

**SB**

**193**

<TARGET><BILL>SB 193</BILL><SUBJECT>SB  
193</SUBJECT><COMM>SNRG29</COMM></TARGET>

# SENATE COMMITTEE REPORT

## First Committee of Referral

DATE: 2/22/16

FURTHER: Labor and Commerce

Date of 5-Day Notice: 3/10/16  
 (in accordance with Uniform Rule 23)

DATE TURNED  
 IN TO OFFICE: 4/1/16

Senate Special Committee on Energy Committee considered SENATE BILL NO. 193

### SB 193-EXTEND EXEMPTION FOR SMALL POWER PLANTS

"An Act extending the exemption from regulation by the Regulatory Commission of Alaska for certain facilities or plants generating energy from renewable energy resources."

and recommends:

- be replaced with CS SB 193 (NRG)  Same Title  New Title
- adopt previous CS \_\_\_\_\_ (\_\_\_\_\_)  Same Title  New Title
- attached amendment(s)
- adopt \_\_\_\_\_ Letter of Intent
- further referral to \_\_\_\_\_ Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
EED	MVA
DEC	DNR
DFG	DPS
GOV	REV
DHS	DOT
AJS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
CED			✓	

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Egan	✓			
	Hoffman			✓	
CO-CHAIR:	Bishop	✓			
CO-CHAIR:	Micciche	✓			

**CS FOR SENATE BILL NO. 193(NRG)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY THE SENATE SPECIAL COMMITTEE ON ENERGY

Offered:  
Referred:

Sponsor(s): SENATORS MCGUIRE, Olson

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act extending the exemption from regulation by the Regulatory Commission of  
2 Alaska for certain facilities or plants generating energy from renewable energy  
3 resources."

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

5 \* **Section 1.** AS 42.05.711(r) is amended to read:

6 (r) A plant or facility that generates electricity entirely from renewable energy  
7 resources is exempt from regulation under this chapter if

8 (1) the plant or facility

9 (A) is first placed into commercial operation on or after  
10 August 31, 2010, and before January 1, 2020 [JANUARY 1, 2016]; and

11 (B) does not generate more than 65 megawatts of electricity;

12 (2) the electricity generated by the plant or facility is sold only to one  
13 or more electric utilities that are regulated by the commission; and

14 (3) the person that constructs, owns, acquires, or operates the plant or

1 facility has not received from the state

2 (A) a grant that was used to generate the electricity from the

3 renewable energy resources; or

4 (B) a tax credit related to the generation of electricity from the

5 renewable energy resources.

# Fiscal Note

State of Alaska  
2016 Legislative Session

Bill Version: SB 193  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: SB193-DCCED-RCA-03-11-16  
Title: EXTEND EXEMPTION FOR SMALL POWER PLANTS  
Sponsor: MCGUIRE  
Requester: (S) Special Committee on Energy

Department: Department of Commerce, Community and Economic Development  
Appropriation: Regulatory Commission of Alaska  
Allocation: Regulatory Commission of Alaska  
OMB Component Number: 2417

**Expenditures/Revenues**

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

	FY2017	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2017 Request	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
<b>OPERATING EXPENDITURES</b>	<b>FY 2017</b>	<b>FY 2017</b>					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time							
Part-time							
Temporary							

<b>Change in Revenues</b>							
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**Estimated SUPPLEMENTAL (FY2016) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2017) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Not applicable, initial version.

Prepared By: Robert M. Pickett, Chairman	Phone: (907)276-6222
Division: Regulatory Commission of Alaska	Date: 03/11/2016 11:45 AM
Approved By: Catherine Reardon, Director	Date: 03/11/16
Agency: Division of Administrative Services, DCCED	

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2016 LEGISLATIVE SESSION

BILL NO. SB193

**Analysis**

SB 193 would extend the exemption created in 2010 for owners of renewable energy generation facilities from regulation by the Regulatory Commission of Alaska (RCA). The exempted entity would not be subject to RCA certification requirements or RCA regulation of rates and standards of service.

The original exemption was created for plants or facilities originally placed into commercial operation before January 1, 2016, a date tied to the expiration of the federal Business Energy Investment Tax Credit (ITC). The ITC was most recently amended in December 2015, and currently expires for large wind on December 31, 2019. The legislation extends the exemption to January 1, 2025.

