

ALASKA LEGISLATURE COMMITTEE BILL FILES - 1987 - 1988 8879

HB 356 cont. 342

#7

AMENDMENT

by Goll

Page 1, Line 23

Delete: "all long-term debt incurred for the project is retired"

Insert and replace with: "the project begins commercial operation"

Delete Section 2:

Page 1, Line 28 through Page 2, Line 3

Re-number sections accordingly.

SUND
2/5/88

LETTER OF INTENT - HB 356

It is the intent of the Legislature in enacting AS 42.05.511(d) to codify some of the testimony of the utilities and the Alaska Public Utilities Commission as to how costs will be allocated under the Bradley Lake power sales agreement and wheeling contracts, and any amendments thereto. The intent is that the formula for cost allocation among the utilities, as spelled out in Appendix A to the wheeling agreement, would be beyond the authority of the APUC; the commission would not be able to mandate changes to that formula. The specific cost items to be allocated under the formula, however, would be subject to normal APUC review. Thus, for example, the percentage of a utility's administrative costs attributable to operating and maintenance expenses for wheeling could be reviewed, but, once those costs have been validated by the APUC, the method of allocation among the utilities, as specified by the formula in the contracts, would be exempt from APUC-mandated changes.

**STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: Rules Committee

Bill Version: HB 356 C.S (Jud)
Publish Date: HOUSE 1/13/88

Revision Date: _____
Title: APUC Authority in connection with activities of the Alaska Power Authority

Agency Affected: AK Power Authority
BRU: _____

Sponsor: Rules Committee
Requestor: Governor

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						

CAPITAL	(50)	(150)	(19,150)	-0-	-0-	-0-
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REVENUE						
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FUNDING: (Thousands of Dollars)

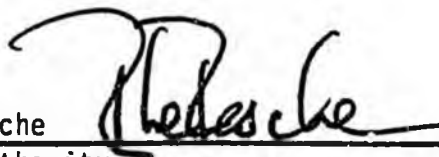
GENERAL FUND						
FEDERAL FUNDS						
OTHER *	(50)	(150)	(19,150)	-0-	-0-	-0-
TOTAL						

POSITIONS: *Railbelt Energy Fund

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

(See attached page)

Prepared by: Robert E. LeResche  Phone: 465-3575
Division: Alaska Power Authority Date: 1/8/88

Approved by Commissioner: J. Anthony Smith  Date: 1/8/88
Agency: Department of Commerce & Economic Development

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

PROGRAM SUMMARY° Expenditures

It is estimated that approximately \$200,000 of additional legal fees will be incurred due to the PUC hearings process.

It is further estimated that the PUC hearings process would delay the Bradley Lake project by a year. The resulting increase in construction costs and interest during construction on the long-term debt would increase the total project costs by an estimated \$19.15 million.

° Funding

It is assumed that any additional Bradley expenditures would be funded by the Railbelt Energy Fund.

° Economic Impact

In addition to the increased costs described above and below, a delay in the Bradley Lake project would reduce the number of jobs available on the Kenai Peninsula this summer and next.

° Impact on Railbelt Electricity Consumers

Not passing this bill would increase the interest rate on the long-term debt for Bradley Lake in two ways. First, debt would have to be issued earlier in the construction schedule (the IDB allocation to Bradley Lake expires on 12/31/90), and completion risk becomes more of a factor. Second and perhaps more important, present law allows the PUC to reopen the contracts at any time in the future. The interest rate penalty from these two factors is estimated to be 1/2 percent. Such a penalty would increase debt service \$750,000 per year, or \$22,500,000 over the life of the bonds.

Additionally, the utilities are expected to incur approximately \$500,000 of legal expenses due to the PUC hearings process. This would be borne by the Railbelt Electricity Consumers.

- ° In summary, the total additional costs incurred from this bill not passing would be approximately \$42,350,000.

**STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: Rules Committee

Bill Version: HR 356 CS (Jud)
Publish Date: HOUSE 1/13/88

Revision Date: _____
Title: APUC authority in connection with activities of the Alaska Power Authority

Agency Affected: AK Power Authority
BRU: _____

Sponsor: RULES COMMITTEE
Requestor: Governor

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						

CAPITAL	(50)	(150)	(19,150)	-0-	-0-	-0-
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REVENUE						
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FUNDING: (Thousands of Dollars)

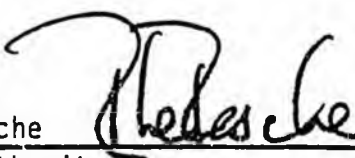
GENERAL FUND						
FEDERAL FUNDS						
OTHER *	(50)	(150)	(19,150)	-0-	-0-	-0-
TOTAL						

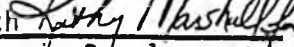
POSITIONS: *Railbelt Energy Fund

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

(See attached page)

Prepared by: Robert E. LeResche  Phone: 465-3575
Division: Alaska Power Authority Date: 1/8/88

Approved by Commissioner: J. Anthony Smith  Date: 1/8/88
Agency: Department of Commerce & Economic Development

Distribution (by preparer):

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

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Not passing this bill would increase the interest rate on the long-term debt for Bradley Lake in two ways. First, debt would have to be issued earlier in the construction schedule (the IDB allocation to Bradley Lake expires on 12/31/90), and completion risk becomes more of a factor. Second and perhaps more important, present law allows the PUC to reopen the contracts at any time in the future. The interest rate penalty from these two factors is estimated to be 1/2 percent. Such a penalty would increase debt service \$750,000 per year, or \$22,500,000 over the life of the bonds.

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In summary, the total additional costs incurred from this bill not passing would be approximately \$42,350,000.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 356
PUBLISH DATE: HOUSE 1/13/88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: APUC Commission authority re APA
and re PCE
Sponsor: Rules Committee by request of
Requestor: Governor

Agency Affected: Commerce & Economic Development
BRU: APUC

Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

See attached

Prepared by: T.S. Moninski II Executive Director Phone: 276-6222
Division: Alaska Public Utilities Commission Date: 1/6/88

Approved by Commissioner: Leslie Marshall John Anthony Smith
Agency: Commerce & Economic Development Date: 1/6/88

Distribution (by preparer):

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



January 6, 1988

The proposed legislation amends AS 42.05.431(b), which established the Commission's authority to review and approve wholesale power contracts entered into between the Alaska Power Authority and other public utilities.

When Section .431(b) was enacted in 1986, no fiscal impact was forecasted and the Commission did not receive any additional resources. The expectation was that the Commission would respond to filings pursuant to this section with existing staff. Therefore, no resultant fiscal impact is projected in response to the changes included in this bill.

A M E N D M E N T

Offered in the FINANCE COMMITTEE

TO: CSHB 356 (Judiciary)

Page 2, line 3, after ".":

Insert "In this subsection, "validated costs" are the actual costs that a utility uses, under the formula set out in related contracts described in AS 42.05.431(c), to establish rates, charges for services and rights, and the payment of charges for services and rights. This subsection does not grant the commission jurisdiction to alter or amend the formula set out in those related contracts."

A M E N D M E N T

Offered in the HOUSE:

BY: SUND

TO: CSHB 356 (Judiciary)

PAGE 1 LINE: 21

After "public utilities" add:

"or among the utilities"

This amendment corrects a drafting error.

A M E N D M E N T

Offered in the FINANCE COMMITTEE

By Swackhammer

TO: CSHB 356 (Judiciary)

Page 1, line 29, to page 2, line 1:

Delete ", except those disallowed under AS 42.05.381(a)," - *Deletion*

Page 2, line 2:

Delete ", "



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Committee on Finance

Official Business

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

TO: Members of the House Finance Committee

FROM: Representative Kay Brown

DATE: February 4, 1988 *Kay*

SUBJ: Amendments to CS HB 356(Jud):
Bradley Lake Exemption from the APUC

This memorandum proposes several specific amendments to CS HB 356(Jud) for your consideration during the House Finance Committee's review of this bill Friday, February 5th.

As a general comment, I would like to clearly state my support for the Administration's essential objective of trying to ensure that the Bradley Lake project is able to proceed with resumption of construction this summer. At this point, given the extent of the state's commitment to the project (ie. "sunk" costs), I feel that additional delays would be counterproductive.

At the same time, however, I am concerned about the potential long-term adverse impacts that some of the language included in CS HB 356(Jud) would have on the ability of the APUC to adequately protect consumer interests. While the House Judiciary Committee version is an improvement over the original bill, I would like to offer the following additional amendments.

As you review the suggested amendments, I would urge you to keep in mind these fundamental objectives for the bill:

- 1) ensure that Bradley Lake construction can move forward this summer; and
- 2) also safeguard the consumer interest by keeping the extent of utility deregulation to a minimum.

The following amendments are offered with these basic objectives in mind.

02/04/88 Rep. K. Brown

PROPOSED AMENDMENTS TO CS HB 356 (Jud)

Limit Enforceability of Covenants to Wholesale Agreement

PURPOSE: To limit the enforceability of covenants to the wholesale power agreements and not include "related agreements."

COMMENT: As suggested by the Commission in its comments, ensuring the enforceability of rate covenants should be limited to the wholesale power agreement and not extend to the "related" services or wheeling agreements. See Attachment 1

Limitation on Automatic Approval of "Any Amendments"

PURPOSE: To provide automatic approval (ie, exemption from APUC jurisdiction) only for contract amendments made prior to January 1, 1996.

COMMENT: It has been stated that there are other parties (in particular, secondary lenders including the Rural Electrification Administration) reviewing the contracts and who may require some, as yet unspecified, amendments. There is also an expressed desire on the part of the utilities and the APA for "convenience" in order to amend the contracts as the need arises.

These arguments do not justify the broad language presently contained in the bill. Amending the bill to provide that only amendments prior to 1996 would be exempted would accommodate any concern about getting the project going again this summer. At the same time, this amendment would ensure the ability of the APUC to review and approve any substantial changes over the long term. (The January 1, 1996 date is taken from the wholesale power contracts which provides that if the project is not complete and operational by this date, the utilities may "opt out.")

Although a "takeover" of Railbelt utilities may not seem likely, the possibility has been recognized by the utilities themselves as evidenced in legislation now before the legislature.

This amendment would not provide the APUC with any additional authority over the existing contracts, only amendments after the project is completed

and operational. The utilities have testified that if it were not for the need to get the project going this summer, they would not be expecting an exemption from the APUC review. See Attachment 2.

Elimination of Excess Payments

PURPOSE: To eliminate the requirement that utilities make "excess" payments beyond those needed to pay off debt or O & M for the project.

COMMENT: Section 29 of the Power Sales Agreement (pages 28 -29) requires payments from Railbelt consumers "in excess of actual debt service required for retirement of Bonds issued to pay Recoverable Construction Costs." These excess payments will amount to hundreds of millions of dollars in nominal terms. (This simplified scenario assumes no amendments to the contracts that could either extend the life of the contracts or increase the amount of the "excess" payments above that amount currently described in Section 29.)

From a Railbelt consumer perspective, even though these "excess" payments are not very sizable in discounted present value terms, the payments are difficult to justify. Notwithstanding the phrase "in recognition of efforts to obtain" the intertie, the payments would be for an essentially unspecified purpose -- or at least for a project which has not been demonstrated as economically feasible nor, I suggest, even likely to be relevant 30 years from now. Essentially, Railbelt consumers would be assessed an extraordinary charge for essentially unknown future purposes. Fortunately, Section 29 could be eliminated without affecting other elements of the wholesale power contracts or the services/wheeling contracts. See Attachment 3.

Attachment 1

AMENDMENT # 1

by BROWN

Limit Enforceability of Covenants to Wholesale Agreement

Amend page 1, line 24 to delete the phrase:

"or related contract"

Attachment 2

AMENDMENT # 2

by BROWN

Limitation on Automatic Approval of "Any Amendments"

Amend page 1, line 22, and after "contract":

Insert "adopted before January 1, 1996,

Attachment 3

AMENDMENT # 3

by BROWN

Elimination of Excess Payments

page 2, after line 17:

Insert a new bill section to read:

**** Sec. 5. APPLICABILITY. AS 42.05.431(c), 42.05.511(d), and the amendments made to AS 44.83.090(b) by sec. 3 of this Act, do not apply to wholesale power agreements and related contracts in which the purchasers are required to make excess payments as that term is described in Section 29 of the Bradley Lake Hydroelectric Project Agreement for the Sale and Purchase of Electric Power prepared November 6th, 1987.****

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 356 (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 the authority of the Alaska
7 Public Utilities Commission in connection with cer-
8 tain activities of the Alaska Power Authority and in
9 connection with calculating power cost equalization;
10 and providing for an effective date."

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

12 * Section 1. AS 42.05.431 is amended by adding a new subsection to
13 read:

14 (c) Notwithstanding (b) of this section,

15 (1) a wholesale agreement for the sale of power from a
16 project licensed by the Federal Energy Regulatory Commission on or
17 before January 1, 1987, and related contracts for the wheeling, stor-
18 age, regeneration, or wholesale repurchase of power purchased under
19 the agreement, entered into between the Alaska Power Authority and one
20 or more other public utilities after October 31, 1987, and before
21 January 1, 1988, and amendments to the wholesale agreement or related
22 contract, are not subject to review or approval by the commission
23 until all long-term debt incurred for the project is retired; and

24 (2) a wholesale agreement or related contract described in
25 (1) of this subsection may contain a covenant for the public utility
26 to establish, charge, and collect rates sufficient to meet its obliga-
27 tions under the contract; the rate covenant is valid and enforceable.

