

SB

47

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 2/3/95

FURTHER:

DATE TURNED INTO OFFICE: 2/23/95

The Finance Committee considered SENATE BILL NO. 47

Relating to the Alaska Public Utilities Commission, efd.

and recommends:

- | be replaced with _____ CS _____ (_____)
- | adopt previous _____ CS _____ (_____)
- | attached amendment(s)
- | adopt Letter of Intent by _____ Committee
- | further referral to the _____ Committee

Senate Bill:

- | same title
- | new title
- House Bill:**
- | technical change
- | new: SCR# _____

SIGNING WITH RECOMMENDATIONS:	DP	DNP	NR	AM
<i>Steven Rigg</i>			✓	
<i>Q. D. E. (PCC)</i>	✓			
<i>James D. Doney</i>				✓
<i>Carl J. Smith</i>			✓	(For 10/9)
<i>Bob McLean</i>	✓			
Co-Chair: <i>Rich Halford</i>	✓			
Co-Chair: <i>Jim</i>	✓			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
<i>DOR - Audit</i>	<i>2/1/95</i>	<i>0</i>	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
<i>HE.D - APUC</i>	<i>1/27/95</i>		<i>3,789.</i>
<i>DOA</i>	<i>1/30/95</i>	<i>0</i>	

| APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

No. 1
 Bill Version: SB 47
 (S) Publish Date: 2/3/95

STATE OF ALASKA
 1995 LEGISLATIVE SESSION

Revision Date: _____
 Title: *An Act . . . establishing a regulatory cost charge . . .
extending the Alaska Public Utilities Commission . . .
 Sponsor: Senator Kelly
 Requestor: _____

Department Affected: Commerce and Economic Development
 BRU: Alaska Public Utilities Commission
 Component: _____
 COMPONENT SERIAL NO. 364

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	2,616.9	2,770.3	2,947.0	3,135.0	3,335.0	3,547.8
TRAVEL	53.6	56.7	60.4	64.2	68.3	72.7
CONTRACTUAL	1,008.5	1,067.6	1,135.7	1,208.2	1,285.3	1,367.2
SUPPLIES	60.7	64.3	68.4	72.7	77.4	82.3
EQUIPMENT	50.0	52.9	56.3	59.9	63.7	67.8
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	3,789.7	4,011.8	4,267.7	4,540.0	4,829.7	5,137.8
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	3,789.7	4,011.8	4,267.7	4,540.0	4,829.7	5,137.8
1006 GF/MHTIA						
Other						
TOTAL	3,789.7¹	4,011.8¹	4,267.7¹	4,540.0¹	4,829.7¹	5,137.8¹

Estimate of current year (FY 95) cost: \$ _____

POSITIONS

FULL-TIME	42	43	43	44	45	46
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)
¹Represents revenues from the regulatory cost charge mandated by Sections 1 and 3 of HB 99.

This bill extends the life of the APUC until June 30, 1999, and mandates the collection of fees from regulated utilities and pipeline carriers to cover its full authorized budget. Early passage is essential to keep public utilities and pipeline regulation on track. Otherwise, the APUC will shut down June 30, 1995. This reflects the operating budget request for the Commission in FY 96. In addition, the contractual line includes \$60.7 for increased RSA with the Department of Law to handle legal analysis and increased litigation concerning the new powers and duties language in Section 1 of the bill.

Prepared by: Robert A. Lohr, Executive Director
 Division: Alaska Public Utilities Commission
 Approved by Commissioner: William L. Hensley
 Agency: Commerce and Economic Development

Phone: 276-6222
 Date: 1/27/95
 Date: 1/27/95

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FISCAL NOTE

1130195 #1
(5) L&C
THEMFIN

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. SB 47

Revision Date: _____
 Title: "An Act . . . establishing a regulatory cost charge . . .
extending the Alaska Public Utilities Commission . . ."
 Sponsor: Senator Kelly
 Requestor: _____

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

COMPONENT SERIAL NO. 364

Expenditures/Revenues: (Thousands of Dollars)

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LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	3,789.7	4,011.8	4,267.7	4,540.0	4,829.7	5,137.8

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	3,789.7	4,011.8	4,267.7	4,540.0	4,829.7	5,137.8
1006 GF/MHTIA						
Other						
TOTAL	3,789.7¹	4,011.8¹	4,267.7¹	4,540.0¹	4,829.7¹	5,137.8¹

SB 47

Estimate of current year (FY 95) cost: \$ _____

POSITIONS

FULL-TIME	42	43	43	44	45	46
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

¹Represents revenues from the regulatory cost charge mandated by Sections 1 and 3 of HB 99.

This bill extends the life of the APUC until June 30, 1999, and mandates the collection of fees from regulated utilities and pipeline carriers to cover its full authorized budget. Early passage is essential to keep public utilities and pipeline regulation on track. Otherwise, the APUC will shut down June 30, 1995. This reflects the operating budget request for the Commission in FY 96. In addition, the contractual line includes \$60.7 for increased RSA with the Department of Law to handle legal analysis and increased litigation concerning the new powers and duties language in Section 1 of the bill.

Prepared by: Robert A. Lohr, Executive Director
 Division: Alaska Public Utilities Commission
 Approved by Commissioner: William L. Hensley *William L. Hensley*
 Agency: Commerce and Economic Development

Phone: 276-6222
 Date: 1/27/95
 Date: 1127195

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FISCAL NOTE

No. 2

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Bill Version: SB47

(S) Publish Date: 2/3/95

Revision Date: _____
Title: "An Act relating to the extent to which the Alaska Public Utilities Commission ... effective date."
Sponsor: Senator Kelly
Requestor: _____

Department Affected: Administration
BRU: Finance
Component: Finance
COMPONENT SERIAL NO. 59

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING SOURCE:

(Thousands of Dollars)

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

Estimate of any current year (FY 95) cost: \$ 0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary.)

No impact on the Division of Finance.

Prepared by: Don Wanie
Division: Finance

Phone: 465-2240
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Department of Administration

Date: 1/30/95

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213195 #2
(S) L3C, DENFIN

FISCAL NOTE

BILL NO. SB 47

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date: _____
Title: "An Act relating to the extent to which the
Alaska Public Utilities Commission ... effective date."
Sponsor: Senator Kelly
Requestor: _____

Department Affected: Administration
BRU: Finance
Component: Finance
COMPONENT SERIAL NO. 59

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING SOURCE: (Thousands of Dollars)

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

Estimate of any current year (FY 95) cost: \$ 0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary.)
No impact on the Division of Finance.

