

HB

209



ALASKA STATE LEGISLATURE

HOUSE LABOR & COMMERCE COMMITTEE

REP. KURT OLSON

Chairman
State Capitol, Room 17
Juneau, AK 99801-1182
(907) 465-2693 FAX 465-3835

Rep Mark Neuman, V-Chair Rep. Carl Gatto
Rep. Jay Ramras Rep. Berta Gardner
Rep. Gabrielle LeDoux Rep. Bob Buch

SPONSOR STATEMENT

CS HB 209

Regulatory Commission of Alaska

HB 209 implements recommendations received from the Regulatory Commission of Alaska ("RCA"), the Legislative Budget and Audit Committee, and regulated utilities to improve the quality and timeliness of the RCA's decision-making.

The bill requires appointment of the RCA Chair be made by the Governor and clarifies processes used in discovery and intervention.

HB 209 limits the RCA's ability to extend a statutory timeline for "good cause", and establishes statutory timeline for matters not otherwise subject to a timeline under state or federal law.

The RCA has extraordinarily broad jurisdiction that covers numerous companies that build and operate critical parts of Alaska's infrastructure. These companies include intrastate pipeline companies, power and water and waste utilities, and telecommunications carriers. The economic growth of Alaska and the well-being of Alaskans depend, to a large degree, on the ability of the RCA to consistently resolve complex regulatory issues in a legally sound, procedurally fair manner. HB 209 will enhance the ability of the RCA to perform this vital mission.

LEGAL SERVICES

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

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

May 2, 2007

SUBJECT: Changes for CSHB 209(JUD) (Work Order No. 25-LS0717AK)

TO: Representative Jay Ramras
Attn: Jane Pierson

FROM: Brian J. Kane *BJK*
Legislative Counsel

I have drafted the CS for HB 209 with the changes you requested from adopted amendments. However, there are two points I need to call to your attention.

(1) The phrase on page 1, line 10, "**and the chair may only serve one term,**" is somewhat ambiguous. This phrase does not make it clear whether a member can only serve one term as chair, or that the chair is only allowed to serve one term as a member of the commission.

(2) On page 3, lines 1 - 2, the insertion of "state law," could be problematic. Perhaps a better option would be to phrase this as "state law or federal law." This might provide more clearly which types of docket matters you are referring to.

If I may be of further assistance, please advise.

BJK:med
07-286.med

Enclosure

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman
(907) 465-3004
Fax: (907) 465-2070
Representative_Jay_Ramras@legis.state.ak.us



1292 Sadler Way, Suite 324
Fairbanks, AK 99701

Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

Fax

To: Brian Kane

Fax #: 2029

Number of pages including cover: 1

From: Jane Pierson

Date: May 2, 2007

Re: HB209(JUD) 25-LS0717AM

Brian,

Would you please draft another final for the above-referenced bill and I'll trade it out for the one I have. We would like to clarify the two points on your memo.

1. The chair may only serve one term as chair.
2. Use the better option "state law or federal law"

Thank you

HP Officejet 7310xl
Personal Printer/Fax/Copier/Scanner

Log for
Representative Jay Ramras
(907) 465-2070
May 02 2007 5:20PM

Last Transaction

<u>Date</u>	<u>Time</u>	<u>Type</u>	<u>Identification</u>	<u>Duration</u>	<u>Pages</u>	<u>Result</u>
May 2	5:19PM	Fax Sent	2029	0:24	1	OK

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman
(907) 465-3004
Fax: (907) 465-2070
Representative_Jay_Ramras@legis.state.ak.us

1292 Sadler Way, Suite 324
Fairbanks, AK 99701



Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

Fax

To: Brian Kane

Fax #: 2029

Number of pages including cover; 4

From: Jane Pierson

Date: May 1, 2007

Re: HB209(L&C) 25-LS0717\M

Brian,

Please go final on a HJUD CS for the above-referenced bill to include the following attached amendments:

Call me if you have any questions.

Thank you.

HP Officejet 7310xd
Personal Printer/Fax/Copier/Scanner

Log for
Representative Jay Ramras
(907) 465-2070
May 01 2007 4:49PM

Last Transaction

<u>Date</u>	<u>Time</u>	<u>Type</u>	<u>Identification</u>	<u>Duration</u>	<u>Pages</u>	<u>Result</u>
May 1	4:48PM	Fax Sent	2029	1:07	4	OK

ADOPT

25-LS0717/M.2
Kane
5/1/07

AMENDMENT # 1

OFFERED IN THE HOUSE

BY REPRESENTATIVE RAMRAS

TO: CSHB 209(L&C)

- 1 Page 1, line 1:
- 2 Delete ";"
- 3 Insert "and"
- 4
- 5 Page 1, lines 2 - 3:
- 6 Delete "; and relating to rules of evidence, discovery, and petitions to intervene in
- 7 a proceeding of the commission"
- 8
- 9 Page 2, lines 1 - 31:
- 10 Delete all material.
- 11
- 12 Renumber the following bill sections accordingly.

Delete Sec 9. Amend # 2

P. 3 L. 30 - P. 4, L. 14.

ADOPT

ADOPT

Conceptual Amendment # 3.

OFFERED IN THE HOUSE
TO CSHB 209(L&C)

BY REPRESENTATIVE RAMRAS

Page 3, Line 15 Delete "450" and Insert "270"

by July 1, 2008

Amendment # 4
By Rep. Samuels

Offered in the House Judiciary Committee

Conceptual

ADOPT

To: CSHB209(L&C)

Page 1, Line 11

Insert after "The term of chair is three years":

However, they may fill a vacancy

and the chair may only serve one term. If the chair fills a vacancy with time remaining on the term, the chair may be appointed to a subsequent full term.

#5 P. 4, L. 18
Insert "state law," before "federal law"
ADPT

Conceptual Amendment #

6

w/d

OFFERED IN THE HOUSE
TO CSHB 209(L&C)

BY REPRESENTATIVE RAMRAS

Page 3, Line 15 New Sec. 10

AS 42.05.175 (f) is amended to read The Commission may extend a timeline required under [(a) – (e) of] this section if all parties of record consent to the extension or if, for one time only, before the timeline expires....

Remember



ALASKA STATE LEGISLATURE

HOUSE LABOR & COMMERCE COMMITTEE

REP. KURT OLSON

Chairman
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Rep. Jay Ramras Rep. Berta Gardner
Rep. Gabrielle LeDoux Rep. Bob Buch

CS HB 209

Sectional Analysis

Section 1 – Amends AS 42.04.010(b) to provide that the Governor shall designate one member of the RCA to serve as chair or to serve out the unexpired term of a former chair. The term of the chair is also expanded to three years from one year. These changes are intended to strengthen the ability of the chair, who is currently elected by the other members of the RCA, to manage the RCA's operations and work schedule.

Section 2 - Technical amendment

Section 3 - Adds new subsections to AS 42.05.151 redefining practices and procedures relating to discovery and intervention.

Sections 4 through 8 – Amend AS 42.05.175 to express timelines for various RCA activities in terms of days rather than in terms of months.

Section 9 – Amends AS 42.05.175(i) to provide that the RCA can find good cause to extend a timeline only when (i) a proceeding involves unusually complex and novel question of law or public policy, (ii) a proceeding involves an unusually complex and large factual record, or (iii) the RCA identifies a compelling public policy reason for an extension that is entirely unrelated to its workload, scheduling, or administrative convenience. This change is intended to improve the timeliness of the RCA's decision-making.

Section 10 – Adds new subsections to AS 42.05.175 to provide timelines for adjudicated docket matters (including private settlements and contracts) that are not otherwise subject to a timeline under state or federal law and prohibit the RCA from evading the requirements of AS 42.05.175 by terminating a proceeding in a docket and opening a proceeding in another docket on substantially the same matter. These changes are intended to improve the timeliness of the RCA's decision-making.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB209-COM-RCA-04-11-07
Bill Version: HB 209
() Publish Date: _____

Revision Date/Time (Note if correction): _____

Dept. Affected: Commerce

Title Regulatory Commission of Alaska

RDU Regulatory Commission of Alaska (399)

Sponsor House Labor & Commerce

Component Regulatory Commission of Alaska

Requester House Labor & Commerce

Component No. 2417

Expenditures/Revenues

(Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	513.2	684.3	684.3	684.3	684.3	684.3
Travel	5.0	5.0	5.0	5.0	5.0	5.0
Contractual	2.0	2.0	2.0	2.0	2.0	2.0
Supplies	5.0	5.0	5.0	5.0	5.0	5.0
Equipment	15.0	0.0	0.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	540.2	696.3	696.3	696.3	696.3	696.3

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

CHANGE IN REVENUES (1141)	540.2	696.3	696.3	696.3	696.3	696.3
------------------------------------	--------------	--------------	--------------	--------------	--------------	--------------

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1141 RCA Receipts	540.2	696.3	696.3	696.3	696.3	696.3
TOTAL	540.2	696.3	696.3	696.3	696.3	696.3

Estimate of any current year (FY2007) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time	6	6	6	6	6	6
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation revises the Regulatory Commission of Alaska (RCA) statutes regarding the selection, composition, and qualifications of Commissioners; increases salary levels for Commissioners; adds positions to partially exempt service; revises the amount of Regulatory Cost Charges (RCC); and revises timeline requirements for a final order of the RCA. The terms of all current Commissioners would expire December 31, 2007. For appointments after the effective date of the legislation, salaries for Commissioners would increase from range 26C to the level of a superior court judge, with the Chair receiving an additional \$10 per month. This legislation would result in the creation of six additional positions (one economist/range 23, four special assistants/range 21 and one executive secretary/range 16). Costs for travel, contractual, supplies and equipment are associated with the new positions. The legislation would reorganize the RCA and create two new sections (administrative law, and natural gas and oil pipeline) which would be staffed with existing personnel. The RCA is funded through the RCC mechanism and direct charge mechanisms and this legislation would increase the cap from 0.7% to 0.9%. No general funds are allocated for support of the agency. The RCC is recalculated each year and allows the agency to recover its operating costs through an assessment on the revenues of the utilities and pipeline carriers it regulates.

Prepared by: Kate Giard, Chairman

Phone 907 276 6222

Division Regulatory Commission of Alaska

Date/Time 4/11/07 5:05 PM

Approved by: Emil Notti, Commissioner

Date 4/11/2007

Agency Commerce, Community, and Economic Development

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CS HB 209 (L&C)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Alaska Judicial Council
 Title Regulatory Commission of Alaska RDU Alaska Judicial Council
 Component Alaska Judicial Council
 Sponsor House Labor & Commerce Committee
 Requester House Labor & Commerce Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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 (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Judicial Council is not addressed in the L&C CS.