28 * Sec. 2. AS 42.05.511 is amended by adding a new subsection to read:

29 (d) Validated costs, except those disallowed under

Adopted
2-5-88

AMENDMENT # 3A

(NOTE: substitute for prior Amendment #3)

by BROWN

Elimination of Excess Payments

page 2, after line 17:

Insert new bill sections to read:

**** Sec. 5. APPLICABILITY. AS 42.05.431(c), 42.05.511(d), and the amendments made to AS 44.83.090(b) by sec. 3 of this Act, do not apply to wholesale power agreements and related contracts in which the purchasers are required to make excess payments as that term is described in Section 29 of the Bradley Lake Hydroelectric Project Agreement for the Sale and Purchase of Electric Power signed December 8, 1987."**

*** Sec. 6. NEGOTIATIONS TO REMOVE EXCESS PAYMENT TERM. If the parties to the Bradley Lake Hydroelectric for the Sale and Purchase of Electric Power signed December 8, 1987 undertake negotiations to amend the agreement, the Alaska Power Authority may not withhold its agreement to remove the requirement to make the excess payments as described in Section 29 of the wholesale power contract, nor may the Alaska Power Authority require concessions from the purchasers as a condition of the removal of the excess payments provision."**

Renumber sections accordingly

ACCEPTED
2-5-88
#4

A M E N D M E N T

Offered in the HOUSE:

BY: SUND

TO: CSHB 356 (Judiciary)

PAGE 1 LINE: 21

After "public utilities" add:

"or among the utilities"

This amendment corrects a drafting error.

#5

Adopted
2-5-88
go0168hBg
Cramer

A M E N D M E N T

Offered in the FINANCE COMMITTEE

By Swackhammer

TO: CSHB 356 (Judiciary)

Page 1, line 29, to page 2, line 1:

Delete ", except those disallowed under AS 42.05.381(a), " *-Deletion*

Page 2, line 2:

Delete ", "

#16
Adopted
2-5-88
go0168hBh
Cramer

A M E N D M E N T

Offered in the FINANCE COMMITTEE

TO: CSHB 356 (Judiciary)

Page 2, line 3, after ".":

Insert "In this subsection, "validated costs" are the actual costs that a utility uses, under the formula set out in related contracts described in AS 42.05.431(c), to establish rates, charges for services and rights, and the payment of charges for services and rights. This subsection does not grant the commission jurisdiction to alter or amend the formula set out in those related contracts."

Approved or accepted

SUND
2/5/88

LETTER OF INTENT - HB 356

It is the intent of the Legislature in enacting AS 42.05.511(d) to codify some of the testimony of the utilities and the Alaska Public Utilities Commission as to how costs will be allocated under the Bradley Lake power sales agreement and wheeling contracts, and any amendments thereto. The intent is that the formula for cost allocation among the utilities, as spelled out in Appendix A to the wheeling agreement, would be beyond the authority of the APUC; the commission would not be able to mandate changes to that formula. The specific cost items to be allocated under the formula, however, would be subject to normal APUC review. Thus, for example, the percentage of a utility's administrative costs attributable to operating and maintenance expenses for wheeling could be reviewed, but, once those costs have been validated by the APUC, the method of allocation among the utilities, as specified by the formula in the contracts, would be exempt from APUC-mandated changes.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 8, 1988

SUBJECT: CSHB 356 (Finance)
(APUC jurisdiction over certain activities)

TO: Representative Al Adams
Chairman
House Finance Committee

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

Enclosed is the Committee Substitute you requested. Section 6 of the bill, limiting the Alaska Power Authority's conduct during renegotiations over the excess payments provision in the Bradley Lake Power Sales Agreement, is arguably unconstitutional, either as a violation of the prohibition on enactment of "local or special legislation" under article II, section 19 of the state constitution, or as a legislative intrusion into the prerogative of the executive responsibility to conduct negotiations on behalf of the state, a violation of the separation of powers first recognized in Bradner v. Hammond, 553 P.2d 1 (Alaska 1976).

It would be possible to remedy the problem if the legislature were to enact a general law that subjected to Alaska Public Utility Commission jurisdiction, APA contracts that required utilities to make excess payments. Excess payments could be defined as payments not required for the operation and maintenance of a project or for the retirement of debt owed on the project.

If I may be of further assistance, please advise.

Enclosure

TBC:bb
wkb2/060

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 5, 1988

SUBJECT: Deposit of excess payments under the
Bradley Lake Power Sales Agreement into
the Railbelt energy fund (Work Order
No. 5-1728)

TO: Representative John Sund, Chairman
House Judiciary Committee

FROM: Teresa B. Cramer *JBC*
Legislative Counsel

You have asked whether the provision in section 29 of the Bradley Lake Hydroelectric Project Power Sales Agreement, which states that excess payments from the purchasers are "for deposit in the Railbelt energy fund," is valid.

The excess payments are payments to be made by the purchasing public utilities after the retirement of bonds issued to pay for the construction of the power project. The bonds are expected to be retired 30 years after the project begins commercial operation and the excess payments are expected to continue for the remaining 20 years of the agreement.

In my opinion, the Alaska Power Authority (APA) does not have the statutory power to enter into an agreement requiring that the excess payments be deposited in the Railbelt energy fund.

Under AS 44.83.398(c), the APA is required to deposit money received from the sale of power from projects constructed under the energy program for Alaska in the general fund unless the money has been pledged or otherwise covenanted to secure bonds. The excess payments do not meet the requirements of the exception. The statute could be construed to allow the APA to deposit the payments in the Railbelt energy fund only if the Railbelt energy fund is considered to be the same as the general fund.

Representative John Sund, Chairman
House Judiciary Committee
Page 2
February 5, 1988

The Railbelt energy fund is an account within the general fund under AS 37.05.153. The statute provides

There is established in the general fund the Railbelt energy fund. The fund consists of money appropriated to it by the legislature. The Department of Revenue shall manage the fund. Interest received on money in the fund shall be accounted for separately and may be appropriated into the fund annually. The legislature may appropriate money from the fund to assist in meeting Railbelt energy needs.

The legislature has given the account a special purpose, even though the purpose is not binding on future legislatures. The setting aside of funds is a legislative function, implicit in the legislature's power of the purse. Therefore, deposit in the Railbelt energy fund does not constitute deposit in the general fund and does not satisfy AS 44.83.398(c).

The power to make deposits in the Railbelt energy fund is also restricted under AS 37.05.153. Under the terms of the statute, money is added to the fund by legislative appropriation. Therefore, the excess payments under section 29 of the Power Sales Agreement can only be added to the fund if the legislature appropriates them to it.

The appropriation of state revenue is a legislative function. Absent statutory authorization, as in the case of bonds or revolving loan funds, an executive branch agency cannot circumvent the legislative decision-making power by entering a contract with private parties that earmarks state revenue for deposit in a particular account.

If I may be of further assistance, please advise.

TBC:gc
WKG1:067

STATE OF ALASKA
RECEIVED
2/2/88

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

January 29, 1988

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

Chairman John Sund
• House Judiciary Committee
Alaska State Legislature
House of Representatives
P.O. Box 4
Juneau, Alaska 99811

Re: Bradley Lake Power Sales Agreement
-- Excess Payments

Dear Chairman Sund,

Robert LeResche, Executive Director of the Alaska Power Authority ("the Authority"), has relayed your request for an opinion on the meaning of section 29 of the Bradley Lake Power Sales Agreement "the Agreement").

The Bradley Lake project is a hydroelectric project within the energy program for Alaska. Sec. 20, ch. 133 SLA 1982. Money received by the Authority for the sale of power from projects constructed under the energy program for Alaska must be transmitted to the commissioner of revenue for deposit in the state general fund unless the money has been pledged to secure bonds. AS 44.83.398(c).

Section 29 of the Agreement provides that the power purchasers of the Bradley Lake hydroelectric project will make payments in excess of actual debt service once the construction bonds have been retired. These "excess" payments will be made to the Alaska Power Authority for deposit into the Railbelt Energy Fund.

As you already know, the Railbelt Energy Fund is a special fund treated as an account in the general fund. AS 37.05.153. The fund is managed by the Department of Revenue. Interest received on money in the fund may be appropriated into the fund annually. Id. AS 37.05.153 specifically provides that "the legislature may appropriate money from the fund to assist in meeting Railbelt energy needs." Id.

Notwithstanding any agreement entered into between a state agency and a second party, only the Legislature may withdraw money from the state treasury. AK Const. art. IX, sec. 13. Thus only the legislature may appropriate money from the Railbelt Energy Fund. Nor can we expect that the Railbelt Energy Fund

will exist in perpetuity. With certain exceptions not applicable to this discussion, the Alaska Constitution prohibits the dedication of public revenues. AK Const. art. IX, sec. 7. In this case, a legislature meeting in the year 2038 may appropriate money from the Railbelt Energy Fund for expenditure on a public purpose other than railbelt energy.

It is my opinion that section 29 of the Agreement would still be enforceable if the legislature withdrew from the Railbelt Energy Fund moneys deposited there under the provisions of the Agreement. I attended all the negotiation sessions leading up to the Agreement. I personally advised all the participants that neither the Legislature nor the Authority could dedicate these excess payments for Railbelt energy needs. Nor could the Authority make any promises for the Legislature.

The utilities were quite conversant with the dedicated funds prohibition of the Alaska Constitution. They wished, however, to express in section 29 their very strong sentiments in favor of having the excess payments used for future Railbelt energy needs and in favor of a Kenai-Fairbanks intertie. All the negotiators interpreted section 29 as a statement of intent and not as a contract condition on which the excess payments were contingent. In fact, the contract specifically provides that "[t]he Purchasers' obligations to make payment under this Section 29 are not contingent upon the success of ... continued efforts to obtain a satisfactory intertie between Fairbanks and the Kenai Peninsula.

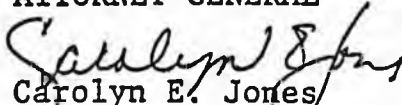
In summary, should moneys earned under this Agreement be deposited in the Railbelt Energy Fund, the Legislature may appropriate the moneys for Railbelt energy needs or as the Legislature deems appropriate. The Purchasers' obligation to make excess payments under the Agreement is not contingent upon dedication of these excess payments to expenditures on Railbelt energy needs.

Please call me if I can be of further assistance.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:


Carolyn E. Jones
Assistant Attorney General

cc: Robert E. LeResche

February 4, 1988

Representative Albert Adams
Chairman, House Finance Committee

Dear Chairman Adams and House Finance Committee:

The Alaska Consumer Advocacy Program (ACAP), a utility consumer advocacy group, objects to the passage of House Bill NO. 356 in its current format because it removes the consumers' check (the Alaska Public Utilities Commission) from the rate making and determination process.

However, ACAP believes that the amendments to H.B. 356 proposed by the House Judiciary Committee are in the consumers' best interest and if clarified, would ease some of the ratepayers' concern in regard to this bill.

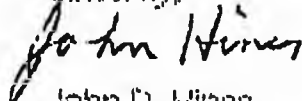
The following comment pertains to Section 2 (d), page 1.

ACAP believes the House Judiciary Committee's intent in inserting the phrase "validated costs, except those disallowed under AS 42.05.301 (a)", and the subsequent deletion of the phrase "without limitation, power and other costs incurred under such an agreement or contract", was to permit only validated costs to be included in the rates charged by utilities for Bradley Lake power. A committee change would help ensure this goal. ACAP offers to this committee the following language changes, beginning on page 1, line 29, (d): Only validated costs, except those disallowed under ... , and on page 2, line 2, described in AS 42.05.431(c)(1), shall be allowed ...

A second point of concern to consumers is the language relating to the time period for which the APUC is excluded from the rate making process. ACAP views the current language as vague. It can be inferred that any long term debt which is acquired will, over its retirement period, prevent the APUC from reviewing or approving the wholesale agreement or contracts. ACAP believes the intent of this amendment was to put a cap on the length of time in which the APUC was to be excluded. This cap was to be in affect only up to the time when the debt service for the construction and financing of the dam as it is currently contracted for and taking into account any refinancing schemes, was retired. ACAP urges the House Finance Committee to amend this language in such a manner that the time period for APUC exclusion includes only the time frame required to retire the debt service of initial costs as described above.

ACAP thanks Chairman Adams and the House Finance Committee for the opportunity to provide the consumers' perspective in these discussions and it urges them to include these comments. ACAP's objective is to keep oversight over a project which has the potential to create a large adverse impact on consumers' electric rates.

Sincerely,



John D. Hines
Staff Economist
Alaska Consumer Advocacy Program

Summary
of
Power Sales & Wheeling Agreements
affected by HB356

The following three agreements, executed by all parties on December 8, 1987, would be affected by enactment of HB356.

1. Bradley Lake Hydroelectric Project Power Sales Agreement (Power Sales Agreement) between the APA and the five purchasers.
2. Bradley Lake Hydroelectric Project Transmission Sharing Agreement (Transmission Agreement) providing for transmission of Project power by Homer Electric Association, Inc. (HEA) between the Project and Soldotna, Alaska.
3. Bradley Lake Hydroelectric Project Agreement for the Wheeling of Electric Power and for Related Services (Services Agreement); providing for the transmission of Project power by Chugach Electric Association, Inc. (CEA) from Soldotna to Anchorage, Alaska and for other services related to Bradley Lake power.

