

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

3489

HLAB

HB 314

1 members in the manner described in this section. A cooperative formed  
 2 for the generation and transmission of electrical service may not  
 3 elect to be deregulated under this section unless each of its members  
 4 that is organized as a distribution cooperative has held an election  
 5 among its subscribers to determine the cooperative's vote on deregu-  
 6 lation.

7 \* Sec. 27. AS 42.05.720(4) is amended to read:

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


13 (A) furnishing, by generation, transmission or distri-  
 14 bution, electrical service to the public for compensation;

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

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

19 (D) transmitting or distributing [FURNISHING BY TRANS-  
 20 MISSION OR DISTRIBUTION OF] natural or manufactured gas to the  
 21 Alaska public for compensation, but not including a producer who  
 22 transmits or distributes natural or manufactured gas for first  
 23 sale to a person unless the purchaser has an affiliated interest  
 24 with the producer;

25 (E) furnishing for distribution or by distribution  
 26 petroleum or petroleum products to the Alaska public for compen-  
 27 sation when the consumer has no alternative in the choice of  
 28 supplier of a comparable product and service at an equal or  
 29 lesser price;

*Other  
 Lang*  


1 (F) furnishing collection and disposal service of  
2 garbage, refuse, trash or other waste material;

3 \* Sec. 28. AS 44.66.010(4) is amended to read:

4 (4) Alaska Public Utilities Commission (AS 42.05.010) --  
5 June 30, 1989 [1986];

6 \* Sec. 29. Notwithstanding AS 42.05.030, as soon as the term of a  
7 consumer member under AS 42.05.040 expires, the governor shall reappoint or  
8 replace the member for a term of four years so that the terms of the con-  
9 sumer members of the board are staggered.

10 \* Sec. 30. Notwithstanding the amendments to AS 42.05.040 made by  
11 sec. 2 and to AS 42.05.050 made by sec. 3 of this Act, a member of the  
12 commission on the effective date of this Act may continue to serve as a  
13 commission member and may be reappointed to the commission without meeting  
14 the additional qualifications. *grandfather MAUV*

15 \* Sec. 31. The amendments made by secs. 4 - 6, 8 - 13, 15 - 17, and 20  
16 of this Act do not apply to a proceeding begun before the effective date of  
17 this Act.

18 \* Sec. 32. Notwithstanding the amendments made by secs. 21 - 26 of this  
19 Act, a utility that was exempt from AS 42.05.221 on the day before the  
20 effective date of this Act may continue to operate and to receive compen-  
21 sation without holding a certificate from the Public Utilities Commission  
22 until the commission has acted on the utility's application for certifica-  
23 tion if the utility files an application for certification within 60 days  
24 after the effective date of this Act.

25 \* Sec. 33. Notwithstanding AS 42.05.371, a utility that was exempt from  
26 regulation by the Public Utilities Commission on the day before the effec-  
27 tive date of this Act may continue to charge the tariffs it charged on the  
28 day before the effective date of this Act, until otherwise ordered by the  
29 commission, if it files its complete tariff with the commission within 60

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days after the effective date of this Act.

\* Sec. 34. AS 42.05.711(g) and 42.05.711(i) are repealed.

\* Sec. 35. This Act takes effect immediately in accordance with AS 01.10.070(c).

AS 42.05.431

1 rate demanded, observed, charged or collected by a public utility for  
2 a service, subject to the jurisdiction of the commission, or that a  
3 classification, rule, regulation, practice, or contract affecting the  
4 rate, is unjust, unreasonable, unduly discriminatory or preferential,  
5 the commission shall determine a just and reasonable rate, classifica-  
6 tion, rule, regulation, practice, or contract to be observed or al-  
7 lowed and shall establish it by order. A municipality may covenant  
8 with bond purchasers regarding rates of a municipally owned utility,  
9 and the covenant is valid and enforceable and is considered to be a  
10 contract with the holders from time to time of the bonds. A coopera-  
11 tive utility organization under AS 10.25 may enter covenants contained  
12 in mortgages and other debt instruments. The covenant is valid and  
13 enforceable and rates set by the commission must be adequate to meet  
14 the covenants. The commission may require a municipal or cooperative  
15 utility to file a copy of each debt instrument affecting its rates or  
16 to secure advance commission approval of the covenants.

17 \* Sec. 20. AS 42.05.431 is amended by adding new subsections to read:

18 (b) The commission may not amend a wholesale power agreement  
19 after it is in effect.

20 ALTERNATE Do not add this subsection.

21 (c) The commission may not require a utility to refund a perma-  
22 nent rate after it is in effect.

23 ALTERNATE Do not add this subsection.

24 \* Sec. 21. AS 42.05.651 is amended to read:

25 EXISTING TEXT: Sec. 42.05.651. EXPENSES OF INVESTIGATION OR  
26 HEARING. After completion of a hearing or investigation held under  
27 this chapter, the commission shall allocate the costs of the hearing  
or investigation among the parties, including the commission, as is  
just under the circumstances. In allocating costs, the commission may

CSHB

## BRIEFING PAPER

GCI proposes that the wording of Section 7 of the March 6, 1986 Committee Work Draft be changed. We would add a new subsection to AS 42.05.161 as follows:

"(c) A commission proceeding is open to the public under AS 44.62.310(a) unless closed under AS 44.62.310(b) or (d)(1). Rule making, rate making, and certification proceedings shall not be considered adjudicatory proceedings for the purpose of AS 44.62.310(d)(1). The Commission shall promulgate regulations further defining the term adjudicatory for the purpose of AS 44.62.310(d) in a manner not inconsistent with this subsection within 90 days of the passage of this Act. After such 90 day period, all APUC actions not defined as adjudicatory shall be made in an open meeting pursuant to AS 44.62.310(a).

The first sentence reiterates existing law: APUC proceedings are subject to the Open Meetings Act.

What the proposed amendment does in the second sentence is to make certain that rule making, rate making, and certification proceedings are done in public. Rule making, rate making, and certification proceedings have a tremendous economic effect on every Alaskan, yet they are now done behind closed doors. Adjudicatory proceedings are exempt from the Open Meetings Act (See AS 44.62.310(d)(1)). The APUC has treated rate making and certification proceedings as adjudicatory and thus allows these decisions to be made behind closed doors. It has not always done rule making in public, even though required to do so. By approving the amendment the Committee would cause all of these proceedings to be done in public.

The third sentence requires that the definition of "adjudicatory proceedings" be spelled out in regulations to be promulgated by the APUC. This would give the public the opportunity to comment upon the APUC's plans for meeting the requirements of the Open Meeting Act. If the APUC has not promulgated regulations in 90 days, everything would be public.

Under the proposed language, the APUC can still go into closed session for certain purposes spelled out in the Open Meetings Act. However, it must first announce on the public record that it is going into closed session and the business it intends to conduct in closed session.

In short, the amendment allows rule making, rate making, and certification proceedings to be done in public and allows the public to know the reason if the session is closed. If the reason for the closed session is improper, the public would have enough knowledge to protest the closed session. Further, the regulations which the APUC would promulgate defining "adjudicatory" would let the public participate in the APUC's plans for implementing the Open Meeting Law. The Federal Communications Commission (FCC) is subject to these requirements, why not the APUC?

For further information, please call  
Jim Clark - 586-3340

March 10, 1986

APUC AMENDMENTS

Page 3, Line 25

delete sec. 7:

[( ) A commission proceeding is open to the public under AS 44.62.310(a) unless closed under AS 44.62.310(b). Commission proceedings are not considered adjudicatory proceedings under AS 44.62.310(d)(1).]

Page 5, Line 10

the service is [not contrary to the public interest]

Page 5, Line 23

the services are [not contrary to the public interest]

Page 6, Line 13

that the proposed service is [not contrary to the public interest]

Replace all three sections with:

required for the public convenience and necessity or in the public interest.

Page 7, Line 17

interest-earned-ratio (TIER) rate procedure. [A cooperative may apply for permission to adjust its rates over a period of time without further filings under the simplified rate filing procedure regulations. The commission shall grant the application if the cooperative satisfies the requirements of the regulations.]

Page 9, Line 25

delete (b) [The commission may not amend a wholesale power agreement after it is in effect.]

3/10/86

A M E N D M E N T

TO: HB 314

BY: Pearce

IN THE HOUSE LABOR & COMMERCE COMMITTEE

pg. 9 ; line 24 insert following language

10 \* Sec. 19. AS 42.05.431 is amended to read:

28 | Sec. 42.05.431. POWER OF COMMISSION TO FIX RATES.

29  
1 a) When the commission, after an investigation and hearing, finds that a  
2 rate demanded, observed, charged or collected by a public utility for  
3 a service, subject to the jurisdiction of the commission, or that a  
4 classification, rule, regulation, practice, or contract affecting the  
5 rate, is unjust, unreasonable, unduly discriminatory or preferential,  
6 the commission shall determine a just and reasonable rate, classifica-  
7 tion, rule, regulation, practice, or contract to be observed or al-  
8 lowed and shall establish it by order. A municipality may covenant  
9 with bond purchasers regarding rates of a municipally owned utility,  
10 and the covenant is valid and enforceable and is considered to be a  
11 contract with the holders from time to time of the bonds. A coopera-  
12 tive utility organization under AS 10.25 may enter covenants contained  
13 in mortgages and other debt instruments. The covenant is valid and  
14 enforceable and rates set by the commission must be adequate to meet  
15 the covenants. [The commission may require a municipal or cooperative  
16 utility to file a copy of each debt instrument affecting its rates or  
to secure advance commission approval of the covenants.]

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\* DELIVER TO: LTCJ \*  
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\* \*  
\* ORIGINAL \*  
\* SENT: 03/06/86 TIME: 14:27 \*  
\* FROM: TCANC \*  
\* SUBJECT: H L AND C - HB 314 \*  
\* PRINT DATE: 03/06/86 TIME: 14:27 \*  
\* \*  
\*\*\*\*\*

TO: BILL IN JUNEAU

FROM: SAM IN ANCHORAGE

TO TESTIFY: JEFF BOHMAN-AKPIRG

TO OBSERVE: JULIE SIMON

\*  
\* DELIVER TO: LTCJ  
\*  
\*  
\*

\* ORIGINAL

\* SENT: 03/06/86 TIME: 13:23

\* FROM: TCANC

\* SUBJECT: 1ST EMAIL-H. L. & C.

\* PRINT DATE: 03/06/86 TIME: 13:23  
\*  
\*\*\*\*\*

TO: BILL IN JUNEAU

FROM: SAM IN ANCHORAGE

TO TESTIFY: GORDON PARKER

----- CRAUM GUESS--HERE TO RESPOND TO QUESTIONS

----- SUSAN KNOWLES--HERE TO RESPOND TO QUESTION

----- JACK FARLEIGH--HERE TO RESPOND TO QUESTION

TO OBSERVE: BERNIE MURRAY  
VIRGINIA RUSCH  
DEBRAH RICKER  
LOUIE AGH  
JEANNE MCPHERREN  
LINDSEY BURROUGHS  
TED MONINSKI

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\*  
\* DELIVER TO: LTCJ \*  
\* \*  
\* \*  
\* ORIGINAL \*  
\* SENT: 03/06/86 TIME: 13:20 \*  
\* FROM: PAULA GRAY \*  
\* SUBJECT: EMAIL 1, AFUC \*  
\* PRINT DATE: 03/06/86 TIME: 13:20 \*  
\* \*  
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EMAIL # 1 - FAIRBANKS PARTICIPANTS - A.F.U.C.

