

**SB**

**133**

**HFIN**

**FILE**

Failed

#6

## Amendment

CSSB 133 (FIN)

Representative John Davies

Page 2, line 14

Insert after "degree."

"At least one commissioner shall be appointed to represent the interests of the consumer."

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

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

## MEMORANDUM

May 13, 1999

**SUBJECT:** HCS CSSB 133(FIN) (Creating the RCA and repealing the APUC)

**TO:** Representative Gene Therriault, Co-chair  
House Finance Committee

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

Enclosed is the House Committee Substitute you requested. When the committee amended the sunset provision in the bill (sec. 21) to extend the RCA only until 2002, sec. 31 of the draft HCS became unnecessary: the bill no longer extends the sunset for five years. Therefore, I have removed sec. 31 from the HCS.

In sec. 7 of the bill, amending AS 42.05.171, page 8, line 12, the intent of the addition of "or an appeal of" is unclear. Is the appeal referred to an administrative appeal to which a party is entitled as of right, a discretionary administrative appeal, or an appeal to the courts? It is clear that the petition for reconsideration is administrative, to be decided by the full commission.

TC:pl  
99-080.plm

Enclosure

HOUSE FINANCE COMMITTEE  
LETTER OF INTENT

SB 133 repeals the Alaska Public Utilities Commission and creates the Regulatory Commission of Alaska. In making this change to public utility regulation, it is the intent of the Legislature to respond to recommendations in legislative audits conducted in 1979, 1985 and 1989, and an audit performed by the National Regulatory Research Institute (NRRI) in 1998. The task of regulating public utilities has changed dramatically as the utility industry has moved from total regulator to regulated competition. The 21<sup>st</sup> Alaska Legislature is creating the Regulatory Commission of Alaska to address these changes in the utility industry on behalf of the people of the state of Alaska.

The Regulatory Commission of Alaska is better equipped than the APUC to respond to industry proposals for changes in utility services, and to protect the interests of ratepayers in the wake of these changes. SB 133 gives the chair authority over administrative matters, leaving the other commissioners free to resolve substantive issues. To address the problem of the APUC's case backlog and time-consuming decision-making process, SB 133 allows panels of three commissioners, hearing officers or arbitrators to resolve cases where appropriate. It also requires the RCA to adopt regulations setting procedural timelines. To address the problems created by changing APUC staff's role between advocate and advisor, it establishes a separate public advocacy section within the RCA.

SB 133 will improve this agency's accountability to the public. The RCA is required to establish a Management Information System, similar to the Legislature's BASIS system so that the public and industry can be better informed about the RCA's proceedings. It requires the RCA to implement a time management system to record the amount of time spent on filings from different industries, so that the Regulatory Cost Charge can be more fairly assessed.

This year is an opportune time to make these changes. The Alaska Public Utilities Commission would begin winding down on June 30, 1999 under the sunset law. SB 133 requires the governor to appoint, and the Legislature to confirm, five commissioners who will represent the interests of the public.

SB 133 provides for a study of the possibility of combining the functions of the Regulatory Commission of Alaska and the Alaska Oil and Gas Conservation Commission. The results of a study by the Legislative Budget and Audit Committee will be presented to the next session of this Legislature. If the Legislature decides to combine the two agencies' functions, the challenge of making that transition will be significantly eased by the creation and operating experience of the RCA under SB 133.

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

## MEMORANDUM

May 11, 1999

**SUBJECT:** Amendment Y.13 to HCS CSSB 133(L&C))  
**TO:** Representative Gene Therriault  
**FROM:** Jack Chenoweth  
Assistant Revisor of Statutes

The amendment draws on the language of the material that was provided by your office. I altered the placement of the second provision and made it a new subsection, subsection (r), within AS 31.05.110, the unitization section.

In its bill section 2, I questioned whether the standard "greater recovery of oil and gas" is correct. The current test, as set out in AS 31.05.030(d)(9) and 31.05.110(a), speaks of "greater *ultimate* recovery of oil and gas," so that is what I substituted. Even so, the current test under which the commission may act to require unitization arguably has three purposes, all as set out in AS 31.05.030(d)(9):

(d) The commission may require

...  
(9) the filing and approval of a plan of development and operation for a field or pool *in order to prevent waste, insure a greater ultimate recovery of oil and gas, and protect the correlative rights of persons owning interests in the tracts of land affected.*

You may want to substitute the full language of the current standard.

Because of the time constraint, I did not have the opportunity to work through each subsection within AS 31.05.110 to satisfy myself that every provision lends itself to commission regulation under the expansion of the provisions in the section to "voluntary cooperative or unit plans or operations" that is made by the amendment to subsection (q).

JBC:glc  
99-259.glc

Enclosure

ATT

## ASHBURN AND MASON

LAWYERS


A PROFESSIONAL CORPORATION

1130 WEST SIXTH AVENUE, SUITE 100  
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KIRSTEN TINGLUMTELEPHONE  
(907) 276-4331TELECOPIER  
(907) 277-8255

## MEMORANDUM

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**TO:** Ray Gillespie

**FROM:** A. William Saupé 

**DATE:** May 11, 1999

**SUBJECT:** Amendments to SB 133  
Our File No. 5667.160

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Further to his May 10 memo to you on the same subject, Mark Vasconi and I have discussed and agreed upon the desirability of the following amendments to SB 133:

1. **Section 42.04.020(a).** The following draft provision would preserve the concept of minimum qualifications for commissioners but eliminate some of the rigidity of current law, which creates specific seats requiring particular degrees:

The commission consists of five commissioners appointed by the governor and confirmed by the legislature in joint session. To qualify for appointment as a commissioner a person must be a member in good standing of the Alaska Bar Association or have a degree from an accredited college or university in engineering, finance, economics, accounting, business administration, or public administration. Actual experience for a period of five years in the practice of law or in the field of engineering, finance, economics, accounting, business administration, or public administration is equivalent to a degree.

2. **Section 42.04.020(e).** After reflection, we have decided not to offer an alternative to the provision allowing the governor to remove a commissioner for cause, which

ASHBURN AND MASON

Memorandum to Ray Gillespie

May 11, 1999

Page 2-

may be necessary in some circumstances. However, we still have concern that it is so broadly drafted in its current form as to risk political interference and to undermine the independence of the commission.

- 3. Section 42.04.080(b). AT&T Alascom continues to believe that the appeal procedure is unnecessary for the reasons stated in AT&T Alascom's testimony to the House Labor and Commerce Committee on Friday, May 7, 1999.
- 4. Section 42.04.080(c). If the appeal subsection is deleted, corresponding changes must be made in the letter designations of the other subsections.
- 5. Section 42.04.150. AT&T Alascom prefers the current system of designating a staff advocacy team on a case-by-case basis. If, however, a separate public advocacy section is going to be created, AT&T Alascom suggests the following fix to harmonize this section with Section 42.04.070(c) and to ensure adequate staffing:

Public advocacy section. There is established within the commission a public advocacy section. The section shall participate as a party in matters that come before the commission to represent the public interest when the chairman determines pursuant to AS 42.04.070(c) that it is in the public interest to do so. The public advocacy section shall include sufficient personnel with expertise to represent the public interest. The public advocacy section shall operate separately from the rest of the commission.

*form public interest to chairman  
- Pub Pol. inf.  
- financial info  
interest is at stake*

(New text is underlined.) NOTE: AT&T Alascom still has serious concerns that, once set in motion, there is no immediate control over the staff's concept of the public interest and the specific direction that its advocacy may take. Ultimately, however, the commission itself has the final word and can rein in any excesses on the part of the public advocacy staff.

- 6. Section 42.04.010(b). As mentioned in AT&T Alascom's oral testimony to the House Labor and Commerce Committee, there is an ambiguity as to whether a new governor could appoint a new chairman prior to the expiration of the chair's four-year term. To balance the "for cause" removal provision, to reduce politicization, and to enhance the commission's independence, the better position would be that a new

ASHBURN AND MASON

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Memorandum to Ray Gillespie  
May 11, 1999  
Page 3-

governor would have to wait for the four-year term of the chairman to expire before appointing a new one. To make this clear, the section could be rewritten as follows:

(b) The commission may nominate one of its members to serve as chair. The governor shall designate the chair of the commission whenever the position becomes vacant, either by selecting the member nominated by the commission or another member. The term as chair is four years. The chair may not be appointed to successive terms as chair.

N:\JWS\667101



# CHUGACH ELECTRIC ASSOCIATION, INC.

EUGENE N. BJORNSTAD, P.E.  
General Manager

April 13, 1999

Senator Drue Pearce  
Twentieth Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear Senator Pearce:

Re: SB 133 as an essential vehicle for regulatory re-invention

Chugach Electric Association, Inc. strongly favors SB 133. This bill will facilitate development of a new regulatory structure to oversee the increasing competition among utility services. The new structure can achieve savings over time through streamlining and through carefully re-defining regulatory functions. Combining functions as provided in SB 133 will allow the new commission to adapt in ways which the old structure is unlikely to achieve.

The existing structure is struggling with the following problems:

The public is not provided much protection by the Commission. The Commission appears to function, but little useful regulatory work is actually being performed. The public suffers the costs and constraints of regulation with little corresponding benefit.

The interests of regulated utilities which support the status quo are protected by the Commission's devotion to anachronistic regulatory approaches.

Regulatory inertia continues unneeded regulation where competition would work better. The APUC is overwhelmed with work in part because it persists in performing unneeded regulation. Essential transition work is not being done.

SB 133 will allow the new Energy Conservation Commission to take a "zero based regulation" approach to examining what regulatory functions are essential. The objective must be to reduce regulatory functions and corresponding public burdens to those which provide sufficiently high benefits to justify the burdens. Over several years, it is reasonable to demand that the transition to greater competition reduce the regulatory effort needed.

As a first step, the Legislature must clearly announce the policy of this state to promote competition among sellers of utility service wherever possible. The reverse policy is followed by the existing regulatory body. A clear policy directive favoring competition as the rule with exceptions only by special decision will allow the new Energy Conservation Commission begin immediately to increase customer choice and reduce regulation. The mission should be to maximize use of competition and minimize use of regulation to promote the welfare of the citizens of the State and their economic well-being.

Sincerely,

Eugene N. Bjornstad  
General Manager

RECEIVED

APR 16 1999

# Alaska State Legislature

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**Drue Pearce**  
*President of the Senate*

## **Sponsor Statement** **5/5/99** **Senate Bill 133**

SB 133 will accomplish several goals regarding the Alaska Oil & Gas Conservation Commission (AOGCC) and Alaska Public Utilities Commission (APUC). The APUC will be re-pealed and re-structured under the new title of the Regulatory Commission of Alaska (RCA). This new structure will be more capable of addressing the current expanding workload of the commission. The AOGCC will be strengthened by relocating to the same physical location as the APUC. Long term efficiencies will be gained by utilizing a common building, sharing clerical staff and record keeping facilities. In addition, Legislative Budget & Audit (LB&A) will write a report during the interim, which will consider the functions of the two commissions and what structure would best serve the states interests.

### SB 133 makes the following changes to the APUC:

1. Repeals the APUC and creates the Regulatory Commission of Alaska (RCA), effective July 1, 1999. All commissioners shall be either re-appointed or replaced. All staff shall remain. All regulations and pending matters before the commission shall be carried forward to the new commission.
2. The new commission will be composed of five commissioners. The five commissioners shall be members of the general public with no requirement for areas of specific expertise. I feel that requiring specific expertise is limiting and that the public interest would best be served by having maximum flexibility in acquiring qualified individuals from the general public.
3. SB 133 strengthens the position of the Chairman.

**The Chairman:**

- a) Shall have limited authority over the other commissioners.
- b) Shall have oversight of all commission staff.
- c) Shall assign the work of the commission and staff.
- d) Shall set timelines by which a matter shall be resolved.
- e) Shall determine when advocacy staff is required given certain standards.

**4. Streamlines the hearing process.**

- a) The chair shall empanel three or more commissioners to a hearing panel to decide the case. This allows the Chairman to assign the applicable number of commissioners depending on the size of the case.
- b) Limited the appeals process to only be considered when a decision taken is contrary to commission precedent.
- c) Mandated that the commission promulgates timeliness standards, depending on the complexity of the docket, for the types of cases that come before the commission. These regulations shall be adopted by December 31, 1999.
- d) Provided for formal hearings to be held before an arbitrator in appropriate cases.
- e) Established within the commission a separate advocacy section to represent the public interest when necessary.

- 5. SB 133 instructs the commission to adopt a time management system to ensure accurate accounting for time billed to each aspect of the commission's functions. LB&A has been recommending a time management system for the APUC in every audit since 1979. To date, the APUC does not use industry or utility codes on payroll time sheets and therefore workloads are approximated using rough estimates. A time management system will provide improved accuracy when assessing regulatory cost charges to individual sectors of the utility industry. This will assist in assuring that the cost causer is the cost payer.**

**SB 133 makes the following changes to the AOGCC:**

- 1. The AOGCC will physically move to the same location as the RCA (APUC) as soon as possible, but not later than July 1, 2006. The two commissions will share record keeping facilities and clerical staff after that time.**
- 2. The AOGCC shall have access to hearing officers at the RCA (APUC) following the effective date, July 1, 1999.**

**SB 133 authorizes LB&A to prepare a transition report to be delivered to the governor and the Legislature on the first day of the second session of the 21<sup>st</sup> Legislature. The Governor shall appoint one commissioner from each commission to work with LB&A on the transition report. The report will address both commissions and their functions and shall make recommendations on changes that would serve the best interests of the state.**

**SB 133 will improve our ability to protect the long-term public interest through increased functional efficiencies of both commissions.**

**SB 133 does NOT:**

- 1. Does NOT combine the two commissions into one.**
- 2. Does NOT de-regulate garbage.**
- 3. Does NOT transfer pipeline regulation to the AOGCC.**
- 4. Does NOT make any policy changes to either commission.**
- 5. Does NOT transfer any function from one to commission to the other.**
- 6. Does NOT alter the number of commissioners on either commission.**

## STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF COMMERCE AND  
ECONOMIC DEVELOPMENT

ALASKA PUBLIC UTILITIES COMMISSION

1010 WEST SIXTH AVENUE, SUITE 400  
ANCHORAGE, ALASKA 99501-2963  
PHONE: (907) 276-4222  
FAX: (907) 276-0160  
TTY: (907) 276-4333

April 28, 1999

The Honorable Tony Knowles  
Governor of Alaska  
P.O.Box 110001  
Juneau, Alaska 99811

Dear Governor Knowles:

After much deliberation, I find myself compelled to share with you a most unfortunate incident. One I believe that could, and should, have been avoided.

On January 25, 1999, one of our employees, Mr. Ed Schubert, the Commission's Accounting Clerk, returned to the Commission on work release from Akeela House. Within one hour and fifteen minutes, he was arrested, handcuffed, and taken to jail, resulting in a great deal of turmoil, confusion, and embarrassment at the Commission.

Mr. Schubert had been arrested in July 1998 for sexual and physical assault while under the influence of alcohol and cocaine. He served two months in jail and four months in Akeela House before his scheduled sentencing. During this time, he was on authorized leave from the Commission and received psychiatric and other counseling. He did so well during his time at Akeela House that he earned an opportunity for work release under the terms of that treatment facility's rules. In conversations with Ms. Diane Hunt, the Commission's Administrative Manager, who was Mr. Schubert's supervisor, Mr. Schubert mentioned several times that he would eventually earn a work release privilege. Many of Mr. Schubert's friends at the Commission kept in touch with him and told me and fellow Commissioners how glad they were that he was getting treatment and that they were looking forward to working with him again.

On January 15, 1999, Mr. Bob Lohr, the Commission's Executive Director, sent a letter to Mr. Schubert stating, "You are expected and directed to return to work at 8:00 a.m. Wednesday, January 27. If you do not report to work..., it will be necessary for me to proceed with separating you from your employment."

On Friday, January 22, 1999, Mr. Schubert called from Akeela House and spoke with Ms. Hunt and told her that he had been given permission by Akeela House and would return to work on Monday, January 25. During this conversation, Ms. Hunt confirmed

that his work hours would be 8:00 a.m., to 4:30 p.m.

As we learned later, this conversation initiated a series of calls from the Commission's offices to Mr. Schubert's probation officer, the Department of Law, Department of Commerce's Human Resource Manager, the Commission Chairman, and a few others to have Mr. Schubert arrested when he returned to work.<sup>1</sup> However, no one involved in these numerous calls contacted Akeela House to determine why and how Mr. Schubert was authorized to return to work. Nor did anyone call Mr. Schubert's attorney or his wife, who is also an attorney, to inform them that Mr. Schubert would be arrested if he returned to work.

During this rather bizarre set of events, only one Commissioner, the Chairman, had any knowledge that Mr. Schubert's work release was in question and could lead to his arrest. Four Commissioners were totally unaware of any problem with Mr. Schubert's pending return. That return and immediate arrest ultimately involved two police officers, two judges, the Court System, a district attorney, a probation officer, and Mr. Schubert's attorney. One phone call to Akeela House or to Mr. Schubert's attorney expressing a concern could have prevented this significant consumption of state resources and resultant chaos and embarrassment to the Commission.

The most tragic result, however, was the embarrassment and humiliation of Mr. Schubert who had excelled in his treatment program. Mr. Schubert had been a very competent state employee. He was removed from the Commission in handcuffs, and later that day appeared in court handcuffed between two other prisoners. His crime: He reported to work as he was directed to do and as had been authorized by his correctional treatment program. Akeela House had no knowledge of any concerns about Mr. Schubert's return to the Commission. Mr. Schubert was indeed the victim of a system that failed because individuals failed to communicate.

Even though I am about to retire, I feel compelled to inform you of this matter because it exemplifies the manner in which the Commission's Executive Director operates. He communicates with only one Commissioner, the Chairman. While in some situations this is appropriate, in a case of this magnitude that involved so many state resources, inside and outside the Commission, all Commissioners should have been apprised of the concerns associated with Mr. Schubert's return. Had that been done, I have no doubt that the arrest would never have occurred.

