

ALASKA LEGISLATIVE COMMITTEE HELD DOZ  
1 2 1 5 ARRC CONFIRMATION HEARINGS, SUSAN KNOWLES (APUC) 115

COMMISSION TARIFF ACTION MEETING

NO. 321

AGENDA July 10, 1981  
(DATE)

TA NO.	UTILITY NAME	45 day	SUBJECT MATTER AND STAFF RECOMMENDATIONS	ACTION TAKEN
U-80-8	ANCHORAGE TELEPHONE UTILITY	--	Compliance w/Order  Staff recommendation: Approval	Approval Unanimously
U-80-84	COLLEGE UTILITIES CORP. (SEWER)	--	Compliance w/Order  Staff recommendation: Approval	Approval Unanimously
U-80-85	COLLEGE UTILITIES CORP. (WATER)	--	Compliance w/Order  Staff recommendation: Approval	Approval Unanimously
			Staff recommendation:	
			Staff recommendation:	
			Staff recommendation:	
			* Not Available yet	

COMMISSION TARIFF ACTION MEETING

No. 323

AGENDA July 24, 1981  
(Date)

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
28-13	GOLDEN VALLEY ELECTRIC ASSOCIATION, INC.	8/13	Rate Increases  Staff recommendation: Grant 13.49% Interim & Suspend Permanent	Deny Interim and Suspend Permanent Unanimously
	PELICAN UTILITY CO. (SAND POINT)	8/13	Rate Increases  Staff recommendation: Grant 24.3% Interim & Suspend Permanent	Granted 24.3% Interim & Suspended Permanent w/Commission Knowles dissenting
13-44 U-80-89	MC GRATH LIGHT & POWER		Rate Increases  Grant 84.68% Interim above permanent Staff recommendation: Rates and Suspend Permanent	Grant Interim & Suspend Permanent Unanimously
			Staff recommendation:	
			Staff recommendation:	

COMMISSION TARIFF ACTION MEETING

No. 324

AGENDA July 24, 1981  
(DATE)

TA NO.	UTILITY NAME	45 day	SUBJECT MATTER AND STAFF RECOMMENDATIONS	ACTION TAKEN
98-19	MATANUSKA TELEPHONE ASSOCIATION, INC.	8/10	Dishonored Check Charge and Delinquent Account Charge Increases Staff recommendation: *	Approved w/Weatherly & Knowles Partially Dissenting
23-8	CHUGACH ELECTRIC ASSOC., INC.	8/10	Underground Line Extension Differential Staff recommendation: Approval	Approved w/Conditions Unanimously
47-3	GENERAL TELEPHONE COMPANY OF ALASKA	8/5	Additions and Deletions of Terminal Equipment Staff recommendation: Approval	Approved Unanimously
159-15	JUNEAU & DOUGLAS TELEPHONE COMPANY	8/12	Deletions of Terminal Equipment Staff recommendation: Approval	Approved Unanimously
25-97	COLLEGE UTILITIES CORP. (WATER)	8/19	Administrative Cleanup Staff recommendation: Approval	Approved Unanimously
35-121	ANCHORAGE MUNICIPAL LIGHT & POWER	8/24	Gas Cost Rate Adjustment Staff recommendation: Approval	Approved Unanimously

COMMISSION TARIFF ACTION MEETING

NO. 325

AGENDA July 24, 1981  
(DATE)

TA NO.	UTILITY NAME	45 day	SUBJECT MATTER AND STAFF RECOMMENDATIONS	ACTION TAKEN
8-92	TANANA POWER COMPANY	8/21	Fuel Cost Rate Adjustment Staff recommendation: Approval	Approved Unanimously
			Staff recommendation:	Approved Unanimously
176-2	ALASKA POWER & TELEPHONE (SKAGWAY)	8/26	Fuel Cost Rate Adjustment Staff recommendation: Approval	Approved Unanimously
177-2	ALASKA POWER & TELEPHONE (CRAIG)	8/31	Fuel Cost Rate Adjustment Staff recommendation: Approval	Approved Unanimously
178-2	ALASKA POWER & TELEPHONE (HYDABURG)	8/31	Fuel Cost Rate Adjustment Staff recommendation: Approval	Approved Unanimously
34-10	COPPER VALLEY ELECTRIC ASSOCIATION, INC. (GLENNALLEN)	8/21	Fuel Cost Rate Adjustment and Power Production Assist- ance Staff recommendation: Approval	Approved Unanimously

\* Not Available Yet

COMMISSION TARIFF ACTION MEETING

NO. 326

AGENDA July 24, 1981  
(DATE)

TA NO.	UTILITY NAME	45 day	SUBJECT MATTER AND STAFF RECOMMENDATIONS	ACTION TAKEN
31-17	KOTZERUE ELECTRIC ASSOCIATION, INC.	8/26	Fuel Cost Rate Adjustment and Power Production Assistance  Staff recommendation: Approval	Approved Unanimously
24-18	MATANUSKA ELECTRIC ASSOCIATION, INC. (UNALAKLEET)	9/1	Fuel Cost Rate Adjustment and Power Production Assistance  Staff recommendation: Approval	Approved Unanimously
U-80-12	EAGLE RIVER HEIGHTS UTILITIES, INC.	--	Compliance w/Order  Staff recommendation: Approval	Approved Unanimously
81-40	ANCHORAGE REFUSE, INC.	--	Compliance w/Order  Staff recommendation: Approval	Approved Unanimously
U-80-42.	ANCHORAGE TELEPHONE UTILITY	--	Compliance w/Order  Staff recommendation: Approval	Approved Unanimously
U-80-23	GLACIER STATE TELEPHONE COMPANY	--	Compliance w/Order  Staff recommendation: Approval	Approved Unanimously

COMMISSION TARIFF ACTION MEETING

Commissioners: Guest  
Weatherly  
Knowles  
Hall

No. 327

AGENDA August 14, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
202-98	ALASCOM, INC.	8/14	Conditions for connection of telephone utility facilities to Alascom facilities  Staff Recommendation: Approval	APPROVED UNANIMOUSLY
149-120	ANCHORAGE TELEPHONE UTILITY	8/20	New rate development factors  Staff Recommendation: Approval as modified	APPROVED UNANIMOUSLY
151-120	ANCHORAGE TELEPHONE UTILITY	8/24	Multi-line terminal equipment offered on a temporary basis & customer terminal equipment upgrade without penalty  Staff Recommendation: Approval	APPROVED UNANIMOUSLY WITH COMM. KNOWLES NOT PARTICIPATING
150-120	ANCHORAGE TELEPHONE UTILITY	8/14	Addition of concept of individual tariffs for special equipment; individual tariff rates for TASCOM telephone answering system  Staff Recommendation:	APPROVED UNANIMOUSLY
203-98	ALASCOM, INC.	8/24	Communicatively handicapped equipment  Staff Recommendation: Approval	HOLD
26-37	COLLEGE UTILITIES CORP. (Sewer)	8/19	Textual revisions  Staff Recommendation: Approval	APPROVED UNANIMOUSLY

\* Not available

COMMISSION TARIFF ACTION MEETING

No. 328

AGENDA August 14, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
30-17	KOTZEBUE ELECTRIC ASSOC., INC.	8/3	Request for tariff interpretation  Staff Recommendation: See memo	HOLD
	PELICAN UTILITY CO.	9/2	Fuel cost rate adjustment  Staff Recommendation: Approval	APPROVED UNANIMOUSLY
45-88	NORTHERN POWER & ENG.	9/8	Fuel cost rate adjustment  Staff Recommendation: Approval	APPROVED UNANIMOUSLY
37-63	FORT YUKON UTILITIES	9/8	Fuel cost rate adjustment  Staff Recommendation: Approval	APPROVED UNANIMOUSLY
57-45	NUSHAGAK ELECTRIC COOP., INC.	9/10	Fuel cost rate adjustment  Staff Recommendation: Approval	APPROVED UNANIMOUSLY
109-1	ALASKA ELECTRIC LIGHT & POWER COMPANY	8/24	Fuel cost rate adjustment  Staff Recommendation: Approval	APPROVED UNANIMOUSLY

\* Not available

## AGENDA August 14, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
78-16	KODIAK ELECTRIC ASSOC., INC.	9/16	Fuel cost rate adjustment  Staff Recommendation: Approval	APPROVED UNANIMOUSLY
U-80-4 U-81-36	ANCHORAGE SEWER UTL.	8/28	Compliance w/Ordering Paragraphs 4 & 8 of Order No. 10 in U-80-4 and Order No. 1 in U-81-36  Staff Recommendation: Approval	APPROVED UNANIMOUSLY
U-80-4 U-81-36	ANCHORAGE SEWER UTL.	8/28	Compliance w/Ordering Paragraph 7 of Order No. 10 in U-80-4 and Order No. 1 in U-81-36  Staff Recommendation: Approval in part & Rejection in part	HOLD
U-81-44	ALASKA ELECTRIC LIGHT & POWER	9/8	Compliance w/ Order  Staff Recommendation: Approval	APPROVED UNANIMOUSLY
U-81-4	BURTON CARVER & CO., INC.	9/17	Compliance w/Order  Staff Recommendation: Approval	APPROVED UNANIMOUSLY
U-81-3	BURTON CARVER & CO., INC.	9/17	Compliance w/Order  Staff Recommendation: Approval	APPROVED UNANIMOUSLY

COMMISSION TARIFF ACTION MEETING

No. 330

AGENDA August 14, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
U-80-39	Homer Electric sso- ciation, Inc.	9/17	Special Contract with Tesoro  Staff Recommendation: Approval	APPROVED UNANIMOUSLY
			Staff Recommendation:	
			Staff Recommendation:	
			Staff Recommendation:	
			Staff Recommendation:	
			Staff Recommendation:	

\* Not available

COMMISSION TARIFF ACTION MEETING

Commissioner's Present

Guess  
Weatherly  
Knowles  
Hall

No. 331

AGENDA August 21, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
U-80-4 U-81-36	ANCHORAGE SEWER UTILITY	8/28	Compliance w/Ordering Paragraph 7 of Order No. 10 in Docket U-80-4 and Order No. 1 in Docket U-81-36  Staff Recommendation: Approval in Part & Rejection in Part	Concur
U-83-99	ALASCOM, INC.	8/24	Communicatively Handicapped Equipment  Staff Recommendation: Approval	Grant interim refundable approval; Suspend; require info re: rate development; open generic docket
30-17	KOTZEBUE ELECTRIC ASSOCIATION, INC.	8/3	Request for tariff interpretation  Staff Recommendation: See memo	Concur with Staff; recommend clarifying language
	HOMER ELECTRIC ASSOCIATION, INC	N/A	Combined Billing  Staff Recommendation: Reaffirm earlier decision to disallow	Concur with Staff
U-79-65	CENTRAL ALASKA UTILITIES	N/A	Southwood Park Subdivision Deviation from Tariff  Staff Recommendation: Approval	Concur with Staff
			Staff Recommendation:	

COMMISSION TARIFF ACTION MEETING

Guest  
Weatherly  
Hall

No. 332

AGENDA August 28, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
204-98	ALASCOM, INC.	8/28	Private Direct Toll Access Line Service Staff Recommendation: Suspension	Approved w/stipulation deleting Togiak & Eagle Unanimously
U-61-51	MATANUSKA TELEPHONE ASSOC., INC.	N/A	Interim Approval of Connection, Move & Trip Charges Staff Recommendation: Interim Approval	HOLD
26-169	ALASKA VILLAGE ELECTRIC COOP., INC.	9/25	Service area amendment Staff Recommendation: Approval	Approved w/Commissioner Hall Dissenting
36-121	ANCHORAGE MUNICIPAL LIGHT & POWER	9/24	Gas Cost Rate Adjustment Staff Recommendation: Approval	Approved Unanimously
110-1	ALASKA ELECTRIC LIGHT & POWER	10/5	Fuel Cost Rate Adjustment Staff Recommendation: Approval	Approved Unanimously
15-24	PELICAN UTILITY CO. (Pelican)	9/23	Fuel Cost Rate Adjustment Staff Recommendation: Approval	Approved Unanimously
179-2	ALASKA POWER & TELEPHONE (Skagway)	9/24	Fuel Cost Rate Adjustment Staff Recommendation: Approval	Approved Unanimously

\* Not available

AGENDA August 28, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
180-2	ALASKA POWER & TELEPHONE	9/24	Fuel Cost Rate Adjustment  Staff Recommendation: Approval	Approved Unanimously
37-53	YAKUTAT POWER, INC.	9/28	Fuel Cost Rate Adjustment  Staff Recommendation: Approval	Approved Unanimously
23-32	HOMER ELECTRIC ASSOC., INC.	10/6	Wholesale Power Cost Adjustment  Staff Recommendation: *	Approved Unanimously
1D-22	NAKNEK ELECTRIC ASSOC., INC.	9/17	Power Production Assistance  Staff Recommendation: Approval	Approved Unanimously
98-19	MATANUSKA TELEPHONE ASSOC., INC.	9/30	Compliance with By Direction Letter  Staff Recommendation: Approval	Approved Unanimously
			Staff Recommendation:	

\* Not available

## AGENDA August 28, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
25-97	COLLEGE UTILITIES CORP. (Water)	9/30	Compliance w/By Direction Letter  Staff Recommendation: Approval	Approved Unanimously
-80-43	HOMER ELECTRIC ASSOC., INC.	7/5	Rules and Regulations  Staff Recommendation: Will be available 8/27	Approved Unanimously
U-81-42	NORTHWAY POWER & LIGHT	10/2	Compliance w/order  Staff Recommendation: Approval	Approved Unanimously
U-80-24	TELEPHONE UTILITIES OF ALASKA, INC. (Fort Wainwright)	9/16	Adoption Notice  Staff Recommendation: Approval	Approved Unanimously
			Staff Recommendation:	
			Staff Recommendation: • Not available	

