

**SB**

**213**

**SFIN**

**FILE**

# SENATE FINANCE COMMITTEE REPORT

DATE: 4/11/94

FURTHER:

DATE TURNED INTO OFFICE: 4-19-94

The Finance Committee considered **SENATE BILL NO. 213**

"An Act extending the Alaska Public Utilities Commission and the regulatory cost charge."

and recommends:

- replace with \_\_\_\_\_ CS SB 213 (FINANCE)
- or  adopt previous \_\_\_\_\_ CS \_\_\_\_\_
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts \_\_\_\_\_ Letter of Intent

further referral to the \_\_\_\_\_

do pass

do not pass

no recommendation

individual recommendations

**NEW FISCAL NOTES**

Department	Date	Zero	Fiscal
DATED	4-11-94	0	
DOR	3-28-94	0	

**PREVIOUS FISCAL NOTES**

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

DO PASS:

Tim Kelly  
Steve K...  
Barb...

OTHER RECOMMENDATIONS:

Justine No Pass

1. [Signature]  
 Co-Chair: Signature/Recommendation

2. [Signature]  
 Co-Chair: Signature/Recommendation

# FISCAL NOTE

**STATE OF ALASKA**  
**1994 LEGISLATIVE SESSION**

**BILL NO. CSSB 213 (FPN)**

Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
 Title: APUC Extension and Regulatory Cost Charge BRU: Revenue Operations  
 Component: Income and Excise Audit  
 Sponsor: (S) L&C  
 Requestor: (S) JUD 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						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL</b>						
<b>REVENUE FUND SOURCE: General</b>	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						
<b>TOTAL</b>	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: March 28, 1994  
 Approved by Commissioner: Darrel J. Rexwinkel Date: March 28, 1994  
 Agency: Department of Revenue

**PREPARED TO PROVIDE ALL 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.** SB 213

Revision Date: 4/11/94  
 Title: Extending the Alaska Public Utilities Commission  
 Sponsor: Senate Judiciary Committee  
 Requestor: \_\_\_\_\_

Department Affected: Commerce and Economic Development  
 BRU: Alaska Public Utilities Commission  
 Component: \_\_\_\_\_  
 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						
<b>TOTAL OPERATING</b>	0	60.7	60.7	60.7	60.7	60.7

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE**

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

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 FY95 reflects the proposed July 1, 1995 effective date for this section.

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

Phone: 276-6222  
 Date: 4/11/94

Approved by Commissioner: Paul Fuhs

# FISCAL NOTE

**STATE OF ALASKA**  
**1994 LEGISLATIVE SESSION**

**BILL NO.** CSSB 213 (H&CA)

Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
 Title: APUC Extension and Regulatory Cost Charge BRU: Revenue Operations  
 Component: Income and Excise Audit  
 Sponsor: (S) L&C  
 Requestor: (S) JUD **COMPONENT SERIAL NO.** 173

**Expenditures/Revenues:** (Thousands of Dollars)

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

<b>CAPITAL</b>						
----------------	--	--	--	--	--	--

<b>REVENUE FUND SOURCE: General</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
-------------------------------------	------------	------------	------------	------------	------------	------------

**FUNDING:** (Thousands of Dollars)

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

**POSITIONS:**

<b>FULL-TIME</b>						
<b>PART-TIME</b>						
<b>TEMPORARY</b>						

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

**ANALYSIS:** (Attach a separate page if necessary.)

(See Attached)

Prepared by: Larry E. Meyers *Larry E. Meyers* Phone: 465-2320  
 Division: Director Date: March 28, 1994  
 Approved by Commissioner: Darrel J. Rexwinkel *Darrel J. Rexwinkel* Date: March 28, 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

CSSB 213 (L&C)

APUC Extension and Regulatory Cost Charge

March 28, 1994

Page 2 of 2

### **Bill Analysis**

Sections 1 and 10 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 2 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.

Sections 3 and 11 authorize the legislature to appropriate the balance of APUC's operating budget which lapses to the general fund to APUC for its operating costs for the next fiscal year. These sections provide that "The Department of Revenue shall identify the amount of the operating budget of the commission that lapses into the general fund each year." The sentence should substitute the Department of Administration for the Department of Revenue.

Sections 4 through 9 deal with provisions which increase gross revenue amounts which exempt utilities from regulation and requirements to pay RCCs to APUC.

Section 12 extends the termination date for APUC to June 30, 1998 and section 14 authorizes staggered terms for APUC commissioners.

Section 13 repeals the sunset date of the RCC program which, under chapter 2, FSSLA 1992, was to sunset December 31, 1994.

### **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 envision 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 reductions in revenues attributable to exemption amount increases and the provision which allows electric utilities to reduce gross revenues by cost of power for calculating RCCs. As a result, this bill is not expected to generate additional revenue.

**FISCAL NOTE**

**STATE OF ALASKA**  
**1994 LEGISLATIVE SESSION**

**BILL NO.** SB 213

Revision Date: 4/11/94  
 Title: Extending the Alaska Public Utilities Commission  
 Sponsor: Senate Judiciary Committee  
 Requestor: \_\_\_\_\_

Department Affected: Commerce and Economic Development  
 BRU: Alaska Public Utilities Commission  
 Component: \_\_\_\_\_  
**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						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>60.7</b>	<b>60.7</b>	<b>60.7</b>	<b>60.7</b>	<b>60.7</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE**

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

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 FY95 reflects the proposed July 1, 1995 effective date for this section.

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

Phone: 276-6222  
 Date: 4/11/94

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

Date: \_\_\_\_\_

4-19-94  
3064  
FOR APUC bill  
(4)  
Adopted

Proposed Amendment to AS 42.05.431(a)

Alaska law now provides utilities that are owned by municipalities and cooperatives with a guarantee of rates that is not available to other utilities. Specifically, the Alaska Public Utilities Commission is required to set rates so as to assure that bond covenants of municipal and cooperative utilities are met. (AS 42.05.431(a); APUC v. Municipality of Anchorage, 555 P2d. 262 (Alaska 1976))

In general, it may be appropriate to provide municipally owned utilities with protections that are not available to other utilities. However, municipally owned utilities (particularly ATU) are now entering new business that are not rate regulated by the APUC and that are in competition with other businesses. Such utilities could place its regulated ratepayers at great risk by issuing bonds to finance the provision of new services. Current law requires the APUC to set rates to ensure that bond covenants are met, therefore the APUC would be required to set rates for local regulated services to cover losses of the utility in businesses that the APUC does not regulate.