TO TESTIFY:

1. PERRY STOOP, SUMMIT TELEPHONE
2. VIRGIL GILLESPIE, F.M.U.S.

OBSERVING

1. SUSAN FISHER, NEWS MENER
2. ERNEST CUZZOCREO, M.U.S.
3. SUSAN ANDREWS, CH 2 NEWS

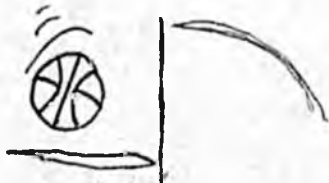
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\* DELIVER TO: LTCJ \*  
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\* ORIGINAL \*  
\* SENT: 03/06/86 TIME: 13:16 \*  
\* FROM: JUNE GALLEY \*  
\* SUBJECT: PARTICIPANT--UTILITIES T/C \*  
\* PRINT DATE: 03/06/86 TIME: 13:16 \*  
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EMAIL #1

HERE TO TESTIFY:

1. TED FERRY  
EOM/JG



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\* DELIVER TO: LTCJ \*  
\* \*  
\* ORIGINAL \*  
\* SENT: 03/06/86 TIME: 13:47 \*  
\* FROM: PAULA GRAY \*  
\* SUBJECT: NEW PARTICIPANT LIST \*  
\* PRINT DATE: 03/06/86 TIME: 13:47 \*  
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EMAIL # 2 - A.P.U.C. TELECONFERENCE

TO TESTIFY:

ERNEST CUZZOCREO WOULD LIKE TO TESTIFY, MY PARTICIPANTS HAVE  
AGREED TO HEAR FROM HIM FIRST.

FAIRBANKS PARTICIPANTS - TESTIFY:

~~✓~~ ERNEST CUZZOCREO

~~✓~~ PERRY STOOF

~~✓~~ VIRGIL GILLESPIE



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\* DELIVER TO: LTCJ \*  
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\* ORIGINAL \*  
\* SENT: 03/06/86 TIME: 13:55 \*  
\* FROM: PAULA GRAY \*  
\* SUBJECT: APUC PARTICIPANTS \*  
\* PRINT DATE: 03/06/86 TIME: 13:56 \*  
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EMAIL # 3 - FAIRBANKS - A.P.U.C.

TO TESTIFY:

4. TED LEHNE

129  
3/7/86

ALASKA PUBLIC UTILITIES COMMISSION COMMENTS ON SEC. 7,  
AS 42.05.161(c) of 3/6/86 CRAMER DRAFT OF CS for HB 314 (L&C)

The first sentence in new subsection (c) is already in existing law and is therefore unnecessary.

The second sentence which would require adjudicatory decisions to be made in public is in conflict with basic state policy on open meetings under the Administrative Procedures Act. The existing state law allows judicial and quasi judicial bodies, such as the Commission, to decide contested cases in closed session. It is both logical and appropriate that the same decision-making process that is used by trial juries and Appellate and Supreme Court Justices be applied to the Commission because our adjudicatory proceedings are conducted like and have the protection of court proceedings. Specifically, parties before the Commission are entitled to the full range of due process protections, including notice, public hearings, right of cross-examination, a written decision which sets forth the findings on which the decision is based, and the right to appeal to a higher tribunal. In addition, closed session deliberations encourages free and open discussion among decision-makers.

The Commission is unaware of the reasons for the addition of language which would single out our agency for this specialized, if not punitive treatment. If modifications are needed to the Open Meeting Law, they should be proposed for all agencies and bodies with full consideration of all ramifications of those changes.

Time:05:38 PM 05-Mar-86

ALTERNATE: (D) furnishing natural or manufactured gas to the public for compensation by transmission or distribution, except as necessary for a producer to supply first sale gas to an entity, other than a public utility in which the producer has an affiliated interest, if the distribution or transmission facilities to the point of sale are either located entirely within the production leasehold or unit of the producer or, to the extent that they are not located within the leasehold or unit, the facilities are valued at \$1,000,000 or less or are declared by the producer to be a common carrier subject to regulation under AS 42.06 (OF NATURAL OR MANUFACTURED GAS TO THE ALASKA PUBLIC FOR COMPENSATION);





TESTIMONY BEFORE THE HOUSE LABOR AND COMMERCE COMMITTEE  
REGARDING HB CS HB 314 (L&C)  
BY GENERAL COMMUNICATION, INC.  
MARCH 6, 1986

For the record, my name is Dana Tindall, and I am an economist with General Communication, Inc. (GCI). I would like to thank you for the opportunity to testify today and to compliment your subcommittee for its excellent work on this bill. The subcommittee has put in a lot of hours and has been very receptive to the comments and concerns of interested parties. I have just a few specific remarks regarding the version of the bill before the Committee.

1. Earlier drafts deleted language in the purposes section (AS 42.05.141(a)) that read; "and the powers of the Commission shall be liberally construed to accomplish its stated purposes." While this was deleted, no substitute language was provided. The Committee substitute now reads "in exercising its authority, the Commission has the powers expressly conferred or reasonably implied by this chapter." This is an improvement that adequately fills the gap between stated and implied powers, while effectively narrowing the definition of Commission powers in the existing statute.

2. There should be a provision in the bill which coordinates this statute with the open meetings law. There is no such language in the draft now before you. The Alaska Public Utilities Commission is required to hold open meetings on all

subjects excepting those listed in Section 44.62.310(c) and (d).

GCI has been concerned for some time that the Commission holds open meetings only for the purposes of hearing oral argument, taking testimony, and conducting weekly tariff meetings. The majority of Commission decisions are carried out behind closed doors. Decisions on setting rates and other determinations of major concern to the public are not held in public.

Subsection (d)(1) of Section 44.62.310 excepts judicial or quasi-judicial bodies from open meetings when such meetings are held solely to make a decision in an adjudicatory proceeding. The statute is unclear concerning which, if any, Commission actions are adjudicatory in nature. GCI proposes the following amendment to AS 42.05.161:

Subsection (c) is added to read:

(c) For the purpose of determining the applicability of Section 44.62.310(d)(1), no Commission proceeding shall be defined as adjudicatory within the meaning of that provision and thus all Commission proceedings shall be subject to Section 44.62.310(a) unless excepted pursuant to Section 44.62.310(c).

This would define adjudicatory matters in such a way as to make all proceedings open to the public.

State policy regarding meetings is very clear when it states in Section 44.62.312(4), "the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know." Clearly, the public has a right to be present at

Commission proceedings affecting the public interest. This right needs to be made clear in the statute. The amendment suggested above would to that.

3. Section 42.05.241 (Conditions of Issuance) of the draft bill states,

"The Commission shall issue a certificate if the Commission finds that the applicant is fit, willing and able under (b) of this section to provide the utility services applied for and that the services are not contrary to the public interest."

This proposal would put Alaska in accord with the current trend of deregulation in other states. The focus nationally is now on a "fit, willing, and able" criterion alone. The idea is to encourage competition to help reduce rates.

Using the negative language of "not contrary to the public interest" effectively shifts the focus to "fit, willing, and able" while still maintaining a public interest requirement. This language provides flexibility to the Commission during this nationwide period of transition to competition.

4. AS 42.095.241(c) provides that the applicant "has the burden of showing that the proposed service is "not contrary to the public interest." This requires an applicant to prove a negative which is logically impossible to do.

Unless there is some reason not to grant the service, it should be granted. An opponent of the application should have the burden of coming forward with any reason why the service is contrary to the public interest. It will then be up to the applicant to respond to that particular issue. However, the

applicant cannot prove in the abstract that the service is not contrary to the public interest.

Assigning a burden of proof for conditions of issuance serves no useful purpose and should not be added to the existing statutes. Accordingly, subsection (c) of AS 42.05.241 should be deleted.

5. Subsection (d) of AS 42.05.241 "Conditions of Issuance" proposes a six month time limit on an uncontested issuance. GCI proposes an additional time limit to read:

"If issuance is contested, the Commission shall grant or deny the application no later than one year after the application was filed. If the Commission does not reach a decision within one year, it shall issue the certificate."

This simply prohibits lengthy certification procedures and provides an incentive for the APUC to act within time limits as other state agencies have been required to do as part of regulatory reform.

6. Section 42.05.431(c) states, "The Commission may not require a utility to refund a permanent rate after it is in effect." The current Commission procedure is to affirmatively examine every initial tariff or tariff change which is filed. This affirmative examination creates a permanent tariff which is not retroactively subject to refund under existing case law. Once an order has been issued making a tariff interim and refundable, however, it is subject to possible refund from that point forward.

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6. Section 42.05.431(c) states, "The Commission may not require a utility to refund a permanent rate after it is in effect." The current Commission procedure is to affirmatively examine every initial tariff or tariff change which is filed. This affirmative examination creates a permanent tariff which is not retroactively subject to refund under existing case law. Once an order has been issued making a tariff interim and refundable, however, it is subject to possible refund from that point forward.

It is in the public's interest that the Commission be able to make permanent rates interim and refundable. No utility has the right to excessive earnings and should a utility be earning an excess amount, the public should have the right to relief.

The Commission recently exercised its power by making a portion of Alascom's rates interim and refundable in a situation where Alascom was earning an excessive rate of return. The proposed subsection confuses the Commission's ability to act and ties its hands in a case where a refund is in the public interest. Accordingly, it should be deleted.

That concludes my comments. I would like to thank the Committee for their time and patience and to say once again I think you have done a wonderful job.



STATE OF ALASKA  
HOUSE OF REPRESENTATIVES

TESTIMONY BY REP. PETER GOLL  
TO HOUSE LABOR AND COMMERCE COMMITTEE  
ON CS FOR HOUSE BILL 314 (L&C)

1. On page 4, line 10:

Time limits provided in this section limit the appeal time to nine months. This will hamper the ability of the APUC to perform its duties in the public interest. The Legislative Budget and Audit report recommended a 12 month time limit after lengthy and exhaustive study. Protection of the public interest must be guaranteed by ensuring that sufficient time is available to the APUC.

The LB&C auditors only looked at the statistics of utility requests. No consideration was given to the additional workload of the commission not included therein. Such as: its responsibilities to implement FCC requirements; its responsibilities to carry out what the FERC requires it to do; and the fact that the APUC is an agency which responds to requests for help by utilities, members of the public, the legislature and other state entities which do not lead to such statistics. The APUC workload is extraordinary and its record of performance is equal to the level of staff funding.

2. Regarding page 5, line 5; page 5, line 18; page 6, line 9:

Delete: "is not contrary to the public interest"

Replace with: public convenience and necessity language found in existing law.

Comment: The new language reverses the historic position that a utility must be operating as a public service. The new language suggests that a utility must only show that it does no damage to the public in order to be certificated.

3. On page 7, line 13:

After "procedure," Delete: all language to end of paragraph.

Comment: The remaining language allows the commission to adopt both tier system and simplified rate filing.

The deleted language permits rate adjustments without further filing and compromises the interests of the public.

4. Page 8, line 2: Delete "nine months."  
Replace with "12 months."

Now the APUC is permitted six months which can be extended if necessary. This limitation, even at 12 months is arbitrary. However, if a limit is to be introduced, then at least permit 12 months. Nine months is not consistent with the public interest.

5. Page 8, line 13: insert new subsection (6).

~~The~~ proceedings involved unusually complex situations or issues or other good cause, including safety.

Comment: We cannot anticipate every situation which might require the APUC--our regulatory arm--to exceed the twelve month suspension period. A waiving of that period for good cause is essential to the public interest.

The court system recognizes good cause as an exception of the requirement of a speedy trial in a criminal case. We must be equally sensitive to specific circumstances.

- Page 9, line 21, delete (b).

Comment: The commission must have the authority to adjust not only retail rates but also wholesale rates when the utility provides both services. To do otherwise can result in either an under recovery for the utility in question or the subsidization of the wholesale customer by the retail customer.

Page 9, line 23, delete (c). Replace with commission language: The commission may not require a utility to refund a permanent rate; provided however that this provision shall not preclude the commission from declaring existing rates interim and refundable from the date of such

declaration forward, if warranted, pending further investigation and hearing.

