

HB

157

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House Bill 157
House Labor and Commerce Committee

1. Greetings – Good afternoon, my name is Robert Baumgartner, I am president of Bristol Alliance Fuels, an independent Tank Farm Operator and Fuel Supplier in Dillingham, Alaska.
2. On behalf of Bristol Alliance and our related operations with approximately 20 employees, I am opposed to House Bill 157 as it is written.
3. I am painfully fully aware of the high cost of fuel, especially in rural Alaska. But the causes for such high prices have more to do with global and west coast energy markets than rural delivery systems.
4. There is tremendous infrastructure that has been invested in and assembled by many private entities throughout the State of Alaska for the purpose of providing fuel products to the residents of Alaska.
5. HB 157 provides an unfair advantage to electric utilities, including publicly funded or subsidized electric cooperative utilities, to provide this service in competition with private industry.
6. There are currently 117 Motor Fuel Qualified Dealers licensed by the State of Alaska to provide fuel, some of which are operators with multiple tank farm sites. Bristol Alliance Fuels is just one dealer with a single site located in Dillingham. Dillingham also has another local dealer, Delta Western, Inc. While I cannot speak for Delta or any other dealer in the state, I can say that our operation alone requires invested and operating capital of over \$10 million.
7. After investing 20 years building our enterprise, I resent the effort to thwart the free market system: that encourages such initiative. There must be other ways to address the high costs of energy delivery in the State of Alaska.
8. This bill will result in an even greater imbalance in the price of energy products especially in rural areas. Not everyone will be able to take advantage of this service and those that are left to be supplied by private industry will be called upon to support an infrastructure requiring even higher margins to carry the related costs of such investments. In many communities, your bill will result in higher fuel costs for those who can least afford it.
9. The Institute of Social and Economic Research previously investigated this particular idea for the onetime Western Alaska Fuel Cooperative, located in Dillingham, Alaska. The ultimate end of years of effort and support by the Alaska Power Authority as well as the explicit assistance of the City of Dillingham and the investigation by the local electric utility, Nushagak Electric Cooperative, found the effort was not practical. Why? Fundamentally, because

there were already two fuel companies in Dillingham. A fuel cooperative would not be economically feasible if required to stand on its own merits in a divided and small marketplace.

10. There are some who may question Bristol Alliance's motives but let me be very clear about this. I believe in the free market system and am opposed to consolidating monopolistic positions. Along with AVEC, the City of Bethel, and others, Bristol Alliance has opposed the consolidation of fuel suppliers in the Yukon-Kuskoquim area.
11. There are communities so small with no fuel delivery system in place where a waiver of current restrictions placed on electric utilities might apply, but a blanket approach that encourages subsidies and movement away from entrepreneurial effort is not the way.
12. Bristol Alliance Fuels is opposed to this legislation as it is written. Publicly funded or subsidized electric utilities should not compete with private industry and have no business doing so.
13. I would be happy to help explore what other methods might be employed to address the high costs of energy delivery, especially in rural Alaska.
14. Are there any questions?
15. Thank you for listening to my concerns.



April 7, 2005

Subject: House Bill 157

Dear Representative Harris:

Service Oil & Gas, Inc. has been privileged to do business in Alaska since 1975. Over the years, we have grown our business to include branch offices in Glennallen, Valdez, Delta Junction, Fairbanks, Talkeetna, Wasilla, Palmer and Anchorage. We provide work for 120 Alaskans in jobs that provide good compensation and benefits for them and their families. We are writing to express our concerns about the referenced bill now before the House Labor & Commerce Committee.

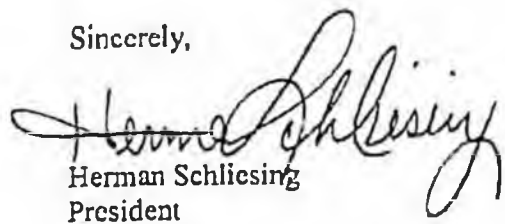
Among other changes, this bill would amend existing law to allow electric cooperatives, including publicly funded or subsidized non-profit electric cooperatives, to commercially sell fuel to consumers, businesses and other entities. HB 157 would enable competition between the electric cooperatives and local fuel retailers, many of which are local corporations and private individuals, directly impacting the economy in rural Alaska. Service Oil & Gas, Inc., along with other private companies in the fuel distribution and sales business in Alaska, is opposed to this legislation.

HB 157 as written would permit publicly funded or subsidized non-profit electric cooperatives to compete with the essential services now being provided throughout Alaska by private enterprise. We fully appreciate that fuel prices have recently reached historically high levels. We also recognize the direct impact this has on the cost of living and the cost of doing business, particularly in many rural Alaska communities. HB 157 would not change these dynamics nor does it address the fundamental fact that fuel is a basic commodity driven by global, regional and local free market forces.

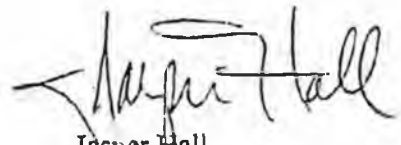
We respectfully request that you thoroughly weigh the public policy implications of this proposed legislation. We trust you will find that the broad legislative relief

proposed in HB 157 is inappropriate where viable, sustainable private enterprise fuel suppliers are providing valuable and needed services to the general public.

Sincerely,



Herman Schliesing
President
907.822.8429
herman@serviceoil.com



Jasper Hall
General Manager
907.822.8427
jasper@serviceoil.com

CROWLEY

DRAFT

April 6, 2005

Subject: Alaska House Bill 157 (HB 157)

Dear Business Colleagues:

We wanted to bring your attention to Alaska House Bill 157 introduced in the Legislature in February. A copy of the most recent draft of HB 157 is attached. This bill is now before the House Labor & Commerce Committee.

Among other changes, this bill would amend existing law to allow electric cooperatives, including publicly funded or subsidized non-profit electric cooperatives, to commercially sell fuel to consumers, businesses and other entities. Crowley, along with other private companies in the fuel distribution and sales business in Alaska, is opposed to this legislation. HB 157 as written would permit publicly funded or subsidized non-profit electric cooperatives to compete with the essential services now being provided throughout Alaska by private enterprise. We appreciate that fuel prices directly impact the cost of living and the cost of doing business, particularly in many rural Alaska communities. HB 157 would not change this dynamic or address the fundamental fact that fuel is a basic commodity driven by global, regional and local free market forces.

We respectfully suggest that you take the time to become familiar with this proposed legislation, fully consider its potential impact on your business, and actively communicate your views to the House Labor & Commerce Committee. A listing of Committee members is attached for your reference.

Yours truly,

M. Bruce Barto
Vice President & General Manager
Petroleum Services
206.332.8081
bruce.barto@crowley.com

James M. Dwight
Director, Sales
Petroleum Services
206.332.8084
jim.dwight@crowley.com

**Yukon Fuel Company**

April 19, 2005

Subject: Alaska House Bill 157 (HB 157)

Dear Representative Carl Moses:

Yukon Fuel Company has been privileged to do business in Alaska throughout the years. We are writing to express our concerns about the referenced bill now before the House Finance Committee.

Among other changes, this bill would amend existing law to allow electric cooperatives, including publicly funded or subsidized non-profit electric cooperatives, to commercially sell fuel to consumers, businesses and other entities. HB 157 would enable competition between the electric cooperatives and local fuel retailers, many of which are local corporations and private individuals, directly impacting the economy in rural Alaska. Yukon Fuel Company, along with other private companies in the fuel distribution and sales business in Alaska, is opposed to this legislation.

HB 157 as written would permit publicly funded or subsidized non-profit electric cooperatives to compete with the essential services now being provided throughout Alaska by private enterprise. We fully appreciate that fuel prices have recently reached historically high levels. We also recognize the direct impact this has on the cost of living and the cost of doing business, particularly in many rural Alaska communities. HB 157 would not change these dynamics nor does it address the fundamental fact that fuel is a basic commodity driven by global, regional and local free market forces.

