FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CS SB 355 (L&C)

Revision Date (Note if correction) _____ Dept. Affected Commerce
Title Provision of electric service BRU APUC
Component APUC
Sponsor S. Labor & Commerce
Requester (S) JUD Compone .t Serial No. 364

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	62.3	62.3	62.3	62.3	62.3	62.3
Travel	0.5	0.5	0.5	0.5	0.5	0.5
C ntractual	21.2	21.2	21.2	21.2	21.2	21.2
Supplies	0.9	0.9	0.9	0.9	0.9	0.9
Equipment	0.2	0.2	0.2	0.2	0.2	0.2
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	**85.1**	**85.1**	**85.1**	**85.1**	**85.1**	**85.1**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )	**85.1**	**85.1**	**85.1**	**85.1**	**85.1**	**85.1**

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)	85.1	85.1	85.1	85.1	85.1	85.1
TOTAL	**85.1**	**85.1**	**85.1**	**85.1**	**85.1**	**85.1**

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

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

This bill would require the Commission to issue orders within 30 days of a request by an electric utility, power marketer, reseller or aggregators to use the transmission and distribution facilities of a certificated electric utility to provide retail electric service. The 30-day turnaround would require the Commission to waive the 30-day statutory notice period required by AS 42.05. 411. A Utility Finance Analyst II, Range 19 would be required to analyze these filings, along with the follow-up analysis of whether the interim rates were just and reasonable.

It is unclear from the language of the bill whether the Commission retains the authority to approve or disapprove these requests within 30 days, or whether they are required to be approved. Both interpretations were expressed at the April 21, 1998 hearing on the bill.

Prepared by Robert A. Lohr Phone 276-6222
Division Alaska Public Utilties Commission Date 4/29/98
Approved by Commissioner [signature] Date 4/30/98
Agency

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FISCAL NOTE(S)

Municipality of Anchorage
Rick Mystrom, Mayor

Municipal Light & Power
1200 East First Avenue
Anchorage, Alaska 99501-1685
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April 24, 1998

The Honorable Robin Taylor
Chairman, Senate Judiciary Committee
The State Senate
Alaska State Legislature
Juneau, AK

Dear Senator Taylor:

There are various proposals currently being contemplated that would implement (or at least consider) competition in the retail electric market in Alaska. At least one major utility is strongly advocating immediate implementation of competition in the Anchorage Bowl.

ML&P and the Municipality of Anchorage strongly advocate the Legislature forming a committee to study the issues of competition and coming back to the next legislative session with their findings and recommendations. A very key part of this process will be a review of competition as it is being implemented in the Lower 48 states and the lessons to be learned there.

Only one state in the United States has actually begun to implement customer choice in the retail market - California. The January 1, 1998 date had to be pushed back three months despite several years of working toward the goal of retail electric choice. Three weeks later, Enron has given up on residential customers as evidenced by an article from the April 22, 1998 edition of the Wall Street Journal, which is attached.

Alaska is a large state with unique market conditions. Only a principled and suitably in-depth study of this complex subject will lead to fair competition and the promotion of consumer interests.

Sincerely,

Meera Kohler
General Manager

Attachment

ATTITUDES TOWARDS COMPETITION IN THE ELECTRIC INDUSTRY

February 1998

Chugach Electric

SB 355

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INTRODUCTION AND

METHODOLOGY

INTRODUCTION AND METHODOLOGY

This project was conducted between February 9th and 15th, 1998. One thousand four hundred registered voters in the Municipality of Anchorage participated in the study. A sample size of 1,400 yields a maximum margin of error of ±2.62% at 95% confidence. In other words, we can be 95% sure that our results differ from their true population proportions by no more than 2.62% on either side.

Respondents were drawn randomly from registered voters lists generated to produce voter households that had voted in the General Election in 1996. The respondents were screened to ensure their status as utility decisionmaker in the household, and the ensure the household paid their own electric bills.

Fielding was conducted by telephone from our centralized facility in Anchorage. Collected data has been data entered, verified, checked for accuracy and coded, and processed using SPSS, a standard statistical package for survey research. The elements of this report include the questionnaire in its final form, collated with the frequency results for each question, and a crosstabulation section that breaks the sample down into core groups.

One hundred respondents were surveyed from each of the 14 Legislative House Districts in Anchorage, numbered 10 to 23. These House Districts paired into 8 Senate Districts, lettered E to L, with District 10 and District 23 not paired with other Anchorage districts.

Quality control measures were taken to ensure as high a response rate as possible for this study. These included supervision of interviewers, repeated callbacks, calling at various times of day and evening, over the course of the fielding period. As a result, we can be very confident of the accuracy of results within the statistical margin of error.

QUESTIONNAIRE AND

FREQUENCIES

ATTITUDES TOWARDS COMPETITION IN THE ELECTRIC INDUSTRY

IVAN MOORE RESEARCH
TEL: 278-4600

Hello, my name is _____ and I'm calling for Ivan Moore Research, an Anchorage marketing research firm. We are conducting an Anchorage area public opinion survey concerning your household's utility services that should take no more than a few minutes. Your opinions are important to us, and we'd really appreciate your participation. (PAUSE)

S1. Is this a residential telephone?

IF "YES", CONTINUE...
IF "NO", TERMINATE...

S2. I need to speak with the person in your household who pays your utility bills, or who makes decisions about utility services. Would that be you?

IF "YES", CONTINUE...
IF "NO", ASK FOR PERSON...

S3. Do you pay your own electric bill or do you have a landlord that pays it for you?

IF "YES", THEN PROCEED...
IF "DON'T PAY ELECTRIC BILL/LANDLORD PAYS", THEN TERMINATE...

1. Which company provides your household with its electric service, Chugach Electric or ML+P?

	FREQUENCY	PERCENT
CHUGACH	1016	72.6%
ML+P	384	27.4%

OK, across the country, efforts are underway to allow individual customers to choose their electric provider. In Alaska, both the Legislature and Public Utilities Commission are now reviewing this issue. I'd like to ask you a few questions to see how you feel about this topic.

2. First, do you think that customers should have the right to choose which company they buy their electric power from?

	FREQUENCY	PERCENT
YES	1272	90.9%
NO	76	5.4%
DON'T KNOW	52	3.7%

3. Do you think competition in the electric industry would result in lower electric prices?

	FREQUENCY	PERCENT
YES	1032	73.7%
NO	233	16.7%
DON'T KNOW	135	9.6%

4. Do you think competition in the electric industry would result in better services?

	FREQUENCY	PERCENT
YES	1017	72.7%
NO	247	17.7%
DON'T KNOW	135	9.7%

5. If you could get better services or lower prices from a different power provider, would you want to be able to switch?

	FREQUENCY	PERCENT
YES	1276	91.1%
NO	80	5.7%
DON'T KNOW	44	3.2%

6. If a legislator were to vote in favor of allowing customers to choose their power supplier, would that make you feel more positive or more negative toward that legislator?

	FREQUENCY	PERCENT
MORE POSITIVE	904	64.6%
MORE NEGATIVE	71	5.1%
NO DIFFERENCE	425	30.3%

The following questions are for statistical purposes only.

7. In what year were you born?

	FREQUENCY	PERCENT
18-39	445	31.8%
40-47	332	23.7%
48-57	327	23.4%
58+	296	21.2%

(Mean = 47.7 years)
(Median = 45.8 years)

8. Of the people currently living in your household, how many are children or adolescents aged 18 or under?

	FREQUENCY	PERCENT
None	766	54.7%
One	222	15.9%
Two	273	19.5%
Three or more	139	9.9%

(Mean = 0.89 children)

9. Are you married or single?

	FREQUENCY	PERCENT
MARRIED	1079	77.1%
SINGLE	321	22.9%

10. GENDER...

	FREQUENCY	PERCENT
MALE	700	50.0%
FEMALE	700	50.0%

Thankyou very much for your help. Goodbye.