Comment: The commission's practice is to declare a utility's existing rates interim and subject to refund only after finding sufficient cause to believe that the existing rates are unreasonably high. The rates are made refundable prospectively. This is important. The commission has never required a utility to refund monies which were collected in the past under permanent rates.



STATE OF ALASKA  
HOUSE OF REPRESENTATIVES

TESTIMONY BY REP. PETER GOLL  
TO HOUSE LABOR AND COMMERCE COMMITTEE  
ON CS FOR HOUSE BILL 314 (L&C)

1. On page 4, line 11:

Time limits provided in this section limit the appeal time to nine months. This will hamper the ability of the APUC to perform its duties in the public interest. The Legislative Budget and Audit report recommended a 12 month time limit after lengthy and exhaustive study. Protection of the public interest must be guaranteed by ensuring that sufficient time is available to the APUC.

The LB&C auditors only looked at the statistics of utility requests. No consideration was given to the additional workload of the commission not included therein. Such as: its responsibilities to implement FCC requirements; its responsibilities to carry out what the FERC requires it to do; and the fact that the APUC is an agency which responds to requests for help by utilities, members of the public, the legislature and other state entities which do not lead to such statistics. The APUC workload is extraordinary and its record of performance is equal to the level of staff funding.

2. Regarding page 5, line 10; page 5, line 23; page 6, line 13:

Delete: "is not contrary to the public interest"

Replace with: public convenience and necessity language found in existing law.

Comment: The new language reverses the historic position that a utility must be operating as a public service. The new language suggests that a utility must only show that it does no damage to the public in order to be certificated.

3. On page 7, line 17:

After "procedure," Delete: all language to end of paragraph.

Comment: The remaining language allows the commission to adopt both tier system and simplified rate filing.

The deleted language permits rate adjustments without further filing and compromises the interests of the public.

4. Page 8, line 6: Delete "nine months."  
Replace with "12 months."

Now the APUC is permitted six months which can be extended if necessary. This limitation, even at 12 months is arbitrary. However, if a limit is to be introduced, then at least permit 12 months. Nine months is not consistent with the public interest.

5. Page 8, line 18: insert new subsection (6).

The proceedings involved unusually complex situations or issues or other good cause, including public safety.

Comment: We cannot anticipate every situation which might require the APUC--our regulatory arm--to exceed the twelve month suspension period. A waiving of that period for good cause is essential to the public interest.

The court system recognizes good cause as an exception of the requirement of a speedy trial in a criminal case. We must be equally sensitive to specific circumstances.

Page 9, line 24, delete (b).

Comment: The commission must have the authority to adjust not only retail rates but also wholesale rates when the utility provides both services. To do otherwise can result in either an under recovery for the utility in question or the subsidization of the wholesale customer by the retail customer.

Page 9, line 27, delete (c). Replace with provided as comments language: The commission may not require a utility to refund a permanent rate; provided however that this provision shall not preclude the commission from declaring existing rates interim and refundable from the date of such

declaration forward, if warranted, pending further investigation and hearing.

Comment: The commission's practice is to declare a utility's existing rates interim and subject to refund only after finding sufficient cause to believe that the existing rates are unreasonably high. The rates are made refundable prospectively. This is important. The commission has never required a utility to refund monies which were collected in the past under permanent rates.

# SUSPENSION PERIOD

MONTHS

1 2 3 4 5 6 7 8 9 10 11 12

- \* → • Staff audit and investigation
- \* \* • Prehearing conference
- \* \* • Utility supplemental testimony

→  
Staff  
prefile  
testimony  
due

→  
Intervenor  
testimony  
due

→  
Utility  
rebuttal  
testimony  
due

→  
Statement  
of issues  
due -  
time to see  
if any  
issues can  
be stipulated

→  
Hearing

→  
transcript  
available

→  
Briefs due

→  
Deliberation  
by Commissioners  
written formal  
order issued

\* If staff expertise is not available & consultants are required, it takes 60 days to negotiate a contract. (see attached memo)

\* \* requested by utility attorneys if the utility is required to prefile its testimony at the time its tariff request is filed with the Commission.

## MEMORANDUM

To: Carolyn S. Guess  
Commissioner

Date: February 26, 1986

From: Ted Moninski  
Deputy Director

Subject: Professional  
Service  
Contracting

This memorandum outlines the steps involved in the process to secure a professional services contract as defined by AS 36.98 and Sections 8102 - 8193 of the Alaska Administrative Manual. Attached is a list prepared during the course of the "Sunset" review which identifies actual contracts from 1978 through October, 1985, with a computation of the average processing time (in days) from Authority to Negotiate (ATN) to contract approval. Also attached is a copy of my October 11, 1985, memo to you interpreting this information.

### *Professional Services Contracting*

- Identify need for professional contract services.
- Prepare ATN request (includes description of services to be provided and justification for use of contract services).
- If agency proposes to use any solicitation method other than that described in statute and regulations (ie. sole source), an Alternative Procurement Method (APM) package must accompany the ATN. The ATN/APM steps will take from one day to one week.
- ATN approval through the Department of Commerce (DC & ED) and approval by Department of Administration's (DOA) Contract Review Committee (CRC) takes from two to four weeks. If contract is for legal services (attorney or hearing officer), ATN must also be approved by the Department of Law (Law) adding approximately one to two weeks to the ATN approval process.
- ATN approved; the agency proceeds to a formal Request for Proposal (RFP) step if the ATN amount is \$ 25,000 or greater. If less than \$ 25,000, the RFP step is scaled down to an informal process as approved in the ATN (ie. requiring the contacting of at least three prospective contractors.) This step, measured from preparation of RFP to closing date for responses will take from 3 weeks (informal) to six weeks for formal RFP's.

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- *Contract drafting and execution: This function is performed by the agency and takes from one to two weeks depending on the standard nature (or lack thereof) of the engagement.*
- *Contract document approval: The executed contract takes the exact same approval route as the original ATN (DC & ED to CRC with approval by Law required for legal services contracts). This step will take from two to four weeks depending on current approving agency workload and the degree of priority this agency is able to attach to the transaction.*
- *Once the contract document is approved by CRC, the parties may commence performance according to its terms and conditions.*

*By this scenario, the optimum time-line for professional services contracts is approximately sixty days (ATN to contract approval). The worse-case time-line is about one hundred sixty days. Actual experience as reflected in the attachments seem to support this analysis with an average processing time for all contracts at eighty-four days.*

*cc. John B. Farleigh*

# MEMORANDUM

# State of Alaska

TO: Representative Mike Navarre  
Chairman, House Labor & Commerce  
Committee

DATE: February 26, 1986

FILE NO:

TELEPHONE NO:

FROM: Carolyn S. Guess  
Commissioner *CSG*  
Alaska Public Utilities  
Commission

SUBJECT: Comments on HB 314  
(2/22/86 Subcommittee draft)

Attached is the Commission's response to some of the proposed changes and additions to AS 42.05. We hope this information will assist your Committee in its deliberations on February 27, 1986.

Because a number of changes to AS 42.05 have been telephonically communicated to me, we would like the opportunity to refine or correct our comments, if necessary, after the workshop tomorrow.

Jack Farleigh, the Executive Director of the Commission and Virginia Rusch, one of the assistant attorneys general assigned to the Commission, will be in attendance in addition to myself to answer question from members of the Committee.

AS 42.05.141(a)

The Commission opposes the deletion of the language in (a)(1) "and the powers of the commission shall be liberally construed to accomplish its stated purpose."

From a practical standpoint, the elimination of the words "liberally construed" could sharply curtail the Commission's authority to assist utilities in "gray" circumstances. For example, could the Commission grant temporary operating authority to address emergency conditions such as those found in Cold Bay in 1984 and in Central in 1985?

In addition, the Commission is concerned that removal of the words "liberally construed" could affect its decision (now on appeal in Superior Court) to deregulate garbage service in the Mat-Su Borough as well as to limit the Commission's authority in allowing competitive utility service in other utility areas.

AS 42.05.171.196

The Commission opposes placing the appeal procedure in the statute. We believe it is appropriately adopted through regulations.

However, if the Committee intends to statutorily define the appeal procedure, the Commission requests that the 60-day timeframe refer to the time the appeal is submitted to the Commission for decision. Because an appeal may necessitate briefing, oral argument and possibly the submission of additional evidence, a 60-day timeframe may be inadequate if it starts running when the appeal is filed. In addition, in complicated proceedings or in the event of an unexpected occurrence such as a Commissioner participating in an appeal leaving the Commission, an extra 60-days decision time should be provided.

The Commission believes that the statute should specifically set forth that the appeal of a Commission decision and subsequent Commission action should not be included within the 12-month suspension period.

The following language carries out the intent of our comments:

AS 42.05.196 APPEAL OF THE FINAL DECISIONS TO THE COMMISSION. When a decision of a hearing officer, administrative law judge, or panel of the commission is appealed to the commission, the commission shall review the record and the briefs of the parties. The commission may permit the parties to submit additional evidence for good cause and may hear oral argument. If an appeal is taken from the decision of a panel of the commission, the commission members who did not serve on the panel shall attend the hearing. The commission shall issue a decision affirming, modifying, or reversing the decision of the presiding officer or panel within 60 days after [THE FILING OF] the appeal[.] is submitted for decision, absent entry of a finding of good cause to extend the period for no more than an additional 60 days. A majority of the commission must concur in the decision[.] on the appeal. Any time required to decide an appeal under this section shall be added to the time permitted for the commission to make final decision under AS 42.05.421(a).

AS 42.04.361(c)

The Commission does not object to the additional language; however, it proposes that this subsection be perfectly clear that it references only the form or filing requirements of the Commission. Therefore, the language "or that is not consistent with this chapter or regulation of the Commission" should be eliminated. Without this deletion it could be argued that the Commission might have to make a final decision on the justness and reasonableness of a utility request within 45 days. The Commission does not believe that that is the Committee's intent.

AS 42.05.421(a)

The Commission supports the proposed language that would require it to issue a final order within a 12-month suspension period which should begin after the 45-day public notice and response period. This is consistent with Recommendation No. 6 of the Legislative Budget and Audit Sunset Review.

However, the Commission believes, based on its experience over the past ten years, that the list of exceptions to the 12-month suspension period should be increased to include the following:

o Issues of safety, quality of service or reasonableness of management practices which cannot be decided separately from the tariff filing;

o a utility whose records and accounts are kept at a location outside the state;

o unusually complex situations or issues or other good cause.

In addition, the Commission opposes the qualifier in proposed AS 42.05.421(a)(2) that the period of suspension must equal the length of delay caused by the utility. The Commission's hearing schedule is generally set three to four months in advance; therefore, if a utility request causes delay for 30 days, it cannot be guaranteed that the Commission could fit a hearing into its existing schedule within a 30-day timeframe. If a utility requests a delay, it should be rescheduled for the first available hearing slot in the Commission's current schedule.

This procedure is used by the court system and appears fair to the utility causing the delay and to those utilities whose calendared hearings would be subject to change to "squeeze" in a proceeding in order to accommodate the proposed language.

AS 42.05.431(b)

The Commission opposes new 431(b). It believes it must have the authority to amend the rates in a wholesale power agreement when costs change. Without this authority, wholesale power sales will be effectively deregulated and could be made at rates which do not properly recover the utility's costs. This could result in either an overrecovery or underrecovery of revenues. In addition, together with the proposed language in AS 42.05.431 which mandates rates adequate to meet debt covenants, this proposed language could result in subsidization of wholesale rates by retail ratepayers. There should be no more support for this legislation than legislation which would exempt from Commission regulation large industrial user contracts with utilities, thereby creating a situation in which residential and small commercial customers could be made to subsidize the rates of a large customer. At the present time, wholesale power agreements exist between Chugach Electric and Matanuska Electric and Homer Electric; in addition the tialine between Anchorage and Fairbanks is being used to transport wholesale power from Anchorage electric utilities to Golden Valley Electric Cooperative.