It was only after Mr. Schubert's arrest that I learned there were some employees at the Commission who had been concerned about Mr. Schubert's work return in view of his

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<sup>1</sup> We learned later that in a call Ms. Hunt made in October 1998 to Mr. Schubert's probation officer, she had been told Mr. Schubert would not be released for work. It was this statement that apparently led to the belief that Mr. Schubert would be violating the terms of his parole to Akeela House if he was allowed to go on work release. As it turned out, there was a huge misunderstanding between the several state agencies as to what Akeela House's authority was in matters such as these. No one from any of the state agencies involved called Akeela House for its interpretation of the matter. Ultimately, Mr. Schubert's arrest for the alleged violation of parole was dropped.

offenses. If anyone had informed me of those concerns, I would have suggested a meeting with representatives from Akeela House to obtain answers and assurances about the screening that is required before work release. Instead rumors were allowed to metastasize, and employees allowed to believe that the other four Commissioners were indifferent to their concerns and willing to expose them to harm by allowing and encouraging an assailant to return to work. Such turmoil is clearly counterproductive to conducting the State's business and, blatantly unfair to those of us at whom such allegations were made. We had no opportunity to address the problem as we were unaware that it existed.

Mr. Lohr has many assets. However, his interpersonal skills at the Commission are deplorable. Besides the Schubert matter, there are numerous other personnel incidents involving Mr. Lohr's lack of appropriate managerial behavior.

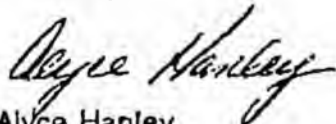
Specifically, one of our most professional and respected employees retired early because of Mr. Lohr's manipulation of the promotion procedures. She was head of the tariff department at the time of her retirement. The former head of the finance department, Joe Franco, interrupted Mr. Lohr in the middle of an evaluation and returned with his written resignation. Mr. Franco was not eligible to retire, but was unwilling to work any longer under Mr. Lohr's inept supervision. Two paralegals came to me personally because they felt physically threatened by Mr. Lohr. Both have left the APUC.

I have listened to Mr. Lohr's explanations and apologies. Recognizing there was nothing I could change, I tolerated Mr. Lohr's management. Since the Schubert incident, however, I have lost my tolerance and any respect I had for Mr. Lohr.

There are perhaps positions in state government in which Mr. Lohr has the potential to succeed. I believe, however, the public interest would be better served with a different individual in the position of executive director.

Thank you for your attention.

Sincerely,



Alyce Hanley,  
Commissioner

cc: Mr. Robert Lohr  
Rep. Joe Green  
Rep. Norman Fiokeberg

FISCAL NOTE

No: 3

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

Version: HCS CS5B 133(L&C)  
(H) Publish Date: 5/8/99

Revision Date: \_\_\_\_\_  
Title: Combine APUC and AOGCC  
Sponsor: Senator Pearce  
Requestor: (H) L&C

Department Affected: Administration  
BRU: AOGCC  
Component: AOGCC  
COMPONENT SERIAL NO. 2010

Expenditures/Revenues: (Thousands of Dollars)  
Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2000	FY 2001	FY2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	147.0	147.0	147.0	147.0	147.0	147.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>147.0</b>	<b>147.0</b>	<b>147.0</b>	<b>147.0</b>	<b>147.0</b>	<b>147.0</b>
<b>CAPITAL EXPENDITURES</b>	<b>321.9</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 CF Match						
1004 GF	147.0	147.0	147.0	147.0	147.0	147.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
<b>TOTAL</b>	<b>147.0</b>	<b>147.0</b>	<b>147.0</b>	<b>147.0</b>	<b>147.0</b>	<b>147.0</b>

Estimate of any current year (FY 99) cost: \$ \_\_\_\_\_

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.)

Operating Budget

This bill combines the AOGCC and APUC offices and will relocate the AOGCC offices to the current APUC office location. \$147.0 of additional operating funds are necessary for AOGCC lease costs at the APUC building. (8,000 x \$2.00/sq. ft. less \$45,000 available from current facility maintenance budget).

Capital Budget

Relocating the AOGCC offices will require a capital expenditure of \$281.9 in FY 2000 to cover moving costs and new office furniture for 23 employees. AOGCC will also need to invest in a new computer network system to be compatible with APUC. The cost for an updated network is estimated to be \$40.0 and is also included in the capital request.

Prepared by: Robert Christenson, PE  
Division: Alaska Oil and Gas Conservation Commission

Phone: 279-1433  
Date: \_\_\_\_\_

Approved by Commissioner: Robert Poe  
Agency: Department of Administration

Date: 5/6/99

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## ALASKA OIL AND GAS CONSERVATION COMMISSION

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 Anchorage, AK 99501-3192  
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 fax: (907) 276-7542

Date: 7-11-96

## TELECOPY TRANSMITTAL

To: Ultimate Recovery From: AOGCC  
Service List (See Below) David Johnston  
Chairman

Number of pages including cover sheet 43  
 If you do not receive fax in its entirety, please call (907) 279-1433 immediately.

## MESSAGE:

AK Department of Natural Resources  
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AK Department of Revenue  
 John Pilkinton, Director  
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 Mark Worcester  
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 Ward Whitmore  
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**DEPARTMENT OF LAW**

OFFICE OF THE ATTORNEY GENERAL

July 3, 1996

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO.

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**ORIGINAL**

The Hon. John T. Shively  
Commissioner  
Department of Natural Resources  
400 Willoughby Avenue  
Juneau, AK 99801-1724

David Johnston, Chair  
Alaska Oil & Gas Conservation Commission  
3001 Porcupine Drive  
Anchorage, AK 99501-3120

Re: AOGCC/DNR Unitization Jurisdiction  
Our file: 663-96-0121

Dear Commissioner Shively and Mr. Johnston:

You have asked for an opinion regarding the respective jurisdictions of the Alaska Oil and Gas Conservation Commission ("AOGCC") and the Department of Natural Resources ("DNR") over the unitization of production interests in state oil and gas leases. Specifically, you have asked whether the AOGCC has the power to unilaterally change the terms of the Prudhoe Bay Unit Agreement ("PBUA"), by forcing the parties to combine their interests in the two Initial Participating Areas established under that Agreement, where those terms were entered into and approved by DNR under AS 38.05.180(p).

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## SUMMARY

A review of the facts, pertinent case law and the statutes establishing the respective jurisdictions, authorities and powers of the AOGCC and the DNR shows that the AOGCC cannot use its compulsory unitization powers to force holders of interests in state oil and gas leases to alter the terms of a voluntary unitization agreement that has been entered into and approved by DNR under AS 38.05.180(p). In this context the AOGCC fulfills whatever statutory obligations it has, not by reworking the parties' contractual allocation of the costs and benefits of Prudhoe Bay production, but by issuing orders that implement specific oil field practices necessary to prevent waste, protect correlative rights, or ensure the greater ultimate recovery of oil and gas.

## INTRODUCTION AND BACKGROUND

### A. Unitization Generally

There is general agreement among courts that persons holding interests in land overlying a common supply of oil and gas have "correlative rights" with others similarly situated as well as a duty to the public not to waste the oil and gas:

The term "correlative rights" is merely a convenient method of indicating that each owner of land in a common source of supply of oil and gas has legal privileges as against other owners of land therein to take oil and gas therefrom by lawful operations conducted on his own land limited, however, by duties to other owners not to injure the source of supply and by duties not to take an undue proportion of the oil and gas. In addition, of course, to this aggregate of legal relations, each landowner has duties to the public not to waste the oil and gas.

1 W.L. Summers, *The Law of Oil and Gas* § 63 at 180-81 (footnote omitted).

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The standards of performance under those correlative rights and the public duty not to waste oil and gas have not been developed by courts. Instead, they are generally reflected in state conservation statutes that give administrative agencies the power to regulate the production of oil and gas to prevent waste:

While litigation, apart from statute, has not often arisen in which the courts have had the opportunity to determine a standard of performance of the duty not to injure a source of supply of oil and gas, conservation statutes, defining and prohibiting waste and giving administrative agencies authority to make and enforce rules for its prevention, do determine such a standard of performance. An injury to the source of supply which violates the rights of the public also violates the rights of adjacent owners.

*Id.* at 184-186.

To prevent waste and to protect the public interest in maximizing the production of oil and gas, many conservation statutes include provisions like those in Alaska that provide for the development and production of an oil and gas deposit through "unitization" of the ownership interests in the common source of supply.<sup>1</sup> Unitization "refers to the combination of most, if not all, of the separate tracts in the field into one tract" so that the reservoir or field can be developed as "a single entity, without regard to surface boundary lines." 6 H.R. Williams and C.J. Meyers, *Oil and*

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<sup>1</sup> Conservation statutes generally provide two methods for combining ownership interests to prevent waste: unitization, and pooling. "Although the terms 'pooling' and 'unitization' are frequently used interchangeably, more properly 'pooling' means the bringing together of small tracts sufficient for the granting of a well permit under applicable spacing rules whereas 'unitization,' or, as it is sometimes described, 'unit operation,' means the joint operation of all or some part of a producing reservoir." 6 H.R. Williams and C.J. Meyers, *Oil and Gas Law* § 901 at 2-3 (1995). We are concerned here with unitization, which is provided for in Alaska under AS 31.05.110 and AS 38.05.180(p)-(q). We are not concerned with pooling, which is addressed in AS 31.05.100 and AS 38.05.180(s).

*Gas Law* § 901 at 3-4 (1995) (footnote omitted). Unitization is necessary for certain oil field practices to be effective, and generally results in greater overall recovery:

Both economics and property rights require the integration of a field in order for such operations as gas cycling, pressure maintenance, and secondary recovery to be conducted. Moreover, . . . greater recovery at less cost can be achieved when the field is treated as an entity and wells [are] so located that they maximize the use of reservoir energy. . . .

Williams and Meyers, § 901 at 3-4 (1995).

Although unitization thus provides comprehensive overall benefits to both the public and those with interests in the field, it frequently is difficult to accomplish voluntarily:

It has long been urged that efficiency in the development and operation of oil and gas reservoirs and the prevention of waste of recoverable hydrocarbons require that such reservoirs be developed and operated as a unit without regard to surface boundaries. To achieve the maximum objectives of such a unitization program it is necessary that all persons having an interest in the program area become subject to the agreement. Without statutory compulsion, however, unanimity is frequently impossible to obtain. *The principal obstacle to full, voluntary agreement is the problem of dividing the proceeds of production.*

*Id.* § 910 at 85 (emphasis added; footnotes omitted). More particularly, "there is frequent acrimony as to the respective shares of production to be given owners of interests in favorable parts of the structure and owners of interests in less favorable areas, for example, persons with interests overlying the gas-cap of a gas-drive pool."<sup>2</sup> Because voluntary unitization is so difficult to

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<sup>2</sup> Williams and Meyers, § 910 at 86. As discussed in more detail *infra*, the problem of placing a value on the leasehold interests overlying the gas cap of the Prudhoe Bay reservoir was particularly acute given the lack of an available transportation system and market for Prudhoe Bay gas, and the uncertainty regarding when (or whether) a viable transportation system and market for that gas would be developed.

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accomplish, at least 33 states (including Alaska) and three Canadian provinces have enacted statutes providing for compulsory unitization under certain circumstances. *Id.*, § 912 at 96-98.

**B. Unitization in Alaska**

**1. Pre-statehood**

Alaska's statutes relating to conservation of oil and gas are now codified in AS 31.05. Many of them, however, were first enacted during territorial days in ch. 40, SLA 1955. The waste of oil and gas was prohibited in sec. 1, now AS 31.05.095. Section 2 defined waste in terms virtually identical to those now appearing in AS 31.05.170(14). Section 3 created an Alaska Oil and Gas Conservation Commission, "to be composed of the Governor, the Territorial Highway Engineer and the Commissioner of the Alaska Department of Mines," who were to serve without compensation. The Commission was given many of the powers and duties now found in AS 31.05.030 (discussed below), including the power to prevent waste. Section 7.1 provided for both voluntary unitization and, in the absence of voluntary unitization, compulsory unitization:

To prevent, or to assist in preventing waste, as prohibited by this Act, to insure a greater ultimate recovery of oil and gas, and to protect the correlative rights of persons owning interests in the tracts of land affected, such persons may validly integrate their interests to provide for the unitized management, development, and operation of such tracts of land as a unit. Where, however, such persons have not agreed to so integrate their interests, the Commission, upon proper petition, after notice and hearing, as hereinafter provided, shall be vested with jurisdiction, power and authority, and it shall be its duty to make and enforce such orders and do such things as may be necessary or proper to carry out and effectuate the purposes of this section.

*Id.* (This language now appears in AS 31.05.110(a) with only minor textual changes.)

The territorial commission's power to compel unitization was limited by section 7.4, however, in that no compulsory unitization order would be effective unless it was approved by "the lessees of record of not less than 62.5 percent of the unit area affected thereby and by the owners of record of not less than 62.5 percent . . . of the normal one-eighth landowners' royalty interest . . ."

This mirrored the practice in other states: "In general, under these [conservation] statutes a regulatory agency is authorized to require unitization of a pool or some part thereof despite the objection of minority interests therein if a proposed plan has been approved by a requisite majority of the owners of interests in the premises to be unitized." Williams and Meyers, § 912 at 98.1-99 (1995).

## 2. Statehood to 1978

Following statehood, the First Alaska Legislature transferred the territorial commission's functions and authority to DNR. Ch. 64, § 16, SLA 1959. It also enacted the Alaska Lands Act, ch. 169, SLA 1959, now codified at AS 38.05, to provide for the management of the huge land grant given the new state.<sup>4</sup> One subsection of that Act, now codified as amended at AS 38.05.180, authorized the commissioner of natural resources to lease state lands for oil and gas purposes. See ch. 169, art. VIII, § 3(7), SLA 1959.

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<sup>3</sup> Following statehood, this provision was codified as AS 31.05.110(d). It was repealed by ch. 160, § 17, SLA 1978.

<sup>4</sup> Under section 6 of the Alaska Statehood Act, the new State of Alaska became entitled to select 103,350,000 acres of federal land (subsections (a) and (b)), was granted the school, university, and mental health land grants previously made to the Territory of Alaska (subsection 6(k)), and succeeded to the United States' title to tide and submerged lands underlying navigable waters within its boundaries (subsection 6(m)). Alaska Statehood Act, Pub. L. 85-508, § 6, 72 Stat. 339 (1958).

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In addition to authorizing leasing of the lands, a proprietary function, that subsection also included specific provisions relating to the unitization of state lands leased for oil and gas purposes, a conservation function. For conservation purposes, lessees with interests in a common source of supply of oil or gas were authorized to enter into a cooperative or unit plan of development or operation "whenever determined and certified by the Commissioner to be necessary or advisable in the public interest." The commissioner was given the discretion "with the consent of the holders of leases involved, to establish, alter, change, or revoke drilling, producing, rental, minimum royalty, and royalty requirements" of the leases and, again with the consent of the lessees, to adopt regulations with respect to the leases and an approved cooperative or unit plan determined "necessary or proper to secure the proper protection of the public interest." Ch. 169, art. VIII, § 3(7), SLA 1959. The commissioner was given the power to include in state leases a provision "requiring the lessee to operate under such a reasonable or cooperative or unit plan" and to "prescribe such a plan under which such a lessee shall operate, which shall adequately protect all parties in interest, including Alaska." *Id.* An approved plan could include, in the commissioner's discretion, a provision vesting the commissioner or another person or a state agency with the authority "to alter or modify from time to time the rate of prospecting and the quantity and rate of production under such plan." *Id.* Finally, these provisions were stated to be "in addition to, and shall in no way repeal, diminish, change or abrogate the provisions of" the 1955 conservation legislation that, under ch. 64, SLA 1959, also was the DNR's responsibility to administer.<sup>5</sup>

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<sup>5</sup> Most of the provisions of section 3(7) of chapter 169, art. VIII, SLA 1959, now appear, with only minor changes, in AS 38.05.180(p). The last two provisions referenced in the text are now found in  
(continued...)

3. Post-1978

In 1978, the legislature enacted three measures of significance here. First, ch. 155, SLA 1978, repealed and reenacted the statute authorizing the commissioner of natural resources to lease state lands for oil and gas purposes, AS 38.05.180. The reenacted statute retained the prior provisions relating to unitization, including the provisions authorizing state lessees to unitize with others and authorizing the commissioner to prescribe a "reasonable cooperative or unit plan . . . [which] must adequately protect all parties in interest, including the state." AS 38.05.180(p). It also retained the prior language that the provisions of AS 38.05.180 concerning cooperative or unit plans are in addition to and do not affect AS 31.05.

The second significant 1978 Act was ch. 158, SLA 1978, which transferred the authority and responsibility for administration of the state's oil and gas conservation statutes from DNR to a newly created "independent quasi-judicial agency of the state," the AOGCC. AS 31.05.005(a). DNR was given "the same standing (no more nor less) before the Commission as granted by law to any other proprietary interest." AS 31.05.026(e). The AOGCC's authority was made applicable to "all land in the state lawfully subject to its police powers," expressly including "all land included in a voluntary cooperative or unit plan of development or operation entered into in accordance with AS 38.05.180(p)." AS 31.05.027. And, under sec. 5 of ch. 158, "[u]ll references in AS 31.05 to department or Department of Natural Resources except in AS 31.05.026 shall be read as [the AOGCC] in order to implement this Act." As a result, the AOGCC was given "jurisdiction

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<sup>3</sup>(...continued)

AS 38.05.180(q). Section 3(7) also included authorization for state lands to be pooled with other lands, a provision that is now codified at AS 38.05.180(s).

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and authority over all persons and property, public and private, necessary to carry out the purposes and intent of this chapter." AS 31.05.030(a). It was directed to "investigate to determine whether or not waste exists or is imminent, or whether or not other facts exist which justify or require action by it." AS 31.05.030(b). And it was directed to "adopt rules, regulations and orders and take other appropriate action to carry out the purposes of this chapter." AS 31.05.030(c).