AGENDA September 11, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
4-251	TELEPHONE UTILITIES OF ALASKA, INC.	9/16	Custom Calling Rates  Staff Recommendation: Approval	Concurred with Staff
161-15	JUNEAU & DOUGLAS TELEPHONE COMPANY	9/14	Unbundled Tariff  Staff Recommendation: Suspension	Concurred with Staff
160-15	JUNEAU & DOUGLAS TELEPHONE COMPANY	9/14	Touch Calling in the Sterling Exchange  Staff Recommendation: Approval	Concurred with Staff
205-98	ALASCOM, INC.	9/16	Electronic Blackboard Rates  Staff Recommendation: Suspension with Interim Approval	Concurred with Staff
19-230	PELICAN UTILITY CO. - Sand Point	10/2	Fuel Cost Rate Adjustment  Staff Recommendation: Approval	Concurred with Staff
111-1	ALASKA ELECTRIC LIGHT & POWER	10/19	Fuel Cost Rate Adjustment Staff Recommendation: Approval	Concurred with Staff

\* Not available

AGENDA September 11, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
150-120	ANCHORAGE TELEPHONE UTILITY	8/14	Compliance w/Letter Order Staff Recommendation: Approval	Concurred with Staff
U-80-89	MC GRATH LIGHT & POWER COMPANY	10/5	Compliance w/Order Staff Recommendation: Approval	Concurred with Staff
1	NAPAKIAK CORPORATION	---	Request for Reconsideration of Power Production Assistance Staff Recommendation:	Support Staff Deny Napakiak's request for reconsideration & will pursue discussion with the AG's office.
			Staff Recommendation:	
			Staff Recommendation:	
1			Staff Recommendation: * Not available	

COMMISSION TARIFF ACTION MEETING

Commissioners: Guess  
Weatherly  
Knowles  
Hall

No. 337

AGENDA September 25, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
152-49	GLACIER STATE TELEPHONE COMPANY	9/30	Unbundled Tariff  Staff Recommendation: Suspension	Suspended Unanimously
L-218	EAGLE RIVER REFUSE, INC.	9/25	Interim & Permanent Rate Increases  Staff Recommendation:	Interim Approved & Permanent Suspended Unanimously
153-49 162-15	GLACIER STATE TELEPHONE COMPANY JUNEAU & DOUGLAS TELEPHONE COMPANY	10/16	New Billing Form  Staff Recommendation: Approval	Approved Unanimously
152-120	ANCHORAGE TELEPHONE UTILITY	10/5	Signaling Equipment  Staff Recommendation: Approval	Approved Unanimously
153-120	ANCHORAGE TELEPHONE UTILITY	10/5	Cutoff/Transfer Key  Staff Recommendation: Approval	Approved Unanimously
155-120	ANCHORAGE TELEPHONE UTILITY	10/9	Call Detail Recording Equipment  Staff Recommendation: Approval	Approved Unanimously

COMMISSION TARIFF ACTION MEETING

No. 338

AGENDA September 25, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
156-120	ANCHORAGE TELEPHONE UTILITY	10/9	Deletion of 1K Memory Card LA34 & Addition of 4K Memory Card LA34  Staff Recommendation: Approval	Approved Unanimously
7-121	ANCHORAGE MUNICIPAL LIGHT & POWER	10/26	Gas Cost Rate Adjustment  Staff Recommendation: Approval	Approved Unanimously
182-2	ALASKA POWER & TELEPHONE (Hydaburg)	10/28	Fuel Cost Rate Adjustment  Staff Recommendation: .	Approved Unanimously
183-2	ALASKA POWER & TELEPHONE (Skagway)	10/28	Fuel Cost Rate Adjustment  Staff Recommendation: Approval	Approved Unanimously
U-81-54	PELICAN UTILITY COMPANY	10/14	Compliance w/Order  Staff Recommendation: Approval	Approved Unanimously
U-80-89	MCGRATH LIGHT & POWER	11/5	Compliance w/Order  Staff Recommendation: Approval  * Not available	Approved Unanimously

COMMISSION TARIFF ACTION MEETING

No. 339

AGENDA September 25, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
U-81-48	COLDEN VALLEY ELECTRIC ASSOCIATION, INC.	10/19	Compliance w/Order  Staff Recommendation: Approval	Approved Unanimously
TA204-98	ALASCOM, INC.	10/30	Compliance w/Letter Order  Staff Recommendation: Approval	Approved Unanimously
U-80-25	CENTRAL ALASKA UTILITIES, INC.	N/A	Compliance w/Order  Staff Recommendation: Approval	Approved Unanimously
			Staff Recommendation:	
			Staff Recommendation:	
			Staff Recommendation: * Not available	

COMMISSION TARIFF ACTION

Weatherly  
Knowles  
Hall  
Snowden

AGENDA October 9, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
38-53	YAKUTAT POWER, INC.	10/14	Interim and Permanent Rate Increases  Staff Recommendation: Grant Interim & Suspend Permanent	Interim Granted & Permanent Suspended w/Comm. Hall dissenting re: rate of return
2-122	ANCHORAGE WATER UTILITY	10/16	Interim and Permanent Rate Increases  Staff Recommendation: Grant Interim & Suspend Permanent	Interim Granted & Permanent Suspended Unanimously
24-126	ANCHORAGE SEWER UTILITY	11/2	Amendment to Sewer Service Agreement w/ State of Alaska, Department of Transportation and Public Facilities  Staff Recommendation: Approval	Approved Unanimously
25-18	MATANUSKA ELECTRIC ASSOCIATION, INC. (Unalakleet)	11/11	Fuel Cost Rate Adjustment and Power Production Assistance  Staff Recommendation: Approval	Approved Unanimously
32-17	KOTZEBUE ELECTRIC ASSOCIATION, INC.	11/11	Fuel Cost Rate Adjustment and Power Production Assistance  Staff Recommendation: Approval of a Different Surcharge	Approved Unanimously
6D-160	CORDOVA ELECTRIC COOPERATIVE, INC.	11/11	Power Production Assistance  Staff Recommendation: Approval	Approved Unanimously

\* Not available

AGENDA October 9, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
2D-22	NAKNEK ELECTRIC ASSOCIATION, INC. (Naknek)	11/18	Power Production Assistance  Staff Recommendation: Approval	Approved Unanimously
J-81-14	HOMER ELECTRIC ASSOCIATION, INC.	9/3	Compliance w/order  Staff Recommendation: Approval	Approved Unanimously
			Staff Recommendation:	
			Staff Recommendation:	
			Staff Recommendation:	
			Staff Recommendation:	

\* Not available

COMMISSION TARIFF ACTION MEETING

Commissioners: Guess  
Weatherly  
Knowles

No. 342

AGENDA October 23, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
28-169	ALASKA VILLAGE ELECTRIC COOPERATIVE, INC.	17/27	Power Cost Assistance  Staff Recommendation: Approval of PCA lower than requested	Approved Unanimously
49-3	GENERAL TELEPHONE COMPANY OF ALASKA	11/13	Revised Rules Governing Establishment and Furnishing of Service  Staff Recommendation: Approval in part/Suspension in part	Suspended Unanimously
53-14	HAINES LIGHT & POWER	10/23	Contract between HL&P and Small Power Producer  Staff Recommendation: Approval	Approved Unanimously
			Staff Recommendation:	
99-19	MATANUSKA TELEPHONE ASSOCIATION, INC.	11/5	Individual Tariff for Radio Communications, Inc.  Staff Recommendation: Approval	HOLD
100-19	MATANUSKA TELEPHONE ASSOCIATION, INC.	1/30	New Billing Form  Staff Recommendation: Approval	HOLD

AGENDA October 23, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
38-121	ANCHORAGE MUNICIPAL LIGHT & POWER	11/25	Gas Cost Rate Adjustment  Staff Recommendation: Approval	Approved Unanimously
6-96	BETTLES LIGHT & POWER	11/20	Fuel Cost Rate Adjustment  Staff Recommendation: Approval	Approved Unanimously
112-1	ALASKA ELECTRIC LIGHT & POWER	11/27	Fuel Cost Rate Adjustment  Staff Recommendation: Approval	Approved Unanimously
184-2	ALASKA POWER & TELE- PHONE (Skagway)	11/27	Fuel Cost Rate Adjustment  Staff Recommendation: Approval	Approved Unanimously
27-169	ALASKA VILLAGE ELEC- TRIC COOPERATIVE, INC.	11/27	Fuel Cost Rate Adjustment  Staff Recommendation: Approval	Approved Unanimously
11-79-4	NORFOLK UTILITIES, INC.	10/23	Compliance w/order  Staff Recommendation: Approval	Approved Unanimously
			* Not available	

AGENDA October 23, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
U-80-4 U-81-36	ANCHORAGE SEWER UTILITY	11/18	Compliance w/order  Staff Recommendation: Approval	Approved Unanimously
U-81-42	NORTHWAY POWER & LIGHT	11/27	Compliance w/order  Staff Recommendation: Approval	Approved Unanimously
U-81-15	GLACIER STATE TELE- PHONE COMPANY	11/6	Compliance w/order  Staff Recommendation: Approval	Approved Unanimously
U-81-27	GLACIER STATE TELE- PHONE COMPANY	11/6	Compliance w/order  Staff Recommendation: Approval	Approved Unanimously
U-73-12	MATANUSKA TELEPHONE ASSOCIATION, INC.	11/16	Compliance w/order  Staff Recommendation: Approval	Approved Unanimously
U-80-26	YAKUTAT POWER, INC.	11/30	Compliance w/order  Staff Recommendation: Approval	Approved Unanimously

COMMISSION TARIFF ACTION MEETING

Commissioners: Weatherly  
Knowles  
Hall  
Snowden

No. 345

AGENDA November 13, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
14-240	Tlingit-Haida Regional Electric Cooperative, Inc.	12/8	Power Cost Assistance Staff Recommendation: Approval	Approved Unanimously
48-3	General Telephone Company of Alaska	11/16	Non-Recurring Charge Increase Staff Recommendation: Approval of a lower increase than requested	Approved Unanimously
8-11	Copper Valley Telephone Cooperative, Inc.	11/13	Unbundled Tariff Staff Recommendation: Suspend	Suspended Unanimously
80-16	Kodiak Electric Association, Inc. (Port Lions)	11/13	Interim & Permanent Rate Increase Staff Recommendation: Suspend Permanent; Approve Across-the-Board Interim	Suspended Permanent and Granted Interim Unanimously
24-32	Homer Electric Association, Inc.	11/19	Special Contract with City of Seldovia Staff Recommendation: Approval	Approved Unanimously
100-19	Matanuska Telephone Association, Inc.	11/23	New Billing Form Staff Recommendation: Approval	Approved Unanimously

AGENDA November 13, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
185-2	Alaska Power & Telephone (Tok)	12/7	Fuel Cost Rate Adjustment Staff Recommendation: Approval	Approved Unanimously
38-63	Fort Yukon Utilities	12/7	Fuel Cost Rate Adjustment Staff Recommendation: Approval	Approved Unanimously
15-240	Tlingit-Haida Regional Electric Cooperative, Inc.	12/21	Fuel Cost Rate Adjustment Staff Recommendation: Approval	Approved Unanimously
16-24	Pelican Utility Company (Pelican)	11/30	Fuel Cost Rate Adjustment Staff Recommendation: Approval	Approved Unanimously
20-230	Pelican Utility Company (Sand Point)	11/30	Fuel Cost Rate Adjustment Staff Recommendation: Approve reduced surcharge; require refund.	Suspended Permanent and Approved Interim Unanimously
21-230	Pelican Utility Company (Sand Point)	12/3	Fuel Cost Rate Adjustment Approve reduced surcharge; require refund Staff Recommendation:	Suspended Permanent and Approved Interim Unanimously
			* Not available	

AGENDA November 13, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
U-81-12	Pelican Utility Company (Sand Point)	11/16	New Tariff Staff Recommendation: Incorporate New Tariff into U-81-12; Approve Adoption Notice	Approved Adoption Notice Unanimously
-81-54	Pelican Utility Company (Sand Point)	12/3	Compliance with Order Staff Recommendation: Approval	Approved Unanimously
U-80-100	Anchorage Municipal Light & Power	11/6	Compliance with Order Staff Recommendation: Approval	Approved Unanimously
53-14	Haines Light & Power	12/16	Compliance with Letter Order Staff Recommendation: Approval	Approved Unanimously
U-79-41	Matanuska Telephone Association, Inc.	10/5	Compliance With Order Staff Recommendation: Approval	HOLD
	Kodiak Sanitation, Inc.	12/3	Adoption Notice Staff Recommendation: Approval	Approved Unanimously
			* Not available	

AGENDA November 13, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
U-81-75	Eagle River Refuse, Inc.	12/16	Compliance with Order Staff Recommendation: Approval	Approved Unanimously
-81-52	Chugach Electric Association, Inc.	12/21	Compliance with Order Staff Recommendation: Approval	Approved Unanimously
TA 28-169	Alaska Village Electric Cooperative, Inc.	12/23	Compliance with Letter Order Staff Recommendation: Approval	Approved Unanimously
			Staff Recommendation:	
			Staff Recommendation:	
			Staff Recommendation: • Not available	