The Commission believes the proposed addition to the statute would result in bad regulation which is worse than no regulation. For that reason it believes it is preferable to deregulate cooperative utilities that sell wholesale power rather than insert the new provision.

AS 42.05.431(c)

The Commission's practice is to declare a utility's existing rates to be interim and subject to refund only after finding sufficient cause to believe that the existing rates are unreasonably high. Furthermore, the rates are made refundable prospectively, that is forward from the date the rates are declared interim. The Commission has never required a utility to refund monies which were collected in the past under permanent rates. If the Committee wants statutory language to expressly prohibit the latter practice only, the following language will maintain the Commission's existing authority to declare permanent rates interim and refundable prospectively, but will prevent the Commission from requiring a utility to refund any monies which have already been collected pursuant to permanent rates.

AS 42.05.431(c) The commission may not require a utility to refund a permanent rate; provided, however, that this provision shall not preclude the commission from declaring existing rates interim and refundable from the date of such declaration forward, if warranted, pending further investigation and hearing.

AS 42.05.651

The Commission allocates only those costs it incurs which are not funded as part of its overall operating budget. These costs include the travel and per diem of Staff incurred during its investigation, travel and per diem of Commissioners to attend a hearing away from Anchorage, the costs of a court reporter, the costs to transcribe a proceeding, long distance telephone charges, xeroxing and postage associated with a specific proceeding. These are referred to in AS 42.05.631 as out-of-pocket expenses.

In addition, if the Commission Staff lacks the professional staff necessary in a specific investigation, because of either the magnitude of the proceeding (all Alascom proceedings) or the complexity of the issues (anti-trust law, rate of return expertise), consultants are hired. The process for hiring a consultant must conform to the regulation of the Department of Administration (see attachment).

Because the Commission's budget funds only one-half of an assistant attorney general funded in its operating budget and the workload of the Commission requires two full-time attorneys to aid and represent the Commission and its Staff, the Commission has interpreted its statute to provide authority to allocate unfunded costs of its assistant attorneys general to the specific proceedings in which they represent Commission Staff. Some utilities do not agree that the Commission has the authority to allocate these contracted costs and the matter is currently before the Superior Court.

The Commission acknowledges that any costs allocated to a utility as a result of a Commission proceeding are passed on to its consumers; this is analogous to current practice which allows a utility to include its costs of processing a case before the Commission in rates charged to its consumers, including its attorney's costs. If the Commission's budget were fully funded to cover costs of its attorneys general, there would be no allocation of these costs. Because the Commission has not been persuasive in this argument in its budget presentations, the result is to recover these costs from the utility's consumers who benefit from adequate Commission processing of a utility's request.

The proposed amendment to AS 42.05.651 would restrict the Commission's ability to thoroughly process a utility's request and is strongly opposed.

## MEMORANDUM

To: Carolyn S. Guess  
Commissioner

Date: February 26, 1986

From: Ted Moninski  
Deputy Director

Subject: Professional  
Service  
Contracting

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*cc. John B. Farleigh*

FILE CONTENTS HB 314

1. HB 314
2. Draft of Senate Bill
3. Fiscal Note
4. Budget & Audit Report
5. Alaska Statutes
6. APUC comments on proposed changes
7. Legal opinions on Sunset of APUC
8. Testimony by Dr. Joyce Murphy, Pres. Chugach Electric, to Joint Labor & Commerce meeting

STATE OF ALASKA  
THE LEGISLATURE

POUCHY STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 25, 1985

SUBJECT: Termination of APUC

TO: Senator Fred Zharoff, Chair  
Senate Labor and Commerce Committee

Representative Mike Navarre, Chair  
House Labor and Commerce Committee

FROM: Billy G. Berrier *BGB*  
Director  
Division of Legal Services

You have asked whether in our opinion if no legislation were enacted to extend the Alaska Public Utilities Commission under the sunset provision of AS 44.66.010(4) which provides for expiration of the Commission on June 30, 1985 would the operation of the Commission be impaired during the following year.

This question was examined in connection with the sunset of the Alaska Transportation Commission and opinions from the Ombudsman, the Department of Law and the Division of Legal Services were published in a report of the House Commerce Committee entitled Interim Report - Sunset In Alaska 1979-1980. Copies of the opinions are enclosed.

There has been nothing since which would clarify the question.

It is still my opinion that there is serious question concerning the power of the Alaska Public Utilities Commission to consider new matters in the year following the expiration date.

BGB:oib  
J14/044



ombudsman

Frank Flavin

State of Alaska

Reply to:

January 17, 1980

- 840 K Street, Room 203  
Anchorage, Alaska 99501  
(907) 276-4011
- Pouch W0  
Juneau, Alaska 99811  
(907) 465-4970
- P.O. Box 74358  
Fairbanks, Alaska 99707  
(907) 452 4001

Keith Miller  
Commissioner  
Alaska Transportation Commission  
Department of Commerce & Economic Development  
338 Denali Street  
Anchorage, AK 99501

Re: Ombudsman Complaint A79-0668

Dear Commissioner Miller:

Since your September 5, 1979, letter expressing ATC's opinion of the Sunset Law's impact on the functioning of the Commission after June 30, 1979, we have reviewed or sought opinions from three other sectors of the state government.

Your opinion, apparently based on being "prudent" in a situation of uncertainty, contends that the Commission ought to go forward in the exercise of all its "powers and authority." This position seemingly ignores any consequence of ATC's being named at AS 44.66.010 (a) (2).

Gerald Wilkerson, Legislative Auditor, when asked his opinion, responded in a fashion similar to ATC's. He felt, based only on his impression of the legislature's state of mind, that the section .010 (b) language, "concluding its affairs," permitted the ATC to retain all its power, unless or until it went out of existence. Your opinion and his both give weight to the two year continuation of the ATC that was vetoed by the governor. However, neither of you seem to take the "sunsetting" consequences of that veto into consideration.

The Department of Revenue requested an Attorney General opinion concerning the status of the ABC Board in FY 1980. This ostensible "legal opinion" puts forth an established principle of law to base the opinion on, then disregards it in favor of a blind, unsupportable guess. Observing the difference between AS 44.66.010 (b) and AS 08.03.020 (a), the Assistant Attorney General states that

Ordinarily, when two provisions are enacted together on related matters and are distinguishable in this manner, the distinction is considered to intend a substantial difference, i.e., here, that agencies terminated under AS 44.66.010 do not continue to possess their powers during this closing-out year.

Keith Miller  
January 17, 1980

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He dismisses this, however, when he can see no reason for differential treatment between the Title 8 Regulatory Boards and the Title 44 State Boards and Commissions. He concludes, from an insufficient legal basis, and without any reference to historical materials showing legislative intent, that the difference in wording must be

inadvertant and that there was no intention to strip the regulatory boards terminated under AS 44.66 of their powers during the year in which they are closing out.

This office sought an opinion from the Legislative Affairs Agency on this matter. That response recognized that AS 44.66 "contains no clarification or definition of the clause 'for the purpose of concluding its affairs.' " To that, this opinion contrasts AS 08.03.020 (a) which modifies the shared phrase above with

During this period, termination does not reduce or otherwise limit the powers or authority of each board.

From this, it is derived that

This omission from AS 44.66.010 (b), an otherwise parallel provision, indicates that a different result was intended. (Emphasis added.)

The most obvious result of this, according to the Legislative affairs legal opinion, was that ATC would be limited to acting solely on matters brought before the Commission on or before June 30, 1979, "but could not act on new matters."

A "plausible," but not his primary construction of the statutory scheme was also postulated by the author of the LAA legal opinion. It was conceivable to him that

the legislative intent was to allow this group of agencies discretion to determine what actions are necessary in winding up the affairs of the agency.

While admitting that he cannot be certain, he leans toward agency self-determination.

The finding of this office, with respect to the underlying complaint that ATC is improperly conducting business as usual, is: INDETERMINATE.

There is no known legislative history which resolves this dilemma, nor are there other serious resources, save the language of the statutes themselves. It is the opinion of this office that the difference in language between Title 8 and Title 44 is significant, and cannot be assumed or guessed away. The additional language found in Title 8 is seen as a modification of the concept espoused in the parallel language of Titles 8 and 44. We believe the statement in AS 08.03.020 (a) that

Keith Miller  
January 17, 1980

Page three

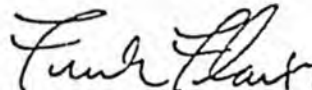
"termination does not reduce or otherwise limit the powers or authority of each board" (which does not appear in Title 44) implies that the preceding language, "continue in existence...for the purpose of concluding its affairs," must contain a limitation on those powers and authority. The greatest difficulty, however, is the determination of the extent of that limitation.

The closest analog in Alaska law is the position of an Alaskan corporation after the filing of a statement of intent to dissolve. AS 10.05.486 defines that position as one wherein "the corporation shall cease to carry on business, except that necessary for the winding up of its business." Subsection 489 (2) characterizes this as collecting assets, satisfying and discharging liabilities, and the like, but allows for nothing new.

On the spectrum of permitting "everything-something-nothing" new, the Office of the Ombudsman believes that the proper interpretation of the present state of the laws falls in "something-nothing," and that "everything" has no basis.

We feel it is urgent that the Legislature be made aware of the ambiguous situation which presently exists, for if clarity is to be attained, that body is the most appropriate forum. We are, therefore, sending a copy of these findings to the Legislature as an expression of our concerns in this matter.

Sincerely,



Frank Flavin  
Ombudsman

FF/RB/jm

cc: Speaker of the House  
President of the Senate

Hon. Thomas K. Williams  
Commissioner  
Department of Revenue  
ATTN: Joseph K. Donohue  
Deputy Commissioner

November 9, 1979

J-66-103-30

AVRUM M. GROSS  
ATTORNEY GENERAL

Status of ABC  
Board in 1980

By:  
Rodger W. Pegues  
Assistant Attorney General

You have asked if it is within the scope of the Sunset Law to continue the normal exercise of the powers of the ABC Board at least until March 1980 and then, absent any statutory resurrection, phasing it out.

We believe that you are acting within the scope of the law.

The 1977 Legislature enacted a sunset law for two classes of agencies. §§ 2 and 3, ch. 149, SLA 1977. One section applies to 22 expressly designated professional and occupational licensing boards. It has been codified as AS 08.03.010. The other applies, first, to five expressly designated regulatory commissions and then to certain other agencies. It is codified as AS 44.66.010, 020. The latter, over a period of years, provides for review and potential termination of all state agencies and institutions. \*/ The ABC Board is one of the regulatory agencies specified in AS 44.66.010.

Both provide for "termination" on dates certain, e.g., June 30, 1979, in the case of the ABC Board. Both provide for a terminated agency to "continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs." Compare AS 08.03.010(c) with AS 44.66.010(b). It is at this point, however, that an apparent distinction arises.

Under AS 08.03.010(c), during its year of continued "existence," the terminated agency's powers expressly remain undiminished. A similar provision does not occur in AS 44.66.010(b). It is silent on the matter. Ordinarily,

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\*/ Because they are constitutionally established or mandated, certain agencies cannot be abolished, e.g., the Alaska Legislative Council, Alaska Const., art. II, § 11.

Joseph K. Donohue  
November 9, 1979  
Page #2

When two provisions are enacted together on related matters and are distinguishable in this manner, the distinction is considered to intend a substantial difference, i.e., here, that agencies terminated under AS 44.66.010 do not continue to possess their powers during this closing-out year. There is no reason, however, to perceive such a difference here. The situation is the same for both classes of agencies and for the objects of regulation and public protection. Indeed, AS 08.03.010(d) provides that the provisions of AS 44.66.050 govern the termination of agencies under AS 08.03, a rather persuasive indication that the same rules are to apply to both classes of agencies.