Yukon Fuel Company respectfully requests that you thoroughly weigh the public policy implications of this proposed legislation. We trust you will find that the broad legislative relief proposed in HB 157 is inappropriate where viable, sustainable private enterprise fuel suppliers are providing valuable and needed services to the general public.

Yours very truly,

Mark Smith
President
907.777.5555
msmith@yukonfuel.com

**Yukon Fuel Company**

April 19, 2005

Subject: Alaska House Bill 157 (HB 157)

Dear Representative Kevin Meyer:

Yukon Fuel Company has been privileged to do business in Alaska throughout the years. We are writing to express our concerns about the referenced bill now before the House Finance Committee.

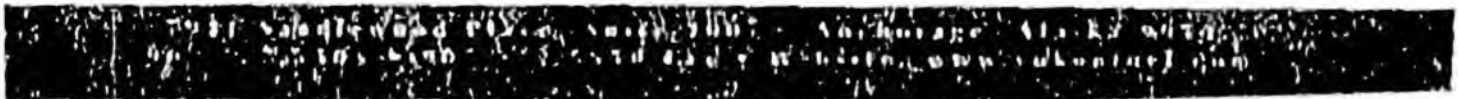
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Yours very truly

Mark Smith
President
907 777 5505
msmith@yukonfuel.com





April 19, 2005

Subject: Alaska House Bill 157 (HB 157)

Dear Representative Mike Chenault:

Yukon Fuel Company has been privileged to do business in Alaska throughout the years. We are writing to express our concerns about the referenced bill now before the House Finance Committee.

Among other changes, this bill would amend existing law to allow electric cooperatives, including publicly funded or subsidized non-profit electric cooperatives, to commercially sell fuel to consumers, businesses and other entities. HB 157 would enable competition between the electric cooperatives and local fuel retailers, many of which are local corporations and private individuals, directly impacting the economy in rural Alaska. Yukon Fuel Company, along with other private companies in the fuel distribution and sales business in Alaska, is opposed to this legislation.

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Yours very truly,

Jon Bartales
Kernal Supervisor
(907) 283-4542



April 19, 2005

Subject: Alaska House Bill 157 (HB 157)

Dear Representative Mike Chenault:

Yukon Fuel Company has been privileged to do business in Alaska throughout the years. We are writing to express our concerns about the referenced bill now before the House Finance Committee.

Among other changes, this bill would amend existing law to allow electric cooperatives, including publicly funded or subsidized non-profit electric cooperatives, to commercially sell fuel to consumers, businesses and other entities. HB 157 would enable competition between the electric cooperatives and local fuel retailers, many of which are local corporations and private individuals, directly impacting the economy in rural Alaska. Yukon Fuel Company, along with other private companies in the fuel distribution and sales business in Alaska, is opposed to this legislation.

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Yours very truly,

Michele Moore
Kanal Office Administrator
(907) 283-7893

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

Sectional Analysis for HB 157 BY: Representative Tom Anderson

Section 1. Amends AS 10.25.020

Adds the ability to form a limited liability company organized for any lawful purpose to the list of the powers of an electric cooperative.

STATE OF ALASKA

DEPARTMENT OF COMMERCE
COMMUNITY AND ECONOMIC DEVELOPMENT
REGULATORY COMMISSION OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

701 WEST EIGHTH AVENUE, SUITE 300
ANCHORAGE, ALASKA 99501-3469
PHONE: (907) 276-6222
FAX: (907) 276-0160
TTY: (907) 276-4533
WEBSITE: www.state.ak.us/rca/

April 12, 2005

The Honorable Kurt Olson, Co-Chairman
House Community & Regional Affairs Committee
Alaska House of Representatives
Alaska State Capitol Room 428
Juneau, AK 99801-1182

Re: HB 157

Dear Representative Olson:

During the committee hearing of HB 157 on March 31, 2005, a question was raised regarding the potential impact of this bill on the Power Cost Equalization (PCE) levels of electric utility cooperatives. We understand HB 157 would, in part, allow electric cooperatives to have memberships in LLCs that could be formed to purchase and sell fuel.

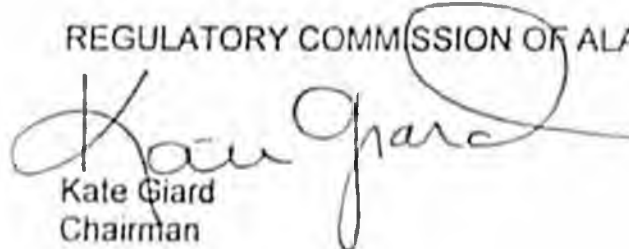
The amount of reimbursement or support that is provided under the PCE program is determined by calculating the total eligible costs incurred by the utility times the current funding rate. The total amount of PCE funding is determined annually by the Legislature and is allocated among eligible utilities on a pro-rata basis as determined by the Alaska Energy Authority. The current PCE pro rata funding rate is 65 percent of total eligible costs.

If cooperatives were successful in lowering their costs, then the fixed amount of Legislative funding for PCE could be allocated on a higher ratio than is available today. In summary, any reduction in an individual or group of utility's costs could have the effect of helping to increase the pro rata funding rate of all utilities participating in the PCE program.

If you have any additional questions, please feel free to call me at (907) 263-2110.

Warm regards,

REGULATORY COMMISSION OF ALASKA


Kate Giard
Chairman



STATE OF ALASKA

DEPARTMENT OF COMMERCE
COMMUNITY AND ECONOMIC DEVELOPMENT
REGULATORY COMMISSION OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

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WEBSITE: www.state.ak.us/rca/

April 13, 2005

The Honorable Tom Anderson, Chairman
House Labor & Commerce Committee
House of Representatives
Alaska State Capitol
Juneau, AK 99801-1182

Re: HB 157

Dear Chairman Anderson:

During the April 11, 2005 committee hearing on CSSSHB 157, the Regulatory Commission of Alaska (RCA) was asked to provide an opinion regarding how AS 10.25.010(a)(4) and AS 10.25.010(a)(9) relates to the proposed legislation and what the RCA's jurisdiction is in this area. Additionally, the RCA was asked whether it reviews issues of solvency and cross-ownership.

CSSSHB 157 proposes to amend AS 10.25.020, powers of electric cooperatives, by adding the following language allowing an electric utility cooperative to:

(8) become a member of other limited liability companies or corporations organized for any lawful purpose, or own stock in them;

(9) sell fuel not needed to generate electric energy.

There was testimony at the committee hearing that the existing language in AS 10.25.010(a)(9) already provided electric and telephone cooperatives with the power to become a member of other cooperatives or corporations or own stock in them. This appears to be correct. AS 10.25.010(a)(9) states, "[e]xcept as provided in (b) of this section, an electric or telephone cooperative may ... become a member of other cooperatives or corporations or own stock in them." The limitations addressed in section (b) relate to the use of funds to promote or oppose a candidate for the director of a cooperative.

We note that the earlier bill proposing to amend AS 10.25.010(a)(9) contained the reference to "cooperatives" while the language proposed in CSSSHB 157 for AS 10.25.020(8) drops this reference.
AS 12.05.141



At the hearing, it was suggested that AS 10.25.010(a)(4) may be at odds with AS 10.25.010(a)(9). AS 10.25.010(a)(4) provides that an electric or telephone cooperative may:

... construct, buy, lease, or otherwise acquire, and equip, maintain, and operate, and sell, assign, convey, lease, mortgage, pledge, or otherwise dispose of or encumber lands, buildings, structures, electric or telephone lines or systems, dams, plants and equipment, and any other real or personal property, tangible or intangible, that is necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized.

Our review of these provisions does not lead us to the conclusion that they are necessarily in conflict. The two provisions appear to address the different powers that a cooperative may exercise and do not appear to be a limitation on each other. An electric cooperative's ability to engage in activities other than the generation and distribution of power may be limited by other provisions such as AS 10.25.010(a)(4) and (14), and AS 10.25.610. However, interpretation and application of these statutes is not within the jurisdiction of the RCA.