These three agreements comprise the necessary contractual arrangements related to the purchase of Project capacity and the delivery of that capacity to the purchasers. Under the Power Sales Agreement, the purchasers agree to purchase their percentage share of Project capacity and pay their share of annual costs of the Project. The Transmission Agreement and the Services Agreement provide for the transmission of Project power from the Project over HEA's planned 115 kv transmission line to the Soldotna Substation; then, from Soldotna to Anchorage over CEA's existing 115 kv facilities. Transmission of Project power from Anchorage north will be provided under the previously executed Alaska Intertie Agreement.

The APA has designed, licensed and initiated construction of the Project using funds appropriated by the State and borrowed through private institutions. Ultimately the State will provide 50% or more of the capital costs through appropriations and will finance the remaining portion with revenue bonds. The power purchasers are obligated to repay the debt service on the bonds (not to exceed a principal amount of \$175 million) as part of the cost of power from the Project. If the State fails to complete the Project, the

purchasers have no obligation to pay any debt service. However, once the Project is commercially operable, the purchasers will be obligated to pay for their share of Project capacity until the revenue bonds are repaid.

The three contracts, which together constitute the bargain struck by the State and the purchasers, are described below:

POWER SALES AGREEMENT

The APA is a public corporation within the Alaska State Department of Commerce and Economic Development, specifically authorized to construct, operate and maintain generating projects whose power capability is marketed to Alaska utilities. The Project has a planned capacity of 90 megawatts and an estimated annual energy output of some 360,000 megawatt hours/annum. It is being constructed on the Bradley River near Homer, Alaska. The following parties have contracted to purchase the following shares of project capacity:

	<u>%</u>	<u>MW</u>
Homer Electric Association*	12.0	10.8
Seward Electric System	1.0	0.9
Chugach Electric Association	30.4	27.4
Anchorage Municipal Light & Power	25.9	23.3
Matanuska Electric Association*	13.8	12.4
Golden Valley Electric Association	16.9	5.2
	<u>100.0</u>	<u>90.0</u>

*Alaska Electric Generation & Transmission Cooperative (AEG&T) on behalf of HEA & MEA, will purchase 25.8%, or 23.2 MW.

The Power Sales Agreement is the key contract among the three involved in the transaction. It provides for the sale of power and the financing, operation, and maintenance of the Project. It governs the sales of bonds to finance a portion of Project construction costs, the repayment of such debt, the scheduling and sales of power from the Project and the administration of the Power Sales Agreement.

As set forth in the Agreement and pursuant to the Bond Resolution in Exhibit "A," the APA proposes to issue up to \$175,000,000 in bonds to pay for a portion of Project construction costs as defined in Section 101 of the Bond Resolution. These funds cannot be used for the acquisition and construction of capital improvements. The APA cannot issue additional bonds unless purchasers who hold 80% or more of the Project capacity approve the action, or unless a majority of

the Project Management Committee requests that repairs, maintenance and renewals (Required Project Work) be paid for out of bond proceeds.

The bond debt will be retired by proceeds from the sale of Project power. The debt, along with all other costs associated with operating and maintaining the Project, are included in a budget of annual Project costs.

Once the Project is commercially operable, purchasers are obligated to pay their percentage share of annual Project costs each fiscal year. Such payments are unconditional and continue without offset or reduction notwithstanding suspension or reduction in the amount of power supplied by the Project.

Should any purchaser default on its payment, the APA is authorized to immediately bring suit. If the APA suspends or terminates power deliveries to a defaulting purchaser, and if the APA estimates that there will be insufficient funds to pay annual Project costs, the APA may increase other purchasers' percentage shares up to a 25% ceiling without the purchasers' consent.

The Agreement also provides for continuity of service, procedures to establish rates and billing, Project management, dispute resolution, record keeping, maintenance, inspection, obligations under the Bond Resolution, and surplus to the State after bonds are retired.

Section 13 creates the Project Management Committee (PMC). The PMC is comprised of representatives of all parties to the Agreement. It acts as a clearinghouse for, and coordinator of, the administrative activities required of the APA and the purchasing utilities in operating the Project and administering the Agreement. It has the ongoing obligation and authority to oversee and guide all significant Project activities thereby controlling costs, setting budgets and resolving disputes among the parties subject to the APA's right to take "Required Actions."

The Power Sales Agreement has an initial term of 50 years. It becomes effective on the date when, 1) it is executed and delivered by all the parties and, 2) when each purchaser has obtained all necessary approvals for it and related transmission and services agreements. The Agreement will terminate either 50 years after the date of commercial operation of the Project, or when no bonds are outstanding and all payment obligations have been satisfied, whichever is later.

There is an early out provision which allows for termination on January 1, 1996 in the event that commercial operation does not occur on or before that date. The Agreement may be renewed for 40-year periods of the life of the Project, whichever is longer.

THE TRANSMISSION AGREEMENT

Pursuant to the Transmission Agreement, HEA agrees to construct and operate approximately 47 miles of 115 kv transmission line between the Bradley Junction and Soldotna Substation. The purpose of the line is to deliver Project power to GVEA, CEA, the City of Anchorage, and the City of Seward, utilities who otherwise do not have transmission capability to take delivery. The Agreement provides for the sale or lease of portions of the transmission line to the purchasers (CEA, GVEA, the City of Anchorage and the City of Seward).

The Agreement provides for payments by the purchasers to HEA for capability of the line once the line is in service whether or not the line remains operable. In the event that the line is downrated, payments may be increased under certain circumstances. Payments include amortization costs of construction loans and operation and maintenance expense.

The Agreement also provides for continuity of service, operation and maintenance, failure to construct, line upgrading, major repairs, special provisions affecting CEA, and dispute resolution.

The term of the Agreement begins on the date that all parties have executed it, and it has been approved by all entities whose approval is necessary. The Agreement ends on the earlier of the date the transmission line is no longer used and useful and all costs of the construction loan have been paid; or the date on which the Power Sales Agreement terminates according to Section 2(c) of that Agreement; or such other date as the parties mutually agree upon, provided that such approvals as are necessary at that time are sought and given. The Agreement includes the same early out provisions found in the Power Sales Agreement.

THE SERVICES AGREEMENT

Pursuant to the Services Agreement, CEA will provide wheeling, storage, and energy purchase services to the parties (GVEA, HEA, MEA, the City of Anchorage, the City of Seward and AEG&T). Parties are not bound to sue CEA's services exclusively. In addition, the Agreement establishes provisions for continuity and scheduling of services, rights to additional transmission capacity, rates and billing, and dispute resolution.

The term of the Agreement begins on the date all parties, 1) have received satisfactory opinions of counsel, 2) have been executed and delivered the Agreement, and 3) the Agreement has been approved by all entities whose approval is necessary. The Agreement terminates

on the earlier of the date on which the APA terminates the Project; or the 50th anniversary of the date of commercial operation of the Project; or the date on which the Agreement has been terminated, upon proper notice, with a party who has available alternate transmission facilities; or upon mutual agreement of all parties subject to necessary federal and state approval.

The Services Agreement provides an alternative solution to the problem of transmitting or otherwise using Project power absent extension of the Alaska Intertie line from Anchorage to the Kenai Peninsula. Parties to this Agreement recognize that the Agreement will be superseded by other arrangements if, and when, construction of additional transmission facilities occurs, or if power pooling arrangements are made by the parties.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS

DEPARTMENT Commerce and Economic Development	DIVISION Alaska Power Authority	BILL NUMBER HB 356	SPONSOR H RULES/BY REQUEST OF GOVERNOR
SHORT TITLE OF BILL "An Act relating to the authority of the Alaska Public Utilities Commission...."			
DEPARTMENT POSITION Do Pass			
PREPARED BY Robert E. LeRonde	DATE 1/25/88	COMMISSIONER'S SIGNATURE <i>Frankly Marshall</i>	DATE 1/25/88

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Alaska Public Utilities Commission	CONSTITUENT GROUPS AFFECTED BY BILL
ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT
 As a result of a 1986 amendment to APUC legislation, the APUC was provided with new regulatory authority to review and approve wholesale power agreements between utilities. The effect on the Alaska Power Authority has been demonstrated with those agreements and related contracts associated with the Bradley Lake project. The project has been unable to move forward because of the regulatory change adopted through the 1986 amendment. The intent of this bill is to provide the necessary exemption language to allow for construc-

ANALYSIS OF BILL/PROGRAM EFFECTS
 The amendments in Sections 1-3 (as described below) will provide the necessary APUC regulatory exemption for wholesale power agreements and related contracts associated with the Bradley Lake project. This amendment serves to clearly exempt these specific contracts without removing APUC's jurisdiction over all other power sales agreements between the Power Authority and utilities on future Power Authority power projects. These amendments provide the statutory exemption language necessary to allow for the Bradley Lake Hydroelectric project to proceed as planned, although now on a revised construction SCHEDULE (see attached). Proposed amendments in Sections 1-3 provide the necessary statutory authority to insure that long-term financing of the project is possible.

The amendment in Section 4 will not provide substantive change to the Power Cost Equalization (PCE) program. The amendment will provide necessary statutory clarification which will assist in maintaining the current PCE level of a local utility supplying power to a U.S. Department of Defense facility without increasing the cost of power to the residen-

AMENDMENTS PROPOSED
 The proposed amendments in Sections 1-3 of the above referenced bill AS 42.05.431, AS 42.05.511 and AS 44.83.090(b) respectively. Amendments to AS 42.05.431 and AS 42.05.511 will provide statutory authority to allow the Power Authority to contract with utilities to guarantee that the utilities will charge sufficient rates to cover the Power Authority's bond obligations on the Bradley Lake Hydroelectric project. These amendments also serve to expand the scope of the Bradley Lake project regulatory exemption to include secondary contracts that are associated with the project. Although not specifically named in the bill, these related contacts include an agreement for Wheeling and

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

BACKGROUND/LEGISLATIVE INTENT (Continued):

tion of the Bradley Lake project to commence this year (See attached sheet on 1988 Construction Schedule).

Section 4 of this legislation provides the necessary statutory change which will serve to clarify that APUC may not include the kilowatt-hour sales to a U.S. Department of Defense facility when determining if a utility is eligible for PCE program benefits. This amendment will resolve a pending question regarding Nainek Electric Association's sale of power to King Salmon Air Force Base. The same potential question exists with the City of Galena and their future sale of power to the Galena Air Force Base.

ANALYSIS OF BILL/PROGRAM EFFECTS (Continued):

tial customers of the utility. This amendment provides compliance to the Federal SWAP Act of 1980 which allows for a U.S. Department of Defense facility to purchase power from a local utility, with the purchase resulting in a cost savings to the local utility without increasing costs to other consumers of power.

AMENDMENTS PROPOSED (Continued):

related services between Bradley Lake power purchasers and Chugach Electric Association, Inc., and an agreement for the sharing of transmission facilities between Bradley Lake power purchasers and Homer Electric Association, Inc.

The proposed amendment to AS 44.83.090(b) clarifies the existing statutory authority of the APUC to exempt from APUC review and approval only those wholesale power agreements and contracts described in AS 42.05.431(c)(1). (The Bradley Lake Hydroelectric project agreements and contracts).

Section 4 amends AS 44.83.162 and stipulates that APUC may not consider validated costs or kilowatt hour sales to a U.S. Department of Defense facility when determining if a utility is eligible for Power Cost Equalization (PCE) program benefits. This provision will prohibit PCE calculated from including rates paid on military bases utilizing power generated and sold by a local utility.

ALASKA PUBLIC UTILITIES COMMISSION

Comments on CS for HB 356 (Judiciary)

February 3, 1988

The Commission endorses the intent of the amendments to HB 356 which were included in CS for HB 356 (Judiciary). The Commission believes that the amended language addresses, at least in part, the concerns previously expressed by the Commission regarding oversight of costs incurred in connection with "related contracts."

The commission recommends two minor amendments to the wording of the bill to make the meaning more clear:

First, Section 2 of the bill, which adds subsection (d) to AS 42.05.511, should begin with the introductory phrase, "Notwithstanding the provisions of AS 42.05.431(c)(1)-(2)" This addition will clarify the intention that, notwithstanding the provisions of Section 1 of the bill, Section 2 preserves Commission oversight of costs incurred in connection with "related contracts."

Second, the Commission believes that the phrase, "except those disallowed under AS 42.05.381(a)" in Section 2 can be deleted as redundant. The amendment which changed "all costs" to "validated costs" was, the Commission understands, intended to provide for Commission oversight of costs which can be recovered. Therefore, the Commission's authority to "validate" costs automatically preserves the authority to disallow costs under AS 42.05.381(a) and the specific language to that effect is redundant.

Section 2 of the bill, amended to incorporate the foregoing changes, would read:

AS 42.05.511 is amended by adding a new subsection to read:

(d) Notwithstanding the provisions of AS 42.05.431(c)(1)-(2), validated costs incurred by a utility in connection with the related contracts described in AS 42.05.431(c)(1) must be allowed in the rates charged by the utility.

