

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990

8672

6434 SENATE LABOR & COMMERCE

838

AGENCY: DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
 CATEGORY: PUBLIC PROTECTION

PROGRAM: AK PUBLIC UTILITIES COMMISSION
 SUB-PROGRAM:

LEG. FIN.

FISCAL YEAR 1990

EXPENDITURES FUNDING	(01) FY88 ACT	(02) FY89 CC	(24) FY89 ATH	(25) FY90BASE	(26) FY90ADJB	(27) FY90 AGY	(28) FY90 GOV	(08) GOV AMD	(09) HOUSE	(10) SENATE	(11) C. C.	(12) BILLS	(13) LEG.REC
PERS. SERV.	2103.5	2113.6	2113.6	2175.0	2175.0	2305.4	2175.0	2175.0					
TRAVEL	27.4	57.1	57.1	57.1	57.1	57.1	57.1	57.1					
CONTRACTUAL	1174.3	1593.9	1593.9	1593.9	1593.9	1768.9	1593.9	1593.9					
COMMODITIES	20.8	22.0	22.0	22.0	22.0	22.0	22.0	22.0					
EQUIPMENT	3.9	2.9	2.9	2.9	2.9	20.3	2.9	2.9					
LANDS/BLDGS													
GRANTS, CLMS													
MISC.			100.0										
TOTAL EXPEND	3329.9	3789.5	3889.5	3850.9	3850.9	4173.7	3850.9	3850.9					
I-A TRANSFER		231.1	231.1	231.1	231.1	231.1	231.1	231.1					
04 GEN FUND	2452.6	2544.2	2644.2	2605.6	2605.6	3328.4	3005.6	3850.9					
05 GF/PRGM	877.3	1245.3	1245.3	1245.3	1245.3	845.3	845.3						
FULL TIME	40.0	40.0	40.0	40.0	40.0	41.0	40.0	40.0					
PART TIME													
TEMPORARY													
STAFF MONTHS	480.0	480.0	480.0	480.0	480.0	492.0	480.0	480.0					

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NEW POSITIONS...

T I T L E	LOCATION	TYP	C O S T	F U N D I N G	REQ	GV	HS	SN	CC
INFORMATION OFFICER I	ANCHORAGE	F	01 PERS. SERV. 48.0 05 EQUIPMENT 4.5 POS'N COST 52.5	1004 GEN FUND	52.5	1	0	0	0
NEW POSITION TOTALS			** TOTAL COST		52.5	1	0	0	0

Proposed by ARECA
February 2, 1989

AS 42.05.720(3) Definitions, "Public" is amended to read:

(3) "public" or "general public" means

(A) any group of 10 or more customers that purchase the service or commodity furnished by a public utility as defined in (4) of this section and that is located or purchases the product or service outside the certificated service area of a public utility; [AND]

(B) any person, association or corporation that purchases a utility service or product and that is located or purchases the product or service within the certificated service area of a public utility; and

[(B)] (C) any utility purchasing the product or service or paying for the transmission of electric energy, natural or manufactured gas, or petroleum products which are re-sold to an individual or [A] group included in (A) or (B) of this paragraph or which are used to produce the service or commodity sold to the public by the utility;

Comment: This amendment adds a third way to qualify as "public" under AS 42.05. The "Public" would be (1) ten or more customers outside a certificated service area, (2) one customer within the certificated service area of a utility, and (3) a utility buying a product or service for resale. This amendment was drafted in this way to continue to permit utility type sales, without regulation, to fewer than 10 customers outside of an area certificated to a utility while treating any such sale within a certificated territory as a utility transaction. This amendment would give the commission the authority to protect the financial health of Alaska's utilities from being undermined by other entities who can "cherry pick" the best customers with no responsibility to serve the less desirable customers.

Proposed by ARECA
February 2, 1989

AS 42.05.461 is amended to read:

AS 42.05.461. Continuing Property Records. The commission may require a public utility to establish, provide, and maintain as part of its system of accounts, continuing property records segregated by the year of placement in service, including a list or inventory of all the units of tangible property used or useful in the public service identifying the property by location or project [, SHOWING THE CURRENT LOCATION OF THE PROPERTY UNITS BY DEFINITE REFERENCE TO THE SPECIFIC LAND PARCELS UPON WHICH THE UNITS ARE LOCATED OR STORED]. The commission may require a public utility to keep accounts and records in such a manner as to show, currently, the original cost of the property when first devoted to the public service, and the related reserve for depreciation. Each public utility with annual revenues exceeding \$100,000 shall keep continuing property records.

Comment: The purpose of this proposed amendment is to permit regulated utilities to keep the same kind of continuing property records for the APUC as they are required to keep for REA, CFC, and other lenders. Without this amendment, the present law actually requires a detailed mapping system to identify the location, by legal description, of every crossarm and bolt in the system.

Proposed by ARECA
February 2, 1989

AS 42.05.381 is amended by adding a new subscription:

AS 42.05.381(f) Dues or fees paid to a trade association that is tax exempt under Section 501(c)(6) of the Internal Revenue Code shall not be disallowed as a business expenses because the trade association is engaged in lobbying.

Comment: The purpose of this proposed amendment is to protect the existence of associations like ARECA by establishing in the law that dues paid to such associations are an appropriate business expense for the member utilities.

A PERFORMANCE REPORT ON THE
DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT
ALASKA PUBLIC UTILITIES COMMISSION

February 14, 1989

Audit Control Number

08-1354-89-R

Commissioner, Department of
Commerce and Economic Development Larry Mercurieff

Deputy Commissioner, Department of
Commerce and Economic Development Jeffrey W. Bush

Members of the
Alaska Public Utilities Commission

Chairperson	Susan M. Knowles
Member	Carolyn S. Guess
Member	Peter Sokolov
Member	Louis E. Agi
Member	Kathleen L. Whiteaker

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THE LEGISLATURE
BUDGET AND AUDIT COMMITTEE

February 21, 1989

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Titles 24 and 44 of the Alaska Statutes, the attached report is submitted for your review.

A PERFORMANCE REPORT ON THE
DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT
ALASKA PUBLIC UTILITIES COMMISSION

February 14, 1989

Audit Control Number

08-1354-89-R

The objectives of this audit were to examine the activities of the Alaska Public Utilities Commission to determine if there is a demonstrated public need for its continued existence and if the commission has been operating in an efficient and effective manner.

The audit was conducted in accordance with generally accepted governmental performance auditing standards. Audit scope and methodology are discussed in the Report Objectives, Scope, and Methodology section of this report. Audit results may be found in the Report Conclusions, Findings and Recommendations, and in the Analysis of Public Need sections of this report.

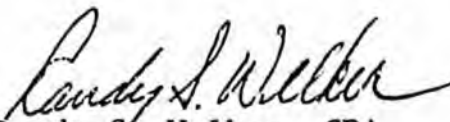

Randy S. Welker, CPA
Legislative Auditor
Division of Legislative Audit

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REPORT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes, we have examined the activities of the Alaska Public Utilities Commission (hereinafter referred to as APUC or the commission) to determine if there is a demonstrated public need for its continued existence and if the commission has operated in an efficient and effective manner.

Legislative intent requires consideration of this report during the legislative oversight hearings to determine whether APUC should be reestablished. The law now specifies that the commission will terminate June 30, 1989 and have one year from that date to conclude its affairs.

The policy and audit approach utilized by the Division of Legislative Audit for performance reports can best be described as "audit by exception." This methodology focuses audit effort on areas of an auditee's operations that have been identified by a preliminary survey as having a high degree of probability for needing improvements.

Therefore, by design, finite audit resources are used to identify where and how improvement can be made, and little time is devoted to reviewing well-run operations or programs. Consequently, this report highlights those areas needing improvement and does not emphasize those operations and programs that are properly functioning.

Discussion of the objectives, scope, and methodology of our review follows.

Objectives

APUC was created to regulate public utilities so that citizens could enjoy adequate service at the lowest reasonable rates. The primary objective of this audit, therefore, was to determine whether the public need for the commission continues to exist.

The secondary objective was to review the commission's major functions, namely certification of utilities, tariff actions, investigations, and complaint follow-up for effectiveness in meeting the public need. The tertiary objective was to evaluate these functions in particular, and the APUC's operations in general, for economy and efficiency of operation.

Our analysis of public need, findings and recommendations, and our conclusions have been summarized in the appropriate sections of this report.

ORGANIZATION AND FUNCTION

Public utility regulation in Alaska has evolved substantially since the creation of the Public Services Commission (PSC) in 1959. That three-member body had jurisdiction over electric power, heat, water, gas, oil or other petroleum products (except by pipeline), telephone or telegraph communications, and community sewer services. In 1960 PSC gained responsibility for transportation utilities which it regulated until the creation of the Alaska Transportation Commission in 1966.

PSC was replaced by a three-member Alaska Public Utilities Commission in 1970. Regulated industries then included electrical, telecommunications, water, steam, sewer, gas, and petroleum when no competition existed. A 1973 amendment added garbage, refuse, trash or other waste to the list. Amendments passed in 1980 provided exemptions from economic regulation for cable television services and other utilities with low annual gross revenues as well as establishing a provision allowing economic deregulation by consumer vote for certain utility groups. With abolition of the Alaska Pipeline Commission in 1981, jurisdiction over pipelines passed to APUC.

In addition to jurisdictional changes, composition of APUC also changed. Alaska Statute 42.05.040 originally required one member to be a law school graduate, one to be a university graduate with a major in engineering, and one to be a university graduate with a major in finance, accounting, or business administration. Two additional positions were added to the commission in 1975 for which no special qualifications were established. All members are appointed by the Governor and confirmed by the Legislature for six-year terms.

Under AS 42.05 and AS 42.06, APUC is charged with the responsibility to ensure the furnishing of adequate service to all public utility patrons, without discrimination, and at the lowest reasonable rates consistent with the interests of both the public and the utility. Statutory provisions direct the commission, after determining an applicant is fit, willing, and able to provide utility service, to issue that applicant a Certificate of Public Convenience and Necessity. After issuance of this certificate the commission then regulates the rates, classifications, rules, regulations, practices, services, and facilities of a public utility, unless it is exempted or deregulated. The commission has the authority to adopt regulations and to hold formal, quasi-judicial hearings to accomplish these purposes.

REPORT CONCLUSIONS

Policy Issues

This review contains policy issues raised as a result of our evaluation of various commission practices. The final policy decisions affecting those practices are not within the scope of this review but require legislative consideration. In debating these decisions the legislative oversight committees should take into consideration the findings and recommendations presented in this report to assist them in evaluating the potential impact of any policy changes.

Report Conclusions

In our opinion, the Alaska Public Utilities Commission is operating in an efficient and effective manner and should continue to regulate public utilities and pipelines. We believe that the public interest is being served by requiring public utilities and pipelines to be certificated by APUC. This process stabilizes demand for the utility service by eliminating competition and thereby allowing economies of scale to operate. Economic regulation by the commission, in place of that competition, ensures that the utilities provide adequate service at the lowest reasonable rates.

Although this economic justification is valid for the majority of utilities regulated by APUC, we evaluated their jurisdiction for potential areas of deregulation for several major reasons: (1) to comply with the intent of sunset legislation which attributed public disenchantment with state government to a proliferation of that government; (2) in recognition of the fact that the cost of regulation may exceed its benefits; (3) the increased demands being placed on commission resources; and (4) the State's ability to provide those resources.

Our analyses revealed several industries where regulation could be eliminated with minimum negative public impact. Our initial criteria was whether the service was essential for modern living to the average Alaskan and, if so, whether the industry operated as a natural monopoly. Although it is uncertain whether rates under deregulation would be higher or lower, deregulation should provide benefits such as competitive alternatives to existing services and more innovative services and rate designs. Additionally, services may be provided in areas not previously served as a result of eliminating the barrier to entry into the marketplace that has been erected by certification and the cost of regulation. While refuse collection services may be considered essential by many, this industry is not a natural

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

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Objectives

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Our analysis of public need, findings and recommendations, and our conclusions have been summarized in the appropriate sections of this report.

Scope and Methodology

The primary emphasis of our audit was on the factors outlined in the Analysis of Public Need section of this report. Alaska Statute 44.66.050 requires that these factors be considered in the determination of the commission's continued existence. To address these areas, we analyzed the need for regulation of the various industries, reviewed pertinent academic literature, considered the regulatory status and trends nationwide, interviewed commissioners and staff, reviewed APUC's statutes and regulations, contacted the State Ombudsman and the Equal Employment Opportunity offices, analyzed consumer complaints against utilities filed with the commission, and reviewed decisions made by the commission.

The effectiveness and efficiency of the commission was addressed through the above procedures and also by contacting and requesting assistance from all certificated utilities and by reviewing individual files.

Our review of decisions, complaints, tariff actions, hearings, investigations, and certifications was performed primarily on a sample of FY 88 items. These were selected on a judgmental basis to allow us to focus on certain activities and industries.

ORGANIZATION AND FUNCTION

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The staff of APUC is divided into six major functions: administration, engineering, communications carriers, consumer protection, finance, and tariffs. In total, APUC employs 40 people with an operating budget for FY 89 of \$3,884,100. A brief description of the services provided by those functions follows:

Administration. An executive director, hired by the commission, is responsible for directing all staff functions and acts as a liaison between staff and commissioners and between the commission and legislature. He is responsible for records and document management, fiscal and personnel administration, and budget preparation and is assisted in these duties by an administrative assistant, document processing personnel, and other clerical support staff.

Engineering. This section is responsible for the investigation of utility procedures and practices affecting quality of service, review of legal descriptions for service areas, plans for plant expansion, and plant-in-service and depreciation schedules. Their evaluations are presented in proceedings before the commission.

Communications Carriers. This section was established by 1976 legislation to develop, recommend, and administer policies and programs with respect to the regulation of rates, services, accounting, and facilities of communications common carriers within the State involving the use of wire, cables, radio and space satellites.

Consumer Protection and Information. Major responsibilities for this section include investigation and resolution of consumer complaints, public relations, and information dissemination.

Finance. Activities carried out by this section include the examination, analysis, and evaluation of financial statements submitted for rate cases, audits of financial records of utilities, examination of financial information comprising historical operating year and pro forma adjustments, and the presentation of these analyses at proceedings before the commission.

Tariff. This section examines, analyzes, and investigates tariff filings and presents recommendations to the commission at biweekly tariff action meetings. Administrative functions include organizing those meetings, as well as meeting all public notice requirements on tariff filings and maintenance of current master tariffs for all utilities.

