed to correct this time. Two Commissioners terms expired last year and the terms of the new appointees are scheduled to expire on the same day in 1999.

mission for regu-
 pt from regulation
 to regulation by a
 (§ 6 ch 113 SLA
 0; am §§ 7 — 9 ch
 30 SLA 1983; am
 n § 2 ch 107 SLA

ed its proposed organi-
 fit corporation under
 1976, Op. Att'y Gen.
 ed utility exceeds the
 of \$325,000 specified in
 us fails to be eligible
 e deregulation exemp-
 ally, and the utility is
 nomic regulation. De-
 p. Att'y Gen.
 mission to effec-
 overview of eligibil-
 emption from regula-
 y the nature and ex-
 a certified and require
 submit a report on its
 venues. These terms
 d be included in the
 es the deregulation
 ember 20, 1988, Op.

ants. — See Alaska
 Municipality of An-
 62 (Alaska 1976).

y or cooperative
 his chapter shall
 ibered in this sec-

ction in which at
 rs return ballots
 tion under (a) of

operative shall
 e subscriber's or
 ore the date set
 n language inform-
 option of dereg-

ulation or regulation by the Alaska Public Utilities Commission will be held within 60 days and that a ballot to participate in that election will be mailed or delivered to each subscriber or member of the utility or cooperative with the regular bill for service. The notice shall also state that a subscriber or member of the cooperative is entitled to vote in the election without regard to whether the subscriber's or member's account with the utility or cooperative is current and that the ballot must be postmarked or returned to the commission within 30 days after it was mailed or otherwise delivered to the subscriber or member. The notice shall also announce the schedule for one or more public meetings which shall provide an opportunity for the subscribers or members to discuss this election. The public meeting or meetings shall be held not more than 30 days before the ballots are mailed or distributed to those eligible to vote. A cooperative may satisfy this requirement by including a discussion of this election on the agenda of an annual meeting if the annual meeting is scheduled to be held not more than 30 days before the election.

(d) A ballot with return postage paid shall be mailed or delivered to each subscriber or member of the utility or cooperative with the subscriber's or member's bill for service and shall contain only the following language:

"Shall (name of utility or cooperative) be exempt from regulation by the Alaska Public Utilities Commission?

[] YES [] NO"

(e) The results of an election under this section shall be certified by the commission within 60 days after the ballots are mailed or delivered to the subscribers or members.

(f) During the 60 days immediately preceding an election under this section a list of subscribers or members of the utility or cooperative shall be made available at cost to any subscriber or member of the utility or cooperative who requests one. The list shall be in the same form that is available to the utility or cooperative.

(g) The board of directors of a utility or cooperative may call an election under this section on its own initiative and shall call an election upon receipt of a valid petition from its subscribers or members. A petition shall be considered valid if it is signed by not less than the number of subscribers or members equal to ten percent of the first 5,000 subscribers or members and three percent of the subscribers or members in excess of 5,000. An election under this section may only be held once every two years.

(h) A utility or cooperative that is already exempt from regulation under this section may elect to terminate its exemption in the same manner. (§ 10 ch 136 SLA 1980)

HOUSE COMMITTEE REPORT

(7)
Date Referred: March 23, 1994

FURTHER REFERRALS:

Finance

Date of Committee Action: 4/07/94

The LABOR AND COMMERCE Committee considered:

HB 539

HOUSE BILL NO. 539

APUC EXTENSION AND REGULATORY COST CHARGE

"An Act extending the Alaska Public Utilities Commission; and relating to regulation of public utilities and to regulatory cost charges."

RECOMMENDATIONS:

be replaced with CS HB 539(L+C) the same title a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact Commerce

fiscal note(s) _____

zero fiscal note Revenue

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Grand Hunter</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>		<input checked="" type="checkbox"/>	
<i>John Reed</i>	<input checked="" type="checkbox"/>	<i>Joe Sitton</i>	<input checked="" type="checkbox"/>		
		<i>W.K. Williams</i>		<input checked="" type="checkbox"/>	
		<i>[Signature]</i>		<input checked="" type="checkbox"/>	
		<i>Bill Hudson</i>		<input checked="" type="checkbox"/>	

Bill Hudson
CHAIRMAN'S SIGNATURE

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347

January 26, 1993

**Members of the Legislative Budget
and Audit Committee:**

In accordance with the provisions of Titles 24 and 44 of the Alaska Statutes, the attached report is submitted for your review.

**DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT
ALASKA PUBLIC UTILITIES COMMISSION**

January 26, 1993

Audit Control Number

08-1404-93

As discussed in the Objectives, Scope, and Methodology section of this report, this review examines the activities of the Alaska Public Utilities Commission to determine if there is a demonstrated public need for its continued existence and if the commission has been operating in an efficient and effective manner.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussions presented in this report are discussed in the Objectives, Scope, and Methodology section of this report. Audit results may be found in the Report Conclusions, Findings and Recommendations, and in the Analysis of Public Need sections of this report.



Randy S. Welker, CPA
Legislative Auditor

TABLE OF CONTENTS

	<u>Page</u>
Report Objectives, Scope, and Methodology	1
Organization and Function	3
Report Conclusions	5
Findings and Recommendations	7
Analysis of Public Need	13
Appendices:	
A. Summary of Appropriations and Expenditures	19
B. Expenditure and Workload Analyses	21
Agency Response:	
Alaska Public Utilities Commission	25

OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Titles 24 and 44 of the Alaska Statutes, we have examined the activities of the Alaska Public Utilities Commission (hereinafter referred to as APUC or the commission) to determine if there is a demonstrated public need for its continued existence and if the commission has operated in an efficient and effective manner.

Legislative intent requires consideration of this report during the legislative oversight hearings to determine whether APUC should be reestablished. The law now specifies that the commission will terminate June 30, 1993 and have one year from that date to conclude its affairs.

The policy and audit approach utilized by the Division of Legislative Audit for performance reports can best be described as "audit by exception." This methodology focuses audit effort on areas of an auditee's operations that have been identified by a preliminary survey as having a high degree of probability for needing improvements.

Therefore, by design, finite audit resources are used to identify where and how improvement can be made, and little time is devoted to reviewing well-run operations or programs. Consequently, this report highlights those areas needing improvement and does not emphasize those operations and programs that are properly functioning.

Discussion of the objectives, scope, and methodology of our review follows.

Objectives

APUC was created to regulate public utilities so that citizens could enjoy adequate service at the lowest reasonable rates. The primary objective of this audit, therefore, was to determine whether the public need for the commission continues to exist.