COMMISSION TARIFF ACTION MEETING

Commissioners: Guess  
Hall  
Snowden

No. 349

AGENDA November 23, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
3-274	M & D ENTERPRISES	1/4	Power Cost Assistance (Inclusion of this item on the agenda is on a tentative basis) Staff Recommendation: *	NOT AVAILABLE
39-121	ANCHORAGE MUNICIPAL LIGHT & POWER	12/28	Gas Cost Rate Adjustment Staff Recommendation: Approval	Approved Unanimously
20-230 21-230	PELICAN UTILITY CO. (Sand Point)	11/30 12/3	Fuel Cost Rate Adjustments at Sand Point Staff Recommendation: Further reduce surcharges, grant interim approval to surcharges; direct refund	Staff recommendations Approved Unanimously
23-230	PELICAN UTILITY CO. (Sand Point)	12/28	Fuel Cost Rate Adjustment at Sand Point Staff Recommendation: Reduce Surcharge; grant interim approval to reduce surcharge; direct refund.	Staff recommendations Approved Unanimously
			Staff Recommendation:	
113-1	ALASKA ELECTRIC LIGHT & POWER	12/23	Fuel Cost Rate Adjustment Staff Recommendation: Approval	Approved Unanimously

AGENDA November 23, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
187-2	ALASKA POWER & TELEPHONE (Tok)	12/28	Fuel Cost Rate Adjustment  Staff Recommendation: <u>Approval</u>	Approved Unanimously
188-2	ALASKA POWER & TELEPHONE (Skagway)	12/28	Fuel Cost Rate Adjustment  Staff Recommendation: <u>Approval</u>	Approved Unanimously
2-274	M & D ENTERPRISES	12/28	Fuel Cost Rate Adjustment  Staff Recommendation: <u>Approval</u>	Approved Unanimously
30-22	NAKNEK ELECTRIC ASSOC., INC.	12/30	Power Production Assistance  Staff Recommendation: <u>Approval</u>	Approved Unanimously
U-78-10	ARCTIC SLOPE TELE- PHONE ASSOC. COOP.	10/9	Compliance w/Order  Staff Recommendation: <u>Approval</u>	Approved Unanimously
U-81-57	UNITED UTILITIES, INC.	12.28	Compliance w/Order  Staff Recommendation: <u>Approval</u>	Approved Unanimously

COMMISSION TARIFF ACTION MEETING

Weatherly  
Knowles

AGENDA December 18, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
			Staff Recommendation:	
		1/13	Staff Recommendation:	
33-17	KOTZEBUE ELECTRIC ASSOC., INC.	1/13	Power Cost Assistance  Staff Recommendation: Approval	Approved Unanimously
18-96	BETTLES LIGHT & POWER	12/21	Power Cost Assistance  Staff Recommendation: Correction of Previously approved PCA	Correction Approved Unanimously
58-45	NUSHAGAK ELECTRIC COOP., INC.	1/15	Power Cost Assistance  Staff Recommendation: Approval	Approved Unanimously
45-43	BETHEL UTILITIES CORP., INC.	1/18	Power Cost Assistance  Staff Recommendation: Approval as Adjusted	Approved Unanimously

\* Not available

COMMISSION TARIFF ACTION MEETING

No. 352

AGENDA December 18, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
2	TAKOTNA VILLAGE COMMUNITY ASSOC.	12/31	Power Cost Assistance  Staff Recommendation: Rejection	HELD
	CITY OF RUBY	1/4	Power Cost Assistance  Staff Recommendation: Approval as adjusted on interim basis, Subject to audit	Approved Amount Unanimously
54-14	HAINES LIGHT & POWER	1/8	Power Cost Assistance  Staff Recommendation: Approval as adjusted	Approved Unanimously
2	NAPAKIAK CORPORATION	1/10	Power Cost Assistance  Staff Recommendation: Approval as adjusted on interim basis, Subject to audit.	Approved Amount Unanimously
7D-160	CORDOVA ELECTRIC COOP., INC.	1/10	Power Cost Assistance  Staff Recommendation: Approval on an interim basis, Subject to audit.	Approved Amount Unanimously
35-10	COPPER VALLEY ELECTRIC ASSOC. INC	1/13	Power Cost Assistance  Staff Recommendation: Approval as adjusted	Approved Unanimously

COMMISSION TARIFF ACTION MEETING

No. 353

AGENDA December 18, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
17-44	MCGRATH LIGHT & POWER	1/13	Power Cost Assistance  Approval as adjusted on an interim basis, Staff Recommendation: Subject to Commission acceptance of the	HELD  stipulation.
D-72	MANLEY UTILITY CO.	1/15	Power Cost Assistance  Approval as adjusted on an interim basis, Staff Recommendation: Subject to audit.	Approved Amount Unanimously
1D	HUGHES POWER & ELECTRIC	1/18	Power Cost Assistance  Staff Recommendation: Rejection	Letter explaining re- quirements approved unanimously
3D-150	NOME JOINT UTILITIES SYSTEM	1/13	Power Cost Assistance  Staff Recommendation: Approval as adjusted	Approved Amount Unanimously
26-18	MATANUSKA ELECTRIC ASSOC., INC. (Unalakleet)	1/14	Power Cost Assistance  Staff Recommendation: Approval	Approved Unanimously
81-16	KODIAK ELECTRIC ASSOC., INC. (Kodiak)	1/15	Power Cost Assistance  Staff Recommendation: Approval	Approved Unanimously

COMMISSION TARIFF ACTION MEETING

No. 354

AGENDA December 18, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
82-16	KODIAK ELECTRIC ASSOC., INC. (Port Lions)	1/15	Power Cost Assistance  Approval as adjusted on an interim basis, Staff Recommendation: Subject to audit.	Approved Unanimously
			Staff Recommendation:	
1-276	ALASCOM, INC. (St. Paul)	1/27	Rule for taxes imposed on utility for direct charge to subscribers  Staff Recommendation: Approval	Approved Unanimously
163-15	JUNEAU & DOUGLAS TELEPHONE COMPANY	12/18	Rates for the SL-1 for the State of Alaska  Staff Recommendation: Interim approval and suspension	Interim Approval and Suspension Unanimously
157-120	ANCHORAGE TELEPHONE UTILITY	12/21	Rates for Infotron Statistical Multiplex Equipment  Staff Recommendation: Approval	Approved Unanimously
165-2	ALASKA POWER & TELEPHONE	1/4	Delinquent Account Carrying Charge  Staff Recommendation: Approval * Not available	Approved Unanimously

COMMISSION TARIFF ACTION MEETING

No. 355

AGENDA December 18, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
13-31	NATIONAL UTILITIES, INC.	1/4	Delinquent Account Carrying Charge  Staff Recommendation: Approval	Approved Unanimously
121	ANCHORAGE MUNICIPAL LIGHT & POWER	1/25	Gas Cost Rate Adjustment  Staff Recommendation: Approval	Approved Unanimously
16-44	MCGRATH LIGHT & POWER	12/21	Fuel Cost Rate Adjustment  Staff Recommendation: Approval	Approved Unanimously
11-5	ANIAK LIGHT & POWER	1/4	Fuel Cost Rate Adjustment  Staff Recommendation: Approval	Approved Unanimously
			Staff Recommendation:	
19-96	SETTLES LIGHT & POWER	1/20	Fuel Cost Rate Adjustment  Staff Recommendation: Approval	Approved Unanimously

AGENDA December 18, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
17-24	PELICAN UTILITY CO. (Pelican)	1/20	Fuel Cost Rate Adjustment  Staff Recommendation: Approval	Approved Unanimously
18-10	COPPER VALLEY ELEC- TRIC ASSOC., INC. (Valdez)	1/21	Fuel Cost Rate Adjustment & Power Production Assistance  Staff Recommendation: Approval	Approved Unanimously
46-43	BETHEL UTILITIES CORP., INC.	1/25	Fuel Cost Rate Adjustment  Staff Recommendation: Approval	Approved Unanimously
11-80-79	ILIAMNA-NEWHALEN ELECTRIC COOP., INC.		New Tariff  Staff Recommendation: Approval	HELD
U-79-41	MATANUSKA TELEPHONE ASSOC., INC.	10/4	Compliance w/order  Staff Recommendation: Approval	Approved Unanimously
U-79-79	BETHEL UTILITIES CORP., INC.	12/30	Compliance w/order  Staff Recommendation: Approval	Approved Unanimously

\* Not available

COMMISSION TARIFF ACTION MEETING

No. 357

AGENDA December 13, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
U-81-78	ANCHORAGE WATER UTILITY	1/8	Compliance w/order  Staff Recommendation: Approval	Approved Unanimously
TA99-19	MATANUSKA TELEPHONE ASSOC., INC.	1/17	Compliance w/order  Staff Recommendation: Approval	Approved Unanimously
TA24-126	ANCHORAGE SEWER UTILITY	1/10	Compliance w/order  Staff Recommendation: Approval	HELD
			Staff Recommendation:	
			Staff Recommendation:	
			Staff Recommendation: Not available	

COMMISSION TARIFF ACTION MEETING

COMMISSIONERS:

Weatherly  
Knowles  
Snowden

No. 358

AGENDA December 24, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
206-98	ALASCOM, INC.	12/24	New Rate Development Factors  Staff Recommendation: Suspension	HELD
	NAPASKIAK		Power Cost Assistance  Staff Recommendation: Approval on an interim basis pending audit	Approved on an Interim Basis Unanimously
2	TAKOTNA VILLAGE COMMUNITY ASSOC.	12/31	Power Cost Assistance  Staff Recommendation: Approval on an interim basis pending audit	Approved on an Interim Basis Unanimously
4D-22 1	NAKNEK ELECTRIC ASSOCIATION, INC.	1/10	Power Cost Assistance  Staff Recommendation: Approval as adjusted on an interim basis, pending audit	Approved on an Interim Basis Unanimously
39-63	FORT YUKON UTILITIES	1/11	Interim and Permanent Rate Increase  Staff Recommendation: Grant Interim & Suspend Permanent	Approved Interim & Suspended Permanent Unanimously
40-63	FORT YUKON UTILITIES	1/13	Power Cost Assistance  Staff Recommendation: Approval as adjusted on interim basis, pending audit • Not available	Approved on an Interim Basis Unanimously

Commissioners: Guess  
Weatherly  
Knowles  
Snowden

COMMISSION TARIFF ACTION MEETING

No. 359

AGENDA December 24, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MAT. AND STAFF RECOMMENDATION	ACTION TAKEN
30-4	ALASKA GAS & SERVICE	12/28	Interim Rate Increase  Staff Recommendation: Grant Interim	Approved Interim  w/Comm. Weatherly Dis-senting
U-80-75	INTERIOR TELEPHONE COMPANY	1/27	Compliance w/order  Staff Recommendation: Approval	Approved  Unanimously
U-81-32	MATANUSKA ELECTRIC ASSOCIATION, INC	1/25	Compliance w/order  Staff Recommendation: Approval	Approved  Unanimously
U-81-87	KODIAK ELECTRIC ASSOCIATION, INC.	1/27	Compliance w/order  Staff Recommendation: Approval	Approved  Unanimously
			Staff Recommendation:	
			Staff Recommendation:	

COMMISSION TARIFF ACTION MEETING

Commissioners: Guss  
Weatherly  
Knowles  
Hall  
Snowden

No. 360

AGENDA January 8, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
39-53	YAKUTAT POWER, INC.	2/3	Power Cost Assistance  Staff Recommendation: Approval of a Reduced PCA	Approved Unanimously
41	VALLEY WATER COMPANY	1/20	Interim and Permanent Rate Increase  Staff Recommendation: Grant Interim & Suspend Permanent	Approved Interim and Suspended Permanent Unanimously
27-18	MATANUSKA ELECTRIC ASSOCIATION, INC.	2/1	Wholesale Power Cost Rate Adjustment  Staff Recommendation: Approval	Approved Unanimously
24-230	PELICAN UTILITY COMPANY (Sand Point)	waived	Fuel Cost Rate Adjustment  Staff Recommendation: Approval on an Interim Basis	Approved Unanimously
25-230	PELICAN UTILITY COMPANY (Sand Point)	2/3	Fuel Cost Rate Adjustment  Staff Recommendation: Approval on an Interim Basis	Approved Unanimously
109-2	ALASKA POWER & TELEPHONE (Skagway)	1/27	Fuel Cost Rate Adjustment  Staff Recommendation: Approval	Approved Unanimously

\* Not available

AGENDA January 8, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
190-2	ALASKA POWER & TELEPHONE (Tok)	1/27	Fuel Cost Rate Adjustment  Staff Recommendation: Approval	Approved Unanimously
191-2	ALASKA POWER & TELEPHONE (Craig)	1/27	Fuel Cost Rate Adjustment  Staff Recommendation: Approval	Approved Unanimously
192-2	ALASKA POWER & TELEPHONE (Hydaburg)	1/27	Fuel Cost Rate Adjustment  Staff Recommendation: Approval	Approved Unanimously
114-1	ALASKA ELECTRIC LIGHT & POWER	2/3	Fuel Cost Rate Adjustment  Staff Recommendation: Approval	Approved Unanimously
5-227	ARCTIC UTILITIES, INC.	2/1	Fuel Cost Rate Adjustment  Staff Recommendation: Approval	Approved Unanimously
U-80-24	TELEPHONE UTILITIES OF ALASKA, INC. (Ft. Wainwright)	1/29	Compliance w/order  Staff Recommendation: Approval	Approved Unanimously

