

ALASKA LEGISLATURE

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HOUSE and SENATE FINANCE COMMITTEE FILES, 1999 - 2000

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D. Recent AOGCC Action: The "MI/NGL" Dispute

A dispute has arisen between the two working interest owners responsible for operating the Prudhoe Bay Unit--ARCO and BPXA--regarding the proper levels of natural gas liquids ("NGLs") and miscible injectant ("MI"), respectively, to be derived from the Unit's separator off-gas.¹³ NGLs can be blended with oil and shipped through the Trans-Alaska Pipeline System ("TAPS") for sale. MI is used as an integral part of the Unit's enhanced oil recovery (EOR) program. The Central Gas Facility ("CGF"), however, can process only a fixed amount of separator off-gas each day. As a result, producing more NGLs for sale and shipment through TAPS reduces the amount of MI available for EOR projects. Because all oil derived from enhanced oil recovery is allocated to the Oil Rim Participating Area, and 90 percent of the NGLs are allocated to the Gas Cap Participating Area, C.O. 360 at ¶ 104, BPXA benefits from greater production of MI for enhanced oil recovery, while ARCO (and Exxon) benefit from greater production of NGLs for blending and sale. *See id.*, ¶ 153.

Effective February 1995, Alyeska Pipeline Service Co. ("Alyeska"), the operator of TAPS, removed all limits on the volume of NGLs that could be blended with oil for shipment through TAPS other than one based on vapor pressure control. C.O. 360, ¶ 10. ARCO, as operator of the CGF, increased the production of NGLs to meet the new vapor pressure control limit. *Id.*, ¶ 12. BPXA, as operator of Skid 50 (where NGLs are blended with oil for delivery to TAPS), refused

¹³ Separator off-gas is "hydrocarbon and nonhydrocarbon natural gas, including NGL Components and all other constituent elements of such natural gas except Separator Liquid, that is produced or otherwise voided from the Reservoir . . ." Prudhoe Bay Unit Operating Agreement, § 26.002 at p. 114 (April 1, 1977).

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to allow these additional NGLs to be blended with the crude oil stream, effectively precluding the production of additional NGLs. *Id.*, ¶ 13. ARCO attempted to blend additional NGLs at an earlier point in the process but BPXA further reduced Skid 50 blending to offset ARCO's efforts. *Id.*

ARCO brought its dispute with BPXA to the AOGCC, and asked it to rule that the best conservation practice concerning NGLs and MI is to blend and ship the maximum volume of NGLs allowed by TAPS. C.O. 360 at ¶ 14. BPXA, in turn, argued that the best conservation practice would be to produce the greatest possible quantity of MI (700 mmscfpd) at the expense of greater blending of NGLs. *Id.*, ¶¶ 15 and 18. Each contended that only its approach would prevent waste. *Id.*, ¶¶ 94, 96, and 97.

The AOGCC accepted ARCO's position, concluding that "[a]t least in the short term, the quantity and rate of production of oil and gas most likely to prevent waste and ensure greater ultimate recovery is to produce the maximum blendable volume of NGLs from hydrocarbons delivered to the CGF." C.O. 360, Conclusion 16. However, the AOGCC considered it "unlikely" that the parties would be before it on the question whether to maximize blendable NGLs or make more MI if the ownership interests in the Oil Rim Participating Area and the Gas Cap Participating Area were integrated. *Id.*, ¶ 140. For the future, the AOGCC offered its preliminary conclusion that further integration of the Oil Rim Participating Area and the Gas Cap Participating Area would be necessary:

Sufficient evidence has been heard regarding the effects of property and contractual arrangements on Prudhoe Bay development and operation to convince the [AOGCC] that the next phase of these proceedings should be more focused than the general investigation previously anticipated. It appears that more complete unitization and integration of interests in the

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Prudhoe Oil Pool will be necessary to prevent waste, ensure a greater ultimate recovery of oil and gas, and protect correlative rights. Consequently, in the absence of voluntary efforts, further hearings in this matter will be directed toward developing a plan of compulsory unitization.

Id., Conclusion 18. The AOGCC ordered a hearing "to develop a plan for compulsory unitization of the Prudhoe Oil Pool," citing AS 31.05 generally and AS 31.05.027, 31.05.030, 31.05.095, and 31.05.110, specifically, as authority.¹⁹

THE AOGCC CANNOT COMPEL UNITIZATION OF OIL AND GAS INTERESTS WHERE THOSE INTERESTS ARE ALREADY SUBJECT TO A UNIT PLAN APPROVED BY DNR UNDER AS 38.05.180(p)

A. The AOGCC's Compulsory Unitization Authority Is Limited to Instances Where the Parties Have Not Entered into a Voluntary Unit Approved by DNR Under 38.05.180(p)

Because administrative agencies "are creatures of statute, deriving from the legislature the authority for the exercise of any power they claim," *Rutter v. State*, 668 P.2d 1343, 1349 (Alaska 1983) (citation omitted), an agency cannot issue an order which goes beyond its statutory authority. *Far North Sanitation v. APUC*, 825 P.2d 867, 870 (Alaska 1992). See *Leedom v. Kyne*, 358 U.S. 184, 188-89 (1958). The issue here is whether the legislature has authorized the AOGCC to order the further unitization of oil and gas interests that are already subject to a unit plan approved by DNR under AS 38.05.180(p).

¹⁹ C.O. 360, Order 2. For its part, DNR determined that it also had jurisdiction to hold a hearing and issue orders relating to the M/NGL dispute. Decision Regarding Jurisdiction, *In the Matter of the Appropriate Reservoir Management for Optimization of Natural Gas Liquids Blending, Utilization of Miscible Injectant, and Maximization of the Economic and Physical Recovery within the Prudhoe Bay Unit*, before the Commissioner of Natural Resources and Commissioner of the Department of Revenue (August 20, 1995) ("DNR Decision re: Jurisdiction") at 1-2 and 81-82.

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1. **AS 31.05.110(q) limits the AOGCC's compulsory unitization powers to oil and gas interests not already part of a unit plan approved by the DNR**

The principal statutory provision establishing that the AOGCC's compulsory unitization authority does *not* extend to cases where oil and gas lessees have already agreed to integrate their interests under a plan approved by DNR is AS 31.05.110(q). That subsection makes *all* of AS 31.05.110 applicable to *involuntary* units, but only *some* of its provisions applicable to *voluntary* units and those entered into and approved by DNR under AS 38.05.180(p):

This section [*i.e.*, AS 31.05.110] applies to all ^{Voluntary & Involuntary} ~~involuntary~~ units formed in the state. Subsections (a) and (g) - (p) of this section apply to all voluntary units formed in the state and to a voluntary cooperative or unit plan of development or operation entered into in accordance with AS 38.05.180(p).

AS 31.05.110(q). Subsections (b) - (f)--those that expressly do not apply to voluntary units and those entered into under AS 38.05.180(p)--are the subsections governing the AOGCC's compulsory unitization powers.

Subsection (b), the first subsection identified by the legislature as not applying to DNR-approved unit plans, empowers the AOGCC to issue an order "providing for the unitization and unitized operation of the pool" if, after notice and hearing, the commission "finds that (1) the unitized management . . . of a pool is reasonably necessary to carry on . . . [any] form of joint effort calculated to substantially increase the ultimate recovery of oil and gas from the pool; (2) one or more of the unitized methods of operation . . . is feasible, and will prevent waste . . . ; (3) the estimated additional cost, if any, of conducting such operations will not exceed the value of the additional oil and gas so recovered; and (4) the unitization and adoption of one or more of the

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words or provisions are superfluous." *Rydwell v. Anchorage School District*, 864 P.2d 526, 530-31 (Alaska 1993) (citation omitted). The only interpretation of AS 31.05.110(q) that gives full effect to all of its terms is that the provisions establishing the AOGCC's compulsory unitization powers (AS 31.05.110(b)-(f)) do not apply to voluntary units and unit plans approved by DNR under AS 38.05.180(p). Any other reading would render that subsection utterly superfluous. Moreover, by specifically identifying only subsections (a) and (g) through (p) as applying to unit plans approved by the DNR, the legislature has clearly manifested an intent that the subsections not so identified do *not* apply. See *Burrel v. Burrel*, 696 P.2d 157, 165 (Alaska 1984) ("[i]t is an accepted rule of statutory construction that to include specific terms presumptively excludes those which are not enumerated"). See also 2A N.J. Singer, *Sutherland Statutes and Statutory Construction* § 47.24 at 228 (5th Ed. 1992) (same). The AOGCC therefore may not apply its compulsory unitization powers to oil and gas interests that are already subject to a unit plan, such as the PBUA, that has been approved by DNR under AS 38.05.180(p).²²

2. AS 31.05.110(a) confirms the legislature's intent to limit the AOGCC's compulsory unitization powers to oil and gas interests that have not been voluntarily unitized

AS 31.05.110(a) confirms the legislature's intent to limit the AOGCC's compulsory unitization powers to oil and gas interests that have not been voluntarily unitized. That statute provides as follows:

²² As noted previously, the PBUA was approved not only by the Commissioner of DNR, but by the AOGCC's predecessor, the Oil and Gas Conservation Committee in the Division of Oil and Gas Conservation. This memorandum, however, does not address whether principles of estoppel or other legal doctrines may be invoked to preclude the AOGCC from altering the terms of the PBUA.

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To prevent, or to assist in preventing waste, to insure a greater ultimate recovery of oil and gas, and to protect the correlative rights of persons owning interests in the tracts of land affected, *these persons may validly integrate their interests to provide for the unitized management, development, and operation of such tracts of land as a unit.* [Where, however, they have not agreed to integrate their interests,] the [AOGCC], upon proper petition, after notice and hearing, has jurisdiction, power and authority, and it is its duty to make and enforce orders and do the things necessary or proper to carry out the purposes of this section. *Including but not limited to*

(Emphasis added.) *compulsory unitization or reunification in a manner which*
~~to ensure a~~ *the commission's finding* ~~ensure a~~ *greater recovery of oil and gas.*
based upon
The two sentences of AS 31.05.110(a) set out two alternative methods for unitizing

oil and gas properties. First, it authorizes the parties to agree to integrate their lands. Where the parties have not done so, however, the AOGCC is expressly given the power to do what is necessary to accomplish that result -- i.e., to compel unitization.

The goal of statutory construction, of course, is "to give effect to the legislature's intent, with due regard for the meaning statutory language conveys to others." *Tesoro Alaska Petroleum Co. v. Kenai Peninsula Borough*, 746 P.2d 896, 905 (Alaska 1987) (citation omitted). The first sentence of AS 31.05.110(a) provides for voluntary unitization with no mention of the AOGCC. The AOGCC is expressly given "jurisdiction, power, and authority" only in the second sentence, subject to the condition precedent that the parties "have not agreed to integrate their interests." The meaning this language conveys to others is that the AOGCC's power to compel unitization is limited to instances in which the parties have not integrated their interests. This meaning is consistent also with the purposes generally of compulsory unitization statutes, which are "a legislative response to the need for compulsory process to deal with persons having minority interests in premises overlying a producing formation who refuse to unitize their premises with

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others despite the public interest in maximum recovery of hydrocarbons." Williams and Meyers, § 912 at 96 (emphasis added). If all persons with interests overlying a producing formation agree to unitize their interests, there is no need for a compulsory process.

If the legislature had intended the AOGCC to have the same jurisdiction, power, and authority where the parties had already agreed to integrate their interests, moreover, the language conditioning the express grant of that power to instances "[w]here . . . they have not agreed to integrate their interests" would have been unnecessary and superfluous. See *Rydwell*, 864 P.2d at 530-31 (courts presume legislature intended every word, sentence, or provision of statute to have purpose, force, and effect). Limiting the AOGCC's power to compel unitization to instances in which the parties "have not already agreed to integrate their interests" gives purpose, force, and effect to that phrase.²³

²³ The AOGCC also appears to have interpreted its general powers under AS 31.05.030 and its specific compulsory unitization authority under AS 31.05.110 as reaching only those cases where an agreement has not already been entered into:

A copy of an agreement validly integrating the interests of all persons owning interests in affected property in the pool or portion of the pool for which development is contemplated by the operator must be filed with the [AOGCC] no later than 30 days before the commencement of regular production from the pool. *In the absence of an agreement*, the [AOGCC] will, in its discretion, after notice and public hearing in accordance with 20 AAC 25.540, issue an order creating a unit, or an area of participation within a unit, which integrates the interests of all persons owning an interest in the pool or a portion of the pool.

20 AAC 25.517(c) (emphasis added). The AOGCC's longstanding interpretation that its compulsory unitization authority applies only "[i]n the absence of an agreement" is of course consistent with the limitations imposed by AS 31.05.110(a) and AS 31.05.110(q), and thus should be given effect. Cf. *Public Defender Agency v. Superior Court, Third Judicial District*, 534 P.2d 947, 952 (Alaska 1975) ("[c]ontinuous, contemporaneous and practical interpretation by executive officers . . . is a valuable aid in determining meaning").

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3. The statutory provisions describing the AOGCC's general jurisdiction and powers are not inconsistent with the conclusion that it cannot compel further integration of oil and gas interests that are already subject to a unit agreement approved by DNR

There are a number of statutory provisions that define in broad terms the scope of the AOGCC's jurisdiction and authority. Most significant among them is AS 31.05.030, which provides

in part:

J. The Comm. shall require reproductions of all voluntary and involuntary unit plan of development

Sec. 31.05.030. Powers and duties of commission. *or operation reservoir*

(a) The commission has jurisdiction and authority over all persons and property, public and private, necessary to carry out the purposes and intent of this chapter. *models of any and all type available*

(b) The commission shall investigate to determine whether or not waste exists or is imminent, or whether or not other facts exist which justify or require action by it. *what base are other relations to producers*

(c) The commission shall adopt regulations and orders and take other appropriate action to carry out the purposes of this chapter. *engineering*

(d) The commission may require . . . (9) the filing and approval of a plan of development and operation for a field or pool in order to prevent waste, insure a greater ultimate recovery of oil and gas, and protect the correlative rights of persons owning interests in the tracts of land affected. *and production data*

(e) The commission ~~may~~ ^{shall} regulate, for conservation purposes . . . (6) the quantity and rate of the production of oil and gas from a well or a property; this authority shall also apply to a well or property in a voluntary cooperative or unit plan of development or operation entered into in accordance with AS 38.05.180(p). *accumulation*

Other statutory provisions confirm the broad scope of the AOGCC's authority. For example, AS 31.05.027 provides that the AOGCC's authority "applies to all land in the state lawfully subject to its police powers" and, in particular, "applies to all land included in a voluntary cooperative or unit plan of development or operation entered into in accordance with AS 38.05.180(p)."

AS 31.05.026(e) provides that the DNR "shall have the same standing (no more or less) before the

K. The Comm. ~~shall~~ may, at its sole discretion, review all decisions made ~~by~~ and approved by DNR

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[AOGCC] as granted by law to any other proprietary interest." AS 31.05.060(a) provides that the AOGCC "may act upon its own motion." Finally, AS 31.05.095 prohibits the waste of oil and gas.

The question is whether these broad grants of power to the AOGCC override the specific limitations of AS 31.05.110(q) that the AOGCC's compulsory unitization powers do not apply to oil and gas interests that are already subject to a voluntary unit agreement or a unit plan entered into and approved by DNR under AS 38.05.180(p).

- a. **The statutes establishing the AOGCC's general jurisdiction and powers must be read together with the legislature's grant of authority to DNR and the specific limitations set forth in AS 31.05.110(q)**

Statutory construction begins with an analysis of the language of the statute construed in light of its purpose. *Borg-Warner Corp. v. Avco Corp.*, 850 P.2d 628, 633 n. 12 (Alaska 1993) (citation omitted). Ordinarily, an unambiguous statute is enforced as written without judicial construction or modification. *Lake v. Construction Machinery, Inc.*, 787 P.2d 1027, 1030 (Alaska 1990). "[H]owever, this rule is not controlling when a seemingly unambiguous statute must be considered in conjunction with another act. In that case, [the court] will examine the legislative history and adopt a reasonable construction which realizes legislative intent, avoids conflict or inconsistency, and gives effect to every provision of both acts." *Id.* (citation omitted).

