

ALASKA LEGISLATURE COMMITTEE BILL FILES - 1987 - 1988 8879

CSHB 237, HB 238 308 308

C S H B

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SENATE COMMITTEE REPORT

FURTHER

DATE TURNED INTO OFFICE 5/6/88

4/30/88  
Mr. President:

Finance Committee considered CSHB 237 (JUD)

physical and sexual offenses against children; amending the definitions of the crimes of murder in the second degree and assault in the first degree; relating to the joinder of offenses of the same or similar character and the admissibility in a criminal proceeding of evidence, etc.  
and recommended

replace with S CS CSHB 237 (Fin)  same title  
 or adopt \_\_\_\_\_ CS \_\_\_\_\_  new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

letter of intent adopted \_\_\_\_\_

Committee  attached or  adopted fiscal note(s)

new  updated or  previous

zero DOC  fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature]  
[Signature]  
[Signature]  
Paul Greke  
[Signature]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Rick Halford do pass  
Chairman signature and recommendation

Committee Backup attached

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act relating to murder, assault  
and physical abuse of children."  
Sponsor: Rep. Ulmer, Hudson  
Requestor: \_\_\_\_\_

Agency Affected: Department of Corrections  
BRU: \_\_\_\_\_  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

This legislation, as revised, will have minimal impact on the Department if current sentencing practices continue. If sentencing practices change and large amounts of consecutive time are imposed, there would be a substantial impact on the Department.

Prepared by: Susan E. Knighton, Director of Admin. Svs. Phone: 465-3376  
Division: Administrative Services Date: 2/18/88

Approved by Commissioner: Susan Humphrey-Barnett Date: 2/18/88  
Agency: Department of Corrections

Distribution (by preparer):

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

WORK DRAFT

WORK DRAFT

WORK DRAFT

5-0809N  
Chenoweth  
5/2/88

*Adopted*  
JD: *uj*

Original sponsors: Ulmer, Hudson,  
Grussendorf, et al.

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 237 (*Finance*)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to physical and sexual offenses  
7 against children; amending the definitions of the  
8 crimes of murder in the second degree and assault in  
9 the first degree; relating to the joinder of offenses  
10 of the same or similar character and the admissibil-  
11 ity in a criminal proceeding of evidence of prior  
12 acts; amending Rule 8(a) of the Alaska Rules of  
13 Criminal Procedure; amending Rule 404(b) of the  
14 Alaska Rules of Evidence; and providing for an effec-  
15 tive date."

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

17 \* Section 1. AS 11.41.110(a) is amended to read:

18 (a) A person commits the crime of murder in the second degree if

19 (1) with intent to cause serious physical injury to another  
20 person or knowing that the conduct is substantially certain to cause  
21 death or serious physical injury to another person, the person causes  
22 the death of any person;

23 (2) the person knowingly engages in conduct [INTENTIONALLY  
24 PERFORMS AN ACT] that results in the death of another person under  
25 circumstances manifesting an extreme indifference to the value of  
26 human life; or

27 (3) acting either alone or with one or more persons, the  
28 person commits or attempts to commit arson in the first degree, kid-  
29 napping, sexual assault in the first degree under AS 11.41.410(a)(1)

1 or (2), sexual assault in the second degree, burglary in the first  
2 degree, escape in the first or second degree, or robbery in any degree  
3 and, in the course of or in furtherance of that crime, or in immediate  
4 flight from that crime, any person causes the death of a person other  
5 than one of the participants.

6 \* Sec. 2. AS 11.41.200(a) is amended to read:

7 (a) A person commits the crime of assault in the first degree if

8 (1) that person recklessly causes serious physical injury  
9 to another by means of a dangerous instrument;

10 (2) with intent to cause serious physical injury to another,  
11 the person causes serious physical injury to any person; or

12 (3) the person knowingly engages in conduct [INTENTIONALLY  
13 PERFORMS AN ACT] that results in serious physical injury to another  
14 under circumstances manifesting extreme indifference to the value of  
15 human life.

16 \* Sec. 3. AS 12.55.025(e) is amended to read:

17 (e) Except as provided in (g) and (h) of this section, if the  
18 defendant has been convicted of two or more crimes, sentences of  
19 imprisonment shall run consecutively. If the defendant is imprisoned  
20 upon a previous judgment of conviction for a crime, the judgment shall  
21 provide that the imprisonment commences at the expiration of the term  
22 imposed by the previous judgment.

23 \* Sec. 4. AS 12.55.025 is amended by adding a new subsection to read:

24 (h) If the defendant has been convicted of two or more crimes  
25 under AS 11.41.200 - 11.41.250 or 11.41.410 - 11.41.455 in which the  
26 victim or victims of the crimes were minors and the judgment on any of  
27 the convictions has not been entered, the court shall impose some  
28 consecutive period of imprisonment for each conviction.

29 \* Sec. 5. AS 12.55.155(c) is amended to read:

1 (c) The following factors shall be considered by the sentencing  
2 court and may aggravate the presumptive terms set out in AS 12.55.125:

3 (1) a person, other than an accomplice, sustained physical  
4 injury as a direct result of the defendant's conduct;

5 (2) the defendant's conduct during the commission of the  
6 offense manifested deliberate cruelty to another person;

7 (3) the defendant was the leader of a group of three or  
8 more persons who participated in the offense;

9 (4) the defendant employed a dangerous instrument in fur-  
10 therance of the offense;

11 (5) the defendant knew or reasonably should have known that  
12 the victim of the offense was particularly vulnerable or incapable of  
13 resistance due to advanced age, disability, ill health, or extreme  
14 youth or was for any other reason substantially incapable of exercis-  
15 ing normal physical or mental powers of resistance;

16 (6) the defendant's conduct created a risk of imminent  
17 physical injury to three or more persons, other than accomplices;

18 (7) a prior felony conviction considered for the purpose of  
19 invoking the presumptive terms of this chapter was of a more serious  
20 class of offense than the present offense;

21 (8) the defendant's prior criminal history includes conduct  
22 involving aggravated or repeated instances of assaultive behavior;

23 (9) the defendant knew that the offense involved more than  
24 one victim;

25 (10) the conduct constituting the offense was among the most  
26 serious conduct included in the definition of the offense;

27 (11) the defendant committed the offense pursuant to an  
28 agreement that the defendant either pay or be paid for the commission  
29 of the offense, and the pecuniary incentive was beyond that inherent

1 in the offense itself;

2 (12) the defendant was on release under AS 12.30.020 or  
3 12.30.040 for another felony charge or conviction or for a misdemeanor  
4 charge or conviction having assault as a necessary element;

5 (13) the defendant knowingly directed the conduct constitut-  
6 ing the offense at an active officer of the court or at an active or  
7 former judicial officer, prosecuting attorney, law enforcement offi-  
8 cer, correctional employee, fire fighter, emergency medical techni-  
9 cian, paramedic, ambulance attendant, or other emergency responder  
10 during or because of the exercise of official duties;

11 (14) the defendant was a member of an organized group of  
12 five or more persons, and the offense was committed to further the  
13 criminal objectives of the group;

14 (15) the defendant has three or more prior felony convic-  
15 tions;

16 (16) the defendant's criminal conduct was designed to obtain  
17 substantial pecuniary gain and the risk of prosecution and punishment  
18 for the conduct is slight;

19 (17) the offense was one of a continuing series of criminal  
20 offenses committed in furtherance of illegal business activities from  
21 which the defendant derives a major portion of the defendant's income;

22 (18) the offense was a crime

23 (A) specified in AS 11.41 and was committed against a  
24 spouse, a former spouse, or a member of the social unit comprised  
25 of those living together in the same dwelling as the defendant;  
26 or

27 (B) specified in AS 11.41.410 - 11.41.460 and was  
28 committed against a minor, and the defendant has engaged in the  
29 same or similar conduct involving the same or another victim who

1           was a minor;

2           (19) the defendant's prior criminal history includes an  
3 adjudication as a delinquent for conduct that would have been a felony  
4 if committed by an adult;

5           (20) the defendant was on furlough under AS 33.30 or on  
6 parole or probation for another felony charge or conviction;

7           (21) the defendant has a criminal history of repeated in-  
8 stances of conduct violative of criminal laws, whether punishable as  
9 felonies or misdemeanors, similar in nature to the offense for which  
10 the defendant is being sentenced under this section;

11           (22) the defendant knowingly directed the conduct constitut-  
12 ing the offense at a victim because of that person's race, sex, color,  
13 creed, physical or mental disability, ancestry, or national origin;

14           (23) the defendant is convicted of an offense specified in  
15 AS 11.71 and the offense involved the delivery of a controlled sub-  
16 stance under circumstances manifesting an intent to distribute the  
17 substance as part of a commercial enterprise;

18           (24) the defendant is convicted of an offense specified in  
19 AS 11.71 and the offense involved the transportation of controlled  
20 substances into the state;

21           (25) the defendant is convicted of an offense specified in  
22 AS 11.71 and the offense involved large quantities of a controlled  
23 substance;

24           (26) the defendant is convicted of an offense specified in  
25 AS 11.71 and the offense involved the distribution of a controlled  
26 substance that had been adulterated with a toxic substance.

27 \* Sec. 6. Rule 8(a), Alaska Rules of Criminal Procedure, is amended to  
28 read:

29           (a) JOINDER OF OFFENSES. Two or more offenses may be charged in

1 the same indictment or information in a separate count for each of-  
2 fense if the offenses charged, whether felonies, misdemeanors or both,

3 (1) are of the same or similar character and it can be  
4 determined before trial that it is likely that evidence of one charged  
5 offense would be admissible to prove another charged offense,

6 (2) [OR] are based on the same act or transaction, or

7 (3) are based on two or more acts or transactions connected  
8 together or constituting parts of a common scheme or plan.

9 \* Sec. 7. Rule 404(b), Alaska Rules of Evidence, is amended to read:

10 (b) Other Crimes, Wrongs, or Acts.

11 (1) Evidence of other crimes, wrongs, or acts is not admissible  
12 to prove the character of a person in order to show that he acted in  
13 conformity therewith. It may, however, be admissible for other pur-  
14 poses, such as proof of motive, opportunity, intent, preparation,  
15 plan, knowledge, identity, or absence of mistake or accident.

16 (2) In a prosecution for a crime involving a physical or sexual  
17 assault or abuse of a minor, evidence of other acts by the defendant  
18 toward the same or another child is admissible to show a common scheme  
19 or plan if admission of the evidence is not precluded by another rule  
20 of evidence and if the prior offenses

21 (i) are not too remote in time;

22 (ii) are similar to the offense charged; and

23 (iii) were committed upon persons similar to the pros-  
24 ecuting witness.

25 \* Sec. 8. Section 7 of this Act is retroactive and applies

26 (1) to evidence of acts committed before the effective date of  
27 this Act; and

28 (2) in trials involving offenses committed before the effective  
29 date of this Act.



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\* Sec. 9. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act relating to murder, assault  
and physical abuse of children."  
Sponsor: Rep. Ulmer, Hudson  
Requestor: \_\_\_\_\_

Agency Affected: Department of Corrections  
BRU: \_\_\_\_\_  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

This legislation, as revised, will have minimal impact on the Department if current sentencing practices continue. If sentencing practices change and large amounts of consecutive time are imposed, there would be a substantial impact on the Department.

Prepared by: Susan E. Knighton, Director of Admin. Svs. Phone: 465-3376  
Division: Administrative Services Date: 2/18/88

Approved by Commissioner: Susan Humphrey-Barnett Date: 2/18/88  
Agency: Department of Corrections

Distribution (by preparer):

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

Original sponsors: Ulmer, Hudson,  
Grussendorf, et al.

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2

CS FOR HOUSE BILL NO. 237 (Judiciary)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to physical and sexual offenses against children; amending the definitions of the crimes of murder in the second degree and assault in the first degree; relating to the joinder of offenses of the same or similar character and the admissibility in a criminal proceeding of evidence of prior acts; amending Rule 8(a) of the Alaska Rules of Criminal Procedure; amending Rule 404(b) of the Alaska Rules of Evidence; and providing for an effective date."

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16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

17

\* Section 1. AS 11.41.110(a) is amended to read:

18

(a) A person commits the crime of murder in the second degree if

19

(1) with intent to cause serious physical injury to another person or knowing that the conduct is substantially certain to cause death or serious physical injury to another person, the person causes the death of any person;

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(2) the person knowingly engages in conduct [INTENTIONALLY PERFORMS AN ACT] that results in the death of another person under circumstances manifesting an extreme indifference to the value of human life; or

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(3) acting either alone or with one or more persons, the person commits or attempts to commit arson in the first degree, kidnapping, sexual assault in the first degree under AS 11.41.410(a)(1)

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1 or (2), sexual assault in the second degree, burglary in the first  
2 degree, escape in the first or second degree, or robbery in any degree  
3 and, in the course of or in furtherance of that crime, or in immediate  
4 flight from that crime, any person causes the death of a person other  
5 than one of the participants.

6 \* Sec. 2. AS 11.41.200(a) is amended to read:

7 (a) A person commits the crime of assault in the first degree if

8 (1) that person recklessly causes serious physical injury  
9 to another by means of a dangerous instrument;

10 (2) with intent to cause serious physical injury to another,  
11 the person causes serious physical injury to any person; or

12 (3) the person knowingly engages in conduct [INTENTIONALLY  
13 PERFORMS AN ACT] that results in serious physical injury to another  
14 under circumstances manifesting extreme indifference to the value of  
15 human life.

16 \* Sec. 3. AS 11.41.434(a) is amended to read:

17 (a) An offender commits the crime of sexual abuse of a minor in  
18 the first degree if

19 (1) being 16 years of age or older, the offender engages in  
20 sexual penetration with a person who is under 13 years of age or aids,  
21 induces, causes, or encourages a person who is under 13 years of age  
22 to engage in sexual penetration with another person; [OR]

23 (2) being 18 years of age or older, the offender engages in  
24 sexual penetration with a person who is under 18 years of age and who

25 (A) is entrusted to the offender's care by authority of  
26 law; or

27 (B) is the offender's son or daughter, including an  
28 illegitimate or adopted child, or a stepchild; or

29 (3) being 18 years of age or older, the offender engages in

1 sexual penetration with a person who is under 16 years of age, and the  
2 victim at the time of the offense is

3 (A) residing as a member of the social unit in the  
4 same household as the offender and the offender is in a position  
5 of authority over the victim; or

6 (B) temporarily entrusted to the offender's care.

7 \* Sec. 4. AS 11.41.436(a) is amended to read:

8 (a) An offender commits the crime of sexual abuse of a minor in  
9 the second degree if

10 (1) being 16 years of age or older, the offender engages in  
11 sexual penetration with a person who is 13, 14, or 15 years of age and  
12 at least three years younger than the offender, or aids, induces,  
13 causes or encourages a person who is 13, 14, or 15 years of age and at  
14 least three years younger than the offender to engage in sexual pene-  
15 tration with another person;

16 (2) being 16 years of age or older, the offender engages in  
17 sexual contact with a person who is under 13 years of age or aids,  
18 induces, causes, or encourages a person under 13 years of age to  
19 engage in sexual contact with another person;

20 (3) being 18 years of age or older, the offender engages in  
21 sexual contact with a person who is under 18 years of age and who

22 (A) is entrusted to the offender's care by authority  
23 of law; or

24 (B) is the offender's son or daughter, including an  
25 illegitimate or adopted child, or a stepchild; [OR]

26 (4) being 16 years of age or older, the offender aids,  
27 induces, causes, or encourages a person who is under 16 years of age  
28 to engage in conduct described in AS 11.41.455(a)(2) - (6); or

29 (5) being 18 years of age or older, the offender engages in

1 sexual contact with a person who is under 16 years of age, and the  
2 victim at the time of the offense is

3 (A) residing as a member of the social unit in the  
4 same household as the offender and the offender is in a position  
5 of authority over the victim; or

6 (B) temporarily entrusted to the offender's care.

7 \* Sec. 5. AS 12.55.025(e) is amended to read:

8 (e) Except as provided in (g) and (h) of this section, if the  
9 defendant has been convicted of two or more crimes, sentences of  
10 imprisonment shall run consecutively. If the defendant is imprisoned  
11 upon a previous judgment of conviction for a crime, the judgment shall  
12 provide that the imprisonment commences at the expiration of the term  
13 imposed by the previous judgment.

14 \* Sec. 6. AS 12.55.025 is amended by adding a new subsection to read:

15 (h) If the defendant has been convicted of two or more crimes  
16 under AS 11.41.200 - 11.41.250 or 11.41.410 - 11.41.455 in which the  
17 victim or victims of the crimes were minors and the judgment on any of  
18 the convictions has not been entered, the court shall impose some  
19 consecutive period of imprisonment for each conviction.