The secondary objective was to review the commission's major functions, namely certification of utilities, tariff actions, investigations, and complaint follow-up for effectiveness in meeting the public need. The tertiary objective was to evaluate these functions in particular, and APUC's operations in general, for economy and efficiency of operation.

Our analysis of public need, findings and recommendations, and our conclusions have been summarized in the appropriate sections of this report.

Scope and Methodology

The primary emphasis of our audit was on the factors outlined in the Analysis of Public Need section of this report. Alaska Statute 44.66.050 requires these factors be considered in the determination of the commission's continued existence. To address these areas, we analyzed the need for regulation of the various industries; reviewed pertinent academic

literature; considered the regulatory status and trends nationwide; interviewed commissioners and staff; reviewed APUC's statutes and regulations; contacted the State Ombudsman, Attorney General, Human Rights Commission, and the Equal Employment Opportunity offices; analyzed consumer complaints against utilities filed with the commission; and reviewed decisions made by the commission.

The effectiveness and efficiency of the commission was addressed through the above procedures, by contacting and requesting assistance from all regulated utilities, and by reviewing individual files.

Our review of decisions, complaints, tariff actions, hearings, investigations, and certifications was performed primarily on a sample of FY 92 items. These were selected on a judgmental basis to allow us to focus on certain activities and industries.

ORGANIZATION AND FUNCTION

Public utility regulation in Alaska has evolved substantially since the creation of the Public Services Commission (PSC) in 1959. That three-member body had jurisdiction over electric power, heat, water, gas, oil or other petroleum products (except by pipeline), telephone or telegraph communications, and community sewer services. In 1960 PSC gained responsibility for transportation utilities which it regulated until the creation of the Alaska Transportation Commission in 1966.

PSC was replaced by a three-member Alaska Public Utilities Commission in 1970. Regulated industries then included electric, telecommunication, water, steam, sewer, gas, and petroleum when no competition existed. A 1973 amendment added garbage, refuse, trash, or other waste to the list. Amendments passed in 1980 provided exemptions from economic regulation for cable television services and other utilities with low annual gross revenues as well as establishing a provision allowing economic deregulation by consumer vote for certain utility groups. With abolition of the Alaska Pipeline Commission in 1981, jurisdiction over pipelines passed to APUC.

In addition to jurisdictional changes, composition of APUC also changed. Alaska Statute 42.05.040 originally required one member to be a law school graduate, one to be a university graduate with a major in engineering, and one to be a university graduate with a major in finance, accounting, or business administration. Two additional positions were added to the commission in 1975 for which no special qualifications were established. All members are appointed by the governor and confirmed by the legislature in joint session for six-year terms.

Under AS 42.05 and AS 42.06, APUC is charged with the responsibility to ensure the furnishing of adequate service to all public utility patrons, without discrimination, and at the lowest reasonable rates consistent with the interests of both the public and the utility. Statutory provisions direct the commission, after determining an applicant is fit, willing, and able to provide utility service, to issue that applicant a Certificate of Public Convenience and Necessity. After issuance of this certificate, the commission then regulates the rates, classifications, rules, regulations, practices, services, and facilities of a public utility, unless it is exempted or deregulated. The commission has the authority to adopt regulations and to hold formal, quasi-judicial hearings, to accomplish these purposes.

The staff of APUC is divided into six major functions: administration, engineering, communication carriers, consumer protection, finance, and tariffs. In total, APUC employs

Alaska Public Utilities Commission Members

Don Schröer, Chairman
Consumer Seat
Term expires October 31, 1996

Susan M. Knowles
Consumer Seat
Term expires October 31, 1993

Daniel Patrick O'Tierney
Legal Seat
Term expires October 31, 1994

Mark A. Foster
Engineering Seat
Term expires October 31, 1995

James E. Carter
Finance Seat
Term expires October 31, 1996

40 people with an operating budget for FY 93 of \$3,740,800. A brief description of the services provided by these functions follows:

Administration. An executive director, hired by the commission, is responsible for directing all staff functions and acts as a liaison between staff and commissioners and between the commission and legislature. He/she is responsible for records and document management, fiscal and personnel administration, and budget preparation and is assisted in these duties by an administrative assistant, document processing personnel, and other clerical support staff.

Engineering. This section is responsible for the investigation of utility procedures and practices affecting quality of service, review of legal descriptions for service areas, plans for plant expansion, and plant-in-service and depreciation schedules. Their evaluations are presented in proceedings before the commission.

Communication Carriers. This section was established by 1976 legislation to develop, recommend, and administer policies and programs with respect to the regulation of rates, services, accounting, and facilities of communication carriers within the State involving the use of wire, cables, radio and space satellites.

Consumer Protection and Information. Major responsibilities for this section include investigation and resolution of consumer complaints, public relations, and information dissemination.

Finance. Activities carried out by this section include the examination, analysis, and evaluation of financial statements submitted for rate cases, audits of financial records of utilities, examination of financial information comprising historical operating year and pro forma adjustments, and the presentation of these analyses at proceedings before the commission.

Tariff. This section examines, analyzes, and investigates tariff filings and presents recommendations to the commission at biweekly tariff action meetings. Administrative functions include organizing those meetings, as well as meeting all public notice requirements on tariff filings and maintenance of current master tariffs for all utilities.

REPORT CONCLUSIONS

Policy Issues

This review contains policy issues raised as a result of our evaluation of various commission practices. The final policy decisions affecting those practices require legislative consideration. In debating these decisions the legislative oversight committees should take into consideration the findings and recommendations presented in this report to assist them in evaluating the potential impact of any policy changes.

Report Conclusions

In our opinion, the Alaska Public Utilities Commission is operating in an efficient and effective manner and should continue to regulate public utilities and pipelines. We believe that the public interest is being served by requiring public utilities and pipelines to be certificated by APUC. This process stabilizes demand for the utility service by eliminating competition and thereby allowing economies of scale to operate. Economic regulation by the commission, in place of that competition, ensures that the utilities provide adequate service at the lowest reasonable rates.

We recommend that AS 44.66.010(a)(4) be amended to extend the life of APUC to June 30, 2003. APUC has consistently demonstrated public need; we believe it is in the public's best interest to extend the life of this commission for ten years. However, we recognize that performance issues periodically arise. The Division of Legislative Audit can address these interim issues, if any, through a special audit at the request of the Legislative Budget and Audit Committee.

