

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

2681 SCOM 120- HOUSE SPEC. COMM. UTILITY RESTRUCTURING, 1999-2000

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E mail

Personnel**Corporate
Michael Burke
General Manager**mburke@akfiberstar.com

As General Manager, Michael Burke oversees the day-to-day operations, strategic business and financial planning at AFS. He has over 15 years of telecommunications experience and has held various positions with several Alaska telecommunications companies, including Executive Vice President and Manager of Financial Planning.

**Sales and Marketing
James E. Miner
Vice President, Sales and Marketing**jminer@akfiberstar.com

James Miner is responsible for all aspects of AFS's sales, revenue generation and marketing programs. He has extensive experience with data-related telecommunications products and computer systems as well as a 20-year background in new technology marketing.

**Operations
David Lewis
Operations and Maintenance Manager**dlewis@akfiberstar.com

Dave Lewis manages the terrestrial and submarine Alaska Fiber Star / NorthStar network providing service to customers in the Alaska Service Region. He brings to the AFS management team an extensive and diverse 25-year background in the research, development, test, evaluation, operations and maintenance of telecommunications, power and logistical systems.

**Human Resources
Michelle Jacquez, SPHR
Manager, Human Resources**mjacquez@wcicable.com

Michelle Jacquez is responsible for all aspects of human resources for the WCI Group of companies, including employee recruitment, legal compliance, compensation and employee development. A certified Senior Professional Human Resources (SPHR), she has over 15 years of experience in human resources, including more than 10 years in high technology.

**Accounting & Finance
John Monfils
Controller**jmonfils@akfiberstar.com

John Monfils is responsible for the financial and accounting systems at Alaska Fiber Star. He has over 15 years of telecommunications experience in both regulated and competitive companies.

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Employment

Job openings for AFS, WCI Cable and WCI LightPoint are posted by the Human Resources Department at the following web sites:

- headhunter.net
- careermosaic.com



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Alaska State Legislature

UTILITIES RESTRUCTURING COMMITTEE

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Bill Hudson Chair
John Cowdery Vice Ch.
Brian Porter
Norman Rokeberg
Pete Kott
John Davies
Ethan Berkowitz
Joe Green Alt.

April 11, 2000

TO: ALL MEMBERS

FROM: REPRESENTATIVE BILL HUDSON
CHAIRMAN

RE: URC MEETING 4/12/00 - **Note Time Change**

Attached please find new back-up material concerning HB 169.

We will meet Wednesday, 4/12/00 at 9 a.m., Capitol 120, to discuss this legislation. The Regulatory Commission of Alaska will be on the teleconference line with us.

Please bring your HB 169 packets with you to the meeting.

Thank you.

HB 169

Sponsor: Rep. Joe Green

An act relating to including the costs of expansion activities and political activities in rates of electric cooperatives.

See attached bill and sponsor statement

Against:

ARECA

Mat-Su Resource Conservation & Development Council

Golden Valley Electric Association (GVEA)

Chugach Electric

For:

Matanuska Electric Assn.

Ed Willis (former legislator)

Has concerns:

Ted Carlson, Eagle River resident

Nan Thompson, Chair of RCA, will be on line to explain RCA's concerns about this bill and to answer questions.



GOLDEN VALLEY ELECTRIC ASSOCIATION INC. PO Box 71249 • Fairbanks, Alaska 99707-1249 • 907-452-1151

March 29, 2000

March 29, 2000

ATTN Sue Plummer

The Honorable Bill Hudson, Chair
House Special Committee on Electric Restructuring
State Capitol, Room 108
Mail Stop 3101
Juneau, Alaska 99801-1182

RE: HB 169

Dear Representative Hudson and Committee Members:

Golden Valley Electric Association (GVEA) is pleased to have this opportunity to present these comments to the Committee. As we understand the issue, HB 169 was introduced in response to the MEA-attempted takeover of Chugach Electric Association last year. While Golden Valley is sympathetic to all of those who were directly affected by this effort, we believe that rate matters are best addressed by the Regulatory Commission of Alaska (RCA).

Cooperative members elect directors to represent their interests in the operation and management of the electric cooperatives. Through the election process and the right to recall directors, cooperative member-owners have a voice in their co-ops.

The RCA is the agency authorized to review utility and cooperative rates and balance the interests of consumers, cooperatives and the public. The RCA already has the authority to determine whether costs such as those identified in HB 169 are legitimately included in the rates charged to the customers of cooperatives. Additionally, customers, citizens or members of a cooperative have the right to have the issue of costs spent to acquire the customers of another cooperative or political activities addressed by the RCA.

Golden Valley respectfully urges the Committee not recommend approval of this bill for the following reasons:

- Rate issues are best addressed by the RCA.
- HB 169 may discourage efforts to attract and retain businesses in Alaska.

Letter to: Representative Bill Hudson
March 29, 2000
Page 2

- HB 169 may thwart efforts to develop new and innovative products and services that would be valued by consumers.
- HB 169 may infringe on the shrinking free speech rights granted under the Constitution.
- This committee is also considering legislation that would restructure the electric industry in Alaska. HB 169 might be considered, if at all, along with this legislation. However, HB 169 may indeed deter the formation of a competitive market place as anticipated in the restructuring of the electric marketplace. Competitive electric providers would likely advertise in order to attract or acquire the customers of a cooperative or utility. It may also be safe to assume that competitive electric providers would seek to recover advertising costs through the prices it charges consumers. HB 169, if approved, could potentially prevent the development of a competitive marketplace.

Thank you for considering these remarks.

Sincerely,

A handwritten signature in cursive script that reads "George B. Kitchens". The signature is written in dark ink and is positioned above the printed name and title.

George B. Kitchens
Executive Vice President

cc: GVEA Board



CHUGACH ELECTRIC ASSOCIATION, INC.

EUGENE N. BJORNSTAD, P.E.
General Manager

March 24, 2000

..... 3 7 2000

Representative Bill Hudson, Chair
House Special Committee on Utility Restructuring
State Capitol, Room 108
Mail Stop 3101
Juneau, Alaska 99801-1182

Re: HB 169

Attention: Sioux Plummer

Dear Representative Hudson and Committee Members:

We understand HB 169 as an effort to prevent utilities from spending money on ill-advised takeover and political adventures. As victims of this chicanery, Chugach is very sympathetic to the rationale. However, Chugach cannot support HB 169 as a solution because:

- HB 169 would not have prevented MEA's expenditure of funds on its takeover attempt.
- The problem is not best addressed by legislation curtailing or burdening speech. Rather, the matter is best left to the ratemaking efforts of the RCA.
- HB 169 could have unintended effects which far outweigh any possible benefit.
- HB 169 is likely an unconstitutional restraint on speech.

In short, the measure would do more harm than good and for that reason we urge the Committee not to recommend approval of the bill.

HB 169 does not prevent expenditures. For this reason, MEA's attempted purchase of Chugach during the Fall of 1998 and most of 1999 would not have been prevented even if HB169 had been law.

The right place to deal with this is before the Regulatory Commission of Alaska. A.S. 43.05.381(a) already prohibits public utilities from including public relations expenditures in their rates¹ and the regulatory commission has traditionally not allowed these and political costs

¹ Although this provision is a questionable burden on commercial speech as outlined in the attached legal opinion, it has apparently never been challenged.

in rates. Electric utility rates are generally set by the RCA. The RCA is already empowered to determine whether costs such as these are legitimately included in customers' rates. The specific question of who will pay for the costs imposed by political activities or unsolicited takeover attempts can be brought before the RCA by any concerned citizen. Indeed, the issue is likely to be an issue in Chugach's upcoming rate cases.

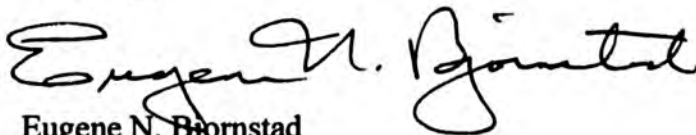
HB 169 could have unintended effects which far outweigh any possible benefit. The following are possible unintended consequences of HB 169:

- Could discourage efforts to attract new businesses or industries to Alaska. For example, efforts to interest a customer of another utility to locate additional operations in the soliciting utility's service territory could be excluded from costs included in rates even though the net effect is to benefit all customers.
- Could discourage utility efforts to develop additional services that could be sold to another utility's customers. This could defeat one of the most effective strategies in enhancing customer value by adding services that can be provided efficiently by the electric utility.
- Could discourage legitimate expenditures to educate the public as to benefits or detriments of a proposed merger or purchase of cooperative assets.

Infringements on free speech deserve careful scrutiny. The attached legal opinion demonstrates the courts' antipathy to limits on speech of the sort proposed by HB 169. The legislators should carefully consider whether the proposal meets the strict standards imposed by our constitutional guarantees of free speech.

For all of the reasons outlined above Chugach has concluded that HB 169 is evidence that bad facts can make for bad law. Chugach urges the committee not to recommend approval of this bill.

Sincerely,



Eugene N. Bjornstad
General Manager

Attachment

ATTORNEYS AT LAW
SIMPSON, TILLINGHAST, SORESENSEN & LORENSEN
A PROFESSIONAL CORPORATION

LESLIE LONGENBAUGH
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MAR 23 2000

GENERAL COUNSEL'S OFFICE

March 20, 2000

Mr. Don Edwards, Esq.
General Counsel
Chugach Electric Association, Inc.
P.O. Box 196300
Anchorage, AK. 99519-6300

Re: HB 169 and 1st Amendment Issues
OUR FILE NO: 594.17

Dear Mr. Edwards:

You have asked us to review Section 1 of HB 169 (proposed AS 42.05.381(h)), which would prohibit an electric cooperative from including "expansion activities" in its rates without "first secur[ing] the [coop's existing] customer's consent to the inclusion of a charge for expansion activity." "Expansion activity" includes competitive advertising. In that regard, we believe that the legislation raises serious constitutional issues, in that: (i) advertising is protected commercial speech under both the Alaska and federal constitutions;^{1/} and (ii) no substantial justification for this limitation on protected speech seems apparent. In light of both United States and Alaska Supreme Court decisions that involve facts very similar to those presented by HB 169, it is our view that the legislature may have a difficult time justifying this legislation.^{2/}

^{1/} United States Constitution, Amendment 1; Alaska Constitution, Art. 1, Sec. 5.

^{2/} We appreciate that existing law already prohibits the inclusion of costs for "public relations" in a utility's rates. AS 42.05.381(a). At the outset, that makes the intent of HB 169 even more difficult to understand, since "expansion activity" (the conduct restricted by HB 169) would seem to be subsumed in the existing phrase "public relations."

The rationale for simply reenforcing existing law aside, the fact that there is an existing restriction on "public relations" does not change our opinion on HB 169 for two reasons. First, existing law would be subject to the same rigorous constitutional scrutiny that would face the proposed legislation. Second, HB 169 is, if anything, even broader, and therefore more suspect, than existing law. Currently, utilities can request a case-by-case exemption from the restriction on including "public relations" costs in their rate base (AS 42.05.711(d)), but no such exemption would be possible under HB 169. Sec. 3, HB 169. Moreover, the restriction imposed by HB 169 extends to any activity that is "intended to attract customers..."--a large and vague net that could capture a wide range of speech and conduct, and for that reason be especially vulnerable to a 1st Amendment challenge.

Mr. Don Edwards, Esq.
March 20, 2000
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In undertaking this analysis, we appreciate that the legislation does not expressly prohibit expansion advertising. It is, however, our understanding that forcing a utility to pay for otherwise-legitimate business activity out of its margin (or, alternatively, obtain consumer-by-consumer consent) significantly affects the practicality of engaging in "expansion activity." And, any significant constraint on the exercise of protected commercial speech would be tested under the same standards as an outright prohibition on that speech. See *Alaska Transportation Commission v. AIRPAC, Inc.*, 685 P.2d 1248, 1254 (Alaska 1984)

Commercial advertising is protected commercial speech. *Central Hudson Gas & Electric Corporation v. Public Service Commission of New York*, 447 U.S. 557 (1980). In *Central Hudson*, the United States Supreme Court considered a case very similar to that presented by HB 169. *Central Hudson* invalidated a public utility commission regulation that banned promotional advertising by electric utilities. The ban had been justified on energy conservation grounds, but the court held that the state's justification was too tenuous and speculative to justify the ban. *Central Hudson* established a four-part analysis to test the validity of government regulation of commercial speech:

At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.

447 U.S. at 566.

The Supreme Court recently reaffirmed the *Central Hudson* test in *Greater New Orleans Broadcasting Association v. United States*, 527 U.S. 173, 174-5 (1999) (overbroad federal ban on private casino gambling advertisements broadcast by radio or television stations violated the First Amendment).

In applying the *Central Hudson* test, the government bears the burden of justifying the challenged restriction. *Greater New Orleans*, 527 U.S. at 174.

In *Alaska Transportation Commission v. AIRPAC, Inc.*, 685 P.2d 1248, the Alaska Supreme Court adopted the *Central Hudson* test--again, applying it in a context that was

Mr. Don Edwards, Esq.

March 20, 2000

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quite similar to HB 169. In *AIRPAC*, the Alaska Transportation Commission had attempted, *inter alia*, to "limit[] AIRPAC's right to solicit customers for its back-haul trip from Anchorage to Dutch Harbor." The Alaska Supreme Court ruled that the ATC's order violated AIRPAC's right to free speech because, under the *Central Hudson* test, the restrictions on AIRPAC's marketing efforts were unnecessary to further any substantial state interest. For example, the ATC's order did not relate to air safety, and "restricting an air taxi operator's right to solicit business for the flight back to its base of operations inhibits economical and efficient service." 685 P.2d 1253-54.

We have like difficulty conforming HB 169 to the *Central Hudson* test. First, expansion advertising is protected speech, in that it "concern[s] a lawful activity and...[is] not...misleading." Second, there is no "substantial state interest" apparent from the bill itself. The inclusion of promotional costs in rates to customers does not raise the involuntary participation issue that exists with respect to political activities by utilities, and therefore we doubt that the bill is motivated by any desire to protect ratepayers' rights of free speech. Compare *Homer Electric Association v. Alaska Public Utilities Commission*, 756 P.2d 874, 878 n.8 (Alaska 1988) (potential constitutional problems with requiring ratepayers to subsidize political or religious activities with which they do not agree); see also proposed AS 42.05.381(i) in Section 1 of HB 169.

Indeed, the only apparent motivation for the bill is to protect other public utilities from competition. If the sole purpose of Alaska's public utilities statutes was to preserve monopolies, an argument for the legislation might be more plausible. However, competition is not prohibited, nor even necessarily discouraged, under our public utility laws. See *Chugach Electric Association v. City of Anchorage*, 426 P.2nd 1001 (Alaska 1967).

Moreover, the final question asked by the *Central Hudson* test is whether the restriction on speech is "not more extensive than necessary" to further the statute's interest. Even to the extent that Alaska's public utility statutes are concerned with potentially unhealthy competition, AS 42.05.221(d) creates a tailored, balanced process for addressing that issue in a specific service area. With this less-intrusive means of controlling damaging competition (whenever it is, in fact, damaging), a sweeping restriction on *all* competitive speech seems especially overbroad.

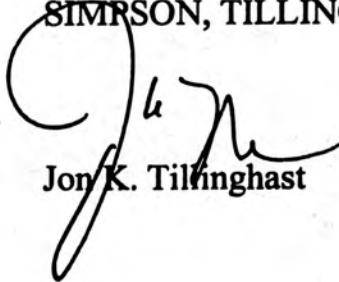
In summary, though we can't warrant that there is no conceivable justification for HB 169's constraints on protected commercial speech, none that meets the governing federal and Alaska test seems evident to us.

Mr. Don Edwards, Esq.
March 20, 2000
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If you have any further questions on this matter, please don't hesitate to ask.

Sincerely,

SIMPSON, TILLINGHAST, SORENS & LORENSEN



Jon K. Tillinghast



GOLDEN VALLEY ELECTRIC ASSOCIATION INC. PO Box 71249 • Fairbanks, Alaska 99707-1249 • 907-452-1151

March 29, 2000

MAR 31 2000

ATTN Sue Plummer

The Honorable Bill Hudson, Chair
House Special Committee on Electric Restructuring
State Capitol, Room 108
Mail Stop 3101
Juneau, Alaska 99801-1182

RE: HB 169

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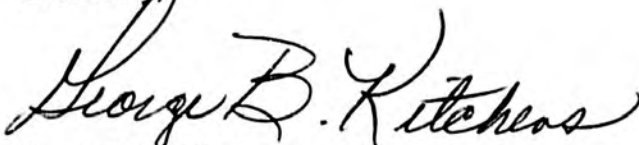
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Thank you for considering these remarks.

Sincerely,

A handwritten signature in cursive script that reads "George B. Kitchens". The signature is written in dark ink and is positioned above the printed name and title.

George B. Kitchens
Executive Vice President

cc: GVEA Board

approval a New York Public Service Commission decision²⁶ in which the commission had held that expenditures for institutional advertising were a proper expense for ratemaking purposes, the court noted that the decision stated that what was of concern there were advertisements which were obviously designed to project a favorable image of the company to its customers, its existing stockholders, and potential investors; that to the extent that such advertising fostered sound consumer relations or encouraged people to invest in the company, it was clear that the consumers, as well as the stockholders, were ultimately benefited through the lessening of the expense of doing business; that the trend in modern regulatory decisions was to allow such charges as proper for rate-making purposes. The commission had concluded that in view of the fact that management should be permitted to control advertising expenditures as long as they are within the limits of reason, and so long as these expenses do not exceed what is reasonably necessary and proper in the particular case, there was no ground to distinguish the advertising costs in question from other necessary and proper expenses. The court determined that the department's disallowance of some of the expenditures for advertising on the grounds stated by it was an unwarranted interference with the function and prerogative of the company's business managers and that it was therefore beyond the power and authority of the department. On remand the test year computations were to be made without deduction of such advertising costs, the court directed.

26. *Re Consolidated Edison Co.* (1961, NY) 41 PUR3d 305.

27. Institutional advertising was defined
978

The court in *State ex rel. Dyer v Public Service Com.* (1960, Mo) 341 SW2d 795, cert den 366 US 924, 6 L Ed 2d 384, 81 S Ct 1351, declined to overturn a decision of the commission to allow, as an administrative expense, a contribution by an electric utility to a private utility power group for several advertisements. In this appeal from a judgment affirming orders of the public service commission made in a utility rate proceeding, the court explained (1) that the commission had found that it was a recognized fact that the principal purpose of advertising is to create good public relations and stimulate a demand for the service or product being advertised, and (2) that the commission was unable to find from the evidence offered that this particular form of advertising would do neither. The court went on to point out that the commission had further stated that in view of the fact that it was of the opinion that management should be permitted to control such advertising expenditures as long as they are within the limits of reason, and in view of the fact that the commission was unable to find that such advertising would not result in benefit to the rate payers, the expenses incurred therefor would be allowed.

See *State v Oklahoma Gas & Electric Co.* (1975, Okla) 536 P2d 887, an appeal from an order of the corporation commission prohibiting public utilities from making expenditures for institutional advertising,²⁷ in which the court declared that the prohibition on expenditures for institutional advertising was an unreasonable means of protecting rate payers from these expenditures. Noting that this

as advertising designed to promote the corporate image of the utility and to present it in a favorable light to the public and to potential investors.

did not mean that the commission must allow all institutional advertising expenses as operating expenses for rate-making purposes, the court concluded that the commission might disallow any institutional advertising expenditures from operating expenses for rate-making purposes unless the utility established that such expenditures benefited all rate payers.

Refusing to disturb the commission's allowance of the power company's expenses incurred for trade ally advertising, the court in *Commonwealth v Virginia Electric & Power Co.* (1971) 211 Va 758, 180 SE2d 675, an appeal from the corporation commission's authorization of electric rate increases, pointed out that although the commission had recently disapproved further use of such advertising in the form engaged in by the company, the commission had refused to eliminate those expenses, finding it reasonable to assume that the company would substitute some other form of promotional activity at an equal or greater cost.

§ 8. Advertising supporting rate increase

In the following cases involving the propriety of allowing advertising expenses incurred by a public utility to be included in operating expenses for rate-making purposes, the courts held that advertising expenses incurred in support of attempts to obtain rate increases should be disallowed.

In *Ft. Smith v Southwestern Bell Tel. Co.* (1952) 220 Ark 70, 247

SW2d 474, wherein the Arkansas Public Service Commission's condemnation of the company's practice of using the ratepayers' money to conduct an advertising campaign to increase the rates proposed to be charged the ratepayers by the company was approved,²⁸ the court explained that the commission's language indicated that in hearings for rate increases by any utility, the commission would carefully examine to see how much was being paid for overhead and staff work directed, in whole or in part, at trying to get rate increases from the public. Making no specific reduction in the amount of advertising expenditures claimed by the company as operating expenses, the court did declare that the utility must use all its receipts as though they were a public trust, and that receipts must not be dissipated in an effort to get further increases from the public.

Affirming the commission's disallowance of expenditures during the test year for advertising purposes, including costs of advertising by means of newspaper, radio, and television, ostensibly as a means of informing the public as to the company's situation in connection with the instant application for a rate increase, the court in *Southern Bell Tel. & Tel. Co. v Louisiana Public Service Com.* (1960) 239 La 175, 118 So 2d 372, noted that proper allowance should be made for ordinary advertising expenses. The court, referring to the commission's statement, explained that after re-

28. The commission, in *Re Southwestern Bell Tel. Co.* (1951, Ark) 87 PUR NS 97, from which the above appeal was taken, had noted that during the course of the hearing, the propriety of this practice was questioned and that the company had discontinued the practice after the issue had been raised in the hearing. The com-

mission voiced the hope and assumption that the company would not engage in such practice in the future, but apparently took no further action on the matter, stating in its order that the operating revenues and expenses, as discussed in this opinion, were thereby approved.

viewing the rulings of the courts of other states which condemn the practice of utilities in using the rate payer's money to conduct an advertising campaign to increase the rates proposed to be charged to the rate payer, the commission disallowed this item, not on the grounds of impropriety, but because the record clearly showed that these expenditures were abnormal and nonrecurring in character and that their inclusion in the operating expense accounts would distort the test year earnings.

§ 9. Promotion

[a] Expenses allowed or allowable

Under the circumstances of the following cases involving the propriety of allowing promotional expenses incurred by a public utility to be included in operating expenses for rate-making purposes, the courts held that promotional expenditures made by the utility were allowable.

Within the limits of reason, advertising or development expenses to foster normal growth are legitimate charges upon income for rate purposes, the court declared in *West Ohio Gas Co. v Public Utilities Com.* (1935) 294 US 63, 79 L Ed 761, 55 S Ct 316, reversing on appeal the decree of a state Supreme Court affirming a rate order of the state public utilities commission. The commission had more than halved the expenses claimed by the gas company for procuring new business or endeavoring to procure it, on the ground that anything more than what was allowed by the commission was unnecessary and wasteful. The court responded that the criticism had no basis in evidence, either direct or circumstantial. Noting that good faith was to be presumed on the part of the managers of a business, the court stated that in the absence of a showing of ineffi-

ciency or improvidence, a court would not substitute its judgment for theirs as to the measure of a prudent outlay.

In *El Dorado v Arkansas Public Service Com.* (1962) 235 Ark 812, 362 SW2d 680, a minimum gas service charge case, the court, responding to the contention that expenses incidental to merchandising, such as advertising, should not be allowed as a utility expense, declared that the commission had correctly allowed the expense of company advertising to be charged to utilities expense. The court pointed out that the record reflected that the company engaged in merchandising only such items as were related to its utility business and would tend to increase the sale of gas. The court held, therefore, that the commission had authority to permit the company to charge to utilities expense items of merchandise advertising, and that it did not act arbitrarily in doing so on the reasonable theory that increased gas sales would tend to lower the price paid by consumers.

On appeal from a rate base determination by the public utility commission, the court in *Re Honolulu Gas Co.* (1935) 33 Hawaii 487, determined that the commission's division of the gas company's expenses, incurred in carrying on a merchandise business devoted to the sale locally of gas stoves, gas heaters, gas refrigerators, and other gas appliances, between utility and nonutility activities, was unwarranted, and that such expenses, including advertising, should have been considered and included in the rate base. The court, pointing out that the commission was correct in its conclusions that the merchandise activities of the company were nonutility, it followed that the same had no proper place in the rate base, and the

division of expenses on the above basis was justified, explained that the uncontroverted evidence showed that the merchandise business of the company constituted but a small percentage of the company's total operations, and that it returned slight, if any, profit to the company and was carried on solely for the purpose of promoting or increasing the demand for manufactured gas throughout the territory in which the company was supplying that product. Noting that there was ample authority to sustain the principle that a company will not be permitted to charge as an operating expense of its public utility activities separate merchandising or other non-utility enterprises, the court stated that it was well settled that where a gas manufacturing company engages in the sale of gas appliances not as an independent or profit-making vocation but to encourage and stimulate the sale of gas, the merchandising thus carried on is a business activity beneficial to the consuming public because the increased use of gas necessarily tends to lower the rate to the consumers, and the assets and capital thus devoted should be included within the property to be appraised in determining the rate base. Recognizing that here, as in other cases, it was the practice of the gas company to conduct such business partly to aid consumers in securing gas appliances manufactured under standard specifications that would thus render most efficient service to the consumers, and partly, by thus promoting the sale of appliances to be used for additional purposes, to increase the sale of gas, the court concluded that the reasonable expenses incurred in promoting new business or in the endeavor to procure it should be incorporated into the rate base.

Notwithstanding the contention

that the commission had erred in allowing excessive amounts expended for advertising by the telephone company to be treated as operating expenses for rate-making purposes, the court in *Illinois Bell Tel. Co. v Illinois Commerce Com.* (1973) 55 Ill 2d 461, 303 NE2d 364, affirmed the commission's finding that the expenditures had not been excessive or improper. Noting that there was no quarrel with the company's expenditures for "informative" as distinguished from "promotional" advertising, the court stated that the telephone company's position was that a reduction in advertising would injure service and reduce its net earnings. The court referred to the commission's statement relative to the company's advertising and public relations programs, in which the commission had declared that the company's expense in relation thereto had not been excessive nor should it be deemed improper. The commission had gone on to add that in an economic climate involving inflationary spiraling of costs which the utilities cannot avoid and still provide adequate service to the public, it becomes apparent to the regulatory agencies that a company's operating expenses should be closely scrutinized and that those which do not specifically relate to business operations should be excluded for ratemaking purposes in the determination of the company's operating income. The commission had pointed out that this observation had also been made in a recent expression of policy on advertising by the New York Public Service Commission wherein it was stated that since management could control its advertising expenditures, it was not in the interest of anyone to have unnecessary institutional advertising

exacerbate customer resentments at a time when large rate increases were made necessary by increases in the various classes of costs beyond the control of utility management. The commission had concluded that sound business judgment indicated that the belt tightening process should begin in those areas not directly and totally related to the providing of the utility service to the public. The court explained that after the admonition that such expenditures would be carefully scrutinized in the future, the commission had then found that the telephone company's expenditures had not been excessive or improper, and the court stated that from its review of the record, it could not say that the commission's findings were without sufficient support in the evidence.

Denying the exceptions by the commission as to the gas company's advertising expenses to be included in operation costs for ratemaking purposes, the court in *Wichita Gas Co. v Public Service Com.* (1930, DC Kan) 3 F Supp 722, pointed out that the propriety of spending money for advertising the wares of a utility was for the owners to determine, and concluded that the method used by the gas company to increase its business was appropriate, the amount expended was reasonable, and the results justified the expenditure.

The court in *Central Maine Power Co. v Public Utilities Com.* (1957) 153 Me 228, 136 A2d 726, sustained the company's exception to the commission's exclusion, as operating expenses, of a large portion of the expenditures made by the company for sales promotions, with the court pointing out that the good faith of the management of the company was not challenged in the slightest degree and that the question resolved itself

into whether it clearly appeared that the expenses were excessive or unwarranted, or, stated differently, whether expenses in excess of the allowance by the commission were within the limits of reason. The court, criticizing the commission for unreasonably substituting its judgment for that of the company's management, explained that the items had not been considered by the commission to be as a whole improper or unlawful charges against the ratepayers, and that placing a more than 50 percent reduction on the amounts shown to be required to meet the company's needs in the promotional field, basing such reduction on the ground that an expanding utility such as the electric company should severely reduce expense of this type, was clearly a substitution of the commission for the company in the management of the utility.

Promotion expenses, including those of advertising, for gas appliances and gas utilization, were allowed in *Consolidated Gas Co. v Newton* (1920, DC NY) 267 F 231, mod on other grounds, 258 US 165, 66 L Ed 538, 42 S Ct 264, a suit in equity brought to enjoin the defendant commission and state officials from imposing confiscatory rates on the plaintiff gas company. The propriety of the expenses was challenged largely because the sale of gas and of machines to burn gas had not increased much. The court pointed out that the truth appeared to be that the constantly increasing use of electricity for illumination had driven out gas more and more, until, to hold its sales, the plaintiff gas company had to promote the use of gas for heating and cooking. The court noted that the company had succeeded in achieving a slight increase in sales, and its officers attributed their ability

to do even this well to such promotions. Pointing out that their decision was not now open to question since they were under a duty to keep up their sales so far as they could, and to push the use of gas in any new ways in which the public would use it, the court determined that even under municipal management, advertising, when not pushed to the useless extreme which competition too often engenders, is a necessary function.

The commission's refusal to allow the gas company's promotional expenditures as operational costs had been found by the trial court to be in error of law, and the court in *State ex rel. North Carolina Utilities Com. v Piedmont Natural Gas Co.* (1961) 254 NC 536, 119 SE2d 469, an appeal from the commission's order canceling a proposed new rate, affirmed such finding. The commission had disallowed the amount in excess of the national average of promotional expenditures for companies retailing natural gas, but the court determined that the gas company's expenditures should have been compared to those of companies in the defendant company's class instead of to the national average. Pointing out that the gas company had, within recent years, changed over from manufactured to natural gas, that all its customers had to be "sold" on natural gas, that new customers had to be won, and that competition with electricity and oil had to be met, the court added that the company was faced with promotion in a new field at a time when promotional expenditures throughout the nation (on which the national average was figured) included those of many older companies which had been in the field for years with a well-

known product and an established market. The court, noting that the commission had recognized the high quality of the company's management and that the company was rapidly expanding its facility by a heavy promotional program, remanded the proceeding to enable the commission, *inter alia*, to ascertain the company's true operating expenses.

See *State v Oklahoma Gas & Electric Co.* (1975, Okla) 536 P2d 887, an appeal from commission order prohibiting public utilities from making expenditures for promotional advertisements,²⁹ wherein the court declared that such prohibitions were invalid. The commission had argued that if such expenditures did not sell energy, they were wasteful, and rate payers should not be required to pay them, but the court responded that this argument did not justify prohibiting such expenditures, because the same result could be obtained by excluding such expenditures from operating expenses for rate-making purposes. To the opposite argument, that if such practices sold energy, they increased the use of fossil fuels and should be prohibited, the court replied that many promotional expenditures are designed to achieve conversion to competing utilities, and to instill preferences for one form of energy over another, rather than to increase overall consumption of energy, and that since the commission did not have jurisdiction over appliance manufacturers and distributors, and since the proposed prohibitions did not prohibit appliance manufacturers and distributors from advertising their products, the prohibited practices and expenditures had little, if any, effect upon overall consump-

29. Promotional advertising was defined as advertising designed to increase usage,

obtain new customers, or encourage use of one form of energy over another.

tion of energy. As long as appliance manufacturers and distributors were allowed to advertise their products, it was arbitrary to deny utilities the right to counteract this advertising at the expense of the stockholders on the ground that promotional advertising and practices by utilities increased overall consumption of fossil fuels, the court explained. Turning then to testimony that if peak load demand for electricity exceeded peak capacity, a brownout would occur, the court declared that if a particular utility faced a foreseeable danger of being unable to meet peak demand, the commission might have authority to prohibit it from engaging in any promotional activities which would further increase its peak demand, but the court pointed out that this did not justify a rule prohibiting all utilities from engaging in such activities. Noting that attempts to disallow promotional expenditures as operating expenses for ratemaking purposes had been held to constitute an invasion of a discretion reserved to corporate management if the expenditures were designed to produce ultimate benefits to every customer and were not excessive or unwarranted, the court concluded that promotional practices which were reasonably calculated to improve the utility's load factor and benefit all consumers by reducing the average unit cost of energy were not unjustly discriminatory, and prohibitions against such practices constituted an invasion of the discretion reserved to corporate management.

[b] Expenses reduced or disallowed

Under the circumstances of the following cases involving the propriety of allowing promotional expenses incurred by a public utility to be included in operating expenses for rate-

making purposes, the courts held that promotional expenditures made by the utility should be reduced or disallowed.

See *Trans World Airlines, Inc. v Civil Aeronautics Board* (1967) 128 App DC 126, 385 F2d 648, cert den 390 US 944, 19 L Ed 2d 1133, 88 S Ct 1029, a case involving a government subsidy mail rate determination rather than a determination of consumer rates, in which the court upheld the Civil Aeronautics Board's disallowance of a specified amount of selling expense as in excess of the amount appropriate under the honest, economical, and efficient management criterion, over the airline's contention that the disallowance was an unwarranted interference with the airline's managerial discretion. The court explained that once the principle of setting a ceiling on selling expenses was established, it was plain that the Board had acted reasonably and that its action had support in the record. In response to the airline's charges of interference with managerial discretion, the court pointed out that a company which sought and pocketed the boon of subsidy or protective contracts could not assail the restraint inherent in accountability to government officials as a tyrannical burden. The government officials were themselves accountable in court for compliance with the rule of law applicable to administrative agencies, the court explained, concluding that the petitioner had not established the agency's action in this case to be arbitrary or capricious.

In reversing that part of the public utility commission's ratemaking order which had allowed a sizable sum for promotional expenses, the court in *Application of Hawaiian Electric Co.* (1975) 56 Hawaii 260, 535 P2d 1102, 83 ALR3d 951, noted that the bur-

den was always on the applicant to prove justification for a requested rate increase, and that the electric company had the burden of showing the propriety of its request for these promotional expenditures. The court held that the electric company had not carried its burden. Part of the expenditures claimed were for allowances or payments to owners and developers who built all-electric homes and apartments and advertised them for sale as such, the court pointed out, declaring that in the context of present times, these promotional expenditures on the part of a regulated public service company were wasteful and unreasonable, and their allowance by the commission was an abuse of its discretion. The disturbing aspect of the public utility commission's decision to allow expenditures for these programs was the rationale behind it, the court observed, noting that the basis of the allowance seemed to be the circuitous reasoning by which an earlier allowance of promotional expenditures to the applicant's competitor, on the ground that the expenditures were necessary to attract away customers from the applicant, now necessitated a like allowance to the applicant. Disapproving the public utility commission's consistent failure to meet squarely the issue of the reasonableness of competitive advertising expenditures, the court explained that one of the primary factors which the public utility commission must take into consideration when it fixes rates is fairness to the ratepayer, and that it was obvious that the particular type of advertising competition involved here did not benefit the ratepayer. Turning then to the propriety of allowing a sizable sum for promotion programs designed to increase the use of electricity and purportedly to

improve the company's load factor, the court indicated that these programs consisted essentially of direct advertising and contributions to dealer and distributor advertising of certain electric appliances. The electric company was, in effect, subsidizing the promotional activities of dealers and distributors whose commercial transactions formed no part of the electric company's own business venture, the court remarked, distinguishing such expenses from those of the gas company competitor, which sold gas appliances as an essential component of its commercial operations. The electric company failed to satisfactorily show how much of an improvement in its load factor these expenses could reasonably be said to make, the court observed, adding that since the appliances being promoted by the electric company were those generally in use during peak load periods, it was difficult to see how the electric company could argue that these expenses encouraged the increase of off-peak utility loads. In conclusion, the court spoke of the stark reality of energy problems and environmental concerns, and insisted that in the face of dwindling oil supplies and spiraling costs, promotional practices which were wasteful or which only served to aggravate the energy crisis should be viewed by a regulatory agency with extreme caution.

The commission, in setting new gas rates, had disallowed as operating expense one-third of the amount claimed by the appellant gas company as new business expense, and in *Peoples Gas Light & Coke Co. v Slattery* (1939) 373 Ill 31, 25 NE2d 482, app dismd 309 US 634, 84 L Ed 991, 60 S Ct 724, the court affirmed the commission's action in this regard, viewing the company's promotional prac-

tice of rental purchase plans for putting gas appliances on the premises of customers as creating an unduly large expenditure for business promotion to be charged as an operating account. The court explained that since gas appliances were sold by many other dealers, and since those sales made by the gas company, if conducted as a separate business, would not be subject to regulation, the advisability of such a method of promoting sales of gas and the propriety of the amount thus expended became matters entirely for the commission. Concluding that the action of the commission in disallowing part of the claimed promotional expenses was not unjustified, the court pointed out that in the very nature of things, a sale of outside articles to promote the sales of a commodity regulated by a utility must be controlled by the commission, since otherwise it would be possible to either raise the operating expenses to unreasonable heights or convert the utility into a mere medium for the sale of appliances and merchandise not regulated by the commission.

In *Boston Consol. Gas Co. v Department of Public Utilities* (1951) 327 Mass 103, 97 NE2d 521, a suit in equity to determine whether rates permitted by the department were confiscatory, it was determined that costs involved in the sale of gas appliances, including the cost of advertising appliances for sale, stood on a different footing than did expenses of sending repairmen to customers in response to complaints of leaks, faulty operation of appliances, etc., which were considered proper charges to the operating expenses of a gas business. The court noted that the gas

company had treated the appliance business as a separate entity for most purposes, but had sought to treat the expenses of the appliance business, including the advertising expenditures, as a part of the company's business of supplying gas. The company had argued that gas could not be bought by the consumer like ordinary merchandise, but could be bought only by having it flow through appliances of one kind or another; that apart from these appliances it could not be advertised effectively; and that whatever promoted the flow of gas through appliances promoted the sale of gas. The court observed that the difficulty with the argument seemed to be that it either fell short of proving the point or it proved too much: if the appliance business was really a part of the gas business, the gas customers were entitled to have the profits from appliances included in the earnings of the gas business, but if it was really a separate business, its expenses ought not to be charged against the gas customers. The court cited an earlier case³⁰ in which it had been stated that the sale and servicing of gas appliances constituted a separate business from the supplying of gas, so that it would not be fair, on the one hand, to charge all customers with higher rates so that some might buy appliances and have them serviced at less than cost, or, on the other hand, to lower the cost of gas service because of a profit on those items. The court recommitted the case for purposes of having the company's earnings determined by correct legal standards.

While the public utility commission had determined that in the absence of evidence of bad faith or imprudence,

30. *Lowell Gas Co. v Department of Public Utilities* (1949) 324 Mass 80, 84
966

NE2d 811, cert den 338 US 825, 94 L Ed 501, 70 S Ct 71.

the advertising and promotional expenditures by an electric company were within the limits of the discretion of the management, the court in *Public Service Co. v State* (1973) 113 NH 497, 311 A2d 513, upheld the contention that all promotional advertising expense should be disallowed because the company and the industry was encountering increased unit costs and decremental profits. The court noted that it was not disputed that increased demand had caused the purchase of power from outside sources so that increased costs would result, and further observed that the parties making the contention disclaimed any concern with past advertising and promotion, seeking only to preclude further such expense. Pointing out that the merchandise and promotional advertising aggregated a comparatively insignificant figure, the court nevertheless held that under present conditions, promotional advertising might well be disallowed, and distinguished the holding of *Pub-*

lic Service Co. v State (1959) 102 NH 150, 153 A2d 801,³¹ which, the court explained, was decided under circumstances quite different from those of this case and could not stand in the way of disallowance of proposed expenses where appropriate under current conditions.

The commission's disallowance, for rate-making purposes, of certain claimed advertising or new business expenses, was upheld in *State v Lone Star Gas Co.* (1935, Tex Civ App) 86 SW2d 484, error ref, revd on other grounds 304 US 224, 82 L Ed 134, 58 S Ct 883, reh den 304 US 590, 82 L Ed 1549, 58 S Ct 1051, a suit by the state to restrain the defendant gas company from violating a rate setting order of the commission. The court explained that only a small amount of advertising was proved, nothing in proportion to the charges made for it, and concluded that the high annual expense claimed for advertising was not supported by the quantum and character of evidence required.

31. In the above-cited case, wherein the commission's action in making no reduction in the questioned accounts was upheld, the court voiced its unwillingness to question the judgment of the commission

in its treatment of the amounts claimed by the company for sales and new business, of which promotional expenses were a part.

Consult POCKET PART in this volume for later cases

SCOMM

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Alaska State Legislature

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DRAFT

March 22, 2000

The Honorable Ted Stevens (Frank Murkowski)
United States Senate
522 Hart Building
Washington, D.C. 20510

Dear Senator Stevens,

The House Special Committee on Utilities Restructuring supports the provisions in S. 422 (Murkowski) that would enable the State of Alaska to assume Federal Energy Regulatory Commission (FERC) licensing responsibilities for 5-megawatt or smaller hydroelectric projects in our state. We understand that the bill, which was passed by the Senate last year, is scheduled for a hearing March 30, 2000, before the Energy and Power Subcommittee of the House Commerce Committee.

As the Alaska legislature's committee charged with issues directly related to electric power development and structure in Alaska, we are encouraging communities and the utilities that serve them to develop renewable resources, especially where those resources will displace high-cost diesel generation on which so many of our rural areas are dependent. In committee testimony as well as individual conversations, we have learned that the FERC licensing process is so expensive and time-consuming that some small hydro projects are greatly delayed or simply not pursued.

S.422 will enable the State to develop an equivalent licensing program, with no diminishment in environmental requirements or oversight, but at less cost and less delay. Jurisdiction would not transfer until the State program is approved by the various federal departments and agencies that are involved in federal hydro licensing through FERC.

Given great distances between our small, remote communities, their dependence on oil-fired generation, the fact that our rural utilities are not interconnected to each other, (much less to the interstate system), and the availability of low-impact hydro resources, the Alaska provisions of S. 422 will be of immense value. There is no question that much-needed economic development in rural Alaska will be enhanced by this legislation.

Your continued support and effort toward passage this year of S. 422 will be greatly appreciated.

Sincerely,

Rep. Bill Hudson, Chair

Rep. John Cowdery, Vice-Chair

Rep. Brian Porter
Speaker of the House

Rep. Joe Green
Majority Leader

Rep. Pete Kott

Rep. Ethan Berkowitz
Minority Leader

Rep. Norman Rokeberg

Rep. John Davies



Alaska State Legislature

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Joe Green Alt.

AGENDA

Wednesday, March 22, 2000

Capitol 120

8 a.m.

1. Draft Letter in support of S.422
2. HB 248 ...relating to consumer choice for electric energy in Alaska, by Rep. Pete Kott

Public testimony limited to 3 minutes per witness.

3. HB 169 ...relating to including the costs of expansion activities and political activities in rates of electric cooperatives, by Rep. Joe Green

Public testimony limited to 3 minutes per witness.

1-LS0923\D

Cramer

2/1/00

CS FOR HOUSE BILL NO. 248()**IN THE LEGISLATURE OF THE STATE OF ALASKA****TWENTY-FIRST LEGISLATURE - SECOND SESSION****BY****Offered:****Referred:****Sponsor(s): REPRESENTATIVE KOTT****A BILL****FOR AN ACT ENTITLED**

1 "An Act relating to consumer choice for electric energy in Alaska; and providing
2 for an effective date."

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

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new
5 section to read:

6 **FINDINGS.** (a) The legislature finds that

7 (1) electric energy should be provided competitively wherever possible;

8 (2) technological advances, reduced costs, and increased consumer choice for
9 electric energy resulting from the adoption of an appropriate competitive market structure will
10 enhance the state's economic ability to compete for jobs in the national and international
11 marketplace;

12 (3) competition in the generation of electric energy will ensure that electric
13 markets are operating efficiently and that Alaska-based businesses benefit from market prices;

14 (4) retail customers should be given the right to choose their electric power

supplier so that competitive pressure is placed on both wholesale power suppliers and wholesale purchasers, including resellers, to revise or terminate existing long-term power supply contracts as needed to competitively meet retail customer needs; independent energy producers in a competitive market should be encouraged; the ability to sell energy in the wholesale market is important to economic development in Alaska; co-generation facilities must continue to be free to sell energy and not be restricted to avoided cost methodology; and

(5) all classes of consumers should realize the benefits of consumer choice in electric energy.

(b) In providing for competition in the electric energy market, the Regulatory Commission of Alaska shall

(1) provide for retail consumer choice in urban areas no later than September 1, 2001, by adopting regulations allowing consumers to choose among competitive electric providers; and

(2) oversee consumer choice in electric energy to ensure that the competition among electric providers is fair to consumers and electric providers.

(c) Because of the unique nature of the non-interconnected rural utilities in Alaska, restructuring discussions and policy options focused on the Railbelt utilities are not appropriate for non-interconnected utilities and communities.

* Sec. 2. AS 42.05.141(a) is amended to read:

(a) The Regulatory Commission of Alaska may do all things necessary or proper to carry out the purposes and exercise the powers expressly granted or reasonably implied in this chapter, including

(1) regulate

(A) every public utility engaged or proposing to engage in a utility business inside the state, except to the extent exempted by AS 42.05.711; and

(B) power aggregators and power marketers as provided in AS 42.05.905 - 42.05.930;

(2) investigate, upon complaint or upon its own motion, the rates, classifications, rules, regulations, practices, services, and facilities of a public utility and hold hearings on them;

1 (3) make or require just, fair, and reasonable rates, classifications,
2 regulations, practices, services, and facilities for a public utility;

3 (4) prescribe the system of accounts and regulate the service and safety
4 of operations of a public utility;

5 (5) require a public utility to file reports and other information and
6 data;

7 (6) appear personally or by counsel and represent the interests and
8 welfare of the state in all matters and proceedings involving a public utility pending
9 before an officer, department, board, commission, or court of the state or of another
10 state or the United States and to intervene in, protest, resist, or advocate the granting,
11 denial, or modification of any petition, application, complaint, or other proceeding;

12 (7) examine witnesses and offer evidence in any proceeding affecting
13 the state and initiate or participate in judicial proceedings to the extent necessary to
14 protect and promote the interests of the state.

15 * Sec. 3. AS 42.05.221(d) is amended to read:

16 (d) Except as provided in AS 42.05.905 - 42.05.930, in [IN] an area where
17 the commission determines that two or more public utilities are competing to furnish
18 identical utility service and that this competition is not in the public interest, the
19 commission shall take appropriate action to eliminate the competition and any
20 undesirable duplication of facilities. This appropriate action may include, but is not
21 limited to, ordering the competing utilities to enter into a contract that, among other
22 things, would [:]

23 (1) delineate the service area boundaries of each in those areas of
24 competition;

25 (2) eliminate existing duplication and paralleling to the fullest
26 reasonable extent;

27 (3) preclude future duplication and paralleling;

28 (4) provide for the exchange of customers and facilities for the
29 purposes of providing better public service and of eliminating duplication and
30 paralleling; and

31 (5) provide such other mutually equitable arrangements as would be in

the public interest.

* Sec. 4. AS 42.05 is amended by adding new sections to read:

Article 10A. Competitive Electrical Service.

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late
Sec. 42.05.905. Retail choice. (a) No later than September 1, 2001, retail customers in urban areas shall be permitted to purchase electric power service from an electric public utility power aggregator or power marketer of the customer's choice.

(b) No later than July 1, 2001, the commission shall adopt regulations that

(1) provide for the calculation and allocation of component costs for Railbelt utilities in a rational and uniform manner (unbundling and cost allocation);

(2) encourage rationalization of access to the transmission system to create a nondiscriminatory open access network while ensuring reliability;

(3) eliminate the oversight of generation siting and construction to further enhance the expansion of a wholesale competitive market with new merchant generators; and

(4) allow consumers in an urban area to choose their electric provider.

(c) By January 1, 2002, the commission may adopt regulations to allow consumers outside of an urban area to choose their electric provider.

(d) In carrying out this section, the commission shall adopt regulations to ensure that

(1) the reliability, quality, safety, and integrity of the electric system continues in place;

(2) all classes of consumers have an opportunity to benefit from choice;

(3) consumer protections are sufficient;

(4) electric providers that are public utilities account for their generation operations and assets separately from other operations and assets;

(5) to the extent that a public utility is vertically integrated, the utility functionally separates its electricity supply, retail transmission and distribution, and regulated and unregulated retail energy services operations in the state;

(6) public utilities are required to

(A) prevent undue discrimination in favor of their own power supply, other services, divisions, or affiliated interests, if any;

(B) prevent any other forms of self-dealing that could result in noncompetitive electricity prices to customers; and

(C) grant customers and their electricity suppliers access to the public utility's retail transmission and distribution systems on a nondiscriminatory basis at rates, terms, and conditions of service comparable to the use of the retail transmission and distribution system by the public utility and the public utility's affiliates;

(7) generation, transmission, and distribution services and costs are unbundled in those service areas opened to competitive electric providers;

(8) equal access to unbundled transmission and distribution lines at just and reasonable rates is available so electric providers may participate in a competitive electric energy marketplace;

(9) if competition exists within a service area, the commission may not regulate the rates for service within the area of competition;

(10) carrier of last resort obligations are fulfilled; and

(11) costs stranded as the result of consumer choice are recovered.

(e) The commission may not order a public utility to divest itself of any generation assets or prohibit a public utility from divesting itself voluntarily of any generation assets.

Sec. 42.05.910. Recoverable stranded cost. The commission may not recognize the loss of revenue under wholesale power contracts in existence on or after the effective date of this section between generation and transmission and distribution cooperative electric utilities as a recoverable stranded cost. The commission may not require a public utility to terminate, void, or modify an existing power sales agreement that has been previously approved by the commission or by the former Alaska Public Utilities Commission. The commission may not recognize as stranded investments any assets acquired in anticipation of retail wheeling or retail electric customer choice and may not recognize as a stranded investment an asset acquired after 1995.

Sec. 42.05.915. Regulation of power aggregators and power marketers. (a) A power aggregator or power marketer that is not a public utility is subject to regulation by the commission only as provided in this section.

(b) The commission may adopt regulations concerning power aggregators and power marketers it considers to be in the public interest. The regulations must require

(1) registration with the commission;

(2) bonding sufficient to protect the power aggregator's or power marketer's customers in the event of default of the power aggregator or power marketer; and

(3) a price cap for retail electric energy equal to the rates charged by the carrier of last resort for a similar electric load.

Sec. 42.05.920. Application of AS 42.05.905 - 42.05.930 to areas. Except as provided in AS 42.05.905(c), AS 42.05.905 - 42.05.930 apply only to an urban area.

Sec. 42.05.930. Definitions for AS 42.05.905 - 42.05.930. In AS 42.05.905 - 42.05.930,

(1) "carrier of last resort" means the public utility certified to provide electric distribution in the consumer's service area;

(2) "consumer choice" means the choice of a wholesale or retail consumer to choose among competitive electric providers;

(3) "electric provider" means any public utility, power aggregator, power marketer, or similar entity that sells electric energy;

(4) "power aggregator" means an entity that purchases and takes title to electric energy for resale;

(5) "power marketer" means an entity that acts as an agent or intermediary in the purchase of electric energy but does not take title to the electric energy;

(6) "recoverable stranded cost" means a cost that a public utility subject to economic regulation by the commission would be allowed recover as either a transition surcharge or other recoverable rate category;

(7) "urban area" means those electric service areas located in a municipality that are served by interconnected electric utilities.

* **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).

Sponsor Statement HB 248

Electric competition has been the subject of two major studies jointly funded by the legislature with the Alaska Public Utilities Commission. Both Black and Veatch and CH2M Hill have submitted final reports to the Legislature. The House has formed the Special Committee on Utility Restructuring to deal with utility restructuring. It is the sponsors desire to bring the issue forward to the next logical step and hold hearings on electric competition in the form of HB 248.

The sponsor has no preconceived ideas on what form electric competition should take, if any. The concept does deserve an airing out by the Legislature. The sponsor worked with two companies that have advocated electric competition in the railbelt, Aurora Power and Chugiak Electric. HB 248 is a result of that collaboration.

This is a complex subject and the electric industry can best describe the bill. That there is little consensus within the industry on electric competition only makes the Legislature's task more difficult.

Testimony on 248 will help the members in understanding some of the following public policy issues:

- Wholesale competition
- Retail Competition
- Stranded costs
- Electric wheeling
- Carrier of last resort
- Independent power producers
- Co-generation
- Role of power marketers & power aggregators
- Relationship between lower cost and reliability
- Potential new technologies

Sectional Analysis
HB 248
"D" Version

Section 1. Findings section

Section 2.

Line 27 adds regulatory oversight by the Regulatory Commission of Alaska of power aggregators and power marketers.

Section 3.

Line 16 technical change necessary for Section 4.

Section 4.

Adds a new section that allows for retail electrical competition

Page 4 lines 4-6. Provides for an effective date, and allows for consumer choice in selecting their electric service provider.

Page 4 lines 7-15. Describes the role of the Regulatory Commission of Alaska in the new competitive market.

Page 4 lines 16 & 17. Would allow for rural competition by January 1, 2002, if the commission allowed.

Page 4 lines 18 through Page 5 line 16. Further refines the issues that the RCA will be required to address.

Page 5 lines 20-28. Provides for recoverable Stranded Costs. This is a complex issue, and is at the core of a level playing field for the competitors.

Page 5 lines 29 through page 6 Line 8. Specific language regarding the regulation of power aggregators and power marketers.

Page 6 lines 9 & 10. Restricts competition to urban areas, unless allowed by the commission.

Page 6 lines 11- 28. Definitions section.

Section 5. Effective date of the act.

March 22, 2000

Honorable Bill Hudson, Chairman
Special Committee on Utility Restructuring
Alaska House of Representatives

Re: HB 248

Honorable Committee Members:

Thank you for the opportunity to address this committee on the very vital subject of the future of the electric utility industry in Alaska.

Since 1997, Chugach Electric Association has been engaged in a strenuous effort to leap-frog the logical processes leading toward restructuring of the electric industry by advocating the immediate imposition of full retail competition in the Anchorage area.

They will tell you today that it is an easy process and the time is now – that two years and more have been frittered away studying and that Anchorage rate-payers are foregoing millions of dollars in savings for each year of delay.

HB248, as introduced on the last day of the first session of this legislature, contemplated moving in the direction of eventual retail competition by first instituting wholesale competition; by next ordering an unbundling of rates and cost allocation; by then considering a retail competition pilot program and, finally, retail competition.

Since this bill was introduced, further forays have been made into restructuring in the Lower-48 and valuable lessons have been learned about the complexities and dangers of deregulation. One of the critical problems that has been identified is that of the physical limitations of the transmission system. In recent months, attention has begun to focus on very significant reliability problems that have emerged. This in an interconnected system hundreds of times the size and capacity of Alaska's.

Another issue that has engendered animated debate in the Lower-48 is the discussion of mitigation of market power. During these debates, the fundamental discussion focuses on whether a 20,000 MW or 30,000 MW or 50,000 MW market is large enough to limit market power to acceptable levels. These debates never even consider the possibility of a 700 MW competitive market. It is also noteworthy that CH2M Hill, the consultant that delivered last year's report on restructuring in Alaska found the issue of market power to be of significant concern.

Congress has been grappling with a myriad of restructuring bills for the last few years. It is clear that no comprehensive electricity restructuring bill will be enacted at the federal level this year.

The sponsor's substitute HB248 presented today is a thinly disguised effort by Chugach Electric Association to advance their agenda of launching retail competition in Anchorage while they are still able to leverage their market power to full advantage.

Additionally, the new language disallowing stranded cost recovery for assets acquired after 1995 very clearly targets the \$125 million gas field that ML&P purchased in 1996.

ML&P has already, before this Committee and in numerous other forums, strongly supported a considered, structured approach to competition in our electric industry. We believe that this legislature and the Regulatory Commission have given this important issue the critical scrutiny that it merits. Not a minute of the time spent has been wasted and a lot more remains to be done. The drama of deregulation as it is playing out in the Lower-48 is revealing lessons that we don't need to learn again through potentially disastrous first-hand experience.

I urge this Committee to not succumb to the pressure of a few selfish or misguided voices that seek to profit at the expense of thousands of silent consumers.

Thank you,

Meera Kohler
General Manager

STATE OF ALASKA

DEPARTMENT OF COMMUNITY AND
ECONOMIC DEVELOPMENT

REGULATORY COMMISSION OF ALASKA

TONY KNOWLES, GOVERNOR

1016 WEST SIXTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501-1963
PHONE: (907) 276-6222
FAX: (907) 276-0160
TTY: (907) 276-4533

March 23, 2000

The Honorable Bill Hudson, Chair
House Electric Utility Restructuring Committee
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Re: ²⁴⁸HB 284

Dear Representative Hudson:

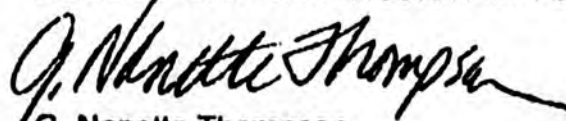
²⁴⁸
This is in response to your request for information from the Regulatory Commission of Alaska (RCA) regarding HB 284. The RCA does not support passage of this legislation this year. We urge your committee to consider this bill next session.

In order to provide the legislature with a well-informed recommendation about how a competitive market could be structured to benefit consumers, the RCA needs to know what the current costs are for the affected utilities. We do not have enough information yet. Most of the major electric utilities have not been before the Commission for a review of their rate structure for many years. The RCA has scheduled rate cases for all of the Railbelt utilities (with the exception of Copper Valley Electric Association, which is not economically regulated) before the end of 2000. While processing these rate cases, the RCA will gather the detailed information about the industry and its cost structure necessary to provide an informed opinion on this subject. We can give you better advice about the potential impact of making the electric markets competitive on customers and rates after we have finished these cases.

If you have further questions or need additional information, please contact me at (907) 276-6222.

Sincerely,

REGULATORY COMMISSION OF ALASKA


G. Nanette Thompson
Chair

INTRODUCTION

My name is Gene Bjornstad. I am General Manager of Chugach Electric Association, Inc.

Chugach is a member owned cooperative and I am pleased to speak on behalf of our member-owners in favor of HB 248 because it advances in a cautious and safe way the idea of allowing customers to choose from whom they purchase their electricity.

But before I get into the specifics of the bill, I would like to make a few general comments.

WHAT THE CUSTOMERS WANT

First, when I say that I am pleased to speak on behalf of our members, I do not say that lightly. We know what our members want and I can tell you with a high degree of confidence that we do speak on behalf of our members when we say that they want to have a choice of suppliers.

And, we know that the polling we have done of our members (and of ML&P's members across town in Anchorage, I might add!) is consistent with what we have been reading of other polls taken in other parts of the country.

Examples:

1) a March 9, 2000 PRNewswire report indicating that a nation-wide survey performed by Public Opinion Strategies for the Electric Consumers' Alliance shows that 77 percent of American consumers support competition in the electric utility industry.

2) a poll taken in early November 1999, commissioned by Edison Electric Institute, which is a large trade association with primarily investor-owned electric companies as members, found that 68 percent of the nation's consumers favor having the option to choose their power supplier.

CORRECTION

**THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION**



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INTRODUCTION

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CUSTOMER CHOICE IS THE RIGHT POLICY CHOICE

For the last 3 years, Chugach has been in the enjoyable position of championing the customers' rights to choose. Of course we are confident that it is only a matter of time before the tide – even in Alaska – will turn in favor of letting customers choose. We know it is right because we have learned through deregulation of other industries that increased competition confers significant benefits on consumers.

We also believe that regulation has not generally been able to deliver efficiency and innovation into the industries they regulate. Intuitively, I think we all know that having to please consumers who are free to choose is a challenge that produces better value over the long run.

INACTION IS THE WRONG ACTION

This is why inaction is the wrong action. Each year that passes without customer choice, is a year that the customers are denied the opportunity to benefit from exercising their right to choose. It's a year in which innovation and efficiency are not compelled by the pressures of meeting the customers' expectations. When you allow customers to choose their supplier, choices will develop. When consumers can take their business elsewhere, electric power providers will respond with better service offering, greater efficiency and innovation. As we have said before - and we think the other utilities will reluctantly agree - the mere threat of competition has begun to change the industry here in Alaska. There is already a noticeable change in attitude toward customer service and satisfaction. Our discussions with customers support this.

It is hard to underestimate the importance of the point that inaction is costly. Just because it is difficult to quantify those costs, it would be very wrong to assume there is no cost associated with inaction. For example, it would have been very difficult to quantify the value of competition to customers in the long distance telephone industry before deregulation. Even after deregulation of long distance, it would be difficult to be precise. But I think we all could agree that the innovation of new and valued services are a direct result of competition.

Of course, our situation is a lack of retail competition in the electric industry and it would be difficult to quantify how much value customers will receive when they are allowed to choose their own supplier rather than having the government make that choice for them. But we know the potential is there and every year that passes without the legislature taking a policy stand in favor of customer choice is a year of benefits lost.

My point is: Inaction is a choice too. And it has consequences. If we have learned anything in the last century of economic experimentation, it is that competition and freer markets are generally better for customers than no competition. Delay denies customers these benefits.

We know that regulation will be required to assist with the transition to competition. This is why Chugach has always supported a thoughtful cautious approach. We support the idea of a price cap at least for a few years to allow for a smooth transition. We support consumer protections. This is one of the reasons we support HB 248 because it begins customer choice cautiously with plenty of oversight by the Regulatory Commission.

THE TIME IS RIGHT FOR CUSTOMER CHOICE

Why is now the right time? Let me list some of the reasons:

- We have been studying this for several years now and no one has come up with any terrifying problems though many have tried. We all know that more and more studies just delay a decision. And, that is why those opposed to competition and deregulation continue to advocate more studies and modeling.
- Chugach has been busy at work addressing many of the worries people have raised in this discussion and I will get to some of those issues in a minute.
- The transition can be accomplished in a very cautious, safe and incremental way – as indeed HB 248 does.

HB 248

Let me speak for a few minutes about what action HB 248 proposes.

In a nutshell, it would require that the RCA develop necessary regulations to set up for customer choice by July 1, 2001 so that Customer choice would start in the Railbelt by September 1, 2001

Here are some of the highlights.

- **The bill contains substantial consumer protections similar to those in HB 81 supported by representatives Dyson and Rokeberg - and I might add supported initially by ARECA.**
- **The bill addresses stranded investments. But note well – Anchorage Municipal Light & Power, a major player in this issue has announced that as a result of its purchase of the 1/3 interest in the Beluga River gas field, it has no stranded investment concerns.**

As long as we're on the topic, because Matanuska Electric Association does not own generation, it is not exposed to significant stranded investments. Homer Electric has effectively dealt with its only generation resource and therefore also has no stranded investment.

- **The bill establishes that power marketers or aggregators, while not subject to full regulation as public utilities, are subject to basic consumer protection regulation by the RCA.**
- **Provides authority for the RCA to prevent undue discrimination by vertically integrated utilities in favor of their own retailers.**
- **Gets the RCA out of the business of deciding when and where to site new generation resources.**
- **Caps retail rates offered by aggregators and marketers at the level set by the RCA for carriers of last resort, which are the utilities.**

- Reaffirms authority of the RCA to establish open access tariffs for transmission facilities.

LISTENERS' TIPS

I want to say one last thing in anticipation of the testimony that will follow. You now know a lot more about retail customer choice than you did three years ago. So you are much better equipped to listen critically.

The last time I spoke with you I suggested that you listen for the famous smokescreen word "complex". That's still a good idea because it and words like it are your cue. It's your smoke alarm. You know someone is likely to be blowing some smoke your way soon. "Complex" translates to "let's delay and study it some more."

In addition to that, I suggest that you listen in particular for loose references to the lower 48 problems. Let's not make this more complicated than it needs to be. Practically we are talking about the Railbelt, and the Railbelt system is not particularly complicated.

So my suggestion is that you insist on an explanation of specifically how the concern actually relates to our situation. Insist on hearing exactly how it is likely to happen here in the Railbelt of Alaska.

CONCLUSION

Over the last three years the legislature has had an opportunity to learn what the concerns are about letting customers choose their electric power suppliers. We've been doing our homework. We've made the opening of our transmission system official by our FERC Open Access Tariff. We have opened up to competition a significant portion of sales to Fairbanks by agreement with Anchorage, ML&P and Golden Valley Electric Association. These sales benefit GVEA and ML&P customers.

HB 248 addresses concerns that have been raised by providing for:

- Consumer protections;
- Price cap for residential rates;
- Protection against misuse of ownership and control of essential facilities like transmission lines;
- Protection against stranded investments;
- Level playing field as between public utilities and power marketers;
- Enhanced wholesale competition.

Because HB 248 provides essential protections while establishing a cautious and incremental approach to the transition to customer choice, it merits your close attention and support.

HB 248 is a good vehicle for transition to customer choice.
It is **safe, simple** and it **should be implemented now.**

SUPPLEMENTAL MATERIALS

Specific concerns raised in the CH2MHill study.

1	Number of Suppliers	What is the minimum number of sellers to ensure a liquid supply market and effectively mitigate price fixing and market collusion?
---	---------------------	--

We think that if full deregulation of wholesale and large power supply is accomplished that over time, the number of suppliers will increase. It will not happen very fast but it will happen.

If you are worried that competition might decrease the number of suppliers, then a **sunset provision** in the legislation will address this. If there are fewer suppliers and you want to pull the plug on competition after a few years, you can do it.

It is important to keep in mind that what Chugach has been advocating is retail competition. This is because there has been competition for wholesale sales for a long time. Although the RCA does in fact review wholesale power contracts, it has not in the past refused approval of them. This has fostered some competition at the wholesale level.

But if you want to have more robust competition with more power producers participating, you need to move forward with **retail competition**.

2	Number of Buyers	What is the minimum number of buyers to ensure demand responsiveness (demand elasticity and diversity)?
---	------------------	---

This is not really a problem. There are over 80,000 meters in the Chugach and ML&P service territories now. That ought to be enough. If the concern is whether there are enough wholesale buyers, that is precisely our point. If you allow all customers to choose suppliers, then it pumps up the competition for the larger sales.

3	System Reliability	How do you structure and manage the transmission system to ensure system reliability and stability?
---	--------------------	---

This is a red herring. Our transmission system is already structured and managed to ensure system reliability and stability. We do not propose any change to that system although we developed an open access tariff along with fully allocated rates for the use of all transmission in the railbelt. In short, there is no reason to believe that anything will change in the transmission system to compromise reliability.

4	Non-discriminatory Access	How do you structure and manage the transmission and distribution system to ensure non-discriminatory access to all facilities?
5	Transmission Governance	How do you structure and manage the transmission system to balance reliability and nondiscriminatory access?

Our transmission system already provides access to any one who wants it. This can and should continue. In addition, to demonstrate our commitment to open access, we have filed an open access tariff with FERC to cover those areas where FERC could assert jurisdiction and to provide a template for open access contracts and tariffs to be approved by the RCA.

FERC has developed transmission tariffs to ensure non-discriminatory access to all facilities that could be used for transmission and easily adapted to fit distribution. There is no need to reinvent the wheel.

Part of the problem may be our orientation to the lower 48 states where transmission access is a complicated problem. Here it is simple and the parties have a well-established practice of joint use. If someone wants access, they should ask. Our Open Access Transmission Tariff is assurance that access will be permitted on an open and non-discriminatory basis. If necessary we can bring disputes to the appropriate regulatory authority.

7	Price Discovery Mechanism	How do you establish an electronic auction mechanism to accept supply and demand bids to determine a market-clearing price for each of the 24 periods in the trading day?
8	Pricing Information	How do you provide a real time information to all market participants and interested parties about trading volumes and market clearing prices over the course of a trading day?
9	Settlements and Billing	What is the most cost-effective way to coordinate scheduling and arrange delivery of power, and to provide transactions settlement and billing services to buyers and sellers?

The interconnected system is too small to support this kind of a structure. Let's not make this more complicated than it really needs to be. We expect things to work like they have in the past for the short term. When someone has short-term power to sell, they call one of the likely buyers to see if they are interested. Or, if someone needs short term power, they call up someone with generation to see if they have any at the right price. For longer-term transactions, the parties will use contracts to buy and sell. That's it. This is one way that our small system makes it easier for us.

On these three questions, the consultants have a radically different view of how competition could work here. The system is too small to have the kind of electronic spot market the question implies. These kinds of mechanisms are not really appropriate for our system.

A good example of how it already works is the recent bidding process used by GVEA to solicit offers from Chugach and ML&P. Recently, the RCA approved of a settlement between ML&P, Chugach, and GVEA.

The effect of this settlement was to open up a significant portion of the GVEA market to competition. It may interest you to know that ML&P won the first supply bidding under that new arrangement.

10	Market Monitoring and Compliance	Who has the responsibility for monitoring the activities of market participants to detect practices or behaviors that indicate that the markets are being manipulated to the detriment of their fairness or efficiency?
11	Ease of Entry	Under what circumstances will current ownership of generating resources be maintained, or required to be sold to affiliate companies or new market entrants?

First, we should ask the question: Who needs these protections? Our view is that the only ones who arguably need protection are the small customers. We have proposed safeguards for small customers. Other areas of commerce do not need market regulatory structures so why impose one here? Remember, our job here should be to protect customers not existing market participants.

However, as an additional protection, Chugach has suggested in the past and would support again, a review of the initial experience in retail customer choice after a period of years by a blue ribbon committee. If, after review, the legislature decides that it is not going well, you will be free to make remedial adjustments as needed or even to eliminate competition and create exclusive monopolies protected by regulators.

12	Ease of Exit	How do you calculate and allocate stranded costs?
----	--------------	---

I have already explained to you why we may not have the stranded investment problem that some people have been claiming. Mainly, ML&P has stated that it has no stranded investment problem by virtue of its purchase of the 1/3 interest in the Beluga River gas field. And MEA and HEA either do not have generation or have wisely taken steps to deal with the generation they have in a way that will not result in stranded investments if competition occurs. So realistically, that leaves GVEA as a possible source of stranded investment claims.

But assuming GVEA was to assert a right to stranded investment recovery, our fundamental premise is this: If you want someone else to pay for it, you must let them use what they pay for. In other words, if you want someone to pay for it, you have to at least give them an opportunity to do something with what you have made them buy.

Look at it from the customer side of the equation. A stranded investment payment is a forced purchase of capacity that the "stranded" utility insists is not useful to them as a result of competition. So our view is, if you are going to make someone pay for it, the one paying for it ought to be able to see if they can make use of it. After all, they've paid for it. Typically when you pay for something you should be able to use it.

A utility that asks to be paid for stranded investments must either sell generation assets outright or on a per kilowatt capacity basis. In the latter event, the entity paying the per kilowatt stranded investment charge should be permitted to accumulate capacity rights and, when a sufficient dispatchable block is accumulated, call for dispatch of that capacity on a non-discriminatory basis.

We feel strongly that we must consider the impact on customers and customers should not be asked to pay owners for capacity that they want to keep and get paid for but won't let anyone use.

Having said this, HB 248 does not get into this question but rather leaves it for the Commission to sort out. We would certainly have no objection to the legislature nipping this in the bud and stating a clear policy rule. The rule should be: if you want to be paid for it, you must either sell it outright or, if you decide not to sell it outright, you have to sell it in small increments and let someone else accumulate it and use it.

Other concerns raised by opponents.

Cherry picking/price cap

The starting point should be that we must look at this question from the perspective of protecting consumers – particularly small consumers.

As currently written, HB 248 has a cap that applies to power marketers and aggregators to prevent price gouging.

If the fear is that a utility faced with lost customers would feel the need to raise prices to its remaining customers, our view is that they would be free to request this of the RCA. It would be very stupid, but they could do it. It would be stupid because they would lose even more customers.

Once again, however, the key question is whether this might hurt customers and the answer is that it would not as they could simply switch to a lower cost supplier.

The utility losing business could presumably request some relief of the RCA by asserting that it has stranded investments. But in order to get this relief, we would expect that the Commission would require either that the utility sell its allegedly stranded capacity, or make capacity available to those who pay for it in the form of a stranded investment charge.

If the concern is that an inefficient utility might be driven out of business, the concern should be reviewed in light of the possible impact on consumers. Certainly one reasonable view is that inefficient suppliers who are unable to meet the needs of their customers should not remain in business. That's how it works for other businesses.

Why should the government be in the business of protecting inefficient suppliers?

Recognize that just because a power producer goes out of business does not mean that service will not be available. As long as people want to buy electricity, suppliers will be there. If a supplier can't do it efficiently, they will sell their assets to a company that can produce more efficiently. This is a good thing.

Finally, however, I do not hold with the doomsayers that say that one of the power generators will go out of business. We think they will become competitors – probably sooner and better than even they think. Look, for example, at the new market we've created for economy power sales to Fairbanks. ML&P won the first round. We hope to win the next, but one thing is certain, it has always been a close fight and one which benefits customers in Fairbanks and Southcentral Alaska.

Power pooling concerns

- A loose pool already exists which has capture the lions share of potential benefits.
- It is not at all clear that pooling is preferable to immediate competition in the Railbelt.
- The full costs of implementing a pool have not been evaluated (there may not be any benefits at all).
 - Costs of renegotiation of fuel contracts.
 - Costs of renegotiating wholesale purchase power contracts.
 - Costs of solving ML&P tax exempt bond problems.
- Who decides which customers pay more so others can pay less?

**TESTIMONY
Of
Norman L. Story, General Manager
Homer Electric Association, Inc.**

Submitted to the

**State of Alaska House of Representatives
Special Committee on Utility Restructuring**

March 22, 2000

Mr. Chairman, and Members of the Committee. I am Norman L. Story, General Manager for Homer Electric Association which serves 24,000-meter locations on the lower Kenai Peninsula in a service area of about 3,000 square miles, a density of about 10 customers per mile.

I appreciate the opportunity to speak before the House Special Committee on Utility Restructuring to discuss HB 248 and why neither version of this bill should be passed. A law that restructures the entire electric utility business in Alaska without first knowing that a change of this magnitude will be in the best interest of Alaskans is very high risk. If the alleged benefits cannot be confirmed with some certainty, HB248 should be set aside until the questions are answered.

Restructuring must yield real benefits. So far, no study conducted in Alaska, including the CH2MHILL, can confirm this outcome. But, retail competition does encourage "cherry picking" the largest consumers from an existing utility, shifting costs to the smaller remaining customers. This results in higher rates for the small consumer. HB248 does not solve this problem.

Deregulation may seriously impact the reliability of electric service in Alaska. Dramatic changes to an industry's infrastructure will also change the way in which the business operates. An erosion of utilities' financial resources results in rethinking how rates of return are re invested and may inhibit the

ability to finance long-term plant maintenance projects. HB248 does not address this problem.

Version 'D' of HB248 leaves in place the existing wholesale power agreements. Homer Electric has binding contractual obligations to purchase wholesale power from Chugach Electric until 2014. The big power suppliers holding long-term purchase power agreements will have an advantage over the smaller utilities if restructuring occurs. HB248 does not solve this problem.

Alaska Regulatory Commission Chairperson, Nanette Thompson, testified before this committee that more time would be needed to fully understand the issues of electric utility deregulation. She expressed that it would be at least a year before the Commission would be knowledgeable and informed sufficiently to make recommendations how to use the CHM21 bill report.

To conclude, the immensity of the industry not to mention the effect on every consumer in Alaska is a good reason to move slowly and deliberately. The RCA must be given the latitude and time to be thorough in their review of the issues. Today, HB248 is not in the best interest of the public.

I would like to thank the members of this Committee for its willingness to hear the issues on this very important subject.

MAR-21-00 TUE 15:52

KENAI LIO

FAX NO. 2833075

9072837122

1-553 P. 04/04

r-300

P. 04

Mar-21-00 03:58am From-HEA

Reference: Testimony by Glenn English, CEO National Rural Cooperative Association, to the U.S. Senate Energy Resource Committee, 1998

SCOMM

120:16



Alaska State Legislature

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SPONSOR STATEMENT

HB 323

Rep. Bill Hudson

HB 323 makes technical changes to SB 133, which passed the legislature last year. SB 133 abolished the Alaska Public Utilities Commission (APUC) and established the Regulatory Commission of Alaska (RCA).

The first change repeals the provision contained in SB 133 that statutorily obligated the RCA to co-locate with Alaska Oil & Gas Conservation Commission (AOGCC). The intention of this provision was to achieve cost savings through shared record storage facilities as well as clerical staff. The Department of Administration conducted a thorough review and determined that the economies of scale we had hoped to achieve could not be realized primarily due to the low cost of the current leased space of the RCA.

The second change corrects a drafting error. SB 133 allowed the commission to employ hearing "officers" instead of hearing "examiners". The difference is that the hearing "officer" need not be an attorney and the hearing "examiner" is an attorney. Hearing examiners are needed to adjudicate legal matters during the RCA's hearing process. This requires them to act as a judge during the hearing. The hearing examiner needs to be proficient in judicial proceedings, rules of evidence, and the rules of practice.

The final revision clarifies that the RCA may employ and utilize mediators as well as arbitrators in their hearing process. That was the intent of SB 133, however the language was unclear. Mediation is a less formal process than arbitration and more expeditious in finding common ground among the interested parties.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 323

Revision Date/Time (Note if correction) 2/8/00 Dept. Affected _____ Dept. of Administration _____
 Title Regulatory Commission of Alaska/AOGCC BRU AOGCC
 Component AOGCC
 Sponsor Representative Hudson
 Requester House Special Committee on Utility Restructuring Component Serial No. 2010

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1108 Statutory Designated Rcpts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY00) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation will not have a fiscal impact on the Commission.

Prepared by Robert N. Christenson, P.E. Phone _____
 Division AOGCC Date/Time 2/8/00 4:09 PM
 Approved by Commissioner [Signature] Date 2/8/00
 Agency _____

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House of Representatives

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Representative Norman Rokeberg

February 8, 2000

Special Committee on Utility Restructuring
Attn: Representative Bill Hudson

Re: AOGCC Leasehold

Dear Mr. Chairman,

As I indicated at the last meeting, I would check on the lease situation for the AOGCC. I talked to Ms. Loretta Delk, the Anchorage leasing officer for the Department of Administration. She informed me that the Department had withdrawn the RFP for the joint RCA/AOGCC premises and was awaiting direction for future action.

She indicated that the lease terms of the existing RCA lease were very favorable and that the building was not adequate for additional joint occupancy. Therefore, she recommended the AOGCC not co-locate with the RCA.

I would recommend that the AOGCC find new premises. The building they currently occupy is in an industrially zoned area in Anchorage. It is obsolete and inadequate for their purposes and activities. The state owns this building, but it has seen its better days. I recommend that the AOGCC be allowed to let new premises and that the state surplus the Mountain View building or find a better use for it. It is my understanding that the fiscal note from last year covers the rental costs for new premises for the agency. Therefore, it should not create a budget problem.

I hope this information is useful and regret that I will be unable to attend tomorrow's meeting.

Respectfully submitted by,

A handwritten signature in black ink, appearing to read "Norman Rokeberg".

Norman Rokeberg
Representative
House District 11