REPORT CONCLUSIONS

Policy Issues

This review contains policy issues raised as a result of our evaluation of various commission practices. The final policy decisions affecting those practices are not within the scope of this review but require legislative consideration. In debating these decisions the legislative oversight committees should take into consideration the findings and recommendations presented in this report to assist them in evaluating the potential impact of any policy changes.

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Although this economic justification is valid for the majority of utilities regulated by APUC, we evaluated their jurisdiction for potential areas of deregulation for several major reasons: (1) to comply with the intent of sunset legislation which attributed public disenchantment with state government to a proliferation of that government; (2) in recognition of the fact that the cost of regulation may exceed its benefits; (3) the increased demands being placed on commission resources; and (4) the State's ability to provide those resources.

Our analyses revealed several industries where regulation could be eliminated with minimum negative public impact. Our initial criteria was whether the service was essential for modern living to the average Alaskan and, if so, whether the industry operated as a natural monopoly. Although it is uncertain whether rates under deregulation would be higher or lower, deregulation should provide benefits such as competitive alternatives to existing services and more innovative services and rate designs. Additionally, services may be provided in areas not previously served as a result of eliminating the barrier to entry into the marketplace that has been erected by certification and the cost of regulation. While refuse collection services may be considered essential by many, this industry is not a natural

monopoly and should not be regulated (See Recommendation No. 1A). Radio communication carriers do not provide an essential service and also should not be regulated (See Recommendation No. 1B). Cable television may be considered essential by many and may also be a natural monopoly in the small and medium size towns. However, the statutes have created state sanctioned monopolies without the companion public protection against unreasonable and discriminatory rates and services. Further, federal law prohibits full economic regulation. The State should cease cable certification (See Recommendation No. 1C).

We are also convinced that small utilities should be exempted from economic regulation on the basis that the cost of regulation likely exceeds its benefits to consumers. We further recommend that the consumers of these exempted utilities be allowed a reasonable opportunity to elect economic regulation (See Recommendation No. 1D).

We recommend that the utilities owned by the Municipality of Anchorage be exempted from economic regulation. This exemption and the companion opportunity to elect economic regulation should be available to Anchorage as it is to all other municipal governments in the State (See Recommendation No. 1E).

We believe that the commission's costs should be fully allocated to consumers, but only to those consumers of utilities who continue to be regulated. We consider this regulatory funding approach to be most equitable to all the State's citizens. It should also encourage the elimination of any unwarranted economic regulation when combined with consumer regulatory elections (See Recommendation No. 2).

We recommend that APUC develop a topical reference system for commission orders and court decisions (See Recommendation No. 3).

A review of commissioner appointments showed that appointment terms expire on the same date for the two consumer members. As this situation could cause a significant disruption of commission activity, we recommend that the statute be changed to require the staggering of these appointments (See Recommendation No. 4).

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

Alaska Statute 42.05 should be amended to eliminate certain unnecessary regulatory functions of APUC.

Public convenience and necessity require certain services to be provided. Such services have traditionally included electric, telephone, gas, water, and sewer. The nature of these businesses do not lend themselves to competition; they are capital intensive and have permanent physical connections to their customers. The economies of scale of these industries are such that one company may be able to serve an entire market at a lower cost than could two or more companies; therefore, competition could not decrease prices to consumers in the long run and would only result in wasted capital resources through duplicate facilities. Note that this "natural monopoly" relates not only to the relationship between fixed and variable costs but also to the characteristics of the market. As these services are considered essential and as the long-run cost is lowest if only one company is allowed to serve, a monopoly is awarded in the form of a Certificate of Public Convenience and Necessity to a company that is determined to be fit, willing, and able.

As these services are essential, the demand for them is relatively inelastic in terms of service price or available funds. A monopoly coupled with inelastic demand can result in excessively high prices as well as price and service discrimination between consumers. Uncontrolled economic power has been considered economically, politically, and socially unacceptable in a democratic society. The alternatives are to nationalize the utilities or to regulate their services as a substitute for effective competition, with regulation being the preferred method. Regulated public utilities are required to make specified service levels available at approved rates to all consumers in their designated service areas.

In addition to the concerns over economic power, the public interest may also serve to extend regulation into situations where competition would have significant undesirable side effects on the quality of life in the area. For example, competition could create a black forest of utility poles or the continual digging to bury cables or pipe.

However, it may not be appropriate to economically regulate all certificated utility companies. For example, the cost of regulation may outweigh its potential benefits or the consumer's control over service and rates that already theoretically exists in that the company is a member-owned cooperative or it is owned by a political subdivision.

Further, overriding all the above considerations, the public interest being addressed must represent a substantial portion of the State's population; unique situations should be addressed at the local level.

While we acknowledge that not everyone will subscribe to this theory of regulation, we believe it to be fundamentally sound. Utilizing these principles, we analyzed APUC's jurisdiction and determined that governmental control in the following areas was unwarranted.

- A. Alaska Statute 42.05 should be amended to cease certification and regulation of companies furnishing collection and disposal service of garbage, refuse, trash, or other waste material.

Whether an individual considers refuse collection to be an essential service for modern living depends primarily on where they reside in the State. However, even essential services should generally not be regulated unless they are natural monopolies. For example, we do not believe that essentials such as food and clothing should be regulated.

Refuse collection, as with most enterprises, has certain economies of scale that affect its operations. However, these economies of scale are not such that one company can obviously provide the area-wide services for a significantly lower total cost than could several competitors. Relative to traditionally-regulated industries, refuse collection requires less capital, and thus they have a higher percentage of variable costs and less significant economies of scale. Further, the competition within service areas in several locations defeats the natural monopoly premise in the larger markets. We believe that a natural monopoly could occur in this industry in only the very small markets and that these do not warrant regulation due to the cost to benefit relationship.

Therefore, refuse collection should not be regulated unless there are overwhelming negative side effects present under competition in this industry. We acknowledge the possible negative effects of increased truck traffic, refuse pickup scheduled throughout the week in individual neighborhoods, and consistency problems as companies adjust to the economic realities of competition. However, these problems did not overwhelm the residents of the Mat-Su Borough as a result of the residential competition which began in 1985. Further, the Alaska Municipal League has adopted a resolution asking that refuse collection be de-regulated.

In response to our previous sunset audit recommendations to deregulate this industry, APUC expressed concern over the health and sanitation problems that could occur if these companies were removed from their jurisdiction. These health and sanitation issues are presently under the jurisdiction of local communities and also the Department of Environmental Conservation.

There are presently forty-three certificated refuse companies; nine of these are economically regulated under AS 42.05.711, as they have annual gross revenues of greater than \$200,000. Although APUC has no time sheet data upon which to estimate the cost to regulate these forty-three companies, the commission states in their FY 88 Annual Report that the time dedicated to refuse is excessive relative to agency resources and the resultant public benefit, and they recommend that this industry be deregulated.

B. Alaska Statute 42.05 should be amended to cease certification and regulation of radio common carriers.

There are currently ten certificated radio common carriers in Alaska. Radio Common Carrier (RCC) services include radio paging, mobile radiotelephone, and improved mobile telephone public utility services.

The commission opened an investigative docket on the subject of deregulation of RCCs in 1981 which resulted in a 1982 decision to cease economic regulation of this industry. The commission cited as justification, among other things, that RCC service was not an essential service. As RCC service is not essential to the average Alaskan, we concur with the commission that it should not be economically regulated. We further contend that services that are not essential should not be certificated.

In that 1982 decision, APUC stated that the certification process should be continued to monitor the interconnection to the telecommunications network and to prevent cross-subsidization of non-monopoly RCC services by monopoly local exchange telephone services. However, both these concerns can be monitored through the continuing processes of certification and economic regulation of local exchange services.

Cellular phones are relatively new to Alaska, and APUC has not yet decided if or how they should be regulated. We understand these phones provide a higher sound quality at a higher cost than conventional radio phones and over a shorter range; as such, they may be even less of an essential service to the average Alaskan.

Alaska Statute 42.05.711(d) reads as follows: "The commission, on a finding that no legitimate public interest will be served, may exempt a utility from all or any portion of this chapter." [Emphasis added.] As the 1982 decision categorically deregulated an entire industry, not an individual utility, this order may be illegal. We are not recommending that this statute be amended to allow categorical deregulation, as this power should be retained by the Legislature. Rather, we are recommending that the statute be amended to specifically deregulate RCC services; this would incidentally resolve the question.

C. Alaska Statute 42.05 should be amended to cease certification of cable television.

We do not consider cable television an essential service, particularly in view of the large number of Alaskans who receive off-the-air network television or broadcasts from the Rural Alaska Television Network. The premise of "essential" is also defeated by a review of the cable television service in Anchorage in which large sections of the service area are not yet cabled 9 years after the certification was awarded. The 1988 service expansion added only 1 mile of cable for 83 homes and businesses. While we acknowledge that it takes years for a new utility to cover a service area, we submit that this standstill, even in consideration of the economic decline, indicates that this service has a higher elasticity of demand than would an "essential" service.

As it is not an essential service, it should not be regulated as a public utility. Although the statutes do not allow economic regulation, they do require certification of the companies. APUC has responded by issuing certifications for exclusive service areas. This has created state-sanctioned monopolies with legally protected service areas, yet the statutes do not provide the companion public protection against unreasonable and discriminatory rates and services. The statute should, therefore, be amended to remove the certification requirement.

However, there are many who believe that cable television is essential to modern living or that it is essential so that we may fully realize our First Amendment right of freedom of speech. If it is first decided that cable television is essential, then the natural monopoly issue must also be considered in the regulatory determination.

We believe that cable television may be a natural monopoly in the small and medium-sized towns. As such, these may be candidates for economic regulation. However, the cost of regulation may outweigh the benefits for these small markets. The economic regulation that is available is also limited to basic services, as the federal Cable Communications Policy Act of 1984 prohibits price regulation of the premium packages. In the largest cities, the competitive environment indicates that there is not a natural monopoly present for cable television, thus certification and economic regulation is inappropriate.

The federal Cable Act was designed to promote the expansion of cable television systems by promoting local franchising and limiting rate regulation. This law would not allow any rate regulation in Anchorage or Fairbanks but would allow basic service rates to be regulated in other areas such as Juneau or Homer. It does, however, appear to allow us control over the possible competitive side effect of duplicate cabling. By statute we could require the segregation of cable distribution companies and these could be fully regulated. The cable programming could then be opened to competition.

In summary, regardless as to whether or not cable television is viewed as essential, we recommended that the present certification requirement be deleted from the statute. To the extent that this service is deemed essential, municipal franchising or certification and regulation of distribution-only companies should be considered.

We also must point out a potential liability to the State under the Cable Act if this recommendation is implemented. The Cable Act outlines specific criteria which must be shown to deny a franchise and the proposed statute amendment would categorically retract the certificates (franchise) without this showing. However, the Attorney General's Office indicated to us that the State would prevail in court. We recommend that a formal opinion on this potential liability be obtained from the Attorney General before this statute is amended.

- D. Alaska Statute 42.05 should be amended to exempt the smaller utilities from economic regulation.

Electric, telephone, gas, water, and sewer utilities have traditionally been considered essential services and are often natural monopolies. Nevertheless, we should refrain from economic regulation if its cost

exceeds the benefits. However, this information is not available nor can it be reasonably generated. "Cost" would include incremental APUC and utility time and materials as well as the effect of project delays on long-term rates; this component of the equation could be studied and estimated. The "benefits" of regulation include a financially stable utility providing consistent service uniformly to customers who are assured of equitable rates and services now and in the future; this cannot be quantified.

Nevertheless, in consideration of the State's dwindling resources and the public's disenchantment with the proliferation of state government, we believe that it is appropriate for us to presume that the cost of regulation presently exceeds its benefits for many smaller utilities and that the gross revenue exemption levels provided in the statutes should be raised.

Alaska Statute 42.05.711 exempts electric and telephone utilities with gross revenues under \$50,000 from certification and economic regulation. It also allows a utility's consumers to elect economic deregulation for cooperatives, electric or telephone utilities with less than \$325,000 in annual gross revenues, and for any utility which does not gross \$100,000 annually. We propose that an across-the-board gross revenue-based exemption from economic regulation be established. Three options are presented in the following table. It was prepared based upon APUC's FY 88 Annual Report and represents all utilities that are currently economically regulated with the exclusion of the industries we have recommended for categorical deregulation.

Number of affected utilities and customers, based upon gross revenues:

Type	Under \$500,000		Under \$750,000		Under \$1,000,000	
	Util.	Customers	Util.	Customers	Util.	Customers
Electric	10	819	15	1,990	18	2,691
Telephone	-0-	-0-	1	343	2	863
Gas	-0-	-0-	-0-	-0-	1	908
Water	22	3,715	22	3,715	22	3,715
Sewer	2	15	3	382	3	382
Total	<u>34</u>	<u>4,549</u>	<u>41</u>	<u>6,430</u>	<u>46</u>	<u>8,559</u>
Percent	<u>40.5%</u>	<u>.8%</u>	<u>48.8%</u>	<u>1.1%</u>	<u>54.8%</u>	<u>1.5%</u>

The above percent calculations represent the reduction in the coverage of economic regulation under each revenue scenario; however, we caution the inference from the table that APUC's workload would decrease

proportionate to the decrease in the number of utilities. While there certainly should be some relationship, the commission has no time sheet data available to correlate these factors.

In concert with an amendment to exempt these smaller utilities, the following areas should also be addressed:

1. The petition provision which allows customers to request economic regulation of exempted utilities should be amended. Alaska Statute 42.05.711 presently requires 25% of an exempted utility's subscribers to sign the petition. We believe that this is much too great an obstacle to overcome and recommend that an election be called if APUC receives a petition demonstrating significant consumer interest. For example, the petition requirement could be set at the lesser of 5% or 500 customers.
2. This proposed gross revenue exemption statute should not take effect for 6 months to allow utility customers who wish to retain regulation to do so without interruption.
3. The results of past deregulation elections should be honored, thus not requiring a new vote on failed deregulation elections.
4. The customers who continue the benefits of APUC's economic regulatory oversight should be expected to pay for this service (See Recommendation No. 2).

E. Alaska Statute 42.05 should be amended to cease mandatory economic regulation of certain utilities owned by political subdivisions.

Alaska Statute 42.05.711(b) generally exempts utilities owned by political subdivisions from economic regulation, unless they so elect. However, it also provides that if any of a subdivision's utilities directly competes with any other certificated utility then all the subdivision's utilities shall be economically regulated. We presume the intent of this provision was to eliminate the wasting of resources from facility duplication resulting from the then ongoing electric service area dispute as well as preventing the cross-subsidization of rates which might accompany such a dispute. The only utilities falling under this provision, at present, are owned by the Municipality of Anchorage.