For example, ATU has announced its intentions to invest over \$100 million to provide "video dialtone" service and to compete in the interstate long distance market. Although the APUC cannot regulate either video dialtone service or interstate toll service, the APUC would be required to set local regulated rates high enough to meet bond covenants and cover losses in these businesses it does not regulate.

The proposed amendment provides that the Commission is not required to set regulated rates to cover the allocated costs and debt coverage requirements of services it does not regulate. Thus, although the Commission would still be required to set rates to recover all the costs and associated debt coverage requirements of the services it regulates, it would not be required to set rates to recover shortfalls incurred in services it does not regulate.

Additionally, the proposed amendment requires that debt issued to provide unregulated, competitive ventures be structured so

SENATE FINANCE  
COMMITTEE  
Amendment Number: 2064  
Bill Number: 213  
Sponsor: [Signature]  
Date: 4/15/94  
Logged In By: [Signature]

that, upon default, creditors would not have recourse to the assets of the basic regulated utility. This provision protects the assets of the regulated utility, and thus the utility's ability to provide basic utility services to ratepayer, from the very real possibility that the utility may incur substantial losses in competitive activities.

AS 42.05.431(a) should be amended as follows: (addition underlined)

Sec. 42.05.431. Power of commission to fix rates. (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.

(b) 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, 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 business.

(c) 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.

[The remaining subsections of AS 42.05.431 would be re-lettered but not substantively amended.]

4-19-94  
BS-3  
DPE  
2/17/94  
5-1 (JK)  
Adopted

A M E N D M E N T

CS for SB-213(Jud)

Delete all material from page 1, lines 5 through 11.

Insert the following:

Section 1. AS 42.05.141(a) is amended to read:

(a) The Alaska Public Utilities Commission may do all things necessary, or proper, to carry out the purposes and exercise the powers expressly granted or <sup>reasonably SR Adopted</sup> ~~necessarily~~ implied in this chapter, including

(1) regulate every public utility engaged or proposing to engage in a utility [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];

SENATE FINANCE  
COMMITTEE  
Amendment Number: #4  
Bill Number: SB 213  
Sponsor: SHARP Date: 19 APR 94  
Logged In By: [Signature]

4-19 94

8-LS1115X.1  
Cramer  
4/16/94

TR  
DP  
3  
4-2  
DP  
BR

Adopted

AMENDMENT

OFFERED IN THE SENATE  
TO: CSSB 213(JUD)

BY SENATOR KELLY

Page 4, lines 4 - 5:

Delete "may elect to be [IS]"  
Insert "is"

SENATE FINANCE  
COMMITTEE #5  
Amendment Number: #5  
Bill Number: SB 213  
Sponsor: KELLY Date: 4/16/94  
Logged In By: [Signature]

Page 4, line 5, after "42.05.281":

Insert "[,] unless [25 PERCENT OF] the subscribers petition the commission for regulation"

Page 4, lines 6 - 7:

Delete "[, UNLESS 25 PERCENT OF THE SUBSCRIBERS PETITION THE COMMISSION FOR REGULATION]"

Post-It™ brand fax transmittal memo 7671		# of pages ▶	6
To	Legal Services	From	[Signature]
Co.		Co.	Senate Finance
Dept.		Phone #	46935
Fax #	3024	Fax #	

*Fin*  
CS FOR SENATE BILL NO. 213(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/11/94  
Referred: Finance

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

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

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

5 \* Section 1. AS 42.05.141(a) is amended to read:

6 (a) The Alaska Public Utilities Commission may

7 (1) regulate every public utility engaged or proposing to engage in a  
8 utility [SUCH A] business inside the state, except to the extent exempted by  
9 AS 42.05.711; [, AND] the powers of the commission shall be those specifically  
10 conferred by statute or necessarily implied by a statutory grant of authority  
11 [LIBERALLY CONSTRUED TO ACCOMPLISH ITS STATED PURPOSES];

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

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

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

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

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

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

15 \* Sec. 2. AS 42.05.253(a) is amended to read:

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

21 \* Sec. 3. AS 42.05.253(c) is amended to read:

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

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

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

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

31 \* Sec. 4. AS 42.05.253(e) is amended to read:

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

9 \* Sec. 5. AS 42.05.711(e) is amended to read:

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

14 \* Sec. 6. AS 42.05.711(f) is amended to read:

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

19 \* Sec. 7. AS 42.05.711(g) is amended to read:

20 (g) A utility, other than a telephone or electric utility, that does not gross  
21 \$150,000 [\$100,000] annually may elect to be exempt from the provisions of this  
22 chapter other than AS 42.05.221 - 42.05.281 under the procedure described in  
23 AS 42.05.712.

24 \* Sec. 8. AS 42.05.711(i) is amended to read:

25 (i) A utility that [WHICH] furnishes collection and disposal service of  
26 garbage, refuse, trash, or other waste material and has annual gross revenues of  
27 \$300,000 [\$200,000] or less is exempt from the provisions of this chapter, other than  
28 the certification provisions of AS 42.05.221 - 42.05.281, unless [25 PERCENT OF]  
29 the subscribers [OR SUBSCRIBERS REPRESENTING 25 PERCENT OF THE  
30 GROSS REVENUE OF THE UTILITY] petition the commission for regulation under  
31 AS 42.05.712(h). Notwithstanding AS 42.05.712(b) and (g), if subscribers

1 representing 25 percent of the gross revenue of the utility petition the commission  
2 for regulation, the utility is subject to the provisions of this chapter.

3 \* Sec. 9. AS 42.05.711(k) is amended to read:

4 (k) A utility that [WHICH] furnishes cable television service ~~may elect to be~~<sup>is</sup>  
5 [IS] exempt from the provisions of this chapter other than AS 42.05.221 - 42.05.281  
6 under the procedure described in AS 42.05.712 [, ~~UNLESS 25 PERCENT OF THE~~  
7 ~~SUBSCRIBERS PETITION THE COMMISSION FOR REGULATION~~]. *Amend #5*

8 \* Sec. 10. AS 42.05.712(h) is amended to read:

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

12 \* Sec. 11. AS 42.06.285(a) is amended to read:

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

18 \* Sec. 12. AS 42.06.285(c) is amended to read:

19 (c) The commission shall administer the charge imposed under this section.  
20 The Department of Revenue shall collect and enforce the charge imposed under this  
21 section. The Department of Administration shall identify the amount of the  
22 operating budget of the commission that lapses into the general fund each year.  
23 The legislature may appropriate an amount equal to the lapsed amount to the  
24 commission for its operating costs for the next fiscal year. If the legislature does  
25 so, the commission shall reduce the total regulatory cost charge collected for that  
26 fiscal year by a comparable amount.

