

AK LEGISLATURE FINANCE COMMITTEES FILES 2007-2008 3223

**HB**

**2009**

SFIN

FILE

# SENATE FINANCE COMMITTEE REPORT

REPORTED OUT  
 MAY 11 2007  
 SENATE FINANCE COMMITTEE

DATE: 5/9/07

FURTHER:

DATE TURNED IN TO OFFICE: 11 May 2007

Finance Committee considered CS FOR HOUSE BILL NO. 209(JUD)

## HB 209 REGULATORY COMMISSION OF ALASKA

"An Act relating to the chair of the Regulatory Commission of Alaska and amending the timeline requirements for a final order of the commission; and providing for an effective date."

and recommends:

- be replaced with  SCS or  CS CS HB 209 (FIN)
- adopt previous  SCS or  CS CS forthcoming
- attached amendment(s)
- adopt \_\_\_\_\_ Letter of Intent
- further referral to \_\_\_\_\_ Committee

**SENATE BILL:**

Same Title

New Title

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**HOUSE BILL:**

Same Title

Technical Title Change

New Title w/ SCR #

SCR forthcoming

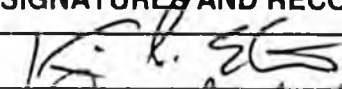

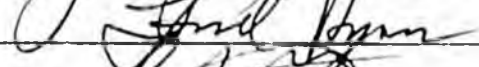



**NEW FISCAL NOTE(S):**

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
LAW	5/9/07		*		
Commerce	f/n forthcoming				

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Elton			✓	
	Thomas			✓	
	Dusan	✓			
	Huggins	✓			
CO-CHAIR: 	Hoffman			✓	
CO-CHAIR: 	Stedman			✓	

SENATE CONCURRENT RESOLUTION NO.  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Introduced:  
Referred:

A RESOLUTION

1 Suspending Rules 24(c), 35, 41(b), and 42(c), Uniform Rules of the Alaska State  
2 Legislature, concerning House Bill No. 209, relating to the chair of the Regulatory  
3 Commission of Alaska and amending the timeline requirements for a final order of the  
4 commission.

5 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

6 That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of  
7 Rules 24(c), 35, 41(b), and 42(c), Uniform Rules of the Alaska State Legislature, regarding  
8 changes to the title of a bill, are suspended in consideration of House Bill No. 209, relating to  
9 the chair of the Regulatory Commission of Alaska and amending the timeline requirements  
10 for a final order of the commission.

# FISCAL NOTE

 REPORTED OUT  
 MAY 11 2007  
 SENATE FINANCE COMMITTEE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

 Fiscal Note Number: HB209SCS5(FIN) COM RCA 05-11-07  
 Bill Version: SCS CSHB 209(FIN)  
 () Publish Date: \_\_\_\_\_

 Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
 Title Regulatory Commission of Alaska RDU Regulatory Commission of Alaska (399)  
 Component Regulatory Commission of Alaska  
 Sponsor House Labor & Commerce  
 Requester Senate Finance Component No. 2417
**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	229.4	229.4	229.4	229.4	229.4	229.4
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>229.4</b>	<b>229.4</b>	<b>229.4</b>	<b>229.4</b>	<b>229.4</b>	<b>229.4</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES (1141)</b>	229.4	229.4	229.4	229.4	229.4	229.4
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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						
1141 RCA Receipts	229.4	229.4	229.4	229.4	229.4	229.4
<b>TOTAL</b>	<b>229.4</b>	<b>229.4</b>	<b>229.4</b>	<b>229.4</b>	<b>229.4</b>	<b>229.4</b>

Estimate of any current year (FY2007) cost: \_\_\_\_\_

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

Full-time	2	2	2	2	2	2
Part-time						
Temporary						

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

This legislation revises the Regulatory Commission of Alaska (RCA) governing statutes by creating a catch-all provision that would establish a six-month timeline on all RCA matters not currently subject to such timelines (approximately 42% of the cases filed with the RCA are not subject to statutory timelines). This legislation would result in the creation of two additional positions (one paralegal/range 16 and one administrative law judge/range 24) to handle the compressed work load associated with these cases.

The RCA is funded through the Regulatory Cost Charge (RCC) mechanism and direct charge mechanism. No general funds are allocated for support of the agency. The RCC is recalculated each year and allows the agency to recover its operating costs through an assessment on the revenues of the utilities and pipeline carriers it regulates. The RCC rate paid is capped by statute (AS 42.05.254 for utilities, AS 42.06.286 for pipelines). The RCA does not anticipate needing a change to the RCC cap in FY08 as a result of this legislation.

 Prepared by: Ka'e Giard, Chairman  
 Division: Regulatory Commission of Alaska  
 Approved by: Emil Notti, Commissioner  
 Agency: Commerce, Community, and Economic Development

 Phone 907-276-6222  
 Date/Time 5/11/07 5:58 PM  
 Date 5/11/2007

# FISCAL NOTE

REPORTED OUT  
MAY 11 2007  
SENATE FINANCE COMMITTEE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

Fiscal Note Number: HB209CS-LAW-RAPA-5-  
Bill Version: CSHB209  
( ) Publish Date: \_\_\_\_\_

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

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	***	***	***	***	***	***

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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 (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	***	***	***	***	***	***

Estimate of any current year (FY2007) cost: 0.0  
Check this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Prepared by: Robert Meiners, Admin. Services Manager Phone 465-5427  
Division Administrative Services Division Date/Time 5/8/07 10:33 AM  
Approved by: Robert Meiners for Talis Colberg, Attorney General Date 5/8/2007  
Agency Department of Law

FISCAL NOTE

STATE OF ALASKA  
2007 LEGISLATIVE SESSION

BILL NO. CSHB209

ANALYSIS CONTINUATION

This bill would create new and amend current statute relating to the chair of and the membership of and qualifications of members of the Regulatory Commission of Alaska; add positions to the partially exempt service; create an administrative law division and natural gas and oil pipeline division within the commission; amend the timeline requirements for a final order of the commission; amend the commission's regulatory cost charges; and add to the duties of the Alaska Judicial Council as they relate to the presentation of nominees for consideration for appointment to the commission.

In particular, proposed Sec. 4 of the bill would amend AS 42.05.175(c) to reduce the time for RCA decision-making in rate cases by approximately six months. This shorter procedural timeline does not necessarily translate into more quantifiable need for resources by RAPA. That is because proposed Sec. 4 does not create more work, but rather impacts the timeline of the processing of the work. Over the long term, the workload will be identical to that if no change is made. However, resource needs at any one point in time may well be greater, dependent upon the type of cases that arise, the number of more complex cases filed in which the Attorney General elects to participate and whether these cases are spread out over time or are filed close together.

The Department cannot readily predict the nature and timing of future filings and thus is not able to say with certainty whether there may be short term additional resource needs resulting from the proposed change. As a consequence the fiscal impact of this bill on the department must be considered indeterminate at this point in time.

25-LS0717AO

Kane

5/11/07

SENATE CS FOR CS FOR HOUSE BILL NO. 209( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act amending the timeline requirements for a final order of the Regulatory  
2 Commission of Alaska; and providing for an effective date."

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

4 \* Section 1. AS 42.05.175(a) is amended to read:

5 (a) The commission shall issue a final order not later than 180 days [SIX  
6 MONTHS] after a complete application is filed for an application

7 (1) for a certificate of public convenience and necessity;

8 (2) to amend a certificate of public convenience and necessity;

9 (3) to transfer a certificate of public convenience and necessity; and

10 (4) to acquire a controlling interest in a certificated public utility.

11 \* Sec. 2. AS 42.05.175(b) is amended to read:

12 (b) Notwithstanding a suspension ordered under AS 42.05.421, the  
13 commission shall issue a final order not later than 270 days [NINE MONTHS] after a  
14 complete tariff filing is made for a tariff filing that does not change the utility's

1 revenue requirement or rate design.

2 \* Sec. 3. AS 42.05.175(c) is amended to read:

3 (c) Notwithstanding a suspension ordered under AS 42.05.421, the  
4 commission shall issue a final order not later than 450 days [15 MONTHS] after a  
5 complete tariff filing is made for a tariff filing that changes the utility's revenue  
6 requirement or rate design.

7 \* Sec. 4. AS 42.05.175(d) is amended to read:

8 (d) The commission shall issue a final order not later than 365 days [12  
9 MONTHS] after a complete formal complaint is filed against a utility or, when the  
10 commission initiates a formal investigation of a utility without the filing of a complete  
11 formal complaint, not later than 365 days [12 MONTHS] after the order initiating the  
12 formal investigation is issued.

13 \* Sec. 5. AS 42.05.175(e) is amended to read:

14 (e) The commission shall issue a final order in a rule-making proceeding not  
15 later than 730 days [24 MONTHS] after a complete petition for adoption, amendment,  
16 or repeal of a regulation under AS 44.62.180 - 44.62.290 is filed or, when the  
17 commission initiates a rule-making docket, not later than 730 days [24 MONTHS]  
18 after the order initiating the proceeding is issued.