AGENDA January 8, 1981

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
24-126	ANCHORAGE SEWER UTILITY	1/10	ASU letters (response to letter order) re military accounts Note: this item held over from 12/18/81 TA meeting  Staff Recommendation: Clarifying letter order be issued	Approved Unanimously
48-3	GENERAL TELEPHONE COMPANY OF ALASKA	1/25	Compliance w/letter order  Staff Recommendation: Approval	Approved Unanimously
U-31-99	BETTLES LIGHT & POWER	2/3	Compliance w/order  Staff Recommendation: Approval	Approved Unanimously
			Staff Recommendation:	
			Staff Recommendation:	
			Staff Recommendation:	

Commiss  
COMMISSION TARIFF ACTION MEETING

No. 363

AGENDA January 25, 1982

Snowden

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
10-92	Tanana Power Co.	2/19	Power Cost Assistance  Staff Recommendation: Approval	Approved Unanimously
1D-106	City of Unalaska	2/8	Power Cost Assistance  Staff Recommendation: Approval of higher PCA than requested	Approved Unanimously
4D-22	Naknek Electric Association, Inc. (Naknek)	1/10	Power Cost Assistance  Staff Recommendation: Correction of PCA amount	Correction Approved Unanimously
31-4	Alaska Gas and Service	2/16	Purchased Gas Cost Rate Adjustment  Staff Recommendation: Approval	Approved Unanimously
9-92	Tanana Power Company	1/29	Rules and Regulations Changes: Billing and Collection, Line Extensions, Service Connections. Staff Recommendation: Approval in part and interim approval in part	Suspended and Allowed to go into effect on an Interim Basis  w/ Comm. Weatherly Dis- senting
18-44	McGrath Light & Power	2/19	Billing Form Changes  Staff Recommendation: Approval	HELD

COMMISSION TARIFF ACTION MEETING

AGENDA January 25, 1982

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
41-121	Anchorage Municipal Light & Power	2/25	Gas Cost Rate Adjustment  Staff Recommendation: Approval	Approved Unanimously
115-1	Alaska Electric Light & Power	3/1	Fuel Cost Rate Adjustment  Staff Recommendation: Approval	Approved Unanimously
U-81-101	Alaska Gas & Service	2/29	Compliance w/order  Staff Recommendation: Approval	Approved Unanimously
U-81-81	Yakutat Power, Inc.	2/26	Compliance w/order  Staff Recommendation: Approval	Approved Unanimously
45-43	Bethel Utilities Corporation, Inc.	2/22	Compliance w/letter order  Staff Recommendation: Approval	Approved Unanimously
U-81-14	Homer Electric Association, Inc.	2/17	Compliance w/order  Staff Recommendation: Approval	Approved Unanimously
			* Not available	

AGENDA January 25, 1982

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
54-14	Haines Light & Power	3/1	Compliance w/letter order  Staff Recommendation: Approval	Approved Unanimously
			Staff Recommendation	
			Staff Recommendation:	
			Staff Recommendation:	
			Staff Recommendation:	
			Staff Recommendation: * Not available	

COMMISSION TARIFF ACTION MEETING

Commissioners: Guess  
Weatherly  
Knowles  
Hall  
Snowden

No. 366

AGENDA February 11, 1982

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
46-88	NORTHERN POWER & ENGINEERING CORP.	3/1	Power Cost Assistance  Staff Recommendation: Approval	Approved Unanimously
208-98	ALASCOM, INC.	3/22	Deletion of Eagle Village from list of locations where Private Direct Toll Access Line Service is provided  Staff Recommendation: Approval	Approved Unanimously
24-b	CHUGACH ELECTRIC ASSOCIATION, INC.	2/16	Underground Line Extension Differential  Staff Recommendation: Approval	Approved Unanimously
117-1	ALASKA ELECTRIC LIGHT & POWER CO.	3/15	Deletion of 3% Franchise Tax for customers in the City of Juneau  Staff Recommendation: Approval	Approved Unanimously
116-1	ALASKA ELECTRIC LIGHT & POWER CO.	3/17	Fuel Cost Rate Adjustment  Staff Recommendation: Approval	Approved Unanimously
93-2	ALASKA POWER & TELEPHONE (Skagway)	3/4	Fuel Cost Rate Adjustaent  Staff Recommendation: Approval	Approved Unanimously

COMMISSION TARIFF ACTION MEETING

AGENDA February 11, 1982

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
194-2	ALASKA POWER & TELEPHONE (Tok)	3/8	Fuel Cost Rate Adjustment  Staff Recommendation: Approval	Approved Unanimously
13-24	PELICAN UTILITY CO. (Pelican)	3/19	Fuel Cost Rate Adjustment  Approval of a Reduced Surcharge: Refund on Staff Recommendation: next properly calculated surcharge	Approved Unanimously
U-81-18	TANANA POWER CO.	2/19	Compliance w/Order  Staff Recommendation: Approval	Approved Unanimously
U-82-3	FORT YUKON UTILITIES	2/26	Compliance w/Order  Staff Recommendation: Approval	Approved Unanimously
U-81-89	PELICAN UTILITY CO. (Sand Point)	3/17	Compliance w/Order  Staff Recommendation: Approval	Approved Unanimously
			Staff Recommendation: * Not available	

COMMISSION TARIFF ACTION MEETING

Commissioners:

GUESS  
Weatherly  
Knowles  
Hall  
Snowden

No. 368

AGENDA February 26, 1982

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
27-230	Pelican Utility Company (Sand Point)	3/19	Power Cost Assistance  Staff Recommendation: Approved of higher PCA than requested.	Approval Unanimously
154-49	Glacier State Telephone Company	3/3	Interim Rate Increase  Staff Recommendation: Grant Interim	HELD
			Staff Recommendation:	
207-98	Alascom, Inc.	3/8	Transportable Earth Stations  Staff Recommendation: Suspension if TA206-98 is suspended; otherwise, approval	Interim Approval & Suspension Unanimously
81-19	Matanuska Telephone Association, Inc.	Waived	Rates for Remote Display Unit for Golden Valley Electric Association, Inc., Healy Power Plant Mitel SX-20  Staff Recommendation: Approval	Approval Unanimously
42-121	Anchorage Municipal Light & Power	3/26	Gas Cost Rate Adjustment  Staff Recommendation: Approval, open docket to investigate methodology  * Not available	Approval and open Docket Unanimously

COMMISSION TARIFF ACTION MEETING

No. 369

AGENDA February 26, 1982

TA No.	UTILITY NAME	45/day	SUBJECT MATTER AND STAFF RECOMMENDATION	ACTION TAKEN
47-43	Bethel Utilities Corporation, Inc.	3/24	Fuel Cost Rate Adjustment and Power Cost Assistance Adjustment  Staff Recommendation: Approval	Approval Unanimously
40-53	Yakutat Power, Inc.	4/1	Fuel Cost Rate Adjustment and Power Cost Assistance Adjustment  Staff Recommendation: Approval	Approval Unanimously
26-230	Pelican Utility Company (Sand Point)	3/8	Fuel Cost Rate Adjustment  Staff Recommendation: Suspension & Interim Approval	Approval Unanimously
U-82-2	Valley Water Company	3/24	Compliance with Order  Staff Recommendation: Approval	Approval Unanimously
U-81-54	Pelican Utility Company (Sand Point)	3/26	Compliance with Order  Staff Recommendation: Approval	Approval Unanimously
U-81-29	Anchorage Telephone Utility	N/A	Supplemental Filing  Staff Recommendation: Approval  * Not available	Approval Unanimously

ALASKA PUBLIC UTILITIES COMMISSION and the Municipality of Anchorage, d/b/a Municipal Light and Power Department, Appellants,

v.

CHUGACH ELECTRIC ASSOCIATION, INC., Appellee.

CHUGACH ELECTRIC ASSOCIATION, INC., Cross-Appellant,

v.

ALASKA PUBLIC UTILITIES COMMISSION and the Municipality of Anchorage, d/b/a Municipal Light and Power Department, Cross-Appellees.

Nos. 2969, 2993.

Supreme Court of Alaska

May 26, 1978.

Electric utility corporation appealed from order of the Public Service Commission which assigned fixed service areas to corporation and to city light and power department within area served by both. The Superior Court, Third Judicial District, Eben H. Lewis, J., held that there was insufficient evidence to support conclusions in Commission's order and remanded matter to Commission for reconsideration, and city light and power department appealed and utility corporation cross-appealed. The Supreme Court, Burke, J., held that (1) in light of statute providing that all certificates of convenience and necessity issued before July 1, 1970 would be subject to modification, general saving statute did not preserve any right which electric utility corporation might have had, prior to order of Commission, to continue providing electric service, and failure of Commission to find existence of such right did not deny utility corporation due process, (2) portion of order establishing fixed service areas for utility corporation and city light and power department within area served by both had a reasonable basis, and (3) portion of order providing for retirement and transfer of facilities from utility corporation to city

light and power department in those areas where the two utilities were operating duplicate and parallel facilities lacked a reasonable basis and would be remanded to Commission for further evidence.

Remanded.

1. Statutes — 277

General saving statute will save rights and remedies except where subsequent repealing act indicates that it was not intention of legislature that particular remedies and rights in question should be saved. AS 01.10.100.

2. Constitutional Law — 296(1) Electricity — 4

In light of statute providing that all certificates of convenience and necessity issued before July 1, 1970 would be subject to modification in areas of conflict with public utilities that had not previously been required to have a certificate, general saving statute did not preserve any right to continue providing service which electric utility corporation, which was operating in same area as city light and power department and which had been issued certificate of convenience and necessity to do so in 1963, may have had prior to Public Service Commission order assigning fixed service areas to corporation and to city department; thus, corporation was not denied due process by failure of Commission to find existence of such right. AS 01.10.100, 42.05.221, AS 42.05.193, 42.05.194, 42.05.196, Laws 1963, c. 95.

3. Administrative Law and Procedure — 790

In cases where decision involves administrative expertise as to either complex subject matter or fundamental policy formulations, deference should be given to administrative determination if it has reasonable basis in law and fact, such deference is given because agency is in better position to make such a determination than court because of agency's specialized knowledge in a field. AS 44.62.570.

180

787

4. Electricity ⇨

On appeal from order of Public Service Commission assigning fixed areas to electric utility corporation and to city light and power department within area served by both pursuant to statutes empowering Commission to take appropriate action to eliminate competition and duplication of facilities in areas where two or more public utilities are competing to furnish identical services, appropriate standard of review, in light of complex financial and engineering determinations involved and considerable expertise required, was reasonable basis test. AS 42.05.221(d), 44 62570.

5. Electricity ⇨

Since Supreme Court, on appeal from order of Public Service Commission assigning fixed service areas to electric utility corporation and to city light and power department within area served by both, was to review case independently of determination made by superior court, which had acted as intermediate court of appeal, Supreme Court would not need to decide whether lower court erroneously relied upon alleged misrepresentation of electric utility corporation regarding statement made by public service commissioner. AS 42.05.221(d), 44 62570.

6. Electricity ⇨

On appeal before Supreme Court from order of Public Service Commission assigning fixed areas to electric utility corporation and to city light and power department within area served by both, affidavit by president of engineering company, which had been submitted by electric utility corporation to Commission as part of its petition for certificate, was properly before Supreme Court notwithstanding that part of corporation's argument that Commission order did not have ascertainable basis. AS 42.05.221(d).

7. Electricity ⇨

Portion of order of Public Service Commission holding that no evidence for electric utility corporation to justify light and power department within area previously served by both, pursuant to statute

empowering Commission to take appropriate action to eliminate competition and duplication of facilities in areas where two or more public utilities are competing to furnish identical services, allocated service areas in such a way as to resolve competing interests of corporation and light and power department and public they served, and had reasonable basis. AS 42.05.221(d).

8. Electricity ⇨

Portion of order of Public Service Commission, entered pursuant to statute empowering Commission to take appropriate action to eliminate competition and duplication of facilities in areas where two or more public utilities are competing to furnish identical services, providing for retirement and transfer of facilities from electric utility corporation to city light and power department in those areas where those two utilities were operating duplicate and parallel facilities, lacked a reasonable basis and would require remand to Commission for further evidence regarding retirement and transfer of such facilities. AS 42.05.221(d).

Jeffrey B. Lowenfels, Asst. Atty. Gen., Anchorage, Avrum M. Gross, Atty. Gen., Juneau, for appellant and cross-appellee, Alaska Public Utilities Commission.

Peter C. Ginder, Asst. Municipal Atty., Karen D. Nagel, Associate Counsel, Richard W. Garnett, III, Municipal Atty. Anchorage, for appellant and cross-appellee, Municipality of Anchorage.

William M. Span, Anchorage, for appellee and cross-appellant.

Before HOOCHNER, Chief Justice, and CONNOR and BURKE, Justices.

OPINION

BURKE, Justice

This appeal and cross appeal require us to review a three-part order of the Alaska Public Utilities Commission. The order, after referring to the Commission's finding of the duplication of service areas between the Municipality of Anchorage and the Public Department

of the Municipality after referred to Chugach Electric Company referred to as Chugach.

The present case arose seven years ago. The Commission's order was issued before the date of public utility certificate pursuant to AS 42.05.221(d) issued authority to the Municipality of Anchorage throughout a section and immediately thereafter the Municipality of Anchorage was operating an electric generation, transmission and distribution facilities for electric power generation was not required in 1971.