THE FOLLOWING VARIABLE WAS RECORDED FROM THE VOTER LIST:

	FREQUENCY	PERCENT
House District 10	100	7.1%
House District 11	100	7.1%
House District 12	100	7.1%
House District 13	100	7.1%
House District 14	100	7.1%
House District 15	100	7.1%
House District 16	100	7.1%
House District 17	100	7.1%
House District 18	100	7.1%
House District 19	100	7.1%
House District 20	100	7.1%
House District 21	100	7.1%
House District 22	100	7.1%
House District 23	100	7.1%

THE FOLLOWING VARIABLE WAS COMPUTED FROM THE PREVIOUS VARIABLE:

	FREQUENCY	PERCENT
Senate District E	100	7.1%
Senate District F	200	14.3%
Senate District G	200	14.3%
Senate District H	200	14.3%
Senate District I	200	14.3%
Senate District J	200	14.3%
Senate District K	200	14.3%
Senate District L	100	7.1%

THE FOLLOWING VARIABLE WAS CALCULATED FROM THE GENDER AND MARITAL STATUS VARIABLES:

	FREQUENCY	PERCENT
Married Males	552	39.4%
Married Females	528	37.7%
Single Males	148	10.6%
Single Females	172	12.3%

THE FOLLOWING VARIABLE WAS CALCULATED FROM THE AGE, MARITAL STATUS AND CHILDREN VARIABLES:

	FREQUENCY	PERCENT
Young Singles	73	5.2%
Adult Singles	167	11.9%
Single Parent	80	5.7%
Young Couple	71	5.1%
Mature Couples	454	32.4%
Young Family	261	18.7%
Mature Family	292	20.9%

CROSSTABULATION TABLES

RIGHT TO CHOOSE?

Row Percents

	RIGHT TO CHOOSE?			Total
	Yes	No	Not sure	Col %
	Row %	Row %	Row %	
ELECTRIC PROVIDER:				
Chugach	91.3%	5.2%	3.5%	72.6%
ML+P	89.8%	6.1%	4.1%	27.4%
LOWER PRICES?				
Yes	96.3%	1.6%	2.1%	73.7%
No	68.7%	24.4%	6.9%	16.7%
Not sure	87.5%	2.2%	10.3%	9.6%
BETTER SERVICES?				
Yes	97.7%	1.2%	1.1%	72.7%
No	69.1%	22.8%	8.0%	17.7%
Not sure	79.2%	5.2%	15.5%	9.7%
WANT TO BE ABLE TO SWITCH?				
Yes	94.3%	3.3%	2.4%	91.1%
No	47.6%	36.5%	15.9%	5.7%
Not sure	70.0%	10.8%	19.2%	3.2%
EFFECT ON LEGISLATOR:				
More positive	98.9%	1.1%		64.6%
More negative	35.4%	52.7%	11.9%	5.1%
No difference	83.2%	6.7%	10.2%	30.3%
AGE OF RESPONDENT:				
18-39	96.9%	1.7%	1.4%	31.8%
40-47	91.4%	4.3%	4.4%	23.7%
48-57	87.5%	7.8%	4.7%	23.4%
58+	85.0%	9.7%	5.3%	21.2%
NUMBER OF CHILDREN:				
None	88.3%	6.6%	5.1%	54.7%
One	93.4%	3.8%	2.7%	15.9%
Two	92.2%	5.7%	2.1%	19.5%
Three or more	98.4%	.8%	.8%	9.9%
MARITAL STATUS:				
Married	90.6%	5.9%	3.5%	77.1%
Single	91.7%	4.0%	4.3%	22.9%
GENDER OF RESPONDENT:				
Male	91.2%	6.5%	2.3%	50.0%
Female	90.6%	4.3%	5.1%	50.0%
Total	90.9%	5.4%	3.7%	100.0%

	RIGHT TO CHOOSE?			Total
	Yes	No	Not sure	Col %
	Row %	Row %	Row %	
MARITAL STATUS BY GENDER:				
Married Males	91.0%	7.1%	1.9%	39.4%
Married Females	90.2%	4.6%	5.2%	37.7%
Single Males	91.8%	4.5%	3.8%	10.6%
Single Females	91.6%	3.6%	4.8%	12.3%
FAMILY STATUS:				
Young Single	95.8%	1.5%	2.8%	5.2%
Adult Single	88.5%	4.5%	7.0%	11.9%
Single Parent	94.7%	5.3%		5.7%
Young Couple	100.0%			5.1%
Mature Couple	85.2%	9.3%	5.5%	32.4%
Young Family	96.0%	2.5%	1.6%	18.7%
Mature Family	92.1%	4.9%	3.0%	20.9%
LEGISLATIVE HOUSE DISTRICT:				
House District 10	84.1%	8.9%	7.0%	7.1%
House District 11	96.3%	3.7%		7.1%
House District 12	93.9%	2.3%	3.8%	7.1%
House District 13	85.3%	9.7%	5.0%	7.1%
House District 14	95.7%	2.1%	2.1%	7.1%
House District 15	92.8%	3.0%	4.2%	7.1%
House District 16	92.2%	5.9%	1.9%	7.1%
House District 17	92.9%	4.4%	2.7%	7.1%
House District 18	88.0%	7.5%	4.5%	7.1%
House District 19	90.7%	2.9%	6.4%	7.1%
House District 20	86.5%	7.2%	6.4%	7.1%
House District 21	91.0%	5.2%	3.8%	7.1%
House District 22	91.2%	4.9%	3.8%	7.1%
House District 23	91.7%	8.3%		7.1%
LEGISLATIVE SENATE DISTRICT:				
Senate District E	84.1%	8.9%	7.0%	7.1%
Senate District F	95.1%	3.0%	1.9%	14.3%
Senate District G	90.5%	5.9%	3.6%	14.3%
Senate District H	92.5%	4.4%	3.1%	14.3%
Senate District I	90.5%	6.0%	3.6%	14.3%
Senate District J	88.6%	5.0%	6.4%	14.3%
Senate District K	91.1%	5.1%	3.8%	14.3%
Senate District L	91.7%	8.3%		7.1%
Total	90.9%	5.4%	3.7%	100.0%

LOWER PRICES?

Row Percents

	LOWER PRICES?			Total
	Yes	No	Not sure	Col %
	Row %	Row %	Row %	
ELECTRIC PROVIDER:				
Chugach	74.7%	16.2%	9.1%	72.6%
ML+P	71.1%	17.9%	11.0%	27.4%
RIGHT TO CHOOSE?				
Yes	78.1%	12.6%	9.3%	90.9%
No	21.1%	74.9%	3.9%	5.4%
Not sure	42.1%	31.0%	27.0%	3.7%
BETTER SERVICES?				
Yes	84.9%	7.4%	7.8%	72.7%
No	35.7%	59.8%	4.5%	17.7%
Not sure	59.2%	7.8%	33.0%	9.7%
WANT TO BE ABLE TO SWITCH?				
Yes	76.9%	13.8%	9.3%	91.1%
No	33.3%	55.0%	11.7%	5.7%
Not sure	53.5%	31.0%	15.5%	3.2%
EFFECT ON LEGISLATOR:				
More positive	86.0%	7.2%	6.8%	64.6%
More negative	23.6%	70.2%	6.2%	5.1%
No difference	56.0%	27.8%	16.1%	30.3%
AGE OF RESPONDENT:				
18-39	83.4%	10.9%	5.7%	31.8%
40-47	72.7%	13.3%	13.0%	23.7%
48-57	67.0%	20.7%	12.3%	23.4%
58+	66.5%	24.7%	8.7%	21.2%
NUMBER OF CHILDREN:				
None	69.4%	20.0%	10.6%	54.7%
One	76.5%	14.1%	9.4%	15.9%
Two	80.9%	10.6%	8.5%	19.5%
Three or more	78.8%	14.1%	7.0%	9.9%
MARITAL STATUS:				
Married	73.7%	16.9%	9.4%	77.1%
Single	73.7%	15.9%	10.4%	22.9%
GENDER OF RESPONDENT:				
Male	73.1%	17.8%	9.1%	50.0%
Female	74.3%	15.5%	10.2%	50.0%
Total	73.7%	16.7%	9.6%	100.0%