(Intentionally left blank)

FINDINGS AND RECOMMENDATIONS

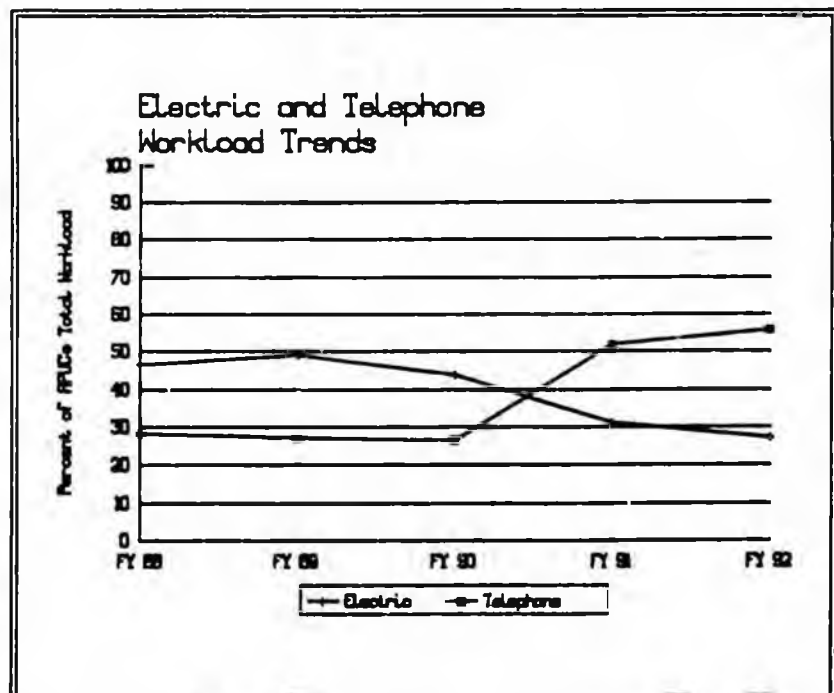
Recommendation No. 1

Alaska Statute 42.05.253 should be amended to require APUC to periodically adjust the regulatory cost charge (RCC) on an industry by industry basis. Further, the automatic repeal date of this statute should be deleted.

In our 1989 sunset audit report we recommended a program receipts budget for APUC, not because it was an alternative funding source but because of the potential benefits that this mechanism could provide. A user fee design can establish a basic fairness in that only those who benefit from the regulatory process bear its cost; it can also encourage consumers to recognize and eliminate unwarranted regulation through deregulation elections. However, these benefits will only be realized to the extent that the RCC program reasonably links the cost-causers with the cost-payers.

For FY 93, the legislature authorized a new RCC program which passes APUC's costs on to the consumers of regulated utilities. This program allocates costs based upon gross revenues. A single charge factor is used across-the-board for all utilities and all industries. Although we believe that a direct workload-based allocation program is preferable, as outlined in our 1989 report, we also continue to believe that a gross revenue based system could realize these benefits if the rates reflect the workload. However, the single RCC factor used in the current plan sacrifices some of program's potential benefit, in that the cost-payers are not necessarily the cost-causers.

We analyzed APUC's workload to evaluate the alignment of cost-causer to cost-payer. In the absence of verifiable data such as utility or industry codings on payroll time sheets, we were forced to approximate the workload by using rough estimates, which were provided on an unofficial basis by commission staff. They provided estimates of the average relative effort required to perform the ongoing APUC functions such as tariff filings, formal proceedings, certification proceedings, and formal and informal complaints. While we acknowledge that the weighting in these analyses is imperfect, we believe it provides an adequate indication of the



commission's workload. We found that the electric and telephone industries, on a combined basis, have represented approximately 79 percent of APUC's workload. The graph of these two industries illustrates the significance, variation, and trend that complicates setting of an RCC rate. The following table compares the commission's estimated FY 93 RCC receipts with the amount calculated based upon the workload over the past three years.

Industry	Flat Rate Allocation		Workload Allocation		Over (Under) Allocation	
	Estimated Gross Revenues	RCC Percent	Estimated FY 93 RCC	Percent of Workload		
Electric	\$260,673,485	.577%	\$1,504,086	34%	\$1,311,670	\$192,416
Telephone	153,306,332	.577%	884,577	45%	1,736,033	(851,456)
Pipeline	99,532,100	.577%	574,300	4%	154,314	419,986
Gas	99,152,056	.577%	572,107	3%	115,736	456,371
Water	22,955,320	.577%	132,452	4%	154,314	(21,862)
Sewer	17,129,576	.577%	98,838	2%	77,157	21,681
Refuse	15,856,758	.577%	91,493	4%	154,314	(62,821)
Cable	0	.577%	0	3%	115,736	(115,736)
Other	0	.577%	0	1%	38,579	(38,579)
Total	\$668,605,627		\$3,857,853	100%	\$3,857,853	\$ 0

This table demonstrates that, based upon the workload over the past three years, the flat across-the-board rate significantly undercharges telephone and overcharges electric, pipeline, and gas utilities. Of course, the over or under allocation amount by industry varies depending on how many years of workload are considered. The use of an across-the-board rate incorrectly assumes that an industry's gross revenues are closely correlated to the workload that it creates. Given the significance of the electric and telephone workload, variation, and trend, we do not believe that the allocation methodology should assume that all workload cycles reverse themselves and that all industries create the same amount of workload in the long run. Therefore, we recommend that the legislature amend AS 42.05.253 to require APUC to periodically adjust the RCC factors to reflect workload on an industry by industry basis.

Notwithstanding the above, we support the current RCC program; we believe that it provides a measure of equity and responsiveness to unwarranted regulation that was lacking prior to the program. Our recommendation is intended to further the equity and regulatory responsiveness objective of this program.

The RCC program was established as a trial program utilizing an automatic repeal of December 31, 1994. As we consider this program to be effective, we recommend that this repeal provision be deleted.

Recommendation No. 2

Alaska Statute 42.05.711 should be amended to make it easier for utility consumers to opt in or opt out of economic regulation.

In the 1989 sunset audit report, we recommended the deregulation of several industries as well as the smaller utilities in each industry. We continue to believe that not all industries need to be regulated and that the cost of regulation may exceed its benefits, particularly for the smaller utilities. With the recent adoption of a user fee approach under the RCC program, the impetus exists to make state government more responsive; what is lacking is a reasonable mechanism to allow consumers to select whether or not they want their utility to be regulated.