20 \* Sec. 7. AS 12.55.155(c) is amended to read:

21 (c) The following factors shall be considered by the sentencing  
22 court and may aggravate the presumptive terms set out in AS 12.55.125:

23 (1) a person, other than an accomplice, sustained physical  
24 injury as a direct result of the defendant's conduct;

25 (2) the defendant's conduct during the commission of the  
26 offense manifested deliberate cruelty to another person;

27 (3) the defendant was the leader of a group of three or  
28 more persons who participated in the offense;

29 (4) the defendant employed a dangerous instrument in

1 furtherance of the offense;

2 (5) the defendant knew or reasonably should have known that  
3 the victim of the offense was particularly vulnerable or incapable of  
4 resistance due to advanced age, disability, ill health, or extreme  
5 youth or was for any other reason substantially incapable of exercis-  
6 ing normal physical or mental powers of resistance;

7 (6) the defendant's conduct created a risk of imminent  
8 physical injury to three or more persons, other than accomplices;

9 (7) a prior felony conviction considered for the purpose of  
10 invoking the presumptive terms of this chapter was of a more serious  
11 class of offense than the present offense;

12 (8) the defendant's prior criminal history includes conduct  
13 involving aggravated or repeated instances of assaultive behavior;

14 (9) the defendant knew that the offense involved more than  
15 one victim;

16 (10) the conduct constituting the offense was among the most  
17 serious conduct included in the definition of the offense;

18 (11) the defendant committed the offense pursuant to an  
19 agreement that the defendant either pay or be paid for the commission  
20 of the offense, and the pecuniary incentive was beyond that inherent  
21 in the offense itself;

22 (12) the defendant was on release under AS 12.30.020 or  
23 12.30.040 for another felony charge or conviction or for a misdemeanor  
24 charge or conviction having assault as a necessary element;

25 (13) the defendant knowingly directed the conduct constitut-  
26 ing the offense at an active officer of the court or at an active or  
27 former judicial officer, prosecuting attorney, law enforcement offi-  
28 cer, correctional employee, fire fighter, emergency medical techni-  
29 cian, paramedic, ambulance attendant, or other emergency responder

1 during or because of the exercise of official duties;

2 (14) the defendant was a member of an organized group of  
3 five or more persons, and the offense was committed to further the  
4 criminal objectives of the group;

5 (15) the defendant has three or more prior felony convic-  
6 tions;

7 (16) the defendant's criminal conduct was designed to obtain  
8 substantial pecuniary gain and the risk of prosecution and punishment  
9 for the conduct is slight;

10 (17) the offense was one of a continuing series of criminal  
11 offenses committed in furtherance of illegal business activities from  
12 which the defendant derives a major portion of the defendant's income;

13 (18) the offense was a crime

14 (A) specified in AS 11.41 and was committed against a  
15 spouse, a former spouse, or a member of the social unit comprised  
16 of those living together in the same dwelling as the defendant;  
17 or

18 (B) specified in AS 11.41.410 - 11.41.460 and was  
19 committed against a minor, and the defendant has engaged in the  
20 same or similar conduct involving the same or another victim who  
21 was a minor;

22 (19) the defendant's prior criminal history includes an  
23 adjudication as a delinquent for conduct that would have been a felony  
24 if committed by an adult;

25 (20) the defendant was on furlough under AS 33.30 or on  
26 parole or probation for another felony charge or conviction;

27 (21) the defendant has a criminal history of repeated in-  
28 stances of conduct violative of criminal laws, whether punishable as  
29 felonies or misdemeanors, similar in nature to the offense for which

1 the defendant is being sentenced under this section;

2 (22) the defendant knowingly directed the conduct constitut-  
3 ing the offense at a victim because of that person's race, sex, color,  
4 creed, physical or mental disability, ancestry, or national origin;

5 (23) the defendant is convicted of an offense specified in  
6 AS 11.71 and the offense involved the delivery of a controlled sub-  
7 stance under circumstances manifesting an intent to distribute the  
8 substance as part of a commercial enterprise;

9 (24) the defendant is convicted of an offense specified in  
10 AS 11.71 and the offense involved the transportation of controlled  
11 substances into the state;

12 (25) the defendant is convicted of an offense specified in  
13 AS 11.71 and the offense involved large quantities of a controlled  
14 substance;

15 (26) the defendant is convicted of an offense specified in  
16 AS 11.71 and the offense involved the distribution of a controlled  
17 substance that had been adulterated with a toxic substance.

18 \* Sec. 8. Rule 8(a), Alaska Rules of Criminal Procedure, is amended to  
19 read:

20 (a) JOINDER OF OFFENSES. Two or more offenses may be charged in  
21 the same indictment or information in a separate count for each of-  
22 fense if the offenses charged, whether felonies, misdemeanors or both,

23 (1) are of the same or similar character and it can be  
24 determined before trial that it is likely that evidence of one charged  
25 offense would be admissible to prove another charged offense,

26 (2) [OR] are based on the same act or transaction, or

27 (3) are based on two or more acts or transactions connected  
28 together or constituting parts of a common scheme or plan.

29 \* Sec. 9. Rule 404(b), Alaska Rules of Evidence, is amended to read:

1 (b) Other Crimes, Wrongs, or Acts.

2 (1) Evidence of other crimes, wrongs, or acts is not admissible  
3 to prove the character of a person in order to show that he acted in  
4 conformity therewith. It may, however, be admissible for other pur-  
5 poses, such as proof of motive, opportunity, intent, preparation,  
6 plan, knowledge, identity, or absence of mistake or accident.

7 (2) In a prosecution for a crime involving a physical or sexual  
8 assault or abuse of a minor, evidence of other acts by the defendant  
9 toward the same or another child is admissible to show a common scheme  
10 or plan if admission of the evidence is not precluded by another rule  
11 of evidence and if the prior offenses

12 (i) are not too remote in time;

13 (ii) are similar to the offense charged; and

14 (iii) were committed upon persons similar to the pros-  
15 ecuting witness.

16 \* Sec. 10. Section 9 of this Act is retroactive and applies

17 (1) to evidence of acts committed before the effective date of  
18 this Act; and

19 (2) in trials involving offenses committed before the effective  
20 date of this Act.

21 \* Sec. 11. This Act takes effect immediately under AS 01.10.070(c).

LETTER OF INTENT  
CSHB 237 (Judiciary)

Sections 1 and 2

The changes to AS 11.41.110(a)(2) and 11.41.200(a)(3) are solely intended as technical amendments to make it clear that the language "intentionally performs an act" means "knowingly engages in conduct". This amendment thus conforms the statutes to the interpretation provided in Neitzel v. State, 655 P.2d 325 (Alaska App. 1982).

Sections 3 and 4

The addition of AS 11.41.434(a)(30) and 11.41.436(a)(5) recognizes that the most serious forms of child sexual abuse are often committed by those who live in the same household as the victim or who are temporarily entrusted with the victim's care. Despite having no legal authority over the victim, such persons are nonetheless in a position of power such that even older children often find it impossible to thwart their advances. Because other subsections of these statutes already cover sexual misconduct with persons under the age of 13, the new changes apply only to victims from 13 to 15 years old. The cutoff at 16 years of age was specifically chosen instead of the 18-year-old cutoff in other subsections dealing with persons with legal or biological ties to the victim.

Sections 5 and 6

In enacting these sections, which require judges to impose some consecutive period of incarceration for each sexual or physical assault against a child, the legislature intends to leave to the court full discretion in determining the length of the consecutive term of incarceration. The court can impose whatever consecutive time as it decides is appropriate pursuant to the sentencing considerations in AS 12.55.005. One of the purposes of adopting a mandatory consecutive sentencing scheme for offenses against children is to express the Legislature's preference for judges to impose some consecutive period of time so as to reflect the community's abhorrence of these types of offenses, and to bring home to the offender that some additional penalty must be paid for each and every proven offense. In some cases, the court may find that only a minimal period of consecutive time to serve may be necessary while in other cases the court may find that a lengthy consecutive term is required. Another purpose of this amendment is to allow judges to fashion some consecutive period of suspended time, with conditions of probation, to assure that offenders being released from prison have an adequate period of supervision by the

court or the Department of Corrections.

#### Section 7

AS 12.55.155(c)(18)(B) has been amended to create a new aggravating factor for repeated sexual misconduct toward minors. This change reflects the Legislature's intent that, although most judges already take into account prior misconduct in sentencing, it should be specifically recognized as a statutory aggravating factor. It is not necessary that a conviction have been entered to constitute this aggravating factor. This factor is also intended to apply to incidents not resulting in convictions. Prior convictions already trigger imposition of presumptive sentencing, or can constitute a separate aggravating factor if there are three or more felonies (AS 12.55.155(c)(15)) or if there are repeated instances of similar conduct (AS 12.55.155(c)(21)). Convictions used for those purposes are not intended to trigger this aggravating factor. As used in this aggravating factor, the phrase "same or similar conduct" is not intended to require a strict analysis of statutory elements of offenses.

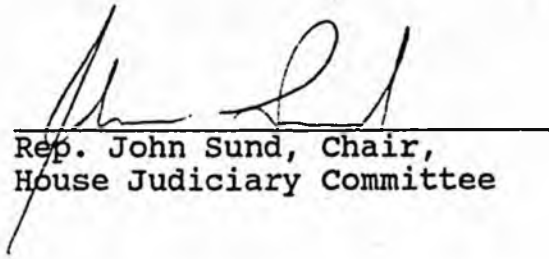
#### Section 8

The amendment to Rule 8 of the Alaska Rules of Criminal Procedure is specifically intended to reverse the decision in Johnson v. State, 730 P.2d 175 (Alaska App. 1986) to permit multiple offenses to be joined for trial when evidence of one offense is admissible to prove another. It is intended that the determination that evidence will likely be cross-admissible be made before trial. This determination depends to a large extent on the state of the prosecution's evidence. The courts should be given great latitude to structure these pretrial proceedings to rely as much as possible on offers of proof and other non-testimonial showings, so as to avoid conducting a mini-trial, and to avoid situations where defendants use this procedure to obtain pretrial depositions to which they are not otherwise entitled. The determination on cross-admissibility may also turn on the precise parameters of a person's defense. A defendant who declines, in an *ex parte in camera* hearing, to disclose a defense, which could have been anticipated at this point in the proceedings and which would render evidence of other offenses inadmissible, should be deemed to have waived any objection to joinder.

#### Section 9

As the Alaska Court of Appeals has emphasized, "[a] sexually abusing parent has tremendous control over his dependent children. He can pick his time and place to minimize the risk of discovery." Soper v. State 731 P.2d 537 (Alaska App. 1987) at 590. Evidence of past acts is therefore particularly important when there is "a swearing contest between the parent denying unlawful conduct and

the child alleging it" because the evidence "may tend to make the alleged incident appear much more plausible and probable." Id. at 590-1. However, having heard testimony about patterns of behavior of many of these offenders, the Legislature finds that the judiciary has drawn the line too narrowly in excluding evidence of prior misconduct, particularly as to non-family members. The Legislature therefore specifically intends to reverse the decision in Bolden v. State, 720 P.2d 957 (Alaska App. 1986). The intent of the Legislature is that, if the court finds that such prior bad acts are relevant to a disputed fact at trial under a common scheme or plan analysis, the court must still balance the probative impact against the prejudicial effect of the evidence pursuant to Evidence Rule 403. As used in this rule, the phrase "similar acts" is not intended to be limited to statutory offenses nor require a strict analysis of statutory elements. It is the intent of the Legislature that this evidentiary provision will apply not only to cases involving sexual assault, sexual abuse and physical abuse against a child, but also to homicides where the victim is a child and to cases involving unlawful exploitation of children.



---

Rep. John Sund, Chair,  
House Judiciary Committee



HB 237

## Alaska Court System

State of Alaska

303 "K" STREET  
ANCHORAGE, ALASKA  
99501

ARTHUR M. SNOWDEN II  
ADMINISTRATIVE DIRECTOR

(907) 274-8611

February 9, 1988

Representative Sund  
Chairman  
House Judiciary Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Dear Representative Sund:

I am writing to express some of my concerns about the procedures used to amend court rules. As you know, court rules can be amended both through the legislative process and through action by the supreme court. For the reasons I have outlined below, I suggest that the legislature consider sending a request for a rule change to the supreme court, prior to any direct action by the legislature to change a rule.

The procedure that the court has now adopted to change court rules is designed to provide a careful, structured review of any proposed rule change. The procedure allows those persons who would be affected by a proposed change to express their opinions to the supreme court. The procedure also insures that any change will be consistent with other court rules.

Let me outline the procedure the court follows when a proposed rule amendment is received. First, the court rules attorney researches the legal and practical consequences of the proposed amendment. The attorney reviews the court's historical file on the rule in question, to determine if the problem which generated the proposal has been previously addressed. The attorney also compares the proposal to the corresponding federal court rule, and in some cases, researches comparable rules from other states.

After this research is completed, the proposal is referred to a rules committee for a recommendation. There are presently five rules committees, which review civil, criminal, appellate, childrens' (delinquency, CINA, adoptions), and probate rules proposals. The committees hold telephonic meetings to allow for

Representative Sund  
February 9, 1988  
Page 2

state-wide participation. These committees are composed of attorneys and judges appointed by the chief justice. The appropriate committee evaluates the merits of the proposal and also attempts to anticipate any unintentional consequences of the proposal, whether legal or practical. The committees and the court rules attorney strive to determine the effects of proposed amendments on other court rules. For example, the argument in favor of changing a particular civil rule may also apply to a criminal rule. Often one rule change may require that several other rules also be amended.

After the appropriate rules committee makes a recommendation about the proposed change, the court solicits comments by sending notices of proposals (in legislative form and usually including a commentary) to all attorneys and court clerks. Depending on the proposal, the court may also request comments from other persons who may be affected. The court rules attorney analyzes and consolidates all recommendations and comments in a memorandum which is forwarded to the supreme court. The supreme court then decides whether to adopt the proposal, based on the background research, the rules committee recommendation and other comments as well as the court's own experience and research.

There may be circumstances in which the supreme court declines to amend a rule, and yet the legislature may feel that the proposed change is desirable. In such a circumstance, if the supreme court's rulemaking procedure has been completed prior to legislative action, the legislature will be able to obtain the results of the court's research and review of the proposed change.

I appreciate your consideration of the court's concerns in this matter.

Very truly yours,



Arthur H. Snowden, II  
Administrative Director



Official Business

# Alaska State Legislature

## House

P.O. BOX V  
State Capitol  
Juneau, Alaska 99811

### MEMORANDUM

January 21, 1988

TO: House Judiciary Committee  
FROM: Representative Fran Ulmer  
SUBJECT: House Bill 237

The proposed CS which you have in front of you today, differs from original House Bill 237 in several significant ways.

The original bill proposed combining several instances of abuse into a new offense a pattern or practice of abuse. This approach was designed to permit the court to try several instances of abuse under one charge in one trial so that in cases like Covington where the child victim could not identify with precision the time, date and place of each act of abuse, it would be possible to convict the offender of abuse.

During the interim, I have had many discussions with individuals regarding this approach. We have researched other states to see whether similar legislation has been adopted. Only the State of Washington has approached child abuse in this manner, with the passage of a new statute last spring. As of this date, there have been no prosecutions under that section or any appellate efforts to shed light on its constitutionality. As you may remember from earlier testimony, the concern which the public defender has regarding the "pattern or practice" charge is the constitutional requirement for a unanimous jury. Her argument is that if you have several instances of abuse combined in a "pattern or practice" charge that the jury may not be unanimous as to which incidents occurred and which were committed by the defendant.

Although there is considerable debate about how the court might interpret the unanimous jury requirement in any challenge to this new "pattern or practice" charge, I have avoided this debate in this proposed CS by attempting to solve the problem in a different way. The CS no longer has a pattern or practice charge for either physical or sexual abuse or assault. Instead, the CS changes court rules which permit related cases to be tried together.

The question as to whether a court should sever or join a case rests on a variety of factors, including the economy of justice, the similarity and related nature of the charged offenses, potential prejudice to the accused, convenience to the parties, and other factors.

CS HB 237 clarifies that cases should be joined if the evidence of one charged offense would be admissible to prove another charged offense. It is preferable to do so for many of the parties involved; certainly for the court system and for the efficiency of the administration of justice. It will save money and time. It accomplishes part of what I had hoped to accomplish with a pattern or practice, but avoids the constitutional issue altogether.

Another major change in the proposed CS is new language amending Rule 404. This new language is a recommendation from the legislative committee of S.T.A.R. (Standing Together Against Rape) and, I believe, is more narrowly focused in a way which directly accomplishes the objective.

The third major change in the CS is the addition of an aggravating factor to be considered at sentencing so that the judge considers additional time for those offenders who abuse or assault minor victims more than once.

The next major difference in the proposed CS is a definition of the phrase "over whom the offender had authority". This proposed new language will clarify that it is intended to cover not only those individuals who reside within the household of the victim, (e.g., a live-in boyfriend), but also cover someone who is caring for the child, like a babysitter.

The final major difference between this CS and the original bill is the addition of a section which clarifies sentencing for concurrent and consecutive terms. Representative Ramona Barnes introduced a bill which was passed by the Legislature and has been interpreted by the courts to mean something quite different than what was originally intended. Sections 4 and 5 are an effort to restore some balance: if the offender is convicted of multiple charges, his sentences should not all run concurrently.

In summary, this proposed CS deals with the issues of joinder of cases, admissibility of evidence, sentencing for multiple offenders. I sincerely hope that after the testimony from individuals who have experience with prosecuting these cases, we'll have a clearer understanding of how these changes will have a positive effect on the administration of criminal justice in Alaska.

BILL NO: CS HB 237 (Judiciary) DATE: February 26, 1988

TITLE: An act relating to the physical and sexual assault and sexual abuse of children; amending Rule 8(a) of the Alaska Rules of Criminal Procedure; amending Rule 404(b) of the Alaska Rules of Evidence; and providing for an effective date.

CONTACT: Barbara Miklos  
Executive Director  
Council on Domestic Violence  
and Sexual Assault  
Dept. of Public Safety

DEPARTMENT OF  
PUBLIC SAFETY  
/  
OFFICE OF  
LEGISLATIVE  
AFFAIRS

The Council on Domestic Violence and Sexual Assault supports CSHB 237(Judiciary).

Sections 1 and 2 changes the language of the present 2nd Degree murder and 1st Degree assault statutes, by substituting the phrase "knowingly engages in conduct" for "intentionally performs an act". This change simply brings the language of the statutes into accordance with the way it has been interpreted by the Alaska Court of Appeals.

