

ALASKA LEGISLATIVE COMMITTEE, 1991

1911

SRES

SB 608

1911

APPENDIX B: FEDERAL AGENCIES HAVING JURISDICTION OVER NEW
ELECTRICAL GENERATING AND TRANSMISSION FACILITIES IN ALASKA

AGENCY	PERMIT OR JURISDICTION
<hr/>	
DEPARTMENT OF ENERGY (DOE)	
Federal Energy Regulatory Commission (FERC)	Licenses power facilities on navigable waters and on federal lands. Regulates wholesale electric rates and service in interstate commerce Reviews electric rates on federal power projects. Regulates natural gas sales and transmission in interstate commerce.
Economic Regulatory Administration (ERA)	Administers PIFUA, grants exceptions allowing new generating facilities to burn oil or gas. Establishes and administers price ceilings, entitlements treatment, and allocation of petroleum, including electric utility fuel. This authority reverts to standby emergency power only on October 1, 1981.
Alaska Power Administration (APA)	Constructs and operates federal power projects in Alaska, as authorized by Congress.
<hr/>	
DEPARTMENT OF THE INTERIOR (DOI)	
Office of the Secretary	Administers overall policy.
Geological Survey (USGS)	Advises on geological, seismic, geotechnic, and hydrological criteria and design.
Fish & Wildlife Service (FWS)	Protection of fish, wildlife, and migratory birds; anadromous fish; endangered species.

FEDERAL AGENCIES HAVING JURISDICTION OVER NEW ELECTRICAL
GENERATING AND TRANSMISSION FACILITIES IN ALASKA (CONTINUED)

AGENCY	PERMIT OR JURISDICTION
DEPARTMENT OF THE INTERIOR (DOI) (CONTINUED)	
Bureau of Land Management (BLM)	Grants rights-of way for electrical transmission lines across public lands.
National Park Service (NPS)	Supports BLM and USFS in protecting archeological and paleontological remains under Antiquities Act.
Bureau of Indian Affairs	Advises Alaska Native organizations on lands, employment, etc.
Mining and Safety Enforcement Administration (MESA)	Approves gravel removal from federal lands.
DEPARTMENT OF AGRICULTURE	
Forest Service (USFS)	Grants rights-of-way, permits for use and occupancy in national forests.
DEPARTMENT OF THE ARMY	
Corps of Engineers (COE)	Issues permits for construction in and affecting navigable waters as designated by COE; floodplains management. Builds hydroelectric and other river basin developments as authorized by Congress.
DEPARTMENT OF LABOR	
Occupational Safety and Health Administration (OSHA)	Establishes and enforces safety and health standards for workers.
DEPARTMENT OF TRANSPORTATION	
Federal Aviation Administration (FAA)	Reviews construction affecting airspace use, control and safety.
DEPARTMENT OF THE TREASURY	
Bureau of Alcohol, Tobacco & Firearms	Issues permits for use and storage of explosives (if not overseen by OSHA or Alaska Department of Labor)

FEDERAL AGENCIES HAVING JURISDICTION OVER NEW ELECTRICAL
GENERATING AND TRANSMISSION FACILITIES IN ALASKA (CONTINUED)

<u>AGENCY</u>	<u>PERMIT OR JURISDICTION</u>
DEPARTMENT OF COMMERCE National Oceanic and Atmospheric Adminis- tration	Coordinates and/or advises on administration of Coastal Zone Management Act (CZM), particularly with reference to protec- tion of anadromous fish.
ENVIRONMENTAL PROTECTION ADMINISTRATION (EPA)	Administers air and water quality standards. Grants permits for discharge into navigable waters. Grants exemption from noise con- trol standards.
COUNCIL ON ENVIRONMENTAL QUALITY (CEQ)	Advises DOI, DOE, COE, EPA, <u>et al</u> , and the President on environmental issues.

ALASKA STATE AGENCIES HAVING JURISDICTION OVER
NEW ELECTRICAL GENERATING AND TRANSMISSION FACILITIES

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT	
Division of Energy & Power Development	Forecasts electricity de- mand; plans facilities.
Alaska Power Authority (APA)	Review and approve construc- tion plans; oversee design, construction, acquisition, financing, and operation of hydroelectric and other power generation projects; lend money to utilities.
Alaska Public Utilities Commission (APUC)	Grants and amends authority to operate generation and transmission facilities. Oversees rates, classifica- tions, practices, services, and facilities of utility companies.

CONGRESSIONAL AUTHORITY AND PROPOSED LEGISLATION
TO FORESHORTEN REGULATORY APPROVALS FOR THE
SUSITNA DAM PROJECT

Prepared For:
The Senate Finance Committee
Alaska State Legislature

Prepared By:
Joseph M. Chomski
Richard G. Haggart
of
BIRCH, HORTON, BITTNER, MONROE
PESTINGER & ANDERSON

February 5, 1982



TABLE OF CONTENTS

	Page
Introduction.....	1
Part I. Proposed Legislation to Foreshorten the Susitna Regulatory Process.....	3
Part II. Scope of the Regulatory Problem.....	19
Part III. Authority of Congress to Foreshorten the Regulatory Process.....	21
Part IV. Major Congressional Actions Foreshortening the Regulatory Process.....	25
Part V. General Conditions and Strategy Issues....	35

INTRODUCTION

This Report is submitted pursuant to the contract of November 10, 1981 between BIRCH, HORTON BITTNER, MONROE, PESTINGER & ANDERSON and the SENATE FINANCE COMMITTEE of the Alaska State Legislature. The contract provides in relevant part:

"Contractor will analyze each relevant regulatory process-shortening measure enacted by Congress in recent years, focusing primarily on energy project measures such as the Alaska Natural Gas Transportation Act. Contractor will extract critical provisions that have already been considered and approved by Congress and then draft a bill that will mandate a two year maximum amount of Susitna Dam regulatory review process."

As outlined in the Table of Contents of this report, the format is basically as follows:

I. Proposed Legislation to Foreshorten the Susitna Regulatory process. This section contains the proposed Federal legislation which, if enacted, would result in a Federal regulatory review process for Susitna lasting not longer than two years.

II. Magnitude of the Regulatory Problems. This section briefly outlines the major regulatory difficulties which have plagued virtually all federally licensed and regulated hydroelectric projects since the mid 1960's and which can reasonably be anticipated to similarly delay a timely resolution of the Susitna Dam Project.

III. Authority of Congress to Foreshorten the Regulatory Process. This section reviews the constitutional sources of Congressional power to regulate - and not to regulate - the Susitna Dam Project. A review of the relevant case law is also included in this section.

IV. Major Congressional Actions Foreshortening the Regulatory Process. This section reviews a variety of Congressional enactments in recent years where the regulatory process has been foreshortened, where relevant Federal law has been waived and/or Federal judicial review precluded or eliminated on major projects. As directed in the contract, the emphasis in this section is on major energy projects.

V. General Considerations and Strategy Issues. The final section of the report briefly discusses alternative legislative solutions to the Susitna regulatory foreshortening problem with analysis of their respective strengths and weaknesses. Further, some comment is provided on other issues raised in the preparation of this report.

I. PROPOSED LEGISLATION TO FORESHORTEN THE
SUSITNA REGULATORY PROCESS

97th CONGRESS
2nd Session

S. or H.R. _____

IN THE SENATE (OR H.R.) OF THE UNITED STATES

Legislative Date, 1982

Read twice and referred to the Committee on
Environment and Public Works

AN ACT

An Act to expedite a decision on the construction of the Susitna
Dam project, and for other purposes.

Be it enacted by the Senate and House of Representatives of the
United States of America in Congress assembled.

SHORT TITLE

Sec. 1. This Act may be cited as the "Susitna Facilities
Development Act of 1982."

CONGRESSIONAL FINDINGS

Sec. 2. The Congress finds and declares that -

(1) The Susitna River is a navigable water of the United States;

(2) The expeditious construction of environmentally sound and economically viable dams and related facilities on the Susitna River for the improvement of navigation, the control of floods, the improvement of recreational access and usage and for the generation of hydroelectric power is in the national interest;

(3) The regulatory and administrative procedures established pursuant to existing acts of Congress governing issuance of licenses, permits and other Federal approvals necessary for hydroelectric and other development on navigable waters of the United States present significant unacceptable potential for delay in reaching a final determination as to the scope and nature of development, if any, appropriate for the Susitna River;

CONGRESSIONAL DECLARATION OF POLICY

Sec. 3. It is declared to be the purpose of the Congress in this Act to require a sound and expeditious decision as to the development of a dam or dams and related facilities on the Susitna River for the purposes of improvement of navigation, control of floods, improvement of recreational access and usage and for the generation of hydroelectric power, and, if such development is approved by Federal agencies under this Act, to expedite its construction and initial operation by (1) limiting the jurisdiction of the courts to review the actions of Federal officers or agencies taken pursuant to the direction and authority of this Act, and (2) requiring the limitation of administrative procedures and effecting the limitation of judicial procedures related to such actions. To accomplish this purpose it is the intent of the Congress to exercise its constitutional powers to the fullest extent in the authorizations and directions herein made, and particularly with respect to the

limitation of judicial review of actions of Federal officers or agencies taken pursuant thereto.

DEFINITIONS

Sec. 4. As used in this Act, unless the context otherwise requires, the term -

(1) "Agency" means any agency, board, commission or instrumentality of the United States empowered or required to grant an approval;

(2) "Applicant" means any person including a corporation or an agency of a state government who applies for a permit for construction of hydroelectric facilities on the Susitna River pursuant to the Federal Power Act;

(3) "Approval" means any permit, license, lease, certificate, right of way or other grant, rate, ruling, or decision authorized or issued by an agency of the Federal government;

(4) "Chairman" means the Chairman of the Federal Energy Regulatory Commission;

(5) "Commission" means the Federal Energy Regulatory Commission;

(6) "Project" means any dam or dams and related facilities in the Watana and Devil Canyon areas of Susitna River proposed by an Applicant; and

(7) "Susitna River" means a river of that name in south central Alaska flowing into Cook Inlet.

AUTHORITY OF THE FEDERAL ENERGY REGULATORY COMMISSION

Sec. 5. Notwithstanding any provision of the Federal Power Act as amended or any other provision of law, the Commission shall, upon the filing of any application for a license for

construction of a project, accept or deny such application for consideration within thirty days of its filing, provided:

(1) That any denial of acceptance of an application for processing shall be accompanied by a statement of reasons for the denial, stating with particularity the defects in the application which led to denial and the specific information required to cure such defects.

(2) No application shall be denied under this section if the Commission in its discretion determines that any defects with respect to the content or required information contained in such application can be cured within a reasonable time and consistent with the requirements of this Act.

(3) Upon acceptance of an application for filing, the Commission shall publish in the Federal Register a summary of the proposed project in sufficient detail to allow timely agency response under Section 6 of this Act.

Sec.6. Not later than thirty days after notice appears in the Federal Register of a decision by the Commission to accept an application for filing, any Federal agency with authority to grant or deny any approval related to the project or any part thereof shall transmit to the Commission -

(1) A compilation of all significant actions required by such agency before any final approval of the project can be rendered or performed;

(2) A compilation of all significant actions required of the applicant by such agency before a final approval can be made;

(3) A tentative schedule for completing actions listed in subsections (1) and (2) of this section within one year; and

(4) All necessary application forms which must be completed by the applicant before such approval can be granted.

Sec. 7. (a) Not later than sixty days after acceptance of a project application, the Commission shall publish in the Federal Register a Susitna Decision Schedule containing reasonable deadlines for all agency approvals and all significant applicant action about which the Commission has received notice

pursuant to Section 6 of this Act and for any other approvals which the Commission in its discretion deems significant.

(b) Notwithstanding any other provision of law, the Commission may establish special procedures in the Susitna Decision Schedule for any Federal agency subject to such schedule. Such procedures shall be consistent with all statutes, rules, regulations, and orders promulgated by the agency except that the Commission may require the agency to -

(1) Consolidate, to the maximum extent practicable, its proceedings respecting approvals which are subject to the Susitna Decision Schedule with the proceedings of other agencies;

(2) Establish approval, filing and other requirements which eliminate duplication and, to the maximum extent practicable, provide for uniform collection, analysis and reporting of such data;

(3) Substitute legislative-type hearings in lieu of trial-type hearings: Provided, however, that, in any cases in which (A) a formal hearing hearing, including an opportunity for cross examination of witnesses is authorized by any provision of statute other than this Act, and (B) the agency determines there is a genuine and substantial dispute of fact which can only be resolved with sufficient accuracy by the introduction of evidence in a formal hearing, the agency shall designate such dispute for resolution in a formal hearing conducted in accordance with the statute providing for such hearing;

(4) Short time periods for approvals required by agency procedures;

(5) Establish procedures for issuing approvals in which the presiding employee at any hearing may be required to certify the hearing record to the agency for approval without an initial decision. Such procedures may also require the presiding employee to submit the record to the agency without a recommended or tentative decision, but with such analysis of the record as the agency may specify. The agency itself shall omit a tentative or recommended approval if the Commission determines that due and timely execution of its function so requires; or

(6) Utilize any combination of procedures authorized by this subsection;

(c) No Susitna Decision Schedule shall encompass a period of more than eighteen months;

(d) The deadlines in the Susitna Decision Schedule shall be consistent with the deadlines submitted to the Commission pursuant to Section 6 unless the Commission determines that different deadlines are necessary in order to meet the requirements of subsection (c) of this section;

(e) Notwithstanding any other provision of law, the deadlines and special procedures imposed by the Susitna Decision Schedule shall constitute the lawful decision making deadlines and procedures for reviewing applications filed by an applicant.

ENFORCEMENT OF THE SUSITNA PROJECT DECISION SCHEDULE

Sec. 8. (a) (1) If any agency has failed to make an approval within the time required by the Susitna Decision Schedule, the Commission shall make the approval determination in lieu of the agency.

(2) In determining an approval in lieu of an agency, the Commission shall apply the criteria that would have been applied had the agency made the determination.

(3) If the Commission notifies an agency that it has determined that the agency has failed to make a decision or perform an action required for an approval within the time required by the Susitna Project Decision Schedule and that the Commission will decide in lieu of the agency, the agency shall transmit to the Commission forthwith all records in the possession of the agency pertinent to that approval. The Commission may take whatever additional action is necessary to develop an adequate record for a final decision or action on the approval.

CONGRESSIONAL REVIEW

Sec. 9. (a) Any approval granted by the Commission under Section 8 shall be transmitted to the appropriate authorizing committees of both Houses of Congress and shall be considered

received by such Houses for the purposes of this section on the first day on which both are in session occurring after such approval is transmitted. Such approval shall be accompanied by a report explaining the basis for the Commission's approval and the reasons for Commission action in lieu of agency action under Section 8.