Our conclusion is, therefore, that the difference in wording is inadvertent and that there was no intention to strip the regulatory boards terminated under AS 44.66 of their powers during the year in which they are closing out. If the boards are not resurrected during that last year, then their powers cease to exist, and they cannot -- absent new legislation -- be delegated to the departments in which the boards were located.

RMP/pjg

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

December 14, 1979

SUBJECT: Alaska Transportation Commission Activities  
(Work Order Number 7552)

TO: Frank Flavin, Ombudsman

FROM: Billy G. Berrier *BGB*  
Director  
Division of Legal Services

You have asked for an opinion from this division on the extent of business the Alaska Transportation Commission may conduct since AS 44.66(a)(2) (the Sunset Statute) provides that the commission expired June 30, 1979 and its existence was not continued by law.

AS 44.66.010 provides in relevant part:

"(a) Boards and Commissions listed in this subsection expire on the date set out after each: . . .

(2) Alaska Transportation Commission (AS 42.-  
07.011) June 30, 1979; . . .

(b) Upon termination, a commission listed in (a) of this section shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs. "

The directly relevant chapter contains no clarification or definition of the clause "for the purpose of concluding its affairs". However AS 08.30.020, which is the Sunset section establishing procedures governing termination, transition and continuation of regulatory boards provides in subsection (a):

(a) Upon termination, each board listed in AS 08.-  
03.010 shall continue in existence until June 30 of the

next succeeding year for the purpose of concluding its affairs. During this period, termination does not reduce or otherwise limit the powers or authority of each board. One year after the date of termination, a board not continued shall cease all activities."

The sunset law as originally enacted provided for termination of both groups of agencies in the same act. (Sections 2 and 3, ch. 149 SLA 1977). This originated as HB 1 of the Tenth Legislature, First Session. The bill as introduced included more agencies than in the final law adopted and contained only one provision for termination. The language of that provision was identical to the present language of AS 08.03.020 except for the scope of application clause. The present format occurred in the Committee Substitute by the House State Affairs Committee. In that version and all succeeding versions the effect of termination sections were identical to existing law.

Both provisions were adopted in the same law and derive from the same section in the bill as introduced. The two sentences with which AS 08.03.020(a) conclude with which read "During this period, termination does not reduce or otherwise limit the powers or authority of each board. One year after the date of termination, a board not continued shall cease all activities." clearly specify the permissible activities after termination of boards terminated under that section. This omission from AS 44.66.010(b), an otherwise parallel provision, indicates that a different result was intended.

The most obvious different result is that the boards and commissions terminated under AS 44.66 were to be limited to activities which were necessary or incidental to concluding their affairs. Under that construction the Alaska Transportation Commission could clearly continue to act on all matters before the board on June 30, 1979 and could act to provide an orderly termination of its duties but could not act on new matters.

Another plausible construction is that the legislative intent was to allow this group of agencies discretion to determine what actions are necessary in winding up the affairs of the agency. It is clear from the text of AS 08.03.020(a) that the legislature did not consider that continued exercise of the powers or authority of an agency was necessarily outside

Frank Flavin  
Page 3  
December 14, 1979

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the scope of concluding the affairs of the agency. Since the agencies included within AS 44.66.010 have broad and diverse authority concerning major segments of the economy there is strong policy support for allowing each agency to determine the scope of its activities within very broad guidelines.

Without more specific statutory guidance I cannot determine with any reasonable certainty the scope of powers of the Alaska Transportation Commission subsequent to its termination. It is very probable that the agencies own determinations in light of the statute and the pattern of its activities would be given great weight.

BGB:ljb

JOINT HOUSE AND SENATE  
LABOR AND COMMERCE COMMITTEES HEARING

TESTIMONY OF DR. JOYCE MURPHY  
PRESIDENT, BOARD OF DIRECTORS  
CHUGACH ELECTRIC ASSOCIATION, INC.

MARCH 5, 1985

THANK YOU, CHAIRMAN ZHAROFF, CHAIRMAN NAVARRE, MEMBERS OF THE COMMITTEES. MY NAME IS JOYCE MURPHY AND I AM PRESIDENT OF THE CHUGACH ELECTRIC ASSOCIATION BOARD OF DIRECTORS.

CHUGACH IS HEADQUARTERED IN ANCHORAGE. WE ARE THE LARGEST ELECTRIC COOPERATIVE AND THE LARGEST ELECTRIC UTILITY IN THE STATE. WE SERVE APPROXIMATELY 60,000 RETAIL CONSUMERS IN ANCHORAGE AND IN THE KENAI PENINSULA. IN ADDITION, WE ARE THE WHOLESALE POWER SUPPLIER FOR MATANUSKA ELECTRIC ASSOCIATION, HOMER ELECTRIC ASSOCIATION AND THE CITY OF SEWARD. OVERALL, CHUGACH HAS THE POWER SUPPLY RESPONSIBILITY FOR HALF THE POPULATION OF OUR STATE.

LAST YEAR WAS CHUGACH'S BEST EVER. WE SETTLED A LONG-STANDING TERRITORIAL DISPUTE WITH ANCHORAGE MUNICIPAL LIGHT AND POWER, WE DRAMATICALLY REDUCED OUTAGE TIMES AND WE ENDED 1984 WITH MORE THAN \$13 MILLION IN MARGINS -- WITHOUT A RATE INCREASE. THE POINT IS THAT CHUGACH IS A HEALTHY CO-OP CAPABLE OF MAKING OUR OWN DAY-TO-DAY DECISIONS. THE PROBLEM IS THAT THE ALASKA PUBLIC UTILITIES COMMISSION WON'T LET US.

MARCH 5, 1985

I WANT TO MAKE IT CLEAR RIGHT OFF THAT CHUGACH IS NOT ADVOCATING ELIMINATION OF THE APUC. WE BELIEVE THE COMMISSION SERVES A NECESSARY PURPOSE IN ESTABLISHING SERVICE AREAS, REGULATING RATES AND PURSUING CONSUMER COMPLAINTS.

I SAY THIS AS PRESIDENT OF THE CHUGACH BOARD AND AS A CONSUMER WITH A STRONG CONSUMER ADVOCACY BACKGROUND. I AND SEVERAL OTHER MEMBERS OF THE BOARD WERE ACTIVELY INVOLVED IN THE ALASKA CONSUMER ADVOCACY PROGRAM AND OTHER CONSUMER-RELATED ACTIVITIES. WE WERE ELECTED TO THE BOARD ON THIS BASIS. I GOT ACQUAINTED WITH THE APUC AS A CONSUMER ACTIVIST, AND I HAVE TESTIFIED BEFORE THE COMMISSION AS A CONSUMER AND AS CHUGACH BOARD PRESIDENT.

I AND OTHER CHUGACH BOARD MEMBERS -- WHO HAVE BEEN DIRECTLY ELECTED BY OUR CONSUMER/OWNERS -- HONESTLY BELIEVE THE APUC HAS OVEREXTENDED ITSELF. IT HAS BECOME MORE THAN THE REGULATORY AGENCY IT SHOULD BE. IT HAS BECOME A SUPER BOARD OF DIRECTORS AND MANAGEMENT, INVOLVING ITSELF IN DAY-TO-DAY ACTIVITIES OF CHUGACH AND OTHERS OF THE 112 UTILITIES IT REGULATES.

THIS IS WRONG, AND IT IS CONTRARY TO THE NATIONAL TREND TOWARD Deregulation. THIS OVER-INVOLVEMENT BY THE COMMISSION IS ALSO WHY IT HAS STRETCHED ITSELF TOO THIN. THE ANSWER IS NOT MORE MONEY AND MORE STAFF. THE ANSWER IS FOR THE COMMISSION TO CONCENTRATE ON THE BASIC REGULATORY AREAS AS CONTEMPLATED BY THE LEGISLATURE -- SERVICE AREA CERTIFICATION, RATE MAKING AND CONSUMER FOLLOW-UP. THE COMMISSION SIMPLY MUST MAKE BETTER USE

OF ITS HUMAN AND FINANCIAL RESOURCES, AND LET THE CONSUMER-ELECTED POLICY BOARD AND ITS MANAGERS MANAGE THE UTILITIES.

LET ME GIVE YOU A FEW EXAMPLES:

COST

THROUGH ITS ABILITY TO ALLOCATE HEARING AND OTHER COSTS TO UTILITIES, THE COMMISSION HAS A VIRTUAL BLANK CHECK. IT CAN GO ANYWHERE IT WANTS WITH LITTLE IF ANY ACCOUNTABILITY -- LEGISLATIVE OR OTHERWISE -- BECAUSE MANY COSTS CAN SIMPLY BE PASSED ON TO THE UTILITIES. THE COMMISSION IS ALLOCATING MORE AND MORE OF THESE COSTS TO THE UTILITIES.

TO ILLUSTRATE MY POINT, HERE IS AN EXCERPT FROM THE COMMISSIONERS' JANUARY 30, 1985, LETTER RESPONDING TO THE DIVISION OF LEGISLATIVE AUDIT'S NEW PERFORMANCE REPORT ON THE COMMISSION. THE COMMISSIONERS' LETTER IS AN ATTACHMENT TO THE PERFORMANCE REPORT ITSELF. THE EXCERPT READS:

"DUE TO THE APUC'S GENERAL OPERATING BUDGET SHORTFALL FOR THE PAST TWO FISCAL YEARS, IT HAS BEEN THE POLICY OF THE APUC TO ALLOCATE, WHEREVER PRACTICAL, ALL ALLOCATABLE EXPENSES ... TO ALL PARTIES EXCEPT THE APUC STAFF. PRIOR TO FY83 THE APUC HAD ALLOCATED SOME EXPENSES INCURRED FROM THE OPERATING BUDGET TO THE APUC STAFF." (Emphasis added.)

SB '64 WOULD EXPAND AND ACCELERATE THIS COURSE. THE BILL WOULD PERMIT ALLOCATION TO UTILITIES OF ALL STAFF AND LEGAL EXPENSES, INCLUDING THOSE OF THE ATTORNEY GENERAL'S OFFICE. THIS IS IN ADDITION TO CONSULTANT EXPENSES. SB 64 ALSO WOULD PERMIT THE ASSESSMENT OF EXPENSES DURING AS WELL AS AFTER PROCEEDINGS, THE LATTER NOW BEING THE CASE.

THESE ACTIONS, IF ALLOWED TO OCCUR, WOULD REMOVE THE LEGISLATURE EVEN FURTHER FROM EXERTING ANY MEANINGFUL BUDGETARY CONTROL OVER THIS MOST IMPORTANT STATE AGENCY. CHUGACH JOINS OTHER UTILITIES ACROSS THE STATE IN STRONGLY URGING YOU NOT TO PASS SB 64.

NOT SO INCIDENTALLY, COMMISSION ACTIONS (INCLUDING STUDIES) HAVE COST CHUGACH MORE THAN \$2.2 MILLION IN THE PAST THREE YEARS ALONE. THIS IS A CONSERVATIVE FIGURE, AND DOES NOT INCLUDE STAFF TIME, WHICH IS STAGGERING.

#### LEVEL OF INVOLVEMENT

YOU HAVE HEARD, OR WILL HEAR, MANY EXAMPLES FROM MANY UTILITIES REGARDING HOW THE COMMISSION HAS TRANSCENDED ITS REGULATORY MANDATE AND NOW WORRIES ABOUT TIME-CONSUMING AND COSTLY DETAILS WHICH ARE RIGHTLY THE PROVINCE OF UTILITIES' BOARDS AND MANAGEMENT.