The Anchorage service area dispute has been resolved and the present day competition is in the form of economy energy sales of electricity and perhaps telephone communication systems. This type of competition does not encourage the massive facility duplication or the cross-subsidization of rates that a service area dispute might. Service area concerns can be adequately addressed through the certification process without economic regulation.

In conjunction with an amendment to delete this mandatory economic regulation, the following areas should also be addressed:

1. The utilities previously regulated by APUC due to competition should continue to be so regulated unless rejected by the governing body.
2. A governing body should be allowed to withdraw a previous election.
3. The consumers who, through their local government, have chosen to continue the benefits of APUC's economic regulatory oversight should be expected to pay for this service. Specifically, the Municipality of Anchorage Assembly should decide whether their utilities should be regulated locally or by APUC. If they choose to "hire" APUC to perform this regulatory function in their behalf, citizens from all across the State should not be forced to pay for that service with General Funds (See Recommendation No. 2).

Recommendation No. 2

Alaska Statute 42.05 and Alaska Statute 42.06 should be amended to more fully allocate the costs of regulation.

APUC is currently being funded primarily by General Funds with a program receipts supplement from partial direct allocations of cost. The statutes require the cost of investigations and hearings to be allocated among the parties, including the commission, as is just under the circumstances. The commission has traditionally not allocated costs to itself and has allocated only the hired consultant fees, attorney general services, and other incremental out-of-pocket costs. In a 1988 decision, the Alaska Supreme Court interpreted the present statutes on cost allocations to disallow attorney general services. The court also remanded the case back to the commission to determine what portion of the cost allocation they should absorb.

Basic fairness prescribes that only the consumers who benefit from the regulatory services provided by APUC should pay the cost of this service. This is the "user fee" concept of funding. A funding method should also be designed to allow responsive adjustments to be made in the level of regulation as desired by consumers. With these criteria in mind, we have briefly commented on three predominate alternatives.

To the extent of its general funding, any approach fails to equitably match the regulatory cost to the consumers who benefit. General funding may be viewed as a payment by all citizens all across the State, while the benefit may accrue primarily to consumers in Anchorage. The utilities owned by the Municipality of Anchorage have contributed greatly to the commission's workload, yet a significant portion of the total cost of the proceedings is paid out of General Funds.

General funding is also less responsive to appropriate regulatory levels; in fact, it probably wastes some of the State's dwindling resources. Given that there is a regulatory cost/benefit break-even point and that certain consumers are given the opportunity to elect full economic regulation, general funding will likely be perceived as payment by "someone else" with the result that regulation will always be extended past this break-even point. Thus, government is providing an unnecessary service.

Funding of APUC through a gross receipts tax levied against the utilities and pipelines that is passed through to consumers could provide a reasonable matching of costs to beneficiaries. This assumes tax rates were established by utility size, by industry, and by level of regulation. However, there would always be inequities.

This tax approach would be responsive to regulatory needs only to the extent that the matching is accurate. However, taxation has traditionally focused on ability to bear rather than resource utilization and, thus, such a funding approach may not be responsive. For example, if a tax was designed which levied 100% of the commission's costs against the pipeline companies and none to the utilities, this approach would do nothing to reduce unnecessary regulation of the utilities.

Full and direct allocation of the commission's costs provides the most accurate and defensible matching among the three alternatives. As such, it would not only be an effective method in eliminating unwarranted government regulation but it could also make the regulatory process more efficient by encouraging adequate and appropriate filings.

To administer this full allocation program would require time sheets for commission staff and attorney general

services, and the use of account codes to share docket proceeding costs among the parties and to allow recovery of general overhead. The administrative cost of this program should be less than with the tax approach but, of course, greater than with the General Fund design. These costs could potentially be offset by increased staff efficiency through time sheet accountability. We believe the benefits of a full-cost allocation program would far outweigh a slightly higher administrative cost.

Based upon the above, we recommend that the statutes be amended to establish a full-cost allocation funding approach for APUC. In conjunction with this shift toward program receipts funding, AS 42.05.651 and AS 42.06.610 should be amended, as follows:

1. These statutes should be amended to specify that all costs of the commission may be allocated.
2. Alaska Statute 42.05.651 should be changed to require interim allocation, rather than awaiting completion of a proceeding. The commission has estimated their unbilled utility allocations at \$1.6 million with an average age of 3.0 years. We note that the related pipeline statute, at AS 42.06.610, already requires interim billings. However, APUC does not appear to be in compliance, with their estimated unbilled pipeline allocations at \$2.1 million with an average of 4.7 years. Further, APUC should amend their regulation at 3 AAC 48.157 which provides for cost allocations after pipeline hearings rather than on the required interim basis.
3. These statutes presently require allocation to the parties of a proceeding including the commission; these should be modified to exclude the commission. However, the provisions allowing the commission to allocate among the parties as is reasonable and just should be retained, thus the commission may occasionally absorb some costs indirectly and have a need for minimal General Fund monies.
4. For economically regulated companies, on a case-by-case basis, the commission should be allowed to determine whether the costs being allocated are to be passed through to the consumers.

Recommendation No. 3

APUC should develop a topical reference system for commission orders and court decisions.

The commission is a quasi-judicial agency which issues decisions based upon finding of fact and conclusions of law.

These decisions are in the form of written orders that have the effect of law and are subject to judicial review.

The commission's orders are filed chronologically and also within the docket (case) files. Decisions from the courts on appeals of commission orders are filed with the related docket. However, no topical cross-reference system is maintained.

At present, the best catalog of prior actions is institutional memory. Obviously, such a memory-based system cannot provide true access to precedent when needed by commissioners, staff, utilities, consultants, and attorneys. A cross-reference system would allow analysis by staff and decisions by the commission to be made consistently from case to case and in accordance with relevant court decisions. It would also aid utilities and their consultants and attorneys to adequately prepare for filings and hearings.

The Legislature, in conjunction with their FY 89 appropriation to APUC, provided the following: "It is the intent of the Legislature that the commission use the additional permanent part-time position to develop a keyword index filing system for all future commission orders and that prior year orders be incorporated into the system as possible." However, the part-time position was not actually authorized and the system has not yet been designed.

Recommendation No. 4

Alaska Statute 42.05.030 should be amended to stagger the appointments of the two consumer members of the commission.

In 1975 the commission was expanded from three to five commissioners. Appointments were made to both the new positions for the standard six-year terms with both terminating on the same date. All other APUC commissioner terms have been appropriately staggered. Because the potential for disruption of commission activity would be high with two new commissioners coming on at the same time, we recommend the terms of the consumer members be staggered.

Currently, the terms are scheduled to end as follows:

Consumer seats (2):	November 1, 1993
Engineering seat:	October 31, 1990
Finance seat:	October 31, 1992
Legal seat:	October 31, 1994

The statute required the governor to stagger the initial appointments. However, as this was not done for the consumer members, we recommend the statute be amended to also require the necessary staggering of subsequent appointments.

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ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses of commission activities indicate both positive and negative factors as they relate to the public need factors defined in AS 44.66.050. These analyses were not intended to be all-inclusive, but address those areas we were able to cover within the scope of our review.

1. The extent to which the board, commission, or program has operated in the public interest.

The commission has conscientiously attempted to allow only qualified applicants to provide utility services and to regulate them in such a manner as to ensure adequate service at the lowest reasonable rates. In finding that no public interest would be served through regulation, APUC administratively exempted some utilities through the discretionary power granted at AS 42.05.711(d).

2. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

The Alaska Public Utilities Act (AS 42.05) and Pipeline Act (AS 42.06) provide broad discretionary power to the commission to carry out its mandated responsibilities. The jurisdiction provided under these statutes should be limited to require regulation only of industries where the greatest public interest may be served (See Recommendation No. 1).

The budgeting approach and the statutes should be modified to fully allocate the commission's costs to consumers, but only to those consumers of utilities who continue to be regulated. We consider this regulatory funding approach to be most equitable to all the State's citizens. It should also encourage the elimination of any unwarranted economic regulation when combined with consumer regulatory elections (See Recommendation No. 2).

The commission has not developed a topical reference system for commission orders and court decisions (See Recommendation No. 3). APUC has not been successful in obtaining additional personnel or funding for this task.

3. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

In their FY 88 Annual Report, APUC highlighted certain problems they perceive with the current statutes and also outlined options and recommended solutions.

APUC broached the question of who should pay the cost of regulation and also presented several options on a public policy level. However, they placed the emphasis on agency funding, rather than on equity to the State's citizens or on the potential elimination of unwarranted regulation (See Recommendation No. 2).

The commission recommended that the statutes be amended to allow interim billing of cost allocations for utilities, similar to that allowed for pipelines. We concur, however, we believe that these billings should be required, and we assert that they are in fact already required for pipeline cases (See Recommendation No. 2).

The commission recommended a statute change to allow them to increase certificate application fees to fully reflect the cost of processing these filings. We would concur if it were not for our recommendation which would effectively allocate these costs on a comprehensive basis (See Recommendation No. 2).

APUC also recommended that the exemption scheme at AS 42.05.711 be reviewed and revised. We agree and have outlined our suggestions at Recommendation No. 1. The commission specifically recommended the deregulation of refuse collection.

They requested clarification of AS 42.05.431 which establishes the power of the commission to fix rates. APUC is uncertain how the dispute resolution procedures under subsection (b) could be used to renegotiate wholesale power contract rates if the commission finds them to be unjust and unreasonable.

The commission suggested that, if the Legislature intended for utilities who are not economically regulated to pay interest on customer deposits, AS 42.05.711 should be amended to reflect this intent. They further recommended that unclaimed deposits not be escheated to the State. We disagree with this second recommendation, as it may provide a disincentive to locate the true owners of these funds.

4. The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

Formal proceedings are properly and timely noticed and are open to the public. The commission has held public hearings and formal proceedings within the service areas of the utilities before them to facilitate public attendance and participation. APUC also staffs a Consumer Protection and Information Section to resolve complaints and disseminate information.

5. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

All formal proceedings, including hearings on proposed regulations, are noticed and open to the public. Any interested person or party may intervene in a formal proceeding if that intervention will benefit, but not unduly delay the proceeding. The commission has also held informal workshops with attorneys and utility representatives in an attempt to be more responsive to the needs and concerns of those groups.

6. The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, to the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

The commission has adopted regulations for informal and formal complaint procedures. Procedures include a requirement that the complaint be made first with the utility before being filed with the commission. If the complaint cannot be resolved informally, formal procedures, including an investigation, may be initiated. The Office of the Ombudsman also occasionally handles utility or APUC-related complaints. We found the complaint resolution process to be operating satisfactorily.

7. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

The commission, prior to granting a Certificate of Public Convenience and Necessity to a public utility, is required to determine that the applicant is fit, willing, and able to provide the service. APUC employs

utility financial analysts and utility engineers to perform the necessary analyses to make this determination.

8. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

We found no evidence of hiring practices or commission appointments that are contrary to state personnel practices. No complaints have been filed with the Human Rights Commission or the Division of Equal Employment Opportunity.

9. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency board or commission to better serve the interests of the public and to comply with the factors.

Please refer to the previous section, Findings and Recommendations.

APPENDIX

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
ALASKA PUBLIC UTILITIES COMMISSION
SUMMARY OF APPROPRIATIONS AND EXPENDITURES
For Fiscal Years 1988 and 1989
(UNAUDITED)

<u>Category</u>	1988 <u>Authorized</u>	1988 Expenses and <u>Encumbrances</u>	1989 <u>Authorized</u>
Personal Services	\$2,113,600	\$2,103,406	\$2,113,600
Travel	28,660	27,423	57,100
Other Services	1,592,330	1,224,346	1,688,500
Supplies	21,000	20,800	22,000
Capital Outlay	<u>3,910</u>	<u>3,910</u>	<u>2,900</u>
<u>Total</u>	<u>\$3.759.500</u>	<u>\$3.379.885</u>	<u>\$3.884.100</u>

Note: The information included in this summary was obtained from APUC records and the state accounting system. This information has not been audited by us and, accordingly, we express no opinion on it.

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STATE OF ALASKA

STEVE COWPER, GOVERNOR

ALASKA PUBLIC UTILITIES COMMISSION DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

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MAR - 9 1989

March 7, 1989

Mr. Randy Welker
Legislative Auditor
Division of Legislative Audit
State of Alaska
P. O. Box W
Juneau, Alaska 99811-3300

Re. Response to Preliminary Audit Report

Dear Mr. Welker:

The following is the response of the Commission to the preliminary audit report and recommendations submitted by the Division of Legislative Audit on February 14, 1989, as a result of its performance review of the Commission.

The Commission concurs with the fundamental conclusion of the report that the

Alaska Public Utilities Commission is operating in an efficient and effective manner and should continue to regulate public utilities and pipelines. (Page 5.)

The Commission does not agree with all of the statements of regulatory theory and philosophy in the preliminary audit report but has focused its comments on the actual recommendations.

Recommendation No. 1A

Alaska Statute 42.05 should be amended to cease certification and regulation of companies furnishing collection and disposal service of garbage, refuse, trash, or other waste material.

The Commission supports this recommendation as it did the identical recommendation made in the 1979 and 1985 Sunset Audits. The auditor's statement that the public health and sanitation aspects of this service are monitored by local governments and the Department of Environmental Conservation addresses the Commission's previous reservation on deregulation.

Recommendation No. 1B

Alaska Statute 42.05 should be amended to cease certification and regulation of radio common carriers.

The Commission concurs with this recommendation based on the character of radio common carrier (RCC) services and the current regulatory status of RCCs operating in the state. However, as noted in the Commission's response to the same recommendation in the 1985 Sunset Audit, future developments in the telecommunications industry may require reimposition of RCC regulation at some later time.

The Commission also believes that its authority to partially or fully deregulate a particular utility industry in response to current circumstances is a desirable and appropriate supplement to the legislative action advocated by the auditor. Accordingly, the Commission requests legislative guidance on the validity of its decision to economically deregulate the RCC industry in the event this recommendation is not implemented by statute.

Recommendation No. 1C

Alaska Statute 42.05 should be amended to cease certification of cable television.