(b) Any approval granted by the Commission under Section 8 shall take effect, unless disapproved under subsection (c) of this section, upon the expiration of forty five calendar days of continuous session of Congress beginning on the date after the date of receipt of the Senate and House of Representatives of an approval transmitted pursuant to subsection (a) of this section.

(c) If both Houses of Congress enact a joint resolution disapproving a Commission approval under Section 8 within the forty five day period designated in subsection (b) of this section, such Commission approval shall not take effect. In the event of a disapproval by both Houses of Congress, the Commission may resubmit such approval for consideration under subsection (a), provided such resubmitted approval differs in a material respect from the prior submitted approval.

(d) For purposes of this section -

(1) Continuity of session of Congress is broken only by an adjournment sine die; and

(2) The days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the forty five day calendar period.

(e) (1) This subsection is enacted by Congress -

(A) As an exercise of the rule making power of each House of Congress, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by Paragraph of this subsection; and it supersedes other rules on the extent that it is inconsistent therewith; and

(B) With full recognition of the constitutional right of either House to change the rules (so far as those rules relate to the procedure of that House) at any time, in the

same manner and to the same extent as in the case of any other rule of such House.

(2) For purposes of this Act, the term "resolution" means (A) A joint resolution, the resolving clause of which is as follows: "That the House of Representatives and Senate disapprove the Federal Energy Regulatory Commission approval under Section 8 of the Alaska Sunitna Facilities Development Act of 1982 submitted to the Congress on _____, 19__"; the blank space therein shall be filled with the date on which the Commission submits its approval to the House of Representatives and the Senate.

(3) A resolution of disapproval under this section, once introduced with respect to a Commission approval under Section 8 of this Act, shall be referred to one or more committees (and all resolutions with respect to the same Commission approval shall be referred to the same committee or committees) by the President of the Senate or by the Speaker of the House of Representatives, as the case may be.

(4)(A) If any committee to which a resolution with respect to a Commission approval under this Act has been referred has not reported it at the end of thirty calendar days after its referral, it shall be in order to move either to discharge such committee from further consideration of such resolution or to discharge such committee from consideration of any other resolution with respect to such Commission approval under this Act which has been referred to such committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same Commission approval under this Act), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be an order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same Commission approval under this Act.

(5) (A) When any committee has reported, or has been discharged from further consideration of, a resolution, but

in no case earlier than thirty days after the date of receipt of the Commission's approval by the Congress, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate on the resolution described in subsection (d)(2)(A) shall be limited to not more than ten hours. This time shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to or, thereafter within such forty five day period, to consider any other resolution respecting the same Commission approval.

(6)(A) A motion to postpone, made with respect to the discharge from committee, or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decision of the chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedures relating to a resolution shall be decided without debate.

REVISION OF SUSITNA DECISION SCHEDULE

Sec. 10. At any time prior to the completion of the Susitna Decision Schedule, the Commission may (i) revise the special procedures for Federal agencies on the Susitna Decision Schedule; (ii) add new special procedures for Federal agencies on the Susitna Decision Schedule; (iii) revise any deadline on the Susitna Decision Schedule; (iv) add any new deadline on the Susitna Decision Schedule, if -

(a) Such modification is necessary after Congressional action under Section 9 of this Act;

(b) The Commission finds that fundamental changes in the circumstances surrounding the project have occurred and that adherence to the Susitna Decision Schedule would not be in the national interest and that adherence to the original Susitna Decision Schedule would not further the purposes of this Act;

(c) Is required under Section 20 of this Act;

(d) Any modification of the Susitna Project Decision Schedule made pursuant to this Act shall involve the minimum delay consistent with the objectives of this Act.

CERTIFICATION OF COMPLETED AGENCY REVIEW

Sec. 11. (a) If the Commission has been notified by the agencies with authority to grant required approvals under this Act, and if judicial review of such approvals is completed or is barred by Section 14 of this Act, the Commission shall certify the same to the applicant. Such certification shall indicate any conditions and the expiration date of any approvals that have been granted to the applicant.

(b) A certificate issued by the Commission under subsection (a) of this section shall constitute conclusive evidence in any judicial or executive proceeding that all approvals necessary to the completion and initial operation of the project have been granted for the duration and subject to the conditions specified on the certificate.

AGENCY AUTHORITY TO ADOPT SPECIAL PROCEDURES

Sec. 12. Any agency authorized to grant approvals respecting the project is authorized to establish the special procedures enumerated in Section 7(b) of this Act.

PRECEDENCE OVER OTHER LAWS

Sec. 13. Notwithstanding any other provision of law, the actions of Federal agencies pursuant to this Act shall not be subject to judicial review except as provided in this Act.

LIMITATION OF ACTIONS

Sec. 14. (a) Except as provided by subsection (c), any petition for review of any approval or action relating thereto pursuant to this Act or of the validity of this Act shall be brought not later than twenty days following the date of actual or constructive notice of the final agency action relating to the approval which is being challenged. The party challenging the reasonableness of an approval or action relating thereto shall have the burden of proof.

(b) Any petition for review of the validity of this Act or of any approval or related action pursuant to this Act shall be barred unless the complaint is filed prior to the expiration of the time limits prescribed by this Act.

(c) Any action for damages or pecuniary loss arising out of the construction or operation of the project shall not be governed by the time limitations of this section.

ADMINISTRATIVE PROCEDURE

Sec. 15. (a) Except as provided in subsection (b) of this section, the Commission and agencies authorized to grant approvals relating to the project shall be exempt from Sections 553 through 559 of Title 5, United States Code.

(b) The establishment of procedures by the Commission or an agency pursuant to this Act shall be subject to Sections 553, 704 and 706 of Title 5, United States Code and any judicial review of such procedures shall be conducted in the Temporary Emergency Court of Appeals pursuant to Sections 14 and 16 of this Act.

JUDICIAL REVIEW

Sec. 16. (a)(1) A petition for review of the validity of this Act or of any approval or related action pursuant to this Act shall be filed in the Temporary Emergency Court of Appeals. Except as provided by this Act, such court shall have exclusive jurisdiction to determine such proceeding in accordance with procedures hereinafter provided and no other district court or court of appeals of the United States and no other court of any state or locality shall have jurisdiction over any such challenge in any proceeding instituted prior to, on or after the date of enactment of this Act.

(2) Notwithstanding any other provision of law, the Temporary Emergency Court of Appeals shall exercise its powers and prescribe rules governing its procedures in such manner as to expedite the determination of cases over which it has jurisdiction under this Act. Such rules may set page limits on briefs and time limits for filing briefs and motions and other actions which are shorter than the limits specified in the Federal Rules of Appellate Procedure.

(3) In any proceeding before the Temporary Emergency Court of Appeals, the chief judge shall designate at least one judge from the circuit in which the project is located to sit on the panel presiding over the proceeding.

(4) There are hereby authorized to be appropriated such sums as are necessary to expand the capacity of the Temporary Emergency Court of Appeals in order to carry out the provisions of this Act.

(b) Any such proceedings shall be assigned for hearing and completed at the earliest possible date, and shall be expedited in every way by such court and such court shall render its final decision relative to any challenge within 120 days from the date such challenge is brought, unless such court determines that a longer period of time is required to satisfy the requirements of the United States Constitution.

(c) Notwithstanding any other provision of law, actions for damage or pecuniary loss arising out of the construction or operation of a project shall be brought in any appropriate district court of the United States.

ACTION SUBJECT TO EXPEDITED REVIEW

Sec. 17. For the purposes of this Act, "an action pursuant to this Act" means -

(a) Any approval or related significant action by the Commission pursuant to this Act, including, but not limited to, any action pursuant to Sections 5, 7 and 8 of this Act. An action of the Commission shall be deemed significant if the Commission determines that expedited review of such action is necessary to meet the objectives of this Act; or

(b) Any approval or related action by any Federal agency or officer, if such action is subject or related to a deadline under this Act or the Susitna Decision Schedule, including any action which is an intermediate step to an approval listed on such schedule; or

(c) Any other action by any Federal officer relating to a project which the Commission determines requires expedited judicial review in order to meet the objectives of this Act.

SUPREME COURT REVIEW

Sec. 18. (a) The Supreme Court shall have exclusive jurisdiction to review any interlocutory judgment or order of the Temporary Emergency Court of Appeals in any case involving an approval or related action pursuant to this Act. The petitioner must file a petition for certiorari or a certification as provided in Section 1254, Title 28, United States Code, within fifteen days after the decision of the Temporary Emergency Court of Appeals or his appeal shall be barred.

(b) Any review by the Supreme Court shall be assigned for hearing and completed at the earliest possible date. It shall, to the greatest extent practicable, take precedence over all other matters on the docket of the court at that time, and shall be expedited in every way by such court.

INJUNCTIVE RELIEF

Sec. 19. (a) Except as provided in subsection (b), no court shall have jurisdiction to grant injunctive relief respecting any action taken under this Act.

(b) The Temporary Emergency Court of Appeals shall have jurisdiction to grant injunctive relief respecting actions taken under this Act, but in any event an injunction shall not lie for a period of longer than sixty days and shall not be granted except in conjunction with a final judgment entered in a case involving an action pursuant to this Act.

ACTION ON REMAND

Sec. 20. Immediately following any court decision remanding to an agency any case or controversy involving the validity of this Act or an action pursuant to this Act, the Commission shall revise the Susitna Decision Schedule as necessary to expedite any further proceedings required by the decision of the court. Such revision shall be consistent with the objectives of this Act.

WATER LAW

Sec. 21 (a) Nothing in this Act shall be construed as expanding or conferring upon the United States, its agents, permittees, or licensees any right to acquire rights to the use of water.

(b) The United States, its agents, permittees, or licensees shall appropriate water within any state for an energy project pursuant to procedural and substantive provisions of state law, regulation or rule of law governing appropriation, use or diversion of water.

(c) The establishment or exercise pursuant to state law, of terms or conditions including terms or conditions terminating use, on permits or authorizations for the appropriation, use or diversion of water for energy projects shall not be deemed because of any interstate carriage, use or disposal of such water to constitute a burden on interstate commerce.

(d) Nothing in this Act shall alter in any way any provision of state law, regulation or rule of law of any interstate compact governing the appropriation, use or diversion of water.

CIVIL RIGHTS

Sec. 22 All Federal officers and agencies shall take such affirmative action as is necessary to assure that no person shall, on the grounds of race, creed, color, national origin or sex, be excluded from receiving, or participating in any activity conducted under, any certificates, permit, right of way, lease or other authorization granted or issued pursuant to this Act. The appropriate Federal officers and agencies shall promulgate such rules as are necessary to carry out the purposes of this section and may enforce this section, and any rules promulgated under this section through agency and department provisions and rules which shall be similar to those established and in effect under Title VI of the Civil Rights Act of 1964.

AUTHORIZATION

Sec. 23. (a) There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

(b) Notwithstanding any other provisions of this Act, authority to enter into contracts, to incur obligations or to make payments under this Act shall be effective only to the extent and in such amounts as provided in advance in appropriation Acts.

EFFECTIVE DATE

Sec. 24. The Commission shall promulgate regulations for carrying out its functions under this Act (including regulations establishing procedures and criteria under Sections

5, 6, 7 and 8) not later than 45 days after the date of enactment.

SEPARABILITY

Sec. 25. If any provision of this Act or the application thereof to any person or circumstance is held invalid, neither the remainder of this Act nor the application of such provision to other persons or circumstances shall be effected thereby.

EXPIRATION

Sec. 26. This Act shall terminate at the end of the last day of the month in which the Commission issues a final approval of the project.

II. SCOPE OF THE REGULATORY PROBLEMS

The Susitna Project faces two distinct problems from a regulatory standpoint at the Federal level. The first such problem is the sheer multiplicity of Federal permits and approvals required. The second problem is that although the Federal Energy Regulatory Commission ("FERC") is the designated lead agency with primary licensing authority under the Federal Power Act (16 U.S.C. 791, et seq.), it possesses no authority with respect to other Federal agencies and regulatory bodies whose approvals are required before a construction license may be issued. Listed below are the major areas where Federal regulatory and/or licensing activity will impinge upon the Susitna Hydroelectric Project in addition to (and as conditions precedent for) issuance of the FERC License:

1. A Dredge and Fill Permit is required from the United States Army Corps of Engineers (COE).

2. The Federal Aviation Administration (FAA) requires an Air Obstruction Notice.

3. A temporary Use Permit is required from the Bureau of Land Management (BLM), Department of the Interior.

4. Compliance with Environmental Protection Agency regulations with respect to prevention of significant air quality deterioration and for new source performance standards is required.

5. The Environmental Protection Agency must issue a permit under the National Pollutant Discharge Elimination System.

6. Consultation with the Fish and Wildlife Service (FWS), of the Department of the Interior and with the National Marine Fisheries Service (NMFS), of the Department of Commerce is required pursuant to the Fish and Wildlife Coordination Act, 16 U.S.C. 662 and Reorganization Plan No. 4.

7. Consultation with the Secretary of the Interior through the Office of Endangered Species of the Fish and Wildlife Service is required pursuant to the Endangered Species Act of 1973, 16 U.S.C. 1536.

8. Consultation with the Environmental Protection Agency is also required under the National Environmental Protection Act of 1969, 42 U.S.C. 4332 and under the Federal Water Pollution Control Act, 33 U.S.C. 1344(b) and (c).

The foregoing are provided to illustrate the magnitude and complexity of the regulatory problem facing the Susitna Project. For an exhaustive analysis of the Federal regulatory requirements facing the Susitna Project see: Managing the Federal/State Permitting Process for Alaskan Hydroelectric Projects prepared under contract to Birch, Horton, Bittner, Monroe, Pestinger & Anderson for the Senate Finance Committee, Alaska State Senate, January 15, 1982.

III. AUTHORITY OF CONGRESS TO FORESHORTEN THE REGULATORY PROCESS

The authority of Congress to exempt a hydroelectric project from Federal regulatory procedures is a logical and legal corollary of its authority to regulate that project in the first place. With respect to the Susitna Hydroelectric Project, the primary source of Congressional authority to legislate is that the Susitna River is a navigable water of the United States. Hence, the project falls squarely within Congress' authority under Article I, Section 8, Clause 3, United States Constitution, to legislate with respect to commerce.