The RCA's jurisdiction over the activities of electric cooperatives is found in AS 42.05 and is limited to public utility operations.³ An electric cooperative's membership in another cooperative or ownership interest in a corporation is not subject to our approval. We generally only review the implications of such an arrangement when the arrangement would affect the operations or rates of an economically regulated public utility, or the power cost equalization⁴ (PCE) levels of an unregulated utility.⁵

If a regulated electric cooperative were to purchase fuel from an affiliated interest, the RCA would review these costs to determine the reasonableness of including the costs in consumer rates. AS 42.05.511(c) provides that

In a rate proceeding the utility involved has the burden of proving that any written or unwritten contract or arrangement it may have with any of its affiliated interests for the furnishing of any services or for the purchase, sale, lease, or exchange of any property is necessary and consistent with the public interest and that the payment made therefor, or consideration given, is reasonably based, in part, upon the submission of satisfactory proof as to the cost to the affiliated interest of furnishing the service or property and, in part, upon the estimated cost the utility would have incurred if it furnished the service or property with its own personnel and capital.

³AS 42.05

⁴Many electric cooperatives are exempt from economic regulation under AS 42.05.711.

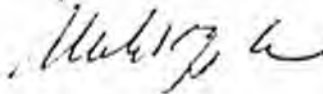
Thus, the RCA's authority is limited to determining whether the costs associated with affiliated transactions should be included in a regulated utility's rates.

The RCA also has the jurisdiction to review the affiliated transactions of non-regulated electric cooperatives when it sets PCE levels. The RCA reviews affiliated transactions under the same standard provided for in AS 42.05.511(c). While the RCA has the authority to determine the PCE levels of unregulated utilities, it does not have the authority to review the actual rates those utilities charge its customers.

If you have any additional questions, please feel free to call me at (907) 263-2110.

Warm regards,

REGULATORY COMMISSION OF ALASKA



 Kate Giard
Chairman

**HOUSE BILL NO. 157 BACKGROUND
MARCH 2005**

I. Introduction.

House Bill No. 157, "An Act clarifying the powers of electric or telephone cooperatives to become members of or own stock in other entities," proposes to amend AS 10.25.010(a) to read:

Sec. 10.25.010. Powers of electric or telephone cooperative; prohibited action. (a) Except as provided in (b) of this section, an electric or telephone cooperative may

...
(9) become a member of other cooperatives, limited liability companies, or corporations organized for any lawful purpose, or own stock in them;

....

The purpose and function of this amendment are to (1) clarify the existing power of an electric or telephone to become a member of, or own stock in, other legal entities, and (2) expressly include limited liability companies (which did not exist in Alaska until 1994) as a type of legal entity in which a cooperative can become a member.

II. Background.

A. Current powers of electric and telephone cooperatives.

As it currently exists, the Alaska Electric and Telephone Cooperative Act (AS 10.25) grants electric and telephone cooperatives broad powers to conduct various activities. For example, AS 10.25.010 provides 14 various general powers of electric and telephone cooperatives. In addition to traditional powers closely related to the provision of electric and telephone utility services, those powers include the power to:

(9) become a member of other cooperatives or corporations or own stock in them; [and]

...
(14) do and perform any other act and thing, and have and exercise any other power which may be necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized.

AS 10.25.010(a).

In addition, AS 10.25.630 provides:

This chapter is complete in itself and is controlling. The provisions of any other law of the state relating to the organization of a corporation, except as provided in this chapter, do not apply to a cooperative organized under this chapter. The enumeration of an object, purpose, power, manner, method or thing does not exclude like or similar objects, purposes, powers, manners, methods or things.

B. The current power to become members of, or own stock in, other legal entities.

As stated above, by statute, Alaska electric and telephone cooperatives, themselves, have the power to engage in a broad range of activities. In addition, through AS 10.25.010(a)(9), as it is currently written, electric and telephone cooperatives can also form subsidiary corporations or cooperatives either through becoming a member of other cooperatives or corporations or by owning stock in them. Ownership in a cooperative, and often in a non-profit corporation, occurs through "membership" in that entity. Ownership in a for-profit corporation occurs through ownership of "stock" in the corporation.

The power to become a member of, or own stock in, another cooperative or corporation allows a cooperative to own all or a portion of another legal entity that conducts activities separate from the cooperative's utility operations. Examples of this could include a cooperative purchasing stock in a publicly traded corporation for investment purposes, or owning all of the stock or membership interest of another corporation that performs services in which the cooperative is interested or has operational experience and expertise. For example, cooperatives often have wholly-owned subsidiary corporations that provide educational services and scholarships to members of the cooperative. In addition, some cooperatives form subsidiary corporations that separately provide other types of services, including Internet and miscellaneous contracting services.

III. The proposed amendment in HB 157 clarifies the power to become a member of, or own stock in, other legal entities "organized for any lawful purpose."

Again, AS 10.25.010(a)(9) already provides the power for an electric or telephone cooperative to "become a member of other cooperatives or corporations or own stock in them." The statute does not limit this power in any way, but there are no published Alaska court decisions that have addressed this power. In other states, however, courts have recently addressed challenges to the power of electric cooperatives to own stock in for-profit subsidiaries. Typically, the issue has arisen when an electric cooperative owns stock in a subsidiary corporation that sells propane gas to the cooperative's members. In those cases, competing propane distributors have challenged the cooperative's power to own a subsidiary corporation whose activities extend beyond the narrow activity of providing electric energy.

In recent decisions, courts in Alabama, Colorado, and Kentucky have held that an electric cooperative has the power to own a subsidiary corporation that provides propane gas service. However, courts in Georgia, Mississippi, and Texas have held that electric cooperatives cannot own subsidiary corporations that provide services not associated the provision of electric energy. Although the specific language of the particular cooperative statutes that were interpreted in those

cases vary in different ways from the language of the Alaska co-op statute. those cases could be cited in the future to help interpret cooperative powers in Alaska.

Given these recent conflicting court decisions from other states, there is a concern that AS 10.25.010(a)(9) could be misinterpreted in the future to infer an unintended and unstated limitation on the power of a cooperative to become a member of, or own stock in, other legal entities. That is, a litigant might attempt to argue that the statute should be interpreted to limit a cooperative's power to own a subsidiary to allow only ownership of entities that provide traditional electric or telephone utility services. Although there is no such limitation in AS 10.25.010(a)(9) as it currently exists, the uncertainty created by the conflicting court decisions makes it prudent to clarify that AS 10.25.010(a)(9) imposes no such limitation.