The Commission concurs with this recommendation with some qualifications, as it did with the same recommendation in the 1985 Sunset Audit. The recommendation appropriately eliminates the anomaly in the current regulatory scheme for cable television (CATV) service whereby CATV providers hold monopoly certificates but are economically deregulated. However, the Commission would encourage the Legislature to use its legal and research staffs to examine the implications of the following on full CATV deregulation: (1) the Cable Communications Policy Act of 1984, (2) the Federal Communications Commission's recent initiatives to eliminate the existing ban on cross-ownership of CATV and telephone companies, (3) the availability and status of local government oversight, (4) shared use of rights-of-way, (5) community access and institutional network use of CATV systems, and (6) disposition of certificates held by existing CATV providers. In any event, as noted in response to the 1985 Sunset Audit recommendation, CATV certification is not a large element of the Commission's workload.

Recommendation No. 1D

Alaska Statute 42.05 should be amended to exempt smaller utilities from economic regulation.

The Commission opposes this recommendation because it disagrees with the auditor's unsupported presumption that the cost of economic regulation presently exceeds its benefits for smaller utilities. Rather, the Commission concludes from its experience

that regulation of small utilities is at the core of its public protection function, especially given the geographic and demographic characteristics of Alaska. The Commission also believes that the burden and cost of regulation on smaller utilities can and should be reduced administratively, and it is currently addressing this issue.

As the auditor points out, it is extremely difficult to quantify the cost of regulation, both to the regulated and to the regulator. At the same time, it is relatively easy to inflate or deflate cost figures to support a given predisposition for or against regulation. Regardless of amount, costs are relatively meaningless unless they are compared to benefits.

The Commission agrees with the auditor that the primary benefits of regulation are a financially stable utility which provides reliable, safe service to all customers at reasonable, non-discriminatory rates. With the exception of 22 water companies, the utilities affected by this recommendation are providing service in rural Alaska and are predominantly electric utilities. It has been the Commission's experience that the need for regulation and the potential benefits provided by regulation are frequently greater for smaller utilities than for larger utilities for many reasons, including, the logistical challenge of operating in remote locations; inexperienced personnel; unsafe facilities as a result of non-compliance with the National Electric Safety Code; lack of familiarity with utility management, maintenance, and accounting procedures; discriminatory actions by utility management; failure to request rate increases when needed; and procurement of wrong equipment. In addition, it can be argued that the consumers in rural Alaska are even more captive than those in the urban areas, and, therefore, are particularly dependent on a high level of protection.

Although the reduction in workload would be approximately commensurate with the loss of Commission staff over the past three years if this recommendation were enacted, and from that standpoint may be appealing, the Commission does not believe that the public interest would be served by wholesale deregulation of utilities serving perhaps the most (or one of the more) vulnerable segment(s) of the ratepaying public.

The Commission believes that the concern about the cost of regulation that has been voiced by the auditor as well as others, for the most part, is directed at the expense (both in time and dollars) associated with regulatory requirements when a utility desires or needs to change its rates. The Commission has recognized for some time that the regulatory scheme that exists and has been applied to both large and small utilities should be examined. To that end, on February 3, 1989, the Commission has issued a Notice of Inquiry. The purpose of the Inquiry is to receive information which would assist the Commission in proposing regulations to simplify rate and other regulatory proceedings for smaller utilities. A copy of this order is attached. (See Appendix A.)

In summary, the Commission believes that the issue of the cost of regulation as it relates to the smaller-sized utilities can be substantially mitigated through administrative procedures rather than legislation which would eliminate the important public protection function today provided by economic regulation.

However, if the Legislature believes public policy is better served by deregulating smaller utilities, the Commission would propose, as it did in response to the 1985 Sunset Audit, the following amendment to AS 42.05.711 to expand the deregulation election process found in AS 42.05.712 which would replace the provisions of AS 42.05.711(e), (f), (g), and (i):

All utilities which have gross revenues of \$500,000 or less may elect to be exempt from the provisions of AS 42.05, other than AS 42.05.221-42.05.281, under the procedures described in AS 42.05.712.

This approach conforms with the Commission's position that regulation for utilities that heretofore have been regulated should be continued unless the people most affected, the consumers, vote to become deregulated.

The Commission also concurs with the auditor's suggestion that consideration be given to reducing the number of customers required to petition for regulation under AS 42.05.711.

Recommendation No. 1E

Alaska Statute 42.05 should be amended to cease mandatory economic regulation of certain utilities owned by political subdivisions.

The Commission supports the philosophy underlying this recommendation. However, the Commission does not believe that elimination of AS 42.05.711(b)(2) is necessary to achieve the auditor's objective and has proposed an alternative legislative approach and language.

It is reasonable that if regulation is elected at one time by a governing body as currently provided under AS 42.05.711(b)(1), then a future governing body should have similar authority to vote to revoke that election. If such revocation is exercised, it is presumed that the public protection function provided by the Commission will be assumed by the governing body of the

political subdivision, thus giving affected consumers a forum and recourse for concerns and complaints.

The Commission recognizes that this recommendation presently affects only the Municipality of Anchorage. It is pertinent to consideration of this recommendation that, at the present time, there are a number of outstanding issues before, and outstanding requirements by, the Commission for the Anchorage Water and Wastewater Utility (sewer), the Anchorage Telephone Utility, and the Anchorage Municipal Light and Power Department.¹ It is reasonable to assume that the Anchorage Assembly would take into consideration the status and results of proceedings before the Commission at such time as it considers any decision to end economic regulation by the Commission.

¹Docket U-87-47 is an investigation into the general management practices of Anchorage's sewer utility. In Dockets U-88-18 and U-87-61 the Anchorage Telephone Utility is before the Commission requesting a 54.83% rate increase and responding to an investigation into the general and financial management practices of the utility. Commission decisions are currently pending in these sewer and telephone cases. At the present time, the Municipal Light and Power Department is required to provide an equity management plan and obtain Commission approval before further debt refunding is issued because of its poor financial condition.

Rather than eliminating AS 42.05.711(b)(2), as the auditor appears to suggest, AS 42.05.711(b) should be expanded to provide for deregulation of a municipal entity if its governing body so elects, once competition no longer exists between it and other utilities, and to allow the governing body of a political subdivision to revoke a previous election. The Commission believes it is desirable to continue a protective mechanism for regulated utilities in the event a future situation arises involving competition with a municipal utility. Proposed language is attached. (See Appendix B.)

Recommendation No. 2

Alaska Statute 42.05 and 42.06 should be amended to more fully allocate the costs of regulation.

The Commission concurs in part, and opposes in part, this recommendation. The Commission agrees with the auditor's suggestion that, in light of the current economic climate as well as a recent court decision, discussion should be focused on the appropriate method to fund this agency. Clearly, the time is ripe to evaluate funding options; however, the Commission disagrees with the method of funding advocated by the auditor. Regardless of the outcome of the broader funding discussion, the Commission concurs that AS 42.05.651(a) should be amended to allow interim allocations during a proceeding and to exclude the Commission from bearing any costs of a hearing or investigation.

The Commission opposes the auditor's "full and direct allocation of the Commission's costs" approach to funding for several reasons. First, the Commission believes that this is the most costly and cumbersome funding option from an administrative perspective. In order to allocate all costs, it would be necessary to develop an extensive cost accounting system to track direct costs and to allocate indirect costs to each utility or pipeline carrier. It would also be necessary to establish an accounting staff and procedures to bill, audit, and collect cost allocations on a regular basis. The costs to design and to provide the personnel and other resources required to implement a system to recover the Commission's budget would be substantial. The Commission also anticipates that its energies would be diluted from substantive regulatory responsibilities to accounting and auditing of cost allocations.

Second, the "full allocation" approach does not accurately and equitably allocate indirect costs. A number of Commission activities do not fall within categories that are readily allocable to specific cases in the manner suggested in the audit. These include: administrative duties such as preparation of the annual budget or responses to administration, legislative, or other agency (both state and federal) requests; generic cases; requests from consumer and utility groups to participate in educational efforts; training; regulations proceedings; court appeals; Commissioner time; all non-regulatory briefings and meetings. In addition, there are a number of Commission activities where the cost-benefit of maintaining individual time records for cost allocation purposes may not be justified. Under the auditor's recommendation, all indirect costs would apparently be assigned to utilities and pipeline carriers on the same basis as the direct cost assignments they have received. The effect of this approach is to shift the cost of statewide regulation to those entities who happen to have proceedings during the year and to ignore the public protection benefits associated with the

availability of regulation for all certificated and regulated entities. The alternative to this imprecise, inequitable allocation of indirect costs is to continue to provide a significant portion of the Commission's ongoing budget from the General Fund, which conflicts with the objective of the "full allocation" scheme.

Third, the "full allocation" approach is contrary to the auditor's underlying economic thesis that utility consumers are motivated by (or should be motivated by) the cost of regulation when choosing the appropriate amount of regulation. In particular, the allocation of indirect costs suggested by the auditor bears no real relationship to the direct costs which are allocated, thus inflating the cost of regulation and sending an incorrect economic signal. It will also be much more difficult for utilities and pipeline carriers to budget for, and incorporate in rates, the cost of regulation than it would be under other alternative funding approaches.

Lastly, a "full allocation" program does not address the legal concern of incurring costs, through the program receipts process, in one fiscal year and recovering them through the allocation process until subsequent fiscal years. In addition, this recommendation appears to conflict with recent administration and legislative discussions on the resolution of the Commission's financial exposure for program receipts payments as a result of a 1988 Supreme Court decision.

The Commission believes that the focus of the funding discussion should be on the other options: Continuation of general funding

and the "user fee" concept of funding.² To paraphrase what the Commission stated on page 85 of its FY1988 Annual Report to the Legislature, the issue is:

Who should pay for regulation: taxpayers (general fund) or ratepayers (user fees)? There are advantages and disadvantages to each approach. However, a preference for the former is largely based on a policy premise that regulation is a responsibility of government and a right to which all citizens are entitled, while the latter may best be supported on a policy premise that the cost-causer should be the cost-payer. In the end, the policy that is adopted may depend on balancing those objectives as well as the budget itself.

The Commission is prepared to respond to specific questions about each of these funding options and will work with all interested persons in determining the optimum funding methodology to enable the Commission to carry out its public protection function.

²Under a user fee approach, certificated and regulated utilities and pipelines are directly assessed fees usually based on gross revenues, which approximate the Commission's budget approved by the Legislature.

Recommendation No. 3

APUC should develop a topical reference system for commission orders and court decisions.

The Commission supports this recommendation, which was previously made in the 1979, 1984, and 1985 Sunset Audits. The Commission also reiterates that funding is essential to the implementation of this recommendation.

The almost-realized funding in the Commission's FY89 budget would have provided a part-time person to reference current decisions. However, the historical decisions made during the past 18 years, with particular emphasis on the last 12 years, are an integral and equal, if not more important, component of a reference system which would serve all who are directly and indirectly affected by Alaska utility regulation. The Commission believes the historical reference system could be developed through a one-time capital appropriation and that the current reference system could be maintained with a part-time person.

Recommendation No. 4

Alaska Statute 42.05.030 should be amended to stagger the appointments of the two consumer members of the commission.

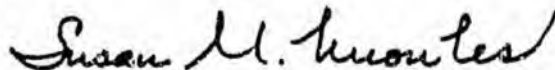
The Commission supports this recommendation.

Appendix

The Commission also finds that the Appendix at page 23 of the preliminary audit report which summarizes Commission appropriations and expenditures for FY1988 and FY1989 is somewhat misleading because of the current sources and uses of funding from the General Fund and program receipts. Accordingly, attached to this response as Appendix C is a copy of page 23 with suggested footnotes to explain the variations in amounts presented.

While it disagrees with some of the specific findings and recommendations in the preliminary audit report, the Commission supports the auditor's underlying objective of matching the duties and the resources of the agency (and the state) and looks forward to working with the Legislature in its consideration of the audit report. Please feel free to contact me if you have any questions about this response.

Sincerely,



Susan M. Knowles
Chairman

Attachments

STATE OF ALASKA

THE ALASKA PUBLIC UTILITIES COMMISSION

Before Commissioners: Susan M. Knowles, Chairman
Carolyn S. Guess
Louis E. Agi
Kathleen L. Whiteaker
Peter Sokolov

In the Matter of the Consideration of Simplification of Small Utility Regulation) R-89-1
) ORDER NO. 1

ORDER ISSUING NOTICE OF INQUIRY FOR SIMPLIFICATION OF SMALL UTILITY REGULATION

BY THE COMMISSION:

Introduction

A longstanding objective of the Commission and a subject of frequent legislative interest is simplification of regulation of small utilities. As a result, the Commission identified this as one of its program priorities for the current fiscal year. At its Public Meeting on November 22, 1988, the Commission adopted a work plan for addressing this objective, the first step of which is issuance of this notice of inquiry (NOI).

Background

A substantial number of the public utilities operating in Alaska are businesses providing service in small, geographically dispersed areas of the state; almost all of these operate outside the major urban areas of the state. Of the 94 utilities

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1 which are economically regulated,¹ the following chart indicates,
 2 by gross revenues and type of service, utilities that could be
 3 proposed within a definition of a small utility. (Financial and
 4 customer information for all economically regulated utilities is
 5 provided on Appendix 1, an extract from the Commission's FY 1988
 6 Annual Report.)

7 UTILITY	8 GROSS REVENUES				
	9 <u>Less than²</u> <u>\$1,000,000</u>	10 <u>Less than</u> <u>\$ 500,000</u>	11 <u>Less than</u> <u>\$ 250,000</u>	12 <u>Less than</u> <u>\$ 100,000</u>	13 <u>Less than</u> <u>\$ 50,000</u>
14 Electric	18	10	4	1	0
15 Gas	1	--	--	--	--
16 Refuse	5	1	--	--	--
17 Sewer	3	2	2	2	2
18 Telephone	2	--	--	--	--
19 Water	<u>22</u>	<u>22</u>	<u>22</u>	<u>15</u>	<u>14</u>
20 TOTAL	51	35	28	18	16

21 For utilities subject to economic regulation, the reg-
 22 ulatory scheme that exists applies uniformly to both large and
 23 small utilities with relatively few exceptions. (For example,

24 ¹Per 3 AAC 48.820(43), "'economic regulation' means that the
 25 commission's jurisdiction extends to matters concerning rates and
 26 charges for public utility or pipeline carrier services, quality
 of service provided by the utility or pipeline carrier to its
 customers or shippers, management practices of the utility or
 pipeline carrier, and customer or shipper complaints concerning
 the services furnished by a utility or pipeline carrier."

²CS for SB369 (L&C), which was introduced in the last ses-
 sion of the Legislature, proposed a simplified scheme of rate
 regulation for utilities with annual gross revenues of \$1,000,000
 or less.