The statutes establishing the AOGCC's general jurisdiction and powers must be read in conjunction with AS 38.05 and the provisions that specifically empower the DNR to approve voluntary or cooperative unit plans of development on state land, as well as with the specific limitations set forth in AS 31.05.110(q). The most reasonable interpretation under this approach is

that the legislature intended to limit the AOGCC's compulsory unitization powers to circumstances where the leaseholders had not already agreed to unitize their interests under a plan approved by DNR. This construction "gives effect to every provision of each act," *Lake*, 787 P.2d at 1030, by recognizing the legitimate statutory obligations of DNR and the specific limitations of AS 31.05.110(q), while acknowledging the AOGCC's power to carry out its statutory responsibilities on all land--including state-owned land already included in a unit plan approved by DNR--through its ability to issue orders that require or forbid specific oil field engineering practices. This construction "realizes legislative intent," *Lake*, 787 P.2d at 1030, because, among other things, it is consistent with the legislature's view that compulsory unitization is a remedy of last resort. See *infra*. This construction also "avoids conflict or inconsistency" by reconciling DNR's statutory responsibility to approve unit plans on state land with the AOGCC's ability to prevent waste, ensure the greater ultimate recovery of oil and gas, and protect correlative rights through orders relating to specific oil field engineering practices. A legislative grant of jurisdiction to the AOGCC over all land in the state simply is not inconsistent with the legislature's concurrent decision to limit the scope of the particular remedies or powers available to the AOGCC under certain circumstances.

b. The legislature's specific instructions regarding the limitations of the AOGCC's compulsory unitization powers control over the more general expressions of the scope of the AOGCC's authority

Even if the statutes governing the AOGCC's general powers and jurisdiction were somehow interpreted as being inconsistent with the specific limitations of AS 31.05.110(q), the limitations set forth in this latter provision must be given effect. It is an accepted rule of statutory

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construction that "if a specific section conflicts with a general section, the specific section controls." *Burton v. State Farm Fire and Casualty Co.*, 796 P.2d 1361, 1363 (Alaska 1990) (citation omitted). Because the legislature articulated a specific intent under AS 31.05.110(q) to exempt unit plans approved by DNR from the statutory provisions relating to the AOGCC's compulsory unitization powers, the Alaska courts will give effect to that intent, regardless of the existence of other, more general statutory provisions that could be interpreted differently.

4. **Legislative history supports the conclusion that the AOGCC's compulsory unitization powers do not extend to oil and gas interests that have already been included in a unit plan approved by the DNR**

Construing AS 31.05.110 as evincing a legislative intent that the AOGCC's compulsory unitization authority is limited to instances where the parties have not agreed to integrate their interests also is consistent with the statement of legislative policy that accompanied the 1978 repeal of AS 31.05.110(d).²⁴ A Free Conference Committee letter of intent adopted unanimously by the full House of Representatives reveals a clear legislative preference for voluntary unitization and an intent that compulsory unitization be limited to cases of "extreme necessity" where the parties had not agreed to unitize voluntarily:

²⁴ AS 31.05.110(d) provided that a compulsory unitization order would not be effective unless approved by the lessees of at least 62.5 percent of the unit area and the owners of at least 62.5 percent of the landowners' royalty interest. It was repealed in sec. 17 of ch. 160, SLA 1978; the AOGCC was granted its unitization authority in ch. 158, SLA 1978. Both of the bills that became ch. 160 and ch. 158 -- HB 815 and HB 830, respectively -- were sponsored by Rep. Chatterton and were considered contemporaneously, or nearly so, during the committee hearing process in both the House of Representatives and the Senate. The bill that became ch. 160, moreover, was passed by both the House of Representatives and the Senate two days before the bill that became ch. 158 was passed. Under these facts, the history relevant to the repeal of AS 31.05.110(d) is "a proper source of evidence of legislative intent" underlying the AOGCC's unitization authority. See *State v. Bundrant*, 546 P.2d 530, 545 (Alaska), *app. dismissed sub nom. Uri v. Alaska*, 429 U.S. 806 (1976).

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Section 17 of FCCS SCS HB 815 repeals Section 31.05.110(d), thus providing the Commissioner with the power to force all working and royalty interests in a pool or field, the boundaries of which are delineated by the Department, to cooperatively unitize their interests in a manner which protects correlative rights and provides for the management of field development and operation as a single unit, thus affording the best known methods for the prevention of waste as defined by AS 31.05.

It is not the intent of the legislature that the Commissioner draft and impose a unitization agreement and the terms of the agreement upon the parties of interest, except in cases of extreme necessity. Rather it is the intent of the legislature that the Commissioner normally exercise his authority to encourage the parties in interest to timely negotiate and finalize a voluntary unit agreement, or, when petitioned to do so, and he considers unitization necessary for the purpose of meeting the intent of this chapter, by drafting an agreement for acceptance by the parties. The agreement should, to the extent possible, contain[] terms which meet the needs of all parties in a manner that encourages acceptance.

1978 House Journal (June 16, 1978) at 1720.²⁵ Broadly construing the AOGCC's compulsory unitization powers to permit it to compel amendment of a unit agreement approved by DNR under AS 38.05.180(p) would be contrary to the legislature's stated intent to encourage voluntary unitization and limit compulsory unitization to cases of "extreme necessity."²⁶ It would also be

²⁵ HB 815 ultimately became ch. 160, SLA 1978. At the time the legislature passed the bill, the AOGCC had not yet been created and implementation of AS 31.05 was still the responsibility of the DNR. The references to the "Commissioner" and the "Department" were thus appropriate at the time the letter of intent was adopted. The letter nevertheless evinces a clear legislative preference for voluntary unitization under the statutes that now define the powers of the AOGCC.

²⁶ The only legislative history of AS 31.05.110(q) discovered to date is contained in what appears to be the minutes of the House Finance Committee for April 27, 1978 (p. 555). These minutes summarize the testimony of Rep. Chatterton, the sponsor of the bill that added subsection (q), as follows:

Section 12, [Rep. Chatterton] advised, adds a new subsection (q) that tries to assure that the conservation statute applies equally to lands that are included in a unit and are under Title 38, which is now a very gray area.

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contrary to what one treatise calls the "guiding principle" when a question is raised as to the extent to which an oil and gas conservation order can modify a pre-existing contract: "That is, there is a preference for freedom of contract. A . . . conservation order should extend only so far as necessary to prevent waste and protect correlative rights." 1 B.M. Kramer and P.H. Martin, *The Law of Pooling and Unitization* § 13.08 at 13-55 (3d Ed. 1994). This preference for freedom of contract is not surprising given, as noted previously, how difficult it is to unitize voluntarily. Such agreements "ordinarily are the products of long and careful negotiations among the owners of interests in the premises sought to be . . . unitized, [with the] negotiations extending in some cases over a number of years." Williams and Meyers, § 924 at 509. "Each negotiation has its own unique problems and substantial skills are required of those persons seeking to obtain agreement on a . . . unitization plan." *Id.* The record compiled in the AOGCC proceedings following issuance of C.O. 360 supports these general assertions, and shows, if anything, that negotiating the PBUA and the provisions in the Unit Operating Agreement implementing the PBUA's two participating area structure was even more difficult than the usual case.

²⁰(...continued)

This summary does not rebut the conclusion that subsection (q) makes *all* of AS 31.05.110 applicable to involuntary units and only subsections (a) and (g) through (p) applicable to unit plans approved under AS 38.05.180(p). Under subsection (q), the "conservation statute" clearly applies to lands included in a unit under Title 38; the only provisions of the statute that do not apply are those relating to compulsory unitization, as they are unnecessary where a unit has already been approved by the DNR. This legislative history does not overcome the apparent meaning of the statute. *Cf. Chokwak v. Worley*, 912 P.2d 1248, 1253 (Alaska 1996) (legislative history was insufficiently strong to require that literal language of statute be narrowed by interpretation).

5. **Substantial considerations of public policy support the conclusion that the AOGCC's compulsory unitization powers do not extend to oil and gas interests that have already been included in a unit plan approved by the DNR**

The AOGCC's primary responsibility is to prevent waste.²⁷ As identified in both AS 31.05.030(d)(9) and AS 31.05.110(a), its broader responsibilities are to prevent waste, to ensure a greater ultimate recovery of oil and gas, and to protect correlative rights. Its focus is on proper oil field engineering practices.²⁸ It has never been an active participant in the negotiation of unit agreements on state land.²⁹ It has no statutory authority to consider and no expertise in the kind of

²⁷ AS 31.05.030(b) states that the AOGCC "shall investigate to determine whether or not waste exists or is imminent, or whether or not other facts exist which justify or require action by it." The Wyoming Supreme Court, interpreting a statute that in all substantive respects is identical to AS 31.05.030(b), has stated that "the primary function" of Wyoming's analogue to the AOGCC is "the prevention of waste." *Majority of the Working Interest Owners in the Buck Draw Field Area v. Wyoming, Oil and Gas Conservation Commission*, 721 P.2d 1070, 1080 (Wyoming 1986).

²⁸ See, e.g., 1984 Inf. Op. Atty Gen. (April 24; 166-198-84) at 8-9 (footnote omitted):

[T]he [A]OGCC, the duties and powers of which are set out in Title 31 of the Alaska Statutes, is responsible statewide for ensuring maximum recovery of oil and gas by means of conservation orders which dictate the engineering mechanics of oil and gas production (flow rate, surface casing requirements, etc.).

See also Testimony of AOGCC Chairman David Johnston before the Senate Resources Committee, September 12, 1995, at 17 ("in terms of our definition of waste, it doesn't talk to economics, but it talks about good oil field engineering practices"); *id.* at 28 (agreeing with Sen. Pearce that the AOGCC is concerned with "good engineering practices"); testimony of AOGCC Chairman Chat Chatterton before the Senate Special Committee on Oil & Gas, March 31, 1987 (minutes following "Number 348") (AOGCC does "limiting of production purely from an engineering standpoint").

²⁹ Although 20 AAC 25.517(a) requires generally that an operator file with the AOGCC for approval a plan of development and operation before the development and operation of an oil or gas pool, a different rule applies to operators on state leases: "If properties to be developed are leased from the state, and committed to a unit approved by the commissioner of the Department of Natural Resources under AS 38.05.180, the plan of development and operation, and all updated plans of development and operation, required by AS 38.05.180, must be submitted to the [AOGCC] for informational purposes." (Emphasis added.) 20 AAC 25.517 became effective April 2, 1986 (Register 97). Ken Boyd, Director of the Division of Oil and Gas in DNR, testified before the Senate

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complex economic issues that will have to be resolved to protect the rights of all interested parties once the means of maximizing the recovery of oil and gas have been determined.³⁰ And it appears that its consistent and long-standing administrative practice has been to defer to DNR all issues other than oil field engineering practices.

DNR, on the other hand, although its authority generally applies only to land owned by the state, is responsible for implementing much broader public interests:

DNR is responsible in large part for implementing the constitutional mandate that the legislature "provide for the utilization, development, and conservation of all natural resources belonging to the State . . . for the maximum benefit of its people." Alaska Const. art. VIII, § 2. See AS 44.37.020(a). In the area of oil and gas leasing, the agency's function is not to run an enterprise but to make decisions that "best serve the interests of the state." AS 38.05.035(c).

²⁹(...continued)

Resources Committee, September 12, 1995, at 44, that the AOGCC does not have to "sign off" on either unitization or operating agreements on state land and that only DNR does so.

³⁰ See 1977 Inf. Op. Atty Gen. (February 14) at 7 ("the use of economic criteria, rather than engineering criteria, would represent a drastic change in regulatory practice in Alaska (and anywhere else for that matter) and thus, should only be undertaken in response to clear legislative direction"). See also testimony of AOGCC Chairman Chat Chatterton before the Senate Special Committee on Oil & Gas, March 3, 1987 (minutes at 4, following Number 348), on SB 49, a bill that, had it passed, would have added economic waste to the things that the AOGCC was to prevent (AOGCC does not have "in-house discipline" to address economic waste because it has no economists; "some agency would need some real sharp economists to administer it"); testimony of AOGCC Commissioner David Johnston before the House Oil and Gas Committee, February 10, 1992 (minutes following 92-7, Number 172), on HB 433, a bill that, had it passed, would have added "economic waste" to the things that the AOGCC was to prevent (AOGCC "didn't possess qualifications to determine economic waste"); and AOGCC Chairman David Johnston's testimony before the Senate Resources Committee, September 12, 1995, at 16-17 ("nothing in our statute really points to considering economics"); *id.* at 26 ("We chose, at the time in '92, as a policy decision by the legislature and by the administration at that time, not to add economics to the powers and duties of the [AOGCC], and clearly, um, now under powers and duties, the [AOGCC] may regulate for conservation purposes, and is silent to economics").

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State, Department of Natural Resources v. Arctic Slope Regional Corporation, 834 P.2d 134, 143 (Alaska 1991).

When making decisions "for the maximum benefit of [the state's] people" and that "best serve the interests of the state" in administering state land for oil and gas purposes, DNR shares some of the same goals given the AOGCC under AS 31.05. Not surprisingly, to that end the legislature left with DNR powers similar to those it transferred to the AOGCC.³¹ However, because DNR's responsibility is significantly broader than the AOGCC's with respect to state land, DNR also has authority to address both economic and physical recovery issues as part of its consideration of the overall best interests of state and the interests of other parties.³² It has experience as an active participant in the negotiation and subsequent amendment of unit agreements on state land under

³¹ For example, as has been discussed, AS 38.05.180(p) authorizes state lessees to unite with others "in collectively adopting or operating under a cooperative or a unit plan of development or operation of the pool, field, or like area, or a part of it, when determined and certified by the commissioner to be necessary or advisable in the public interest." It also permits the commissioner to include a provision in state oil and gas leases "requiring the lessee to operate under a reasonable cooperative or unit plan" and to "prescribe a plan under which the lessee must operate" which "must adequately protect all parties in interest, including the state."

³² AS 38.05.180(a) includes a legislative finding that "(1) the people of Alaska have an interest in the development of the state's oil and gas resources to (A) maximize the economic and physical recovery of the resources." 11 AAC 83.303(a) provides that the commissioner of natural resources will approve a proposed unit agreement if it (1) promotes the conservation of all natural resources, including all or part of an oil or gas pool or field, (2) promote the prevention of both economic and physical waste, and (3) protect all interested parties including the state. In making those determinations, 11 AAC 83.303(b) provides, among other things that the commissioner will consider "(5) the economic costs and benefits to the state." Under 11 AAC 83.303(c), the commissioner will consider the criteria in (a) and (b) when evaluating any requested approval or authorization for a unit agreement, an extension or amendment of a unit agreement, a plan of exploration, development, or operations, a participating area, or a proposed or revised production or cost allocation formula. And DNR has formally determined that it has the legal authority to conduct investigations and issue orders related to the M/NGL dispute giving rise to your request for this opinion. DNR Decision Regarding Jurisdiction, *supra* n. 19. The Alaska Supreme Court has recognized that the state's economic welfare is promoted "by maximizing the amount it receives for the lease of its lands" and "the legitimacy of using the state's police power to protect the government's financial stability." *Arctic Slope Regional Corp.*, 834 P.2d at 143.

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AS 38.05.180(p), which includes the negotiation and subsequent amendment of the Unit Agreement at issue here. To the extent any state agency does, DNR has the expertise to address the kind of complex economic issues that have to be resolved to protect all interested parties where state oil and gas leases are involved. Under these circumstances, exempting unit plans approved by DNR under AS 38.05.180(p) from the AOGCC's compulsory unitization powers is consistent with sound public policy.

**B. The AOGCC Has No Implied Authority to Overturn Unit Plans
Approved by DNR under AS 38.05.180(p)**

As shown above, AS 31.05.110(q) limits the AOGCC's compulsory unitization authority to cases where the parties have not adopted a unit plan approved by the DNR under AS 38.05.180(p). The AOGCC, however, appears to suggest that the limitations imposed by AS 31.05.110(q) should not apply where the unit plan approved by DNR does not, in the AOGCC's view, sufficiently or "complete[ly]" unitize the oil and gas interests that have been made subject to the plan. See C.O. 360, Conclusion 18 ("It appears that more complete unitization and integration of interests in the Prudhoe Oil Pool will be necessary to prevent waste, ensure a greater ultimate recovery of oil and gas, and protect correlative rights. Consequently, in the absence of voluntary efforts, further hearings in this matter will be directed toward developing a plan of compulsory unitization"). Implicit in this suggestion is that the AOGCC has the power to review a "voluntary cooperative or unit plan of development or operation entered into in accordance with AS 38.05.180(p)," and to substitute its judgment for that of the DNR regarding whether the unit agreement is valid. The relevant statutes, however, contain no express grant of power to the

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AOGCC to review DNR's approval of a unit plan under AS 38.05.180(p) and, for the reasons discussed below, the courts are unlikely to find that the AOGCC has an implied power to do so.