Prepared by: Eleanor Wolfe, Committee Aide
 Division: House Labor & Commerce Committee
 Approved by: Rep. Kurt Olson
 Agency: _____

Phone 2693
 Date/Time _____
 Date 4/27/2007

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB209 LAW-RAPA-4-6-0
 Bill Version: HB 209
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title An Act relating to the Regulatory Commission RDU Civil
of Alaska Component Reg. Affairs & Public Advocacy
 Sponsor LABOR & COMMERCE
 Requester HOUSE LABOR & COMMERCE Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
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)

FUND SOURCE	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
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 (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

POSITIONS	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would create new and amend current statute relating to the chair of and the membership of and qualifications of members of the Regulatory Commission of Alaska; add positions to the partially exempt service; create an administrative law division and natural gas and oil pipeline division within the commission; amend the timeline requirements for a final order of the commission; amend the commission's regulatory cost charges; and add to the duties of the Alaska Judicial Council as they relate to the presentation of nominees for consideration for appointment to the commission. This proposed legislation should not have a significant fiscal impact on the Department of Law.

Prepared by: Robert Meiners, Admin. Services Manager
 Division Administrative Services Division
 Approved by: Robert Meiners for Talis Colberg, Attorney General
 Agency Department of Law

Phone 465-5427
 Date/Time 4/6/07 8:07 AM
 Date 4/6/2007



UTILITY SERVICES OF ALASKA, INC.

PROVIDING ADMINISTRATIVE SERVICES TO
COLLEGE UTILITIES CORP. AND GOLDEN HEART UTILITIES, INC.

January 26, 2007

Governor Sarah Palin
State of Alaska
Box 110001
Juneau, AK 99811

RE: REGULATORY COMMISSION OF ALASKA SUNSET REVIEW

Dear Governor Palin:

Changes are needed to the Alaska Statutes regarding the Regulatory Commission of Alaska (RCA). I believe the following, at a minimum, is needed:

1. Reduce the statutory time allowed for rate cases from 15 months to 9 months, which is the time line for many other commissions (see Legislative Budget and Audit Report data for support).
2. Limit discovery by all parties in RCA matters. There is currently no limit.
3. Place Regulatory Affairs and Public Advocacy (RAPA) under the control of the RCA. It is now an independent agency with little or no oversight.
4. Raise both the qualifications and salary of the RCA Commissioners. Pay should be equal to that of Superior Court judges. The appropriate pay will attract qualified candidates.
5. Create within the RCA the position of Chief of Staff or Executive Director to exercise staff control and to act as a liaison with utility personnel.

BACKGROUND

Our water and wastewater utilities serve more than 8,500 customers in the greater Fairbanks area which represents a population of over 50,000.

Our utilities are regulated by the Regulatory Commission of Alaska as to rates, regulations and service. We believe the level of service our utilities provide is of the highest quality. To bear this out, the RCA has received an average of less than six complaints per year from our customers for the past seven years. (This includes those related to rising rates).

As result of a rate filing stipulated March 19, 2003, our utilities were required by the RCA to file for, among other things, new rates that would levelize both water and wastewater rates between the two utilities, GHU and CUC, i.e., postage stamp rates, by August 1, 2005, based on a 2004 test year.

Our utilities made attempts to file early and to make the expected difficult process simpler, but did not succeed. With permission from the RCA, our complete filing was filed August 22, 2005. The filing was rejected for what we believed to be minor deficiencies. Commission staff informed us that they were directed to reject filings if at all possible to diminish work load and extend timelines.

The initial filing was split into three parts and the rate portion of the filing was finally accepted by the RCA on October 7, 2005. The statutory timeline of 15 months then started. A final decision was issued January 8, 2007, the last day of the statutory timeline, all based on a test year of 2004 for rates that should have been in effect for late 2005 and 2006.

At the point the filing was accepted, the real difficulties began. There were four intervening parties, including RAPA. Discovery took months with huge costs. The hearing was finally held in Fairbanks the last week of August 2006. In the meantime, as sales were sharply declining and costs sharply rising, our utilities attempted in January 2006 to supplement the October 7, 2005 filing to update it for new increased costs, and to correct some errors that had been made in the original filing. That supplemental filing was rejected so our utilities filed for additional rate relief June 5, 2006 based on a 2005 test year. Interim relief was granted in August 2006.

We received the final decision in the first case on January 8, 2007, more than four months after completion of the hearing in the matter. In the interim, the June 5, 2006 filing, with many of the same issues expected to be resolved by the January 8, 2007 decision, is now in the throes of discovery over many of the same issues.

Costs to our utilities alone in the 2004 test year case are more than \$1 million. These costs are for legal, consulting, rate of return experts, cost of service study contractors and other direct outside expenses. Utility staff time, which is substantial, is not included, nor are the costs of the interveners, including RAPA. The added revenue requirement being requested in the 2004 case is about \$2.3 million. Additionally, our 2005 test year case is now stacking up new costs. Discovery in the 2004 case consisted of several hundred requests resulting in approximately 15,000 pages being produced. The January 8, 2007 decision allowed recovery of only \$118,094/year for three years, of the \$1 million required to be spent.

We do not believe the regulatory process, as outlined above, serves our ratepayers, employees or shareholders. From our perspective, we believe the process is broken and in dire need of repair.

1. The statutory timeline is far too long. The process simply expands to fill the available time. In 2006, during RAPA discovery, items produced in early discovery, one to two months before reply testimony was due, were not examined until the same week reply testimony was due. We know this because our production of same was inadvertently incomplete! Upon discovering this omission and calling it to our attention (the week reply testimony was due), we produced correct documents within hours. To require four and half months to adjudicate case matters after hearing is too long. Many other jurisdictions have statutory or voluntarily utilize timelines of 9 or 10 months. The statute needs to be changed to 9 months. If a mistake is made either in favor of or against the utility, a prompt re-filing can be made by the utility or required by the RCA. (See the results of the Legislative Budget and Audit review of the RCA for Sunset Review for supporting documents for reduced statutory timelines.) Rates need to be in effect during the computed time frame, not one to two years later.
2. Discovery is totally out of hand. The volumes of data requested by various parties, mostly RAPA and other interveners, is beyond analysis, with costs out of sight. There are basically no discovery rules in what has become a near court like affair. At the least, rules of discovery ought to be adopted similar to other legal venues, with an eye to limits on discovery both in time and amount.
3. RAPA was created by our late governor from the RCA's Public Advocacy Section, so the governor could exercise control over pipeline regulation. This change was ill conceived at best. RAPA is now responsible to no one. It appears to be run by the Attorney General even though control ought to in part be exerted by the RAPA staff section head. This appears not to be the case. RAPA contributes to large costs, case delays, and huge difficulties for the RCA. The RAPA group needs to be brought back under the control of the RCA so someone can exercise oversight.

Informal discussion and discovery during RCA proceedings is almost non-existent. The process is controlled by attorneys and a utility almost never really gets to "tell its story". This lack of dialog between the utilities and the RCA must change. Dialog must be required by statute, especially during the time between initial filing and suspension. Settlement discussions need to be mandated by statute.


1. Commissioner's current pay levels are about \$85,000/year and are set by the legislature. Qualifications are not set at a high bar. This is wrong. Pay should be set at a higher level and automatically adjusted when other state salaries are adjusted. Superior Court judge levels are an appropriate place to start. Qualifications ought to be at the level of

Masters in Business Administration, professional engineers, a senior attorney, or similar high qualifications.

5. The RCA staff does not really have a leader. The Commission Chair, which rotates, tries to do this but considering adjudicative and hearing duties, this is very difficult. Consequently, staff memo/analysis/decisions reached during the 45 day timeframe before statutory suspension are often times not properly reviewed, analyzed or thought out. The RCA needs a chief of staff or an executive director through which this control can be exercised. This should be spelled out by statute. This could alleviate the ex parte issue.

The continuing health of the state's utilities along with a balance to protect ratepayers demands that these issues be addressed.

Sincerely,



George Gordon
Director of Regulatory Affairs

cc: Senator Gene Therriault
Senator Joe Thomas
Senator Gary Wilken
Representative David Guttenberg
Representative Scott Kawasaki
Representative Michael "Mike" Kelly
Representative Jay Ramras
Representative John Coghil Jr.

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P.O. Box 113300
Juneau, AK 98111-3300
(907) 465-3830
FAX (907) 465-2347
legaudit@legis.state.ak.us

November 8, 2006

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), the attached report is submitted for your review.

DEPARTMENT OF COMMERCE, COMMUNITY, AND
ECONOMIC DEVELOPMENT
REGULATORY COMMISSION OF ALASKA
SUNSET REVIEW

October 20, 2006

Audit Control Number

03-20048-06

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently, under AS 44.66.010(a)(3), the Regulatory Commission of Alaska is scheduled to terminate on June 30, 2007.

In our opinion, the termination date for this commission should be extended. We recommend the legislature extend the termination date to June 30, 2015.

The audit was conducted in accordance with generally accepted government audit standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology.

Handwritten signature of Pat Davidson.

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Regulatory Commission of Alaska (RCA or commission). Under AS 44.66.050(a), the legislative committees of reference are to consider this report during the legislative oversight process to determine whether the commission's termination date should be extended. Currently, AS 44.66.010(a)(3) requires the commission to terminate on June 30, 2007. If the legislature takes no action to extend the termination date, the commission will have one year from that date to conclude its operations.

Objectives

The following are the three central, interrelated objectives of our report:

1. To determine if the termination date of the commission should be extended.
2. To determine if the commission is operating in the public's interest.
3. To determine if the commission has exercised appropriate oversight of certificated utilities and pipeline companies.

The assessment of operations and performance of the commission was based on the 11 factors set out at AS 44.66.050. Under the State's "sunset" law, these factors are to be used in assessing if an agency, subject to the law, has demonstrated a valid public policy need for continuing operations.

Scope and Methodology

The major areas of our review included:

- assessment of management controls,
- compliance with statutory deadlines for certain formal proceedings,
- compliance with statutory notice periods for tariff filings,
- compliance with public notice requirements,
- evaluation of the regulation adoption process, and
- review of the consumer protection activities.

Our audit reviewed operations and activities of the commission from July 2002 through June 2006 (FY 03 – FY 06).

Our review of the major areas was supplemented with information obtained from individuals employed by, or representing, the regulated utilities and pipeline companies. Two surveys were conducted. The surveys consisted of various questions soliciting the opinions of these groups about the operations and decision making processes of RCA.

One survey was sent to a sample of individuals who were involved in docket¹ proceedings. Topics in this survey included: statutory timelines, communication of the statutory deadline for docket proceedings, timeliness of dockets without statutory timelines, the hearing process, statutes, regulations, RCA's overall operations, and usability of the commission's website. A sample of 77 individuals² was selected from the service list attached to each docket's final or last order. Twenty-six of the 77 (34%) individuals surveyed responded.