1 certain recordkeeping requirements are less complex for smaller
2 sized utilities.) Since the Commission's statute is modeled
3 after a "Lower 48" average-size utility, a number of real or
4 potential problems exist with the present regulation of small
5 utilities.³

6 First, by its nature, regulation is a complex, techni-
7 cal process. The basic ground rules for utility regulation in
8 Alaska are set forth in statute and regulations which exceed 150
9 pages in length and are written in the terminology (both legal
10 and technical) which is peculiar to these documents as well as to
11 utility regulation. State regulation is also influenced by, and
12 at times dictated by, national trends and developments. An ex-
13 tensive bibliography of regulatory texts, periodicals, and court
14 and commission cases have been applied to and interpreted in
15 hundreds of Commission decisions. Additionally, there is no in-
16 dex of Commission decisions,⁴ further complicating the process
17 for small, less experienced and sophisticated utilities. Thus,
18 small utilities face a formidable challenge in acquiring a work-
19 ing understanding of the rules, vocabulary, and formulas of the
20 process sufficient to operate as regulated businesses.

21
22 ³The substantial assistance provided in regulatory matters
23 by Commission Staff (Staff) to smaller utilities attests to the
24 very real circumstances that face both these utilities and the
25 Commission under the traditional regulatory scheme.

26 ⁴Beginning in 1979, with support of Legislative Audit recom-
mendations, the Commission has unsuccessfully sought funding for
development of an index of its decisions.

1 Second, small utilities, because of their geographic
2 locations and higher costs of operation, find personnel special-
3 ized in regulatory matters unavailable or extremely costly. Many
4 of the smaller utilities are basically one-person operations or
5 have few employees. As a result, they must be "jacks of all
6 trades" specializing in maintaining adequate service above all
7 else. Their skills are focused in the area of operations, which
8 are especially critical and challenging in rural Alaska, not in
9 the particular aspects of engineering, accounting, and record-
10 keeping which are typically required in the regulatory process.
11 As a result, small utilities may find the complexities of the
12 regulatory process disinviting, if not overwhelming; may not
13 maintain records in accordance with regulatory requirements; and
14 may find it difficult, without some guidance and assistance, to
15 provide the information necessary to meet the same standards of
16 proof for rate and other tariff revisions which are required of
17 larger utilities. This, coupled with a natural reluctance to
18 raise rates to their neighbors, can jeopardize the long-term
19 operation and existence of a utility. Furthermore, individuals
20 who are struggling to maintain viable utility operations in a
21 harsh environment or are otherwise independent-minded Alaskan
22 entrepreneurs may have little time or use for the complexities
23 and requirements of regulation. Regulation is more likely to be
24 ignored and less likely to fulfill its stated public purposes
25 under these circumstances.

26

1 Third, the costs of compliance with standardized infor-
2 mation and recordkeeping requirements may be high relative to
3 other costs and revenues for small utilities. Absent in-house
4 expertise, the small utility is often put in a position where it
5 must contract for outside assistance to fulfill its regulatory
6 needs. The costs incurred for attorneys, accountants, and en-
7 gineers, as well as for hearings before the Commission, can have
8 a direct and material effect on the rates paid by consumers.
9 While regulatory costs may be a relatively small portion of over-
10 all costs for larger utilities, they may actually be a signifi-
11 cant contributor to the rate increases required by smaller utili-
12 ties. As a result, small utilities may not be able to afford the
13 unavoidable costs of exercising their rights and fulfilling their
14 responsibilities under regulation. This problem is multiplied
15 for those small utilities operating in remote locations.

16 Fourth, small utilities may have financial characteris-
17 tics which differ from those traditionally identified with
18 economically regulated utilities. In particular, some of these
19 utilities have a small investment in rate base (plant investment)
20 relative to revenues and expenses in contrast to utilities which
21 require large investments of fixed assets in relation to revenues
22 generated. There are a number of reasons for this difference,
23 including, the utility may not be capital intensive by nature
24 (e.g., refuse utilities); the utility has received government
25 grants to finance its plant (e.g., water or electric utilities);
26 the utility was initiated with and financed by a real estate

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1 development (e.g., water utilities); or the utility owner has
2 contributed substantial "sweat equity" in one or more years of
3 the utility's operation which is not reflected in booked capital
4 investment (e.g., all small utilities). Minor fluctuations in
5 revenues and expenses have significant consequences for the
6 financial condition of small utilities with higher ratios of
7 revenues to assets. Predictable fixed charges are a low portion
8 of these utilities' expenses, and they may not have the cash flow
9 cushion provided by depreciation expense and return on investment
10 (as compared to operating expenses) which is available to more
11 capital intensive industries. The lead time and requirements of
12 regulation may be particularly critical to these small utilities.

13 Fifth, one of the consequences of the decrease in Com-
14 mission resources without a corresponding decrease in statutory
15 responsibilities and workload is that it is increasingly dif-
16 ficult for the Commission to provide the necessary level of as-
17 sistance to small utilities. For example, there have been a num-
18 ber of instances in the past where Staff has essentially prepared
19 and processed a small utility's rate case, in particular, where
20 the financial health of the business depended on rate relief.
21 For some, it is the Staff's analysis which provides the utility
22 with the input to determine the level of rate adjustment it needs
23 to meet its operating costs. The Staff routinely provides
24 guidance and assistance on other regulatory matters as well.
25 While the need for and interest in providing this type of support
26 still exists, it is not possible to continue the past level of

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1 implement this policy for small utilities by examining the cur-
2 rent approach to regulation and by developing simplified pro-
3 cedures for that regulation which minimize administrative and
4 regulatory burdens and costs for utilities and regulators. It is
5 the Commission's intent to solicit input from all interested per-
6 sons on this subject by issuing this NOI and to use that input
7 for drafting regulations. The regulations would, in turn, be
8 noticed for comment and suggested changes prior to being
9 promulgated.

10 While there are many facets of small utility regulation
11 which are worthy of reassessment and refinement, the Commission
12 believes that its initial focus should be on the ratemaking pro-
13 cess. For the reasons discussed earlier in this Order, ratemak-
14 ing is perhaps the least discretionary and most critical of the
15 regulatory functions for small utilities. As a corollary to its
16 ratemaking review, the Commission intends to examine the annual
17 report forms currently used by small utilities for simplifica-
18 tion, wherever possible, and for maximum coordination with the
19 supporting information requirements of rate cases. The Commis-
20 sion understands that there are also opportunities for simplify-
21 ing other areas of small utility regulation, such as the prepara-
22 tion and processing of miscellaneous tariff filings. While com-
23 ments are welcome on the full range of regulatory reform for
24 small utilities, the Commission's anticipated order of priority
25 in this inquiry is: (1) ratemaking; (2) annual report forms; and
26 (3) other matters.

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1 Interested persons are encouraged to provide the Com-
2 mission any and all information and suggestions which they
3 believe are relevant to this inquiry. However, to facilitate
4 comments to the NOI, the list of questions which follow includes
5 issues which the Commission believes should be considered. Some
6 questions are more relevant for utilities or their representa-
7 tives responding to this inquiry, while others may be more ap-
8 propriate for a response from Staff or other interested parties
9 such as the Alaska Consumer Advocacy Program, the Alaska Rural
10 Electric Cooperative Association, or the Alaska Telephone As-
11 sociation. All respondents are encouraged to be as specific as
12 possible and, where appropriate, to detail the content and format
13 of any forms which may be proposed.

14 1. What should be the objectives of any procedures for
15 simplifying ratemaking and reporting functions for small
16 utilities?

17 2. What should be the criteria for being designated a
18 "small" utility which is eligible for participation in simplified
19 ratemaking procedures?

20 3. What approach should be used to simplify the ratemaking
21 process for small utilities? For example,

22 a. Should the emphasis be on making periodic rate case
23 filings easier?

24 b. Should a simplified rate filing procedure similar to
25 that found in AS 42.05.381(e) and 3 AAC 48.700 -- 3 AAC 48.790 be
26 adopted? (A copy of these provisions is attached as Appendix 2.)

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1 c. Should some other alternative to traditional rate
2 base/rate of return regulation be implemented such as a ratio of
3 operating expenses to revenues?

4 4. What is the minimum amount of information needed to per-
5 form the type of small utility regulation which is proposed?

6 5. What additional information (above that suggested in
7 response to question 4) would be desirable or necessary to in-
8 crease the accuracy or accountability of small utility regula-
9 tion; what is the cost/benefit of acquiring that information?

10 6. What, if any, forms or information are provided to other
11 state or federal agencies by small utilities which could be sub-
12 stituted for some or all of the forms required for rate cases or
13 Commission annual reports? (Please provide a sample.)

14 7. Is it possible to develop a substantially similar set of
15 forms to be used for both rate case filings and annual reports by
16 small utilities? (Please provide examples of proposed forms.)

17 8. What are the most difficult sections of the annual re-
18 port forms for small utilities to complete? Why?

19 9. What are the most useful and the least useful sections
20 of the annual report? Why?

21 10. What, if any, changes should be made in the procedures
22 for processing small utility rate filings in order to minimize
23 their administrative complexity and cost? (Please provide an
24 example.)

25

26

1 11. What level of support have small utilities been provided
2 by Commission Staff for ratemaking or other regulatory require-
3 ments? (Individual utilities should be as specific as possible.)

4 12. What level of support, guidance, or assistance is neces-
5 sary for the Commission to provide to small utilities?

6 In conclusion, the Commission is issuing this NOI to
7 solicit comments on and suggestions for simplification of the
8 regulation of small utilities consistent with the Commission's
9 responsibilities under the law. Written responses to this NOI
10 should be filed no later than April 3, 1989, with reply comments
11 due no later than May 1, 1989. Further procedures and schedules
12 will be established upon review of those comments.

13 ORDER

14 THE COMMISSION FURTHER ORDERS:

15 1. By issuance of this notice of inquiry, a proceeding
16 is opened for the purpose of considering simplification of reg-
17 ulation of small utilities.

18 2. All interested persons may submit comments in
19 response to the notice of inquiry no later than 4 p.m.,
20 April 3, 1989.

21 3. All interested persons may submit reply comments no
22 later than 4 p.m., May 1, 1989.

23 DATED AND EFFECTIVE at Anchorage, Alaska, this 3rd day of Febru-
24 ary, 1989.

25 BY DIRECTION OF THE COMMISSION
(Commissioner Louis E. Agi, not participating)

26 (S E A 'L)

ELECTRIC UTILITIES
(1987 Calendar Year)

Utility	Net Plant	Revenues		Users
		Total Revenues	Net Income	
<u>(Gross Operating Revenue Greater Than \$5,000,000)</u>				
Alaska Electric Generation & Transmission Cooperative, Inc.	\$ 17,139,417	\$ 16,256,727	\$ 86,170	1
Alaska Electric Light and Power Company	34,739,603	15,008,700	1,360,802	10,370
Alaska Village Electric Cooperative, Inc. ¹	27,210,242	11,485,183	1,016,263	4,970
Chugach Electric Association, Inc.	366,771,700	93,533,988	5,394,175	60,007
Copper Valley Electric Association, Inc.	14,053,824	7,171,696	886,209	2,350
Golden Valley Electric Association, Inc.	138,156,431	39,115,609	3,173,267	26,704
Homer Electric Association, Inc.	82,327,628	31,168,368	2,551,630	17,239
Kodiak Electric Association, Inc.	32,519,997	14,044,493	2,325,809	4,354
Katanaska Electric Association, Inc.	106,672,760	37,879,553	4,648,728	27,479
Municipal Light & Power Department, Municipality of Anchorage d/b/a	<u>146,962,166</u>	<u>61,594,072</u>	<u>722,462</u>	<u>30,048</u>
Subtotal	<u>\$966,553,848</u>	<u>\$327,258,309</u>	<u>\$22,173,595</u>	<u>104,506</u>

(This Appendix contains excerpts from the Commission's FY88 Annual Report to the Legislature; footnotes are omitted.)

18-89-1(1)
APPENDIX 1

ELECTRIC UTILITIES (CONT.)
(1987 Calendar Year)

Utility	Net Plant	Revenues		Users
		Total Revenues	Net Income	
<u>(Gross Operating Revenue Greater Than \$1,500,000 but Less Than \$5,000,000)</u>				
Alaska Power & Telephone Company	\$ 3,354,858	\$ 3,164,175	\$ 500,190	1,716
Arctic Utilities, Inc. ¹	2,152,979	3,146,571	249,226	26
Barrow Utilities and Electric Cooperative, Inc.	-----2	1,686,004	229,661	1,246
Bethel Utilities Corporation, Inc.	2,036,500	4,277,113	136,114	1,691
Kotzebue Electric Association, Inc.	6,449,804	2,790,390	420,487	973
Hushagak Electric Cooperative, Inc. ³	4,771,174	2,498,707	260,577	1,004
Tiltingit-Haida Regional Electrical Authority	<u>5,620,503</u>	<u>2,906,005</u>	<u>400,024</u>	<u>975</u>
Subtotal	\$ <u>25,193,970</u>	\$ <u>20,557,933</u>	\$ <u>2,356,279</u>	<u>7,711</u>

(Gross Operating Revenue Greater Than \$500,000 but Less Than \$1,500,000)

Aniak Light and Power Company, Inc.	\$ 526,320	\$ 741,912	\$ 119,449	150
G & K, Inc.	II/A	895,814	II/A	70
Gwitchyaa Zhee Utility Company ⁴	690,130	570,600	<110,318>	297
Haines Light & Power Company, Inc.	1,206,793	1,162,049	97,064	750
I-H-H Electric Cooperative, Inc.	1,522,032	695,272	<1,032>	259
McGrath Light & Power Company ⁴	1,069,476	837,306	143,931	231
Sand Point Electric, Inc. ⁵	430,301	939,039	2,132	400
Tanana Power Company, Inc.	751,797	551,930	81,250	184
Yakutat Power, Inc.	<u>674,031</u>	<u>693,330</u>	<u>45,659</u>	<u>281</u>
Subtotal	\$ <u>6,080,480</u>	\$ <u>7,095,260</u>	\$ <u>377,343</u>	<u>2,622</u>

ELECTRIC UTILITIES (CONT.)
(1967 Calendar Year)