Prepared by: Don Wanie
Division: Finance

Phone: 465-2240
Date: _____

Approved by Commissioner: Mark Bover
Agency: Department of Administration

Date: 1/30/95

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Revision Date: February 1, 1995 Dept. Affected: Revenue
 Title: APUC Extension & Regulatory Cos; Charge BRU: Audit Operations
 Component: Income and Excise Audit
 Sponsor: Senator Kelly
 Requestor: Labor & Commerce COMPONENT SERIAL NO. 113

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current (FY95) impact \$ 00.00

ANALYSIS: (Attach a separate page if necessary)

(See Attached Analysis)

Prepared by: Robert N. Bartholomew, Deputy Director *Robert N. Bartholomew* Phone: 465-2320
 Division: Income and Excise Audit *[Signature]* Date: 2/1/95
 Approved by Commissioner: *[Signature]* Date: 2/1/95
 Agency: Department of Revenue

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SB 47

SB 47 (L&C)
APUC Extension & Regulatory Cost Charge
February 1, 1995
Page 2 of 2

Bill Analysis (Analysis for sections impacting the Department of Revenue only)

Section 1, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15 and 16 - No impact.

Sections 2 and 10 reinstitute the regulatory cost charges (RCC) and sets the maximum rate paid by regulated public utilities and pipeline carriers to the APUC at .8% of gross revenues, as adjusted, from operations in the state. The language of the bill is very similar to statutory provisions that were previously in effect but "sunsetting" December 31, 1994. Paragraph (e) appoints APUC to administer the RCC, Department of Revenue to collect the charge and Department of Administration to identify the amount of the APUC operating budget that lapses each year. The legislature may appropriate an amount equal to the lapse to APUC to reduce future RCC charges. Paragraph (g) authorizes APUC and Department of Revenue to adopt regulations to administer this section.

Operating Costs

Department of Revenue is currently charged with collecting and accounting for RCCs. The RCCs were paid quarterly in FY94 and annually in FY95 by approximately 100 public utilities and pipeline carriers. The Department does not envision that the reinstatement of RCCs will have an impact on its operating budget.

Revenue

According to APUC officials revenue derived from this statute will be approximately the same as was collected in FY95. This revenue is used to fund the APUC operating budget and will not generate additional new revenues to the state.

SENATE FINANCE
COMMITTEE
Amendment Number: 1
Bill Number: SB 47
Sponsor: DOINLEY Date: 2/22
Logged In By: LES

9-LS0340C.2
Cramer
2/22/95

2/23/95
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BS
obj.
Failed
2-5

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR DO. LEY

TO: SB 47

- 1 Page 1, line 1, through page 7, line 11:
- 2 Delete all material and insert ""An Act extending the Alaska Public Utilities
- 3 Commission; and providing for an effective date.""

- 4 Page 7, line 12:
- 5 Delete "Sec. 12"
- 6 Insert "Section 1"

- 7 Page 7, line 14:
- 8 Delete "1999"
- 9 Insert "1996"

- 10 Page 7, lines 15 - 25:
- 11 Delete all material and insert a new bill section to read:
- 12 ""* Sec. 2. This Act takes effect immediately under AS 01.10.070(c)."

SENATE FINANCE
COMMITTEE

Amendment Number: 2

Bill Number: SB 47

Sponsor: DONLEY Date: 2/22

Logged in By: LES

9-LS0346... ✓
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2/22/95

2/23/95
DD
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3-4
Forked
3-4

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR DONLEY

TO: SB 47

- 1 Page 7, line 14:
- 2 Delete "**1999**"
- 3 Insert "**1996**"

NOTE: This fiscal note is for informational purposes only, as the APUC FY96 funding request will be addressed within the Legislature's operating budget.

2/23/95 Asked Larry if
this should accompany
fiscal note #1. No action
taken in committee.
Larry said, no. pl

2/3/95

Talked to Larry about
fiscal note/budget
problem. He said he
talked to Josh F. in
Sen. Kelly's office.
Josh said he would
request a new note
showing only the
\$60.7.

This decision
later revised



pl

COMPONENT DETAIL - FY96 OPERATING BUDGET

Component: Alaska Public Utilities Comm
 BRU: Alaska Public Utilities Comm
 Agency: Department of Commerce and Economic Development

Component: A
 BRU: Alaska

	FY94 Act	FY95 CC	FY95Auth	OMB Adj	Gov Org	FY95Auth - Gov Org	
						Comparison	
01 Pers. Serv.	2,463.0	2,682.4	2,616.9	2,616.9	2,615.9		
02 Travel	56.5	53.6	53.6	53.6	53.6		
03 Contractual	801.0	907.3	879.6	879.6	947.8	68.2	7.8%
04 Commodities	63.6	60.7	60.7	60.7	60.7		
05 Equipment	33.4	25.0	25.0	25.0	50.0	25.0	100.0%
06 Lands/Bldgs.	0.0	0.0	0.0	0.0	0.0		
07 Grants, Clms	0.0	0.0	0.0	0.0	0.0		
08 Misc.	0.0	-93.2	0.0	0.0	0.0		
** Total Expend.	3,417.5	3,635.8	3,635.8	3,635.8	3,729.0	93.2	2.6%
1005 GF/Prgm	3,417.5	3,635.8	3,635.8	3,635.8	3,729.0	93.2	2.6%
Perm Full Time	41.0	42.0	42.0	42.0	42.0		
Perm Part Time	0.0	0.0	0.0	0.0	0.0		
Non-Perm	0.0	0.0	0.0	0.0	0.0		

Transaction TI

Conference Co
 GF/P

Allocate Misc P

Inc contract fo
 GF/P

Hardware to s
 GF/P

FY96 Govern

**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

January 30, 1995

SUBJECT: Sectional summary of SB 47
(APUC extension and other utility matters)

TO: Senator Tim Kelly
Attn: Josh Fink

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

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

Sec. 1 permits the Alaska Public Utilities Commission (APUC) to exercise the powers expressly granted or reasonably implied by the chapter. The section removes a requirement that the powers of the APUC be liberally construed to accomplish the commission's stated purpose.

Sec. 2 establishes a regulatory cost charge on utilities. Under subsection (a), regulated public utilities pay an annual charge not to exceed .8 percent of in-state gross revenue and exempt public utilities pay the actual cost of services provided by the commission.