Finally, the Commission would also reiterate its earlier statement that the provision in Section 1 ensuring the enforceability of rate covenants should be limited to the wholesale power agreement and not extended to the "related contracts." The provision in Section 1 that any rate covenant in the "related contract" is valid and enforceable is inconsistent with the amendments to Section 2 which preserve the Commission's authority to "validate" costs. Further, as previously noted, the "related contracts" are between utilities (not with the APA) and contracts between utilities should not create rate covenants which are binding on the Commission. Therefore, Section 1 should be amended to eliminate from proposed AS 42.05.431(c)(2) the words, ". . . or related contract"

Alaska Public Utilities Commission

Comments on HB356

January 26, 1988

I. Overall Analysis

The Commission concurs that exemption of the wholesale power contract between the Alaska Power Authority (APA) and purchasing utilities from Commission review and approval is necessary to meet the construction schedule for the Bradley Lake Hydroelectric Project (Bradley Lake) established by the APA. Therefore, if the Legislature supports this schedule, HB356 should be enacted insofar as it provides that "a wholesale agreement for the sale of power from a project licensed by the Federal Energy Regulatory Commission on or before January 1, 1987, entered into between the Alaska Power Authority and one or more other public utilities after October 31, 1987, and before January 1, 1988...[is] not subject to review or approval by the commission."

The Commission also believes that the foregoing exemption protects the APA's bondholders by obligating the Commission to honor through rates the terms and conditions negotiated between the APA and the utilities. Therefore, the provision in HB356 which states that the wholesale power agreement may contain a valid and enforceable covenant for the utility to establish rates sufficient to meet its obligations under the contract appears to be redundant but is certainly not objectionable insofar as it concerns the wholesale power agreement between the APA and the purchasing utilities.

However, the Commission has questions regarding the provisions of HB356 which exempt from Commission review and approval the "related contracts for the wheeling, storage, regeneration, or wholesale repurchase of power purchased under such an agreement and any subsequent amendments" to those contracts. The Commission understands that "related contracts" are the services agreements between the utilities purchasing Bradley Lake power which focus on arrangements for the transmission of the power. The scope of "subsequent amendments" is not defined.

The Commission believes that five basic questions should be answered before these agreements are exempted from Commission review. First, is total exemption of the agreements from Commission review necessary in order for the construction of Bradley Lake to proceed on schedule? Second, are there public policy reasons not to exempt totally the related contracts from Commission review? Third, are there regulatory policy reasons not to

exempt totally the related contracts from Commission review? Fourth, should the rate covenant provisions be extended to the "related contracts? Fifth, what, if any, exemption status is appropriate for "subsequent amendments" to related contracts?

The Commission does not believe that it is necessary to exempt totally the related contracts from Commission review in order for Bradley Lake construction to proceed on schedule. The APA is not a signatory to the related contracts and the costs for services pursuant to the related contracts are not part of the financial commitments to bondholders. Therefore, it is not necessary to extend to the related contracts the same rate covenant and cost recovery provisions which apply to the wholesale power agreement between the APA and the utilities. The Commission is unaware of any other legal requirement for total exemption of the "related contracts."

The Commission also believes that it would be poor public policy to exempt totally the related agreements from Commission review. Because the APA is not a signatory to the related contracts, the APA Board of Directors has not reviewed the contracts in the same public process or with the same diligence as the wholesale power agreement itself. The related contracts are the type of agreement which are typically subject to regulatory oversight and an exemption in this case would be contrary to the public policy established in AS 42.05 regarding the Commission's regulation of utilities.

Finally, the Commission believes that total exemption of the related contracts from Commission review presents significant regulatory problems. The "related contracts" affect the overall operation of the contracting utilities and involve facilities which are not dedicated solely to Bradley Lake but which are common facilities used to provide services to all customers. As such, the agreements raise basic issues with respect to dividing costs between regulated (non-Bradley Lake) and unregulated (Bradley Lake) functions. To illustrate:

-If exemption extends to facilities used or expenses incurred to regenerate, wheel, store and transmit Bradley Lake Power and non-Bradley Lake power, the generation and transmission operations of the regulated signatory utilities are essentially exempt from economic regulation.

-If exemption means that only non-Bradley Lake facilities and expenses are jurisdictional to the Commission, significant rate implications arise. Setting aside the arguments and challenges associated with allocating investment and expenses between regulated and unregulated portions of a whole, there is no assurance that the sum of the unregulated and regulated parts would equal the whole, thereby creating a situation of either over-recovery or underrecovery for the affected utilities. In other words, the customers of a purchasing utility could pay too much

or not enough depending on the particular circumstance, with the result that the customers of the transmitting utility would either be subsidized or be subsidizing the customers of the purchasing utility. It has been this Commission's experience that the issue of which customers should bear what share of an investment or expense is usually more important than the question of the total cost which must be paid.

-If exemption means that the Commission or any consumers cannot challenge the "relatedness" of a subsequent investment or expense relating to Bradley Lake, a substantial "hole" in the Commission's current jurisdiction would exist.

The Commission also believes that the provision ensuring the enforceability of rate covenants should not be extended to "related contracts." Those contracts are solely between utilities; utilities should not be allowed to establish, by private contract, rate covenants which would be binding on the Commission.

While the Commission believes that it is important that its jurisdiction to regulate the rates for services provided under the related contracts be preserved, the Commission also recognizes that the utilities purchasing Bradley Lake power must be assured that the power can be transmitted from the project site to their service area or that, alternatively, there can be an "administrative" or "paper" transfer of the power. Therefore, the Commission believes that the related contracts between the utilities, to the extent that they establish operational methods to assure such delivery of power, are necessary and appropriate and should be exempt from Commission review. Thus, the Commission recommends that HB356 provide that the operational aspects designed to assure delivery of power be exempt from Commission approval, but that the Commission's authority to evaluate costs and establish rates for services be preserved.

II. Response to House Judiciary Committee Inquiries

There are four major differences between SB22 and HB356, other than elimination of sections regarding utility deregulation.

The first, and most significant, difference is that SB22 exempted from Commission review and approval only the wholesale power contract for Bradley Lake power and did not exempt "related contracts for the wheeling, storage, regeneration, or wholesale repurchase of power and any subsequent amendments." These "related contracts and subsequent amendments," were not mentioned in SB22 and would have remained under Commission jurisdiction under SB22.

The second major difference concerns the provisions which assure that utilities recover costs associated with Bradley Lake. SB22 stated simply that "power costs incurred by a utility in connection with [purchase of Bradley Lake power] shall be allowed in

the rates charged by the utility." HB356 enlarges this provision significantly. It states that "all costs...including, without limitation, power and other costs" incurred in connection with an agreement to purchase power from Bradley Lake must be included in rates. That broader provision could be interpreted to require recovery of costs associated with Bradley Lake that are normally excluded from rates by statute, such as lobbying and advertising expenses (AS 42.05.381). The legislation should make clear whether the contemplated exemption extends to every section of the Commission's existing statute.

The third major difference is that HB356 includes a completely new provision which provides that both the wholesale power agreement and related contracts may include rate covenants and such covenants are valid and enforceable. The Commission understands the term "covenant" to mean that utilities can "promise" the APA and each other, by contract, that they will establish rates at a specified level in order to make payments to the APA or other utilities. Because such a covenant is "valid and enforceable," the Commission assumes that it would be required to set rates sufficient to allow the utility to meet all expenses, even those imprudently incurred or unreasonable in amount; in other words, the Commission interprets "covenant" to mean that it could not disallow expenses or investment for any reason whatsoever, if it would cause a breach of the rate covenant.

The fourth major difference is that SB22 included a provision that the APA is not a public utility under AS 42.05. That provision is not included in HB356. The effect of the exclusion is that wholesale power contracts between the APA and other public utilities, other than those specifically exempted by HB356, will remain under the jurisdiction of the Commission.

HOUSE BILL NO. 356(APUC)
IN THE LEGISLATURE OF THE STATE OF ALASKA
FIFTEENTH LEGISLATURE - SECOND SESSION
A BILL

For an Act entitled: "An Act relating to the authority of the Alaska Public Utilities Commission in connection with certain activities of the Alaska Power Authority and in connection with calculating power cost equalization; and providing for an effective date."

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

* Section 1. AS 42.05.431 is amended by adding a new subsection to read:

(c) Notwithstanding (b) of this section,

(1) a wholesale agreement for the sale of power from a project licensed by the Federal Energy Regulatory Commission on or before January 1, 1987, entered into between the Alaska Power Authority and one or more other public utilities after October 31, 1987, and before January 1, 1988, [AND RELATED CONTRACTS FOR THE WHEELING, STORAGE, REGENERATION, OR WHOLESALE REPURCHASE OF POWER PURCHASED UNDER SUCH AN AGREEMENT,] and any subsequent amendments thereto [TO THE WHOLESALE AGREEMENT OR RELATED CONTRACT],

are not subject to review or approval by the commission;
and

(2) a wholesale agreement [OR RELATED CONTRACT] described in (1) of this subsection may contain a covenant for the public utility to establish, charge, and collect rates sufficient to meet its obligations under the contract; such a covenant is valid and enforceable; and[.]

(3) the operational provisions of a related contract entered into prior to January 1, 1988, and technical or clarifying amendments thereto, which are necessary for the wheeling, storage, regeneration, or wholesale repurchase of power purchased under an agreement described in (1) of this subsection are not subject to approval by the commission; provided, however, that the commission shall have the authority to determine the cost of and establish rates for any services provided pursuant to such a related contract.

[*SECTION 2. AS 42.05.511 IS AMENDED BY ADDING A NEW
SUBSECTION TO READ:

(D) ALL COSTS INCURRED BY A UTILITY IN CONNECTION WITH A WHOLESALE AGREEMENT OR CONTRACT DESCRIBED IN AS 42.05.431(C) (1), INCLUDING, WITHOUT LIMITATION, POWER AND OTHER COSTS INCURRED UNDER SUCH AN AGREEMENT OR CONTRACT, MUST BE ALLOWED IN THE RATES CHARGED BY THE UTILITY.]

*Section 2 [3]. AS 44.83.090(b) is amended to read:

(b) The authority is not subject to the jurisdiction of the Alaska Public Utilities Commission. Nothing in this chapter grants the authority any jurisdiction over the services or rates of any public utility or diminishes or otherwise alters the jurisdiction of the Alaska Public Utilities Commission with respect to any public utility, including any right the commission may have to review and approve or disapprove contracts for the purchase of electricity by a public utility other than wholesale agreements and contracts described in AS 42.05.431(c)(1) and AS 42.05.431(c)(3).

*Section 3 [4]. AS 44.83.162 is amended by adding a new subsection to read:

(p) In calculating power cost equalization, the commission may not consider validated costs or kilowatt-hour sales associated with a United States Department of Defense facility.

*Section 4 [5]. This Act is retroactive to November 1, 1937.

*Section 5 [6]. This Act takes effect immediately under AS 01.10.070(c).

ALASKA POWER AUTHORITY

POSITION PAPER

HOUSE BILL NO. 356

The Alaska Power Authority supports enactment of House Bill No. 356. Specifically, Sections 1, 2 and 3 of the bill provide for amendments which would exempt wholesale power agreements and related contracts (the two "wheeling" agreements), including any subsequent amendments to the wholesale agreement or related contract, between the Alaska Power Authority and one or more other public utilities from review or approval by the Alaska Public Utilities Commission (APUC). The exemption provided through these amendments covers only those agreements for the sale of power from a project licensed by the Federal Energy Regulatory Commission (FERC), on or before January 1, 1987, entered into between the Power Authority and one or more other public utilities after October 31, 1987 and before January 1, 1988, i.e., the Bradley Lake Hydroelectric project (licensed by the FERC on December 31, 1985), and the wholesale power sales agreements and related agreements were entered into on December 8, 1987. Enactment of this legislation remains essential to the program of revenue bond financing of the Bradley Lake Hydroelectric Project.

The need for enactment of House Bill 356 is due to a 1986 amendment to APUC legislation. The amendment provided the APUC with the authority to review in advance and approve wholesale power agreements between public utilities. The existing APUC statutory authority also allows that, once the agreements are in effect, the APUC may also order the parties to the agreement to renegotiate

the agreement if the APUC determines that retail power rates are not just. Where the parties are unable to agree to an amendment, the APUC may order the parties to proceed under the agreement's dispute resolution procedures.

The 1986 amendment to APUC statutes was part of a complex, lengthy and controversial package of amendments within the "sunset" reauthorization bill for the Alaska Public Utilities Commission. The effect of the amendment on the Alaska Power Authority, its wholesale power agreements and related contracts, and the Bradley Lake agreement in particular, was never considered by the 1986 Legislature. Consequently, we are now presented with a statutory conflict. The Power Authority is exempt by statute from the APUC's jurisdiction. On the other hand, the APUC has jurisdiction over wholesale power agreements and other related contracts to which the Power Authority is a party.

During the 1987 legislative session Senate Bill No. 22 was introduced and provided for amendments which would have restored law that had been in effect since 1976 and that was inadvertently removed during the reauthorization of the Alaska Public Utilities Commission by the 1986 Legislature. The amendments, as provided for in SB22, attempted to restore, rather than change the status quo. After a lengthy legislative hearing process, SB22 passed the Legislature and was subsequently vetoed. Governor Cowper vetoed the bill because of amendments contained in Section 4 of HCS CSSSB 22 (Fin.), which were unrelated to the amendments which would have exempted wholesale power agreements between the Alaska Power Authority and public utilities from review and approval by the APUC. As a result of the veto, Bradley Lake project construction could not move forward as originally planned.