The power of Congress to regulate navigable waters is not expressly granted in the Constitution. Rather the power arises incidentally from the expressly delegated power to regulate commerce generally. Leovy v. United States, 177 U.S. 632 (1900). An extremely expansive interpretation of Congressional authority to legislate with respect to the navigable waters of the United States was established early in the nation's history. That power was described in Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1, 189 (1824) as "comprehending navigation within the limits of every state in the Union, so far as that navigation may be in any manner connected with commerce with foreign nations or among the several states or with the indian tribes." The fact that a river lies solely within the boundaries of a single state, that it is not and has not been used for "commercial" purposes in navigation is not controlling. Where personal or private use by boat demonstrates availability of the waterway for at least rudimentary types of commercial navigation a finding of navigability, and hence, inclusion within the purview of the Commerce Clause will be upheld. See, United States v. Lewis, 355 F.Supp. 1132 (D.C. Ga. 1973). Once the navigable nature of the waterway is established (and we assume throughout this discussion that there is no serious dispute as to the navigability of the Susitna River) the power of Congress to regulate, on such terms as it chooses, structures and uses of the waterway affecting its navigable qualities is plenary in nature and has been broadly interpreted by the courts. As the Supreme Court said in United States v. Appalachian Electric Power Co., 311 U.S. 377 (1940):

That authority [over navigable waters] is as broad as the needs of commerce. Water power development from dams in navigable streams is from the public's standpoint a by-product of the general use of the rivers for commerce. To this general power, the

respondent must submit its single purpose of electrical production. The fact that the Commission is willing to give a license for a power dam only is of no significance in appraising the type of conditions allowable. It may well be that this portion of the river is not needed for navigation at this time. Or that the dam proposed may function satisfactorily with others, contemplated or intended. It may fit in as a part of the river development. The point is that navigable waters are subject to national planning and control in the broad regulation of commerce granted the federal government. The license conditions to which objection is made have an obvious relationship to the exercise of the commerce power. Even if there were no such relationship, the plenary power of Congress over navigable waters would empower it to deny the privilege of constructing an obstruction in those waters. It may likewise grant the privilege on terms.

Appalachian Electric Power at 426-427.

The foregoing cases give a flavor for the extreme breadth of Congressional authority in this area. One corollary of this power is that State authority to regulate with respect to construction and operation of the facility could be preempted by Congressional legislation if the Congress chose. Since it is our understanding that the terms of this contract are limited solely to consideration of regulatory foreshortening at the Federal level, we have not included analysis or examination of the issues which would be raised in the event of Congressional preemption of state authority. Nonetheless, we felt it important to point out that the option exists and that were Congress to so legislate, the legal basis for any assertion of state regulatory authority would be extremely tenuous. An example of the extraordinary reach of Congressional power in this area with respect to traditional notions of state sovereignty can be seen in Washington Department of Game v. Federal Power Commission, 207 F.2d 391 (9th Cir 1953), cert. den. 347 U.S. 936 (1954). In Washington, the Federal Power Commission (predecessor to the FERC and licensing agency for hydroelectric projects under the Federal Power Act) granted a license to construct two dams to the City of Tacoma, Washington. From its initiation, the project was opposed by state officials and citizens' groups primarily on the grounds that construction of the dam would severely damage or destroy salmon runs in the Cowlitz River, a tributary of the Columbia. In upholding the authority of the FPC to grant the license to the City of Tacoma and to proceed with construction of the dam irrespective of state policy to the contrary, the court said:

We must now consider the fate of the fish on the Cowlitz River. Herein lies the chief concern of those who object to the construction of the dams. They contend that the project will destroy the runs of spring chinook salmon, fall chinook, silver salmon, steelhead trout, cut throat trout, and smelt, which use the Cowlitz as spawning grounds. They point out that to pass each of the dams, the fish will have to climb ladders. . . , each of which is considerably higher than the . . . highest dam over which migratory fish have been successfully passed to date. . . .

As we see it, it is not within our jurisdiction to prescribe a policy. The Federal government has the jurisdiction over navigable rivers and it is within the power of the Congress and the executive to prescribe the policy in relation thereto. If the dams will destroy the fish industry of the river, we are powerless to prevent it. It is admitted that the fish industry on the river is an important one and every known method should be used to preserve it. If it is the law (and we are not holding one way or another) that the Commission is held to the use of discretion in its requirements as to the preservation of any use to which a navigable stream is currently being put, we hold that the Commission has given the subject of the fishing industry due consideration and has not abused its discretion. Washington at 397-398 [footnote omitted].

The State of Washington subsequently attempted to relitigate the issues involved in this case through the state courts and obtained a favorable judgment in the Supreme Court of Washington. However, the United States Supreme Court reversed and remanded on the grounds that exclusive jurisdiction for appeals from Federal Power Commission actions was vested in the United States Court of Appeals and that the decision in Washington, supra, was a final decision on the merits and not susceptible to a collateral attack in the state courts. City of Tacoma v. Taxpayers of Tacoma, 357 U.S. 320 (1958).

The foregoing describes the scope of Congressional authority, as exercised by a delegatee of that authority (i.e., the Federal Power Commission with delegated authority to regulate dams on navigable waters) under the Federal Power Act. As contemplated in the contract for this report, the delegated authority to a Federal agency for regulatory review and approval of the Susitna dam will be exercised, in part, under a new statute. As is generally the case in administrative law

situations, the authority of the agency to regulate is derived from the underlying power of Congress to legislate with respect to the subject matter.

Thus, it seems extremely clear that Congress, acting alone, has plenary power with respect to the construction of a dam on the Susitna River. As will be discussed further in Part V of this report, the only constraint on such power is the Due Process clause of the Fifth Amendment to the United States Constitution regarding the taking of property. Within these confines, however, Congressional power is complete. What this means is that if Congress wishes, it could direct an agency of the Federal government to construct a dam on the Susitna River notwithstanding any other provision of law. And, at least with respect to navigable waters and the regulation thereof, what Congress may do directly it may do by a delegation to an administrative agency for the executive branch of government. The conclusion seems clear that with the proper Congressional enactment, providing the Federal Energy Regulatory Commission (or some other designated agency. For obvious reasons of practicability and technical expertise, we have chosen to designate the FERC as lead licensing agency in the expedited review process) the regulatory review period may be limited to two years for the Susitna project.

IV. MAJOR CONGRESSIONAL ACTIONS FORESHORTENING THE REGULATORY PROCESS

As noted in the Introduction, this section reviews a variety of Congressional enactments in recent years where the regulatory process has been amended or foreshortened, where relevant Federal law has been waived and/or Federal judicial review precluded or limited on major projects. As directed in the contract, the emphasis in this section is on major energy projects regulated by the United States Government.

An examination of Congressional enactments going back to the late 1960s reveals relatively few enactments where major regulatory foreshortening was mandated. Major examples which have arisen are those statutes with which Alaskans are most familiar: the Trans-Alaska Pipeline Act and the Alaska Natural Gas Transportation Act. Our research indicates that few other Congressional enactments during this period even approach in scope the limitations imposed by Congress on the administrative and regulatory process in these Acts. This conclusion is particularly applicable with respect to the Alaska Natural Gas Transportation Act.

Although not strictly called for in the contract, we have also included consideration of proposed legislation for establishment of the Energy Mobilization Board. Although never enacted, the proposals with respect to the Energy Mobilization Board involved one of the most sweeping attempts at regulatory foreshortening ever contemplated by Congress. It is safe to say that the provisions of the legislation which would have established the Energy Mobilization Board fall only one step short of the ultimate form of regulatory foreshortening: direct Congressional enactments directing the construction of designated projects without reference to existing provisions of law. Following is a discussion of the major Congressional enactments involving significant regulatory foreshortening or limitations on judicial review.

ALASKA NATURAL GAS TRANSPORTATION ACT OF 1976

The Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. § 719 et seq.; hereinafter "ANGTA"), was enacted October 11, 1976 in an effort to resolve seemingly insoluble regulatory conflicts facing the Federal Power Commission with respect to selection of a route and sponsor for delivery of North Slope Alaskan natural gas to continental U.S. markets. ANGTA represents one of the major regulatory foreshortening exercises

of recent years and established a general pattern which was followed extensively in Title V of the Public Utility Regulatory Policies Act of 1978 relating to construction of west to east crude oil pipelines (see discussion infra).

The provisions of ANGTA were unique in that Congress intervened in an on-going regulatory proceeding, directing that the proceedings be suspended and that the Commission, on the basis of the existing record, develop within five months a recommendation to the President regarding which route and sponsor should be approved. ANGTA then provided the President an additional four month period after submission of the recommendations of the Commission to reach a final decision and to submit this decision to Congress. The Act then provided for Congressional ratification of the Presidential decision within sixty days of submission by joint resolution.

Section 9 of the Act directed Federal officers or agencies to adopt expedited procedures with respect to grants and certificates, rights of way permits, leases or other authorizations necessary or related to the construction and initial operation of the approved system. Section 9 also provided for the waiver of procedural requirements where, in the discretion of the Federal officer or agency such waiver was necessary to permit expeditious and priority consideration of the application. Section 10 of the Act limited available judicial review for challenging the provisions of the Act itself or any actions taken thereunder. Essentially this section provided a sixty day statute of limitations for actions challenging the Act or actions taken under its authority. Further, exclusive jurisdiction to hear such actions was vested in the United States Court of Appeals for the District of Columbia.

The final major provision of the Act established a process under which the President could propose waivers of existing the law to Congress where such waivers were deemed necessary to expedite project schedule. The waiver provision required approval by the Congress via joint resolution before any such waiver became effective, and differed from ordinary Congressional enactments primarily with respect to the limited time period established for Congressional action once a waiver had been proposed, and in the somewhat expeditious legislative procedure relating to joint resolutions.

ANGTA is one major example of a Congressional regulatory foreshortening device and, as will be seen below, many of the provisions in ANGTA have served as general models for subsequent legislative proposals in Congress.

TITLE V, PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

The Public Utility Regulatory Policies Act of 1978 was a wide ranging piece of legislation covering retail regulatory policies for electric utilities, establishing expanded Department of Energy authorities with respect to utility and power production policies, establishing standards for retail natural gas utility sales, a program for small hydroelectric power project development, and, finally, instituting an expedited regulatory review process for certain crude oil pipeline systems.

Title V of the Act dealt with crude oil transportation systems; specifically, the systems covered were west to east crude oil pipelines designed to move the Alaskan west coast crude oil "surplus" to mid-continent U.S. markets. Although establishing an expedited regulatory review process that was nearly as comprehensive as that enacted in ANGTA, Title V was specifically limited both definitionally and via time limitations pipeline applications to existing and competing west to east pipeline proposals (i.e., Northern Tier, Northern Border and Long Beach-Midland). Section 505 directed the Secretary of the Interior to establish an expedited schedule for reviews and recommendations with respect to such transportation systems. Section 506 directed that all environmental impact statements for proposed projects be completed within four months after enactment of the bill.

As in ANGTA, the President was vested with authority to decide which, if any, of the competing systems should be approved, after considering the recommendations of various government departments and the results of the environmental impact reports. Unlike ANGTA, the President's decision was not subject to Congressional ratification. Also in keeping with ANGTA procedures was § 508 providing for Presidentially proposed waivers of Federal law, if such waivers were approved by both Houses of Congress by a joint resolution.

Section 509 of Title V established general expedited procedures for any system or systems approved by Presidential decision. While this section directed Federal officers and agencies to make all decisions as expeditiously as practicable, no applicable provisions of law were waived. However, in the case of the Long Beach-Midland project, the bill directed:

"All decisions regarding issuance of Federal permits, rights of way, and leases and other Federal authorization is necessary for construction and operation of the Long Beach-Midland project shall be consistent with applicable provisions of Federal law, except that such

decisions shall be made within thirty days after the date this title becomes effective." 43 U.S.C. § 2009(b).

This subsection is of some interest in the context of this report in that Congress simply directed that decisions - whether for or against the project - be made within a specified period. No attempt was made to specify how the strictures of existing law were to be conformed to the thirty day schedule. Thus, subsection (b) suggests that one clear alternative for any proposed Susitna legislation would be simply to establish a two year regulatory review deadline for all necessary Federal approvals without specifying regulatory mechanisms. As will be discussed in Part V of this report, we believe there are compelling political reasons why such a relatively simple approach may be a less desirable, alternative.

Finally, Title V established some limited constraints with respect to judicial review. Actions not brought within sixty days of the Federal action or decision challenged were barred. Exclusive jurisdiction was vested in the District Courts of the United States, although no other limitations with respect to jurisdiction or venue were included in the Act.

Title IV of the 1978 Act established a program to encourage development of small hydroelectric power projects (which were defined as having not more than 15,000 kw of installed capacity). In addition to establishing loan programs for feasibility studies and for project costs, § 405 also mandated establishment of a "simplified and expeditious" licensing procedure. However, the section specifically provided that there was no exemption from any applicable Federal law for such small hydroelectric power projects, nor were any limitations with respect to judicial review established. Since this section dealt only with the Federal Energy Regulatory Commission's licensing authority under the Federal Power Act and did not establish similar expedited procedures in other Federal agencies, this section does not provide a completely useful model for any proposed Susitna legislation. In short, while FERC licensing procedures may have been "simplified" as a result of this enactment, we doubt that the overall result has been a significant decrease in total regulatory review time throughout the Federal establishment. This total delay period is, of course, the crux of the problem facing the Susitna project.

Title IV was amended in 1980, increasing the definition of small hydroelectric facilities to 30,000 kw. The 1980 amendment also provided for FERC authority to completely exempt very small hydroelectric projects (5,000 kw or less) for

licensing proceedings under the Federal Power Act. However, the exemption did not extend to non-FERC matters such as environmental review.

ENERGY MOBILIZATION BOARD LEGISLATION

Proposals to establish a national Energy Mobilization Board were narrowly defeated in 1980. The Board proposals involved some of the most sweeping grants of power to a Federal agency contemplated during peace time. The bill would have created an Energy Mobilization Board (hereafter "EMB") with the authority to designate high priority, non-nuclear energy projects for "expedited" regulatory consideration and processing. Once a project had been designated for such expedited consideration, the Board had authority to establish project deadlines for every Federal, state and local approval or permit required for construction and operation. And, where any such Federal, state or local agency failed to meet a designated approval deadline, the Board was authorized to make the decision in lieu of such agency.

The Senate passed legislation provided the Board with authority to waive applicable Federal, state or local law provided that any such law had been enacted after construction of a designated project had begun. The conference bill watered down this provision, adopting a procedure whereby the Board could recommend to the President suspension, modification or amendment of Federal statutes, rules, regulations and standards. If the President in turn recommended such changes to the Congress, the recommendation would take effect upon enactment of a joint resolution of Congress approving the recommendation. Thus, the provisions of the EMB legislation followed closely the waiver sections originally enacted in ANGTA.

The bill would have further provided for the Board to possess authority to obtain court orders to enforce necessary agency action for designated projects. Finally, the bill also contained provisions relating to expedited judicial review and limiting the jurisdiction of state and local courts to hear cases arising under the Act.