Section 3 allows a charge of 1st Degree Sexual Abuse of a Minor (SAM I) to be brought against a person over 18 who engages in sexual penetration with someone under 16 who is living in the same household and is under the offender's authority, or who has been temporarily entrusted to the offender's care. Under current statute, this offense would be classified as SAM I only if the victim were under 13 years of age. Section 4 similarly amends the 2nd Degree Sexual Abuse of a Minor (SAM II) statute to include situations in which a person over 18 engages in sexual contact with someone under 16 who is living in the same household and under the offender's authority, or who has been temporarily entrusted to the offender's care. Currently, this offense is classified as 3rd Degree Sexual Abuse of a Minor (SAM III) if the victim is 13, 14 or 15 years of age. The kind of offense addressed by these amendments is more likely to be repeated or continuous in nature than a similar assault by someone who does not hold a position of trust and authority over the child. Children who have been abused by an authority figure often have long-term emotional and psychological problems which stem from the abuse of power and betrayal of trust in assaults of that nature. The same protection afforded to children who are abused by a parent should be extended to children who are abused by other authority figures.

Sections 5 and 6 amend AS 12.55.025 to require that a person convicted of two or more physical or sexual assaults committed against a minor will be sentenced to some consecutive period of imprisonment for each conviction. The length of the consecutive period is to be determined by the judge in each case.

Section 7 permits consideration of a defendant's previous sexual offenses against a minor as an aggravating factor in determining the presumptive sentence for a crime under AS 11.41.410 - 11.41.460. This enables the court to increase the sentences of those offenders who have repeatedly victimized children. The aggravating factor applies to conduct "similar" to the present offense; the defendant need not have been tried or convicted for the previous offense. This further protects child victims, since many sexual assaults against children do not result in criminal convictions.

Section 8 modifies Rule 8 of the Alaska Rules of Criminal Procedure to allow two or more offenses to be charged in the same indictment or information if the offenses are of the same or similar character and it can be determined before trial that evidence of one charged offense would likely be admissible to prove another charged offense, or the offenses are based on the same act, or two or more acts are connected together or constitute parts of a common scheme or plan. Currently, a child may be required to testify at numerous trials under certain circumstances, (e.g.: if there are multiple victims). Even under the best circumstances, testifying in court can be extremely difficult for a child, as s/he may be required to confront the defendant and relive the abuse again and again. This amendment will lessen the trauma of the court process for these victims.

Section 9 amends Rule 404(b) of the Alaska Rules of Evidence to allow the introduction of evidence, in a trial for physical or sexual assault or abuse of a minor, of other similar acts by the defendant towards children in order to show a common scheme or plan. This evidence is allowable only if the prior offenses are reasonably recent, similar to the offense charged, and committed against persons similar to the prosecuting witness. Many sex offenders follow a pattern in their offenses. Evidence of previous similar acts is important to establish a framework in which the jury may fairly evaluate the victim's testimony regarding the charged acts.

Section 10 provides that the changes to the evidence rules made in section 9 applies to acts and offenses committed before the effective date of the bill. Section 11 establishes an immediate effective date.



Arthur English  
Commissioner

SENATE COMMITTEE REPORT

REC'D  
4/14/88  
EJC

FURTHER

FINANCE

4/14/88

DATE TURNED INTO OFFICE \_\_\_\_\_

Mr. President:

JUDICIARY Committee considered CSHB 237 (JUD)

physical and sexual offenses against children; amending the definitions of the crimes of murder in the second degree and assault in the first degree; relating to the joinder of offenses of the same or similar character and the and recommended admissibility in a criminal proceeding of evidence, etc. (with House Letter of Intent)

[ ] replace with \_\_\_\_\_ CS \_\_\_\_\_ ) [ ] same title  
[ ] or adopt \_\_\_\_\_ CS \_\_\_\_\_ ) [ ] new title

[ ] attached amendment(s) and

*whole*

[ ] do pass

[ ] do not pass

[ ] no recommendation

individual recommendations

[ ] further referral to \_\_\_\_\_

letter of intent adopted House Letter

*House Letter  
intent adopted*

Committee  attached or [ ] adopted fiscal note(s)  
[ ] new [ ] updated or  previous  
 zero [ ] fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

*Quirk*  
*William Stuenkel*  
*John Kober*  
*Joe Anderson*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*J. Keith*  
Chairman signature and recommendation

[ ] Committee Backup attached

SENATE COMMITTEE REPORT

FURTHER JUDICIARY  
FINANCE

3/8/88

DATE TURNED INTO OFFICE 4/13/88

Mr. President:

HESS Committee considered CSHB 237 (JUD)

physical and sexual offenses against children; amending the definitions of the crimes of murder in the second degree and assault in the first degree; relating to the joinder of offenses of the same or similar character and the admissibility in a criminal proceeding of evidence, etc. and recommended (with House Letter of Intent)

replace with \_\_\_\_\_ CS \_\_\_\_\_ )  same title  
 or adopt \_\_\_\_\_ CS \_\_\_\_\_ )  new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

letter of intent adopted \_\_\_\_\_

Committee  attached or  adopted fiscal note(s)  
 new  updated or  previous  
 zero  fiscal impact *ND*

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

1 Sec. Josephson

2 Mr. Fanning No Rec

\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1 Paul Thicke (Do Pass)  
Chairman signature and recommendation

Committee Backup attached

HB

238

**HOUSE COMMITTEE REPORT**

(11)

Date referred: 4/22/88

FURTHER REFERRALS:

DATE: 4/30/88

The Finance ~~Committee~~ Committee has considered HR 238

"An Act requiring certain electric public utilities to prepare certain reports; and relating to costs in proceedings before the Alaska Public Utility Commission."

**RECOMMENDS:**

- replace with CS HB 238 (Res.)  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

BOYER [Signature]

BROWN [Signature]

DAVIS [Signature]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**SIGNING OTHER RECOMMENDATIONS:**

ADAMS [Signature]

LARSON [Signature]

GALL [Signature]

SWACK [Signature] No REC

PIEBER [Signature] No Recommendation

FRANK [Signature]

POMREHRT [Signature] No REC

[Signature]  
Chairman's signature

**STATE OF ALASKA  
1988 LEGISLATIVE SESSION**

**BILL VERSION: CSHB238 (RES)  
PUBLISH DATE: \_\_\_\_\_**

**FISCAL NOTE**

**REQUEST:**

Revision Date: 4/29/88 Agency Affected: Commerce & Econ. Development  
 Title: An act requiring certain electric public utilities to prepare certain reports and relating to costs in proceedings before the APUC BRU: APUC  
 Sponsor: Brown, Ellis, Davis et al Components: Operations  
 Requestor: House Finance

**EXPENDITURES/REVENUES: (Thousands of Dollars) \***

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0.0	86.2	86.2	86.2	86.2	86.2
TRAVEL	0.0	2.5	2.5	2.5	0.0	0.0
CONTRACTUAL	0.0	40.0	0.0	50.0	0.0	0.0
SUPPLIES	0.0	.3	.3	.3	.3	.3
EQUIPMENT	0.0	6.4	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>135.4</b>	<b>89.0</b>	<b>139.0</b>	<b>86.5</b>	<b>86.5</b>

CAPITAL	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93

REVENUE	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	0.0	135.4	89.0	89.0	86.5	86.5
FEDERAL FUNDS						
OTHER Prog Rcpts				50.0		
<b>TOTAL</b>	<b>0.0</b>	<b>135.4</b>	<b>89.0</b>	<b>139.0</b>	<b>86.5</b>	<b>86.5</b>

**POSITIONS:**

FULL-TIME	0	2	2	2	2	2
PART-TIME						
TEMPORARY						

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

\*Funding FY 89 = HB 239; Funding FY 90-93 Budget Forecast - Details on attached Fiscal Note Narrative  
 (See attached for narrative concerning analysis)

Prepared by: T.S. Moninski II Executive Director Phone: 276-6222  
 Division: Alaska Public Utilities Commission Date: 4/30/88

Approved by Commissioner: \_\_\_\_\_ Date: \_\_\_\_\_  
 Agency: Commerce & Economic Development

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

**ANALYSIS CSHB 238**  
**PAGE 2 OF 2**

This Fiscal Note was developed in specific response to the changes incorporated in CSHB 238. The legislature's attention is directed at the fact that the demand for Commission resources will fluctuate depending upon which planning stage is active in any given fiscal year. This Fiscal Note attempts to accommodate those changes in resource requirements in an effort to minimize the ongoing overhead associated with administering the integrated resources planning process.

## Fiscal Note Narrative Concerning HB No. 238

"An Act requiring certain electric public utilities to prepare certain reports; and relating to costs in proceedings before the Alaska Public Utilities Commission.

Listed below is a breakout of the costs which are identified on the fiscal note.

## PERSONAL SERVICES:

1.	54.0	UTILITY ENGINEER III (RANGE 19A).
2.	32.2	CLERICAL SUPPORT (Range 10A)
	<u>SUBTOTAL:</u>	<u>86.2</u> PERSONAL SERVICES FY 89 - FY 93

## TRAVEL:

1.	2.5	Funds for travel to utilities not located in the Anchorage area. Travel costs are projected FY 90 thru FY 91.
	<u>SUBTOTAL:</u>	<u>2.5</u> TRAVEL

## CONTRACTUAL:

1.	15.0	FY 89 - Development of computerized data bases in the first year (10.0); misc costs associated with promulgating regulations such as advertising, mailing costs, etc. (4.5); and additional postage costs for FY 89 (.5) - total of 15.0
2.	25.0	FY 89 - Non-allocable Attorney Services to assist the Commission in promulgate regulations, participate in public hearings, etc.
3.	50.0	FY 91 - Technical and professional services which may be required in FY 91 to review and approve plans filed, if used. These expenses are "allocable" under AS 42.05.651 and are recoverable; therefore we are requesting that this 50.0 be funded from program receipts
	<u>SUBTOTAL:</u>	<u>40.0</u> IN FY 89
		<u>50.0</u> IN FY 91

## COMMODITIES:

1.	0.3	Additional Costs Per Year for Paper, etc.
	<u>SUBTOTAL:</u>	<u>0.3</u> FY 89 thru FY 93

**EQUIPMENT:**

1.	6.0	Hewlett Packard Personal Computer with additional memory boards, basic and specialized software to operate the computer, printer, and other pc peripheral.
2.	0.4	5 Drawer Filing Cabinet to house non-computerized records.
SUBTOTAL:	<u>6.4</u>	Equipment for FY 89 only
GRANT TOTAL:	<u>135.4</u>	Fiscal Year 1989 - all GF
	<u>89.0</u>	Fiscal Year 1990 - all GF
	<u>139.0</u>	Fiscal Year 1991 - 50.0 Pr.;89.0 GF
	<u>86.5</u>	Fiscal Year 1992 - all GF
	<u>86.5</u>	Fiscal Year 1993 - all GF

## MEMORANDUM

To: Hon. Kay Brown  
Representative  
Alaska Legislature

Date: April 29, 1988

From: Ted Moninski  
Executive Director  
APUC

Subject: Revised Fiscal  
Note CSHB238

Following my review of the most recent version of the Integrated Resource Planning bill, HB238, and discussions with your office, I have determined that it would be appropriate to restructure the APUC's fiscal note associated with this bill. A copy of the updated fiscal note along with this memorandum will be telecopied to you immediately. The original of the fiscal note will be forwarded to you and should arrive early next week.

The Commission Staff's approach in developing the revised fiscal note was to analyze the bill's impact on a "per phase of implementation" basis. This resulted in a fair amount of fluctuation in resource requirements from one fiscal year to the next. The outline which follows describes our best estimate of the activities and related resources that will be required from FY89 through FY93.

FY89:	Activities	--	Promulgation of Regulations Initial Commission Planning Database Design Initial Utility Planning
	APUC Resources	--	Utility Engineer Support Staff One-time Attorney Expense Miscellaneous Start-up Costs
FY90:	Activities	--	Active Phase of Utility Plan Development
	APUC Resources	--	Utility Engineer Support Staff
FY91:	Activities	--	Plan Review and Approval
	APUC Resources	--	Utility Engineer Support Staff Contingency Program Receipt Appropriation for Professional Services



Original sponsors: Brown, Ellis,  
Davis, et al.

1 IN THE HOUSE BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 238 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act requiring certain electric public utilities  
7 to prepare certain plans."

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

9 \* Section 1. AS 42.05 is amended by adding new sections to read:

10 Sec. 42.05.294. INTEGRATED RESOURCE PLANS. (a) An electric  
11 utility with annual sales that exceed 300,000,000 kilowatt hours shall  
12 file an integrated resource plan with the commission on or before  
13 January 15 every three years. The plan must show how the utility will  
14 meet forecasted power requirements. Unless a different time is speci-  
15 fied, a forecast required by this subsection must be for the next 20  
16 years. In the plan, the utility shall

17 (1) list and describe current facilities and energy supply  
18 resources of the utility;

19 (2) include a forecasted retirement schedule that lists the  
20 facilities that the utility expects to remove from service, discusses  
21 the assumptions used to develop the retirement schedule, and includes  
22 the forecasted use of specific facilities, the remaining useful life  
23 of the facilities, and forecasted maintenance work;

24 (3) describe the utility's interconnection relationships  
25 with other utilities and small power producers, and the utility's  
26 agreements for operation of joint use facilities, power exchanges,  
27 power pooling, reserve sharing, commodity displacement, and other  
28 operating arrangements;

29 (4) document energy end-use in the utility service area and

1 identify with reasonable accuracy the final physical use of electrici-  
2 ty in the residential, commercial, and industrial sectors, including  
3 use within each sector for space heating and cooling, lighting, water  
4 heating, refrigeration, and appliances;

5 (5) forecast system power demand including annual, season-  
6 al, and peak day load hourly duration curves and best estimates of  
7 anticipated peak demand of the major user classifications including  
8 residential, commercial, and industrial sectors;

9 (6) analyze the utility's existing ability to meet increas-  
10 ed system requirements, including

11 (A) opportunities for generation, transmission, or  
12 other system efficiency improvements;

13 (B) potential electric power pooling;

14 (C) possible interconnection with qualifying cogenera-  
15 tors or small power producers;

16 (D) anticipated demand reductions in power require-  
17 ments as a result of market-induced or programmatic conservation  
18 efforts; and

19 (E) current utility load management efforts;

20 (7) summarize the utility's load research programs, end-use  
21 analysis, and load management investigations, including

22 (A) the status of current and anticipated load re-  
23 search, data collection, and analysis;

24 (B) the status of current and anticipated end-use  
25 research, data collection, and analysis;

26 (C) an assessment of changes anticipated in end-use  
27 requirements from appliance and mechanical system efficiency  
28 improvements for each consumer sector;

29 (D) an evaluation of the effects on utility costs from

- 1 end-use efficiency changes;
- 2 (E) a description of methods including innovative rate  
3 designs available to modify, coordinate, or control end-uses to  
4 manage system loads; and
- 5 (F) cost estimates for implementation of load manage-  
6 ment programs;
- 7 (8) provide long-term forecasts, based on end-use and  
8 econometric methodologies as appropriate, including
- 9 (A) base, low, and high forecasts of the power re-  
10 quirements for the utility service area;
- 11 (B) a discussion of the assumptions used in developing  
12 the forecasts including reserve margin requirements, population  
13 growth or decline, employment growth or decline, economic de-  
14 velopment, service area expansion, and other factors that influ-  
15 ence the demand for electrical energy; and
- 16 (C) a sensitivity analysis that tests the importance  
17 of specific assumptions;
- 18 (9) identify and evaluate alternative development options  
19 to meet forecasted power requirements; the options must address  
20 availability, reliability, flexibility, and cost-effectiveness;
- 21 (10) identify the development option with the lowest present  
22 value of revenue requirements over the forecast period;
- 23 (11) recommend a specific development option and an imple-  
24 mentation plan for the option; the option must identify projected  
25 facility retirement, development of additional generating and trans-  
26 mission systems, load management efforts, conservation, and energy  
27 end-use efficiency improvements; and
- 28 (12) include other information considered necessary by the  
29 commission to ensure adequate evaluation of all supply-side and

1 demand-side alternatives; the commission may not require the utilities  
2 to provide information unless the type of information requested is  
3 consistent with the type of information required by electric utility  
4 regulatory agencies in other states.

5 (b) The commission shall establish by regulation a consistent  
6 plan development and reporting methodology for the integrated resource  
7 plans required under (a) of this section including the coordinated  
8 preparation and filing of individual plans by closely integrated  
9 utilities served by common facilities.

10 (c) The commission shall assist utilities in the development of  
11 the integrated resource plan to minimize regulatory burdens and cost.

12 Sec. 42.05.296. REVIEW AND APPROVAL OF INTEGRATED RESOURCE  
13 PLANS. (a) The commission shall establish by regulation a procedure  
14 for the review and approval of a plan submitted under AS 42.05.294  
15 that includes provision for public hearings before the commission in  
16 the principal localities served by the utility submitting the plan.

17 (b) The commission shall approve a utility's integrated resource  
18 plan including the recommended development option if the commission  
19 finds that the plan

20 (1) ensures system reliability;

21 (2) would provide consumers with the lowest reasonable cost  
22 of power over the forecast period; cost savings identified through  
23 life-cycle cost analysis may be considered even though the cost  
24 savings will be realized after the forecast period;

25 (3) adequately addresses conserving electrical energy  
26 through cost-effective, end-use efficiency improvements using readily  
27 available or reliably anticipated methods or technology;

28 (4) documents a reasonable expectation of future load and  
29 resource requirements;

1           (5) uses, as appropriate, life-cycle costing and cost-  
2 effectiveness analysis and explains the criteria and assumptions on  
3 which the analysis is based;

4           (6) evaluates resource alternatives that would be appropri-  
5 ate for the service area in light of technology currently available  
6 and reliably anticipated to exist during the forecast period; and

7           (7) describes the utility's data collection activities,  
8 additional data requirements, and efforts to develop that additional  
9 data.