The third significant 1978 Act was ch. 160, SLA 1978. So far as relevant here, that Act added "the filing and approval of a plan of development and operation for a field or pool in order to prevent waste, insure a greater ultimate recovery of oil and gas, and protect the correlative rights of persons owning interests in the tracts of land affected" to the list of things the AOGCC was authorized to require. Ch. 160, § 1, SLA 1978 (adding AS 31.05.030(d)(9)). It added "the quantity and rate of the production of oil and gas from a well or property," to the list of things the AOGCC was authorized to regulate "for conservation purposes," and provided that "this authority shall also apply to a well or property in a voluntary cooperative or unit plan of development or operation entered into in accordance with AS 38.05.180(p)." Ch. 160, § 2, SLA 1978 (adding AS 31.05.030(e)(6)). The act also repealed AS 31.05.110(d), which had provided that no compulsory unitization order would be effective unless ratified by the lessees of at least 62.5 percent of the unit area and at least 62.5 percent of the owners of the landowners' royalty interest in the unit. Ch. 160, § 17, SLA 1978. Of particular significance here, this act also added a new subsection to the unitization section, AS 31.05.110, which provided:

This section applies to all involuntary units formed in the state. Subsections (a) and (g) - (p) of this section apply to all voluntary units formed in the state

and to a voluntary cooperative or unit plan of development or operation entered into in accordance with AS 38.05.180[p].

Ch. 160, § 2, SLA 1978, codified at AS 31.05.110(q).<sup>6</sup>

### C. The PBUA

On March 29, 1977, Atlantic Richfield Company, BP Alaska, Inc., and Exxon Corporation filed an application with the commissioner of DNR pursuant to AS 38.05.180 and 11 AAC 83.355 "for approval and certification of a voluntary unit agreement for the Prudhoe Bay Unit."<sup>7</sup> The Oil and Gas Conservation Committee in the Division of Oil and Gas Conservation ("DOGC"), which had assumed the powers and duties of the territorial Conservation Commission, concluded that a plan of operations subsequently submitted by the applicants was "consistent with sound conservation practices based on currently available data."<sup>8</sup> The DOGC director approved the application for the PBUA and the accompanying plan of operations and forwarded his decision to the commissioner on May 19, 1977.<sup>9</sup> The commissioner approved the director's decision on June 2, 1977.<sup>10</sup> The commissioner also signed the Unit Agreement, approving it as "a unit plan of

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<sup>6</sup> Originally this subsection referred to AS 38.05.180(m), which, prior to its 1978 repeal and reenactment, was the provision now codified at AS 38.05.180(p). AS 31.05.110(q) now correctly refers to AS 38.05.180(p).

<sup>7</sup> Decision and Findings of the Director, Division of Minerals and Energy Management ["DMEM"] with Respect to Application for Approval of Unit Agreement, Prudhoe Bay (May 25, 1977) ("DMEM Decision") at 1.

<sup>8</sup> May 19, 1977 memorandum from Hoyle H. Hamilton, Director, DOGC, to O.K. Gilbreath, Jr., Director, DMEM.

<sup>9</sup> DMEM Decision at 6.

<sup>10</sup> Approval of Prudhoe Bay Unit Agreement by the Commissioner of the Department of Natural Resources (June 2, 1977) at 2.

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development or operation on behalf of the State of Alaska," as authorized by Chapter 38.05 of the Alaska Statutes. PBUA at 1, 36. Under Article 3 of the Unit Agreement, all of the oil and gas rights in the leases executed by the State "are hereby unitized so that Unit Operations may be conducted as if the Unit Area had been included in a single lease executed by the State of Alaska . . ." PBUA, Art. 3.1 at 7.

The primary oil and gas reservoir subject to the Unit Agreement is referred to as the Prudhoe Bay (*Permo-Triassic*) Reservoir. The Unit Agreement identifies two portions of the reservoir, the Oil Rim and the Gas Cap.<sup>11</sup> The existence of these two distinct portions of the

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<sup>11</sup> The "Prudhoe Bay (Permo-Triassic) Oil Rim" is "that portion of the Prudhoe Bay (Permo-Triassic) Reservoir which originally contained Oil and Solution Gas and which was not originally occupied by Gas Cap Gas." PBUA, art. 5, § 5.1(d), p. 17. The Prudhoe Bay (Permo-Triassic) Gas Cap is "that portion of the Prudhoe Bay (Permo-Triassic) Reservoir which originally contained Gas Cap Gas and which is distinguished from the Prudhoe Bay (Permo-Triassic) Oil Rim as being that portion of the Permo-Triassic Reservoir which originally existed above the gas-oil contact or contacts as determined by the Working Interest Owners." PBUA, art. 5, § 5.1(b), p. 16. Article 1 of the Unit Agreement provides the following other relevant definitions:

1.3 *Gas Cap Gas* is natural gas (with all of its constituent elements, including condensate and gas plant liquids, derived or extracted from it after it leaves the Reservoir) which originally occurred in a Reservoir in gaseous form and not in solution with Oil.

1.4 *Gas Cap* is that portion of a Reservoir occupied by Gas Cap Gas originally in place and not by Oil or Solution Gas.

\* \* \*

1.7 *Oil* is any hydrocarbon produced in liquid form at the wellhead and originally existing in liquid form in the Reservoir.

\* \* \*

1.9 *Oil Rim* is that portion of a Reservoir occupied by Oil and Solution Gas originally in place and not by Gas Can Gas.

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reservoir means that oil and gas do not exist in the same proportion everywhere in the Prudhoe Bay field, and that each lease of each working interest owner overlies a different amount of oil and gas. Due in substantial measure to difficulties associated with placing a value on the Gas Cap Gas in the absence of an available transportation system and market for that gas, the working interest owners could not agree on a single equity ownership interest in Prudhoe Bay hydrocarbons. The working interest owners therefore divided the Prudhoe Bay Unit into two, largely overlapping, Initial Participating Areas: the Oil Rim Participating Area ("ORPA") and the Gas Cap Participating Area ("GCPA").<sup>12</sup> Each working interest owner is assigned a "tract participation percentage" for each

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<sup>11</sup>(...continued)

1.20 *Solution Gas* for the purposes of distinguishing it from Gas Cap Gas, is any gaseous hydrocarbon which originally occurred in a Reservoir in solution with Oil. *Solution Gas* for purposes of distinguishing it from Oil, is any hydrocarbon which originally occurred in a Reservoir in solution with Oil and which was converted to a gaseous form by changes in pressure or temperature effected by ordinary production methods. In either case, the term *Solution Gas* includes all constituent elements including gas plant liquids derived or extracted therefrom after it leaves the Reservoir.

PBUA, art. 1, pp. 2-4.

<sup>12</sup> Article 5.2 of the Unit Agreement establishes the two Initial Participating Areas and sets forth, in accordance with Exhibit C to the Agreement, the tract participation percentages for each working interest owner:

*5.2 Participation for Prudhoe Bay (Permo-Triassic) Reservoir Participating Areas.* The Oil Rim Participating Area shown on Exhibit D-1 and the Gas Cap Participating Area shown on Exhibit D-2 are hereby established as the initial Participating Areas. The Tract Participations initially agreed to by the Working Interest Owners for the Oil Rim and Gas Cap Participating Areas are shown in Exhibit C. Tract Participations have been assigned to the Tracts within the Oil Rim Participating Area primarily on the basis of Oil and Solution Gas originally in place and to the Gas Cap Participating Area primarily on the basis of Gas Cap Gas originally in place, as determined by agreement of the Working Interest Owners. Because development of the Tracts and the available information concerning Unitized Substances is not complete enough to allow final determination of Tract Participations as of the

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lease (or tract) it holds in each participating area.<sup>13</sup> Production from the Unit is allocated to each participating area "in accordance with methods, formulas and procedures as provided in the Unit Operating Agreement."<sup>14</sup> The stated goal of these "methods, formulas and procedures" is to allocate Gas Cap Gas to the Gas Cap Participating Area, and to allocate Oil and Solution Gas to the Oil Rim Participating Area.<sup>15</sup> Production that has been allocated to a particular participating area is then

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<sup>12</sup>(...continued)

Effective Date, the Working Interest Owners agree that the initial Tract Participations shall be subject to adjustments or corrections as provided in the Unit Operating Agreement.

PBUA, art. 5, p. 17.

<sup>13</sup> Because the Oil Rim Participating Area and the Gas Cap Participating Area overlap considerably, most of the leases received tract participation percentages in both areas. *Compare* Unit Agreement, Exh. C, Part I at C-1 through C-4, *with* Unit Agreement, Exh. C, Part II at C-5 through C-7.

<sup>14</sup> Unit Agreement, Art. 6.1. The Unit Operating Agreement is a separate agreement among the working interest owners to which the State is not a party. The Operating Agreement deals in detail with, among other things, voting rights (Arts. 5, 35), tract operations (Art. 8), taxes (Art. 12), insurance (Art. 13), production allocation (Arts. 27-29), and Unit expense allocation and adjustments (Arts. 30-34). However, "[i]nsofar as the respective rights and obligations of Working Interest Owners on the one hand and the State of Alaska on the other hand are concerned, this [Unit] agreement shall control in case of any conflict between it and the Unit Operating Agreement." PBUA, art. 18, p.34.

<sup>15</sup> Unit Agreement, Article 6.1. The definitions of Gas Cap Gas, Oil, and Solution Gas are set forth in note 11. above. Article 6.1 provides as follows:

*Allocation of Unitized Substances Produced from Participating Areas.* All Unitized Substances produced and saved from the Unit Area shall be allocated to the Participating Area established for such Reservoir and to the Working Interest Owners therein; except that where there are separate Oil Rim and Gas Cap Participating Areas within a Reservoir, production therefrom of Gas Cap Gas shall be allocated to the Gas Cap Participating Area of such Reservoir, and to the Working Interest Owners therein, and production therefrom of Oil and Solution Gas shall be allocated to the Oil Rim Participating Area of such Reservoir and to the Working Interest Owners therein. Such allocations shall be in accordance with methods, formulas and procedures as provided in the Unit Operating Agreement.

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further allocated to each working interest owner based upon the sum total of that owner's tract participation percentages in that area.<sup>16</sup> See AOGCC Conservation Order No. 360, August 9, 1995 (revised November 3, 1995) ("C.O. 360") at 13, ¶¶ 102, 103. For example, BPXA receives 50.68 percent of production allocated to the Oil Rim Participating Area but only 13.84 percent of production allocated to the Gas Cap Participating Area. *Id.* ARCO and Exxon Co. USA ("Exxon"), on the other hand, each receive 21.78 percent of production allocated to the Oil Rim Participating Area and 42.56 percent of production allocated to the Gas Cap Participating Area.<sup>17</sup>

<sup>13</sup>(...continued)

Unitized Substances allocated to each Working Interest Owner in a Participating Area shall be allocated to the several Tracts in such Participating Area in which such Working Interest Owner owns a Working Interest in the proportion that the product of such Working Interest Owner's Working Interest in each such Tract multiplied by the current Tract Participation for such Tract bears to the sum of all such products for that Working Interest Owner. The amount of Unitized Substances allocated to each Tract, regardless of whether the amount is more or less than the actual production of Unitized Substances from the well or wells, if any, on such Tract, shall be deemed for all purposes to have been produced from such Tract.

<sup>16</sup> *Ibid.*

<sup>17</sup> Other owners and their respective interests are:

	<u>ORPA</u>	<u>GCPA</u>
Mobil Oil Co.	1.89%	0.28%
Phillips Petroleum Co.	1.88%	0.26%
Chevron USA Production Co.	0.67%	0.48%
Amerada Hess Corp.	0.54%	0.00%
Texaco Exploration and Prod. Co.	0.55%	0.00%
Louisiana Land and Exploration Co.	0.04%	0.00%
Marathon Oil Co.	0.05%	0.00%
Shell Land and Energy Co.	0.14%	0.00%

C.O. 360 at 13, ¶ 103.

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**D. Recent AOGCC Action: The "MI/NGL" Dispute**

A dispute has arisen between the two working interest owners responsible for operating the Prudhoe Bay Unit--ARCO and BPXA--regarding the proper levels of natural gas liquids ("NGLs") and miscible injectant ("MI"), respectively, to be derived from the Unit's separator off-gas.<sup>13</sup> NGLs can be blended with oil and shipped through the Trans-Alaska Pipeline System ("TAPS") for sale. MI is used as an integral part of the Unit's enhanced oil recovery (EOR) program. The Central Gas Facility ("CGF"), however, can process only a fixed amount of separator off-gas each day. As a result, producing more NGLs for sale and shipment through TAPS reduces the amount of MI available for EOR projects. Because all oil derived from enhanced oil recovery is allocated to the Oil Rim Participating Area, and 90 percent of the NGLs are allocated to the Gas Cap Participating Area, C.O. 360 at ¶ 104, BPXA benefits from greater production of MI for enhanced oil recovery, while ARCO (and Exxon) benefit from greater production of NGLs for blending and sale. *See id.*, ¶ 153.

Effective February 1995, Alyeska Pipeline Service Co. ("Alyeska"), the operator of TAPS, removed all limits on the volume of NGLs that could be blended with oil for shipment through TAPS other than one based on vapor pressure control. C.O. 360, ¶ 10. ARCO, as operator of the CGF, increased the production of NGLs to meet the new vapor pressure control limit. *Id.*, ¶ 12. BPXA, as operator of Skid 50 (where NGLs are blended with oil for delivery to TAPS), refused

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<sup>13</sup> Separator off-gas is "hydrocarbon and nonhydrocarbon natural gas, including NGL Components and all other constituent elements of such natural gas except Separator Liquid, that is produced or otherwise voided from the Reservoir . . ." Prudhoe Bay Unit Operating Agreement, § 26.002 at p. 114 (April 1, 1977).

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to allow these additional NGLs to be blended with the crude oil stream, effectively precluding the production of additional NGLs. *Id.*, ¶ 13. ARCO attempted to blend additional NGLs at an earlier point in the process but BPXA further reduced Skid 50 blending to offset ARCO's efforts. *Id.*

ARCO brought its dispute with BPXA to the AOGCC, and asked it to rule that the best conservation practice concerning NGLs and MI is to blend and ship the maximum volume of NGLs allowed by TAPS. C.O. 360 at ¶ 14. BPXA, in turn, argued that the best conservation practice would be to produce the greatest possible quantity of MI (700 mmscfd) at the expense of greater blending of NGLs. *Id.*, ¶¶ 15 and 18. Each contended that only its approach would prevent waste. *Id.*, ¶¶ 94, 96, and 97.

The AOGCC accepted ARCO's position, concluding that "[a]t least in the short term, the quantity and rate of production of oil and gas most likely to prevent waste and ensure greater ultimate recovery is to produce the maximum blendable volume of NGLs from hydrocarbons delivered to the CGF." C.O. 360, Conclusion 16. However, the AOGCC considered it "unlikely" that the parties would be before it on the question whether to maximize blendable NGLs or make more MI if the ownership interests in the Oil Rim Participating Area and the Gas Cap Participating Area were integrated. *Id.*, ¶ 140. For the future, the AOGCC offered its preliminary conclusion that further integration of the Oil Rim Participating Area and the Gas Cap Participating Area would be necessary:

Sufficient evidence has been heard regarding the effects of property and contractual arrangements on Prudhoe Bay development and operation to convince the [AOGCC] that the next phase of these proceedings should be more focused than the general investigation previously anticipated. It appears that more complete unitization and integration of interests in the

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Prudhoe Oil Pool will be necessary to prevent waste, ensure a greater ultimate recovery of oil and gas, and protect correlative rights. Consequently, in the absence of voluntary efforts, further hearings in this matter will be directed toward developing a plan of compulsory unitization.

*Id.*, Conclusion 18. The AOGCC ordered a hearing "to develop a plan for compulsory unitization of the Prudhoe Oil Pool," citing AS 31.05 generally and AS 31.05.027, 31.05.030, 31.05.095, and 31.05.110, specifically, as authority.<sup>19</sup>

**THE AOGCC CANNOT COMPEL UNITIZATION OF OIL AND GAS INTERESTS WHERE THOSE INTERESTS ARE ALREADY SUBJECT TO A UNIT PLAN APPROVED BY DNR UNDER AS 38.05.180(p)**

**A. The AOGCC's Compulsory Unitization Authority Is Limited to Instances Where the Parties Have Not Entered into a Voluntary Unit Approved by DNR Under 38.05.180(p)**

Because administrative agencies "are creatures of statute, deriving from the legislature the authority for the exercise of any power they claim," *Rutter v. State*, 668 P.2d 1343, 1349 (Alaska 1983) (citation omitted), an agency cannot issue an order which goes beyond its statutory authority. *Far North Sanitation v. APUC*, 825 P.2d 867, 870 (Alaska 1992). See *Leedom v. Kyne*, 358 U.S. 184, 188-89 (1958). The issue here is whether the legislature has authorized the AOGCC to order the further unitization of oil and gas interests that are already subject to a unit plan approved by DNR under AS 38.05.180(p).

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<sup>19</sup> C.O. 360, Order 2. For its part, DNR determined that it also had jurisdiction to hold a hearing and issue orders relating to the M/NGL dispute. Decision Regarding Jurisdiction, *In the Matter of the Appropriate Reservoir Management for Optimization of Natural Gas Liquids Blending, Utilization of Miscible Injectant, and Maximization of the Economic and Physical Recovery within the Prudhoe Bay Unit*, before the Commissioner of Natural Resources and Commissioner of the Department of Revenue (August 20, 1995) ("DNR Decision re: Jurisdiction") at 1-2 and 81-82.

1. **AS 31.05.110(q) limits the AOGCC's compulsory unitization powers to oil and gas interests not already part of a unit plan approved by the DNR**

The principal statutory provision establishing that the AOGCC's compulsory unitization authority does *not* extend to cases where oil and gas lessees have already agreed to integrate their interests under a plan approved by DNR is AS 31.05.110(q). That subsection makes *all* of AS 31.05.110 applicable to *involuntary* units, but only *some* of its provisions applicable to *voluntary* units and those entered into and approved by DNR under AS 38.05.180(p):

This section [*i.e.*, AS 31.05.110] applies to all <sup>Voluntary & Involuntary</sup> ~~involuntary~~ units formed in the state. Subsections (a) and (g) - (p) of this section apply to all voluntary units formed in the state and to a voluntary cooperative or unit plan of development or operation entered into in accordance with AS 38.05.180(p).

AS 31.05.110(q). Subsections (b) - (f)--those that expressly do not apply to voluntary units and those entered into under AS 38.05.180(p)--are the subsections governing the AOGCC's compulsory unitization powers.