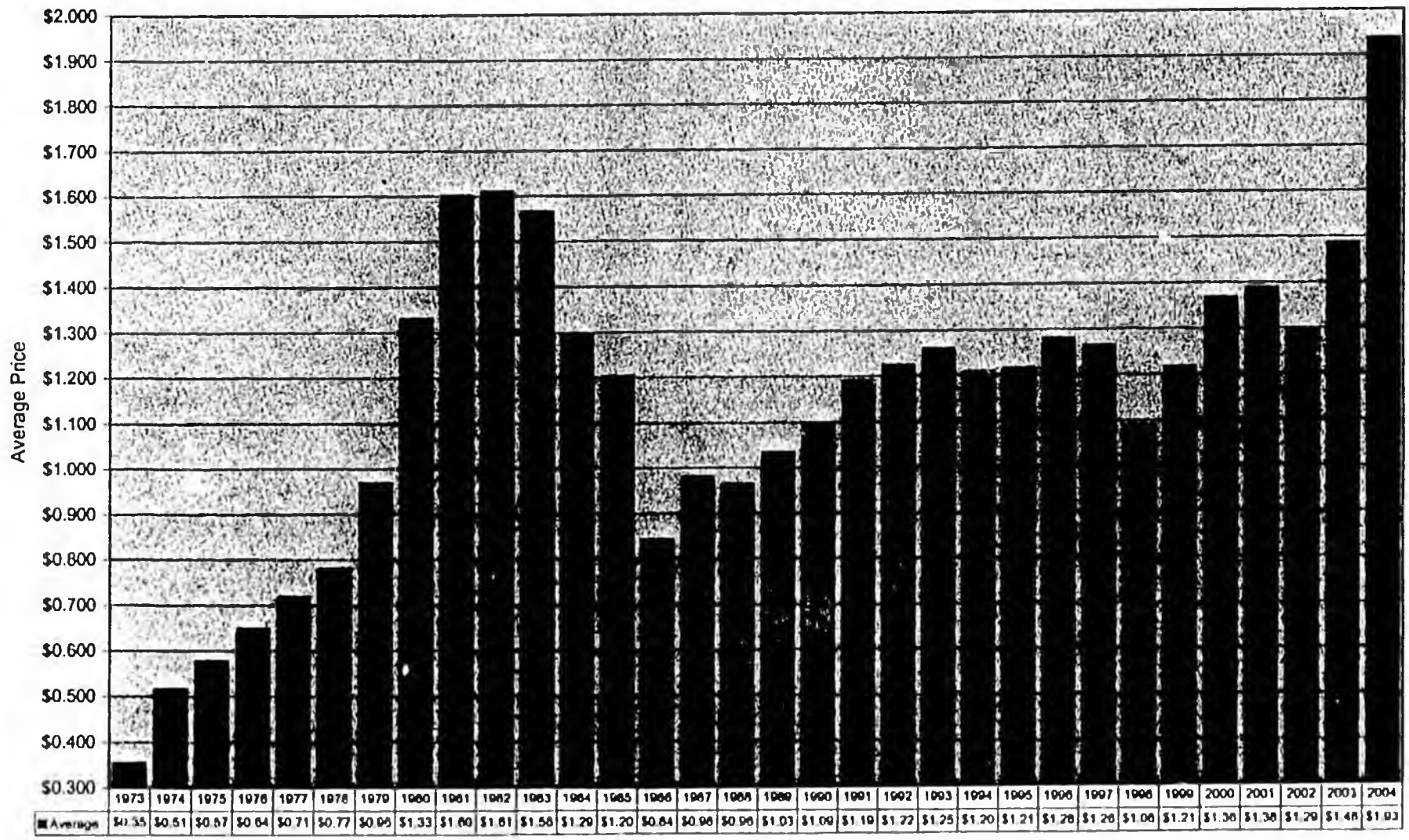
HB 157 proposes to clarify AS 10.25.010(a)(9) by adding the clause "organized for any lawful purpose." As amended, AS 10.25.010(a)(9) would provide that an electric or telephone cooperative may "become a member of other cooperatives, limited liability companies, or corporations organized for any lawful purpose, or own stock in them;". The addition of "organized for any lawful purpose" will clarify that the power of a cooperative to own an interest in another entity is not limited to only those entities that provide electric or telephone utility services.

This amendment simply preserves and clarifies the status quo with respect to cooperatives as they provide diversified services with meaningful benefits to their members. Particularly in rural areas of Alaska, co-op subsidiaries can fulfill important needs that are not directly associated with the provision of traditional electric or telephone utility service and that are, in many cases, requested by local residents.

For example, in some rural areas, cost-effective and environmentally sound bulk fuel storage, facilities maintenance, and delivery are lacking. This is an activity in which rural electric cooperatives have experience and expertise. Through membership or ownership interests in subsidiary entities, electric cooperatives may be able to provide those types of services more safely and at a lower cost than would otherwise occur.

The other change to AS 10.25.010(a)(9) proposed in HB 157 is the addition of "limited liability companies" as a legal entity in which a cooperative may become a member. Limited liability companies (LLCs) are a relatively new type of member-owned legal entity. They were first recognized in Alaska in 1994 and are codified in the Alaska Revised Limited Liability Company Act, AS 10.50. LLCs did not exist when AS 10.25.010(a)(9) was adopted. However, LLCs are increasingly becoming preferred over corporations and cooperatives for many types of non-profit and for-profit organizations, including subsidiaries. Even though LLCs are not prohibited by the current statute, the addition of "limited liability companies" in HB 157 clarifies this by expressly including LLCs as a type of legal entity in which an electric or telephone cooperative may become a member.

**Alaska Village Electric Cooperative, Inc.
1973 - 2004 Fuel Prices**





ALASKA POWER ASSOCIATION R E S O L U T I O N

1.6) A Resolution Supporting Legislative Action to Clarify the Cooperative's Ability to become the Full-Service Energy Provider in the Communities that they Serve

Alaska's electric cooperatives are increasingly receiving requests from their members asking the cooperative to become the full-service energy supplier in the community, supplying not only electric energy but also home heating oil and other forms of energy. Recent court cases in other states (notably, Georgia, Texas, and Mississippi) have called into question the ability of Alaska's electric cooperatives to form subsidiaries to respond to these member needs.

Alaska Power Association urges legislative action that would confirm Alaska's electric cooperatives' ability to meet this need by amending AS 10.25.010(a), Powers of electric or telephone cooperative, to include a new subsection to read:

(15) Become a member of or own stock in a corporation, limited liability company or subsidiary, organized for a lawful purpose or purposes for which a corporation or company may be organized.

Approved 12/04 by Alaska Power Association Board of Directors

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Anchorage, Alaska 99503

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eyould@alaskapower.org

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TELEPHONE
(907) 246-4224
FAX
(907) 246-6633

Bristol Bay Borough

March 25, 2005

Legislators:

The Bristol Bay Borough supports House Bill No. 157, expanding the powers given to electric or telephone cooperatives. We feel it is important to provide as many avenues as possible to reduce costs in rural Alaska. It will be impossible for rural Alaska to reduce costs if we are forced to do business with the limited existing companies presently providing services.

House Bill No.157 will afford an opportunity for electric or telephone cooperatives to work together to reduce costs, that until now remained fixed or on the increase.

THE BRISTOL BAY BOROUGH SUPPORTS HOUSE BILL 157 AND URGES THE ALASKA STATE LEGISLATURE TO PASS THIS ACT.

Thank you.

A handwritten signature in cursive script, appearing to read "Fred W. Pike".

Fred W. Pike, BBB mgr.



ALASKA VILLAGE ELECTRIC COOPERATIVE, INC.

April 11, 2005

Rep. Tom Andersen, Chairman
Rep. Pete Kott, Vice Chairman
Members of the House Labor and Commerce Committee
Room 17, Capitol Building
Juneau, Alaska

Re: **CSSSHB 157**

Honorable Chairman and Committee Members:

I regret that I am unable to testify in person before your committee on the merits of House Bill 157, clarifying the powers of electric cooperatives.

Please accept the attached written testimony supporting passage of this bill, with which I urge you to pass this bill out of your committee and to the House floor for consideration.

If any further information is needed, I am available at the address below, by email at mkohler@avec.org or by telephone at (907) 565-5531 at any time.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads 'Meera Kohler'.

Meera Kohler
President & CEO

Attachment



ALASKA VILLAGE ELECTRIC COOPERATIVE, INC.

ALASKA VILLAGE ELECTRIC COOPERATIVE, INC.

Support for Passage of HB 157

April 2005

HB 157 clarifies Alaska's existing statute on electric cooperatives, allowing them to establish subsidiaries or own stock in companies doing non-electric business without fear of legal challenge. Such challenges have occurred in other states, where some courts have ruled in favor of co-ops and some have ruled against.

HB 157 has been brought forward in response to members of electric cooperatives who are asking their locally owned, not-for-profit company to utilize the co-ops' established management and administrative structure to provide other essential community services such as heating oil in communities where such services are not available, or where existing suppliers are preparing to exit the market.

Objections are being raised, apparently by for-profit fuel transport interests, who cite such issues as "a non-level playing field" and "subsidies such as the Power Cost Equalization Program." These are not legitimate concerns. The cooperatives are not going to compete with the fuel transport companies. Any subsidiary providing fuel or other services, whether owned in part by an electric cooperative or not, would have to follow the same rules as any other company.