An administrative agency "has no inherent powers, but only such as have expressly granted to it by the legislature or have, by implication, been conferred upon it *as necessarily incident to the exercise of those powers expressly granted.*" *State v. Dept. of Transp. of Wash.*, 33 Wash.2d 448, 206 P.2d 474-75 (1949) (emphasis added), *quoted with approval in Greater Anchorage Area Borough v. City of Anchorage*, 504 P.2d 1027, 1033 n.19 (Alaska 1972), *overruled on other grounds, City & Borough of Juneau v. Thibodeau*, 595 P.2d 626, 629 (Alaska 1979). *See State Farm Mutual Automobile Insurance Co. v. Barnes*, 585 P.2d 929, 931 (Colo. App. 1978) ("[p]owers not expressly granted to a regulatory agency will be implied only if such powers are necessary in order to achieve the objectives of the statute, and if the implied power is exercised in a reasonable manner"). In determining whether a power is necessarily implied, however, courts generally employ a rule of strict construction. *See Public Service Commission v. Formal Complaint of WWZ Co.*, 641 P.2d 183, 186 (Wyoming 1982) ("the statutes creating and empowering the [agency] must be strictly construed and any reasonable doubt of the existence of any power must be resolved against the exercise thereof"); *Williams v. Public Service Commission*, 754 P.2d 41, 50 (Utah 1988) ("[t]o ensure that the administrative powers of the PSC are not overextended, 'any reasonable doubt of the existence of any power must be resolved against the exercise thereof'"); *Swede v. City of Clifton*, 125 A.2d 865, 869 (N.J. 1956) ("where there is reasonable doubt of the existence of a particular power, the power is denied").

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Consistent with these principles, the Alaska Supreme Court narrowly construes the scope of an agency's implied powers. See *McDaniel v. Cory*, 631 P.2d 82, 88 (Alaska 1981) (fine levied by Human Rights Commission held invalid where "no statutory authority exists which gives the Commission the power to award damages to complainants in public accommodation discrimination cases"); *Warner v. State*, 819 P.2d 28, 31 n. 1 (Alaska 1991) ("[f]ollowing *McDaniel*, we will narrowly interpret a statute as to the question of whether it grants the agency the discretion to promulgate rules").

There is no basis for concluding that the AOGCC has the implied power under its organic statutes to substitute its judgment for that of the DNR under AS 38.05.180(p) regarding the validity of a unit agreement among working interest owners holding state oil and gas leases. The limitations imposed by AS 31.05.110(q), which exempt unit plans approved by the DNR from the AOGCC's compulsory unitization powers, would be meaningless, or virtually so, if the AOGCC could ignore a DNR determination approving a particular unit plan. Such authority is not "necessarily incident to the exercise of those powers expressly granted" to the AOGCC, *Greater Anchorage Area Borough*, 504 P.2d at 1033 n.19, because that agency has broad powers apart from its compulsory unitization powers to prevent waste, ensure the greater ultimate recovery of oil and gas, and protect correlative rights, on and off state land. There is no need to imply the further power to review and reject DNR approvals of unit plans to enable the AOGCC to carry out its statutory responsibilities, and therefore the courts will not imply that power.

This conclusion is supported by the reasoning of the Alaska Supreme Court in *McDaniel*. The *McDaniel* court found no implied power to assess a damages remedy despite the

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Human Rights Commission's argument that "if a respondent . . . is not forced to pay damages, the purpose of the statute cannot as a practical matter be effectuated" and that "[t]his would result in many situations where no meaningful relief would be available." 631 P.2d at 88. The Court's response was that "[i]f there is merit to this argument, the legislature, rather than this court, must remedy the defect."³³ It nevertheless went on to consider and reject the merits of the Commission's argument because "[t]he Commission has been given broad powers to enjoin and compel affirmative action to eliminate discriminatory practices and may construct an appropriate remedy without resort to damages." *Id.*

³³ *McDaniel*, 631 P.2d at 88. It should be noted that there was some legislative effort directed at resolving the jurisdictional dispute between the DNR and the AOGCC during the Second Session of the Nineteenth Legislature. On December 29, 1995, Representatives Green and Davis introduced House Bill No. 381, entitled "An Act relating to oil and gas conservation and recovery." Section 1 of this bill would have authorized the AOGCC to "modify a determination or action of the commissioner of natural resources authorized by . . . AS 38.05.180(p), (q), or (u); . . ." Section 2 would have provided that an order of the AOGCC would prevail over "a determination or action of the commissioner of natural resources authorized by . . . AS 38.05.180(p), (q), or (u); . . ." And section 3, the final section, would have amended AS 38.05.180(q) to provide that "the provisions of (p) of this section and this subsection may be modified by the Alaska Oil and Gas Conservation Commission by an order entered under AS 31.05.100 - 31.05.110." In a bill analysis dated January 8, 1996, the AOGCC (through David W. Johnston, Chairman), supported the bill on the ground that it "will remove any ambiguity about the prevailing authority of the Commission under its police powers to prevent waste, protect correlative rights and ensure a greater ultimate recovery [of oil and gas]." In a bill analysis dated January 25, 1996, the Department of Natural Resources (through Ken Boyd, Director of the Division of Oil and Gas) opposed the bill on a number of grounds, one of which was that it would "direct an agency not charged with maximizing the economic benefits from the State's lands, to control oil and gas development and operations on State lands," something that, in DNR's view, "could significantly impact the State's economic and financial welfare." In a letter dated February 12, 1996, addressed to David Koivuniemi, Deputy Commissioner of the Department of Administration, all three commissioners of the AOGCC recommended that, "[t]o help resolve these jurisdictional issues," the Department of Law undertake a "deliberate review of the statutes . . . in advance of any legislative effort to amend the law." The bill ultimately failed to pass.

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Like the Human Rights Commission in *McDanel*, the AOGCC also "has been given broad powers to enjoin and compel affirmative action to eliminate" practices that are contrary to its statutory responsibilities, such as the waste of oil and gas, and thus "may construct an appropriate remedy without resort to" a remedy that has not been specifically provided for by the legislature. For example, under AS 31.05.030, the AOGCC may "regulate, for conservation purposes . . . the quantity and rate of the production of oil and gas from a well or property," and this authority expressly extends to a well or property in a unit plan approved by the DNR under AS 38.05.180(p). See AS 31.05.030(e)(6). In addition, the AOGCC has the power to require the making and filing of reports, well logs and other information on wells drilled for oil or gas, AS 31.05.030(d)(2), the drilling, casing or plugging of wells to "prevent blowouts, cavings, seepages and fires," AS 31.05.030(d)(3), the furnishing of a reasonable bond sufficient to ensure the repair of a well causing waste, AS 31.05.030(d)(4), the measurement and fixing of gas-oil and water-oil ratios for particular wells, AS 31.05.030(d)(5), and the measuring and monitoring of oil and gas pool pressures, AS 31.05.030(d)(8). The AOGCC also has the power to investigate whether waste exists or is imminent, AS 31.05.030(b), impose penalties for violations of AS 31.05 or an AOGCC regulation or order adopted under it, AS 31.05.150, and to seek injunctive relief any time "it appears that a person is violating or threatening to violate any provision of this chapter, or any regulation or order of the [AOGCC]." AS 31.05.160(a).

These authorities give the AOGCC a variety of options to accomplish the purposes of the state's conservation statutes that stop short of compulsory reunification of a unit agreement entered into and approved by DNR pursuant to its statutory responsibilities. Indeed, the M/NGL

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proceedings before the AOGCC, which culminated in C.O. 360 and an order requiring, at least in the short term, the production of the maximum amount of blendable NGLs by the working interest owners, proves the efficacy of these alternate procedures. Although the AOGCC may believe that altering the underlying contractual arrangements of the working interest owners as approved by DNR will be more efficient than dealing with allegations of waste on a case by case basis, the relevant statutes provide no authority to the AOGCC to review DNR approvals of unit plans under AS 38.05.180(p).³⁴

C. Even If the Authority and Jurisdiction of the AOGCC and DNR Overlapped in Such a Way That the AOGCC Could Compel Unitization of Oil and Gas Leases on Terms Different than Those Already Approved by DNR, Principles of Comity and Deference Would Require the AOGCC to Refrain from Exercising That Jurisdiction

The analysis above concludes that AS 31.05.110(q) unambiguously exempts oil and gas interests from the AOGCC's compulsory unitization powers where those interests are already subject to a unit plan approved by DNR under AS 38.05.180(p). Nevertheless, even if the limitations imposed by AS 31.05.110(q) could somehow be ignored, and the statutes defining the authority of

³⁴ This conclusion is not inconsistent with the rule that an agency has the power to conduct proceedings to determine whether it has jurisdiction. Cf. *FPC v. Louisiana Power & Light Co.*, 406 U.S. 621, 647 (1972) (applying doctrine that agency has primary authority to determine its own jurisdiction). Thus, although AS 31.05.110(q) exempts voluntary unit agreements and unit agreements approved by the DNR from the ambit of the AOGCC's compulsory unitization powers, the AOGCC has the authority to inquire, as an initial matter, whether there is, in fact, a voluntary unit agreement or a unit agreement approved by the DNR. Although it is unnecessary for the purposes of this memorandum to address the full scope of the AOGCC's power to review the validity of a voluntary unit agreement (other than one approved by the DNR), at a minimum it would have the authority to ensure that such an agreement is not a sham designed to avoid the Commission's jurisdiction. But where, as here, there is no question that the unit agreement at issue has been approved by DNR pursuant to its responsibilities under AS 38.05.180(p), the AOGCC's inquiry, at least insofar as its compulsory unitization powers are concerned, has reached the end of its statutory rope.

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the AOGCC were interpreted to permit compulsory reunification of state oil and gas leases already subject to a DNR-approved unit plan, the fact the AOGCC can accomplish its statutory objective of preventing waste without infringing upon DNR's jurisdiction renders it likely that the Alaska courts would preclude the AOGCC from using its compulsory unitization powers here.

As noted above, shortly after statehood the legislature made DNR responsible for both conservation of oil and gas, under laws now codified at AS 31.05, and the management of state lands under AS 38.05. Prior to the 1978 legislation establishing the AOGCC, the potential for conflict between the administration of these two sets of laws was minimal because DNR administered them both. As a result of the establishment of the AOGCC in 1978, however, both the AOGCC and DNR have at least some statutory authority over the production of oil and gas from state land, and the potential for conflict exists. This potential for conflict, though, imposes additional obligations upon both agencies: where two agencies share the same or comparable statutory responsibilities, each "must fully enforce the requirements of its own statute, but must do so, insofar as possible, in a way that minimizes the impact of its actions on the policies of the other statute." *New York Shipping Association v. Federal Maritime Comm'n*, 854 F.2d 1338, 1367 (D.C. Cir. 1988). "[T]he policies of diverse statutory regimes are best preserved if each agency scrupulously avoids deciding questions of law or policy that more properly lie within the jurisdiction of another agency, when a more limited inquiry into the requirements of its own statute is sufficient to dispose of the question before it." *Id.* at 1368. Furthermore, an administrative agency "should be particularly careful in its choice of remedy . . . because of the possible effects of its decision on the

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functioning of [another statutory policy].” *Id.* at 1370 (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 172 (1962)).

The conclusion that an agency must choose to the extent possible a remedy that does not conflict with the jurisdiction of another is based upon necessary principles of comity and deference among related agencies. As one court has articulated it:

[P]rinciples of comity and deference to sibling agencies are part of the fundamental responsibility of administrative tribunals charged with overseeing complex and manifold activities that are also the appropriate statutory concern of other governmental bodies. This is a corollary application of the broader principle that where a court has concurrent, discretionary jurisdiction with another court or an administrative agency, the decision to exercise jurisdiction *vel non* should be fully responsive to the competence, expertise and status of the other tribunal.

Hinfey v. Matawan Regional Board of Education, 391 A.2d 899, 907-08 (N.J. 1978) (citations omitted; emphasis added).³⁵ These principles “are designed to assure that a controversy, or its most critical facets, will be resolved by the forum or body which, on a comparative scale, is in the best

³⁵ The New Jersey Court described the rationale underlying the rule of comity among agencies as follows:

There is no reason, absent an occlusive statutory bar, for an administrative agency to be obtuse to the genuine concerns of other administrative agencies which possess concurrent jurisdiction over the same subject matter. This is especially so where the controversy is multidimensional and legitimately touches the competence of more than one agency. In that context, administrative agencies should never be encouraged to engage in internecine struggles for jurisdictional hegemony. The unilateral and possessive assumption of jurisdiction by one agency to the exclusion of another, perhaps more suitable, agency creates the risk that, although a many-sided controversy may be laid to rest in whole or in part from the vantage of a single administrative agency, in the process other important interests may be mishandled or neglected.

Hinfey, 391 A.2d at 907-08. “These precepts, prudently applied, serve as well to circumvent collisions between administrative agencies occupying similar areas and to avoid conflicts in agency decisions over the same subject matter.” *Id.* at 908.

position by virtue of its statutory status, administrative competence and regulatory experience to adjudicate the matter." *Id.*

Under the approach advocated in *Hinfey* and *New York Shipping Association*, the AOGCC, assuming it had the power to apply its compulsory unitization powers to oil and gas interests already subject to a unit plan approved by DNR, must analyze the alternatives it has for carrying out its statutory responsibilities in terms "of the possible effects those alternative courses of action may have on the functioning and policies" of DNR's statutory regime. If there is the potential for interfering with DNR's responsibilities, it must choose the approach that avoids or at least minimizes that interference.³⁶

Applying these principles here, it is apparent that an AOGCC order under its compulsory unitization powers to force the working interest owners to combine their interests in the initial participating areas would directly contravene DNR's determination that the separate participating area approach of the PBUA furthered the state's interests.³⁷ Moreover, an assertion by the AOGCC of the power to unilaterally realign the contractual arrangements of working interest owners in unit plans approved by the DNR has the potential to undermine DNR's authority to negotiate such plans on terms that reflect the best interests of the state. DNR may, for example, face

³⁶ "[A]n agency, faced with alternative methods of effectuating the policies of the statute it administers, (1) must engage in a careful analysis of the possible effects those alternative courses of action may have on the functioning and policies of other statutory regimes, with which a conflict is claimed; and (2) must explain why the action taken minimizes, to the extent possible, its intrusion into policies that are more properly the province of another agency or statutory regime." *New York Shipping Association*, 854 F.2d at 1370.

³⁷ An order compelling the integration of the two participating areas would also conflict generally with DNR's decision to promulgate 11 AAC 83.351(a), which provides in part that "[s]eparate participating areas may be established to distinguish between an oil rim and a gas cap."

unwarranted difficulties in negotiating unit plans for state oil and gas leases if state leaseholders view them as merely advisory or contingent and subject to unilateral modification by the AOGCC. More generally, unilateral action by the AOGCC invalidating the PBUA also may undermine the state's efforts to promote oil and gas development: if the holders of state leases cannot be assured that the agreements they reach with DNR will be honored by the AOGCC, it increases the risks and thus the costs of doing business with the state. And, for the policy reasons given previously, DNR "on a comparative scale, is in the best position by virtue of its statutory status, administrative competence and regulatory experience," *Hinfrey*, 391 A.2d at 908, to approve unit plans that protect the best interests of the state, and particularly its economic interests, when state oil and gas leases are involved.

In sum, even if the AOGCC's statutory authority extended so far as to enable it to compel reunification of oil and gas interests already subject to a unit plan approved by DNR, the courts are likely to consider an exercise of that authority under these circumstances to be an abuse of agency discretion. Because the AOGCC clearly has alternatives to compulsory unitization in carrying out its statutory responsibilities that do not directly conflict with the statutory responsibilities delegated to DNR, the AOGCC must choose one of those alternatives.