Alaska Statute 42.05.711 exempts electric and telephone utilities with revenues less than \$50,000 and refuse utilities with revenues under \$200,000. However, customers can obtain economic regulation by petitioning APUC. Alaska Statute 42.05.711 presently requires 25% of an exempted utility's subscribers to sign the petition. We believe that this is too great an obstacle to overcome and recommend that an election be called if APUC receives a petition demonstrating significant consumer interest. We recommend that the petition and election requirements be modeled after the deregulation election procedures in AS 42.05.712. These procedures call for an election if the petition is signed by 10% of the first 5,000 subscribers and 3% of the subscribers in excess of 5,000. These elections may only be held once every two years for a given utility.

Alaska Statute 42.05.711 also allows deregulation elections to be held for electric and telephone utilities with revenues of less than \$325,000 and other utilities with revenues under \$100,000. We believe that more consumers should be given the option to deregulate by substantially raising the cut-off amount.

In combination, these two changes would allow APUC and the user fee approach of the new RCC program to be more responsive to the regulatory needs of the utility consumer. The regulatory cost/benefit decision should be made by the consumer.

Recommendation No. 3

APUC should establish a timekeeping system.

We initially recommended, in 1979, that the commission implement the time system they had purchased. As part of a 1978 management audit of APUC, Arthur Young & Co. developed a time management system to assist the commission in prioritizing, planning, scheduling, and

monitoring the workflow. In response to our recommendation, the commission concurred that a time management system is a useful administrative tool. They indicated that the time system would be implemented.

In our 1989 sunset audit report we recommended that APUC establish a timekeeping system as an integral part of a direct-allocation RCC program. As the legislature selected an RCC program that was not time based, APUC was not required to implement this recommendation. However, as costs to establish and operate a time system are minimal and the benefits are substantial, we continue to recommend it.

The costs of a timekeeping system are minimal.

- The commission should determine what management reports are needed. While we acknowledge that the 1978 time management system is likely outdated, we recommend that the commission review it to assist them in developing this needs definition.
- Purchase and install "canned" software. There is very inexpensive software on the market that should meet the commission's needs. APUC already has a programmer on staff that could handle the installation.
- The ongoing cost to record time would be insignificant. An employee would need only a few minutes a day to electronically enter their time.
- The time system would also require a small amount of computer and personnel time to accumulate the data and generate periodic management reports.

The benefits of a timekeeping system are substantial.

- A time system would give APUC management a greater ability to prioritize, plan, schedule, and monitor their workload. We believe this information would be invaluable to the commission.
- The legislature is often involved in regulatory matters. Using these management reports, APUC would be better able to estimate the full effect of any regulatory changes.
- There is a potential for increased staff efficiency as a result of time sheet accountability.
- Time sheets would provide a defensible basis for the RCC allocation discussed in Recommendation No. 1. However, regardless of the action taken on Recommendation No. 1, the benefits of implementing a timekeeping system far outweigh the costs.

The nature of the commission's business is very different from most state agencies; they deal with a relatively small number of companies and work on discrete projects. APUC's workload is similar to that in the Attorney General's Office and the Department of Transportation and Public Facilities' maintenance and construction divisions, all of which maintain project time systems.

Recommendation No. 4

APUC should consider how to best ensure commission member access to adequate staff support and advice.

The commission members are inundated with technical information and complex issues. These issues must be thoroughly explored and the commission's decisions must be fully documented. The legislature recognized this difficult task and appropriately established full-time commission members with six-year terms. Nevertheless, there remains a substantial need for staff support and professional advice.

We are concerned that in the instances when commission staff are named as a party in an adjudicatory proceeding, the commission members do not have full access to support staff, professional staff, or legal counsel. The judicial model requires adversarial parties to present the case. APUC staff is frequently designated as a party to a case to provide this necessary balance. The assistant attorney generals advise APUC staff and effectively become a party to the case. Under this judicial model, ex parte communication rules prevent the commission members from directly obtaining assistance or advice from their staff or attorneys; this can only be accomplished if the utility is also present. This may often be impractical.

We believe that the commission would benefit from greater access to their staff and attorneys. The commission should consider how to best ensure full access. We offer the following alternatives:

- A group could be assigned, on a rotational basis, to each case. These individuals would be the party to the case; all others would be available to the commission members.
- Several staff could be assigned, on a rotational basis, directly to the commission. The criteria for selection may vary. The team could include all the professional disciplines, it could target the disciplines currently needed, or it could be a team of executive assistants. The remaining staff would be the party of record.

Although the above approaches have certain drawbacks, we believe that some separation would be achieved thus diminishing the ex parte communication problem. We believe this will enhance the commission's overall efficiency and effectiveness.

Recommendation No. 5

The APUC member's terms of office should be staggered.

The Alaska Public Utilities Commission has five members who are appointed by the governor and confirmed by the legislature in joint session to serve six-year terms. On October 31, 1993 two commission seats become available. Because the potential for

disruption of commission activity would be high with two new members coming in at the same time, we recommend the terms be staggered.

Currently, the terms are scheduled to end as follows:

Consumer seat (1)	October 31, 1993
Engineering seat	October 31, 1993
Legal seat	October 31, 1994
Consumer seat (2)	October 31, 1996
Finance seat	October 31, 1998

We propose this staggering be implemented by modifying the upcoming term of the engineering seat. We propose the following language be added to a temporary or special act:

The term of the Alaska Public Utilities Commission Engineering seat, which is scheduled to begin on November 1, 1993, shall end on October 31, 1995. This adjustment to the normal six-year term, as established under AS 42.05.030(a), is necessary to appropriately stagger commission membership.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses of commission activities indicate both positive and negative factors as they relate to the public need factors as defined in AS 44.66.050. These analyses were not intended to be all-inclusive, but address those areas we were able to cover within the scope of our review.

The extent to which the board, commission, or program has operated in the public interest

The commission has conscientiously attempted to allow only qualified applicants to provide utility services and to regulate them in such a manner as to ensure adequate service at the lowest reasonable rates. A finding that no public interest would be served through regulation, APUC administratively exempted some utilities through the discretionary power granted at AS 42.05.711(d).

The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

The potential effectiveness of the commission was greatly enhanced by the passage of the 1992 RCC legislation; we believe that it provides a measure of equity and responsiveness to unwarranted regulation that was lacking prior to this program. We recommend that the RCC program's automatic repeal date of December 31, 1994 be repealed. However, we also believe that this equity and regulatory responsiveness could be further enhanced by periodic realignment of the charges on an industry by industry basis (see Recommendation No. 1).

Alaska Statute 42.05.711 should be amended to make it easier for utility consumers to opt in or opt out of economic regulation. The regulatory cost/benefit decision should be made by the consumer (see Recommendation No. 2).