Since the RCA will not be required to certificate or regulate the owners of renewable energy generation facilities, the agency will not experience any increase in workload due to the passage of SB 193. The RCA does not anticipate fiscal impact from this legislation.

# 29<sup>th</sup> Alaska State Legislature


*Session:*  
State Capitol, Room 121  
Juneau, AK 99801  
Phone: (907) 465-2995  
Fax: (907) 465-6592



*Interim:*  
716 W 4<sup>th</sup> Avenue, Room 515  
Anchorage, AK 99501  
Phone: (907) 269-0250  
Fax: (907) 269-0249

## Senator Lesil McGuire

**TO:** Senator Micciche, Co-Chair  
Senator Bishop, Co-Chair  
Senate Special Committee on the Arctic

**FROM:** Senator McGuire, Chair   
Senate Judiciary Committee

**DATE:** 9 March 2016

**SUBJECT:** Hearing Request for Senate Bill 193: Extend Exemption for Small Power Plants

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Co-Chairmen Micciche and Bishop,

I respectfully request scheduling of a hearing for Senate Bill 193: Extend Exemption for Small Power Plants in the Senate Special Committee on Energy at your earliest convenience.

Attached is a bill packet that contains the following:

1. Sponsor Statement
2. SB193 Version A
3. SB193 Supporting Documents
  - a. SB193 Supporting Document-Letter APA 2-29-16
  - b. SB193 Letter of Support AIPPA 3-4-16
  - c. SB193 Letter of Support CIRI 3-4-16
  - d. SB193 Leg Research Report on Regulation SB277 3-5-10
  - e. SB193 Supporting Document Letter CIRI response to APA letter 3-19-10

Jesse Logan in my office is the staff contact for this bill. He can be reached at [jesse.logan@akleg.gov](mailto:jesse.logan@akleg.gov) or his direct phone line is 465-5159. Please call if you have any questions.

# Alaska State Legislature

Session:  
State Capitol  
Suite 125  
Juneau, AK 99801  
Phone: (907) 465-2995  
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Senator Lesil McGuire

## Sponsor Statement for Senate Bill 193

### **"An Act extending the exemption from regulation by the Regulatory Commission of Alaska for certain facilities or plants generating energy from renewable energy resources."**

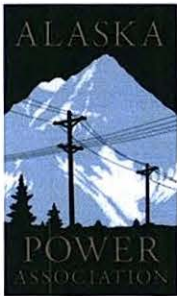
The electric demand of the relatively small and dispersed population in Alaska has traditionally been served by regulated utilities. The Regulatory Commission of Alaska (RCA) is charged with certifying utilities, regulating their rates, resolving disputes and protecting consumers. However, Alaska has seen an increasing private sector investment in the development of our renewable energy resources.

Previously, Alaska exempted small power producers from regulation to lower the barrier cost of entry and to reduce Alaska regulatory overreach to the emerging small power producers developing and financing renewable energy resources throughout Alaska, but this exemption sunset on January 1, 2016.

Regulation can pose obstacles to investment, but can also increase the cost of government in reviewing and regulating small power producers who by federal statute would otherwise be exempt from regulation. The extension of the regulatory sunset date from January 1, 2016 to January 1, 2025 provides fiscal and regulatory certainty to Alaska villages, communities, and entrepreneurs that can invest their funds into developing and generating power rather than filing regulatory proceedings. The extension of exemption reduces the cost of government while empowering and enabling the development of our renewable energy resources.

SB 193 seeks to continue a middle ground compromise between a thoroughly deregulated market and the highly regulated electrical market of Alaska. The exemption from RCA regulation is only applicable to facilities that generate renewable energy that is sold to a regulated utility. This arrangement maintains RCA oversight over the power sales agreements and thereby provides a layer of protection to ratepayers.

The bill will also maintains an open door to Alaska's electricity market and encourages private sector investment in renewable energy for Alaskans with regulatory certainty to 2025.



## Alaska Power Association

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Anchorage, Alaska 99503-6650  
(907) 771-5700  
Fax: (907) 561-5547  
www.alaskapower.org

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February 29, 2016

Honorable Lesil McGuire  
Alaska State Capitol, Room 121  
Juneau, Alaska 99801  
Fax: (907) 465-6592  
Email: Senator.Lesil.McGuire @akleg.gov

Subject: Senate Bill 193

Dear Senator McGuire:

Alaska Power Association (APA) and its members have reviewed Senate Bill 193, and, at this time, we are not taking a position on the bill. We realize that this bill does not create any new exemptions, but simply extends the timeframe in which a plant or facility that generates power from renewable resources must be built in order to qualify for the exemption.