During the 1987 legislative session, the Railbelt utilities requested funding and statutory authority which would have allowed for immediate construction of an upgraded intertie system in the Railbelt. The utilities asserted that this system was necessary to transmit electrical energy from Bradley Lake to its users in the Railbelt. That legislation did not pass, and the utilities were required to develop alternate (contractual) arrangements for moving energy over the intertie system as it exists today. These contractual arrangements are called "wheeling" and/or "services" agreements. These agreements govern the utilization of several segments of transmission facilities that are owned and operated by different parties. Further, these agreements serve as additional terms and conditions necessary to provide delivery of energy contracted for under the Power Sales Agreement, and are therefore integral parts of the bargain the utilities have made for Bradley Lake power. The Bradley Lake Power Sales Agreement does not become effective until all required approvals of these agreements are received.

Section 4 of HB356 provides for amendments to AS 44.83.162 (Section 7, of SB 22 passed by the 1987 Legislature also included this language.) Although Section 4 of this bill does not impact the Alaska Power Authority, it does relate to the Power Cost Equalization Program (PCE) which is administered by the Alaska Power Authority. This amendment clarifies that APUC should not include the kilowatt-hour sales to a Department of Defense facility when determining if a utility is eligible for Power Cost Equalization benefits. The amendment provides resolution to a question that has been pending regarding Naknek Electric Association's calculation of PCE benefits. Naknek Elec-

tric Association provides contractual electric service to the King Salmon Air Force Base under the Federal SWAP Act provisions of 1980. The amendment will provide a positive benefit to local customers of utilities participating in the PCE program which supply power now, or in the future, to a U.S. Department of Defense facility. The City of Galena, recently awarded a contract to sell power to the Galena Air Force Base, will also benefit from the amendment. The exclusion of pro rata fixed costs and kilowatt-hour sales arising from supplying power to such a facility will provide for a positive economic impact on Naknek Electric Association's members. This amendment will also serve to maintain the PCE level of Naknek Electric Association's residential customers without increasing the cost of power to these customers.

Clarice

DB22

April 21, 1987

To: Don Shira
Director of Program Development

From: Gwen Obermiller
Research Analyst

re: Naknek Electric's
disagreement with PCE
level determination

I am commenting on Mr. Franke's letter to Senator Zharoff dated March 19, 1987 though the supporting documents have not been forwarded.

The SWAP Act of 1980 states that an energy "...purchase ...will result in a cost savings to such agency of electric energy without increasing costs to other consumers of electric energy." If there are additional costs involved in providing power to wholesale customers of NEA, I would assume it to be the utility's responsibility to take all additional costs in account when negotiating the contract. If the direct costs are not passed through to the wholesale customers incurring the costs, the other raters will subsidize the contract, unless the additional demand decreases the total cost of power. The agreement Naknek Electric (NEA) has with the Air Force is a negotiated wholesale power contract of the format which it appears that NEA enters into with any purchaser whose demand exceeds 500 kva. (See attached)

Cost based rates are developed by allocating the cost or ratio of cost of services and/or facilities to the customer or rate class depending on the degree of benefit to that class or the level of demand. If overall costs of providing electricity to the utility consumer are decreased, then it follows that a subsidy would decrease.

It appears in the letter from Mr. Franke to Sen. Zharoff that he wishes to count the costs of supplying electrical service to the Air Force yet not include the benefits of those expenditures in the formula. (PCE determined from Total Costs/Total KWH sales to get unit cost of electricity.) Therefore the PCE level would be much higher. If the KWH sales of the Air Force base are excluded, it would seem that any portion of the costs that do not contribute to the benefit of the other raters should be excluded when determining the unit cost of electricity and ultimately the PCE subsidy level. If maintaining the PCE level is the desired outcome, then using the revenues from the Air Force to decrease costs before dividing by kwh sales of all other customers will only work if the costs of providing that service would outweigh the benefits.

One of the purposes of the Power Cost Equalization program as stated in general order 14 is to encourage feasible alternatives to diesel generation, which one could interpret to mean would be less expensive in the long run leading to less dependence on power subsidies such as PCE.

The most equitable way to resolve the issue at this point in time would be to exclude the Air Force totally from the computations for PCE determination for all other rate classes. This would mean exclude the costs and the kwh sales arising from serving the base from the PCE formula. The subsidy serves to skew the impact of this contract on the cost of power for the remainder of the ratepayers.

Contract F65501-81-0003

EXHIBIT "B"

RATE SCHEDULE EXTRACT

The following power rate was extracted from the Naknek Electric Association Proposal, F65501-80-00033, with negotiated price adjustment reflected.

SCHEDULE W

NAKNEK DIVISION WHOLESALE POWER COST

AVAILABILITY

Available to customers desiring to purchase wholesale power and whose demand exceeded 500 kva during any period throughout the calendar year.

TYPE OF SERVICE

To be determined and made a part of a subordinate contract to be entered into with each customer utilizing such service.

RATES

All energy sold - 9.9¢/KWH

MINIMUM MONTHLY CHARGE

The minimum monthly charge under the above rate shall be \$15,000/month.

FUEL COST ADJUSTMENT CHARGE

A surcharge or credit may be applied to each billing for service rendered under this Schedule to reflect increases or decreases in the cost of fuel compared to the base cost of fuel.

Current Fuel Cost

$$\text{Surcharge (¢/KWH)} = \frac{\text{(¢/Gallon)} - 52.3¢/\text{Gallon}}{\text{Average No. of KWH Sold Per Gallons of Fuel Consumed During Latest 12 Months}}$$



NAKNEK ELECTRIC ASSOCIATION, INC.

POST OFFICE BOX 118 • NAKNEK, ALASKA 99833 • PHONE (907) 248-4261

March 19, 1987

Senator Fred F. Zharoff
Fouch V
Juneau, AK 99811

Dear Senator Zharoff:

The clutches of legislative over-sight have finally engulfed the proper PCE entitlement of the members of Naknek Electric Association.

This has been prompted by calculation methodology used by the (current) staff of the Alaska Public Utility Commission. The current staff's calculation method includes kilowatt hours delivered to the King Salmon Air Force Base under the Federal SWAP Act of 1980, whereas previously the Commission excluded those KWHs from their calculation. The recommendation of the current APUC staff follows the letter of the law as set forth in General Orders 14A and 14B in which it is stated "Total Kilowatt Hours Delivered", even though the previous Staff's interpretation of the law excluded the kilowatt hours delivered to the Air Force. Consequently, the new recommendation will deliver significant economic impact to the balance of Naknek Electric Association's consumers in the amount of \$101,132.41 in just twelve months.

Strong feelings exist within the Association that this was not the intent of the law and would like consideration of an amendment to the law to exclude all SWAP Act kilowatt hours from the Commission's calculation of the fixed cost portion of the PCE entitlement.

This Association provides contractual electric service (at the cost of energy only, i.e., fuel costs) to the King Salmon Air Force Base under the Federal SWAP Act of 1980 (Public Law 96-571). The premise for this Act is to provide and encourage the interchange between utilities and National Defense installations when it is "mutually beneficial". When the "out of pocket" costs of members are elevated as a result of inclusion of SWAP Act kilowatt hours, the arrangement becomes non-beneficial to the majority of Naknek Electric Association's consumers and consequently no longer "mutually beneficial".

The higher costs which would be incurred if the Air Force was forced to return to providing for its own electrical needs appear undesirable in light of defense budget goals. Additionally, the generation equipment at the King Salmon Air Force base is derelict as well as unreliable. The inevitable need for replacement of this equipment would be eliminated by continued service from Naknek Electric Association.

Several attachments are included in support of our request to amend legislation to exclude SWAP Act delivered energy in the fixed cost portion of PCE calculations.

Page two - PCE calculation

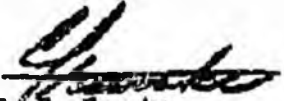
The attachments are:

- #1. 1985/86 12 month schedule of PCE dollar and KWH values.
- #2. Sample of data source for attachment #1.
- #3. January 28, 1987 Commission Order & Staff recommendation.
- #4. Impaction of Commission Order.
- #5. Comparative of 85 & 86 data as done previously. (Supports acceptable non-inclusion of Air Force revenue and KWH consumption.)
- #6. Schedule developed by Commission staff during field audit performed 12/83. (Of interest is audit note, highlighting impaction of Air Force's consumption. This note provided the basis for our negotiation of the rates determined in attachment #5.)
- #7. January 27, 1987 letter from our attorney, Roger Kempe, to the Commission concerning order (attachment # 3). An evidentiary hearing was held on March 4, 1987, which resulted in verbal instruction from the Commission to do what we could to legislatively exclude SWAP Act energy in the fixed cost portion of the PCE calculation.

Your support in influencing this important amendment to the law, to exclude all SWAP Act kilowatt hours from the PCE calculation, is requested. The resulting economic effect to the Association's members, including the Air Force, makes this amendment a necessity.

Sincerely,

Naknek Electric Association


G. R. Fraska
General Manager

CEF:tbc

enclosures

cc: Adelheid Herrmann
NEA Attorney, Roger Kempe
ARECA Executive Secretary, Dave Hutchins
APUC Chairman, Weacnerly
Nels Anderson
NEA Board Members
file

**STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: Rules Committee

Bill Version: _____
Publish Date: _____

Revision Date: _____
Title: APUC authority in connection with activities of the Alaska Power Authority

Agency Affected: AK Power Authority
BRU: _____

Sponsor: Governor
Requestor: _____

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL		(50)	(150)	(19,150)		
----------------	--	------	-------	----------	--	--

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


FUNDING: (Thousands of Dollars)

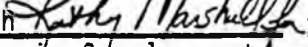
GENERAL FUND						
FEDERAL FUNDS						
OTHER *		(50)	(150)	(19,150)		
TOTAL						

POSITIONS: *Railbelt Energy Fund

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)
(See attached page)

Prepared by: Robert E. LeResche  Phone: 465-3575
Division: Alaska Power Authority Date: 1/8/88

Approved by Commissioner: J. Anthony Smith  Date: 1/8/88
Agency: Department of Commerce & Economic Development

Distribution (by preparer):

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

PROGRAM SUMMARY

° Expenditures

It is estimated that approximately \$200,000 of additional legal fees will be incurred due to the PUC hearings process.

It is further estimated that the PUC hearings process would delay the Bradley Lake project by a year. The resulting increase in construction costs and interest during construction on the long-term debt would increase the total project costs by an estimated \$19.15 million.

° Funding

It is assumed that any additional Bradley expenditures would be funded by the Railbelt Energy Fund.

° Economic Impact

In addition to the increased costs described above and below, a delay in the Bradley Lake project would reduce the number of jobs available on the Kenai Peninsula this summer and next.

° Impact on Railbelt Electricity Consumers

Not passing this bill would increase the interest rate on the long-term debt for Bradley Lake in two ways. First, debt would have to be issued earlier in the construction schedule (the IDB allocation to Bradley Lake expires on 12/31/90), and completion risk becomes more of a factor. Second and perhaps more important, present law allows the PUC to reopen the contracts at any time in the future. The interest rate penalty from these two factors is estimated to be 1/2 percent. Such a penalty would increase debt service \$750,000 per year, or \$22,500,000 over the life of the bonds.

Additionally, the utilities are expected to incur approximately \$500,000 of legal expenses due to the PUC hearings process. This would be borne by the Railbelt Electricity Consumers.

- ° In summary, the total additional costs incurred from this bill not passing would be approximately \$42,350,000.

Alaska Power Authority

NEED FOR EXPEDITIOUS PASSAGE OF NEW "SB22" LEGISLATION

The revised construction schedule adopted for Bradley Lake has been developed to accomplish two primary objectives: first, to complete the project in a reasonable timeframe which will bring the project on line when the utilities' seasonal demand for power is increasing; and second, to stimulate the construction industry and employment opportunities by initiating major construction efforts during the 1988 construction season.