HERE IS JUST ONE MORE EXAMPLE: JUST A FEW DAYS AGO, WE RECEIVED A LETTER FROM THE APUC REQUIRING THAT CHUGACH SEEK THE

COMMISSION'S APPROVAL -- "REGARDLESS OF ESTIMATED COST" -- FOR ANY CHANGES OR ADDITIONS TO OUR MICROWAVE SYSTEM. NO MATTER HOW SMALL, THESE CHANGES MUST FIRST RECEIVE THE BLESSING OF THE APUC. CERTAINLY, THIS AGENCY HAS MORE IMPORTANT WAYS TO SPEND ITS STAFF TIME AND MONEY, EVEN ASSUMING THAT SUCH COSTS MIGHT END UP BEING CHARGED TO CHUGACH CONSUMERS.

#### REGULATORY LAG

IN LARGE PART BECAUSE THE COMMISSION HAS INVOLVED ITSELF IN TOO MUCH DETAIL, REGULATORY LAG HAS BECOME A SERIOUS PROBLEM. A RECENT STUDY OF APUC FILES BY THE ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION SHOWED THAT THE AVERAGE RATE CASE DOCKET REMAINS OPEN BETWEEN 15 AND 16 MONTHS. FOR NON-RATE CASES, DOCKETS REMAIN OPEN BETWEEN 14 AND 15 MONTHS. IT IS NOT UNUSUAL FOR DOCKETS TO STAY OPEN FOR TWO TO THREE YEARS. THIS ADDS A CONSIDERABLE FINANCIAL BURDEN TO THE UTILITIES AND OUR CONSUMERS, MANY OF WHOM ARE YOUR CONSTITUENTS.

#### SERVICE AND SAFETY STANDARDS REGULATIONS

IN 1982, THE COMMISSION ISSUED SEVEN PAGES OF PROPOSED SERVICE AND SAFETY REGULATIONS. FOLLOWING A PUBLIC HEARING IN MID-1983, THE REGULATIONS DISAPPEARED. THEY RESURFACED THIS PAST JANUARY AS 49 PAGES, COVERING A FAR BROADER RANGE OF ISSUES AND AREAS. THE COMMISSION IS NOW ATTEMPTING TO APPLY AT LEAST SOME OF THESE REGULATIONS TO UNREGULATED UTILITIES, INCLUDING THREE

COOPERATIVES WHOSE MEMBERS HAVE VOTED TO DISSOCIATE FROM COMMISSION REGULATION. SUFFICE IT TO SAY, THOSE THREE CO-OPS ARE UP IN ARMS.

THE REGULATIONS ARE STILL JUST PROPOSED. THEY ARE STILL OPEN FOR PUBLIC COMMENTS AND A HEARING. HOWEVER, HAVING MULTIPLIED SEVEN-FOLD AND NOW MUCH BROADER IN SCOPE AND APPLICABILITY, THESE REGULATIONS CLEARLY SHOW WHERE THE COMMISSION IS HEADING, AND WHAT IT SEES AS ITS MANDATE.

LET ME TOUCH ON A FEW OF CHUGACH'S CONCERNS WITH THE PROPOSED REGULATIONS THEMSELVES:

ONE AREA IN WHICH THE COMMISSION APPEARS TO BE INCREASINGLY INTERESTED IS UTILITY PLANNING FOR GENERATION. THE REGULATIONS WOULD REQUIRE CHUGACH AND OTHERS TO FILE WITH THE COMMISSION, A FULL 180 DAYS BEFORE CONSTRUCTION, THE FOLLOWING INFORMATION ON A GENERATION UNIT:

- PROPOSED SITE
- GENERATING CAPACITY
- FUEL TYPE AND SOURCE
- OPERATING DATA
- LOAD FORECASTING DATA JUSTIFYING PLANT FINANCING
- ANY OTHER INFORMATION THE COMMISSION DECIDES IS RELEVANT

ATOP ALL THIS, THERE IS NO APPARENT OBLIGATION FOR THE COMMISSION TO ACT TIMELY IN APPROVING OR DISAPPROVING A UTILITY'S GENERATION PLANS. THE POTENTIAL CONSEQUENCES HERE ARE OBVIOUS.

QUALITY OF SERVICE IS ANOTHER MAJOR AREA ADDRESSED BY THE REGULATIONS. I WANT TO STRESS THAT ON THIS QUESTION WE ALL HAVE THE SAME GOAL -- SAFE, RELIABLE AND ENVIRONMENTALLY ACCEPTABLE POWER SUPPLY. CHUGACH ADHERES STRINGENTLY TO THE MANDATORY NATIONAL ELECTRIC SAFETY CODE AND OTHER INDUSTRY STANDARDS.

HOWEVER, THE DETAIL AND OBJECTIVES IN THE PROPOSED QUALITY OF SERVICE REGULATIONS ARE SURE TO TRY -- OR EXCEED -- THE KNOWLEDGE, EXPERTISE AND STAFF RESOURCES OF THE APUC. THE REGULATIONS SET UNREALISTIC GOALS -- SUCH AS MANDATING THAT NO OUTAGE LAST MORE THAN 90 SECONDS -- AND WOULD REQUIRE NON-EXISTENT OR OUTRAGEOUSLY EXPENSIVE TECHNOLOGY. IT WOULD BE VIRTUALLY IMPOSSIBLE FOR THE SMALLER UTILITIES TO COMPLY, BUT VIOLATION OF THE REGULATIONS WOULD CONSTITUTE PRESUMPTION OF INADEQUATE SERVICE AND/OR SAFETY VIOLATIONS.

AT THE VERY LEAST, THE COMMISSION WOULD HAVE TO BEEF UP ITS OWN STAFF TO TRY TO ENFORCE ALL THIS DETAIL. UTILITIES WOULD BE EXPOSED TO POTENTIALLY STAGGERING LIABILITY, REGARDLESS OF THEIR NEGLIGENCE. LET ME STRESS AGAIN THAT CHUGACH MEETS OR EXCEEDS INDUSTRY SAFETY STANDARDS.

#### WHOLESALE POWER CONTRACTS

HERE IS ANOTHER EXAMPLE OF THE COMMISSION NOT CONSIDERING THE IMPLICATIONS OF ITS ACTIONS.

IN THE SUMMER OF 1983, THE COMMISSION ASSERTED JURISDICTION OVER AT LEAST THE PRICING COMPONENT OF THE WHOLESALE POWER CONTRACTS BETWEEN CHUGACH AND TWO NEIGHBORING COOPERATIVES -- MATANUSKA ELECTRIC AND HOMER ELECTRIC. IN THE WAKE OF THIS, THERE HAS BEEN WIDE CONFUSION AMONG THE CO-OPS AND OUR LENDERS REGARDING THE STATUS OF THE WHOLESALE CONTRACTS.

ONE EFFECT HAS BEEN A DETERIORATION IN RELATIONS AMONG OUR THREE CO-OPS AND WITH OUR LENDERS, INCLUDING THE FEDERAL RURAL ELECTRIFICATION ADMINISTRATION. THIS HAS LED TO CONFUSION OVER FINANCING FOR FUTURE POWER PROJECTS SUCH AS BRADLEY LAKE. THE STAKES AND RESPONSIBILITIES ARE VERY HIGH.

I AND OTHER CHUGACH BOARD MEMBERS COULD GO ON FOR MANY HOURS, BUT TIME IS VERY LIMITED HERE. THANK YOU FOR THIS OPPORTUNITY. CHUGACH STANDS READY TO PROVIDE OTHER INFORMATION, AND WE LOOK FORWARD TO TESTIFYING AT FUTURE HEARINGS ON THIS MOST IMPORTANT MATTER. WHILE I HAVE SYNOPSISIZED MY TESTIMONY TODAY, MY FULL WRITTEN COMMENTS WILL BE PROVIDED TO MEMBERS OF YOUR COMMITTEES.

THANK YOU.

m/testimony/11MAR85

### Built-in Controls

An electric cooperative utility is a self-regulating entity, owned and controlled by the consumers it serves. The consumers elect the board of directors who, in turn, hire a manager to administer the day-to-day activities of the cooperative.

The board establishes guidelines, policies and financial controls under which the manager must operate. Whenever a board member or manager strays from the best interest of the utility and its consumers, the membership has the power to "rise up and throw the rascals out" in good democratic tradition. In short, electric cooperatives have their own inherent check and balance system and their regulation by the APUC should be basic.

The State of Wisconsin, for example, recognizes this democratic tradition. Wisconsin law established a Public Utility Commission with powers almost as broad as those found in Alaska. The Badger State, however, has purposely exempted co-ops from the Commission's jurisdiction, allowing the co-ops to regulate themselves.

### What We Want

Alaska's electrical cooperatives are not advocating that they be exempted from APUC control. They do, however, agree on the following list of suggestions for improvement:

1. Changes needed to obtain non-government financing
  - a. Amend AS 42.05.431 to treat cooperative mortgage obligations the same as municipal bond obligations.
  - b. Prevent APUC from changing wholesale power agreements after they are in effect.
  - c. Prevent APUC from making permanent rates approved by the Commission later subject to refund.

2. Narrow the scope of APUC authority

- a. Reservation of management rights to governing bodies of utilities for subjects not specifically granted to APUC.
- b. Trim some specific grants of authority, i.e. AS 42.05.291 (standards of service and facilities) and AS 42.05.511 (management practices).
- c. Simplify ratemaking process by authorizing TIER indexing of rates upon application by a cooperative utility.

3. Speed up the regulatory process

- a. Authorize the APUC to suspend action for only one period of six months
- b. Require the Commission to rule promptly on matters before them.
- c. Enforce this statutory limitation by requiring the commissioners to forfeit their pay when dockets are not completed on time.

# STATE OF ALASKA 1986 LEGISLATIVE SESSION

## FISCAL NOTE

Revision Date : 12/19/85

**REQUEST**

Bill/Resolution No. : HB 63  
 Title: An Act relating to the plumbing code"  
 Sponsor : Governor  
 Requestor : House Labor & Commerce  
 Date of Request : 3/15/85

**FISCAL DETAIL**

Agency Affected : Labor  
 BRU : Labor Standards & Safety  
 Components : Mechanical Inspection

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

**FUNDING : (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS :**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

Prepared by: <sup>1/3</sup> Robert J. Bacolas, Sr.  
 Division : Labor Standards & Safety  
 Approved by Commissioner: Jim Robison  
 Agency : Labor

Phone : 465-4870  
 Date : 12/19/85  
 Date : 12/19/85

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

SUMMARY OF PROPOSED CHANGES

TO AS 42.05 (Alaska Public Utilities Commission Act)

AS 42.05.091

Add section (b) - requires commissioners to complete their work within six months or have their pay withheld, as is now the case for judges and justices in the Alaska Court System.

AS 42.05.141

(1) deletes provision which allows commission powers to be liberally construed.

(d) adds provision reserving management authority for cooperatives organized under AS 10.25 (Alaska's cooperative statute) to the boards of those cooperatives.

AS 42.05.221

(e) expressly allows commission to assign costs to various parties involved in commission proceedings -- not just utilities.

AS 42.05.291

(c) and (d) require petition by a cooperative's membership for the commission to adopt service and safety regulations applicable to that cooperative.

Current section (d) is relettered (e).

AS 42.05.381

(c) allows a cooperative's rates to be set within a commission-approved range, thus avoiding costly new rate cases for minor rate fluctuations.

Current sections (c) and (d) are relettered (d) and (e)

AS 42.05.421

(1) deletes word "initial" and requires commission action within six months on tariff filings.

(3) adds new section providing that tariff filings automatically go into effect on a permanent basis unless the commission acts within six months.

AS 42.05.431

(a) requires commission to respect the financial obligations of cooperatives, as the commission is currently required to respect the financial obligations of municipal utilities.

(b) prohibits commission from changing wholesale power contracts after they are in effect.

(c) prohibits commission from ordering refunds from permanent rates.

AS 42.05.461

deletes cumbersome requirement that utilities inventory property by specific land parcel and be required to furnish commission with such information.