27 \* Sec. 13. AS ~~42.66.010~~(a)(4) is amended to read

28 (4) Alaska Public Utilities Commission (AS 42.05.010) -- June 30,  
29 1998 [1994];

30 \* Sec. 14. REPEAL OF SUNSET OF REGULATORY COST CHARGES. Sections 22,  
31 26, 36, and 38, ch. 2, FSSLA 1992, are repealed.

- 1     \* **Sec. 15. APUC STAGGERED TERMS.** Notwithstanding AS 42.05.030(a), after the  
2 expiration in 1999 of the term of the member of the Alaska Public Utilities Commission with  
3 a major or experience in engineering, the vacancy shall next be filled for a term of four years  
4 in order to adjust the staggering of the terms of the members of the commission so that no  
5 more than one commission member's term expires each year.
- 6     \* **Sec. 16. APPLICATION TO ONGOING PROCEEDINGS.** The amendment to  
7 AS 42.05.141(a), made by sec. 1 of this Act. applies to proceedings begun on or after the  
8 effective date of sec. 1 of this Act.
- 9     \* **Sec. 17.** Section 1 of this Act takes effect July 1, 1995.
- 10    \* **Sec. 18.** Except as provided in sec. 16, this Act takes effect July 1, 1994.

FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Bill Version: SB 213  
(S) Publish Date: 3-16-94

Revision Date: 2/4/93  
Title: Extending the Alaska Public Utilities Commission and the regulatory cost charge  
Sponsor: Senator Kelly  
Requestor: Senate Labor & Commerce

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

COMPONENT SERIAL NO. \_\_\_\_\_

Expenditures/Revenues:

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

CAPITAL EXPENDITURES	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

CHANGE IN REVENUES ( )	0	0	0	0	0	0
------------------------	---	---	---	---	---	---

FUND SOURCE

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Estimate of current year (FY 94) cost: \$ 0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary.)  
 date Comte Aide (initial)  
 Changes in CS SB 213 JUD have no fiscal impact. This fiscal note is appropriate.  
4/8/94 [Signature]  
 Changes in CS SB 213 (4C) have no fiscal impact. This fiscal note is appropriate.  
3/15/94 [Signature]  
 date Comte Aide (initial)

Prepared by: Bob Lohr, Executive Director  
 Division: Alaska Public Utilities Commission

Phone: 276-6222  
 Date: \_\_\_\_\_

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

Date: 2-7-94

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

**FISCAL NOTE**

4/20/94  
(S) RLS

**STATE OF ALASKA  
1994 LEGISLATIVE SESSION**

**BILL NO. SB 213**

Revision Date: 4/11/94  
 Title: Extending the Alaska Public Utilities Commission  
 Sponsor: Senate Judiciary Committee  
 Requestor: \_\_\_\_\_

Department Affected: Commerce and Economic Development  
 BRU: Alaska Public Utilities Commission  
 Component: \_\_\_\_\_  
 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						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>60.7</b>	<b>60.7</b>	<b>60.7</b>	<b>60.7</b>	<b>60.7</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE**

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

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 proposed July 1, 1995 effective date for this section.

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

Phone: 276-6222  
 Date: 4/11/94

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

Date: 4/12/94

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

SB 213

# 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

April 19, 1994

**SUBJECT:** CSSB 213 (FIN) (Extending the Alaska Public Utilities Commission; regulation of public utilities)

**TO:** Senator Drue Pearce, Co-Chair  
Senator Steve Frank, Co-Chair  
Senate Finance Committee

**FROM:** Teresa B. Cramer *TBC*  
Legislative Counsel

Enclosed is the final of CSSB 213(Fin), passed from your committee this morning. One of the amendments adopted by the committee required a technical change. As adopted, the amendment would have split existing AS 42.05.431(a) into three subsections, designated subsections (a), (b), and (c), and added new language to the second of the new subsections. This change would have required relettering the remaining existing subsections of AS 42.05.431 and amending other sections that contain cross-references to AS 42.05.431. As a matter of drafting style, we do not reletter subsections unless the entire statutory section is repealed and reenacted with changes throughout the statute.

After speaking with Marie Murray of the Senate Finance Committee staff, I have amended subsection (a) to repeal the language that will become the new subsections and added two new subsections as AS 42.05.431(i) and (j). See bill sections 5 and 6. Please let me know if this is unsatisfactory.

TC:mi:gc  
94-090.mai

Enclosure

*p. 4, line 12-*

*Return - "assets of the" to final bill  
inadvertently left out in  
final drafting. - tk/per Stephanie.*

CS FOR SENATE BILL NO. 213(FIN)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

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

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

5 \* Section 1. AS 42.05.141(a) is amended to read:

6 (a) The Alaska Public Utilities Commission may do all things necessary or  
7 proper to carry out the purposes and exercise the powers expressly granted or  
8 reasonably implied in this chapter, including

9 (1) regulate every public utility engaged or proposing to engage in a  
10 utility [SUCH A] business inside the state, except to the extent exempted by  
11 AS 42.05.711 [, AND THE POWERS OF THE COMMISSION SHALL BE  
12 LIBERALLY CONSTRUED TO ACCOMPLISH ITS STATED PURPOSES];

13 (2) investigate, upon complaint or upon its own motion, the rates,  
14 classifications, rules, regulations, practices, services, and facilities of a public utility

1 and hold hearings on them;

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

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

6 (5) require a public utility to file reports and other information and  
7 data;

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

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

16 \* Sec. 2. AS 42.05.253(a) is amended to read:

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

22 \* Sec. 3. AS 42.05.253(c) is amended to read:

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

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

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

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

1 \* Sec. 4. AS 42.05.253(e) is amended to read:

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

10 \* Sec. 5. AS 42.05.431(a) is amended to read:

11 (a) When the commission, after an investigation and hearing, finds that a rate  
12 demanded, observed, charged, or collected by a public utility for a service subject to  
13 the jurisdiction of the commission, or that a classification, rule, regulation, practice,  
14 or contract affecting the rate, is unjust, unreasonable, unduly discriminatory or  
15 preferential, the commission shall determine a just and reasonable rate, classification,  
16 rule, regulation, practice, or contract to be observed or allowed and shall establish it  
17 by order. [A MUNICIPALITY MAY COVENANT WITH BOND PURCHASERS  
18 REGARDING RATES OF A MUNICIPALLY OWNED UTILITY, AND THE  
19 COVENANT IS VALID AND ENFORCEABLE AND IS CONSIDERED TO BE A  
20 CONTRACT WITH THE HOLDERS FROM TIME TO TIME OF THE BONDS.  
21 THE FINANCIAL COVENANTS CONTAINED IN MORTGAGES AND OTHER  
22 DEBT INSTRUMENTS OF COOPERATIVE UTILITIES ORGANIZED UNDER  
23 AS 10.25 ARE ALSO VALID AND ENFORCEABLE, AND RATES SET BY THE  
24 COMMISSION MUST BE ADEQUATE TO MEET THOSE COVENANTS.  
25 HOWEVER, A COOPERATIVE UTILITY THAT IS NEGOTIATING TO ENTER A  
26 MORTGAGE OR OTHER DEBT INSTRUMENT THAT PROVIDES FOR A  
27 TIMES-INTEREST-EARNED RATIO (TIER) GREATER THAN THE RATIO THE  
28 COMMISSION MOST RECENTLY APPROVED FOR THAT COOPERATIVE  
29 SHALL SUBMIT THE MORTGAGE OR DEBT INSTRUMENT TO THE  
30 COMMISSION BEFORE THE INSTRUMENT TAKES EFFECT. THE  
31 COMMISSION MAY DISAPPROVE THE INSTRUMENT WITHIN 60 DAYS

GCT  
amended  
# 2

GCI  
amend  
# 2

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 <sup>Drafters changed "shall" to "may"</sup> ~~incurred~~ in a manner that would permit a  
12 creditor, on default, to have recourse to the <sup>assets removed</sup> ~~basic~~ regulated utility business.

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

22 \* Sec. 7. AS 42.05.711(e) is amended to read:

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

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

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

1 \* Sec. 9. AS 42.05.711(g) is amended to read:

2 (g) A utility, other than a telephone or electric utility, that does not gross  
3 \$150,000 [\$100,000] annually may elect to be exempt from the provisions of this  
4 chapter other than AS 42.05.221 - 42.05.281 under the procedure described in  
5 AS 42.05.712.

6 \* Sec. 10. AS 42.05.711(i) is amended to read:

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

1 \* Sec. 11. AS 42.05.711(k) is amended to read:

17 (k) A utility that [WHICH] furnishes cable television service is exempt from  
18 the provisions of this chapter other than AS 42.05.221 - 42.05.281 [,] unless [25  
19 PERCENT OF] the subscribers petition the commission for regulation under the  
20 procedure described in AS 42.05.712. (was deleted)

21 \* Sec. 12. AS 42.05.712(h) is amended to read:

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

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

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

31 \* Sec. 14. AS 42.06.285(c) is amended to read:

1 (c) The commission shall administer the charge imposed under this section.  
2 The Department of Revenue shall collect and enforce the charge imposed under this  
3 section. The Department of Administration shall identify the amount of the  
4 operating budget of the commission that lapses into the general fund each year.  
5 The legislature may appropriate an amount equal to the lapsed amount to the  
6 commission for its operating costs for the next fiscal year. If the legislature does  
7 so, the commission shall reduce the total regulatory cost charge collected for that  
8 fiscal year by a comparable amount.

9 \* Sec. 15. AS 44.66.010(a)(4) is amended to read:

10 (4) Alaska Public Utilities Commission (AS 42.05.010) -- June 30,  
11 1998 [1994];

12 \* Sec. 16. REPEAL OF SUNSET OF REGULATORY COST CHARGES. Sections 22,  
13 26, 36, and 38, ch. 2, FSSLA 1992, are repealed.

14 \* Sec. 17. APUC STAGGERED TERMS. Notwithstanding AS 42.05.030(a), after the  
15 expiration in 1999 of the term of the member of the Alaska Public Utilities Commission with  
16 a major or experience in engineering, the vacancy shall next be filled for a term of four years  
17 in order to adjust the staggering of the terms of the members of the commission so that no  
18 more than one commission member's term expires each year.

19 \* Sec. 18. APPLICATION TO ONGOING PROCEEDINGS. The amendment to  
20 AS 42.05.141(a), made by sec. 1 of this Act, applies to proceedings begun on or after the  
21 effective date of sec. 1 of this Act.

22 \* Sec. 19. Section 1 of this Act takes effect July 1, 1995.

23 \* Sec. 20. Except as provided in sec. 18, this Act takes effect July 1, 1994.

4-19-94

Stephanie -

Attached is the final  
for CSSB 213 (Fin)  
with an advisory memo  
from the drafter. I have  
highlighted the amend-  
ments within the bill.  
Will hold this final  
pending approval for  
release by you.

Kathy  
2018

*Withdrawn*



# Anchorage Telephone Utility

Executive Offices

SENATE FINANCE *Withdrawn*  
COMMITTEE

FOR IMMEDIATE RELEASE

Amendment Number: 3

Bill Number: SB 213

Sponsor: \_\_\_\_\_ Date: 4/16/94

Logged In By: (RM)

CONTACT: Marnie Brennan, Director of Communications

PHONE: 564-1681

DATE: April 15, 1994

## ATU BLASTS GCI FOR LEGISLATIVE ATTEMPT TO THWART COMPETITION

ATU general manager Jim Morrison today described as "corporate greed" an attempt by GCI to change state law to prevent ATU from competing in the long-distance telephone business. Morrison said a legislative amendment proposed by GCI could have the effect of preventing all municipally-owned utilities in the state from borrowing money -- with potentially disastrous consequences on their ability to provide service.

"GCI threatened to do this at an Anchorage Assembly work session earlier this week," said Morrison. "I find it ironic that the company which has promoted competition for so many years is now trying to prevent competition in the marketplace."

The GCI action came in the form of an amendment to SB 213, a bill currently before the legislature that would extend the life of the Alaska Public Utilities Commission. "ATU is involved in the increasingly competitive telecommunications industry, and this legislation appears to be aimed squarely at placing the assets of the citizens of Anchorage at risk," Morrison said. "This clearly is to the benefit of GCI and to the detriment of the owners of ATU -- the citizens of Anchorage."