Although we are not taking a position on the bill, we would like to take this opportunity to comment on the statute referenced, AS 42.05.711(r):

1. The statute's 65 MW size restriction appears to be too high. The potential justification for exemption from RCA certification and regulation is very different if the exemption applies to a small 500 kilowatt (kW) renewable resources facility as opposed to a large 65 MW facility.

2. The statute exempts a facility that sells its output to *multiple* regulated electric utilities. Sales to multiple electric utilities raise concerns about preventing the facility from discriminating among customers with respect to rates, terms, or conditions of service.

3. The statute exempts a facility even if it is closely affiliated with a regulated electric utility to which it sells power. That raises additional concerns about the potential for discriminatory preferences among the electric utilities that purchase power from the facility.

4. It appears that the statutory exemption in AS 42.05.711(r) is not necessary for the following reasons: First, under federal law, most renewable energy resource electric generation

Honorable Lesil McGuire  
February 29, 2016  
Page 2 of 2

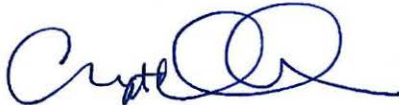
plants that propose to sell power only to another electric utility can already become exempt from state and local regulation by becoming a "qualifying facility" (QF). *See* 18 C.F.R. § 292.602(c); 18 C.F.R. § 292.601(a), (b). Second, regardless of whether the facility is exempt as a QF, the facility can also become exempt from RCA certification and regulation through a petition to the RCA showing that the exemption is "in the public interest." *See* AS 42.05.711(d).

5. The statutory exemption precludes affected electric utilities from having input on determining whether the exemption of a particular project is justified.

6. The statutory exemption impairs the RCA's ability to ensure that the facility's rates, terms, and conditions of service are just, reasonable, and non-discriminatory, particularly when the facility sells power to multiple electric utilities.

Alaska Power Association represents the statewide electric utility industry. Our membership serves communities from Barrow to Unalaska, through the Interior and Southcentral, and down the Inside Passage. We stand ready to assist you and your staff with any questions or suggestions you may have that pertain to SB 193 or the statute it modifies.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Crystal Enkvist', with a stylized flourish at the end.

Crystal Enkvist  
Executive Director



March 4, 2016

## Members

- Alaska Power & Telephone, Inc.
- CIRI
- Juneau Hydropower, Inc.
- Delta Wind Farm
- Fishhook Renewable Energy
- Alyeska Resort
- STG Incorporated
- Chenega Energy, LLC
- Cape Fox Corporation
- American Transmission Co.

## Board of Directors

- Earle Ausman, President
- Keith Comstock
- Mike Craft
- Bob Grimm
- Ethan Schutt
- Randall Call
- Greg Porter
- Chuck Blair
- Jim St. George

## Executive Director

Duff Mitchell  
Contact

Mailing Address  
8585 Old Dairy Rd.  
Suite 104  
Juneau, AK 99801

Telephone  
907.789.2775

Web  
[www.aippa.info](http://www.aippa.info)

Senator Lesil McGuire  
State Capitol Room 121  
Juneau AK, 99801

RE: Alaska Independent Power Producers Association (AIPPA) support for SB 193 extension of exemption for small power producers

Dear Senator McGuire,

AIPPA is a diverse organization that boasts of its membership the leading renewable energy developers and independent power producers in Alaska. Independent power producers (IPP's), which are efficient and innovative renewable energy developers generate 38% of America's electrical generation. In Alaska, IPP's represent a much smaller, but growing share of the total generation. SB 277, the predecessor of SB 193 has helped pave the way for millions of dollars of private investment in Alaska's energy resources. Many Alaska IPP investments would not likely have invested in Alaska jobs and energy infrastructure without the previous exemption of regulation that now expired on January 1, 2016.

AIPPA supports the simple and effective language of SB 193 that extends the period that small, independent power producers are exempt from State regulation. As you and many of your colleagues know, the federal government exempts all small power producers from state regulation as does the other 49 states. Alaska is the exception and is unique in this over-regulation of small power producers. AIPPA supports SB 193 because it removes the state overreach that this extension cures to 2025.