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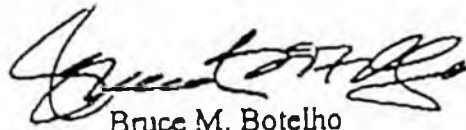
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CONCLUSION

For all of the foregoing reasons, the AOGCC's compulsory unitization powers do not extend to oil and gas interests that are already subject to a unit plan entered into and approved by DNR under AS 38.05.180(p).

Very truly yours,



Bruce M. Botelho
Attorney General

BMB:JPG:pw

(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: May 8, 1999

FURTHER REFERRALS:

Date of Committee Action: 5/12/99

The FINANCE Committee considered:

CSSB 133(RLS) am

CS FOR SENATE BILL NO. 133(RLS) am

REGULATORY COMMISSION OF ALASKA

"An Act creating and relating to the Regulatory Commission of Alaska and transferring to it certain powers and duties of the Alaska Public Utilities Commission; repealing the Alaska Public Utilities Commission; relating to the powers of the chair of the Regulatory Commission of Alaska; relating to regulatory cost charges for public utilities and pipelines; relating to the appellate procedures of the Regulatory Commission of Alaska; relating to the Alaska Oil and Gas Conservation Commission; and providing for an effective date."

recommends it be replaced with the following committee substitute HCS CSSB 133 (Fin) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: HFC Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)
 fiscal note(s) DCED, DDA ^(for incoming) fiscal note(s) _____

zero fiscal note(s) _____ zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Gene Theriault</i>	Theriault	X			
<i>Edon Mulder</i>	Mulder	X			
<i>Don Brundt</i>	Brundt			X	
<i>Ving Kohring</i>	Kohring	X			
<i>Alan Austerman</i>	Austerman	X			
<i>J. DAVIES</i>	J. DAVIES	X			
<i>Grussendorf</i>	Grussendorf			X	
<i>Williams</i>	Williams	X			
<i>Justin</i>	Justin	X			

CHAIR'S SIGNATURE *Gene Theriault* *Edon Mulder*
Theriault Mulder

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HCS CSSB133 (FIN)

Revision Date/Time _____	Dept. Affected _____	Dept of Admin. _____
Title <u>REGULATORY COMMISSION OF ALASKA</u>	BRU	<u>AOGCC</u>
Sponsor <u>Pearce</u>	Component	<u>AOGCC</u>
Requester <u>House FIN</u>	Component Serial No.	<u>2010</u>

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual	147.0	147.0	147.0	147.0	147.0	147.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	147.0	147.0	147.0	147.0	147.0	147.0

CAPITAL EXPENDITURES (GF)	321.9	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	147.0	147.0	147.0	147.0	147.0	147.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	147.0	147.0	147.0	147.0	147.0	147.0

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time	0.0	0.0	0.0	0.0	0.0	0.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)

Operating Budget

This bill creates the Regulatory Commission of Alaska. The bill also requires the AOGCC and the APUC to be co-located. \$147.0 of additional operating funds are necessary for lease costs associated with the move. (8,000 X \$2.00/sq. ft. less \$45,000 available from current facility maintenance budget)

Capital Budget

Relocating the AOGCC offices will require a capital expenditure of \$281.9 in FY 2000 to cover moving costs and new office furniture for 23 employees. AOGCC will also need to invest in a new computer network system to be compatible with the APUC system. The cost for an updated network is estimated to be \$40.0 and is also included in the capital request.

Prepared by B Robert Christenson, PE
 Division Alaska Oil and Gas Conservation Commission
 Approved by Commissioner [Signature]
 Agency _____

Phone 279-1433
 Date/Time _____
 Date 5/12/99 5/13/99

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. H CSSB 133 (L&C)

Revision Date/Time (Note if correction) _____ Dept. Affected _____
 Title Alaska Public Utilities Commission BRU AK Public Utilities Commission/AEGCC
 Component APUC/ARC Operations
 Sponsor Senator Pearce
 Requester House Finance Component Serial No. 346

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	3,287.0					
Travel	35.0					
Contractual	1,300.9					
Supplies	62.5					
Equipment	13.8					
Land & Structures	0.0					
Grants & Claims	0.0					
Miscellaneous	0.0					
TOTAL OPERATING	4,699.2	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	500.0					
-----------------------------	--------------	--	--	--	--	--

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1110 APUC Rcpts	4,699.2	0.0	0.0	0.0	0.0	0.0
TOTAL	4,699.2	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time	55	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)

The APUC recently contracted for an analysis to determine the recommended specifications and cost of an information management system that would fulfill the requirements specified in the proposed CS. Without the benefit of the results of this study, a capital appropriation of \$500,000 is estimated for this cost.

Potential administrative savings from partial consolidation in FY2000 are not estimated because the timing of the AOGCC move is unknown. Similarly, potential administrative savings and/or improved efficiencies are likely in FY2001 and beyond in areas such file maintenance and reception services but are difficult to estimate at this time given the current understaffing at both agencies. Similarly, the potential cost increase of the public advocacy section is not reflected because of uncertainties in calculating the costs.

Prepared by Ginny Fay Phone 465-2503
 Division Commissioner's Office Date/Time 5/11/99 11:19 AM
 Approved by Commissioner Deborah B. Medwick Date 5/11/99
 Agency _____

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LETTER OF INTENT

SB 133 repeals the Alaska Public Utilities Commission and creates the Regulatory Commission of Alaska. In making this change to public utility regulation, it is the intent of the Legislature to respond to recommendations in legislative audits conducted in 1979, 1985 and 1989, and an audit performed by the National Regulatory Research Institute (NRRI) in 1998. The task of regulating public utilities has changed dramatically as the utility industry has moved from total regulation to regulated competition. The 21st Alaska Legislature is creating the Regulatory Commission of Alaska to address these changes in the utility industry on behalf of the people of the state of Alaska.

The Regulatory Commission of Alaska is better equipped than the APUC to respond to industry proposals for changes in utility services, and to protect the interests of ratepayers in the wake of these changes. SB 133 gives the chair authority over administrative matters, leaving the other commissioners free to resolve substantive issues. To address the problem of the APUC's case backlog and time-consuming decision-making process, SB 133 allows panels of three commissioners, hearing officers or arbitrators to resolve cases where appropriate. It also requires the RCA to adopt regulations setting procedural timelines. To address the problems created by changing APUC staff's role between advocate and advisor, it establishes a separate public advocacy section within the RCA.

SB 133 will improve this agency's accountability to the public. The RCA is required to establish a Management Information System, similar to the Legislature's BASIS system so that the public and industry can be better informed about the RCA's proceedings. It requires the RCA to implement a time management system to record the amount of time spent on filings from different industries, so that the Regulatory Cost Charge can be more fairly assessed.

This year is an opportune time to make these changes. The Alaska Public Utilities Commission would begin winding down on June 30, 1999 under the sunset law. SB 133 requires the governor to appoint, and the Legislature to confirm, five commissioners who will represent the interests of the public.

SB 133 provides for a study of the possibility of combining the functions of the Regulatory Commission of Alaska and the Alaska Oil and Gas Conservation Commission. The results of a study by the Legislative Budget and Audit Committee will be presented to the next session of this Legislature. If the Legislature decides to combine the two agencies' functions, the challenge of making that transition will be significantly eased by the creation and operating experience of the RCA under SB 133.

1-LS077(VT)
Cramer
5/12/99

NO OBJ

adopted 5/12/99 pm

HOUSE CS FOR CS FOR SENATE BILL NO. 133(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATOR PEARCE

A BILL

FOR AN ACT ENTITLED

1 "An Act creating and relating to the Regulatory Commission of Alaska and
2 transferring to it certain powers and duties of the Alaska Public Utilities
3 Commission; repealing the Alaska Public Utilities Commission; relating to the
4 powers of the chair of the Regulatory Commission of Alaska; relating to
5 regulatory cost charges for public utilities and pipelines; relating to the appellate
6 procedures of the Regulatory Commission of Alaska; relating to the Alaska Oil
7 and Gas Conservation Commission; and providing for an effective date."

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

9 * Section 1. AS 42 is amended by adding a new chapter to read:

10 **Chapter 04. Regulatory Commission of Alaska.**

11 **Article 1. Commission and Staff.**

12 **Sec. 42.04.010. Regulatory Commission of Alaska created.** (a) There is
13 created within the Department of Commerce and Economic Development as an

1 independent agency of the state the Regulatory Commission of Alaska.

2 (b) When a vacancy occurs in the office of chair, the commission may
3 nominate one of its members to serve as chair. When a vacancy occurs in the office
4 of chair, the governor shall designate the chair of the commission, either by selecting
5 the member nominated by the commission or another member. The term as chair is
6 four years. The chair may not be appointed to successive terms as chair.

7 **Sec. 42.04.020. Commissioners.** (a) The commission consists of five
8 commissioners appointed by the governor and confirmed by the legislature in joint
9 session. To qualify for appointment as a commissioner, a person must be a member
10 in good standing of the Alaska Bar Association or have a degree from an accredited
11 college or university with a major in engineering, finance, economics, accounting,
12 business administration, or public administration. Actual experience for a period of
13 five years in the practice of law or in the field of engineering, finance, economics,
14 accounting, business administration, or public administration is equivalent to a degree.

15 (b) The term of office of each member is six years. A commissioner, upon
16 the expiration of a term, shall continue to hold office until a successor is appointed and
17 qualified.

18 (c) A vacancy arising in the office of a commissioner shall be filled by
19 appointment by the governor and confirmed by the legislature in joint session, and,
20 except as provided in AS 39.05.080(4), an appointee selected to fill a vacancy shall
21 hold office for the balance of the full term for which the predecessor on the
22 commission was appointed.

23 (d) A vacancy in the commission does not impair the authority of a quorum
24 of commissioners to exercise all the powers and perform all the duties of the
25 commission.

26 (e) The governor may remove a commissioner from office for cause, including
27 incompetence, neglect of duty, inability to serve, or misconduct in office or because
28 the member, while serving on the commission, is convicted of a misdemeanor for
29 violating a statute or regulation related to public utilities or is convicted of a felony.
30 A commissioner, to be removed for cause, shall be given a copy of the charges and
31 afforded an opportunity to be publicly heard in person or by counsel in the

1 commissioner's own defense upon not less than 10 days' notice. If a commissioner
2 is removed for cause, the governor shall file with the lieutenant governor a complete
3 statement of all charges made against the commissioner and the governor's finding
4 based on the charges, together with a complete record of the proceedings.

5 (f) Members of the commission are in the exempt service and are entitled to
6 a monthly salary equal to Step C, Range 26, of the salary schedule in AS 39.27.011(a)
7 for Juneau, Alaska. The chair of the commission is entitled to a monthly salary equal
8 to Step C, Range 27, of the salary schedule in AS 39.27.011(a) for Juneau, Alaska.

9 (g) Each commissioner, before entering upon the duties of office, shall take
10 and subscribe to the oath prescribed for principal officers of the state.

11 **Sec. 42.04.030. Principal office; seal.** (a) The commission shall establish a
12 principal office and branch offices necessary to discharge its business efficiently. For
13 the convenience of the public or of parties to a proceeding, the commission may hold
14 meetings, hearings, or other proceedings at other locations.

15 (b) The commission shall have an official seal.

16 **Sec. 42.04.040. Legal counsel.** (a) The Department of Law shall provide full-
17 time legal counsel to the commission.

18 (b) The commission may, subject to the approval of the attorney general,
19 contract for the services of specialized legal counsel or legal consultants.

20 **Sec. 42.04.050. Employment of commission personnel.** (a) The chair of the
21 commission is responsible for directing the administrative functions of the commission
22 and carrying out the policies as set by the commission. The commission chair may
23 employ engineers, hearing officers, administrative law judges, experts, clerks,
24 accountants, and other agents and assistants considered necessary. Employees of the
25 commission who are not in the exempt service under AS 39.25.110 or the partially
26 exempt service under AS 39.25.120, are in the classified service under AS 39.25.100.

27 (b) The chair of the commission may enter into a contract for no more than
28 \$5,000 to engage the services of a consultant or expert the chair considers necessary.
29 The commission may contract for and engage the services of consultants and experts
30 the commission considers necessary.

31 (c) At the request of the Alaska Oil and Gas Conservation Commission and

1 to the extent workload permits, the Regulatory Commission of Alaska shall make
2 available to the Alaska Oil and Gas Conservation Commission the services of a
3 hearing officer.

4 **Sec. 42.04.060. Restrictions on members and employees.** (a) A member of
5 the commission or an employee of the commission may not have an official connection
6 with, hold stock or securities in, or have a pecuniary interest in a public utility within
7 the state. Membership in a cooperative association is not a "pecuniary interest" within
8 the meaning of this section; however, a member or employee of the commission may
9 not be an officer, board member, or employee of a cooperative association. A member
10 or employee may not act upon a matter in which a relationship of the member or
11 employee with any person creates a conflict of interest.

12 (b) A member or employee of the commission may not, after leaving the
13 position as a member or employee of the commission, act as agent for or on behalf of
14 a public utility in any matter before the commission that was before the commission
15 during the employee's employment or the member's term of office. A violation of this
16 subsection is a class A misdemeanor.

17 (c) Members and employees of the commission, except clerical and secretarial
18 staff, are subject to AS 39.50. Members and employees of the commission are subject
19 to AS 39.52.

20 (d) A member of the commission is disqualified from voting upon any matter
21 before the commission in which the member has a conflict of interest.

22 **Sec. 42.04.070. Powers and duties of commission chair.** (a) The chair of
23 the commission shall

24 (1) employ the commission staff;

25 (2) establish and implement a time management system for the
26 commission;

27 (3) assign the work of the commission to members and staff of the
28 commission so that matters before the commission are resolved as expeditiously and
29 competently as possible; when assigning a matter, the chair shall also set a date by
30 which time the matter should be completed.

31 (b) The chair of the commission may appoint a hearing officer or an

1 administrative law judge to hear a matter that has come before the commission; a
2 member of the commission may serve as hearing officer or, if qualified, as an
3 administrative law judge.

4 (c) The chair of the commission shall direct the public advocacy section to
5 participate as a party in a matter when the commission believes that it is in the public
6 interest to do so.

7 **Sec. 42.04.080. Decision-making procedures.** (a) Except as provided in
8 AS 42.05.171 or AS 42.06.140, when a matter comes for decision before the
9 commission under AS 42.05 or AS 42.06, the chair shall appoint a hearing panel
10 composed of three or more members to hear, or if a hearing is not required, to
11 otherwise consider, and decide the case. The panel shall exercise the powers of the
12 commission with respect to the matter. - appeal gone -

13 (b) The commission shall adopt regulations by December 31, 1999, that
14 establish standards of timeliness for the types of cases that come before the
15 commission. The commission shall establish standards based in part on degrees of
16 complexity of the cases.

17 **Article 2. Communications Carriers Section.**

18 **Sec. 42.04.100. Communications carriers section.** There is established
19 within the commission a communications carriers section that shall develop,
20 recommend, and administer policies and programs with respect to the regulation of
21 rates, services, accounting, and facilities of communications common carriers within
22 the state involving the use of wire, cable, radio, and space satellites.

23 **Article 3. Public Advocacy Section.**

24 **Sec. 42.04.150. Public advocacy section.** There is established within the
25 commission a public advocacy section. The section shall participate as a party in
26 matters that come before the commission when directed to do so in accordance with
27 AS 42.04.070(c). The public advocacy section shall operate separately from the rest
28 of the commission.