	LOWER PRICES?			Total
	Yes	No	Not sure	Col %
	Row %	Row %	Row %	
MARITAL STATUS BY GENDER:				
Married Males	73.2%	18.3%	8.5%	39.4%
Married Females	74.2%	15.4%	10.4%	37.7%
Single Males	72.6%	16.0%	11.3%	10.6%
Single Females	74.5%	15.9%	9.6%	12.3%
FAMILY STATUS:				
Young Single	83.6%	12.4%	4.0%	5.2%
Adult Single	68.6%	19.0%	12.4%	11.9%
Single Parent	75.1%	12.7%	12.1%	5.7%
Young Couple	79.0%	12.6%	8.3%	5.1%
Mature Couple	65.9%	22.8%	11.3%	32.4%
Young Family	84.3%	10.2%	5.5%	18.7%
Mature Family	75.1%	14.7%	10.2%	20.9%
LEGISLATIVE HOUSE DISTRICT:				
House District 10	63.5%	23.2%	13.3%	7.1%
House District 11	75.3%	18.4%	6.4%	7.1%
House District 12	80.7%	10.3%	9.0%	7.1%
House District 13	67.0%	20.8%	12.2%	7.1%
House District 14	76.1%	13.7%	10.2%	7.1%
House District 15	72.5%	22.8%	4.6%	7.1%
House District 16	80.4%	14.5%	5.1%	7.1%
House District 17	77.3%	14.2%	8.5%	7.1%
House District 18	67.1%	25.9%	7.0%	7.1%
House District 19	76.9%	6.6%	16.5%	7.1%
House District 20	68.4%	16.8%	14.8%	7.1%
House District 21	70.3%	15.7%	14.0%	7.1%
House District 22	85.0%	8.9%	6.0%	7.1%
House District 23	71.6%	21.2%	7.2%	7.1%
LEGISLATIVE SENATE DISTRICT:				
Senate District E	63.5%	23.2%	13.3%	7.1%
Senate District F	78.0%	14.3%	7.7%	14.3%
Senate District G	71.5%	17.3%	11.2%	14.3%
Senate District H	76.5%	18.7%	4.8%	14.3%
Senate District I	72.2%	20.1%	7.7%	14.3%
Senate District J	72.6%	11.7%	15.7%	14.3%
Senate District K	77.7%	12.3%	10.0%	14.3%
Senate District L	71.6%	21.2%	7.2%	7.1%
Total	73.7%	16.7%	9.6%	100.0%

BETTER SERVICES?

Row Percents

	BETTER SERVICES?			Total
	Yes	No	Not sure	Col %
	Row %	Row %	Row %	
ELECTRIC PROVIDER:				
Chugach	73.5%	17.5%	9.0%	72.6%
ML+P	70.4%	18.2%	11.4%	27.4%
RIGHT TO CHOOSE?				
Yes	78.1%	13.4%	8.4%	90.9%
No	16.4%	74.3%	9.3%	5.4%
Not sure	20.8%	38.4%	40.8%	3.7%
LOWER PRICES?				
Yes	83.7%	8.5%	7.8%	73.7%
No	32.1%	63.4%	4.5%	16.7%
Not sure	58.6%	8.3%	33.1%	9.6%
WANT TO BE ABLE TO SWITCH?				
Yes	76.7%	14.3%	9.0%	91.1%
No	22.3%	63.4%	14.3%	5.7%
Not sure	48.4%	30.8%	20.8%	3.2%
EFFECT ON LEGISLATOR:				
More positive	84.6%	8.4%	6.9%	64.6%
More negative	19.4%	75.1%	5.5%	5.1%
No difference	56.3%	27.6%	16.2%	30.3%
AGE OF RESPONDENT:				
18-39	81.4%	11.1%	7.4%	31.8%
40-47	74.4%	14.7%	10.9%	23.7%
48-57	69.3%	21.1%	9.6%	23.4%
58+	61.3%	26.9%	11.8%	21.2%
NUMBER OF CHILDREN:				
None	67.8%	21.7%	10.5%	54.7%
One	75.9%	13.2%	10.9%	15.9%
Two	78.6%	14.2%	7.2%	19.5%
Three or more	82.9%	9.3%	7.8%	9.9%
MARITAL STATUS:				
Married	73.7%	17.5%	8.8%	77.1%
Single	69.3%	18.1%	12.6%	22.9%
GENDER OF RESPONDENT:				
Male	72.2%	19.2%	8.6%	50.0%
Female	73.1%	16.2%	10.7%	50.0%
Total	72.7%	17.7%	9.7%	100.0%

	BETTER SERVICES?			Total
	Yes	No	Not sure	Col %
	Row %	Row %	Row %	
MARITAL STATUS BY GENDER:				
Married Males	72.2%	19.5%	8.3%	39.4%
Married Females	75.3%	15.5%	9.3%	37.7%
Single Males	72.4%	17.9%	9.7%	10.6%
Single Females	66.6%	18.3%	15.2%	12.3%
FAMILY STATUS:				
Young Single	79.8%	12.5%	7.7%	5.2%
Adult Single	63.1%	21.9%	15.0%	11.9%
Single Parent	72.5%	15.2%	12.3%	5.7%
Young Couple	81.2%	13.0%	5.8%	5.1%
Mature Couple	65.5%	24.5%	10.1%	32.4%
Young Family	81.1%	11.2%	7.7%	18.7%
Mature Family	78.0%	13.5%	8.5%	20.9%
LEGISLATIVE HOUSE DISTRICT:				
House District 10	58.9%	25.7%	15.4%	7.1%
House District 11	78.4%	18.4%	3.2%	7.1%
House District 12	73.7%	16.6%	9.7%	7.1%
House District 13	62.5%	24.7%	12.9%	7.1%
House District 14	72.5%	18.3%	9.2%	7.1%
House District 15	71.3%	19.0%	9.7%	7.1%
House District 16	80.2%	15.8%	4.0%	7.1%
House District 17	75.5%	13.8%	10.7%	7.1%
House District 18	73.3%	19.4%	7.3%	7.1%
House District 19	78.6%	10.4%	11.0%	7.1%
House District 20	63.3%	18.3%	18.3%	7.1%
House District 21	70.3%	18.6%	11.1%	7.1%
House District 22	84.2%	9.0%	6.8%	7.1%
House District 23	74.8%	19.2%	5.9%	7.1%
LEGISLATIVE SENATE DISTRICT:				
Senate District E	58.9%	25.7%	15.4%	7.1%
Senate District F	76.0%	17.5%	6.4%	14.3%
Senate District G	67.5%	21.5%	11.0%	14.3%
Senate District H	75.7%	17.4%	6.9%	14.3%
Senate District I	74.4%	16.6%	9.0%	14.3%
Senate District J	70.9%	14.4%	14.7%	14.3%
Senate District K	77.2%	13.8%	8.9%	14.3%
Senate District L	74.8%	19.2%	5.9%	7.1%
Total	72.7%	17.7%	9.7%	100.0%

WANT TO BE ABLE TO SWITCH?