This simple, but effective bill cures unnecessary "state overreach" in our regulations and removes unnecessary State bureaucracy and regulatory costs that discourage private investment. SB 193 provides the encouragement of small power producers to invest in Alaska energy resources to help drive down the cost of power for Alaskans.

AIPPA appreciates your interest and continued leadership in making Alaska regulations more effective and less burdensome on Alaskan enterprise. SB 193 encourages private investment in Alaska at a time when Alaska needs it most.

Regards,

Duff W. Mitchell  
Executive Director



March 4, 2016

Senator Lesil McGuire  
State Capitol Room 121  
Juneau, AK 99801

Dear Senator McGuire:

Cook Inlet Region, Inc. (CIRI) supports prompt passage of Senate Bill 193: "An Act extending the exemption from regulation by the Regulatory Commission of Alaska for certain facilities or plants generating energy from renewable energy resources." We believe that SB 193, a simple extension of the sunset date of an exemption that was passed by a prior legislature represents good, commonsense public policy that will facilitate and encourage private investment in projects in Alaska.

CIRI used the exemption embodied in the statute that has now sunsetted as a part of the development process for its successful Fire Island Wind project. The negotiated off-take agreement and the private risk dollars invested to develop Fire Island Wind have now provided long-term, flat-priced renewable wind power to Chugach Electric Association for more than 2 years now with 22 years to go. We believe this is a model of how private investment in this sector can be beneficial to the public without burdening the state government with direct financial support.

While we have already successfully utilized the exemption at issue for our project, we believe it is important to extend the sunset so that other independent project proponents can have regulatory certainty in their own respective project development activities.

We look forward to passage of SB 193 by this legislature.

Sincerely,

Cook Inlet Region, Inc.

A handwritten signature in blue ink, appearing to read "ES", is written over a faint, illegible background.

Ethan Schutt  
Senior Vice President, Land and Energy Development

# LEGISLATIVE RESEARCH REPORT

MARCH 5, 2010



REPORT NUMBER 10.189

## REGULATION OF WHOLESALE TRANSACTIONS BY INDEPENDENT POWER PRODUCERS

PREPARED FOR SENATOR LESIL MCGUIRE

BY TIM SPENGLER, LEGISLATIVE ANALYST

You asked if other states regulate wholesale electric power transactions by independent power producers (IPPs) in the same way as does Alaska.<sup>1</sup> Specifically, you wanted to know if other states regulate power producers who sell to one or more customers and generate more than \$50,000 in income from the sale of electricity, as provided in Alaska law.<sup>2</sup> **Briefly, we could identify no states that regulate independent power producers in this way.**

For our review, we queried all state utility commissions, conducted a search of the Westlaw database of state statutes, and contacted national experts on the topic. None of the 24 states that responded to our query report having any regulatory language similar to that in Alaska.<sup>3</sup> A frequent response that we received from states was that IPPs are subject to Federal Energy Regulatory Commission (FERC) regulations but not to state regulation.<sup>4</sup> A number of experts we contacted point out that utilities that purchase electricity from IPPs are subject to their respective state's public utilities commission regulations. We also communicated with lead staff from the National Association of Regulatory Utility Commissioners (NARUC), the Independent Power Producers Coalition of the West (IPPC), the National Conference of State Legislatures (NCSL),

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<sup>1</sup> Independent power producers are entities that generate electric power for sale to utilities and end users. The producers are unaffiliated with the franchised utility in the area in which the IPP is selling power

<sup>2</sup> The Regulatory Commission of Alaska has statutory authority (under AS 42.05.141) to regulate every "public utility." Public utility is defined under AS 42.05.990(4) as an entity (including an individual) that furnishes electrical service to the "public" for compensation. AS 42.05.990(2)(b) defines "public" or "general public"— as "one or more customers that purchase electrical service for use within an area that is certificated to and presently or formerly served by an electric utility if the total annual compensation that the electrical utility receives for sales of electricity exceeds \$50,000."

<sup>3</sup> Officials in the following 24 states responded to our query: Alabama, Arizona, Arkansas, Colorado, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, North Carolina, Oregon, South Dakota, Texas, Virginia, and Washington.