Subsection (b), the first subsection identified by the legislature as not applying to DNR-approved unit plans, empowers the AOGCC to issue an order "providing for the unitization and unitized operation of the pool" if, after notice and hearing, the commission "finds that (1) the unitized management . . . of a pool is reasonably necessary to carry on . . . [any] form of joint effort calculated to substantially increase the ultimate recovery of oil and gas from the pool; (2) one or more of the unitized methods of operation . . . is feasible, and will prevent waste . . . ; (3) the estimated additional cost, if any, of conducting such operations will not exceed the value of the additional oil and gas so recovered; and (4) the unitization and adoption of one or more of the



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words or provisions are superfluous." *Rydwell v. Anchorage School District*, 864 P.2d 526, 530-31 (Alaska 1993) (citation omitted). The only interpretation of AS 31.05.110(q) that gives full effect to all of its terms is that the provisions establishing the AOGCC's compulsory unitization powers (AS 31.05.110(b)-(f)) do not apply to voluntary units and unit plans approved by DNR under AS 38.05.180(p). Any other reading would render that subsection utterly superfluous. Moreover, by specifically identifying only subsections (a) and (g) through (p) as applying to unit plans approved by the DNR, the legislature has clearly manifested an intent that the subsections not so identified do *not* apply. See *Burrel v. Burrel*, 696 P.2d 157, 165 (Alaska 1984) ("[i]t is an accepted rule of statutory construction that to include specific terms presumptively excludes those which are not enumerated"). See also 2A N.J. Singer, *Sutherland Statutes and Statutory Construction* § 47.24 at 228 (5th Ed. 1992) (same). The AOGCC therefore may not apply its compulsory unitization powers to oil and gas interests that are already subject to a unit plan, such as the PBUA, that has been approved by DNR under AS 38.05.180(p).<sup>22</sup>

**2. AS 31.05.110(a) confirms the legislature's intent to limit the AOGCC's compulsory unitization powers to oil and gas interests that have not been voluntarily unitized**

AS 31.05.110(a) confirms the legislature's intent to limit the AOGCC's compulsory unitization powers to oil and gas interests that have not been voluntarily unitized. That statute provides as follows:

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<sup>22</sup> As noted previously, the PBUA was approved not only by the Commissioner of DNR, but by the AOGCC's predecessor, the Oil and Gas Conservation Committee in the Division of Oil and Gas Conservation. This memorandum, however, does not address whether principles of estoppel or other legal doctrines may be invoked to preclude the AOGCC from altering the terms of the PBUA.

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To prevent, or to assist in preventing waste, to insure a greater ultimate recovery of oil and gas, and to protect the correlative rights of persons owning interests in the tracts of land affected, *these persons may validly integrate their interests to provide for the unitized management, development, and operation of such tracts of land as a unit.* [Where, however, they have not agreed to integrate their interests,] the [AOGCC], upon proper petition, after notice and hearing, has jurisdiction, power and authority, and it is its duty to make and enforce orders and do the things necessary or proper to carry out the purposes of this section. *Including but not limited to*

(Emphasis added.) *Compulsory unitization or reunification in a manner which*  
~~to ensure a~~ *the Commission's finding ~~to ensure a~~ ensure a*  
*based upon* *greater recovery of oil and gas.*  
The two sentences of AS 31.05.110(a) set out ~~two~~ alternative methods for unitizing

oil and gas properties. First, it authorizes the parties to agree to integrate their lands. Where the parties have not done so, however, the AOGCC is expressly given the power to do what is necessary to accomplish that result -- *i.e.*, to compel unitization.

The goal of statutory construction, of course, is "to give effect to the legislature's intent, with due regard for the meaning statutory language conveys to others." *Tesoro Alaska Petroleum Co. v. Kenai Peninsula Borough*, 746 P.2d 896, 905 (Alaska 1987) (citation omitted). The first sentence of AS 31.05.110(a) provides for voluntary unitization with no mention of the AOGCC. The AOGCC is expressly given "jurisdiction, power, and authority" only in the second sentence, subject to the condition precedent that the parties "have not agreed to integrate their interests." The meaning this language conveys to others is that the AOGCC's power to compel unitization is limited to instances in which the parties have not integrated their interests. This meaning is consistent also with the purposes generally of compulsory unitization statutes, which are "a legislative response to the need for compulsory process to deal with persons having minority interests in premises overlying a producing formation who refuse to unitize their premises with

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others despite the public interest in maximum recovery of hydrocarbons." Williams and Meyers, § 912 at 96 (emphasis added). If all persons with interests overlying a producing formation agree to unitize their interests, there is no need for a compulsory process.

If the legislature had intended the AOGCC to have the same jurisdiction, power, and authority where the parties had already agreed to integrate their interests, moreover, the language conditioning the express grant of that power to instances "[w]here . . . they have not agreed to integrate their interests" would have been unnecessary and superfluous. See *Rydwell*, 864 P.2d at 530-31 (courts presume legislature intended every word, sentence, or provision of statute to have purpose, force, and effect). Limiting the AOGCC's power to compel unitization to instances in which the parties "have not already agreed to integrate their interests" gives purpose, force, and effect to that phrase.<sup>23</sup>

<sup>23</sup> The AOGCC also appears to have interpreted its general powers under AS 31.05.030 and its specific compulsory unitization authority under AS 31.05.110 as reaching only those cases where an agreement has not already been entered into:

A copy of an agreement validly integrating the interests of all persons owning interests in affected property in the pool or portion of the pool for which development is contemplated by the operator must be filed with the [AOGCC] no later than 30 days before the commencement of regular production from the pool. *In the absence of an agreement*, the [AOGCC] will, in its discretion, after notice and public hearing in accordance with 20 AAC 25.540, issue an order creating a unit, or an area of participation within a unit, which integrates the interests of all persons owning an interest in the pool or a portion of the pool.

20 AAC 25.517(c) (emphasis added). The AOGCC's longstanding interpretation that its compulsory unitization authority applies only "[i]n the absence of an agreement" is of course consistent with the limitations imposed by AS 31.05.110(a) and AS 31.05.110(q), and thus should be given effect. Cf. *Public Defender Agency v. Superior Court, Third Judicial District*, 534 P.2d 947, 952 (Alaska 1975) ("[c]ontinuous, contemporaneous and practical interpretation by executive officers . . . is a valuable aid in determining meaning").

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- 3. The statutory provisions describing the AOGCC's general jurisdiction and powers are not inconsistent with the conclusion that it cannot compel further integration of oil and gas interests that are already subject to a unit agreement approved by DNR

There are a number of statutory provisions that define in broad terms the scope of the AOGCC's jurisdiction and authority. Most significant among them is AS 31.05.030, which provides

in part:

*J. The Comm. shall require reproductions of all voluntary and involuntary unit plan of development*

Sec. 31.05.030. Powers and duties of commission. *or operation reservoir*

(a) The commission has jurisdiction and authority over all persons and property, public and private, necessary to carry out the purposes and intent of this chapter. *models of any and all type available*

(b) The commission shall investigate to determine whether or not waste exists or is imminent, or whether or not other facts exist which justify or require action by it. *what base are other relations to producers*

(c) The commission shall adopt regulations and orders and take other appropriate action to carry out the purposes of this chapter. *engineering*

(d) The commission may require . . . (9) the filing and approval of a plan of development and operation for a field or pool in order to prevent waste, insure a greater ultimate recovery of oil and gas, and protect the correlative rights of persons owning interests in the tracts of land affected. *and production data*

(e) The commission ~~may~~ <sup>shall</sup> regulate, for conservation purposes . . . (6) the quantity and rate of the production of oil and gas from a well or a property; this authority shall also apply to a well or property in a voluntary cooperative or unit plan of development or operation entered into in accordance with AS 38.05.180(p). *accumulation*

Other statutory provisions confirm the broad scope of the AOGCC's authority. For example, AS 31.05.027 provides that the AOGCC's authority "applies to all land in the state lawfully subject to its police powers" and, in particular, "applies to all land included in a voluntary cooperative or unit plan of development or operation entered into in accordance with AS 38.05.180(p)."

AS 31.05.026(e) provides that the DNR "shall have the same standing (no more or less) before the

*K. The Comm. ~~shall~~ may, at its sole discretion, review all decisions made ~~by~~ and approved by DNR*

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[AOGCC] as granted by law to any other proprietary interest." AS 31.05.060(a) provides that the AOGCC "may act upon its own motion." Finally, AS 31.05.095 prohibits the waste of oil and gas.

The question is whether these broad grants of power to the AOGCC override the specific limitations of AS 31.05.110(q) that the AOGCC's compulsory unitization powers do not apply to oil and gas interests that are already subject to a voluntary unit agreement or a unit plan entered into and approved by DNR under AS 38.05.180(p).

- a. **The statutes establishing the AOGCC's general jurisdiction and powers must be read together with the legislature's grant of authority to DNR and the specific limitations set forth in AS 31.05.110(q)**

Statutory construction begins with an analysis of the language of the statute construed in light of its purpose. *Borg-Warner Corp. v. Avco Corp.*, 850 P.2d 628, 633 n. 12 (Alaska 1993) (citation omitted). Ordinarily, an unambiguous statute is enforced as written without judicial construction or modification. *Lake v. Construction Machinery, Inc.*, 787 P.2d 1027, 1030 (Alaska 1990). "[H]owever, this rule is not controlling when a seemingly unambiguous statute must be considered in conjunction with another act. In that case, [the court] will examine the legislative history and adopt a reasonable construction which realizes legislative intent, avoids conflict or inconsistency, and gives effect to every provision of both acts." *Id.* (citation omitted).

The statutes establishing the AOGCC's general jurisdiction and powers must be read in conjunction with AS 38.05 and the provisions that specifically empower the DNR to approve voluntary or cooperative unit plans of development on state land, as well as with the specific limitations set forth in AS 31.05.110(q). The most reasonable interpretation under this approach is

that the legislature intended to limit the AOGCC's compulsory unitization powers to circumstances where the leaseholders had not already agreed to unitize their interests under a plan approved by DNR. This construction "gives effect to every provision of each act," *Lake*, 787 P.2d at 1030, by recognizing the legitimate statutory obligations of DNR and the specific limitations of AS 31.05.110(q), while acknowledging the AOGCC's power to carry out its statutory responsibilities on all land--including state-owned land already included in a unit plan approved by DNR--through its ability to issue orders that require or forbid specific oil field engineering practices. This construction "realizes legislative intent," *Lake*, 787 P.2d at 1030, because, among other things, it is consistent with the legislature's view that compulsory unitization is a remedy of last resort. See *infra*. This construction also "avoids conflict or inconsistency" by reconciling DNR's statutory responsibility to approve unit plans on state land with the AOGCC's ability to prevent waste, ensure the greater ultimate recovery of oil and gas, and protect correlative rights through orders relating to specific oil field engineering practices. A legislative grant of jurisdiction to the AOGCC over all land in the state simply is not inconsistent with the legislature's concurrent decision to limit the scope of the particular remedies or powers available to the AOGCC under certain circumstances.

**b. The legislature's specific instructions regarding the limitations of the AOGCC's compulsory unitization powers control over the more general expressions of the scope of the AOGCC's authority**

Even if the statutes governing the AOGCC's general powers and jurisdiction were somehow interpreted as being inconsistent with the specific limitations of AS 31.05.110(q), the limitations set forth in this latter provision must be given effect. It is an accepted rule of statutory

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construction that "if a specific section conflicts with a general section, the specific section controls." *Burton v. State Farm Fire and Casualty Co.*, 796 P.2d 1361, 1363 (Alaska 1990) (citation omitted). Because the legislature articulated a specific intent under AS 31.05.110(q) to exempt unit plans approved by DNR from the statutory provisions relating to the AOGCC's compulsory unitization powers, the Alaska courts will give effect to that intent, regardless of the existence of other, more general statutory provisions that could be interpreted differently.

4. **Legislative history supports the conclusion that the AOGCC's compulsory unitization powers do not extend to oil and gas interests that have already been included in a unit plan approved by the DNR**

Construing AS 31.05.110 as evincing a legislative intent that the AOGCC's compulsory unitization authority is limited to instances where the parties have not agreed to integrate their interests also is consistent with the statement of legislative policy that accompanied the 1978 repeal of AS 31.05.110(d).<sup>24</sup> A Free Conference Committee letter of intent adopted unanimously by the full House of Representatives reveals a clear legislative preference for voluntary unitization and an intent that compulsory unitization be limited to cases of "extreme necessity" where the parties had not agreed to unitize voluntarily:

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<sup>24</sup> AS 31.05.110(d) provided that a compulsory unitization order would not be effective unless approved by the lessees of at least 62.5 percent of the unit area and the owners of at least 62.5 percent of the landowners' royalty interest. It was repealed in sec. 17 of ch. 160, SLA 1978; the AOGCC was granted its unitization authority in ch. 158, SLA 1978. Both of the bills that became ch. 160 and ch. 158 -- HB 815 and HB 830, respectively -- were sponsored by Rep. Chatterton and were considered contemporaneously, or nearly so, during the committee hearing process in both the House of Representatives and the Senate. The bill that became ch. 160, moreover, was passed by both the House of Representatives and the Senate two days before the bill that became ch. 158 was passed. Under these facts, the history relevant to the repeal of AS 31.05.110(d) is "a proper source of evidence of legislative intent" underlying the AOGCC's unitization authority. See *State v. Bundrant*, 546 P.2d 530, 545 (Alaska), *app. dismissed sub nom. Uri v. Alaska*, 429 U.S. 806 (1976).

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Section 17 of FCCS SCS HB 815 repeals Section 31.05.110(d), thus providing the Commissioner with the power to force all working and royalty interests in a pool or field, the boundaries of which are delineated by the Department, to cooperatively unitize their interests in a manner which protects correlative rights and provides for the management of field development and operation as a single unit, thus affording the best known methods for the prevention of waste as defined by AS 31.05.

It is not the intent of the legislature that the Commissioner draft and impose a unitization agreement and the terms of the agreement upon the parties of interest, except in cases of extreme necessity. Rather it is the intent of the legislature that the Commissioner normally exercise his authority to encourage the parties in interest to timely negotiate and finalize a voluntary unit agreement, or, when petitioned to do so, and he considers unitization necessary for the purpose of meeting the intent of this chapter, by drafting an agreement for acceptance by the parties. The agreement should, to the extent possible, contain[] terms which meet the needs of all parties in a manner that encourages acceptance.

1978 House Journal (June 16, 1978) at 1720.<sup>25</sup> Broadly construing the AOGCC's compulsory unitization powers to permit it to compel amendment of a unit agreement approved by DNR under AS 38.05.180(p) would be contrary to the legislature's stated intent to encourage voluntary unitization and limit compulsory unitization to cases of "extreme necessity."<sup>26</sup> It would also be

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<sup>25</sup> HB 815 ultimately became ch. 160, SLA 1978. At the time the legislature passed the bill, the AOGCC had not yet been created and implementation of AS 31.05 was still the responsibility of the DNR. The references to the "Commissioner" and the "Department" were thus appropriate at the time the letter of intent was adopted. The letter nevertheless evinces a clear legislative preference for voluntary unitization under the statutes that now define the powers of the AOGCC.

<sup>26</sup> The only legislative history of AS 31.05.110(q) discovered to date is contained in what appears to be the minutes of the House Finance Committee for April 27, 1978 (p. 555). These minutes summarize the testimony of Rep. Chatterton, the sponsor of the bill that added subsection (q), as follows:

Section 12, [Rep. Chatterton] advised, adds a new subsection (q) that tries to assure that the conservation statute applies equally to lands that are included in a unit and are under Title 38, which is now a very gray area.

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contrary to what one treatise calls the "guiding principle" when a question is raised as to the extent to which an oil and gas conservation order can modify a pre-existing contract: "That is, there is a preference for freedom of contract. A . . . conservation order should extend only so far as necessary to prevent waste and protect correlative rights." 1 B.M. Kramer and P.H. Martin, *The Law of Pooling and Unitization* § 13.08 at 13-55 (3d Ed. 1994). This preference for freedom of contract is not surprising given, as noted previously, how difficult it is to unitize voluntarily. Such agreements "ordinarily are the products of long and careful negotiations among the owners of interests in the premises sought to be . . . unitized, [with the] negotiations extending in some cases over a number of years." Williams and Meyers, § 924 at 509. "Each negotiation has its own unique problems and substantial skills are required of those persons seeking to obtain agreement on a . . . unitization plan." *Id.* The record compiled in the AOGCC proceedings following issuance of C.O. 360 supports these general assertions, and shows, if anything, that negotiating the PBUA and the provisions in the Unit Operating Agreement implementing the PBUA's two participating area structure was even more difficult than the usual case.

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<sup>20</sup>(...continued)

This summary does not rebut the conclusion that subsection (q) makes *all* of AS 31.05.110 applicable to involuntary units and only subsections (a) and (g) through (p) applicable to unit plans approved under AS 38.05.180(p). Under subsection (q), the "conservation statute" clearly applies to lands included in a unit under Title 38; the only provisions of the statute that do not apply are those relating to compulsory unitization, as they are unnecessary where a unit has already been approved by the DNR. This legislative history does not overcome the apparent meaning of the statute. *Cf. Chokwak v. Worley*, 912 P.2d 1248, 1253 (Alaska 1996) (legislative history was insufficiently strong to require that literal language of statute be narrowed by interpretation).

5. **Substantial considerations of public policy support the conclusion that the AOGCC's compulsory unitization powers do not extend to oil and gas interests that have already been included in a unit plan approved by the DNR**

The AOGCC's primary responsibility is to prevent waste.<sup>27</sup> As identified in both AS 31.05.030(d)(9) and AS 31.05.110(a), its broader responsibilities are to prevent waste, to ensure a greater ultimate recovery of oil and gas, and to protect correlative rights. Its focus is on proper oil field engineering practices.<sup>28</sup> It has never been an active participant in the negotiation of unit agreements on state land.<sup>29</sup> It has no statutory authority to consider and no expertise in the kind of

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<sup>27</sup> AS 31.05.030(b) states that the AOGCC "shall investigate to determine whether or not waste exists or is imminent, or whether or not other facts exist which justify or require action by it." The Wyoming Supreme Court, interpreting a statute that in all substantive respects is identical to AS 31.05.030(b), has stated that "the primary function" of Wyoming's analogue to the AOGCC is "the prevention of waste." *Majority of the Working Interest Owners in the Buck Draw Field Area v. Wyoming, Oil and Gas Conservation Commission*, 721 P.2d 1070, 1080 (Wyoming 1986).