The issue of PCE is a non-issue. Any assets or operating costs that might be used by an electric co-op in any non-electric-related business would be required, by statute, to be separately accounted for under contract with the business. The practical effect of this would be to reduce eligible cost for the PCE program and would result potentially in lower PCE credits for our individual consumers. Our consumers would therefore expect that reduced PCE to be offset by lower costs for other essential goods and services that they would like their electric cooperative to provide for them. In that case, our consumers would benefit and the PCE program would also benefit.

It is indeed ironic that protests are emanating from the fuel transport industry – the very industry that is currently engaged in a process to merge to transform the current fuel oligopoly into a monopoly.

In the pending buyout of Yukon Fuel by Crowley Maritime, which incidentally, the utilities of Western Alaska have been fighting now for almost two years, the parties have asserted that the fuel market is an open one that 'anyone can enter' easily. While the electric cooperatives are not planning to compete with Yukon Fuel or Crowley Marine, they do want to have the ability to help form companies that can provide other services in communities that desperately need them. AVEC and its consumer-members throughout our 52 villages strongly support HB 157 and urge the House Labor & Commerce Committee to advance this bill without delay.

Josh Applebee

From: Tom Bolen [tbolen@nwabor.org]
Sent: Tuesday, April 12, 2005 10:08 AM
To: Rep. Tom Anderson
Subject: House Bill 157

Dear Rep. Anderson,

I feel compelled to follow my testimony yesterday afternoon before your committee with this email for several reasons. First, because I was the last to testify, I was very frustrated and didn't really deliver the concise message I had hope to deliver on behalf of the Northwest Arctic Borough.

Second, I took exception to many things said by the fuel companies present, but did not want to step out and take a strong adversarial position with them in light of the fact that we still have yet to go out for this years annual fuel bid.

The important points regarding this bill are as follows:

#1 We are not writing new law, we are only attempting to clarify existing law.

#2 In our area, Crowley DOES have a monopoly, and they are not the nice guys they portray themselves to be. They make a huge profit on our region, and that profit is at the expense of all fuel consumers in our Borough. If Crowley was doing such a great job, and their margins were so slim, we wouldn't be looking for another business model to lower the cost of fuels.

The reason that Yukon, and Delta Western do not routinely compete with Crowley in our region IS because Crowley has a monopoly with regard to logistics and infrastructure. Crowley recently attempted to ensure and strengthened its monopoly in its attempted merger with Yukon Fuel. Fortunately for us, this merger did not take place.

#3 The passage of HB 157 will NOT cause electric coops all across the state to go into the fuel business, as the fuel companies suggest. It will only happen on a limited basis, where cooperative boards see a need and financial viability. There is absolutely no need for any of us to have to explain where the capital financing for this business expansion will come from. If the financing is available and legal, and the boards of coops are willing, then fuel coops will emerge; if not, they won't. Fuel companies are frightened because they are about to lose their "gravy."

#4 Cooperatives are NOT against the law, or un-American; they are another viable business model, and the market may well determine that they will eventually displace "for Profit" fuel enterprises in some areas of rural Alaska.

#5 In our case in Northwest Arctic, it is our desire to create a cooperative whose members will be bulk fuel operators including municipal city governments, electric coops (AVEC), the school district, tribal governments, and independent operators. The Coop would supply the lowest cost wholesale fuels to those entities, who would either consume it, or retail it to the public. Village level enterprise would continue unchanged, except that fuels would cost less. We would not have individual residents as members. Kotzebue Electric, an existing electric Coop in Kotzebue, has the capacity to form a subsidiary that would be this "Fuel Coop."

#6 Passage of HB 157 would dissuade fuel companies from aggressively challenging the creation of such enterprises in order to protect their profits. A Northwest Arctic Bulk Fuel working group approached Crowley with an offer to purchase their Kotzebue Tank Farm several years ago. It was our perception that an international maritime company which owned only three tank farms in the world might be willing to sell, since tank farms

comprised such a minor part of its corporate
activity. Crowley responded by cutting off discussions and then began
building a brand new tank farm in Bethel. So much
for slim margins.

The Northwest Arctic Borough urges passage of HB 157, as it will be an important tool for
us in our battle to lower the cost of living for residents in our region of rural Alaska.
Thank you for the opportunity to comment on this important issue.

Tom Bolen
Public Services Director
Acting Mayor
Northwest Arctic Borough
(907) 442 2500 ext 112
Fax (907) 442 2930

Bristol Alliance Fuels, LLC

4141 B Street, Suite 207
P.O. Box 112105, Anchorage, AK 99511
Phone: (907) 222-2828
Fax: (907) 222-1418

April 7, 2005

Representative Anderson
House Labor and Commerce Committee
State Capitol, Room 408
Juneau, AK 99801-1182

Via: Facsimile (907) 465-2418

Re: Alaska House Bill 157 (HB 157)

Dear Representative Anderson:

I would like to go on the record as opposed to Alaska House Bill 157. There is a tremendous infrastructure that has been invested in and assembled by many private entities throughout the State of Alaska for the purpose of providing fuel products to the residents of Alaska. Your bill provides an unfair advantage to electric utilities, including publicly funded or subsidized electric utilities to provide this service in competition with private industry.

There are currently 117 Motor Fuel Qualified Dealers licensed by the State of Alaska, some of which are operators with multiple tank farm sites. Bristol Alliance Fuels is just one dealer with a single site located in Dillingham. Dillingham also has another local dealer, Delta Western, Inc. While I cannot speak for Delta or any other dealer in the state, I can say that our operation alone requires invested and operating capital of over \$10 million. After investing 20 years building our enterprise, I resent the effort to thwart the free market system that encourages such initiative. There must be other ways to address the high costs of energy delivery in the State of Alaska.

This bill will result in an even greater imbalance in the price of energy products especially in rural areas. Not everyone will be able to take advantage of this service and those that are left to be supplied by private industry will be called upon to support an infrastructure requiring even higher margins to carry the related costs of such investments. In many communities, your bill will result in higher fuel costs for those who can least afford it.

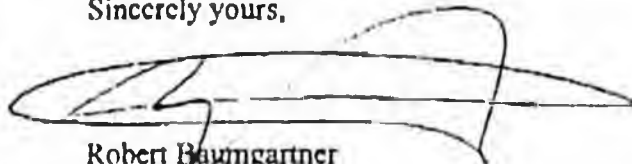
The Institute of Social and Economic Research previously investigated this particular idea for the onetime Western Alaska Fuel Cooperative, located in Dillingham, Alaska. The ultimate end of years of efforts and the explicit assistance of the City government as well as the investigation by the local electric utility, Nushagak Electric Cooperative, found the effort was not practical. Why? Fundamentally, because there were already two

fuel companies in Dillingham. A fuel cooperative would not be economically feasible if required to stand on its own merits in a divided and small marketplace. There may be communities so small with no fuel delivery system in place where a waiver of current restrictions placed on electric utilities might apply, but a blanket approach that encourages subsidies and movement away from entrepreneurial effort is not the way.

While I appreciate that fuel is an essential commodity and fuel prices are a significant factor in the costs of living and doing business in Alaska, especially rural areas, HB 157 does not address the underlying problems that impact the costs of energy in today's global economy.

Again, Bristol Alliance Fuels is opposed to this legislation as it is written. Publicly funded or subsidized electric utilities should not compete with private industry and have no business doing so. I would be happy to help explore what other methods might be employed to address the high costs of energy delivery especially in rural Alaska.

Sincerely yours,



Robert Baumgartner
President,
Bristol Alliance Fuels, LLC

Cc: Representative Kott
Representative LeDoux
Representative Lynn
Representative Rokeberg
Representative Crawford
Representative Guttenberg



April 7, 2005

Subject: House Bill 157

Dear Representative Harris:

Service Oil & Gas, Inc. has been privileged to do business in Alaska since 1975. Over the years, we have grown our business to include branch offices in Glennallen, Valdez, Delta Junction, Fairbanks, Talkeetna, Wasilla, Palmer and Anchorage. We provide work for 120 Alaskans in jobs that provide good compensation and benefits for them and their families. We are writing to express our concerns about the referenced bill now before the House Labor & Commerce Committee.