APUC should establish a timekeeping system to prioritize, plan, schedule, and monitor the workflow. The costs to establish and operate a time system are minimal and the benefits would be substantial (see Recommendation No. 3).

APUC should consider how to best ensure commission member access to adequate staff support and advice. When staff is named as a party to a case, the commission members do not always have full access to support staff, professional staff, or legal counsel (see Recommendation No. 4).

The APUC member's terms of office should be staggered. On October 31, 1993 two commission seats become available. The potential for disruption of commission activity

would be high with two new members coming in at the same time (see Recommendation No. 5).

APUC has recently completed the development of a topical reference system for commission orders and court decisions. This had been a long-standing recommendation of the Division of Legislative Audit as well as being specified by legislative intent.

The extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.

In their FY 92 Annual Report, APUC highlighted certain problems they perceive with the current statutes and also outlined options and recommended solutions.

The commission requested that the legislature clarify or delete two factors from AS 44.83.162(d)(2) which are to be used to adjust the power cost limitation under the Power Cost Equalization Program. The commission believes these two factors, the rate of change in fuel cost and the power demand, are not logically related. In a January 1987 report on the Power Cost Equalization Program, the Division of Legislative Audit recommended that these two factors be clarified.

The commission requested that the legislature clarify AS 42.05.253(a) and (d). The commission finds that subsection (a) limits the annual amount paid by a utility to .61 percent of annual gross revenues and subsection (d) requires each electric utility to pay an equal per kilowatt-hour charge. This could allow a single utility with very low rates to force the RCC rates down for the entire electric utility industry. As we do not believe that this was what the legislature intended, we recommend clarification.

The commission requested that the legislature substitute "may" for "shall" in AS 42.06.400(b) and (c) to allow the commission the discretion to determine whether monies received on suspended and temporary tariffs should be held in escrow. We concur with this request.

The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.

Formal proceedings are properly and timely noticed and are open to the public. The commission has made public hearings and formal proceedings within the service areas of the utilities before them to facilitate the public attendance and participation. APUC also staffs a Consumer Protection and Information Section to resolve complaints and disseminate information.

The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

All formal proceedings, including hearings on proposed regulations, are noticed and open to the public. Any interested person or party may intervene in a formal proceeding if that intervention will benefit, but not unduly delay the proceeding. The commission has also held informal workshops with attorneys and utility representatives in an attempt to be more responsive to the needs and concerns of these groups.

The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

The commission has adopted regulations for informal and formal complaint procedures. Procedures include a requirement that the complaint be made first with the utility before being filed with the commission. If the complaint cannot be resolved informally, formal procedures, including an investigation, may be initiated. The Office of the Ombudsman also occasionally handles utility or APUC-related complaints. We found the complaint resolution process to be operating satisfactorily.

The extent to which the board or commission which regulated entry into an occupation or profession has presented qualified applicants to serve the public.

The commission, prior to granting a Certificate of Public Convenience and Necessity to a public utility, is required to determine that the applicant is fit, willing, and able to provide the service. APUC employs utility financial analysts and utility engineers to perform the necessary analyses to make this determination.

The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

We found no evidence of hiring practices or commission appointments that are contrary to state personnel practices. No complaints have been filed with the Human Rights Commission or the Division of Equal Employment Opportunity.

The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

In addition, a statute change may become necessary in response to the federal Cable Television Consumer Protection and Competition Act of 1992. Whether this act will lead to active economic regulation of cable systems in Alaska is uncertain. The regulations to implement this new program are scheduled to be adopted in April 1993.

APPENDICES

(Intentionally left blank)

APPENDIX A

Department of Commerce and Economic Development
 Alaska Public Utilities Commission
Summary of Appropriations and Expenditures
 For Fiscal Years 1992 and 1993
 (Unaudited)

Funding Sources	FY 92	FY 93
General Fund	\$3,627,000	\$ -0-
Program Receipts	-0-	3,740,800
Total	\$3,627,000	\$3,740,800

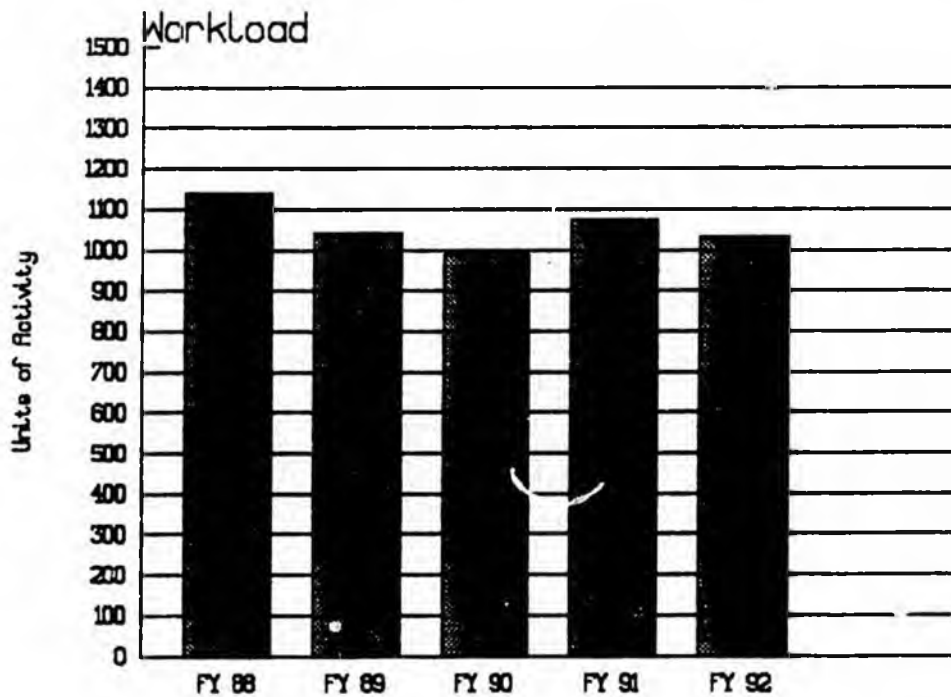
Expenditures and Encumbrances	FY 92		FY 93 Authorized
	Authorized	Actual	
Personal Services	\$2,430,300	\$2,431,602	\$2,541,500
Travel	51,400	40,383	57,800
Other Services & Charges	1,114,800	1,021,645	1,077,400
Supplies	27,600	79,583	43,700
Machinery and Equipment	2,900	52,556	20,400
Total	\$3,627,000	\$3,625,769	\$3,740,800

Note: The information included in this summary was obtained from the state accounting system. This information has not been audited by us and, accordingly, we express no opinion on it.