Utility	Net Plant	Revenues		Users
		Total Revenues	Net Income	
<u>(Gross Operating Revenue Less Than \$500,000)</u>				
Andreanof Electric Corporation ¹	\$ 129,345	\$ 79,872	\$ 15,203	37
Bettles Light & Power, Inc.	316,722	373,529	<47,841>	49
Far North Utilities	355,414	112,315	<6,110>	44
Levelock Electric Cooperative, Inc. ²	75,534	144,844	20,344	69
Hanley Utility Company, Inc.	266,322	111,344	<66,862>	84
Middle Kuskokwim Electric Cooperative, Inc.	1,714,495	375,093	<21,233>	152
Napaklak Incinag Power Company ³	141,137	275,343	61,212	81
Northway Power & Light, Inc.	327,927	366,442	39,759	110
Pelican Utility Company	584,282	394,794	186,033	107
Teller Power Company	96,429	305,680	71,561	86
Subtotal	\$ 4,007,607	\$ 2,539,256	\$ 252,066	819
TOTALS	<u>\$1,002,635,913</u>	<u>\$357,450,846</u>	<u>\$25,159,203</u>	<u>195,650</u>

GAS UTILITIES
(1987 Calendar Year)

Utility	Net Plant	Revenues		Users
		Total Revenues	Net Income	
<u>(Gross Operating Revenue Greater Than \$5,000,000)</u>				
ENSTAR Natural Gas Company ¹ (a division of Seagull Energy Corporation)	\$157,479,366	\$99,956,451	\$15,855,146	70,223
Subtotal	\$157,479,366	\$99,956,451	\$15,855,146	70,223
<u>(Gross Operating Revenue Greater Than \$500,000 but Less Than \$1,500,000)</u>				
Darrow Utilities and Electric Cooperative, Inc.	\$----- ²	\$ 804,907	\$ 74,685	900
Subtotal	\$----- ²	\$ 804,907	\$ 74,685	900
TOTALS	<u>\$157,479,366</u>	<u>\$100,761,430</u>	<u>\$15,929,831</u>	<u>79,131</u>

REFUSE AND GARDAGE UTILITIES
(1987 Calendar Year)

Utility	Net Plant	Revenues		Customers
		Total Revenues	Net Income	
<u>(Gross Operating Revenue Greater Than \$200,000)</u>				
Anchorage Refuse, Inc.	\$2,458,804	\$ 9,210,396	\$163,811	26,076
Channel Sanitation Corporation	276,094	2,132,305	<390,404>	4,920
Drake's Sanitation, Inc. ¹	132,400	454,641	<0,716>	165
Eagle River Refuse, Inc.	185,610	932,965	32,697	4,110
Far North Sanitation, Inc.	1,569,616	1,214,258	133,067	712
Interior Services, Ralph E. Bartlett d/b/a	780,822	519,916	<23,940>	262
Kodiak Sanitation, Inc.	82,437	820,551	70,322	102
Peninsula Sanitation Company, Inc. ²	252,395	1,350,321	85,804	1,340
Wasilla Refuse, Inc. ³	130,700	541,037	74,584	702
TOTAL	<u>\$5,077,046</u>	<u>\$17,176,390</u>	<u>\$137,937</u>	<u>38,477</u>

SEWER (WASTEWATER) UTILITIES
(1987 Calendar Year)

Utility	Net Plant ¹	REVENUES		Users
		Total Revenues	Net Income	
<u>(Gross Operating Revenue Greater Than \$1,000,000)</u>				
Anchorage Water and Wastewater Utility, Municipality of Anchorage d/b/a	\$54,302,553	\$10,099,805	\$<1,200,190>	49,140
College Utilities Corp. ²	<u>2,201,975</u>	<u>1,366,995</u>	<u>101,412</u>	<u>1,554</u>
Subtotal	<u>\$56,504,528</u>	<u>\$19,466,800</u>	<u>\$<1,108,778></u>	<u>50,694</u>
<u>(Gross Operating Revenue Less Than \$250,000)</u>				
Darrow Utilities and Electric Cooperative, Inc.	\$----- ³	\$ 554,580	\$ 3,333	367
Salmantof Utilities, Inc.	50,000	804	514	3
Settlers Bay Properties, Inc.	- 0 -	<u>5,045</u>	<u><159,390></u>	<u>12</u>
Subtotal	<u>\$ 50,000</u>	<u>\$ 560,509</u>	<u>\$ <155,543></u>	<u>382</u>
TOTALS	<u>\$56,634,528</u>	<u>\$20,027,309</u>	<u>\$<1,342,321></u>	<u>51,076</u>

TELECOMMUNICATION UTILITIES
 (Long Lines and Local Exchange Carriers)
 (1987 Calendar Year)

Utility	Net Plant	Revenues		Main Access Lines
		Total Revenues	Net Income	
<u>(Gross operating Revenue Greater Than \$4,000,000)</u>				
Alascom, Inc.	\$329,029,964	\$201,030,131	\$42,456,392	11/A
Anchorage Telephone Utility, Municipality of Anchorage d/b/a	219,695,213	87,020,380	1,669,758	112,107
General Telephone Company of Alaska	12,084,609	8,255,030	1,002,776	10,602
Interior Telephone Company	8,837,986	4,407,591	8,605	1,965
Natanuska Telephone Association, Inc.	91,414,691	29,325,474	1,381,188	25,418
Telephone Utilities of Alaska, Inc.	94,008,561	43,760,048	6,850,419	34,031
Telephone Utilities of the Northland, Inc.	22,071,989	14,845,183	2,058,959	14,297
United Utilities, Inc.	15,760,740	7,651,037	652,195	2,065
Subtotal	<u>\$794,503,841</u>	<u>\$476,294,074</u>	<u>\$56,080,292</u>	<u>201,285</u>
<u>(Gross Operating Revenue Greater Than \$1,000,000 but Less Than \$4,000,000)</u>				
Arctic Slope Telephone Association Cooperative, Inc.	\$ 3,429,404	\$ 3,828,686	\$ 564,797	855
Bristol Bay Telephone Cooperative, Inc.	3,073,711	1,517,469	150,112	942
Copper Valley Telephone Cooperative, Inc.	10,453,257	3,432,288	696,210	2,795
Nukluk Telephone Company, Inc.	2,731,542	1,363,916	347,015	642
National Utilities, Inc.	1,670,124	1,419,241	208,968	1,571
Nushagak Telephone Cooperative, Inc.	3,436,799	1,754,223	304,716	1,286
OTZ Telephone Cooperative, Inc.	3,900,170	2,001,821	349,989	1,540
Subtotal	<u>\$ 20,695,015</u>	<u>\$ 15,317,644</u>	<u>\$ 2,622,635</u>	<u>9,631</u>
<u>(Gross Operating Revenue Less Than \$1,000,000)</u>				
Dush-Tail, Incorporated	\$ 2,384,383	\$ 814,510	\$ <14,506>	520
Yukon Telephone Company, Inc.	684,335	644,904	<63,290>	343
Subtotal	<u>\$ 3,068,718</u>	<u>\$ 1,459,414</u>	<u>\$ <77,796></u>	<u>863</u>
TOTAL	<u>\$826,267,574</u>	<u>\$493,071,932</u>	<u>\$ 50,625,131</u>	<u>211,779</u>

WATER UTILITIES
(1967 Calendar Year)

Utility	Net Plant ¹	Revenues		Users
		Gross Revenues	Net Income	
<u>(Gross Operating Revenue Greater Than \$1,000,000)</u>				
Anchorage Water and Wastewater Utility, Municipality of Anchorage d/b/a	\$91,067,395	\$17,029,004	\$391,062	40,305
Darrow Utilities and Electric Cooperative, Inc.	----- ²	2,497,134	421,071	300
College Utilities Corp. ³	<u>3,685,731</u>	<u>1,402,341</u>	<u>170,270</u>	<u>1,600</u>
Subtotal	<u>\$94,753,126</u>	<u>\$20,928,559</u>	<u>\$990,403</u>	<u>42,293</u>

(Gross Operating Revenue Less Than \$250,000)

Alpat Water Utility Company	\$ 93,299	\$ 22,782	\$ 9,976	76
Alyeska Utilities, Inc. ⁴	85,689	102,143	20,522	526
Chugiak Utilities	247,418	51,919	20,454	195
Dawn Development Corporation		(Not Reported)		
Eagle Utilities, Inc.	- 0 -	29,459	7,868	83
Eklutna Utilities, Inc.	456,993	193,555	<66,475>	600
ERU, Inc.	66,608	9,727	<5,352>	34
Kwik Log Water System, Hyron Alton Newton d/b/a	- 0 -	2,688	890	18
Hatanuska Utility Company, Inc.	69,689	12,443	<1,159>	12
McGahan Utilities, Inc.	22,801	23,046	2,683	11/A
McKinley Utilities, Inc. ⁵	69,742	9,924	1,635	34
Norfolk Utilities, Inc.	696,505	248,156	235	866
Omlin Water Utility, Paul Omlin d/b/a	31,216	4,437	533	15
Pelican Utility Company		(Not Reported)		

WATER UTILITIES (CONT.)
(1967 Calendar Year)

<u>Utility</u>	<u>Net Plant¹</u>	<u>Gross Revenues</u>	<u>Net Income</u>	<u>Users</u>
Potter Creek Water Company	\$ 128,642	500	<3,653>	9
Romig Park Improvement Company ²	- 0 -	12,350	<3,174>	85
Sandlake Services, R. J. & Clara Rhodes d/b/a	35,648	28,566	9,310	130
Settlers Day Properties, Inc.	- 0 -	8,670	<62,000>	62
South Central Utilities, Inc.	81,577	1,323	<22,103>	11
Southeast Utilities, Inc., Robert H. Scott, Evelyn V. Scott, Charles J. Schneider and Harlene C. Schneider, S & S Development d/b/a	214,912	116,903	30,415	630
Spennard Heights Water System, Wayne Cates d/b/a	5,742	4,857	<409>	40
Valley Water Company, Inc. ³	<u>230,175</u>	<u>157,600</u>	<u>54,560</u>	<u>265</u>
Subtotal	<u>\$ 2,536,656</u>	<u>\$ 1,041,128</u>	<u>\$ <5,460></u>	<u>3,715</u>
TOTAL	<u>\$97,289,782</u>	<u>\$21,969,687</u>	<u>\$984,935</u>	<u>46,000</u>

Sec. 42.05.365. Interest on deposits. (a) A public utility may collect and retain a deposit for contracted recurring monthly service. A public utility that collects and retains a deposit of over \$100 for recurring monthly service shall pay interest on that deposit at or before the time it is returned. Interest paid under this section shall be at the legal rate of interest at the time the deposit is made. However, if the deposit is placed in an interest bearing account, the utility shall pay the interest rate of the interest bearing account.

(b) If delinquent payments result in interruption of service, a public utility is not required to pay interest under (a) of this section for 12 months after reestablishment of service. (§ 1 ch 50 SLA 1986)

Cross references. — For legal rate of interest, see AS 45.45.010.

Sec. 42.05.381. Rates to be just and reasonable. (a) All rates demanded or received by a public utility, or by any two or more public utilities jointly, for a service furnished or to be furnished shall be just and reasonable; however, a rate may not include an allowance for costs of political contributions, or public relations except for reasonable amounts spent for

- (1) energy conservation efforts;
- (2) public information designed to promote more efficient use of the utility's facilities or services or to protect the physical plant of the utility;
- (3) informing shareholders and members of a cooperative of meetings of the utility and encouraging attendance; or
- (4) emergency situations to the extent and under the circumstances authorized by the commission for good cause shown.

(b) In establishing the revenue requirements of a municipally owned and operated utility the municipality is entitled to include a reasonable rate of return.

(c) A utility, whether subject to regulation by the commission or exempt from regulation, may not charge a fee for connection to, disconnection from, or transfer of services in an amount in excess of the actual cost to the utility of performing the service plus a profit at a reasonable percentage of that cost not to exceed the percentage established by the commission by regulation.

(d) A utility shall provide for a reduced fee or surcharge for standby water for fire protection systems approved under AS 18.70.081 which use hydraulic sprinklers.

(e) The commission shall adopt regulations for electric cooperatives setting a range for adjustment of rates by a simplified rate filing procedure. A cooperative may apply for permission to adjust its rates over a period of time under the simplified rate filing procedure regulations. The commission shall grant the application if the cooperative

(See attached regulations (3AAC 48.700 - 3AAC 48.790) pp. 428-433.)

R-89-1(1)
Appendix 2

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satisfies the requirements of the regulations. The commission may review implementation of the simplified rate filing procedure at reasonable intervals and may revoke permission to use the procedure or require modification of the rates to correct an error. (§ 6 ch 113 SLA 1970; am § 1 ch 86 SLA 1976; am § 5 ch 106 SLA 1977; am § 4 ch 46 SLA 1980; am § 3 ch 104 SLA 1986)

Effect of amendments. — The 1980 amendment added subsection (e).

NOTES TO DECISIONS

Lobbying expenses excluded from revenue requirement. — The commission acted reasonably and within its statutory authority in excluding lobbying expenses as part of a utility's revenue requirement. *Home Elec. Ass'n v. State, Pub. Util. Comm'n*, Sup. Ct. Op. No. 3327 (File No. S-1052), P.2d (1988).

Sec. 42.05.385. Charges for water and sewer line extensions.

(a) A water or sewer line extension may not be constructed unless the legislative body of each municipality through which the extension passes has approved the extension. This subsection does not apply to an extension that will not create any charges or assessments against the adjacent property.

(b) Except as provided in (c) of this section, when utility service is available to a property owner as a result of a water or sewer line extension, the utility offering the service through the extension shall notify the property owner, according to the procedure set forth for service of process in the Alaska Rules of Civil Procedure, of the charges and interest due the utility if the property owner elects to obtain the utility service through the extension. The property owner does not owe the charge for the extension until the property owner connects to the extension.

(c) Except as provided in (e) of this section, and unless the property owner connects to the extension,

(1) charges do not accrue against the property for construction of the extension;

(2) interest does not accrue against the property for the construction of the extension; and

(3) a lien or encumbrance may not be levied against the property for the construction of the extension.

(d) If the costs of constructing a water or sewer line extension have been paid by charges collected under this chapter, a utility may not charge for connection to the extension an amount greater than the actual cost of the connection.

(e) The provisions of this section do not apply to a water or sewer line extension constructed by a municipality under AS 29.46. (§ 1 ch 107 SLA 1986)

explaining the reason for the action and stating that the action is without prejudice to refileing.

(b) If an application is found to be partially incomplete or defective, a letter may be written to the applicant containing the statement "By direction of the commission" in which attention is directed to the omitted material or defects and specifying a future date when the application may be dismissed unless satisfactory action is taken to correct the deficiencies of the application. If the applicant needs additional time to perfect his application, he may request an extension at least five days before the deadline date specified in the commission's letter. The commission may then by letter grant or deny the request or specify an alternative deadline date.