<sup>4</sup> We spoke with FERC energy industry analyst, Saeed Farrokhpay, (916) 294-0322, who confirmed that IPPs' power transactions fall under FERC jurisdiction pertaining to rate regulation. The FERC is a federal agency, under the Department of Energy, with jurisdiction over interstate natural gas transportation and sale for resale rates, wholesale electric rates, hydroelectric licensing, oil pipeline rates, and gas pipeline certification (<http://www.ferc.gov>).

and the Colorado Independent Energy Association.<sup>5</sup> None of the experts from these entities with whom we spoke were aware of regulations in other states similar to those in Alaska. A common thread of the feedback we received was that regulating wholesale transactions of independent power producers would be a duplicative procedure as the utilities to which IPPs sell their electricity are already regulated by states. Such regulations would likely act as a disincentive for IPPs—including alternative or smaller energy producers—effectively discouraging such entities from engaging in business.

Below we highlight feedback we received from eight states that you may find to be of interest.

- ◆ **Arkansas:** According to Dave Stanton (501-682-1792), chief administrative law judge and chief of commissioners' staff, Arkansas Public Service Commission (APSC), the APSC only regulates "public utilities" and, therefore, has no regulatory authority over independent power producers. IPPs located in Arkansas are not subject to rate regulation but are subject to state and federal environmental regulations administered by the federal EPA and the Arkansas Department of Environmental Quality.
- ◆ **Colorado:** Colorado Public Utilities Commission does not regulate Independent Power Producers, according to Doug Dean (303-894-2007), director of the commission. IPPs are not allowed to provide retail electric services; they only provide electricity at the wholesale level. Only the investor-owned electric utilities, cooperative electric associations, and municipal utilities are permitted to provide retail electric service in Colorado. These entities are regulated by the state.
- ◆ **Idaho:** The state does not regulate independent power producers, regardless of size, according to Gene Fadness (208-334-0339), executive director, Idaho Public Utilities Commission (IPUC). The IPPs come under IPUC purview only when they contract with regulated utilities.
- ◆ **Maine:** Evelyn deFrees (207-287-6141), public information officer with Maine's Public Utilities Commission, relates that the state does not regulate power suppliers or producers, only transmission and distribution companies. The commission does license and oversee companies that sell at the retail level; at the wholesale level, however, the sale of electricity is not state regulated but is subject to FERC jurisdiction.
- ◆ **Minnesota:** The Minnesota Public Utilities Commission only has ratemaking authority over entities defined as public utilities, according to Janet Gonzales (651-201-2231), energy unit manager. Public utilities are (in part) defined in

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<sup>5</sup> We contacted the following individuals for this report: Christopher Mele, legislative director—energy, National Association of Regulatory Utility Commissioners, (202) 898-2206. NARUC is an association representing state public service commissioners who regulate utility services, such as electricity, gas, telecommunications, water, and transportation, throughout the country (<http://www.naruc.org>); Robert Kahn, executive director, Northwest and Intermountain Power Producers Coalition (NIPPC), (206) 624-1235. NIPPC's website asserts that the organization will pursue informal and formal (i.e., laws, policies, rules, and regulations) avenues and forums to encourage a competitive electric power supply marketplace in the Pacific Northwest and Intermountain West (<http://www.nippc.org>); Keith Hay, energy program director, National Conference of State Legislatures, (303) 364-7700 (<http://www.ncsl.org>); Nicholas Muller executive director, Colorado Independent Energy Association, (303) 297-1970. The CIEA attempts to save Colorado ratepayers money by promoting lower cost electricity (<http://www.ciea-colorado.org>).

Minnesota statute (§216B.02, subd. 4) in the following way: "No person shall be deemed to be a public utility if it produces or furnishes service to less than 25 persons." Minnesota does not regulate electric power providers based on revenues from electricity sales.

- ◆ **New Jersey:** Doyal Siddell (973-468-8515), public information officer, New Jersey Board of Public Utilities relates that power from New Jersey's independent power producers is dispatched to the state's regional transmission organization, PJM, whose rates are subject to FERC jurisdiction; the state has no jurisdiction.
- ◆ **Oregon:** Oregon does not regulate wholesale power transactions between independent power producers, according to Maury Galbraith (503-378-8718), electric rates and planning, Public Utilities Commission. Mr. Galbraith informs us that FERC has regulatory jurisdiction over this type of transaction across the country.
- ◆ **South Dakota:** John Smith (605-773-3201), general counsel, South Dakota Public Utilities Commission, informs us that their commission does not engage in utility regulation of independent power producers unless the IPPs sell to "ultimate consumers"—or, in other words, retail consumers.