29 * Sec. 2. AS 29.35.137(6) is amended to read:

30 (6) "local exchange telephone company" means a telephone utility
31 certificated under AS 42.05 [BY THE ALASKA PUBLIC UTILITIES

1 COMMISSION] to provide local exchange service;

2 * Sec. 3. AS 37.05.146(b) is amended to read:

3 (b) The program receipts listed in this subsection are accounted for separately,
4 and appropriations from these program receipts are not made from the unrestricted
5 general fund:

6 (1) federal receipts;

7 (2) University of Alaska receipts (AS 14.40.491);

8 (3) designated program receipts; in this paragraph, "designated program
9 receipts" means money received by the state from a source other than the state or
10 federal government that is restricted to a specific use by the terms of a gift, grant,
11 bequest, or contract;

12 (4) receipts of the following:

13 (A) highway working capital fund (AS 44.68.210);

14 (B) correctional industries fund (AS 33.32.020);

15 (C) loan funds;

16 (D) international airport revenue fund (AS 37.15.430);

17 (E) corporate receipts earned or managed by a public
18 corporation of the state;

19 (F) fish and game fund (AS 16.05.100);

20 (G) school fund (AS 43.50.140);

21 (H) training and building fund (AS 23.20.130);

22 (I) retirement funds (AS 14.25, AS 22.25, AS 26.05.222,
23 AS 39.35, and former AS 39.37);

24 (J) permanent fund (art. IX, sec. 15, Alaska Constitution);

25 (K) public school trust fund (AS 37.14.110);

26 (L) second injury fund (AS 23.30.040);

27 (M) fishermen's fund (AS 23.35.060);

28 (N) FICA administration fund (AS 39.30.050);

29 (O) receipts of the employee benefits program established under
30 AS 39.30.150 - 39.30.180;

31 (P) receipts of the deferred compensation program established

1 under AS 39.45;

2 (Q) clean air protection fund (AS 46.14.260);

3 (R) receipts of the group insurance programs established under
4 AS 39.30.090;

5 (S) mental health trust fund (AS 37.14.031);

6 (T) Alaska children's trust (AS 37.14.200);

7 (U) commercial fisheries test fishing operations
8 (AS 16.05.050(15));

9 (V) Regulatory Commission of Alaska [PUBLIC UTILITIES
10 COMMISSION] under AS 42.05 and AS 42.06;

11 (5) receipts of or from the trust established by AS 37.14.400 -
12 37.14.450, except reimbursements described in AS 37.14.410.

13 * Sec. 4. AS 39.25.120(c) is amended by adding a new paragraph to read:

14 (25) hearing officers and administrative law judges of the Regulatory
15 Commission of Alaska.

16 * Sec. 5. AS 39.50.200(b)(24) is amended to read:

17 (24) Regulatory Commission of Alaska (AS 42.04.010) [PUBLIC
18 UTILITIES COMMISSION (AS 42.05.010)];

19 * Sec. 6. AS 42.05.151(b) is amended to read:

20 (b) The commission shall adopt regulations governing practice and procedure,
21 consistent with due process of law, including the conduct of formal and informal
22 investigations, pre-hearing conferences, hearings, and proceedings, and the handling
23 of procedural motions by a single commissioner. The regulations must provide for
24 the hearing or, when a hearing is not required, other consideration of a matter
25 in accordance with AS 42.04.080. Technical rules of evidence need not apply to
26 investigations, pre-hearing conferences, hearings, and proceedings before the
27 commission. The commission shall provide for representation by out-of-state attorneys
28 substantially in accordance with Rule 81, Alaska Rules of Civil Procedure.

29 * Sec. 7. AS 42.05.171 is amended to read:

30 Sec. 42.05.171. **Formal hearings.** A formal hearing that the commission has
31 power to hold may be held by or before a hearing panel appointed under

1 AS 42.04.080 [THREE OR MORE COMMISSIONERS], a hearing officer, or an
2 administrative law judge designated for the purpose by the chair of the commission.
3 In appropriate cases, a formal hearing may be held before an arbitrator
4 designated for the purpose by the commission. The testimony and evidence in a
5 formal hearing may be taken by the panel [COMMISSIONERS], by the hearing
6 officer, by the arbitrator, or by the administrative law judge to whom the hearing has
7 been assigned. A decision of a hearing officer, an arbitrator, or an administrative
8 law judge is not final until approved by the commission. A commissioner who has
9 not heard or read the testimony, including the argument, may not participate in making
10 a decision of a hearing panel [THE COMMISSION]. In determining the place of a
11 hearing, the commission shall give preference to holding the hearing at a place most
12 convenient for those interested in the subject of the hearing.

13 * Sec. 8. AS 42.05.254(a) is amended to read:

14 (a) A regulated public utility operating in the state shall pay to the commission
15 an annual regulatory cost charge in an amount not to exceed the maximum
16 percentage of adjusted gross revenue that applies to the utility sector of which the
17 utility is a part. The regulatory cost charges that the commission expects to
18 collect from all regulated utilities may not exceed .8 percent of the total adjusted
19 gross revenue of all regulated public utilities derived from operations in the state [,
20 AS MODIFIED UNDER (c) OF THIS SECTION IF APPROPRIATE]. An exempt
21 utility shall pay the actual cost of services provided to it by the commission.

22 * Sec. 9. AS 42.05.254(b) is amended to read:

23 (b) The commission shall by regulation establish a method to determine
24 annually the amount of the regulatory cost charge for a public utility. If the amount
25 the commission expects to collect under (a) of this section and under AS 42.06.286(a)
26 exceeds the authorized budget of the commission, the commission shall, by order,
27 reduce the percentages determined under (i) [SET OUT IN (a)] of this section so that
28 the total amount of the fees collected approximately equals the authorized budget of
29 the commission for the fiscal year.

30 * Sec. 10. AS 42.05.254(h) is amended by adding a new paragraph to read:

31 (5) "adjusted gross revenue" means the gross revenue of a utility as

1 modified under (c) of this section, if appropriate.

2 * **Sec. 11.** AS 42.05.254 is amended by adding a new subsection to read:

3 (i) The commission shall by regulation establish a method to determine
4 annually the maximum percentage of adjusted gross revenue that will apply to each
5 regulated public utility sector and the maximum percentage of gross revenue that will
6 apply to the regulated pipeline carrier sector. The method established shall allocate
7 the commission's costs, other than the cost of services provided to exempt utilities,
8 among the regulated public utility sectors and the regulated pipeline carrier sector
9 based on the relative amount of the commission's annual costs that is attributable to
10 regulating each sector.

11 * **Sec. 12.** AS 42.05.990(2) is amended to read:

12 (2) "commission" means the Regulatory Commission of Alaska
13 [PUBLIC UTILITIES COMMISSION];

14 * **Sec. 13.** AS 42.05.995 is amended to read:

15 **Sec. 42.05.995. Short title.** This chapter may be cited as the Alaska Public
16 Utilities Regulatory [COMMISSION] Act.

17 * **Sec. 14.** AS 42.06.05(b) is amended to read:

18 (b) The commission shall by regulation establish a method to determine
19 annually the amount of the regulatory cost charge. If the amount the commission
20 expects to collect under (a) of this section and under AS 42.05.254(a) exceeds the
21 authorized budget of the commission, the commission shall, by order, reduce the
22 percentage determined under (f) [SET OUT IN (a)] of this section so that the total
23 amount of the fees collected approximately equals the authorized budget of the
24 commission for the fiscal year.

25 * **Sec. 15.** AS 42.06.286 is amended by adding a new subsection to read:

26 (f) The commission shall by regulation establish a method to determine
27 annually the maximum percentage of gross revenue that will apply to each regulated
28 public utility sector and the maximum percentage of gross revenue that will apply to
29 the regulated pipeline carrier sector in accordance with AS 42.05.254(i).

30 * **Sec. 16.** AS 42.06 is amended by adding a new section to read:

31 **Sec. 42.06.055. Commission decision-making procedures.** The commission

1 shall comply with AS 42.04.080 for matters that come before the commission for
2 decision.

3 * Sec. 17. AS 42.06.305 is amended by adding a new subsection to read:

4 (b) The commission's decision under this section shall be based on the best
5 interest of the public.

6 * Sec. 18. AS 42.06.445(e) is amended to read:

7 (e) A commissioner [, AND THE EXECUTIVE DIRECTOR,] may certify as
8 to all official records of the commission under this section and may certify as to all
9 official acts of the commission under this chapter.

10 * Sec. 19. AS 42.06.630(2) is amended to read:

11 (2) "commission" means the Regulatory Commission of Alaska
12 [PUBLIC UTILITIES COMMISSION] (AS 42.04.010);

13 * Sec. 20. AS 42.45.020(b) is amended to read:

14 (b) Subject to AS 42.45.060, the department may make loans from the rural
15 electrification revolving loan fund to electric utilities certified under AS 42.05 [BY
16 THE ALASKA PUBLIC UTILITIES COMMISSION]. A loan from the fund may be
17 made only for the purpose of extending new electric service into an area of the state
18 that an electric utility may serve under a certificate of public convenience and
19 necessity issued under AS 42.05 [BY THE ALASKA PUBLIC UTILITIES
20 COMMISSION]. A loan may be made from the fund to an electric utility if the utility
21 invests the money necessary to provide one pole, one span of line, one transformer,
22 and one service drop for each consumer for whom immediate service would be
23 provided by the extension of electric service. However, a loan may not be made from
24 the fund unless

25 (1) the loan is recommended by a loan advisory committee appointed
26 under AS 42.45.030; and

27 (2) the extension of electric service would provide immediate service
28 to at least three consumers.

29 * Sec. 21. AS 44.66.010(a)(4) is amended to read:

30 (4) Regulatory Commission of Alaska (AS 42.04.010) [PUBLIC
31 UTILITIES COMMISSION (AS 42.05.010)] -- June 30, 2004 [1999];

1 * Sec. 22. AS 44.83.425(3) is amended to read:

2 (3) "qualified utility" means an electric utility or an electric operating
3 entity established as an instrumentality of two or more electric utilities certified under
4 AS 42.05 [BY THE ALASKA PUBLIC UTILITIES COMMISSION] to serve all or
5 part of a market area that is served or will be served by the power project, that the
6 authority determines is capable of operating and maintaining the power project.

7 * Sec. 23. AS 46.04.020(i) is amended to read:

8 (i) The superior court and, with respect to intrastate voyages, the Regulatory
9 Commission of Alaska [PUBLIC UTILITIES COMMISSION,] under AS 42.05.361 -
10 42.05.431, have concurrent jurisdiction to review and enjoin a charge, contract term,
11 or financial responsibility requirement described under (h) of this section at the request
12 of a vessel owner, operator, or charterer. Except as provided in this subsection,
13 nothing in this section affects the jurisdiction of the Regulatory Commission of
14 Alaska [PUBLIC UTILITIES COMMISSION].

15 * Sec. 24. REPEAL OF STATUTES. AS 39.25.120(c)(6); AS 42.05.010, 42.05.020,
16 42.05.030, 42.05.035, 42.05.040, 42.05.050, 42.05.071, 42.05.081, 42.05.091, 42.05.101,
17 42.05.111, 42.05.121, 42.05.123, and 42.05.131 are repealed.

18 * Sec. 25. REPORT CONCERNING RESTRUCTURING OF THE ALASKA OIL AND
19 GAS CONSERVATION COMMISSION AND THE REGULATORY COMMISSION OF
20 ALASKA. The Legislative Budget and Audit Committee shall prepare a report considering
21 the functions of the Regulatory Commission of Alaska and the Alaska Oil and Gas
22 Conservation Commission. The report must address whether it is in the best interest of the
23 state to merge the Regulatory Commission of Alaska and the Alaska Oil and Gas Conservation
24 Commission into a single commission and whether it is in the state's best interest to
25 restructure the functions of the two commissions. The report shall be delivered to the
26 governor and the legislature by the first day of the second session of the Twenty-First Alaska
27 State Legislature.

28 * Sec. 26. MANAGEMENT INFORMATION SYSTEM. The Regulatory Commission of
29 Alaska shall develop its management information system and make the system accessible to
30 the general public through the Internet for the purpose of tracking, scheduling, and managing
31 all dockets within the commission.

1 * Sec. 27. LOCATION OF THE ALASKA OIL AND GAS CONSERVATION
2 COMMISSION. (a) The principal office of the Alaska Oil and Gas Conservation
3 Commission shall move to the same location as the principal office of the Regulatory
4 Commission of Alaska as soon as feasible, but in any case, no later than July 1, 2000.

5 (b) As soon as the Alaska Oil and Gas Conservation Commission moves to the same
6 location as the Regulatory Commission of Alaska, the two commissions shall share record
7 keeping facilities and clerical staff.

8 * Sec. 28. REGULATORY COMMISSION OF ALASKA EMPLOYMENT OF HEARING
9 OFFICER. To the extent that sufficient funds are appropriated for the purpose, during the
10 state fiscal year ending June 30, 2000, the Regulatory Commission of Alaska shall employ,
11 in addition to the hearing officers that the former Alaska Public Utilities Commission was
12 authorized to employ on June 30, 1999, an additional hearing officer.

13 * Sec. 29. TERMS AND INITIAL APPOINTMENTS. (a) Notwithstanding AS 42.05.030,
14 the terms of members of the Alaska Public Utilities Commission expire at the close of
15 business on June 30, 1999.

16 (b) The governor shall expeditiously make initial appointments to the Regulatory
17 Commission of Alaska, created by sec. 1 of this Act. Appointments made under this
18 subsection may not take effect before July 1, 1999.

19 (c) Notwithstanding AS 39.05.055, the terms of the initially appointed members of the
20 Regulatory Commission of Alaska shall be set by the governor as follows:

21 (1) one member shall serve a five-year term;

22 (2) one member shall serve a four-year term;

23 (3) one member shall serve a three-year term;

24 (4) one member shall serve a two-year term; and

25 (5) one member shall serve a one-year term.

26 * Sec. 30. TRANSITIONAL PROVISIONS. (a) Litigation, hearings, investigations, and
27 other proceedings pending under a law repealed or amended by this Act, or in connection with
28 functions transferred from the Alaska Public Utilities Commission to the Regulatory
29 Commission of Alaska by this Act, continue in effect and may be completed notwithstanding
30 a transfer or repeal provided for in this Act.

31 (b) Regulations in effect on June 30, 1999, that were adopted to implement a function

1 that is transferred by this Act remain in effect and shall be enforced by the Regulatory
2 Commission of Alaska until amended.

3 (c) Wherever in Alaska Statutes affected by this Act there is a reference to regulations
4 adopted under a section of law and there are no regulations adopted under that section because
5 previous regulations adopted under another section are being enforced under (b) of this
6 section, the reference shall be construed to refer to the previously adopted regulations until
7 they are amended by the new agency.

8 (d) Except as provided in sec. 29(a) of this Act, contracts, rights, liabilities, and
9 obligations created by or under a law repealed or amended by this Act, and in effect on June
10 30, 1999, remain in effect notwithstanding this Act's taking effect.

11 (e) Records, equipment, appropriations, and other property of the Alaska Public
12 Utilities Commission shall be transferred to the Regulatory Commission of Alaska to
13 implement the provisions of this Act.

14 (f) Notwithstanding the amendments to AS 42.05.254 made by secs. 8 - 11 of this Act
15 and to AS 42.06.286 made by secs. 14 and 15 of this Act, for the fiscal year ending June 30,
16 2001, the Regulatory Commission of Alaska shall, by order, establish and use a model for the
17 assessment of regulatory cost charges for that year, based on estimates for figures for which
18 it does not have actual data.

19 * Sec. 31. FIVE-YEAR SUNSET. The amendment to AS 44.66.010(a)(4), made by
20 sec. 21 of this Act, is made notwithstanding AS 44.66.010(c).

21 * Sec. 32. REVISOR INSTRUCTIONS. (a) In the following statutes, the revisor of
22 statutes is instructed to change "Alaska Public Utilities Commission" to "Regulatory
23 Commission of Alaska":

- 24 (1) AS 29.35.131(c);
- 25 (2) AS 29.35.137(5);
- 26 (3) AS 38.35.120(a) in three places;
- 27 (4) AS 38.35.230(2);
- 28 (5) AS 42.05.141(a);
- 29 (6) AS 42.05.325(c);
- 30 (7) AS 42.05.381(f) in both places;
- 31 (8) AS 42.05.712(c);

- 1 (9) AS 42.05.712(d);
- 2 (10) AS 42.45.010(e);
- 3 (11) AS 42.45.110(a);
- 4 (12) AS 42.45.170(a);
- 5 (13) AS 42.45.170(e);
- 6 (14) AS 43.55.150(b);
- 7 (15) AS 43.56.210(7);
- 8 (16) AS 44.83.090(b) in both places;
- 9 (17) AS 45.50.473(a);
- 10 (18) AS 45.50.473(b);
- 11 (19) AS 45.50.475(b);
- 12 (20) AS 45.50.475(c); and
- 13 (21) AS 45.63.080(12).

14 (b) In the following statutes, the revisor of statutes is instructed to change "Alaska
15 Public Utilities Commission" to "former Alaska Public Utilities Commission or the Regulatory
16 Commission of Alaska":

- 17 (1) AS 09.65.085(a);
- 18 (2) AS 10.25.020(6); and
- 19 (3) AS 18.57.020(c).