Row Percents

	WANT TO BE ABLE TO SWITCH?			Total
	Yes	No	Not sure	Col %
	Row %	Row %	Row %	
ELECTRIC PROVIDER:				
Chugach	92.0%	5.2%	2.8%	72.6%
ML+P	88.9%	7.0%	4.1%	27.4%
RIGHT TO CHOOSE?				
Yes	94.6%	3.0%	2.4%	90.9%
No	55.5%	38.2%	6.3%	5.4%
Not sure	58.9%	24.5%	16.5%	3.7%
LOWER PRICES?				
Yes	95.1%	2.6%	2.3%	73.7%
No	75.3%	18.8%	5.9%	16.7%
Not sure	88.0%	6.9%	5.1%	9.6%
BETTER SERVICES?				
Yes	96.1%	1.7%	2.1%	72.7%
No	74.0%	20.4%	5.5%	17.7%
Not sure	84.8%	8.4%	6.8%	9.7%
EFFECT ON LEGISLATOR:				
More positive	97.4%	.7%	1.8%	64.6%
More negative	45.5%	43.8%	10.7%	5.1%
No difference	85.4%	9.8%	4.8%	30.3%
AGE OF RESPONDENT:				
18-39	95.8%	1.9%	2.3%	31.8%
40-47	91.5%	5.1%	3.4%	23.7%
48-57	92.5%	4.9%	2.6%	23.4%
58+	82.3%	12.9%	4.9%	21.2%
NUMBER OF CHILDREN:				
None	88.8%	7.5%	3.7%	54.7%
One	90.8%	5.4%	3.8%	15.9%
Two	95.7%	2.6%	1.7%	19.5%
Three or more	95.7%	2.1%	2.2%	9.9%
MARITAL STATUS:				
Married	92.1%	5.3%	2.6%	77.1%
Single	87.8%	6.9%	5.3%	22.9%
GENDER OF RESPONDENT:				
Male	91.0%	5.9%	3.1%	50.0%
Female	91.2%	5.5%	3.3%	50.0%
Total	91.1%	5.7%	3.2%	100.0%

	WANT TO BE ABLE TO SWITCH?			Total
	Yes	No	Not sure	Col %
	Row %	Row %	Row %	
MARITAL STATUS BY GENDER:				
Married Males	91.8%	5.8%	2.4%	39.4%
Married Females	92.5%	4.8%	2.7%	37.7%
Single Males	88.3%	6.0%	5.7%	10.6%
Single Females	87.4%	7.7%	4.9%	12.3%
FAMILY STATUS:				
Young Single	95.3%	3.1%	1.6%	5.2%
Adult Single	82.3%	10.4%	7.3%	11.9%
Single Parent	92.3%	3.2%	4.5%	5.7%
Young Couple	96.3%	3.7%		5.1%
Mature Couple	89.0%	7.8%	3.3%	32.4%
Young Family	95.9%	1.1%	3.0%	18.7%
Mature Family	92.7%	5.7%	1.7%	20.9%
LEGISLATIVE HOUSE DISTRICT:				
House District 10	95.0%	2.9%	2.1%	7.1%
House District 11	96.8%	2.4%	.8%	7.1%
House District 12	87.2%	10.8%	2.0%	7.1%
House District 13	88.3%	6.6%	5.0%	7.1%
House District 14	87.4%	4.0%	8.5%	7.1%
House District 15	87.7%	6.3%	5.9%	7.1%
House District 16	94.2%	2.8%	3.0%	7.1%
House District 17	95.1%	3.8%	1.1%	7.1%
House District 18	90.4%	8.3%	1.3%	7.1%
House District 19	90.2%	5.8%	4.0%	7.1%
House District 20	86.0%	7.4%	6.6%	7.1%
House District 21	87.8%	10.2%	2.0%	7.1%
House District 22	99.0%	1.0%		7.1%
House District 23	90.8%	7.2%	2.0%	7.1%
LEGISLATIVE SENATE DISTRICT:				
Senate District E	95.0%	2.9%	2.1%	7.1%
Senate District F	92.0%	6.6%	1.4%	14.3%
Senate District G	87.9%	5.3%	6.8%	14.3%
Senate District H	91.0%	4.6%	4.4%	14.3%
Senate District I	92.8%	6.0%	1.2%	14.3%
Senate District J	88.1%	6.6%	5.3%	14.3%
Senate District K	93.4%	5.6%	1.0%	14.3%
Senate District L	90.8%	7.2%	2.0%	7.1%
Total	91.1%	5.7%	3.2%	100.0%