Under subsection (b), the commission adopts regulations to set the method for determining the annual amount of the regulatory cost charge. Subsection (c) establishes special rules for utilities selling services at wholesale, local exchange telephone utilities, and electric utilities.

Subsection (d) directs the commission to allocate the total amount of the regulatory cost charge to be paid by electric utilities by using an equal charge per kilowatt hour.

Subsection (e) directs the Department of Revenue to collect and enforce the regulatory cost charge and the Department of Administration to identify how much of the APUC's operating budget lapses into the general fund each year. This will permit the legislature, if it wishes, to appropriate that amount for the following year's budget so that the APUC can set a lower regulatory cost charge for the second year to reflect the surplus from the previous years' collection.

Subsection (f) requires the APUC to allow public utilities to bill their customers for the cost of the regulatory cost charge.

Subsection (g) allows the APUC and the Department of Revenue to adopt regulations.

Subsection (h) defines terms used in the section.

Sec. 3 directs the APUC to consider the amount that a utility pays as a regulatory cost charge when allocating the costs of a hearing.

Sec. 4 provides that the subscribers of small electric and telephone utilities can petition to place the utility under APUC regulation by following the procedures set out in AS 42.05.712(h), which is amended by sec. 12 of the bill.

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

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

Sec. 7 exempts garbage collection utilities that gross \$300,000 or less from rate regulation unless the subscribers petition for regulation under AS 42.05.712(h), amended by sec. 12 of the bill. The current threshold is \$200,000. The section retains the right of subscribers representing 25 percent of the gross revenue of a utility to petition the APUC for rate regulation.

Sec. 8 provides that the subscribers of cable television service utilities can petition to place the utility under APUC rate regulation under AS 42.05.712.

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

Sec. 10 establishes a regulatory cost charge for pipeline carriers. Under subsection (a), pipeline carriers pay an annual charge not to exceed .8 percent of in-state gross revenue. A regulatory cost charge may not be assessed unless the pipeline carrier operations are within the jurisdiction of the APUC.

Under subsection (b), the commission adopts regulations to set the method for determining the annual amount of the regulatory cost charge.

Subsection (c) directs the Department of Revenue to collect and enforce the regulatory cost charge and the Department of Administration to identify how much of the

Senator Tim Kelly
January 30, 1995
Page 3

APUC's operating budget lapses into the general fund each year. This will permit the legislature, if it wishes, to appropriate that amount for the following year's budget so that the APUC can set a lower regulatory cost charge for the second year to reflect the surplus from the previous years' collection.

Subsection (d) allows the APUC and the Department of Revenue to adopt regulations.

Subsection (e) defines "gross revenue" as used in this section.

Sec. 11 directs the APUC to consider the amount that a pipeline carrier pays as a regulatory cost charge when allocating the costs of a hearing.

Sec. 12 extends the sunset date for the Alaska Public Utilities Commission until June 30, 1999.

Sec. 13 adjusts the way in which the terms of members of the APUC are staggered to ensure that no more than one commission member's term expires each year.

Secs. 14 and 15 provide that the amendment, in sec. 1, concerning how the APUC's powers are to be interpreted applies only to proceedings begun on or after the effective date of sec. 1, which is set in sec. 15 as July 1, 1996.

Sec. 16 states that, except for sec. 1, the Act takes effect immediately.

TC:klb
95-023.klb

MEMBER

TENTH ALASKA LEGISLATURE
ELEVENTH ALASKA LEGISLATURE
TWELFTH ALASKA LEGISLATURE
THIRTEENTH ALASKA LEGISLATURE
FOURTEENTH ALASKA LEGISLATURE
FIFTEENTH ALASKA LEGISLATURE
SIXTEENTH ALASKA LEGISLATURE
EIGHTEENTH ALASKA LEGISLATURE

ALASKA STATE SENATE



SENATOR TIM KELLY

STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-3822
FAX (907) 465-3756

716 WEST 4TH, SUITE 400
ANCHORAGE, ALASKA 99501
(907) 258-8180
FAX (907) 258-4524

SB 47: Relating to the Alaska Public Utilities Commission and the Regulatory Cost Charge

Consensus Provisions from 18th Legislature

Senate Bill 47 (SB 47) is the re-introduction of SB 213 from the 18th Legislature. This legislation accomplishes two primary objectives: 1) It extends the Alaska Public Utilities Commission (APUC) which is currently winding down in its sunset year; and 2) It re-enacts the Regulatory Cost Charge (RCC) which expired on December 31, 1994.

This legislation was the product of numerous and lengthy committee hearings in the last Legislature – in fact, more than 8 substantive hearings in the Senate alone.

Given the unknown but potentially serious ramifications of allowing the APUC to expire, this legislation was introduced as a "consensus" bill in that all provisions contained within have been debated extensively and are either without opposition, or the result of compromise agreed to by all concerned parties and in the best interest of consumer protection. This version is nearly identical to the final version that would have reached the House floor last May 10th had that body not adjourned before it was taken up. It is not exactly identical because the RCC has expired and so rather than repealing its sunset, the entire RCC was re-enacted.

Another bill has been introduced by the Senate Labor & Commerce Committee that will incorporate for the committee's consideration further amendments affecting the APUC and/or RCC.

SECTIONAL ANALYSIS

Section 1: Replaces language granting the commission powers which shall be "liberally construed" with language allowing the commission to do "all things necessary or proper to carry out the purposes and exercise the powers expressly granted or reasonably implied".

This compromise was reached last year in the Senate Finance Committee. Some utilities, namely electricians, felt this grant of power was too broad, and in questions where the commission did not have express authority to act, the legislature should make such policy calls. Others, besides the APUC itself, felt this provision was necessary for the efficient and orderly functioning of the commission in the regulation of utilities for the public interest. This language strikes a balance and was acceptable to all parties concerned.

Sections 2, 3, 10 and 11: Re-enact the RCC for utilities and pipelines without the sunset. This language is identical to the former law with the following exceptions:

There are no sunset provisions for the regulatory cost charges.

This provision was proposed by the auditor and supported by the APUC. Both assert the Commission's sunset review is adequate to address any issues that arise with the Regulatory Cost Charge.

Page 3, lines 11- 13:

Adjusts the allocation of the Regulatory Cost Charge for electric utilities by subtracting the cost of power from their gross revenues.

The auditor recommended the APUC periodically adjust the RCC allocation among utility types to reflect workload on an industry by industry basis utilizing a time-keeping system. However, the commission argued such a change would be complicated and require more staff. ARECA proposed this "rough cut" justice as a simplified and more economical way to achieve the auditor's recommendation.