Another survey was sent to a sample of individuals from the regulated entities that had interactions with RCA's consumer protection section. Topics in this survey included: RCA's informal complaint process, regulations, RCA's overall operations, and the usefulness of the commission's website. A non-probability sample of 29 individuals was selected from a list³ of contacts provided by the consumer protection section staff. Fifteen of the 29 (52%) individuals surveyed responded.

We evaluated dockets and tariff filings to determine that: 1) dockets were processed within the applicable, if any, statutory timelines or within tariff statutory notice periods; 2) certain data maintained in RCA's database systems is reliable; and 3) RCA provides adequate public notice of commission meetings, docket proceedings, and tariff filings.

Our evaluation covered dockets opened on or after July 1, 2002 through May 10, 2006. We excluded pipeline dockets since those proceedings have no statutory timelines. The total number of dockets in our population was 465. We tested a randomly-selected statistical sample of 35 dockets. We also reviewed all final decisions of rule-making⁴ dockets closed during the period to ensure the closure was within statutory timelines.

In addition, RCA had 367 pending dockets at the end of FY 02. During our audit period, there were 796 dockets closed, including those pending at the end of June 2002. Of the 796, 211 were dockets on utility matters that had an associated statutory timeline.⁵ We sampled 25 of these utility dockets to confirm closures were based on decisions on substantive issues.

Our scope for tariff filings included those filed on or after July 1, 2002 through June 8, 2006. We excluded tariff filings that were withdrawn or suspended and those that were related to

¹ The term docket is used by RCA to refer to a formal proceeding before the commission.

² Forty-nine individuals were involved in utility dockets, 20 were involved in pipeline dockets, 7 were involved in both utility and pipeline dockets, and the remaining one was the public advocate in the Department of Law.

³ Although, the list did not consist of all the utilities and pipelines regulated by RCA, they included companies that the consumer protection section had regular contact with during the audit period.

⁴ A rule-making docket is a matter in which RCA considers certain additions, deletions, or amendments to its regulations.

⁵ We excluded dockets already reviewed in our statistical sample.

quarterly or annual adjustments.⁶ The total number of tariff filings in our population was 915. We tested a non-probability sample of 35 tariff filings.

During our field work, we also:

- Assessed the adequacy of management controls over the docket and tariff filing processes
- Reviewed RCA's mandated quarterly reports to the legislature
- Evaluated the reliability of certain data maintained in the commission's databases
- Analyzed consumer complaints against utilities filed with the commission
- Reviewed applicable statutes and regulations
- Contacted the state ombudsman, the office of victims' rights, the Alaska State Human Rights Commission, the U.S. Equal Employment Opportunity Commission, the Alaska Labor Relations Agency, and the equal employment opportunity staff within the Department of Administration
- Reviewed proposed legislation and related testimony
- Interviewed commissioners, RCA staff, and management of regulated entities
- Researched other states' regulatory commission websites, statutes, and regulations
- Reviewed RCA's annual reports and operational performance measures
- Analyzed the expenditures of the commission and appropriations of the regulatory cost charges paid by the regulated entities
- Read RCA's transcripts of certain public meetings and hearings as well as related commission decisions

⁶ These tariff filings included adjustments due to power cost equalization allocations and RCA's regulatory rate charges.

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ORGANIZATION AND FUNCTION

The Regulatory Commission of Alaska (RCA or commission) was created July 1, 1999, upon reorganization of the Alaska Public Utilities Commission by Chapter 25, SLA 1999. Under state law, RCA is responsible for ensuring safe, adequate, and fair public utility and pipeline services. This is to be done by allowing regulated entities to charge users rates and provide service in a manner consistent with the interests of both the public and regulated entity. The commission has the authority to adopt regulations and to hold formal, quasi-judicial hearings to accomplish these purposes.

RCA regulates pipeline, telephone, electric, natural gas, water, sewer, refuse, cable TV, and steam services. All pipelines, and all other public utilities with ten or more customers, are regulated by the certification process. A public utility or pipeline company must obtain a certificate of public convenience and necessity, which describes the authorized service area and scope of operations. A certificate is issued upon the commission formally finding the applicant to be fit, willing, and able to provide the service requested.

Exhibit 1	
RCA Economically Regulated Certificates by Service Type	
Telecommunications	63
Electric	32
Pipeline	19
Refuse	13
Water	11
Gas	6
Sewer	3
Cable TV	2

Besides the certification process, RCA also may economically regulate the rates, classifications, rules, regulations, practices, services, and facilities of public utilities and pipeline companies covered by statute. Utilities are subject to the RCA certification process but many are exempt from more extensive economic regulation. As of August 2006, there were 630 active certificated entities. Of these 149 were economically regulated. Exhibit 1 is a summary, by service type, of the economically regulated entities.

The commission consists of five commissioners appointed by the governor and confirmed by the legislature. The commissioners must either be a member of the Alaska Bar Association or have a degree in engineering, finance, economics, accounting, business administration, or public administration from an accredited college or university. The commissioners serve six-year terms. (See Exhibit 2 for the current commissioners and their terms.)

Exhibit 2	
Regulatory Commission of Alaska Members	

Kate Giard, Chair	Term Expires March 2007
Anthony Price	Term Expires June 2010
Mark Johnson	Term Expires March 2009
Dave Harbour	Term Expires March 2008
Jan Wilson	Term Expires March 2012

The staff of RCA is organized around six major functions: administration, finance, tariff, engineering, common carriers, and consumer protection. RCA had 60 funded positions⁷ in its \$6 million FY 06 operating budget. A brief description of the services provided by each function is as follows.

- Administration: This function is responsible for fiscal and personnel administration, budget preparation, and records management - including the case management system. The commission chair is responsible for this function and is aided by an administrative manager, a commission section manager, an advisory section manager, documents processing and accounting personnel, and other clerical support staff.
- Finance: This function examines, analyzes, and evaluates financial statements submitted for rate cases. The finance staff audits financial records of utilities and pipeline companies and examines historical operating year data and pro forma adjustments. These analyses are presented at proceedings before the commission.
- Tariff: This function examines, analyzes, and investigates tariff filings and presents recommendations to the commission at biweekly tariff action meetings. Administrative duties include organizing those meetings, ensuring that public notice requirements on tariff filings are met, and maintaining current master tariffs for all utilities.
- Engineering: This function is responsible for certification proceedings and the investigation of utility and pipeline company procedures and practices affecting service quality. The engineering staff also reviews legal descriptions for service areas, plans for plant expansion, and plant-in-service and depreciation schedules. These analyses are presented in proceedings before the commission.
- Common Carriers: This function develops, recommends, and administers policies and programs with respect to the regulation of rates, services, accounting, and facilities of communications common carriers within the State involving the use of wire, cables, radio, and space satellites.
- Consumer Protection: This function investigates and resolves informal consumer complaints, and is responsible for public affairs and media relations as well as responding to information requests.

As of July 2003, the responsibility of public advocacy for regulatory affairs was transferred to the Department of Law. The regulatory affairs and public advocacy section advocates on behalf of the public in utility matters that come before RCA. Regulatory cost charges from the regulated entities continue to fund the public advocate function.

⁷ This total does not include the assistant attorney general that the Department of Law furnishes to RCA through a reimbursable services agreement.

Exhibit 3 below, summarizes RCA's expenditures for the past four fiscal years. The funding source for almost all of these expenditures was the regulatory cost charges paid by the regulated entities. Beginning with FY 04, the expenditures for the public advocacy function, relocated to the Department of Law, are excluded from the amounts shown.⁸

Exhibit 3				
Regulatory Commission of Alaska				
Summary of Expenditures				
FY 03 - FY 06				
Expenditures	FY 03	FY 04	FY 05	FY 06
Personal Services	\$3,896,539	\$4,005,622	\$3,764,473	\$3,582,676
Travel	53,081	55,359	50,747	89,370
Contractual	1,756,621	2,001,549	1,377,995	1,657,384
Supplies	50,501	54,555	81,610	129,847
Equipment	134,579	85,536	-0-	74,764
Total	<u><u>\$5,891,321</u></u>	<u><u>\$6,202,621</u></u>	<u><u>\$5,274,825</u></u>	<u><u>\$5,534,041</u></u>

Source: RCA's FY 03 annual report and the State's accounting system.

⁸ The regulatory affairs and public advocacy section within the Department of Law received \$1 million in FY 04 from RCA and then was appropriated, from fees paid by regulated entities, \$1.3 million and \$1.4 million, respectively in FY 05 and FY 06.

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BACKGROUND INFORMATION

The Regulatory Commission of Alaska (RCA or commission) is currently working on two significant projects: the 2005 improvement initiative project and the development of a regulatory program for small hydropower projects within the State. The following is a brief summary of each of these projects.

2005 Improvement Initiative Project

In March 2005, the commission began, what it termed, the 2005 improvement initiative project. The three primary goals of the project were to improve RCA's transparency, accountability, and operational efficiency. In order to achieve these goals, the commission identified four primary objectives:

1. To improve the regulatory environment for pipeline companies by partnering with them to jointly identify areas where RCA processes could be improved.
2. To improve the regulatory environment for utilities by meeting with key regulated industries to understand their view of RCA's oversight processes. Part of this effort would be to involve the utilities in setting priorities for regulation and statute changes, identifying the needs for a case management information system, and modifying RCA business practices.
3. To improve the internal operating and management structure of the commission.
4. To implement an integrated case management system with a web portal to allow access by the regulated entities.

RCA's actions under the first three objectives are discussed throughout the Findings and Recommendation and Analysis of Public Needs sections. The following discussion relates to the progress in the implementation of a case management information system.

Internet Integrated Case Management System

In late 2004, RCA began a series of meetings and workshops asking the public and the regulated entities what information technology improvements they believed were needed for the commission. A working group was formed of individuals from the regulated entities to better define RCA's system needs.

As a result of this process, in 2005 RCA began several information technology projects. In 2006 the commission issued a request for proposals to obtain an integrated case management system. The star system, proprietary software of an information technology company known as ACO, was selected. In response to inquiries from the various entities regulated by RCA,

the commission established a user committee of volunteers. The user committee members also solicited feedback from other utilities, pipeline companies, and organizations that interact with RCA.

The user committee's objective was to develop the conceptual framework that would allow each regulated entity access to a web-based portal, secured by a password, through which all business interactions with RCA could be transacted electronically. The budget for the new case management system and the web-based portal is approximately \$2.25 million. It is anticipated that these projects will be completed by the end of 2006.

Regulation of smaller scale hydropower projects

RCA is in the process of establishing a regulatory program for small hydropower projects that are currently regulated by the Federal Energy Regulatory Commission (FERC). In 1999, federal legislation was adopted that provided for the phasing out of FERC's role in Alaska involved with licensing and regulating hydropower projects of less than 5,000 kilowatts.