TRANS-ALASKA PIPELINE AUTHORIZATION ACT

The Trans-Alaska Pipeline Act (hereafter "TAPs") is in some respects the model example of a "regulatory nightmare" which required Congressional action to resolve. Virtually from the inception of the original pipeline proposals, the project had been under heavy legal pressure from environmental groups on a variety of grounds. And, of course, in the early stages of the

project the unresolved issue of native land claims also raised the spectre of great delay. However, after passage of the Alaska Native Claims Settlement Act, the problems centered on two major areas:

1. The right of way width provisions, § 28 of the Mineral Leasing Act of 1920, were inadequate to permit construction of the pipeline.

2. The adequacy of the environmental impact statement required under the National Environmental Policy Act had been under heavy challenge by environmental groups.

It was primarily to meet these twin challenges that the Act was passed. The specific impetus was the decision in Wilderness Society v. Morton, 479 F.2d 842 (D.C. Cir. 1973) requiring strict adherence to the right of way width provisions of the Mineral Leasing Act. Without an amendment to these provisions, even with an adequate environmental impact statement, pipeline construction could not go forward. And, as the legislative history of the Act reveals, the decision in Wilderness Society v. Morton raised questions as to the legality of nearly 100 pipeline rights of way granted in prior years by the Department of Interior and promised to stall virtually any new pipeline construction of significant size over Federal lands in the United States.

In consequence, the Act provided not only for a 50 foot right of way width, but vested authority in the Secretary of Interior to grant larger rights of way if the project required. Further, the Act expressly authorized temporary use permits for the period of construction and for purposes of maintenance and operation which were not specifically included in the right of way itself but which were reasonably necessary for access.

The problems which had been encountered with respect to the environmental impact statement under the National Environmental Policy Act were dealt with in the same fashion recommended by Vermont's Senator Aiken regarding the Vietnam War: on the environmental issues, Congress simply declared victory. Section 203 of the Act expressly declared that because of the extensive governmental studies that had already been made and because of the national interest in prompt construction without further administrative or judicial delay, the Secretary and other appropriate Federal officials were directed to issue and take all other necessary actions necessary for pipeline construction. Section 203 further provided that further actions under the Environmental Policy Act were not required. Judicial challenges were limited to a period of sixty days following enactment while

exclusive jurisdiction over such actions was vested in any appropriate United States District Court.

In sum, the TAPS Act is probably not a regulatory foreshortening act in the sense of other legislation considered in this report. Rather, it involved enactment of a Congressional mandate to issue permits and rights of way for construction of a designated project. In contrast, ANGTA, Title V of the Public Utility Regulatory Policies Act of 1978 and the Deep Water Ports Act (discussed infra), all left discretion over whether or not to develop a given project with the administrative agencies involved. And, it is this latter approach that we have followed in drafting the proposed Susitna legislation in Part IV of this report, rather than simply mandating issuance of a Federal Power Act permit. While such a Congressional mandate for Susitna construction would clearly involve the ultimate in regulatory foreshortening, we believe, as will be discussed further below, that such a legislative approach this juncture is politically unrealistic.

DEEP WATER PORT ACT OF 1974

In the non-energy area, the Deep Water Port Act of 1974 represents perhaps the best example of a streamlined and efficient regulatory format enacted by Congress. As provided in the Act, the procedural requirements for consideration of applications and issuance or denial of a license cover a maximum period of 356 days. Any judicial review of the Secretary of Transportation's final decision must be requested no later than sixty days after such a decision is made.

As taken from the legislative history of the Act, the mandated review process can be summarized as follows:

0 days: An application for a deep water port license is filed.

21 days: The Secretary of Transportation ascertains if all the necessary information is included.

26 days: If the necessary information is included, the Secretary publishes notice and a summary of the proposal, designates the application area and designates adjacent coastal states under the Act. Copies of the application are sent to all Federal agencies involved in the review process, and such

applications to the Secretary of Transportation are deemed to be applications for requisite approvals required in all such agencies.

36 days: Copies of the application are sent to the governor of those designated adjacent coastal states.

56 days (30 days after publishing notice of application): The Secretary designates a safety zone around the proposed port. Thereafter, a safety zone is designated for each subsequent, competing application within 30 days after notice.

86 days (60 days after notice): Notice of intent to file competing applications must have been received. The administrator of the National Oceanic & Atmospheric Administration must designate any additional adjacent coastal state based on a determination of substantial pollution risk from a proposed deep water port, notify the Secretary of Transportation and publish notice of the designation.

96 days: A copy of the application is forwarded to the governor of each adjacent coastal state designated by NOA.

116 days (90 days after notice): All competing applications must have been received. Reports of Federal Trade Commission and the Attorney General with respect to antitrust considerations must be transmitted to the Secretary.

266 days (240 days after notice): All public hearings must be concluded.

311 days (45 days after the final public hearing): Agency comments must be transmitted to the Secretary of Transportation. Each adjacent coastal state governor must notify the Secretary as to whether he approves or disapproves issuance of a license. It is assumed the governor approves of the application if he does not respond within this time.

356 days (90 days after the final public hearing): The Secretary makes his decision.

At first glance, the approach taken in the Deep Water Ports Act would seem to be superior to the somewhat complex

project decision schedule system which we recommended in Part IV of this report. For two reasons, however, we believe the general legislative approach taken in Part I of this report is superior to that adopted in the Deep Water Port Act. Specifically, the Deep Water Port Act involved assertion of Federal jurisdiction and agency authority in an area that was, essentially, virgin regulatory ground. Unlike the hydroelectric licensing process (and unlike pipeline rights of way), there were no entrenched, established bureaucracies with vested interests in the regulatory process. Thus, both politically and practically, establishing a relatively efficient and centrally managed regulatory process for these licenses proved to be a manageable task.

A further consideration is that the general approach suggested in Part I of this report has already been followed in various energy related pieces of legislation. In our judgment, gaining approval of any Susitna legislation will be eased if the general legislative format is already familiar to relevant members of Congress and of the Federal bureaucracy. Confronting such Federal decision makers with a new, and in the context of major energy projects, untried, regulatory approach will compound the problem of gaining ultimate Congressional approval. Within these constraints, however, the general approach set forward in the Deep Water Port Act would provide a satisfactory model for Susitna legislation, in the event an alternative to the legislation in Part I of this report is desired.

MISCELLANEOUS LEGISLATION

The foregoing pieces of legislation represent the major Congressional enactments in recent years involving regulatory foreshortening. The following acts or portions of acts are of substantially less importance in terms of analyzing the problem as it relates to Susitna but are included for purposes of completeness.

A. Emergency Petroleum Allocation Act of 1973.

Section 6 of the Emergency Petroleum Allocation Act provided a limited exemption from Federal antitrust laws in cases where otherwise collusive or anti-competitive meetings or practices were necessary among oil companies or their employees to meet the petroleum allocation and price control requirements of the Act.

B. Energy Policy and Conservation Act of 1975

Section 252(j) of the Energy Policy and Conservation Act provided for a limited exemption to antitrust laws with

respect to oil companies participating in the Agreement on International Energy Program.

C. Emergency Energy Conservation Act of 1979.

Section 214 of the Emergency Energy Conservation Act of 1979 imposed some limitations on judicial review with respect to Federally established energy conservation targets applicable to the state.

D. Uranium Mill Tailings Radiation Control Act of 1978.

Section 209 of this Act authorized the Nuclear Regulatory Commission to consolidate to the maximum extent practicable licensing and licensing procedures under the Act with required licenses and related procedures under the authority of the Atomic Energy Act of 1954.

E. Ocean Thermal Energy Conversion Act of 1980.

The Ocean Thermal Energy Conversion Act established licensing procedures with respect to the construction and operation of ocean thermal energy conversion facilities to produce electricity and for the production of energy intensive products off the coast of the United States. The Act provided for an expedited review process for such licenses and approvals essentially identical to those contained in the Deep Water Port Act.

F. Regional Rail Reorganization Act of 1973.

Section 601 of this Act provided for a limited exemption from the antitrust laws with respect to formulation or implementation of the final system plan required under the Act.

V. GENERAL CONSIDERATIONS AND STRATEGY ISSUES

As noted earlier in the body of this report, alternative models exist for drafting Susitna regulatory foreshortening legislation. As we discussed in Part IV of the report, the best general alternative model would probably be the approach used in the Deep Water Port Act of 1974.

Within the context of the proposed legislation in Part I, modifications of this general approach are, of course, possible. What follows is a brief discussion of the major sections of the proposed legislation, possible alternative approaches and what we believe are the strengths and weaknesses of such alternatives.

Section 8 of the legislation allows the Commission to make necessary decisions and approvals in lieu of other Federal agencies where these agencies are unable to meet Susitna decision deadlines. A clear alternative here would be to direct each appropriate Federal officer or agency to close the record thirty days prior to a Susitna decision deadline and to reach a decision with respect to that approval either by or shortly after the decision deadline. This approach may have some political advantage with respect to Congressional acceptance of the proposed legislation in that it appears less radically disruptive of established government procedures. Further, some legal advantage might be obtained because of administrative law presumptions in favor of "agency expertise." Such presumptions might make "line" agency approvals somewhat less vulnerable to judicial challenge. On the other hand, we believe leaving the decision process in the hands of an agency that has already failed to meet the schedule deadline significantly increases the probability of a negative decision. It is our experience that there is a tendency among Federal agencies to seek regulatory "perfection" in their discrete area of expertise, without respect to the interests of an entire project. This tendency is one of the sources of regulatory delay for major projects such as Susitna. Consequently vesting the decision making authority in the Federal Energy Regulatory Commission in the event of a missed project deadline will allow a more balanced review of the the approval's relationship to the project as a whole.

With respect to the Congressional review provisions of in § 9, one alternative would be to require affirmative Congressional action to validate Commission approvals in lieu of other Federal agencies. This has been the procedure used in other acts where waiver of Federal law was involved. However, here, where there is no waiver of Federal law and where the action is

essentially administrative and procedural in nature, we believe the requirement that Congress act affirmatively to stop Commission action is the more appropriate course. Such a procedure affords Congress a clear opportunity to review the completeness and adequacy of necessary regulatory approvals made by the Commission. It will not, however, place Congress in the position of reviewing in detail and acting upon, every administrative decision in order to avoid substantial project delay.

Further areas open to modifications are the various time schedules for agency review and action established in the legislation. Our general objective here was to complete all non-Commission reviews 18 months after the initial application is accepted. This provides a six month period for the Commission to complete any necessary work with respect to the project license. While we believe these time periods are appropriate, modifications would have no major project impact, so long as the Commission itself has adequate time in which to reach a decision as to a license.

The judicial review sections of the legislation are relatively straightforward with respect to review of agency actions and approvals relating to the Act. Jurisdiction was vested in the Temporary Emergency Court of Appeals because this court is arguably best equipped and experienced to deal rapidly with any questions presented. Vesting such jurisdiction in any other Court of Appeals of the United States (most typically such jurisdiction has been vested, in other acts, in the Court of Appeals for the District of Columbia Circuit) would probably have a relatively small effect on the timing of any judicial review. We would not recommend an amendment vesting such jurisdiction in the district courts of the United States, since an additional appeal would be added and because the district courts are neither as experienced nor as equipped to deal with such matters on an expedited basis as are the courts of appeal.

A further area of judicial review dealt with in the proposed legislation relates to actions arising for pecuniary loss or damage resulting from construction or operation of the project. Such losses would typically be associated with flooding of land upstream from the project, interference with usufructory water rights downstream and the taking of lands for the construction and operation of the project on and around the project site. Ordinarily, actions for recovery of such losses (i.e., valuation actions in eminent domain proceedings) may be had in either the district courts of the United States or the state courts, provided that other jurisdictional requirements are met. 16 U.S.C. 814. In the proposed legislation, we recommend

limiting jurisdiction to the district courts of the United States. The primary reason we recommend this is that the limitations with respect to injunctive relief contained in § 19 of the proposed legislation thereby attach. Such a procedure allows full and fair compensation to any landowners or water users suffering compensable loss from the construction or operation of the project, but substantially reduces the possibility of significant project delay.

In this regard, our research disclosed indicated the presence of possibly significant problems with respect to damages arising from historical and statutorily based water use rights on the river. There appear to be significant issues here which State policy makers may wish to address in the context of moving forward with the Susitna project. Specifically we have identified the following areas as being of potentially significant concern and which we offer as an aid to the committee in its further consideration of the matter.

1. The Alaska Native Claims Settlement Act did not conclusively dispose of the question of aboriginal water rights. To our knowledge such claims have been asserted by several native corporations over the last few years and have to date been unsuccessful. The Committee may wish to consider the magnitude and effects of any such claims, if they were to be asserted. A subcategory of this problem involves the effect of the project on subsistence uses in the area. While the Alaska National Interest Lands Act specifically provided that subsistence uses were not a property right (and hence not compensable as a taking under the Fifth Amendment), the interrelationship of water use rights and subsistence effects might constitute a property interest compensable as a taking. It would seem to us that consideration of these areas would initially involve a close analysis of possible claims arising from such sources as well as consideration of alternative methods of dealing with them at the State and Federal level.

2. The licensee for the project is authorized to utilize the Federal power of eminent domain to the extent necessary for project construction and operation. 16 U.S.C. 814. Some condemnations under this power do not constitute compensable "takings" under the Fifth Amendment to the United States Constitution. Others, such as riparian fast lands (i.e., land above the normal high water mark which is flooded as a result of the project) and loss of water use rights, if any, are compensable. Further, since the contemplated licensee is an agency of the State of Alaska, the licensee would also have State powers of eminent domain. The use of such powers of eminent domain, the methods of valuation to be utilized, what rights and

interests are and are not compensable under Federal and State law, are all issues that involve cost and policy determinations with respect to the project and therefore may warrant further examination.

We have, of course, not engaged in a complete analysis of any of these questions. However, in aid of the Committee's responsibilities with respect to the Susitna project, we point them out as possible areas of further investigation.

Summary
of 3 Volume
Report +
2 Volumes of
appropriate regula

REGULATORY IMPACT MANAGEMENT PLAN
FOR THE SUSITNA HYDROELECTRIC PROJECT

Presented to:

Honorable Ed Dankworth
Honorable Don Bennett
Co-Chairmen
Senate Finance Committee

January 15, 1982

Contractor:

Ronald G. Birch
BIRCH, HORTON, BITTNER AND MONROE

Subcontractors:

S. John Byington
ROGERS HOGE & HILLS

Gerald R. Hill
REGULATORY IMPACT MANAGEMENT INC.