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We hope you find this information to be useful. Please let us know if you have questions or need additional information.



Jason Custer  
Business Development Director  
Alaska Power & Telephone  
136 Misty Marie Lane  
Ketchikan, AK 99901

Date: March 11<sup>th</sup>, 2016

**RE: Alaska Power & Telephone Company Support for SB 193**

Dear Senator McGuire

The purpose of this letter is to express Alaska Power & Telephone Company's support for SB 193: "An Act extending the exemption from regulation by the Regulatory Commission of Alaska for certain facilities or plants generating energy from renewable energy resources."

AP&T is an employee- and investor-owned business which was founded in Skagway, Alaska in 1957. Since that time, our business has grown to include a presence in 40 Alaskan communities, where we provide a variety of utility services, including regulated and non-regulated electrical generation, transmission, and distribution services. AP&T has the unique distinction of serving both as an incumbent utility, and an Independent Power Producer engaged in the development and operation of numerous hydropower and other facilities throughout rural Alaska.

AP&T supports the simple and effective language of SB 193, which extends the period during which small, independent power producers are exempt from State regulation. As you and many of your colleagues know, the federal government and all other 49 states in Alaska exempt small power producers from State regulation. The additional regulatory burden Alaska imposes upon independent power producers is unique, and is a deterrent to many private developers willing to assume project development risks, and invest private debt and equity to help build the energy generation infrastructure that residents of Alaska require.

You and other members of the legislature are well aware that despite the abundance and diversity of renewable resources present in Alaska, many Alaskan communities remain completely dependent on diesel-based generation of electricity. As a result, rural communities throughout Alaska are challenged by some of the highest consumer energy prices in the nation. Adverse consequences of high energy prices include poverty, lack of economic opportunities and associated employment, rural population outmigration, and the host of social ills that attends joblessness. It is contrary to the public interest to permit these conditions to continue to exist.

In recent years, the State of Alaska has sought to promote conversion from diesel-based generation to locally available renewable energy resources through grant-driven programs which help offset the costs of renewable energy development. Due to the recent global collapse in oil prices, the State of

Alaska is now facing severe revenue shortfalls which leave little public funds available for investment in renewable generation assets, and other electrical infrastructure. Private funding is available in abundance for financing energy projects; however, energy sector investment opportunities span America and the globe, and investors and developers prioritize markets and opportunities which offer them a supportive project development environment with the most favorable mix of risks and rewards. It is necessary that Alaska do everything possible to remain competitive and attractive within the greater context of global opportunity.

AP&T therefore strongly supports SB 193 as a way to ease the regulatory burden for small power producers, to help encourage renewable energy development and production in rural Alaska in accordance with State policy, and the best interests of the public.

Thank you for your consideration.



---

Jason Custer

Business Development Director  
Alaska Power & Telephone

[Jason.c@aptalaska.com](mailto:Jason.c@aptalaska.com)  
907-225-1950 x 29



March 18, 2010

The Honorable Lesil McGuire  
Alaska State Senate  
Alaska State Capitol, Room 125  
Juneau, Alaska 99801

Dear Senator McGuire:

I appreciate the opportunity to respond to the criticisms and concerns raised in its letter dated March 8, 2010, by the Alaska Power Authority (APA) regarding Senate Bill 277, on behalf of Cook Inlet Region, Inc. (CIRI) as a potential independent power producer (IPP). While I will respond in a point-by-point fashion I will start with a higher level response that the APA's criticisms are generally a misunderstanding of the relationship between IPPs and their regulated public utility customers.

The APA fundamentally misunderstands the respective roles of an IPP and its utility customers, and the resulting relationship. Unlike a regulated public utility that has a certificated, monopoly service area granted by the Regulatory Commission of Alaska (RCA), an IPP has only wholesale customers obtained by arms-length commercial negotiations. The resulting differences are profound.