AS 42.05.511

(a) places responsibility on the commission for proving, in a rate proceeding, that the management practices of a utility are inefficient or unreasonable.

AS 42.05.711

(h) provides that commission authority over areas other than service area boundaries does not apply to deregulated cooperatives.

AS 42.05.712

(a), (b) and (d) provide that cooperatives are deregulated generally unless a majority of 15% of a cooperative's membership votes to be regulated.

AS 42.05.720

(7) limits a "tariff" to filings related to rates and charges, to avoid costly and time consuming delays and paperwork.

Changes Proposed by Cliff Eilen

\*Section 1. AS 42.05.711 is amended to read:

(f) Telephone utilities which serve less than fifteen hundred subscribers within the state shall not be subject to economic regulation by the Public Utilities Commission pursuant to Section 42.05.141 (3) unless the company elects by action of its board of directors to be subject to such economic regulation by the Commission; or the proposed increases exceeds 30 percent in any one year; or 20 percent of the subscribers petition the Commission to regulate rates pursuant to (1) and (3) of this subsection; or the Commission declares that the company shall be subject to economic regulation by the Commission pursuant to (4) of this subsection.

(1) Each telephone company not subject to economic regulation pursuant to (f) of this section shall, at least 60 days before the effective date of any proposed rate increase, notify the Commission and each of the company's subscribers of the proposed rate increase. Notice by the company to all subscribers shall be in a form prescribed by the Commission, shall be by first-class mail, and shall include a schedule of the proposed rates, the effective date of the rate increase, and the procedure necessary for the subscribers to petition the Commission to determine rates in lieu of the proposed rates. If the telephone directory published by the company for its subscribers sets forth the procedure for petitioning the Commission, a reference to the location in the directory shall be adequate notice of the procedure.

(2) The subscribers of a telephone company not subject to the Commission's economic regulation pursuant to (f) of this section may petition the Commission to determine rates in lieu of any rate increase proposed by the company pursuant to (1) of this subsection.

The Commission shall adopt and promulgate rules and regulations governing the form of such petitions and a petition substantially in compliance with such rules and regulations shall not be deemed invalid due to minor errors in its form.

(3) If, by the effective date of the company's proposed rate increase, the Commission has received petitions from fewer than 20 percent of the subscribers requesting that the Commission determine rates, the Commission shall certify such fact to the company and the company's proposed rates shall become effective as published in the notice to subscribers. If, on or before the effective date of the proposed rate change, the Commission has received petitions from 20 percent or more of the subscribers requesting that the Commission determine rates, the Commission shall notify the company that it will determine rates for the company in lieu of the company's proposed rate increase.

(4) In addition to the procedure for petition prior to any proposed rate increase pursuant to (1) through (3) of this subsection, the subscribers of a telephone company not subject to the Commission's economic regulation may at any time petition the Commission to declare that the company shall be subject to such economic regulation. If the Commission determines that at least 51 percent of a company's subscribers have properly petitioned that the company be subject to the Commission's economic regulations, the Commission shall certify such fact to the company and thereafter the company shall be subject to economic regulation by the Commission until at least 51 percent of the company's subscribers petition that the company no longer shall be subject to the Commission's economic regulation. The

Commission shall adopt and promulgate rules and regulations governing the petition procedure and the form of such petitions and a petition substantially in compliance with such rules and regulations shall not be deemed invalid due to minor errors in its form.

3 of 3

*Alie Simons  
Harry Markly  
from Chugach } ARECA*

BILL SHEFFIELD, GOVERNOR

ALASKA PUBLIC UTILITIES COMMISSION

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

420 "L" STREET  
SUITE 100  
ANCHORAGE, ALASKA 99501  
(907) 276-6222

April 23, 1985

Honorable Fred F. Zharoff  
Chairman, Senate Labor and  
Commerce Committee  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Honorable Mike Navarre  
Chairman, House Labor and  
Commerce Committee  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Senator Zharoff and Representative Navarre:

This letter and its enclosures are submitted in response to your meeting of April 11, 1985 with Jack Farleigh, Executive Director of the Commission and representatives of ARECA and Chugach Electric Association. The Commission's comments include an initial assessment of the impact of the proposed statutory changes and our reaction to the effect of those changes.

The Commission has addressed only those proposed amendments in which it was indicated that there is active legislative interest. The Commission did not address proposed revisions to AS 42.05.091, .291(c) and (d) since it was our understanding that those sections would not be given consideration at this time. However, if that is not the case, the Commission will provide comment on those sections immediately.

The Commission has noted for each proposed amendment which utilities would be affected by the changes; we believe this information is an extremely critical consideration for legislative deliberation. The Commission regulates utilities as large as Alascom, serving over 400,000 consumers and collecting annual revenues in excess of \$276 million to small utilities such as Pelican Utility Company, serving 76 customers with annual revenues of \$257,000. It appears to the Commission that the proposed changes are being suggested by only one segment of the regulated industry, and we would note that among that industry there is not unanimous support for all the changes suggested by ARECA.

In regard to those changes which would substantially alter the regulation of cooperative utilities, it would be preferable to the Commission, to deregulate cooperatives rather than to give the appearance of regulation through verbage which in effect eliminates Commission review and authority.

Senator Zharoff  
Representative Navarre

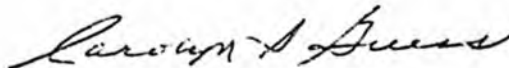
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April 23, 1985

It should be remembered that the Commission is charged with the responsibility of protecting the utility consumers because the State has seen fit through AS 42.05 to grant public and private utilities monopoly power. We cannot emphasize too strongly the argument that the needs of the regulated industry to operate within reasonable regulatory constraints must be balanced with the protection that the existing statutory language of AS 42.05 provides to the consumers of regulated monopoly businesses.

Sincerely,

ALASKA PUBLIC UTILITIES COMMISSION



Carolyn S. Guess, Chairman

CSG/wfs2192W  
42285a  
Enclosures

APUC Comments on Proposed Statutory Revisions

Section 42.05.141(a)(1) - regulate every public utility engaged or proposing to engage in such a business inside the state, except to the extent exempted by AS 42.05.711 [and the power of the commission shall be liberally construed to accomplish its stated purpose];

Impact:

- \* Affects all regulated utilities
- \* Removes flexibility to deal with varied situations that benefit both utilities and consumers.
- \* Could create judicial confusion as to how to interpret Commission authority.
- \* May eliminate Commission authority to issue temporary certificates of public convenience and necessity.

Comments:

Language similar to the current language exists in the statutes of most states and is necessary for a utility commission to achieve effective regulation over a wide variety of utilities operating under different circumstances.

Repeal of the existing language represents a "broad brush" attempt to limit the Commission's power. The Commission respectfully suggests that it would be preferable for the Legislature to specifically address any particular powers of the Commission which are of concern.

APUC Comments on Proposed Statutory Revisions

AS 42.05.141(d) - Notwithstanding any other provision to the contrary, none of the general powers and duties of the commission operate to divest the board of directors of a cooperative organized under AS 10.25 from exercising management authority for the conduct of that cooperative's affairs.

Impact:

- \* Affects regulated cooperative utilities, both electric and telephone.
- \* Eliminates traditional regulatory oversight.
- \* Language contained in this provision may conflict with Commission's responsibilities articulated in AS 42.05.511.
- \* Intent of this provision is not clear.

Comments:

Primary responsibility for utility management resides within the sound discretion of its board of directors and appointed managers. However, this has and should be subject to regulatory oversight under an effective regulatory scheme. The proposed revision appears to either eliminate entirely this oversight or radically curtail it (see also comments under proposed AS 42.05.511(a)).

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AFUC Comments on Proposed Statutory Revisions

AS 42.05.221(e) - The commission may employ professional consultants to assist it in administering the provisions of this section and may apportion the expenses relating to this administration among the competing [utilities] parties involved[.], including but not limited to utilities, commission staff and consumer intervenors, other than individual consumers.

Impact:

- \* Affects all regulated utilities.
- \* Intent of the proposed revision is unclear.
- \* Does not appear to change existing Commission practice.

Comments:

*Supreme* In practice, this section which relates to utility certification and service area boundaries has been generally used to allocate costs of hearing officers in competing cable television certification proceedings. The only other instance where this section of the statute has been invoked was the result of a ~~Superior~~ Court decision to remand a case to the Commission to receive further evidence in order to finalize the service area boundaries of Chugach Electric Association and Municipal Light and Power.

Absent clarifying language or some other indication of the drafter's intended purpose, the Commission is unable to offer a meaningful response beyond that noted above.

## APUC Comments on Proposed Statutory Revisions

AS 42.05.381(c) - In establishing the revenue requirement of a cooperative organized under AS 10.25 the commission shall, upon application of the cooperative, allow the cooperative to, without further filing, adjust rates to earn a times interest earned ratio within a range approved by the commission. the results of such adjustments shall be subject to verification by the commission and the operation of this adjustment procedure shall be reviewed by the commission at reasonable intervals.

### Impact:

- \* Affects regulated cooperative utilities, both electric and telephone.
- \* Allows cooperatives whose rates are currently regulated by the Commission to modify rates merely by making application (of unspecified content) to the Commission.
- \* Allows modification of rates without justification by a utility, without notice to or recourse by consumers, and without review by the Commission to determine that the rates are just and reasonable as otherwise required by AS 42.05.381.
- \* Allows rate increases to achieve a Commission established times interest earned ratio (TIER) without restriction as to frequency and amount of changes, and without requiring a concomitant decrease should the cooperative exceed the allowed TIER.
- \* Allows modification of rates charged to consumers without consideration of discrimination between classes of service, i.e., residential and commercial, as prohibited by AS 42.05.391.

### Comments:

Because rate regulation is a cost plus exercise, this proposed change partially deregulates cooperative rates. The adequacy of a return or TIER is a function of the level of a utility's expenses. Therefore, an allowable TIER range while giving the appearance of reasonableness, in effect, provides no restraints on the expenses of a cooperative.

It should be noted that the Commission provides for automatic adjustment of a energy utility's fuel costs, generally its largest expense item, with Commission verification subsequent to the adjustment.

The Legislature should consider the fact that the proposed revision implements a far reaching and not commonly utilized rate methodology with a simplistic statement in the statute.

○

APUC Comments on Proposed Statutory Revisions

AS 42.05.421(a)(1) - [an initial] a period not longer than six months beyond the time when it would otherwise go into effect if the annual gross revenues of the utility making the filing are more than \$3,000,000; and

AS 42.05.421(a)(3) - failure by the commission to issue a final order on a tariff filing within six months of the filing will result in the tariff filing requested going into effect on a permanent basis.

Impact:

*or maybe  
interim rate*

- \* Affects all regulated utilities.
- \* Eliminates flexibility in processing cases; for example, forces Commission to reject incomplete tariff applications totally rather than to assist utilities to complete their filings.
- \* Fails to consider the scheduling impact of independent actions by parties which can create delay.
- \* Fails to include the due process requirements of a quasi-judicial proceeding.
- \* Severely disadvantages intervenor participation in Commission proceedings.
- \* Mandatory six-month processing deadline would be impossible to accomplish with existing resources (see attached fiscal note).
- \* Reduces existing processing time by 45 days by beginning the six-month suspension period from the point of filing (as opposed to the point of suspension as is the practice under the current statute) by reducing existing processing time.

Comments:

The Commission does not believe that its case processing delays warrant such drastic statutory changes without evidence from an objective source that the proposed change will "cure the perceived problem" without compromising the mission of the Commission to protect the interest of the consumers while creating a healthy operating environment for the utilities. In its last three budget submissions, the Commission has acknowledged delays in case processing due largely to its limited resources. In FY '85, a hearing officer position (unfunded) was created. In October 1985, a part-time hearing officer was hired and substantial improvement in case processing has been effected. The Commission expects this favorable trend to continue.