(MORE)

ATU PAGE 2 OF 2

"If this amendment becomes law, it could cripple our ability to provide modern telecommunications services," said Morrison. "The primary way ATU meets our customers' needs is by borrowing money to pay for new technology."

Although the GCI-sponsored amendment is directed at ATU, the language is written so broadly that it will likely affect other Anchorage utilities. It might even apply to all the municipally-owned utilities in the state, and there are many, from Ketchikan to Fairbanks, Morrison said.

Morrison pointed out that GCI's proposed amendment, while aimed at an ATU plan announced Feb. 14 to go into the long-distance business, could eventually affect ATU's core local telephone business. "The U.S. Congress is expected to open up local phone service to competition within a few months," Morrison said. "When that happens, the GCI amendment could prevent us from upgrading our local service, since it will then be competitive."

"Most of ATU's planned 'Information Superhighway' services would be affected by the GCI amendment," Morrison said. "GCI is single-handedly attempting to deprive Anchorage residents from receiving everything from basic telephone dial tone to the high-tech services of the future. It's an outrageous, behind-the-scenes maneuver in the closing days of the legislature which must be stopped."

PROPRIETARY AND  
CONFIDENTIAL

WHITE PAPER  
POTENTIAL AMENDMENT THAT WOULD BAR  
ATU FROM USING BONDS TO SUPPORT COMPETITIVE SERVICES

The strongest challenge to any such amendment would likely be constitutional as such an amendment implicates many provisions of the Alaska constitution. The strongest argument rests on Article II, Section 19 of Alaska's constitution. It provides that:

Local or Special Acts. The legislature shall pass no local or special act if a general act can be made applicable. Whether a general act can be made applicable shall be subject to judicial determination.

The Alaska Supreme Court has said this provision bars the legislature from enacting a law that selectively intervenes in local governmental affairs. The test is whether the legislation bears a "fair and substantial relationship" to legitimate purposes. If this test is satisfied, a bill will not be invalid because it has incidental local effect or incidental private advantages. The key is whether the act has a legitimate purpose, and whether it has, either by its terms or by its effect, discriminates against a business or individual. Even if an act appears to apply evenly across the state, it will be declared unconstitutional if it is directed at one municipal entity.

A second provision of the Alaska constitution supports ATU's position. This is Article X, Alaska's "home-rule" provision. Section I states that the Article's purpose is to provide "maximum local self-government," and Section 11 grants all legislative powers to home-rule municipalities except for those expressly prohibited. It is pursuant to this provision that the City of Anchorage enacted its home-rule charter, which allows the municipality to own and operate public utilities. Importantly, the charter provision, as originally enacted, mandates that the city operate public utilities competitively: it requires that each municipal utility "be operated in accordance with the general standards common to utilities providing the same utility service."

This argument is bolstered by Article I, Section II of the Constitution. It provides that "all political power is inherent in the people." The residents of the municipality voted in 1991 to amend the Anchorage Charter through Proposition 32 and to require that ATU be run competitively and to provide a dividend to the Municipality of Anchorage. Again, the power to amend the charter arises directly out of the Alaska constitution's home-rule provision.

Not Offered

MUNICIPALITY OF ANCHORAGE  
1994 LEGISLATIVE PROGRAM

LEGISLATIVE ISSUES

TITLE: Alaska Statute Change Concerning Public Utilities

The Municipality of Anchorage and Municipal Light and Power recommend the following changes at Section 42.05.381(b) of the Alaska Statute as follows:

(b) In establishing the revenue requirements of a municipally owned and operated utility the Municipality is entitled to include a reasonable (rate of return) profit.

and, at Section 42.05.521 of the Alaska Statute as follows:

Section 42.05.521. Impaired capital. When the Commission finds that the capital of a public utility corporation is impaired, or might become impaired, it may, after investigation and hearing, issue an order directing the public utility to cease paying dividends on its common stock until the impairment has been removed. Nothing in this section shall prohibit a public utility from the distribution up to one third of its profit earned in a given year in accordance with Section 42.05.531. (Section 6, Chapter 113 SLA 1970)

JUSTIFICATION:

Section 42.05.381(b) Change from Rate of Return to Profit.

In every rate case ML&P has had before the Alaska Public Utilities Commission (APUC) since 1980, ML&P has indicated the inadequacy of the rates that were being granted. ML&P's concern was the fact that the rates that were granted did not provide a reasonable opportunity for a positive bottom line. In the past rate cases, APUC staff advocate a zero bottom line. ML&P focused on the adequacy of rates regardless of the methodology used to insure that this utility had bottom line earnings. In this respect, the rate of return methodology is a theoretical calculation that does not necessarily insure profit.

(more)

SENATE FINANCE  
COMMITTEE  
Amendment Number: ① ML&P  
Bill Number: SB 213  
Sponsor: \_\_\_\_\_ Date: 4/16/94  
Logged In By: \_\_\_\_\_

**Alaska Statute Change Concerning Public Utilities  
Continued**

Changing the statute from rate of return to profit insures that the test for reasonableness includes cost recovery through rates that have been set which includes a profit to the utility.

Section 42.05.521 addition is included to insure that the owners of a utility, in this case the Municipality, can receive a return even if capital is impaired.

**Contact:** Ronald J. Kuczek  
Assistant to General Manager  
**Phone:** 263-5424



ARECA

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 13, 1994

Sen. Druce Pearce, Co-Chairman  
Senate Finance Committee  
Juneau, Alaska

Dear Sen. Pearce:

Section 1 of CS SB 213 (Jud.) is a provision which this association believes should be a part of any legislation extending the APUC as a result of the current sunset review process. The effect of this section 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

## "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"

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.



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 13, 1994

Sen. Drue Pearce, Co-Chairman  
Senate Finance Committee  
Juneau, Alaska

Dear Sen. Pearce:

Attached is a report from the law firm which represents this association. At our request, they examined Alaska state law to determine which other state agencies have in their statutes 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. To assist the APUC in making the transition to this new status, it is appropriate that a special effective date be used for this section of July 1, 1995 as is currently provided in Section 17.