The essence of the issue is that Alaska has very few for-profit entities involved in the development and operation of electric power projects, and even fewer IPPs. The emergence of IPPs developing renewable energy projects has raised the possibility of a different model of developing projects in Alaska. Most of the comments in the APA's letter either result from a misunderstanding of the relationship between IPPs and their public utility customers or reflect an apparent mistrust of anything that is not a cooperative or municipally-owned public utility. We believe that the exemption proposed by SB 277 encourages and supports negotiated and commercially-reasonable relationships between IPPs and public utilities, and, as such, is good public policy.

I will now address the specific, numbered concerns raised in the APA's letter.

#### General Concerns

1. The exemption proposed by SB 277 is necessary.

Obtaining a Qualified Facility designation under federal law does not simply provide an exemption from state regulation. A QF designation also provides the IPP with a default option of putting power onto public utilities in a non-consensual

manner by selling to the utilities at avoided cost. CIRI does not believe that it would be appropriate or desirable to enter a market as small as Alaska's Railbelt in a non-consensual manner, even if it is possible under federal law. Moreover, the promise of renewable energy is to decouple the cost of power from the cost of fuel over time ultimately making renewable power cheaper than its fuel-fired alternative. Selling renewable power at avoided cost does not pass this promise on to the ultimate ratepayer. Perversely, selling renewable power at avoided cost allows an IPP to keep that benefit as profit, something you would think the APA would not suggest as its preferred public policy.

The option of applying to the RCA for a regulatory exemption is also an undesirable and impractical option for several reasons. The RCA has shown itself to be a slow, expensive and unpredictable regulatory body. Unlike public utilities who can recover the expense of their RCA practice in their respective rate bases and who have a state-sponsored monopoly against which to pursue project development, IPPs often have limited market windows in which to put together all of the necessary pieces to successfully develop private power projects, including successful negotiation of one or more power purchase agreements. The uncertainty, delay and expense of asking for a project exemption from the RCA layers an additional and significant project risk on private project development.

More importantly and fundamentally, however, the RCA has shown itself to be a partial and biased forum in which to seek the exemption from regulation for a project sponsored by a private, for-profit project proponent. A sitting RCA commissioner has privately questioned CIRI's motives in supporting SB 277 and has surmised that CIRI's motivation is trying to obtain out-sized returns—implying that being a for-profit entity makes CIRI an untrustworthy project proponent. Similarly, staff for the RCA has publicly testified in a prior Senate committee hearing on SB 277 that exempting a private, for-profit project from direct regulatory oversight could never be in the public interest, or words to that effect. These recent public and private sentiments demonstrate that the RCA is a potentially biased body from which a fair and impartial hearing cannot be obtained by a private, for-profit project proponent.

For these reasons, neither the federal QF nor the state RCA processes provides a reasonable and acceptable manner in which to exempt a IPP-sponsored renewable energy project from RCA regulation.

2. The fact that the RCA cannot second-guess the results of a commercial, arms-length negotiation between an IPP and a public utility is precisely the reason the exemption proposed by SB 277 is necessary. It is the public utility's job to ensure that the contract's rates, terms and conditions of service are fair and commercially reasonable. And it is a role that the public utilities are capable of fulfilling. It is unnecessary and unfair for an IPP, who bears all of the project development risk, to

have to negotiate a commercial PPA with one or more utilities and then start over with a regulatory process in the RCA that can take up to 18 months to complete.

It is also inappropriate to suggest that the RCA, and thereby any other interested party because of the public nature of RCA proceedings, must have access to all documents and costs of a project in order to satisfy the public interest. Again, the role of validating costs and justifying returns is best handled in a commercial negotiation. The second guessing and potential gaming of comments and motives in the RCA process only serves to drive up delay, expense and risk after the conclusion of negotiations between the IPP and the public utilities.

3. The RCA is not a necessary forum in which to adjudicate disputes between an IPP and public utility. There are numerous alternative dispute resolution methods, such as mediation and arbitration, that can provide for timely and expert adjudication of disputes short of filing lawsuits in court.
4. The "obligation to serve" is inappropriate to apply to a IPP-sponsored project because it is a concept that derives from the monopoly service territory granted to public utilities. Suggesting that a private project should have an "obligation to serve" shows that the APA fundamentally does not understand the relationship between an IPP and its public utility customers.

Taking the APA's suggestion that IPP-sponsored projects should have an obligation to serve at its literal face-value would mean that the project could not refuse to provide service to any inter-connected public utility. How would this work? Does this mean that the IPP would have an obligation to serve any interested public utility but would not have any contract negotiation mechanism to arrive at a workable relationship? Obviously, this would not work.