<sup>28</sup> See, e.g., 1984 Inf. Op. Atty Gen. (April 24; 166-198-84) at 8-9 (footnote omitted):

[T]he [A]OGCC, the duties and powers of which are set out in Title 31 of the Alaska Statutes, is responsible statewide for ensuring maximum recovery of oil and gas by means of conservation orders which dictate the engineering mechanics of oil and gas production (flow rate, surface casing requirements, etc.).

See also Testimony of AOGCC Chairman David Johnston before the Senate Resources Committee, September 12, 1995, at 17 ("in terms of our definition of waste, it doesn't talk to economics, but it talks about good oil field engineering practices"); *id.* at 28 (agreeing with Sen. Pearce that the AOGCC is concerned with "good engineering practices"); testimony of AOGCC Chairman Chat Chatterton before the Senate Special Committee on Oil & Gas, March 31, 1987 (minutes following "Number 348") (AOGCC does "limiting of production purely from an engineering standpoint").

<sup>29</sup> Although 20 AAC 25.517(a) requires generally that an operator file with the AOGCC for approval a plan of development and operation before the development and operation of an oil or gas pool, a different rule applies to operators on state leases: "If properties to be developed are leased from the state, and committed to a unit approved by the commissioner of the Department of Natural Resources under AS 38.05.180, the plan of development and operation, and all updated plans of development and operation, required by AS 38.05.180, must be submitted to the [AOGCC] for informational purposes." (Emphasis added.) 20 AAC 25.517 became effective April 2, 1986 (Register 97). Ken Boyd, Director of the Division of Oil and Gas in DNR, testified before the Senate

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complex economic issues that will have to be resolved to protect the rights of all interested parties once the means of maximizing the recovery of oil and gas have been determined.<sup>30</sup> And it appears that its consistent and long-standing administrative practice has been to defer to DNR all issues other than oil field engineering practices.

DNR, on the other hand, although its authority generally applies only to land owned by the state, is responsible for implementing much broader public interests:

DNR is responsible in large part for implementing the constitutional mandate that the legislature "provide for the utilization, development, and conservation of all natural resources belonging to the State . . . for the maximum benefit of its people." Alaska Const. art. VIII, § 2. See AS 44.37.020(a). In the area of oil and gas leasing, the agency's function is not to run an enterprise but to make decisions that "best serve the interests of the state." AS 38.05.035(c).

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<sup>29</sup>(...continued)

Resources Committee, September 12, 1995, at 44, that the AOGCC does not have to "sign off" on either unitization or operating agreements on state land and that only DNR does so.

<sup>30</sup> See 1977 Inf. Op. Atty Gen. (February 14) at 7 ("the use of economic criteria, rather than engineering criteria, would represent a drastic change in regulatory practice in Alaska (and anywhere else for that matter) and thus, should only be undertaken in response to clear legislative direction"). See also testimony of AOGCC Chairman Chat Chatterton before the Senate Special Committee on Oil & Gas, March 3, 1987 (minutes at 4, following Number 348), on SB 49, a bill that, had it passed, would have added economic waste to the things that the AOGCC was to prevent (AOGCC does not have "in-house discipline" to address economic waste because it has no economists; "some agency would need some real sharp economists to administer it"); testimony of AOGCC Commissioner David Johnston before the House Oil and Gas Committee, February 10, 1992 (minutes following 92-7, Number 172), on HB 433, a bill that, had it passed, would have added "economic waste" to the things that the AOGCC was to prevent (AOGCC "didn't possess qualifications to determine economic waste"); and AOGCC Chairman David Johnston's testimony before the Senate Resources Committee, September 12, 1995, at 16-17 ("nothing in our statute really points to considering economics"); *id.* at 26 ("We chose, at the time in '92, as a policy decision by the legislature and by the administration at that time, not to add economics to the powers and duties of the [AOGCC], and clearly, um, now under powers and duties, the [AOGCC] may regulate for conservation purposes, and is silent to economics").

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*State, Department of Natural Resources v. Arctic Slope Regional Corporation*, 834 P.2d 134, 143 (Alaska 1991).

When making decisions "for the maximum benefit of [the state's] people" and that "best serve the interests of the state" in administering state land for oil and gas purposes, DNR shares some of the same goals given the AOGCC under AS 31.05. Not surprisingly, to that end the legislature left with DNR powers similar to those it transferred to the AOGCC.<sup>31</sup> However, because DNR's responsibility is significantly broader than the AOGCC's with respect to state land, DNR also has authority to address both economic and physical recovery issues as part of its consideration of the overall best interests of state and the interests of other parties.<sup>32</sup> It has experience as an active participant in the negotiation and subsequent amendment of unit agreements on state land under

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<sup>31</sup> For example, as has been discussed, AS 38.05.180(p) authorizes state lessees to unite with others "in collectively adopting or operating under a cooperative or a unit plan of development or operation of the pool, field, or like area, or a part of it, when determined and certified by the commissioner to be necessary or advisable in the public interest." It also permits the commissioner to include a provision in state oil and gas leases "requiring the lessee to operate under a reasonable cooperative or unit plan" and to "prescribe a plan under which the lessee must operate" which "must adequately protect all parties in interest, including the state."

<sup>32</sup> AS 38.05.180(a) includes a legislative finding that "(1) the people of Alaska have an interest in the development of the state's oil and gas resources to (A) maximize the economic and physical recovery of the resources." 11 AAC 83.303(a) provides that the commissioner of natural resources will approve a proposed unit agreement if it (1) promotes the conservation of all natural resources, including all or part of an oil or gas pool or field, (2) promote the prevention of both economic and physical waste, and (3) protect all interested parties including the state. In making those determinations, 11 AAC 83.303(b) provides, among other things that the commissioner will consider "(5) the economic costs and benefits to the state." Under 11 AAC 83.303(c), the commissioner will consider the criteria in (a) and (b) when evaluating any requested approval or authorization for a unit agreement, an extension or amendment of a unit agreement, a plan of exploration, development, or operations, a participating area, or a proposed or revised production or cost allocation formula. And DNR has formally determined that it has the legal authority to conduct investigations and issue orders related to the M/NGL dispute giving rise to your request for this opinion. DNR Decision Regarding Jurisdiction, *supra* n. 19. The Alaska Supreme Court has recognized that the state's economic welfare is promoted "by maximizing the amount it receives for the lease of its lands" and "the legitimacy of using the state's police power to protect the government's financial stability." *Arctic Slope Regional Corp.*, 834 P.2d at 143.

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AS 38.05.180(p), which includes the negotiation and subsequent amendment of the Unit Agreement at issue here. To the extent any state agency does, DNR has the expertise to address the kind of complex economic issues that have to be resolved to protect all interested parties where state oil and gas leases are involved. Under these circumstances, exempting unit plans approved by DNR under AS 38.05.180(p) from the AOGCC's compulsory unitization powers is consistent with sound public policy.

**B. The AOGCC Has No Implied Authority to Overturn Unit Plans  
Approved by DNR under AS 38.05.180(p)**

As shown above, AS 31.05.110(q) limits the AOGCC's compulsory unitization authority to cases where the parties have not adopted a unit plan approved by the DNR under AS 38.05.180(p). The AOGCC, however, appears to suggest that the limitations imposed by AS 31.05.110(q) should not apply where the unit plan approved by DNR does not, in the AOGCC's view, sufficiently or "complete[ly]" unitize the oil and gas interests that have been made subject to the plan. See C.O. 360, Conclusion 18 ("It appears that more complete unitization and integration of interests in the Prudhoe Oil Pool will be necessary to prevent waste, ensure a greater ultimate recovery of oil and gas, and protect correlative rights. Consequently, in the absence of voluntary efforts, further hearings in this matter will be directed toward developing a plan of compulsory unitization"). Implicit in this suggestion is that the AOGCC has the power to review a "voluntary cooperative or unit plan of development or operation entered into in accordance with AS 38.05.180(p)," and to substitute its judgment for that of the DNR regarding whether the unit agreement is valid. The relevant statutes, however, contain no express grant of power to the

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AOGCC to review DNR's approval of a unit plan under AS 38.05.180(p) and, for the reasons discussed below, the courts are unlikely to find that the AOGCC has an implied power to do so.

An administrative agency "has no inherent powers, but only such as have expressly granted to it by the legislature or have, by implication, been conferred upon it *as necessarily incident to the exercise of those powers expressly granted.*" *State v. Dept. of Transp. of Wash.*, 33 Wash.2d 448, 206 P.2d 474-75 (1949) (emphasis added), *quoted with approval in Greater Anchorage Area Borough v. City of Anchorage*, 504 P.2d 1027, 1033 n.19 (Alaska 1972), *overruled on other grounds, City & Borough of Juneau v. Thibodeau*, 595 P.2d 626, 629 (Alaska 1979). *See State Farm Mutual Automobile Insurance Co. v. Barnes*, 585 P.2d 929, 931 (Colo. App. 1978) ("[p]owers not expressly granted to a regulatory agency will be implied only if such powers are necessary in order to achieve the objectives of the statute, and if the implied power is exercised in a reasonable manner"). In determining whether a power is necessarily implied, however, courts generally employ a rule of strict construction. *See Public Service Commission v. Formal Complaint of WWZ Co.*, 641 P.2d 183, 186 (Wyoming 1982) ("the statutes creating and empowering the [agency] must be strictly construed and any reasonable doubt of the existence of any power must be resolved against the exercise thereof"); *Williams v. Public Service Commission*, 754 P.2d 41, 50 (Utah 1988) ("[t]o ensure that the administrative powers of the PSC are not overextended, 'any reasonable doubt of the existence of any power must be resolved against the exercise thereof'"); *Swede v. City of Clifton*, 125 A.2d 865, 869 (N.J. 1956) ("where there is reasonable doubt of the existence of a particular power, the power is denied").

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Consistent with these principles, the Alaska Supreme Court narrowly construes the scope of an agency's implied powers. See *McDaniel v. Cory*, 631 P.2d 82, 88 (Alaska 1981) (fine levied by Human Rights Commission held invalid where "no statutory authority exists which gives the Commission the power to award damages to complainants in public accommodation discrimination cases"); *Warner v. State*, 819 P.2d 28, 31 n. 1 (Alaska 1991) ("[f]ollowing *McDaniel*, we will narrowly interpret a statute as to the question of whether it grants the agency the discretion to promulgate rules").

There is no basis for concluding that the AOGCC has the implied power under its organic statutes to substitute its judgment for that of the DNR under AS 38.05.180(p) regarding the validity of a unit agreement among working interest owners holding state oil and gas leases. The limitations imposed by AS 31.05.110(q), which exempt unit plans approved by the DNR from the AOGCC's compulsory unitization powers, would be meaningless, or virtually so, if the AOGCC could ignore a DNR determination approving a particular unit plan. Such authority is not "necessarily incident to the exercise of those powers expressly granted" to the AOGCC, *Greater Anchorage Area Borough*, 504 P.2d at 1033 n.19, because that agency has broad powers apart from its compulsory unitization powers to prevent waste, ensure the greater ultimate recovery of oil and gas, and protect correlative rights, on and off state land. There is no need to imply the further power to review and reject DNR approvals of unit plans to enable the AOGCC to carry out its statutory responsibilities, and therefore the courts will not imply that power.

This conclusion is supported by the reasoning of the Alaska Supreme Court in *McDaniel*. The *McDaniel* court found no implied power to assess a damages remedy despite the

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Human Rights Commission's argument that "if a respondent . . . is not forced to pay damages, the purpose of the statute cannot as a practical matter be effectuated" and that "[t]his would result in many situations where no meaningful relief would be available." 631 P.2d at 88. The Court's response was that "[i]f there is merit to this argument, the legislature, rather than this court, must remedy the defect."<sup>33</sup> It nevertheless went on to consider and reject the merits of the Commission's argument because "[t]he Commission has been given broad powers to enjoin and compel affirmative action to eliminate discriminatory practices and may construct an appropriate remedy without resort to damages." *Id.*

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<sup>33</sup> *McDaniel*, 631 P.2d at 88. It should be noted that there was some legislative effort directed at resolving the jurisdictional dispute between the DNR and the AOGCC during the Second Session of the Nineteenth Legislature. On December 29, 1995, Representatives Green and Davis introduced House Bill No. 381, entitled "An Act relating to oil and gas conservation and recovery." Section 1 of this bill would have authorized the AOGCC to "modify a determination or action of the commissioner of natural resources authorized by . . . AS 38.05.180(p), (q), or (u); . . ." Section 2 would have provided that an order of the AOGCC would prevail over "a determination or action of the commissioner of natural resources authorized by . . . AS 38.05.180(p), (q), or (u); . . ." And section 3, the final section, would have amended AS 38.05.180(q) to provide that "the provisions of (p) of this section and this subsection may be modified by the Alaska Oil and Gas Conservation Commission by an order entered under AS 31.05.100 - 31.05.110." In a bill analysis dated January 8, 1996, the AOGCC (through David W. Johnston, Chairman), supported the bill on the ground that it "will remove any ambiguity about the prevailing authority of the Commission under its police powers to prevent waste, protect correlative rights and ensure a greater ultimate recovery [of oil and gas]." In a bill analysis dated January 25, 1996, the Department of Natural Resources (through Ken Boyd, Director of the Division of Oil and Gas) opposed the bill on a number of grounds, one of which was that it would "direct an agency not charged with maximizing the economic benefits from the State's lands, to control oil and gas development and operations on State lands," something that, in DNR's view, "could significantly impact the State's economic and financial welfare." In a letter dated February 12, 1996, addressed to David Koivuniemi, Deputy Commissioner of the Department of Administration, all three commissioners of the AOGCC recommended that, "[t]o help resolve these jurisdictional issues," the Department of Law undertake a "deliberate review of the statutes . . . in advance of any legislative effort to amend the law." The bill ultimately failed to pass.

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Like the Human Rights Commission in *McDanel*, the AOGCC also "has been given broad powers to enjoin and compel affirmative action to eliminate" practices that are contrary to its statutory responsibilities, such as the waste of oil and gas, and thus "may construct an appropriate remedy without resort to" a remedy that has not been specifically provided for by the legislature. For example, under AS 31.05.030, the AOGCC may "regulate, for conservation purposes . . . the quantity and rate of the production of oil and gas from a well or property," and this authority expressly extends to a well or property in a unit plan approved by the DNR under AS 38.05.180(p). See AS 31.05.030(e)(6). In addition, the AOGCC has the power to require the making and filing of reports, well logs and other information on wells drilled for oil or gas, AS 31.05.030(d)(2), the drilling, casing or plugging of wells to "prevent blowouts, cavings, seepages and fires," AS 31.05.030(d)(3), the furnishing of a reasonable bond sufficient to ensure the repair of a well causing waste, AS 31.05.030(d)(4), the measurement and fixing of gas-oil and water-oil ratios for particular wells, AS 31.05.030(d)(5), and the measuring and monitoring of oil and gas pool pressures, AS 31.05.030(d)(8). The AOGCC also has the power to investigate whether waste exists or is imminent, AS 31.05.030(b), impose penalties for violations of AS 31.05 or an AOGCC regulation or order adopted under it, AS 31.05.150, and to seek injunctive relief any time "it appears that a person is violating or threatening to violate any provision of this chapter, or any regulation or order of the [AOGCC]." AS 31.05.160(a).

These authorities give the AOGCC a variety of options to accomplish the purposes of the state's conservation statutes that stop short of compulsory reunification of a unit agreement entered into and approved by DNR pursuant to its statutory responsibilities. Indeed, the M/NGL

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proceedings before the AOGCC, which culminated in C.O. 360 and an order requiring, at least in the short term, the production of the maximum amount of blendable NGLs by the working interest owners, proves the efficacy of these alternate procedures. Although the AOGCC may believe that altering the underlying contractual arrangements of the working interest owners as approved by DNR will be more efficient than dealing with allegations of waste on a case by case basis, the relevant statutes provide no authority to the AOGCC to review DNR approvals of unit plans under AS 38.05.180(p).<sup>34</sup>

**C. Even If the Authority and Jurisdiction of the AOGCC and DNR Overlapped in Such a Way That the AOGCC Could Compel Unitization of Oil and Gas Leases on Terms Different than Those Already Approved by DNR, Principles of Comity and Deference Would Require the AOGCC to Refrain from Exercising That Jurisdiction**

The analysis above concludes that AS 31.05.110(q) unambiguously exempts oil and gas interests from the AOGCC's compulsory unitization powers where those interests are already subject to a unit plan approved by DNR under AS 38.05.180(p). Nevertheless, even if the limitations imposed by AS 31.05.110(q) could somehow be ignored, and the statutes defining the authority of

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<sup>34</sup> This conclusion is not inconsistent with the rule that an agency has the power to conduct proceedings to determine whether it has jurisdiction. Cf. *FPC v. Louisiana Power & Light Co.*, 406 U.S. 621, 647 (1972) (applying doctrine that agency has primary authority to determine its own jurisdiction). Thus, although AS 31.05.110(q) exempts voluntary unit agreements and unit agreements approved by the DNR from the ambit of the AOGCC's compulsory unitization powers, the AOGCC has the authority to inquire, as an initial matter, whether there is, in fact, a voluntary unit agreement or a unit agreement approved by the DNR. Although it is unnecessary for the purposes of this memorandum to address the full scope of the AOGCC's power to review the validity of a voluntary unit agreement (other than one approved by the DNR), at a minimum it would have the authority to ensure that such an agreement is not a sham designed to avoid the Commission's jurisdiction. But where, as here, there is no question that the unit agreement at issue has been approved by DNR pursuant to its responsibilities under AS 38.05.180(p), the AOGCC's inquiry, at least insofar as its compulsory unitization powers are concerned, has reached the end of its statutory rope.

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the AOGCC were interpreted to permit compulsory reunification of state oil and gas leases already subject to a DNR-approved unit plan, the fact the AOGCC can accomplish its statutory objective of preventing waste without infringing upon DNR's jurisdiction renders it likely that the Alaska courts would preclude the AOGCC from using its compulsory unitization powers here.