Among other changes, this bill would amend existing law to allow electric cooperatives, including publicly funded or subsidized non-profit electric cooperatives, to commercially sell fuel to consumers, businesses and other entities. HB 157 would enable competition between the electric cooperatives and local fuel retailers, many of which are local corporations and private individuals, directly impacting the economy in rural Alaska. Service Oil & Gas, Inc., along with other private companies in the fuel distribution and sales business in Alaska, are opposed to this legislation.

HB 157 as written would permit publicly funded or subsidized non-profit electric cooperatives to compete with the essential services now being provided throughout Alaska by private enterprise. We fully appreciate that fuel prices have recently reached historically high levels. We recognize the direct impact this has on the cost of living and the cost of doing business, particularly in many rural Alaska communities. HB 157 would not change these dynamics nor does it address the fundamental fact that fuel is a basic commodity driven by global, regional and local free market forces.

We respectfully request that you thoroughly weigh the public policy implications of this proposed legislation. We trust you will find that the broad legislative relief proposed in HB 157 is inappropriate where viable, sustainable private enterprise fuel suppliers are providing valuable and needed services to the general public.

Sincerely,

**Yukon Fuel Company**

April 7, 2005

Subject: Alaska House Bill 157 (HB 157)

Dear Representative Tom Anderson:

Yukon Fuel Company has been privileged to do business in Alaska throughout the years. We are writing to express our concerns about the referenced bill now before the House Labor & Commerce Committee.

Among other changes, this bill would amend existing law to allow electric cooperatives, including publicly funded or subsidized non-profit electric cooperatives, to commercially sell fuel to consumers, businesses and other entities. HB 157 would enable competition between the electric cooperatives and local fuel retailers, many of which are local corporations and private individuals, directly impacting the economy in rural Alaska. Yukon Fuel Company, along with other private companies in the fuel distribution and sales business in Alaska, is opposed to this legislation.

HB 157 as written would permit publicly funded or subsidized non-profit electric cooperatives to compete with the essential services now being provided throughout Alaska by private enterprise. We fully appreciate that fuel prices have recently reached historically high levels. We also recognize the direct impact this has on the cost of living and the cost of doing business, particularly in many rural Alaska communities. HB 157 would not change these dynamics nor does it address the fundamental fact that fuel is a basic commodity driven by global, regional and local free market forces.

Yukon Fuel Company respectfully requests that you thoroughly weigh the public policy implications of this proposed legislation. We trust you will find that the broad legislative relief proposed in HB 157 is inappropriate where viable, sustainable private enterprise fuel suppliers are providing valuable and needed services to the general public.

Yours very truly,

Mark Smith
President
907.777.5505
msmith@yukonfuel.com

CROWLEY

April 7, 2005

The Honorable Tom Anderson
Chair, House Labor & Commerce Committee
State Capitol, Room 408
Juneau, AK 99801-1182
Fax: 907-465-2418

Subject: Alaska House Bill 157 (HB 157)

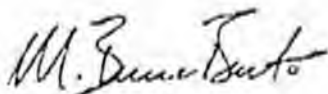
Dear Representative Anderson:

Crowley Marine Services, Inc. has been privileged to do business in Alaska since 1953. We are writing to express our concerns about the referenced bill now before the House Labor & Commerce Committee.

Among other changes, this bill would amend existing law to allow electric cooperatives, including publicly funded or subsidized non-profit electric cooperatives, to commercially sell fuel to consumers, businesses and other entities. Crowley, along with other private companies in the fuel distribution and sales business in Alaska, is opposed to this legislation. HB 157 as written would permit publicly funded or subsidized non-profit electric cooperatives to compete with the essential services now being provided throughout Alaska by private enterprise. We fully appreciate that fuel prices have recently reached historically high levels. We also recognize the direct impact this has on the cost of living and the cost of doing business, particularly in many rural Alaska communities. HB 157 would not change these dynamics nor does it address the fundamental fact that fuel is a basic commodity driven by global, regional and local free market forces.

Crowley respectfully requests that you thoroughly weigh the public policy implications of this proposed legislation. We trust you will find that the broad legislative relief proposed in HB 157 is inappropriate where viable, sustainable private enterprise fuel suppliers are providing valuable and needed services to the general public.

Yours very truly,



M. Bruce Barto
Vice President & General Manager
Petroleum Services
206.332.8081
bruce.barto@crowley.com



CROWLEY MARINE SERVICES, INC.
1102 SW MASSACHUSETTS • SEATTLE • WASHINGTON • 98134 • 206.332.8000
www.crowley.com

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ANDREW L. JOSEPHSON
OF COUNSELDAN S. BAIR
OF COUNSELJODY A. HEAUSAW
OF COUNSEL

April 11, 2005

Honorable Thomas Anderson
Chair
Committee on Labor & Commerce
House of Representatives
Alaska State Legislature
Juneau, Alaska

Dear Mr. Chairman:

Re: CSHB 157

For many years, I have represented Mr. Mark Steer, doing business as Twin Cities Fuel, a retail supplier of petroleum products in Lower Kalskag, Alaska.

Mr. Steer spent the bulk of his years as a public school educator teaching in Lower Kalskag. He was active in the community and was, for a time, a member of the Lower Kalskag City Council. In addition, he founded, and still operates, the fuel supply business known as Twin Cities Fuel. Last year, Mr. Steer retired as a public school teacher.

Last week, Mr. Steer, whose primary residence is now in Nebraska, but who retains a home in Lower Kalskag, was made aware by word-of-mouth from his fuel wholesaler of the existence of the pending bill, House Bill 157. On Friday, April 8, Mr. Steer asked me to perform some research about the measure, and I learned later that day of today's scheduled telephonic hearing.

I believe that there is background of which members of the Legislature may not be fully aware.

For example, in Lower Kalskag and its adjacent community, Upper Kalskag, a significant federally-funded investment of approximately \$4,800,000 in the infrastructure for rural bulk fuel storage and delivery has been made through the Denali Commission.

We understand that the Alaska Village Electric Cooperative, Inc. ("AVEC") contributed approximately \$200,000 to the total

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ATTORNEYS AT LAW

Honorable Thomas Anderson, Chair

Page 2

project, and AVEC obtained fuel tanks, ostensibly as part of its program for upgrading the rural electrical power system.

Twin Cities Fuel and its local competitor, Morgan Fuels of Upper Kalskag, were invited to lease storage and ancillary facilities in the consolidated campus so funded and located in Upper Kalskag. There is no subsidy in the lease arrangements, the terms of which were carefully constructed to meet anticipated operation, maintenance and replacement expenses for the prudent management of the leased premises.

When the Denali Commission's participation first became a topic of public discussion, a very sensitive issue for Mr. Steer and other private sector small businessmen and small businesswomen was whether federal money would be used to upset the existing market share balance among fuel suppliers.

The Denali Commission's Investment Policy promulgated in March 2003, of which a copy is attached, contained explicit assurances that no retail supplier would be adversely affected, without his or her consent, as a result of Denali Commission funding. The language of the policy could hardly be more clear:

"The existing market share balance among retail fuel suppliers within a community may be significantly altered as a result of a Denali Commission funding only if all of the affected retail fuel suppliers currently operating in the community agree to it or if such alteration is deemed necessary to facilitate competitive conditions in the community."

Attachment, page 3.

Furthermore, I received a letter dated June 7, 2004, from AVEC counsel in Anchorage which, in pertinent part, assured my client:

". . . AVEC has no interest in absorbing Twin Cities Fuel. AVEC is not in the retail or wholesale fuel business. AVEC purchases and stores fuel for use in generating electricity, not for resale to others."

Mr. Chairman, Twin Cities Fuel and its owner are deeply

JOSEPHSON & ASSOCIATES, P.C.