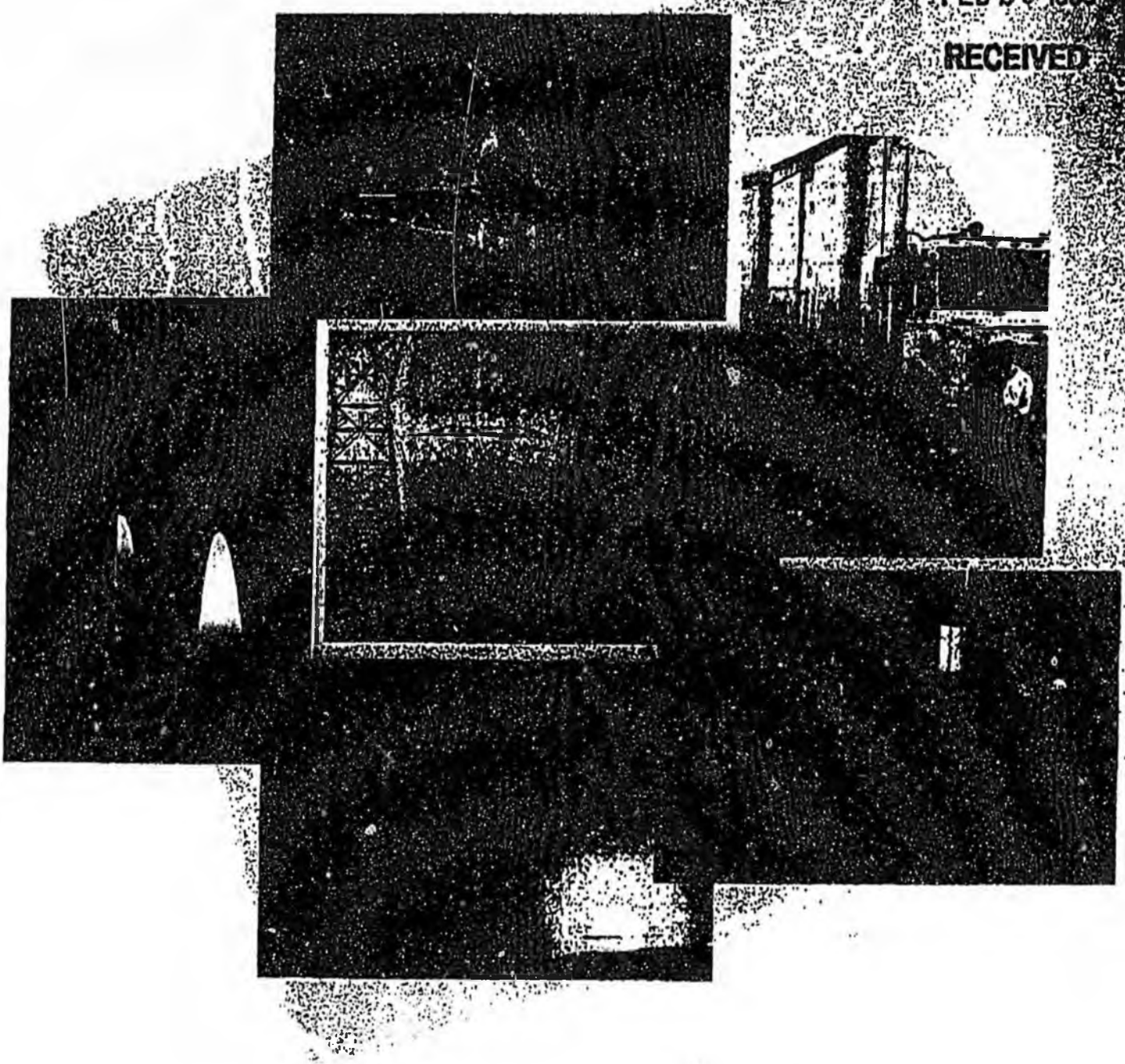
EFFECT ON LEGISLATOR

Row Percents

	EFFECT ON LEGISLATOR:			Total
	More positive	More negative	No difference	Col %
	Row %	Row %	Row %	
ELECTRIC PROVIDER:				
Chugach	65.8%	4.8%	29.4%	72.6%
ML+P	61.3%	5.9%	32.8%	27.4%
RIGHT TO CHOOSE?				
Yes	70.2%	2.0%	27.8%	90.9%
No	13.2%	49.6%	37.2%	5.4%
Not sure		16.4%	83.6%	3.7%
LOWER PRICES?				
Yes	75.3%	1.6%	23.1%	73.7%
No	27.9%	21.5%	50.6%	16.7%
Not sure	45.8%	3.3%	50.9%	9.6%
BETTER SERVICES?				
Yes	75.2%	1.4%	23.5%	72.7%
No	30.9%	21.7%	47.4%	17.7%
Not sure	46.4%	2.9%	50.7%	9.7%
WANT TO BE ABLE TO SWITCH?				
Yes	69.0%	2.5%	28.4%	91.1%
No	8.2%	39.4%	52.5%	5.7%
Not sure	37.2%	17.2%	45.6%	3.2%
AGE OF RESPONDENT:				
18-39	75.0%	2.2%	22.8%	31.8%
40-47	62.1%	4.6%	33.3%	23.7%
48-57	62.0%	5.4%	32.6%	23.4%
58+	54.5%	9.7%	35.8%	21.2%
NUMBER OF CHILDREN:				
None	59.7%	6.1%	34.2%	54.7%
One	70.4%	4.7%	24.9%	15.9%
Two	69.7%	4.0%	26.3%	19.5%
Three or more	72.0%	2.4%	25.6%	9.9%
MARITAL STATUS:				
Married	64.3%	4.9%	30.8%	77.1%
Single	65.6%	5.7%	28.8%	22.9%
GENDER OF RESPONDENT:				
Male	64.0%	6.7%	29.3%	50.0%
Female	65.1%	3.5%	31.4%	50.0%
Total	64.6%	5.1%	30.3%	100.0%

	EFFECT ON LEGISLATOR:			Total
	More positive	More negative	No difference	Col %
	Row %	Row %	Row %	
MARITAL STATUS BY GENDER:				
Married Males	62.5%	6.4%	31.1%	39.4%
Married Females	66.1%	3.4%	30.5%	37.7%
Single Males	69.8%	7.5%	22.6%	10.6%
Single Females	61.9%	4.0%	34.1%	12.3%
FAMILY STATUS:				
Young Single	68.5%	4.3%	27.2%	5.2%
Adult Single	59.3%	6.3%	34.4%	11.9%
Single Parent	76.1%	5.5%	18.5%	5.7%
Young Couple	74.0%		26.0%	5.1%
Mature Couple	56.2%	7.3%	36.6%	32.4%
Young Family	75.5%	2.6%	22.0%	18.7%
Mature Family	64.4%	4.7%	30.9%	20.9%
LEGISLATIVE HOUSE DISTRICT:				
House District 10	54.3%	8.5%	37.2%	7.1%
House District 11	66.8%	3.7%	29.5%	7.1%
House District 12	64.7%	.9%	34.4%	7.1%
House District 13	56.4%	6.9%	36.7%	7.1%
House District 14	72.8%	4.3%	23.0%	7.1%
House District 15	57.3%	3.0%	39.7%	7.1%
House District 16	69.9%	4.1%	26.0%	7.1%
House District 17	68.2%	4.2%	27.6%	7.1%
House District 18	60.6%	8.8%	30.6%	7.1%
House District 19	71.1%	3.2%	25.7%	7.1%
House District 20	59.0%	7.9%	33.2%	7.1%
House District 21	68.5%	6.7%	24.8%	7.1%
House District 22	68.3%	3.1%	28.6%	7.1%
House District 23	66.1%	6.2%	27.6%	7.1%
LEGISLATIVE SENATE DISTRICT:				
Senate District E	54.3%	8.5%	37.2%	7.1%
Senate District F	65.7%	2.3%	32.0%	14.3%
Senate District G	64.6%	5.6%	29.9%	14.3%
Senate District H	63.6%	3.6%	32.9%	14.3%
Senate District I	64.4%	6.5%	29.1%	14.3%
Senate District J	65.0%	5.5%	29.5%	14.3%
Senate District K	68.4%	4.9%	26.7%	14.3%
Senate District L	66.1%	6.2%	27.6%	7.1%
Total	64.6%	5.1%	30.3%	100.0%

Economic Deregulation and Customer Choice: Lessons for the Electric Industry



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Executive Summary

Policymakers and regulators are engaged in an ongoing debate about introducing customer choice in electric service. The most comprehensive legislative proposals envision a market in which all customers could choose their electricity suppliers. Electric utilities would no longer have monopoly rights to sell electricity to particular groups of customers. Instead, they would become transporters of electricity, and they could also compete in the generation marketplace. The price of the electricity would no longer be regulated, although the price of transportation still would be.

During the past two decades, numerous industries with many economic similarities to electricity have already undergone price and entry deregulation in at least part of the industry. The most significant include natural gas, telecommunications, airlines, trucking, and railroads. Like electricity, these are "network" industries. Suppliers and customers are connected via a network of pipes, wires, air routes, roads, or rails, and the decisions of one network user can affect the ability of others to use the network.[1] The experience of these five industries can therefore serve as a guide in the debate over customer choice in electricity.[2] A review of the evidence reveals several broad conclusions about the effects of deregulation, and each conclusion carries with it a policy implication.

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[1] Because of this fact, analysis of these five industries is more relevant to the electricity debate than that of nonnetwork industries that were deregulated at similar times, such as oil production, stock brokerage, or savings and loans.

[2] We are hardly the first to notice the similarities between electricity and other deregulated industries. In August 1996, the National Regulatory Research Institute released a report whose substantive findings largely agree with ours (Costello and Graniere 1996).

Summary of Trends Following Regulatory Change

Industry	% Real price reduction after... 2 years	5 years	10 years	Annual value of consumer benefits due to deregulation
Gas	10-38% (1984-86)	23-45% (1984-89)	27-57% (1984-94)	N.A.*
Long Distance Telecom	5-16% (1984-86)	23-41% (1984-89)	40-47% (1984-94)	$5 billion
Airlines	13% (1977-79)	12% (1977-82)	29% (1977-87)	$19.4 billion
Trucking	N.A.**	3-17% (1980-85)	28-58%*** (1977-87)	$19.6 billion
Railroads	4% (1980-82)	20% (1980-85)	44% (1980-90)	$9.10 billion

Note: All figures are real, in $1995. Consumer benefit figures in the last column measure *total* consumer benefits, including both price reductions and changes in service quality.

Source: For price reductions, see Appendix and/or text of study for data. Consumer benefit figures are from Crandall (1991), Morrison and Winston (1995), and Winston et. al. (1990).