The main reason for transfer of such authority from FERC to state regulation was that "*Alaska presents special circumstances that favor local control over projects.*"⁹ In the view of congress, state regulation would be timelier and less costly for both the current operators of the small hydropower projects and entities seeking initial approval for project construction. Transfer of this authority was contingent on the State developing a regulatory process that met certain requirements and was approved by FERC.

In 2002, the state legislature adopted legislation¹⁰ giving RCA authority to develop regulations as part of establishing a regulatory program for small hydropower projects within the State.¹¹ RCA opened a rule-making docket in December 2003 to begin the process of developing a regulatory program. A stakeholder advisory committee was formed and numerous committee meetings, workshops, and public meetings were held.

Proposed regulations were issued for public comment in April 2005. Although rule-making dockets are to be closed by a final order within 24 months, RCA exercised its discretion to extend the deadline by 90 days. In March 2006 the commission was still not prepared to adopt the regulations. At the commission's public meeting, RCA's assigned assistant attorney general advised that

... [state law]... says [the commission] shall issue a final order in a rule-making proceeding... not later than 24 months after a petition of the regulation has been filed. ...my advice to [the commission is] that you have to follow that provision and

⁹ Calendar No. 65, 106th Congress, Committee on Energy and Natural Resources report to the Senate on S. 422.

¹⁰ Chapter 107, Session Law 2002

¹¹ Not included for state regulation are certain projects licensed or exempted under federal law before November 9, 2000.

issue a final order.... That is not obligating you to adopt the regulations, it's simply issuing a final order that would terminate the proceedings.

Accordingly, at the end of March 2006, RCA ordered the rule-making docket closed. In the final order the commission stated a new rule-making docket would be opened and the entire record of the closed docket would be incorporated into the new docket. As of the date of this report a new docket has not been opened. Due to the size and complexity of this regulation project, RCA is contracting for an attorney to assist in revising the proposed regulations.

Once the regulations have been edited, and a new docket opened, RCA intends to hold public meetings on the revised proposed regulations. The regulations would then be further revised as necessary, adopted, and submitted to the governor for eventual transmittal to FERC. The federal agency then has a year for its review. Only after FERC has approved RCA's regulatory program can the State take over regulatory responsibilities. The RCA chair anticipates this process will take approximately two more years from the date of the order for the additional public hearings.

In FY 07, RCA received a \$150,000 appropriation from the State's general fund to continue the process of developing the small hydropower regulatory program. The costs associated with the project prior to FY 07, approximately \$207,000 have been funded through RCA's regulatory cost charges from the current regulated entities.

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REPORT CONCLUSIONS

In developing our conclusion whether the termination date of the Regulatory Commission of Alaska (RCA or commission) should be extended, we evaluated commission operations using the 11 factors set out at AS 44.66.050. Under the State's "sunset" law, these factors are to be used in assessing if an agency, subject to the law, has demonstrated a valid public policy need for continuing operations. As discussed in the Findings and Recommendation section, we identified areas where regulation changes could improve RCA's efficiency and accountability. Given the quasi-judicial nature of how RCA operates, we recognize making these proposed regulation changes may be time consuming and attract extensive scrutiny and challenge by various parties that interact with RCA.

In our opinion RCA meets a valid public policy need and is serving Alaskans by: (1) assessing the capabilities of utility and pipeline companies to safely and capably serve the public; (2) evaluating tariffs and charges made by regulated entities; (3) verifying the pass-through charges to consumers from electric and natural gas utilities; (4) adjudicating disputes between ratepayers and regulated entities; (5) providing consumer protection services; and, (6) performing financial reviews of utilities for the State's power cost equalization program. RCA has demonstrated the commission serves a public need. Under AS 44.66.010(a)(3), RCA is scheduled to terminate June 30, 2007. We recommend the legislature adopt legislation extending RCA's termination date to June 30, 2015.

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FINDINGS AND RECOMMENDATION

In our previous sunset audit,¹² we made three recommendations. The first recommendation was for the Regulatory Commission of Alaska (RCA or commission) to propose legislation to clarify statutes imposing statutory timelines on certain proceedings. In 2002 legislation extending the termination date for RCA, the legislature adopted statutes setting specified timelines for the commission to follow in making certain kinds of decisions. The statutory timelines apply to about half of the regulatory decisions made by the commission. In Recommendation No. 1, of this review, we recommend the commission consider adopting further timelines for other actions not covered in statute.

A second recommendation stated RCA's chair should ensure that publication of notices of formal proceedings is monitored. While there are still some operational deficiencies with ensuring all discretionary public notices have appropriately been made, RCA consistently meets basic public notice requirements related to its decision making process. The concerns related to this prior audit recommendation have substantially been addressed.

The third prior recommendation suggested RCA either require smaller water and sewer utilities to be certificated or establish a meaningful exemption system by regulation. RCA adopted the necessary regulations in February 2004.¹³

The following recommendation is based on the current sunset review.

Recommendation No. 1

RCA should proceed with the development of regulations that would enhance the transparency, accountability, and efficiency of the commission's decision making process.

In late 2004, RCA held public meetings inviting comments on possible regulation changes that would improve the way in which the commission operated. In the early part of 2005, based on comments from staff in addition to those received from regulated utilities and pipeline companies at the 2004 meetings, RCA adopted a regulation projects plan. This work plan is reviewed on a regular basis. Many of the projects would establish more accountability standards for RCA operations.

In the course of our review, we identified three areas where adoption of regulations would promote improved efficiency, accountability, and transparency of RCA's decisions. All areas

¹² *Department of Community and Economic Development, Regulatory Commission of Alaska, Sunset Review, November 26, 2002, Audit Control No. 08-20021-03.*

¹³ These regulations became effective June 19, 2004.

Exhibit 4

Statutory Timelines

In a special session in June 2002, legislative committees conducted extensive oversight hearings that focused on RCA's workload and the regulated utilities' complaints of slow processing of their requests. The legislature responded to these complaints by enacting statutory timelines for RCA decisions in several categories of utility regulatory matters. The addition of AS 42.05.175 provided, in part, the following:

- (a) *The commission shall issue a final order not later than **six months** after a **complete application** is filed for an application...*
- (b) *... the commission shall issue a final order not later than **nine months** after a **complete tariff filing** is made for a tariff filing that does not change the utility's revenue requirement or rate design.*
- (c) *... the commission shall issue a final order not later than **15 months** after a **complete tariff filing** is made for a tariff filing that changes the utility's revenue requirement or rate design.*
- (d) *The commission shall issue a final order not later than **12 months** after a **complete formal complaint** is filed against a utility or, when the commission initiates a formal investigation of a utility without the filing of a **complete formal complaint**, not later than **12 months** after the order initiating the formal investigation is issued.*
- (e) *The commission shall issue a final order in a rule-making proceeding not later than **24 months** after a **complete petition** for adoption, amendment, or repeal of a regulation...*
- (f) *The commission may extend a timeline required under (a) - (e)... if all parties of record consent to the extension or if, for one time only, before the timeline expires, the*
 - (1) *commission reasonably finds that good cause exists to extend...*
 - (2) *commission issues a written order extending the timeline and setting out its finding regarding good cause; and*
 - (3) *extension of time is 90 days or less.*
- (g) *The commission shall file quarterly reports with the Legislative Budget and Audit Committee identifying all extensions ordered under (f)(2)...*
[emphasis added]

we identified for improvement were included in the commission's 2005 regulation projects plan – although as of the date of this report, the commission has not started the process of developing the necessary regulations. Our identified improvement areas include: (1) establishment of additional timelines; (2) adoption of rules related to discovery; and (3) defining when a record is considered complete and the given timeline starts. Further discussion of these issues is as follows:

1. Establishing timelines for matters not covered by statute. In 2002, legislation was passed imposing statutory timelines on certain matters that come before the commission. (Refer to Exhibit 4.) However, these timelines apply to about half of the matters decided by RCA, leaving many filings and applications submitted to the commission without any formal, widely recognized timelines. This ongoing concern about timeliness was also reflected in almost half of survey responses received from representatives of regulated entities.

Our review of RCA's decisions indicated the commission is consistently meeting the timelines set out in statute. This demonstrates RCA is committed to being as timely as possible. We urge the commission to take the additional step of putting timelines, for the actions not covered by statute, into regulation.

2. Establishing standards for certain aspects of discovery. Part of the prehearing process, during which each party requests relevant information and documents from opposing parties, is termed discovery. Each side is attempting to discover pertinent facts. Generally, discovery devices include depositions,¹⁴ requests for admissions,¹⁵ interrogatories,¹⁶ document production requests, and requests for inspection. Excessive discovery requests during the course of a proceeding can be used as a tactic to drive up the legal costs for the opposing party. Additionally, extended discovery may contribute to longer proceedings, which runs counter to the central intent behind statutory timelines adopted in recent years.

In past years, the merits and possibility of placing some limits on discovery has been raised in public meetings between RCA commissioners, utility managers, and attorneys that specialize in regulation law. In comments received from respondents to our survey, the need for discovery guidelines and the use of what is termed "informal" discovery were listed as current suggestions for improvement. Under current regulations RCA does have the authority, on a case-by-case basis, to adopt procedural rules limiting the nature and extent of discovery.¹⁷

¹⁴Depositions are proceedings in which a witness or party is asked to answer questions under oath before a court reporter.

¹⁵A request for admission is a request to a party that they admit certain facts. One party sends the other a request for admission so that issues, the parties agree upon, can be resolved and not have to be proven at hearing.

¹⁶Interrogatories are written questions sent by one party to the other for the latter to answer in writing under oath.

¹⁷ See 3 AAC 48.091(l). Rulings that specifically limit certain aspects of discovery are typically set out in an order during the early part of a proceeding. RCA occasionally issues orders limiting discovery, typically doing so only if one of the parties make a request to do so, and can make a persuasive argument.

State court rules limit the number of interrogatories in civil matters to 30. Federal civil procedure rules limit interrogatories to 25. Many regulatory authorities in other states have adopted rules related to discovery. In such situations where limits are imposed, provisions are typically made to allow parties to seek additional discovery. To do so, however, a party wanting more discovery must convince the adjudicative authority (judge, commissioner, hearing officer, etc.) to suspend or expand the established limits. If similar rules were in place at RCA, a party making an extensive discovery request would first have to justify the need for a larger request.¹⁸

There is a need to balance due process against efficiency. There may be times when exceptions to an established standard may have to be made. However, there is merit in RCA's consideration of limiting some aspects of the discovery process in the interest of promoting more efficient proceedings. Adoption of such rules by RCA would shift the burden of justifying broad discovery requests to the requesting party.