Sincerely,

David Hutchens

KEMPPPEL, 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:

- i. 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. Kemppel  
FROM: Donald C. Ellis  
DATE: March 31, 1994  
SUBJECT: Research re "Liberal 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. Kemppel  
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

WITH PROPOSED ELECTRIC EXCLUSION (3/10/93 WORKDRAFT K)  
 TOTAL POWER PRODUCTION EXPENSES  
 JULY 1, 1993 - JUNE 30, 1994

LINE UTILITY GROSS REVENUES

SECTOR	1992 Revenue (Actual)	Percent RCC (1.21)	Estimated RCC
1 Electric	\$169,936,189	0.586%	\$995,088
2 Gas	114,195,505	0.586%	\$668,713
3 Refuse	20,656,122	0.586%	\$120,955
4 Wastewater	20,594,329	0.586%	\$120,593
5 Local Exchange Telephone	78,835,789	0.586%	\$461,635
6 Interexchange Telephone	92,130,745	0.586%	\$539,486
7 Cable	502,580	0.586%	\$2,942
8 Water	24,097,453	0.586%	\$141,106
9 Pipeline	111,838,906	0.586%	\$654,890
10 TOTAL	<u>\$632,791,538</u>		<u>\$3,785,418</u>

FORMULA FOR COMPUTING RCC: RCC = (B - E + X) / OR

11 B = APUC Budget		\$3,634,200
12 E = Estimated Actual Cost Charges (\$100,000) + First Quarter Estimated Collections		(100,000)
13 X = Allowance for Uncollectibles = 5% x APUC Budget		181,210
15 TOTAL TO BE RECOVERED		<u>\$3,785,418</u>
16 OR = Utility Gross Receipts		0.5856% NEW RCC RATE
17 Full Year (1.18)	\$632,791,538	0.586% New (Rounded)
18		0.455% Old RCC Rate
		0.131% Difference
19 FY94 Estimated Revenue Base	<u>632,791,538</u>	<u>20.87% '98 Change</u>
20 RCC Percent (1.15 / 1.19)		<u>0.58566%</u>
21 RCC PERCENT ROUNDED		<u>0.586%</u>

COMPUTATION PER ELECTRIC kWh

22 1992 Electric Gross Retail Revenue (1.1)	\$169,936,189	1,643,270 Electric Share of RCC for FY94
23		995,088 Less Revised RCC Electric Share
24 TIMES: RCC (1.21)	0.586%	648,182 LINE 79 EXCLUSION (Using Total Power Production Expenses)
25 Amount Derived from Electric (1.23 x 1.24)	<u>\$169,936,189</u>	192,416 Less Legislative Audit Computation of Electric Overallocation (Sunset Audit, page 8)
26 1992 Electric Retail kWh	<u>3,644,576,595</u>	<u>\$455,766 DIFFERENCE</u>
27		
28 Rate per kWh (1.25 / 1.27)		

0003/003

AK PUB UTIL COMM

907 276 0180

03-11-94 18:34

## Operating Budget

# Operating Budget

	FY92	FY93	Percent Change
<b>APPROPRIATIONS</b>			
71000 Personal Services	\$2,430,300	\$2,455,400	1.0%
72000 Travel	51,400	57,800	12.5%
73000 Contractual	1,114,800	1,163,500	4.4%
74000 Commodities	27,600	43,700	58.3%
75000 Equipment	2,900	20,400	603.4%
<b>TOTALS</b>	<u>\$3,627,000</u>	<u>\$3,740,800</u>	<u>3.1%</u>
<b>EXPENDITURES</b>			
71000 Personal Services	\$2,431,602	\$2,366,884	-2.7%
72000 Travel	40,383	47,777	18.3%
73000 Contractual	1,021,645	913,309	-10.6%
74000 Commodities	79,583	94,049	18.2%
75000 Equipment	52,556	71,327	35.7%
<b>TOTALS</b>	<u>\$3,625,769</u>	<u>\$3,493,348</u>	<u>-3.7%</u>
<b>REVENUE RECEIPTS <sup>1</sup></b>			
General Fund:	\$207,943		
General Fund			
Program Receipts:		\$3,897,553 <sup>2</sup>	
<b>TOTAL RECOVERED</b>	<u>\$207,943</u>	<u>\$3,897,553</u>	

<sup>1</sup> The Commission received revenues under various provisions of its statutes including application fees (AS 42.05.861/AS 42.05.807), copying and postage charges (AS 42.05.201) and cost allocations in proceedings (AS 42.05.861/AS 42.05.610).

<sup>2</sup> The Commission funding was changed to General fund Program Receipts in FY93 (3 AAC 47) under the Regulatory Cost Charge program.

ALASKA PUBLIC UTILITIES COMMISSION

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

1016 WEST 6TH AVENUE  
SUITE 400  
ANCHORAGE, ALASKA 99501-1963  
PHONE: (907) 278-6222  
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.<sup>1</sup>

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.

<sup>1</sup> 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

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

1051 WEST 4TH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 279-8100  
FAX: (907) 276-3697

KEY BANK BUILDING  
100 CUSHMAN ST., SUITE 400  
FAIRBANKS, ALASKA 99701-4879  
PHONE: (907) 481-2811  
FAX: (907) 451-2848

P.O. BOX 110300 - STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 466-3800  
FAX: (907) 466-8738

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY 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

The Honorable Bill Eudson  
House Labor and Commerce Committee

April 4, 1994  
Page 2

example, the APUC is supposed to "regulate" public utilities in the state.<sup>1</sup> 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.<sup>2</sup>

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, rmg

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

<sup>1</sup> 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.

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

WALTER J. HICKEL, GOVERNOR

**DEPARTMENT OF COMMERCE AND  
ECONOMIC DEVELOPMENT**1018 WEST 6TH AVENUE, SUITE 400  
ANCHORAGE, ALASKA 99501-1963  
PHONE: (907) 278-6222  
FAX: (907) 278-0180  
TTY: (907) 278-4833

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.<sup>1</sup> 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." Guterman 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

---

<sup>1</sup> 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

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

ALASKA PUBLIC UTILITIES COMMISSION

April 15, 1994

Honorable Drue Pearce  
Senator  
Honorable Steve Frank  
Senator  
Co-Chairs, Senate Finance Committee  
Alaska State Senate  
via Telecopier 465-3872

Re: SB 213, APUC Sunset Extension

Dear Senator Pearce and Senator Frank:

I understand that SB 213, "An Act extending the Alaska Public Utilities Commission; and relating to regulation of public utilities and to regulatory cost charges" has been scheduled for hearing in the Finance Committee Monday, April 18 at 9:00 a.m. Commissioner Alyce Hanley and I will be available to testify on this bill.