**Page 2, line 27;
and Page 6, line 4:**

Increases the regulatory cost charge ceiling for public utilities and pipeline carriers from .61 percent to .8 percent.

This change was necessitated when cost of power was subtracted from electric utilities gross revenues before application of the RCC. The RCC rate would need to be increased roughly 30 percent to maintain the same amount of revenue for the commissions operating costs. (Remember, the RCC is a direct pass through on our utility bills, and is itemized as the RCC).

Provisions of SB 47
Page 3

**Page 3, lines 20-24;
and Page 6, lines 15-19:**

Requires the Dept. of Administration to earmark regulatory cost charges over-collected for possible appropriation by the Legislature for the commission's next fiscal year.

Currently, by the time 4th quarter Regulatory Cost Charges charges arrive in July, the new fiscal year has started. If the APUC has over-collected, and they won't know until the 4th quarter receipts arrive, the money lapses into the general fund. This section would allow those over-collected funds to be appropriated back to the APUC thus reducing the next year's RCC.

Sections 4, 8 and 9: Provides that subscribers of small utilities or utilities otherwise exempt from regulation can petition for an election to place the utility under regulation under the same procedures the subscribers of a regulated utility can petition for an election to remove the utility from regulation.

This provision was recommended by the auditor and supported by the commission. Under current statute, 10 percent of the first 5,000 subscribers of a regulated utility and 3 percent of the remaining subscribers may petition for an election to remove a utility within certain revenue parameters from regulation. However, for subscribers to petition for an election to place an unregulated utility under regulation they must gather the signatures of 25% of the subscribers. The auditor recommended the procedures for subscribers to opt-in or opt-out of economic regulation should be easier. These sections provide that opt-in and opt-out procedures are identical.

Sections 5, 6, and 7: Gives more consumers the option to deregulate by raising maximum amount of gross revenues a utility may receive under which the consumers may elect for deregulation.

Currently, electric and telephone utilities that do not gross \$325,000 annually may elect to be exempt from regulation. Section 5 increases that amount to \$500,000. For other utilities the cut-off was raised from \$100,000 to \$150,000, except for garbage collection utilities the amount was raised from \$200,000 to \$300,000.

These provisions were recommended by the auditor and supported by the commission. They increase the consumers options to deregulate.

Section 12: Extends the sunset date of the APUC to June 30, 1999.

Section 13: Staggers the terms of the members of the commission.

Currently, the terms of the consumer seat and the engineering seat expire at the same time. This provision would stagger the terms, though it would not affect the terms of any of the current commissioners.

Section 14 and 15: Provides that the change in the commission's powers as amended in section 1 apply only to proceedings begun on or after the effective date of section 1, which is set in section 15 as July 1, 1996.

Section 16: Except for section 1, the Act has an immediate effective date.

Alaska State Legislature

Senator Tim Kelly, Chair
Senator John Torgerson, Vice Chair
Senator Mike Miller
Senator Jim Duncan
Senator Judy Salo



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SENATE LABOR AND COMMERCE COMMITTEE

716 W. 4TH, SUITE 400
ANCHORAGE, AK 99501-2133
PHONE: (907) 258-8180
FAX: (907) 258-4524

MEMORANDUM

TO: Senator Rick Halford, Co-Chair
Senator Steve Frank, Co-Chair
Senate Finance Committee

FROM: Senator Tim Kelly, Co-Chair
Senate Labor & Commerce Committee

DATE: February 1, 1995

RE: Scheduling of SB 47 - Relating to the Alaska Public
Utilities Commission and Regulatory Cost Charge

I respectfully request you schedule SB 47, Relating to the
A.P.U.C. and R.C.C., pending referral.

This bill is scheduled before the Labor & Commerce this Thursday
at 1:30 p.m. It is my intention to move the bill out at that
meeting, and it will be referred to the Finance Committee on
Friday.

As you know, the APUC is currently in its sunset year. If the
Legislature does not take action soon to extend this regulatory
commission, it must stop taking rate cases and other action that,
by statute, often require from 90 days to six months. In
addition, the commission will have to begin informing staff they
will be terminated June 30th.

I have not found any concerned party supporting the A.P.U.C.'s
sunset. In fact, I've heard just the opposite: the A.P.U.C. needs to
be extended soon so as not to disrupt regulatory activity that is
vital for many utilities existence and the public good.

Memo- SB 47

February 1, 1995

Page 2

So you know, I am working in concert with the House to ensure early passage of this legislation. In addition, the Labor & Commerce Committee has introduced another A.P.U.C. bill that will encompass suggested amendments for the Senate's consideration. I have done this in order to avoid delays resulting from potentially contentious amendments with the "consensus" bill currently moving through.

Attached please find my staff's analysis of the bill as well as a sectional analysis from Legislative Legal. If you have any questions, please contact myself or staff, Josh Fink.

Thank you for your consideration.


MEMORANDUM

STATE OF ALASKA
Office of the Governor

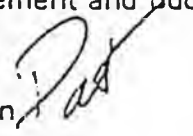
To: All Departments

Date: January 20, 1995

File No: 95fisno.mem/lb

From: Annalee McConnell 
Director
Office of Management and Budget

Subject: Revised 1995 Fiscal
Note Detailed
Instructions

Pat Pourchot 
Legislative Liaison
Office of the Governor

This Administration is committed to up-front, responsible budgeting. Thorough, accurate fiscal notes are an important aspect of that commitment and our cooperative relationship with the Legislature. We appreciate your assistance in doing this job well.

Each year State departments are asked to provide detailed information regarding the fiscal implications of proposed legislation. As in the past, the fiscal note will be used to accomplish this task as prescribed in AS 24.08.035 (attached). To provide the Legislature, the Governor's Legislative Office and OMB's Division of Budget Review (DBR) with timely and objective fiscal data, please follow these instructions when completing and processing fiscal notes.

For legislation proposed to be submitted at the request of the Governor, departments are required to complete a fiscal note form accompanied by a fiscal analysis. Fiscal notes and analysis should be submitted to the Governor's Legislative Office by the due date on your legislative review sheets before final approval of the draft legislation. Draft legislation will not be finalized for introduction until appropriate fiscal information is submitted to the legislative office and reviewed and approved by DBR.