(c) If the commission's technical staff finds that an application, which is otherwise complete, lacks certain information needed to determine and fully evaluate its merits, the commission may request the applicant to furnish it, by a specified date, in a letter written "By direction of the commission" and the applicant shall supply it by the date specified as a condition precedent to any further action by the commission other than dismissing the application. (EIF. 1/13/73, Register 44)

Authority: AS 42.05.141(1)
AS 42.05.161

3 AAC 48.660. BURDEN OF PROOF. Every applicant shall have the burden of furnishing whatever information and data that may be required to prove to the commission's satisfaction that the applicant has, or will, comply with the governing law and the provisions of any applicable rule, regulation or order of the commission. When a governing law requires the commission to make a finding in regard to any application, the applicant shall, in each case, have the burden of furnishing whatever information, data, and documents may be required to prove to the commission's satisfaction that the finding is justified. (EIF. 1/13/73, Register 44)

Authority: AS 42.05.141
AS 42.05.151

**Article 5. Simplified Rate Filing Procedures
for Electric Cooperatives**

Section
700. Application and purpose
710. Filing requirements
720. Supporting information
730. Notice and effective date
740. Rate adjustments
750. Calculation of TIER

Section
760. Target TIER determination
770. Limitations on use of simplified procedure
780. Application of rate increases
790. Cost-of-service filings

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3 AAC 48.700. APPLICATION AND PURPOSE. (a) The purpose of 3 AAC 48.700 — 3 AAC 48.790 is to implement AS 42.05.381(e) and to establish simplified, expedited filing and rate adjustment procedures for those nonprofit electric cooperatives organized under AS 10.25 and regulated by the commission.

(b) If allowed or required by 3 AAC 48.740, an electric cooperative organized under AS 10.25 may adjust rates no more than quarterly based on the filing requirements and other conditions set out in 3 AAC 48.710 — 3 AAC 48.790. (EIT. 1/1/87, Register 100)

Authority: AS 42.05.141 AS 42.05.411
AS 42.05.161 AS 42.05.421
AS 42.05.381 AS 42.05.431

3 AAC 48.710. FILING REQUIREMENTS. (a) A rate adjustment filing under 3 AAC 48.700 — 3 AAC 48.790 is governed by 3 AAC 48.240 and 3 AAC 48.270.

(b) A cooperative that adjusts its rates under the authority of 3 AAC 48.700 — 3 AAC 48.790 shall then file all of the information required by 3 AAC 48.720 for whichever period is elected, quarterly or semi-annual, whether or not a change in rates is requested, until permission to discontinue the filing is granted by the commission or the cooperative submits a filing in accordance with AS 42.05.411 and 3 AAC 48.275. A cooperative that files the information required by 3 AAC 48.720 for each quarterly period shall file that information within 60 days after the end of each quarter, and a cooperative that files the information required by 3 AAC 48.720 for each semi-annual period shall file that information within 90 days after the end of the semi-annual period. (EIT. 1/1/87, Register 100)

Authority: AS 42.05.141 AS 42.05.411
AS 42.05.151 AS 42.05.421
AS 42.05.381 AS 42.05.431

3 AAC 48.720. SUPPORTING INFORMATION. (a) In accordance with 3 AAC 48.710(h), a cooperative shall file with the commission the following information for each quarterly or semi-annual period:

- (1) APUC Form 201 (Modified REA Form 7);
- (2) a schedule and explanation of all amortized expenses;
- (3) a schedule and explanation of all pro forma and normalizing adjustments;
- (4) a schedule and explanation of each line item on APUC Form 201 which has increased or decreased more than 10 percent from the previous 12-month period;
- (5) a schedule of the calculation of the cooperative's Times Interest Earned Ratio (TIER), calculated in accordance with 3 AAC 48.750;

(6) a schedule showing the ratio of residential class kilowatt-hour sales to total kilowatt-hour sales for the current 12-month period and the ratio that existed when the cooperative last filed a cost-of-service study;

(7) if appropriate, a schedule showing the ratio of retail kilowatt-hour sales as a percentage of total retail and wholesale kilowatt-hour sales, and the ratio that existed when the cooperative filed its last cost-of-service study; and

(8) a copy of the cooperative's annual certified audit, including any adjusting journal entries.

(b) If a cooperative proposes to adjust rates in accordance with 3 AAC 48.740 based on its quarterly or semi-annual filing, the cooperative shall file with the commission the following additional information:

(1) tariff sheets showing any proposed adjustments to the cooperative's rates;

(2) if applicable, power cost equalization updates, including tariff sheets;

(3) a copy of the resolution of the board of directors of the cooperative authorizing the requested increase in rates; and

(4) a narrative description or evidence of the cooperative's actions taken to comply with the notice requirements in 3 AAC 48.730. (EIT. 1/1/87, Register 100)

Authority: AS 42.05.141 AS 42.05.411
AS 42.05.151 AS 42.05.421
AS 42.05.381 AS 42.05.431

49.730

3 AAC 45.730: NOTICE AND EFFECTIVE DATE. (a) A cooperative's rate adjustment filing under 3 AAC 48.700 — 3 AAC 48.790 is governed by 3 AAC 48.280 and will become permanent at the end of the notice period described in AS 42.05.411 unless the commission suspends the filing in accordance with AS 42.05.421. If the commission suspends the filing, the commission will, in its discretion, allow the filing to take effect on an interim basis, subject to refund.

(b) A cooperative shall provide to its customers prior individual notice of the intent of its board of directors to consider participation in the simplified rate filing procedure established in 3 AAC 48.700 — 3 AAC 48.790. That notice must include, at a minimum,

(1) the purpose of 3 AAC 48.700 — 3 AAC 48.790 and its possible effect on recurring electric rates on a quarterly or semi-annual basis, whichever is appropriate;

(2) the time and place of the board of director's meeting scheduled for consideration of the appropriateness and desirability of participation in the simplified rate procedure; and

3 AAC 48.740 . COMMERCE AND ECON. DEV. 3 AAC 48.760

(3) acknowledgment that the major responsibility for rate adjustments under the simplified procedure will rest with the board of directors of the cooperative rather than with the commission.

(c) A cooperative shall provide its customers with reasonable notice of any rate adjustments approved by its board of directors either before or at the time the rate adjustment takes effect. (EFC, 1/1/87, Register 100)

Authority: AS 42.05.141 AS 42.05.411
AS 42.05.151 AS 42.05.421
AS 42.05.381 AS 42.05.431

3 AAC 48.740. RATE ADJUSTMENTS. If a cooperative's TIER deviates from the cooperative's Target TIER, the cooperative may adjust rates in accordance with 3 AAC 48.700 — 3AAC 48.790 to achieve its Target TIER. If a cooperative's TIER is more than five percent above the cooperative's Target TIER, the cooperative shall reduce rates to achieve its Target TIER. (EFC, 1/1/87, Register 100)

Authority: AS 42.05.141 AS 42.05.411
AS 42.05.151 AS 42.05.421
AS 42.05.381 AS 42.05.431

3 AAC 48.750. CALCULATION OF TIER. A cooperative's TIER is calculated for the most recent 12-month period, based on the information filed in accordance with 3 AAC 48.720 and on the following principles:

(1) the annualized long-term interest expense for the period must be used;

(2) the actual operating expenses for the period must be normalized to remove nonrecurring items and to adjust for items normally amortized for ratemaking purposes, and may also be normalized to reflect pro forma adjustments for known and measurable changes that are more than likely to continue through the period in which the rates will be in effect;

(3) interest income must be included in the determination of TIER to the extent that interest income exceeds short-term interest expense. (EFC, 1/1/87, Register 100)

Authority: AS 42.05.141 AS 42.05.411
AS 42.05.151 AS 42.05.421
AS 42.05.381 AS 42.05.431

3 AAC 48.760. TARGET TIER DETERMINATION. (a) The Target TIER (Times Interest Earned Ratio) for a cooperative is the TIER approved by the commission in that cooperative's last general rate case or the TIER established under (b) of this section.

(b) By petition separate from another proceeding under 3 AAC 48.700 — 3 AAC 48.790, a cooperative may request that a new Target TIER be set, based on consideration of the cooperative's present equity levels, optimum equity levels, cost of debt, growth rate and capitalization, mortgage covenants, the capital credits retirement program of the cooperative, and other relevant factors. (M.F. 1/1/87, Register 100)

Authority: AS 42.05.141 AS 42.05.411
AS 42.05.151 AS 42.05.421
AS 42.05.381 AS 42.05.431

3 AAC 48.770. LIMITATIONS ON USE OF SIMPLIFIED PROCEDURE. (a) Rate adjustments allowed under 3 AAC 48.700 — 3 AAC 48.790 may not exceed a cumulative 20 percent increase in any three-year period, or a cumulative eight percent in any 12-month period, excluding purchased power and fuel costs rate adjustments.

(b) For good cause shown, the commission will, in its discretion, revoke or deny a cooperative's authority to request an increase under the simplified rate filing procedure in 3 AAC 48.700 — 3 AAC 48.790. (M.F. 1/1/87, Register 100) 3 AAC 48.700 - 3 AAC 48.790.

Authority: AS 42.05.141 AS 42.05.411
AS 42.05.151 AS 42.05.421
AS 42.05.381 AS 42.05.431

3 AAC 48.780. APPLICATION OF RATE INCREASES. A rate increase granted under 3 AAC 48.700 — 3 AAC 48.790 must be applied as an across-the-board adjustment to all recurring charges, except the customer charge. (M.F. 1/1/87, Register 100)

Authority: AS 42.05.141 AS 42.05.411
AS 42.05.151 AS 42.05.421
AS 42.05.381 AS 42.05.431

48.790

3 AAC 48.790. COST-OF-SERVICE FILINGS. To ensure that a cooperative's rates properly reflect the cost to serve the various classes of customers, a cost-of-service study in accordance with 3 AAC 48.540(c) — (h) must be filed if

(1) the residential class kilowatt-hour sales as a percentage of total kilowatt-hour sales, on an annual basis, changes by more than 5 percent from the percentage that existed when the cooperative last filed a cost-of-service study; or

(2) the retail kilowatt-hour sales as a percentage of total retail and wholesale kilowatt hour sales, on an annual basis, changes by more than 5 percent from the percentage that existed when the cooperative last filed a cost-of-service study; or

(3) the cooperative files a rate case complying with the requirements of AS 42.05.411 and 3 AAC 48.275, and if 3 AAC 48.540(a) or (b) requires that cooperative to file a cost-of-service study. (Eff. 1/1/87, Register 100)

Authority: AS 42.05.141 AS 42.05.411
AS 42.05.151 AS 42.05.421
AS 42.05.301 AS 42.05.431

Article 6. Miscellaneous Provisions

Section Section
800. General administrative provisions 810. Delegation of authority
805. Waivers 820. Definitions

3 AAC 48.800. GENERAL ADMINISTRATIVE PROVISIONS. (a) Each utility and pipeline carrier has the continuing responsibility to conform the language of its tariff with the definitions in 3 AAC 48 and 3 AAC 52. A definition that is not substantially the same must be revised by means of an appropriate tariff filing.

(b) Definitions contained in 3 AAC 52.080, 3 AAC 52.150 and 3 AAC 52.340 also apply to the defined words as they are used in 3 AAC 48.010 — 3 AAC 48.820. (Eff. 1/13/73, Register 44; am 6/29/84, Register 90)

Authority: AS 42.05.141 AS 42.06.140(a)
AS 42.05.151 AS 42.06.350

3 AAC 48.805. WAIVERS. (a) Except for those that are also required under AS 42.05, any requirement in 3 AAC 48 may be modified or waived, in whole or in part, by order of the commission upon application and a showing of good cause or on the commission's own motion.

(b) Application for waiver under this section must be in writing and must set out the pertinent facts in sufficient detail to support a finding by the commission that no legitimate public interest will be served by enforcing the requirement designated in the application. An application under this section may be made to the commission by motion, petition, or, where appropriate, by a tariff advice letter.

(c) If modification of a requirement in 3 AAC 48 cannot be granted without also exempting the applicant from a provision of AS 42.05, the application for the modification or waiver must include application for exemption from the provision of AS 42.05.

(d) The commission will grant or deny an application, in whole or in part. The commission's decision will be announced by order or in a letter written "By Direction of the Commission." (Eff. 6/29/84, Register 90)

Appendix B

42.05.711 (b) is amended to read:

(b) Except as otherwise provided in this subsection, public utilities owned and operated by a political subdivision of the state, or electric operating entities established as the instrumentality of two or more public utilities owned and operated by political subdivisions of the state, are exempt from this chapter, other than AS 42.05.221 -- AS 42.05.281 and 42.05.385. However,

(1) the governing body of a political subdivision may elect to be subject to this chapter and may elect to revoke a previous election to be subject to this chapter; and

(2) a utility or electric operating entity that is owned and operated by a political subdivision and that directly competes with another utility or electric operating entity is subject to this chapter and any other utility or electric operating entity owned and operated by the political subdivision is also subject to this chapter; when the direct competition ends the governing body of the political subdivision may elect not to have one or more of the utilities or electric operating entities owned and operated by the political subdivision subject to this chapter.

APPENDIX

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
 ALASKA PUBLIC UTILITIES COMMISSION
SUMMARY OF APPROPRIATIONS AND EXPENDITURES
 For Fiscal Years 1988 and 1989
 (UNAUDITED)

<u>Category</u>	1988		1989 <u>Authorized</u>
	<u>1988 Authorized</u>	<u>Expenses and Encumbrances</u>	
Personal Services	\$2,113,600	\$2,103,406	\$2,113,600
Travel	28,660	27,423	57,100 ^{2/}
Other Services	1,592,330 ^{1/}	1,224,346 ^{1/}	1,688,500 ^{2/}
Supplies	21,000	20,800	22,000
Capital Outlay	<u>3,910</u>	<u>3,910</u>	<u>2,900</u>
<u>Total</u>	<u>\$3,759,500</u>	<u>\$3,379,885</u>	<u>\$3,884,100</u>

Note: The information included in this summary was obtained from APUC records and the state accounting system. This information has not been audited by us and, accordingly, we express no opinion on it.

Commission Footnotes:

- 1/ The "Other Services" category is predominantly funded through program receipts which can only be expended for case related activities which are reimbursable by cost allocations. The difference between the 1988 authorization and expenditure in this category is because of a lapse in program receipts funds which were not required for case related expenses.
- 2/ Since FY1982, "Travel" and "Other Services" budget authorizations have been funded by both the General Fund and program receipts: For FY1989, the funding ratio is \$27,100 General Fund to \$30,000 program receipts for the "Travel" category and \$473,500 General Fund to \$1,215,000 program receipts for the "Other Services" category.