TABLE OF CONTENTS

EXECUTIVE SUMMARY

1.0 INTRODUCTION

- 1.1 Background
- 1.2 Objectives of this Program
- 1.3 Organization of Report

2.0 FINDINGS AND RECOMMENDATIONS

- 2.1 Native and State Land Ownership
- 2.2 Native Association Lawsuit
- 2.3 Subsistence Rights
- 2.4 Water Rights
- 2.5 Adequacy of Interagency Communications
- 2.6 Adequacy of Data Base
- 2.7 FERC Preliminary Permit
- 2.8 Changing Regulatory Climate
- 2.9 Hydroelectric Application Approvals
- 2.10 Potential for Oil and Hazardous Substance Spills
- 2.11 Temporary Use Permits for Pre-license Studies
- 2.12 Transmission and Access Facility Authorization
- 2.13 Soil Erosion Prevention
- 2.14 Proper Sanitation Techniques
- 2.15 Land Use Policy
- 2.16 Public Participation

3.0 HYDROELECTRIC LICENSING PERSPECTIVE

- 3.1 History of Susitna Project
- 3.2 Licensing Procedures
- 3.3 Examples of Administrative and Regulatory Problems

4.0 INVENTORY OF REGULATORY NEEDS

- 4.1 Local Regulation
- 4.2 State Regulation
- 4.3 Federal Regulation

5.0 INVENTORY OF NON-REGULATORY FACTORS

- 5.1 Local and Native Alaskan Concerns
- 5.2 State Non-Regulatory Concerns
- 5.3 Federal Non-Regulatory Concerns

APPENDIX A: COMPENDIUM OF STATE REGULATORY REQUIREMENTS

APPENDIX B: COMPENDIUM OF FEDERAL REGULATORY REQUIREMENTS

EXECUTIVE SUMMARY

The Susitna hydroelectric project is facing obstacles which place its successful completion in doubt. Even if Acres American's (the license-preparation company under contract to the Alaska Power Authority) study concludes that the project is feasible (from an environmental, economic and engineering standpoint) and if the Alaska government and active interest groups agree, the massive inter-group coordination required of any major hydroelectric project could delay this project to the point of jeopardizing its completion. The most notable of the pitfalls include:

- ° 15 to 20 state and local government approvals
 - air and water quality permits, fish and game impact-mitigation measures, waste disposal, etc.;
- ° 10 to 15 federal permits
 - involving at a minimum these federal agencies:
 - Federal Energy Regulatory Commission (FERC);
 - Environmental Protection Agency (EPA); Corps of Engineers (COE); Coast Guard; U.S. Fish and Wildlife Service (USF&WS); Bureau of Land Management (BLM); Advisory Council on Historic Preservation (ACHP); National Marine Fishery Service (NMFS); and the Federal Aviation Administration (FAA);
- ° other factors
 - uncertain land ownership patterns, water rights disputes, and subsistence rights, plus probability of intra- and inter-agency communications breakdowns concerning the adequacy and implications of the data base.

Multi-agency involvement at the federal, state and local government levels, and the attendant demands for different information and possibly conflicting interpretations of data, make delay inevitable. Delays and resulting confusion can cost hundreds of millions of dollars. The threat of such significant cost increases alone jeopardizes the project. The project sponsors must, therefore, seek to minimize delay and maximize cooperation.

Management of the regulatory process can reduce delay and confusion substantially by coordinating and giving definition to the agency reviews and agency information needs. Avoiding agency jurisdiction disputes and planning to fill agency information requirements promptly will, in a very real sense, ensure timely and successful completion of the Susitna hydroelectric project.

A regulatory impact management system will give Alaska the appropriate tools to shepherd the project through the bureaucratic maze efficiently and at the least possible cost.

This report constitutes the first step of Phase I of such a system. It identifies and documents the problems, both regulatory and non-regulatory, facing the Susitna project. The report makes specific findings and recommendations that require state officials' immediate consideration. Furthermore, the identification of issues and deficiencies provides a foundation for implementing a regulatory management system in the future.

Examples of major problems which could affect the ultimate completion of the Susitna hydroelectric project significantly include:

- Unsettled Native land ownership disputes in the project area which could delay the project for years unless efforts are made to bring about a negotiated settlement;
- Inadequate data bases concerning fish and wildlife resources in and along the Susitna River, and the absence of any analysis of the project's impacts on subsistence uses of such resources by Natives;
- Unsettled jurisdictional disputes among federal agencies concerning certain aspects of the licensing and construction of hydroelectric dams and associated transmission facilities;
- Inadequate inventory of persons or entities who may have appropriated water rights or who may have valid water claims along the Susitna River which could be affected by construction of the dams; and
- The absence of a clearly defined policy governing land use in the project area, including an analysis of the socio-economic impacts of the project on the people and natural resources in the region.

The remaining steps of Phase I of the management system would initiate a review of all data, studies, and other materials which currently are available to interested groups and agencies. Initially the data would be checked to ensure that it is adequate to meet the agencies' informational and regulatory needs. Then the data and conclusions would be used to prepare the various permit and license applications. Agency memoranda of understanding (MOUs) would be negotiated, presetting agency review by defining its scope and timetable. This will reduce the uncertainty and confusion attendant to any project of this magnitude.

Upon filing the applications, the regulatory process formally begins. To ensure that the permitting process stays on track, the second phase will feature:

- frequent status reports to keep all parties informed and to show agency compliance with the pre-agreed schedule;
- management reports to the Alaska Legislature to facilitate effective oversight and to ensure the efficient use of public funds.

I. INTRODUCTION

II. FINDINGS AND RECOMMENDATIONS

III. LICENSING

IV. REGULATORY NEEDS

V. NON-REGULATOR FACTORS

NOTE REGARDING THE FOLLOWING FRAME ON MICROFILM:

COMPLETE DOCUMENT IS AVAILABLE IN ORIGINAL FILES
IN ALASKA STATE ARCHIVES. TITLE PAGE ONLY HAS
BEEN FILMED.

David A. Anderson

Comment Draft

**Railbelt Electric Power
Alternatives Study:
Evaluation of Railbelt Electric
Energy Plans**

February 1982

**For the Office of the Governor
State of Alaska
Division of Policy Development and
Planning and the Governor's
Policy Review Committee
Under Contract 2311204417**

 **Battelle**
Pacific Northwest Laboratories

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W — ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF — STATE CAPITOL

JUNEAU 99801

MEMORANDUM

Date: February 24, 1982

To: Honorable Don Bennett
Honorable Ed Dankworth
Honorable Al Adams
Chairmen, Finance Committees
Alaska State Legislature

From: Milt Barker *MB*
Fiscal Analyst

Subject: General Funds Available for Appropriation

At your request, I have estimated state revenue for FY 81 through FY 83. Based on these estimates the following liquid general funds would be available for appropriation for FY 83 or for FY 82 supplementals (\$ millions):

AVAILABLE FOR APPROPRIATION

<u>Source of Estimate</u>	<u>Amount</u>
Legislative Finance	
High	\$2563.9
Medium	1855.9
Low	1448.5
Department of Revenue	3240.1

The Department of Revenue amount is based on their January 1982 estimates. They will publish new quarterly estimates in April, if not before, that will probably be lower.

The revenue by year is (\$ millions):

REVENUE BY YEAR

<u>Source of Estimate</u>	<u>Amount</u>
<u>FY 82</u>	
Legislative Finance	
High	\$3847.2
Medium	3722.9
Low	3699.8
Department of Revenue	4335.8

8

FY 83

Legislative Finance

High	3946.2
Medium	3362.5
Low	2978.2

Department of Revenue	4133.7
-----------------------	--------

The large difference in amount available for FY 83 in comparison to FY 82 revenues is due to a shortfall in FY 82 estimated to be (\$ millions):

FY 82 SHORTFALL

<u>Source of Estimate</u>	<u>Amount</u>
Legislative Finance	
High	(\$1197.1)
Medium	(1321.4)
Low	(1344.5)
Department of Revenue	(708.4)

In this analysis, the medium case is not necessarily to be taken as the most likely. These three cases, as explained in this memo under "oil price scenarios", are a means of analyzing the two opposing sides of the debate on oil prices and the impact on Alaska if a particular view should happen to be correct.

The assumed Sadlerochit wellhead prices behind these estimates are (\$ per barrel)

SADLEROCHIT WELLHEAD PRICES

<u>Source of Estimate</u>	<u>FY 82</u>	<u>FY 83</u>
Legislative Finance		
High	\$20.27	\$20.80
Medium	19.42	16.80
Low	19.28	14.00
Department of Revenue	22.41	23.62

CURRENT OIL MARKETS

A low level of demand for petroleum products has resulted in sharp decreases in January 1982 in spot market and domestic prices for crude oil. Some delivered prices for Alaskan North Slope (Sadlerochit) fell below \$30.¹ Spot prices for heavier Mid-East grades have been reported as low as \$27 and for Arabian Light as low as \$29. U.S. posted prices have been reduced \$1-\$2 a barrel. Generally, official OPEC prices remain at the levels established in October, 1981.

As can be seen in the attached chart, Alaskan and spot prices are now below the official Saudi price of \$34 by a record amount since decontrol of U.S. prices occurred in February, 1981. Official prices for heavier OPEC oil were reduced by 50¢ to a dollar January 1, 1982 in recognition of the especially soft markets for heavier oil products used in space heating and industrial or utility boilers. Conversions to gas for space heat and coal for boilers appear to be making significant inroads on oil consumption in these two markets.

The generally higher yield of heavier products from the relatively heavy Alaskan crude is part but not all the reason for its drop in January. The January price reductions have cut across all grades of oil. The bulk of Sadlerochit crude is sold on contract or intra-company transfer pricing which tends to lag the spot market. Thus, further declines in Alaskan wellhead prices may be expected.

Part of the reason for the generally low level of demand and January's price drop is that inventories are being drawn down. Continued high interest rates and expectations of still lower prices make inventory reduction the preferred source of supply.

Other reasons for the current slack demand are the state of the world economy and continued conservation and fuel substitution measures. In the U.S., auto production is at the lowest levels since the 1950's. U.S. fuel oil consumption was 10% below last year for the month of January despite a colder winter.

One reason to expect that official OPEC prices may come down is that refiners are generally losing \$2 to \$3 per barrel on each barrel of OPEC oil that they refine and sell in current markets. Significant increases in demand or reductions in supply are required if OPEC prices are to remain at their current levels.

1. Sources for oil prices and energy consumption per GNP quoted in this memo are various issues of "Petroleum Intelligence Weekly".

WEST COAST OIL MARKET

Three factors related to the West Coast oil market are likely to have an adverse effect on Alaskan wellhead prices:

- 1) the current soft market is likely to spur competition in the West Coast market; current Gulf Coast prices are only \$1.25 a barrel higher than on the West Coast, yet the transportation costs are as much as \$3.50 a barrel more; thus West Coast prices could fall as much as \$2.25 a barrel and still yield the same wellhead price; however, the incentive to compete for the West Coast market is minimized by the fact that wellhead taxes and royalty, including most notably the windfall profits tax, take around 90¢ of each dollar increase in wellhead;
- 2) new production from Kuparuk will intensify competition on the West Coast; because there are no windfall profits taxes on Kuparuk production (which makes a higher wellhead more valuable to producers), there will be a strong incentive to market it on the West Coast until netback prices at the wellhead are equal to the Gulf Coast;
- 3) the prospective long-term sale contracts of royalty oil in-kind by the state could have similar effects as Kuparuk; the extra margin earned by marketing it on the West Coast is smaller since the cost of royalty oil to a purchaser is based on the average of West Coast and Gulf Coast sales; however, this extra margin is not diluted by wellhead taxes and royalties and thus provides a strong incentive to market it on the West Coast until netback prices are equal to the Gulf Coast;

In September 1981, roughly 862,000 BPD of North Slope oil went to the West Coast and 655,000 BPD to the Gulf Coast. Assuming that Kuparuk production of 89,000 BPD and roughly 100,000 BPD of the state's royalty sales displace North Slope producers' oil to the Gulf Coast, Sadlerochit average prices would drop by 20¢ if there is no reduction of West Coast prices. Kuparuk would come in \$1.18 higher than Sadlerochit except that gathering charges of \$1.00 per barrel and a gravity differential of 37.5¢ a barrel would actually give it a wellhead 19¢ lower than Sadlerochit.

If West Coast prices fall the full \$2.25 a barrel necessary to equalize netback prices at the wellhead with the Gulf Coast, the Sadlerochit wellhead would drop \$1.27. Kuparuk would be \$1.37 less than Sadlerochit.

The prospect of the trans-Panama oil pipeline opening in January 1983 means transport from the West Coast to the Gulf Coast might fall as much as \$1.00 per barrel. In that case, equalizing netback prices for the two markets would require a drop of only \$1.25 on the West Coast and 70¢ in the Sadlerochit wellhead. Again Kuparuk would be \$1.37 less per barrel than Sadlerochit. These drops would be offset by an increase in the wellhead of \$1.00 for Sadlerochit as a result of the cheaper transport through Panama and for Kuparuk as well on the assumption that the West Coast market maintains the same relationship to the Gulf Coast market.

TAPS

Effective January 1982, Exxon reduced its tariff on the Trans-Alaska Pipeline System (TAPS) to \$5.30 from \$5.95. With Exxon's 20% ownership in the line, this increases average wellhead values on the North Slope 13¢ a barrel.

Exxon reduced its tariff to avoid violating provisions of a 1941 consent decree between the U.S. Justice Department and certain oil companies which limits dividends that pipeline-owning companies can pay to affiliated parent companies. If tariffs are not lowered and earnings accumulate in excess of the amounts allowed as dividends, the excess is placed in a frozen account. Other TAPS companies may be following this latter course in the hopes of ultimately recovering funds so frozen. In any event, further tariff reductions by TAPS owners cannot be counted on, absent a settlement of the challenge by the state of TAPS tariffs before the Federal Energy Regulatory Commission (FERC).

OUTLOOK FOR OIL PRICES

There is currently a sharp divergence of opinion about both the demand and supply side of the market.

One group of observers emphasizes conservation and use of alternate fuels as the major and continuing factor in the slide in demand. They can point to a drop of 14% in energy consumption per real dollar of GNP between 1973 and 1981 and an even sharper drop of 27.6% in oil consumption per real dollar of GNP for the same period.

-
2. The other side in the argument would say that these figures exaggerate the effect of conservation because 1981 was a year of recession in which energy-using industries were particularly adversely affected.

This same group generally has bearish expectations regarding supply, too. They anticipate non-OPEC production rising significantly and the return of Iran and Iraq as major producers. Most importantly, they assume that OPEC will not be able to limit its members' production efforts. They foresee cut-throat price competition among OPEC members trying to sell enough oil to meet their budgetary needs.