10          (c) Notwithstanding AS 42.05.294 and this section, a utility  
11 may, without commission approval, maintain, repair, upgrade, or re-  
12 build existing facilities to maintain reliable service and may pursue  
13 action to alleviate an emergency situation in which service would be  
14 lost.

15          (d) On the anniversary of the plan's approval date, the utility  
16 shall submit annual reports on the implementation of the resource plan  
17 and the approved development option, including (1) departures neces-  
18 sitated by emergency service, maintenance, or repair, and (2) signifi-  
19 cant changes in the underlying assumptions of the resource plan. The  
20 report must include modifications to the plan under (c) of this sec-  
21 tion, changes to underlying assumptions, and supporting data and  
22 documentation.

23          (e) Commission review and approval of a utility's integrated  
24 resource plan and development option authorizes the utility to imple-  
25 ment the plan as approved.

26          (f) The commission shall adopt regulations and establish poli-  
27 cies that set rates for utility services and revenue requirements at a  
28 level sufficient for a utility to recover all reasonable expenses and  
29 capital expenditures incurred by the utility in preparing the plan and

1 implementing the approved plan. Expenses allowed for recovery in  
2 rates shall include those expenses reasonably expected to occur during  
3 the time the rates are in effect. The commission shall develop speci-  
4 fic procedures for revenue requirement adjustment in lieu of a general  
5 rate adjustment filing.

6 \* Sec. 2. AS 42.05.711(b) is amended to read:

7 (b) Except as otherwise provided in this subsection, public  
8 utilities owned and operated by a political subdivision of the state,  
9 or electric operating entities established as the instrumentality of  
10 two or more public utilities owned and operated by political subdivi-  
11 sions of the state, are exempt from this chapter, other than AS 42.-  
12 05.221 - 42.05.281, 42.05.294 - 42.05.296, and 42.05.385. However,

13 (1) the governing body of a political subdivision may elect  
14 to be subject to this chapter; and

15 (2) a utility or electric operating entity that is owned  
16 and operated by a political subdivision and that directly competes  
17 with another utility or electric operating entity is subject to this  
18 chapter and any other utility or electric operating entity owned and  
19 operated by the political subdivision is also subject to this chapter.

20 \* Sec. 3. AS 44.83 is amended by adding a new section to read:

21 Sec. 44.83.085. GRANTS FOR INTEGRATED RESOURCE PLANS. The  
22 authority may make a grant to a Railbelt electric utility that is  
23 required to prepare an integrated resource plan under AS 42.05.294 to  
24 assist in the cost of preparing the plan.

25 \* Sec. 4. INITIAL PLAN DEADLINE. A public utility's first integrated  
26 resource plan required under AS 42.05.294, enacted by sec. 1 of this Act,  
27 shall be filed on or before January 15, 1991.

216 4/30/88

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION: CSHB238 (RES)  
PUBLISH DATE: \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: 4/29/88 Agency Affected: Commerce & Econ. Development  
Title: An act requiring certain electric public utilities to prepare certain reports and relating to costs in proceedings before the APUC.  
Sponsor: Brown, Ellis, Davis et al BRU: APUC  
Requestor: House Finance Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars) \*

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0.0	86.2	86.2	86.2	86.2	86.2
TRAVEL	0.0	2.5	2.5	2.5	0.0	0.0
CONTRACTUAL	0.0	40.0	0.0	50.0	0.0	0.0
SUPPLIES	0.0	.3	.3	.3	.3	.3
EQUIPMENT	0.0	6.4	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	135.4	89.0	139.0	86.5	86.5

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	135.4	89.0	89.0	86.5	86.5
FEDERAL FUNDS						
OTHER Prog Rcpts				50.0		
TOTAL	0.0	135.4	89.0	139.0	86.5	86.5

POSITIONS:

FULL-TIME	0	2	2	2	2	2
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

\*Funding FY 89 = HB 239; Funding FY 90-93 Budget Forecast - Details on attached Fiscal Note Narrative.  
(See attached for narrative concerning analysis)

Prepared by: T.S. Moninski II Executive Director Phone: 276-6222  
Division: Alaska Public Utilities Commission Date: \_\_\_\_\_

Approved by Commissioner: [Signature] Date: 5-2-88  
Agency: Commerce & Economic Development

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

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MAY 2 1988

LEGISLATIVE FINANCE

ANALYSIS CSHB 238

PAGE 2 OF 2

This Fiscal Note was developed in specific response to the changes incorporated in CSHB 238. The legislature's attention is directed at the fact that the demand for Commission resources will fluctuate depending upon which planning stage is active in any given fiscal year. This Fiscal Note attempts to accommodate those changes in resource requirements in an effort to minimize the ongoing overhead associated with administering the integrated resources planning process.

Fiscal Note Narrative Concerning HB No. 238

"An Act requiring certain electric public utilities to prepare certain reports; and relating to costs in proceedings before the Alaska Public Utilities Commission.

Listed below is a breakout of the costs which are identified on the fiscal note.

PERSONAL SERVICES:

1.	54.0	UTILITY ENGINEER III (RANGE 19A).
2.	32.2	CLERICAL SUPPORT (Range 10A)
	<u>86.2</u>	PERSONAL SERVICES FY 89 - FY 93

TRAVEL:

1.	2.5	Funds for travel to utilities not located in the Anchorage area. Travel costs are projected FY 90 thru FY 91.
	<u>2.5</u>	TRAVEL

CONTRACTUAL:

1.	15.0	FY 89 - Development of computerized data bases in the first year (10.0); misc costs associated with promulgating regulations such as advertising, mailing costs, etc. (4.5); and additional postage costs for FY 89 (.5) = total of 15.0
2.	25.0	FY 89 - Non-allocable Attorney Services to assist the Commission in promulgate regulations, participate in public hearings, etc.
3.	50.0	FY 91 - Technical and professional services which may be required in FY 91 to review and approve plans filed, if used. These expenses are "allocable" under AS 42.05.651 and are recoverable; therefore we are requesting that this 50.0 be funded from program receipts
	<u>40.0</u>	<u>IN FY 89</u>
	<u>50.0</u>	<u>IN FY 91</u>

COMMODITIES:

1.	0.3	Additional Costs Per Year for Paper, etc.
	<u>0.3</u>	FY 89 thru FY 93

EQUIPMENT:

1. 6.0 Hewlett Packard Personal Computer with additional memory boards, basic and specialized software to operate the computer, printer, and other pc peripheral.
2. 0.4 5 Drawer Filing Cabinet to house non-computerized records.

SUBTOTAL:	<u>6.4</u>	Equipment for FY 89 only
GRANT TOTAL:	<u>135.4</u>	Fiscal Year 1989 - all GF
	<u>89.0</u>	Fiscal Year 1990 - all GF
	<u>139.0</u>	Fiscal Year 1991 - 50.0 Pr.;89.0 GF
	<u>86.5</u>	Fiscal Year 1992 - all GF
	<u>86.5</u>	Fiscal Year 1993 - all GF

**STATE OF ALASKA  
1988 LEGISLATIVE SESSION**

**BILL VERSION: CSHB 238 (Res)  
PUBLISH DATE: HOUSE 2/22/88**

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Commerce & Econ. Development  
 Title: An act requiring certain electric BRU: APUC  
public utilities to prepare certain reports and relating to costs in proceedings before  
 Sponsor: Brown, Ellis, Davis et al. Components: Operations  
 Requestor: Cotten APUC.

319

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		170.0	170.0	170.0	170.0	170.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		170.0	170.0	170.0	170.0	170.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

**FUNDING: (Thousands of Dollars)**

GENERAL FUND			170.0	170.0	170.0	170.0
FEDERAL FUNDS						
OTHER		170.0				
<b>TOTAL</b>		170.0	170.0	170.0	170.0	170.0

**POSITIONS:**

FULL-TIME		3	3	3	3	3
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary) HB238 creates an ongoing filing and approval process for integrated resource plans. Although HB239 provides inception year funding via direct appropriation from the Railbelt Energy Fund, subsequent year funding is forecasted to be provided by General Fund resources unless the legislature determines that further Railbelt Energy Fund support is appropriate.

Prepared by: T.S. Moninski II Executive Director Phone: 276-6222  
 Division: Alaska Public Utilities Commission Date: \_\_\_\_\_

Approved by Commissioner: \_\_\_\_\_ Date: \_\_\_\_\_  
 Agency: Commerce & Economic Development

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)



# Alaska State Legislature

## HOUSE OF REPRESENTATIVES

### Committee on Finance

Official Business

P.O. Box V  
State Capitol  
Juneau, Alaska 99811

TO: Representative Al Adams

FROM: Representative Kay Brown

DATE: April 28, 1988

SUBJ: HB 238/239: Integrated Resource Planning Legislation

As you may know, the topic of integrated resource planning (also known as "least-cost" planning) was the subject of a conference held in Anchorage last fall which involved representatives of private and public utilities from aaround the nation. On the basis of that conference and an interim worksession of the Resources Committee, as well as additional discussions with utility representatives and consumer organizations, CS HB 238 (Res) has developed into the bill now before the House Finance Committee.

Fundamentally, integrated resource planning is designed to achieve the most cost-effective energy system by integrating the analysis of "demand-side" options with "supply-side" options. Integrated resource planning enables utilities to consider conservation options (or end-use technologies that conserve electricity) on an equal basis with the construction of new power generation facilities. The value of integrated resource planning is increasingly recognized throughout the country. One recent survey found that **25 states are using or developing integrated resource planning and another 7 are considering** implementation or using a similar type of methodology for facility siting or conservation programs.

The recently released energy report by the House Research Agency (*Energy Planning in Alaska: Past Efforts and A Future Direction*, February 1988) clearly reveals that integrated resource planning for Alaska is overdue. Although Alaska Power Authority statutes and regulations specify a multi-step review process for individual power projects, APA reviews are driven by specific project proposals and do not constitute a true planning process. Had integrated resource planning been in place over the past decade, many of the costly mistakes which have characterized the Energy Program for Alaska could have been avoided.

As noted by the HRA report, in urban areas of the state, the legislature appropriated **\$1.3 billion between FY 77 and FY 88**. Over 99 percent of these appropriations were spent on supply-side projects (89 percent on hydroelectric projects) and **less than one percent on demand-side investments**. If integrated resource planning had been in place during this period, the HRA report suggests that "a comprehensive analysis would have revealed residential and commercial building standards, commercial ventilation and lighting technical improvements, energy efficient appliances, and load management as feasible or more cost effective alternatives to new generating capacity." Instead, the more traditional project-based, supply-side approach has resulted in the futile pursuit of infeasible projects (eg, Susitna) as well as to the development of expensive excess capacity (eg, Tye Lake and Soldotna One).

The version of HB 238 reported out of the Resources Committee is significantly compromised relative to earlier versions of the legislation. CS HB 238 (Res) would require the Railbelt electric utilities to prepare integrated resource plans that adequately address both supply-side and demand-side energy development opportunities. During the evolution of HB 238 the utilities have argued that while they support integrated resource planning, they would urge an incentive-based approach. In the spirit of compromise, I have supported amendments to the bill which eliminated the enforcement mechanism originally included in the bill (ie, APUC pre-project approval). As the bill now stands, the quality of the integrated resource planning process will largely depend on the good-faith efforts of the utilities involved.

The integrated resource planning requirements proposed in **CS HB 238 (Res) would apply only to the state's larger Railbelt electric utilities** (defined as those with sales in excess of 300,000,000 kilowatt hours annually). These are utilities with the administrative and financial resources to undertake the planning efforts that would be required. These are also utilities in which the state has an enormous equity investment in the form of Bradley Lake and the Anchorage-Fairbanks Intertie. While it is anticipated that ratepayers throughout the state will ultimately benefit from the experience gained by the Railbelt utilities, the legislation has purposefully been crafted to involve only the state's larger utilities.

Finally, the proposed planning process would ensure that future development of Railbelt utility systems proceeds in a rational and deliberate fashion. Neither the ratepayers in the Railbelt, nor the state, can afford business as usual.

04/28/88 Rep. Brown

**Sectional Analysis**  
**HB 238/RESOURCES COMMITTEE SUBSTITUTE**

**Section 1**

**Integrated Resource Plans.** This section establishes a requirement for utilities with annual sales greater than 300 million kilowatt hours (kwh) to prepare 20-year integrated resource plans for approval by the APUC every three years.

(Note: Utilities in Alaska with sales above the 300 million kwh sales level include Chugach Electric Association, Golden Valley Electric Association, Homer Electric Association, Matanuska Electric Association, and Municipal Light and Power - Municipality of Anchorage.)

The required integrated resource plans would:

- list and describe current facilities
- include the utility's forecasted retirement schedule
- describe the utility's interconnection relationships
- document energy end-use in the service area
- forecast system power demand (load duration curves)
- analyze the utility's existing ability to meet demand
- summarize load research
- provide long term forecasts (base, high, low) including assumptions used to develop the forecasts
- identify and evaluate alternative development options with consideration given to availability, reliability, flexibility and cost-effectiveness
- identify the development option with the lowest present value of revenue requirement
- recommend implementation of a specific option
- include other information necessary to ensure adequate evaluation of all supply-side and demand-side alternatives

The Commission is directed to develop a consistent reporting methodology and assist utilities in the development of the plans including coordinated filing of plans by closely integrated utilities.

## LEAST-COST PLANNING

Least-cost planning is a process that allows utilities to evaluate and consider supply and demand side options on an equivalent basis. It presents a "level playing field" approach to objectively evaluating energy conservation, power plant construction, improved performance of existing systems, use of alternative energy services and purchased power based upon their cost and reliability. Least-cost planning is also known as integrated resource planning and value-based integrated resource planning.

Whatever it is called, the process expands a utility frame of reference to include providing energy services: the heat, the light, the power needed to operate homes and buildings. This strategy enables utilities to consider programs which promote energy efficiency on an equal basis with increased capacity. Thus utility conservation programs can be viewed as new electrical sources just as new power plants are.

Interest in least-cost planning is the result of the uncertainties in the utility market and the increased penetration into the market of demand-side management technologies. Utilities understand how to evaluate and rank supply-side options. Demand-side options have, however, developed rather recently and there is not a lot of experience in incorporating these considerations into utility plans. One of the goals of least-cost planning is to expand the historically supply oriented utility by encouraging the development of a demand-side analytical and experience base.

Utilities from Alabama to Wisconsin have undertaken demand side strategies through a least-cost planning process. The American Public Power Association supports the concept of this process, calling it "energy services planning", and stating that it helps "reduce the adverse impact of long lead-times and costly construction of large generating facilities... and encourages optimum utilization of existing equipment." Examples of utility programs include the Snohomish Public Utility in Everett, Washington that has incorporated least-cost strategies into its planning process, and Navopache Electric Cooperative in Arizona that is involved in innovative load management programs including budget billing, off-peak rates, and heat pump and weatherization loans.

State governments have also been actively involved in least cost planning. In 1984 the National Association of Regulatory Utility Commissioners unanimously passed a resolution urging all state and federal regulatory commissioners to adopt a "policy mandating electric and gas utilities to develop and submit for approval least-cost plans." The two states that are recognized as playing leading roles in least-cost planning are Nevada and

The Commission is directed to establish by regulation a public process for the review and approval of integrated resource plans. The Commission is directed to approve a plan upon a finding that the plan:

- 1) ensures system reliability;
- 2) would provide consumers with the lowest reasonable cost of power;
- 3) adequately addresses conserving electrical energy;
- 4) documents a reasonable expectation of future power requirements;
- 5) uses appropriate methodology for the evaluation of options;
- 6) adequately evaluates resource alternatives currently available or reliably anticipated to exist in the forecast period; and
- 7) describes the utility's data collection activities and on-going data collection efforts.

The legislation provides that, notwithstanding the requirement for preparation of an integrated resource plan, a utility may, without commission approval, maintain or repair facilities in order to maintain reliable service, including emergency repairs.

The legislation calls for the submission of annual reports on the implementation of the resource plans which include any departures necessitated by emergency service and any significant changes to the underlying assumptions used in the plan. Commission review and approval of a plan authorizes the utility to implement the plan as approved.

The Commission is directed to adopt regulations and policies that set rates and revenue requirements at a level sufficient to recover costs incurred by a utility in preparing and implementing an approved plan.

#### Section 2

Clarifies that municipal utilities with sales in excess of 300,000,000 kwh are not exempt from the integrated resource plan requirement.

#### Section 3

Amends APA statutes to provide specific authority to make grants for the purpose of preparing integrated resource plans.

#### Section 4

Establishes the due date for the first plan as January 15, 1991.

Wisconsin. Nevada requires regulated utilities to consider demand and supply options in developing an integrated resource plan. In order for a utility to receive approval for a new generation or transmission facility, the proposed must be included in the utility's least-cost plan. Wisconsin mandates that utilities submit biennial plans for new power projects, and that least-cost analyses of both supply and demand-side options be included as part of the framework of the plan.

This issue has also grabbed the attention of national and state legislatures. Congress has appropriated funds to the U.S. Department of Energy for research, technology transfer, and analytical activities to promote least-cost planning. State legislatures in California, Wisconsin, Florida and Iowa have passed legislation mandating some form of least-cost planning regulation. In the last session of the Alaska Legislature, H.B. 238 was introduced by Representative Kay Brown. This bill would incorporate least-cost planning into the planning process of Alaskan utilities regulated by the Alaska Public Utilities Commission.