3. Clarifying terms used in statute that relate to established timelines for certain formal proceedings. State law, in setting timelines for various RCA proceedings, refers to various matters as being "complete" before the related, specified time period begins. Terms such as "*complete application*," or "*complete tariff filing*" serve as reference points that trigger the deadline for a given decision. (See Exhibit 4.) The statute states that a request from the regulated entity is complete when all requirements are complied with under RCA's statutes, regulations, and adopted forms.

However, the determination of completeness is made informally by the advisory section staff rather than by a written decision of the commission. A more formal process performed by the commissioners or administrative law judges, rather than the current delegation to staff, would provide greater clarity to the regulated entities as to the completeness of their requests.

Over a quarter of the respondents to our survey said they were not informed by RCA as to what the deadline date was for their particular matter of interest. Although the date a matter is first opened may be clear, it is often some time before the filing is considered complete. Determining when the initial filing is complete involves subjective judgment on the part of RCA staff. In evaluating RCA's compliance with the timeline provisions, we occasionally saw where the date—when a filing was considered complete—was sometimes changed upon further review of the file.

RCA's determination of the trigger date of the statutory timeline, the date of completeness, is a point on appeal in several cases in front of the Superior Court initiated during the audit period. Legal filings and responses in the RCA hearing process and

¹⁸ A current proceeding provides an example of where discovery appears to be unreasonable. A regulated utility received five requests from an opposing party that involved developing responses to between 1,800 and 2,200 interrogatories (the count varying depending on how one chose to count various question sub-parts).

appeals of RCA decisions may be limited by adoption of such regulations. Clarification of what determines completeness, and the process to document and communicate the completeness date, could limit this as a point of contention.

If RCA adopted regulations to define when an initial application, filing, complaint, and petition are complete such action would enhance the transparency and accountability of the commission's deliberative process. Alternatively, the commission could develop the practice of issuing an order to memorialize the date of when the initial record is considered complete. Such an order date could be integrated into the commission's interactive internet web portal and all parties to a given matter would be on notice as to the deadline date for a given matter's final decisional order.

The commission has been very proactive in soliciting feedback from the public, and the utility and pipeline companies, which are involved with RCA on an ongoing basis. While this process has identified key areas where RCA could improve its operations, the priority for implementation has to date been given to other matters. For the three issues discussed—directly related to promoting efficiency, accountability, and transparency of RCA's decision making—we recommend that the commission take the next step and schedule the necessary hearing dockets.

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A NALYSIS OF PUBLIC NEE D

The following analyses of commission activities relate to the public need factors defined in AS 44.66.050(c). These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

Determine the extent to which the board, commission, or program has operated in the public interest.

The Regulatory Commission of Alaska (RCA or commission) operates in the public interest in a wide variety of ways. The commission identifies its core services as including:

1. certification and economic regulation of utilities and pipeline companies;
2. assisting in the administration of the State's power cost equalization program;
3. review of tariffs;
4. resolution of disputes among service providers in various regulated industries;
5. consumer protection;
6. refinement of the State's utility regulatory framework; and,
7. serving as a technical resource for legislative and administrative decision makers.

In carrying out its responsibilities, RCA acts much of the time in a quasi-judicial manner. Accordingly, decisions must be supported by findings of fact, and the findings of fact must be based solely upon the evidence as it appears in the record of a given proceeding. RCA continues to be very concerned about affording all parties to a given decision appropriate due process, while at the same time being responsive to concerns about the timeliness of its decision making process.

RCA's efforts at resolving consumer complaints with regulated utilities also serve the public interest. The commission resolves most informal complaints within 30 days. Most of the regulated entities responding to our survey reported they were satisfied with the complaint resolution process.

RCA has responded well to legislative concerns about timeliness. In 2002, after extensive oversight hearings, the legislature put into statute specific time periods for RCA to follow in making various decisions. We reviewed 35 tariff filings and 35 formal proceedings. In no instance did RCA take longer than permitted, by statute, to make a given decision.

As discussed in Background Information, RCA did issue a final order to close a rule-making docket prior to completing the development of regulations related to hydropower projects.

While such action allowed the commission to technically comply with the established timeline, the central intent of the statute was circumvented. The commission continues to work on developing the regulations and does intend to reopen a formal docket in the future to adopt the necessary regulations.

Determine the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters.

RCA's system, used to monitor progress of various hearing dockets and ensure impending deadlines are met, is adequate in promoting the issuance of timely decisions.¹⁹ Such a system serves to prevent the triggering of default actions as provided for under the statutes for late decisions.

There is a lack of clarity about when timelines for certain decisions, as provided for in statute, actually begin. The time period for a decision begins when the initial record related to a proceeding is complete. However, there is no formally established definition in policy or regulation about when the initial record is complete. Determination of completeness is critical to designating when a given time period starts. Additionally, from a survey of selected parties involved with RCA proceedings, over a quarter of the respondents reported they had not been informed of any established deadline date related to their matter that fell under the statutory timelines.

Almost half of the survey respondents involved with proceedings not covered by a statutory deadline believed the length of time it took to resolve their matters was unreasonable. For survey respondents involved in pipeline proceedings, which are not covered by any statutory deadline, 60 percent believed the length of time for such proceedings was unreasonable. As discussed in Recommendation No. 1, we encourage the commission to develop regulations that establish timelines for matters not covered by state law.

Determine the extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.

RCA commissioners provided testimony regarding the impact that 2003 legislation would have on commission operations. The legislation clarified state law related to the regulation of pipelines. The legislation expanded RCA's authority to regulate rates charged to customers for natural gas transported through any pipeline in the State, where previously such authority had been limited to a designated natural gas pipeline.

¹⁹ There are three components of RCA's system. First, each matter filed with RCA is assigned to a responsible "docket manager" who monitors subordinates' progress in preparing the matter for decision. Second, the RCA commission section manager maintains a database to monitor workflow and to continually advise the commissioners and staff as to the needed allocation of resources. Thirdly, weekly meetings with the RCA chair, administrative law judges, and staff are held to review the status of all open dockets.

According to testimony, RCA worked with the Department of Law to assist in developing 2004 legislation that provided for assessments to fund the public-advocacy function related to utility and pipeline regulation. This function was transferred from RCA to the Department of Law by Executive Order #111. The legislation clarified RCA's authority under the Executive Order and provided for independence between the commission and the public-advocate function.

RCA testified about the impact proposed 2005 legislation would have on commission operations. The legislation would have permitted privately owned utilities to be eligible for certain state water and sewer infrastructure grants. Grant eligibility under the legislation would have been contingent on the recipient utilities remaining under RCA's regulatory oversight. The legislation was adopted by the House but not the Senate.

RCA testified in hearings related to proposed 2005 legislation exempting certain water and sewer utilities from regulation. More specifically, the proposed legislation exempted such utilities owned by local governments, if the utility did not compete with a regulated utility. RCA's chair testified the commission could support the legislation if certain safeguards were in place to protect the affected consumers of the utility. Under the final draft of the legislation, RCA's chair would have been charged with reviewing the existence and appropriateness of such safeguards. If the chair determined the measures were adequate, the commission would notify the administration that the utility was exempt from RCA's regulation. The legislation was adopted by the House but not the Senate.

Determine the extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.

RCA affords the public the opportunity to speak at publicly noticed meetings of the commission. The quasi-judicial manner in which RCA operates provides extensive opportunity for all interested and affected parties to informally and formally respond to proposed regulations and decisions.

In addition, as part of its operating mission, RCA has an active consumer protection function which provides utility customers an avenue to seek resolution of complaints. RCA generally tries to resolve disputes between customers and utilities informally, before opening a formal complaint.

Exhibit 5		
Consumer Complaints		
Filed with RCA during FY 06		
	Number Filed	Percentage Of Total Complaints
Telecommunications	247	60%
Electric	91	22%
Water / Sewer	34	8%
Natural Gas	20	5%
Refuse Collection	18	4%
Cable Television	5	1%
Totals	<u>415</u>	<u>100%</u>

As reflected in Exhibit 5 on the previous page, RCA opened 415 formal complaints in FY 06. RCA resolved almost 90 percent of these complaints within 30 days. Additionally, almost 90 percent of the respondents to our survey, who were involved with the informal complaint resolution process, reported they were satisfied or very satisfied with the process.

RCA uses a variety of methods of notifying the public of formal proceedings. All notices appear on the commission's and the State's website. Notices are also placed in newspapers in the affected regions of the State, posted at the local post office, or included with utility customer billings.

Determine the extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

RCA's internet website is another tool that is instrumental for communicating with the public. Besides notices of upcoming meetings, formal actions are posted along with the commission's annual reports, discussions of major regulatory issues, and a forum is provided for public comment. The process for filing a consumer complaint is explained and visitors to the website can subscribe to direct e-mail notices related to specific topics of interest.

Survey respondents report that RCA's internet website is easy to use for finding sought after information and the site provides sufficient information regarding dockets and filings. RCA makes a computer terminal available at its office for the public to use for researching commission records. As discussed in Background Information, the commission sought and facilitated the formation of stakeholder groups to assist in the process of developing regulations for smaller hydropower projects. The commission has often used this consensus-building approach in developing regulations and making certain operational decisions.

In December 2004, in response to frustrations voiced by pipeline companies, the commission began holding informal meetings with certificated companies. The meetings developed a listing of suggestions about how the oversight process for pipelines could be improved. In March 2005, a follow-up meeting was held that documented the steps RCA had already taken and the commission's strategy to further address the concerns of the companies. These efforts should be continued to improve the commission's regulation of pipelines.

RCA has used a public process to identify priorities for possible changes in regulations. Beginning in late 2004, commissioners solicited suggestions from staff, the public, and regulated entities about what regulations should be amended or adopted. At a January 2005 public meeting, RCA adopted a list of 11 proposed regulation projects. (See Recommendation No. 1.)

Determine the efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved.

The state ombudsman and the office of victims' rights report receiving no complaints about RCA since our previous sunset review four years ago.

RCA orders and decisions are subject to appeal to the state courts. Since the prior sunset review, 26 of the commission's final orders reflecting docket decisions have been appealed to the State's Superior Court. The Superior Court has remanded three of the decisions back to RCA for further proceedings.

Additionally, the State's Supreme Court has issued decisions related to four RCA docket decisions, resulting in one decision being remanded back to RCA for further proceedings.

Determine the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public.

As discussed in Organization and Function, "entry" into the provision of public utility services or the operation of a pipeline is regulated through the issuance of a certificate of public convenience and necessity. A public utility or pipeline carrier must obtain from RCA a certificate of public convenience and necessity, which describes the authorized service area and scope of operations. A certificate is issued upon the commission formally finding the applicant to be fit, willing, and able to provide the service requested. The commission generally regulates the rates, services, and practices of these entities.

To that end, RCA employs utility financial analysts and utility engineers to perform the appropriate analyses to make a determination of an applicant's capabilities before granting a certificate. Since 2002, RCA has issued 53 certificates of public convenience and necessity.