N.A*: For natural gas, no controlled studies quantify the separate effect of deregulation on gas prices. Winston (1993, 1274-75) speculates that the consumer benefits exceeded economists' prederegulation predictions, which were in the range of $2-4 billion in 1995 dollars. If gas prices had remained at 1984 levels, consumers would have paid $50-60 billion more for gas in 1995.

N.A.**: For trucking, no studies have documented the effects for the first couple of years.

***No trucking figure is available for 1980-90; figure quoted is for 1977-87, from Corsi (1994). Because regulation made it difficult to cut trucking rates, the bulk of these rate reductions occurred after 1980.

- **Finding: Deregulation and customer choice lower prices.**

In each of the five industries, prices paid by customers fell significantly as a result of deregulatory reforms. Within the first two years of deregulation, prices had fallen by 4-15 percent, and sometimes more for certain groups of customers. Within 10 years, prices were at least 25 percent lower, and sometimes close to 50 percent lower. Of course, not all of these changes were due to changes in the regulatory regime, but scholarly studies consistently show that regulatory reform created billions of dollars worth of consumer benefits. Consumers gained substantially—not just because of rate reductions, but also because of improvements in the quality of service. All broad consumer groups shared in the price reductions, though some benefited more than others.

Policy implication: *Competition is desirable.*

Policymakers concerned about consumers should open electric service to competition, deregulate rates, and promote consumer choice as quickly as possible.

- **Finding: Deregulation and customer choice align service quality with customer desires.**

The only declines in service quality attributable to deregulation or regulatory reform occurred when regulation previously limited customer choice, forcing customers to pay premium prices for gold-plated service. Crucial social goals like airline safety, reliability of gas service, and reliability of the telecommunications network were maintained or improved by deregulation and customer choice.

Policy implication: *Service quality is no excuse for delay.*

Concerns about reliability and other aspects of service quality are reasons to expedite regulatory reform. Under deregulation, service quality choices will enable consumers to select the services that best meet their needs.

- **Finding: Consumers have experienced genuine benefits, not just reallocation of costs among customer classes.**

Regulatory reform is not a zero sum game; it has generated genuine gains for consumers and society as a whole. It is possible to find narrowly defined groups of customers in special circumstances who paid somewhat higher prices after deregulation, but the gains to the vast majority of consumers far outweighed the effects on these small groups.

Consumers gained for two reasons. First, deregulation or regulatory reform aligned prices more closely with costs, leading to a more efficient use of resources by both firms and customers. Second, firms faced greater incentives to adopt cost-reducing or quality-enhancing innovations in technology, marketing, and business strategy, which often were not predicted beforehand.

Policy implication: *Transition costs are no excuse for delay.*

Based on the experience in other industries, electricity regulatory reform should produce gains well in excess of the transition costs. Therefore, the presence of transition costs is no excuse for delaying or avoiding reform.

- **Finding: The lower the barriers to customer choice, the greater benefits customers receive.**

Rates fell faster in parts of the market where regulators permitted greater customer choice. In telecommunications, for example, long-distance rates fell faster in the interstate market than the intrastate market, because state regulators have been less tolerant of competition and price cutting. Similarly in the airline industry, during the 1970s proponents made a powerful case for deregulation by showing that tickets were less expensive on the less heavily regulated intrastate routes of Texas and California.

Policy implication: *Choice for* **all** *customers for all competitive services will provide the most benefits.*

The best way to let all customers reap the benefits of competitive electric service is to let all customers choose their electricity suppliers. Policy proposals that deregulate only the wholesale electricity market, or allow only large customers to choose their suppliers, are thus inferior from a consumer perspective. For similar reasons, states that refuse to allow competition from out-of-state suppliers do their own citizens a disservice.

- **Finding: Competitive markets continue to evolve in response to consumer needs.**

Although prices fell noticeably in response to deregulation, adjustment to the new, deregulated environment was far from immediate for incumbent firms. Regulation affects not just the structure of incentives facing a firm, but also its corporate culture—the shared assumptions about what types of activities generate business success. Regulation can change relatively quickly, but corporate culture often changes slowly, and so corporate strategies may also adjust slowly to the deregulated environment. For the five industries in this study, significant changes and adjustments are occurring even after 10 years. Benefits of regulatory reform continued to accrue long after the market was first opened.

Even if some firms adjust quickly to the deregulated environment, that environment changes much more quickly than the regulated environment. The industries in this study did not move from a "monopoly equilibrium" to a new "competitive equilibrium." Rather, they moved from a fairly stable regulated environment to an evolutionary environment in which competitive rivalry continually forces producers to improve their performance. Since it is unlikely that firms will ever stop learning, and consumers are never satisfied with the status quo, a stable equilibrium is extremely unlikely.

The five industries in this study present a plethora of examples of innovations that were not foreseen or planned beforehand. These include natural gas hubs, airline hub-and-spoke

systems, and a multitude of types of new services and customer-premises equipment in telecommunications. Such developments should give pause to anyone who claims to be able to predict either the likely or the optimal market structure.

Policy implication: ***Open and competitive markets should be allowed to evolve.***

Legislators and regulators should resist the temptation to elaborately plan either the structure of markets or the transition process. The temptation to overplan takes many forms, including mandates that power must be bought and sold through a central "POOLCO" and proposals that would restrict the range of contracts that generators can make with customers.

In any move toward greater reliance on markets, transition problems must be addressed. But the significant ones where government must play a role, such as those dealing with transition costs, involve the assignment or reassignment of property rights to various market participants. The proper role of policy is not to "design market mechanisms" but to create and protect a framework of property rights that allows market institutions to evolve on their own.

Electric Power Competition In Alaska

Testimony of Michael C. Dotten
Shareholder, Heller, Ehrman, White & McAuliffe

Before the
Senate Labor and Commerce Committee

Alaska Legislature

My name is Michael Dotten and I am a shareholder in the law firm of Heller, Ehrman, White & McAuliffe. For the last 20 years I have been involved in the electric power and natural gas industries, first as a regulator as an Assistant Attorney General assigned to the Idaho Public Utilities Commission and then, as lead rate counsel for Bonneville Power Administration, a large federally owned electric utility that sells 50 percent of the power in the Pacific Northwest and provides 80 percent of the region's bulk transmission. For the last 15 years, I have been in private practice representing large consumers of natural gas and electricity, utilities, independent power producers, and cogenerators. I recently represented Columbia Steel Casting Co., Inc. as plaintiff in a successful Federal antitrust lawsuit against Portland General Electric Company, its incumbent electric utility on grounds that the utility unlawfully monopolized sales of electric power in Portland, Oregon.

Portland General filed a Petition for Certiorari with the United States Supreme Court and we await a decision by the Supreme Court as to whether it will grant review.

My practice has included work in 16 states. Many of those states today permit competition in the sale of electric power in one manner or another. Electric power service consists of three parts: generation (or power), transmission (to move electric power to load centers at high voltage) and distribution (lines that take power from high voltage to stepped down voltage and then over wires to businesses and homes). In the west, the states of California, Nevada, Oregon, Washington, and Montana all have fairly extensive state-wide or pilot programs offering customers a choice in their electric power suppliers. Distribution utilities remain monopolies, but there is competition to provide electric power to all classes of consumers, and prices are dropping.

In other words, Alaska would not be alone in providing its consumers with a choice in allowing competitive access to electric power suppliers. If Alaska fails to do so, however, it will handicap itself from attracting new industry.

I come before you today to describe why I believe current Alaska law not only permits, but mandates competition in the sale of electric power. I am also here to reassure you that Alaska law permits the Alaska Public Utilities Commission to create monopoly electric power distribution territories where it concludes duplication of facilities would be harmful to the public interest.