Least-cost planning is not a panacea for all of the current uncertainties in electrical planning but it does offer a process that allows demand-side options to compete equally with supply side options. As more utilities and states begin to look at this type of planning strategy they find they must grapple with several important questions: How will they define and determine least-cost? Least-cost to whom, and at what point in the planning strategy? What are the most effective methods of implementing least-cost planning - through voluntary utility initiative or state mandate? There is also a question of what aspects of least-cost planning are applicable to Alaska, with its relatively small utilities, unique distribution system, and currently, in many places, a surplus of power.

In order to explore these issues, the Department of Community and Regional Affairs, in conjunction with the Alaska Rural Electric Cooperative Association, Alaska Public Interest Research Group, Alaska Public Utility Commission, and Chugach Electric Association, is sponsoring a conference on least-cost planning in Anchorage on October 26-27, 1987. Representatives of utilities and regulatory agencies as well as nationally recognized energy analysts who have been involved in least-cost planning have been invited to share their experiences and concerns. In addition their Alaskan counterparts will discuss what applications there could be for Alaska.

# PUBLIC CITIZEN

Critical Mass Energy Project

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## THE LEAST-COST ALTERNATIVE TO NEW POWER PLANT CONSTRUCTION

*A Strategy for Ensuring Utility Investments  
in Conservation and Renewable Energy Resources*

OCTOBER 1985

BY PAUL MARKOWITZ

### AN INTRODUCTION

In the past decade, energy price shocks, supply disruptions, and a major nuclear accident have made it increasingly clear that America depends upon an unnecessarily high-cost and high-risk energy system. The sweeping changes affecting the energy field over the past ten years have perhaps been most profound in the electrical utility industry. Since 1973, electrical demand has declined drastically, fuel prices have escalated, and power plant construction costs have increased exponentially. Rate increases caused by power plant cost overruns have significantly raised electric rates and threaten to add thousands of people to the ranks of the poor and unemployed.

The concept of a "least-cost energy strategy" is emerging among consumer advocates, regulatory commissions, and utilities in response to the radical changes affecting the economics of electricity production. The first step towards implementing such a strategy requires that utilities shift their focus from selling electricity to providing electrical services: the heat, light and power needed to operate the buildings and industries in their service area.<sup>1</sup> This strategy enables utilities to consider programs which promote electrical efficiency on an equal basis with the construction of new electrical generating facilities. Thus, utility conservation programs (such as providing low-interest loans for home weatherization or cash rebates for the purchase of energy-efficient appliances)

Since 1973, electricity prices have tripled and utilities have cancelled 180 proposed or partially constructed power plants that have cost consumers over \$16 billion dollars to date.

can be viewed as new electrical sources just as assuredly as a new nuclear or coal-fired power plant.

While energy efficiency (or conservation) measures are the most cost-effective of all resource options, and therefore the cornerstone of a least-cost investment strategy, the concept really involves utilizing *all* resources which provide the least-cost means of meeting future electrical demand. Thus, *load management*, the shifting of energy consumption from peak periods of the day into slack demand periods; *cogeneration*, the simultaneous production of electricity from industrial heat processes; and *renewable energy resources* such as solar, wind, biomass, and water become integral components of

utilities' least-cost energy investment strategies.

For varying reasons, many electric utilities are reluctant to consider many of the investments which are part of a least-cost investment strategy, particularly conservation, and it is left to legislatures and regulatory commissions to enact least-cost energy planning laws and regulations. These require utilities to comprehensively assess the potential of *all resources options* available for meeting new electrical demand, and to invest in these options based upon their cost-effectiveness.

### ELECTRICAL UTILITIES: AN INDUSTRY IN TRANSITION

The changes affecting electric utilities have been dramatic and swift. From 1945 to 1970, the demand for electricity grew at an average annual rate of 8 percent, and utilities met new demand by constructing new fossil and nuclear-fueled power plants. Economies of scale achieved in power plant size, improvements in power plant productivity, and decreasing fuel costs resulted in declining electrical rates and contributed to electric utilities becoming one of the most sound financial investments in the marketplace.

Then the 1973 oil embargo struck, and the world of the electric utility planner turned upside down. With the astronomical increases in oil prices (and their consequent price effect on oil-fired electrical generation), demand growth for electricity slumped to near zero and continued to grow only a modest two percent annually for the next ten years. At the same time, the long term trend of declining marginal costs associated with larger power plants came to an abrupt halt. From 1971-1981, the real costs (above inflation) for constructing nuclear and coal power plants increased *each year* by 14 percent and 8 percent, respectively.<sup>2</sup>

A myriad of factors contributed to the escalation of power plant construction costs, including: higher interest rates, new safety and environmental regulations, mismanagement, and technological difficulties resulting from the rapid escalation in power plant size. As a result, since 1973, electricity prices have tripled and utilities have cancelled 180 proposed or partially constructed power plants that have cost consumers over \$16 billion dollars to date.<sup>3</sup> Utilities across the country are struggling to pay for power plants whose electricity is neither needed nor affordable.

The impact on utility ratepayers from these power plant cost escalations is devastating. Many of the power plants ordered in the early 1970's have recently started (or soon will

be) producing power. The rate shock resulting from the inclusion of these power plant construction costs in electrical rates (construction costs are generally not passed on to ratepayers until plants are completed or officially cancelled) is expected to increase consumers' rates 50—180 percent in many utility service areas, and impact 35 million families in 25 states.<sup>4</sup> The employment and economic repercussions resulting from these rate shocks threaten to be equally disastrous. In a report commissioned by Suffolk County in Long Island, New York, rate increases necessary to pay for the Shoreham Nuclear Power Plant are expected to eliminate 35,000 jobs, disqualify 37,000 families from the mortgage market, increase foreclosures and home abandonment by up to 2000 per year, and push 11,000 households below the poverty line.<sup>5</sup>

### LEAST-COST ENERGY OPTIONS

A quiet revolution in the energy field has been manifested in the rapid movement toward least-cost energy efficiency and renewable energy investments. According to energy conservation advocate Amory Lovins, since 1979, the United States has obtained more than one hundred times as much new energy from efficiency improvements as from all net expansions of energy supply. Technological developments have spurred extensive design improvements in America's electricity consuming buildings and devices. As a result, the efficiency of the best available commercially-available motors has doubled, lighting systems tripled, major appliances quadrupled, and the efficiency of building space conditioning (heating and cooling) has improved by a factor of ten.<sup>6</sup>

For example, Norelco has developed its SL-18 light bulb which uses only 18 watts of electricity, yet produces the same amount of light as a 75-watt incandescent bulb. The bulb lasts more than 13 times longer, provides light of better quality, and uses a high-frequency solid-state ballast which eliminates flicker and hum. By replacing 75 watts with 18 watts, an individual is essentially installing a 57-watt power plant in their home. The SL-18 repays its high retail cost (\$15-\$20) two-three times over by saving \$40 worth of electricity plus \$10 for a dozen replacement bulbs. When universally used, SL light bulbs and other equally efficient bulbs, will displace (at one-to-two cents/kilo-watt hour (KW-h)) the need for thirty 1000 mega-watt power plants (at seven

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**In an era of uncertain demand, utilities find that conservation and load management investments offer a unique opportunity to reduce high capital costs and the financial risks associated with excess generating capacity.**

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cents/KW-h.). Savings of similar magnitude exist for appliances, industrial processes, and other electrical end-uses, as well.<sup>7</sup>

Renewable energy technologies such as photovoltaics (solar electric cells), wind energy systems, passive solar applications, solar flat plate collectors (for hot water and space heating), and biomass conversion (wood, alcohol fuels, etc.) have also become increasingly cost-competitive. The Public Utilities Regulatory Policy Act (PURPA) has played a significant role in this recent transition towards renewable energy resources. PURPA requires electric utilities to purchase electricity from small-power (renewables and cogeneration) producers up to the utility's cost of producing electricity from conventional

most dramatic example of this shift toward renewables is found in California, where by mid-1984 over 10,000 megawatts of small, independent sources were planned or under construction, enough to supply over 20 percent of the state's power by 1990.<sup>8</sup>

In addition to their cost-effectiveness, energy efficient and renewable energy technologies create several times as many jobs per dollar as their conventional counterparts. They also represent the best energy supplies for abating the long-term problems of acid rain, carbon-dioxide build-up, and the proliferation of fissionable materials that are posed by continued dependence on conventional energy sources.

### UTILITY SUPPORT FOR LEAST-COST OPTIONS

A few utilities have heeded the changing economics of electrical generation, and begun developing programs which promote least-cost electrical investments. Utilities, such as Pacific Power and Light, Northern States Power Co., and New England Electric Systems are finding that least-cost investment options are not only much cheaper than conventional generating sources, but also improve their own financial well-being. South California Edison, one of the nation's largest utilities, announced a change in its 1981 corporate policy which involved "devoting corporate resources to the accelerated development of a wide variety of renewable resources, cogeneration, conservation, and load management."<sup>9</sup>

Demand-side options (efficiency and load management), cogeneration, and renewable energy resources reduce utility planning uncertainty and risk. These investment options are small, modular, and incremental in nature. Compared to conventional coal and nuclear-fired power plants, they have shorter production lead times, low capital requirements, and

### MODEL CONSERVATION PROGRAMS

Pacific Gas and Electric Company (California), the nation's largest private utility, recently embarked on its Great Energy Rebate Program. As part of this program, commercial, industrial and agricultural electric customers are paid up to \$150,000 per customer account to convert to energy-saving equipment and products. Rebates are offered for such equipment as lighting conversions, air conditioners, industrial motors, refrigerators and freezers, heating system conversions and modifications, and load management controls. Customers can obtain rebates which defray 25% to 40% of the purchase and conversion costs for efficient products, and rebates are paid on the basis of up to \$250/KW for saved electrical capacity and \$.06/KW-h for saved energy. Similar rebates are also available for residential customers.<sup>10</sup>

General Public Utilities (of Pennsylvania and New Jersey) has developed an alternative financing program for home weatherization through its Residential Energy Conservation Action Program (RECAP). Under RECAP, contractors install cost-effective conservation measures free of charge to individual residences. The utility pays the contractor for the actual, measured long-term reductions in energy consumption over a period of years at an agreed upon rate. Energy savings from the program are expected to exceed costs by a ratio of five to one over a 10 year period, and General Public Utilities has already completed weatherization for over 5,000 homes.<sup>11</sup>

offer the utility a quick return on its investment. In an era of highly uncertain demand, utilities are finding that conservation and load management investments offer a unique opportunity to improve load factors, increase velocity of cash flow, reduce high capital costs, and reduce the financial risks associated with excess generating capacity.

Untapped investments in energy efficiency and load management offer enormous potential for meeting new electrical demand and remain the most cost-effective of all resource options. Utilities, regulators, and consumer advocates have developed programs designed to increase the efficiency of America's electrical consumption.

Most utilities offer some type of program promoting efficiency investments, ranging from simple bill inserts on conservation tips and school education programs to innovative financing programs like those cited above. However, very few utilities have begun to comprehensively investigate the full potential for improving the efficiency of their customers' energy consumption or to implement incentive programs which are designed to promote efficiency investments.

### UTILITY OPPOSITION TO LEAST-COST OPTIONS

The majority of utilities are still planning for high electrical demand growth in the future, despite the drastic decline in the rate of electrical demand growth over the past decade. And they are planning on meeting this demand primarily by building large coal-fired electrical generating plants (and to a lesser extent nuclear power), despite the radical changes in the economics of central power generation. Most utilities are reluctant to shift to a least-cost investment strategy for a variety of reasons, including:

- Utilities have traditionally seen themselves as suppliers of a commodity (electricity), and like most other private enterprises, strive toward increasing profits by increasing sales of their commodity. This has been historically accomplished by constructing large power plants.
- Most utility executives wait for positive signs from their commissioners that least-cost investments will receive preferential rate treatment.
- The revenue formulas established by public utility commissions, which are used to determine return on investment, are often based on total capital investment. Utilities have a built-in incentive to overinvest in capital-intensive plant and equipment.
- Efficiency measures, programs, and technologies for saving energy and electricity are still relatively unfamiliar to the utility industry, and are viewed as risky until proven over a long period.<sup>12</sup>

Because of this reluctance, a few state legislators and regulators have begun to adopt statutes and regulations which assure that utilities will comprehensively examine all resource options, and invest in these on a cost-effective basis.

### STATE REGULATORY COMMISSIONS CAN ENSURE LEAST-COST INVESTMENTS

The least-cost concept has garnered strong support from some impressive official bodies, including the American Public Power Association, the American Gas Association, and the National Association of Regulatory Utility Commissioners (NARUC). At its 1984 annual convention, NARUC unanimously passed a resolution urging all state and federal

regulatory commissions to adopt a "policy mandating electric and gas utilities to develop and submit for approval least-cost resource plans".<sup>13</sup>

Legislators and commissioners have begun to develop laws and regulations to compel utility investment in demand-side options and renewables due to many utilities' reluctance to pursue least-cost planning on their own initiative. Several states, including California, Wisconsin, Florida, Iowa, and Nevada have now adopted some form of least-cost electrical planning regulations.

The state of Nevada has developed one of the most comprehensive least-cost planning regulations in the country. The

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### Citizen-based organizations and public interest intervenors have been the primary motivating force behind the adoption of many current least-cost planning laws and regulations.

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Nevada Utility Resource Planning Act of 1983, authored by the state's Office of Consumer Advocate, requires electric utilities to submit to the Nevada Public Service Commission a fully integrated, long-range resource plan every two years. These plans must demonstrate that *all* aspects of a utility's future energy needs and resource options have been considered.

Nevada utilities are required to conduct assessments of the cost-effective potential for each resource option, including efficiency, load management, cogeneration, and renewables, and then integrate and prioritize those options according to their cost-effectiveness. Perhaps most importantly, utilities cannot receive approval for a new power plant unless the plant has been previously approved as part of the utility's least-cost resource mix. The Nevada model includes provisions which assure that:

- Demand forecasts are based upon inventories of electrical end-uses such as lighting, heating, and cooling.
- Utilities must also submit a two-year implementation plan that specifies which least-cost resources will be utilized over the next two years.
- Standardized planning methodologies and models are used by all utilities to assure long-term consistency.
- Utilities are held responsible for the creation and coordination of all plan components.
- Enforcement mechanisms are developed to assure utility compliance with their resource plans.<sup>14</sup>

Most states have adopted only individual components of comprehensive least-cost planning regulations, and consequently lack the ability to ensure utility investments on a least-cost basis. For example, many public utility commissions have specific statutory authority to require utility investments in conservation and load management but lack the capability to adequately evaluate utility assessments of conservation potential or program proposals. Other commissions require utilities to file conservation plans which must evaluate all resource options available for meeting new electrical demand yet lack the authority (or initiative) to deny approval of the plan or to require that utilities invest in all cost-effective conservation investments prior to new supply resources.

Unfortunately, very few commissions have adopted comprehensive least-cost regulations which ensure that utilities

invest in the most cost-effective resources to meet new electrical demand.<sup>15</sup> This is due to a variety of reasons. Some state commissions lack adequate information and analytic planning tools, while others are awaiting the results of those states which have enthusiastically promoted conservation. Still, other commissions believe that utilities should decide how to meet demand for electricity or that existing regulations are sufficient in promoting utility conservation investments. However, a truly integrated and comprehensive least-cost planning model, such as Nevada's, is vital to assure utility investments in least-cost energy resources.

## A FRAMEWORK FOR CITIZEN ACTION

A well-informed and organized consumer-based coalition can significantly influence its state regulatory and legislative bodies to adopt least-cost planning laws and regulations. Citizen-based organizations and public interest intervenors have been the primary motivating force behind the adoption of many current least-cost planning laws and regulations. The following are specific actions that public policy organizations and citizen-based groups can take to promote least-cost energy planning in their state:

**1. Review Existing Statutes and Regulations Regarding Utility Investments in Least-Cost Energy Resources.** Utility statutes and regulations vary from state to state. Thus, a crucial first step involves reviewing existing statutes and regulations to reveal possible gaps in a comprehensive least-cost planning process. Some of the more pertinent questions to pursue, include:

- Does your public utility commission have the regulatory authority to require utility investments in customer efficiency improvements?
- Are utilities required to undertake a comprehensive assessment of the conservation potential in their service districts?
- Are utilities required to file long-range resource or conservation plans? If yes, do these plans include assessments of demand-side and supply-side options and do they require these options to be integrated according to their cost-effectiveness?
- Does your commission have an adequate enforcement mechanism which ensures that utilities invest on a least-cost basis, i.e. denial of a power plant permit due to lack of consideration of alternatives?
- Has the state adopted favorable buyback regulations to require utilities to purchase electricity from small-power producers, including cogeneration and renewables?

**2. Develop an Independent Conservation Potential Assessment.** Universities offer an ideal base for the development of independent assessments of the potential for energy conservation in a utility service district or the state as a whole. For example, the Center for Energy Studies at the University of Texas, in conjunction with Lawrence Berkeley Laboratories, has recently developed an assessment of the conservation supply potential for residential and commercial buildings in the state of Texas.<sup>16</sup>

University departments with experience in quantitative analysis, computer modeling, or electrical planning issues can be solicited to develop specific information:

- An inventory of available efficiency measures, methods, and technologies capable of cheaply and reliably supplying or saving energy and power.
- A detailed inventory of energy use, indicating how much electricity is consumed for what purposes within the state.
- An assessment of the potential for efficiency improvements in the residential, commercial, and industrial sectors.
- A survey of information on state commission orders, regulations, rate treatments and case histories of efficiency programs.