Reminders

At the request of the Criminal Justice Working Group, fiscal notes for legislation impacting Group programs will be reviewed by DBR before distribution to legislative committees. Fiscal notes are still to be delivered to the Governor's Legislative Office, who will then forward them to DBR for review to be completed within 24 hours. If no changes are required, the fiscal notes will then be delivered to the legislative committee.

"Revenue" - Specifying Fund Source Code

Revenue generated as a result of legislation will continue to be reflected under "Revenue." In addition, please specify the revenue's fund source and its code as assigned by DBR. If no funding source code is available, simply state the name of the source. A fund source code will be assigned if the legislation is enacted.

Sunset Legislation

Please remember that fiscal notes extending an entity under sunset review should display the on-going costs of operations and any associated revenue generated by passage of the sunset legislation. These types of fiscal notes should be footnoted to indicate that the expenditures are contained in the proposed operating budget and that the revenues are reflected in revenue projections.

Component Serial Numbers

The Legislature will again be entering fiscal information into BASIS this year. To facilitate data entry, agencies are required to enter the component serial number on each fiscal note prepared. This applies to all legislative fiscal notes prepared by a department throughout the session. A listing of component serial numbers, by serial number and component name, will be provided after FY 96 budget work is completed by DBR.

GENERAL INFORMATION**Requests for Fiscal Notes**

Alaska Statute 24.08.035 provides that before a bill or resolution, except an appropriation bill, is reported from the committee of first referral, a fiscal note must be attached.

The fiscal note will normally be requested by phone by various committees of the Legislature. (Copies of all introduced legislation are available from the Documents Room on the ground floor of the Capitol building, and fiscal note forms will be sent to each department's Legislative Liaison. Additional forms are available from DBR and the Governor's Legislative Office upon request. *DBR will provide the fiscal note form in Excel 4.0 or 5.0 format upon request.*)

Prompt submission of fiscal notes is essential. Unless otherwise requested, the time for delivery of a fiscal note to the legislative committee is not more than five days following the request. Requests made after the 90th legislative day or during a special session require delivery of the fiscal note within two days. The Governor's Legislative Office should receive fiscal notes for distribution with at least a one-day lead time before the requester's due date. *Criminal Justice Working Group fiscal notes should have a two-day lead time.* The Legislative Office is responsible for the distribution of the departments' fiscal notes to the Legislature and DBR.

- 1 **Bill No.** - The fiscal note should specify the version of the bill/resolution for which the fiscal note is prepared (i.e., committee substitute). It is very important to use the correct version of the bill to which the fiscal note applies.
- 2 **Revision Date** - Fill this in if preparing a revised fiscal note. Revised date should match the revised "prepared by" date.



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Electr. Service for 300,000 Alaskans

August 2, 1993

Sen. Tim Kelly
716 W. 4th Ave., Suite 400
Anchorage, AK 99501-2133

Dear Sen. Kelly:

I am pleased to know that you plan to schedule consideration of APUC Sunset Review for early September. Our association has three priority issues we would like for your committee to consider in this review. One of these issues is also raised by the Audit Report.

APUC Powers Liberally Construed

For many years, the APUC has tended to expand the authority it exercises, and the courts have permitted this expansion to take place. The reason for this is the provision in AS 42.05.141(a)(1) that directs that "the powers of the commission shall be liberally construed . . ." This can work either to the advantage or disadvantage of the regulated utility, but in either case, we do not think it is appropriate. We have long believed that a more appropriate directive would be that "the powers of the commission shall be those specifically conferred by the legislature or necessarily implied from those specific grants of authority."

We have long believed that this power to define the role of the commission should rest with the legislature rather than the commission itself, but this issue now takes on much more critical importance. Now that the commission is funded primarily by a variable tax it imposes on the utilities called the "regulatory cost charge," the commission potentially has the resources to fund whatever level of regulation it wishes to develop. No agency of state government should have that kind of power.

Enclosed is a letter from Roger Kempel, our attorney, which details a few recent examples in which the commission and the courts relied on the "liberally construed" language to expand their authority.

We ask that this section be amended so that the legislature reclaims its appropriate authority over the commission.

— Letters on "Liberally
Construed" — CTION

Negotiated Rulemaking

Negotiated rulemaking is authorized at the federal level, and it is being used there with increasing frequency. Without any special authorization, the Alaska Department of Environmental Conservation has also used this technique quite effectively. We think this approach to rulemaking has considerable merit at the APUC as well. The problem in implementing that approach at the commission without legislative directive is that it would violate existing rules of procedure at the commission which presume adversarial proceedings.

The federal energy legislation of 1992 contained a requirement that state regulatory bodies consider implementing "integrated resource planning." Negotiated rulemaking could be particularly useful in complying with that requirement.

Regulatory Cost Charge

This association objects to the whole idea of this special tax on utilities. We think that operations of the APUC should be paid for from unrestricted general revenue funds. However, if one assumes that the RCC will stay in place in some form, our concern is the same as that of the auditor: There has to be some way to make the allocations of cost under the RCC more equitable.

The audit report recommends that a timekeeping system be established which would be used to allocate responsibility for the RCC the next year. The commission objects to this recommendation because they think this timekeeping would increase their costs significantly. Because the industry is paying the commission's bills, we also have to be sensitive to their costs. So although we are in complete agreement with the audit report in how it defines the problem, we are ambivalent about the cure it recommends.

We recommend a more direct approach to solving the problem. Our proposal is to reconsider the amendment submitted by then Rep. Bert Sharp in the House Finance Committee when the RCC as it exists today was being drafted. The Sharp proposal was to adjust the gross electric revenues by deleting the cost of power before the RCC is calculated. The rationale for doing this is that the distribution function of an electric utility, without the cost of the electricity itself added in, is comparable to the service provided by a local telephone exchange. By deleting the cost of power from the calculation, a great deal more fairness between telephone and electric would be introduced into the system.

As the RCC calculation exists now, electric paid 39% of the total in FY 93, and that will increase to 43% of the total for FY 94. By contrast, the audit report estimates that telephone companies account for 45% of the workload while under the FY 94 plan they will be paying only 21% of the RCC. If the Sharp amendment were in place, the share of RCC for electric would drop to approximately 23% while the share for telephone would increase to approximately 27%.

I look forward to discussing these and other proposals which may be under consideration when your committee meets on APUC sunset review.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dave", written in dark ink.