Determine the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

We found no evidence of RCA's hiring practices or appointments that were contrary to state personnel practices. Since our sunset review during 2002, no complaints have been filed with any of the following: (1) Alaska State Commission on Human Rights in the Office of the Governor; (2) U.S. Equal Employment Opportunity Commission; (3) Alaska Labor Relations Agency with the Department of Labor and Workforce Development; or (4) staff specializing in equal employment opportunity issues in the Division of Personnel within the Department of Administration.

Determine the extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Half of the respondents, to our survey of parties to formal proceedings, reported they do not believe the existing statutes meet the needs of the regulated entities and protect the public interests. Some of the areas that the respondents believe should be addressed by statutory changes were:

- protection of rural exemptions,
- provision of business incentive to encourage investment in Alaska,
- amendment of the Pipeline Act (AS 42.06) to provide RCA a greater degree of discretion in deciding pipeline-related issues,
- clarification of statutory timelines due to recent RCA decisions,
- establishment of varying degrees of regulation based on complexity and financial impacts,
- shortening of the statutory timeline for decisions in rate proceedings, and
- amendment of AS 42.05.175 to segregate the timeframes between adjudicative proceedings and the time given for the commission to issue its final order at the close of such proceedings.

In addition, the results of our surveys showed that 43 percent of the respondents do not believe the existing regulations meet the needs of the regulated entities and protect the public interests. Some of the areas that the respondents believe should be addressed by regulation changes were:

- deregulation of competitive markets,
- revision of ex parte communication rules,
- clarification of what constitutes a complete application/filing and when RCA must determine and document such completeness,
- addition of discovery limitations, and provision for use of more informal discovery.

As discussed in Background Information, RCA began in March 2006, what it termed, the 2005 improvement initiative project. This project included setting priorities for statute and regulation changes with input from the regulated entities through the public meeting process.

Determine the extent to which the board, commission, or agency has effectively attained its objectives and purposes and the efficiency with which the board, commission, or agency has operated.

According to 55 percent of the survey respondents, RCA's overall operations have improved somewhat or significantly during the past four years. Eighty-eight percent (88%) of survey respondents reported the efficiency of the commission's hearing process has stayed the same or improved with 46 percent of the respondents reporting the hearing process over the past four years has become more efficient.

Since FY 03, RCA's operational performance measures have evolved. The current chair of RCA is planning to implement a review of the performance measures and in the process obtain input from the regulated entities. The current performance measurements include:

- issuing all orders within statutory deadlines;
- closing as many cases as the number received each year; and,
- limiting the number of its decisions that are appealed to the Superior Court.

RCA has substantially accomplished the above operational performance measures. See Recommendation No. 1 which identified regulations that could improve RCA's efficiency and effectiveness.

Determine the extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.

Under state law,²⁰ utilities owned and operated by local governments are exempted from regulation. The exemption of utilities owned and operated by governmental units is a common feature of utility regulation statutes across the country. The main reason for such a law is the accountability to the public for utility rates and services thought to be more efficiently accomplished through the local government electoral process. Accordingly, regulating rates and service through a quasi-judicial adjudicatory process such as RCA could be considered duplicative in instances where a local government utility is not exempted.

This issue of possible duplication is reflected in recent efforts of the Municipality of Anchorage (MOA) to have the city's water and sewer utility exempted from RCA oversight. In both the 2003-04 and 2005-06 legislatures, bills have been considered that would amend the statutes related to such exemptions. The central purpose of the proposed legislation was to further specify that water and sewer utilities owned by a local government, such as MOA,

²⁰ AS 42.05.711 (b) states in part "...public utilities owned and operated by a political subdivision of the state ... are exempt from [RCA oversight]." The statute does allow such utilities to opt for regulation upon the election of the political subdivision's governing body. More significantly though, if such a utility "directly competes with another utility or electric operating entity [subject to RCA regulation]," then the exemption does not apply. In such a situation the political subdivision utility remains subject to RCA regulation.

would be exempt from regulation. The exemption would continue to be contingent on the utility not competing with other regulated water and sewer utilities.²¹

²¹ An earlier attempt in the early 1990s by MOA to be exempted from RCA failed largely because of concern over the city's ownership of both a water and sewer utility along with an electrical utility. Since the commission determined MOA's electrical utility did compete with other regulated utilities, this precluded exemption of the water and sewer utility. The commissioners at the time were concerned joint ownership of an exempted water and sewer utility and nonexempt electrical utility could lead to a shifting of costs between the two entities. It was determined that such possible cost-shifting could be unfair to competing electrical utilities.



DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Regulatory Commission of Alaska

Sarah Palin, Governor
William C. Noll, Commissioner
Kate Giard, Chairman

December 6, 2006

Ms. Pat Davidson, Legislative Auditor
Division of Legislative Audit
PO Box 113300
Juneau, AK 99811

Dear Ms. Davidson,

The Regulatory Commission of Alaska (RCA) received your Confidential Preliminary Audit Report on November 14, 2006. The Commissioners met in Executive Session on November 22, 2006, for the purposes of discussing the report and have formulated this response.

We believe a governmental agency must never stop trying to improve. It must never rest on its laurels or forget that just beyond the horizon lies a better way to do business, one that's more efficient, promotes greater accountability or enhanced transparency.

After three years of concentrated efforts, the RCA is a better, more efficient and responsive regulatory agency. Yet, our mission is not complete. We must strive to continually deliver an improved and balanced regulatory environment that achieves our statutory mandate of protecting the public interest. We are wholly committed to that goal.

This audit report delivers a straight-forward and comprehensive evaluation of the Agency. We appreciate the work of the legislative auditors who spent four months immersed in Alaska's complex regulatory environment. The resulting management letter includes three recommendations that are germane and timely. We will implement them without question.

We again thank Legislative Audit for a fair and honest evaluation and seek support of the Alaska Legislature for the recommendations contained therein.

Sincerely,

Kate Giard, Chairman

701 W. 8th Street, Suite 300, Anchorage, Alaska 99501-3469
Telephone: (907) 276-6222 Fax: (907) 276-0160 Text Telephone: (907) 465-5437
Website: <http://www.commerce.state.ak.us/rca/>



Jennifer M. Granholm
GOVERNOR

STATE OF MICHIGAN
PUBLIC SERVICE COMMISSION
DEPARTMENT OF LABOR & ECONOMIC GROWTH
DAVID C. HOLLISTER
DIRECTOR

J. Peter Lark
CHAIR

Robert B. Nelson
COMMISSIONER

Laura Chappelle
COMMISSIONER

To: J. Peter Lark, Chair
Robert Nelson, Commissioner
Laura Chappelle, Commissioner

From: Gary Kitts

Subject: Rate Case Processing

You requested that the Commission Staff conduct an analysis of the length of time required to process a rate case in Michigan compared to other states. To do so, we used data published by Regulatory Research Associates, Inc. regarding rate cases decided between January 1, 1990 and December 31, 2003. We included any cases that were initiated by an application filed by the utility, but did not include any initiated by the Commission on its own motion, on the motion of the Commission Staff, or on the motion of another agency, such as a Consumers Counsel. The total number of cases during this 14-year period was 824, of which 19 were in Michigan. The study includes rate cases from all states except Alaska (we were unable to find any rate cases in the data base) and Nebraska, which relies primarily on municipal regulation. The results of our study are shown in the following table and the specific details for each state are attached.

	Michigan	U.S. Average
Unadjusted Case Time	11.4 Months	10.9 Months
Cases of \$100 Million or more (Percent)	21.1 %	9.6 %
Adjusted Case Time	11.4 Months	11.7 Months

The first line of this table indicates that the actual average time to complete a rate case in Michigan was 11.4 months compared to 10.9 months in the rest of the country – a difference of approximately two weeks. However, this average fails to take into account the relative size of the cases involved. It has been our experience (indeed it should be obvious) that large cases require more time than short cases. On average, a rate increase request of \$100 million or more lasts 7.3 months longer than a smaller rate case. This difference is significant, because in Michigan 21.1% of all rate requests are for \$100 million or more compared to only 9.6% in the rest of the country. Thus, the proportion of large controversial rate cases in Michigan is more than double that in the other states. When an adjustment is made for case size, Michigan's average rate case is actually completed in less time than in other states.¹

¹ (21.1% - 9.6%) x 7.3 months = 0.8 months.

In addition, it is important to recognize the significant impact of the recent increase in rate requests. Between 1990 and 2003, Michigan utilities filed rate requests totaling slightly more than \$900 million, an average of approximately \$65 million per year. However, this year companies regulated by the Commission are asking for rate increases of approximately \$950 million. Thus, utility rate requests this year exceed the total requests for the prior 14 years. Along with these traditional rate requests, Consumers and Detroit Edison have asked for an additional \$1.1 billion in asset recovery costs pursuant to MCL 460.10d(4) and other relevant sections.² Finally, in the next month or so, we anticipate the filing of new rate cases totaling approximately \$500 million. Thus, this year, the Commission is faced with rate filings in excess of \$2.5 billion, almost triple the total volume over the last 14 years. It goes without saying that it will be a challenge to address these requests, especially in light of the fact that the Commission Staff has been reduced from 240 in 1992 to 148 today.

State	Total \$	Wtd \$	Months	Wtd Month
Alabama	14.5	0.04%	7.0	0.00
Arizona	1048.4	2.97%	14.3	0.42
Arkansas	136.1	0.39%	10.1	0.04
California	1578.1	4.47%	15.2	0.68
Colorado	331.2	0.94%	9.4	0.09
Connecticut	1327.1	3.76%	6.4	0.24
Delaware	104.8	0.30%	15.0	0.04
District of Columbia	445.6	1.26%	10.3	0.13
Florida	544.5	1.54%	7.1	0.11
Georgia	681.7	1.93%	6.1	0.12
Hawaii	534.7	1.52%	20.0	0.30
Idaho	66.8	0.19%	10.0	0.02
Illinois	2914.0	8.26%	11.2	0.93
Indiana	460.4	1.30%	11.6	0.15
Iowa	504.7	1.43%	8.6	0.12
Kansas	402.7	1.14%	9.1	0.10
Kentucky	185.8	0.53%	8.2	0.04
Louisiana	139.2	0.39%	14.8	0.06
Maine	225.1	0.64%	8.6	0.05
Maryland	1084.4	3.07%	5.8	0.18
Massachusetts	712.1	2.02%	6.5	0.13
Michigan	909.9	2.58%	11.4	0.29
Minnesota	473.0	1.34%	12.1	0.16
Mississippi	120.1	0.34%	4.8	0.02
Missouri	862.9	2.45%	9.0	0.22
Montana	255.6	0.72%	11.0	0.08
Nevada	284.8	0.81%	5.5	0.04
New Hampshire	21.2	0.06%	12.0	0.01

² These are total rather than annual asset recovery costs for these items.