**3. Form a Coalition.** A successful strategy will be based on linking least-cost planning with other utility issues that are affecting ratepayers. Least-cost planning offers a long-term, comprehensive process for assuring the most cost-effective implementation of electrical resources as well as an ideal complement to shorter-term and single focus, and sometimes adversarial, utility issues.

For instance, "rate shock" (the rate impacts from the cost of new power plants) is an excellent organizing issue because the inclusion of expensive, new power plants costs in the rate base directly result in higher utility bills. While citizen groups argue against the inclusion of imprudent power plant construction costs in the rate base, rate shock also presents an excellent opportunity for consumers to press their regulators with the question of, "How are you going to prevent these astronomical rate increases from occurring in the future?"

Least-cost planning can be used to address other utility issues, such as utility proposals for the construction of new coal or nuclear plants, the inclusion of construction work-in-progress (CWIP) costs in the rate base, and the impacts of rate increases on low-income households. Least-cost electrical planning offers an ideal issue for forging statewide coalitions which can bring together diverse organizations, including low-income, senior citizen, safe energy, and consumer groups.

## FOOTNOTES

<sup>1</sup> *The Least-Cost Energy Strategy: Minimizing Consumer Costs Through Competition*, 1979. Roger Sant. Carnegie Mellon University Press, Pittsburgh, PA.

<sup>2</sup> *Power Plant Cost Escalation: Nuclear and Coal Costs, Regulation, and Economics*, 1981. Charles Komanoff. Van Nostrand Reinhold, NY.

<sup>3</sup> *Electricity: New Consumer Choices*, 1985. Dick Munson. Center for Renewable Resources, Washington, DC.

<sup>4</sup> *Rate Shock: Confronting the Cost of Nuclear Power*, 1984. Alan Noguee. Environmental Action, Washington, DC.

<sup>5</sup> *Operation Vs. Abandonment of the Shoreham Nuclear Plant: The Effect on Long Island Unemployment*, 1984. Greg Palast. Union Associates, New York, NY.

<sup>6</sup> "Saving Cigarettes with Negawatts", 1985. Arroyo Lovins. *Public Utilities Fortnightly*, March 21, 1985.

<sup>7</sup> *Ibid*

<sup>8</sup> *Electricity's Future: The Shift to Efficiency and Small-Scale Power*, 1984. Chris Flavin. Worldwatch Institute, Washington, DC.

<sup>9</sup> *1981 Conservation and Load Management Program*, 1981. South California Edison Co. Rosemead, CA.

<sup>10</sup> "The Great PG & E Rebate Program", 1984. Pacific Gas and Electric Co. San Francisco, CA.

<sup>11</sup> "Don't Pay for Insulation... Buy Conservation." 1983. Slide show presentation explaining General Public Utilities RECAP Program. Richard Estevez, Manager of Conservation Communications, General Public Utilities, Parsippany, NJ.

<sup>12</sup> "Questions and Answers" from Nevada Public Service Commissioner Stephen Wiel at March 5, 1985 hearings before the Energy Development and Applications Subcommittee hearings on Department of Energy 1986 budget.

<sup>13</sup> Resolution on gas and electric utility least-cost resource plans, 1984. Proposed by the Ad Hoc Committee on Energy Conservation of the National Association of Regulatory Utility Commissioners (NARUC). Adopted by NARUC at their 1984 Annual National Convention, NARUC, Washington, DC.

<sup>14</sup> "Utility Resource Planning: The State of Nevada Adopts an Integrated Planning Model", 1984. Jon Wellinghoff and Cynthia Mitchell, Nevada Office of Consumer Advocate, Carson City, NV.

<sup>15</sup> "Results of Survey of Regulatory Utility Commission's Electric Resource Planning and Conservation Activities", November 1985. Conducted by Congresswoman Claudine Schneider's office for hearings on the Least-Cost Planning Initiative. Hearings held before the House Energy Development and Applications Subcommittee, September 26, 1985.

<sup>16</sup> *Electrical Energy Conservation Supply Potential in the Texas Building Sector*, December 1985 (repeated date). Center for Energy Studies, University of Texas, Austin, TX, and Energy Efficient Buildings Program, Lawrence Berkeley Labs, Berkeley, CA. Commissioned by the Texas Public Utility Commission, Austin, TX.

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ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

cc HB 238  
members' files

P.O. Box Y, State Capitol  
Juneau, Alaska 99811-3100  
Mail Stop 3100  
(907) 465-3991

March 29, 1988

MEMORANDUM

TO: Representative Kay Brown

ATTN: Eric Meyers

FROM: Ginny Fay *GFay*  
Legislative Analyst

RE: Regulation of Cooperative and Publicly-Owned Electric Utilities  
Research Request 88.227

You requested information on the regulation of electric utilities in other states. You are interested in the number of states that: (1) regulate cooperative and publicly-owned electric utilities and (2) require advanced siting approval for new utility construction projects.

Based on the "1985 Annual Report on Utility and Carrier Regulation," by the National Association of Regulatory Utility Commissioners, forty-five of the fifty states have electric cooperatives. Coincidentally, forty-five states also have public utilities such as municipal utilities. Twenty-five of the forty-five states with cooperatives (fifty-six percent) regulate their rates. Of the twenty states that do not regulate cooperatives, one (Minnesota) allows for members to elect to be regulated, another (Nevada) exempts cooperatives only if all their sales are to members, and a third (Wisconsin) regulates a cooperative if its activities include functions that make it a public utility under Wisconsin statute (Attachment A). In twenty-three of the forty-five states with publicly-owned electric utilities (fifty-one percent), electric rates are subject to regulation (Attachment A).

Eighteen states require advance approval or certification for construction of additional generation facilities by investor-owned electric utilities. Twelve require advanced approval for electric cooperatives and nine for publicly-owned electric utilities (Attachment B). Twenty-two states required advance approval for construction of distribution lines by investor-owned electric utilities. Fourteen states require approval for cooperatives and ten for publicly-owned utilities (Attachment B).

I hope this information is useful. Please do not hesitate to call if you have additional questions.

Attachments

**ATTACHMENT A**  
**Regulation of Rates: Electric, Gas and**  
**Telephone Utilities**

TABLE 3 - REGULATION OF RATES: ELECTRIC, GAS AND TELEPHONE UTILITIES

AGENCY	The Agency has authority to regulate or control rates on sales to -																	
	Ultimate Consumers						Indus. Con- sumers of Inter- state pipe- line com- panies	Nat- ional Gas Pro- cess- ing	Public Authorities for public use (not resale)					US Government - not for resale				
	Electric			Gas					Electric			Gas		Electric			Gas	
	Pri- vate	Pub- lic	Coop- erative	Private	Pub- lic	Tele- phone			Private	Pub- lic	Coop- erative	Private	Pub- lic	Tele- phone	Private	Pub- lic	Coop- erative	Private
FCC FERC		1/				X 16/		17/	17/		1/							
ALABAMA PSC	X	X 2/	X 66/	X	X	X		X	X 2/	X 66/	X	X	X	X 2/	X 66/	X	X	
ALASKA PUC	X	53/		X	54/	X		X 51/	X 53/	X	X	X 52/	X	X	X	X	X	
ALBERTA PUB	X		X	X		X		X	X	X	X	X	X	X	X	X	X	
ARIZONA CC	X		X	X		X		X	X	X	X	X	X	X	X	X	X	
ARIZONA PSC	X		X	X	X 3/	X		X	X	X	X	X	X	X	X	X	X	
CALIFORNIA PUC	X			X		X		X		X		X	X				X	
CANADIAN RTC						X											X	
COLORADO PUC	X		X	X		X		X		X		X			X		X	
CONNECTICUT DPUC	X		X	X		X		X		X		X		X		X	X	
DEL. PSC	X		X	X		X		X		X		X		X		X	X	
D.C. PSC	X	X 43/	X 43/	X		X		X	X 43/	X 43/	X	X	X	X 43/	X 43/	X	X	
FLORIDA PSC	X	X 43/	X 43/	X		X		X	X 43/	X 43/	X	X	X	X 43/	X 43/	X	X	
GEORGIA PSC	X			X		X		X		X		X		X		X	X	
HAWAII PUC	X			X		X		X		X		X		X		X	X	
IDAHO PUC	X			X		X		X		X		X		X		X	X	
ILLINOIS CC	X			X		X	X	X		X		X	X	X	X	X	X	
INDIANA PSC	X	X	X	X	X	X		X	X	X	X	X 35/	X	X	X	X	X	
IOWA SCC	X			X		X 35/	X	X		X		X	X 35/	X	X	X	X	
IOWA SCC	X	4/		X	4/	X		X	4/	X		X	4/	X	X	X	4/	
KANSAS SCC	X	4/		X	4/	X		X	4/	X		X	4/	X	X	X	4/	
KENTUCKY PSC	X			X		X		X		X		X		X		X	X	
LOUISIANA PSC	X		X 56/	X 41/		X		X		X		X	X	X	X	X	X 12/	
MAINE PUC	X	X	X	X	X 12/	X		X	X	X	X	X 12/	X	X	X	X	X	
MARYLAND PSC	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	
MASSACHUSETTS DPUC	X	5/		X	5/	X		X	5/	X		X	5/	X	X	X	5/	
MICHIGAN PSC	X			X		X	X	X 20/		X 20/	X 20/	X	X 67/	X	X	X	X	
MINNESOTA PUC	X		56/	X 60/		X 72/						X		X		X		
MISSISSIPPI PSC	X	64/		X	64/	X		X	64/	X		X	64/	X	X	X	64/	
MISSOURI PSC	X			X		X		X		X		X		X		X	X	
MONTANA PSC	X	X		X		X	X	X	X	X		X	X	X		X	X	
NEBRASKA PSC 42/	X			X		X		X		X		X		X		X	X	
NEVADA PSC	X	6/	65/	X	6/	X		X	6/	65/	X	6/	X	6/	65/	X	6/	
NEW HAMPSHIRE PUC	X	X 3/		X		X		X	X 3/	X		X	X	X 3/	X	X	X	
NEW JERSEY BPU	X	7/		X		X		X	7/	X		X	X	7/	X	X	X	
NEW MEXICO PSC	X	8/		X		X	X 10/	X	8/	X		X	X	8/	X	X	X	
NEW MEXICO SCC	X			X		X		X		X		X		X		X	X	
NEW YORK PSC	X	X 9/		X	X	X		X 21/	X 21/	X	X 21/	X 21/	X 21/	X 21/	X 21/	X	X 21/	
NORTH CAROLINA UC	X			X		X		X		X		X		X		X	X	
NORTH DAKOTA PSC	X			X		X		X		X		X		X		X	X	
NOVA SCOTIA PUB	X	X	X	X 12/	X 12/	X		X	X	X 12/	X 12/	X	X	X	X	X	X	
OHIO PUC	X			X		X		X		X		X		X		X	X	
OKLAHOMA CC	X			X		X		X		X		X		X		X	X	
ONTARIO EB	X			X		X		X		X		X		X		X	X	
ONTARIO TSC	X			X		X		X		X		X		X		X	X	
OREGON PUC	X			X	12/	X		X		X	12/	X		X		X	12/	
OREGON PUC	X	X 11/		X	X 11/	X		X	X 11/	X		X	X 11/	X		X	X 11/	
PENNSYLVANIA PUC	X	X 11/		X	X 11/	X		X	X 11/	X		X	X 11/	X		X	X 11/	
PUERTO RICO PSC	X			X		19/	10/	X		X		X		X		X		
QUEBEC EGB	X			X		X		X		X		X		X		X		
QUEBEC RSP	X			X		X		X		X		X		X		X		
RHODE ISLAND PUC	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	
RHODE ISLAND PUC	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	
SASKATCHEWAN PUC	X			X		X		X		X		X		X		X		
SOUTH CAROLINA PSC	X			X		X		X		X		X		X		X		
SOUTH DAKOTA PUC	X			X		X 50/	X	X	X	X		X	X	X		X	X	
TENNESSEE PSC	X			X		X		X		X		X		X		X		
TEXAS PUC	X	X 40/	X	X		X		X	X 40/	X		X	X 40/	X		X	X 40/	
TEXAS PUC	X	X 40/	X	X	X 8/	X		X	X 40/	X		X	X 8/	X		X	X 8/	
TEXAS RC	X			X		X		X		X		X		X		X		
UTAH PSC	X			X		X		X		X		X		X		X		
VERMONT PSC	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	
VIRGIN ISLANDS PSC	X	X		X		X		X		X		X		X		X		
VIRGINIA SCC	X			X		X 73/		X		X		X		X		X		
WASHINGTON UTC	X			X		X		X		X		X		X		X		
WEST VIRGINIA PSC	X	X 50/	X	X	X	X		X	X	X	X	X	X	X	X	X	X	
WISCONSIN PSC	X	X	14/	X	X	X	12/	12/	X	X	14/	X	X	X	14/	X	X	
WISCONSIN PSC	X	X 45/	X	X	X 45/	X	X 50/	X	X	X 45/	X	X	X 45/	X	X	X	X 45/	
WYOMING PSC	X	X 45/	X	X	X 45/	X	X 50/	X	X	X 45/	X	X	X 45/	X	X	X	X 45/	

**FOOTNOTES - TABLE 3  
REGULATION OF RATES: ELECTRIC, GAS AND TELEPHONE UTILITIES**

- 1/ The FERC has statutory jurisdiction over the power and transmission rates of the Bonneville Power Administration and jurisdiction over power and transmission rates of DOE's other power marketing agencies as delegated by the Secretary of Energy. Rates for the transmission of non-Federal electric power over the Federal Columbia River Transmission System became effective upon confirmation and approval by FERC under the Federal Columbia River Transmission System Act.
- 2/ Publicly owned utilities are regulated as to service area. Full regulation is imposed when competition exists between municipal and similar utility.
- 3/ Public utilities regulated when outside of municipal boundary only.
- 4/ Same as for private utilities and co-ops for facilities outside of 3 miles from the corporate limits of municipalities. Commission has no jurisdiction within the 3 mile limit.
- 5/ Only if earnings exceed 8 percent of original cost of plant in service or if discrimination between class of customers.
- 6/ Municipal utilities exempt from State regulation.
- 7/ Authority limited in individual cases by legislation or court decision.
- 8/ Municipally owned utilities are fully regulated with respect to service beyond five miles of municipal boundary.
- 9/ Not over publicly owned electric utilities served by NYS Power Authority. Publicly owned gas or electric utilities need not decrease rates unless investigation was based upon complaint of 25 or more active customers.
- 10/ No natural gas in Puerto Rico.
- 11/ Only when service extends beyond the corporate limits of a publicly owned utility company.
- 12/ None in state.
- 13/ Seven months after filing, utility may place a portion of the increase in effect not to exceed 15% of their gross intrastate operating revenue.
- 14/ Not unless co-op extends activities to include functions that make it a public utility under the statutes (except to portion of co-op service within incorporated municipality as a result of annexation). Plus 60 days notice.
- 16/ Authority to regulate rates for interstate and foreign services of telephone and telegraph carriers.
- 17/ FERC reviews rates by interstate pipelines to mainline industrial customers in certificate proceedings.
- 18/ Authority not exercised.
- 19/ The Puerto Rico Telephone Authority, a state public corporation created by Law 25 (May 6, 1974) purchased the Puerto Rico Telephone Company.
- 20/ Commission jurisdiction excluded from rates covered by special agreements with municipalities.
- 21/ Jurisdiction over all rates either by tariff or contract.
- 22/ Commission jurisdiction excluded from rates for intrastate service covered by special agreements with municipalities and rates for interstate services subject to the Federal Energy Regulatory Commission.
- 23/ Authority limited to rate charged and manner of delivery.
- 24/ Primarily Federal Energy Regulatory Commission jurisdiction.
- 25/ No specific statutory authority.
- 26/ May fix temporary rates, but practice is not followed.
- 27/ Interim rates must be approved and are collected under bond subject to refund.
- 28/ Commission has authority to grant partial and immediate rate relief during pendency of final order, after statutory requirements are met.
- 29/ May permit rates to go into effect, subject to refund.
- 30/ Interim rates may be prescribed after a hearing.
- 31/ Required to advertise 30 days prior to change.
- 32/ Rates for interstate service subject to FERC.
- 33/ When not subject to FERC.
- 34/ Specific authority required to change rates. Rates do not become effective after a specified period, consequently, no suspension is required.
- 35/ Mutual telephone companies in which at least 50% of the users are owners, cooperative telephone corporations or associations, and telephone companies having less than 15,000 customers and less than 15,000 access lines are not subject to rate regulation.
- 36/ Hawaii law provides that rate increases may not go into effect until approved by the Commission.
- 37/ Effective July 1, 1978 for electric and gas private utilities. Effective July 1, 1982 for telephone utilities.
- 38/ Emergency only.
- 39/ 90 days at a time; up to a total of 6 months.
- 40/ Can investigate co-op rates for discriminatory practices.
- 41/ Except no authority over rates charged to industrial customers by any gas company.
- 42/ Telephone is the only regulated utility. Electric service is supplied by political subdivisions called public power districts, electric cooperatives and municipal electric systems. Nebraska is unique among the states in having no private power companies; all electric facilities are publicly-owned or member-owned. Natural gas is provided by private companies through franchise granted by each city, town or village.
- 43/ Basic rate structure regulation only.
- 44/ Rates for interstate sales are subject to the jurisdiction of the FERC; intrastate rates are subject to State regulation.
- 45/ Public utilities regulated insofar as they are owned and operated outside corporate limits.
- 46/ Municipals can put rates into effect after 45 days. The Board can order an investigation and rates may be subject to rebate.
- 47/ The Commission may extend the ten-month suspension period for periods of time and for reasons established by statute.