## APUC Comments on Proposed Statutory Revisions

Where final decision making occurs outside the initial six month suspension period (which is less than 10% of our cases), it is (1) because a utility has requested the delay because of its constraints; (2) the utility and Commission staff have agreed to a delay for mutually beneficial reasons; (3) the utility proceeding is unusually large or complex, i.e., Alascom's pending rate design case; (4) generic proceedings as a result of federal decisions affecting all of one regulated industry, i.e., Federal Communications Commission decisions mandating State Commission actions; and (5) lack of Commissioner support staff to assist in preparing legally defensible, written decisions (see page 470 of APUC budget document for verification).

The proposed amendment allows no extension of the six months for those cases which are so complex as to make meaningful review by the Commission, and meaningful participation by intervenors, impossible in the six-month period. Nor does it make an exception for the many instances where the utility itself requests a delay. The Legislature should also consider the balance achieved under the current provision. At present, the Commission is able to fairly consider the interests of both the utility and the consumer as it decides tariff changes. The utility is protected by the Commission's ability to grant interim relief during the period of full review of the permanent request. The consumer is protected by the Commission's careful consideration of the issues and the potential impact on rate payers that takes place during the suspension period. Imposition of an absolute decision deadline will certainly impact the protection now available to the consumer and create an imbalance of consideration in favor of the utility that may not be the real intent of the Legislature.

The Commission notes that an alternative proposal may be considered which would, in effect, add an additional six months to the suspension period for a total suspension period of 12 months. The impact statements presented above would equally apply to a proposed 12-month suspension. There would be some minimal change in the fiscal impact which can be forecasted at the Committee's request.

AS 42.05.421(A)(1) FISCAL NOTE BASED ON MANDATORY SIX MONTH SUSPENSION PERIOD

LINE ITEM	FY '85	FY '86	FY '87	FY '88	FY '89	FY '90
100-PERSONAL SERVICES: MERIT OR NEGOTIATED SALARY INCREASES NOT INCLUDED)						
Hrg. Officer, R 24A (ex.)	68,967	68,967	68,967	68,967	68,967	68,967
Paralegal I, R 13A	34,076	34,076	34,076	34,076	34,076	34,076
Paralegal I, R 13A	34,076	34,076	34,076	34,076	34,076	34,076
Economist, R 20A	53,306	53,306	53,306	53,306	53,306	53,306
AST II, R 8A	25,947	25,947	25,947	25,947	25,947	25,947
100 TOTAL =	<u>216,372</u>	<u>216,372</u>	<u>216,372</u>	<u>216,372</u>	<u>216,372</u>	<u>216,372</u>
200-TRAVEL (THIS LINE ITEM INCLUDES A 0% INFLATION FACTOR 86-90)						
	-0-	-0-	-0-	-0-	-0-	-0-
300-CONTRACTUAL (NO INFLATION FACTOR)						
Computer Programming	-0-	-0-	-0-	-0-	-0-	-0-
Other	-0-	-0-	-0-	-0-	-0-	-0-
300 TOTAL =	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
400-COMMODITIES (THIS LINE ITEM INCLUDES A 0% INFLATION FACTOR 85-90)						
Hrg. Officer, R 24A (ex.)	400	400	400	400	400	400
Paralegal I, R 13A	400	400	400	400	400	400
Paralegal I, R 13A	400	400	400	400	400	400
Economist, R 20A	400	400	400	400	400	400
AST II, R 8A	400	400	400	400	400	400
	<u>2,000</u>	<u>2,000</u>	<u>2,000</u>	<u>2,000</u>	<u>2,000</u>	<u>2,000</u>
500-EQUIPMENT (ONE TIME PURCHASES, FIRST YEAR ONLY)						
Hrg. Officer, R 24A (ex.)	2,025	-0-	-0-	-0-	-0-	-0-
Paralegal I, R 13A	2,025	-0-	-0-	-0-	-0-	-0-
Paralegal I, R 13A	2,025	-0-	-0-	-0-	-0-	-0-
Economist, R 20A	2,025	-0-	-0-	-0-	-0-	-0-
AST II, R 8A	1,200	-0-	-0-	-0-	-0-	-0-
	<u>9,300</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
600-LAND (NO INFLATION AND FORMULA IS SQ. FT. X 12 MONTHS X \$2.00 PER SQ. FT.)						
Hrg. Officer, R 24A (ex.)	3,000	3,000	3,000	3,000	3,000	3,000
Paralegal I, R 13A	3,000	3,000	3,000	3,000	3,000	3,000
Paralegal I, R 13A	3,000	3,000	3,000	3,000	3,000	3,000
Economist, R 20A	3,000	3,000	3,000	3,000	3,000	3,000
AST II, R 8A	1,992	1,992	1,992	1,992	1,992	1,992
	<u>13,992</u>	<u>13,992</u>	<u>13,992</u>	<u>13,992</u>	<u>13,992</u>	<u>13,992</u>
GRAND TOTAL	241,664	232,364	232,364	232,364	232,364	232,364

APUC Comments on Proposed Statutory Revisions

AS 42.05.431(a) - When the commission, after an investigation and hearing, finds that a rate demanded, observed, charged or collected by a public utility for a service, subject to the jurisdiction of the commission, or that a classification, rule regulation, practice, or contract affecting the rate, is unjust, unreasonable, unduly discriminatory or preferential, the commission shall determine a just and reasonable rate, classification, rule, regulation, practice, or contract to be observed or allowed and shall establish it by order. A municipality may covenant with bond purchasers regarding rates of a municipally owned utility, and the covenant is valid and enforceable and is considered to be a contract with the holders from time to time of the bonds. The financial covenants contained in mortgages and other debt instruments of cooperative utilities organized under AS 10.25 are likewise valid and enforceable, and rates set by the commission must be adequate to merit those covenants. Municipal utilities and cooperative utilities organized under AS 10.25 shall file an informational copy of debt instruments affecting rates with the commission upon execution.

Impact:

- \* Affects regulated cooperative utilities, both telephone and electric, and regulated municipal utilities.
- \* Requires the Commission to automatically grant rates which will generate income sufficiently in excess of expenses to cover any financial covenants that cooperatives might have in their debt instruments, regardless of their reasonableness.
- \* Eliminates Commission review of whether utility facilities are used and useful or otherwise prudent, and replaces it with whatever terms the utility and its lenders have agreed to.

Comments:

As proposed, .381(c) eliminates Commission review of cooperative expenses, this provision eliminates Commission review of the reasonableness of cooperative debt instruments. REA, on whose behalf these changes were suggested according to ARECA, has been contacted by the Commission and has indicated it (1) does not require the changes, (2) it was not contacted about the proposed changes, and (3) it has no problems with the Commission's past decision making under current statutory language.

APUC Comments on Proposed Statutory Revisions

AS 42.05.431(b) - The commission may not alter, change, modify or amend wholesale power agreements after they are in effect.

Impact:

- \* Affects all regulated utilities.
- \* Is contrary to REA requirements.
- \* Destroys Commission ability to protect wholesale and retail consumers.
- \* Eliminates Commission oversight of a potentially large element of a utility's operating expenses and revenues.

Comments:

Evidence in a Commission proceeding confirms that until the Commission exercised its jurisdiction over Chugach Electric's wholesale rates, the consumers in Anchorage were subsidizing the rates of Matanuska Electric and Homer Electric Association Cooperatives.

The Commission should have continuing jurisdiction over wholesale rates. Periodic review of wholesale power contracts is necessary to prevent some consumers from subsidizing other consumers.

APUC Comments on Proposed Statutory Revisions

AS 42.05.431(c) - Permanent rates shall not be subject to refund.

Impact:

- \* Affects all regulated utilities.
- \* Eliminates Commission authority to make refundable permanent rates when evidence provided by a utility indicates that its rates are excessive and a Commission investigation is underway.
- \* If rates were ultimately found excessive, the customer would not be entitled to any refund for the period during which the rates were under investigation by the Commission, and arguably under appeal in the courts.

Comments:

Permanent rates are ordinarily not refundable. However, if costs have decreased or revenues increased substantially the Commission has an obligation to determine whether current permanent rates are excessive, just as the Commission has an obligation to determine when a utility requests an interim (emergency) rate increase whether current permanent rates are too low. Interim rate increases are generally granted within 45 days of a utility's request and are refundable. Where the Commission becomes aware, via credible evidence, that rates are too high, current rates are declared interim and refundable, subject to the Commission's final determination. This approach protects both the utility and the ratepayer under either scenario. Legislative adoption of the proposed revision would continue the utility's protected status, but would leave the consumer vulnerable during the intervening period if the investigation confirmed the rates were too high.

At this time, the Commission has made refundable, permanent rates of Matanuska Electric Association when it requested the reinstatement of a fuel surcharge that had been eliminated due to an overrecovery of revenues because of substantial growth in its service area; and permanent rates of Alaska Village Electric Cooperative when it updated its request for Power Cost Assistance and the utility's financial information indicated a substantial overrecovery of revenues.

## APUC Comments on Proposed Statutory Revisions

AS 42.05.461 - The commission may require a public utility to establish, provide, and maintain as a part of its system of accounts, continuing property records segregated by the year of placement in service including a list or inventory of all the units of tangible property used or useful in the public service, [showing the current location of the property units by definite reference to the specific land parcels upon which the units are located or stored. The commission may require a public utility to keep accounts and records in such a manner as to show, currently, the original cost of the property when first devoted to the public service, and the related reserve for depreciation.] Each public utility with annual revenues exceeding \$100,000 shall keep continuing property records.

### Impact:

- \* Affects all regulated utilities.
- \* Eliminates certain data elements that are essential for rate making and full compliance with other provisions of this chapter (i.e., location of plant in service, original cost, depreciation reserve, depreciation expense, etc.).
- \* Makes auditing of utility more difficult.
- \* Prevents verification of whether plant is being used to provide utility services.
- \* Encourage subjective instead of objective arguments in rate cases.

### Comments:

Continuing Property Records (CPR's) provide a complete record of each type of property owned by a utility. The Commission uses these records to verify the net value of plant on which a utility is allowed to earn a return and for which a depreciation expense is allowed.

In order for the utility to prove that its investment is being used for utility service as required by AS 42.05.461(b) without adequate accounts and records, it is anticipated that additional utility funds would be expended to prove to the Commission that utility plant exists and to verify its original cost. This expense, which the Commission believes is unnecessary, would be passed on to the ratepayer.

## APUC Comments on Proposed Statutory Revisions

AS 42.05.511(a) - [The commission may investigate the management of a public utility,] In a rate proceeding, the commission has the burden of proving that the management practices of a public utility, including but not limited to staffing patterns, wage and salary scales and agreements, investment policies and practices, purchasing and payment arrangements with affiliated interests [for the purpose of determining] are inefficient or unreasonable practices which adversely affect the cost or quality of service of the public utility.

### Impact:

- \* Affects all regulated utilities.
- \* There is an immediate conflict between the proposed language in 511(a) and the existing language in 511(c).
- \* Effectively eliminates Commission oversight into management practices of a utility.
- \* Burden is shifted from the utility to Commission staff and provides an opportunity for a utility so inclined to slow-roll an investigation.
- \* Could result in unreasonable delay in approving permanent rates which could jeopardize utility funding and which arguably will result in increased litigation.
- \* If management practices can only be reviewed in the context of rate proceedings, then the Commission is forced either to expand a management investigation into a rate proceeding or to regularize review of management practices during a rate proceeding. In either event, this would unnecessarily complicate and lengthen rate proceedings as well as create delays in timely Commission response to pressing management problems affecting service quality.

### Comments:

Management investigations are few and instituted only after documented evidence that serious problems affecting the safety, reliability or quality of a utility's service exists. Exhibit 1 shows 14 investigations during a four-year period.