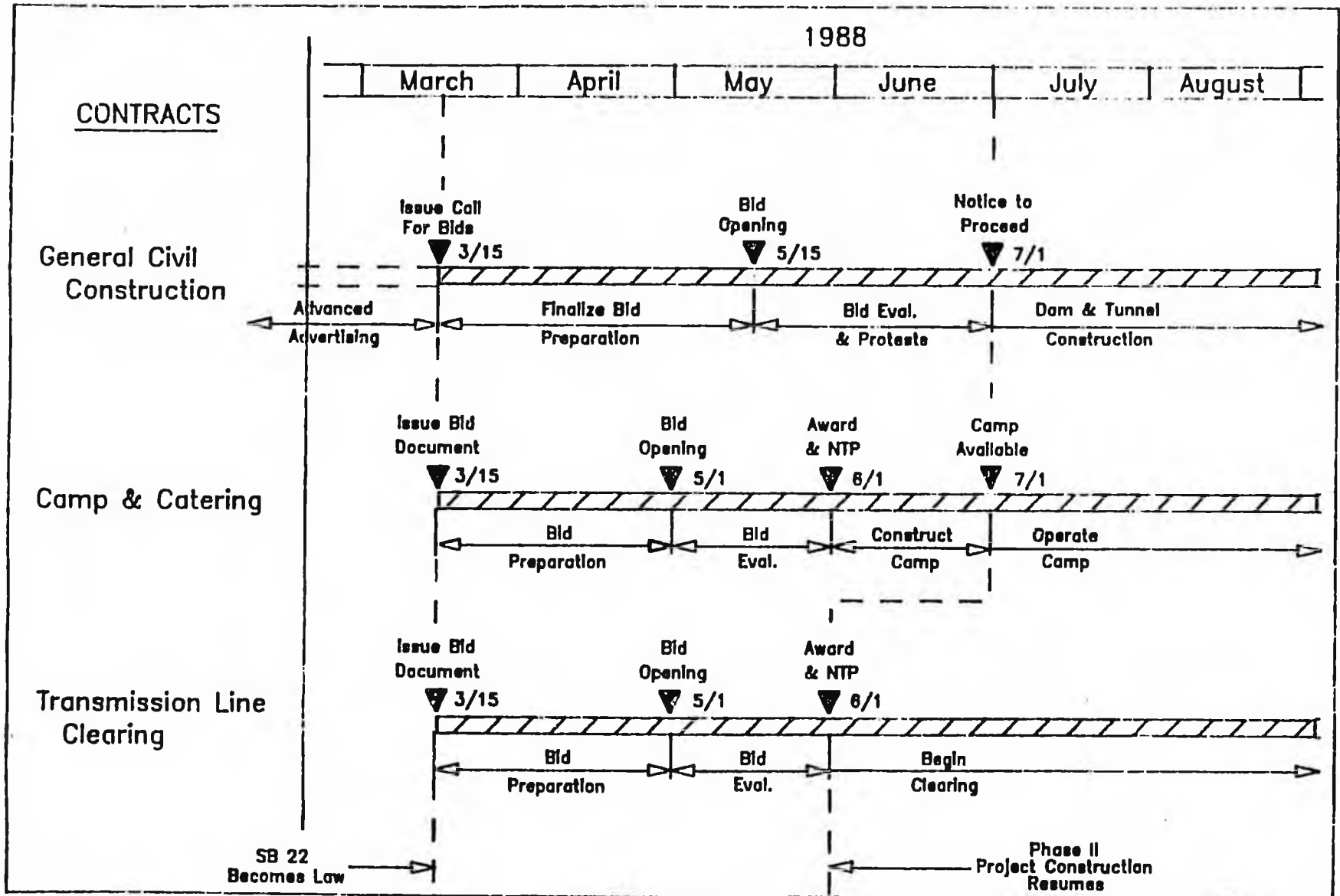
To accomplish the above objectives, and in particular to create a meaningful positive effect on the labor situation in 1988, it is imperative that the main construction contract (General Civil Construction) be awarded early enough in the summer of 1988 to enable the contractors to initiate work on both the dam and power tunnel. If the contract award is delayed beyond July 1, 1988, the contractor will still begin work on the power tunnel. However, due to the limited summer season remaining, work on the dam will probably not be initiated until the spring of 1989. As a consequence, the total 1988 work force will be reduced by approximately one-half.

Due to the time involved in advertising, bid preparation, bid opening, potential bid protests and the contract award process, in order to achieve a contract notice to proceed on July 1, 1988, it is imperative that "clean SB22" legislation be enacted and signed into law on or before March 15, 1988.

The attached flow chart shows the timetable required to achieve timely award of the General Civil Construction contract and other project contracts involving 1988 construction. Also attached is a bar chart which compares the estimated manpower requirements for 1988 resulting from early passage of SB22 (prior to March 15), versus late passage of the bill (May 15).

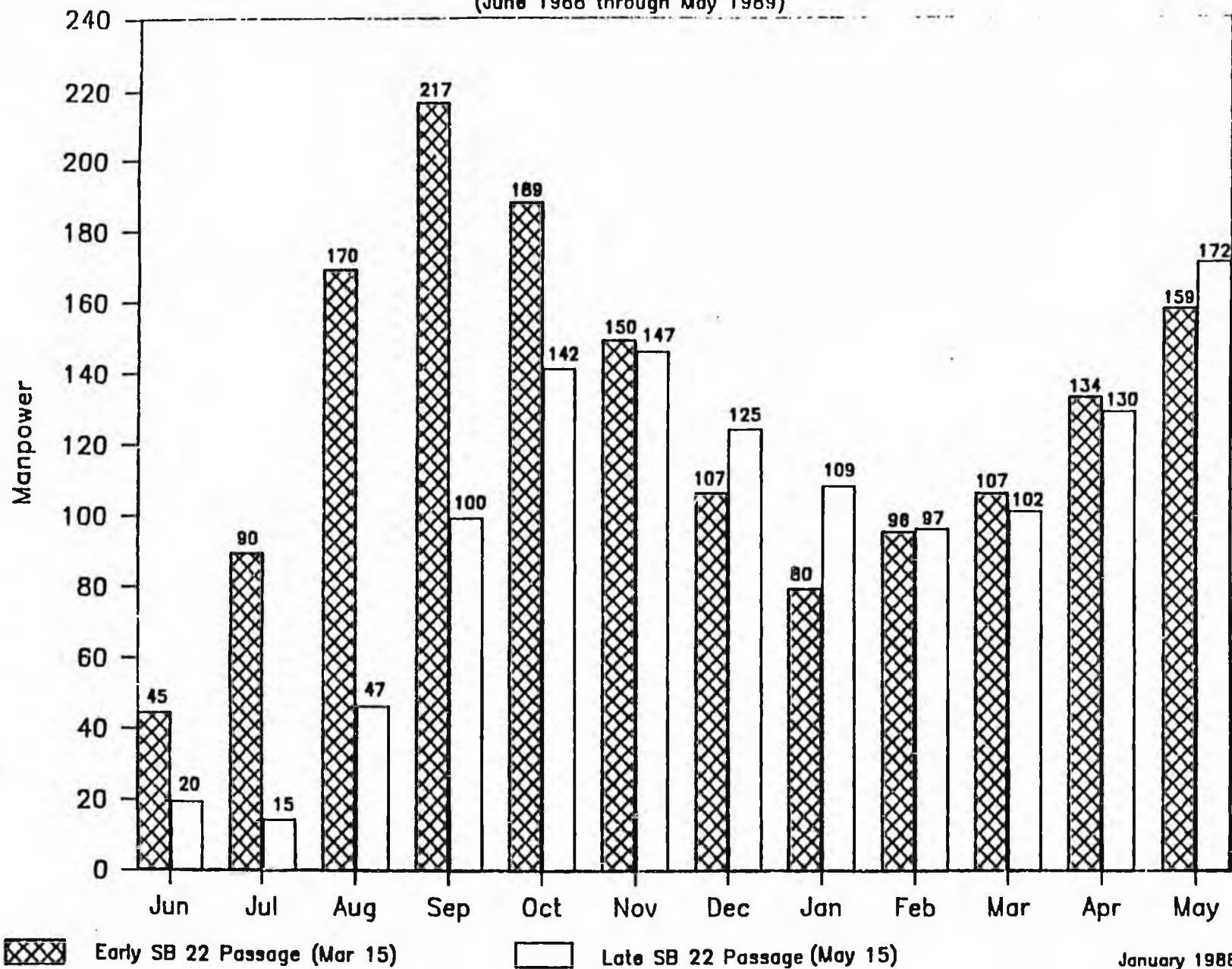
Attachments

Bradley Lake Hydroelectric Project 1988 Construction Schedule



Bradley Lake Hydroelectric Project Projected Manpower Requirements

(June 1988 through May 1989)



January 1988



Official Business

Alaska State Legislature

House

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

TO: Representative John Sund

FROM: Representative Kay Brown *Kay*

DATE: January 26, 1988

SUBJ: HB 356 - Bradley Lake Exemption from the APUC

As you review House Bill 356, which would exempt the Bradley Lake power sales contracts and related "services" and wheeling contracts from the review or approval of the Alaska Public Utilities Commission, I wish to draw your attention to several specific concerns I have with the bill.

I would like to preface my specific comments with a general statement of support for the administration's essential objective of trying to ensure that the Bradley Lake project is able to proceed with resumption of construction this summer. Although I still have reservations about the fundamental wisdom of the project, at this point, given the extent of the state's commitment (ie, "sunk" costs), I feel that additional delays would be counterproductive.

At the same time, however, I am concerned about the potential long-term adverse impacts that some of the language proposed in HB 356 would have on the ability of the APUC to protect consumer interests. I find it troublesome that the bill would provide not only that the Bradley Lake wholesale power contracts would be exempted, but also, "without limitation," all unspecified "other costs" as well. Additionally, there is language in the bill stating that "any subsequent amendments" are beyond APUC jurisdiction.

I also have concerns about Section 29 of the power sales contracts, which require that Railbelt consumers make "excess" payments beyond those required to pay off the debt for the project. Please find attached some draft language that would provide for the elimination of this provision.

Exempting the transmission agreements, together with the open-ended language contained in HB 356 providing an exemption for all "other costs" and "any amendments" would result, to a significant degree, in de facto deregulation of the Railbelt utilities.

I urge the Judiciary Committee to carefully explore language modifications to the bill which would meet two fundamental objectives:

- 1) ensure that the Bradley project construction can move forward this summer in order to complete the project in time to sell long-term tax exempt bonds prior to 1991; and
- 2) also ensure, to the greatest degree possible, that the APUC will be able to perform its regulatory functions and safeguard consumer interests.

The following specific comments are offered in the interest of working out such language modifications as quickly as possible to provide timely passage of a responsible HB 356.

SPECIFIC COMMENTS

All Unspecified "Other Costs" Exempted

In contrast to last years HCS CSSSSSB 22 (Fin), that provided only for the exemption of power costs, HB 356 calls for the exemption of "all costs... including, without limitation, power and other costs..." (see page 1, line 29 through page 2, line 4).

While an argument can be made that bond holders require the security of knowledge that the project debt will be repaid through power sales, the exemption of all other costs (ie, management salaries, consulting contracts, administrative costs, legal costs, and any other costs including those established by amendments to the contracts) cannot be justified. This would have the effect of allowing utilities to pass through without review any costs whether reasonable or not.

This open-ended language should be modified to provide only that power costs are to be guaranteed a flow through to the rates. All "other costs" should be reviewed and approved.

All Unspecified Amendments Exempted

HB 356 proposes not only to exempt the wholesale power contracts and the related services/wheeling contracts which have been entered into but also "any subsequent amendments" (see page 1, line 21).

It has been stated that there are other parties (secondary lenders including the Rural Electrification Administration) reviewing the contracts and who may require some amendments. There is also an expressed desire on the part of the utilities for "flexibility" to make changes in the contracts as the need arises.

Neither of these arguments is compelling. If the fundamental need is to respond to the possible demands of secondary lenders, then the bill should include a specific exemption for that purpose.

Assignability of Contracts

Another question regarding the exemption provisions concerns the potential assignability of the contracts. In the recent past there have been indications from Railbelt utilities that certain Outside, private investor-owned utilities are interested in purchasing Alaska co-ops.

Could these contracts be assigned to an investor-owned utility? If so, I would argue that potentially providing a categorical exemption from APUC review to a profit-making utility and allowing that utility to pass through "without limitation ... all costs" is inappropriate state policy adverse to consumer interests.

"Excess" Payments Requirement

Section 29 of the Power Sales Agreement (pages 28 -29) requires payments from Railbelt consumers "in excess of actual debt service required for retirement of Bonds issued to pay Recoverable Construction Costs." These payments are "in recognition of efforts" to obtain an intertie project between Fairbanks and the Kenai Peninsula, but are not contingent upon the success of such efforts. These "excess" payments, which are to commence upon the retirement of all bonds, are to be made to the APA for deposit into the Railbelt Energy Fund.

According to APA Executive Director Robert LeResche, the payments, which are to be based on the average annual debt service for the project, will be

approximately \$18 million per year over the period between year 30 and year 50 of the contracts for a cumulative total "excess" payment of approximately \$360 million in nominal dollars. This simplified scenario assumes no amendments to the contracts that could either extend the life of the contracts or increase the amount of the "excess" payments above that amount currently described in Section 29. Any such amendments, irrespective of reasonableness, would be categorically exempted from APUC review or approval under the terms of HB 356 as introduced.

From a Railbelt consumer perspective, even though these "excess" payments are not very sizable in discounted present value terms, the payments are difficult to justify. Notwithstanding the phrase "in recognition of efforts to obtain" the intertie, the payments would be for an essentially unspecified purpose -- or at least for a project which has not been demonstrated as economically feasible nor, I suggest, even likely to be relevant 30 years from now.

Moreover, when one considers the precedent established by the Four Dam Pool "project" financing arrangements (which provided that essentially half of the Four Dam Pool was debt financed and the remainder funded with cash grants) it appears that Railbelt consumers are being assessed an extraordinary charge for essentially unknown future purposes.

It is my feeling that the "excess" payment provision should be eliminated from the wholesale contracts. Fortunately, it appears that Section 29, which establishes the excess payment provision, could be eliminated without affecting other elements of the wholesale power contracts or the services/wheeling contracts.

I have attached language which would make the effective date of HB 356 contingent upon the elimination of this section.

Preservation of APUC Review and Cost Allocation Jurisdiction

My fundamental concerns with HB 356 as introduced center on the ability of the APUC to perform its basic regulatory functions and safeguard consumer interests. It is important to clarify the objective of the bill. The fundamental objective, as I understand it, is to ensure that Bradley Lake can proceed in a timely manner. It is not, as I understand it, the objective of this bill to legislatively deregulate the Railbelt utilities.*

However, HB 356 goes far beyond the scope of these basic objectives by eliminating even the review of any and all costs, without limitation,

associated with any undertakings "in connection with" the management, operation or administration of the Bradley Lake project and the related services and wheeling agreements. As a practical matter, the effect of HB 356 would be to put the direct project wholesale power costs, the associated transmission agreements, and indirect administrative and management costs, into a "black box". This would severely constrain and undermine the ability of the APUC to meaningfully regulate the Railbelt utilities.