**FOOTNOTES - TABLE 3**  
**REGULATION OF RATES, ELECTRIC, GAS AND TELEPHONE UTILITIES**

- 48/ If municipality, appellate jurisdiction only. This Commission has original jurisdiction over two public authorities (River Authority).
- 49/ Wyoming Supreme Court decision to effect PSC cannot regulate gas sale for resale.
- 50/ To extent not Federally preempted.
- 51/ Only if authorized by Lieutenant Governor in Council.
- 52/ Alberta PMC may determine what amounts are eligible for inclusion in cost of service.
- 53/ If for resale outside municipal boundaries. Pursuant to the Electric Energy Marketing Act the Alberta PUB has jurisdiction to fix the price at which one publicly (municipal) owned utility sells to the Alberta Electric Energy Marketing Agency.
- 54/ Only if the municipality has passed a by-law approved by the Lieutenant Governor in Council, bringing itself under the Alberta PUB or if the public body is the Government of the Province of Alberta.
- 55/ Rates must be filed 30 days before final adoption by the utility; however, the rates become effective regardless of whether the PSC issues a comment to the utility on some aspect of its rate structure.
- 56/ Has authority only at the election of the cooperative.
- 57/ Rates cannot be increased without hearings and a subsequent order of the Commission, consequently, no suspension is required.
- 58/ PUC does not regulate rates of rural telephone cooperatives or of thirteen independents and three municipals.
- 59/ Commission has limited review authority over rate changes by municipally owned utilities.
- 60/ One hundred and fifty days beyond automatic 35 days and two additional days for each day of hearings on merit beyond 15 days.
- 61/ One year for utilities with \$3 million or less annual gross revenues; indefinite for utilities with over \$3 million in annual gross revenues. Interim rates must be acted upon within five months for utilities with \$3 million or less annual gross revenues; no statutory requirements for large utilities.
- 62/ Rates become effective after seven months if Commission does not take action.
- 63/ May be extended to nine months if just cause is shown in the Record.
- 64/ Only with that service which extends one mile beyond the corporate limits.
- 65/ Rates of cooperatives providing services to members only are not regulated.
- 66/ May become deregulated upon majority vote of at least 15 percent of eligible members.
- 67/ Only intrastate WATS.
- 68/ Rates are not regulated for gas utilities serving fewer than 650 customers.
- 69/ PSC has state authority to require investor-owned, municipal and cooperative utilities to wheel. PSC is pre-empted by FERC from setting wheeling rates for investor-owned utilities, but may regulate wheeling rates for municipal and cooperative utilities.
- 70/ Investor-owned gas distribution companies only.
- 71/ Commission's alternate energy production rules, adopted pursuant to Iowa Code Sec. 476.43, set wheeling rates.
- 72/ Five local exchange companies must receive approval prior to changing rates; all other 89 companies must give notice but do not need PUC approval.
- 73/ The Commission has authority to regulate rates for certificated interexchange carriers but allows these rates to be set competitively.

**ATTACHMENT B**  
**Certificates, Licenses and Permits**

TABLE 42 - CERTIFICATES, LICENSES AND PERMITS - PART I (CONTINUED)

AGENCY	The Agency has authority to require certificates of convenience and necessity for -																
	Constructing Major Additions -																
	Distribution Lines						Other Plant						Abandonment of Facilities or Service				
	ELECTRIC			GAS			ELECTRIC			GAS			ELECTRIC		GAS		
Pri- vate	Pub- lic	Co-op	Pri- vate	Pub- lic	Tele- phone	Pri- vate	Pub- lic	Co-op	Pri- vate	Pub- lic	Tele- phone	Pri- vate	Pub- lic	Co-op	Pri- vate	Pub- lic	Tele- phone
FERC						X						X 29/			X 28/29/	X 30/	
ALABAMA PSC									X			X			X	X	X
ALASKA PUC												X			X	X	X
ALBERTA PUB 45/															X	X	X
ARIZONA CC															X	X	X
ARKANSAS PSC	X		X	X		X	X		X	X		X	X		X	X	X
CALIFORNIA PUC							X								X	X	X
COLORADO PUC 27/	9/		9/	9/		9/	9/		9/	9/		9/			X	X	X
CONNECTICUT DPUC															X	X	X
DELAWARE PSC															X	X	X
DC PSC															X	X	X
FLORIDA PSC 40/																	
GEORGIA PSC				X		14/										X	X
HAWAII PUC	10/			10/		10/	10/			10/		10/					X
IDAH0 PUC	X			X		X	X			X		X			X	X	X
ILLINOIS CC	X			X		X 14/	X			X		X 14/			X	X	X
INDIANA PSC															X	X	X
IOWA SCC	X	X	X	X	X		X	X	X						X	X	X
KANSAS SCC	X	5/	X	X			X	5/	X	X					X	X	5/
KENTUCKY PSC	X		X	X		X	X		X	X		X			X	X	X
LOUISIANA PSC 29/																	
MAINE PUC															30/	30/	30/
MARYLAND PSC															X	X	X
MASSACHUSETTS DPUC															X	X	X
MICHIGAN PSC										X					X	X	X
MINNESOTA PUC										X					X	X	X
MISSISSIPPI PSC	X	X	X	X	X	X	X		X	X		X	X	X	X	X	X
MISSOURI PSC	X 54/			X		X	X 54/			X		X	X		X	X	X
MONTANA PSC 31/																	
NEBRASKA PSC		X		X		X				X					X	X	X
NEVADA PSC	X		X	X		X				X					X	X	X
NEW HAMPSHIRE PUC															X 19/	X	X
NEW JERSEY DPUC 32/																	
NEW MEXICO PSC	18/	18/	18/	18/	18/		18/	18/	18/	18/					X	X	X
NEW MEXICO SCC																	
NEW YORK PSC	11/	6/11/		11/	6/11/	11/	11/	6/11/	11/	6/11/	11/				X	X	X
NORTH CAROLINA UC																	
NORTH DAKOTA PSC	X			X		X									X	X	X
NOVA SCOTIA PUB 48/																	
OHIO PUC															X 41/	X 41/	X 41/
OKLAHOMA CC															X	X	X
ONTARIO EB				X						X							
ONTARIO TSC 46/																	
OREGON PUC 33/																	
PENNSYLVANIA PUC	X			X		X				X					X	X	X
PUERTO RICO PSC															X	X	X
QUEBEC EGB	X						X			X					X	X	X
QUEBEC RSP 42/																	X 43/
RHODE ISLAND PUC	X	X	X	X		X	X	X	X	X		X					X
SOUTH CAROLINA PSC				X						X						X	X
SOUTH DAKOTA PUC							X	X	X	X					X	X	X
TENNESSEE PSC															X	X	X
TEXAS PUC	X		X			X	X		X			X			X	X	X
TEXAS PC																	
UTAH PSC	X		X			X	X		X	X		X			X 7/	X	X
VERMONT PSB	X	X	X	X		X	X 34/	X 34/	X 34/	X 34/	X 34/	X 34/	X 34/		X	X	X
VIRGIN ISLANDS PSC 35/																	
VIRGINIA SCC 32/	X		X	X		X						X		X			
WASHINGTON UC																	
WEST VIRGINIA PSC	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
WISCONSIN PSC	X			X		X	X		X	X		X			X	X	X
WYOMING PSC	X	19/	X	X	19/	X	X	19/	X	X	19/	X	X	19/	X	X	19/

## FOOTNOTES - TABLE 42 - CERTIFICATES, LICENSES AND PERMITS - PART I

- 1/ Finding of public convenience and necessity required if another utility is already offered or is authorized to offer a comparable service in the same area. 35 MRSA 13-A.
- 2/ Authorize exercise of franchise rather than issue certificate of Public Convenience and Necessity.
- 3/ Present certificate authority limited to gas transmission pipelines, gas storage fields, telephone companies and, in the case of gas and electric companies, to situations where one utility proposes to extend service into a municipality presently receiving like and contemporaneous service from another utility.
- 4/ Answered with "private" meaning investor-owned and "public" meaning municipal or governmental.
- 5/ Same as for private utilities and cooperatives for facilities outside of 3 miles from the corporate limits of municipalities - commission has no jurisdiction within the 3-mile limit.
- 6/ No, except for service outside the municipality. General Municipal Law, Sec. 361, 364; Public Service Law, Sec. 68.
- 7/ Implied authority from statute.
- 8/ Generating plants in excess of 50 MW.
- 9/ Not necessary to obtain certificate for extension of its line, plant or system if contiguous to its existing system and if such extension is not into area of another utility of like character, and if extension is necessary in the ordinary course of its business.
- 10/ Although certification is not required, all capital expenditures in excess of \$500,000 or 10% of the total plant in service must be submitted to the Commission for review.
- 11/ The certificates of public convenience and necessity heretofore issued by the Commission for the most part authorize construction of minor electric, gas and telephone plant of all sorts, without time limit, within specified municipalities. Therefore, a utility needs no additional certificate, other than for a major steam electric generating facility or an electric or gas transmission line to construct additional plant within its previously certified area. For any construction outside its previously certified area, approval of the Public Service Commission is required. Non-retail gas transmission by exploration companies needs no franchise, but must meet safety standards and may require an Article VII certificate.
- 12/ Participates through membership on Power Siting Commission, which has authority as indicated. Note: Power siting now part of PUCO.
- 13/ Transmission lines in excess of 200 KV.
- 14/ Certificates are required if new areas are to be served by the facilities. The state is completely covered for telephone service.
- 15/ Department has power to rezone property for construction of utility facilities and make takings in Eminent Domain Proceedings.
- 16/ Limited to when condemnation is required.
- 17/ Once a utility has been certified by the Commission, the general policy followed by the Commission is to not require further certification for major additions within the service area of the utility.
- 18/ Certificate needed for extensions into new territory not contiguous to existing service or being served by another utility.
- 19/ Only outside municipal limits.
- 20/ Indeterminate permits in Wisconsin come into existence by operation of law resulting from any grant from the State for a municipality to any public utility to own, operate, manage or control any plant for the furnishing of a public utility service. Whether an indeterminate permit exists in any given situation depends essentially upon the existence of such underlying grant.
- 21/ To the extent that is not in conflict with interstate commerce (Federal Energy Regulatory Commission (FERC)).
- 22/ Only electricity generated by water power.
- 23/ All territory is incorporated.
- 24/ Upon proper application.
- 25/ No, except where duplicate franchises may have been granted to more than one utility.
- 26/ Unless the territory is contiguous to another public utility.
- 27/ Colorado PUC has no jurisdiction over municipally-owned utilities operating inside corporate limits except as to gas safety.
- 28/ To extent a municipality generates power for resale.
- 29/ Louisiana Constitution of 1974 grants wide and plenary authority to "regulate" but no specific certification authority is provided except by statute to radio common carriers. Authority may be implied. Allocation of territory has been undertaken by General Order as well as RS 45:121 et seq.
- 30/ 35 MRSA, Sec. 212.
- 31/ Certificates, Permits and Licenses - None in Montana.
- 32/ The key word here is authority. The Commission can do all these things on the basis that utilities must provide safe, adequate and proper service.
- 33/ Utilities, at their option, may request exclusive territories.
- 34/ If significant environmental impact.
- 35/ Electric facilities owned and operated by the government and are regulated by the Commission only for rate increases. No natural gas service in the Virgin Islands other than "bottled gas" which is not regulated by the Commission.
- 36/ The term "certificates of convenience and necessity" does not apply for construction, but the agency does approve major additions of all regulated utilities.
- 37/ Cannot be exclusive territory.
- 38/ Yes, for licenses hydro-electric projects only.
- 39/ Compression, underground storage and LNG plant.
- 40/ The 1974 legislature gave territory authority to the PSC over all electrics, including municipal and REAx to settle disputes among utilities.
- 41/ Limited authority.

FOOTNOTES - TABLE 42 - CERTIFICATES, LICENSES AND PERMITS - PART I  
(CONTINUED)

- 42/ The Regie has exclusive jurisdiction to decide the location and conditions for connecting the installations necessary for the operation of a public service. It may also order the sharing of the utilization of a public service installation (for distribution lines). Finally, an undertaking must also obtain the Regie's authorization to extend or amend service.
- 43/ The Regie's authorization is needed to abandon service.
- 44/ Have authority, but no public gas companies in Vermont.
- 45/ Authority rests with Energy Resources Conservation Board for electric and gas.
- 46/ Certificates are not applicable to telephone companies and systems under the Ontario TSC jurisdiction.
- 47/ Participates through membership on Connecticut Siting Council which has authority indicated.
- 48/ The Board has power to grant franchises but not certificates of convenience except where territory already served by a public utility. Board's approval is required for expenditures to construct major additions. Consent of Board is required for any abandonment of lines or works.
- 49/ Notice of abandonment must be filed as a change in rates and the effectiveness may be suspended for five months.
- 50/ There are no public gas utilities in Oregon.
- 51/ All electric and telephone utilities, including cooperatives and municipals, must have Commission approval to serve outside assigned service areas. Gas utilities serve on a local franchise basis.
- 52/ MPUC approval required for construction of electric generating and transmission facilities under 35 MRSA Section 13-A.
- 53/ The utilities are owned and operated by the government; the Commission has authority over rates only.
- 54/ Only if outside of certificated service area.
- 55/ Generating plants with capacity of 12 MW or greater.
- 56/ Transmission lines rated 100 KV or greater.
- 57/ Only upon the request of the appropriate utility.
- 58/ Article VIII of the State's Public Service Law establishes within the Department of Public Service a Board on Electric Generation Siting and the Environment intended to have one-stop siting jurisdiction. The Chairman of the Public Service Commission acts as Chairman of the Board. The other members are the Commissioners of Environmental Conservation, State Energy Office, Health and Commerce, an ad hoc member appointed by the Governor, who shall be a resident of the judicial district in which the facility as primarily proposed is to be located, and an ad hoc member appointed by the Governor, who shall be a resident of the county in which the facility as primarily proposed is to be located.
- 59/ Article VII of the Public Service Law requires a certificate for major electric and gas transmission lines. It does not apply to telephone lines.

## INTRODUCTION

In the midst of substantial controversy, the Fifteenth Legislature has spent a great deal of time discussing numerous state energy issues. Topics include the financing and regulation of the Bradley Lake Hydroelectric Project and the broader question of regulatory jurisdiction over state-owned wholesale power; the disposition of the Railbelt Energy Fund; state construction and upgrade of Railbelt interties; state construction of a natural gas pipeline to the Interior; and proposals for the future financing of energy loans, the Alaska Power Authority (APA) and the Power Cost Equalization (PCE) program.

Previously, the Cowper Administration Budget Transition Team recommended that the energy functions provided by the Alaska Power Authority and the Department of Community and Regional Affairs (DCRA) be examined closely, with strong consideration being given to their consolidation in a single energy division. In mid-1987, Governor Cowper appointed an Energy Policy Task Force and charged them with the task of examining the state's energy programs and recommending ways to make them as efficient and affordable as possible.

These legislative and executive deliberations are occurring at a time when urban utilities are facing surplus capacity and declining sales and when rural utilities have become heavily dependent on a state rate subsidy. Utilities, municipalities and individuals statewide are feeling the effects of an economic downturn. The need to maximize flexibility and minimize uncertainty in the delivery of energy services is underscored by the economic uncertainties facing Alaska today and in the future. With state and local governments, utilities and individuals facing tough budget decisions, securing lowest cost energy options in the short- and long-term future is desirable.

This agency was asked to examine Alaska's energy planning, programs and policies from a perspective which seeks to minimize costs of energy services--to the consumer, the utilities and the state. This report begins with a general discussion of energy planning; a least cost planning perspective is the current focus across the nation with 25 states actively using this approach. We assess Alaska's current energy programs--what we are doing and where the public funds are going. Specific suggestions are made to reorient state programs in the near future toward efforts which more effectively address current energy needs statewide. In addition, the

This report analyzes Alaska's energy efforts separately for the urban and rural regions of the state. The primary reasons for this division are: 1) some distinct differences in the production and cost of urban and rural energy; and 2) the differences in makeup and focus of most past and present energy programs in urban and rural Alaska. For the purposes of this energy report, we have defined urban and rural Alaska, as follows:

Urban Alaska - the more populated communities which are also serviced primarily by an interconnected power grid or major hydroelectric projects. The urban communities include: Anchorage, Fairbanks, Homer, Juneau, Kenai, Ketchikan, Kodiak, Palmer, Petersburg, Seward, Sitka, Soldotna, Valdez, Wasilla and Wrangell.

Rural Alaska - the less populated communities, which in general have isolated power generation systems serving only the immediate area, or other scattered settlements which experience high energy costs relative to urban Alaska.

Based on the most recent population figures available from the Alaska Department of Labor, we estimate an urban population of about 394,000 (73 percent) and a rural population of about 146,000 (27 percent) as of July 1, 1986.

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

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report presents legislators with an outline of a future direction for Alaska's energy programs. Following a transition period, state decision making would be anchored to a deliberate, planned process that identifies the best and lowest cost options for meeting Alaska's future energy needs.

Chapter One describes the evolution of energy planning nationwide, particularly during the last decade as load growth, capital costs and fuel prices have become more unpredictable. We review state and utility energy planning nationwide in order to present a view of where the leaders are and the methods they are employing. We explain the convergence of society-based least cost planning and utility-based demand-side management into the state-of-the-art approach of integrated resource planning under which all reasonable supply- and demand-side options are considered on an equal basis. Specific information about current energy planning in other states, the Pacific Northwest, and one utility is presented.

In Chapter Two, we examine past energy planning in urban Alaska and suggest what might have happened differently had an integrated resource planning process been in place. Second, an integrated resource planning perspective is applied to today's urban energy programs in order to assess current strategies, options and levels of spending in light of the current energy situation in urban Alaska. A number of suggestions are made which would address urban energy problems in the near future more effectively than some of the current programs.