One key provision of the bill (Section 1) would amend the powers and duties section of the Commission's statute. It would emaciate the agency's ability to regulate monopoly public utilities in the public interest. Customers of public utilities would be harmed by the change. No evidence has been offered by the proponents of the change that a problem exists that needs to be solved. The Commission supports the deletion of Section 1. The current wording of AS 42.05.142(a) works just fine.

At the Chairman's request the Department of Law advised the House Labor & Commerce Committee that:

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 quite routine....

By limiting the APUC's authority to "powers... specifically conferred by statute or necessarily implied by a statutory grant 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. (April 4, 1994 letter from Attorney General to Honorable Bill Hudson)

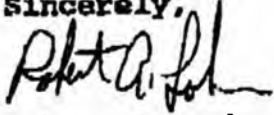
WALTER J. HICKEL, GOVERNOR

1016 WEST 6TH AVENUE, SUITE 400  
ANCHORAGE, ALASKA 99501-1963  
PHONE: (907) 276-6222  
FAX: (907) 276-0160  
TTY: (907) 276-4539

Letter to Senators Pearce and Frank  
Senate Finance Committee  
April 15, 1994  
Page 2

I have enclosed background materials that make the case for deletion of Section 1. Commission witnesses are prepared to discuss SB 213 on Monday. I look forward to the opportunity to testify.

Sincerely,



Robert A. Lohr  
Executive Director

## 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 these 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.

## FINDINGS AND RECOMMENDATIONS

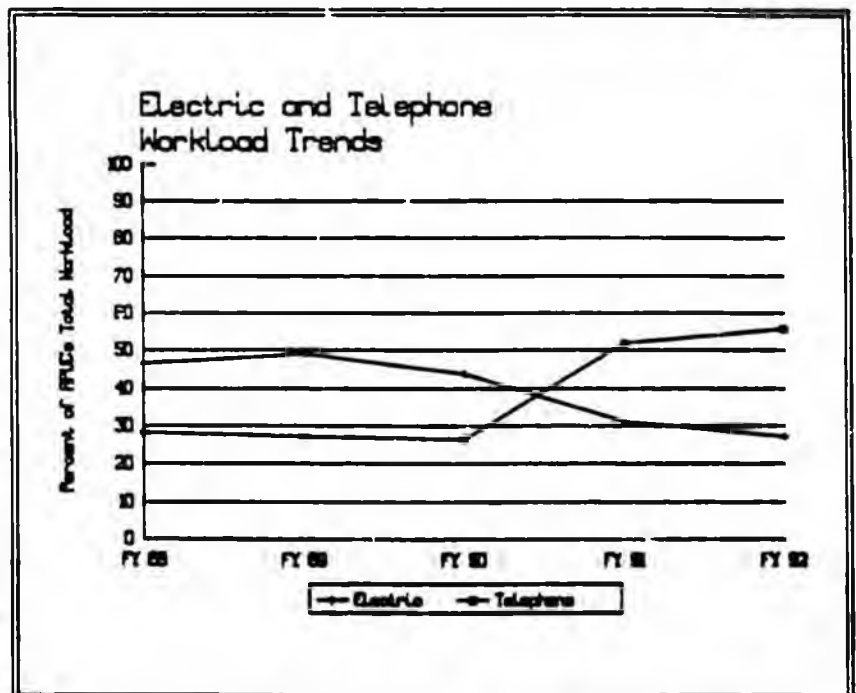
### Recommendation No. 1

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 combine 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 a RCC rate. The following table compares the commission's estimated FY 93 RCC receipt 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)
<b>Total</b>	<b>\$668,605,627</b>		<b>\$3,857,853</b>	<b>100%</b>	<b>\$3,857,853</b>	<b>\$ 0</b>

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 regulator 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 professional 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.*

**Chairman Schröer's Remarks to the  
Senate Labor & Commerce Committee Hearing  
Anchorage, Alaska, Tuesday, September 28, 1993, 1:00 p.m.**

**Sunset Hearing Testimony**

**I. The Alaska Public Utilities Commission**

Thank you for inviting me to testify to you. I am proud of the Commission and I welcome the opportunity to speak to you about our agency. The Commission supports SB 213 and recommends several changes to it.

**A. 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 41, including the Commissioners. I am proud of the work

"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.

## **2. Refuse Deregulation**

The Commission agrees with the legislative auditor that refuse collection and disposal should be de-regulated at the statewide level, and that municipalities should be authorized to regulate this area.

## **3. Cable Television Regulation**

The Commission is presently applying to the Federal Communications Commission for authority 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.

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.

## **II. 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.

### **1. Regulatory Cost Charge**

The Commission opposes required readjustment of the RCC on an industry by industry basis. Keep it small. Keep it simple. And

#### **4. 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.

#### **5. Stagger Commissioner's Terms**

The Commission supported this one, but a statutory change would be needed to correct this time. Two Commissioners terms expire this year.

### **III. Response to Alaska Rural Electric Cooperative Association Recommendations**

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

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.

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

**KETCHIKAN PUBLIC UTILITIES**

MUNICIPALLY OWNED ELECTRIC • WATER • PHONE

2<sup>ND</sup> JO TONGASE • 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(b) 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*  
John A. Magyar  
Telephone Division Manager

cc: Senator Robin Taylor  
Thomas W. Stevenson

Sp 213

**TESTIMONY OF  
Michael J. Burns, Chairman  
Board of Directors  
Anchorage Telephone Utility**

**PRESENTED TO THE  
SENATE FINANCE COMMITTEE  
April 18, 1994**

For the record, my name is Michael J. Burns. I am Chairman of the Board of Directors of Anchorage Telephone Utility. On behalf of the Board, I thank the Chair for the opportunity to appear here today to express our views.

I am here to speak in regard to SB 13, extending the existence of the Alaska Public Utilities Commission. Specifically, I want to address an amendment which I am advised has been suggested by GCI. I will speak directly to the amendment in a moment. First, I want to offer some background information which is pertinent to the debate.

The Board of Directors which I chair was created by the voters of Anchorage in 1991. At that time, voters were asked if they wished to sell the company. They chose not to sell. At the same time, voters were asked if they wished to place the company under the control of a Board of Directors, thereby isolating it from the political pressures which were inherent under the old system of management by elected officials. By an overwhelming margin (56 per cent) the voters chose to create the Board of Directors.