New Mexico	78.5	0.22%	10.1	0.02
New Jersey	1990.4	5.64%	11.7	0.66
New York	3132.2	8.88%	12.2	1.08
North Carolina	445.7	1.26%	6.6	0.08
North Dakota	32.2	0.09%	7.2	0.01
Ohio	1604.8	4.55%	11.3	0.51
Oklahoma	225.3	0.64%	20.5	0.13
Oregon	879.9	2.49%	11.0	0.27
Pennsylvania	1693.3	4.80%	8.6	0.41
Rhode Island	89.0	0.25%	7.9	0.02
South Carolina	361.9	1.03%	8.0	0.08
South Dakota	19.7	0.06%	5.2	0.00
Tennessee	63.6	0.18%	6.8	0.01
Texas	3427.6	9.72%	14.3	1.39
Utah	512.0	1.45%	8.5	0.12
Vermont	279.9	0.79%	9.5	0.08
Virginia	827.2	2.34%	15.8	0.37
Washington	1058.7	3.00%	8.1	0.24
Wisconsin	1573.7	4.46%	9.0	0.40
West Virginia	457.7	1.30%	9.3	0.12
Wyoming	157.1	0.45%	7.0	0.03
	35279.8	100.00%		10.9

BOARD	REGULATORY Y/N?	LEGISLATIVE CONFIRMATION Y/N?	BOARD FUNCTION
Alaska Statehood Celebration Commission	N	N	Plan/administer all state activities leading up to 50th anniversary of statehood
Aviation Advisory Board	N	N	Advise DOT&PF commissioner on aviation policy, recommend FAI and ANC airport manager
Alaska-Alberta Bilateral Council	N	N	Provide direction on bilateral issues, explore new areas for cooperation
Arts Council	N	N	Encourage and support excellent regulates and controls applications, licences, and permits of barbers, hairdressers, cosmetologists,
Board of Barbers and Hairdressers	Y	Y	
Big Game Commercial Services Board	Y	Y	Licenses and regulates big game commercial hunters Res. in state quarter, make recommendations to governor for his/her nomination to US Mint
Commemorative Coin Commission	N	N	sustained yield management of fishery resource
Commercial Fish Entry Commission	Y	Y	
Employment of People with Disabilities	N	N	Promotes employment of people with disabilities
Faith Based and Community Initiatives Advisory Council	N	N	Convene a statewide conference on faith-based and community initiatives
Knik Arm Bridge and Toll Authority (KABATA)	N	N	Develop and advance the Knik Arm Bridge to connect Anchorage and Mat-Su Serve as labor relations agency under public employment relations act, and for Alaska Railroad
Labor Relations Agency	Y	Y	
Marine Pilots	Y	Y	Jurisdiction over licensing and pilotage of marine pilots Provide recommendations to governor and commissioner of DOT&PF on marine transportation functions
Marine Transportation Advisory board (MTAB)	N	N	
Occupational Safety	Y	Y	hears appeals of citations relating to occupational hazards

Oil and Gas Conservation	Y	Y	Regulate oil and gas drilling, development and production
Parole Board	Y	Y	Authorizes parole releases and conditions of parole
Professional Counselors	Y	Y	Regulates licensing standards and examinations of applicants
Psychologists and Psychological Associates	Y	Y	Regulates and controls applications, licences and permits facilitates and permits payment of compensation to innocent victims of violent crimes
Violent Crimes Compensation Board	Y	Y	
Workers Compensation Appeals Commission	Y	Y	Jurisdiction to hear appeals from final decisions of the Workers Compensation Board

ALASKA STATE LEGISLATURE

REPRESENTATIVE KURT OLSON

- Chair, Labor and Commerce
- Vice-Chair, Oil and Gas
- Member, Community and Regional Affairs

Session: January – May
State Capitol
Juneau, AK 99801-1182
Phone: 907-465-2693
Fax: 907-465-3835



Interim: May – December
145 Main Street Loop, Ste 221
Kenai, AK 99611
Phone: 907-283-2690
Fax: 907-283-2763

Official Business

April 23, 2007

To: Members, House Labor and Commerce Committee

Re: Regulatory Commission of Alaska

We currently have two RCA bills and a resolution before our committee. It is my intention to move them out of committee in a timely manner beginning later this week. Although the process of getting these bills out of committee may have appeared to be disjointed up until now, that has not been the case. I have been working closely with the Palin administration, my counterpart in Senate Labor and Commerce, and leadership of the House and Senate.

HCR 8

This resolution will set up a task force to study staffing, job descriptions, and salaries of RCA commissioners and employees. It is an outgrowth of a request made by the full commission in February to Governor Palin for the Legislature to review those items. A copy of the transmittal letter is attached and highlighted.

HB 209

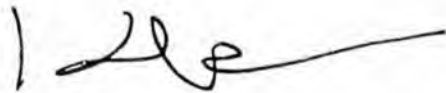
We will be working off the committee substitute adopted by the committee on April 13th. It primarily deals with timelines and the Governor appointing the Chair of the RCA. The CS is acceptable to the administration and most of the entities regulated by the RCA. Attached is a recent communication from the Palin administration to the RCA discussing the administration's support of the CS to HB 209.

HB 110

This is the sunset bill extending the RCA. Depending on the outcome of HCR 8 and HB 209 I believe that we will most likely have a sunset of either four or six years, with Senate wording on biannual report cards. It is my intent to move it out clean.

I would encourage each of you to schedule an appointment with me sometime on Tuesday to discuss any questions or concerns you may have. I believe that the bills and the resolution meet the needs of the residents of Alaska, and will make the RCA more efficient.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kurt Olson', with a long horizontal flourish extending to the right.

Rep. Kurt Olson

Cc: House Speaker John Harris
Senate President Lyda Green
John Bitney, Office of the Governor
Senator Johnny Ellis, Chair, Labor and Commerce
Anna Kim, Office of the Governor

From: John Bitney [mailto:john_bitney@gov.state.ak.us]
Sent: Wednesday, April 18, 2007 11:59 AM
To: 'Kate'
Cc: 'Michael Tibbies'; 'Anna Kim'; 'Sally Saddler'; 'Christopher Clark'
Subject: RCA legislation

Kate:

Here's where the Palin administration stands on legislation relating to the Regulatory Commission of Alaska.

We support:

1. **One, clean sunset extension** – We prefer a six-year extension with two-year reviews as outlined in the CSSB 16 (CRA), but we can live with a four-year extension **that contains no other provisions.**

2. **A second bill that is limited to:**

- Time lines;
- Having the Governor select the commission chair; and,
- Establishing a task force, which would sunset, to address commissioner salaries and qualifications and other reform provisions as brought forth in RCA public hearings.

This is the message we wish to convey to Senate President Lyda Green, House Speaker John Harris, Senate Finance Committee Co-chairs Lyman Hoffman and Bert Stedman, House Finance Committee Co-chairs Mike Chenault and Kevin Meyer, Senate Labor and Commerce Committee Chair Johnny Ellis, Senate Community and Regional Affairs Committee Chair Donny Olson, House Labor and Commerce Committee Chair Kurt Olson, and other lawmakers.

4 20 2007



DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Regulatory Commission of Alaska

Sarah Palin, Governor
Emil Notti, Commissioner
Kate Giard, Chairman

February 22, 2007

To: Honorable Sarah Palin, Governor

Re: Proposed Changes to Governing Statutes, Regulatory Commission of Alaska

From: Kate Giard, Chairman

On behalf of the Regulatory Commission of Alaska, I am pleased to provide you with the results of our public process concerning possible revisions to our enabling statutes. As has been our practice the last several years, we engaged in a systematic public process as part of our commitment to enhance Commission transparency and accountability, and to identify statutory revisions that would improve Commission processes.

As part of this process, we invited and received substantial public input and dialogue before approving the attached statutory reform proposals. We invited two rounds of comments, held a public workshop and public hearing, and discussed the proposed statutory revisions at three public meetings. The transcripts of these public proceedings can be found at <http://rca.alaska.gov/data/docketDetail.html?docket=R-06-01C>, along with electronic versions of all Commission orders issued and public comments filed regarding these suggested statutory revisions.

On February 2, 2007, the Commission voted to transmit several proposed changes to statutes governing agency operations to you for consideration. We believe that your support for legislation containing these statutory improvements will serve the public interest.

Following is a brief description of each proposal:

Revising AS 42.05.254 (Public Utility Regulatory Cost Charge) and AS 42.06.286 (Pipeline Carrier Regulatory Cost Charge)

We seek your support for legislation which would revise the Regulatory Cost Charge (RCC) provisions of the Alaska Public Utilities Regulatory Act (AS 42.05) and the Pipeline Act (AS 42.06). The revenues of the Commission are derived almost entirely through ratepayer charges paid through their utility services and pipeline transportation bills. The legislature has enacted a statutory limit on the amount of RCCs the Commission can collect to protect ratepayers from excessive government spending.

The agency has been able to fulfill its mission and operate within these limits in the past, however, in fiscal 2008 the Commission may incur up to \$1.5 million in combined PERS benefit costs plus litigation costs.

We sought public comment on whether to meet these unanticipated expenditures 1) through a reduction in personnel, 2) through an increase in the RCC rate or 3) by removing an existing exemption for electric utilities.

There was no public support for reducing our personnel, primary because those commenting were concerned that it would slow down the regulatory process. Comments generally supported the increase in the RCC amount and comments were divided on whether to remove the exemption.

The Commissioners voted to seek your support to increase the statutory regulatory cost charge limit to 0.9 percent from 0.7 percent. We believe this will provide a sufficient base of revenue to address 2008 and hopefully any subsequent increases in the PERS benefit liability.

Revising AS 42.05.571 (Civil Penalties/Public Utilities) and AS 42.06.540 (Civil Penalties/Pipeline Carriers)

Another proposal would increase the amount of civil penalties from current levels (\$100 for public utilities, \$500 for pipeline carriers) to \$1,000 for any violation of statute or Commission directive, and would allow the Commission to assess these civil penalties against any person involved in any Commission proceeding. The small, \$100 fine, has remained unchanged in statutes since 1970.¹

¹See § 6 ch 113 SLA 1970.

Revising AS 42.05.175 (Timelines for Issuance of Final Orders)

A fourth proposal forwards several potential revisions to statutes establishing specific deadlines for Commission action in several types of proceedings. This proposal generated the most public comment, with several suggested changes to existing statutes proposed by interested parties. We incorporated one of the public proposals (a "catch-all" provision that establishes a deadline for proceedings not currently subject to such a deadline), and propose some additional revisions based on our experience with statutory deadlines.

The following four suggested statutory revisions are part of our agency restructuring efforts.