Chapter Three presents an overview of past energy planning and programs in rural Alaska and also suggests what the state might have done differently if integrated resource planning had occurred. The myriad rural energy programs today are examined within an integrated resource planning framework which defines strategies and looks at where the public funds are being spent. Based on an assessment of the effectiveness of current rural energy programs, several specific suggestions for reorienting state efforts are offered for action in the near future.

In Chapter Four, we discuss the implementation of integrated resource planning statewide during the next few years. The state's future role in energy affairs--particularly energy planning--is considered. An integrated resource planning approach in Alaska, which blends both utility-directed and state-directed planning, is suggested. We describe specific elements of the planning process itself and outline an appropriate organization of energy functions and programs. Finally, we offer a means to initiate an integrated resource planning process in Alaska's immediate future.

This report analyzes Alaska's energy efforts separately for the urban and rural regions of the state. The primary reasons for this division are: 1) some distinct differences in the production and cost of urban and rural energy; and 2) the differences in makeup and focus of most past and present energy programs in urban and rural Alaska. For the purposes of this energy report, we have defined urban and rural Alaska, as follows:

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## EXECUTIVE SUMMARY

### CHAPTER ONE: ENERGY PLANNING

#### Introduction

Until the mid-1970s, nationwide annual demand for electrical power increased steadily and fuel prices and interest rates were relatively stable. In this more predictable environment, the primary role of electric utility planning was to assure that long construction lead times did not interfere with utilities' ability to meet demand with supply-side options. Utility supply planners used historic demand growth to project future load growth and built power plants based on those projections.

Nationally, the 1973 oil embargo radically altered the energy planning environment. Load growth, capital costs, and fuel prices increased rapidly during the 1970s, causing real electricity prices to increase dramatically compared to prior decades. This dramatic increase in real electricity prices, coupled with a recession and the emergence of cost-effective energy efficiency technology caused load growth to slow substantially in the early 1980s.

As load growth, capital costs, fuel prices and competition have become more unpredictable, utility planning methods became more sophisticated. In recent years, there has been interest in planning methods that focus on alternatives to supply-side options. Two such approaches, Demand-Side Management and Least-Cost Planning, address opportunities to modify the way in which energy (especially electricity) is used in order to reduce the need for new generation sources. The term "least-cost planning" is sometimes used to describe the balancing of a mix of supply- and demand-side alternatives to meet society's energy needs at the "least-cost." A more descriptive and accurate term for this balancing is Integrated Resource Planning (IRP).

### Demand-Side Management

Demand-side management is the planning and implementation of utility activities designed to influence customer use of electricity in ways that will produce desired changes in the utility's load shape, i.e., changes in the time pattern and/or magnitude of a utility's load. Demand-side management is a planning process developed by utilities and their research institutions to address demand growth uncertainties and financial vulnerabilities faced by utilities during the past decade. Initial research and implementation of demand and load management programs were conducted by innovative utilities without any regulations requiring them to do so.

Utility demand-side management programs include: load management, new uses, strategic conservation, electrification, power customer self-generation, and adjustments in market share. Demand-side management includes only those activities that involve a deliberate intervention by the utility in the marketplace to alter its load shape. Demand-side management extends beyond conservation and load management to include programs designed specifically to build load in both peak and off-peak periods.

### Least-Cost Planning

At the same time that utilities and regulators were grappling with the shifting energy environment, there was a growing interest among government energy planners and research institution analysts to develop a new framework for meeting energy users' needs. The framework for these analyses conveyed a new societal perspective of minimizing the societal costs and risks of meeting energy needs. Least-cost planning appeared in situations where government and the public perceived there was a failure of regulatory and market mechanisms to achieve a "least-cost societal solution" to the delivery of energy services. When speaking about least-cost planning today, it is important to recognize the evolution of the scope of energy sources and functions included. Today, least-cost planning is often interpreted to mean any process which integrates supply- and demand-side planning by comparing the costs of each alternative. In contrast, early least-cost analyses focussed on the technical potential of demand-side alternatives to replace supply-side options.

### Integrated Resource Planning

Integrated resource planning, as it has evolved from demand-side and least-cost planning, is a process through which all reasonable options for both supply and demand are assessed against an array of cost and benefit considerations which are defined as broadly as possible. This approach does not segregate supply-side options from demand-side options but instead seeks to evaluate all options on an integrated, equivalent basis.

Integrated resource planning evaluates programs from the perspective of the participant in the program, the nonparticipant, the average ratepayer, the utility, and society-at-large. The convergence of least-cost planning and demand-side management is occurring through the development of a process which combines the societal and customer perspective of least-cost planning and the utility and individual ratepayer perspective of demand-side management.

In order to achieve an integrated resource planning process that addresses all these perspectives, it has been necessary for states to pass legislation requiring planning and to write specific rules. Utilities and consumers have actively participated in the rulemaking process to assure that the planning process would be workable for all parties involved. It is unrealistic to expect that utilities will engage in integrated resource planning unless required because they cannot be expected to assess benefits and costs from a societal rather than utility perspective.

### Approaches to Integrated Resource Planning in Other States

The predominant mechanism for establishing an integrated resource planning process by states has been through legislation that provides the state public utilities commission with the authority to require utilities to conduct planning. The 25 states that are using or developing IRP vary considerably in their scope of planning. All consider electricity on a utility by utility basis but some also consider electricity on a statewide basis. Some include natural gas in their planning review. The level of state resource commitment varies with the purpose and scope of planning efforts and with the level of state involvement in the planning process. Current levels of annual effort range from less than one person year to at least 14-person years. There are three general state prototypes of integrated resource planning approaches--utility planning, statewide overview, and countervailing recommendation.

Several key components have been identified to be important to the integrated resource planning process:

- **Integration of the Planning Process.** On a substantive level, demand forecasts and the demand- and supply-side options are integrated to derive the "least-cost" resource plan. In addition, regulators strive for integration of utility rate making and construction permit proceedings to ensure that the planning process takes hold.
- **Sufficient Methodological Specification.** Specification of the methodology and models to be used by utilities is necessary, but must not be so rigorous as to thwart innovation by utility planners.
- **Required Implementation.** Action plans which specify how utilities plan to acquire and implement resource options are necessary.
- **Utility Responsibility for Plan Creation.** If utilities have primary responsibility for creation of resource plans, they are more likely to use them in internal and external decision making.
- **Plan Enforcement.** The regulatory process must provide for an enforcement mechanism to ensure that utilities adequately conduct the planning and follow through with implementation of the "least-cost" resource options.

#### Examples of Integrated Resource Planning At Work

Examples of planning in the Pacific Northwest and Southern California were selected because each emphasizes planning for uncertainty to maximize flexibility and minimize costs. Because of the natural volatility of Alaska's economy, this approach to planning is especially pertinent.

**Pacific Northwest Planning.** The Northwest Power Planning Council is responsible for electrical energy planning for the Northwest Region (Washington, Oregon, Idaho, and Montana) as required by the Federal Northwest Power Act. The council's planning strategies are particularly relevant to the Railbelt and some other areas of Alaska, because the Pacific Northwest, like the Railbelt, currently has a large surplus of power and future demand levels are uncertain. The council utilizes an integrated resource and risk minimization planning approach. The council attempts to maximize flexibility by identifying options with short lead times, small sizes, and/or low capital costs. Conservation is considered a highly flexible option in the Pacific Northwest.

The Pacific Northwest region also uses a resource options strategy to add flexibility to the scheduling of options that require a great deal of time from inception to completion. An option moves through the time-consuming but relatively inexpensive siting, design, and licensing steps, after which it can be scheduled, placed on hold, constructed, or terminated, depending on the demand for electricity. The objective of the resource options strategy is to move decisions involving the commitment of large sums of capital as close as possible to the anticipated time power will be needed. The value to the region of this two-stage decision making process is estimated to be \$700 million during the 20-year planning horizon.

The council also identifies "lost opportunity resources." A lost opportunity resource is a potential electrical power generating or conservation option currently available to the region which, if not implemented, will no longer be available and cost-effective. Conservation standards for new residential and commercial buildings for energy efficient construction is an example of a lost opportunity resource the Northwest Region is currently pursuing.

The council's planning strategy is based on a societal perspective. The objective is to minimize total system costs, whether these costs are borne by utilities--and thus reflected in electric rates--or by individuals, businesses and governments acting in their own self-interest. This result does not necessarily result in the lowest electrical rates in the short term; but instead minimizes the long-term cost of serving all ratepayers in the region.

Southern California Edison. As at many other utilities, resource planning at Southern California Edison (SCE) had traditionally been dominated by a single-load forecast which defined the resource requirements necessary to meet the load with an adequate safety margin. As the business environment began to change, starting in the late 1960s, the process of load forecasting and resource planning became more complicated. Planning had become more complicated not because the forecasting models were inadequate, but because frequent surprise events made their underlying assumptions inappropriate. This observation led to SCE's new resource planning philosophy: planning for uncertainty.

The SCE scenario analysis starts with an effort to identify how the future could unfold under a wide range of assumptions. Alternative economic conditions, growth rates, and regulatory, environmental, technological, social, political, and business environments are considered. The SCE has discovered that many alternative scenarios result in similar consequences relative to the need for new resources, thus reinforcing the importance of focusing on the consequences of scenarios as opposed to the events or scenarios themselves.

Since there is no way of knowing which one, if any, of the scenarios will occur, SCE's resource planning process focuses on developing a flexible action plan which covers the entire set. To achieve this objective, the resource plan consists of a number of strategic elements that can be rearranged in a variety of ways to accommodate any plausible scenario. Using these strategic "building blocks," SCE can accommodate a range of growth outcomes from four percent annual growth to one-half of one percent annual decline during the next ten-year period. The SCE's planning methods have been widely acclaimed and emulated by other utilities.

## CHAPTER TWO: APPLICATION OF INTEGRATED RESOURCE PLANNING TO URBAN ALASKA

### History

In the mid-1970s, the major energy concern identified for urban Alaska was the ability of utilities to finance and build generation capacity to meet rapidly growing demand. Based on expected growth rates, the Institute of Social and Economic Research (ISER) identified utilities' ability to finance generation capacity as a major obstacle to low electrical rates in urban Alaska. The ISER suggested several alternatives to lower the cost of construction financing. One alternative was the establishment of a state-owned power authority that "would be able to borrow in the tax-free municipal bond market and provide interim construction financing." By serving as a financing agency to lower the cost of money, the public corporation could indirectly lower electric rates. To this end, the Alaska Power Authority (APA) was established in 1976 as a quasi-independent public corporation.

Drawing upon a windfall of oil revenues, the state appropriated \$1.3 billion for urban energy programs between FY 77 and FY 88. This amounts to approximately \$3,359 per urban resident. This appropriation frenzy did not allow adequate opportunity for a thorough evaluation of energy projects or alternatives. As a result, urban energy dollars were probably not spent as efficiently or equitably as possible. In urban Alaska, for example, the cost per installed kilowatt of state built and owned hydroelectric capacity ranges from \$4,420 to \$10,499. Similarly, the per capita state appropriations for urban energy projects range from approximately \$900 in one community to \$25,000 in another.

Within urban Alaska, over 99 percent of the energy appropriations was spent on supply-side projects; approximately 89 percent was spent on hydroelectric projects. Less than one percent of urban energy expenditures was spent on demand-side projects. Most of the demand-side appropriations were federal weatherization program dollars.

What would have happened had integrated resource planning (IRP) been in place during the last decade? If supply- and demand-side options had been considered equally, more state money would most likely have been directed to demand-side options. On the supply-side, regularly updated forecasts and monitoring of electrical demand growth would have made apparent the inaccuracy of ISER's 1976 forecast of electrical demand. Recognition of this trend could have resulted in lower expenditures on the Susitna hydroelectric project. Additionally, the high load forecast and the state's zealous construction of large projects created an environment in the early 1980s that focussed on supply-side growth. Under an IRP process, utilities would now be in a more flexible position to ease the adjustment to a declining economy.

Rather than requiring projects merely to be feasible, IRP would have also required projects to be cost-effective and the lowest cost alternative. More extensive analysis of the Four Dam Pool projects from a cost-effectiveness perspective probably would have resulted in the scaling back of some projects or, for example, the construction of one dam and an intertie system between the communities of Wrangell, Petersburg, and Ketchikan.

Given the strength of the political momentum in the early 1980s to fund large power projects to create construction jobs and encourage economic development, it is unlikely that IRP could have completely redirected the momentum as state revenues soared. Planning, however, could have made the economic development versus energy production objectives more explicit.

**An Integrated Resource Planning Assessment of Current Urban Energy Programs**

The general energy problem in urban Alaska today is that the energy systems were developed in anticipation of higher and unabated demand growth. The focus has been on increasing installed generation capacity to meet this anticipated demand. As a result of Alaska's economic recession, most of urban Alaska is experiencing large surplus capacity while population and economic activity have declined, i.e., the revenue base has fallen.

A number of conclusions can be drawn from the examination of current urban energy programs:

- 1) Approximately \$9.7 million of state and federal funds is being spent in FY 88 on urban energy (electrical and space heating) programs. This is about 21 percent of the total public funds (\$47.1 million) currently directed toward energy programs and projects statewide.
- 2) Approximately 45 percent of the public's current urban energy expenditures is directed toward electrical services; 55 percent is for space heating. The state, however, directs 98 percent of its energy dollars to electrical services while 93 percent of federal funding is allocated to space heating. Federal energy assistance and weatherization programs are income-based.
- 3) As in previous years, the majority (94 percent) of state electric program dollars are being spent on supply-side options. Almost all state demand-side dollars are to match federal funds; the state has initiated no demand-side programs in urban Alaska. Almost all federal energy dollars are for demand-side programs.
- 4) Approximately 94 percent (\$4.1 million) of the state's current electrical funding is for analyses of supply-side alternatives for the use of the Railbelt Energy Fund. Given the Railbelt's excess capacity until after the year 2000, these expenditures appear to be driven by the availability of funding rather than a need to increase capacity. These expenditures are also being made to determine the feasibility of individual projects without a long-range assessment of supply- and demand-side energy needs of the Railbelt.

Viewed as a whole, it is apparent that urban energy programs and expenditures are not well matched to evolving state policy or the current situation in urban Alaska. Relatively little is being done to address the near-term (0 to five years) energy problems in urban Alaska.

### Short-term Reorientation of Urban Energy Programs

In the short term, there are a number of alternatives that address the urban energy problem more effectively than some of the current state programs. Suggested program options are designed to either lower power system costs and improve utility financial conditions or improve end-use efficiency.

**Utility Financing.** Two of the program options are directed at lowering the cost of utility debt. The first provides increased funding through the Power Project Loan Fund to finance capital expenses of electric utilities in the near-term. The other, to refinance high-cost debt. If the Railbelt Energy Fund financed both of these programs, the fund would provide short-term rate relief to customers while assuring use of the Railbelt Energy Fund for Railbelt energy needs. From a planning perspective, the options are attractive because they offer a practical solution to a political debate during a period when the region has excess capacity. The existing and projected excess capacity make additional investment difficult to justify on a strictly economic basis.

**Regulatory Review.** Another program area that could provide indirect rate relief is modifications to the regulatory review system. Increased funding to the APUC would allow them to more effectively conduct their responsibilities. One method to provide funding is to incorporate a "users' fee" into the rates of regulated industries. This is a common practice in other states. The other suggestion is a prioritization and subsequent reduction of APUC responsibilities to match their available funding.

**Load/Demand Management Pilot Projects.** Despite the benefits of increased demand and load management in urban Alaska, these strategies are relatively new and untested and require financial and time commitments to develop. In most of urban Alaska, the financial status of utilities today is not conducive to project testing and experimentation. A state program to support demand and load management pilot projects would overcome this obstacle.

**Improve End-Use Efficiency.** Given the current surplus in urban generating capacity, there are limitations to short-term improvements in end-use efficiencies that would not have a detrimental effect on electrical rates. Therefore, although it is inevitable that some electric customers will attempt to increase end-use efficiencies, in the short-term it is unrealistic to expect utilities facing falling demand to actively encourage programs that will further reduce their declining revenues.

There are improvements in end-use efficiencies, however, that should be encouraged even if demand is declining. These include programs such as residential and commercial building energy standards and appliance efficiency standards. The cost to retrofit buildings is much greater than the cost to efficiently construct them in the first place. Similarly, the stock of electric appliances takes many years to be replaced by more efficient models. To initially install an efficient appliance is also more cost-effective than later developing rebate programs to encourage the purchase of more efficient models.

Improvements in energy efficiency--especially in public buildings such as schools--is another area identified for short-term, as well as mid- and long-term, potential energy programs. From a fiscal standpoint, it makes sense for public buildings to be operated and maintained as efficiently as possible to maximize the social benefits of state funds. Therefore, despite the potential effects on utilities and ratepayers, who are also beneficiaries of state programs such as education, opportunities to improve end-use efficiencies in public buildings should be explored even in the short-term because their social benefits may outweigh individual ratepayer or utility costs.

### CHAPTER THREE: APPLICATION OF INTEGRATED RESOURCE PLANNING TO RURAL ALASKA

#### History

Prior to the 1970s, the state did not put a great deal of time or money into the electrification of rural Alaska. The federal Rural Electrification Administration (REA) was a primary source of financing for several rural utilities established in the 1960s and early 1970s.

Several studies assessing rural power systems in the mid-1970s reflected Alaska's preoccupation with new power development throughout the state as well as the gathering momentum to more adequately electrify rural Alaska. A 1979 study on rural energy options noted, however, that the lack of a comprehensive rural energy policy lead to a reactive and piecemeal approach by the state in addressing the problems of rural power systems throughout the 1970s.