Free enterprise is the foundation of our country's economic philosophy. In the words of the United States Supreme Court, "antitrust laws are the magna carta of free enterprise. They are as important to the preservation of economic freedom and our free-enterprise system as the Bill of Rights is to our fundamental personal freedoms." [*US v. Topco,* 405 US 596, 610 (1972)].

Despite this country's historical commitment to free enterprise, the belief arose that some utilities are natural monopolies. Because of the tremendous capital investment that some utility systems require, and technological barriers to entry, it made no sense to have companies compete. Instead, some (but not all) states granted utilities a protected monopoly in return for regulated rates and services. However, as described below, this right to monopolize is not absolute and unfettered. The federal courts have increasingly held that, even in industries where monopolization has historically been permitted, as competition becomes

technologically and economically feasible, monopolization may become unlawful. In those circumstances the Courts will take a harder look at whether monopolization is sanctioned by the state.

Given the importance of the antitrust laws in preserving free enterprise, it is not surprising that the courts in this country that apply and interpret the antitrust laws are reluctant to create exceptions to those laws. The Court of Appeals for the Ninth Circuit (the Circuit in which Alaska is located) has held that immunity from the antitrust laws is "disfavored, much as are repeals [of the antitrust laws] by implication because of Congress's 'overarching and fundamental policies' protecting competition." *Columbia Steel Casting Co., Inc. v. Portland General Electric Company*, 111 F.3d 1427, 1436 [1] This rule applies even in the electric power industry which many people previously consider to be a "natural monopoly."

As this body is aware, electric power is gradually undergoing the same deregulation and is subject to the same competitive forces that have reduced consumer costs in the airline, telecommunications, natural gas, railroad and trucking

[1] The Ninth Circuit cited for these fundamental propositions the cases *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621, 636 (1992) and *City of Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389, 398-99 (1978).

industries. As with many industries, the Federal courts are being used as vehicles by frustrated consumers to obtain competitive pricing from electric utility suppliers. To ward off these challenges to their monopolization and to defend themselves against claims for monopoly pricing, electric utilities seek to use a variety of exceptions to the normal application of the antitrust laws. Despite the courts' general reluctance to permit exceptions to the antitrust laws, some exceptions have arisen. One of those exceptions, called "the state action doctrine," arose, not from statutes, but from Federal court holdings. In the 1943 case of *Parker v. Brown*,[2] the Supreme Court determined that the antitrust laws were never intended to interfere with states implementing state policy. The Court recognized that states must have latitude to formulate regulatory policies that may be inherently anticompetitive. Accordingly, the Court ruled in *Parker v. Brown* that the states acting in their sovereign capacity are immune from the antitrust laws.

Subsequent decisions extended that immunity to private parties acting pursuant to expressly established state regulatory policies. Those decisions developed a test for state action immunity that balances state sovereignty against the judicial policy against implied immunities to the antitrust laws. That test was

[2] 317 U.S. 341 (1943).

formally articulated in the case of *California Retail Liquor Dealers Association v. Midcal Aluminum, Inc. ("Midcal")* 445 U.S. 97 (1980). That decision holds that anticompetitive conduct is not immune from the antitrust laws unless that conduct is "clearly articulated and affirmatively expressed as state policy" to displace competition with regulation and "second, the policy must be actively supervised by the State itself." *Midcal*, 445 U.S. at 105. In other words, the state legislature acting in its sovereign capacity may sanction certain anticompetitive conduct on the part of state officials or private actors, but that sanction must be unmistakable. It cannot be implied in the statutes, nor can it arise *de facto* from the inaction of administrative agencies.

Even though municipalities are arms of the state, the Supreme Court has held that "before a municipality will be entitled to the protection of the state action exemption from the antitrust laws, it must demonstrate that it is engaging in the challenged activity pursuant to a clearly expressed state policy." *Town of Hallie v. City of Eau Claire*, 471 U.S. 34 (1985).

The question for the Legislature, in light of this background is: to what extent does Alaska law clearly articulate and affirmatively express a policy to displace competition for retail sales of electric energy with regulation? The answer makes

engineering, economic and policy sense and is based on a straightforward reading of Alaska law. AS 42.05.221 (d) reads as follows:

> In an area where the commission determines that two or more public utilities are competing to furnish identical utility service and that this competition is not in the public interest, the commission shall take appropriate action to eliminate the competition and any undesirable duplication of facilities. This appropriate action may include, but is not limited to, ordering the competing utilities to enter into a contract that, among other things, would:
>
> (1) delineate the service area boundaries in each of those areas of competition;
>
> (2) eliminate existing duplication and paralleling to the fullest reasonable extent;
>
> (3) preclude future duplication and paralleling;. . . .

Note that the foregoing approach does not "clearly articulate and affirmatively express" Alaska's intent to permit monopolization of electric power sales. It merely evidences the state's intent (after appropriate findings are made) to eliminate duplication and paralleling of distribution (and potentially transmission) facilities--the only facilities that could be "parallel."

Even if it can be said that a state public utility commission acquiesced in a utility's maintenance of monopoly electric sales, that is not sufficient to insulate the utility from private antitrust liability to consumers who seek access to competitive

markets. Federal Courts are willing to view antitrust immunity through the lens of an evolving technological and economic world. A monopoly insulated from liability when competition is technologically or economically impractical may find itself unprotected when competition becomes feasible. I offer the following real-world examples:

Do you recall the days when we all dialed our calls over black rotary telephones owned by the local exchange company? The local exchange companies claimed (correctly for years) that permitting phones produced by others to be connected to their lines would disrupt service. They claimed that the phone system needed to be a seamless web to assure adequate service. Gradually, however, alternative telephone handset and equipment providers convinced the federal courts and regulatory bodies that they could supply telephones that would be perfectly compatible with the local exchange companies' wires and switches.

Later, in the case of *MCI Communications Corp. v. AT&T Co.*, 708 F.2d 1081 (7th Cir.) *cert. denied,* 464 U.S. 891 (1983) and its progeny, the Federal courts concluded AT&T had misused its essential facility to eliminate competition, that long distance service did not need to be part of a vertically integrated monopoly and the Court ordered the breakup of AT&T. Today, we are seeing competition for

dial tone service. Why? Because each of these steps in breaking up a vertically-integrated monopoly became feasible from a technological and economic perspective. The Federal courts merely applied antitrust law to assure that monopolies were not needlessly perpetuated.

We have seen the beginnings of this evolution in the electric power industry as well. In *Cantor v. Detroit Edison Company*, 428 U.S. 579 (1976) the United States Supreme Court held that Detroit Edison was not insulated from antitrust liability for carrying out a program that allowed consumers to receive free replacement light bulbs from the utility. Suit was filed by a drug store owner who complained that the program constituted an unprotected restraint of trade. The Supreme Court found that the utility was not insulated under the state action doctrine from liability, even though the Michigan Public Service Commission had approved the tariffs that established the bulb replacements and thereby approved the program by implication. In effect, the free replacement of light bulbs, which had taken place since 1886, was part of a vertical monopoly that was no longer technologically or economically necessary.

Today, it is no longer technologically or economically required for electric utilities to provide vertically integrated monopoly generation, transmission and

distribution service--there are technologically and economically feasible alternatives. As the Supreme Court said of electric utilities in *Cantor*:

> There is no logical inconsistency between requiring such a [utility] firm to meet regulatory criteria insofar as it is exercising its natural monopoly powers and also to comply with antitrust standards to the extent it engages in business activity in competitive areas of the economy.

Cantor v. Detroit Edison Company, 428 U.S. at 596.

To the same effect, the Supreme Court held that insurance companies that might be insulated from antitrust liability under the federal McCarran-Ferguson Act are not immune from related activity that is subject to competition. *Group Life & Health Insurance Company et al. v Royal Drug Company*, 440 U.S. 205 (1979).