19 \* Sec. 6. AS 42.05.175(f) is amended to read:

20 (f) The commission may extend a timeline required under [(a) - (e) OF] this  
21 section if all parties of record consent to the extension or if, for one time only, before  
22 the timeline expires, the

23 (1) commission reasonably finds that good cause exists to extend the  
24 timeline;

25 (2) commission issues a written order extending the timeline and  
26 setting out its findings regarding good cause; and

27 (3) extension of time is 90 days or less.

28 \* Sec. 7. AS 42.05.175 is amended by adding new subsections to read:

29 (k) In adjudicated docket matters that come before the commission under state  
30 law or federal law and are not subject to a timeline under federal law or  
31 AS 42.05.175(a) - (e), the commission shall issue a final order not later than 180 days

1 after the filing of an initiating petition. If the matter is commenced on the  
2 commission's own motion, the commission shall issue a final order not later than 365  
3 days after the issuance of an order opening the docket. This subsection does not apply  
4 to a complaint against a utility, a petition to revoke a certificate of public convenience  
5 and necessity, or a functionally equivalent filing.

6 (l) If the commission does not issue and serve a final order governed by (k) of  
7 this section within the applicable timeline specified, including any extension granted  
8 by the commission in accordance with (f) of this section, the initiating petition shall be  
9 considered approved and shall take effect immediately, or, if the matter was  
10 commenced by the commission, the docket shall be closed with no action taken.

11 (m) If proceedings subject to different timelines under this section are  
12 consolidated or if a single proceeding implicates more than one timeline, the latest  
13 applicable deadline for the issuance of a final order shall apply.

14 (n) The commission may not evade the requirement of this section by  
15 terminating a proceeding in a docket and opening a proceeding in another docket on  
16 substantially the same matter.

17 \* Sec. 8. Section 3 of this Act takes effect July 1, 2008.

SENATE CONCURRENT RESOLUTION NO.  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY

Introduced:

Referred:

A RESOLUTION

1 Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State  
2 Legislature, concerning House Bill No. 209, relating to the chair of the Regulatory  
3 Commission of Alaska and amending the timeline requirements for a final order of the  
4 commission.

5 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

6 That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of  
7 Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding  
8 changes to the title of a bill, are suspended in consideration of House Bill No. 209, relating to  
9 the chair of the Regulatory Commission of Alaska and amending the timeline requirements  
10 for a final order of the commission.

# FISCAL NOTE

STATE OF ALASKA  
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB209CS-LAW-RAPA-5-  
Bill Version: CSHB209  
( ) Publish Date: \_\_\_\_\_

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

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>

Estimate of any current year (FY2007) cost: 0.0

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

**POSITIONS**

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

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

Prepared by: Robert Meiners, Admin. Services Manager Phone 465-5427  
Division Administrative Services Division Date/Time 5/8/07 10:33 AM  
Approved by: Robert Meiners for Talis Colberg, Attorney General Date 5/8/2007  
Agency Department of Law

FISCAL NOTE

STATE OF ALASKA  
2007 LEGISLATIVE SESSION

BILL NO. CSHB209

**ANALYSIS CONTINUATION**

This bill would create new and amend current statute relating to the chair of and the membership of and qualifications of members of the Regulatory Commission of Alaska; add positions to the partially exempt service; create an administrative law division and natural gas and oil pipeline division within the commission; amend the timeline requirements for a final order of the commission; amend the commission's regulatory cost charges; and add to the duties of the Alaska Judicial Council as they relate to the presentation of nominees for consideration for appointment to the commission.

In particular, proposed Sec. 4 of the bill would amend AS 42.05.175(c) to reduce the time for RCA decision-making in rate cases by approximately six months. This shorter procedural timeline does not necessarily translate into more quantifiable need for resources by RAPA. That is because proposed Sec. 4 does not create more work, but rather impacts the timeline of the processing of the work. Over the long term, the workload will be identical to that if no change is made. However, resource needs at any one point in time may well be greater, dependent upon the type of cases that arise, the number of more complex cases filed in which the Attorney General elects to participate and whether these cases are spread out over time or are filed close together.

The Department cannot readily predict the nature and timing of future filings and thus is not able to say with certainty whether there may be short term additional resource needs resulting from the proposed change. As a consequence the fiscal impact of this bill on the department must be considered indeterminate at this point in time.

# FISCAL NOTE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

Fiscal Note Number: HB209CS(JUD)-COM-RCA 05-10-07  
 Bill Version: CSHB 209(JUD)  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
 Title Regulatory Commission of Alaska RDU Regulatory Commission of Alaska (399)  
 Component Regulatory Commission of Alaska  
 Sponsor House Labor & Commerce  
 Requester Senate Finance Component No. 2417

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	355.0	355.0	355.0	355.0	355.0	355.0
Travel						
Contractual	150.0	50.0	0.0	0.0	0.0	0.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>505.0</b>	<b>405.0</b>	<b>355.0</b>	<b>355.0</b>	<b>355.0</b>	<b>355.0</b>
<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES (1141)</b>	<b>505.0</b>	<b>405.0</b>	<b>355.0</b>	<b>355.0</b>	<b>355.0</b>	<b>355.0</b>

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1141 RCA Receipts	505.0	405.0	355.0	355.0	355.0	355.0
<b>TOTAL</b>	<b>505.0</b>	<b>405.0</b>	<b>355.0</b>	<b>355.0</b>	<b>355.0</b>	<b>355.0</b>

Estimate of any current year (FY2007) cost: \_\_\_\_\_

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

**POSITIONS**

Full-time	4	4	4	4	4	4
Part-time						
Temporary						

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

This legislation establishes a new six-month time line for approximately 42% of AS 42.05 dockets which comprise the RCA's caseload and that do not currently have an associated statutory time line. This legislation would also reduce time lines on rate cases and rate design cases to 9 months from 15 months effective July 1, 2008, a reduction of 40% of the time line of a rate case.

These combined changes would substantially reduce regulatory lag which will improve the regulatory climate in Alaska. (Continued)

Prepared by: Kate Giard, Chairman  
 Division Regulatory Commission of Alaska  
 Approved by: Emil Notti, Commissioner  
 Agency Commerce, Community, and Economic Development

Phone 907-276-6222  
 Date/Time 5/10/07 7:14 PM  
 Date 5/10/2007

FISCAL NOTE

STATE OF ALASKA  
2007 LEGISLATIVE SESSION

BILL NO. CSHB 209(JUD)

ANALYSIS CONTINUATION

To achieve these efficiencies, the RCA would need to make immediate and substantive changes to its work allocation, its staffing and most importantly, its regulations. The RCA would increase staff by four positions; 2 analyst positions, one Administrative Law Judge and one support staff to ensure compliance with the new time lines. The RCA would also need to hire outside contractors to work with industry and the RCA to create new regulations to address the comprehensive hearings procedures and the new discovery procedures. This would be necessary for the RCA to comply with the July 1, 2008 implementation date. Without contractual resources, a regulations projects of this magnitude would take two to three years to implement which would be beyond the scope of meeting the new time lines.

RCC Impact:

Calculations indicate the RCA would likely exceed the statutory rate cap for fiscal 2008 as a result of the combination of the 2007, \$1.3 million supplemental for legal costs and the addition of staffing resources needed to reduce regulatory lag. Consequently, the RCC cap would need to be increased from .007 to .008 to fund the provisions of this legislation.



# ALASKA STATE LEGISLATURE

## HOUSE LABOR & COMMERCE COMMITTEE

REP. KURT OLSON

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

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

### SPONSOR STATEMENT

#### CS HB 209

#### Regulatory Commission of Alaska

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

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

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

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



# ALASKA STATE LEGISLATURE

## HOUSE LABOR & COMMERCE COMMITTEE

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

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

### CS HB 209

#### Sectional Analysis

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

**Section 2** - Technical amendment

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

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

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

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



**UTILITY  
SERVICES OF  
ALASKA, INC.**

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

January 26, 2007

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

RE: REGULATORY COMMISSION OF ALASKA SUNSET REVIEW

Dear Governor Palin:

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

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

**BACKGROUND**

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

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

Letter to Governor Palin  
January 26, 2007  
Page 2

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

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

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

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

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

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

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

1. The statutory timeline is far too long. The process simply expands to fill the available time. In 2006, during RAPA discovery, items produced in early discovery, one to two months before reply testimony was due, were not examined until the same week reply testimony was due. We know this because our production of same was inadvertently incomplete! Upon discovering this omission and calling it to our attention (the week reply testimony was due), we produced correct documents within hours. To require four and half months to adjudicate case matters after hearing is too long. Many other jurisdictions have statutory or voluntarily utilize timelines of 9 or 10 months. The statute needs to be changed to 9 months. If a mistake is made either in favor of or against the utility, a prompt refile can be made by the utility or required by the RCA. (See the results of the Legislative Budget and Audit review of the RCA for Sunset Review for supporting documents for reduced statutory timelines.) Rates need to be in effect during the computed time frame, not one to two years later.
2. Discovery is totally out of hand. The volumes of data requested by various parties, mostly RAPA and other interveners, is beyond analysis, with costs out of sight. There are basically no discovery rules in what has become a near court like affair. At the least, rules of discovery ought to be adopted similar to other legal venues, with an eye to limits on discovery both in time and amount.
3. RAPA was created by our late governor from the RCA's Public Advocacy Section, so the governor could exercise control over pipeline regulation. This change was ill conceived at best. RAPA is now responsible to no one. It appears to be run by the Attorney General even though control ought to in part be exerted by the RAPA staff section head. This appears not to be the case. RAPA contributes to large costs, case delays, and huge difficulties for the RCA. The RAPA group needs to be brought back under the control of the RCA so someone can exercise oversight.  
  
Informal discussion and discovery during RCA proceedings is almost non-existent. The process is controlled by attorneys and a utility almost never really gets to "tell its story". This lack of dialog between the utilities and the RCA must change. Dialog must be required by statute, especially during the time between initial filing and suspension. Settlement discussions need to be mandated by statute.
4. Commissioner's current pay levels are about \$85,000/year and are set by the legislature. Qualifications are not set at a high bar. This is wrong. Pay should be set at a higher level and automatically adjusted when other state salaries are adjusted. Superior Court judge levels are an appropriate place to start. Qualifications ought to be at the level of

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

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

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

Sincerely,



George Gordon  
Director of Regulatory Affairs

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



May 11, 2007

The Honorable Lyman Hoffman, Co-Chair  
Senate Finance Committee  
Alaska State Capitol, Room 518  
Juneau, AK 99801-1182

The Honorable Bert Stedman, Co-Chair  
Senate Finance Committee  
Alaska State Capitol, Room 516  
Juneau, AK 99801-1182

RE: HB 209 (House Labor and Commerce)—Oppose Unless Amended

Dear Co-Chairs Hoffman and Stedman:

On behalf of the AARP members in Alaska, we urge you and your colleagues on the Senate Finance Committee not to adopt CSHB 209 unless Section 4 is amended to preserve the 15 month period allowed for the Regulatory Commission of Alaska (RCA) to complete review of utility requests for rate increases. The reduction of the time allowed from 15 months to 270 days (9 months) does not allow the RCA adequate time to carry out its essential function of protecting utility ratepayers from unjust and unreasonable rates.

AARP is a consumer advocacy group that has been participating in RCA proceedings for several years because of its concern over high utility rates that affect AARP members as well as other utility service consumers.

The RCA has the extremely important role of protecting consumers from unreasonable utility rates and practices. It carries out this duty by reviewing each tariff filing in which a utility proposes to change its rates or other terms of service. Consumers will be the losers if the RCA is not allowed enough time to thoroughly review utilities' proposed rate increases.

The rate case process that would be shortened to 9 months by Section 4 begins with a utility's filing proposing a rate increase or change in other term of service. A utility is entitled to charge rates sufficient to cover its reasonable costs and provide an adequate, but not excessive, return on the utility's investment. However, the task of determining what the rates should be requires the RCA to review the utility's complex rate filing. The process begins with a 45 day preliminary review during which the RCA determines if the filing should be approved or suspended for further investigation. If suspended, the public

advocacy staff (now a part of the Attorney General's Office) investigates the claimed costs. If the utility's claimed costs are contested, the RCA must conduct a hearing consistent with due process, and issue a written order. CS HB 209 includes a utility-sponsored provision to reduce the time for this process from 15 months to 9 months. This provision is not in the interests of utility consumers who expect and deserve adequate review of any rates they are obligated to pay.

Thank you for your consideration.

Please feel free to contact me (907-223-0604) or Patrick Luby, AARP Advocacy Director (907-762-3314) if you have any questions about AARP's position.

Sincerely,

*Virginia Rusch*

Virginia Rusch  
Representing AARP Alaska  
801 West Fireweed, Suite 202  
Anchorage, AK 99503  
[vrusch@acsalaska.net](mailto:vrusch@acsalaska.net)

CC: Vice-Chair Charlie Huggins  
Senator Kim Elton  
Senator Donald Olson  
Senator Joe Thomas  
Senator Fred Dyson  
Representative Kurt Olson

May 10, 2007

Senator Bert Stedman  
State Capitol, Room 516  
Juneau, AK 99801-1182

Re: Support for HB 209 – Regulatory Commission of Alaska (RCA)

Dear Senator Stedman:

As President/CEO of the second and third largest water and wastewater companies in Alaska, I am compelled to comment on HB 209, currently being considered by the legislature. Golden Heart Utilities (GHU) and College Utilities Corporation (CUC), along with our administrative services company, Utility Services of Alaska (USA), serve more than 8,500 accounts and a population of more than 50,000 in the greater Fairbanks area. We have experienced the consequences of regulatory lag that allows excessively long statutory periods to resolve rate case filings. The rate adjustment process is cumbersome, unresponsive and often results in expenses disproportionate to the return the utility and its customers receive. USA strongly supports HB 209 in its current form. In particular, the provision which reduces the statutory time allowed for rate cases from 15 months to 9 months is an essential change that needs to be incorporated immediately.

Many other jurisdictions have realized that lengthy hearing and review processes do not serve the interests of a utility's customers. Statutory timelines for resolution of rate case filings frequently result in "pancaking" of rate cases because one case is not resolved before rapidly escalating costs require a second rate adjustment. This increases the complexity of these pancaked filings tremendously. Reasonable action guidelines by the Regulatory Commission would give a utility some assurance of a response within a reasonable time after a filing takes place. We firmly believe that a reasonable timeline for resolution of a rate case is 9 months. In context, rate case filings are always historical in nature so a utility is requesting rates adjustments based upon increased costs that have been in effect for at least one year before the rate adjustment is presented to the commission. Many states have already recognized the benefit of more immediate action on rate adjustments and have implemented statutory or voluntary timelines of 9 months or less. Alaska needs to follow suit! Please see the enclosed analysis performed by the State of Michigan Public Service Commission. If a mistake is made either in favor of or against the utility, a prompt refiling can be made by the utility or required by the RCA. (See the results of the Legislative Budget and Audit review of the RCA for Sunset Review for supporting documents for reduced statutory timelines.) This process protects both the public interest and the viability of the utility. Rates need to be in effect during the computed time frame, not one to two years later.

For example, GHU and CUC filed a rate proceeding with the RCA on October 7, 2005. The statutory timeline of 15 months then started. A final decision was issued January 8, 2007, the last day of the statutory timeline, all based on a test year of 2004 for rates that should have been in effect for late 2005 and 2006. The length of time to issue a rate case order has many impacts, including uncontrolled cost to the utility and ultimately the ratepayer and the restriction of capital investments to stimulate utility growth within a community.

Delays in resolving rate case filings equate directly to increased costs. The costs to our utilities alone for the 2004 test year case are more than \$1 million. These costs are for legal, consulting, rate of return experts, cost of service study contractors and other direct outside expenses. Utility staff time, which is substantial, is not included, nor are the costs of the interveners, including RAPA. The added revenue requirement being requested in the 2004 case is about \$2.3 million. There is no equity in a system that requires nearly \$1 million in order to generate \$2.3 million in rate increase. The process simply expanded to fill available time.

The current statutory timeline does not serve the best interest our ratepayers. The costs for legal, consulting, and other direct expenses over these many months will end up being absorbed by ratepayers. An additional consequence of the lengthy review process on rate case filings is the impact upon interveners such as AARP who frequently intervene against any rate increase due to the impact upon their constituent members. Additional time, additional discovery and additional delays all equate to increased and often unnecessary costs for the interveners, the utility and the Regulatory Commission.

I ask for your support of HB 209 in its current form. This important legislation must go forward as written to begin the process of repairing a very broken system in dire need of repair. Shortening the statutory timeline is one of the first steps in this process.

Sincerely,

Dan Gavora  
President/CEO

Enclosure



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

Jennifer M. Granholm  
 GOVERNOR

J. Peter Lark  
 CHAIR

Robert B. Nelson  
 COMMISSIONER

Laura Chappelle  
 COMMISSIONER

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

From: Gary Kitts

Subject: Rate Case Processing

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

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

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

<sup>1</sup> (21.1% - 9.6%) x 7.3 months = 0.8 months.

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

State	Total \$	Wtd \$	Months	Wtd Month
Alabama	14.5	0.04%	7.0	0.00
Arizona	1048.4	2.97%	14.3	0.42
Arkansas	136.1	0.39%	10.1	0.04
California	1578.1	4.47%	15.2	0.68
Colorado	331.2	0.94%	9.4	0.09
Connecticut	1327.1	3.76%	6.4	0.24
Delaware	104.8	0.30%	15.0	0.04
District of Columbia	445.6	1.26%	10.3	0.13
Florida	544.5	1.54%	7.1	0.11
Georgia	681.7	1.93%	6.1	0.12
Hawaii	534.7	1.52%	20.0	0.30
Idaho	66.8	0.19%	10.0	0.02
Illinois	2914.0	8.28%	11.2	0.93
Indiana	460.4	1.30%	11.6	0.15
Iowa	504.7	1.43%	8.6	0.12
Kansas	402.7	1.14%	9.1	0.10
Kentucky	185.8	0.53%	8.2	0.04
Louisiana	139.2	0.39%	14.8	0.06
Maine	225.1	0.64%	8.6	0.05
Maryland	1084.4	3.07%	5.8	0.18
Massachusetts	712.1	2.02%	6.5	0.13
Michigan	909.9	2.58%	11.4	0.29
Minnesota	473.0	1.34%	12.1	0.16
Mississippi	120.1	0.34%	4.8	0.02
Missouri	862.9	2.45%	9.0	0.22
Montana	255.6	0.72%	11.0	0.08
Nevada	284.8	0.81%	5.5	0.04
New Hampshire	21.2	0.06%	12.0	0.01

<sup>2</sup> These are total rather than annual asset recovery costs for these items.

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

# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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

November 8, 2006

Members of the Legislative Budget  
and Audit Committee:

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

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

October 20, 2006

Audit Control Number

08-20048-06

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

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

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

Handwritten signature of Pat Davidson in black ink.

Pat Davidson, CPA  
Legislative Auditor

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## OBJECTIVES, SCOPE, AND METHODOLOGY

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

### Objectives

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

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

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

### Scope and Methodology

The major areas of our review included:

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

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

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

One survey was sent to a sample of individuals who were involved in docket<sup>1</sup> proceedings. Topics in this survey included: statutory timelines, communication of the statutory deadline for docket proceedings, timeliness of dockets without statutory timelines, the hearing process, statutes, regulations, RCA's overall operations, and usability of the commission's website. A sample of 77 individuals<sup>2</sup> was selected from the service list attached to each docket's final or last order. Twenty-six of the 77 (34%) individuals surveyed responded.

Another survey was sent to a sample of individuals from the regulated entities that had interactions with RCA's consumer protection section. Topics in this survey included: RCA's informal complaint process, regulations, RCA's overall operations, and the usefulness of the commission's website. A non-probability sample of 29 individuals was selected from a list<sup>3</sup> of contacts provided by the consumer protection section staff. Fifteen of the 29 (52%) individuals surveyed responded.

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

Our evaluation covered dockets opened on or after July 1, 2002 through May 10, 2006. We excluded pipeline dockets since those proceedings have no statutory timelines. The total number of dockets in our population was 465. We tested a randomly-selected statistical sample of 35 dockets. We also reviewed all final decisions of rule-making<sup>4</sup> dockets closed during the period to ensure the closure was within statutory timelines.

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

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

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

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

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

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

<sup>5</sup> We excluded dockets already reviewed in our statistical sample.

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

During our field work, we also:

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

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

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## ORGANIZATION AND FUNCTION

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

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

### Exhibit 1

#### RCA Economically Regulated Certificates by Service Type

Telecommunications	63
Electric	32
Pipeline	19
Refuse	13
Water	11
Gas	6
Sewer	3
Cable TV	2

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

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

### Exhibit 2

#### Regulatory Commission of Alaska Members

Kate Giard, Chair  
Term Expires March 2007

Anthony Price  
Term Expires June 2010

Mark Johnson  
Term Expires March 2009

Dave Harbour  
Term Expires March 2008

Jan Wilson  
Term Expires March 2012

The staff of RCA is organized around six major functions: administration, finance, tariff, engineering, common carriers, and consumer protection. RCA had 60 funded positions<sup>7</sup> in its \$6 million FY 06 operating budget. A brief description of the services provided by each function is as follows.

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

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

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

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

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

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

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

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## BACKGROUND INFORMATION

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

### 2005 Improvement Initiative Project

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

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

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

### *Internet Integrated Case Management System*

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

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

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

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

#### Regulation of smaller scale hydropower projects

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

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

In 2002, the state legislature adopted legislation<sup>10</sup> giving RCA authority to develop regulations as part of establishing a regulatory program for small hydropower projects within the State.<sup>11</sup> RCA opened a rule-making docket in December 2003 to begin the process of developing a regulatory program. A stakeholder advisory committee was formed and numerous committee meetings, workshops, and public meetings were held.

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

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

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

<sup>10</sup> Chapter 107, Session Law 2002

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

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

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

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

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

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## REPORT CONCLUSIONS

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

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

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## FINDINGS AND RECOMMENDATION

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

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

The third prior recommendation suggested RCA either require smaller water and sewer utilities to be certificated or establish a meaningful exemption system by regulation. RCA adopted the necessary regulations in February 2004.<sup>13</sup>

The following recommendation is based on the current sunset review.

### Recommendation No. 1

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

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

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

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

<sup>13</sup> These regulations became effective June 19, 2004.

#### Exhibit 4

#### Statutory Timelines

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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## ANALYSIS OF PUBLIC NEED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Exhibit 5**

**Consumer Complaints  
Filed with RCA during FY 06**

	<u>Number Filed</u>	<u>Percentage Of Total Complaints</u>
Telecommunications	247	60%
Electric	91	22%
Water / Sewer	34	8%
Natural Gas	20	5%
Refuse Collection	18	4%
Cable Television	5	1%
Totals	315	100%

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



DEPARTMENT OF  
**COMMERCE**  
COMMUNITY AND  
ECONOMIC DEVELOPMENT

Regulatory Commission of Alaska

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

December 6, 2006

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

Dear Ms. Davidson,

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

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

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

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

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

Sincerely,

Kate Giard, Chairman

**HB**

**212**

**HFIN**

**FILE**

# FISCAL NOTE

STATE OF ALASKA  
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: HB 212  
(H) Publish Date: 4/10/07

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
Title Land Transfer Alaska RR and Eklutna RDU \_\_\_\_\_  
Component Alaska Railroad Corporation  
Sponsor Stoltze, Fairclough  
Requester House Community & Regional Affairs Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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 (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2007) cost: 0.0

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This legislation transfers the 48-acre rock quarry site in Eagle River, currently owned by the Alaska Railroad Corporation (ARRC), to Eklutna Inc. ARRC is a public corporation supported by revenues generated through its freight, passenger and real estate services. Because ARRC does not receive state funding for operations or capital improvements and is operated as an independent state-owned enterprise, this legislation would not create a fiscal impact for the State.

Prepared by: Wendy Lindskoog, Assistant Vice President, Corporate Affairs Phone 907.265.2498  
Division Alaska Railroad Corporation Date/Time 3/22/07 7:10 PM  
Approved by: Emil Notti, Commissioner Date 3/22/2007  
Agency Commerce, Community, and Economic Development

# ALASKA STATE LEGISLATURE

*Vice Chair:*  
House Finance Committee

*Chair:*  
House Finance Subcommittees for;  
Department of Public Safety  
Department of Law



*Session:*  
Alaska State Capitol, Rm. 501  
Juneau, AK 99801-1182  
Phone: (907) 465-4958  
Fax: (907) 465-4928

*District:*  
600 E. Railroad Ave.  
Wasilla, AK 99654

**BILL STOLTZE**  
STATE REPRESENTATIVE  
Representative\_Bill\_Stoltze@legis.state.ak.us

## House Bill 212

### Alaska Railroad Land Transfer of Eklutna Quarry to Eklutna, Inc.

House Bill 212 would authorize the Alaska Railroad Corporation (ARRC) to transfer its entire interest in the Eklutna Quarry site north of Eagle River to Eklutna, Inc., the ANCSA village corporation created for the Eagle River area containing the quarry site.

On February 1, 2007, ARRC, Eklutna Inc. and the Native Village of Eklutna signed an agreement memorializing this land transfer. The agreement allows ARRC to obtain appropriate permits and begin removing stockpiled material in the quarry with a replacement value of approximately \$2 million. All parties understood that legislative approval would be required before ARRC could carry out the land transfer.

This 48-acre property and its use as a quarry has been the subject of a long-running dispute between ARRC on the one side and the Native Village of Eklutna and the Municipality of Anchorage on the other. That dispute culminated in three Alaska Supreme Court decisions, which denied ARRC continued use of the quarry without first obtaining a municipal conditional use permit, and prevented ARRC from obtaining federal approval to use the rock on federally funded projects.

While ARRC has recently obtained local and federal approval to remove the processed material, it is unlikely to ever obtain future permits for new blasting without consent of the Village as tribal representative of the Dena'ina Native people. That consent is highly unlikely because the hills that comprise the quarry have valid historic and cultural significance to the Dena'ina. As a result, ARRC determined that it will not use the Eklutna Quarry again for mining rock and has developed a new quarry site on property it owns near Curry, which is approximately 20 miles north of Talkeetna.

Certain agreements that resolved ANCSA Native land claims long ago identified Eklutna, Inc. as the eventual recipient of title to the quarry. Under the North Anchorage Land Agreement (NALA), and the ARRC-Eklutna 3(e) Claims Settlement Agreement, the Quarry will revert to Eklutna, Inc. when it ceases to be used for certain transportation purposes.

Legislative approval of HB 212 will execute these long-standing agreements and pave the way for ARRC and Eklutna, Inc. to work on future land negotiations that are beneficial to both entities.

DISTRICT 16

BIRCHWOOD • BUTTE • CHUGIAK • EKLUTNA • FAIRVIEW LOOP  
KNIK RIVER ROAD • LAZY MOUNTAIN • PALMER • PETERS CREEK



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NATIVE VILLAGE OF EKLUTNA

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February 21, 2007

Rep. Bill Stoltze:  
Alaska State Legislature  
600 E. Railroad Avenue  
Wasilla, AK 99654

RE: NVE, ARRC and EI MOU

Dear Representative Stoltze:

As Tribal Administrator of the Native Village of Eklutna, I am writing to assure you that the that the Native Village of Eklutna supports the "Memorandum of Agreement Regarding the Eklutna Quarry" that was recently signed by the Native Village Eklutna, the Alaska Railroad Corporation, and Eklutna, Inc. As we agreed when we signed the Memorandum of Agreement, ARRC will transfer the land of the Quarry to Eklutna, Inc., subject to legislative approval, and ARRC already has the consent to remove stockpiled rock from the Eklutna Quarry. We support both those goals and hope that legislation can be passed that will allow ARRC to make the transfer. If any changes are to be made, we want to be in that loop. When a bill is introduced, we want a copy for our review. Thank you for your consideration of our wishes.

Sincerely,

Daniel Alex, Tribal Administrator, The Native Village of Eklutna

**Agreement Regarding Eklutna Quarry  
Between  
Alaska Railroad Corporation,  
Eklutna, Incorporated and  
the Native Village of Eklutna**

**Dated as of 1/22/2007**

**Recitals:**

The Eklutna Hills have a documented historic cultural use by the Eklutna Natives of major significance.

The Alaska Railroad developed a rock quarry in the Eklutna Hills sometime between 1920 and 1940. The Railroad has used rock from the quarry for railroad and other projects since that time.

The Eklutna Quarry (Quarry) transferred from the Federal Government to the Alaska Railroad Corporation (ARRC) with the purchase of the Railroad by the State of Alaska in 1985.

The Quarry was also identified for eventual transfer to Eklutna, Incorporated (EI) in the North Anchorage Land Agreement (NALA), and was further addressed in the Agreement dated January 8, 1987 between the ARRC and EI resolving native land claims (the "3(e) Agreement").

Because of the cultural significance of the Quarry, the ARRC is not able to use the rock resources on Federal projects. The continued use of the Quarry has also been a matter of considerable dispute between the Native Village of Eklutna and the ARRC.

Pursuant to a Memorandum of Understanding dated December 21, 2005, as amended, (MOU) between ARRC, EI, and the Native Village of Eklutna (NVE), the parties have been working together to develop an agreement to allow the ARRC to transfer control, either by ownership or lease, of the ARRC Eklutna rock quarry site; and to provide for other concerns of the parties.

While the above referenced MOU references other properties and negotiations towards agreements regarding other properties and issues are in progress, this Agreement is specific to the Quarry and the stockpiled materials at the Quarry.

**Agreement:**

1. The mechanism for transfer of control and title to the Quarry is agreed to as follows: ARRC agrees to transfer title and control of the Quarry to EI as soon as practicable on such further terms and conditions as shall be mutually agreed to by the parties as provided for in the December 21, 2005 MOU. EI and NVE understand that a title transfer may require legislative action. All parties are also desirous of accomplishing the transfer under the terms of NALA.

2. The ARRC wishes to utilize the previously mined rock materials (materials) on the ground at the Quarry for ARRC purposes, including federally funded projects. EI and NVE agree that removal of these materials by the ARRC is a necessary part of the transfer process and support ARRC's effort to obtain a conditional use permit for this purpose.

3. All parties agree that removal of the materials, as soon as practicable, is a desired element of this Agreement. All parties agree to cooperate with each other to this end.

4. Traditional access through or near the Quarry site is permitted for NVE villagers or EI shareholders, for subsistence purposes and to gain access to a traditional fishing site on the western side of the Quarry. Such permissible access is subject to safety concerns if the ARRC is operating at the site. EI and NVE agree to observe ARRC safety measures and precautions while using the traditional access.

5. While industrial noise is unavoidable during ARRC operations pursuant to this Agreement, the ARRC will take measures to minimize noise and the timing of noise to the greatest extent possible.

6. Explosives can be used in conjunction with removal of unsafe loose hanging rock or shaping the face of the Quarry rock wall for safety purposes, on twenty-four (24) hours' prior notice to EI and NVE, unless otherwise provided in the conditional use permit.

7. NVE and EI agree that they support any ARRC effort to obtain a National Historic Preservation Act, Section 106 resolution that allows the use of such materials on federally funded railroad projects.

8. Upon final removal of materials, the ARRC will remove the tracks and crossties and any loose or unstable materials in and around the Quarry that could present a safety hazard.

9. EI and NVE are not requesting or demanding any remedial re-vegetation or importation of remedial materials to the Quarry site as part of this Agreement.

Eklutna, Inc.

By W. Price

Its CEO

Dated 1/30/07

Native Village of Eklutna

By Donald Alex

Its Tribal Administrator

Dated Feb 1, 2007

Alaska Railroad Corporation

By FK Gabel

Its Pres/CEO

Dated 1/23/07



Adopted: 01/22/07

Resolution No. 2007-07

Relating to the Approval Transfer  
of the Eklutna Rock Quarry to  
Eklutna, Inc.

WHEREAS, the Alaska Railroad developed a rock quarry in the Eklutna Hills sometime between 1920 and 1940 and used rock from the quarry for railroad and other projects; and

WHEREAS, the Eklutna Rock Quarry (Quarry) was transferred by license from the Federal Government to the Alaska Railroad Corporation (ARRC) with the purchase of the Alaska Railroad by the State of Alaska in 1985; and

WHEREAS, the Quarry was among the rail properties claimed by Eklutna, Inc. under the Alaska Native Claims Settlement Act (ANCSA) and was the subject of a settlement agreement regarding ANCSA claims between ARRC and Eklutna, Inc. dated January 8, 1987; and

WHEREAS, under said settlement agreement, ARRC would be entitled to continue mining the Quarry until the rock was removed to track subgrade level or when the property was devoted principally to a use other than mining of rock, at which point it would then revert to Eklutna, Inc.; and

WHEREAS, ARRC continued work in the Quarry from time to time following transfer from the Federal Government, but use of the Quarry has also been a matter of considerable dispute with the Native Village of Eklutna (Village) due to the documented significant historic cultural use of the Eklutna Hills by the Eklutna Natives; and

WHEREAS, the Native Village of Eklutna has taken several legal actions against ARRC and others to protect the historical and physical integrity of the Eklutna Hills, culminating in a 2003 Alaska Supreme Court ruling that ARRC must attempt to comply with local planning and zoning ordinances and seek a conditional use permit before conducting any further activity in the Quarry; and

WHEREAS, there is over one million dollars' worth of inventory stockpiled in the Quarry, consisting of rip rap, ballast and fines, which cannot be removed for use without a municipal conditional use permit; and

WHEREAS, because of the historic cultural significance of the Quarry, a conditional use permit for further rock extraction is difficult to obtain and, in addition, without completing a successful consultation with the Village under the

National Historical Preservation Act, ARRC is not able to use any of the rock resources on Federal projects; and

WHEREAS, ARRC management has located and is developing an alternative rock quarry at Curry and, as a result, further use of the Eklutna Quarry as a source is not urgent and compelling; and

WHEREAS, ARRC management believes that final resolution of the Quarry controversy will allow more efficient use of corporate resources, foster better relations with the Village, and encourage good faith negotiations to proceed with Eklutna, Inc. regarding exchange of other properties in a manner that will serve the parties' respective development and operational needs; and

WHEREAS, pursuant to a Memorandum of Understanding dated December 21, 2005, as amended, among ARRC, Eklutna, Inc. and the Village, the parties have been working together to develop an agreement to allow the ARRC to transfer control, either by ownership or lease, of the Quarry site; and to provide for other concerns of the parties; and

WHEREAS, reaching agreement with Eklutna, Inc. and the Village for transfer of the Quarry will enable ARRC to obtain a conditional use permit for removal of the existing rock inventory stockpiled in the Quarry and also to receive Federal Transit Administration approval for use of said rock inventory on federally funded projects; and

WHEREAS, a proposed Agreement Regarding Eklutna Quarry, as attached to the Resolution, has been negotiated and is recommended by ARRC management for Board approval.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors has reviewed the history of railroad use of the Eklutna Rock Quarry and the surrounding controversy and finds that it is in the best interests of the corporation to cease effort to conduct further quarry operations and to transfer complete ownership of the Eklutna Quarry to Eklutna, Inc. as set forth in the attached Agreement and consistent with the provisions of the January 8, 1987 settlement agreement and any other applicable agreements, laws or regulations; and

FURTHER RESOLVED, the President and CEO or his designee is authorized to negotiate such other conditions of transfer and take such other steps as he deems are appropriate and in the best interests of the corporation, including but not limited to seeking legislative approval of the transfer if required by law.

**MUNICIPALITY OF ANCHORAGE  
PLANNING AND ZONING COMMISSION RESOLUTION NO. 2006-066**

A RESOLUTION APPROVING A FINAL CONDITIONAL USE TO ALLOW NATURAL RESOURCE EXTRACTION IN THE T (TRANSITION) ZONE DISTRICT FOR T16N, R1W, SEC. 24, PARCEL B, EKLUTNA ROCK QUARRY SUBDIVISION.

(Case 2006-151; Tax I.D. No. 052-061-04)

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WHEREAS, a request has been received from Alaska Railroad Corporation (ARRC) to allow natural resource extraction for Parcel B, generally located northwest of the Village of Eklutna, and

Whereas, the actual rock and gravel quarrying operations have been completed and the applicant proposes to clean up and stabilize the quarry before deeding the property to Eklutna, and requires a conditional use for this purpose, and

WHEREAS, notices were published, posted and mailed and a public hearing was held December 4, 2006.

NOW, THEREFORE, BE IT RESOLVED, by the Municipal Planning and Zoning Commission that:

- A. The Commission makes the following findings of fact:
1. Quarrying operations have been completed. The ARRC conditional use for natural resource extraction is actually for the purpose of removing stockpiled rock and gravel material, general clean-up of the site, and rock face stabilization to return the area to a safe condition before turning the property over to Eklutna.
  2. Eklutna Inc. and the Village of Eklutna support the conditional use.
- B. The Commission APPROVES a final conditional use permit to allow natural resource extraction in the T (Transition) Zone District for T16N, R1W, SEC. 24, Parcel B, Eklutna Rock Quarry Subdivision, subject to the following conditions.
1. A Notice of Zoning Action, including a copy of the approved Commission Resolution for this case, shall be filed with the State Recorder's Office and proof of such shall be submitted to the Planning Department.
  2. The conditional use is intended to allow removal of approximately 145,000 tons of stockpiled rip-rap, ballast, and fines from Parcel B.
  3. All construction shall substantially conform to the petitioner's narrative and submitted plans on file at the Planning Department, except as modified by other conditions herein.

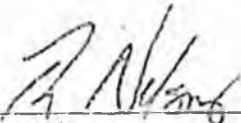
4. Prior to the issuance of any land use or excavation permit, the following shall be accomplished:
  - a. Review and approval of a final Air Quality Plan by the Department of Health and Social Services, Air Quality Office; the plan shall include any dust mitigation measures on public roadways and on the roadways within the site; a copy of the approved plan shall be submitted to the Planning Department.
  - b. Resolve the need for a drainage plan, sedimentation and erosion control plan, and a plan for the treatment of stormwater runoff. Plans shall be submitted to Municipal Project Management and Engineering Section for review and approval. Include copies of any required AK-DNR or AK-DEC applications, permits or plans.
  - c. Resolve the need for a restoration plan with Eklutna Inc. and the Planning Department. If the development of the site does not begin within a year, the site will be sodded or hydro-seeded to maintain runoff and air quality, or shall be restored via an alternative method approved by DHHS, DNR, DEC and PM&E.
  - d. A noise control permit application shall be submitted for review, to be approved by DHHS, with a copy to be provided to the Planning Department. Blasting is to be limited to restoring the rock faces to a safe and stable condition and shall be limited to the hours of 8:00 am to 4:00 pm, Monday through Friday. If the Applicant proposes to store explosives on site, a copy of the approved magazine application shall be submitted to the Planning Department. All equipment used in these operations shall comply with Chapter 15.70 Noise Control of the Anchorage Municipal Code.
5. Operational hours for removal of previously quarried materials shall be limited to loading and train operations from 6:00 a.m. to 7:00 p.m., Monday through Saturday. Only emergency operations are permitted on Sundays and holidays, or outside of the above hours. Removal of quarried material by truck will be allowed only by amendment to this conditional use.
6. The operation of the site shall include the following:
  - a. On-site personnel shall be formally trained on all aspects of the excavation operation.
  - b. The telephone number of the contractor selected to perform the work, as well as a contact telephone number for the owners, shall be placed on site. The sign shall be of sufficient size to be visible from the adjacent roadways and the view of the sign shall be unobstructed by equipment, machinery, vegetation and the like.
  - c. On-site personnel shall have total authority to direct road clean-up and maintenance operations as needed. On-site personnel shall have the

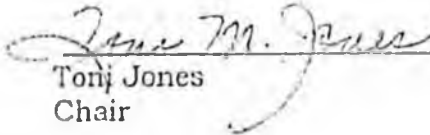
authority to call a sweeper, water truck and motor grader, as necessary, to respond to specific site conditions or complaints.

- d. Circulation roads within the excavation area shall be maintained to minimize materials carried onto the adjacent properties.
  - e. The owners shall identify contact people to respond to public inquiries. The numbers of the contact people shall be provided to the Chair of the Chugiak Community Council, representatives of the Village of Eklutna and Eklutna Inc., and to the Manager, Land Use Enforcement. The Community Council chairman and Land Use Enforcement shall be notified of any change in the contact personnel or business telephone number(s).
7. This approval is valid until October 31, 2011. Prior to that date the petitioner may apply for a time extension on the same record supplemented as deemed appropriate by the Department. The time extension would be granted after a non-public hearing if the Commission finds the operation has not violated the conditions of approval nor has it created environmental problems either on-site or off-site.
  8. Beginning December 1, 2007, and every December 1 thereafter until the property is transferred to Eklutna, Inc., the Applicant shall submit to the Planning Department, an annual monitoring report containing the following information:
    - a. A log of any complaints reported in the previous year and how the complaint was resolved.
    - b. An update on the amount of material removed during the previous year, and an update, if necessary, of any change to the proposed completion date.
    - c. A close out inspection of the property with representatives of the Planning Department and Eklutna, Inc. at the completion of operations.
  9. The Alaska Railroad Corporation shall seek a jurisdictional determination from the Corps of Engineers, and seek any necessary Clean Water Act authorizations from the COE and EPA. In addition ARRC shall limit adverse impact to water quality and habitat functions, and plan the work to avoid and minimize activities in the intertidal waters, wetlands, and streams, and to provide a non-disturbance buffer for such areas to the maximum extent practical. Copies of permits and plans shall be provided to the Planning Department.

PASSED AND APPROVED by the Municipal Planning and Zoning Commission  
on the 4<sup>th</sup> day of December, 2006.

ADOPTED by the Anchorage Municipal Planning and Zoning Commission this 29<sup>th</sup> day of January 2007. If the secretary received a written request and intent to appeal, this written decision/resolution of the Planning and Zoning Commission is final and any party may appeal it within twenty (20) days to the Board of Adjustment pursuant to Anchorage Municipal Code 21.30.030 and Anchorage Municipal Code of Regulations 21.10.304. If the secretary did not receive a written request and intent to appeal within seven (7) calendar days of the date the decision was made on the record, December 4, 2006, then this written decision is final and not appealable to any other administrative body. Final administrative decisions with no further administrative remedy may be appealed to the Superior Court within thirty (30) days.

  
\_\_\_\_\_  
Tom Nelson  
Secretary

  
\_\_\_\_\_  
Toni Jones  
Chair

(Case Number 06-151)  
(Parcel ID 052-061-04)

**3 (e)**

**AGREEMENT**

**BETWEEN**

**ARRC-EI**

*JAN 1987*

AGREEMENT OF ALASKA RAILROAD CORPORATION  
AND EKLUTNA, INC.  
SETTLING CLAIMS OF VALID EXISTING RIGHTS  
TO RAIL PROPERTIES OF THE ALASKA RAILROAD AND PROVIDING  
FOR CONVEYANCES PURSUANT TO THE ALASKA NATIVE CLAIMS  
SETTLEMENT ACT AND THE ALASKA RAILROAD TRANSFER  
ACT OF 1982

*3e agreement*

January 8, 1987

16.1 Conveyance of Rock Quarry Lands Upon Cessation of Use. The Parties acknowledge that, pursuant to paragraph I.B(3)(e) of the North Anchorage Land Agreement of March 15, 1982, Among Eklutna, Inc., the Municipality of Anchorage, and the State of Alaska, the State of Alaska or its assignee is required to convey to Eklutna, Inc. certain lands including Parcel B of the Eklutna Rock Quarry, as described in subparagraph 1.5.2, above, and Exhibit No. 3B hereto, if the State of Alaska or its assignee ceases to use such lands "in connection with furnishing mass or bulk transportation." To further implement the requirements of paragraph I.B(3)(e) of the North Anchorage Land Agreement, the Parties agree as follows:

(a) The Alaska Railroad Corporation or its successor will notify Eklutna, Inc., the Governor of Alaska, the Legislature of Alaska, and the Municipality of Anchorage of the cessation of use of Parcel B of the Eklutna Rock Quarry in connection with furnishing mass or bulk transportation when such cessation occurs.

(b) Within 90 days after receipt of notice of cessation of use pursuant to the foregoing clause (a), Eklutna, Inc. will notify the Alaska Railroad Corporation or its successor whether Eklutna, Inc. desires to receive a conveyance of Parcel B of the Eklutna Rock Quarry.

(c) As soon as feasible after receipt of a request for conveyance of Parcel B of the Eklutna Rock Quarry from Eklutna,

Inc., pursuant to the foregoing clause (b), but in no event sooner than January 5, 1995, and subject to legislative approval if necessary at the time of conveyance, the Alaska Railroad Corporation or its successor will convey the lands within Parcel B in accordance with the requirements of paragraph 1.B(3)(e) of the North Anchorage Land Agreement.

(d) The Parties agree that cessation of use of Parcel B of the Eklutna Rock Quarry in connection with furnishing mass or bulk transportation will occur only when (i) the rock structure occupying the parcel has been exhausted and no quarry rock that can be removed remains above the subgrade of the track bed presently situated on the parcel; or (ii) the parcel is devoted principally to a use other than the mining of rock. During the period the Alaska Railroad Corporation is using Parcel B of the Eklutna Rock Quarry for mining purposes, it may also use Parcel B for other incidental railroad support functions, including storage of railroad equipment. The Alaska Railroad Corporation shall not quarry rock situated lower than the existing subgrade of the track bed, and rock below such grade shall not be considered in determining whether the rock structure has been exhausted.

16.2 Conveyance of Easements by Eklutna, Inc. Within three days after its receipt of the conveyance of Parcel A of the Eklutna Rock Quarry, described in subparagraph 1.5.1, above, Eklutna, Inc. shall deliver to the Alaska Railroad Corporation

EXCERPT

§ 1425, Alaska National Interest Lands  
Conservation Act (ANILCA)

Public Law 96-487, Dec. 2, 1980, 94 Stat.  
2371

## EKLUTNA VILLAGE CORPORATION LANDS

Sec. 1425. Eklutna-State Agreements and Negotiations.-(a) The purpose of this section is to provide for the settlement of certain claims and litigation, and in so doing to consolidate ownership among the United States, the State of Alaska, the Municipality of Anchorage, Eklutna, Incorporated, and Cook Inlet Region, Incorporated, thereby facilitating land management, a fair implementation of the Alaska Native Claims Settlement Act, // 43 USC 1601 // the protection of State public park lands and resources, and appropriate development patterns in and about Anchorage, Alaska.

(b) The Secretary shall accept relinquishments and make conveyances of selections in accordance with the specific terms, conditions, covenants, reservations, and other restrictions set forth in any agreement respecting the lands described in subparagraph (1) below, executed by the State of Alaska, by the Municipality of Anchorage, and by Eklutna, Incorporated, and hereafter submitted to the Senate Committee on Energy and Natural Resources and the House Committee on Interior and Insular Affairs and filed with the Secretary, the execution and implementation of which agreement are hereby authorized as to those duties and obligations of the United States, the State of Alaska, the Municipality of Anchorage, and Eklutna, Incorporated, which arise under Federal law: Provided, however, That any conveyance under such agreement of lands to Eklutna, Incorporated, shall be only of the surface estate, with a subsequent conveyance to Cook Inlet Region, Incorporated, of the subsurface estate except as otherwise provided in subsection (b). In aid thereof:

(1) The following lands located within the townships described in sections 11(a) (1) and (2) of the Alaska Native Claims Settlement Act // 43 USC 1610. // with respect to the Native Village of Eklutna are withdrawn, subject to valid existing rights, from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and including Public Law 94--204, // 43 USC 1604, 1611 // except section 12 thereof, and from selection under the Alaska Statehood Act, // 48 USC prec. 21. // or any statutes authorizing selections by the State of Alaska: (A) lands withdrawn or reserved for national defense purposes; and (B) lands determined by the Secretary under section 3(e)(1) of the Alaska Native Claims Settlement Act // 43 USC 1602. // not to be public lands for purposes of the Alaska Native Claims Settlement Act. This withdrawal and the agreement shall not affect the administrative jurisdiction of the Department of Defense or any other holding agency over the lands withdrawn, but all forms of disposition other than in accordance with this section and the agreement are prohibited: Provided, That the foregoing to the contrary notwithstanding, lands placed prior to July 15, 1979, in the pool contemplated by part I.C.(2) of the document entitled "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area as clarified 8--13--76", but only to the extent authorized by that document under section 12 of Public Law 94--204 // 43 USC 1611 // as amended heretofore and in accordance with the procedures and with the consents and approvals required by laws, regulations and Executive orders in effect on such date of placement, may be selected by Cook Inlet

Region, Incorporated, free of the effects of the agreement pursuant to this section; if the lands placed in that pool are not thereafter selected in accordance with part I.C.(2) of that document any agreement pursuant to this section shall govern: Provided further, That neither the revocation of certain withdrawals of lands made by subsection (b) effective upon the filing of the agreement, nor the expiration of the withdrawal made by subsection (b) in the event no agreement is reached, shall be deemed an action causing those lands affected thereby to be subject to disposition under such section 12. The withdrawal made by this subsection (b) will expire March 15, 1982, if an executed agreement described in this section is not filed by the parties thereto on or before that date with the Secretary in the Alaska State Office of the Bureau of Land Management; but if an agreement is so executed, rights under the agreement shall vest as of the effective date of this Act, and this withdrawal shall become permanent, except as otherwise provided in the agreement. The agreement shall not impose upon the United States obligations or outlays of funds, except as reasonable in the ordinary course of business, or impose any procedural requirements or require the reassignment of personnel; and any of its provisions to the extent to the contrary shall be void as against the Secretary.

(2) Upon termination or revocation of any national defense withdrawal or reservation or of any other withdrawal in effect December 18, 1971, respecting lands described in subsection (b)(1), or upon declaration of their excess status in whole or in part, whichever first occurs, but not before, and from time to time, the lands excessed or as to which the withdrawal is terminated or revoked shall be conveyed to Eklutna, Incorporated, as to the surface estate and Cook Inlet Region, Incorporated as to the subsurface estate, or to the State of Alaska (for reconveyance by the State of Alaska in whole or in part to the Municipality of Anchorage), as may be provided in the agreement described in this subsection: Provided, however, That such conveyance shall not be made of lands in the pool established under part I.C.(2) of the document entitled "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area as clarified 8--31--76" under section 12 of Public Law 94--204 // 43 USC 1611 // as amended heretofore, unless and until removed from that pool in accordance with such part I.C.(2). This section and the agreement shall preempt the procedures of the Federal Property Act (40 U.S.C. 471, et seq., and of 41 CFR 101--47.000 et seq.), (other than as to fixtures and personalty) and the preference right for State selection of section 6( g) of the Alaska Statehood Act. The conveyances to Eklutna, Incorporated, of lands withdrawn by this subsection called for by the agreement shall not be subject to section 1613(c) of title 43, United States Code. This section shall revoke PLO 5187 as it pertains to any lands withdrawn by this subsection and any power project withdrawals other than Power Project 350 as to such lands, effective upon the date of filing of the agreement. Lands conveyed to the State of Alaska, the surface estate of lands conveyed to Eklutna, Incorporated, and the subsurface estate conveyed to Cook Inlet Region, Incorporated, pursuant to this section and the agreement, shall be charged against their respective entitlements under sections 12 and 14 of the Settlement Act // 43 USC 1611, 1613, // and be considered conveyed and received pursuant to the Settlement Act, and section 6 of the Alaska Statehood Act // 43 USC 1601 // or section 906(c) of this Act.

(c) If an agreement to the following effect executed by the State of Alaska and Eklutna, Incorporated, is hereafter filed with the Secretary in the Alaska State Office of the Bureau of Land Management on or before April 2, 1982, the public lands as defined in the Settlement Act, // 43 USC 1601 // located within township 17 north, range 3 east, Seward Meridian, Alaska, shall be deemed to have been withdrawn pursuant to section 11(a) of the Settlement Act // 43 USC 1610. // as of December 18, 1971, and, selections heretofore made by Eklutna, Incorporated, with respect to lands therein shall be processed by the Secretary as though said selections had been made within a township heretofore validly withdrawn pursuant to section 11(a). If no such agreement is filed, this subsection shall not be held to affect the validity or invalidity of such selections. Whether or not any agreement is filed, this subsection shall not be held to affect the validity or invalidity of any third party interest heretofore created by the State of Alaska.

(d) Notwithstanding other provisions of this Act, the State and Eklutna, Incorporated, are each authorized to relinquish, in whole or in part, pursuant to either or both of the agreements contemplated by subsections (b) and (c), any one or more land selections affecting lands to be conveyed under the agreement to the other whether or not such selections have been previously approved or tentatively approved. The lands affected by the State selections so relinquished shall be deemed public lands as of December 18, 1971, as that term is defined in the Settlement Act.

(e) Eklutna, Incorporated, and the Secretary shall stipulate to dismiss cause number A-78--24 Civil in the United States District Court for the District of Alaska, when the Secretary tenders to Eklutna, Incorporated, a conveyance of all lands in township 17 north, range 3 east, Seward Meridian, which are to be conveyed to Eklutna, Incorporated, under the agreement referred to in subsection (c).

(f) Eklutna, Incorporated, and the Secretary shall stipulate to dismiss cause number A-78--192 Civil in the United States District Court for the District of Alaska except as to the lands affected thereby which under the agreement referred to in subsection (b) are to remain in litigation in that cause, if any, when the Secretary tenders to Eklutna, Incorporated, a conveyance of all those lands which under the agreement the State agrees are to be conveyed to Eklutna, Incorporated, from among those selected at one time by the State under the authority of the Mental Health Enabling Act of 1956 (70 Stat. 709).

(g) The Secretary shall convey to Eklutna, Incorporated, its entitlement without regard to the acreage or interests which may ultimately be conveyed to Eklutna, Incorporated, under the agreement from within lands withdrawn by subsection (b). The agreement shall, however, require Eklutna, Incorporated, to subject to section 907 of this Act one or more compact tracts of lands of at least equal acreage to that ultimately to be conveyed to Eklutna, Incorporated, under the agreement from those withdrawn by subsection (b). The agreement shall require Eklutna, Incorporated, to reconvey to the State lands from those subject to section 907 in an amount provided by the agreement, upon the occasion of each receipt of lands by Eklutna, Incorporated, from among those withdrawn by subsection (b). Lands received by the State in such a reconveyance from

Eklutna, Incorporated, shall be charged, to the extent of the acreage received by Eklutna, Incorporated, in the relevant conveyance to it, against the State's entitlement under section 6 of the Alaska Statehood Act, // 48 USC prec. 21. // or section 906(c) of this Act, as the State may elect. If thereby the State receives more than its entitlements under the Act elected, it shall reconvey to the United States a compact tract of unencumbered State lands of equal acreage contiguous to lands belonging to the United States. Eklutna, Incorporated, shall also subject to section 907 of this Act, once an agreement under subsection (c) exists and thereafter from time to time, one or more compact tracts which equals the acreage amount by which Eklutna, Incorporated's entitlement would be over satisfied considering the acreage already conveyed to Eklutna, Incorporated; to the extent such a risk of over entitlement abates the lands may be withdrawn from the Land Bank.

(h) In the event that Eklutna, Incorporated, receives a conveyance from the United States of the surface estate in lands withdrawn by subsection (b) pursuant to the agreement authorized in that subsection, and if a reconveyance from Eklutna, Incorporated, of the surface estate in land to the State from those subject to section 907 of this Act is thereby occasioned, a conveyance of the subsurface estate in the lands conveyed to Eklutna, Incorporated, shall be withheld until the Secretary ascertains to whom the subsurface estate is to be conveyed under this subsection. The entity owning the subsurface estate in those reconveyed lands shall retain that interest, unless it in the agreement or separately consents to convey the same to the State. In the event such entity so consents to convey the subsurface to the State, the Secretary shall convey the subsurface estate in the lands conveyed to Eklutna, Incorporated, to that entity; if such entity does not so consent, the subsurface estate in the lands conveyed to Eklutna, Incorporated, shall be conveyed to the State.

## **EKLUTNA QUARRY Q&A**

### **Proposal Title:**

Railroad Transfers Eklutna Quarry to Eklutna, Inc.

### **Proposal Summary:**

ARRC proposes to transfer its entire interest in the Eklutna Quarry site north of Eagle River to Eklutna, Inc., and seeks legislative approval of the conveyance. This property and its use as a quarry has been the subject of a long-running dispute between ARRC on one side and the Native Village of Eklutna and the Municipality of Anchorage on the other. That dispute culminated in three Alaska Supreme Court decisions, which denied ARRC continued use of the quarry without first obtaining a municipal conditional use permit. While ARRC has recently obtained a permit to remove processed materials stockpiled in the quarry, it is unlikely to ever obtain a permit for new blasting without consent of the Village as tribal representative of the Dena'ina Native people. That consent is highly unlikely because the hills that comprise the quarry have valid historic and cultural significance to the Dena'ina.

Eklutna, Inc. is the ANCSA village corporation created for this area and is entitled to the Quarry property in the future under certain agreements that resolved ANCSA Native land claims. Under the North Anchorage Land Agreement (NALA), and the ARRC-Eklutna 3(e) Claims Settlement Agreement (the 3(e) Agreement), the Quarry will revert to Eklutna, Inc. when it ceases to be used for certain transportation purposes.

ARRC has determined that it will not use the Quarry again for mining rock, which potentially triggers transfer to Eklutna, Inc. An Agreement has been reached between the ARRC, Eklutna, Inc. and the Village that commits ARRC to transferring the Quarry to Eklutna, Inc., subject to legislative approval. The agreement also commits the Village and Eklutna, Inc. to support ARRC's application for a conditional use permit to allow the ARRC to remove previously stockpiled materials at the ARRC Quarry and to support its efforts to obtain federal approval for using the rock on federally funded projects.

Because of the application of NALA to this location, the transfer to Eklutna, Inc. will operate as an ANCSA conveyance under Section 1425 of the Alaska National Interest Lands Conservation Act (ANILCA). Under ANCSA and NALA, CIRI will receive the subsurface rights with Eklutna receiving the surface rights. Any transfer by ARRC of its entire interest in land is subject to legislative approval under the Alaska Railroad Corporation Act. To this end, ARRC is seeking and Eklutna, Inc. and the Village will support appropriate legislation this session.

### **Attachments:**

- Agreement between ARRC, Eklutna, Inc., and Native Village of Eklutna

- Railroad Board of Director Resolution No. 2007-07
- Map/aerial photo of area
- ANILCA Section 1425
- NALA excerpt
- AS 42.40.285
- 3(e) Agreement excerpt
- Conditional Use Permit

### Questions & Answers:

#### What is the history behind the Eklutna Quarry?

The Eklutna Hills, just outside the Native Village of Eklutna, are a culturally significant part of the heritage of the Dena'ina Native people. In addition, the larger area was administered by the Bureau of Indian Affairs as a Native school reserve from 1935 until 1946. During World War II, the BIA authorized the Alaska Railroad to develop a rock quarry on one of the knobs of granite that comprise the Eklutna Hills. That location still exists as the Eklutna Quarry. BIA abandoned the school complex in 1946 and decided to surplus the Native school reserve lands beginning in 1952. BIA transferred the quarry and other nearby lands to the federal Alaska Railroad in 1955. In keeping with the attitudes of the times, the government does not appear to have involved the Eklutna villagers in any of the transactions or decisions about how to handle this land. Usage as a quarry was fairly steady albeit light until the early 1980s, the heaviest use being for earthquake recovery efforts in 1964.

After the passage of ANCSA in 1971, Eklutna, Inc. (as the village corporation established for this area) asserted selection rights for a number of Alaska Railroad lands. Those selections were still in dispute when the State bought the Alaska Railroad in 1985. In 1987 ARRC negotiated a settlement of ANCSA land claims with Eklutna, Inc. known as the "3(e) Agreement" under which ARRC received a limited title to the Quarry and the right to mine the rock down, essentially, to ground level.

The Railroad's somewhat sporadic use of the Quarry intensified in the early 1990s and was opposed by the Native Village of Eklutna, which is a tribal council and a separate legal entity from Eklutna, Inc. This led to three separate lawsuits and three separate Alaska Supreme Court decisions. The cases established that ARRC had to obtain a conditional use permit in order to use the Quarry. The Village's opposition, based on the cultural significance of the Eklutna Hills, made it highly unlikely that ARRC would be able to get a permit. In addition, this opposition prevented ARRC from using rock from the Quarry on federally funded projects because federal law requires certain accommodations for culturally significant properties.