20 (c) In the following statutes, the revisor of statutes is instructed to change "by the
21 Alaska Public Utilities Commission" to "by the former Alaska Public Utilities Commission
22 or by the Regulatory Commission of Alaska":

- 23 (1) AS 29.35.050(b) in both places;
- 24 (2) AS 29.35.050(c);
- 25 (3) AS 29.35.060(a);
- 26 (4) AS 29.35.060(b); and
- 27 (5) AS 42.45.200(e).

28 * Sec. 33. (a) Section 29 of this Act takes effect immediately under AS 01.10.070(c).

29 (b) Sections 8 - 11, 14, and 15 of this Act take effect July 1, 2000.

30 (c) Except as provided in (a) and (b) of this section, this Act takes effect July 1, 1999.

5/12/99

#1

NO 013j - adopted

AMENDMENT

OFFERED IN THE HOUSE

TO: HCSCSSB 133(FIN)
Version "T" 5/12/99

Page 4, line 6

After "utility"

Insert "or pipeline carrier"

5/12/99

#2

~~Withdrawn~~

Amend

Adopted

AMENDMENT

OFFERED IN THE HOUSE

TO: HCSCSSB 133(FIN)
Version "T" 5/12/99

Page 12, lines 8 - 12

Delete all

Renumber sections accordingly

Withdrawn

5/12/99 pm

1-L50771\Y.13

Chenoweth

5/11/99

AMENDMENT #3

OFFERED IN THE HOUSE

TO: HCS CSSB 133(L&C)

1 Page 1, following line 8:

2 Insert new bill sections to read:

3 **** Section 1.** AS 31.05.026 is amended by adding a new subsection to read:

4 (f) In a dispute between the commission and the Department of Natural
5 Resources regarding a specific course of action to be taken or a specific decision
6 made, the action or decision of the commission prevails.

7 *** Sec. 2.** AS 31.05.110(a) is amended to read:

8 (a) To prevent, or to assist in preventing waste, to insure a greater ultimate
9 recovery of oil and gas, and to protect the correlative rights of persons owning
10 interests in the tracts of land affected, these persons may validly integrate their
11 interests to provide for the unitized management, development, and operation of such
12 tracts of land as a unit. The [WHERE, HOWEVER, THEY HAVE NOT AGREED
13 TO INTEGRATE THEIR INTERESTS, THE] commission, upon proper petition, after
14 notice and hearing, has jurisdiction, power, and authority, and it is its duty to make
15 and enforce orders and do the things necessary or proper, to carry out the purposes
16 of this section, including making and enforcing orders and doing other things
17 necessary to require compulsory unitization or reunition in a manner that,
18 based on the commission's findings, ensures a greater ultimate recovery of oil
19 and gas.

20 *** Sec. 3.** AS 31.05.110(q) is amended to read:

21 (q) This section applies to all voluntary and involuntary units formed in the
22 state. [SUBSECTIONS (a) AND (g) - (p) OF THIS SECTION APPLY TO ALL
23 VOLUNTARY UNITS FORMED IN THE STATE AND TO A VOLUNTARY
24 COOPERATIVE OR UNIT PLAN OF DEVELOPMENT OR OPERATION
25 ENTERED INTO IN ACCORDANCE WITH AS 38.05.180(p).]

1 (r) The commission shall require every producer or unit operator subject to
2 an order made by the commission under this section and every producer or unit
3 operator who has established a voluntary cooperative or unit plan of development or
4 operation under AS 38.05.180(p) to provide to the commission the most recent
5 reproductions of the unit plan of development or operation reservoir models of any
6 type that relates to the producer's or unit operator's collection and accumulation of
7 engineering and production data. A producer or unit operator shall provide the
8 information and data required by the commission under this subsection."

9 Page 1, line 9:

10 Delete "* Section 1."

11 Insert "* Sec. 5."

12 Renumber the following bill sections accordingly.

13 Page 13, line 4:

14 Delete "sec. 20"

15 Insert "sec. 24"

no logs 5/12/99
Adopted #4

I-LS0771\T.1
Cramer/
5/12/99

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: HCS CSSB 133(FIN), Draft Version "T"

1 Page 8, line 10, following "panel":

2 Delete "[THE COMMISSION]"

3 Insert ". A party may file a petition for reconsideration of a decision by a hearing
4 officer, an arbitrator, or an administrative law judge that has been approved by the
5 commission, or a decision of a hearing panel. The full commission shall act on the
6 petition"

OR AN APPEAL OF

nolobg
Adopted

5112199
#5 THERIAULT

AMENDMENT

OFFERED IN THE HOUSE

TO: HCSCSSB 133(FIN)
Version "T" 5/12/99

Page 10, line 31

After "June 30,"

Delete "2004"

Insert "2002"

FISCAL NOTE

No: 3

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Version: HCS CSSB 133 (L&C)
(H) Publish Date: 5/8/99

Revision Date: _____
Title: Combine APUC and AOGCC
Sponsor: Senator Pearce
Requestor: (H) L&C

Department Affected: Administration
BRU: AOGCC
Component: AOGCC
COMPONENT SERIAL NO. 2010

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	147.0	147.0	147.0	147.0	147.0	147.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	147.0	147.0	147.0	147.0	147.0	147.0

CAPITAL EXPENDITURES	321.9	0.0	0.0	0.0	0.0	0.0
----------------------	-------	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	147.0	147.0	147.0	147.0	147.0	147.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	147.0	147.0	147.0	147.0	147.0	147.0

Estimate of any current year (FY 99) cost: \$ _____

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary.)

Operating Budget

This bill combines the AOGCC and APUC offices and will relocate the AOGCC offices to the current APUC office location. \$147.0 of additional operating funds are necessary for AOGCC lease costs at the APUC building, (8,000 x \$2.00/sq. ft. less \$45,000 available from current facility maintenance budget).

Capital Budget

Relocating the AOGCC offices will require a capital expenditure of \$281.9 in FY 2000 to cover moving costs and new office furniture for 23 employees. AOGCC will also need to invest in a new computer network system to be compatible with APUC. The cost for an updated network is estimated to be \$40.0 and is also included in the capital request.

Prepared by: Robert Christenson, PE
Division: Alaska Oil and Gas Conservation Commission

Phone: 279-1433
Date: _____

Approved by Commissioner: Robert Poe Jr.
Agency: Department of Administration

Date: 5/6/99

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FISCAL NOTE

Bill Number: HCS CSSB 133 (L&C)

(H) Publish Date: 5/8/99

**STATE OF ALASKA
1999 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) 5/6 9:00 Dept. Affected DOED
 Title Alaska Public Utilities Commission BRU AK Public Utilities Commission/AEGCC
 Component APUC/AECC Operations
 Sponsor Senator Pearce
 Requester (H)Labor & Commerce Component Serial No. 346

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	3,287.0					
Travel	35.0					
Contractual	1,300.9					
Supplies	62.5					
Equipment	13.8					
Land & Structures	0.0					
Grants & Claims	0.0					
Miscellaneous	0.0					
TOTAL OPERATING	4,699.2	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	500.0					
-----------------------------	--------------	--	--	--	--	--

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1110 APUC Rcpts	4,699.2	0.0	0.0	0.0	0.0	0.0
TOTAL	4,699.2	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time	55	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)

The APUC recently contracted for an analysis to determine the recommended specifications and cost of an information management system that would fulfill the requirements specified in the proposed CS. Without the benefit of the results of this study, a capital appropriation of \$500,000 is estimated for this cost.

Potential administrative savings from partial consolidation in FY2000 are not estimated because the timing of the AOGCC move is unknown. Similarly, potential administrative savings and/or improved efficiencies are likely in FY2001 and beyond in areas such file maintenance and reception services but are difficult to estimate at this time given the current understaffing at both agencies.

Prepared by Ginny Fay Phone 465-2503
 Division Commissioner's Office Date/Time 5/6/99 9:00 AM
 Approved by Commissioner [Signature] Date 5/5/99
 Agency [Signature]

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FISCAL NOTE

No: 3

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Version: HCS CSSB 133(L&C)
(H) Publish Date: 5/8/99

Revision Date: _____
Title: Combine APUC and AOGCC
Sponsor: Senator Pearce
Requestor: (H) L&C

Department Affected: Administration
BRU: AOGCC
Component: AOGCC
COMPONENT SERIAL NO. 2010

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	147.0	147.0	147.0	147.0	147.0	147.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	147.0	147.0	147.0	147.0	147.0	147.0

CAPITAL EXPENDITURES	321.9	0.0	0.0	0.0	0.0	0.0
----------------------	-------	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	147.0	147.0	147.0	147.0	147.0	147.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	147.0	147.0	147.0	147.0	147.0	147.0

Estimate of any current year (FY 99) cost: \$ _____

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary.)

Operating Budget

This bill combines the AOGCC and APUC offices and will relocate the AOGCC offices to the current APUC office location. \$147.0 of additional operating funds are necessary for AOGCC lease costs at the APUC building. (8,000 x \$2.00/sq. ft. less \$45,000 available from current facility maintenance budget).

Capital Budget

Relocating the AOGCC offices will require a capital expenditure of \$281.9 in FY 2000 to cover moving costs and new office furniture for 23 employees. AOGCC will also need to invest in a new computer network system to be compatible with APUC. The cost for an updated network is estimated to be \$40.0 and is also included in the capital request.

Prepared by: Robert Christenson, PE
Division: Alaska Oil and Gas Conservation Commission

Phone: 279-1433
Date: _____

Approved by Commissioner: Robert Poe
Agency: Department of Administration

Date: 5/6/99

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FISCAL NOTE Bill Version: HCS CSSB 133 (L&C)

(H) Publish Date: 5/8/99

**STATE OF ALASKA
1999 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) 5/6 9:00 Dept. Affected DOED
 Title Alaska Public Utilities Commission BRU AK Public Utilities Commission/AEGCC
 Component APUC/AECC Operations
 Sponsor Senator Pearce
 Requester (H)Labor & Commerce Component Serial No. 346

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	3,287.0					
Travel	35.0					
Contractual	1,300.9					
Supplies	62.5					
Equipment	13.6					
Land & Structures	0.0					
Grants & Claims	0.0					
Miscellaneous	0.0					
TOTAL OPERATING	4,699.2	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	500.0					
-----------------------------	--------------	--	--	--	--	--

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1110 APUC Rcpts	4,699.2	0.0	0.0	0.0	0.0	0.0
TOTAL	4,699.2	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time	55	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)

The APUC recently contracted for an analysis to determine the recommended specifications and cost of an information management system that would fulfill the requirements specified in the proposed CS. Without the benefit of the results of this study, a capital appropriation of \$500,000 is estimated for this cost.

Potential administrative savings from partial consolidation in FY2000 are not estimated because the timing of the AOGCC move is unknown. Similarly, potential administrative savings and/or improved efficiencies are likely in FY2001 and beyond in areas such file maintenance and reception services but are difficult to estimate at this time given the current understaffing at both agencies.

Prepared by Ginny Fay Phone 465-2503
 Division Commissioner's Office Date/Time 5/6/99 9:00 AM
 Approved by Commissioner [Signature] Date 5/5/99
 Agency [Signature]

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FISCAL NOTE

No: 3

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Version: HCS CSSB 130 (L&C)
 (H) Publish Date: 5/8/99

Revision Date: _____
 Title: Combine APUC and AOGCC
 Sponsor: Senator Pearce
 Requestor: (H) L&C

Department Affected: Administration
 BRU: AOGCC
 Component: AOGCC
 COMPONENT SERIAL NO. 2010

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	147.0	147.0	147.0	147.0	147.0	147.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	147.0	147.0	147.0	147.0	147.0	147.0

CAPITAL EXPENDITURES	321.9	0.0	0.0	0.0	0.0	0.0
----------------------	-------	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	147.0	147.0	147.0	147.0	147.0	147.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	147.0	147.0	147.0	147.0	147.0	147.0

Estimate of any current year (FY 99) cost: \$ _____

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary.)

Operating Budget

This bill combines the AOGCC and APUC offices and will relocate the AOGCC offices to the current APUC office location. \$147.0 of additional operating funds are necessary for AOGCC lease costs at the APUC building. (8,000 x \$2.00/sq. ft. less \$45,000 available from current facility maintenance budget).

Capital Budget

Relocating the AOGCC offices will require a capital expenditure of \$281.9 in FY 2000 to cover moving costs and new office furniture for 23 employees. AOGCC will also need to invest in a new computer network system to be compatible with APUC. The cost for an updated network is estimated to be \$40.0 and is also included in the capital request.

Prepared by: Robert Christenson, PE
 Division: Alaska Oil and Gas Conservation Commission

Phone: 279-1433
 Date: _____

Approved by Commissioner: Robert Poe Jr.
 Agency: Department of Administration

Date: 5/6/99

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FISCAL NOTE

Bill Version: HCS CSSB 133 (L&C)

(H) Publish Date: 5/8/99

**STATE OF ALASKA
1999 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) 5/6 9:00

Title Alaska Public Utilities Commission

Dept. Affected DOED

BRU AK Public Utilities Commission/AEGCC

Component APUC/AECC Operations

Sponsor Senator Pearce

Requester (H)Labor & Commerce

Component Serial No. 346

Expenditures/Revenues

(Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	3,287.0					
Travel	35.0					
Contractual	1,300.9					
Supplies	62.5					
Equipment	13.8					
Land & Structures	0.0					
Grants & Claims	0.0					
Miscellaneous	0.0					
TOTAL OPERATING	4,699.2	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	500.0					
-----------------------------	--------------	--	--	--	--	--

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

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1110 APUC Rcpts	4,699.2	0.0	0.0	0.0	0.0	0.0
TOTAL	4,699.2	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: 0.0

POSITIONS

POSITIONS	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Full-time	55	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)

The APUC recently contracted for an analysis to determine the recommended specifications and cost of an information management system that would fulfill the requirements specified in the proposed CS. Without the benefit of the results of this study, a capital appropriation of \$500,000 is estimated for this cost.

Potential administrative savings from partial consolidation in FY2000 are not estimated because the timing of the AOGCC move is unknown. Similarly, potential administrative savings and/or improved efficiencies are likely in FY2001 and beyond in areas such file maintenance and reception services but are difficult to estimate at this time given the current understaffing at both agencies.

Prepared by Ginny Fay
 Division Commissioner's Office
 Approved by Commissioner [Signature]
 Agency [Signature]

Phone 465-2503
 Date/Time 5/6/99 9:00 AM
 Date 5/5/99

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SB

133

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/27/99

FURTHER: 4/30/99

DATE TURNED IN TO OFFICE: 30 April 99

Finance Committee considered

SENATE BILL NO. 133

COMBINE APUC AND AOGCC

and recommends:

- be replaced with _____ CS SB 133 (FIN)
- adopt previous _____ CS forth coming
- attached amendment(s) CS
- adopt Letter of Intent by _____
- further referral to the _____

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>Lynne Freese</i>	✓		
		<i>Pat Kelly</i>	✓		
		<i>Al Adams</i>	✗		
		<i>Don Doney</i>	✓		✓
Co-Chair: <i>[Signature]</i>	✓	Co-Chair:			
Co-Chair:		Co-Chair:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
<i>Admin</i>	<i>4/30/99</i>		<i>3304</i>

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

RECEIVED OUT OF
S.O. 4/30/99

STATE OF ALASKA
1999 LEGISLATIVE SESSION

DRAFT

BILL NO. CSSB133 (FIN)

DRAFT

Revision Date/Time <u>4/30/99 9:30</u>	Dept. Affected _____	Dept of Admin. _____
Title <u>Combine APUC and AOGCC</u>	BRU <u>AOGCC</u>	
	Component <u>AOGCC</u>	
Sponsor <u>Pearce</u>		
Requester <u>Senate Finance</u>	Component Serial No. <u>2010</u>	

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	183.4	183.4	183.4	183.4	183.4	183.4
Travel						
Contractual	147.0	147.0	147.0	147.0	147.0	147.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	330.4	330.4	330.4	330.4	330.4	330.4
CAPITAL EXPENDITURES (GF)	321.9	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	330.4	330.4	330.4	330.4	330.4	330.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	330.4	330.4	330.4	330.4	330.4	330.4

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time	2.0	2.0	2.0	2.0	2.0	2.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0

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

Operating Budget

This bill combines the AOGCC and APUC offices and will relocate the AOGCC offices to the current APUC office location. \$147.0 of additional operating funds are necessary for AOGCC lease costs at the APUC building. (8,000 X \$2.00/sq. ft. less \$45,000 available from current facility maintenance budget) Two positions are transferred from APUC to AOGCC along with the pipeline tariff function.