(Intentionally left blank)

APPENDIX B

Department of Commerce and Economic Development
Alaska Public Utilities Commission
Expenditure and Workload Analyses
For Fiscal Years 1988 through 1993



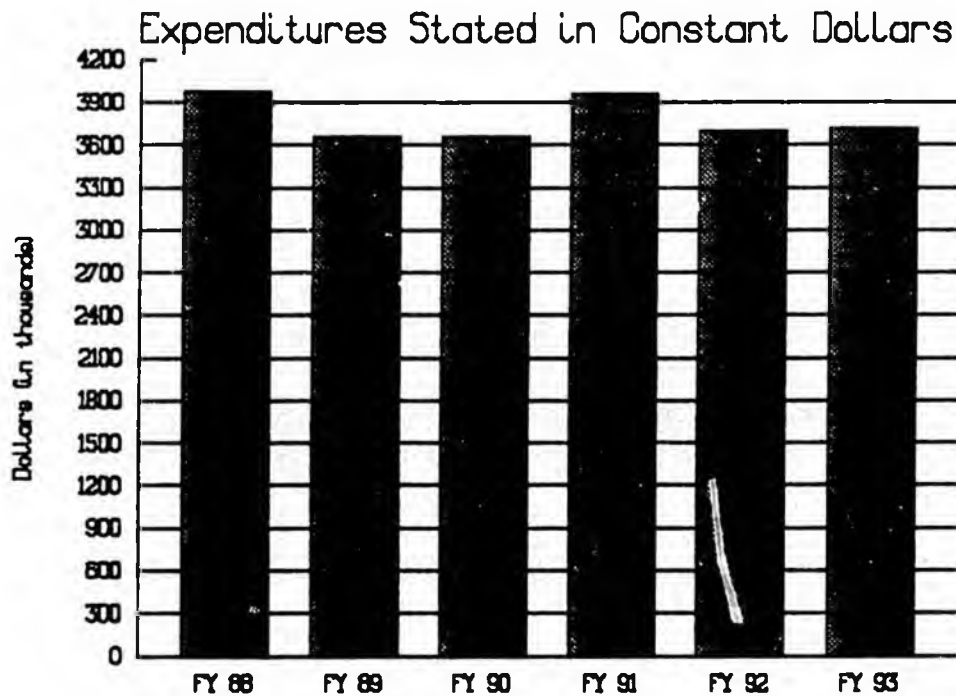
Workload: Each bar in the graph represents a consolidated measurement of the commission's workload for each fiscal year. Each unit of activity is a function performed by APUC such as a tariff filing, formal proceeding, certification proceeding, or formal and informal complaints. Each activity was weighted using an estimate of the relative effort generally required to accomplish each task.

The weighting was accomplished using rough estimates provided on an unofficial basis by commission staff. While we acknowledge the weighting in this analysis is imperfect, we believe it provides an adequate indication of the commission's workload.

This analysis indicates that the commission's workload fluctuated moderately from year to year, yet no clear trend is evident.

APPENDIX B (cont.)

Department of Commerce and Economic Development
Alaska Public Utilities Commission
Expenditure and Workload Analyses
For Fiscal Years 1988 through 1993



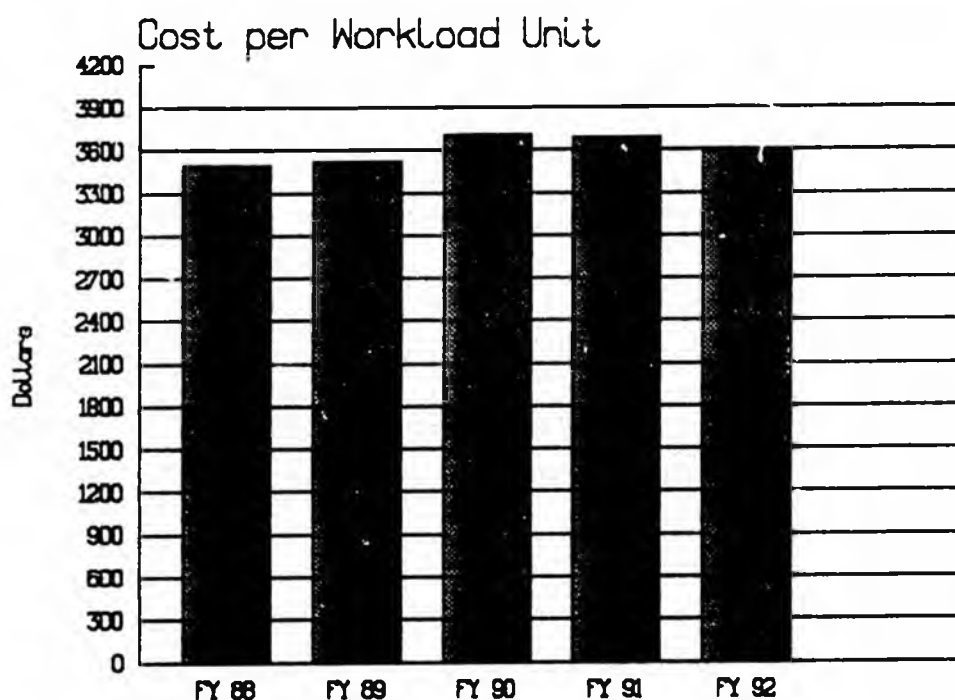
Expenditures Stated in Constant Dollars: The FY 88 through FY 92 actual expenditures and the FY 93 authorizations are stated in constant dollars. A constant dollar reflects the purchasing power of a dollar by adjusting it using a price-level index. We used the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for all urban consumers in Anchorage to adjust the amounts to FY 93 dollars. This analysis includes amounts for personal services, travel, contractual, and supply; equipment purchases were excluded because they are less directly related to the workload of each individual year.

The dollar amounts used in this analysis were taken directly from APUC Annual Reports. The amounts have not been audited by us and, accordingly, we express no opinion on them.

This analysis is generally consistent with the workload graph. The fluctuations were moderate and without a clear trend.

APPENDIX B (cont.)

Department of Commerce and Economic Development
Alaska Public Utilities Commission
Expenditure and Workload Analyses
For Fiscal Years 1988 through 1993



Cost per Workload Unit: Each workload unit cost was calculated by dividing fiscal year expenditures stated in constant dollars by the weighted workload units. This calculated cost per workload unit is a measure of the commission's efficiency.