As noted above, shortly after statehood the legislature made DNR responsible for both conservation of oil and gas, under laws now codified at AS 31.05, and the management of state lands under AS 38.05. Prior to the 1978 legislation establishing the AOGCC, the potential for conflict between the administration of these two sets of laws was minimal because DNR administered them both. As a result of the establishment of the AOGCC in 1978, however, both the AOGCC and DNR have at least some statutory authority over the production of oil and gas from state land, and the potential for conflict exists. This potential for conflict, though, imposes additional obligations upon both agencies: where two agencies share the same or comparable statutory responsibilities, each "must fully enforce the requirements of its own statute, but must do so, insofar as possible, in a way that minimizes the impact of its actions on the policies of the other statute." *New York Shipping Association v. Federal Maritime Comm'n*, 854 F.2d 1338, 1367 (D.C. Cir. 1988). "[T]he policies of diverse statutory regimes are best preserved if each agency scrupulously avoids deciding questions of law or policy that more properly lie within the jurisdiction of another agency, when a more limited inquiry into the requirements of its own statute is sufficient to dispose of the question before it." *Id.* at 1368. Furthermore, an administrative agency "should be particularly careful in its choice of remedy . . . because of the possible effects of its decision on the

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functioning of [another statutory policy].” *Id.* at 1370 (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 172 (1962)).

The conclusion that an agency must choose to the extent possible a remedy that does not conflict with the jurisdiction of another is based upon necessary principles of comity and deference among related agencies. As one court has articulated it:

[P]rinciples of comity and deference to sibling agencies are part of the fundamental responsibility of administrative tribunals charged with overseeing complex and manifold activities that are also the appropriate statutory concern of other governmental bodies. This is a corollary application of the broader principle that where a court has concurrent, discretionary jurisdiction with another court or an administrative agency, the decision to exercise jurisdiction *vel non* should be fully responsive to the competence, expertise and status of the other tribunal.

*Hinfey v. Matawan Regional Board of Education*, 391 A.2d 899, 907-08 (N.J. 1978) (citations omitted; emphasis added).<sup>35</sup> These principles “are designed to assure that a controversy, or its most critical facets, will be resolved by the forum or body which, on a comparative scale, is in the best

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<sup>35</sup> The New Jersey Court described the rationale underlying the rule of comity among agencies as follows:

There is no reason, absent an occlusive statutory bar, for an administrative agency to be obtuse to the genuine concerns of other administrative agencies which possess concurrent jurisdiction over the same subject matter. This is especially so where the controversy is multidimensional and legitimately touches the competence of more than one agency. In that context, administrative agencies should never be encouraged to engage in internecine struggles for jurisdictional hegemony. The unilateral and possessive assumption of jurisdiction by one agency to the exclusion of another, perhaps more suitable, agency creates the risk that, although a many-sided controversy may be laid to rest in whole or in part from the vantage of a single administrative agency, in the process other important interests may be mishandled or neglected.

*Hinfey*, 391 A.2d at 907-08. “These precepts, prudently applied, serve as well to circumvent collisions between administrative agencies occupying similar areas and to avoid conflicts in agency decisions over the same subject matter.” *Id.* at 908.

position by virtue of its statutory status, administrative competence and regulatory experience to adjudicate the matter." *Id.*

Under the approach advocated in *Hinfey* and *New York Shipping Association*, the AOGCC, assuming it had the power to apply its compulsory unitization powers to oil and gas interests already subject to a unit plan approved by DNR, must analyze the alternatives it has for carrying out its statutory responsibilities in terms "of the possible effects those alternative courses of action may have on the functioning and policies" of DNR's statutory regime. If there is the potential for interfering with DNR's responsibilities, it must choose the approach that avoids or at least minimizes that interference.<sup>36</sup>

Applying these principles here, it is apparent that an AOGCC order under its compulsory unitization powers to force the working interest owners to combine their interests in the initial participating areas would directly contravene DNR's determination that the separate participating area approach of the PBUA furthered the state's interests.<sup>37</sup> Moreover, an assertion by the AOGCC of the power to unilaterally realign the contractual arrangements of working interest owners in unit plans approved by the DNR has the potential to undermine DNR's authority to negotiate such plans on terms that reflect the best interests of the state. DNR may, for example, face

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<sup>36</sup> "[A]n agency, faced with alternative methods of effectuating the policies of the statute it administers, (1) must engage in a careful analysis of the possible effects those alternative courses of action may have on the functioning and policies of other statutory regimes, with which a conflict is claimed; and (2) must explain why the action taken minimizes, to the extent possible, its intrusion into policies that are more properly the province of another agency or statutory regime." *New York Shipping Association*, 854 F.2d at 1370.

<sup>37</sup> An order compelling the integration of the two participating areas would also conflict generally with DNR's decision to promulgate 11 AAC 83.351(a), which provides in part that "[s]eparate participating areas may be established to distinguish between an oil rim and a gas cap."

unwarranted difficulties in negotiating unit plans for state oil and gas leases if state leaseholders view them as merely advisory or contingent and subject to unilateral modification by the AOGCC. More generally, unilateral action by the AOGCC invalidating the PBUA also may undermine the state's efforts to promote oil and gas development: if the holders of state leases cannot be assured that the agreements they reach with DNR will be honored by the AOGCC, it increases the risks and thus the costs of doing business with the state. And, for the policy reasons given previously, DNR "on a comparative scale, is in the best position by virtue of its statutory status, administrative competence and regulatory experience," *Hinfrey*, 391 A.2d at 908, to approve unit plans that protect the best interests of the state, and particularly its economic interests, when state oil and gas leases are involved.

In sum, even if the AOGCC's statutory authority extended so far as to enable it to compel reunification of oil and gas interests already subject to a unit plan approved by DNR, the courts are likely to consider an exercise of that authority under these circumstances to be an abuse of agency discretion. Because the AOGCC clearly has alternatives to compulsory unitization in carrying out its statutory responsibilities that do not directly conflict with the statutory responsibilities delegated to DNR, the AOGCC must choose one of those alternatives.

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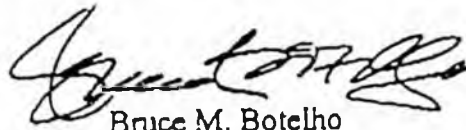
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**CONCLUSION**

For all of the foregoing reasons, the AOGCC's compulsory unitization powers do not extend to oil and gas interests that are already subject to a unit plan entered into and approved by DNR under AS 38.05.180(p).

Very truly yours,



Bruce M. Botelho  
Attorney General

BMB:JPG:pw

(11)

# HOUSE COMMITTEE REPORT

Date Referred to Committee: May 8, 1999

FURTHER REFERRALS:

Date of Committee Action: 5/12/99

The FINANCE Committee considered:

CSSB 133(RLS) am

CS FOR SENATE BILL NO. 133(RLS) am

REGULATORY COMMISSION OF ALASKA

"An Act creating and relating to the Regulatory Commission of Alaska and transferring to it certain powers and duties of the Alaska Public Utilities Commission; repealing the Alaska Public Utilities Commission; relating to the powers of the chair of the Regulatory Commission of Alaska; relating to regulatory cost charges for public utilities and pipelines; relating to the appellate procedures of the Regulatory Commission of Alaska; relating to the Alaska Oil and Gas Conservation Commission; and providing for an effective date."

recommends it be replaced with the following committee substitute HCS CSSB 133 (Fin)  the same title  a new title

additional referral to \_\_\_\_\_ Committee  
 attached amendment(s)

ADOPTS: HFC Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)  
 fiscal note(s) DCED, DDA <sup>(for incoming)</sup>  fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_  zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Gene Theriault</i>	Theriault	X			
<i>Edon Mulder</i>	Mulder	X			
<i>Don Brundt</i>	Brundt			X	
<i>Ving Kohring</i>	Kohring	X			
<i>Alan Austerman</i>	Austerman	X			
<i>J. DAVIES</i>	J. DAVIES	X			
<i>Grussendorf</i>	Grussendorf			X	
<i>Williams</i>	Williams	X			
<i>Forster</i>	Forster	X			

CHAIR'S SIGNATURE *Gene Theriault* *Edon Mulder*  
Theriault Mulder

# FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO. HCS CSSB133 (FIN)

Revision Date/Time _____	Dept. Affected _____	Dept of Admin. _____
Title <u>REGULATORY COMMISSION OF ALASKA</u>	BRU	AOGCC
Sponsor <u>Pearce</u>	Component	AOGCC
Requester <u>House FIN</u>	Component Serial No.	<u>2010</u>

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

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual	147.0	147.0	147.0	147.0	147.0	147.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>147.0</b>	<b>147.0</b>	<b>147.0</b>	<b>147.0</b>	<b>147.0</b>	<b>147.0</b>

<b>CAPITAL EXPENDITURES (GF)</b>	321.9	0.0	0.0	0.0	0.0	0.0
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<b>CHANGE IN REVENUES ( )</b>	0.0	0.0	0.0	0.0	0.0	0.0
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	147.0	147.0	147.0	147.0	147.0	147.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>147.0</b>	<b>147.0</b>	<b>147.0</b>	<b>147.0</b>	<b>147.0</b>	<b>147.0</b>

Estimate of any current year (FY99) cost: \_\_\_\_\_

**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)

**Operating Budget**

This bill creates the Regulatory Commission of Alaska. The bill also requires the AOGCC and the APUC to be co-located. \$147.0 of additional operating funds are necessary for lease costs associated with the move. (8,000 X \$2.00/sq. ft. less \$45,000 available from current facility maintenance budget)

**Capital Budget**

Relocating the AOGCC offices will require a capital expenditure of \$281.9 in FY 2000 to cover moving costs and new office furniture for 23 employees. AOGCC will also need to invest in a new computer network system to be compatible with the APUC system. The cost for an updated network is estimated to be \$40.0 and is also included in the capital request.

Prepared by B Robert Christenson, PE  
 Division Alaska Oil and Gas Conservation Commission  
 Approved by Commissioner [Signature]  
 Agency \_\_\_\_\_

Phone 279-1433  
 Date/Time \_\_\_\_\_  
 Date 5/12/99 5/13/99

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# FISCAL NOTE

**STATE OF ALASKA**  
**1999 LEGISLATIVE SESSION**

**BILL NO. H CSSB 133 (L&C)**

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected \_\_\_\_\_  
 Title Alaska Public Utilities Commission BRU AK Public Utilities Commission/AEGCC  
 Component APUC/ARC Operations  
 Sponsor Senator Pearce  
 Requester House Finance Component Serial No. 346

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

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	3,287.0					
Travel	35.0					
Contractual	1,300.9					
Supplies	62.5					
Equipment	13.8					
Land & Structures	0.0					
Grants & Claims	0.0					
Miscellaneous	0.0					
<b>TOTAL OPERATING</b>	<b>4,699.2</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>500.0</b>					
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1110 APUC Rcpts	4,699.2	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>4,699.2</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY99) cost: 0.0

**POSITIONS**

Full-time	55	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

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

The APUC recently contracted for an analysis to determine the recommended specifications and cost of an information management system that would fulfill the requirements specified in the proposed CS. Without the benefit of the results of this study, a capital appropriation of \$500,000 is estimated for this cost.

Potential administrative savings from partial consolidation in FY2000 are not estimated because the timing of the AOGCC move is unknown. Similarly, potential administrative savings and/or improved efficiencies are likely in FY2001 and beyond in areas such file maintenance and reception services but are difficult to estimate at this time given the current understaffing at both agencies. Similarly, the potential cost increase of the public advocacy section is not reflected because of uncertainties in calculating the costs.

Prepared by Ginny Fay Phone 465-2503  
 Division Commissioner's Office Date/Time 5/11/99 11:19 AM  
 Approved by Commissioner Deborah B. Medwick Date 5/11/99  
 Agency \_\_\_\_\_

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## LETTER OF INTENT

SB 133 repeals the Alaska Public Utilities Commission and creates the Regulatory Commission of Alaska. In making this change to public utility regulation, it is the intent of the Legislature to respond to recommendations in legislative audits conducted in 1979, 1985 and 1989, and an audit performed by the National Regulatory Research Institute (NRRI) in 1998. The task of regulating public utilities has changed dramatically as the utility industry has moved from total regulation to regulated competition. The 21<sup>st</sup> Alaska Legislature is creating the Regulatory Commission of Alaska to address these changes in the utility industry on behalf of the people of the state of Alaska.

The Regulatory Commission of Alaska is better equipped than the APUC to respond to industry proposals for changes in utility services, and to protect the interests of ratepayers in the wake of these changes. SB 133 gives the chair authority over administrative matters, leaving the other commissioners free to resolve substantive issues. To address the problem of the APUC's case backlog and time-consuming decision-making process, SB 133 allows panels of three commissioners, hearing officers or arbitrators to resolve cases where appropriate. It also requires the RCA to adopt regulations setting procedural timelines. To address the problems created by changing APUC staff's role between advocate and advisor, it establishes a separate public advocacy section within the RCA.

SB 133 will improve this agency's accountability to the public. The RCA is required to establish a Management Information System, similar to the Legislature's BASIS system so that the public and industry can be better informed about the RCA's proceedings. It requires the RCA to implement a time management system to record the amount of time spent on filings from different industries, so that the Regulatory Cost Charge can be more fairly assessed.

This year is an opportune time to make these changes. The Alaska Public Utilities Commission would begin winding down on June 30, 1999 under the sunset law. SB 133 requires the governor to appoint, and the Legislature to confirm, five commissioners who will represent the interests of the public.

SB 133 provides for a study of the possibility of combining the functions of the Regulatory Commission of Alaska and the Alaska Oil and Gas Conservation Commission. The results of a study by the Legislative Budget and Audit Committee will be presented to the next session of this Legislature. If the Legislature decides to combine the two agencies' functions, the challenge of making that transition will be significantly eased by the creation and operating experience of the RCA under SB 133.

1-LS077(VT)  
Cramer  
5/12/99

NO OBJ

adopted 5/12/99 pm

**HOUSE CS FOR CS FOR SENATE BILL NO. 133(FIN)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIRST LEGISLATURE - FIRST SESSION**

**BY THE HOUSE FINANCE COMMITTEE**

Offered:  
Referred:

Sponsor(s): **SENATOR PEARCE**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act creating and relating to the Regulatory Commission of Alaska and  
2 transferring to it certain powers and duties of the Alaska Public Utilities  
3 Commission; repealing the Alaska Public Utilities Commission; relating to the  
4 powers of the chair of the Regulatory Commission of Alaska; relating to  
5 regulatory cost charges for public utilities and pipelines; relating to the appellate  
6 procedures of the Regulatory Commission of Alaska; relating to the Alaska Oil  
7 and Gas Conservation Commission; and providing for an effective date."

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

9 \* Section 1. AS 42 is amended by adding a new chapter to read:

10 **Chapter 04. Regulatory Commission of Alaska.**

11 **Article 1. Commission and Staff.**

12 **Sec. 42.04.010. Regulatory Commission of Alaska created.** (a) There is  
13 created within the Department of Commerce and Economic Development as an

1 independent agency of the state the Regulatory Commission of Alaska.

2 (b) When a vacancy occurs in the office of chair, the commission may  
3 nominate one of its members to serve as chair. When a vacancy occurs in the office  
4 of chair, the governor shall designate the chair of the commission, either by selecting  
5 the member nominated by the commission or another member. The term as chair is  
6 four years. The chair may not be appointed to successive terms as chair.

7 **Sec. 42.04.020. Commissioners.** (a) The commission consists of five  
8 commissioners appointed by the governor and confirmed by the legislature in joint  
9 session. To qualify for appointment as a commissioner, a person must be a member  
10 in good standing of the Alaska Bar Association or have a degree from an accredited  
11 college or university with a major in engineering, finance, economics, accounting,  
12 business administration, or public administration. Actual experience for a period of  
13 five years in the practice of law or in the field of engineering, finance, economics,  
14 accounting, business administration, or public administration is equivalent to a degree.

15 (b) The term of office of each member is six years. A commissioner, upon  
16 the expiration of a term, shall continue to hold office until a successor is appointed and  
17 qualified.

18 (c) A vacancy arising in the office of a commissioner shall be filled by  
19 appointment by the governor and confirmed by the legislature in joint session, and,  
20 except as provided in AS 39.05.080(4), an appointee selected to fill a vacancy shall  
21 hold office for the balance of the full term for which the predecessor on the  
22 commission was appointed.

23 (d) A vacancy in the commission does not impair the authority of a quorum  
24 of commissioners to exercise all the powers and perform all the duties of the  
25 commission.

26 (e) The governor may remove a commissioner from office for cause, including  
27 incompetence, neglect of duty, inability to serve, or misconduct in office or because  
28 the member, while serving on the commission, is convicted of a misdemeanor for  
29 violating a statute or regulation related to public utilities or is convicted of a felony.  
30 A commissioner, to be removed for cause, shall be given a copy of the charges and  
31 afforded an opportunity to be publicly heard in person or by counsel in the

1 commissioner's own defense upon not less than 10 days' notice. If a commissioner  
2 is removed for cause, the governor shall file with the lieutenant governor a complete  
3 statement of all charges made against the commissioner and the governor's finding  
4 based on the charges, together with a complete record of the proceedings.

5 (f) Members of the commission are in the exempt service and are entitled to  
6 a monthly salary equal to Step C, Range 26, of the salary schedule in AS 39.27.011(a)  
7 for Juneau, Alaska. The chair of the commission is entitled to a monthly salary equal  
8 to Step C, Range 27, of the salary schedule in AS 39.27.011(a) for Juneau, Alaska.

9 (g) Each commissioner, before entering upon the duties of office, shall take  
10 and subscribe to the oath prescribed for principal officers of the state.

11 **Sec. 42.04.030. Principal office; seal.** (a) The commission shall establish a  
12 principal office and branch offices necessary to discharge its business efficiently. For  
13 the convenience of the public or of parties to a proceeding, the commission may hold  
14 meetings, hearings, or other proceedings at other locations.

15 (b) The commission shall have an official seal.

16 **Sec. 42.04.040. Legal counsel.** (a) The Department of Law shall provide full-  
17 time legal counsel to the commission.

18 (b) The commission may, subject to the approval of the attorney general,  
19 contract for the services of specialized legal counsel or legal consultants.

20 **Sec. 42.04.050. Employment of commission personnel.** (a) The chair of the  
21 commission is responsible for directing the administrative functions of the commission  
22 and carrying out the policies as set by the commission. The commission chair may  
23 employ engineers, hearing officers, administrative law judges, experts, clerks,  
24 accountants, and other agents and assistants considered necessary. Employees of the  
25 commission who are not in the exempt service under AS 39.25.110 or the partially  
26 exempt service under AS 39.25.120, are in the classified service under AS 39.25.100.