HB

75

SENATE COMMITTEE REPORT

FURTHER JUD

3/6/89

DATE TURNED INTO OFFICE 3/13/89

Mr. President:

L&C

Committee considered CSHB 75 (JUD)

construction contractor licensing requirements; efd

and recommended

- replace with _____ CS _____) same title
- or adopt _____ CS _____) new title
- attached amendment(s) and technical title change (HB only)
- _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

FISCAL NOTE(S) zero fiscal impact appropriation no FN
 new updated previous
 same as previous fiscal note(s) published _____

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Chairman signature and recommendation

Committee Backup attached

MEMORANDUM

State of Alaska

Department of Law

TO Randall Burns, Director
Division of Occupational Licensing
Department of Commerce and Economic
Development

DATE February 15, 1989

TEL NO 465-3600

SUBJECT HB 75 ("An Act relating to construction contractor licensing requirements and exemptions; and providing for an effective date.")

FROM *Beth*
Elizabeth J. Kerttula
Assistant Attorney General
Commercial Section-Juneau

During the House Labor and Commerce meeting last week, there were three questions concerning this bill. I have researched the issues and my analysis follows.

1. SECTION ONE OF HB-75 IS CONSTITUTIONAL.

The first question that was asked was whether section 1 of the bill was constitutional. AS 08.18.101 (1) (B) as written in the bill presents no problem, but since AS 08.18.101 (1) (A) distinguishes between contractors who have insurance from companies who are admitted to do business in Alaska, and contractors who do not, this raises a question whether there might be an equal protection issue under the 14th Amendment of the U.S. Constitution, or under Art. I, §1 of the Alaska Constitution.

I do not find an unconstitutional discriminatory effect in HB-75.

Since there is no discrimination between residents and non-residents, I do not think that equal protection is violated as far as contractors are concerned. The requirement applies to both resident and non-resident contractors alike.

Neither is there discrimination against insurance companies, since any company, resident or non-resident, can become "admitted" to do business in Alaska. Therefore, HB-75 is not requiring the purchase of insurance from resident insurance companies only. Although the bill requires that the insurance company be admitted to do business in Alaska, this is a fairly minimal, and legitimate, requirement.

If HB-75 required that contractors purchase insurance from only resident companies, or if it required residency as a prerequisite to obtain a contractor's license, then there might be a violation of equal protection. Since HB-75 does not, there is no problem.

Even if a court were to analyze this section under equal protection, the section would meet constitutional muster. For purposes of clarification, I have included the following three-step analysis. See, Alaska Pacific Assurance Co. v. Brown, 687 P.2d 264, 269 (Alaska 1984) (helpful explanation of equal protection analysis in Alaska).

A. What is the weight of the constitutional interest impaired? Depending on the primacy of the interest involved the state will have a lesser or greater burden in justifying its legislation.

The interests involved here are economic. Contractors may have to pay more to get proper coverage, and insurance companies will have to be registered in Alaska to be "valid" under the proposed licensing requirement in HB-75. These economic concerns are not very weighty. See, Lynden Transport, Inc. v. State, 532 P.2d 700, 707 (Alaska 1975). Thus, there is a lesser burden on the state in justifying the legislation.

B. What purpose does the statute serve? Depending upon the level of review, the state may be required to show purposes which at the low end of the scale are simply "legitimate objectives" all the way to a "compelling state interest" at the upper end.

Since this is an economic regulation, we have a lower level of review, and probably all the state will have to meet is a "legitimate objective". Id. There can be a number of reasons for the legislation, and since we are at a low level of review the fact that we have one valid reason should suffice. Aiding injured workers through requiring proper workers compensation coverage is a proper purpose.

C. What is the state's interest in the particular means employed to further its goals? The state's burden differs in accordance with the determination of the level of scrutiny under "A", and goes from a "substantial relationship between the means and ends" to a much closer fit.

Here we have the lowest scrutiny, so the state would only have to show that there is a "substantial relationship between the means and the ends" of this statutory requirement. The fit does not have to be absolutely perfect.

The main goal of HB-75 is to provide proper compensation to injured workers. By requiring a contractor to

buy insurance from a company registered to do business in Alaska we assure that we have a method to monitor the type of coverage a contractor has. Without this type of requirement the Department of Labor has not been able to effectively enforce the state's workers compensation laws because there is no way to monitor who has proper coverage and who does not.

Under my initial analysis, section one of the bill passes constitutional muster. Key to this is the fact that any company can be "admitted to do business" in Alaska, and that does not necessarily mean that they have to be resident corporations.

2. WE CAN EXEMPT SOLE PROPRIETORS TO CLARIFY THAT THE LEGISLATION DOES NOT APPLY TO THEM.

The second question was whether this legislation applied to sole proprietors.

I do not think it does, but to be safe we can easily include a provision exempting sole proprietors (and partners). Since sole proprietors and partners can currently opt into the workers compensation program if an insurer will accept them, under AS 23.30.239, people who chose this option should remain within the ambit of the bill. Section 2 of HB-75, dealing with liability, would still apply to sole proprietors.

I suggest re-drafting the bill to include a section "a" after the words "INSURANCE REQUIRED" at line 11, and then adding a section "b" after line 27, to state:

(b) Section a (1) does not apply to sole proprietors or partners who do not elect under AS 23.30.239 to utilize workers compensation coverage as an employee.

This will clarify that sole proprietors (and partners) who are not in the workers compensation program are not required to prove that they have workers compensation coverage before being granted a contractor's license.

3. WE CANNOT REQUIRE FEDERAL CONTRACTORS TO HAVE STATE CONTRACTOR'S LICENSES.

The final question was whether we can repeal AS 08.18.161(7).

This section currently exempts contractors on federal projects from being required to obtain an Alaskan contractor's license.

After research I conclude that we cannot require that federal contractors obtain a state license.

As a sovereign, the U.S. government controls federal territory. It also controls its own employees and has jurisdiction over them both. States have no jurisdiction over the government itself, or the governments' employees, unless there is a specific grant of authority from the U.S. government to the states.

Although private contractors are not government employees in the same sense as employees such as postal workers, under 10 U.S.C.A. § 2305, the federal government has preempted any state contracting license requirements that conflict with its own requirements concerning private federal contractors.

In Leslie Miller, Inc. v. Arkansas, 352 U.S. 187 (1956); the U.S. Supreme Court faced the exact question of whether state licensing requirements applied to federal contractors. The Court held that "Subjecting a federal contractor to the Arkansas contractor license requirements would give the State's licensing board a virtual power of review over the federal determination of "responsibility" and would thus frustrate the expressed federal policy of selecting the lowest responsible bidder." Miller at 190.

The court analyzed the federal determination of "responsibility" as including contractors who were economically sound, had experience and were generally qualified. Arkansas's licensing requirement was similar (as is Alaska's).

The court relied on Johnson v. Maryland, 254 U.S. 51, 57 (1920), in reaching their conclusion, and noted that the following rationale was applicable:

It seems to us that the immunity of the instruments of the United States from state control in the performance of their duties extends to a requirement that they desist from performance until they satisfy a state officer upon examination that they are competent for a necessary part of them and pay a fee for permission to go on. Such a requirement does not merely touch the Government servants remotely by a general rule of conduct; it lays hold of them in their specific attempt to obey orders and requires qualifications in addition to those that the Government has pronounced sufficient. It is the

duty of the Department to employ persons competent for their work and that duty it must be presumed has been performed.

If the state requires federal contractors to prove that they have workers compensation and liability insurance (and other requirements) we will be in conflict with the federal law regulating procurement. We too would be "laying hold" of them by "requiring qualifications in addition to those that the Government has pronounced sufficient." Because of this, we cannot require that federal contractors have state licenses.

I have attached Miller v. Arkansas for your information.

Thus, the exemption currently in statute should not be repealed and section 2 of HB-75 should be removed. There would be no applicability to federal contractors even if we repealed the exemption, but the exemption provides clarity.

It is interesting to note that under 40 U.S.C.A. § 290, federal law grants states the right to impose their (the state's) workers compensation laws to federal projects within a state's boundaries. Begay v. Kerr McGee Corp., 682 F.2d 1311, 1319 (1982). States do not have to formally acknowledge this through law to have this power. Capetola v. Barclay White Co., 139 F.2d 556 (1943), cert. den., 321 U.S. 799 (1944). However, because of sovereign immunity and federal jurisdiction, states do not have the power to enforce their workers compensation laws against the federal government itself. Roelofs v. U.S., 501 F.2d 556 (1974), rehearing den., 511 F.2d 1402, cert. den., 423 U.S. 830 (1975).

4. CONCLUSION

I see no constitutional problem with requiring contractors to get their insurance from companies admitted to do business in Alaska. We are not discriminating against nonresidents, and even under an equal protection analysis this section of the bill is valid.

I think that sole proprietors would be excluded from the workers compensation requirements in the bill as drafted, but to be positive I have made suggestions to clarify that they are excluded from this, but not the liability, requirement. They are excluded unless they opt to take part in the workers compensation

Randall Burns, Director
Division of Occupational Licensing

February 15, 1989
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program (if they can get an insurance company to accept them) as is their present option.

Finally, since we cannot require federal contractors to have a state license, I have suggested deleting section 2 of the bill.

I hope you find this helpful. If I can be of further assistance please do not hesitate to ask.

EJK:jf

cc: Representative Peter Goll
Representative Max Gruenberg
Representative Ann Spohnholz
Representative Dave Donley

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2

HOUSE BILL NO. 75

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to construction contractor licensing requirements and exemptions; and providing for an effective date."

7

8

9

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

10

* Section 1. AS 08.18.101 is amended to read:

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Sec. 08.18.101. INSURANCE REQUIRED. ^(a) Each applicant, at the time of applying for registration or renewal of registration, shall file with the commissioner satisfactory evidence that the applicant has in effect

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15

(1) either

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(A) workers' compensation insurance that is purchased

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from a private insurer who is admitted to do business in Alaska

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and that shows Alaska coverage, appropriate employee classifica-

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tions, and Alaska rates, or

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(B) has a valid workers' compensation self-insurance

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certificate issued by the Alaska Workers' Compensation Board to

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cover Alaska workers; and

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(2) public liability and property damage insurance covering

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the applicant's contracting operations in Alaska in the sum of not

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less than \$20,000 for damage to property, \$50,000 for injury, includ-

26

ing death, to any one person and \$100,000 for injury, including death,

27

to more than one person.

28

~~* Sec. 2. AS 08.18.101(7) is repealed.~~

29

* Sec. ² This Act takes effect immediately under AS 01.10.070(c).

HB0075A

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HB 75

(b)

Section 2 (1) does not apply to ~~persons~~ sole proprietors or partners who do not elect under AS 23.30.239 to utilize workers compensation coverage as an employee.

M, 1956.

Court. 352 U. S.

reflect the intention of the Senate Report, after giving "judicial review only" had been stricken from the bill. It was not intended to give judicial review in immigration law." (Emphasis supplied.) The safeguard of the Act. The safeguard of the alien in both exclusion and appeal. We believe that our immigration law is in accord with these signifying and managing the house of the Congress. It is a far more expeditious judgment, as the experience has shown. But that fact may be of the necessity of arrest and make his choice of the review in challenging his exclusion of the review is that of

Affirmed.

the problem of judicial review of the procedures provided in the bill, security and the protection of citizens of this country, remain of the Administrative Procedure Act. "The Administrative Procedure Act is afforded the alien the same protection as is afforded the citizen." (Emphasis supplied.) 2d Sess., at 127. An action was filed January 19,

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Opinion of the Court.

LESLIE MILLER, INC., v. ARKANSAS.

APPEAL FROM THE SUPREME COURT OF ARKANSAS.

No. 51. Argued December 5-6, 1956.—Decided December 17, 1956

Section 3 of the Armed Services Procurement Act of 1947 provides that awards on advertised bids "shall be made . . . to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered . . ." Appellant was awarded a contract under this section and commenced construction of facilities at an Air Force base in Arkansas over which the United States had not acquired jurisdiction pursuant to 54 Stat. 19, 40 U. S. C. § 255. Appellant was convicted under Ark. Stat., 1947, §§ 71-701 through 71-721, for submitting a bid, executing a contract, and commencing work as a contractor in the State of Arkansas without having obtained a license for such activities from the State Contractors Licensing Board. *Held*: The state statute is in conflict with the federal statute and the regulations thereunder, and the state statute cannot constitutionally be applied to appellant. *Johnson v. Maryland*, 254 U. S. 51. Pp. 187-190.

225 Ark. 285, 281 S. W. 2d 946, reversed and remanded.

Leffel Gentry argued the cause and filed a brief for appellant.

By special leave of Court. *John F. Davis* argued the cause for the United States, as *amicus curiae*, urging reversal. On the brief were *Solicitor General Rankin*, *Assistant Attorney General Doub* and *Melvin Richter*.

William J. Smith argued the cause for appellee. With him on the brief were *Tom Gentry*, Attorney General of Arkansas, and *Thorp Thomas*, Assistant Attorney General.

PER CURIAM.

Appellant submitted a bid in May 1954 for construction of facilities at an Air Force Base in Arkansas over

which the United States had not acquired jurisdiction pursuant to 54 Stat. 19, 40 U. S. C. § 255. The United States accepted appellant's bid, and in June appellant began work on the project. In September, the State of Arkansas filed an information accusing appellant of violation of Ark. Stat., 1947, §§ 71-701 through 71-721, for submitting a bid, executing a contract, and commencing work as a contractor in the State of Arkansas without having obtained a license under Arkansas law for such activity from its Contractors Licensing Board. The case was tried on stipulated facts. Appellant was found guilty and fined. The trial court's judgment was affirmed by the Arkansas Supreme Court, 225 Ark. 285, 281 S. W. 2d 946, and the case came here on appeal. 351 U. S. 948. Appellant and the United States as *amicus curiae* contend that the application of the Arkansas statute to this contractor interferes with the Federal Government's power to select contractors and schedule construction and is in conflict with the federal law regulating procurement.

Congress provided in § 3 of the Armed Services Procurement Act of 1947, 62 Stat. 21, 23, 41 U. S. C. § 152, that awards on advertised bids "shall be made . . . to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered . . ." The report from the Committee on Armed Services of the House of Representatives indicated some of the factors to be considered: "The question whether a particular bidder is a 'responsible bidder' requires sound business judgment, and involves an evaluation of the bidder's experience, facilities, technical organization, reputation, financial resources, and other factors." H. R. Rep. No. 109, 80th Cong., 1st Sess. 18; see S. Rep. No. 571, 80th Cong., 1st Sess. 16. The Armed Services Procurement Regulations,