This analysis which indicates that the commission's efficiency decreased from FY 88 through FY 90. However, in FY 91 through FY 92 the commission's efficiency improved somewhat. Over the five year period, there is no clear trend.

(Intentionally left blank)

WALTER J. HICKEL, GOVERNOR

ALASKA PUBLIC UTILITIES COMMISSION
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

1016 WEST 6TH AVENUE
SUITE 400
ANCHORAGE, ALASKA 99501-1963
PHONE: (907) 276-6222
FAX: (907) 276-0160

March 1, 1993

Mr. Randy S. Welker, CPA
Legislative Auditor
Legislative Budget and Audit Committee
P.O. Box 113300
Juneau, Alaska 99811-3300

RECEIVED
MAR - 5 1993

LEGISLATIVE AUDIT

Ref: Audit Control No. 08-1404-93

Dear Mr. Welker:

On behalf of the Alaska Public Utilities Commission (Commission), I appreciate the opportunity to respond to your agency's audit of the Alaska Public Utilities Commission (08-1404-93). The Commission concurs with your finding in the "Report Conclusions" that the life of the Commission be extended until June 30, 2003. Therefore, this letter will focus on the Commission's response to your "Findings and Recommendations".

The audit states on page 1 "APUC was created to regulate public utilities so that citizens could enjoy adequate service at the **lowest reasonable rates**" (emphasis added). The actual ratemaking standard applied by the statute is "just and reasonable".

Recommendation No. 1 Alaska Statute 42.05.253 should be amended to require APUC to periodically adjust the regulatory cost charge (RCC) on an industry by industry basis. Further, the automatic repeal date of this statute should be deleted.¹

The Commission agrees that the program should be made permanent by deleting the automatic repeal date for the Regulatory Cost Charge Program (RCC). Last year the legislature switched the funding source for the Commission from general funds to this regulatory assessment. The Commission expended significant resources in developing regulations and procedures to make the program work and to make compliance by affected entities as straightforward as possible. The program is in place and running smoothly.

However, the Commission cannot support the recommendation to require itemization of the rates under the RCC program by utility/pipeline carrier type. Although in theory the recommendation has some merit, it is not at all clear to the Commission that it would be either practical or cost-effective to attempt to implement it at this time.

¹ To carry out this recommendation fully, the repeal date for AS 42.06.285 (pipeline carrier regulatory cost charge) should also be deleted.

Letter to Mr. Randy Welker, CPA
Page 2 of 3
March 1, 1993

Individual RCC rates would require full and direct allocation of the Commission's costs. The recommendation, if implemented as drafted, would substantially increase the cost of the RCC program. Full cost allocation would be expensive, especially during the year when it was implemented. A permanent increment to the Commission's budget would be required. The Commission would face a new administrative burden of setting individual RCC rates and handling protests to the rates.

One of the key principles guiding the development of the RCC was simplicity. The Commission has been able to absorb the ongoing costs of the RCC program from its existing budget, because the program has been kept simple and workable. Your recommendation for further refinement of the RCC would require the statutory cap of .61% of adjusted gross revenues (AS 42.05.253(a)) to be substantially increased. Based on your estimates by utility type for purposes of discussion, the current authorized budget for the Commission would require increasing the cap to .85% for certain utility groups, at a minimum.

From the perspective of most utility customers facing a regulatory cost charge bill of less than \$20 per year, different rates for different utility types would not have a measurable effect on their total bill.

Recommendation No. 2 Alaska Statute 42.05.711 should be amended to make it easier for utility consumers to opt in or out of regulation.

The Commission agrees in part. Since the legislature reached a policy conclusion that small utilities ought to be provided the statutory option to deregulate by majority vote, it seems appropriate to periodically adjust the gross revenue cutoff levels to maintain this as a realistic option. These gross revenue cutoff levels have not been adjusted since they were enacted in 1980.

Increasing the cut-off from \$325,000 to \$500,000, for example, would allow the members of nine additional economically regulated electric utilities to decide whether to vote for deregulation. They are Bettles, Far North, Gustavus, Manley, Middle Kuskokwim, Napakiak, Northway, PUI and Teller. Middle Kuskokwim is already eligible to vote for deregulation as a cooperative under AS 42.05.711(h). Attachment #1 lists electric and telephone utility gross revenues.

The cut-off for local exchange telephone companies would have to be increased from \$325,000 to approximately \$850,000 in order for any other utility to qualify for the option of voting to deregulate.

The Commission does support increases in the cutoff levels if there

Letter to Mr. Randy Welker, CPA
Page 3 of 3
March 1, 1993

is some compelling evidence that the benefits of regulation are not commensurate with the cost. Although the enactment of the RCC has quantified the cost side, the benefits, although tangible, are still difficult to quantify.

Recommendation No. 3 APUC should establish a timekeeping system.

The Commission agrees that this recommendation is worthwhile to pursue. If accomplished for internal management purposes, the system could be designed relatively economically. However, if the system is required to serve as the basis for billings, such as those recommended in Recommendation #1, it would be substantially more costly. In either case a fiscal note would be required to carry out this recommendation.

Recommendation No. 4 APUC should consider how to best ensure commission member access to adequate staff support and advice.

The Commission agrees.

Commission staff become a party to a proceeding only when designated to be so by Commission order. This decision is typically made by the Commissioners in adjudicatory session soon after a docket is established.

The Commission is familiar with the alternate models for deployment of the staff resources outlined in your report and will continue to entertain possibilities for improvement.

The Commission believes that a simplified method of obtaining counsel to support the Commission under contract is needed for cases where the attorney general represents staff as a party. Extended procurement procedures and the approval of the attorney general to selected the legal contractor both complicate this process.

Recommendation No. 5 The APUC member's terms of office should be staggered.

The Commission agrees. Legislation would be required to accomplish this change.

Thank you for the opportunity to respond.