In order for Bradley Lake to proceed this summer, it is apparent that the APUC must be removed from the initial approval of the power sales contracts. (Elimination of initial approval will obviate the concern that project opponents would use a Commission proceeding to delay the project.) In order to provide assurances to potential bond holders that the debt for the project will be recoverable, it also appears that some sort of provision providing a pass through of power costs to the rates may be appropriate.

At this point, I feel it is most important to focus on how it would be possible to preserve the ability of the APUC to:

- 1) review and approve non-power costs (ie, other than the wholesale power costs which would directly flow through to rate payers); and
- 2) also be able to review and approve as just and reasonable cost allocations associated with implementation of the related "services" and wheeling contracts.

Language which accomplished these objectives would satisfy the basic purpose of the bill -- to get the project restarted this summer and completed in time to issue tax exempt bonds by 1991.

Because the review and approval of the implementation of the related "services" and wheeling contracts could only come after the project was completed, maintaining this APUC authority would not conflict with the objective of getting the project restarted this summer.

It has been suggested that maintaining the jurisdiction of the APUC would, to some degree, carry a "cost premium" in the form of an incremental interest charge somewhere on the order of 3/8 to 1/2 of a percentage point. In terms of incremental costs, the APA has suggested that this would increase debt service costs on the bonds by several million dollars. This issue needs to be explored closely during the committee hearings to determine, as precisely as possible, what the cost premium would be for maintenance of the APUC's

regulatory authority, limited to non-power costs and only after the project was completed and operational.

Of course, any incremental "cost" resulting from higher interest charges must be weighed against the potential savings to consumers that would result from APUC review and approval over potentially excessive non-power costs such as administration salaries, consulting contracts, legal fees, lobbying contracts, etc.

From a consumer point of view, it would seem that the present value of these incremental costs -- to the extent that they can actually be determined to exist -- would be offset in part by regulatory cost controls in the future. Taken together with the proposal to save Railbelt consumers the cost of the "excess" charges as suggested above, a modified HB 356 as I have outlined should come at no extra cost to the consumer than what has been proposed. It would, however, still preserve the ability of the APUC to perform its essential regulatory functions and protect consumer interests.

(* It should be noted that all of the utilities participating in the project already have the means to deregulate themselves. Co-op's can deregulate, with the consent of the membership. It is noteworthy that, in the case of the co-ops at least, consumers have not allowed their utility management to opt out. The Legislature should not enact a measure that essentially pre-empts this consumer prerogative.)

cc: House Judiciary Committee members
Representative Swackhammer

Attachment 1

Draft Language to Eliminate Excess Payment Requirement

(conditional effective date)

Section ____ . This Act takes effect on the date that the Alaska Power Authority, as seller, and the Chugach Electric Association; Golden Valley Electric Association; Anchorage Municipal Light and Power; Seward Electric System; Alaska Electric Generation and Transmission Cooperative; Homer Electric Association; and Matanuska Electric Association, as purchasers, enter into an agreement to eliminate the requirement for payments in excess of actual debt service required for retirement of bonds for the Bradley Lake hydroelectric project as provided for in the "Agreement for the Sale and Purchase of Electric Power" dated _____ .



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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

January 27, 1988

MEMORANDUM

TO: Representatives John Sund and Kay Brown

ATTN: John Hartle and Eric Meyers

FROM: Ginny Fay *GF*
Legislative Analyst

RE: Bradley Lake Power Sales, Service, and Transmission Agreements and House Bill 356
Research Request 88.119

You requested that this agency review the following agreements, which House Bill 356 would remove from the purview of the Alaska Public Utilities Commission (APUC):

- the Bradley Lake Hydroelectric Power Sales Agreement (Power Sales Agreement);
- the Bradley Lake Hydroelectric Project Transmission Sharing Agreement (Transmission Agreement) between Homer Electric Association (HEA) and other Railbelt utilities; and
- the Bradley Lake Hydroelectric Project Agreement for the Wheeling of Electric Power and for Related Services (Services Agreement) between Chugach Electric Association (CEA) and the other Railbelt utilities.

You also asked that we compare provisions of the Bradley Lake Power Sales Agreement with the Four Dam Pool Power Sales Agreement. In addition, you asked that we suggest alternative language for HB 356 that would accomplish the objective of assuring immediate, continued progress on Bradley Lake construction but which would minimize impact on the APUC's general authority to review and approve electrical costs and rates.

The first part of this memorandum provides background information on the Bradley Lake project and HB 356 (Attachment A). The next section presents an overview of each of the three Bradley Lake agreements and compares the Bradley Lake and the Four Dam Pool power sales agreements. This is followed by a discussion of HB 356 and how it compares with the version of

Senate Bill 22 that was vetoed last session. The final section of this memorandum suggests alternative language for HB 356.

Background

The 90 megawatt Bradley Lake hydroelectric project is currently under construction by the APA on the Kenai Peninsula near Homer, Alaska. The APA has obtained State appropriations (\$168,080,000) and borrowed short-term funds to finance the initial costs of construction. The APA is ready to issue the Request For Proposals for the general civil engineering construction contract. Prior to committing to the completion of the project, however, the APA insisted that all three contracts noted above be agreed upon.

House Bill 356 was introduced by Governor Cowper to exempt these Bradley Lake contracts from APUC review and approval. Exemption from APUC review is deemed necessary to avoid extensive project delay caused by interveners in the APUC hearing process. Public Utility Regulatory Policy Act (PURPA) qualifying alternative energy facilities who intend to sell power to some of the Railbelt utilities are likely to intervene in the Bradley Lake hearing process. Similarly, the State regulatory review process provides an opportunity for parties who may oppose construction of the Bradley Lake project to delay its completion and thus jeopardize the APA's ability to obtain lower interest, tax-free bonding for the project. Deregulation of the Bradley Lake project by HB 356 also allows automatic flow-through of Bradley Lake costs into electric rates, thus guaranteeing revenue required for bond repayment.

As mentioned in the SB 22 hearings last session, removal of APUC authority over the Bradley Lake contracts does not eliminate all judicial opportunities for PURPA interveners; it simply transfers PURPA jurisdiction to the federal government. If APUC authority is removed, interveners can still file suits under PURPA in federal district court. This court would also hear any appeals of APUC decisions related to PURPA. In this regard, removal of APUC review authority would eliminate one step in the judicial process. The next section provides some general information on the three Bradley Lake project contracts.

The APA has been advised by bond counsel that APUC oversight of the contracts would raise the interest rates on bonds. There has been continued discussion of this point. We are unable to comment on the accuracy of the claims. The APUC review of projects does not preclude the recovery of "prudent" costs. However, given the excess generating capacity in the Railbelt, there is some question that Bradley Lake would be considered a prudent project at this time.

Bradley Lake Hydroelectric Project Contracts

Wholesale Power Sales Agreement. Of the three agreements entered into by utilities purchasing Bradley Lake power, the Power Sales Agreement (PSA) is the primary contract. Parties to the contract are the Alaska Power Authority (APA), CEA, HEA, Golden Valley Electric Association (GVEA), Anchorage Municipal Light and Power (AML&P), Matanuska Electric Association (MEA), Alaska Electric Generation and Transmission Cooperative, Inc. (AEG&T) and the Seward Electric System (SES). The PSA provides for the sale of 100 percent of the project's power to the purchasing utilities under an unconditional, take-or-pay contract.¹ The agreement also provides for the financing, operation, and maintenance of the project. The PSA governs the sale of bonds to finance up to \$175 million of the construction costs, the repayment of the bonded debt, the scheduling and sales of project power, administration of the Power Sales Agreement, the establishment of the Project Management Committee, and the determination of annual project costs.

The bonded debt will be retired by proceeds from the sale of project power. The debt, along with all other costs associated with operating and maintaining the project, will be included in a budget of annual project costs written by the Project Management Committee. The Project Management Committee is comprised of APA and all utilities purchasing Bradley Lake power (including voting members HEA and MEA and nonvoting member AEG&T). The Project Management Committee has the ongoing responsibility and authority to oversee all significant Bradley Lake project activities including controlling costs, writing the annual budget, and resolving disputes among the agreement's parties. The APA, however, retains the right to take "required actions" to ensure that financial obligations under the bond covenant are met.

The Power Sales Agreement has an initial term of 50 years. It becomes effective when all parties execute the agreement and have obtained all necessary approvals for it and the related Transmission and Services Agreements. Debt service on the bonds extends for 30 years. Upon the retirement of all bonds issued to pay recoverable construction costs, the purchasers of Bradley Lake power agree to make "excess payments" to the Railbelt Energy Fund "...in recognition of the Railbelt Energy Council's

¹Power from the Bradley Lake project is allocated on a percentage basis as follows: Alaska Electric Generation & Transmission Cooperative, Inc., 25.8 percent (acting for Hower Electric Association, 12.0 percent and Matanuska Electric Association, 13.8 percent); Chugach Electric Association, 30.4 percent; Golden Valley Electric Association, 16.9 percent; Anchorage Municipal Light & Power, 25.9 percent; and Seward Electric System, 1.0 percent. These shares are specified in Exhibit D of the Power Sales Agreement.

commitment to continued efforts to obtain a satisfactory transmission intertie between Fairbanks and the Kenai Peninsula..." Excess payments are to be paid in proportion to each purchaser's share of Bradley Lake power and will be equal to the average annual debt service on retired bonds minus any payments on debt issued to fund required project work. At a maximum, excess payments would equal four cents for each kilowatt hour (kwh) purchased by each of the utilities. Given that Bradley Lake's projected output is 369.2 kilowatt hours each year, the excess payments could be as much as \$14.8 million annually (nominal dollars) for power purchased after retirement of the bonds. Because the payments would commence so far in the future, the net present value of the 20-year revenue stream (2021-2040) is estimated to be about \$10 million. Excess payments will be made until the termination of the 50-year agreement period.

If the Bradley Lake project is not completed and operational by January 1, 1996, there is an "early out" provision for purchasers under the agreement. The PSA may be renewed for 40 year periods or for the life of the project, whichever is longer.

Table 1 (Attachment B) compares some of the major provisions of the Bradley Lake and Four Dam Pool power sales agreements. Most of the differences can be attributed to inherent differences in the projects or to differences in the timing of negotiation of the power sales agreements. Most of the Four Dam Pool projects produce excess power. This situation precluded take-or-pay contracts for all of the projects' power. In addition, the costs of some of the Four Dam Pool projects increased substantially from their original estimates. Furthermore, the projects were completed before the power sales agreement was in place, putting the State in a weaker negotiating position. The rate reopener provisions (2001 and 2016) in the Four Dam Pool agreement provides a mechanism to increase the debt service component on these projects rather than a means to decrease payments. In contrast, the Bradley Lake agreement includes a provision for excess payments which commence after the 30-year bond is retired. Both the rate reopener and excess payment provisions offer at least partial repayment of the State's equity in the projects.

Transmission Agreement. The Transmission Agreement is one of the "related contracts" mentioned in HB 356. The agreement between HEA and CEA, GVEA, and AML&P provides for HEA's construction of a 47 mile, 135 kilovolt (kv) transmission line between the Bradley Junction and Soldotna

Substation. The line, which is estimated to cost \$14.1 million to construct, will provide for delivery of Bradley Lake power to the purchasing utilities. The Transmission Agreement provides for the sale or lease of portions of the HEA line to CEA, GVEA, and AML&P.² The State of Alaska is not a party to this contract.

Parties to the agreement are expected to pay a portion of the line's construction costs as well as reimburse HEA "...each month for a portion of HEA's actual expenses associated with operating, maintaining, and repairing the Transmission Line." Formulas for calculating construction and operation and maintenance costs are attached to the agreement. As HB 356 is currently written, the costs specified by these formulas would not be subject to APUC review or approval.

The agreement also provides for a number of other operational considerations such as line upgrading, failure to construct, repairs, special provisions affecting CEA, and dispute resolution. The term of the agreement begins when all parties have executed it and it has received all necessary approvals. The agreement ends when the line is no longer used to transmit Bradley Lake power and all construction costs have been paid; or the date when the Power Sales Agreement terminates; or any such date as all parties mutually agree, provided the date meets with the approval of entities whose approval is necessary.

Services Agreement. The Services Agreement contract between CEA and HEA, GVEA, MEA, AML&P, SES, and AEG&T provides for the transfer of Bradley Lake power across CEA's transmission network, storage of Bradley Lake power in CEA's Cooper Lake hydroelectric facility, and energy purchase and displacement services to the purchasing parties by CEA. The Services Agreement establishes provisions for the: 1) continuity and scheduling of services with CEA serving as dispatcher; 2) right to additional transmission capacity; 3) establishment of rates and billings; and 4) resolution of disputes. Similar to the Transmission Agreement, the State is not a party to the Services Agreement, which is a "related contract" under HB 356.

Computation of wheeling rates to be paid by purchasing parties is determined by formulas attached to the agreement. The basic wheeling rate is indirectly tied (through variables in the formula) to CEA's rate adjustment proceedings which occur before the APUC. While this provides a "reference point" for the calculation of costs, determination of actual components of costs to be included in each variable is difficult. As noted in Appendix A of the service agreement,

²The CEA's proportion of the line includes its percentage share of Bradley Lake power plus that of SES and MEA.

Chugach's transmission O&M expense and A&G expense associated with Chugach's Beluga to Point Mackenzie transmission segment are not (and at this time cannot be) specifically identified and isolated from Chugach's total transmission O&M expense and A&G expense. Therefore, in computing "A" and "B" in the foregoing formula, reasonable estimates of Chugach's transmission O&M expense and A&G expense associated with Chugach's Beluga to Point Mackenzie transmission segment shall be used. Such estimates may be based on reasonable proxy variables.