The other party in the debate, which has more bullish views on oil prices, identifies the current recession and inventory liquidation as the more prominent reasons for current slack demand. They generally anticipate that the economy will pick up steam towards the end of the year and that inventories will have reached satisfactory levels around the middle of the year. Thus, they expect demand to slowly increase over the year.

The bulls feel that OPEC will not break down in the face of reduced demand. Either demand for OPEC oil will be such that Saudi Arabia can soak up the glut by reducing its ~~consumption~~^{production} or else in the face of sharp declines in demand, the sobering prospect of ruinous competition will restrain OPEC members from competing for market shares. There are signs that some OPEC members, including Nigeria, are preparing sharply reduced budgets.

OIL PRICE SCENARIOS

The two opposing views of prospective oil prices can be analyzed in three scenarios. Two scenarios, high demand and low demand cases, would have the common assumption that OPEC is able to keep the market roughly in balance through production and/or price reductions.

-
3. 6 million barrels per day (BPD) is likely to be a floor that the Saudi's would be very reluctant to penetrate because it would cut into their five year development plan, result in imports exceeding exports, and not provide sufficient associated gas for new industries according to "Petroleum Intelligence Weekly", January 25, 1982 issue. It appears that the Saudis are, as promised, letting the market determine their production levels, at least within limits. It is believed that producing companies underlifted by as much as 700,000 BPD in January from the official Saudi production level of 8.5 million BPD. However, some experts feel Saudi production levels would have to drop to around 4 million BPD to soak up excess capacity and also change price expectations that are resulting in inventory drawdowns and short sales by oil speculators.

The possibility that OPEC would lower official prices probably is less likely than cuts in production. Given the short-run inelasticity of demand, cuts in prices would leave members with less revenue from selling the same amount of oil and only exacerbate tendencies towards cut-throat competition. Cuts in production could be disproportionately borne by countries with revenue surpluses.

There are indications that present price levels and expectations are already showing the desired effect on long-run demand for OPEC oil. Many synfuels projects are being dropped or shelved indefinitely and deep-water drilling plans are being cut back. Sales of coal reserves are showing softness.

In any event, OPEC's pricing behavior is expected to be of secondary importance in determining non-OPEC prices. Because of declining markets, price leadership has passed to non-OPEC producers. Some of the important ones like the U.S. and U.K. have strong incentives to meet market declines with reduced prices; U.S. producers can shift profits to refining and marketing and so avoid windfall profits taxes on production. For OPEC governments to reduce prices poses difficult budgetary and political problems each time it becomes necessary.

Thus, in the first two cases, it can be assumed that prices generally follow the market with OPEC serving only to prevent runaway competition.

It is conceivable that OPEC could become so alarmed about long-run demand that they decide to lower prices well below current market levels in order to discourage conservation and fuels substitution. The enormous pressures this would place on deficit-ridden members to cheat on prices, not to mention the difficulty of achieving consensus on such a decision, make such a scenario unlikely enough that it suffices to consider only one additional scenario. This is one of a precipitous decline in prices due to cut-throat competition among OPEC members.

Practically speaking, prices, and thus Alaska revenues, could fall anywhere between the higher cases and the low case of a shattered OPEC. These points in between can represent the basic uncertainty about where the bottom of the market is or they can even represent the possibility of OPEC making a drastic reduction in price and somehow being able to hold the line at that point.

The detailed assumptions as to price in the three scenarios are:

High Case- high demand, OPEC intact

1) January - June, 1982

The spot market remains depressed due to weak demand, some OPEC cheating, and speculators' short trading. Consequently, Sadlerochit delivered prices drop from \$31.15 in December 1982 to \$29 for this period. (By comparison comparable Mid-East grades in January are trading at and are valued by refiners at \$27 to \$28 a barrel). With roughly \$10 in transportation costs subtracted from the delivered price, the Sadlerochit wellhead would be \$19.

2) July - December, 1982

- a) Demand picks up a bit as inventories reach satisfactory levels. OPEC makes production cuts and cheating abates, firming up prices. Sadlerochit wellheads rise \$1 a barrel.
- b) West Coast prices fall \$1.25 relative to Gulf Coast prices, resulting in a 70¢ reduction in Sadlerochit wellhead. Kuparuk and royalty sales responsible.

3) January - June, 1983

- a) World economies pick up. OPEC possibly raises prices by some amount less than inflation. Sadlerochit wellhead rises \$2 a barrel.
- b) Completion of the Panama pipeline raises Sadlerochit wellhead \$1.00 a barrel.

Medium Case- low demand, OPEC intact

1) January - June, 1982

- a) Markets generally weaker than high case. Sadlerochit wellhead averages \$18 a barrel for the period.
- b) West Coast prices fall \$1.25 relative to Gulf Coast, reducing Sadlerochit wellhead 70¢ further. Kuparuk responsible.

2) July - December, 1982

Even though inventories have been worked off, demand remains flat. OPEC production reductions help stabilize markets. No change in prices.

3) January - June, 1983

- a) Upward pressure on prices from gains in world economic activity, if any, is more than offset by continued conservation and fuel switching. OPEC continues price freeze. Sadlerochit prices decline \$2 a barrel.
- b) Completion of Panama pipeline raises Sadlerochit wellhead \$1.00 a barrel.

Low Case- demand irrelevant, OPEC shattered

The question here is "where is the bottom?". No one knows. William Brown of the Hudson Institute in a well-known article in "Fortune" suggested \$20 a barrel or conceivably \$15. Others have suggested \$22-\$28. This case arbitrarily picks \$20 in 1981 dollars and assumes the decline to that level occurs by the end of FY 83. A higher or lower bottom reached more or less quickly is just as defensible in the face of OPEC's demise.

With inflation at roughly 10% per annum, \$20 in 1981 dollars would be \$24 in 1983. Assuming the \$24 figure refers to Arabian Light, Sadlerochit might fetch only \$22 because of its lesser quality. This would be \$12 at the wellhead. Roughly speaking, wellheads might average \$17, \$15, and \$13 a barrel for the next three six month periods.

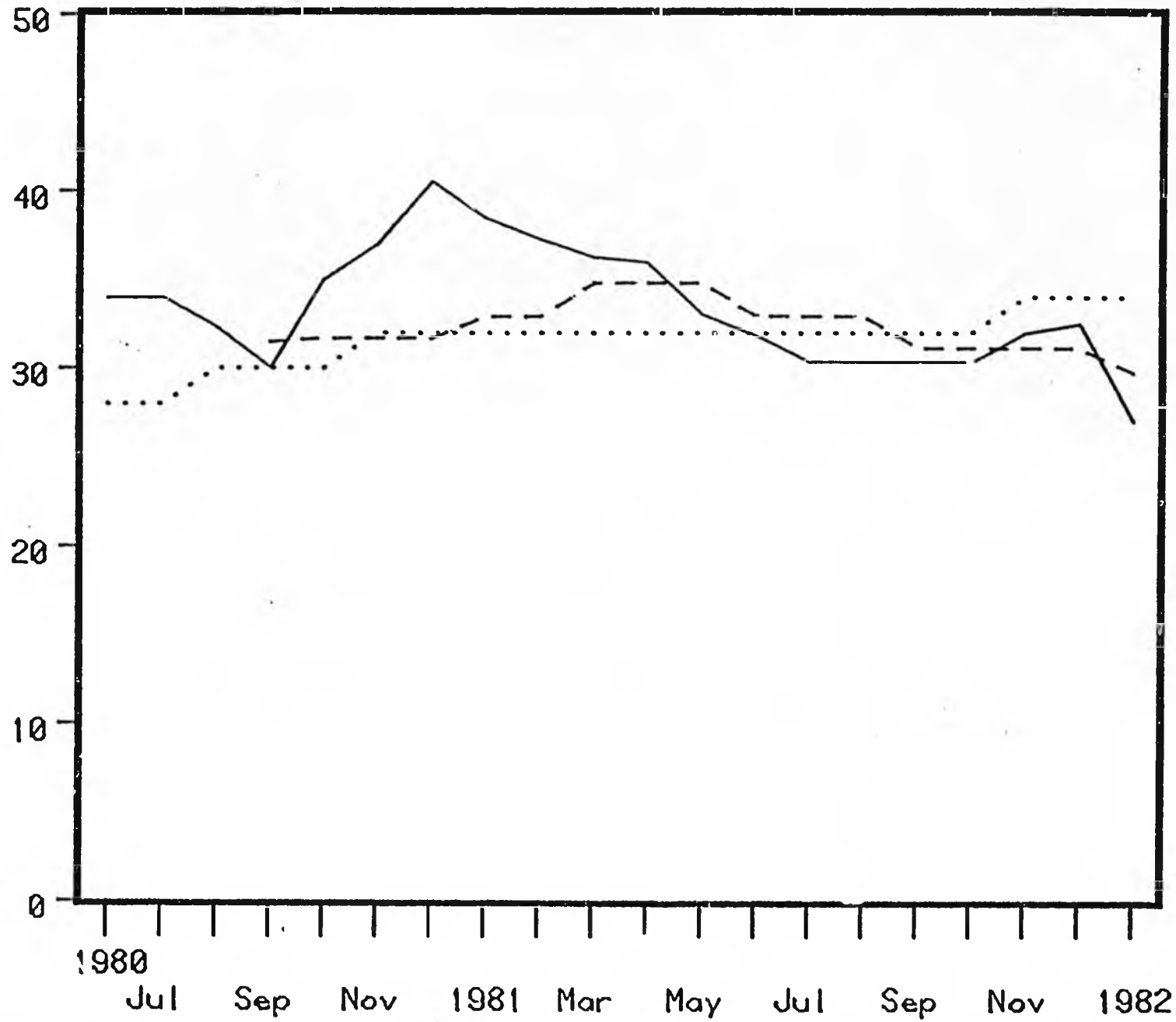
The wellhead prices implied by these three scenarios for Sadlerochit and Kuparuk are shown in Tables VI and VII.

INDEX TO TABLES

<u>SUBJECT</u>	<u>TABLE (S)</u>
General Funds Available for Appropriation	I
Petroleum Revenues	
High Estimate	II
Medium Estimate	III
Low Estimate	IV
Sadlerochit Windfall Profit Taxes (Current Statutes)	V
Sadlerochit Oil Prices	VI
Kuparuk Oil Prices	VII

OIL PRICES

Source: Petroleum Intelligence Weekly



\$ / B a r r e l

- Spot Price
- - - - - Sadlenochit
- Arabian Light

Table I
General Funds Available for Appropriation
(\$ Millions)

	<u>High Estimate</u>		<u>Medium Estimate</u>		<u>Low Estimate</u>	
	<u>Liquid General Funds</u>	<u>Total General Funds</u>	<u>Liquid General Funds</u>	<u>Total General Funds</u>	<u>Liquid General Funds</u>	<u>Total General Funds</u>
General Fund Balance 6/30/81 ¹	490.8	891.6	490.8	891.6	490.8	891.6
<u>FY 82</u>						
Revenue ²						
Royalty (Net of Permanent Fund)	1157.8	1157.8	1108.0	1108.0	1098.9	1098.9
Severance	1585.5	1585.5	1519.2	1519.2	1507.1	1507.1
Petroleum Corporate Income Tax	442.9	442.9	434.7	434.7	432.8	432.8
Property Tax	155.0	155.0	155.0	155.0	155.0	155.0
Other	<u>506.0</u>	<u>506.0</u>	<u>506.0</u>	<u>506.0</u>	<u>506.0</u>	<u>506.0</u>
Total Revenue	3847.2	3847.2	3722.9	3722.9	3699.8	3699.8
Lapse and Loan Repayments ¹	74.0	50.0	74.0	50.0	74.0	50.0
Appropriations ³	<u>(5609.1)</u>	<u>(5609.1)</u>	<u>(5609.1)</u>	<u>(5609.1)</u>	<u>(5609.1)</u>	<u>(5609.1)</u>
General Fund Balance 6/30/82	(1197.1)	(820.3)	(1321.4)	(944.6)	(1344.5)	(967.7)
<u>FY 83</u>						
Revenue ²						
Royalty (Net of Permanent Fund)	1211.3	1211.3	983.9	983.9	822.1	822.1
Severance	1655.5	1655.5	1320.5	1320.5	1132.9	1132.9
Petroleum Corporate Income Tax	393.9	393.9	372.6	372.6	337.7	337.7
Property Tax	157.7	157.7	157.7	157.7	157.7	157.7
Other	<u>527.8</u>	<u>527.8</u>	<u>527.8</u>	<u>527.8</u>	<u>527.8</u>	<u>527.8</u>
Total Revenue	3946.2	3946.2	3362.5	3362.5	2978.2	2978.2
Loan Repayments ¹	24.0	-	24.0	-	24.0	-
Appropriations ⁴	<u>(209.2)</u>	<u>(209.2)</u>	<u>(209.2)</u>	<u>(209.2)</u>	<u>(209.2)</u>	<u>(209.2)</u>
General Fund Available for Appropriation	2563.9	2916.7	1855.9	2208.7	1448.5	1801.3

TABLE I

- NOTES:
1. "Executive Budget, FY 83", Budget & Management, Office of the Governor
 2. From Table II-IV except property tax and "other" from "Revenue Sources", Alaska Department of Revenue, January 1982 with \$15.0 in NPRA bonus revenue added to "other" for FY 82.
 3. This is the figure in "Executive Budget, FY 83" increased by \$400 million in Permanent Fund appropriations that had been deleted and reduced by \$50 million that had been included for supplementals.
 4. \$100 million for energy and \$101.2 million for municipal aid in Ch. 92, SLA 81 and 8.0 for senior citizen housing in Ch. 76, SLA 81.