ATTORNEYS AT LAW

Honorable Thomas Anderson, Chair

Page 3

concerned lest legislation which would allow AVEC to provide fuel on a retail basis in Upper Kalskag and Lower Kalskag (as well as elsewhere) would not only significantly alter the competitive balance but would likely destroy the existing local retailers who now compete. It could well be that retailers in other communities are presently unaware of this impending threat and, were they to be aware, would express their own, similar, concerns.

In this regard, I express the hope that the Legislature will go to great lengths to notify all existing fuel suppliers, both retailers and wholesalers, of the pendency of CSHB 157 and solicit any comments they may have.

These are individuals who, like Mr. Steer, have invested their own resources, time and labor as venturing small business operators, without public subsidy, in the time-honored American free enterprise way. My client believes that the proposition that state law might now, for the first time, permit cooperatives, heretofore barred from retail sales, to compete with local, private sector, retailers presents a very grave prospect for these small businesses. The cooperatives, of course, would enjoy certain tax advantages denied to the private sector retailers. In contexts such as the villages of Lower Kalskag and Upper Kalskag, a cooperative's retail activity would upset the competitive balance in a way that is wholly at odds with the written policy of the Denali Commission, the principal funding source for bulk fuel storage upgrades. Moreover, AVEC's exercise of the authority contemplated in CSHB 157, at least in Lower Kalskag and Upper Kalskag, would be contrary to the assurances Mr. Steer received from AVEC counsel last June.

Furthermore, even if AVEC were not to exercise the authority to conduct retail sales in Lower Kalskag and Upper Kalskag, so as to adhere to its past assurance, Twin Cities Fuel would still have profound effect upon the company's ability to purchase fuel from wholesale sources now serving rural Alaska. This is a concern that I cannot address in a few hours of available consideration, but I would ask that the Legislature explore how and whether the passage of CSHB 157 might affect the availability of fuel to the retailers who now serve rural Alaska.

Thank you, Mr. Chairman, on behalf of Mr. Steer, for your study of these concerns as the Committee on Labor and Commerce considers CSHB 157. I am sending a copy of this correspondence to your committee colleagues as well, for their ready reference.

JOSEPHSON & ASSOCIATES, P.C.

ATTORNEYS AT LAW

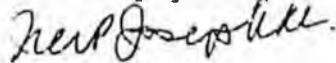
Honorable Thomas Anderson, Chair

Page 4

I would appreciate having this letter incorporated into the committee's records as written testimony with regard to CSHB 157, since I am unable to be present personally at this afternoon's hearing. If and when the hearing is carried over to another day, I would appreciate notification so that I could plan to be present.

With best wishes to you and your colleagues for a successful conclusion to the current legislative session, I am

Sincerely yours,



Joe P. Josephson
Attorney for Twin Cities Fuels.

cc: Honorable Gabrielle LeDoux
Honorable Pete Kott
Honorable Norm Rokeberg
Honorable Harry Crawford
Honorable David Guttenberg
The Denali Commission
Mr. Mark Steer
John Andrew Leman, Esquire

Attachment: Copy of Denali Commission Investment Policy



Denali Commission
510 L Street, Suite 410
Anchorage, AK 99501

907.271.1414 tel
907.271.1415 fax
888.480.4321 toll free

Private Enterprise Policy April 30, 2003

1. Objective

The purpose of this policy is to establish guidelines for infrastructure projects where private enterprise is involved.

2. General Policy

Economic development is a part of the mission of the Denali Commission. However, economic development is primarily a function of private enterprise. A fundamental prerequisite of economic development is basic sustainable public infrastructure such as transportation, sanitation facilities, energy and healthcare. Another important consideration is that for private enterprise to function efficiently a market large enough to support competition is necessary. When the necessary prerequisites are in place for the market to function efficiently, private enterprise tends to drive costs down and quality of service up.

However, in the small/isolated communities of Alaska, the market does not function efficiently or does not function at all. Frequently the needed public infrastructure is not in place and the market size is insufficient to support the competition necessary to encourage efficient market dynamics. This fact does not lessen the need for basic services like health care, lights, heat and sanitation. The challenge is to harness the forces of private enterprise where they exist to provide needed services at an affordable price. Where private enterprise is inadequate or non-existent to achieve this purpose, consideration must be given to providing these services through other means.

3. General Provisions

The Denali Commission will embrace and support, in appropriate ways, private enterprise where it is functioning or can function efficiently and adequately to meet the needs of all members of the local community. The Commission will not support the replacement of or new structures for a publicly funded service to compete with services delivered by private enterprise as long as those services are:

1. Accessible to all members of a community including temporary members;
2. Reasonably priced when compared to comparable communities;
3. Predictably available and sustainable for the long term.

Denali Commission Investment Policy March 2003
Infrastructure Subcommittee Meeting

2

All proposals for new or upgraded infrastructure facilities to be funded with Denali Commission funds shall be evaluated on the basis of public benefits resulting from the project. A proposal for funding may be approved where the facility is or will be owned, operated, and/or maintained by private entities only if there is found to be a direct and substantial public benefit from the project.

Facilities funded in whole or in part by the Denali Commission may not be sold, leased, sub-leased, or interest otherwise assigned without the express approval of the Denali Commission or its successor agency. In any event, the facility shall continue to provide the originally intended public benefit until such time as that public need no longer exists or until the serviceable life of the facility has expired.

Funding decisions must take into account existing private enterprise in the community. Funding should not generally be used to create new or additional competition with existing private enterprise in the community. However in cases where an unregulated monopolistic or other wise inefficient condition exist in which current services are not available at fair and reasonable rates the Commission, after appropriate consultation, may consider funding projects that would contribute to more competitive rates.

4. Provisions Specific to Health Care

The Denali Commission seeks to support health care facilities in a manner which improves access to quality, affordable health services, be it by a private entity or a publicly funded one. The Denali Commission does not seek to create or enhance competition in an inefficient market. In this scenario, an inefficient market is one that cannot support two mutually exclusive health care providers. Given the economic fragility of rural health care systems, Denali Commission funding for health care facilities will be deployed in a manner which encourages a cooperative and collaborative arrangement for the health benefit of the community in question, and improves the sustainability of the overall care delivery system for that population. Denali Commission health facility funding supports systems that ensure access to care for everyone regardless of ability to pay. It is expected that a system that is exclusively private in rural Alaska will not be able to meet that criteria. Thus, some integration of public and private provider entities will likely be required in areas where any private provider system currently exists.

5. Provisions Specific to Bulk Fuel Storage

The developer of any bulk fuel storage consolidation project funded in whole or in part by Denali Commission funds will consult with all retail fuel suppliers within a community in the course of developing the project's conceptual design to ensure that their interests are understood and, to the extent feasible, dealt with in the course of conceptual design.

Denali Commission Investment Policy March 2003
Infrastructure Subcommittee Meeting

3

The existing market share balance among retail fuel suppliers within a community may be significantly altered as a result of a Denali Commission funding only if all of the affected retail fuel suppliers currently operating in the community agree to it or if such alteration is deemed necessary to facilitate competitive conditions in the community. For each type of fuel, the existing market share for a retail fuel supplier is defined as that supplier's existing in-service storage capacity as a percentage of the total gallons of existing in-service storage capacity for all retail fuel suppliers in the community.

Where multiple retail fuel suppliers are involved in a project, comparable levels of investment in project costs (based on market share) will be sought from each participating retail fuel supplier in the community, whether public or private.

Denali Commission funds may be used to upgrade or replace fuel storage facilities owned by private sector retail fuel suppliers if there is determined to be significant public benefit. However, to ensure that long term project benefits flow through to the public, such new or improved fuel storage and dispensing facilities will generally be owned by a local government entity which may lease the facilities to the private sector fuel supplier at a nominal cost or contract with the private sector fuel supplier for facility operation. The term of such lease or contract will be for the life of the assets, and is not transferable as an asset of the leaseholder without express written approval of the Denali Commission or its successor agency.