5. The financial fitness of an IPP is a matter that should be addressed by the purchasing public utility. If that utility does not believe that the IPP is sufficiently capable of developing and operating the project for any reason—financial, technical or operational—then that utility can refuse to purchase the project's power. Layering the RCA over the top of this process implies that the public utilities are incapable of protecting themselves through due diligence and contract negotiations. Moreover, the APA's reference to the "fit, willing and able" standard again misapplies the public utility, monopoly standard of operation to the IPP concept. The "fit, willing and able" standard applies to public utilities because of their state-granted monopoly service territories. Implicit under that standard is a public utility's capacity and competence to determine the fitness of and negotiate the commercial purchase of power generated by others, including IPPs. It is surprising that the APA would suggest that its own membership (comprised of public utilities) is incapable of performing one of the core competencies within their own respective certifications as public utilities.

The suggestion that the RCA provides additional comfort in a bankruptcy situation is a red herring. The bankruptcy statutes provide for the bankruptcy court and bankruptcy trustee to protect the public interest. To suggest otherwise is simply a scare tactic intended to illicit the fear of the lights going dark because of the financial insolvency of an IPP. This is not a realistic scenario. The APA's motives are further illustrated by the suggestion that developing a project in a subsidiary entity is inappropriate—"owner" is not a dirty word when it describes a subsidiary entity used to develop and own a project and to suggest otherwise is simply an indirect way to slander private, for-profit entities.

6. The APA's suggestion that the affected utilities must be able to comment on a PPA post-negotiation is precisely why the exemption proposed by SB 277 is necessary and appropriate. Allowing a utility that has negotiated a PPA to later come back through the regulatory process to renegotiate the contract suggests that bad-faith negotiations and gaming are an appropriate business practice. We do not agree. To suggest that other non-contracting utilities have some basis for reviewing and commenting on PPAs to which they are not a party is to invite the sort of regulatory busy-body filings that drive up the cost, delay and uncertainty of the RCA process.

#### Specific Concerns

1. The 65 megawatt size limit is not too large. The APA suggests that a 500 kilowatt limit is appropriate. While we agree that a .5 megawatt facility should be exempted, we believe that larger facilities should be exempted as well. IPPs need a predictable and fair process to negotiate for the commercial sales of their project power. Without predictability and fairness, the status quo—no IPPs on the Railbelt and no large commercial-scale renewable projects will likely persist.
2. The APA's suggestion that an IPP could cherry pick other non-electric utilities as customers is unrealistic. How would an IPP deliver the power to its non-electric utility customer without negotiating a transmission agreement with the existing electric utility? And how would the IPP deliver firm power (as opposed to the intermittent power produced by renewable power sources) without negotiating a firming agreement with the electric utility? These points illustrate the APA's principal concern: competition. CIRI believes that the discipline, efficiency and market competition demanded of IPPs, as for-profit enterprises, bring benefits to the cost of power and ultimately to the ratepayer. The APA obviously disagrees and prefers non-competitive, government-sponsored monopolies.
3. The APA again raises the "obligation to serve" notion addressed above. I will not address it again.

4. This point is a permutation of the "obligation to serve" point again. But it also raises for the first time the possibility of an IPP owning a regulated entity. The RCA already possesses the ability to look through ownership structures to sister and parent companies of regulated utilities. Thus, the RCA already possesses the authority and tools to address this potential issue.
5. This point highlights an APA inconsistency. In the General Concerns point number one, the APA suggests that an IPP can get certified as a Qualified Facility under federal law in arguing that SB 277 is unnecessary. In this point, it decries the "contentious experiences" of utilities who had to deal with developers who were attempting to force them to purchase power in a non-consensual manner—a veiled reference to the very QF program it suggests above as an available alternative. As stated above, we agree that non-consensual power sales are not in the ultimate interest of Alaska's public utilities. The exemption proposed by SB 277 fosters negotiated and consensual power sales between IPPs and incumbent utilities. This is exactly the point.

Sincerely,

Cook Inlet Region, Inc.

A handwritten signature in black ink, appearing to read 'E. Schutt', with a stylized flourish at the end.

Ethan Schutt

Senior Vice President, Land and Energy Development