Capital Budget

Relocating the AOGCC offices will require a capital expenditure of \$281.9 in FY 2000 to cover moving costs and new office furniture for 23 employees. AOGCC will also need to invest in a new computer network system to be compatible with APUC. The cost for an updated network is estimated to be \$40.0 and is also included in the capital request.

Prepared by Robert Christenson, PE
 Division Alaska Oil and Gas Conservation Commission
 Approved by Commissioner [Signature]
 Agency _____

Phone 279-1433
 Date/Time _____
 Date 4/30/99 4/30/99

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4/29?

SUBJECT: _____
DATE: _____

SUBJECT: _____
DATE: CS. SM. 133 (FIN) v/o

	YEA	NAY
SENATOR P. KELLY		✓
SENATOR L. GREEN		✓
SENATOR PHILLIPS	✓	
SENATOR DONLEY	✓	
SENATOR LEMAN	absent	
SENATOR WILKEN	absent	
SENATOR ADAMS		✓
SENATOR TORGERSON		✓
SENATOR PARNELL		absent
TOTAL:	2	4

	YEA	NAY
SENATOR L. GREEN	✓	
SENATOR PHILLIPS		absent
SENATOR DONLEY		✓
SENATOR LEMAN		absent
SENATOR WILKEN		absent
SENATOR ADAMS	✓	
SENATOR P. KELLY	✓	
SENATOR TORGERSON	✓	
SENATOR PARNELL		absent
TOTAL:	4	1

SUBJECT: _____
DATE: _____

	YEA	NAY
SENATOR PHILLIPS		
SENATOR DONLEY		
SENATOR LEMAN		
SENATOR WILKEN		
SENATOR ADAMS		
SENATOR P. KELLY		
SENATOR L. GREEN		
SENATOR TORGERSON		
SENATOR PARNELL		
TOTAL:		

1-LS0771\K ✓
Cramer
4/29/99

moved by Sen. Green
Sen. Kelly OBJECT-w/withdrawn
w/o obj. ADOPTED.

CS FOR SENATE BILL NO. 133(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): **SENATOR PEARCE**

A BILL

FOR AN ACT ENTITLED

1 "An Act creating and providing for the Regulatory Commission of Alaska and
2 transferring to it certain powers and duties of the Alaska Public Utilities
3 Commission; transferring regulation of pipelines to the Alaska Oil and Gas
4 Conservation Commission; repealing the Alaska Public Utilities Commission;
5 relating to the powers of the chair of the Regulatory Commission of Alaska;
6 relating to regulatory cost charges for public utilities; relating to the appellate
7 procedures of the Regulatory Commission of Alaska; and providing for an
8 effective date."

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

10 * Section 1. AS 42 is amended by adding a new chapter to read:

11 **Chapter 04. Regulatory Commission of Alaska.**

12 **Article 1. Commission and Staff.**

1 **Sec. 42.04.010. Regulatory Commission of Alaska created.** (a) There is
2 created as an independent agency of the state the Regulatory Commission of Alaska.

3 (b) The commission may nominate one of its members to serve as chair. The
4 governor shall designate the chair of the commission, either by selecting the member
5 nominated by the commission or another member. The term as chair is four years.
6 The chair may not be appointed to successive terms as chair.

7 **Sec. 42.04.020. Commissioners.** (a) The commission consists of five
8 commissioners appointed by the governor and confirmed by the legislature in joint
9 session.

10 (b) The term of office of each member is six years. A commissioner, upon
11 the expiration of a term, shall continue to hold office until a successor is appointed and
12 qualified.

13 (c) A vacancy arising in the office of a commissioner shall be filled by
14 appointment by the governor and confirmed by the legislature in joint session, and,
15 except as provided in AS 39.05.080(4), an appointee selected to fill a vacancy shall
16 hold office for the balance of the full term for which the predecessor on the
17 commission was appointed.

18 (d) A vacancy in the commission does not impair the authority of a quorum
19 of commissioners to exercise all the powers and perform all the duties of the
20 commission.

21 (e) The governor may remove a commissioner from office for cause, including
22 incompetence, neglect of duty, or misconduct in office or because the member, while
23 serving on the commission, is convicted of a misdemeanor for violating a statute or
24 regulation related to public utilities or is convicted of a felony. A commissioner, to
25 be removed for cause, shall be given a copy of the charges and afforded an opportunity
26 to be publicly heard in person or by counsel in the commissioner's own defense upon
27 not less than 10 days' notice. If a commissioner is removed for cause, the governor
28 shall file with the lieutenant governor a complete statement of all charges made against
29 the commissioner and the governor's finding based on the charges, together with a
30 complete record of the proceedings.

31 (f) Members of the commission are in the exempt service and are entitled to

See Kelly
delete
with revision
See Kelly
delete
with revision

1 a monthly salary equal to Step C, Range 26, of the salary schedule in AS 39.27.011(a)
2 for Juneau, Alaska. The chair of the commission is entitled to a monthly salary equal
3 to Step C, Range 27, of the salary schedule in AS 39.27.011(a) for Juneau, Alaska.

4 (g) Each commissioner, before entering upon the duties of office, shall take
5 and subscribe to the oath prescribed for principal officers of the state.

6 **Sec. 42.04.030. Principal office; seal.** (a) The commission shall establish a
7 principal office and branch offices necessary to discharge its business efficiently. For
8 the convenience of the public or of parties to a proceeding, the commission may hold
9 meetings, hearings, or other proceedings at other locations.

10 (b) The commission shall have an official seal.

11 **Sec. 42.04.040. Legal counsel.** (a) The Department of Law shall provide full-
12 time legal counsel to the commission. ~~The legal counsel provided by the Department~~
13 ~~of Law is subject to the approval of the commission.~~

14 (b) The commission may contract for the services of specialized legal counsel
15 or legal consultants.

16 **Sec. 42.04.050. Employment of commission personnel.** (a) The chair of the
17 commission is responsible for directing the administrative functions of the commission
18 and carrying out the policies as set by the commission. The commission chair may
19 employ engineers, hearing officers, experts, clerks, accountants, and other agents and
20 assistants considered necessary. Employees of the commission who are not in the
21 exempt service under AS 39.25.110, other than legal counsel, are in the classified
22 service under AS 39.25.100.

23 (b) The chair of the commission may enter into a contract for no more than
24 \$5,000 to engage the services of a consultant or expert the chair considers necessary.
25 The commission may contract for and engage the services of consultants and experts
26 the commission considers necessary.

27 **Sec. 42.04.060. Restrictions on members and employees.** (a) A member of
28 the commission or an employee of the commission may not have an official connection
29 with, hold stock or securities in, or have a pecuniary interest in a public utility within
30 the state. Membership in a cooperative association is not a "pecuniary interest" within
31 the meaning of this section; however, a member or employee of the commission may

1 not be an officer, board member, or employee of a cooperative association. A member
2 or employee may not act upon a matter in which a relationship of the member or
3 employee with any person creates a conflict of interest.

4 (b) A member or employee of the commission may not, after leaving the
5 position as a member or employee of the commission, act as agent for or on behalf of
6 a public utility in any matter before the commission that was before the commission
7 during the employee's employment or the member's term of office. A violation of this
8 subsection is a class A misdemeanor.

9 (c) Members and employees of the commission, except clerical and secretarial
10 staff, are subject to AS 39.50. Members and employees of the commission are subject
11 to AS 39.52.

12 (d) A member of the commission is disqualified from voting upon any matter
13 before the commission in which the member has a conflict of interest.

14 **Sec. 42.04.070. Powers and duties of commission chair.** (a) The chair of
15 the commission shall

16 (1) employ the commission staff;

17 (2) establish and implement a time management system for the
18 commission;

19 (3) assign the work of the commission to members and staff of the
20 commission so that matters before the commission are resolved as expeditiously and
21 competently as possible; when assigning a matter, the chair shall also set a date by
22 which time the matter should be completed.

23 (b) The chair of the commission may appoint a hearing officer to hear a matter
24 that has come before the commission; a member of the commission may serve as
25 hearing officer.

26 (c) When the chair of the commission believes that it is in the public interest
27 for the commission to participate as a party in an adjudicatory matter, the chair shall
28 direct the public advocacy section to do so.

29 **Sec. 42.04.080. Decision-making procedures.** (a) Except as provided in
30 AS 42.05.171, when a matter comes for decision before the commission under
31 AS 42.05, the chair shall appoint a hearing panel composed of three or more members

1 to hear and decide the case. The panel shall exercise the powers of the commission
2 with respect to the matter.

3 (b) A decision of a hearing panel under AS 42.05 may be appealed to the
4 commission if there is an allegation in the appeal that action or a decision taken by the
5 commission is contrary to commission precedent and is not based on an intervening
6 change in law. The commission may grant or deny the application to appeal. If a
7 decision of a hearing panel is not subject to appeal to the commission or if the
8 commission denies an application to appeal, the decision of the hearing panel is a final
9 decision for purposes of appeal to the courts.

10 (c) The commission shall adopt regulations by December 31, ¹⁹⁹⁹~~2000~~, that
11 establish standards of timeliness for the types of cases that come before the
12 commission. The commission shall establish standards based in part on degrees of
13 complexity of the cases.

14 **Article 2. Communications Carriers Section.**

15 **Sec. 42.04.100. Communications carriers section.** There is established
16 within the commission a communications carriers section that shall develop,
17 recommend, and administer policies and programs with respect to the regulation of
18 rates, services, accounting, and facilities of communications common carriers within
19 the state involving the use of wire, cable, radio, and space satellites.

20 **Article 3. Public Advocacy Section.**

21 **Sec. 42.04.150. Public advocacy section.** There is established within the
22 commission a public advocacy section. The section shall participate as a party in
23 adjudicatory matters that come before the commission to represent the public interest
24 when it is in the public interest to do so. The public advocacy section shall operate
25 separately from the rest of the commission.

26 * **Sec. 2.** AS 29.35.137(6) is amended to read:

27 (6) "local exchange telephone company" means a telephone utility
28 certificated under AS 42.05 [BY THE ALASKA PUBLIC UTILITIES
29 COMMISSION] to provide local exchange service;

30 * **Sec. 3.** AS 37.05.146(b) is amended to read:

31 (b) The program receipts listed in this subsection are accounted for separately,

1 and appropriations from these program receipts are not made from the unrestricted
2 general fund:

3 (1) federal receipts;

4 (2) University of Alaska receipts (AS 14.40.491);

5 (3) designated program receipts; in this paragraph, "designated program
6 receipts" means money received by the state from a source other than the state or
7 federal government that is restricted to a specific use by the terms of a gift, grant,
8 bequest, or contract;

9 (4) receipts of the following:

10 (A) highway working capital fund (AS 44.68.210);

11 (B) correctional industries fund (AS 33.32.020);

12 (C) loan funds;

13 (D) international airport revenue fund (AS 37.15.430);

14 (E) corporate receipts earned or managed by a public
15 corporation of the state;

16 (F) fish and game fund (AS 16.05.100);

17 (G) school fund (AS 43.50.140);

18 (H) training and building fund (AS 23.20.130);

19 (I) retirement funds (AS 14.25, AS 22.25, AS 26.05.222,
20 AS 39.35, and former AS 39.37);

21 (J) permanent fund (art. IX, sec. 15, Alaska Constitution);

22 (K) public school trust fund (AS 37.14.110);

23 (L) second injury fund (AS 23.30.040);

24 (M) fishermen's fund (AS 23.35.060);

25 (N) FICA administration fund (AS 39.30.050);

26 (O) receipts of the employee benefits program established under
27 AS 39.30.150 - 39.30.180;

28 (P) receipts of the deferred compensation program established
29 under AS 39.45;

30 (Q) clean air protection fund (AS 46.14.260);

31 (R) receipts of the group insurance programs established under

1 AS 39.30.090;

2 (S) mental health trust fund (AS 37.14.031);

3 (T) Alaska children's trust (AS 37.14.200);

4 (U) commercial fisheries test fishing operations
5 (AS 16.05.050(15));

6 (V) Regulatory Commission of Alaska [PUBLIC UTILITIES
7 COMMISSION] under AS 42.05 [AND AS 42.06];

8 (W) Alaska Oil and Gas Conservation Commission under
9 AS 42.06;

10 (5) receipts of or from the trust established by AS 37.14.400 -
11 37.14.450, except reimbursements described in AS 37.14.410.

12 * Sec. 4. AS 39.50.200(b)(24) is amended to read:

13 (24) Regulatory Commission of Alaska (AS 42.04.010) [PUBLIC
14 UTILITIES COMMISSION (AS 42.05.010)];

15 * Sec. 5. AS 42.05.151(b) is amended to read:

16 (b) The commission shall adopt regulations governing practice and procedure,
17 consistent with due process of law, including the conduct of formal and informal
18 investigations, pre-hearing conferences, hearings, and proceedings, and the handling
19 of procedural motions by a single commissioner. The regulations must provide for
20 the hearing of a matter by a hearing panel and appeal of the matter in
21 accordance with AS 42.04.080. Technical rules of evidence need not apply to
22 investigations, pre-hearing conferences, hearings, and proceedings before the
23 commission. The commission shall provide for representation by out-of-state attorneys
24 substantially in accordance with Rule 81, Alaska Rules of Civil Procedure.

25 * Sec. 6. AS 42.05.171 is amended to read:

26 Sec. 42.05.171. Formal hearings. A formal hearing that the commission has
27 power to hold may be held by or before a hearing panel appointed under
28 AS 42.04.080 [THREE OR MORE COMMISSIONERS], a hearing officer, or an
29 administrative law judge designated for the purpose by the chair of the commission.
30 In appropriate cases, a formal hearing may be held before an arbitrator
31 designated for the purpose by the commission. The testimony and evidence in a

1 formal hearing may be taken by the panel [COMMISSIONERS], by the hearing
2 officer, by the arbitrator, or by the administrative law judge to whom the hearing has
3 been assigned. A commissioner who has not heard or read the testimony, including
4 the argument, may not participate in making a decision of the commission. In
5 determining the place of a hearing, the commission shall give preference to holding
6 the hearing at a place most convenient for those interested in the subject of the
7 hearing.

8 * Sec. 7. AS 42.05.254(a) is amended to read:

9 (a) A regulated public utility operating in the state shall pay to the commission
10 an annual regulatory cost charge in an amount not to exceed the maximum
11 percentage of adjusted gross revenue that applies to the utility sector of which the
12 utility is a part. The percentage may not exceed .8 percent of the total adjusted
13 gross revenue of all regulated public utilities [DERIVED FROM OPERATIONS IN
14 THE STATE, AS MODIFIED UNDER (c) OF THIS SECTION IF APPROPRIATE].
15 An exempt utility shall pay the actual cost of services provided to it by the
16 commission.

17 * Sec. 8. AS 42.05.254(b) is amended to read:

18 (b) The commission shall by regulation establish a method to determine
19 annually the amount of the regulatory cost charge for a public utility. If the amount
20 the commission expects to collect under (a) of this section [AND UNDER
21 AS 42.06.286(a)] exceeds the authorized budget of the commission, the commission
22 shall, by order, reduce the percentages determined under (i) [SET OUT IN (a)] of
23 this section so that the total amount of the fees collected approximately equals the
24 authorized budget of the commission for the fiscal year.

25 * Sec. 9. AS 42.05.254(h) is amended by adding a new paragraph to read:

26 (5) "adjusted gross revenue" means the gross revenue of a utility as
27 modified under (c) of this section, if appropriate.

28 * Sec. 10. AS 42.05.254 is amended by adding a new subsection to read:

29 (i) The commission shall by regulation establish a method to determine
30 annually the maximum percentage of adjusted gross revenue that will apply to each
31 regulated public utility sector. The method established shall allocate the commission's

1 costs, other than the cost of services provided to exempt utilities, among the regulated
2 public utility sectors based on the relative amount of the commission's annual costs
3 that is attributable to regulating each sector.