David Hutchens

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A PROFESSIONAL CORPORATION

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July 23, 1993

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David Hutchens
Executive Director
Alaska Rural Electric
Cooperative Association, Inc.
703 W. Tudor Road, Suite 200
Anchorage, AK 99503

Re: APUC Powers "Liberally Construed"

Dear Dave:

You have asked whether the "liberally construed" language found in AS 42.05.141(a)(1) has any operative effect; that is, whether the Alaska Supreme Court cites or relies upon this statutory language in reaching decisions involving the APUC.

The answer is that both the APUC and the Alaska Supreme Court find it necessary to cite this statutory section in order to create APUC jurisdiction in matters not expressly conferred by the legislature.

The two most recent supreme court cases citing this statutory section of which I am aware occurred just last year. In February 1992, the Alaska Supreme Court issued its opinion in the case of *Far North Sanitation v. APUC*, 825 P.2d 867 (February 7, 1992). In that decision, the court dealt with the question of the APUC's power to order interim refundable rates. The court quoted the APUC's argument that the legislature granted the APUC broad powers to accomplish its purposes and, further, provided that these powers should be liberally interpreted [citing AS 42.05.141(a)(1)] but went on to state that, on the question of whether the APUC has authority to declare a rate interim and refundable after hearing, there is conflicting case law. The court concluded, however, that the APUC had such implied authority, again citing AS 42.05.141(a)(1) and stating:

Alaska's statute mandates that the powers of the APUC be liberally construed.

Far North Sanitation v. APUC at p. 873.

Two months later, the court issued its opinion in *Colville Environmental Services, Inc. v. North Slope Borough*, 831 P.2d 341 (April 24, 1992), this time addressing the power of the APUC to attach conditions to a certificate of public convenience and necessity which conflicted with another state statute (AS 29.35.050). In concluding that the Commission had such power, the court again relied upon the liberally construed statutory language in reaching this result.

David Hutchens
July 23, 1995
Page 2

In reaching its decision in *Colville*, the Alaska Supreme Court cited its earlier 1991 decision in *Homer Electric Association v. City of Kenai*, 816 P.2d 182, again discussing the effect of AS 42.05.141(a) and concluding in part that that section stands for the proposition that the Commission's "powers to adjudicate are plenary, as broad as the specific provisions of the act permit." *HEA v. City of Kenai* at p. 186.

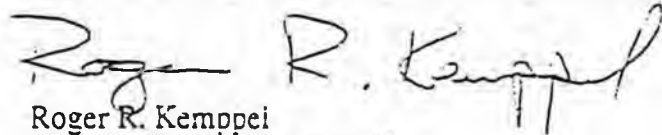
I have not attempted to completely research all of the instances in which the APUC or the courts have relied upon AS 42.05.141 to expand the APUC's specific legislative powers, but I believe that the above cases illustrate that the courts have utilized this section on more than one occasion and have done so quite recently.

You should also note that the cases cited above have been decided both for and against the utility. That is to say that the existence of AS 42.05.141(a)(1) has not always worked to the detriment of the utility, but I do think it is fair to say that it has always worked to expand the APUC's jurisdiction and power beyond that otherwise explicitly granted to it by the legislature.

If you have any further questions or wish me to compile a more exhaustive list of court citations, please feel free to contact me.

Sincerely yours,

KEMPEL, HUFFMAN AND GENDER, P.C.



Roger R. Kempel
General Counsel for ARECA

RRK:lka

"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 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.

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KEMPEL LTR: "Liberally —
Construed" ✓

**APUC
FY94
overview**

Since statehood in 1959, the Alaska Public Utilities Commission has been working with the hundreds of public utilities in Alaska with the same mission in mind - to ensure continued service, sound management, and fair rates for residents in all corners of the state. The Commission regulates utilities that bring water, electric, gas, and telecommunications into our homes, as well as overseeing services that collect and dispose of our waste. In 1981 the APUC's role was expanded to include oversight of pipeline carriers and pipelines when it merged with the Alaska Pipeline Commission.

Utility commissions were originally created to protect consumers, since most utilities were monopolies. Today, Commissioners are faced with the challenge of evaluating regulations and considering policy changes to encourage competition while continuing to maintain consumer protection as a primary goal.

In situations where monopolies exist, the Commission monitors the utility to ensure fair pricing practices, reasonable service, financial stability, and accountability. The Commission balances the legitimate need for utilities and pipeline carriers to show a profit for their investment, and the public's right to receive fair service for its money. Commissions in all 50 states serve the same general mission, regulating the relationship between the utilities and the consumers they serve.

The Commission achieves this balance by issuing "certificates of public convenience and necessity" to qualified service providers. A certificate essentially acts as a license to operate and details how the utility or pipeline carrier must conduct business with consumers or shippers concerning rates. The Commission establishes rates, terms, and conditions of service while overseeing the practices, services, and facilities of regulated utilities and pipeline carriers. In the next few years, new approaches and a broader perspective will be necessary as the Commission works to address complex issues and to make appropriate regulatory decisions for all Alaskans.

The APUC has jurisdiction over the operations of:

- electric utilities
- natural gas utilities
- refuse (garbage) collection
- wastewater (sewer) treatment
- steam producers
- telephone companies (local and in-state services)
- water utilities
- oil and gas pipeline carriers.

Cellular phone, cable television, and radio common carriers are regulated to a lesser extent.

The Commission has issued 359 certificates of public convenience and necessity (certificates) held by utilities and pipeline carriers.

Approximately one-third of the 358 certificates are for utilities whose services and operations are fully regulated

by the Commission. The authority to regulate some types and sizes of utilities is limited under the law. Many electric utilities in bush communities are exempt from regulation because of their small size. Some cooperatives and government-owned utilities are also exempt because they have alternative means of accountability to the consumer. Of the 359 certificates held, the Commission currently regulates the rates, services, practices, or facilities of 704 utilities and 15 pipeline carriers.

In addition, the Commission is responsible for computing the power costs and resultant state assistance amounts for customers of electric utilities participating in the Power Cost Equalization (PCE) program.

The Commission carries out its regulatory responsibilities through several means. It conducts audits, investigations, public meetings, tariff action meetings, formal adjudicatory proceedings, informal meetings, and conferences; and resolves complaints by telephone, mail, meeting, or adjudication.

The Commission functions as a quasi-judicial body when rendering decisions in formal proceedings and as a quasi-legislative body when promulgating regulations. Its proceedings and determinations are governed by the statutes and regulations of the state.

Funding

Funds to pay for Commission operations have historically been provided through the state's general fund. In 1992 following the legal mandate of the legislature, the Commission enacted regulations allowing it to recover its operating costs through an assessment on the revenues of the utilities and pipeline carriers it regulates. That Regulatory Cost Charge (RCC) shows up as a surcharge on monthly billing statements to consumers and shippers.