Revising AS 42.04.040 (Legal Counsel)²

Currently the Department of Law simultaneously fulfills several roles involving this agency, from advising the Commission³ to appearing before the Commission as the public advocate⁴ or an interested party.⁵ In both its public advocate and interested party roles, the Department of Law has the ability to appeal Commission decisions. The Department of Law's simultaneous performance of different roles in Commission proceedings creates an inherent conflict of interest that at times requires special accommodations, including the need to hire outside counsel to avoid a situation where the Department of Law represents both the appellant and appellee in an agency appeal. The creation of an Office of General Counsel will allow us to avoid this potential conflict of interest.

²This proposal also encompasses several statutory revisions necessary to reflect the Commission's shift from representation by the Department of Law to an Office of General Counsel. Specifically, references to the "attorney general" would be changed to the "general counsel" in AS 42.05.601(a) and 42.06.560(a). In addition, AS 42.06.140(a)(7) would be amended to clarify the Commission's involvement in federal proceedings involving pipeline carriers as well as proceedings in another state. Finally, the revision to AS 42.06.140 would clarify that the Department of Law may request (rather than require) the Commission's assistance in proceedings involving a pipeline carrier or affiliated interest and affecting the interests of the State of Alaska.

³In this capacity the Department of Law acts as our legal advisor in adjudications, rulemaking proceedings and public meetings, and defends appealed orders.

⁴Since 2003, the Department of Law has also participated in commission dockets as the public advocate. The public advocate was created in 1999, when the legislature allowed the Alaska Public Utilities Commission to sunset and created the Regulatory Commission of Alaska. At its inception the public advocate was part of the Regulatory Commission of Alaska. See AS 42.04.150 (repealed 2003). In 2003, the public advocacy function was transferred to the Department of Law. See AS 44.23.020(e).

⁵In pipeline dockets, the Department of Law's Oil and Gas section may participate as a party representing the Department of Natural Resources and the Department of Revenue, which oversee the state royalty and tax interests.

Adding AS 42.05.045 (Administrative Law Section)

Our Commission has restructured by hiring additional administrative law judges and creating an Administrative Law Section. This reform has allowed us to retain additional in-house legal expertise, and has contributed to a significant reduction in time frames for processing filings and resolving issues before this agency. Our proposed statutory revisions include a section providing statutory authorization for the Administrative Law Section.

Adding AS 42.05.047 (Natural Gas and Oil Pipeline Section)

Another agency restructuring proposal is the creation a Natural Gas and Oil Pipeline Section. Our regulation of pipeline carriers involves complicated issues and requires a significant allocation of staff resources to adequately address pipeline issues within our jurisdiction. The proposed statutory reform would allow this agency to develop and dedicate agency expertise for upcoming gas and oil pipeline issues.

Revising AS 39.25.120 (Partially Exempt Service)

A final aspect of our agency restructuring is the authorization to utilize certain partially exempt positions allocated only to departments with the State of Alaska. This statutory revision would allow the chairman and commissioners, respectively, to employ a private secretary and special assistants. In addition, this section would transition the commission section manager, chief administrative law judge, and any economist we may employ into partially exempt service, and would reaffirm the partially exempt status of our administrative law judges and attorneys.

Revising AS 42.04.020 (Commissioners)

The last statutory revision we propose concerns increasing qualification levels for commissioners. Commissioner positions at this agency are challenging and require considerable knowledge of public utility operations and management, administrative law and practice, and regulatory principles. Newly-appointed commissioners are subjected to a substantial learning curve, and an adequate professional background can expedite and enhance a commissioner's grasp of the required expertise. Certain professional backgrounds (e.g., experience in law, accounting, engineering, or regulated industry) provide a more advantageous knowledge base for a commissioner. We propose a revision to the commissioner qualification section of our enabling statute to ensure that a candidate's professional expertise correlates to the duties of a commissioner.

Request for Legislative Review of Commissioner Salary Levels

We also believe that an increase to the salaries of commissioners is necessary to attract and retain qualified professionals for future commissioner openings. The current salary structure for our commissioners was established in 1980.⁶ While commissioners act in a quasi-judicial role and are required to possess considerable expertise in rendering their decisions, their positions are valued far less than their judicial counterparts or other full-time commissioner and deputy commissioner positions within the executive branch.

We have not proposed any legislative reform to increase commissioner salary levels. Instead we suggest that the Governor seek a legislative determination regarding the appropriate salary levels for commissioners. We believe that regulated industries recognize the expertise required of commissioners and are generally supportive of modernized salary levels for those commissioners.

We hope that our effort to coordinate public responses to these concepts proves valuable to you and the legislature.

cc: Michael Tibbles, Chief of Staff
Enclosure: Proposed Statutory Changes (11 pages)

⁶ See §§ 10, 25 ch 3 SLA 1980.

BOARD	REGULATORY Y/N?	LEGISLATIVE CONFIRMATION Y/N?	BOARD FUNCTION
Alaska Statehood Celebration Commission	N	N	Plan/administer all state activities leading up to 50th anniversary of statehood
Aviation Advisory Board	N	N	Advise DOT&PF commissioner on aviation policy, recommend FAI and ANC airport manager
Alaska-Alberta Bilateral Council	N	N	Provide direction on bilateral issues, explore new areas for cooperation
Arts Council	N	N	Encourage and support excellent regulates and controls applications, licences, and permits of barbers, hairdressers, cosmetologists.
Board of Barbers and Hairdressers	Y	Y	
Big Game Commercial Services Board	Y	Y	Licenses and regulates big game commercial hunters design state quarter, make recommendations to governor for his/her nomination to US Mint
Commemorative Coin Commission	N	N	sustained yield management of fishery resource
Commercial Fish Entry Commission	Y	Y	
Employment of People with Disabilities	N	N	Promotes employment of people with disabilities
Faith Based and Community Initiatives Advisory Council	N	N	Convene a statewide conference on faith-based and community initiatives
Knik Arm Bridge and Toll Authority (KABATA)	N	N	Develop and advance the Knik Arm Bridge to connect Anchorage and Mat-Su serve as labor relations agency under public employment relations act, and for Alaska Railroad
Labor Relations Agency	Y	Y	
Marine Pilots	Y	Y	Jurisdiction over licensing and pilotage of marine pilots provide recommendations to governor and commissioner of DOT&PF on marine transportation functions
Marine Transportation Advisory board (MTAB)	N	N	
Occupational Safety	Y	Y	hears appeals of citations relating to occupational hazards

Oil and Gas Conservation	Y	Y	Regulate oil and gas drilling, development and production
Parole Board	Y	Y	Authorizes parole releases and conditions of parole
Professional Counselors and Psychological Associates	Y	Y	Regulates licensing standards and examinations of applicants
Violent Crimes Compensation Board	Y	Y	Regulates and controls applications, licences and permits facilitates and permits payment of compensation to innocent victims of violent crimes
Workers Compensation Appeals Commission	Y	Y	Jurisdiction to hear appeals from final decisions of the Workers Compensation Board

Kristi L. Catlin
Vice President
State Law & Government Affairs
May 1, 2007

AT&T Alascom
505 E Bluff Drive
Anchorage, AK 99501

House Judiciary Committee
State Capitol
Juneau, Alaska 99801

SUBJECT: CSHB209 (L&C)

Dear Honorable Representative Ramras and Members of the House Judiciary Committee:

Following is my written testimony on CSHB209 for the House Judiciary Committee:

Section 1: AS 42.05.010(b). AT&T Alascom is opposed to changes made to Section 1.

At one time, the Governor designated the chair of the Regulatory Commission of Alaska. That practice was changed several years ago in an attempt to de-politicize the process. The current process of peer-election of the RCA's chair requires that the chair be able to obtain the support of a majority of the Commission in order to be elected. From AT&T Alascom's perspective, the existing peer-election process is an improvement over the old system of chair appointments, and should not be changed.

Section 2: AS 42.05.151(b). AT&T Alascom does not support adoption of the amendments made in this section.

This section proposes to apply technical rules of evidence to hearings and proceedings before the Commission. Technical rules of evidence normally are applied in civil and criminal proceedings within the court system, not in administrative proceedings. These rules protect the litigants and jurors alike, but the Commission is a panel of experts for which this protection is not necessary. Application of technical rules of evidence would add cost and time to the existing process of adjudicating cases before the Commission.

Section 3: AS 42.05.151(d) and AS 42.05.151(e). AT&T is opposed to Section 3.

Existing civil rules for discovery are not easily applied to administrative agency proceedings, and AT&T Alascom would not recommend their direct application. The RCA has recently initiated a docket to develop discovery rules for application at the Commission. AT&T Alascom believes that this rulemaking should be allowed to go forward so that the RCA may create rules that are appropriately adapted.

AS 42.05.151(e) proposes more stringent rules for intervention into RCA proceedings. AT&T Alascom's concern with this language is that it would prevent the public from intervening in dockets of interest. AT&T Alascom understands the need for rules governing intervention. However, the Commission has existing rules on intervention that AT&T

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Alascom believes provide protection against inappropriate intervention, while allowing the Commission to address the needs of the public to intervene if and when appropriate. AT&T Alascom believes this section is an unnecessary strengthening of intervention rules, and could actually harm the public.

Sections 4, 5, 6, 7, and 8. [Proposed Amendment] AT&T Alascom does not oppose these changes.

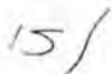
Section 9. AS 42.05.175(f)(1) AT&T Alascom opposes the amendments proposed in Section 9.

This section appears to be designed to limit the Commission's ability to extend statutory timelines. AT&T Alascom is concerned in general that this subsection appears to attempt to re-define "good cause." "Good cause" is a term that is heavily used in utility regulation, and has extensive definitional history. The language raises more questions than answers, opening up great opportunity for litigation and appeal. For example, how would one define or determine "unusually complex" or "novel." AT&T Alascom is also concerned that subsection (C) appears to be designed to ensure that the Commission does not extend a timeline if its "workload, scheduling, or administrative convenience" requires it. Although extension of timelines may not be desirable, if the Commission has a legitimate operational need to extend the timeline, it should be allowed to do so. The alternative would very likely be a decision that may not be as well reasoned as it should be, and which may ultimately not be in the public interest. For all of these reasons, AT&T Alascom does not support the proposed amendments to AS 42.05.175(f)(1).

Section 10. AS 42.05.175 AT&T Alascom suggests an amendment to this section.

AT&T Alascom is concerned that perhaps this subsection could prevent or unintentionally prohibit an extension that is stipulated by the parties. When all parties agree that an extension is in their best interests, the Commission should be allowed to consider their request without limitations. Therefore, AT&T Alascom would suggest that an amendment to this subsection be added to address this concern.

Sincerely,

A handwritten signature in blue ink, appearing to be "15/".

Kristi L. Catlin
Vice President, State Government Affairs