TABLE II
PROJECTED PETROLEUM REVENUES
HIGH ESTIMATE
(\$ Millions)

	(1) <u>Sadlerochit</u>	(2) <u>Field Cost Settlement</u>	(3) <u>"Exhibit B" Price for In-Kind Oil</u>	(4) <u>Bonus from Royalty Auction</u>	(5) <u>Alaska Oil Co. Price Dispute</u>	(6) <u>Kuparuk</u>	(7) <u>Cook Inlet</u>	(8) <u>TAPS</u>	(9) <u>Total (Accrual Basis)</u>	(10) <u>Retro "Warts" & Windfall Deductions</u>	(11) <u>Total (Cash Basis)</u>
<u>FY 81</u>											
Royalty	1414.7	30.0	(Not used	--	--	--	60.7	--	1505.4	--	1491.3
Severance	1153.3	--	in this	--	--	--	26.8	--	1180.1	--	1169.9
Petroleum Corporate Income Tax	618.6	(2.8)	analysis)	--	--	--	18.3	203.0	837.1	--	860.1
<u>FY 82</u>											
Royalty	1402.2	--	17.0	35.0	(60.0)	37.3	112.3	--	1543.8	--	1543.8
Severance	1518.8	--	--	--	--	33.1	33.6	--	1585.5	--	1585.5
Petroleum Corporate Income Tax	421.0	--	--	--	--	13.7	19.7	144.5	598.9	(215.5)	442.9
<u>FY 83</u>											
Royalty	1423.7	--	9.1	--	--	83.8	102.5	--	1615.1	--	1615.1
Severance	1545.3	--	--	--	--	74.4	35.8	--	1655.5	--	1655.5
Petroleum Corporate Income Tax	224.2	--	--	--	--	14.3	6.7	80.4	325.6	--	393.9

TABLE III
PROJECTED PETROLEUM REVENUES
MEDIUM ESTIMATE
(\$ Millions)

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
	<u>Sadlerochit</u>	<u>Field Cost Settlement</u>	<u>"Exhibit B" Price for In-Kind Oil</u>	<u>Bonus from Royalty Auction</u>	<u>Alaska Oil Co. Price Dispute</u>	<u>Kuparuk</u>	<u>Cook Inlet</u>	<u>TAPS</u>	<u>Total (Accrual Basis)</u>	<u>Retro "Warts" & Windfall Deductions</u>	<u>Total (Cash Basis)</u>
<u>FY 81</u>											
Royalty	1414.7	30.0	(Not used	--	--	--	60.7	--	1505.4	--	1491.3
Severance	1153.3	--	in this	--	--	--	26.8	--	1180.1	--	1169.9
Petroleum Corporate Income Tax	618.6	(2.8)	analysis)	--	--	--	18.3	203.0	837.1	--	860.1
<u>FY 82</u>											
Royalty	1343.3	--	17.0	35.0	(60.0)	32.8	109.3	--	1477.4	--	1477.4
Severance	1457.0	--	--	--	--	29.3	32.9	--	1519.2	--	1519.2
Petroleum Corporate Income Tax	413.3	--	--	--	--	11.8	18.3	144.5	587.9	(215.5)	434.7
<u>FY 83</u>											
Royalty	1150.0	--	5.1	--	--	66.5	90.3	--	1311.9	--	1311.9
Severance	1257.8	--	--	--	--	59.5	32.3	--	1320.5	--	1320.5
Petroleum Corporate Income Tax	206.0	--	--	--	--	10.6	4.0	80.4	300.8	--	372.6

TABLE IV
PROJECTED PETROLEUM REVENUES
LOW ESTIMATES
(\$ Millions)

	(1) <u>Sadlerochit</u>	(2) <u>Field Cost Settlement</u>	(3) <u>"Exhibic B" Price for In-Kind Oil</u>	(4) <u>Bonus from Royalty Auction</u>	(5) <u>Alaska Oil Co. Price Dispute</u>	(6) <u>Kuparuk</u>	(7) <u>Cook Inlet</u>	(8) <u>TAPS</u>	(9) <u>Total (Accrual Basis)</u>	(10) <u>Retro "Warts" & Windfall Deductions</u>	(11) <u>Total (Cash Basis)</u>
<u>FY 81</u>											
Royalty	1414.7	30.0	(Not used	--	--	--	60.7	--	1505.4	--	1491.3
Severance	1153.3	--	in this	--	--	--	26.8	--	1180.1	--	1169.9
Petroleum Corporate Income Tax	618.6	(2.8)	analysis)	--	--	--	18.3	203.0	837.1	--	860.1
<u>FY 82</u>											
Royalty	1333.7	--	17.0	35.0	(60.0)	30.7	108.9	--	1465.3	--	1465.3
Severance	1446.9	--	--	--	--	27.4	32.8	--	1507.1	--	1507.1
Petroleum Corporate Income Tax	412.0	--	--	--	--	10.8	18.1	144.5	585.4	(215.5)	432.8
<u>FY 83</u>											
Royalty	958.3	--	5.1	--	--	51.4	81.4	--	1096.2	--	1096.2
Severance	1056.5	--	--	--	--	46.5	29.9	--	1132.9	--	1132.9
Petroleum Corporate Income Tax	165.8	--	--	--	--	7.0	1.9	80.4	255.1	--	337.7

NOTES TO TABLES II - IV:

1. Royalty = production X in-value price X .125; source: Table VI.
FY 81 Severance = production X (invalue + field cost) X .875 working interest X .1225 tax X ELF; source: Table VI, except ELF from Col. 6, Table 5 "Fiscal Analysis of the Proposed Backstop Tax Legislation", Gregg Erickson, May 1981.
FY 82-83 Severance = production X (in-value price + field costs) X .875 X .15 tax; source: Table VI.
FY 81 Income Tax = (production X (in-value price + field costs) from Table VI less royalty and severance from above less windfall profits tax from Table V less other deductions from "Erickson" Table 9) X (.11 + .094)/2 average tax rate.
FY 82 Income Tax = FY 81 formula X (1.0 + .39)/2 average apportionment tax collections relative to AS 43.21.
FY 83 Income Tax = FY 82 formula with substitution of .094 tax rate and .39 apportionment factor.
2. Field cost settlement at 42¢ per barrel on 979 million barrels of pre-1980 production and 55¢ per barrel on 277 million barrels of production for first half of calendar 1980 compared to company charges of 64¢ per barrel.
3. 50¢ surcharge on in-value price for June 1981 applied to 28,000 BPD of in-kind sales to Golden Valley/North Pole for FY 82 and FY 83 and on 75,000 BPD to Alauka Oil Co. and 55,000 of royalty auction crude for first half of FY 82.
4. Average bonus of \$2.39 on 55,000 BPD for first half of FY 82 plus \$11 million in settlements from companies failing to take 30,000 BPD.
5. "Revenue Sources", Department of Revenue, January 1982.
6. Royalty = production X in-value Kuparuk price from Table VII X .125.
Severance = production X (in-value price + field costs) X .1225 tax rate X .875 working interest.
Income Tax = (production X (in-value price + field costs) less severance and royalty from above less other deductions from "Erickson" Table 10) X (.11 + .094)/2 tax rate X (1.0 + .39)/2 apportionment factor for FY 82 or .094 tax rate and .39 apportionment factor for FY 83.
7. Royalty = oil production from Col. 2, Table 12 "Erickson" X (Sadlerochit in-value price plus \$10 per barrel for FY 82 and FY 83 and controlled price of \$13.59 for FY 81) X .125 plus gas royalties from "Petroleum Production Revenue Forecast", Department of Revenue, December 1981.
Severance = oil production X prices X .1225 for FY 81 or .15 for FY 82 or FY 83 X .875 working interest X (ELF factors of .36 for FY 81, .23 for FY 82, and .27 for FY 83 as calculated from data in "Petroleum Production Revenue Forecast") plus (gas severance taxes from "Petroleum Production Revenue Forecast").
Income Tax = (Oil production X price plus gas production X gas price from Table 12 "Erickson" less royalty and severance from above less additional deductions from Table 12 "Erickson" less windfall profit tax derived from Line 5, Table 17 "Erickson") X (.11 + .094)/2 tax rate for FY 81 and X (1.0 + .39)/2 apportionment factor for FY 82 or X .094 tax rate and .39 apportionment factor for FY 83.
8. Income Tax = net income from Col. 8, Table 11, "Erickson", except FY 83 estimated which use \$2193.7 million net income based on a tariff of \$6.08 to account for Exxon's reduced tariff X (.11 + .094)/2 tax rate for FY 81 and X (1.0 + .39)/2 apportionment factor for FY 82 or X .094 tax rate and .39 apportionment factor for FY 83.

(CONTINUED)

NOTES TO TABLES II - IV (CONTINUED):

9. Sum of columns 1 through 8.
10. Windfall profits tax of \$2.016.2 million for FY 81 at an average tax rate of $(.11 + .094)/2 = .102$ FY 81 tax benefit for this deduction. This is lagged one quarter of a year to put the benefit on a collections basis using \$18.9 million from "Erickson" Table 17, Note 2 as the value of windfall deductions for the last quarter of FY 80. "Warts" deductions for FY 81 and prior years have a value of \$83 million according to the Department of Revenue fiscal note for FCCS SB 524 which is adjusted by $(.11/.094)$ for 1/2 year at .11 tax rate. In addition, there is a retroactive assessment of the .11 tax rate against the first quarter of calendar 1981's collections of \$280.3 million which would not otherwise be picked up by lagging collections one quarter - $(.11/.094) \times 280.3 = 280.3$. All three items are adjustments to FY 82 because the FY 81 cash totals in col. 11 are actual collections.
11. FY 81 = actual collections
FY 82 and FY 83 royalty and severance = Col. 9.
FY 82 and FY 83 income tax = Col. 9 income tax lagged one quarter plus Col. 10.

TABLE V
SADLEROCHIT WINDFALL PROFIT TAX ESTIMATES

	(1)	(2)			(3)	(4)			(5)		
	WORKING INTEREST PRODUCTION (Millions of Barrels)	WELLHEAD PRICE PER BARRELL			WINDFALL BASE PRICE	NET WINDFALL (\$ MILLIONS)			WINDFALL PROFITS TAX (\$ MILLIONS)		
		HIGH	MEDIUM	LOW		HIGH	MEDIUM	LOW	HIGH	MEDIUM	LOW
FY 81	479.2	\$20.50	\$20.50	\$20.50	\$13.69	2880.2	2880.2	2880.2	2016.2	2016.2	2016.2
FY 82	479.2	20.27	19.42	19.28	14.92	2162.8	1818.8	1762.1	1514.0	1273.1	1233.5
FY 83	479.2	20.80	16.80	14.00	16.65	1580.4	60.0	--	1176.2	42.5	--

NOTES:

1. Assumes production of 1.5 million BPD less 1/8 royalty exempt from windfall profits tax.
2. From Table VI.
3. Table 7, Col. 3 "Fiscal Analysis of the Proposed Backstop Tax Legislation," Gregg Erickson, May 1981.
4. (Col. 1 X (Col. 2 - Col. 3)) - (Severance taxes from Tables II - IV) (Col. 2 - Col. 3)/Col. 2.
5. Col. 4 X .7.

TABLE VI
SADLEROCHIT CRUDE
ACTUAL AND PROJECTED PRODUCTION AND PRICES
FY 81 - 83

	ACTUAL			PROJECTED				
	Production (Millions of Barrels)	In-Value Royalty Price	Field Costs Per Barrel	Production (Millions of Barrels)	In-Value Royalty Price			Field Costs
					High	Medium	Low	
FY 81	552.1	\$ 20.50	\$.58					
<u>FY 82</u>								
July	47.1	21.99	.62					
August	47.1	21.63	.62					
September	45.8	21.25	.62					
October	46.9	21.52	.62					
November	46.0	21.42	.62					
December	46.7	21.24	.62					
First Half FY 82	279.6	21.51	.62					
Second Half FY 82				273.8	\$19.00	\$17.30	\$17.00	.67
Total Production				553.4				
Average Prices					20.27	19.42	19.28	.64
<u>FY 83</u>								
First Half FY 83				273.8	19.30	17.30	15.00	.67
Second Half FY 83				273.8	22.30	16.30	13.00	.72
Total Production				547.6				
Average Prices					20.80	16.80	14.00	.70

TABLE VII
KUPARUK CRUDE
PROJECTED PRODUCTION AND PRICES
FY 82-83

	<u>Production (Millions) of Barrels</u>	<u>In-Value Royalty Price</u>			<u>Field Costs</u>
		<u>High</u>	<u>Medium</u>	<u>Low</u>	
<u>FY 82</u>					
Total Production	15.70				
Average Prices		\$19.00	\$16.75	\$15.63	\$.64
<u>FY 83</u>					
First Half FY 83	14.60	18.75	16.75	13.63	
Second Half FY 83	18.25	21.75	15.75	11.63	
Total Production	32.85				
Average Prices		20.42	16.19	12.52	\$.70

NOTES: See text sections on "West Coast Market" and "Oil Price Scenarios". These numbers assume Kuparuk is sold at West Coast prices and are related to Sadlerochit as follows:

- 1) equal to Sadlerochit with no change in West Coast price differential;
- 2) 55¢ less than Sadlerochit if West Coast prices drop \$1.25 since Sadlerochit drops 70¢ and Kuparuk \$1.25; Panama pipeline does not change the differential between the markets;
- 3) \$1.37 less than Sadlerochit in the low case on the assumption that distressed markets eliminate any wellhead price differential for the West Coast market.

PREPARED BY:
Legislative Finance
2/24/82

Alaska
Ruralite®

POSTMASTER: Change of address & PO Form 3579 to be sent to GHEA, Inc., PO Bx 115, Auke Bay, AK 99821.

February 1982

Glacier Highway



Uncle Fatz
Page 16
see also pages 8-9, 24-28



Dave Hutchens
executive director,
Alaska Rural Electric
Cooperative Association

The Alaska Scene

“Hydro Reform”?

A recent editorial in an Anchorage newspaper endorsed “hydro reform.” Their endorsement was based on a great deal of misinformation. The legislature enacted an excellent program last year for hydroelectric development. This program has not yet had time to be implemented. Rather than amending the present program, advocates for change should take the time to understand how it would work.

Before a hydro project can be built under the present law, it has to be proved to be the least costly alternative available to the public, on a life cycle analysis using real world interest costs. Only then can the project be included in the Energy Program for Alaska. The fact that consumers will pay lower rates because of this financing program has no part at all in the feasibility analysis.

The “hydro reform” proposal the newspaper endorsed would greatly increase the cost of electricity to consumers. Using Terror Lake on Kodiak Island as the example, this proposal would add 3.3¢ per KWH to consumers’ bills in the first year. This amount increases each year until it reaches a final level of more than 20¢ per KWH, in addition to the costs the

consumers would pay under the present law.

Relative freedom from inflation in rates is the greatest natural benefit of a hydro project. Requiring rates to increase with inflation makes certain that this benefit will never be realized.

The most destructive feature of this proposal is the regional competition and animosity it would bring. Whoever gets to the public trough first would get the exclusive benefits of the state money that is appropriated for their project. If there isn’t enough money to pay for later projects, people in those areas would get no benefit from state money invested in earlier projects.

The present law is fair because the costs are averaged among all projects in the statewide system. Consumers served by later projects will share in the benefits of the money appropriated to earlier projects. Consumers served by earlier projects will help pay the debt service on later projects financed by bonds after state money is no longer available for that purpose.

The present law provides the opportunity to finance new projects as they are needed, indefinitely into the future. Under the new proposal, only those communities getting state money now will be able to finance the next generation of projects 30 years from now.