The legislature appropriated and the governor approved a FY95 budget of \$3.635 million, funded 100 percent from program receipts, in the form of the Regulatory Cost Charge. There are no unrestricted general funds in the FY95 appropriation. To raise the \$3.7 million for operating costs, the revenue assessment was set at 43 cents per \$100 for all utilities except electric utilities (assessed at .0412 cents per kilowatt hour).

With provisions of the sunset law clouding the Commission's long-term existence and its funding mechanism set to expire even sooner, the APUC has been forced to adapt to an uncertain future at least until corrective action can be taken by the Legislature.

APUC FY94 overview (continued)

Alaska Public Utilities Commission

	FY93	FY94	Percent change
Appropriations			
71000 Personal services	\$2,455,400	\$2,612,500	6%
72000 Travel	57,800	53,600	-7%
73000 Contractual	1,163,500	872,400	-25%
74000 Commodities	43,700	60,700	39%
75000 Equipment	20,400	25,000	23%
TOTALS	\$3,740,800	\$3,624,200	-3%

**Operating
Budget
FY94
(7/1/93
to 6/30/94)**

	Expenditures		
71000 Personal services	\$2,366,884	\$2,462,960	4%
72000 Travel	47,777	56,508	18%
73000 Contractual	913,309	800,962	-12%
74000 Commodities	94,049 ¹	63,615	-32%
75000 Equipment	71,327	33,470	-53%
TOTALS	\$3,493,346¹	\$3,417,515	-2%

Revenue receipts²			
General Fund Program Receipts:	\$3,897,553 ³	\$3,482,122	-11%
TOTAL REVENUES	\$3,897,553	\$3,482,122	-11%

1. Corrected number from FY93 Annual Report.
2. The Commission received revenues under various provisions of its statutes including copying and postage charges (AS 42.05.201) and cost allocations in proceedings (AS 42.05.651/AS 42.06.610).
3. The Commission funding was changed to General Fund Program Receipts in FY93 (3 AAC 47) under the Regulatory Cost Charge program.

The Alaska Public Utilities Commission is working this fiscal year in the shadow of a dilemma. While the Commission remains charged with carrying out its regulatory mandate, its annual funding mechanism was not extended by the last Legislature, nor was the APUC's very existence extended beyond June 1995.

There was no formal opposition to extending the APUC — in fact the state's 1995 budget includes full funding for the Commission. But because no legislative action was taken to the contrary, the Commission fell victim to the state's sunset law and was terminated June 30, 1994. That began the Commission's one-year wind-down period. Under the 1977 Sunset Law, several state boards and commissions are set to periodically and automatically expire unless specifically renewed.

Compounding the confusion is the fact that legislation extending the APUC's authority to levy a Regulatory Cost Charge (RCC) from utilities and pipeline carriers was held up and died on the House floor during the last day of the regular session. Because the Legislature did not act on the RCC issue, which generates 100 percent of the funding for the Commission's approximately \$3.63 million annual budget, there is no mechanism for collecting money after December 31, 1994.

With provisions of the Sunset Law clouding the Commission's long-term existence and its funding mechanism set to expire even sooner, the APUC has been forced to adapt to an uncertain future — at least until corrective action can be taken by the Legislature.

With legal guidance from the State Attorney General's office, the APUC will continue undiminished in pursuit of its regulatory mandate until it is forced to close its office on June 30, 1995 under the sunset law. As the Assistant Attorney General's June opinion to the APUC stated, "We advise that the Commission should continue to perform its statutory duties to the extent possible while developing a plan to phase out its work by the close of the sunset year."

In August the APUC also adopted a policy strongly recommending to the Legislature and the Governor that a simple reauthorization bill be promptly introduced and passed to do just two things: extend the Commission for four years and to make permanent the RCC. Other APUC legislative business could be deferred in the interest of prompt passage of these bills.

The Alaska Public Utilities Commission is doing everything possible to maintain a normal schedule during its wind-down year. However, those things that will be neglected, and the consequences from such neglect, may grow more serious each day.

As the Commission is compelled to complete its affairs the potential disruption may become severe:

1) applications for a certificate of public convenience and necessity, or for changes in service area or transfer of a certificate received after December 31, 1994 may not be processed before June 30, 1995;

APUC: Working in the shadow of the Sunset Law

2) processing of new cases involving utility or pipeline rate changes or new requests may be disrupted. Normally, when a filing is suspended for investigation, the suspension period is five or six months. Therefore, dockets cannot be opened after December 31, 1994 with the normal suspension period. Accelerating the dockets is not an option because utilities and pipeline carriers are entitled to due process; and

3) regulatory proceedings will be suspended for dockets where the regulations may not take effect before the termination date.

The Commission is mandated by law to **conclude** its affairs by June 30, 1995. AS 44.66.010(b). To wrap up as many dockets as possible by that deadline, and to minimize the loose ends, the Commission must, according to statutes, focus its attention on concluding its affairs.

Additionally, under current law the authority to charge the Regulatory Cost Charge (RCC) expires December 31, 1994, halfway through the fiscal year. The Commission has obtained an Attorney General's opinion citing that the Commission can collect the full amount of the annual FY95 appropriation by December 31, 1994, and has adopted regulations to accomplish this. The Commission was directed to submit its FY96 budget request with program receipts as the source, thereby assuming that the RCC will be reenacted.

Sunset extension early in first session of the Legislature is needed to avoid severe disruption of utilities and pipeline carrier regulation. It was only the hurried activity of the closing days of last year's legislative session that prevented action assuring the extension of the Alaska Public Utilities Commission. The Commission looks forward to a prompt and positive resolution of the issues affecting its authority and funding.