27 (b) The chair of the commission may enter into a contract for no more than  
28 \$5,000 to engage the services of a consultant or expert the chair considers necessary.  
29 The commission may contract for and engage the services of consultants and experts  
30 the commission considers necessary.

31 (c) At the request of the Alaska Oil and Gas Conservation Commission and

1 to the extent workload permits, the Regulatory Commission of Alaska shall make  
2 available to the Alaska Oil and Gas Conservation Commission the services of a  
3 hearing officer.

4 **Sec. 42.04.060. Restrictions on members and employees.** (a) A member of  
5 the commission or an employee of the commission may not have an official connection  
6 with, hold stock or securities in, or have a pecuniary interest in a public utility within  
7 the state. Membership in a cooperative association is not a "pecuniary interest" within  
8 the meaning of this section; however, a member or employee of the commission may  
9 not be an officer, board member, or employee of a cooperative association. A member  
10 or employee may not act upon a matter in which a relationship of the member or  
11 employee with any person creates a conflict of interest.

12 (b) A member or employee of the commission may not, after leaving the  
13 position as a member or employee of the commission, act as agent for or on behalf of  
14 a public utility in any matter before the commission that was before the commission  
15 during the employee's employment or the member's term of office. A violation of this  
16 subsection is a class A misdemeanor.

17 (c) Members and employees of the commission, except clerical and secretarial  
18 staff, are subject to AS 39.50. Members and employees of the commission are subject  
19 to AS 39.52.

20 (d) A member of the commission is disqualified from voting upon any matter  
21 before the commission in which the member has a conflict of interest.

22 **Sec. 42.04.070. Powers and duties of commission chair.** (a) The chair of  
23 the commission shall

24 (1) employ the commission staff;

25 (2) establish and implement a time management system for the  
26 commission;

27 (3) assign the work of the commission to members and staff of the  
28 commission so that matters before the commission are resolved as expeditiously and  
29 competently as possible; when assigning a matter, the chair shall also set a date by  
30 which time the matter should be completed.

31 (b) The chair of the commission may appoint a hearing officer or an

1 administrative law judge to hear a matter that has come before the commission; a  
2 member of the commission may serve as hearing officer or, if qualified, as an  
3 administrative law judge.

4 (c) The chair of the commission shall direct the public advocacy section to  
5 participate as a party in a matter when the commission believes that it is in the public  
6 interest to do so.

7 **Sec. 42.04.080. Decision-making procedures.** (a) Except as provided in  
8 AS 42.05.171 or AS 42.06.140, when a matter comes for decision before the  
9 commission under AS 42.05 or AS 42.06, the chair shall appoint a hearing panel  
10 composed of three or more members to hear, or if a hearing is not required, to  
11 otherwise consider, and decide the case. The panel shall exercise the powers of the  
12 commission with respect to the matter. - appeal gone -

13 (b) The commission shall adopt regulations by December 31, 1999, that  
14 establish standards of timeliness for the types of cases that come before the  
15 commission. The commission shall establish standards based in part on degrees of  
16 complexity of the cases.

### 17 **Article 2. Communications Carriers Section.**

18 **Sec. 42.04.100. Communications carriers section.** There is established  
19 within the commission a communications carriers section that shall develop,  
20 recommend, and administer policies and programs with respect to the regulation of  
21 rates, services, accounting, and facilities of communications common carriers within  
22 the state involving the use of wire, cable, radio, and space satellites.

### 23 **Article 3. Public Advocacy Section.**

24 **Sec. 42.04.150. Public advocacy section.** There is established within the  
25 commission a public advocacy section. The section shall participate as a party in  
26 matters that come before the commission when directed to do so in accordance with  
27 AS 42.04.070(c). The public advocacy section shall operate separately from the rest  
28 of the commission.

29 \* **Sec. 2.** AS 29.35.137(6) is amended to read:

30 (6) "local exchange telephone company" means a telephone utility  
31 certificated under AS 42.05 [BY THE ALASKA PUBLIC UTILITIES

1 COMMISSION] to provide local exchange service;

2 \* Sec. 3. AS 37.05.146(b) is amended to read:

3 (b) The program receipts listed in this subsection are accounted for separately,  
4 and appropriations from these program receipts are not made from the unrestricted  
5 general fund:

6 (1) federal receipts;

7 (2) University of Alaska receipts (AS 14.40.491);

8 (3) designated program receipts; in this paragraph, "designated program  
9 receipts" means money received by the state from a source other than the state or  
10 federal government that is restricted to a specific use by the terms of a gift, grant,  
11 bequest, or contract;

12 (4) receipts of the following:

13 (A) highway working capital fund (AS 44.68.210);

14 (B) correctional industries fund (AS 33.32.020);

15 (C) loan funds;

16 (D) international airport revenue fund (AS 37.15.430);

17 (E) corporate receipts earned or managed by a public  
18 corporation of the state;

19 (F) fish and game fund (AS 16.05.100);

20 (G) school fund (AS 43.50.140);

21 (H) training and building fund (AS 23.20.130);

22 (I) retirement funds (AS 14.25, AS 22.25, AS 26.05.222,  
23 AS 39.35, and former AS 39.37);

24 (J) permanent fund (art. IX, sec. 15, Alaska Constitution);

25 (K) public school trust fund (AS 37.14.110);

26 (L) second injury fund (AS 23.30.040);

27 (M) fishermen's fund (AS 23.35.060);

28 (N) FICA administration fund (AS 39.30.050);

29 (O) receipts of the employee benefits program established under  
30 AS 39.30.150 - 39.30.180;

31 (P) receipts of the deferred compensation program established

1 under AS 39.45;

2 (Q) clean air protection fund (AS 46.14.260);

3 (R) receipts of the group insurance programs established under  
4 AS 39.30.090;

5 (S) mental health trust fund (AS 37.14.031);

6 (T) Alaska children's trust (AS 37.14.200);

7 (U) commercial fisheries test fishing operations  
8 (AS 16.05.050(15));

9 (V) Regulatory Commission of Alaska [PUBLIC UTILITIES  
10 COMMISSION] under AS 42.05 and AS 42.06;

11 (5) receipts of or from the trust established by AS 37.14.400 -  
12 37.14.450, except reimbursements described in AS 37.14.410.

13 \* Sec. 4. AS 39.25.120(c) is amended by adding a new paragraph to read:

14 (25) hearing officers and administrative law judges of the Regulatory  
15 Commission of Alaska.

16 \* Sec. 5. AS 39.50.200(b)(24) is amended to read:

17 (24) Regulatory Commission of Alaska (AS 42.04.010) [PUBLIC  
18 UTILITIES COMMISSION (AS 42.05.010)];

19 \* Sec. 6. AS 42.05.151(b) is amended to read:

20 (b) The commission shall adopt regulations governing practice and procedure,  
21 consistent with due process of law, including the conduct of formal and informal  
22 investigations, pre-hearing conferences, hearings, and proceedings, and the handling  
23 of procedural motions by a single commissioner. The regulations must provide for  
24 the hearing or, when a hearing is not required, other consideration of a matter  
25 in accordance with AS 42.04.080. Technical rules of evidence need not apply to  
26 investigations, pre-hearing conferences, hearings, and proceedings before the  
27 commission. The commission shall provide for representation by out-of-state attorneys  
28 substantially in accordance with Rule 81, Alaska Rules of Civil Procedure.

29 \* Sec. 7. AS 42.05.171 is amended to read:

30 Sec. 42.05.171. **Formal hearings.** A formal hearing that the commission has  
31 power to hold may be held by or before a hearing panel appointed under

1 AS 42.04.080 [THREE OR MORE COMMISSIONERS], a hearing officer, or an  
2 administrative law judge designated for the purpose by the chair of the commission.  
3 In appropriate cases, a formal hearing may be held before an arbitrator  
4 designated for the purpose by the commission. The testimony and evidence in a  
5 formal hearing may be taken by the panel [COMMISSIONERS], by the hearing  
6 officer, by the arbitrator, or by the administrative law judge to whom the hearing has  
7 been assigned. A decision of a hearing officer, an arbitrator, or an administrative  
8 law judge is not final until approved by the commission. A commissioner who has  
9 not heard or read the testimony, including the argument, may not participate in making  
10 a decision of a hearing panel [THE COMMISSION]. In determining the place of a  
11 hearing, the commission shall give preference to holding the hearing at a place most  
12 convenient for those interested in the subject of the hearing.

13 \* Sec. 8. AS 42.05.254(a) is amended to read:

14 (a) A regulated public utility operating in the state shall pay to the commission  
15 an annual regulatory cost charge in an amount not to exceed the maximum  
16 percentage of adjusted gross revenue that applies to the utility sector of which the  
17 utility is a part. The regulatory cost charges that the commission expects to  
18 collect from all regulated utilities may not exceed .8 percent of the total adjusted  
19 gross revenue of all regulated public utilities derived from operations in the state [,  
20 AS MODIFIED UNDER (c) OF THIS SECTION IF APPROPRIATE]. An exempt  
21 utility shall pay the actual cost of services provided to it by the commission.

22 \* Sec. 9. AS 42.05.254(b) is amended to read:

23 (b) The commission shall by regulation establish a method to determine  
24 annually the amount of the regulatory cost charge for a public utility. If the amount  
25 the commission expects to collect under (a) of this section and under AS 42.06.286(a)  
26 exceeds the authorized budget of the commission, the commission shall, by order,  
27 reduce the percentages determined under (i) [SET OUT IN (a)] of this section so that  
28 the total amount of the fees collected approximately equals the authorized budget of  
29 the commission for the fiscal year.

30 \* Sec. 10. AS 42.05.254(h) is amended by adding a new paragraph to read:

31 (5) "adjusted gross revenue" means the gross revenue of a utility as

1 modified under (c) of this section, if appropriate.

2 \* **Sec. 11.** AS 42.05.254 is amended by adding a new subsection to read:

3 (i) The commission shall by regulation establish a method to determine  
4 annually the maximum percentage of adjusted gross revenue that will apply to each  
5 regulated public utility sector and the maximum percentage of gross revenue that will  
6 apply to the regulated pipeline carrier sector. The method established shall allocate  
7 the commission's costs, other than the cost of services provided to exempt utilities,  
8 among the regulated public utility sectors and the regulated pipeline carrier sector  
9 based on the relative amount of the commission's annual costs that is attributable to  
10 regulating each sector.

11 \* **Sec. 12.** AS 42.05.990(2) is amended to read:

12 (2) "commission" means the Regulatory Commission of Alaska  
13 [PUBLIC UTILITIES COMMISSION];

14 \* **Sec. 13.** AS 42.05.995 is amended to read:

15 **Sec. 42.05.995. Short title.** This chapter may be cited as the Alaska Public  
16 Utilities Regulatory [COMMISSION] Act.

17 \* **Sec. 14.** AS 42.06.05(b) is amended to read:

18 (b) The commission shall by regulation establish a method to determine  
19 annually the amount of the regulatory cost charge. If the amount the commission  
20 expects to collect under (a) of this section and under AS 42.05.254(a) exceeds the  
21 authorized budget of the commission, the commission shall, by order, reduce the  
22 percentage determined under (f) [SET OUT IN (a)] of this section so that the total  
23 amount of the fees collected approximately equals the authorized budget of the  
24 commission for the fiscal year.

25 \* **Sec. 15.** AS 42.06.286 is amended by adding a new subsection to read:

26 (f) The commission shall by regulation establish a method to determine  
27 annually the maximum percentage of gross revenue that will apply to each regulated  
28 public utility sector and the maximum percentage of gross revenue that will apply to  
29 the regulated pipeline carrier sector in accordance with AS 42.05.254(i).

30 \* **Sec. 16.** AS 42.06 is amended by adding a new section to read:

31 **Sec. 42.06.055. Commission decision-making procedures.** The commission

1 shall comply with AS 42.04.080 for matters that come before the commission for  
2 decision.

3 \* Sec. 17. AS 42.06.305 is amended by adding a new subsection to read:

4 (b) The commission's decision under this section shall be based on the best  
5 interest of the public.

6 \* Sec. 18. AS 42.06.445(e) is amended to read:

7 (e) A commissioner [, AND THE EXECUTIVE DIRECTOR,] may certify as  
8 to all official records of the commission under this section and may certify as to all  
9 official acts of the commission under this chapter.

10 \* Sec. 19. AS 42.06.630(2) is amended to read:

11 (2) "commission" means the Regulatory Commission of Alaska  
12 [PUBLIC UTILITIES COMMISSION] (AS 42.04.010);

13 \* Sec. 20. AS 42.45.020(b) is amended to read:

14 (b) Subject to AS 42.45.060, the department may make loans from the rural  
15 electrification revolving loan fund to electric utilities certified under AS 42.05 [BY  
16 THE ALASKA PUBLIC UTILITIES COMMISSION]. A loan from the fund may be  
17 made only for the purpose of extending new electric service into an area of the state  
18 that an electric utility may serve under a certificate of public convenience and  
19 necessity issued under AS 42.05 [BY THE ALASKA PUBLIC UTILITIES  
20 COMMISSION]. A loan may be made from the fund to an electric utility if the utility  
21 invests the money necessary to provide one pole, one span of line, one transformer,  
22 and one service drop for each consumer for whom immediate service would be  
23 provided by the extension of electric service. However, a loan may not be made from  
24 the fund unless

25 (1) the loan is recommended by a loan advisory committee appointed  
26 under AS 42.45.030; and

27 (2) the extension of electric service would provide immediate service  
28 to at least three consumers.

29 \* Sec. 21. AS 44.66.010(a)(4) is amended to read:

30 (4) Regulatory Commission of Alaska (AS 42.04.010) [PUBLIC  
31 UTILITIES COMMISSION (AS 42.05.010)] -- June 30, 2004 [1999];

1 \* Sec. 22. AS 44.83.425(3) is amended to read:

2 (3) "qualified utility" means an electric utility or an electric operating  
3 entity established as an instrumentality of two or more electric utilities certified under  
4 AS 42.05 [BY THE ALASKA PUBLIC UTILITIES COMMISSION] to serve all or  
5 part of a market area that is served or will be served by the power project, that the  
6 authority determines is capable of operating and maintaining the power project.

7 \* Sec. 23. AS 46.04.020(i) is amended to read:

8 (i) The superior court and, with respect to intrastate voyages, the Regulatory  
9 Commission of Alaska [PUBLIC UTILITIES COMMISSION,] under AS 42.05.361 -  
10 42.05.431, have concurrent jurisdiction to review and enjoin a charge, contract term,  
11 or financial responsibility requirement described under (h) of this section at the request  
12 of a vessel owner, operator, or charterer. Except as provided in this subsection,  
13 nothing in this section affects the jurisdiction of the Regulatory Commission of  
14 Alaska [PUBLIC UTILITIES COMMISSION].

15 \* Sec. 24. REPEAL OF STATUTES. AS 39.25.120(c)(6); AS 42.05.010, 42.05.020,  
16 42.05.030, 42.05.035, 42.05.040, 42.05.050, 42.05.071, 42.05.081, 42.05.091, 42.05.101,  
17 42.05.111, 42.05.121, 42.05.123, and 42.05.131 are repealed.

18 \* Sec. 25. REPORT CONCERNING RESTRUCTURING OF THE ALASKA OIL AND  
19 GAS CONSERVATION COMMISSION AND THE REGULATORY COMMISSION OF  
20 ALASKA. The Legislative Budget and Audit Committee shall prepare a report considering  
21 the functions of the Regulatory Commission of Alaska and the Alaska Oil and Gas  
22 Conservation Commission. The report must address whether it is in the best interest of the  
23 state to merge the Regulatory Commission of Alaska and the Alaska Oil and Gas Conservation  
24 Commission into a single commission and whether it is in the state's best interest to  
25 restructure the functions of the two commissions. The report shall be delivered to the  
26 governor and the legislature by the first day of the second session of the Twenty-First Alaska  
27 State Legislature.

28 \* Sec. 26. MANAGEMENT INFORMATION SYSTEM. The Regulatory Commission of  
29 Alaska shall develop its management information system and make the system accessible to  
30 the general public through the Internet for the purpose of tracking, scheduling, and managing  
31 all dockets within the commission.

1       \* Sec. 27. LOCATION OF THE ALASKA OIL AND GAS CONSERVATION  
2 COMMISSION. (a) The principal office of the Alaska Oil and Gas Conservation  
3 Commission shall move to the same location as the principal office of the Regulatory  
4 Commission of Alaska as soon as feasible, but in any case, no later than July 1, 2000.

5           (b) As soon as the Alaska Oil and Gas Conservation Commission moves to the same  
6 location as the Regulatory Commission of Alaska, the two commissions shall share record  
7 keeping facilities and clerical staff.

8       \* Sec. 28. REGULATORY COMMISSION OF ALASKA EMPLOYMENT OF HEARING  
9 OFFICER. To the extent that sufficient funds are appropriated for the purpose, during the  
10 state fiscal year ending June 30, 2000, the Regulatory Commission of Alaska shall employ,  
11 in addition to the hearing officers that the former Alaska Public Utilities Commission was  
12 authorized to employ on June 30, 1999, an additional hearing officer.

13       \* Sec. 29. TERMS AND INITIAL APPOINTMENTS. (a) Notwithstanding AS 42.05.030,  
14 the terms of members of the Alaska Public Utilities Commission expire at the close of  
15 business on June 30, 1999.

16           (b) The governor shall expeditiously make initial appointments to the Regulatory  
17 Commission of Alaska, created by sec. 1 of this Act. Appointments made under this  
18 subsection may not take effect before July 1, 1999.

19           (c) Notwithstanding AS 39.05.055, the terms of the initially appointed members of the  
20 Regulatory Commission of Alaska shall be set by the governor as follows:

- 21           (1) one member shall serve a five-year term;
- 22           (2) one member shall serve a four-year term;
- 23           (3) one member shall serve a three-year term;
- 24           (4) one member shall serve a two-year term; and
- 25           (5) one member shall serve a one-year term.

26       \* Sec. 30. TRANSITIONAL PROVISIONS. (a) Litigation, hearings, investigations, and  
27 other proceedings pending under a law repealed or amended by this Act, or in connection with  
28 functions transferred from the Alaska Public Utilities Commission to the Regulatory  
29 Commission of Alaska by this Act, continue in effect and may be completed notwithstanding  
30 a transfer or repeal provided for in this Act.