AS 42.05.221(d) does clearly articulate and affirmatively express the state's intent to permit monopolization of distribution facilities when necessary to prevent what the Alaska Public Utilities Commission finds to be harmful duplication of facilities. But that is as far as the Alaska statutes go. Whether the Alaska statutes would permit the vertically integrated monopolization of service when there was no technologically or economically feasible competition for the sale of electric power is now a moot question. Now that there are technologically and economically feasible alternatives to the sale of electric power over distribution lines that form a natural

monopoly, it is clear that neither federal nor state law will insulate a utility that seeks to monopolize sales of electric power over those lines from federal antitrust liability. As they have many times in the past, the federal courts will afford private litigants a remedy against monopolization that is not clearly articulated and affirmatively expressed as the state's own policy. Even if a state public utility commission has acquiesced in monopoly sales of electric power, that will not insulate the utilities. As the Ninth Circuit Court of Appeals recently said in *Columbia Steel Casting Co., Inc. v. Portland General Electric Company*:

> As a matter of law, then, neither the 1974 Order nor any other subsequent orders of the OPUC [Oregon Public Utilities Commission] amend the 1972 Order to clarify that Order as an expression of state policy to displace competition with regulation. At best, these orders recite that the utilities have stopped competing with each other within territories they have defined. As our court has said, mere "state authorization, approval, encouragement, or participation in restrictive private conduct confers no antitrust immunity." *Phonetele, Inc. v. American Tel. & Tel. Co.*, 664 F. 2d 716, 736 (9th Cir. 1981) (quoting *Cantor v. Detroit Edison Co.*, 428 U.S. 579, 592-93, 96 S. Ct. 3110, 3118-19, 49 L.Ed. 2d 1141 (1976), cert denied, 459 U.S. 1145, 103 S.Ct. 785, 74 L.Ed.2d 992 (1983).

Columbia Steel Casting Co., Inc. v. Portland General Electric Company, 111 F.3d 1427, 1441-42 (9th Cir. 1997).

This opinion is not "out there" in isolation. A federal district court judge in Idaho recently reached a similar result in the case of *Snake River Valley Electric Association v. PacifiCorp*, (Civil No. 96-0308-E-BLW, April 25, 1997, District of

Idaho) (interlocutory review denied by the U.S. Court of Appeals for the Ninth Circuit). Although I am proud of the result in the *Columbia Steel* case, I believe it reflects a straightforward application of the Supreme Court's test in the *Midcal* case.

We are not here today to challenge the notion of natural monopolies. We agree that some utility service cannot reasonably be duplicated and AS 42.05.221(d) affords the Alaska Public Utilities Commission the authority to bar duplication and paralleling of distribution and transmission facilities. But the tremendous changes that have occurred in the past few years in the electric industry have now made it feasible for sales of electric power to be scheduled across lines owned by third parties. That is the essence of competition that is taking place in the lower 48. For the last couple of years utility pilot programs have proven that electric power sales can be decoupled (or "unbundled") from distribution and transmission service, and consumers can be afforded substantial savings from the resulting competition. Alaska's utility statutes are not a bar to competitive sales of electric power that are now technologically and economically feasible. Neither are they a defense to challenges under the federal antitrust laws of those utilities that seek to block access to competition. I can assure you from my own experience that larger consumers of electric power are willing to use the antitrust laws, where necessary, to challenge

anticompetitive conduct by utilities. Businesses that increasingly compete in the world economy have no tolerance for higher prices paid to utilities that seek to protect themselves from competition.

We are not here advocating that legislation is necessary to allow competition to proceed, either. Electric utilities in this state have no lawful alternative but to permit competition to proceed. If the legislature or the Alaska Public Utilities Commission do not act to define how competition is to proceed, then a Federal court judge (as in the *Columbia Steel* and *Snake River* cases) may define the manner in which competition must go forward. All it would take to put the resolution of this question before a federal judge is a plaintiff who believes they have a sufficient stake in encouraging competition in electric power sales.

In addition to private litigation, the United States Department of Justice, through its Antitrust Division has become increasingly more active in the electric power arena. In 1997 the Justice Department filed suit against Rochester Gas and Electric Corporation (RG&E) in the United States District Court for the Western District of New York challenging the anticompetitive aspects of a contract entered into between RG&E and the University of Rochester in which RG&E promised to provide electricity to the University in return for the University's promise not to use

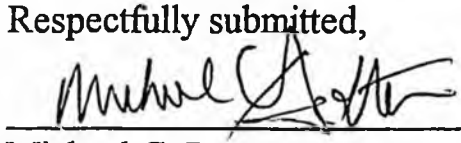
cogeneration to compete with RG&E. After a federal judge refused to dismiss the complaint, on February 20 of this year, RG&E and the Justice Department entered into a stipulation and submitted a consent judgment to the Court by which RG&E voluntarily surrendered the right to enforce the provisions eliminating competition in the sale of electric power from its agreement and prohibiting LG&E from "entering into or enforcing a covenant or agreement not to compete in the retail sale of electricity with any competitor."

Finally, I want to describe why competition is worth the effort. The Brookings Institution published, in 1997, a study entitled "*Economic Deregulation and Customer Choice: Lessons for the Electric Industry.*" The study reveals that in the natural gas, long distance telecom, airlines, trucking, and railroad industries, deregulation (and competition) resulted in real price reductions in the short term (2 years) the medium term (5 years) and the long term (10 years) with the price reductions getting larger over time. The study also reports that all classes of customers (not just large industrial customers) enjoyed substantial savings in each of these industries. A table, revealing the results is attached to this testimony.

I appreciate the opportunity to address you. The changes that will take place in the electric power industry in the next few years will create many new

opportunities. If Alaska does not impede market access and moves swiftly to encourage competition, it will enjoy a relative competitive advantage in attracting new business to the state as the savings resulting from competitive markets become available sooner, rather than later.

Respectfully submitted,



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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 355

Revision Date (Note if correction)
Title: Provision of electric service
Sponsor: S. Labor & Commerce
Requester: S. Labor & Commerce

Dept. Affected: Commerce
BRU: APUC
Component: APUC
Component Serial No. 364

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	79.1	79.1	79.1	79.1	79.1	79.1
Travel	0.6	0.6	0.6	0.6	0.6	0.6
Contractual	27.0	27.0	27.0	27.0	27.0	27.0
Supplies	1.1	1.1	1.1	1.1	1.1	1.1
Equipment	0.2	0.2	0.2	0.2	0.2	0.2
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	108.0	108.0	108.0	108.0	108.0	108.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )	108.0	108.0	108.0	108.0	108.0	108.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)	108.0	108.0	108.0	108.0	108.0	108.0
TOTAL	108.0	108.0	108.0	108.0	108.0	108.0

Estimate of any current year (FY98) cost:

POSITIONS

Full-time	1	1	1	1	1	1
Part-time	1	1	1	1	1	1
Temporary						

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

This bill would require the Commission to issue orders within 10 days of a request by a certificated electric utility. There is no precedent for expecting decisions this quickly. Even in competitive markets such as long distance telecommunications, the deadline for action on a utility filing is 30 days, and the Commission has the option to reject the application if it is incomplete, or to suspend the filing for further investigation. The ten-day turnaround would not allow for public notice of the filings required by AS 42.05. 411.

A Utility Finance Analyst II, Range 19 and part-time Administrative Clerk (Range 8) would be required to handle the fast turnaround required for these filings, along with the follow-up analysis of whether the interim rates were just and reasonable. The Commission would be required to schedule special meetings to handle these filings, because regularly scheduled meetings would not meet the statutory deadline.

Division: Alaska Public Utilities Commission — Date: 4/20/98
Approved by Commissioner: [signature] — Date: 4/21/98
Agency

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