Sincerely,
Don Schröer



Chairman

Electric Utilities

(1991 Calendar Year)

Utility	Revenues ¹			
	Net Plant	Total Revenues	Net Income	Users
(Gross Operating Revenue \$5,000,000 or Greater)				
Alaska Electric Generation & Transmission Cooperative, Inc.	\$ 15,132,391	\$ 36,107,128	\$ 520,344	1
Alaska Electric Light and Power Company	39,698,352	20,393,975	2,359,645	12,580
Alaska Village Electric Cooperative, Inc.	27,702,360	14,422,892	2,055,036	5,317
Arctic Utilities, Inc. ²	7,408,846	5,438,438	165,654	65
Bethel Utilities Corporation, Inc.	2,940,363	5,837,208	253,258	1,796
Chugach Electric Association, Inc.	405,044,506	113,063,777	6,528,017	61,069
Copper Valley Electric Association, Inc.	13,823,094	8,772,239	761,652	2,747
Golden Valley Electric Association, Inc.	129,119,361	44,786,188	4,921,758	26,569
Homer Electric Association, Inc.	85,626,945	33,936,610	2,124,098	18,173
Kodiak Electric Association, Inc.	42,079,649	16,037,039	1,685,511	15,154
Matanuska Electric Association, Inc.	97,965,827	39,421,396	4,718,151	29,008
Municipal Light & Power Department, Municipality of Anchorage d/b/a	141,035,282	69,064,766	2,545,094	29,144
Subtotal	\$1,007,576,976	\$407,281,656	\$28,638,218	191,623
(Gross Operating Revenue Greater Than \$1,500,000 but Less Than \$5,000,000)				
Alaska Power & Telephone Company	\$ 6,735,677	\$4,521,539	\$1,104,194	1,957
Barrow Utilities and Electric Cooperative, Inc.	4,599,233	1,989,787	153,281	1,357
Kotzebue Electric Association, Inc.	7,029,760	3,051,630	131,097	1,002
Subtotal	\$18,364,670	\$9,562,956	\$1,388,572	4,316
(Gross Operating Revenue Greater Than \$500,000 but Less Than \$1,500,000)				
Aniak Light and Power Company, Inc.	\$ 859,291	\$ 794,818	\$ 65,560	186
G & K, Inc.	2,003,537	1,185,853	69,083	77
Gwitchyaa Zheo Utility Company ³	555,237	629,705	63,223	329
Haines Light and Power Co, Inc.	1,882,384	1,408,805	67,375	848
McGrath Light & Power Company ⁴	1,149,378	980,749	149,809	222
Sand Point Electric, Inc.	1,120,558	1,080,533	55,349	464
Tanana Power Company, Inc.	899,312	542,833	32,518	175
Unalakleet Valley Electric Cooperative, Inc., Matanuska Electric Assoc., Inc. d/b/a	1,055,161	825,060	160,336	299
Subtotal	\$9,524,858	\$7,448,356	\$663,253	2,600

¹ Revenue classes per 3 AAC 48.277.² Information presented for year ending 4/30/92.³ Information presented for year ending 9/30/91.⁴ Information presented for year ending 9/30/91.

Electric Utilities (Continued)

Utility	Revenues ¹			Users
	Net Plant	Total Revenues	Net Income	
(Gross Operating Revenue Less Than \$500,000)				
Bettles Light & Power, Inc.	\$ 255,340	\$ 422,033	\$ 23,551	46
Far North Utilities	273,946	161,566	(15,066)	38
Gustavus Electric, Inc.	490,309	458,937	41,946	222
Manley Utility Company, Inc.	383,809	163,609	(30,527)	79
Middle Kuskokwim Electric Cooperative, Inc.	1,533,699	411,642	8,586	169
Napakiak Ircinaq Power Company	67,481	226,524	(35,757)	106
Northway Power & Light, Inc.	431,545	369,825	(14,328)	116
PUI Acquisition Corporation	496,692	476,240	154,502	124
Teller Power Company, Inc.	299,739	413,578	(16,043)	99
Subtotal	\$ 4,232,560	\$ 3,103,954	\$ 116,864	999
TOTALS	\$ 1,039,699,064	\$427,396,922	\$30,806,907	197,107

¹ Revenue classes per 3 AAC 48.277.

Telecommunications Utilities
(Interexchange & Local Exchange Carriers)
 (1991 Calendar Year)

Utility	Net Plant	Revenues ¹		Main Access Lines
		Gross Revenues	Net Income	
Gross Operating Revenue \$5,000,000 or Greater)				
Alascom, Inc.	\$389,266,807	\$344,212,115	\$ 5,028,215	N/A
Anchorage Telephone Utility, Municipality of Anchorage d/b/a	190,755,816	84,884,602	5,192,433	134,831
GTE Alaska, Incorporated	13,362,737	9,364,978	2,011,904	14,808
Interior Telephone Company	12,352,184	6,213,625	216,179	3,752
Matanuska Telephone Association, Inc.	81,116,559	35,761,990	4,280,751	31,326
Telephone Utilities of Alaska, Inc.	20,967,634	13,885,396	1,782,221	22,404
Telephone Utilities of the Northland, Inc.	79,745,875	49,739,760	6,622,934	43,450
United Utilities, Inc.	17,077,641	9,653,401	697,453	3,444
Subtotal	\$804,645,253	\$553,715,867	\$25,832,090	254,015
(Gross Operating Revenue Greater Than \$1,000,000 but Less Than \$5,000,000)				
Arctic Slope Telephone Association Cooperative, Inc.	\$ 3,488,504	\$ 3,425,631	\$ 416,805	1,795
Bristol Bay Telephone Cooperative, Inc.	2,404,223	1,841,143	(113,312)	1,230
Bush-Tell, Inc.	2,873,912	1,205,352	113,928	664
Copper Valley Telephone Cooperative, Inc.	11,238,813	3,818,023	1,024,531	4,000
Mukluk Telephone Company, Inc.	2,568,937	1,532,478	75,786	763
National Utilities, Inc.	3,027,723	2,328,354	579,589	2,221
Nushagak Telephone cooperative, Inc.	3,315,506	1,679,981	249,703	1,609
OTZ Telephone Cooperative, Inc.	3,923,235	2,198,207	1,045,872	1,971
Subtotal	\$ 32,840,853	\$ 18,029,169	\$ 3,392,902	14,253

¹Revenue classes per 3 AAC 48.277.

(Continued)

**Telecommunications Utilities
(Interexchange & Local Exchange Carriers) (Continued)**

Utility	Net Plant	Revenues ¹		Main Access Lines
		Gross Revenues	Net Income	
(Gross Operating Revenue Less Than \$1,000,000)				
Bettles Telephone Company, Inc.	\$ 99,036	\$ 153,022	\$ (2,390)	70
North Country Telephone Company	163,194	103,479	16,172	110
Summit Telephone Company, The Summit Telephone and Telegraph Company of Alaska, d/b/a	222,809	169,751	57,628	65
Yukon Telephone Company, Inc.	848,601	813,948	61,246	378
Subtotal	\$ 1,333,640	\$ 1,240,200	\$ 132,656	623
TOTAL	\$838,819,746	\$572,985,236	\$29,357,648	268,891

¹ Revenue classes per 3 AAC 48.277.