4 * Sec. 11. AS 42.05.990(2) is amended to read:

5 (2) "commission" means the Regulatory Commission of Alaska
6 [PUBLIC UTILITIES COMMISSION];

7 * Sec. 12. AS 42.05.990(4) is amended to read:

8 (4) "public utility" or "utility" includes every corporation whether
9 public, cooperative, or otherwise, company, individual, or association of individuals,
10 their lessees, trustees, or receivers appointed by a court, that owns, operates, manages,
11 or controls any plant, pipeline, or system for

12 (A) furnishing, by generation, transmission, or distribution,
13 electrical service to the public for compensation;

14 (B) furnishing telecommunications service to the public for
15 compensation;

16 (C) furnishing water, steam, or sewer service to the public for
17 compensation;

18 (D) furnishing by transmission or distribution of natural or
19 manufactured gas to the public for compensation to the extent the
20 transmission and distribution are not regulated by the Alaska Oil and Gas
21 Conservation Commission under AS 42.06;

22 (E) furnishing for distribution or by distribution petroleum or
23 petroleum products to the public for compensation when the consumer has no
24 alternative in the choice of supplier of a comparable product and service at an
25 equal or lesser price and to the extent the distribution is not regulated by
26 the Alaska Oil and Gas Conservation Commission under AS 42.06;

27 (F) furnishing collection and disposal service of garbage, refuse,
28 trash, or other waste material to the public for compensation;

29 * Sec. 13. AS 42.05.995 is amended to read:

30 Sec. 42.05.995. Short title. This chapter may be cited as the Alaska Public
31 Utilities Regulatory [COMMISSION] Act.

1 * Sec. 14. AS 42.06.286(b) is amended to read:

2 (b) The commission shall by regulation establish a method to determine
3 annually the amount of the regulatory cost charge. If the amount the commission
4 expects to collect under (a) of this section [AND UNDER AS 42.05.254(a)] exceeds
5 the authorized budget of the commission that is related to the implementation of this
6 chapter, including an appropriate share of the commission's administrative
7 expenses, the commission shall, by order, reduce the percentage set out in (a) of this
8 section so that the total amount of the fees collected approximately equals the
9 authorized budget of the commission for the fiscal year.

10 * Sec. 15. AS 42.06.445(e) is amended to read:

11 (e) A commissioner [, AND THE EXECUTIVE DIRECTOR,] may certify as
12 to all official records of the commission under this section and may certify as to all
13 official acts of the commission under this chapter.

14 * Sec. 16. AS 42.06.630(2) is amended to read:

15 (2) "commission" means the Alaska Oil and Gas Conservation
16 [PUBLIC UTILITIES] Commission (AS 31.05.005);

17 * Sec. 17. AS 42.45.020(b) is amended to read:

18 (b) Subject to AS 42.45.060, the department may make loans from the rural
19 electrification revolving loan fund to electric utilities certified under AS 42.05 [BY
20 THE ALASKA PUBLIC UTILITIES COMMISSION]. A loan from the fund may be
21 made only for the purpose of extending new electric service into an area of the state
22 that an electric utility may serve under a certificate of public convenience and
23 necessity issued under AS 42.05 [BY THE ALASKA PUBLIC UTILITIES
24 COMMISSION]. A loan may be made from the fund to an electric utility if the utility
25 invests the money necessary to provide one pole, one span of line, one transformer,
26 and one service drop for each consumer for whom immediate service would be
27 provided by the extension of electric service. However, a loan may not be made from
28 the fund unless

29 (1) the loan is recommended by a loan advisory committee appointed
30 under AS 42.45.030; and

31 (2) the extension of electric service would provide immediate service

1 to at least three consumers.

2 * **Sec. 18.** AS 44.66.010(a)(4) is amended to read:

3 (4) **Regulatory Commission of Alaska (AS 42.04.010)** [PUBLIC
4 UTILITIES COMMISSION (AS 42.05.010)] -- June 30, **2004** [1999];

5 * **Sec. 19.** AS 44.83.425(3) is amended to read:

6 (3) "qualified utility" means an electric utility or an electric operating
7 entity established as an instrumentality of two or more electric utilities certified **under**
8 **AS 42.05** [BY THE ALASKA PUBLIC UTILITIES COMMISSION] to serve all or
9 part of a market area that is served or will be served by the power project, that the
10 authority determines is capable of operating and maintaining the power project.

11 * **Sec. 20.** AS 46.04.020(i) is amended to read:

12 (i) The superior court and, with respect to intrastate voyages, **either** the
13 **Regulatory Commission of Alaska** [PUBLIC UTILITIES COMMISSION,] under
14 AS 42.05.361 - 42.05.431 **or the Alaska Oil and Gas Conservation Commission**
15 **under AS 42.06, as appropriate,** have concurrent jurisdiction to review and enjoin
16 a charge, contract term, or financial responsibility requirement described under (h) of
17 this section at the request of a vessel owner, operator, or charterer. Except as provided
18 in this subsection, nothing in this section affects the jurisdiction of the **Regulatory**
19 **Commission of Alaska or the Alaska Oil and Gas Conservation Commission**
20 [PUBLIC UTILITIES COMMISSION].

21 * **Sec. 21.** REPEAL OF STATUTES. AS 39.25.120(c)(6); AS 42.05.010, 42.05.020,
22 42.05.030, 42.05.035, 42.05.040, 42.05.050, 42.05.071, 42.05.081, 42.05.091, 42.05.101,
23 42.05.111, 42.05.121, 42.05.123, and 42.05.131 are repealed.

24 * **Sec. 22.** REPORT CONCERNING RESTRUCTURING OF THE ALASKA OIL AND
25 GAS CONSERVATION COMMISSION AND THE REGULATORY COMMISSION OF
26 ALASKA. The Legislative Budget and Audit Committee shall prepare a report containing
27 recommendations for restructuring the Regulatory Commission of Alaska and the Alaska Oil
28 and Gas Conservation Commission into a single commission. The governor shall appoint one
29 member from the Regulatory Commission of Alaska and one member from the Alaska Oil and
30 Gas Conservation Commission to work with the Legislative Budget and Audit Committee on
31 the report. The report shall be delivered to the governor and the legislature by the first day

1 of the second session of the Twenty-First Alaska State Legislature.

2 * **Sec. 23. MANAGEMENT INFORMATION SYSTEM.** The Regulatory Commission of
3 Alaska shall develop its management information system and make the system accessible to
4 the general public through the Internet for the purpose of tracking, scheduling, and managing
5 all dockets within the commission.

6 * **Sec. 24. LOCATION OF THE ALASKA OIL AND GAS CONSERVATION**
7 **COMMISSION.** (a) The principal office of the Alaska Oil and Gas Conservation
8 Commission shall move to the same location as the principal office of the Regulatory
9 Commission of Alaska as soon as feasible, but in any case, no later than July 1, 2000.

10 (b) As soon as the Alaska Oil and Gas Conservation Commission moves to the same
11 location as the Regulatory Commission of Alaska, the two commissions shall share record
12 keeping facilities and clerical staff.

13 * **Sec. 25. REGULATORY COMMISSION OF ALASKA EMPLOYMENT OF HEARING**
14 **OFFICER.** (a) To the extent that sufficient funds are appropriated for the purpose, during
15 the state fiscal year ending June 30, 2000, the Regulatory Commission of Alaska shall employ,
16 in addition to the hearing officers that the former Alaska Public Utilities Commission was
17 authorized to employ on June 30, 1999, an additional hearing officer.

18 (b) The Alaska Oil and Gas Conservation Commission may use the services of the
19 additional hearing officer employed under (a) of this section to assist with pipeline regulation
20 matters under AS 42.06.

21 * **Sec. 26. INITIAL TERMS OF MEMBERS OF THE REGULATORY COMMISSION**
22 **OF ALASKA.** Notwithstanding AS 39.05.055, the terms of the initially appointed members
23 of the Regulatory Commission of Alaska shall be set by the governor as follows:

- 24 (1) one member shall serve a five-year term;
25 (2) one member shall serve a four-year term;
26 (3) one member shall serve a three-year term;
27 (4) one member shall serve a two-year term; and
28 (5) one member shall serve a one-year term.

29 * **Sec. 27. TRANSITIONAL PROVISIONS.** (a) Litigation, hearings, investigations, and
30 other proceedings pending under a law repealed or amended by this Act, or in connection with
31 functions transferred from the Alaska Public Utilities Commission to the Regulatory

1 Commission of Alaska by this Act, continue in effect and may be completed notwithstanding
2 a transfer or repeal provided for in this Act.

3 (b) Litigation, hearings, investigations, and other proceedings pending under a law
4 repealed or amended by this Act, or in connection with functions transferred from the Alaska
5 Public Utilities Commission to the Alaska Oil and Gas Conservation Commission by this Act,
6 continue in effect and may be completed notwithstanding a transfer or repeal provided for in
7 this Act.

8 (c) Regulations in effect on June 30, 1999, that were adopted to implement a function
9 that is transferred by this Act remain in effect and shall be enforced by the Alaska Oil and
10 Gas Conservation Commission or the Regulatory Commission of Alaska, as appropriate, until
11 amended by the appropriate commission.

12 (d) Wherever in Alaska Statutes affected by this Act there is a reference to regulations
13 adopted under a section of law and there are no regulations adopted under that section because
14 previous regulations adopted under another section are being enforced under (c) of this
15 section, the reference shall be construed to refer to the previously adopted regulations until
16 they are amended by the new agency.

17 (e) Contracts, rights, liabilities, and obligations created by or under a law repealed or
18 amended by this Act, and in effect on June 30, 1999, remain in effect notwithstanding this
19 Act's taking effect.

20 (f) Records, equipment, appropriations, and other property of the Alaska Public
21 Utilities Commission relating to regulation of public utilities under AS 42.05 shall be
22 transferred to the Regulatory Commission of Alaska to implement the provisions of this Act.

23 (g) Records, equipment, appropriations, and other property of the Alaska Public
24 Utilities Commission relating to regulation of pipelines under AS 42.06 shall be transferred
25 to the Alaska Oil and Gas Conservation Commission to implement the provisions of this Act.
26 The Alaska Public Utilities Commission shall also transfer at least two employees of the
27 Alaska Public Utilities Commission who are employed in the tariff section to the Alaska Oil
28 and Gas Conservation Commission.

29 * **Sec. 28. FIVE-YEAR SUNSET.** The amendment to AS 44.66.010(a)(4), made by
30 sec. 18 of this Act, is made notwithstanding AS 44.66.010(c).

31 * **Sec. 29. REVISOR INSTRUCTIONS.** (a) In the following statutes, the revisor of

1 statutes is instructed to change "Alaska Public Utilities Commission" to "Regulatory
2 Commission of Alaska":

- 3 (1) AS 29.35.131(c);
- 4 (2) AS 29.35.137(5);
- 5 (3) AS 42.05.141(a);
- 6 (4) AS 42.05.325(c);
- 7 (5) AS 42.05.381(f) in both places;
- 8 (6) AS 42.05.712(c);
- 9 (7) AS 42.05.712(d);
- 10 (8) AS 42.45.010(e);
- 11 (9) AS 42.45.110(a);
- 12 (10) AS 42.45.170(a);
- 13 (11) AS 42.45.170(e);
- 14 (12) AS 44.83.090(b) in both places;
- 15 (13) AS 45.50.473(a);
- 16 (14) AS 45.50.473(b);
- 17 (15) AS 45.50.475(b);
- 18 (16) AS 45.50.475(c); and
- 19 (17) AS 45.63.080(12).

20 (b) In the following statutes, the revisor of statutes is instructed to change "Alaska
21 Public Utilities Commission" to "former Alaska Public Utilities Commission or the Regulatory
22 Commission of Alaska":

- 23 (1) AS 09.65.085(a);
- 24 (2) AS 10.25.020(6); and
- 25 (3) AS 18.57.020(c).

26 (c) In the following statutes, the revisor of statutes is instructed to change "by the
27 Alaska Public Utilities Commission" to "by the former Alaska Public Utilities Commission
28 or by the Regulatory Commission of Alaska":

- 29 (1) AS 29.35.050(b) in both places;
- 30 (2) AS 29.35.050(c);
- 31 (3) AS 29.35.060(a);

1 (4) AS 29.35.060(b); and

2 (5) AS 42.45.200(e).

3 (d) In the following statutes, the revisor of statutes is instructed to change "Alaska
4 Public Utilities Commission" to the "Alaska Oil and Gas Conservation Commission":

5 (1) AS 38.35.120(a) in three places;

6 (2) AS 38.35.230(2);

7 (3) AS 43.55.150(b); and

8 (4) AS 43.56.210(7).

9 * **Sec. 30.** This Act takes effect July 1, 1999.

A M E N D M E N T

OFFERED IN THE SENATE

TO: SB 133

SENATE FINANCE
COMMITTEE #1
Amendment Number: #1
Bill Number: SB 133 (RES)
Sponsor: Jorgensen Date: 4/29/99
Logged In By: Q SoClaw

1 Page 5, line 22, following ".":

2 Insert "If there is an allegation in an appeal filed with the commission that action or
3 a decision taken by the commission is contrary to commission precedent and is not based on
4 an intervening change in law, a party to the appeal may request that the full commission hear
5 the appeal. The full commission may grant or deny a request for hearing by the full
6 membership. ~~_____~~

7 ~~_____~~

8 Page 7, line 2:

9 Delete "The"

10 Insert "Unless the appeal is to be heard by the full commission under
11 AS 42.04.080. the"

12 Page 7, line 4:

13 Delete "[COMMISSION]"

14 Insert "or the commission"

15 Page 7, line 6, following "appointed":

16 Insert "or the full commission agrees to hear the application"

17 Page 7, line 8:

18 Delete "[COMMISSION]"

19 Insert "or the commission"

20 Page 8, lines 10 - 11:

1

Delete "to a five-member appellate panel"

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 133(RES)

SENATE FINANCE
COMMITTEE

Amendment Number: #2
Bill Number: CSSB 133(RES)
Sponsor: Tracy Jensen Date: 4/29/99
Logged In By: Abel Garcia

- 1 Page 12, following line 8:
- 2 Insert a new bill section to read:
- 3 "* Sec. 24. MANAGEMENT INFORMATION SYSTEM. The Alaska Energy
- 4 Conservation Commission shall develop its management information system and make the
- 5 system accessible to the general public through the Internet for the purpose of tracking,
- 6 scheduling, and managing all dockets within the commission."

- 7 Renumber the following bill sections accordingly.

A M E N D M E N T

OFFERED IN THE SENATE
TO: CSSB 133(RES)

SENATE FINANCE
COMMITTEE
Amendment Number: # 3
Bill Number: CS SB 133 (RES)
Sponsor: Tompersen Date: 4/28/99
Logged In By: J. S. L. L. L.

- 1 Page 12, lines 28 - 30:
2 Delete all material and insert:
3 "(1) one member shall serve a five-year term;
4 (2) one member shall serve a four-year term;
5 (3) one member shall serve a three-year term;
6 (4) one member shall serve a two-year term; and
7 (5) one member shall serve a one-year term."

A M E N D M E N T

OFFERED IN THE SENATE
TO: CSSB 133(RES)

SENATE FINANCE
COMMITTEE # 4
Amendment Number: # 4
Bill Number: CSSB 133 (RES)
Sponsor: TORRES Date: 4/29/99
Logged In By: ASotlari

1 Page 3, lines 22 - 23:

2 Delete all material and insert:

3 "(b) The chair of the commission may enter into a contract for no more than
4 \$5,000 to engage the services of a consultant or expert the chair considers necessary.

5 The commission may contract for and engage the services of consultants and experts
6 the commission considers necessary."

A M E N D M E N T

OFFERED IN THE SENATE
TO: CSSB 133(RES)

SENATE FINANCE
COMMITTEE
Amendment Number: #5
Bill Number: CSSB 133 (RES)
Sponsor: Torgerson Date: 4/29/99
Logged In By: J. Getlani

1 Page 4, lines 23 - 26:
2 Delete all material.

3 Page 5, following line 11:
4 Insert a new section to read:

5 **"Article 3. Public Advocacy Section.**

6 **Sec. 42.04.150. Public advocacy section.** There is established within the
7 commission a public advocacy section that shall participate as a party in adjudicatory
8 matters that come before the commission to represent the public interest when it is in
9 the public interest to do so. The public advocacy section shall operate separately from
10 the rest of the commission."