31           (b) Regulations in effect on June 30, 1999, that were adopted to implement a function

1 that is transferred by this Act remain in effect and shall be enforced by the Regulatory  
2 Commission of Alaska until amended.

3 (c) Wherever in Alaska Statutes affected by this Act there is a reference to regulations  
4 adopted under a section of law and there are no regulations adopted under that section because  
5 previous regulations adopted under another section are being enforced under (b) of this  
6 section, the reference shall be construed to refer to the previously adopted regulations until  
7 they are amended by the new agency.

8 (d) Except as provided in sec. 29(a) of this Act, contracts, rights, liabilities, and  
9 obligations created by or under a law repealed or amended by this Act, and in effect on June  
10 30, 1999, remain in effect notwithstanding this Act's taking effect.

11 (e) Records, equipment, appropriations, and other property of the Alaska Public  
12 Utilities Commission shall be transferred to the Regulatory Commission of Alaska to  
13 implement the provisions of this Act.

14 (f) Notwithstanding the amendments to AS 42.05.254 made by secs. 8 - 11 of this Act  
15 and to AS 42.06.286 made by secs. 14 and 15 of this Act, for the fiscal year ending June 30,  
16 2001, the Regulatory Commission of Alaska shall, by order, establish and use a model for the  
17 assessment of regulatory cost charges for that year, based on estimates for figures for which  
18 it does not have actual data.

19 \* Sec. 31. FIVE-YEAR SUNSET. The amendment to AS 44.66.010(a)(4), made by  
20 sec. 21 of this Act, is made notwithstanding AS 44.66.010(c).

21 \* Sec. 32. REVISOR INSTRUCTIONS. (a) In the following statutes, the revisor of  
22 statutes is instructed to change "Alaska Public Utilities Commission" to "Regulatory  
23 Commission of Alaska":

- 24 (1) AS 29.35.131(c);  
25 (2) AS 29.35.137(5);  
26 (3) AS 38.35.120(a) in three places;  
27 (4) AS 38.35.230(2);  
28 (5) AS 42.05.141(a);  
29 (6) AS 42.05.325(c);  
30 (7) AS 42.05.381(f) in both places;  
31 (8) AS 42.05.712(c);

- 1 (9) AS 42.05.712(d);
- 2 (10) AS 42.45.010(e);
- 3 (11) AS 42.45.110(a);
- 4 (12) AS 42.45.170(a);
- 5 (13) AS 42.45.170(e);
- 6 (14) AS 43.55.150(b);
- 7 (15) AS 43.56.210(7);
- 8 (16) AS 44.83.090(b) in both places;
- 9 (17) AS 45.50.473(a);
- 10 (18) AS 45.50.473(b);
- 11 (19) AS 45.50.475(b);
- 12 (20) AS 45.50.475(c); and
- 13 (21) AS 45.63.080(12).

14 (b) In the following statutes, the revisor of statutes is instructed to change "Alaska  
15 Public Utilities Commission" to "former Alaska Public Utilities Commission or the Regulatory  
16 Commission of Alaska":

- 17 (1) AS 09.65.085(a);
- 18 (2) AS 10.25.020(6); and
- 19 (3) AS 18.57.020(c).

20 (c) In the following statutes, the revisor of statutes is instructed to change "by the  
21 Alaska Public Utilities Commission" to "by the former Alaska Public Utilities Commission  
22 or by the Regulatory Commission of Alaska":

- 23 (1) AS 29.35.050(b) in both places;
- 24 (2) AS 29.35.050(c);
- 25 (3) AS 29.35.060(a);
- 26 (4) AS 29.35.060(b); and
- 27 (5) AS 42.45.200(e).

28 \* Sec. 33. (a) Section 29 of this Act takes effect immediately under AS 01.10.070(c).

29 (b) Sections 8 - 11, 14, and 15 of this Act take effect July 1, 2000.

30 (c) Except as provided in (a) and (b) of this section, this Act takes effect July 1, 1999.

5/12/99

#1

NO 013j - adopted

AMENDMENT

OFFERED IN THE HOUSE

TO: HCSCSSB 133(FIN)  
Version "T" 5/12/99

Page 4, line 6

After "utility"

Insert "or pipeline carrier"

5/12/99

#2

~~Withdrawn~~

Amend

Adopted

AMENDMENT

OFFERED IN THE HOUSE

TO: HCSCSSB 133(FIN)  
Version "T" 5/12/99

Page 12, lines 8 - 12

Delete all

Renumber sections accordingly

Withdrawn

5/12/99 pm

1-L50771\Y.13

Chenoweth

5/11/99

AMENDMENT #3

OFFERED IN THE HOUSE

TO: HCS CSSB 133(L&C)

1 Page 1, following line 8:

2 Insert new bill sections to read:

3 **\*\* Section 1.** AS 31.05.026 is amended by adding a new subsection to read:

4 (f) In a dispute between the commission and the Department of Natural  
5 Resources regarding a specific course of action to be taken or a specific decision  
6 made, the action or decision of the commission prevails.

7 **\* Sec. 2.** AS 31.05.110(a) is amended to read:

8 (a) To prevent, or to assist in preventing waste, to insure a greater ultimate  
9 recovery of oil and gas, and to protect the correlative rights of persons owning  
10 interests in the tracts of land affected, these persons may validly integrate their  
11 interests to provide for the unitized management, development, and operation of such  
12 tracts of land as a unit. The [WHERE, HOWEVER, THEY HAVE NOT AGREED  
13 TO INTEGRATE THEIR INTERESTS, THE] commission, upon proper petition, after  
14 notice and hearing, has jurisdiction, power, and authority, and it is its duty to make  
15 and enforce orders and do the things necessary or proper, to carry out the purposes  
16 of this section, including making and enforcing orders and doing other things  
17 necessary to require compulsory unitization or reunification in a manner that,  
18 based on the commission's findings, ensures a greater ultimate recovery of oil  
19 and gas.

20 **\* Sec. 3.** AS 31.05.110(q) is amended to read:

21 (q) This section applies to all voluntary and involuntary units formed in the  
22 state. [SUBSECTIONS (a) AND (g) - (p) OF THIS SECTION APPLY TO ALL  
23 VOLUNTARY UNITS FORMED IN THE STATE AND TO A VOLUNTARY  
24 COOPERATIVE OR UNIT PLAN OF DEVELOPMENT OR OPERATION  
25 ENTERED INTO IN ACCORDANCE WITH AS 38.05.180(p).]

1 (r) The commission shall require every producer or unit operator subject to  
2 an order made by the commission under this section and every producer or unit  
3 operator who has established a voluntary cooperative or unit plan of development or  
4 operation under AS 38.05.180(p) to provide to the commission the most recent  
5 reproductions of the unit plan of development or operation reservoir models of any  
6 type that relates to the producer's or unit operator's collection and accumulation of  
7 engineering and production data. A producer or unit operator shall provide the  
8 information and data required by the commission under this subsection."

9 Page 1, line 9:

10 Delete "\* Section 1."

11 Insert "\* Sec. 5."

12 Renumber the following bill sections accordingly.

13 Page 13, line 4:

14 Delete "sec. 20"

15 Insert "sec. 24"

no logs 5/12/99  
Adopted #4

I-LS0771\T.1  
Cramer/  
5/12/99

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: HCS CSSB 133(FIN), Draft Version "T"

1 Page 8, line 10, following "panel":

2 Delete "[THE COMMISSION]"

3 Insert ". A party may file a petition for reconsideration of a decision by a hearing  
4 officer, an arbitrator, or an administrative law judge that has been approved by the  
5 commission, or a decision of a hearing panel. The full commission shall act on the  
6 petition"

OR AN APPEAL OF

nolobg  
Adopted

5112199  
#5 THERIAULT

AMENDMENT

OFFERED IN THE HOUSE

TO: HCSCSSB 133(FIN)  
Version "T" 5/12/99

Page 10, line 31

After "June 30,"

Delete "2004"

Insert "2002"

FISCAL NOTE

No: 3

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

Version: HCS CSSB 133 (L&C)  
(H) Publish Date: 5/8/99

Revision Date: \_\_\_\_\_  
Title: Combine APUC and AOGCC  
Sponsor: Senator Pearce  
Requestor: (H) L&C

Department Affected: Administration  
BRU: AOGCC  
Component: AOGCC  
COMPONENT SERIAL NO. 2010

Expenditures/Revenues: (Thousands of Dollars)  
Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2000	FY 2001	FY2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	147.0	147.0	147.0	147.0	147.0	147.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	147.0	147.0	147.0	147.0	147.0	147.0

CAPITAL EXPENDITURES	321.9	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
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	147.0	147.0	147.0	147.0	147.0	147.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	147.0	147.0	147.0	147.0	147.0	147.0

Estimate of any current year (FY 99) cost: \$ \_\_\_\_\_

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.)

Operating Budget

This bill combines the AOGCC and APUC offices and will relocate the AOGCC offices to the current APUC office location. \$147.0 of additional operating funds are necessary for AOGCC lease costs at the APUC building, (8,000 x \$2.00/sq. ft. less \$45,000 available from current facility maintenance budget).

Capital Budget

Relocating the AOGCC offices will require a capital expenditure of \$281.9 in FY 2000 to cover moving costs and new office furniture for 23 employees. AOGCC will also need to invest in a new computer network system to be compatible with APUC. The cost for an updated network is estimated to be \$40.0 and is also included in the capital request.

Prepared by: Robert Christenson, PE  
Division: Alaska Oil and Gas Conservation Commission

Phone: 279-1433  
Date: \_\_\_\_\_

Approved by Commissioner: Robert Poe Jr.  
Agency: Department of Administration

Date: 5/6/99

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**FISCAL NOTE**

Bill Number: HCS CSSB 133 (L&C)

(H) Publish Date: 5/8/99

**STATE OF ALASKA  
1999 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) 5/6 9:00 Dept. Affected DOED  
 Title Alaska Public Utilities Commission BRU AK Public Utilities Commission/AEGCC  
 Component APUC/AECC Operations  
 Sponsor Senator Pearce  
 Requester (H)Labor & Commerce Component Serial No. 346

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

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	3,287.0					
Travel	35.0					
Contractual	1,300.9					
Supplies	62.5					
Equipment	13.8					
Land & Structures	0.0					
Grants & Claims	0.0					
Miscellaneous	0.0					
<b>TOTAL OPERATING</b>	<b>4,699.2</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>500.0</b>					
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1110 APUC Rcpts	4,699.2	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>4,699.2</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY99) cost: 0.0

**POSITIONS**

Full-time	55	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

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

The APUC recently contracted for an analysis to determine the recommended specifications and cost of an information management system that would fulfill the requirements specified in the proposed CS. Without the benefit of the results of this study, a capital appropriation of \$500,000 is estimated for this cost.

Potential administrative savings from partial consolidation in FY2000 are not estimated because the timing of the AOGCC move is unknown. Similarly, potential administrative savings and/or improved efficiencies are likely in FY2001 and beyond in areas such file maintenance and reception services but are difficult to estimate at this time given the current understaffing at both agencies.

Prepared by Ginny Fay Phone 465-2503  
 Division Commissioner's Office Date/Time 5/6/99 9:00 AM  
 Approved by Commissioner [Signature] Date 5/5/99  
 Agency [Signature]

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FISCAL NOTE

No: 3

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

Version: HCS CSSB 133 (L&C)  
(H) Publish Date: 5/8/99

Revision Date: \_\_\_\_\_  
Title: Combine APUC and AOGCC  
Sponsor: Senator Pearce  
Requestor: (H) L&C

Department Affected: Administration  
BRU: AOGCC  
Component: AOGCC  
COMPONENT SERIAL NO. 2010

Expenditures/Revenues: (Thousands of Dollars)  
Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2000	FY 2001	FY2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	147.0	147.0	147.0	147.0	147.0	147.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	147.0	147.0	147.0	147.0	147.0	147.0
CAPITAL EXPENDITURES	321.9	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	147.0	147.0	147.0	147.0	147.0	147.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	147.0	147.0	147.0	147.0	147.0	147.0

Estimate of any current year (FY 99) cost: \$ \_\_\_\_\_

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.)

Operating Budget

This bill combines the AOGCC and APUC offices and will relocate the AOGCC offices to the current APUC office location. \$147.0 of additional operating funds are necessary for AOGCC lease costs at the APUC building. (8,000 x \$2.00/sq. ft. less \$45,000 available from current facility maintenance budget).

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Relocating the AOGCC offices will require a capital expenditure of \$281.9 in FY 2000 to cover moving costs and new office furniture for 23 employees. AOGCC will also need to invest in a new computer network system to be compatible with APUC. The cost for an updated network is estimated to be \$40.0 and is also included in the capital request.

Prepared by: Robert Christenson, PE  
Division: Alaska Oil and Gas Conservation Commission

Phone: 279-1433  
Date: \_\_\_\_\_

Approved by Commissioner: Robert Poe  
Agency: Department of Administration

Date: 5/6/99

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**FISCAL NOTE** Bill Version: HCS CSSB 133 (L&C)

(H) Publish Date: 5/8/99

**STATE OF ALASKA  
1999 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) 5/6 9:00 Dept. Affected DOED  
 Title Alaska Public Utilities Commission BRU AK Public Utilities Commission/AEGCC  
 Component APUC/AECC Operations  
 Sponsor Senator Pearce  
 Requester (H)Labor & Commerce Component Serial No. 346

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

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	3,287.0					
Travel	35.0					
Contractual	1,300.9					
Supplies	62.5					
Equipment	13.6					
Land & Structures	0.0					
Grants & Claims	0.0					
Miscellaneous	0.0					
<b>TOTAL OPERATING</b>	<b>4,699.2</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>500.0</b>					
-----------------------------	--------------	--	--	--	--	--

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

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1110 APUC Rcpts	4,699.2	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>4,699.2</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY99) cost: 0.0

**POSITIONS**

Full-time	55	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

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

The APUC recently contracted for an analysis to determine the recommended specifications and cost of an information management system that would fulfill the requirements specified in the proposed CS. Without the benefit of the results of this study, a capital appropriation of \$500,000 is estimated for this cost.

Potential administrative savings from partial consolidation in FY2000 are not estimated because the timing of the AOGCC move is unknown. Similarly, potential administrative savings and/or improved efficiencies are likely in FY2001 and beyond in areas such file maintenance and reception services but are difficult to estimate at this time given the current understaffing at both agencies.

Prepared by Ginny Fay Phone 465-2503  
 Division Commissioner's Office Date/Time 5/6/99 9:00 AM  
 Approved by Commissioner Date 5/5/99  
 Agency

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**FISCAL NOTE**

No: 3

**STATE OF ALASKA**  
**1999 LEGISLATIVE SESSION**

Version: HCS CSSB 130 (L&C)  
 (H) Publish Date: 5/8/99

Revision Date: \_\_\_\_\_  
 Title: Combine APUC and AOGCC  
 Sponsor: Senator Pearce  
 Requestor: (H) L&C

Department Affected: Administration  
 BRU: AOGCC  
 Component: AOGCC  
 COMPONENT SERIAL NO. 2010

**Expenditures/Revenues:** (Thousands of Dollars)  
 Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2000	FY 2001	FY2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	147.0	147.0	147.0	147.0	147.0	147.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>147.0</b>	<b>147.0</b>	<b>147.0</b>	<b>147.0</b>	<b>147.0</b>	<b>147.0</b>

CAPITAL EXPENDITURES	321.9	0.0	0.0	0.0	0.0	0.0
----------------------	-------	-----	-----	-----	-----	-----

CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

**FUND SOURCE:** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	147.0	147.0	147.0	147.0	147.0	147.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
<b>TOTAL</b>	<b>147.0</b>	<b>147.0</b>	<b>147.0</b>	<b>147.0</b>	<b>147.0</b>	<b>147.0</b>

Estimate of any current year (FY 99) cost: \$ \_\_\_\_\_

**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.)**

**Operating Budget**

This bill combines the AOGCC and APUC offices and will relocate the AOGCC offices to the current APUC office location. \$147.0 of additional operating funds are necessary for AOGCC lease costs at the APUC building. (8,000 x \$2.00/sq. ft. less \$45,000 available from current facility maintenance budget).

**Capital Budget**

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Prepared by: Robert Christenson, PE  
 Division: Alaska Oil and Gas Conservation Commission

Phone: 279-1433  
 Date: \_\_\_\_\_

Approved by Commissioner: Robert Poe Jr.  
 Agency: Department of Administration

Date: 5/6/99

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# FISCAL NOTE

Bill Version: HCS CSSB 133 (L&C)

(H) Publish Date: 5/8/99

**STATE OF ALASKA  
1999 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) 5/6 9:00 Dept. Affected DOED  
 Title Alaska Public Utilities Commission BRU AK Public Utilities Commission/AEGCC  
 Component APUC/AECC Operations  
 Sponsor Senator Pearce  
 Requester (H)Labor & Commerce Component Serial No. 346

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

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	3,287.0					
Travel	35.0					
Contractual	1,300.9					
Supplies	62.5					
Equipment	13.8					
Land & Structures	0.0					
Grants & Claims	0.0					
Miscellaneous	0.0					
<b>TOTAL OPERATING</b>	<b>4,699.2</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>500.0</b>					
-----------------------------	--------------	--	--	--	--	--

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

**FUND SOURCE (Thousands of Dollars)**

FUND SOURCE	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1110 APUC Rcpts	4,699.2	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>4,699.2</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY99) cost: 0.0

**POSITIONS**

POSITIONS	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Full-time	55	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

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

The APUC recently contracted for an analysis to determine the recommended specifications and cost of an information management system that would fulfill the requirements specified in the proposed CS. Without the benefit of the results of this study, a capital appropriation of \$500,000 is estimated for this cost.

Potential administrative savings from partial consolidation in FY2000 are not estimated because the timing of the AOGCC move is unknown. Similarly, potential administrative savings and/or improved efficiencies are likely in FY2001 and beyond in areas such file maintenance and reception services but are difficult to estimate at this time given the current understaffing at both agencies.

Prepared by Ginny Fay  
 Division Commissioner's Office  
 Approved by Commissioner [Signature]  
 Agency [Signature]

Phone 465-2503  
 Date/Time 5/6/99 9:00 AM  
 Date 5/5/99

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