Industry Comparative Data

	Rural Electric Co-op	Publicly Owned	Investor- Owned
Federal Assistance (\$ Millions)	85 ¹	331	3,000 ²
Financial Assistance per consumer (annual \$)	\$9.46	\$40.45	\$42.48
Average Interest Rate	13.50%	12.00%	15.25%
Effective Capital Cost ³	13.5%	12.0%	12.9%
Borrowed Capital, % of Total ⁴	94%	85%	48%
Investment in Distribution Plant per Consumer	\$1,337	\$648	\$825
Consumers per Mile of Line	4.6	NA	35.8
Revenue per Mile of Line	\$2,887	NA	\$36,652

1. OMB calculation of REA insured rate less market rate times loan level.

2. Retained tax benefits (prel. data).

3. Reflecting federal assistance.

4. Proportion of capital financed and not internally generated (from depreciation, retained earnings, tax benefits).



Department Of Energy

Alaska Power Administration
P.O. Box 50
Juneau, Alaska 99802

February 26, 1982

Mr. Kurt Dzinich
Senator J. M. Kerttula
Capitol Building
Pouch V MS 3100
Juneau, AK 99811

Dear Mr. Dzinich:

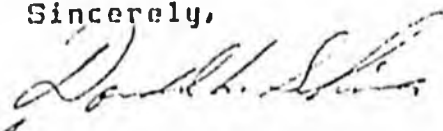
Alaska Power Administration has developed a general computer program for comparing revenue requirements of power projects under various sets of repayment criteria. This program allows a user to look at any number of projects scheduled to be built in the next twenty years and calculates the annual revenue requirements and energy rates needed to meet these requirements.

We are enclosing an abstract of the program and analyses for projects which may be developed in the State during the next twenty years. The data for the projects was obtained from the latest information available to APA, however, there may be changes that we are not aware of. This should not affect the outcome of the analyses since the main purpose was to compare the different sets of repayment criteria and the same data was used in all the alternatives examined.

The output presented here includes analyses of revenue criteria in existing and proposed legislation as well as one representing a standard method of financing. Firm energy was used in each case and the rates listed for firm energy cost should not be construed to represent the actual energy cost when the projects are built. Additional costs such as administration and overhead have not been considered and they would be included in any actual rate determination.

This program was developed for APA studies, however, we would welcome its use by anyone interested in making comparisons of various methods of financing power projects. Please feel free to contact this office if you have any questions.

Sincerely,



Robert J. Cross
Administrator

Enclosures

Reson King | 3/2/82
Rm 211c

P R O G R A M A B S T R A C T

This program allows the user to calculate the future revenue requirements and energy costs for power projects financed under a broad range of financing criteria. The following methods may be selected.

1. Standard Financing (e.g. 7% for 25 years)
2. Annual Return on Investment (e.g. 10%)
3. Repayment of Investment Only (e.g. over a 20-year period)

The program reads input data on any number of projects expected to come on-line through the year 2005. This input data consists of project name, construction costs, OM&R costs, energy output, and on-line date. Projects may be fully loaded when brought on-line or they may have staged output. All costs are assumed to be January 1982

Output consists of a schedule of projects showing on-line dates, costs, energy, and a yearly tabulation of the revenue requirements and energy costs. A summary of the repayment methods follows.

STANDARD FINANCING - this method allows the user to specify any interest rate and any period of repayment. Revenue requirements would include the repayment of investment based on these rates plus the costs of OM&R.

ANNUAL RETURN ON INVESTMENT - this method allows the user to specify any return on investment desired. The user has the option of including OM&R costs in the annual revenue requirements or using the greater of a.) the annual return on investment or b.) the OM&R costs as the value to use for the annual revenue requirement. The latter option represents existing Alaska legislation.

REPAYMENT OF INVESTMENT ONLY - this method allows the user to specify any period for repayment of investment interest-free. An option allows the user to adjust future payments for inflation based on the Consumer Price Index -- representative of proposed legislation. Annual revenue requirements are based on the repayment costs plus OM&R costs.

A future inflation rate may be specified. This rate would inflate the construction costs for the projects to the mid-point of construction while the OM&R costs would increase at this annual rate throughout the project life.

The user may use firm or average energy in the input as long as all projects are treated in the same manner. Using average energy will result in lower energy rates, however, the results are for comparison purposes only and are not meant to show the exact cost of energy. Administrative and overhead costs are not included in these calculations and they would increase the cost of energy. The energy from the projects can also be at full load at project start or it may be built up over a period of years. Transmission facilities do not contribute to the overall production of energy therefore the energy associated with them is always zero.

The user also has the option of performing a present-worth study of the above financing methods. This analysis should only be completed if the period of study is extended through the life of the projects.

INFLATION

0%

ALASKA POWER ADMINISTRATION
FINANCIAL ANALYSIS PROGRAM

SCHEDULE FOR PROJECTS EXAMINED

YEAR	PROJECT NAME	1982 CONSTRUCTION COST (\$1000)	ANNUAL OM&R\1 (\$1000)	FIRM ENERGY (MWH)
1982	SOLOMON GULCH	49,500	280	40,780
1983	SWAN LAKE	70,000	690	85,000
1984	TYEE	99,000	1,050	127,000
	RAILBELT INTERTIE	131,000	4,700	0
	KAKE/PETERSBURG INTERTIE	8,000	28	0
	WEST CREEK	57,500	750	26,540
	PRESSURE REDUCING TURB.	10,900	225	52,000
1985	TERROR LAKE	174,000	830	129,000
1986	KENAI PENINSULA T/LINE	79,000	850	0
	JUNEAU-HOONAH INTERTIE	21,000	585	0
	TAZIMINA I	58,600	102	78,000
	CORDOVA INTERTIE	12,800	140	0
1988	BRADLEY LAKE	363,600	825	317,500
1990	TAKATZ	153,000	3,000	93,200
	BLACK BEAR	31,000	133	23,700
	ALLISON CREEK	38,400	224	37,250
	TAZIMINA II	52,000	128	110,000
1993	SUSITNA - WATANA	3,700,000	10,000	533,000
1994	WATANA LOAD INCR.	0	0	634,000
1995	WATANA LOAD INCR.	0	0	712,000
1996	WATANA LOAD INCR.	0	0	541,000
2002	SUSITNA - DEVIL CANYON	1,500,000	3,400	559,000
2003	DEVIL CANYON LOAD INCR.	0	0	665,000
2004	DEVIL CANYON LOAD INCR.	0	0	747,000
2005	DEVIL CANYON LOAD INCR.	0	0	569,000

\1 - First year cost only; future years increased by inflation

APA - 2/82

ALASKA POWER ADMINISTRATION
FINANCIAL ANALYSIS PROGRAM

FUTURE INFLATION - 0%

ANNUAL REVENUE REQUIREMENTS:

0% ANNUAL RETURN ON INVESTMENT
ANNUAL OM&R COSTS

YEAR	INVESTMENT PAYMENT (\$1000)	OM&R (\$1000)	ANNUAL REVENUE REQUIREMENT\1 (\$1000)	FIRM ENERGY (MWH)	FIRM ENERGY COST\2 (c/kWh)
1982	0	280	280	40,780	.7
1983	0	970	970	125,790	.8
1984	0	7,723	7,723	331,320	2.3
1985	0	8,553	8,553	460,320	1.9
1986	0	10,230	10,230	538,320	1.9
1987	0	10,230	10,230	538,320	1.9
1988	0	11,055	11,055	855,820	1.3
1989	0	11,055	11,055	855,820	1.3
1990	0	14,540	14,540	1,119,970	1.3
1991	0	14,540	14,540	1,119,970	1.3
1992	0	14,540	14,540	1,119,970	1.3
1993	0	24,540	24,540	1,652,970	1.5
1994	0	24,540	24,540	2,284,970	1.1
1995	0	24,540	24,540	2,993,970	.8
1996	0	24,540	24,540	3,539,970	.7
1997	0	24,540	24,540	3,539,970	.7
1998	0	24,540	24,540	3,539,970	.7
1999	0	24,540	24,540	3,539,970	.7
2000	0	24,540	24,540	3,539,970	.7
2001	0	24,540	24,540	3,539,970	.7
2002	0	29,940	29,940	4,098,970	.7
2003	0	29,940	29,940	4,763,970	.6
2004	0	29,940	29,940	5,510,970	.5
2005	0	29,940	29,940	6,079,970	.5
			444,336	55,739,000	.8

\1 - Excludes Administrative and overhead costs

\2 - If energy sales are less than firm energy available
cost will be higher

APA - 2/82

ALASKA POWER ADMINISTRATION
FINANCIAL ANALYSIS PROGRAM

FUTURE INFLATION - 0%

ANNUAL REVENUE REQUIREMENTS:

THE CREATOR OF:

10% ANNUAL RETURN ON INVESTMENT
OR ANNUAL OM&R COSTS

YEAR	INVESTMENT PAYMENT (\$1000)	OM&R (\$1000)	ANNUAL REVENUE REQUIREMENT ^{\1} (\$1000)	FIRM ENERGY (MWH)	FIRM ENERGY COST ^{\2} (c/kWh)
1982	4,950	280	4,950	40,780	12.1
1983	13,950	970	13,950	125,780	11.1
1984	44,590	7,723	44,590	331,320	13.5
1985	61,970	8,553	61,970	460,320	13.5
1986	79,130	10,230	79,130	538,320	14.7
1987	79,130	10,230	79,130	538,320	14.7
1988	115,470	11,055	115,470	855,820	13.5
1989	115,470	11,055	115,470	855,820	13.5
1990	143,010	14,540	143,010	1,119,970	12.8
1991	143,010	14,540	143,010	1,119,970	12.8
1992	143,010	14,540	143,010	1,119,970	12.8
1993	513,010	24,540	513,010	1,652,970	31.0
1994	513,010	24,540	513,010	2,236,970	22.4
1995	513,010	24,540	513,010	2,798,970	17.1
1996	513,010	24,540	513,010	3,539,970	14.5
1997	513,010	24,540	513,010	3,539,970	14.5
1998	513,010	24,540	513,010	3,539,970	14.5
1999	513,010	24,540	513,010	3,539,970	14.5
2000	513,010	24,540	513,010	3,539,970	14.5
2001	513,010	24,540	513,010	3,539,970	14.5
2002	663,010	29,740	663,010	4,098,970	16.2
2003	663,010	29,740	663,010	4,763,970	13.9
2004	663,010	29,740	663,010	5,510,970	12.0
2005	663,010	29,740	663,010	6,079,970	10.9
			8,212,880	55,739,000	14.7

\1 - Excludes Administrative and overhead costs

\2 - If energy sales are less than firm energy available
cost will be higher

Corrected copy

ALASKA POWER ADMINISTRATION
FINANCIAL ANALYSIS PROGRAM

FUTURE INFLATION - 0%

ANNUAL REVENUE REQUIREMENTS:

REPAYMENT OF INVESTMENT ONLY IN 33.33 Years
(Adjusted for Inflation)

ANNUAL OM&R COSTS

YEAR	INVESTMENT PAYMENT (\$1000)	OM&R (\$1000)	ANNUAL REVENUE REQUIREMENT ^{\1} (\$1000)	FIRM ENERGY (MWH)	FIRM ENERGY COST ^{\2} (c/kWh)
1982	1,485	280	1,765	40,780	4.3
1983	4,251	970	5,221	125,780	4.2
1984	13,627	7,723	21,350	331,320	6.4
1985	19,411	8,553	27,964	460,320	6.1
1986	25,344	10,230	35,574	533,320	6.6
1987	26,365	10,230	36,595	533,320	6.8
1988	38,336	11,055	49,391	855,820	5.8
1989	39,851	11,055	50,916	855,820	5.9
1990	49,704	14,540	64,244	1,119,970	5.7
1991	51,663	14,540	66,203	1,119,970	5.9
1992	53,682	14,540	68,222	1,119,970	6.1
1993	166,764	24,540	191,304	1,652,970	11.6
1994	172,796	24,540	197,336	2,286,970	8.6
1995	179,017	24,540	203,557	2,998,970	6.8
1996	185,433	24,540	209,973	3,539,970	5.9
1997	192,080	24,540	216,620	3,539,970	6.1
1998	198,891	24,540	223,431	3,539,970	6.3
1999	205,943	24,540	230,483	3,539,970	6.5
2000	213,182	24,540	237,722	3,539,970	6.7
2001	220,677	24,540	245,217	3,539,970	6.9
2002	273,419	29,940	303,359	4,098,970	7.4
2003	281,551	29,940	311,491	4,763,970	6.5
2004	289,760	29,940	319,700	5,510,970	5.8
2005	298,110	29,940	328,050	6,079,970	5.4
			3,645,690	55,739,000	6.5

\1 - Excludes Administrative and overhead costs

\2 - If energy sales are less than firm energy available
cost will be higher

ALASKA POWER ADMINISTRATION
FINANCIAL ANALYSIS PROGRAM

FUTURE INFLATION - 0%

ANNUAL REVENUE REQUIREMENTS:

STANDARD FINANCING For 40 Years at 7%
ANNUAL OM&R COSTS

YEAR	INVESTMENT PAYMENT (\$1000)	OM&R (\$1000)	ANNUAL REVENUE REQUIREMENT ^{\1} (\$1000)	FIRM ENERGY (MWH)	FIRM ENERGY COST ^{\2} (c/kWh)
1982	3,713	280	3,993	40,730	9.8
1983	10,464	970	11,434	125,780	9.1
1984	33,447	7,723	41,170	331,320	12.4
1985	46,498	8,553	55,051	460,320	12.0
1986	59,355	10,230	69,585	538,320	12.9
1987	59,355	10,230	69,585	538,320	12.9
1988	36,628	11,055	97,683	855,820	11.4
1989	36,628	11,055	97,683	855,820	11.4
1990	107,271	14,540	121,811	1,119,970	10.9
1991	107,271	14,540	121,811	1,119,970	10.9
1992	107,271	14,540	121,811	1,119,970	10.9
1993	384,804	24,540	409,344	1,652,970	24.8
1994	384,804	24,540	409,344	2,236,970	17.9
1995	384,804	24,540	409,344	2,998,970	13.6
1996	384,804	24,540	409,344	3,539,970	11.6
1997	384,804	24,540	409,344	3,539,970	11.6
1998	384,804	24,540	409,344	3,539,970	11.6
1999	384,804	24,540	409,344	3,539,970	11.6
2000	384,804	24,540	409,344	3,539,970	11.6
2001	384,804	24,540	409,344	3,539,970	11.6
2002	497,318	29,940	527,258	4,098,970	12.9
2003	497,318	29,940	527,258	4,763,970	11.1
2004	497,318	29,940	527,258	5,510,970	9.6
2005	497,318	29,940	527,258	6,079,970	8.7
			6,604,747	55,739,000	11.8

\1 - Excludes Administrative and overhead costs

\2 - If energy sales are less than firm energy available
cost will be higher

INFLATION

7%