Under HB 356, the APUC will not have the authority to determine the "reasonableness" of these proxy variables. The difficulty in isolating these costs for the computation of wheeling charges under the agreement is a precursor to the difficulties that would be faced by the APUC in determining utility costs in a partially deregulated power system.

The Services Agreement represents an operational alternative solution to transmitting Bradley Lake power to all purchasers in the absence of the State of Alaska's construction of an intertie from the Kenai Peninsula to Anchorage. Parties to the Service Agreement recognize that the agreement will be superseded if, and when, construction of an additional transmission line occurs, or if power pooling arrangements are made by the purchasing parties.

House Bill 356 and Senate Bill 22

The major contrast between HB 356 as introduced this session and SB 22 as passed last session is the additional exemption (from APUC review and approval) of service and transmission agreements related to the wholesale power sales agreement. This broadening of the scope of the bill reduces APUC's authority to review and approve utility costs and their inclusion in electrical rates. These agreements are included in the exemption because they form the operational basis for the financial obligations contracted in the Power Sales Agreement. These related contracts were probably not included in last year's bill only because they did not exist at the time.

Alternative Language For HB 356

Attachments C, D, and E provide alternative language for HB 356. The language provided is based on the following premises regarding the intention of the bill:³

³Mary Halloran, Office of the Governor, Director, Division of Policy, Office of Management and Budget, personal communication, January 20, 1988.

- to ensure completion of the Bradley Lake project without further delays caused by interveners in the APUC hearing process;
- to ensure that utility rates are adequate to repay bonded debt; and
- to minimize deregulation of Railbelt electric utilities.

The language provided in Attachment C primarily clarifies the language and intent of the bill. In section 1(c)(1), the reference to related contracts is moved within the October 1, 1987 and January 1, 1988 dates to more clearly specify the extent of related contracts covered. In section (c)(2), the "Alaska Power Authority" is added to clarify the pronoun "its" which was clear in last year's bill but vague in the current bill. Section 2 is unnecessary given the revised language of section 1(c)(2) of the bill and specification of "annual costs" in the Power Sales Agreement. However, if it is retained section 2 can be modified to specify "power and transmission" costs rather than "all" costs "without limitation." This change to section 2 limits the erosion of APUC authority, which is the governor's intent, without jeopardizing the repayment of bond debt provided for in section 1(c)(2).

Attachment D provides language that separates the financial obligation to bond holders under the Power Sales Agreement from the operational constraints provided by the related service and transmission agreements. Section 1(c)(1) and (2) pertain to the wholesale power sales agreement and ensure sufficient rates and revenues for repayment of the bonds. Section 2 of this modification provides that the commission shall allow related contracts between utilities to the extent required to enable performance under the wholesale power sales agreement. This ensures that rates and revenues are sufficient to make the power sales agreement fully operational without total deregulation of associated costs.

Attachment E is similar to Attachment D in that the language also separates the financial obligation aspects of the power sales agreement from the operational aspects of the transmission and service agreements. Section 1 is essentially the same as Attachment D. Given that section 1(c)(2) provides for rates sufficient to meet the financial obligation of the bonds, section 2 of this modification retains the APUC's ability to review the allocation of those costs among utilities and subsequently among retail

Representatives Sund and Brown
January 27, 1988
Page 8

customer classes. This change addresses the potential problem created by the original language of section 2; the far reaching language in this section eliminates the APUC's ability not only to approve or disapprove costs, but also to allocate costs among customer classes. The original language of section 2 goes beyond providing for the automatic flow-through of Bradley Lake costs; it allows utilities to attribute more than an appropriate share of total costs to Bradley Lake, thereby by passing the regulatory process.

* * *

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

Attachments

ATTACHMENT A
House Bill 356

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2

HOUSE BILL NO. 356

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 the authority of the Alaska
Public Utilities Commission in connection with cer-
tain activities of the Alaska Power Authority and in
connection with calculating power cost equalization;
and providing for an effective date."

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

12

* Section 1. AS 42.05.431 is amended by adding a new subsection to

13

read:

14

(c) Notwithstanding (b) of this section,

15

(1) a wholesale agreement for the sale of power from a
project licensed by the Federal Energy Regulatory Commission on or
before January 1, 1987, entered into between the Alaska Power Authori-
ty and one or more other public utilities after October 31, 1987 and
before January 1, 1988, and related contracts for the wheeling, stor-
age, regeneration, or wholesale repurchase of power purchased under
such an agreement, and any subsequent amendments to the wholesale
agreement or related contract, are not subject to review or approval
by the commission; and

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(2) a wholesale agreement or related contract described in
(1) of this subsection may contain a covenant for the public utility
to establish, charge, and collect rates sufficient to meet its obliga-
tions under the contract; such a covenant is valid and enforceable.

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* Sec. 2. AS 42.05.511 is amended by adding a new subsection to read:

29

(d) All costs incurred by a utility in connection with a

1 wholesale agreement or contract described in AS 42.05.431(c)(1),
2 including, without limitation, power and other costs incurred under
3 such an agreement or contract, must be allowed in the rates charged by
4 the utility.

5 * Sec. 3. AS 44.83.090(b) is amended to read:

6 (b) The authority is not subject to the jurisdiction of the
7 Alaska Public Utilities Commission. Nothing in this chapter [AS 44.-
8 83.010 - 44.83.425] grants the authority any jurisdiction over the
9 services or rates of any public utility or diminishes or otherwise
10 alters the jurisdiction of the Alaska Public Utilities Commission with
11 respect to any public utility, including any right the commission may
12 have to review and approve or disapprove contracts for the purchase of
13 electricity by a public utility other than wholesale agreements and
14 contracts described in AS 42.05.431(c)(1).

15 * Sec. 4. AS 44.83.162 is amended by adding a new subsection to read:

16 (p) In calculating power cost equalization, the commission may
17 not consider validated costs or kilowatt-hour sales associated with a
18 United States Department of Defense facility.

19 * Sec. 5. This Act is retroactive to November 1, 1987.

20 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

ATTACHMENT B
Comparison of the Four Dam Pool
and Bradley Lake Power Sales Agreements

TABLE 1
COMPARISON OF THE FOUR DAM POOL AND BRADLEY LAKE POWER SALES AGREEMENTS

FOUR DAM POOL	BRADLEY LAKE
State loan: more flexible repayment and rate reopener	Bonded indebtedness: 30 year payments
Project managed by Project Management Committee comprised of a member from each purchasing utility	Project managed by Project Management Committee comprised of a member from each purchasing utility
Project Management Committee has similar duties to the Bradley Lake Project Management Committee	Project Management Committee has similar role but APA has required affirmative vote in some cases
Debt rate reopener on debt service component only	Set debt payments over 30 years, no rate reopener on debt service
State equity = \$293.3 million	State Equity provided = \$181 million*
State Loan = \$191.2 million, 45 year term, 4.3 cents/kwh current debt service component	Bonded Debt up to \$175 million
No excess payments	Excess Payments of up to 4 cents/kwh for the years 31-50, present value of payments equals approximately \$10 million
Debt service and O&M charged for power sold, any additional sales increases revenues to the State	Take-or-pay contract for 100% of project power

* Based on estimated construction costs.

Note: These provisions are based on a review of the Bradley Lake Hydroelectric Project, Agreement for the Sale and Purchase of Electric Power and Long-Term Power Sales Agreement, Four Dam Pool - Initial Project of the Alaska Power Authority.

Prepared by the House Research Agency, January 1988, (88.119).

ATTACHMENT C
Alternative Language 1

BILL ROOT: HB0356
BILL NUMBER: HB 356 INTRODUCED: 1/13/88 REFERRED:
Judiciary and Finance

SPONSOR:

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

HOUSE BILL NO. 356
IN THE LEGISLATURE OF THE STATE OF ALASKA
FIFTEENTH LEGISLATURE - SECOND SESSION
A BILL

"An Act relating to the authority of the Alaska Public Utilities Commission in connection with certain activities of the Alaska Power Authority and in connection with calculating power cost equalization; and providing for an effective date."

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

* Section 1. AS 42.05.431 is amended by adding a new subsection to read:

(c) Notwithstanding (b) of this section,

(1) a wholesale agreement for the sale of power from a project licensed by the Federal Energy Regulatory Commission on or before January 1, 1987, and related contracts for the wheeling, storage, regeneration, or wholesale repurchase of power purchased under such an agreement, and any subsequent amendments, entered into between the Alaska Power Authority and one or more other public utilities after October 31, 1987 and before January 1, 1988, [AND RELATED CONTRACTS FOR THE WHEELING, STORAGE, REGENERATION, OR WHOLESale REPURCHASE OF POWER PURCHASED UNDER SUCH AN AGREEMENT, AND ANY SUBSEQUENT AMENDMENTS] are not subject to review or approval by the commission; and

(2) a wholesale agreement or related contract described in (1) of this subsection may contain a covenant for the public utility to establish, charge, and collect rates sufficient to meet the Alaska Power Authority's financial [ITS] obligations under the contract; such a covenant is valid and enforceable.

* Sec. 2. AS 42.05.511 is amended by adding a new subsection to read:

(d) [ALL] Power and transmission costs incurred by a utility in connection with a wholesale agreement or contract described in AS 42.05.431(c)(1), [INCLUDING, WITHOUT LIMITATION, POWER AND OTHER COSTS] incurred under such an agreement or contract, must be allowed in the rates charged by the utility.

* Sec. 3. AS 44.83.090(b) is amended to read:

(b) The authority is not subject to the jurisdiction of the Alaska Public Utilities Commission. Nothing in this chapter [AS 44.-83.010 - 44.83.425] grants the authority any jurisdiction over the services or rates of any public utility or diminishes or otherwise alters the jurisdiction of the Alaska Public Utilities Commission with respect to any public utility, including any right the commission may have to review and approve or disapprove contracts for the purchase of electricity by a public utility other than wholesale agreements and contracts described in AS 42.05.431(c)(1).

* Sec. 4. AS 44.83.162 is amended by adding a new subsection to read:

(p) In calculating power cost equalization, the commission may not consider validated costs or kilowatt-hour sales associated with a United States Department of Defense facility.

* Sec. 5. This Act is retroactive to November 1, 1987.

* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

ATTACHMENT D
Alternative Language 2

BILL ROOT: HB0356
BILL NUMBER: HB 356 INTRODUCED: 1/13/88 REFERRED:
Judiciary and Finance

SPONSOR:

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

HOUSE BILL NO. 356
IN THE LEGISLATURE OF THE STATE OF ALASKA
FIFTEENTH LEGISLATURE - SECOND SESSION
A BILL

"An Act relating to the authority of the Alaska Public Utilities Commission in connection with certain activities of the Alaska Power Authority and in connection with calculating power cost equalization; and providing for an effective date."

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

* Section 1. AS 42.05.431 is amended by adding a new subsection to read:

(c) Notwithstanding (b) of this section,

(1) a wholesale agreement for the sale of power from a project licensed by the Federal Energy Regulatory Commission on or before January 1, 1987, entered into between the Alaska Power Authority and one or more other public utilities after October 31, 1987 and before January 1, 1988, [AND RELATED CONTRACTS FOR THE WHEELING, STORAGE, REGENERATION, OR WHOLESALE REPURCHASE OF POWER PURCHASED UNDER SUCH AN AGREEMENT, AND ANY SUBSEQUENT AMENDMENTS TO THE WHOLESALE AGREEMENT OR RELATED CONTRACT, ARE NOT SUBJECT TO REVIEW OR APPROVAL BY THE COMMISSION; AND]

(2) a wholesale agreement [OR RELATED CONTRACT] described in (1) of this subsection may contain a covenant for the public utility to establish, charge, and collect rates sufficient to meet its obligations under the contract; such a covenant is valid and enforceable.

* Sec. 2. AS 42.05.511 is amended by adding a new subsection to read:

(d) [ALL COSTS INCURRED BY A UTILITY IN CONNECTION WITH A WHOLESALE AGREEMENT OR CONTRACT DESCRIBED IN AS 42.05.431(c)(1), INCLUDING, WITHOUT LIMITATION, POWER AND OTHER COSTS INCURRED UNDER SUCH AN AGREEMENT OR CONTRACT, MUST BE ALLOWED IN THE RATES CHARGED BY THE UTILITY.]

(d) The commission shall allow related contracts, including subsequent amendments, between utilities sufficient to enable performance under the wholesale power agreement described in (c)(1) above.

* Sec. 3. AS 44.83.090(b) is amended to read:

(b) The authority is not subject to the jurisdiction of the Alaska Public Utilities Commission. Nothing in this chapter [AS 44.-83.010 - 44.83.425] grants the authority any jurisdiction over the services or rates of any public utility or diminishes or otherwise alters the jurisdiction of the Alaska Public Utilities Commission with respect to any public utility, including any right the commission may have to review and approve or disapprove contracts for the purchase of electricity by a public utility other than wholesale agreements and contracts described in AS 42.05.431(c)(1) and AS 42.05.011 (d).

* Sec. 4. AS 44.83.162 is amended by adding a new subsection to read:

(p) In calculating power cost equalization, the commission may not consider validated costs or kilowatt-hour sales associated with a United States Department of Defense facility.

* Sec. 5. This Act is retroactive to November 1, 1987.

* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).