**APUC:
Working in
the shadow of
the Sunset
Law
(continued)**



Tamara Alexander (records and filings supervisor), Balassa Doughty (documents processor), Sonia Cornejo (documents processor)



Pat Oldenburg (administration supervisor)

REPORT CONCLUSIONS

Policy Issues

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

Report Conclusions

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

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

FINDINGS AND RECOMMENDATIONS

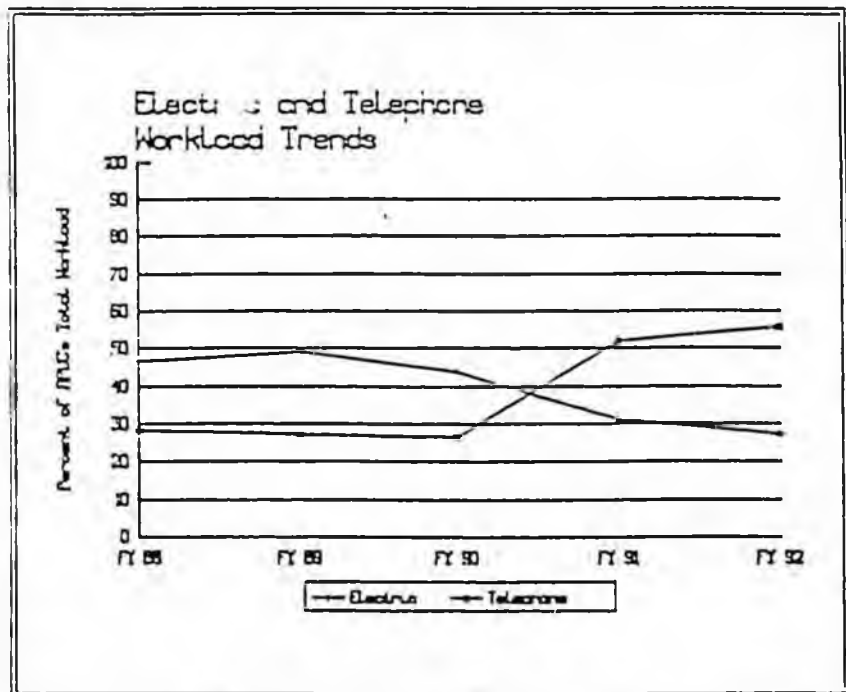
Recommendation No. 1

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

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

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

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



commission's workload. We found that the electric and telephone industries, on a combined basis, have represented approximately 79 percent of APUC's workload. The graph of the two industries illustrates the significance, variation, and trend that complicates setting of 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	Allocation	
Electric	\$260,673,485	.577%	\$1,504,086	34%	\$1,311,670	\$192,416
Telephone	153,306,332	.577%	884,577	45%	1,736,033	(851,456)
Pipeline	99,532,100	.577%	574,300	4%	154,314	419,986
Gas	99,152,056	.577%	572,107	3%	115,736	456,371
Water	22,955,320	.577%	132,452	4%	154,314	(21,862)
Sewer	17,129,576	.577%	98,838	2%	77,157	21,681
Refuse	15,856,758	.577%	91,493	4%	154,314	(62,821)
Cable	0	.577%	0	3%	115,736	(115,736)
Other	0	.577%	0	1%	38,579	(38,579)
Total	\$668,605,627		\$3,857,853	100%	\$3,857,853	\$ 0

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

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

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

Recommendation No. 2

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

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

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

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

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

Recommendation No. 3

APUC should establish a timekeeping system.

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

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

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

The costs of a timekeeping system are minimal.

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

The benefits of a timekeeping system are substantial.

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

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

Recommendation No. 4

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

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

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

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

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

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

Recommendation No. 5

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

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

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

Currently, the terms are scheduled to end as follows:

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

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

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

WALTER J. HICKEL, GOVERNOR

ALASKA PUBLIC UTILITIES COMMISSION
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

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March 1, 1993

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

RECEIVED
MAR - 5 1993

LEGISLATIVE AUDIT

Ref: Audit Control No. 08-1404-93

Dear Mr. Welker:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Commission does support increases in the cutoff levels if there

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

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

Recommendation No. 2 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

FISCAL NOTE

House Fiscal Note
 No. 3 *HB 99*
 Bill Version: HB 99 *Cross-ref*
 (H) Publish Date: 2/1/95

STATE OF ALASKA
 '995 LEGISLATIVE SESSION

Revision Date: _____
 Title: "An Act extending the Alaska Public Utilities Commission and relating to regulatory cost charges."
 Sponsor: House Labor and Commerce
 Requestor: _____

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

COMPONENT SERIAL NO. 364

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	2,616.9	2,770.3	2,947.0	3,135.0	3,335.0	3,547.8
TRAVEL	53.6	56.7	60.4	64.2	68.3	72.7
CONTRACTUAL	947.8	1,003.3	1,067.4	1,135.5	1,207.9	1,285.0
SUPPLIES	60.7	64.3	68.4	72.7	77.4	82.3
EQUIPMENT	50.0	52.9	56.3	59.9	63.7	67.8
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	3,729.0¹	3,947.5¹	4,199.4¹	4,467.3¹	4,752.3¹	5,055.5¹

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	3,729.0	3,947.5	4,199.4	4,467.3	4,752.3	5,055.5
1006 GF/MHTIA						
Other						
TOTAL	3,729.0²	3,947.5²	4,199.4²	4,467.3²	4,752.3²	5,055.5²

Estimate of current year (FY 95) cost: \$ _____

POSITIONS

FULL-TIME	42	43	43	44	45	46
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

¹ Represents ongoing costs of operations as proposed in FY 96 operating budget.

² Represents revenues from the regulatory cost charge mandated by Sections 1 and 3 of HB 99.

This bill extends the life of the APUC until June 30, 1999, and mandates the collection of fees from regulated utilities and pipeline carriers to cover its full authorized budget. Early passage is essential to keep public utilities and pipeline regulation on track. Otherwise, the APUC will shut down June 30, 1995.

Prepared by: Robert A. Lohr, Executive Director
 Division: Alaska Public Utilities Commission
 Approved by Commissioner: William L. Hensley
 Agency: Commerce and Economic Development

Phone: 276-6222
 Date: 1/25/95
 Date: 1/26/95

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SENATE COMMITTEE REPORT

First Committee of Reference

gmr

DATE: 1/25/95

FURTHER: Finance

Date of 5-Day Notice: 1/26/95
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 2/2/95

Labor and Commerce Committee considered SB 47

Relating to the Alaska Public Utilities Commission; etc.

*1 FN
+ 1/2 FN*

and recommends:

- be replaced with _____ CS _____
- adopt previous _____ CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

Senate Bill:
 same title
 new title
 House Bill:
 technical change
 new: SCR# _____

SIGNING WITH RECOMMENDATIONS:	DP	DNP	NR	AM
<i>Mike Miller</i>	✓			
<i>John Torgerson</i>	✓			
<i>Judith E. Salo * (2)</i>			✓	
CHAIR: <i>Tim Kelly</i>	✓			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
DOA	<i>1/30/95</i>	✓	
DCED	<i>1/27/95</i>		✓

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill