

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4717 HJUD HB 356

588

02/04/88 Rep. K. Brown

PROPOSED AMENDMENTS TO CS HB 356 (Jud)

Limit Enforceability of Covenants to Wholesale Agreement

PURPOSE: To limit the enforceability of covenants to the wholesale power agreements and not include "related agreements."

COMMENT: As suggested by the Commission in its comments, ensuring the enforceability of rate covenants should be limited to the wholesale power agreement and not extend to the "related" services or wheeling agreements. See Attachment 1

Limitation on Automatic Approval of "Any Amendments"

PURPOSE: To provide automatic approval (i.e., exemption from APUC jurisdiction) only for contract amendments made prior to January 1, 1996.

COMMENT: It has been stated that there are other parties (in particular, secondary lenders including the Rural Electrification Administration) reviewing the contracts and who may require some, as yet unspecified, amendments. There is also an expressed desire on the part of the utilities and the APA for "convenience" in order to amend the contracts as the need arises.

These arguments do not justify the broad language presently contained in the bill. Amending the bill to provide that only amendments prior to 1996 would be exempted would accommodate any concern about getting the project going again this summer. At the same time, this amendment would ensure the ability of the APUC to review and approve any substantial changes over the long term. (The January 1, 1996 date is taken from the wholesale power contracts which provides that if the project is not complete and operational by this date, the utilities may "opt out.")

Although a "takeover" of Railbelt utilities may not seem likely, the possibility has been recognized by the utilities themselves as evidenced in legislation now before the legislature.

This amendment would not provide the APUC with any additional authority over the existing contracts, only amendments after the project is completed

and operational. The utilities have testified that if it were not for the need to get the project going this summer, they would not be expecting an exemption from the APUC review. See Attachment 2.

Elimination of Excess Payments

PURPOSE: To eliminate the requirement that utilities make "excess" payments beyond those needed to pay off debt or O & M for the project.

COMMENT: Section 29 of the Power Sales Agreement (pages 28 -29) requires payments from Railbelt consumers "in excess of actual debt service required for retirement of Bonds issued to pay Recoverable Construction Costs." These excess payments will amount to hundreds of millions of dollars in nominal terms. (This simplified scenario assumes no amendments to the contracts that could either extend the life of the contracts or increase the amount of the "excess" payments above that amount currently described in Section 29.)

From a Railbelt consumer perspective, even though these "excess" payments are not very sizable in discounted present value terms, the payments are difficult to justify. Notwithstanding the phrase "in recognition of efforts to obtain" the intertie, the payments would be for an essentially unspecified purpose -- or at least for a project which has not been demonstrated as economically feasible nor, I suggest, even likely to be relevant 30 years from now. Essentially, Railbelt consumers would be assessed an extraordinary charge for essentially unknown future purposes. Fortunately, Section 29 could be eliminated without affecting other elements of the wholesale power contracts or the services/wheeling contracts. See Attachment 3.

Attachment 1

AMENDMENT • 1

by BROWN

Limit Enforceability of Covenants to Wholesale Agreement

Amend page 1, line 24 to delete the phrase:

"or related contract"

Attachment 2

AMENDMENT # 2

by BROWN

Limitation on Automatic Approval of "Any Amendments"

Amend page 1, line 22, and after "contract":

Insert "adopted before January 1, 1996,

"Substantive" Amendments ?

Attachment 3

AMENDMENT • 3

Sec 3.1

by BROWN

Elimination of Excess Payments

page 2, after line 17:

Insert a new bill section to read:

"* Sec. 5. APPLICABILITY. AS 42.05.431(c), 42.05.511(d), and the amendments made to AS 44.83.090(b) by sec. 3 of this Act, do not apply to wholesale power agreements and related contracts in which the purchasers are required to make excess payments as that term is described in Section 29 of the Bradley Lake Hydroelectric Project Agreement for the Sale and Purchase of Electric Power prepared November 6th, 1987."

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 356 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the authority of the Alaska
7 Public Utilities Commission in connection with cer-
8 tain activities of the Alaska Power Authority and in
9 connection with calculating power cost equalization;
10 and providing for an effective date."

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

12 * Section 1. AS 42.05.431 is amended by adding a new subsection to
13 read:

14 (c) Notwithstanding (b) of this section,

15 (1) a wholesale agreement for the sale of power from a
16 project licensed by the Federal Energy Regulatory Commission on or
17 before January 1, 1987, and related contracts for the wheeling, stor-
18 age, regeneration, or wholesale repurchase of power purchased under
19 the agreement, entered into between the Alaska Power Authority and one
20 or more other public utilities after October 31, 1987, and before
21 January 1, 1988, and amendments to the wholesale agreement or related
22 contract, are not subject to review or approval by the commission
23 until all long-term debt incurred for the project is retired; and

24 (2) a wholesale agreement or related contract described in
25 (1) of this subsection may contain a covenant for the public utility
26 to establish, charge, and collect rates sufficient to meet its obliga-
27 tions under the contract; the rate covenant is valid and enforceable.

28 * Sec. 2. AS 42.05.511 is amended by adding a new subsection to read:

29 (d) Validated costs, except those disallowed under

Adopted

AMENDMENT • 3A

(NOTE: substitute for prior Amendment #3)

by BROWN

Elimination of Excess Payments

page 2, after line 17:

Insert new bill sections to read:

**** Sec. 5. APPLICABILITY. AS 42.05.431(c), 42.05.511(d), and the amendments made to AS 44.83.090(b) by sec. 3 of this Act, do not apply to wholesale power agreements and related contracts in which the purchasers are required to make excess payments as that term is described in Section 29 of the Bradley Lake Hydroelectric Project Agreement for the Sale and Purchase of Electric Power signed December 8, 1987."**

*** Sec. 6. NEGOTIATIONS TO REMOVE EXCESS PAYMENT TERM. If the parties to the Bradley Lake Hydroelectric for the Sale and Purchase of Electric Power signed December 8, 1987 undertake negotiations to amend the agreement, the Alaska Power Authority may not withhold its agreement to remove the requirement to make the excess payments as described in Section 29 of the wholesale power contract, nor may the Alaska Power Authority require concessions from the purchasers as a condition of the removal of the excess payments provision."**

Renumber sections accordingly

AMENDMENT

by Goll

7

Page 1, Line 23

Delete: "all long-term debt incurred for the project is retired"

Insert and replace with: "the project begins commercial operation"

Delete Section 2:

Page 1, Line 28 through Page 2, Line 3

Re-number sections accordingly.

A M E N D M E N T

Offered in the FINANCE COMMITTEE

TO: CSHB 356 (Judiciary)

Page 2, line 3, after ".":

Insert "In this subsection, "validated costs" are the actual costs
as determined by the APUC
that a utility uses, under the formula set out in related contracts
described in AS 42.05.431(c), to establish rates, charges for services
and rights, and the payment of charges for services and rights. This
subsection does not grant the commission jurisdiction to alter or
amend the formula set out in those related contracts."



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Committee on Finance

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

TO: Members of the House Finance Committee

FROM: Representative Kay Brown *Kay*

DATE: February 4, 1988

SUBJ: Amendments to CS HB 356(Jud):
Bradley Lake Exemption from the APUC

This memorandum proposes several specific amendments to CS HB 356(Jud) for your consideration during the House Finance Committee's review of this bill Friday, February 5th.

As a general comment, I would like to clearly state my support for the Administration's essential objective of trying to ensure that the Bradley Lake project is able to proceed with resumption of construction this summer. At this point, given the extent of the state's commitment to the project (ie, "sunk" costs), I feel that additional delays would be counterproductive.

At the same time, however, I am concerned about the potential long-term adverse impacts that some of the language included in CS HB 356(Jud) would have on the ability of the APUC to adequately protect consumer interests. While the House Judiciary Committee version is an improvement over the original bill, I would like to offer the following additional amendments.

As you review the suggested amendments, I would urge you to keep in mind these fundamental objectives for the bill:

- 1) ensure that Bradley Lake construction can move forward this summer; and
- 2) also safeguard the consumer interest by keeping the extent of utility deregulation to a minimum.

The following amendments are offered with these basic objectives in mind.

02/04/88 Rep. K. Brown

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COMMENT: As suggested by the Commission in its comments, ensuring the enforceability of rate covenants should be limited to the wholesale power agreement and not extend to the "related" services or wheeling agreements. See Attachment 1

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01/31/88

HB 356 - CONCEPTUAL AMENDMENTS
for the
House Finance Committee

1) Include language to clarify/reconcile section 1 of the bill with section 2.

- amend section 1 to include the phrase:

"Except as provided in AS 42.05.511...."

- amend section 2 to read:

"Only costs validated by the Commission that are incurred by a utility in connection with the related contracts described in AS 42.05.431 (c) must be allowed in the rates charged by a utility."

2) Limit duration of exemption from APUC jurisdiction to maximum of 30 years.

3) Limit the exemption of subsequent "amendments" to before January 1991.

4) Eliminate "excess payments" provision through conditional effective date.

5) Include language to ensure that meetings of bodies established by the power sales contracts and related contracts are covered by the Open Meetings Act.

6) Add language that would eliminate the APUC exemption if, at some point in the future, the utilities which are parties to the contracts were taken over by another utility that was not either a municipal utility or a cooperative (ie, an investor owned utility). See attached article.

Draft Admendment #1
to House Bill No. 356

A copied

*Section 1. AS 42.05.431 is amended by adding a new subsection to read:

(c) Notwithstanding (b) of this section,

(1) a wholesale agreement for the sale of power from a project licensed by the Federal Energy Regulatory Commission on or before January 1, 1987 [ENTERED INTO BETWEEN THE ALASKA POWER AUTHORITY AND ONE OR MORE OTHER PUBLIC UTILITIES AFTER OCTOBER 31, 1987 AND BEFORE JANUARY 1, 1988] and related contracts for the wheeling, storage, regeneration, or wholesale repurchase of power purchased under such an agreement, entered into between the Alaska Power Authority and one or more other public utilities or among the utilities after October 31, 1987 and before January 1, 1988 and [ANY SUBSEQUENT] amendments to the wholesale agreement or related contracts are not subject to review or approval by the commission until all debt incurred for the project is retired and long-term

(2) a wholesale agreement or related contract described in (1) of this subsection may contain a covenant for the public utility to establish, charge, and collect rates sufficient to meet its obligations under the contract; such a covenant is valid and enforceable.

*Sec. 2. AS 42.05.511 is amended by adding a new subsection to read:

(d) ^{Validated} ~~all~~ costs, except those disallowed under AS 42.05.381(a), incurred by a utility in connection with a ^{the related} wholesale agreement or contracts described in AS 42.05.431(c)(1), including, without limitation, power and other costs incurred under such an agreement or contract, must be allowed in the rates charged by the utility.

(Subsections 3 & 4 remain the same)

Alaska Power Authority

NEED FOR EXPEDITIOUS PASSAGE OF NEW "SB22" LEGISLATION

The revised construction schedule adopted for Bradley Lake has been developed to accomplish two primary objectives: first, to complete the project in a reasonable timeframe which will bring the project on line when the utilities' seasonal demand for power is increasing; and second, to stimulate the construction industry and employment opportunities by initiating major construction efforts during the 1988 construction season.

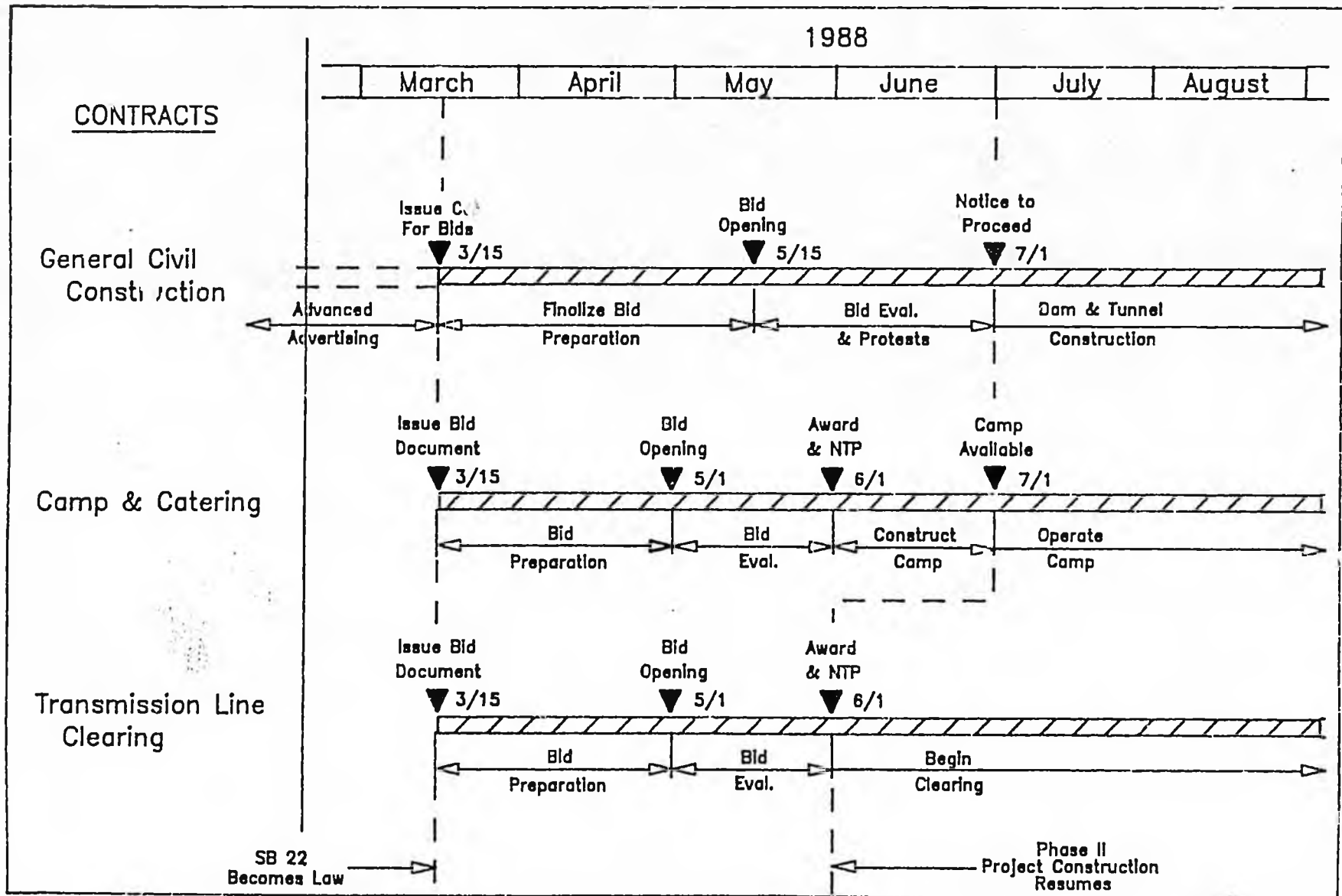
To accomplish the above objectives, and in particular to create a meaningful positive effect on the labor situation in 1988, it is imperative that the main construction contract (General Civil Construction) be awarded early enough in the summer of 1988 to enable the contractors to initiate work on both the dam and power tunnel. If the contract award is delayed beyond July 1, 1988, the contractor will still begin work on the power tunnel. However, due to the limited summer season remaining, work on the dam will probably not be initiated until the spring of 1989. As a consequence, the total 1988 work force will be reduced by approximately one-half.

Due to the time involved in advertising, bid preparation, bid opening, potential bid protests and the contract award process, in order to achieve a contract notice to proceed on July 1, 1988, it is imperative that "clean SB22" legislation be enacted and signed into law on or before March 15, 1988.

The attached flow chart shows the timetable required to achieve timely award of the General Civil Construction contract and other project contracts involving 1988 construction. Also attached is a bar chart which compares the estimated manpower requirements for 1988 resulting from early passage of SB22 (prior to March 15), versus late passage of the bill (May 15).

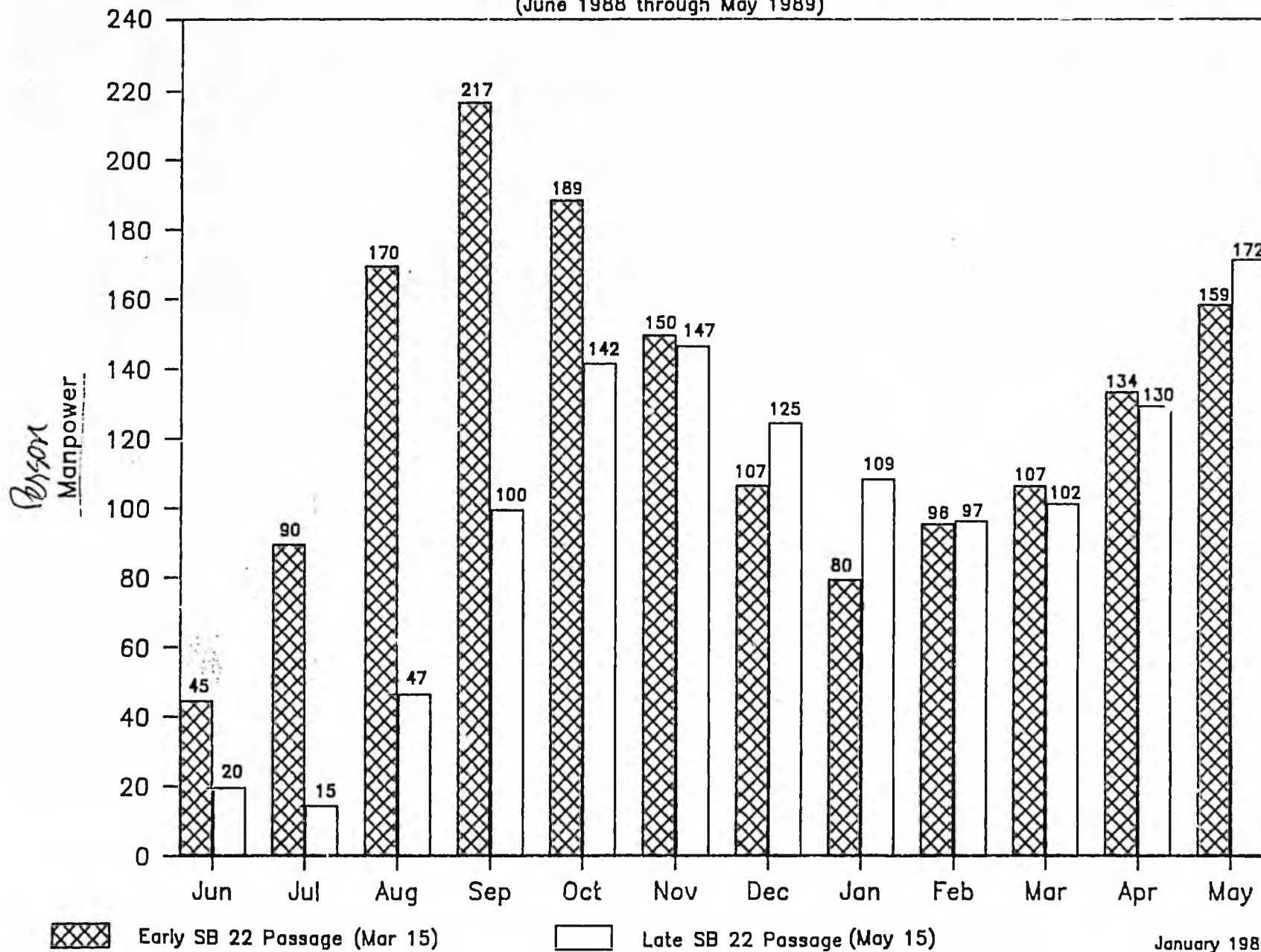
Attachments

Bradley Lake Hydroelectric Project 1988 Construction Schedule



Bradley Lake Hydroelectric Project Projected Manpower Requirements

(June 1988 through May 1989)



January 1988

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2

HOUSE BILL NO. 356

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the authority of the Alaska
7 Public Utilities Commission in connection with cer-
8 tain activities of the Alaska Power Authority and in
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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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13 read:

14 (c) Notwithstanding (b) of this section,

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16 project licensed by the Federal Energy Regulatory Commission on or
17 before January 1, 1987, entered into between the Alaska Power Authori-
18 ty and one or more other public utilities after October 31, 1987 and
19 before January 1, 1988, and related contracts for the wheeling, stor-
20 age, regeneration, or wholesale repurchase of power purchased under
21 such an agreement, and any subsequent amendments to the wholesale
22 agreement or related contract, are not subject to review or approval
23 by the commission; and

24 (2) a wholesale agreement or related contract described in
25 (1) of this subsection may contain a covenant for the public utility
26 to establish, charge, and collect rates sufficient to meet its obliga-
27 tions under the contract; such a covenant is valid and enforceable.

28 * Sec. 2. AS 42.05.511 is amended by adding a new subsection to read:

29 (d) All costs incurred by a utility in connection with a

1 wholesale agreement or contract described in AS 42.05.431(c)(1),
2 including, without limitation, power and other costs incurred under
3 such an agreement or contract, must be allowed in the rates charged by
4 the utility.

5 * Sec. 3. AS 44.83.090(b) is amended to read:

6 (b) The authority is not subject to the jurisdiction of the
7 Alaska Public Utilities Commission. Nothing in this chapter [AS 44.-
8 83.010 - 44.83.425] grants the authority any jurisdiction over the
9 services or rates of any public utility or diminishes or otherwise
10 alters the jurisdiction of the Alaska Public Utilities Commission with
11 respect to any public utility, including any right the commission may
12 have to review and approve or disapprove contracts for the purchase of
13 electricity by a public utility other than wholesale agreements and
14 contracts described in AS 42.05.431(c)(1).

15 * Sec. 4. AS 44.83.162 is amended by adding a new subsection to read:

16 (p) In calculating power cost equalization, the commission may
17 not consider validated costs or kilowatt-hour sales associated with a
18 United States Department of Defense facility.

19 * Sec. 5. This Act is retroactive to November 1, 1987.

20 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: APUC Commission authority re APA
and re PCE
Sponsor: Rules Committee by request of
Requestor: Governor

Agency Affected: Commerce & Economic Development
BRU: APUC
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

See attached

Prepared by: T.S. Moninski II Executive Director Phone: 276-6222
Division: Alaska Public Utilities Commission Date: 1/6/88

Approved by Commissioner: Kathy Marshall for J. Anthony Smith Date: 1/6/88
Agency: Commerce & Economic Development

Distribution (by preparer):

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

January 6, 1988

The proposed legislation amends AS 42.05.431(b), which established the Commission's authority to review and approve wholesale power contracts entered into between the Alaska Power Authority and other public utilities.

When Section .431(b) was enacted in 1986, no fiscal impact was forecasted and the Commission did not receive any additional resources. The expectation was that the Commission would respond to filings pursuant to this section with existing staff. Therefore, no resultant fiscal impact is projected in response to the changes included in this bill.

**STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: Rules Committee

Bill Version: HB 356
Publish Date: HOUSE 1/13/88

Revision Date: _____
Title: APUC authority in connection with
activities of the Alaska Power Authority
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: AK Power Authority
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL	(50)	(150)	(19,150)	-0-	-0-	-0-
REVENUE						

FUNDING: (Thousands of Dollars)

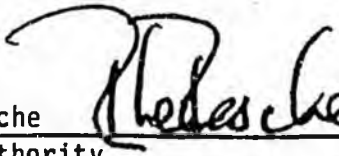
GENERAL FUND						
FEDERAL FUNDS						
OTHER *	(50)	(150)	(19,150)	-0-	-0-	-0-
TOTAL						

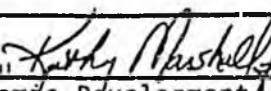
POSITIONS: *Railbelt Energy Fund

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

(See attached page)

Prepared by: Robert E. LeResche  Phone: 465-3575
Division: Alaska Power Authority Date: 1/8/88

Approved by Commissioner: J. Anthony Smith  Date: 1/8/88
Agency: Department of Commerce & Economic Development

Distribution (by preparer):

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

PROGRAM SUMMARY

° Expenditures

It is estimated that approximately \$200,000 of additional legal fees will be incurred due to the PUC hearings process.

It is further estimated that the PUC hearings process would delay the Bradley Lake project by a year. The resulting increase in construction costs and interest during construction on the long-term debt would increase the total project costs by an estimated \$19.15 million.

° Funding

It is assumed that any additional Bradley expenditures would be funded by the Railbelt Energy Fund.

° Economic Impact

In addition to the increased costs described above and below, a delay in the Bradley Lake project would reduce the number of jobs available on the Kenai Peninsula this summer and next.

° Impact on Railbelt Electricity Consumers

Not passing this bill would increase the interest rate on the long-term debt for Bradley Lake in two ways. First, debt would have to be issued earlier in the construction schedule (the IDB allocation to Bradley Lake expires on 12/31/90), and completion risk becomes more of a factor. Second and perhaps more important, present law allows the PUC to reopen the contracts at any time in the future. The interest rate penalty from these two factors is estimated to be 1/2 percent. Such a penalty would increase debt service \$750,000 per year, or \$22,500,000 over the life of the bonds.

Additionally, the utilities are expected to incur approximately \$500,000 of legal expenses due to the PUC hearings process. This would be borne by the Railbelt Electricity Consumers.

- ° In summary, the total additional costs incurred from this bill not passing would be approximately \$42,350,000.

ALASKA POWER AUTHORITY

POSITION PAPER

HOUSE BILL NO. 356

The Alaska Power Authority supports enactment of House Bill No. 356. Specifically, Sections 1, 2 and 3 of the bill provide for amendments which would exempt wholesale power agreements and related contracts (the two "wheeling" agreements), including any subsequent amendments to the wholesale agreement or related contract, between the Alaska Power Authority and one or more other public utilities from review or approval by the Alaska Public Utilities Commission (APUC). The exemption provided through these amendments covers only those agreements for the sale of power from a project licensed by the Federal Energy Regulatory Commission (FERC), on or before January 1, 1987, entered into between the Power Authority and one or more other public utilities after October 31, 1987 and before January 1, 1988, i.e., the Bradley Lake Hydroelectric project (licensed by the FERC on December 31, 1985), and the wholesale power sales agreements and related agreements were entered into on December 8, 1987. Enactment of this legislation remains essential to the program of revenue bond financing of the Bradley Lake Hydroelectric Project.

The need for enactment of House Bill 356 is due to a 1986 amendment to APUC legislation. The amendment provided the APUC with the authority to review in advance and approve wholesale power agreements between public utilities. The existing APUC statutory authority also allows that, once the agreements are in effect, the APUC may also order the parties to the agreement to renegotiate

the agreement if the APUC determines that retail power rates are not just. Where the parties are unable to agree to an amendment, the APUC may order the parties to proceed under the agreement's dispute resolution procedures.

The 1986 amendment to APUC statutes was part of a complex, lengthy and controversial package of amendments within the "sunset" reauthorization bill for the Alaska Public Utilities Commission. The effect of the amendment on the Alaska Power Authority, its wholesale power agreements and related contracts, and the Bradley Lake agreement in particular, was never considered by the 1986 Legislature. Consequently, we are now presented with a statutory conflict. The Power Authority is exempt by statute from the APUC's jurisdiction. On the other hand, the APUC has jurisdiction over wholesale power agreements and other related contracts to which the Power Authority is a party.

During the 1987 legislative session Senate Bill No. 22 was introduced and provided for amendments which would have restored law that had been in effect since 1976 and that was inadvertently removed during the reauthorization of the Alaska Public Utilities Commission by the 1986 Legislature. The amendments, as provided for in SB22, attempted to restore, rather than change the status quo. After a lengthy legislative hearing process, SB22 passed the Legislature and was subsequently vetoed. Governor Cowper vetoed the bill because of amendments contained in Section 4 of HCS CSSSB 22 (Fin.), which were unrelated to the amendments which would have exempted wholesale power agreements between the Alaska Power Authority and public utilities from review and approval by the APUC. As a result of the veto, Bradley Lake project construction could not move forward as originally planned.

During the 1987 legislative session, the Railbelt utilities requested funding and statutory authority which would have allowed for immediate construction of an upgraded intertie system in the Railbelt. The utilities asserted that this system was necessary to transmit electrical energy from Bradley Lake to its users in the Railbelt. That legislation did not pass, and the utilities were required to develop alternate (contractual) arrangements for moving energy over the intertie system as it exists today. These contractual arrangements are called "wheeling" and/or "services" agreements. These agreements govern the utilization of several segments of transmission facilities that are owned and operated by different parties. Further, these agreements serve as additional terms and conditions necessary to provide delivery of energy contracted for under the Power Sales Agreement, and are therefore integral parts of the bargain the utilities have made for Bradley Lake power. The Bradley Lake Power Sales Agreement does not become effective until all required approvals of these agreements are received.

Section 4 of HB356 provides for amendments to AS 44.83.162 (Section 7, of SB 22 passed by the 1987 Legislature also included this language.) Although Section 4 of this bill does not impact the Alaska Power Authority, it does relate to the Power Cost Equalization Program (PCE) which is administered by the Alaska Power Authority. This amendment clarifies that APUC should not include the kilowatt-hour sales to a Department of Defense facility when determining if a utility is eligible for Power Cost Equalization benefits. The amendment provides resolution to a question that has been pending regarding Naknek Electric Association's calculation of PCE benefits. Naknek Elec-

tric Association provides contractual electric service to the King Salmon Air Force Base under the Federal SWAP Act provisions of 1980. The amendment will provide a positive benefit to local customers of utilities participating in the PCE program which supply power now, or in the future, to a U.S. Department of Defense facility. The City of Galena, recently awarded a contract to sell power to the Galena Air Force Base, will also benefit from the amendment. The exclusion of pro rata fixed costs and kilowatt-hour sales arising from supplying power to such a facility will provide for a positive economic impact on Naknek Electric Association's members. This amendment will also serve to maintain the PCE level of Naknek Electric Association's residential customers without increasing the cost of power to these customers.

Glorie

JB22

April 21, 1987

To: Don Shinn
Director Program Development

From: Gwen Obermiller
Research Analyst

re: Naknek Electric's
disagreement with PCE
level determination

I am commenting on Mr. Franke's letter to Senator Zharoff dated March 19, 1987 though the supporting documents have not been forwarded.

The SWAP Act of 1980 states that an energy "...purchase ...will result in a cost savings to such agency of electric energy without increasing costs to other consumers of electric energy." If there are additional costs involved in providing power to wholesale customers of NEA, I would assume it to be the utility's responsibility to take all additional costs in account when negotiating the contract. If the direct costs are not passed through to the wholesale customers incurring the costs, the other ratepayers will subsidize the contract, unless the additional demand decreases the total cost of power. The agreement Naknek Electric (NEA) has with the Air Force is a negotiated wholesale power contract of the format which it appears that NEA enters into with any purchaser whose demand exceeds 500 kva. (See attached)

Cost based rates are developed by allocating the cost or ratio of cost of services and/or facilities to the customer or rate class depending on the degree of benefit to that class or the level of demand. If overall costs of providing electricity to the utility consumer are decreased, then it follows that a subsidy would decrease.

It appears in the letter from Mr. Franke to Sen. Zharoff that he wishes to count the costs of supplying electrical service to the Air Force yet not include the benefits of those expenditures in the formula. (PCE determined from Total Costs/Total KWH sales to get unit cost of electricity.) Therefore the PCE level would be much higher. If the KWH sales of the Air Force base are excluded, it would seem that any portion of the costs that do not contribute to the benefit of the other ratepayers should be excluded when determining the unit cost of electricity and ultimately the PCE subsidy level. If maintaining the PCE level is the desired outcome, then using the revenues from the Air Force to decrease costs before dividing by kwh sales of all other customers will only work if the costs of providing that service would outweigh the benefits.

One of the purposes of the Power Cost Equalization program as stated in general order 14 is to encourage feasible alternatives to diesel generation, which one could interpret to mean would be less expensive in the long run leading to less dependence on power subsidies such as PCE.

The most equitable way to resolve the issue at this point in time would be to exclude the Air Force totally from the computations for PCE determination for all other rate classes. This would mean exclude the costs and the kwh sales arising from serving the base from the PCE formula. The subsidy serves to skew the impact of this contract on the cost of power for the remainder of the ratepayers.

Contract F65501-81-0003

EXHIBIT "B"

RATE SCHEDULE EXTRACT

The following power rate was extracted from the Naknek Electric Association Proposal, F65501-80-0003, with negotiated price adjustment reflected.

SCHEDULE W

NAKNEK DIVISION WHOLESALE POWER COST

AVAILABILITY

Available to customers desiring to purchase wholesale power and whose demand exceeded 500 kva during any period throughout the calendar year.

TYPE OF SERVICE

To be determined and made a part of a subordinate contract to be entered into with each customer utilizing such service.

RATES

All energy sold - 9.9¢/KWH

MINIMUM MONTHLY CHARGE

The minimum monthly charge under the above rate shall be \$15,000/month.

FUEL COST ADJUSTMENT CHARGE

A surcharge or credit may be applied to each billing for service rendered under this Schedule to reflect increases or decreases in the cost of fuel compared to the base cost of fuel.

Current Fuel Cost

$$\text{Surcharge} = \frac{(\text{¢/Gallon}) - 52.3\text{¢/Gallon}}{\text{Average No. of KWH Sold Per Gallons of Fuel Consumed During Latest 12 Months}} \text{ (¢/KWH)}$$



NAKNEK ELECTRIC ASSOCIATION, INC.

POST OFFICE BOX 118 • NAKNEK, ALASKA 99833 • PHONE (907) 246-4281

March 19, 1987

Senator Fred F. Zharoff
Pouch V
Juneau, AK 99811

Dear Senator Zharoff:

The clutches of legislative over-sight have finally engulfed the proper PCE entitlement of the members of Naknek Electric Association.

This has been prompted by calculation methodology used by the (current) staff of the Alaska Public Utility Commission. The current staff's calculation method includes kilowatt hours delivered to the King Salmon Air Force Base under the Federal SWAP Act of 1980, whereas previously the Commission excluded those KWHs from their calculation. The recommendation of the current APUC staff follows the letter of the law as set forth in General Orders 14A and 14B in which it is stated "Total Kilowatt Hours Delivered", even though the previous Staff's interpretation of the law excluded the kilowatt hours delivered to the Air Force. Consequently, the new recommendation will deliver significant economic impaction to the balance of Naknek Electric Association's consumers in the amount of \$101,132.41 in just twelve months.

Strong feelings exist within the Association that this was not the intent of the law and would like consideration of an amendment to the law to exclude all SWAP Act kilowatt hours from the Commission's calculation of the fixed cost portion of the PCE entitlement.

This Association provides contractual electric service (at the cost of energy only, i.e., fuel costs) to the King Salmon Air Force Base under the Federal SWAP Act of 1980 (Public Law 96-571). The premiss for this Act is to provide and encourage the interchange between utilities and National Defense installations when it is "mutually beneficial". When the "out of pocket" costs of members are elevated as a result of inclusion of SWAP Act kilowatt hours, the arrangement becomes non-beneficial to the majority of Naknek Electric Association's consumers and consequently no longer "mutually beneficial".

The higher costs which would be incurred if the Air Force was forced to return to providing for its own electrical needs appear undesirable in light of defense budget goals. Additionally, the generation equipment at the King Salmon Air Force base is derelict as well as unreliable. The inevitable need for replacement of this equipment would be eliminated by continued service from Naknek Electric Association.

Several attachments are included in support of our request to amend legislation to exclude SWAP Act delivered energy in the fixed cost portion of PCE calculations.

Page two - PCE calculation

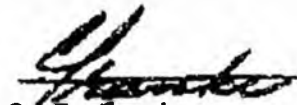
The attachments are:

- #1. 1985/86 12 month schedule of PCE dollar and KWH values.
- #2. Sample of data source for attachment #1.
- #3. January 28, 1987 Commission Order & Staff recommendation.
- #4. Impaction of Commission Order.
- #5. Comparative of 85 & 86 data as done previously. (Supports acceptable non-inclusion of Air Force revenue and KWH consumption.)
- #6. Schedule developed by Commission staff during field audit performed 12/83. (Of interest is audit note, highlighting impaction of Air Force's consumption. This note provided the basis for our negotiation of the rates determined in attachment #5.)
- #7. January 27, 1987 letter from our attorney, Roger Kemppel, to the Commission concerning order (attachment # 3). An evidentiary hearing was held on March 4, 1987, which resulted in verbal instruction from the Commission to do what we could to legislatively exclude SWAP Act energy in the fixed cost portion of the PCE calculation.

Your support in influencing this important amendment to the law, to exclude all SWAP Act kilowatt hours from the PCE calculation, is requested. The resulting economic effect to the Association's members, including the Air Force, makes this amendment a necessity.

Sincerely,

Naknek Electric Association


C. E. Franke
General Manager

CEF:tbc

enclosures

cc: Adelheid Herrmann
NEA Attorney, Roger Kemppel
ARECA Executive Secretary, Dave Hutchins
APUC Chairman, Heatherly
Neil Anderson
NEA Board Members
File

**STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: Rules Committee

Bill Version: _____
Publish Date: _____

Revision Date: _____
Title: APUC authority in connection with
activities of the Alaska Power Authority

Agency Affected: AK Power Authority
BRU: _____

Sponsor: Governor
Requestor: _____

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING		FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL		(50)	(150)	(19,150)		
REVENUE						

FUNDING: (Thousands of Dollars)


GENERAL FUND						
FEDERAL FUNDS						
OTHER *		(50)	(150)	(19,150)		
TOTAL						

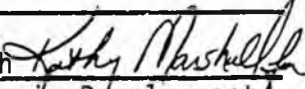
POSITIONS: *Railbelt Energy Fund

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

(See attached page)

Prepared by: Robert E. LeResche  Phone: 465-3575
Division: Alaska Power Authority Date: 1/8/88

Approved by Commissioner: J. Anthony Smith  Date: 1/8/88
Agency: Department of Commerce & Economic Development

Distribution (by preparer):

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

PROGRAM SUMMARY

° Expenditures

It is estimated that approximately \$200,000 of additional legal fees will be incurred due to the PUC hearings process.

It is further estimated that the PUC hearings process would delay the Bradley Lake project by a year. The resulting increase in construction costs and interest during construction on the long-term debt would increase the total project costs by an estimated \$19.15 million.

° Funding

It is assumed that any additional Bradley expenditures would be funded by the Railbelt Energy Fund.

° Economic Impact

In addition to the increased costs described above and below, a delay in the Bradley Lake project would reduce the number of jobs available on the Kenai Peninsula this summer and next.

° Impact on Railbelt Electricity Consumers

Not passing this bill would increase the interest rate on the long-term debt for Bradley Lake in two ways. First, debt would have to be issued earlier in the construction schedule (the IDB allocation to Bradley Lake expires on 12/31/90), and completion risk becomes more of a factor. Second and perhaps more important, present law allows the PUC to reopen the contracts at any time in the future. The interest rate penalty from these two factors is estimated to be 1/2 percent. Such a penalty would increase debt service \$750,000 per year, or \$22,500,000 over the life of the bonds.

Additionally, the utilities are expected to incur approximately \$500,000 of legal expenses due to the PUC hearings process. This would be borne by the Railbelt Electricity Consumers.

° In summary, the total additional costs incurred from this bill not passing would be approximately \$42,350,000.

Alaska Power Authority

NEED FOR EXPEDITIOUS PASSAGE OF NEW "SB22" LEGISLATION

The revised construction schedule adopted for Bradley Lake has been developed to accomplish two primary objectives: first, to complete the project in a reasonable timeframe which will bring the project on line when the utilities' seasonal demand for power is increasing; and second, to stimulate the construction industry and employment opportunities by initiating major construction efforts during the 1988 construction season.

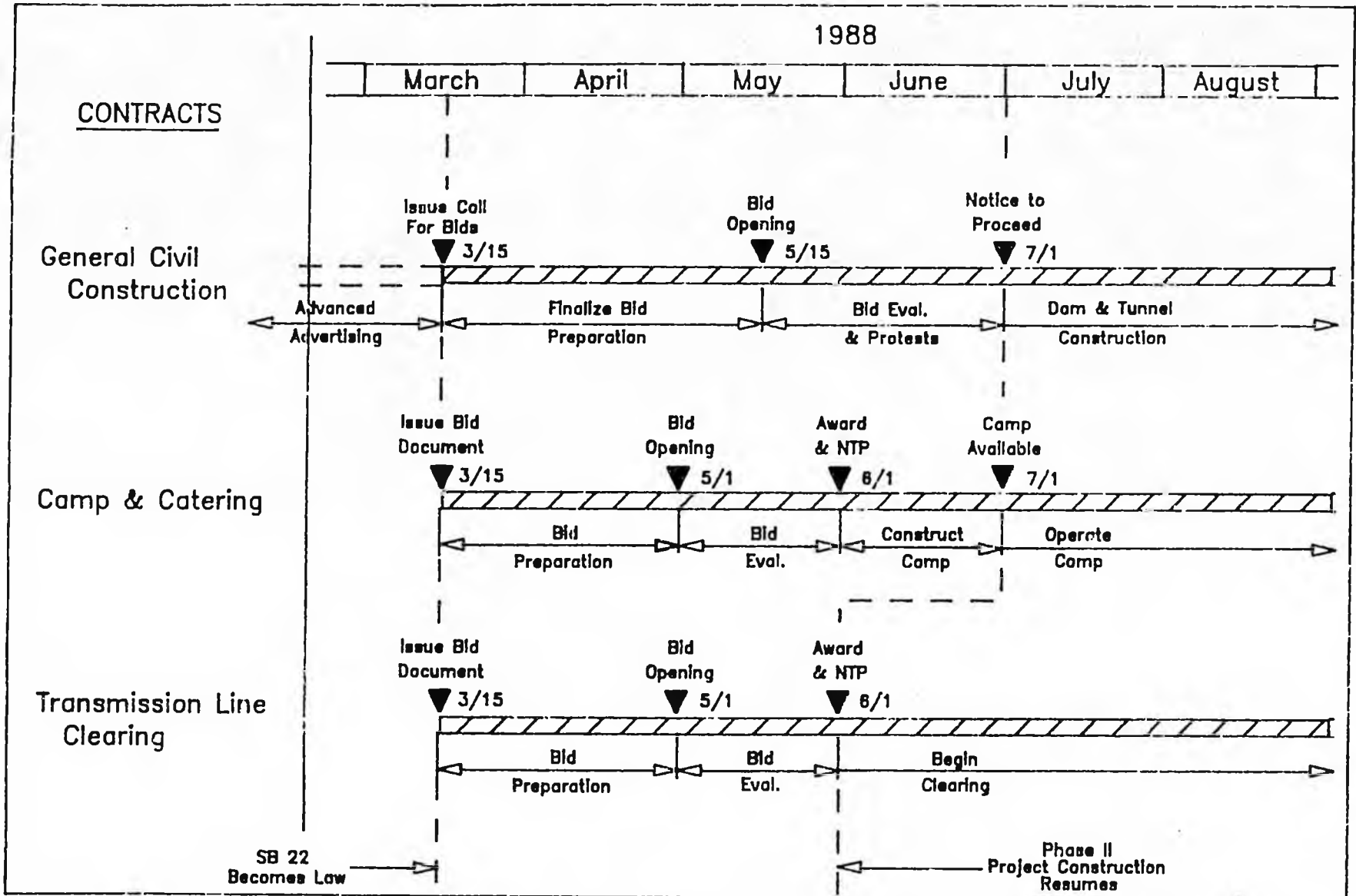
To accomplish the above objectives, and in particular to create a meaningful positive effect on the labor situation in 1988, it is imperative that the main construction contract (General Civil Construction) be awarded early enough in the summer of 1988 to enable the contractors to initiate work on both the dam and power tunnel. If the contract award is delayed beyond July 1, 1988, the contractor will still begin work on the power tunnel. However, due to the limited summer season remaining, work on the dam will probably not be initiated until the spring of 1989. As a consequence, the total 1988 work force will be reduced by approximately one-half.

Due to the time involved in advertising, bid preparation, bid opening, potential bid protests and the contract award process, in order to achieve a contract notice to proceed on July 1, 1988, it is imperative that "clean SB22" legislation be enacted and signed into law on or before March 15, 1988.

The attached flow chart shows the timetable required to achieve timely award of the General Civil Construction contract and other project contracts involving 1988 construction. Also attached is a bar chart which compares the estimated manpower requirements for 1988 resulting from early passage of SB22 (prior to March 15), versus late passage of the bill (May 15).

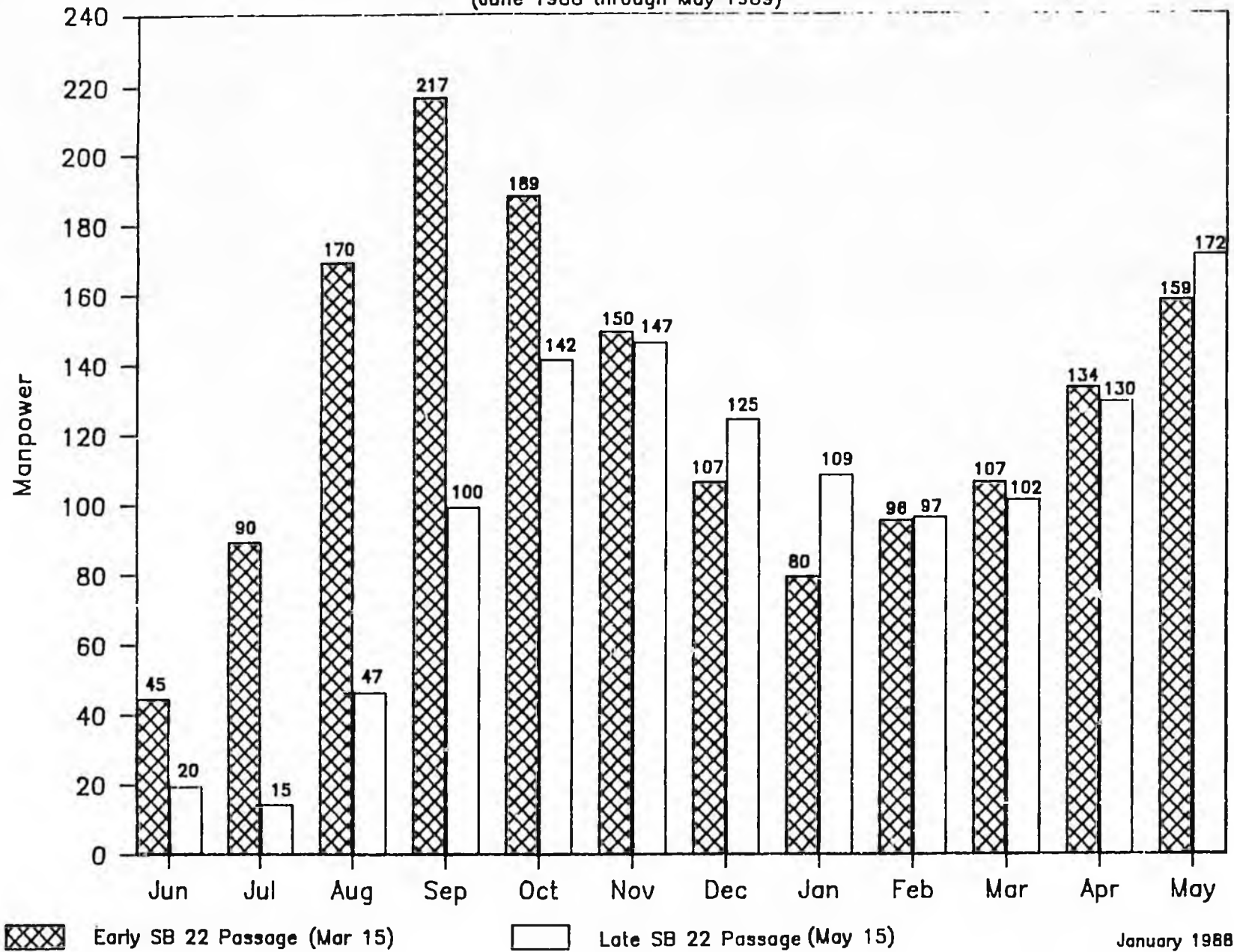
Attachments

Bradley Lake Hydroelectric Project 1988 Construction Schedule



Bradley Lake Hydroelectric Project Projected Manpower Requirements

(June 1988 through May 1989)



January 1988

Summary
of
Power Sales & Wheeling Agreements
affected by HB356

The following three agreements, executed by all parties on December 8, 1987, would be affected by enactment of HB356.

1. Bradley Lake Hydroelectric Project Power Sales Agreement (Power Sales Agreement) between the APA and the five purchasers.
2. Bradley Lake Hydroelectric Project Transmission Sharing Agreement (Transmission Agreement) providing for transmission of Project power by Homer Electric Association, Inc. (HEA) between the Project and Soldotna, Alaska.
3. Bradley Lake Hydroelectric Project Agreement for the Wheeling of Electric Power and for Related Services (Services Agreement); providing for the transmission of Project power by Chugach Electric Association, Inc. (CEA) from Soldotna to Anchorage, Alaska and for other services related to Bradley Lake power.

These three agreements comprise the necessary contractual arrangements related to the purchase of Project capacity and the delivery of that capacity to the purchasers. Under the Power Sales Agreement, the purchasers agree to purchase their percentage share of Project capacity and pay their share of annual costs of the Project. The Transmission Agreement and the Services Agreement provide for the transmission of Project power from the Project over HEA's planned 115 kv transmission line to the Soldotna Substation; then, from Soldotna to Anchorage over CEA's existing 115 kv facilities. Transmission of Project power from Anchorage north will be provided under the previously executed Alaska Intertie Agreement.

The APA has designed, licensed and initiated construction of the Project using funds appropriated by the State and borrowed through private institutions. Ultimately the State will provide 50% or more of the capital costs through appropriations and will finance the remaining portion with revenue bonds. The power purchasers are obligated to repay the debt service on the bonds (not to exceed a principal amount of \$175 million) as part of the cost of power from the Project. If the State fails to complete the Project, the

purchasers have no obligation to pay any debt service. However, once the Project is commercially operable, the purchasers will be obligated to pay for their share of Project capacity until the revenue bonds are repaid.

The three contracts, which together constitute the bargain struck by the State and the purchasers, are described below:

POWER SALES AGREEMENT

The APA is a public corporation within the Alaska State Department of Commerce and Economic Development, specifically authorized to construct, operate and maintain generating projects whose power capability is marketed to Alaska utilities. The Project has a planned capacity of 90 megawatts and an estimated annual energy output of some 360,000 megawatt hours/annum. It is being constructed on the Bradley River near Homer, Alaska. The following parties have contracted to purchase the following shares of project capacity:

	%	MW
Homer Electric Association*	12.0	10.8
Seward Electric System	1.0	0.9
Chugach Electric Association	30.4	27.4
Anchorage Municipal Light & Power	25.9	23.3
Matanuska Electric Association*	13.8	12.4
Golden Valley Electric Association	16.9	5.2
	100.0	90.0

*Alaska Electric Generation & Transmission Cooperative (AEG&T) on behalf of HEA & MEA, will purchase 25.8%, or 23.2 MW.

The Power Sales Agreement is the key contract among the three involved in the transaction. It provides for the sale of power and the financing, operation, and maintenance of the Project. It governs the sales of bonds to finance a portion of Project construction costs, the repayment of such debt, the scheduling and sales of power from the Project and the administration of the Power Sales Agreement.

As set forth in the Agreement and pursuant to the Bond Resolution in Exhibit "A," the APA proposes to issue up to \$175,000,000 in bonds to pay for a portion of Project construction costs as defined in Section 101 of the Bond Resolution. These funds cannot be used for the acquisition and construction of capital improvements. The APA cannot issue additional bonds unless purchasers who hold 80% or more of the Project capacity approve the action, or unless a majority of

the Project Management Committee requests that repairs, maintenance and renewals (Required Project Work) be paid for out of bond proceeds.

The bond debt will be retired by proceeds from the sale of Project power. The debt, along with all other costs associated with operating and maintaining the Project, are included in a budget of annual Project costs.

Once the Project is commercially operable, purchasers are obligated to pay their percentage share of annual Project costs each fiscal year. Such payments are unconditional and continue without offset or reduction notwithstanding suspension or reduction in the amount of power supplied by the Project.

Should any purchaser default on its payment, the APA is authorized to immediately bring suit. If the APA suspends or terminates power deliveries to a defaulting purchaser, and if the APA estimates that there will be insufficient funds to pay annual Project costs, the APA may increase other purchasers' percentage shares up to a 25% ceiling without the purchasers' consent.

The Agreement also provides for continuity of service, procedures to establish rates and billing, Project management, dispute resolution, record keeping, maintenance, inspection, obligations under the Bond Resolution, and surplus to the State after bonds are retired.

Section 13 creates the Project Management Committee (PMC). The PMC is comprised of representatives of all parties to the Agreement. It acts as a clearinghouse for, and coordinator of, the administrative activities required of the APA and the purchasing utilities in operating the Project and administering the Agreement. It has the ongoing obligation and authority to oversee and guide all significant Project activities thereby controlling costs, setting budgets and resolving disputes among the parties subject to the APA's right to take "Required Actions."

The Power Sales Agreement has an initial term of 50 years. It becomes effective on the date when, 1) it is executed and delivered by all the parties and, 2) when each purchaser has obtained all necessary approvals for it and related transmission and services agreements. The Agreement will terminate either 50 years after the date of commercial operation of the Project, or when no bonds are outstanding and all payment obligations have been satisfied, whichever is later.

There is an early out provision which allows for termination on January 1, 1996 in the event that commercial operation does not occur on or before that date. The Agreement may be renewed for 40-year periods of the life of the Project, whichever is longer.

THE TRANSMISSION AGREEMENT

Pursuant to the Transmission Agreement, HEA agrees to construct and operate approximately 47 miles of 115 kv transmission line between the Bradley Junction and Soldotna Substation. The purpose of the line is to deliver Project power to GVEA, CEA, the City of Anchorage, and the City of Seward, utilities who otherwise do not have transmission capability to take delivery. The Agreement provides for the sale or lease of portions of the transmission line to the purchasers (CEA, GVEA, the City of Anchorage and the City of Seward).

The Agreement provides for payments by the purchasers to HEA for capability of the line once the line is in service whether or not the line remains operable. In the event that the line is downrated, payments may be increased under certain circumstances. Payments include amortization costs of construction loans and operation and maintenance expense.

The Agreement also provides for continuity of service, operation and maintenance, failure to construct, line upgrading, major repairs, special provisions affecting CEA, and dispute resolution.

The term of the Agreement begins on the date that all parties have executed it, and it has been approved by all entities whose approval is necessary. The Agreement ends on the earlier of the date the transmission line is no longer used and useful and all costs of the construction loan have been paid; or the date on which the Power Sales Agreement terminates according to Section 2(c) of that Agreement; or such other date as the parties mutually agree upon, provided that such approvals as are necessary at that time are sought and given. The Agreement includes the same early out provisions found in the Power Sales Agreement.

THE SERVICES AGREEMENT

Pursuant to the Services Agreement, CEA will provide wheeling, storage, and energy purchase services to the parties (GVEA, HEA, MEA, the City of Anchorage, the City of Seward and AEG&T). Parties are not bound to sue CEA's services exclusively. In addition, the Agreement establishes provisions for continuity and scheduling of services, rights to additional transmission capacity, rates and billing, and dispute resolution.

The term of the Agreement begins on the date all parties, 1) have received satisfactory opinions of counsel, 2) have been executed and delivered the Agreement, and 3) the Agreement has been approved by all entities whose approval is necessary. The Agreement terminates

on the earlier of the date on which the APA terminates the Project; or the 50th anniversary of the date of commercial operation of the Project; or the date on which the Agreement has been terminated, upon proper notice, with a party who has available alternate transmission facilities; or upon mutual agreement of all parties subject to necessary federal and state approval.

The Services Agreement provides an alternative solution to the problem of transmitting or otherwise using Project power absent extension of the Alaska Intertie line from Anchorage to the Kenai Peninsula. Parties to this Agreement recognize that the Agreement will be superseded by other arrangements if, and when, construction of additional transmission facilities occurs, or if power pooling arrangements are made by the parties.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

January 29, 1988

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

Chairman John Sund
• House Judiciary Committee
Alaska State Legislature
House of Representatives
P.O. Box 4
Juneau, Alaska 99811

FEB 0 1 1988

Re: Bradley Lake Power Sales Agreement
-- Excess Payments

Dear Chairman Sund,

Robert LeResche, Executive Director of the Alaska Power Authority ("the Authority"), has relayed your request for an opinion on the meaning of section 29 of the Bradley Lake Power Sales Agreement "the Agreement").

The Bradley Lake project is a hydroelectric project within the energy program for Alaska. Sec. 20, ch. 133 SLA 1982. Money received by the Authority for the sale of power from projects constructed under the energy program for Alaska must be transmitted to the commissioner of revenue for deposit in the state general fund unless the money has been pledged to secure bonds. AS 44.83.398(c).

Section 29 of the Agreement provides that the power purchasers of the Bradley Lake hydroelectric project will make payments in excess of actual debt service once the construction bonds have been retired. These "excess" payments will be made to the Alaska Power Authority for deposit into the Railbelt Energy Fund.

As you already know, the Railbelt Energy Fund is a special fund treated as an account in the general fund. AS 37.05.153. The fund is managed by the Department of Revenue. Interest received on money in the fund may be appropriated into the fund annually. Id. AS 37.05.153 specifically provides that "the legislature may appropriate money from the fund to assist in meeting Railbelt energy needs." Id.

Notwithstanding any agreement entered into between a state agency and a second party, only the Legislature may withdraw money from the state treasury. AK Const. art. IX, sec. 13. Thus only the legislature may appropriate money from the Railbelt Energy Fund. Nor can we expect that the Railbelt Energy Fund

will exist in perpetuity. With certain exceptions not applicable to this discussion, the Alaska Constitution prohibits the dedication of public revenues. AK Const. art. IX, sec. 7. In this case, a legislature meeting in the year 2038 may appropriate money from the Railbelt Energy Fund for expenditure on a public purpose other than railbelt energy.

It is my opinion that section 29 of the Agreement would still be enforceable if the legislature withdrew from the Railbelt Energy Fund moneys deposited there under the provisions of the Agreement. I attended all the negotiation sessions leading up to the Agreement. I personally advised all the participants that neither the Legislature nor the Authority could dedicate these excess payments for Railbelt energy needs. Nor could the Authority make any promises for the Legislature.

The utilities were quite conversant with the dedicated funds prohibition of the Alaska Constitution. They wished, however, to express in section 29 their very strong sentiments in favor of having the excess payments used for future Railbelt energy needs and in favor of a Kenai-Fairbanks intertie. All the negotiators interpreted section 29 as a statement of intent and not as a contract condition on which the excess payments were contingent. In fact, the contract specifically provides that "[t]he Purchasers' obligations to make payment under this Section 29 are not contingent upon the success of ... continued efforts to obtain a satisfactory intertie between Fairbanks and the Kenai Peninsula.

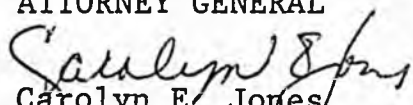
In summary, should moneys earned under this Agreement be deposited in the Railbelt Energy Fund, the Legislature may appropriate the moneys for Railbelt energy needs or as the Legislature deems appropriate. The Purchasers' obligation to make excess payments under the Agreement is not contingent upon dedication of these excess payments to expenditures on Railbelt energy needs.

Please call me if I can be of further assistance.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:


Carolyn E. Jones
Assistant Attorney General

cc: Robert E. LeResche



Official Business

Alaska State Legislature

House

P.O. BOX V
State Capitol
Juneau, Alaska 99811

TO: Representative John Sund

FROM: Representative Kay Brown

DATE: January 26, 1988 *Kay*

SUBJ: HB 356 - Bradley Lake Exemption from the APUC

As you review House Bill 356, which would exempt the Bradley Lake power sales contracts and related "services" and wheeling contracts from the review or approval of the Alaska Public Utilities Commission, I wish to draw your attention to several specific concerns I have with the bill.

I would like to preface my specific comments with a general statement of support for the administration's essential objective of trying to ensure that the Bradley Lake project is able to proceed with resumption of construction this summer. Although I still have reservations about the fundamental wisdom of the project, at this point, given the extent of the state's commitment (ie, "sunk" costs), I feel that additional delays would be counterproductive.

At the same time, however, I am concerned about the potential long-term adverse impacts that some of the language proposed in HB 356 would have on the ability of the APUC to protect consumer interests. I find it troublesome that the bill would provide not only that the Bradley Lake wholesale power contracts would be exempted, but also, "without limitation," all unspecified "other costs" as well. Additionally, there is language in the bill stating that "any subsequent amendments" are beyond APUC jurisdiction.

I also have concerns about Section 29 of the power sales contracts, which require that Railbelt consumers make "excess" payments beyond those required to pay off the debt for the project. Please find attached some draft language that would provide for the elimination of this provision.

Exempting the transmission agreements, together with the open-ended language contained in HB 356 providing an exemption for all "other costs" and "any amendments" would result, to a significant degree, in de facto deregulation of the Railbelt utilities.

I urge the Judiciary Committee to carefully explore language modifications to the bill which would meet two fundamental objectives:

- 1) ensure that the Bradley project construction can move forward this summer in order to complete the project in time to sell long-term tax exempt bonds prior to 1991; and
- 2) also ensure, to the greatest degree possible, that the APUC will be able to perform its regulatory functions and safeguard consumer interests.

The following specific comments are offered in the interest of working out such language modifications as quickly as possible to provide timely passage of a responsible HB 356.

SPECIFIC COMMENTS

All Unspecified "Other Costs" Exempted

In contrast to last years HCS CSSSSSB 22 (Fin), that provided only for the exemption of power costs, HB 356 calls for the exemption of "all costs... including, without limitation, power and other costs..." (see page 1, line 29 through page 2, line 4).

While an argument can be made that bond holders require the security of knowledge that the project debt will be repaid through power sales, the exemption of all other costs (ie, management salaries, consulting contracts, administrative costs, legal costs, and any other costs including those established by amendments to the contracts) cannot be justified. This would have the effect of allowing utilities to pass through without review any costs whether reasonable or not.

This open-ended language should be modified to provide only that power costs are to be guaranteed a flow through to the rates. All "other costs" should be reviewed and approved.

All Unspecified Amendments Exempted


HB 356 proposes not only to exempt the wholesale power contracts and the related services/wheeling contracts which have been entered into but also "any subsequent amendments" (see page 1, line 21).

It has been stated that there are other parties (secondary lenders including the Rural Electrification Administration) reviewing the contracts and who may require some amendments. There is also an expressed desire on the part of the utilities for "flexibility" to make changes in the contracts as the need arises.

Neither of these arguments is compelling. If the fundamental need is to respond to the possible demands of secondary lenders, then the bill should include a specific exemption for that purpose.

Assignability of Contracts

Another question regarding the exemption provisions concerns the potential assignability of the contracts. In the recent past there have been indications from Railbelt utilities that certain Outside, private investor-owned utilities are interested in purchasing Alaska co-ops.



Could these contracts be assigned to an investor-owned utility? If so, I would argue that potentially providing a categorical exemption from APUC review to a profit-making utility and allowing that utility to pass through "without limitation ... all costs" is inappropriate state policy adverse to consumer interests.

"Excess" Payments Requirement

Section 29 of the Power Sales Agreement (pages 28 -29) requires payments from Railbelt consumers "in excess of actual debt service required for retirement of Bonds issued to pay Recoverable Construction Costs." These payments are "in recognition of efforts" to obtain an intertie project between Fairbanks and the Kenai Peninsula, but are not contingent upon the success of such efforts. These "excess" payments, which are to commence upon the retirement of all bonds, are to be made to the APA for deposit into the Railbelt Energy Fund.

According to APA Executive Director Robert LeResche, the payments, which are to be based on the average annual debt service for the project, will be

approximately \$18 million per year over the period between year 30 and year 50 of the contracts for a cumulative total "excess" payment of approximately \$360 million in nominal dollars. This simplified scenario assumes no amendments to the contracts that could either extend the life of the contracts or increase the amount of the "excess" payments above that amount currently described in Section 29. Any such amendments, irrespective of reasonableness, would be categorically exempted from APUC review or approval under the terms of HB 356 as introduced.

From a Railbelt consumer perspective, even though these "excess" payments are not very sizable in discounted present value terms, the payments are difficult to justify. Notwithstanding the phrase "in recognition of efforts to obtain" the intertie, the payments would be for an essentially unspecified purpose -- or at least for a project which has not been demonstrated as economically feasible nor, I suggest, even likely to be relevant 30 years from now.

Moreover, when one considers the precedent established by the Four Dam Pool "project" financing arrangements (which provided that essentially half of the Four Dam Pool was debt financed and the remainder funded with cash grants) it appears that Railbelt consumers are being assessed an extraordinary charge for essentially unknown future purposes.

It is my feeling that the "excess" payment provision should be eliminated from the wholesale contracts. Fortunately, it appears that Section 29, which establishes the excess payment provision, could be eliminated without affecting other elements of the wholesale power contracts or the services/wheeling contracts.

I have attached language which would make the effective date of HB 356 contingent upon the elimination of this section.

Preservation of APUC Review and Cost Allocation Jurisdiction

My fundamental concerns with HB 356 as introduced center on the ability of the APUC to perform its basic regulatory functions and safeguard consumer interests. It is important to clarify the objective of the bill. The fundamental objective, as I understand it, is to ensure that Bradley Lake can proceed in a timely manner. It is not, as I understand it, the objective of this bill to legislatively deregulate the Railbelt utilities.*

However, HB 356 goes far beyond the scope of these basic objectives by eliminating even the review of any and all costs, without limitation,

associated with any undertakings "in connection with" the management, operation or administration of the Bradley Lake project and the related services and wheeling agreements. As a practical matter, the effect of HB 356 would be to put the direct project wholesale power costs, the associated transmission agreements, and indirect administrative and management costs, into a "black box". This would severely constrain and undermine the ability of the APUC to meaningfully regulate the Railbelt utilities.

In order for Bradley Lake to proceed this summer, it is apparent that the APUC must be removed from the initial approval of the power sales contracts. (Elimination of initial approval will obviate the concern that project opponents would use a Commission proceeding to delay the project.) In order to provide assurances to potential bond holders that the debt for the project will be recoverable, it also appears that some sort of provision providing a pass through of power costs to the rates may be appropriate.

At this point, I feel it is most important to focus on how it would be possible to preserve the ability of the APUC to:

- 1) review and approve non-power costs (ie, other than the wholesale power costs which would directly flow through to rate payers); and
- 2) also be able to review and approve as just and reasonable cost allocations associated with implementation of the related "services" and wheeling contracts.

Language which accomplished these objectives would satisfy the basic purpose of the bill -- to get the project restarted this summer and completed in time to issue tax exempt bonds by 1991.

Because the review and approval of the implementation of the related "services" and wheeling contracts could only come after the project was completed, maintaining this APUC authority would not conflict with the objective of getting the project restarted this summer.

It has been suggested that maintaining the jurisdiction of the APUC would, to some degree, carry a "cost premium" in the form of an incremental interest charge somewhere on the order of 3/8 to 1/2 of a percentage point. In terms of incremental costs, the APA has suggested that this would increase debt service costs on the bonds by several million dollars. This issue needs to be explored closely during the committee hearings to determine, as precisely as possible, what the cost premium would be for maintenance of the APUC's

regulatory authority, limited to non-power costs and only after the project was completed and operational.

Of course, any incremental "cost" resulting from higher interest charges must be weighed against the potential savings to consumers that would result from APUC review and approval over potentially excessive non-power costs such as administration salaries, consulting contracts, legal fees, lobbying contracts, etc.

From a consumer point of view, it would seem that the present value of these incremental costs -- to the extent that they can actually be determined to exist -- would be offset in part by regulatory cost controls in the future. Taken together with the proposal to save Railbelt consumers the cost of the "excess" charges as suggested above, a modified HB 356 as I have outlined should come at no extra cost to the consumer than what has been proposed. It would, however, still preserve the ability of the APUC to perform its essential regulatory functions and protect consumer interests.

(* It should be noted that all of the utilities participating in the project already have the means to deregulate themselves. Co-op's can deregulate, with the consent of the membership. It is noteworthy that, in the case of the co-ops at least, consumers have not allowed their utility management to opt out. The Legislature should not enact a measure that essentially pre-empts this consumer prerogative.)

cc: House Judiciary Committee members
Representative Swackhammer



ALASKA STATE LEGISLATURE
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May 9, 1987

TO: Representative Sam Cotten.

FROM: Gretchen Keiser
Legislative Analyst

G. Keiser

RE: Energy Project Financing
Research Request 87.254

You requested that this agency analyze various options for financing proposed energy projects in the Railbelt. Section one of this memorandum explores some alternatives for the long-term financing of the Bradley Lake hydroelectric power project currently under construction. We estimate the wholesale power rates and the State contribution--net of repayments--under the various alternatives. The second section presents options for the financing of new/upgraded interties extending from the Kenai Peninsula north to the Fairbanks area. Finally, we discuss a long-term, statewide energy financing mechanism which could be capitalized, in part, from a repayment stream under various financing options presented for the aforementioned Railbelt projects.

BRADLEY LAKE FINANCING OPTIONS

Total Bradley Lake project costs are estimated to be \$351 million (including costs for construction, interest during construction minus arbitrage earnings, bond issuance and reserve fund requirements), provided long-term bonds are issued to finance a portion of the cost. We estimate that the total Bradley Lake cost could be reduced to about \$329 million if the State instead chose to finance a portion of the cost through a long-term loan. The lower costs stem from savings in bond issuance costs and the fact that a debt service reserve would not be required (Attachment A presents a comparison of cost estimates).

About \$118 million has been appropriated to Bradley Lake to date. Of this amount, \$62 million has been spent--leaving \$56 million to cover future expenses. In addition, the Alaska Power Authority (APA) issued \$267.5 million in variable rate demand bonds for the Bradley Lake project in November 1985. The bonds are secured by a letter of credit (from a consortium of three banks) which expires in October 1991. At this time, it is anticipated that these short-term bonds would be replaced with

long-term, fixed-rate financing at or near project completion (estimated to occur in early to mid-1990). Under the federal tax reforms of 1986, the Bradley Lake project has a special exemption allowing tax-exempt financing--provided that the long-term bond is issued by late 1990.

Current Proposal under the Draft Power Sales Agreement. The APA and seven Railbelt utilities have drafted a long-term financing arrangement for the Bradley Lake project which would entail: 1) a 30-year revenue bond of up to \$175 million with the annual debt service borne by the utilities; and 2) a State equity contribution of \$175.9 million. This arrangement would require the State to contribute \$58 million in addition to the \$118 million in previous Bradley Lake appropriations.

The APA has estimated wholesale power rates under this financing arrangement. The entry rate in 1991 would depend primarily upon the interest rate secured for the long-term bond, and is estimated to be between 4.3 cents/kwh (at a 7 percent interest rate) and 5.3 cents/kwh (at 10 percent interest). The APA is anticipating an entry wholesale power rate of about 5 cents/kwh--which is projected to have a minimal impact on retail power costs in the Railbelt. Estimates from the APA indicate that a 5 cent/kwh wholesale purchase price might raise retail rates for Chugach Electric Association and Homer Electric Association customers 1 - 4 percent, depending on the number of utilities purchasing Bradley Lake power. Although initial rates for Bradley Lake power are likely to exceed the cost of existing gas-fired power, Bradley Lake power rates would be attractive in the long term. Over the life of the project, the wholesale power rates would be inflation resistant, to a large extent, because most of the annual costs would be fixed debt service. The alternative financing arrangements considered in this section are designed to provide an entry wholesale power rate of no more than 5 cents/kwh.

State Loan Financing of the Bradley Lake Project. Table 1 compares several long-term loan financing alternatives with the current long-term bond financing proposal. Before discussing in detail the various financing alternatives presented in Table 1, we offer the following general observations. It became apparent as we worked through the calculations that there are alternatives (to the currently proposed financing arrangement) which would likely provide cheaper power rates and at the same time increase the State's recovery of funds contributed to the project.¹ We constructed these financing options under the basic assumption that any additional money for Bradley Lake will come from the Railbelt Energy Fund. Choosing one of these alternatives, therefore, would require that the legislature commit a major portion of the Railbelt Energy Fund in the near term to the Bradley Lake project in trade for a long-term repayment stream which could be made available for other energy projects or programs in the future.

¹According to 3 AAC 94.065, financing alternatives are to be identified which provide the most appropriate means to achieve the lowest cost electric power for consumers while minimizing the amount of State assistance required.

Cash Financing

TABLE 1
BRADLEY LAKE FINANCING ALTERNATIVES: A 50-YEAR ANALYSIS
(In millions of \$)

ANALYSIS PARAMETER	-----BOND FINANCING-----		-----LOAN FINANCING-----				
	CASE 1 Draft PSA: \$176 M Equity + \$175 M Bond @ 8%	CASE 2 Draft PSA: \$176 M Equity + \$175 M Bond @ 9%	CASE 3 \$176 M Equity + \$153 M Loan @ 6%	CASE 4 \$176 M Equity + \$153 M Loan @ 7%	CASE 5 \$176 M Equity + \$153 M Loan @ 8%	CASE 6 \$118 M Equity + \$211 M Loan @ 5%	CASE 7 \$118 M Equity + \$211 M Loan @ 6%
Bradley Lake Project Costs *	\$351.0	\$351.0	\$329.0	\$329.0	\$329.0	\$329.0	\$329.0
Bond/Loan Factors							
Issuance Date	1990	1990	1990	1990	1990	1990	1990
Interest Rate	8.0%	9.0%	6.0%	7.0%	8.0%	5.0%	6.0%
Term (Years)	30	30	30	30	30	30	30
Annual Payment	15.5	17.0	11.1	12.3	13.6	13.7	15.3
Annual Excess Payment (2021-2040)	14.8	14.8	14.8	14.8	14.8	14.8	14.8
Present Value Calculations							
State Funds Commitment (Equity & Loan)	171.1	171.1	282.9	282.9	282.9	282.9	282.9
- State Return on Funds Committed							
Interest Earnings on Loan Set Aside**	0.0	0.0	26.4	26.4	26.4	26.4	26.4
Total Loan Repayments	0.0	0.0	90.1	99.9	110.2	111.3	124.3
Total Excess Payments	10.0	10.0	10.0	10.0	10.0	10.0	10.0
Net State Contribution	161.1	161.1	156.4	146.6	136.3	135.2	122.2
Entry Wholesale Power Rate in 1991 (cents/kwh)	4.7	5.0	3.8	4.1	4.4	4.5	4.9
Railbelt Energy Fund Balance Available for other Project	\$223.0	\$223.0	\$70.0	\$70.0	\$70.0	\$70.0	\$70.0
Potential Annual Revenue Stream for other Projects (beginning in 1991)	\$0.0	\$0.0	\$11.1	\$12.3	\$13.6	\$13.7	\$15.3

NOTES: *Bradley Lake project costs are \$22 million higher under Cases No. 1 & 2 because of bond issuance costs and debt service reserve requirements.

**The present value calculations in Cases No. 3-7 take into account the interest earned on only the \$153 million portion of the Railbelt Energy Fund set aside for a loan in 1990. Cases No. 6 & 7 assume that an additional \$58 million is loaned in 1987 and 1988, but no interest is earned because the money is spent on the project soon thereafter. An 8.2 percent annual rate of return is assumed--the average rate earned by the General Fund over the past seven years, as reported by the Department of Revenue.

***Loan repayments under Cases No 6 & 7 assume that the \$58 million loaned in 1987 and 1988 are interest-free until 1990.

Annual inflation = 4.5%; Discount Rate = 3.5%.

In all cases, an annual excess payment amount is assumed to be paid by the purchasers once the 30-year bond or loan is retired. This is a provision of the draft power sales agreement.

Cases 1 and 2 in Table 1 present the current proposal of a \$176 million State equity contribution with a \$175 million bond (at 8 and 9 percent interest rates). Cases 3 - 5 assume the same \$176 million State equity contribution but would provide a long-term State loan (of \$153 million at 6 to 8 percent) instead of bond financing. Finally, Cases 6 and 7 assume that no more State equity beyond the present \$118 million is provided to the project; all remaining financing (\$211 million) would be long-term State loans. In Cases 6 and 7, we assume that \$50 million is loaned to the project in 1987 and \$8 million in 1988--these loans would be interest-free until 1991 when power sales would provide for loan repayment of a total 30-year loan of \$211 million (\$58 million + \$153 million).

A number of points should be considered as the financing alternatives in Table 1 are reviewed:²

- 1) Bradley Lake project costs can vary depending upon whether a bond is issued (with financial market issuance costs and debt service reserve requirements) or a State loan is arranged (without external market requirements). We estimated a savings of \$22 million in bond issuance costs and debt service reserve requirements if the State provided a loan.
- 2) In contrast to bond financing, the interest rate set on a State loan is a matter of policy. Cases 3, 6 and 7 call for interest rates of 5 - 6 percent, which is the long-term estimated rate of return on the \$185 million, 45-year Four Dam Pool loan.
- 3) The current draft power sales agreement provides for an annual excess payment amount to be made by the utilities once the 30-year bond is retired in 2020. As proposed, the annual payment (of up to 4 cents/kwh, or about \$14.8 million) would be deposited into a revolving loan fund for future Railbelt energy projects. These payments--with a present value of \$10 million for payments during the remaining 20 years of the original 50-year contract--represent the sole recovery of the State's equity contribution of \$176 million in Cases 1 and 2. We have included a similar excess payment provision under the loan financing options.
- 4) The flow of State dollars into the Bradley Lake project in the near-term (through 1990) and the flow of money back to the State over the long-term (through 2040 under a 50-year contract) have been discounted to today's dollars. Present value calculations allow for an accurate comparison of disparate cash flows, particularly when an analysis covers an extended period of time. We employed previous APA assumptions of a 4.5 percent inflation rate and 3.5 percent discount rate in all cases.

²-----
We can provide detailed tables supporting these financing alternatives upon your request.

- 5) Under the financing options explored, there are three possible sources of return to the State of a portion of the funds committed to Bradley Lake. The estimated interest earnings assume that the money to be loaned to the project in 1990 under Cases 3 - 7 is set aside this year. The interest earned on the loan set aside would accrue to the State--although not automatically to the account holding the \$153 million in principal needed in 1990. The cumulative loan repayment under the different options varies as a function of the interest rate placed on the loan. The third source of return to the State is the excess payment stream discussed in point Number 3 above. Under the alternatives considered, the State would--at best--minimize its assistance to \$122 million (Case 7); under this option the power would be relatively expensive.
- 6) The wholesale power rate in 1991 under Cases 3 - 6 (loan financing) are lower than those under currently proposed bond financing (Cases 1 and 2). As noted in Table 1, a 5 cents/kwh power rate is anticipated to cause a small retail rate increase for Chugach Electric and Homer Electric Associations. A lower power rate should make Bradley Lake power more attractive.
- 7) The Railbelt Energy Fund balance available for other projects is dramatically different under the bond financing ($\$281 - \$58 = \$223$ million) and loan financing alternatives [$\$281 - (\$58 + \$153) = \70 million]. If the money is committed to Bradley Lake in the near term as under the loan financing alternatives, only about 25 percent of the fund would be available for other uses at this time. On the other hand, a loan would provide a repayment stream in the future at a time when the State may wish to commit funds to other energy projects.
- 8) The revenue stream potentially available for other projects consists of the loan repayments (1991 - 2020) and the excess payments (2021 - 2040). Bond financing provides no revenue stream during the first 30 years, but leaves most of the Railbelt Energy Fund intact. The loan financing options provide a 50-year revenue stream--at the expense of the current balance of the Railbelt Energy Fund. We discuss the potential revenue stream under the various financing alternatives in the following section when we consider financing of the Railbelt interties.

In conclusion, we suggest that Cases 5 and 6 provide the best loan financing alternatives for comparison with the current bond financing proposal. Both options provide power at least 0.5 cents/kwh cheaper than the entry rate anticipated by the APA under bond financing. At the same time, the State would recover about \$25 million more of its contribution, in present value, under these alternatives than under the bond financing options. With this Bradley Lake financing analysis in hand, we now proceed to consider possible approaches to the financing of the Railbelt interties.

FINANCING ALTERNATIVES FOR THE RAILBELT INTERTIES

The APA has had preliminary studies conducted which provide the following cost estimates and preferred alternatives for proposed new/upgraded interties between the Kenai Peninsula and the Fairbanks area:³

Northern Intertie (Anchorage - Fairbanks)
230 kv line: \$118.2 million

Southern Intertie (Kenai Peninsula - Anchorage)
Enstar Route (Huffman Substation Alternative): \$ 76.6 million

Current Proposal. As part of the proposal for long-term bond financing of Bradley Lake, the Railbelt utilities seek legislative authorization of these two interties at a combined cost of about \$200 million in direct appropriations. If the State funds are committed, required feasibility and finance studies--as well as detailed engineering and environmental analyses--would begin shortly and the interties would tentatively be completed in 1990-1991 when the Bradley Lake project commences operation.

The Railbelt Energy Fund (REF) would be the proposed source of the \$200 million sought for these interties. This \$200 million, coupled with a proposed transfer of \$50 million to the Bradley Lake project (under Senate Bill 159), would leave a balance of \$31 million in the fund. An additional equity contribution of \$8 million to Bradley Lake proposed for FY 89 would actually leave only \$23 million presently uncommitted. As you no doubt realize, a \$200 million commitment to the interties would foreclose any option of using a significant portion of the REF as a loan for Bradley Lake --as outlined in the previous section of this memorandum.

A companion analysis of the Railbelt interties performed by the House Research Agency (Research Request 87.253) has concluded that the new/upgraded interties are not needed in the near future. The current Anchorage-Fairbanks intertie is capable of satisfying transmission requirements for moving gas-fired power north to Fairbanks under probable energy demand forecasts until the turn of the century. Further, the analysis concludes that a new intertie on the Kenai Peninsula is not necessary for at least 15-20 years because Bradley Lake power could be utilized on the Kenai Peninsula to displace Chugach Electric Association power which is presently brought south from the Beluga Power Station.

³Other route alternatives for the Kenai Peninsula-Anchorage intertie range between \$79 and \$99 million. A higher voltage (345 kv) alternative for the Anchorage-Fairbanks intertie would cost about \$130.5 million.

We assume that an integrated power grid in the Railbelt is a desirable long-term objective, but the above-referenced analysis concludes that State spending toward that goal at this time is premature. Rather than construct the interties now because the money is available, we explore some alternatives which could provide a potential revenue stream 10 - 15 years in the future when building these interties would make better sense.

Other Options for Financing the Interties. The Railbelt interties do not lend themselves easily to a bond or loan financing alternative. Bonds or loans require a revenue stream in order to meet debt service (bond) or principal and interest repayments (loan) as well as the project's annual operation and maintenance (O&M) costs. Typically, this revenue stream comes from a charge levied on energy moved over the transmission line (commonly referred to as the "wheeling" charge). In theory, the State could arrange long-term financing for the interties if the transmission lines could generate enough revenue to repay the financing.

In the Railbelt, however, the present and forecast price differential among the fuels (natural gas, No. 4 diesel, and coal) is not large enough between a "cheap" power area (Anchorage) and an "expensive" power area (Fairbanks) to recover any charges beyond those needed to pay O&M. In other words, there is no room to charge for any long-term financing costs and still move what may be only somewhat cheaper power from the generation point to a distant retail market and sell it for less than power generated at home.⁴

According to records provided by the Alaska Public Utilities Commission, recent prices for Railbelt power generation fuels were: \$2.25/MMBtu natural gas; \$2.34/MMBtu fuel oil No. 4; and \$1.31/MMBtu coal. The two fuels competing for intertie sales--natural gas and fuel oil--are very close in price. We believe that, in the foreseeable future, the price of all three Railbelt fuels will generally move with the world price of oil so that the price differential between fuel oil and gas is unlikely to widen significantly. In addition, the long-term supply of these fuels in the Railbelt is quite large--further dampening any trend toward widening the price gap. Therefore, it is improbable that a new/upgraded intertie would be able to charge much more than a nominal fee for debt service/loan repayments and maintain energy sales. Given that the volume of energy sales over the Railbelt interties in the foreseeable future is also relatively small, a nominal charge for debt service/loan repayment will be insufficient to cover the required payments.

⁴Interties in the lower 48 do not generally face this problem because: 1) interconnected power generation facilities tend to be huge plants--thus maximizing cheap power production possibilities; 2) these interties are moving large amounts of energy over which to spread debt service; and 3) if a project is not expected to meet its debt service, it is not constructed.

Representative Cotten

May 9, 1987

Page 8

At this time, we conclude that the only option for bond or loan financing of the Railbelt interties must entail the commitment of some other revenue stream as the major source of debt service/loan repayments incurred by the interties. We believe that such a revenue stream could be identified, especially at such a time in the future when constructing or upgrading a Railbelt intertie is warranted from an energy demand and marketing perspective.

Table 2 presents an analysis of the cash flow into and out of a revolving energy loan fund. The revenue stream into the fund would be the repayment of existing and future loans, including: 1) the Four Dam Pool loan; 2) existing Rural Electrification and Power Project loans; 3) a Bradley Lake loan (the preferred Cases 5 and 6 analyzed in the previous section of this memorandum); and 4) additional energy loans made from a Railbelt Energy Fund \$70 million balance, which remains after Bradley Lake loan financing as outlined in the previous section.

TABLE 2
 A REVENUE STREAM FOR FINANCING THE ANCHORAGE - FAIRBANKS INTERTIE AND OTHER ENERGY PROJECTS
 (in millions of \$)

	FY 1991	FY 1995	FY 2000	FY 2002	FY 2005	FY 2010
POTENTIAL ANNUAL REVENUE STREAM						
Four Dam Pool Loan	\$8.5	\$9.8	\$11.1	\$16.5	\$16.5	\$16.5
Other Existing Energy Loans	3.3	3.3	3.3	3.2	2.5	2.1
Bradley Lake Loans						
Case 5: \$153 Million @ 8%	13.6	13.6	13.6	13.6	13.6	13.6
Case 6: \$211 Million @ 5%	13.7	13.7	13.7	13.7	13.7	13.7
Other Energy Loans made from \$70 M Balance in Railbelt Energy Fund*						
Option 1: Loans @ 5%	4.6	4.6	4.6	4.6	4.6	4.6
Option 2: Loans @ 6%	5.1	5.1	5.1	5.1	5.1	5.1
Total Potential Revenue Stream						
Low Estimate	29.9	31.3	32.6	37.9	37.2	36.8
High Estimate	30.6	32.0	33.2	38.6	37.9	37.4

POTENTIAL USE OF ANNUAL REVENUE STREAM						
Anchorage-Fairbanks Intertie** IDC on Short-Term Note @ 8% Pledge for Debt Service (Bond @ 8%)			17.2		19.1	19.1
Total Committed Revenue Stream	0.0	0.0	17.2	19.1	19.1	19.1
Balance Uncommitted						
Low Estimate	29.9	31.3	15.4	18.8	18.1	17.7
High Estimate	30.6	32.0	16.0	19.5	18.8	18.3
Potential Use of Uncommitted \$ Power Cost Equalization***						
Scaled-down Program @ 500kwh	15.6	17.6	20.4	21.6	23.7	27.5
Percent Costs Covered	100%	100%	75-78%	87-90%	76-79%	64-67%
Present Program	20.7	23.3	27.0	28.7	31.3	36.3
Percent Costs Covered	100%	100%	57-59%	66-68%	58-60%	49-50%

NOTES: * The \$70 million balance in the Railbelt Energy Fund assumes that the other \$211 million has been committed to the Bradley Lake project by 1991. Loans could be made for a variety of projects, including: rural electrification, small-scale urban projects and purchase of federal Eklutna and Snettisham projects.

** Assumes a project cost of \$215 million in 2000 (current \$118 million cost estimate adjusted for 4.5% inflation + bond issuance costs). Interest during construction (IDC) equals 8% of \$215 million and is assumed to be paid out of the revenue stream from other loan repayments in FY 2000-2001.

*** A 3% annual escalation to cover increases in program participants, program costs and fuel costs is assumed throughout the period.

Table 2 identifies a potential revenue stream of about \$30 million in FY 91, peaking at \$38 million in FY 2002 and declining slightly thereafter to roughly \$37 million in FY 2010. We suggest that you view these figures as rough estimates designed to give you a picture of the magnitude of cash flow which may be possible under loan financing alternatives.

Table 2 also identifies two major uses of the aforementioned loan repayment stream: an upgraded Anchorage-Fairbanks Intertie and the Power Cost Equalization Program. As previously concluded, we do not believe that Railbelt energy economics support State commitment to the construction of the Anchorage-Fairbanks intertie until the turn of the century when the existing transmission line is fully utilized. The scenario presented in Table 2, therefore, assumes construction of this intertie in 2000-2001 at an inflation-adjusted cost of about \$215 million. Proceeds from short-term notes issued in 2000 would cover construction costs (with interest on these notes being paid by the energy fund). In 2002, the State would issue a 30-year bond and pledge repayment streams from other loans--most notably the remaining 30 years repayment schedule of \$16.5 million under the Four Dam Pool loan.

The second potential use identified under this energy fund is the Power Cost Equalization Program (PCE).⁵ As indicated in Table 2, 100 percent of the PCE costs could be covered by the anticipated loan repayment stream until the year 2000, when the State would commit roughly half of the revenue stream to the Anchorage-Fairbanks Intertie. Once the commitment is made to the intertie, the percentage of PCE costs potentially covered under the energy fund falls off to 59 - 78 percent, depending primarily on the nature of the PCE program in place at that time. We present rough PCE cost estimates under: 1) the present program (which provides a power rate subsidy for a base consumption of 750 kwh for residential services plus 75 kwh/resident for community facilities); and 2) a scaled-down subsidy (for 500 kwh consumption and 50 kwh/resident for community facilities). Under a scaled-down program, the uncommitted energy fund revenues would pay more than two-thirds of the program costs through 2010.

There are other potential uses of the revenue stream which would not be committed to the Anchorage-Fairbanks Intertie in 2000. Most notable is a southern intertie between Anchorage and the Kenai Peninsula, which the House Research Agency intertie analysis concludes may be needed in about 15 - 20 years. If the State began construction of the preferred line in 2005 at an inflation-adjusted cost of about \$169 million, short-term financing would require annual interest payments of about \$13.5 million (8%) for two years followed by \$15.0 million in debt service payments under

⁵ We are not advocating the Power Cost Equalization Program. Rather, we offer rough estimates of PCE costs merely to indicate the percentage of program costs that could be covered by this energy fund revenue stream uncommitted to the Anchorage-Fairbanks Intertie.

Representative Cotten
May 9, 1987
Page 11

a 30-year bond. The uncommitted balance identified in Table 2 could support this level of bond financing for the southern intertie. However, it appears that the uncommitted revenue stream would be insufficient to fully fund the PCE and cover the financing costs of the Anchorage-Kenai Intertie.

As a final note, we offer some general observations regarding this energy fund financing proposal. The interest rate established for energy loans is a matter of policy; the 5 - 8 percent rates provided for future loans would probably be lower than financial market rates. By offering State loans below market rates, loan recipient benefits at the expense of the energy loan fund. Furthermore, annual grants on the order of \$16 million (FY 91) to as high as \$36 million (FY 2010) to fund the Power Cost Equalization program will clearly deplete the energy fund over the long term. Money distributed as grants cannot be loaned to provide future revenue streams back to the fund. We have assumed that this energy loan fund would exist well into the future, but have not tried to create a perpetual fund. The final section of this memorandum provides further discussion of a statewide energy fund concept.

A STATEWIDE ENERGY FUND: FURTHER DISCUSSION

With the decline in State revenues and projections of modest State revenues in the future, it is clear that the days of massive State grants for energy projects are drawing to a close. If the State wants to continue to support energy projects, it will have to secure bond financing or establish a long-term fund as a source of funding. At this point, it appears appropriate that the State explore options for establishing some form of revolving loan fund which could provide loans for energy projects and annual grants for some energy programs--such as that presented in the previous sections of this memorandum. If this approach to energy financing is deemed appropriate, we believe that: 1) it is imperative to get a mechanism in place while certain State energy appropriations and energy loan repayments are available as potential sources for the capitalization of a statewide energy fund; and 2) the objectives of a statewide energy fund should be clearly established.

Developing a consensus on policy objectives for a statewide energy fund is beyond the scope of this memorandum. Nevertheless, the first hurdle is to define "energy"; it is possible to structure a statewide energy fund which supported projects/programs that address all principal end uses (power generation, space heating and transportation). We have defined "energy" broadly and, as a starting point, we suggest that the fund's objectives should include the following:

- 1) to provide financial assistance to a broad spectrum of projects and programs which strive to lower the total energy budgets of Alaska households and businesses;
- 2) to provide financial assistance to energy projects which "achieve the lowest cost electric power for consumers while minimizing the amount of State assistance required" (3 AAC 94.065);
- 3) to assist in the financing of major energy projects whose economic and financial feasibility have been demonstrated by thorough analysis and close scrutiny (as required under AS 44.83.177 - .185);
- 4) to provide financial assistance to energy projects which reduce energy demand through electrical load management, waste heat recovery, efficient home construction, and other conservation strategies;
- 5) to provide financial assistance for energy programs which seek to provide a "lifeline" amount of electrical power at a reasonable rate statewide without unduly encouraging energy consumption through unrealistic price signals;
- 6) to supplement, if necessary, the funding of other energy programs which emphasize the conservation of energy in the space heating and transportation end use sectors; and
- 7) to provide for reasonable loan repayment schedules in order to perpetuate the fund and minimize future State appropriations;

Public funding under a rational energy policy may not be difficult to achieve. If a project/program does not provide low power costs or a reasonable "payback" through reduced energy consumption, then it would not receive financial assistance under the statewide energy fund. The competition for assistance from a comparatively "lean" statewide energy fund would no doubt be intense. This potential competition will help to ensure that proposed projects/programs are well researched and meet demanding energy policy criteria.

A statewide energy revolving fund could be funded with: 1) money appropriated by the legislature; 2) loan repayment streams from existing energy loan funds; and 3) principal and interest portions of loan repayments from loans made from the fund itself. The energy fund outlined in the previous section relies on an initial appropriation of a portion of the Railbelt Energy Fund for a Bradley Lake loan and an additional appropriation from the REF to finance or fund other energy projects and programs as appropriate in the future. The Power Cost Equalization program, new rural electrification loans or purchase of the federal Eklutna and Snettisham hydro projects are possible projects or programs to be

considered for support under the energy fund. Finally, loan repayments from existing energy loan funds and future loans made by the fund itself provide a continuing revenue stream into the energy fund.

Senate Bill 206, which would create a power project revolving loan fund, perhaps provides a starting point for legislation establishing a statewide energy fund. Pertinent sections of the bill would:

- 1) provide for loans to public and private power production entities to: a) perform background studies; b) construct power production facilities; c) acquire bulk fuel or proven energy resources; and d) improve consumer end use to reduce energy demand;
- 2) provide a source of funds for: a) the purchase of federal power projects; and b) the APA for studies, licensing, design, land acquisition, construction, O&M, and debt service for projects under the energy program for Alaska;
- 3) give first priority for use of unrestricted funds to the power cost equalization program;
- 4) allow for the bonding of additional funds for authorized power projects; and
- 5) capitalize the fund through repayments of loans made by the fund, as well as loans under the existing Rural Electrification, Power Development, and Power Project loan funds. These existing funds would be subsumed under the new revolving loan fund. Additional legislative appropriations could be made to the fund.

However, SB 206 would have to be amended in order to accommodate the aforementioned statewide energy fund concept. The bill emphasizes power projects while ignoring funding of a broader range of energy projects and programs which would address other end uses such as space heating and transportation. In addition, SB 206 would enable the APA to use the fund for internal costs related to power projects without providing for clearly defined oversight with respect to the projects initially undertaken by the APA.

It appears that the loan fund established by SB 206 would probably support few projects beyond the next few years. Given that all but \$28 million of the Railbelt Energy Fund will be spent by 1990 on Bradley Lake and the interties and that near-term appropriations and interest earnings will be spent on Power Cost Equalization and APA studies, the long-term revenue stream to the fund is essentially limited to repayment of existing energy loans. In contrast, the energy fund outlined in this memorandum would

Representative Cotten
May 9, 1987
Page 14

loan money for the long-term financing of Bradley Lake--thus setting up a significant additional loan repayment stream to the fund.⁶ Under this approach, the combined revenue stream to the fund would be sufficient to pledge for long-term bonding of the northern intertie if it can be economically justified at the turn of the century. In addition, revenues could support some level of funding of the Power Cost Equalization program or be pledged for bond financing of the southern intertie.

* * *

In summary, we have tried to present a broad outline of some possible alternatives to the Railbelt energy financing proposal currently before the legislature. We are convinced that these options warrant further consideration, primarily because they may offer: 1) a means of lowering Bradley Lake entry power rates while at the same time lowering the State assistance to this project; 2) a mechanism for funding a northern intertie at the turn of the century; and 3) a long-term vehicle for the financing and funding of other priority energy projects and programs.

We are available to provide further assistance or answer any questions you may have regarding this information.

Attachment

⁶Although not identified as such in our energy fund proposal, interest earned on the money set aside now for a Bradley Lake loan in 1990 could be used to support a significant portion of the Power Cost Equalization program.

ATTACHMENT A
 ESTIMATED BRADLEY LAKE COSTS UNDER TWO LONG-TERM FINANCING ALTERNATIVES
 (In millions \$)

EXPENSE CATEGORY	LONG-TERM BOND FINANCING	LONG-TERM LOAN FINANCING
Construction Cost	\$328.2	\$328.2
Interest during Construction	62.1	62.1
Interest Earnings	-69.5	-69.5
Issuance Costs	8.7	3.5
Reserve Funds	21.4	4.9
Total Project Costs	\$350.9	\$329.2

NOTES: The long-term bond financing assumes a \$175 million bond, as currently proposed in power sales negotiations with the Railbelt utilities.

Interest earnings based on net earnings to date on short-term variable rate demand bonds (VRDBs) plus 1.5 percent spread hereafter.

Issuance costs equal costs of VRDBs in both cases and additional costs for the long-term bond financing alternative.

Each alternative assumes a Reserve and Contingency Fund (at 1.5% of construction cost). Long-term bond financing would also require a reserve of one year's debt service.

SOURCES: Long-term bond financing alternative: Alaska Power Authority.
 Long-term loan financing alternative: House Research Agency

Prepared by the House Research Agency, May 1987 (87-254C; 870330-06).

BRADLEY LAKE FINANCING OPTION: INITIAL STATE EQUITY CONTRIBUTION AND LOAN FOR REMAINING FINANCING
(In millions \$)

5% Case

			State Funds Commitment		Loan Payments		Excess Payment Amount	
		Year	(Nominal \$)	(1986 \$)	(Nominal \$)	(1986 \$)	(Nominal \$)	(1986 \$)
Bradley Lake Project Costs			\$118.0	118.0				
Construction:	\$328.0	1987	50.0	47.6				
Interest during Constrcn:	\$52.1	1988	8.0	7.3				
Interest Earnings:	(\$59.5)	1989	0.0	0.0				
S-T Bond Issuance:	\$3.5	1990	153.0	148.3				
Reserve Funds:	\$4.9	1991			510.0	38.0		
Total:	\$329.0	1992			19.0	7.6		
		1993			10.0	7.3		
State Equity Contribution:	\$176.0	1994			10.0	7.0		
State Loan Amount:	\$153.0	1995			5.0	5.0		
		1996			10.0	6.4		
Inc. Earnings on Loan Commitment (1986\$)		1997			0.0	0.1		
1987	\$5.0	1998			10.0	5.9		
1988	\$11.5	1999			10.0	5.1		
1989	\$11.0	2000			10.0	5.0		
Annual Investment Rate	8.2%	2001			10.0	5.1		
		2002			10.0	4.9		
State Loan Issued (1986\$)	153.0	2003			10.0	4.0		
Loan Interest (1986\$)	1.0	2004			10.0	4.0		
Loan Rep (1986\$)	0	2005			10.0	4.0		
Annual Loan Payments:	\$10.0	2006			10.0	4.0		
		2007			10.0	3.1		
		2008			10.0	3.0		
State Funds Payment		2009			10.0	3.0		
(2001 - 2010)	\$10.0	2010			10.0	2.5		
		2011			10.0	2.7		
Annual Inflation	3.5%	2012			10.0	2.1		
Interest Rate	8.5%	2013			10.0	2.0		
		2014			10.0	2.0		
Annual Equity Cost	\$10.0	2015			10.0	1.5		
		2016			10.0	1.7		
		2017			10.0	1.5		
		2018			10.0	1.5		
Interest on State Funds Commitment:		2019			10.0	1.5		
		2020			10.0	1.5		
State Funds Commitment	\$232.5	2021					12.5	
- Interest Earnings	\$76.4	2022					14.8	
- Loan Payments	\$10.7	2023					14.8	
- Excess Payment	7.0	2024					4.5	
		2025					14.8	
Net State Equity Commitment	\$156.0	2026					14.8	
		2027					14.8	
Loan from State (2001-2010)	153.0	2028					14.8	
		2029					14.8	
		2030					14.8	

ALASKA PUBLIC UTILITIES COMMISSION

Comments on CS for HB 356 (Judiciary)
February 3, 1988

The Commission endorses the intent of the amendments to HB 356 which were included in CS for HB 356 (Judiciary). The Commission believes that the amended language addresses, at least in part, the concerns previously expressed by the Commission regarding oversight of costs incurred in connection with "related contracts."

The commission recommends two minor amendments to the wording of the bill to make the meaning more clear:

First, Section 2 of the bill, which adds subsection (d) to AS 42.05.511, should begin with the introductory phrase, "Notwithstanding the provisions of AS 42.05.431(c)(1)-(2)" This addition will clarify the intention that, notwithstanding the provisions of Section 1 of the bill, Section 2 preserves Commission oversight of costs incurred in connection with "related contracts."

Second, the Commission believes that the phrase, "except those disallowed under AS 42.05.381(a)" in Section 2 can be deleted as redundant. The amendment which changed "all costs" to "validated costs" was, the Commission understands, intended to provide for Commission oversight of costs which can be recovered. Therefore, the Commission's authority to "validate" costs automatically preserves the authority to disallow costs under AS 42.05.381(a) and the specific language to that effect is redundant.

Section 2 of the bill, amended to incorporate the foregoing changes, would read:

AS 42.05.511 is amended by adding a new subsection to read:

(d) Notwithstanding the provisions of AS 42.05.431(c)(1)-(2), validated costs incurred by a utility in connection with the related contracts described in AS 42.05.431(c)(1) must be allowed in the rates charged by the utility.

Finally, the Commission would also reiterate its earlier statement that the provision in Section 1 ensuring the enforceability of rate covenants should be limited to the wholesale power agreement and not extended to the "related contracts." The provision in Section 1 that any rate covenant in the "related contract" is valid and enforceable is inconsistent with the amendments to Section 2 which preserve the Commission's authority to "validate" costs. Further, as previously noted, the "related contracts" are between utilities (not with the APA) and contracts between utilities should not create rate covenants which are binding on the Commission. Therefore, Section 1 should be amended to eliminate from proposed AS 42.05.431(c)(2) the words, ". . . or related contract"

APPENDIX AComputation Of Wheeling Rates

Rates for wheeling services provided under Section 4 of this Agreement are intended to be computed on a fully allocated cost basis and to apply to all Wheeling Utilities in a "postage stamp" manner, in accordance with the following principles:

1. Basic Wheeling Rate.

(a) Formula. The basic wheeling rate shall be computed in each Chugach rate adjustment proceeding in accordance with the following formula, using actual values for each variable as determined for the ratemaking test year applicable to that rate adjustment proceeding:

$$R = \frac{A + B + C + D + E}{F} \times K$$

Where:

- R = The basic wheeling rate to be charged during the rate period;
- A = Chugach O & M expense allocated to transmission (currently REA Accounts 556 through 573), less such O & M expense properly allocated to Chugach's Beluga to Point MacKenzie transmission segment;
- B = Chugach A & G expense allocated to transmission (currently REA Accounts 920 through 932), less such A & G expense properly allocated to Chugach's Beluga to Point MacKenzie transmission segment;
- C = Chugach taxes allocated to transmission (currently REA Account 408), less such taxes properly allocated to Chugach's Beluga to Point MacKenzie transmission segment;
- D = Chugach depreciation allocated to transmission (currently REA Account 403), less such depreciation properly allocated to Chugach's Beluga to Point MacKenzie transmission segment;

E = Chugach interest expense and generation-and-transmission TIER (or other applicable generation and transmission margin requirement) allocated to transmission, less interest expense and generation and transmission TIER properly allocated to Chugach's Beluga to Point MacKenzie transmission segment;

F = The sum in kilowatthours of (i) Chugach's total generation (exclusive of generation for economy sales) plus purchases, and (ii) the Bradley Lake Energy of the Wheeling Utilities;

and

K = The applicable phase-in factor or constant as set forth below in Provision 2 of this Appendix A.

(b) Notes on specific variables.

(i) The Point MacKenzie Substation is not part of Chugach's Beluga to Point MacKenzie transmission segment, and the costs of that Substation shall not be excluded in determining the values for those variables from which the costs of that segment are excluded.

(ii) Chugach's transmission O & M expense and A & G expense associated with Chugach's Beluga to Point MacKenzie transmission segment are not (and at this time cannot be) specifically identified and isolated from Chugach's total transmission O & M expense and A & G expense. Therefore, in computing "A" and "B" in the foregoing formula, reasonable estimates of Chugach's transmission O & M expense and A & G expense associated with Chugach's Beluga to Point MacKenzie transmission segment shall be used. Such estimates may be based on reasonable proxy variables, such as the percentage of total recorded annual hours of transmission O & M labor represented by recorded annual hours of transmission O & M labor on Chugach's Beluga to Point MacKenzie transmission segment.

(iii) As provided in Section 13(cc) of this Agreement, neither HEA nor AEG&T on behalf of HEA is a Wheeling Utility for purposes of this Agreement (except, potentially, as a successor or assignee of another Wheeling Utility's Bradley Lake Energy). Thus, "F" in the formula set forth above shall not include or be increased by any Bradley Lake Energy of HEA or AEG&T on behalf of HEA, even if such Energy is wheeled by Chugach pursuant to Section 8(f) of this Agreement at wheeling rates established under this Exhibit A.

2. Phase-In Factor (Years 1-15) And Constant (Later Years).

Beginning with the calendar year in which the Project achieves Commercial Operation, and in each of the next fourteen calendar years (Calendar Years 1 through 15 in the table below), the applicable wheeling rate shall be determined by multiplying the then-applicable base wheeling rate (as computed above) times a phase-in factor in accordance with the following table:

<u>Calendar Year</u>	<u>Phase-In Factor</u>
1 . . . . .	.3333
2 . . . . .	.3333
3 . . . . .	.3333
4 . . . . .	.3805
5 . . . . .	.4278
6 . . . . .	.4750
7 . . . . .	.5222
8 . . . . .	.5694
9 . . . . .	.6167
10 . . . . .	.6639
11 . . . . .	.7111
12 . . . . .	.7583
13 . . . . .	.8056
14 . . . . .	.8528
15 . . . . .	.9000

Beginning on the first day of the next calendar year after Calendar Year 15, and in all succeeding calendar years, the base wheeling rate (as computed under heading 1 above) shall be multiplied by 0.9000 as a constant. Any increase in the applicable wheeling rate resulting from an increase in the phase-in factor in accordance with the table above shall become effective without the need for any regulatory approval other than approval of this Agreement.

STATE OF ALASKA

ALASKA PUBLIC UTILITIES COMMISSION DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

FEB 26 1988

STEVE COWPER, GOVERNOR

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

February , 1988

Representative John Sund
State of Alaska
House of Representatives
P. O. Box V
Juneau, Alaska 99811

Dear Representative Sund:

I am writing to respond to questions that have been raised with respect to the Commission's current and future jurisdiction over the "Four Dam Pool" Power Sales Agreement.

This subject has recently been addressed by the Department of Law per the enclosed letters to Senator Fred F. Zharoff. The Department of Law stated, and the Commission concurs, that:

(1) The Agreement is exempt from the provisions of AS 42.05.431(b) because it predated this section of the statute. Therefore, the Commission can require neither advance approval of the Agreement nor negotiation of amendments to rates which are found to be unreasonable under the Agreement.

(2) Implementation of the terms of the existing Agreement to periodically reopen and reestablish rates does not bring the Agreement under Commission review, if the procedures set forth in the Agreement are followed.

(3) The scope of the Commission's jurisdiction is unclear if the Agreement were amended to include totally new subjects or so substantially as to constitute a new contract. (The Commission has previously suggested to the Alaska Power Authority that if this situation arises, the amendments be submitted for a determination of whether they are jurisdictional.)

Representative John Sund
February 22, 1988
Page 2

I am also enclosing for your information a chart showing the utilities who are signatories to the "Four Dam Pool" Agreement and their current regulatory status. As you can see, only two of the five utilities are currently economically regulated by the Commission. Thus, as a practical matter, whatever Commission jurisdiction exists over the Agreement affects two utilities directly and the remaining three only indirectly.

Please let me know if you have any additional questions.

Sincerely yours,

A handwritten signature in cursive script that reads "Susan". The signature is written in black ink and is positioned above the typed name.

Susan M. Knowles
Chairman

Enclosures

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-1550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL
February 12, 1988

Honorable Fred F. Zharoff
Pouch V
Juneau, Alaska 99811

Re: APUC Review/ "4 Dam Pool"
Power Sales Agreement
File No. 661-88-0329

Dear Senator Zharoff,

You have asked our opinion whether the Alaska Public Utility Commission (APUC) is authorized to review the Long-Term Power Sales Agreement 4 Dam Pool - Initial Project of the Alaska Power Authority ("the Agreement").

As you know, the Alaska Power Authority ("the APA"), 2 electric cooperatives and three cities in southeast Alaska signed the Agreement in October, 1985. The Agreement provided for the sale over 45 years of hydroelectric power from 4 state-owned hydroelectric projects collectively known as the Initial Project. See Agreement, Sec. 2(b). The Agreement requires the power purchasers to resell the power at a rate sufficient to pay the costs of operating and maintaining the projects and the cost of debt service. 1/ See Agreement, Sec. 5(b). The Agreement also provides, as required by law, for the parties to renegotiate the debt service component of the wholesale power rate in the years 2000 and 2015. See AS 44.33.625; Agreement, Sec. 9. This provision is commonly referred to as "the rate reopener."

In 1986 the legislature amended AS 42.05.431 by adding a new subsection which provided that a wholesale power agreement between public utilities is subject to advance approval of the APUC. AS 42.05.431(b). 2/ Moreover, the APUC may order the parties to negotiate an amendment to a wholesale power agreement when the APUC finds that the rates set in accordance with the

1/ The debt service component is paid to the APA to retire a loan between the Department of Commerce and Economic Development and the APA for the purpose of constructing and acquiring the 4 Dam Pool hydroelectric projects.

2/ This office has previously determined that sec. 431(b) applies to wholesale power agreements to which the APA is a party. 1987 Inf. Op. Att'y Gen. (February 18; 663-87-0365).

agreement are not just and reasonable. Id. The only comment I have found on the purpose of subsection (b) is in a letter from Attorney General Brown to Governor Sheffield, reviewing HB 314 after it was passed by the legislature. The letter states, "[t]he commission's authority to approve wholesale power agreements would be made explicit by AS 42.05.431(b)." Letter, June 4, 1986, A.G. File No. 883-86-0135.

At the same time that the legislature adopted AS 42.05.431(b), however, the legislature further provided that subsection (b) "applies only to wholesale power agreements entered into on or after June 7, 1986." Sec. 8, ch. 104, SLA 1986. Since this Agreement was entered into prior to June 7, 1986, section 431(b) does not apply to the existing Agreement.

The more difficult question is whether the APUC acquires jurisdiction over this 45-year Agreement if the parties exercise their rights under the rate reopener provision of the existing Agreement and voluntarily elect to amend the Agreement in the year 2000 or 2015 as to the rates to be charged under the Agreement. By the terms of the existing Agreement, they may reopen the Agreement as to the debt service component of the wholesale power rate. See Agreement, sec. 9. The Agreement provides an elaborate procedure for determining whether the debt service component should be revised. As long as the parties proceed under the provisions of section 9 of the existing Agreement, such activity should not produce a new agreement subject to APUC review under AS 42.05.431(b).

This opinion does not address whether the APUC would have jurisdiction over the agreement should the parties decide to amend the Agreement regarding a subject not contemplated by the original Agreement. Nor does this opinion address whether the APUC would acquire jurisdiction if the parties so modified and amended the original Agreement as to create a new agreement.

I hope this opinion has answered your question. Please let me know if I can be of further assistance.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 

Carolyn E. Jones
Assistant Attorney General

cc: Susan Knowles, APUC
Elizabeth Hickerson, AGO
Art Peterson, AGO

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

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JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

February 22, 1988

Honorable Fred F. Zharoff
Pouch V
Juneau, Alaska 99811

Re: APUC Review/ "4 Dam Pool"
Power Sales Agreement
File No. 661-88-0329

Dear Senator Zharoff:

In my letter dated February 12, 1988 I advised you that the Alaska Public Utility Commission (APUC) would not have jurisdiction over the Long-Term Power Sales Agreement 4 Dam Pool - Initial Project of the Alaska Power Authority ("the Agreement") if the parties exercised their rights under the rate reopener provision of the Agreement. This opinion was based on the fact that the Agreement contemplated a rate reopener period and provided an elaborate procedure for a reconsideration of the rates charged under the Agreement. As such, the Agreement was specifically excluded from APUC review.

I expressed no opinion on whether the APUC would acquire jurisdiction over the Agreement should the parties decide to amend the Agreement regarding a subject not contemplated by the original Agreement. Nor did I address whether the APUC would acquire jurisdiction if the parties so modified and amended the original Agreement as to create a new agreement. Your memorandum of February 15, 1988 asks me to address these two questions as well:

Without having an actual amendment to the Agreement and an actual set of facts before me, it is not possible to give you a definite answer. I do not, however, want to foreclose the possibility that at some point the parties to the Agreement may so amend the Agreement that it no longer resembles the Agreement which the legislature exempted from APUC review. Should that

Honorable Fred F. Zharoff

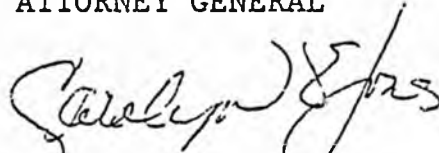
February 22, 1988
Page 2

eventuality occur, then the APUC may well successfully assert jurisdiction over the amended Agreement.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:



Carolyn E. Jones
Assistant Attorney General

CEJ:sw

cc: Susan Knowles, APUC
Elizabeth Hickerson, AGO

4-Dam Pool Project/Utility Profile

<u>Project</u>	<u>Community Served</u>	<u>Utility</u>	<u>Regulatory Status</u>
Terror Lake	Kodiak/Port Lyons	Kodiak Electric Association	Regulated
Solomon Gulch	Glennallen/Valdez	Copper Valley Electric Association	Regulated
Tyee Lake	Wrangell/ Petersburg	Cities of Wrangell and Petersburg	Unregulated
Swan Lake	Ketchikan	City of Ketchikan	Unregulated

STATE OF ALASKA
THE LEGISLATURE

POUCH Y. STATE CAPITOL
JUNEAU, ALASKA 99811
907-463-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 5, 1988

SUBJECT: Deposit of excess payments under the
Bradley Lake Power Sales Agreement into
the Railbelt energy fund (Work Order
No. 5-1728)

TO: Representative John Sund, Chairman
House Judiciary Committee

FROM: Teresa B. Cramer *JBC*
Legislative Counsel

You have asked whether the provision in section 29 of the Bradley Lake Hydroelectric Project Power Sales Agreement, which states that excess payments from the purchasers are "for deposit in the Railbelt energy fund," is valid.

The excess payments are payments to be made by the purchasing public utilities after the retirement of bonds issued to pay for the construction of the power project. The bonds are expected to be retired 30 years after the project begins commercial operation and the excess payments are expected to continue for the remaining 20 years of the agreement.

In my opinion, the Alaska Power Authority (APA) does not have the statutory power to enter into an agreement requiring that the excess payments be deposited in the Railbelt energy fund.

Under AS 44.83.398(c), the APA is required to deposit money received from the sale of power from projects constructed under the energy program for Alaska in the general fund unless the money has been pledged or otherwise covenanted to secure bonds. The excess payments do not meet the requirements of the exception. The statute could be construed to allow the APA to deposit the payments in the Railbelt energy fund only if the Railbelt energy fund is considered to be the same as the general fund.

Representative John Sund, Chairman
House Judiciary Committee
Page 2
February 5, 1988

The Railbelt energy fund is an account within the general fund under AS 37.05.153. The statute provides

There is established in the general fund the Railbelt energy fund. The fund consists of money appropriated to it by the legislature. The Department of Revenue shall manage the fund. Interest received on money in the fund shall be accounted for separately and may be appropriated into the fund annually. The legislature may appropriate money from the fund to assist in meeting Railbelt energy needs.

The legislature has given the account a special purpose, even though the purpose is not binding on future legislatures. The setting aside of funds is a legislative function, implicit in the legislature's power of the purse. Therefore, deposit in the Railbelt energy fund does not constitute deposit in the general fund and does not satisfy AS 44.83.398(c).

The power to make deposits in the Railbelt energy fund is also restricted under AS 37.05.153. Under the terms of the statute, money is added to the fund by legislative appropriation. Therefore, the excess payments under section 29 of the Power Sales Agreement can only be added to the fund if the legislature appropriates them to it.

The appropriation of state revenue is a legislative function. Absent statutory authorization, as in the case of bonds or revolving loan funds, an executive branch agency cannot circumvent the legislative decision-making power by entering a contract with private parties that earmarks state revenue for deposit in a particular account.

If I may be of further assistance, please advise.

TBC:gc
WKG1:067



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

January 27, 1988

MEMORANDUM

TO: Representatives John Sund and Kay Brown

ATTN: John Hartle and Eric Meyers

FROM: Ginny Fay *gfay*
Legislative Analyst

RE: Bradley Lake Power Sales, Service, and Transmission Agreements and
House Bill 356
Research Request 88.119

You requested that this agency review the following agreements, which House Bill 356 would remove from the purview of the Alaska Public Utilities Commission (APUC):

- the Bradley Lake Hydroelectric Power Sales Agreement (Power Sales Agreement);
- the Bradley Lake Hydroelectric Project Transmission Sharing Agreement (Transmission Agreement) between Homer Electric Association (HEA) and other Railbelt utilities; and
- the Bradley Lake Hydroelectric Project Agreement for the Wheeling of Electric Power and for Related Services (Services Agreement) between Chugach Electric Association (CEA) and the other Railbelt utilities.

You also asked that we compare provisions of the Bradley Lake Power Sales Agreement with the Four Dam Pool Power Sales Agreement. In addition, you asked that we suggest alternative language for HB 356 that would accomplish the objective of assuring immediate, continued progress on Bradley Lake construction but which would minimize impact on the APUC's general authority to review and approve electrical costs and rates.

The first part of this memorandum provides background information on the Bradley Lake project and HB 356 (Attachment A). The next section presents an overview of each of the three Bradley Lake agreements and compares the Bradley Lake and the Four Dam Pool power sales agreements. This is followed by a discussion of HB 356 and how it compares with the version of

Senate Bill 22 that was vetoed last session. The final section of this memorandum suggests alternative language for HB 356.

Background

The 90 megawatt Bradley Lake hydroelectric project is currently under construction by the APA on the Kenai Peninsula near Homer, Alaska. The APA has obtained State appropriations (\$168,080,000) and borrowed short-term funds to finance the initial costs of construction. The APA is ready to issue the Request For Proposals for the general civil engineering construction contract. Prior to committing to the completion of the project, however, the APA insisted that all three contracts noted above be agreed upon.

House Bill 356 was introduced by Governor Cowper to exempt these Bradley Lake contracts from APUC review and approval. Exemption from APUC review is deemed necessary to avoid extensive project delay caused by interveners in the APUC hearing process. Public Utility Regulatory Policy Act (PURPA) qualifying alternative energy facilities who intend to sell power to some of the Railbelt utilities are likely to intervene in the Bradley Lake hearing process. Similarly, the State regulatory review process provides an opportunity for parties who may oppose construction of the Bradley Lake project to delay its completion and thus jeopardize the APA's ability to obtain lower interest, tax-free bonding for the project. Deregulation of the Bradley Lake project by HB 356 also allows automatic flow-through of Bradley Lake costs into electric rates, thus guaranteeing revenue required for bond repayment.

As mentioned in the SB 22 hearings last session, removal of APUC authority over the Bradley Lake contracts does not eliminate all judicial opportunities for PURPA interveners; it simply transfers PURPA jurisdiction to the federal government. If APUC authority is removed, interveners can still file suits under PURPA in federal district court. This court would also hear any appeals of APUC decisions related to PURPA. In this regard, removal of APUC review authority would eliminate one step in the judicial process.

The APA has been advised by bond counsel that APUC oversight of the contracts would raise the interest rates on bonds. There has been continued discussion of this point. We are unable to comment on the accuracy of the claims. The APUC review of projects does not preclude the recovery of "prudent" costs. However, given the excess generating capacity in the Railbelt, there is some question that Bradley Lake would be considered a prudent project at this time. The next section provides some general information on the three Bradley Lake project contracts.

Bradley Lake Hydroelectric Project Contracts

Wholesale Power Sales Agreement. Of the three agreements entered into by utilities purchasing Bradley Lake power, the Power Sales Agreement (PSA) is the primary contract. Parties to the contract are the Alaska Power Authority (APA), CEA, HEA, Golden Valley Electric Association (GVEA), Anchorage Municipal Light and Power (AML&P), Matanuska Electric Association (MEA), Alaska Electric Generation and Transmission Cooperative, Inc. (AEG&T) and the Seward Electric System (SES). The PSA provides for the sale of 100 percent of the project's power to the purchasing utilities under an unconditional, take-or-pay contract.¹ The agreement also provides for the financing, operation, and maintenance of the project. The PSA governs the sale of bonds to finance up to \$175 million of the construction costs, the repayment of the bonded debt, the scheduling and sales of project power, administration of the Power Sales Agreement, the establishment of the Project Management Committee, and the determination of annual project costs.

The bonded debt will be retired by proceeds from the sale of project power. The debt, along with all other costs associated with operating and maintaining the project, will be included in a budget of annual project costs written by the Project Management Committee. The Project Management Committee is comprised of APA and all utilities purchasing Bradley Lake power (including voting members HEA and MEA and nonvoting member AEG&T). The Project Management Committee has the ongoing responsibility and authority to oversee all significant Bradley Lake project activities including controlling costs, writing the annual budget, and resolving disputes among the agreement's parties. The APA, however, retains the right to take "required actions" to ensure that financial obligations under the bond covenant are met.

The Power Sales Agreement has an initial term of 50 years. It becomes effective when all parties execute the agreement and have obtained all necessary approvals for it and the related Transmission and Services Agreements. Debt service on the bonds extends for 30 years. Upon the retirement of all bonds issued to pay recoverable construction costs, the purchasers of Bradley Lake power agree to make "excess payments" to the Railbelt Energy Fund "...in recognition of the Railbelt Energy Council's

¹Power from the Bradley Lake project is allocated on a percentage basis as follows: Alaska Electric Generation & Transmission Cooperative, Inc., 25.8 percent (acting for Hower Electric Association, 12.0 percent and Matanuska Electric Association, 13.8 percent); Chugach Electric Association, 30.4 percent; Golden Valley Electric Association, 16.9 percent; Anchorage Municipal Light & Power, 25.9 percent; and Seward Electric System, 1.0 percent. These shares are specified in Exhibit D of the Power Sales Agreement.

commitment to continued efforts to obtain a satisfactory transmission intertie between Fairbanks and the Kenai Peninsula..." Excess payments are to be paid in proportion to each purchaser's share of Bradley Lake power and will be equal to the average annual debt service on retired bonds minus any payments on debt issued to fund required project work. At a maximum, excess payments would equal four cents for each kilowatt hour (kwh) purchased by each of the utilities. Given that Bradley Lake's projected output is 369.2 kilowatt hours each year, the excess payments could be as much as \$14.8 million annually (nominal dollars) for power purchased after retirement of the bonds. Because the payments would commence so far in the future, the net present value of the 20-year revenue stream (2021-2040) is estimated to be about \$10 million. Excess payments will be made until the termination of the 50-year agreement period.

If the Bradley Lake project is not completed and operational by January 1, 1996, there is an "early out" provision for purchasers under the agreement. The PSA may be renewed for 40 year periods or for the life of the project, whichever is longer.

Table 1 (Attachment B) compares some of the major provisions of the Bradley Lake and Four Dam Pool power sales agreements. Most of the differences can be attributed to inherent differences in the projects or to differences in the timing of negotiation of the power sales agreements. Most of the Four Dam Pool projects produce excess power. This situation precluded take-or-pay contracts for all of the projects' power. In addition, the costs of some of the Four Dam Pool projects increased substantially from their original estimates. Furthermore, the projects were completed before the power sales agreement was in place, putting the State in a weaker negotiating position. The rate reopener provisions (2001 and 2016) in the Four Dam Pool agreement provides a mechanism to increase the debt service component on these projects rather than a means to decrease payments. In contrast, the Bradley Lake agreement includes a provision for excess payments which commence after the 30-year bond is retired. Both the rate reopener and excess payment provisions offer at least partial repayment of the State's equity in the projects.

Transmission Agreement. The Transmission Agreement is one of the "related contracts" mentioned in HB 356. The agreement between HEA and CEA, GVEA, and AML&P provides for HEA's construction of a 47 mile, 135 kilovolt (kv) transmission line between the Bradley Junction and Soldotna

Substation. The line, which is estimated to cost \$14.1 million to construct, will provide for delivery of Bradley Lake power to the purchasing utilities. The Transmission Agreement provides for the sale or lease of portions of the HEA line to CEA, GVEA, and AML&P.² The State of Alaska is not a party to this contract.

Parties to the agreement are expected to pay a portion of the line's construction costs as well as reimburse HEA "...each month for a portion of HEA's actual expenses associated with operating, maintaining, and repairing the Transmission Line." Formulas for calculating construction and operation and maintenance costs are attached to the agreement. As HB 356 is currently written, the costs specified by these formulas would not be subject to APUC review or approval.

The agreement also provides for a number of other operational considerations such as line upgrading, failure to construct, repairs, special provisions affecting CEA, and dispute resolution. The term of the agreement begins when all parties have executed it and it has received all necessary approvals. The agreement ends when the line is no longer used to transmit Bradley Lake power and all construction costs have been paid; or the date when the Power Sales Agreement terminates; or any such date as all parties mutually agree, provided the date meets with the approval of entities whose approval is necessary.

Services Agreement. The Services Agreement contract between CEA and HEA, GVEA, MEA, AML&P, SES, and AEG&T provides for the transfer of Bradley Lake power across CEA's transmission network, storage of Bradley Lake power in CEA's Cooper Lake hydroelectric facility, and energy purchase and displacement services to the purchasing parties by CEA. The Services Agreement establishes provisions for the: 1) continuity and scheduling of services with CEA serving as dispatcher; 2) right to additional transmission capacity; 3) establishment of rates and billings; and 4) resolution of disputes. Similar to the Transmission Agreement, the State is not a party to the Services Agreement, which is a "related contract" under HB 356.

Computation of wheeling rates to be paid by purchasing parties is determined by formulas attached to the agreement. The basic wheeling rate is indirectly tied (through variables in the formula) to CEA's rate adjustment proceedings which occur before the APUC. While this provides a "reference point" for the calculation of costs, determination of actual components of costs to be included in each variable is difficult. As noted in Appendix A of the service agreement,

²The CEA's proportion of the line includes its percentage share of Bradley Lake power plus that of SES and MEA.

Chugach's transmission O&M expense and A&G expense associated with Chugach's Beluga to Point Mackenzie transmission segment are not (and at this time cannot be) specifically identified and isolated from Chugach's total transmission O&M expense and A&G expense. Therefore, in computing "A" and "B" in the foregoing formula, reasonable estimates of Chugach's transmission O&M expense and A&G expense associated with Chugach's Beluga to Point MacKenzie transmission segment shall be used. Such estimates may be based on reasonable proxy variables.

Under HB 356, the APUC will not have the authority to determine the "reasonableness" of these proxy variables. The difficulty in isolating these costs for the computation of wheeling charges under the agreement is a precursor to the difficulties that would be faced by the APUC in determining utility costs in a partially deregulated power system.

The Services Agreement represents an operational alternative solution to transmitting Bradley Lake power to all purchasers in the absence of the State of Alaska's construction of an intertie from the Kenai Peninsula to Anchorage. Parties to the Service Agreement recognize that the agreement will be superseded if, and when, construction of an additional transmission line occurs, or if power pooling arrangements are made by the purchasing parties.

House Bill 356 and Senate Bill 22

The major contrast between HB 356 as introduced this session and S3 22 as passed last session is the additional exemption (from APUC review and approval) of service and transmission agreements related to the wholesale power sales agreement. This broadening of the scope of the bill reduces APUC's authority to review and approve utility costs and their inclusion in electrical rates. These agreements are included in the exemption because they form the operational basis for the financial obligations contracted in the Power Sales Agreement. These related contracts were probably not included in last year's bill only because they did not exist at the time.

Alternative Language For HB 356

Attachments C, D, and E provide alternative language for HB 356. The language provided is based on the following premises regarding the intention of the bill:³

³Mary Halloran, Office of the Governor, Director, Division of Policy, Office of Management and Budget, personal communication, January 20, 1988.

- to ensure completion of the Bradley Lake project without further delays caused by interveners in the APUC hearing process;
- to ensure that utility rates are adequate to repay bonded debt; and
- to minimize deregulation of Railbelt electric utilities.

The language provided in Attachment C primarily clarifies the language and intent of the bill. In section 1(c)(1), the reference to related contracts is moved within the October 1, 1987 and January 1, 1988 dates to more clearly specify the extent of related contracts covered. In section (c)(2), the "Alaska Power Authority" is added to clarify the pronoun "its" which was clear in last year's bill but vague in the current bill. Section 2 is unnecessary given the revised language of section 1(c)(2) of the bill and specification of "annual costs" in the Power Sales Agreement. However, if it is retained section 2 can be modified to specify "power and transmission" costs rather than "all" costs "without limitation." This change to section 2 limits the erosion of APUC authority, which is the governor's intent, without jeopardizing the repayment of bond debt provided for in section 1(c)(2).

Attachment D provides language that separates the financial obligation to bond holders under the Power Sales Agreement from the operational constraints provided by the related service and transmission agreements. Section 1(c)(1) and (2) pertain to the wholesale power sales agreement and ensure sufficient rates and revenues for repayment of the bonds. Section 2 of this modification provides that the commission shall allow related contracts between utilities to the extent required to enable performance under the wholesale power sales agreement. This ensures that rates and revenues are sufficient to make the power sales agreement fully operational without total deregulation of associated costs.

Attachment E is similar to Attachment D in that the language also separates the financial obligation aspects of the power sales agreement from the operational aspects of the transmission and service agreements. Section 1 is essentially the same as Attachment D. Given that section 1(c)(2) provides for rates sufficient to meet the financial obligation of the bonds, section 2 of this modification retains the APUC's ability to review the allocation of those costs among utilities and subsequently among retail