In establishing the Board of Directors, the voters they wanted the company to "...be operated and compete in accordance with prevailing industry practices and in a manner which will provide a Dividend to the Municipality." In February of this year, ATU management announced that the company intends to complete five fiber rings in Anchorage, enter the long distance business through a separate subsidiary and begin a pay per view video pilot project. We believe that announcement was in keeping with our instructions from the people of Anchorage.

Prior to making our announcement, we conducted market surveys. We learned that a majority of Anchorage residents equal to that which created the Board of Directors desire that we enter the long distance business. We are convinced that we are following

Burns Testimony  
4/18/94  
Page two

the wishes of Anchorage voters.

Why did ATU decide to enter the long distance business. There are several reasons. First, our analyses indicate that we can make money. While this is a highly competitive market, we believe that a niche exists which we can successfully tap.

There was also our disappointment that Anchorage residents received no benefits from ATU's 18 million dollar reduction in its access charges last year. We had expected the long distance companies to share that 18 million dollars with customers in Anchorage. That did not occur. We believe that we can share at least a portion of that 18 million dollars with our customers.

We are also keeping a close eye on events at the national level. The house has already completed committee work on HR 3636 and it is expected to go to the floor in May. The senate will be holding hearings late this month and next month on S 1822. The White House and both houses of Congress have announced their intention that one of these bills, or a combination of them, will become law this year. This legislation will accomplish three major goals: Open the local market to competition; remove the prohibition against telephone companies and cable companies from entering each others' businesses; and free the Bell Operating Companies from restrictions on their entry into long distance and other businesses. We are convinced that Congress will act. We are also convinced that we must move aggressively into competition or we will cease to exist.

Why do we feel so strongly about this? MCI, which owns a third of GCI, announced recently its intention to enter the local market through new technology. On December 6, 1993, in the Anchorage Daily News, Ron Duncan, CEO of GCI announced his company's intention to enter the local market. Our competitors are close at hand and hard at work. It's just as simple as that.

Another motivation behind our announcement was our desire to assure that Anchorage and Alaska are full participants in the much discussed Information Superhighway. We announced that we will be completing five fiber rings in Anchorage. This technology, known as SONET (Synchronous Optical Network), is highly advanced and, coupled with equally advanced switching equipment, will provide Anchorage with the capacity to enter the 21st century on an equal technological footing with the rest of the nation.

We believe the amendment being proposed by GCI will have serious

consequences. First, we believe there are constitutional issues at stake, not the least of which is the Alaska constitution's reliance on the voters as the final authority. This amendment clearly is intended to frustrate the intentions of the voters of Anchorage. There is also a question interference in the authority of home rule governments. Finally, we wonder if the proposed amendment doesn't violate the constitutional prohibition against passing legislation aimed at a single entity. While we believe GCI's proposed language may have incidental effects on other entities, the proponents have made no secret of their intention that it is aimed at ATU.

From a business point of view, the most serious issue is simply the results of restricting ATU's ability to follow the mandate of the voters and "...compete in accordance prevailing industry practices..." GCI and their major shareholder MCI have publicly announced their intention to enter the local market. Now they are asking the legislature to restrict ATU's ability to compete. If ATU is restricted from aggressively competing and forced to stand frozen like a wounded moose while the wolves circle, then not only will the will of the voters be frustrated but the Municipality of Anchorage will very quickly find itself owning a worthless asset. I am not being dramatic which I say to you that ATU is either allowed to "...compete in accordance with prevailing industry practices..." or the people of Anchorage will see their asset, now worth hundreds of millions of dollars, reduced to whatever we can get for the real estate.

Finally, I would point out that the federal legislation which I discussed earlier will open the local market to competition. That means that the action being supported by GCI will not apply only to the long distance market but, on passage of the federal legislation, will apply to the local market as well. In short, if GCI has its way now, it will have been successful in restricting ATU's ability to compete in all areas.

Given these factors, I ask that you not approve this amendment; that you allow ATU to carry out the wishes of the voters of Anchorage; and that you allow the principles of competition in the marketplace, which GCI at one time championed, to work.

*JUP*

# SENATE COMMITTEE REPORT

DATE: 3/16/94

FURTHER: Finance

DATE TURNED INTO OFFICE: 4/11/94

Judiciary Committee considered SENATE BILL NO. 213

"~~An Act~~ extending the Alaska Public Utilities Commission and the regulatory cost charge."

and recommends it  
be replaced with

and recommends:

replace with \_\_\_\_\_ CS SB 213 (JUP)

or  adopt previous \_\_\_\_\_ CS \_\_\_\_\_

attaches amendment(s)

and report it  
back as follows

~~same title~~  
 new title  
 technical  
title change  
(HB only)

adopts \_\_\_\_\_ Letter of Intent

further referral to the \_\_\_\_\_

do pass

do not pass

no recommendation

individual recommendations

*pkol*

~~NEW FISCAL NOTES~~ *previous applies*

Department	Date	Zero	Fiscal
<i>Comm Econ Devel.</i>	<i>4/8/94</i>	<input checked="" type="checkbox"/>	

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

DO PASS:

OTHER RECOMMENDATIONS:

\_\_\_\_\_  
*Michael Douley (NO REC)*  
*Suzanne Little (no Rec)*

*George Parks Jacks*

*Adrian L. Taylor*  
Chair: Signature and Recommendation

**SENATE COMMITTEE REPORT**  
FIRST COMMITTEE OF REFERRAL

*JMD*

DATE: 5/7/93

*2/3/94*

FURTHER: JUDICIARY  
FINANCE

Date of 5-Day Notice: \_\_\_\_\_  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3/15/94

L&C Committee considered SB 213

~~"An Act~~ extending the Alaska Public Utilities Commission and the regulatory cost charge."

and recommends: \_\_\_\_\_ and a majority of the committee recommends it be replaced with \_\_\_\_\_

replace with \_\_\_\_\_ CS SB 213 (L&C)

- same title
- new title
- technical title change (HB only)

attaches amendment(s) and do pass

adopts \_\_\_\_\_ Letter of Intent

further referral to the \_\_\_\_\_

do pass

do not pass

no recommendation

individual recommendations

*DFN*

**FISCAL NOTE INFORMATION**

CS458

Department	Date	Zero	Fiscal
DCED	2/2/94	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

*Steve King Repp*  
*Scott Muzzey Sha*

OTHER RECOMMENDATIONS:

*Judith E. Sals NR*

*Tim Kelly - Do Pass*

Chair: Signature and Recommendation