After reviewing the Commission's decision, the Commission determined that the certificates were being issued by Chugach, which certificate of public utility granted to it provides that when two utilities are competing to furnish electric service and that this is in the public interest, the

1. AS 42.05.221 provides that a certificate of public utility may operate on a fixed area providing a certificate of public utility on or after July 1, 1971 was from the Commission certificate decision and necessarily require. Where a certificate of public utility is granted in it, the services authorized area the public utility.

(c) A certificate of public utility which was issued before July 1, 1971 shall not be subject to a certificate of public utility which is issued on or after July 1, 1971, unless there are areas of duplication of service or where there are changes in circumstances.

ALASKA PUBLIC UTILITIES v. CHUGACH ELEC. ASS'N Alaska 689

Cite as, Alaska, 590 P.2d 687

of the Municipality of Anchorage (hereinafter referred to as ML&P) and the Chugach Electric Association (hereinafter referred to as Chugach).

The present controversy began nearly seven years ago when ML&P filed an application before the Commission for a certificate of public convenience and necessity pursuant to AS 42.05.221<sup>1</sup>. ML&P requested authority to furnish electric service throughout a service area situated within and immediately adjacent to the then City of Anchorage. At the time of filing, ML&P was operating an extensive network of electric generation, transmission, and distribution facilities for which Commission certification was not required prior to January 1, 1971.

After reviewing ML&P's application, the Commission determined that identical services were being offered in many instances by Chugach, which was operating under a certificate of public convenience and necessity granted to it in 1963. AS 42.05.221(d)<sup>2</sup> provides that where the Commission determines that two or more public utilities are competing to furnish identical utility service and that this competition is not in the public interest, the Commission is to take

appropriate action to eliminate the competition and any undesirable duplication of facilities. Pursuant to this section, the Commission issued Order No. 1 on March 11, 1971, seeking the advice and assistance of ML&P and Chugach in implementing a plan to eliminate such competition and duplication.

In response to Order No. 1, ML&P and Chugach filed briefs outlining their respective views as to how the Commission should proceed. Both parties submitted proposed orders to establish a negotiating committee that would allow the utilities to reach agreement on a voluntary basis. On August 31, 1971, the Commission by Order No. 9 established the requested negotiating committee, composed of members from each of the utilities and one Commission staff member who was to serve as a coordinating chairman. The Commission also established interim service areas during this period.

After several months of negotiations the parties' efforts to reach agreement proved unsuccessful. The Commission then ordered each party to submit, among other things, proposed solutions to the service area dispute. Upon reviewing the proposed

1. AS 42.05.221 provides in relevant part

*Certificates required.* (a) No public utility may operate and receive compensation for providing a commodity or service after January 1, 1971 without first having obtained from the commission under this chapter a certificate declaring that public convenience and necessity require or will require the service. Where a public utility provides more than one type of utility service, a separate certificate of convenience and necessity is required for each type. A certificate shall describe the nature and extent of the authority granted in it including, as appropriate for the services involved, a description of the authorized area and scope of operations of the public utility.

(c) A certificate shall be issued to a public utility which was not required to have one before July 1, 1970 and which is required to have one after that date, if it appears to the commission that the utility was actually operating in good faith on that date. Such a certificate is subject to modification where there are areas of conflict with other public utilities or where there has been a substantial change in circumstances.

2. AS 42.05.221(d) states:

In an area where the commission determines that two or more public utilities are competing to furnish identical utility service and that this competition is not in the public interest, the commission shall take appropriate action to eliminate the competition and any undesirable duplication of facilities. This appropriate action may include but is not limited to, ordering the competing utilities to enter into a contract which, among other things would:

(1) delineate the service area boundaries of each in those areas of competition.

(2) eliminate existing duplication and paralleling to the fullest reasonable extent.

(3) preclude future duplication and paralleling.

(4) provide for the exchange of customers and facilities for the purposes of providing better public service and of eliminating duplication and paralleling, and

(5) provide such other mutually equitable arrangements as would be in the public interest.

199

700

recommendations by each utility, the Commission concluded that neither plan provided an equitable solution to the problem.

On September 19, 1972, public hearings were commenced to afford both ML&P and Chugach the opportunity to augment their written filings and to cross-examine the other party on its proposal. Extensive testimony was taken, following which the parties submitted additional briefs. On September 27, 1973, the Commission issued Order No. 19 which, among other things, assigned firm, fixed service areas to each of the utilities. It is this Order, as amended by Order No. 20, which led to these appeals.

Pursuant to 3 AAC 48.090(e),<sup>3</sup> Chugach, on December 3, 1973, petitioned the Commission for reconsideration of Order No. 19 and for the re-opening of the proceedings to receive additional evidence. No action was taken on the petition for 30 days and thus it was automatically denied under 3 AAC 48.090(e).

On February 1, 1974, Chugach gave notice of its appeal to the superior court from Order No. 19, as amended by Order No. 20. On April 30, 1976, oral argument was heard before the superior court. At the close of the proceedings the trial court held that there was insufficient evidence to support the Commission's conclusions in Order No. 19 and remanded the matter to the Commission for reconsideration. This appeal and cross-appeal followed. We will discuss the issues raised in Chugach's cross-appeal first.

CROSS-APPEAL

The service area granted to ML&P by the Commission in Order No. 19 included sever-

3. 3 AAC 48.090(e) provides:

Within 30 days after an order of the commission is served, a party may file a petition for reconsideration of the order that is served setting forth specifically the grounds upon which the petitioner believes the order is unreasonable, erroneous, unlawful or otherwise defective. The petitioner may also submit a proposed order designed to cure the defects of the commission's order. A party filing a petition for reconsideration of an order shall file with a copy of the petition the petitioner's power to order reconsideration expires 30 days after the date that the order

al areas which had been granted to Chugach in its 1953 certificate of public convenience and necessity. These areas were within the corporate limits of the former City of Anchorage where the two utilities were operating duplicate or parallel electrical facilities. In its cross-appeal, Chugach claims that its right to provide service within its certificated area is a vested property interest which was improperly taken without due process of law when the Commission granted to ML&P the right to offer service within portions of Chugach's certificated service area. In order to adequately set out Chugach's claim and resolve this question, it is first necessary for us to outline briefly the statutory history of pertinent portions of what is now entitled the Alaska Public Utility Commission Act (hereinafter referred to as the Act).

Utility regulation on a statewide basis in Alaska first became a reality upon passage, by the first state legislature, of Chapter 199, SLA 1959. This act established the Alaska Public Service Commission. However, its application to electric, telegraphic and telephonic utilities was held in abeyance pending submission of a report to the legislature by the newly formed Commission.

In 1963, AS 42.05 et seq. was amended in several respects by Chapter 95, SLA 1963. AS 42.05.193 required for the first time that certificates be obtained. That section stated:

*Certificates of Convenience and Necessity:* No public utility shall operate after January 1, 1964, without first having

designated in the petition for reconsideration it served on the petitioner. If the commission takes no action on a petition for reconsideration within the time allowed for pending reconsideration, the petition is automatically denied. The commission may order reconsideration of all or part of the record on a proposed order and any additional evidence and argument it may permit either in writing or orally. The filing of a petition for reconsideration does not excuse the petitioner from compliance with a copy of the order of the commission.

obtained fr  
provisions  
declaring t  
necessity req  
tion and de  
vice is to b  
AS 42.05.194  
ther rights"  
ing:

*Certificate*  
A Certificate  
years to th  
utility was  
faith on Oc  
fines of th  
public utili  
necessary t  
chise as of

It was under  
that Chugach

In require  
ificates in  
also added 1  
05.196, upon  
reliance:

*Power of*  
cate. The  
power aft  
tice to int  
tificate to  
ready serv  
when the  
ties serv  
and will n  
faction of  
ness, the  
bearing r  
requested  
same in w  
In addition

to exclud  
regulation  
vising whic  
trial serv  
re-achieve

- 4. Are cases
- 5. AS 42.05

ALASKA PUBLIC UTILITIES v. CHUGACH ELEC. ASS'N Alaska 691

Cite as Alaska, 980 P.2d 657

obtained from the commission under the provisions of this chapter a certificate declaring that public convenience and necessity require or will require the operation and delineating the area where service is to be provided.

AS 42.05.194, however, granted "grandfather rights" to those utilities then operating:

*Certificates Granted to Existing Utilities.* A Certificate shall be granted if it appears to the commission that the public utility was actually operating in good faith on October 15, 1962, within the confines of the requested area, or that the public utility was installing the facilities necessary to furnish service under a franchise as of that date.

It was under this section of the 1963 Act that Chugach obtained its certificate.

In requiring public utilities to obtain certificates in order to operate, the legislature also added the following provision, AS 42.05.196, upon which Chugach places great reliance:

*Power of Commission to Grant Certificate.* The commission shall have the power after hearing, upon reasonable notice to interested parties, to grant a certificate to provide service in an area already served by a certificate holder only when the existing public utility or utilities serving the area are not providing and will not provide service to the satisfaction of the commission. In all other cases, the commission with or without hearing may issue a certificate as requested or for good cause shown deny the same in whole or part.

In addition, AS 42.05.640(2) was amended to exclude municipally-owned utilities from regulation under the Act. It was this provision which allowed ML&P to furnish electrical services without a certificate of public convenience and necessity at that time.

The statutes regulating public utilities were again amended in 1970, pursuant to Ch. 113, S.L.A. 1970. Several extensive changes are relevant to this appeal. The definition of "public utility" or "utility" was amended to include municipally-owned utilities. AS 42.05.701(2). As a result of this, municipally-owned utilities, including ML&P, were required to obtain certificates of convenience and necessity in order to operate. In addition, AS 42.05.194, AS 42.05.195 and AS 42.05.196, quoted above, were repealed.

In place of those repealed sections, AS 42.05.221 was enacted.<sup>4</sup> This statute requires public utilities to obtain certificates of convenience and necessity as a condition of operation. Subsection (c) gave "grandfather rights" to existing utilities newly subject to regulation. Subsection (b), which is significant in the instant case, provides:

All certificates of convenience and necessity issued to a public utility before July 1, 1970 remain in effect but they are subject to modification where there are areas of conflict with public utilities that have not previously been required to have a certificate or where there is a substantial change in circumstances.

This subsection was supplemented by AS 42.05.271, which provides for the modification, suspension or revocation of certificates for several listed reasons, including the requirements of public convenience and necessity.<sup>5</sup>

Within the context of this statutory history, Chugach's claim on cross-appeal can now be more fully understood. At the time Chugach was certificated, AS 42.05.196, quoted above, provided that a competing utility could be certificated in the same area as a certificate holder only if the certificate holder did not and would not furnish service in that area to the satisfaction

shows, may amend, modify, suspend, or revoke a certificate, in whole or in part. Good cause for amendment, modification, suspension or revocation of a certificate includes (1) the requirements of public convenience and necessity.

4. See notes 1 and 2 supra for relevant parts.

5. AS 42.05.271 states in pertinent part: *Modification, suspension, or revocation of certificates.* Upon complaint or upon its own motion the commission, after notice and opportunity for hearing and for good cause

185

220

of the Commission. Chugach contends that its right to provide electrical service within its certificated area became a vested right at the time of its certification, subject to divestment only if its service in that area was unsatisfactory to the Commission under AS 42.05.196. Because this right vested prior to the repeal of AS 42.05.196 in 1970, Chugach argues it is still entitled to the application of that section of the statute under Alaska's general saving statute, AS 01.10.100.<sup>6</sup> Thus, Chugach maintains, the Commission denied Chugach its right to due process with regard to its vested property interest when it granted ML&P the right to serve portions of Chugach's certificated area without first finding that Chugach had not and would not perform satisfactorily in that area.

In order to sustain Chugach's claim, we must first find that Chugach's 1963 certificate gave it a vested right to provide service in its certificated area barring a finding by the Commission that its services were unsatisfactory. Then we must find that this right was preserved under the Alaska saving statute despite the repeal of those sections in the former Act upon which this right depends. We conclude that the saving statute does not preserve any accrued right which Chugach may have had and thus it is unnecessary for us to determine whether in fact Chugach did have such a right.

AS 01.10.100(a) provides in relevant part: The repeal or amendment of any law does not release or extinguish any right accruing or accrued under such law, unless the repealing or amending act so provides expressly. The law shall be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of the right.

AS 01.10.100 provides in relevant part: Effect of repeal or amendment. (a) The repeal or amendment of any law does not release or extinguish any penalty, forfeiture, or liability incurred or right accruing or accrued under such law, unless the repealing or amending act so provides expressly. The

We note that the term "right" has been construed to mean a vested right and that vested property rights are protected from state action under the Fourteenth Amendment of the United States Constitution and Art. I, section 7, of the Alaska Constitution. *Bidwell v. Scheele*, 355 P.2d 584, 586 (Alaska 1960).

[1, 2] The law regarding general saving statutes was succinctly stated by the court in *Territory of Alaska v. American Can Company*, 137 F.Supp. 181, 16 Alaska 71, 76 (1956),<sup>7</sup> as follows:

It is a fundamental rule of statutory construction that a general saving clause or statute preserves rights and liabilities which have accrued under the act repealed and that they operate to make applicable in designated situations the law as it existed before the repeal, unless such application is negated by the express terms or clear implication of a particular repealing act, or where not otherwise provided by the repealing act. (emphasis in original).

The saving statute in effect at that time was somewhat different from the present one but the court's statement accurately reflects the general rule. As stated in *Sutherland, Statutory Construction* (4th ed. C.D. Sands 1973), a general saving statute will save rights and remedies "except where a subsequent repealing act indicates that it was not the legislative intention that particular rights and remedies should be saved." *Id.* at § 47.10. See *Summit Beach, Inc. v. Glander*, 153 Ohio St. 147, 91 N.E.2d 10, 11-12 (1950); *State v. Chicago Great Western Ry. Co.*, 222 Minn. 504, 25 N.W.2d 294, 297-98 (1946).

Section 5 of Ch. 113, S.L.A. 1970, specifically repealed AS 42.05.193, AS 42.05.194 and AS 42.05.196, the sections on which Chugach's claimed property right depends. In

law shall be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of the right, penalty, forfeiture, or liability.

7. *Aff'd* 216 F.2d 493, 17 Alaska 249 (5th Cir. 1957), *rev'd in part* 355 U.S. 224, 79 S.Ct. 274, 3 L.Ed.2d 227 (1957).

their plac  
05.221.<sup>8</sup>

above, st

All cer  
sity iss  
1, 1970  
subject  
areas o  
have no  
a certifi  
tial ch  
added).

It is clea  
this subs  
to a situa  
where a p  
gach) is p  
a utility  
quired to  
furnishing  
has decre  
viously ce  
wher uo  
ment the  
guished v  
had to co  
was dein  
place the  
the existe  
ly-owned  
cient gro  
ly grant  
do, that C  
erty right  
mandate  
here is th  
the legis  
any right

8. See not

9. In no  
view and  
that no  
necessity  
entitled  
judgment  
not argu  
to which  
not statu  
State v  
to v. Stat  
1970).

10. AS 44

ALASKA PUBLIC UTILITIES v. CHUGACH ELEC. ASS'N Alaska 693

Cite as, Alaska, 550 P.2d 697

their place the legislature enacted AS 42-05.221.<sup>9</sup> Subsection (b), which was noted above, states as follows:

All certificates of convenience and necessity issued to a public utility before July 1, 1970 remain in effect but they are subject to modification where there are areas of conflict with public utilities that have not previously been required to have a certificate or where there is a substantial change in circumstances. (emphasis added).

It is clear that the emphasized portion of this subsection specifically addresses itself to a situation such as the present one, i. e., where a previously certificated utility (Chugach) is providing service in an area where a utility which has not previously been required to be certificated (ML&P) is also furnishing electric service. The legislature has decreed that the certificate of the previously certificated utility may be modified where such a conflict exists. By this statement the legislature clearly has extinguished whatever right Chugach may have had to continue providing service unless it was doing so unsatisfactorily and in its place the legislature has determined that the existence of a conflict with a municipally-owned utility in itself provides a sufficient ground for modification of a previously granted certificate. Assuming, arguendo, that Chugach did have the vested property right it has claimed, the legislature's mandate in the very situation presented here is clear. In enacting AS 42.05.221(b) the legislature indicated its intention that any right afforded certificated utilities un-

der the old AS 42.05.196 was not saved. We hold, therefore, that the saving statute, AS 01.10.100, does not preserve any right Chugach may have had to continue providing electrical service unless it was not providing or would not provide service to the satisfaction of the Commission. Chugach, therefore, has not been denied due process by the Commission's failure to make such a finding.<sup>9</sup>

APPEAL

Appellants ML&P and the Commission's first argument on appeal is that the superior court used an incorrect standard of review in reaching its decision to remand the case to the Commission. The Commission argues that the lower court improperly substituted its judgment for that of the Commission while ML&P contends that the lower court improperly applied the substantial evidence test. Both parties maintain that the proper standard of review is the reasonable basis test.

At the outset we note that it is unclear from a reading of the superior court's oral decision which standard of review it applied. This lack of clarity is not significant, however, for we approach the issues here independently of the superior court which was acting as an intermediate court of appeal. *Jager v State*, 537 P.2d 1100, 1106 (Alaska 1975); *State v. Marathon Oil Company*, 525 P.2d 293, 295 (Alaska 1974).

[3.4] This court has enunciated several standards of review of agency action under AS 41.62.570,<sup>10</sup> the section of the Alaska

8. See notes 1 and 2 for relevant parts.

9. In its statement of issues presented for review and in its conclusion, Chugach suggests that its certificate of public convenience and necessity is a franchise or contract which is entitled to constitutional protection against impairment. However, because Chugach does not argue this issue beyond a passing reference to it in the argument portion of its brief, we do not consider the issue on review. See *Kristich v State*, 530 P.2d 790, 804 (Alaska 1975); *Lewis v State*, 469 P.2d 682, 691-92 n. 2 (Alaska 1970).

10. AS 41.62.570 provides in part

Scope of review. (a) An appeal shall be heard by the superior court sitting without a jury.

(b) Inquiry in an appeal extends to the following questions: (1) whether the agency has proceeded without or in excess of jurisdiction, (2) whether there was a fair hearing, and (3) whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in the manner required by law, the order or decision is not supported by the findings or the findings are not supported by the evidence.

(c) The court may exercise its independent judgment on the evidence. If it is claimed that the findings are not supported by the

135

200

Administrative Procedure Act governing scope of review. We do not find it necessary to discuss each of the various standards at this time, however, for it is clear that the appropriate standard of review in the instant case is the reasonable basis test.<sup>11</sup> In *Kelly v. Zamarello*, 486 P.2d 906, 916-17 (Alaska 1971), we set forth this test as follows: In cases where a decision involves administrative expertise as to either complex subject matter or fundamental policy formulations, deference should be given to an administrative determination if it has a reasonable basis in law and fact.<sup>12</sup> Such deference is given because the agency is in a better position to make such a determination than a court because of the agency's specialized knowledge in a field. In the instant case, it is readily apparent that the delineation of electrical service areas involves complex financial and engineering determinations and requires considerable expertise in these areas. In addition, fundamental policy formulations are involved in the Commission's task of eliminating undesirable competition and duplication of facilities under AS 42.05.221(d). It is difficult, in fact, to conceive of a situation where the reasonable basis test is more appropriate. Therefore, we limit our review in this case to deciding whether the Commission's action in Order No. 19, as amended, has a reasonable basis in law and fact.

evidence, abuse of discretion is established if the court determines that the findings are not supported by (1) the weight of the evidence, or (2) substantial evidence in the light of the whole record.

(d) The court may suggest the agency reconsider in whole or in part, remand a hearing de novo. If the court finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing, the court may (1) enter judgment as provided in (e) of this section and remand the case to be reconsidered in the light of that evidence, or (2) admit the evidence at the appellate hearing without remanding the case.

(e) The court shall enter judgment setting aside, modifying, reversing or affirming the order or decision, without interfering or controlling in any way the discretion legally vested in the agency.

[5] Before we can make this determination, however, it is necessary for us to deal with several other issues raised by appellants. Both ML&P and the Commission argue on appeal that the trial court erred in relying on Chugach's alleged misrepresentation regarding a "Statement of Position" by Mr. Hendershot, one of the commissioners involved in Order No. 19. This statement explained why no action was taken on Chugach's petition for reconsideration and set forth certain problems Mr. Hendershot saw in Order No. 19. Since, as noted above, we review this case independently of the superior court, we need not decide whether the lower court erroneously relied on the alleged misrepresentation.

[6] Appellants also argue that the superior court erred in considering an affidavit by T. Foley Treadway, president of the Georgia-based Southern Engineering Company, which Chugach had submitted to the Commission as part of its petition for reconsideration. Again, we need not decide whether the lower court erred in this regard; however, it is necessary for us to determine if and to what extent this court may consider the affidavit.

ML&P and the Commission argue this joint somewhat differently, but the gist of their arguments<sup>13</sup> is that it is improper for

11. For a summary of the different standards of review, see *Jager v. State*, 537 P.2d 1100, 1107 (Alaska 1975).

12. See generally *Jager v. State*, *supra*; *Shell Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 99 (Alaska 1974); *Swindel v. Kelly*, 499 P.2d 291 (Alaska 1973); *Fan American Petroleum Corp. v. Shell Oil Co.*, 425 P.2d 12 (Alaska 1967).

13. ML&P also argues that since the Commission failed to give the relief sought in Chugach's petition for reconsideration, the record closed and review is limited to examination of the testimony and exhibits presented at the hearings on Order No. 19. This contention is without merit. AS 44.62.01(c) which determines the contents of the record on appeal reads in part: "The record shall include (1) the pleadings, (2) all notices and orders issued by the

the reviewing way affidavit evidence which to the Commission No. 19 but at the time. Appellants should not be previously a circumstance of evidence to its consideration.

In refuting Chugach may not intend to admit as evidence going to the matter of Order No. 19. Chugach had the statements noted in its petition for an affidavit found no relief from the record in the form merely made convincing. We persuasive Treadway a court on behalf of Chugach as amended basis.

[7] We whether the reasonable basis makes two appeal. For areas for the retention from Chugach two utilities utilities. We the order that the be related.

agency, including office script of the exhibits written in the case

The complete record includes (1) the pleadings, (2) all notices and orders issued by the

ALASKA PUBLIC UTILITIES v. CHUGACH ELECTRIC ASS'N Alaska 695

Cite as, Alaska, 580 P.2d 697

the reviewing court to consider the Treadway affidavit because the affidavit presents evidence which could have been presented to the Commission before it entered Order No. 19 but which was not presented at that time. Appellants contend that Chugach should not be allowed to introduce now, previously available evidence under this circumstance by simply attaching such evidence to its administrative petition for reconsideration.

In refuting this argument by appellants, Chugach maintains that it did not and does not intend to introduce the Treadway affidavit as evidence, but rather as argument going to prove the unreasonableness as a matter of law of the Commission's Order No. 19. Chugach points out in its brief that had the shortcomings of the order been noted in its memorandum in support of its petition for reconsideration rather than in an affidavit, the appellants would have found no reason to move for its elimination from the record. Submitting the argument in the form that it did, Chugach contends, merely made it more penetrating and convincing. We find Chugach's contention persuasive and therefore hold that the Treadway affidavit is properly before this court on review not as evidence, but as part of Chugach's argument that Order No. 19, as amended, did not have a reasonable basis.

[7] We now turn to the question of whether the Commission's order has a reasonable basis. Order No. 19, as amended, makes two determinations relevant to this appeal. First, it delineates fixed service areas for each utility; second, it provides for the retirement and transfer of facilities from Chugach to ML&P in areas where the two utilities have duplicate or parallel facilities. We will address these components of the order separately, although we realize that the two facets of the order in fact may be related.

agency, (3) the proposed decision by a hearing officer, (4) the final decision, (5) a transcript of testimony and proceedings, (6) the exhibits admitted or rejected, (7) the written evidence, and (8) all other documents in the case.

Initially, we find it helpful to set out that aspect of the service area delineation which is the major source of contention in this case. Stated briefly, the dispute centers on the Commission's grant to ML&P of virtually all areas within the limits of the former City of Anchorage in which the two utilities were providing duplicate and parallel service. It is not the fact that fixed service areas were established by the order that is in question; rather, it is the Commission's decision regarding the service areas actually assigned which must be reviewed for reasonableness.

After a lengthy recitation of the events leading up to the issuance of its order, including a summary of the proposals submitted by ML&P and Chugach and the testimony presented at the September 1972 hearings, the Commission in Order No. 19 assigned fixed service areas to each of the utilities. Essentially, the Commission awarded ML&P two non-contiguous sub-areas. In one of the sub-areas, ML&P was already the sole supplier of electrical services except for infrequent minor border area penetrations by Chugach. In the other, there was either no present supplier, ML&P the sole supplier, or Chugach and ML&P were operating duplicate or parallel facilities. Chugach was awarded most of the remaining portions of its certificated service area.

Following its assignment of service areas the Commission provided the following basis for its decision:

In establishing the above service area boundaries between CEA and ML&P, extensive consideration was given to the requirements that ML&P be afforded the necessary opportunity for horizontal growth and that the existing revenue base of CEA be preserved.

Classification 8, "all other documents in the case" clearly acts to make Chugach's petition, with its attached affidavits, part of the record on review.

185

282

The Commission recognized in assigning ML&P almost all areas within the city in which duplication exists, that without compensating factors the gradual phase out of facilities and customers by CEA would progressively reduce the city's revenues. Such effect, however, should be offset adequately by CEA's exclusive authorization to serve the rapidly expanding business and residential communities immediately outside ML&P's service boundaries.

In our view, that portion of the Commission's order establishing service areas for Chugach and ML&P had a reasonable basis. Acting pursuant to the mandate of AS 42-05.221(d), the Commission allocated service areas in such a way as to resolve the competing interests of both Chugach and ML&P and the public they serve. Therefore, we affirm that portion of Order No. 19.

[8] As noted above, Order No. 19 also provided for the retirement and transfer of facilities from Chugach to ML&P in those areas where the two utilities were operating duplicate and parallel facilities. The Commission did not order the immediate transfer of Chugach's facilities because it felt that to do so could result in increased rates and would jeopardize Chugach's financial integrity. Instead, the Commission provided that Chugach would be allowed to retain and operate its existing facilities within ML&P's newly-awarded service areas for the "normal life" of those facilities. As those facilities were "retired", ML&P would then be permitted to construct and operate the replacement facilities. In addition, it was provided that Chugach could perform routine and emergency maintenance on its old facilities so long as the maintenance did not constitute an attempt to extend the life of the facility beyond its

14. ML&P contends that Chugach may not challenge the retirement and transfer provisions of Order No. 19 because the Commission specifically limited the scope of the challenge to delineation of service areas, reserving the transfer issue to a later time. It is contended that Chugach concurred in such a proposition and that therefore Chugach is estopped from

normal life. Finally, the Commission established procedures whereby either utility, when circumstances so dictated, could construct or install additional facilities within the authorized service area of the other utility.

Our examination of the record in this case, particularly of the Treadway affidavit submitted by Chugach in support of its petition for reconsideration, persuades us that these portions of Order No. 19 lack a reasonable basis and that a remand to the Commission is required for further evidence regarding the retirement and transfer of Chugach's facilities to ML&P.<sup>14</sup> In his affidavit, Treadway discusses at great length the inadequacy of the transfer of facilities scheme set out in Order No. 19. At the outset, for example, he points out that it is unclear from the order exactly what the Commission means by retirement of facilities. Theoretically, retirement could occur when the facilities are fully depreciated on Chugach's books or when they physically have no remaining useful life. Furthermore, the term "facilities" could mean either an entire distribution line, circuit or section of a system, or it could mean simply units or components of a system.

More significantly, Treadway asserts that in reality, electrical service facilities are never retired, either actually or on the books. This is because it is necessary to maintain these facilities in good working condition so that they may continue to provide adequate service. Separate components of a distribution system may be retired at a given point due to damage or wear, but they must be replaced for the system to continue in operation. Thus, Treadway points out, not only is an electrical facility never fully retired, but, despite the Commission's order that no replacement or maintenance of a facility be done with

now requesting that the proceeding be reopened for further evidence on this issue. We find it immaterial whether or not the retirement and transfer provisions in fact proceeded until a later time since the Commission chose to deal with this problem in Order No. 19.

the intent  
replaceme  
ily extend

The Tre  
other critic  
fer provis  
not feel a  
we are pe  
the Comm  
sions of C  
mand this  
directions  
Commission  
evidence a  
necessary  
transfer o

REMAN

RABIN  
not partici

AMOCO

W. C. C  
TRAC

Su

Indera  
ment that  
from indan  
employee.  
cal District  
ides, J., dan  
District p  
prote Cour  
the three  
findings for  
was not

AMOCO PRODUCTION CO. v. W. C. CHURCH WELDING Alaska 697

Cite as, Alaska, 580 P.2d 697

the intent to extend its useful life, such replacement or maintenance must necessarily extend the life of the property.

The Treadway affidavit contains many other criticisms of the retirement and transfer provisions of Order No. 19 which we do not feel are necessary to recite here since we are persuaded that it is necessary for the Commission to reconsider these provisions of Order No. 19. Therefore we remand this case to the superior court with directions that the case be remanded to the Commission so that it may take further evidence and such other action as it deems necessary regarding the retirement and transfer of Chugach's facilities to M.I.&P.

REMANDED.

RABINOWITZ and MATTHEWS, JJ.,  
not participating.



AMOCO PRODUCTION COMPANY,  
Petitioner,

v.

W. C. CHURCH WELDING & CON-  
TRACTING, INC., Respondent.

No. 367.

Supreme Court of Alaska.

June 23, 1978.

Indemnitee moved for summary judgment that it was entitled to indemnification from indemnitor for injuries to indemnitor's employee. The Superior Court, Third Judicial District, Anchorage Peter J. Kalamarides, J., denied summary judgment, and indemnitee petitioned for review. The Supreme Court granted review and held that: (1) enforceability of agreement for indemnification for injuries to indemnitor's employees was not dependent on whether indemni-

tor or indemnitee had been in control of work which caused employee's injury, and (2) where indemnification agreement was thus enforceable and there was no factual issue as to whether injury to indemnitor's employee came within terms of agreement, indemnitee was entitled to indemnity.

Reversed.

1. Indemnity — 8(4)

Enforceability of agreement for indemnity for injuries to indemnitor's employees was not dependent on whether indemnitor or indemnitee had been in control of work which caused employee's injury.

2. Indemnity — 3

Where indemnitee could have secured liability insurance protecting against claim by indemnitor's employees, there was no reason, in absence of some showing of unscrupulousness or unequal bargaining power, why indemnitee could not secure same protection from indemnitor by means of indemnification agreement.

3. Appeal and Error — 80(6)

Where issue involved was one of a controlling question of law on which there was substantial ground for difference of opinion and where an immediate and present review of the order might materially advance the ultimate termination of litigation, Supreme Court granted petition for review of trial court's denial of motion by indemnitee for summary judgment against indemnitor based on indemnification agreement.

4. Indemnity — 8(4)

Where indemnification agreement was enforceable even though indemnitee was in charge of indemnitor's employee and there was no factual issue involved as to whether injury to indemnitor's employee came under terms of agreement, indemnitee was entitled to indemnity for any claim for injury sustained by indemnitor's employee while he was working on indemnitee's offshore drilling rig.

Sanford M. Gibbs, Hagana, Smith, Brown,  
Erwin & Gibbs, Anchorage, for petitioner.

581

582

Original in  
C. J. F. A. F.

It is convenient in the course of our discussion of this case to review the reasons advanced by Mr. Madison and his associates for their conclusion, supplementing them, so far as may be, by additional considerations which lead this court to concur therein.

First. Mr. Madison insisted that article 2 by vesting the executive power in the President was intended to grant to him the power of appointment and removal of executive officers except as thereafter expressly provided in that article. He pointed out that one of the chief [110] purposes of the Convention was to separate the legislative from the executive functions. He said:

"If there is a principle in our Constitution, indeed in any free Constitution more sacred than another, it is that which separates the legislative, executive and judicial powers. If there is any point in which the separation of the legislative and executive powers ought to be maintained with great caution, it is that which relates to officers and offices." 1 Annals of Congress, 581.

Their union under the Confederation had not worked well, as the members of the convention knew. Montesquieu's view that the maintenance of independence as between the legislative, the executive and the judicial branches was a security for the people had their full approval. Madison in the Convention, 2 Farrand, Records of the Federal Convention, 56. *Kendall v. United States*, 12 Pet. 524, 610, 9 L. ed. 1181, 1215. Accordingly, the Constitution was so framed as to vest in the Congress all legislative powers therein granted, to vest in the President the executive power, and to vest in one Supreme Court and such inferior courts as Congress might establish, the judicial power. From this division on principle, the reasonable construction of the Constitution must be that the branches should be kept separate in all cases in which they were not expressly blended, and the Constitution should be expounded to blend them no more than it affirmatively requires. Madison, 1 Annals of Congress, 497. This rule of construction has been confirmed by this court in *Meriwether v. Carr*, 102 U. S. 472, 515, 26 L. ed. 197, 205; *Kilbourn v. Thompson*, 103 U. S. 168, 190, 26 L. ed. 377, 386; *Mugler v. Kansas*, 123 U. S. 623, 662, 31 L. ed. 205, 210, 8 Sup. Ct. Rep. 273.

The debates in the Constitutional Convention indicated an intention to create a strong executive, and after a controversial discussion the executive power of

the government was vested in one person and many of his important functions were specified so as to avoid the [117] humiliating weakness of the Congress during the Revolution and under the Articles of Confederation. 1 Farrand, 66-97.

Mr. Madison and his associates in the discussion in the House dwelt at length upon the necessity there was for constraining article 2 to give the President the sole power of removal in his responsibility for the conduct of the executive branch, and enforced this by emphasizing his duty expressly declared in the third section of the Article to "take care that the laws be faithfully executed." Madison, 1 Annals of Congress, 496, 497.

The vesting of the executive power in the President was essentially a grant of the power to execute the laws. But the President alone and unaided could not execute the laws. He must execute them by the assistance of subordinates. This view has since been repeatedly affirmed by this court. *Wilcox v. Jackson*, 13 Pet. 498, 513, 10 L. ed. 264, 271; *United States v. Eliason*, 16 Pet. 291, 302, 10 L. ed. 968, 972; *Williams v. United States*, 1 How. 200, 297, 11 L. ed. 135, 138; *Re Neagle*, 135 U. S. 1, 63, 34 L. ed. 55, 71, 10 Sup. Ct. Rep. 658; *Russell Motor Car Co. v. United States*, 361 U. S. 514, 523, 67 L. ed. 778, 784, 43 Sup. Ct. Rep. 428. As he is charged specifically to take care that they be faithfully executed, the reasonable implication, even in the absence of express words, was that as part of his executive power he should select those who were to act for him under his direction in the execution of the laws. The further implication must be, in the absence of any express limitation respecting removals, that as his selection of administrative officers is essential to the execution of the laws by him, so must be his power of removing those for whom he can not continue to be responsible. *Fisher Ames*, 1 Annals of Congress, 474. It was urged that the natural meaning of the term "executive power" granted the President included the appointment and removal of executive subordinates. If such appointments and removals were not an exercise of the executive power, what were they? They certainly [118] were not the exercise of legislative or judicial power in government as usually understood.

It is quite true that in state and colonial governments at the time of the Constitutional Convention, power to make appointments and removals had sometimes

been lodged in the courts; but such a really vesting part of another branch of the British system, the executive, had to be removed and removal was natural. We framed our Constitution with the words "executive power" in both. *Ex parte*, 10, 69 L. ed. 52. *Sup. Ct. Rep.* 33. conquest of the land, and rejected *Fleming v. Pa*, 10, 270, 282, with appointo not incompat form of govern requirement article 2; that the consent to the was to be st 12, follow executive power enumeration and functions of the Ex were limitat grant of the execut being limitations, sh beyond the words of 462, 463, 464. was given in genera by specific terms recorded as appropri by direct express was needed, and the limit was placed on by the Executive w tion that none was same construction of Alexander Hamilton [110]. Second Madison and his not only did the power, to the Pre section of article power of removal recognition of the limit in the con view on the we of constitutional an tion that the power tive officers was incl appointment. It opponents of the b two exceptions, the principle the power ried with it the *Rose Sherman*, 1 C. This principle tional and statuto U. L. ed. 273.

Oct. Term

ED STATES. ment was vested in one person of his important functions, fixed so as to avoid the weakness of the Congress in Revolution and under the Confederation. Madison and his associates in the House dwelt at length on the necessity there was for Congress to give the President the removal in his responsibility for the executive branch, and this by emphasizing his duty declared in the third section to "take care that the laws be executed." Madison, 1 Annals, 496, 497.

of the executive power, the President was essentially a grantee to execute the laws. But he alone and unaided could not execute laws. He must execute them with the assistance of subordinates. This has since been repeatedly affirmed. *Wilcox v. Jackson*, 13 Pet. 20 L. ed. 264, 271; *United States v. Eliasou*, 16 Pet. 291, 302, 303, 305, 307; *Williams v. United States*, 11 L. ed. 1125; *How*, 290, 297, 11 L. ed. 1125; *Neagle*, 135 U. S. 1, 63, 34 L. ed. 10 Sup. Ct. Rep. 658; *Russell Co. v. United States*, 261 U. S. 57 L. ed. 778, 784, 43 Sup. Ct. 107.

As he is charged specifically with that they be faithfully executed, reasonable implications, even in the absence of express words, warrant the inference that his executive power be should be exercised by those who were to act for him in the execution of the laws. The further implication must be that in the absence of any express limitation on the removal of administrative officers is essential to the execution of the laws by him; and his power of removing them for cause can not continue to be reserved to the President. *Ames*, 1 Annals of Congress, 496. It was urged that the meaning of the term "executive power" granted the President included the appointment and removal of executive officers. If such appointments and removals were not an exercise of the power, what were they? They were not the exercise of legislative or judicial power in government, and were not to be so understood.

It is true that in state and colonial constitutions at the time of the Constitutional Convention, power to make appointments and removals had sometimes

been lodged in the legislatures or in the courts, but such a disposition of it was not really a part of the executive power in another branch of the government. In the British system, the Crown which was the executive, had the power of appointment and removal of executive officers, and it was natural, therefore, for those who framed our Constitution to regard the words "executive power" as including both. *Ex parte Grossman*, 267 U. S. 87, 110, 69 L. ed. 527, 531, 38 A.L.R. 131, 45 Sup. Ct. Rep. 332. Unlike the power of consent of the British Crown, considered and rejected as a precedent for us in *Fleming v. Page*, 9 How. 603, 618, 13 L. ed. 276. 282, the association of removal with appointment of executive officers is not incompatible with our republican form of government.

The requirement of the second section of article 2 that the Senate should advise and consent to the Presidential appointments, was to be strictly construed. The words of § 2, following the general grant of executive power under § 1 were either an enumeration and emphasis of specific functions of the Executive, not all inclusive, or were limitations upon the general grant of the executive power, and as such, being limitations, should not be enlarged beyond the words used. *Madison*, 1 Annals, 462, 463, 464. The executive power was given in general terms, strengthened by specific terms where emphasis was regarded as appropriate, and was limited by direct expressions where limitation was needed, and the fact that no express limit was placed on the power of removal by the Executive was convincing indication that none was intended. This is the same construction of article 2 as that of Alexander Hamilton, quoted *infra*.

[110] Second. The view of Mr. Madison and his associates was that not only did the grant of executive power to the President in the first section of article 2 carry with it the power of removal, but the express recognition of the power of appointment in the second section enforced this view on the well approved principle of constitutional and statutory construction that the power of removal of executive officers was incident to the power of appointment. It was agreed by the opponents of the bill, with only one or two exceptions, that as a constitutional principle the power of appointment carried with it the power of removal. *Roger Sherman*, 1 Annals of Congress, 401. This principle as a rule of constitutional and statutory construction, then

generally conceded, has been recognized ever since. *Ex parte Hennen*, 13 Pet. 230, 259, 10 L. ed. 138, 152; *Reagan v. United States*, 182 U. S. 419, 45 L. ed. 1162, 21 Sup. Ct. Rep. 842; *Sburtlett v. United States*, 189 U. S. 311, 315, 47 L. ed. 828, 831, 23 Sup. Ct. Rep. 535. The reason for the principle is that those in charge of and responsible for administering functions of government who select their executive subordinates need in meeting their responsibility to have the power to remove those whom they appoint.

Under § 2 of article 2, however, the power of appointment by the Executive is restricted in its exercise by the provision that the Senate, a part of the legislative branch of the government, may check the action of the Executive by rejecting the officers he selects. Does this make the Senate part of the removing power? And this, after the whole discussion in the House is read attentively, is the real point which was considered and decided in the negative by the vote already given.

The history of the clause by which the Senate was given a check upon the President's power of appointment makes it clear that it was not prompted by any desire to limit removals. As already pointed out, the important purpose of those who brought about the restriction was to lodge in the Senate, where the small states had equal [120] representation with the larger states, power to prevent the President from making too many appointments from the larger states. *Roger Sherman* and *Oliver Ellsworth*, delegates from Connecticut, reported to its governor: "The equal representation of the States in the Senate and the voice of that branch in the appointment to office will secure the rights of the lesser as well as of the greater states." 3 Farrand, 96. The formidable opposition to the Senate's veto on the President's power of appointment indicated that in construing its effect, it should not be extended beyond its express application to the matter of appointments. This was made apparent by the remarks of *Abraham Baldwin*, of Georgia, in the debate in the First Congress. He had been a member of the Constitutional Convention. In opposing the construction which would extend the Senate's power to check appointments to removals from office, he said:

"I am well authorized to say that the mingling of the powers of the President and Senate was strongly opposed in the Convention which had the honor to sub-

mit to the consideration of the United States and the different states the present system for the government of the Union. Some gentlemen opposed it to the last, and finally it was the principal ground on which they refused to give it their signature and assent. One gentleman called it a monstrous and unnatural connexion and did not hesitate to affirm it would bring on convulsions in the government. This objection was not confined to the walls of the Convention; it has been subject of newspaper declamation and perhaps justly so. Ought we not, therefore, to be careful not to extend this unchaste connexion any further?" 1 Annals of Congress, 557.

Madison said:

"Perhaps there was no argument urged with more success or more plausibly grounded against the Constitution under which we are now deliberating than that founded [121] on the mingling of the executive and legislative branches of the government in one body. It has been objected that the Senate have too much of the executive power even, by having control over the President in the appointment to office. Now shall we extend this connexion between the legislative and executive departments which will strengthen the objection and diminish the responsibility we have in the head of the Executive?" 1 Annals of Congress, 380.

It was pointed out in this great debate that the power of removal, though equally essential to the executive power is different in its nature from that of appointment. Madison, 1 Annals of Congress, 497 et seq.; Clymer, 1 Annals, 489; Seigwick, 1 Annals, 522; Ames, 1 Annals, 541, 542; Hartley, 1 Annals, 481. A veto by the Senate—a part of the legislative branch of the government—upon removal is a much greater limitation upon the executive branch and a much more serious bleeding of the legislative with the executive than a rejection of a proposed appointment. It is not to be implied. The rejection of a nominee of the President for a particular office does not greatly embarrass him in the unobscured discharge of his high duties in the selection of those who are to aid him, because the President usually has an ample field from which to select for office, according to his preference, competent and capable men. The Senate has full power to reject newly proposed appointments whenever the President shall remove the incumbents. Such a check enables the Senate to prevent the filling of offices with bad or incompetent

men or with those against whom there is tenable objection.

The power to prevent the removal of an officer who has served under the President is different from the authority to consent to or reject his appointment. When a nomination is made, it may be presumed that the Senate is, or may become, as well advised as to the fitness of the nominee [122] as the President, but in the nature of things he defects in ability or intelligence or loyalty in the administration of the laws of one who has served as an officer under the President, are facts as to which the President, or his trusted subordinates, must be better informed than the Senate, and the power to remove him may, therefore, be regarded as confined for very sound and practical reasons, to the governmental authority which has administrative control. The power of removal is incident to the power of appointment, not to the power of advising and consenting to appointment, and when the grant of the executive power is enforced by the express mandate to take care that the laws be faithfully executed, it emphasizes the necessity for including within the executive power as conferred the exclusive power of removal.

Oliver Ellsworth was a member of the Senate of the First Congress, and was active in securing the imposition of the Senate restriction upon appointments by the President. He was the author of the Judiciary Act in that Congress, and subsequently Chief Justice of the United States. His view as to the meaning of this article of the Constitution, upon the point as to whether the advice of the Senate was necessary to removal, like that of Madison, formed and expressed almost in the very atmosphere of the Convention, was entitled to great weight. What he said in the discussion in the Senate was reported by Senator William Patterson, 2 Harecroft, History of the Constitution of the United States, 102, as follows:

"The three distinct powers, legislative, judicial and executive should be placed in different hands. 'He shall take care that the laws be faithfully executed' are sweeping words. The officers should be attentive to the President in whom the Senate is not a council. To turn a man out of office is an exercise neither of legislative nor of judicial power; it is like a tree growing upon land that has been granted. The advice of the Senate does not make the appointment. The President appoints. There [123] are certain restrictions in certain cases, but the re-

striction is as to the removal." "not as to the removal." "In the discussion in the year was expressed that the rule of construction in the passage of the bill country to tyranny through the exercise of the power the President. Underlying the fundamental misconception President's attitude in power is one of opposition while the Congress is in the government, and action may be noted in had before this court. properly contested in the discussion (1 Annals, 461), by Mr. Hartley (1 Annals, 481), Mr. Lawrence (1 Annals, 541), Mr. Scott (1 Annals, 542) is a representative as the members of the House are, and it may on some subjects that ed, by all the people representative of them all, of either body whose constituencies countrywide; and as they ed for four years, with the people to exercise er, under the Constitution seem to be no reason instrument in such a hamper that power be of it, expressed or fact. Another argument First Congress against er of removal in the Constitution its necessity in the protection of the executive power harassment in this respect by the President's of officers, disloyal conduct the Senate could act. said: "Gentlemen ask, whether suspending an officer what misconduct? inconsistency in the declare that Congress is construe the Constitution of the President removal; yet they a construction in of suspension being. Surely gentlemen do President has the granted expressly to they do, they have in their remarks than I have been. allow a power of 1820 ed.

striction is as to the appointment and not as to the removal."

In the discussion in the First Congress fear was expressed that such a constitutional rule of construction as was involved in the passage of the bill would expose the country to tyranny through the abuse of the exercise of the power of removal by the President. Underlying such fears was the fundamental misconception that the President's attitude in his exercise of power is one of opposition to the people, while the Congress is their only defender in the government, and such a misconception may be noted in the discussions had before this court. This view was properly contested by Mr. Madison in the discussion (1 Annals of Congress, 461), by Mr. Hartley (1 Annals, 481), by Mr. Lawrence (1 Annals, 485), and by Mr. Scott (1 Annals, 533). The President is a representative of the people just as the members of the Senate and of the House are, and it may be at some times on some subjects that the President elected by all the people is rather more representative of them all than are the members of either body of the legislature whose constituencies are local and not countrywide; and as the President is elected for four years, with the mandate of the people to exercise his executive power under the Constitution, there would seem to be no reason for construing that instrument in such a way as to limit and hamper that power beyond the limitations of it, expressed or fairly implied.

Another argument advanced in the First Congress against implying the power of removal in the President alone from its necessity in the proper administration of the executive power was that all embarrassment in this respect could be avoided by the President's power of suspension of officers, disloyal or incompetent, until the Senate could act. To this Mr. Benson said:

"Gentlemen ask, will not the power of suspending an officer be sufficient to prevent malconduct? Here is some [124] inconsistency in their arguments. They declare that Congress have no right to construe the Constitution in favor of the President, with respect to removal; yet they propose to give a construction in favor of the power of suspension being exercised by him. Surely gentlemen do not pretend that the President has the power of suspension granted expressly by the Constitution; if they do, they have been more successful in their researches into that instrument than I have been. If they are willing to allow a power of suspending, it must be [125] L. ed.

because they construe some part of the Constitution in favor of such a grant. The construction in this case must be equally unwarrantable. But admitting it proper to grant this power, what then? When an officer is suspended, does the place become vacant? May the President proceed to fill it up? Or must the public business be likewise suspended? When we say an officer is suspended, it implies that the place is not vacant; but the parties may be heard, and, after the officer is freed from the objections that have been taken to his conduct, he may proceed to execute the duties attached to him. What would be the consequence of this? If the Senate, upon its meeting, were to acquit the officer, and replace him in his station, the President would then have a man forced on him whom he considered as unfaithful; and could not, consistent with his duty, and a proper regard to the general welfare, go so far as to entrust him with full communications relative to the business of his department. Without a confidence in the Executive Department, its operations would be subject to perpetual discord, and the administration of the government become impracticable." 1 Annals of Congress, 506.

Mr. Vining said:

"The Departments of Foreign Affairs and War are peculiarly within the powers of the President, and he must be responsible for them; but take away his controlling power, and upon what principle do you require his responsibility?"

[125] "The gentlemen say the President may suspend. They were asked if the Constitution gave him this power any more than the other? Do they contend the one to be a more inherent power than the other? If they do not, why shall it be objected to us that we are making a legislative construction of the Constitution, when they are contending for the same thing?" 1 Annals of Congress, 512.

In the case before us, the same suggestion has been made for the same purpose, and we think it is well answered in the foregoing. The implication of removal by the President alone is no more a strained construction of the Constitution than that of suspension by him alone and the broader power is much more needed and more strongly to be implied.

Third. Another argument urged against the constitutional power of the President alone to remove executive officers appointed by him with the consent of the Senate is that in the absence of an express power of removal granted to the President, power to make provision for removal of

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

STATE OF ALASKA

THE ALASKA PUBLIC UTILITIES COMMISSION

Before Commissioners: Carolyn S. Guess, Chairman  
Marvin R. Weatherly  
Susan M. Knowles  
Stuart C. Hall

In the Matter of the Filing of )  
a Tariff Revision, Designated as ) U-80-4  
TA20-126, by the MUNICIPALITY OF )  
ANCHORAGE d/b/a ANCHORAGE SEWER ) ORDER NO. 10  
UTILITY for a Permanent General )  
Sewer Rate Increase in the )  
Anchorage, Eagle River, and )  
Girdwood-Alyeska Sewer Service )  
Areas )

In the Matter of the Filing of )  
a Tariff Revision, Designated as ) U-81-36  
TA23-126, by the MUNICIPALITY OF )  
ANCHORAGE d/b/a ANCHORAGE SEWER ) ORDER NO. 1  
UTILITY for Consolidation of )  
Service Areas and Permanent )  
Reduction of Rates )

ORDER SUSPENDING SERVICE AREA CONSOLIDATION  
AND APPROVING PERMANENT RATE REDUCTIONS

On May 1, 1981, the MUNICIPALITY OF ANCHORAGE  
d/b/a ANCHORAGE SEWER UTILITY (ASU) filed a tariff revision,  
designated of TA23-126, requesting the immediate permanent  
reduction of rates for sewer service in the Eagle River  
Sewer Service Area (ERSSA) and the Girdwood-Alyeska Sewer  
Service Area (GASSA). ASU requested that customers in the  
ERSSA and GASSA be integrated into the appropriate rate  
schedule of the Anchorage Bowl Service Service Area (ABSSA);  
that all ERSSA and GASSA rate schedules except for those  
based on metered water consumption be deleted; that definitions  
and other tariff references for Service Area 40 (ABSSA) and  
Service Area 50 (ERSSA) be deleted; and that a definition be

U-80-4(10), U-81-36(1) (6-15-81)  
Page 1

ALASKA PUBLIC UTILITIES COMMISSION  
1100 MacKay Building - 338 Denali Street  
Anchorage, Alaska 99501  
Phone 276-6222

LXIII  
Item 9

1 added for the Anchorage Sewer Service Area (ASSA) as "that  
2 area established by Anchorage, Alaska, Ordinance 81-23...."

3 The Commission Staff (Staff) has reviewed the  
4 filing and has determined that it meets the requirements of  
5 3 AAC 48.200 through 3 AAC 48.420.

6 The filing was noticed on May 7, 1981, with a  
7 closing date of June 8, 1981, for the submission of state-  
8 ments in support of, or in opposition to, the proposed  
9 tariff revision. As of June 8, 1981, five statements have  
10 been received by the Commission, four of which were also  
11 filed with ASU as required under 3 AAC 48.090(b)(2).

12 Of the four properly filed statements, two from  
13 ABSSA ratepayers (opposed) the tariff revision in its entirety;  
14 one from a GASSA ratepayer supported the tariff revision in  
15 its entirety; and one from an ABSSA ratepayer included a  
16 statement of non-objection to the decrease in ERSSA and  
17 GASSA rates, and a statement of vehement objection to the  
18 creation of a consolidated service area and dissolution of  
19 separate service areas.

20 In June 9, 1981, the Commission received a memorandum,  
21 a copy of which is attached hereto as Appendix A from the  
22 Staff setting forth a review and analysis of ASU's request.

23 Discussion

24 In support of its request for consolidation of  
25 sewer service areas, ASU cites the 1980 amendment (Sec. 5,  
26 Ch. 136, SLA 1980) to AS 42.05.391(a) which provides that:

27 a municipally owned utility may offer  
28 uniform or identical rates for a public  
29 utility service to customers located in  
30 different areas within its certificated  
31 service area who receive the same class  
32 of service. Any uniform or identical

31 U-80-4(10), U-81-36(1)  
32 Page 2