5. Implementation

Denali Commission partners will have full responsibility for implementing this policy. The Denali Commission will monitor to ensure satisfactory implementation. This policy may be modified or waived only by agreement of the Denali Commission Chief of Staff if it is determined that modification or waiver is in the public interest.

6. Appeals Process

Any decisions of the Chief of Staff may be appealed to first to the Federal Co-chair and if deemed necessary to the full Commission.

Issued by



Date

May 29, 2003

JOSEPHSON & ASSOCIATES

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Jody Reausaw
of Counsel

FAX COVER PAGE

TO: TOM ANDERSON

FAX NO.: 907-465-4939

FROM: JOE P JOSEPHSON

DATE: 4/11/05

RE: ERRATUM

No. of Pages Following: 1 SENT VIA: X FAX ONLY FAX & MAIL

The pages following contain information intended for the addressee(s) named above, and the information is confidential. In the event that any of the pages following are not received, or are distorted or unreadable for any reason in the transmittal process, please notify the office of Josephson & Associates at (907) 276-0151.

JOSEPHSON & ASSOCIATES

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MARC A. JAKUBOVIC

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ANDREW L. JOSEPHSON
OF COUNSEL
DAN S. BAIR
OF COUNSEL
JODY A. REAUSAW
OF COUNSEL

ERRATUM

April 11, 2005

To: Members of the House Committee on Labor & Commerce
House of Representatives
Juneau, Alaska

Re: CSHB 157

Dear Members:

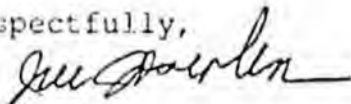
On page 3, in the fourth paragraph on the page, a sentence clause erroneously read in part: ". . .Twin Cities Fuel would have profound effect upon the company's ability to purchase fuel from wholesale sources now serving rural Alaska."

The sentence clause should have read as follows, and I apologize for the error:

". . .Twin Cities Fuel would foresee (HAVE) profound effect upon the company's ability to purchase fuel from wholesale sources now serving rural Alaska."

With best wishes, I am

Respectfully,



Joe P. Josephson

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSSHB 157(CRA)
(H) Publish Date: 4/5/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
Title Electric/Telephone Co-ops RDU Regulatory Commission of Alaska (399)
and Other Entities Component Regulatory Commission of Alaska
Sponsor Anderson
Requester House Community & Regional Affairs Component No. 2417

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill adds "limited liability company" to the list of entities of which an electric or telephone cooperative can become a member; the other two entities on the list are cooperatives and corporations. This legislation has no fiscal impact on the operations of the agency.

Prepared by: Kato Giard, Chairman Phone 907.276.6222
Division Regulatory Commission of Alaska Date/Time 3/21/05 4:00 PM
Approved by: Edgar Blatchford, Commissioner Date 3/21/2005
Agency Commerce, Community, and Economic Development

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSSSHB 157(L&C)
(H) Publish Date: 4/26/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue 04
Title Elec/Phone Coop & Other Entities RDU Tax and Treasury
Component Tax
Sponsor Rep. Anderson, Thomas
Requester (H) CRA Component No. 2476

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL

Estimate of any current year (FY2005) cost: 00

Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

* See page 2

Prepared by: Chuck Harlbert
Division: Tax Division
Approved by: Tom Boutin, Deputy Commissioner
Agency: Revenue

Phone: 465-2320
Date/Time: 4/5/05 4:34 PM
Date: 4/5/2005

FISCAL NOTE # 2

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. CSSSHB 157(L&C)

ANALYSIS CONTINUATION.

We are unable to estimate the revenue impact, if any, of the bill.

AS 10.25.540(b) exempts telephone and electric cooperatives from all state taxes other than the cooperative tax under AS 10.25.550 or .555. We do not believe that this exclusion is intended to avoid requirements for collection or remittance of taxes on their members or other customers.

New section AS 10.25.020(8) specifies that cooperatives may own, in whole or in part, LLCs or corporations organized for any lawful purpose. Revenue does not have the expertise to opine whether the bill clarifies existing law or establishes new rights for the cooperatives. To the extent that the activities of these LLCs or corporations are attributed to the cooperative and not taxed as a separate entity, the cooperatives' tax exemption will shelter the LLC/Corporate activity from state taxation. The activity thus sheltered from tax would be limited to the portion of the LLC/Corporation's activity that is attributed to a cooperative.

Excise, ad valorem, and property taxes are imposed at the entity level and are not attributed to the owners of the entity. The LLC or corporation will pay any applicable motor fuel tax, property tax, local sales tax, or other non-income taxes. Therefore, the arrangement allowed under the bill will not avoid these taxes.

In contrast, income taxes are commonly attributed to the owner of the operating entity instead of the entity itself. An LLC that is either a single member LLC (owned wholly by the cooperative) or a multi-member LLC that elects to be treated as a partnership for tax purposes, the income of the LLC will be attributed to the owners. The LLC's activity will not be subject to corporate income taxes to the extent that the income is allocated to a cooperative. Thus, the income of a single member LLC owned by a cooperative, and the cooperatives' share of the income of a multi-member LLC electing partnership treatment, will be sheltered from state corporate net income tax.

This same "loophole", that of sheltering income through attribution to an exempt entity, is used by the majority of businesses operating in the state. Every S-corporation and every partnership or LLC electing partnership treatment and having individual partners/members achieves the same result under Alaska law.

New section AS 10.25.020(9) authorizes cooperatives to sell fuel that is not needed to generate electric energy. We believe that the state tax exemption for cooperatives does not extend to excuse cooperatives from collection and reporting requirements applicable to dealers of motor fuel. Cooperatives could experience financial hardship if they fail to collect tax on sales of taxable fuel and are later forced to pay the uncollected tax along with any interest owing. We recommend that the committee consider adding language to clarify the cooperatives' obligation to collect and remit motor fuel tax as a dealer under AS 43.40.010.

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT FOR HB 157 BY: Representative Tom Anderson

TITLE: "An Act clarifying the powers of electric or telephone cooperatives to become members of or own stock in other entities."

As it currently exists, the Alaska Electric and Telephone Cooperative Act (AS 10.25) grants electric and telephone cooperatives broad powers to conduct various activities. Those powers include the ability to become a member of other cooperatives or corporations or own stock in them and to do and perform any other act and thing, and have and exercise any other power which may be necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized.

These powers allow the formation of subsidiary corporations or cooperatives in which a cooperative can own all or a portion of another legal entity that conducts activities separate from the cooperative's utility operations. For example, some cooperatives provide internet or cable television services.

Recent court decisions in Georgia, Mississippi and Texas have called into question a cooperative's ability to own subsidiary corporations. While the statutes in those states are different from those here in Alaska, there is a concern that those cases could be used in the future to help interpret Alaska's laws.

HB 157 proposes to clarify AS 10.25.010(a)(9) to make clear that a cooperative utility may own an interest in another entity that does not provide electric or telephone utility services. This amendment simply preserves and clarifies the current statutes which allow cooperatives to provide added benefits to their members.

For example, in some rural areas, cost-effective and environmentally sound bulk fuel storage, facilities maintenance and delivery are lacking. This is an activity in which rural electric utilities have useful expertise. Through membership or ownership in interests in subsidiary entities, electric cooperatives may be able to provide those types of services more safely and at a lower cost than would otherwise occur.

The second change made in HB 157 is the addition of "limited liability company" to the list of entities a cooperative may become a member of or own stock in. Limited liability companies (LLCs) are a relatively new type of member-owned legal entity. They were first recognized in

Alaska in 1994 and did not exist when AS 10.25.010(a)(9) was enacted. LLCs are increasingly becoming preferred over corporations and cooperatives for many non-profit and for-profit organizations, including subsidiaries. Although LLCs are not specifically prohibited in the statutes, the addition made by HB 157 clarifies this by expressly including LLCs as an acceptable legal entity a cooperative may become a member or own stock in.

This bill is necessary and important to preserve the intent of existing statutes. I urge your support for this legislation.