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test each situation by the guidelines set forth in *Re Utah Power & Light Co.* (1952, Utah) 95 PURNS 390, such guidelines seem to state the case nicely: the advertising and promotion expenses of a company are completely within the control of management; the amount to be so expended can be large or small depending on the judgment and discretion of management; if the full amount of this type of expenditure is to be allowed as an operating expense in testing the company's need for additional net revenue, it is most incumbent upon the management that no expenditures be made in this category except those such as are reasonably necessary to fully serve the customers of the company and keep the company in contact with the consuming public as an alert, energetic, forward-looking business enterprise and public servant.

[b] Practice pointers

Counsel practicing before a utility regulating agency on behalf of a public utility seeking a rate increase needs to be aware that the burden of proof is upon the utility to establish that such an increase in revenue is essential.¹⁵ And it is equally true that the one asserting the error of the rate set by the commission has the burden of proving that the order is invalid because it is unjust and unreasonable

in its consequences.¹⁶ Although a commission may examine a utility's expenses or cost of service very carefully, and although justification for large outlays is frequently required, an attorney for a utility may be able to prove his case by showing that the present utility rates set by the commission are confiscatory,¹⁷ that utility income is insufficient both to meet overhead and also to give a fair and reasonable return to the utility's stockholders, and that management has handled the utility's affairs in a wise and efficient manner and still has found itself in a financial bind.

If counsel can show the reasonableness of the advertising expenditures by the utility—either by a comparison of such expenses to those of a sufficient number of utilities whose operations are similar in size and type, or by a showing that such expenses have remained a constant percentage of the total operating-expense budget over a significant period of time—and that such advertising expenditures will result in benefits to the ratepayer as well as to the stockholders, his defense of such items would seem to be sufficient. As the court pointed out in *New England Tel. & Tel. Co. v Department of Public Utilities* (1971) 360 Mass 443, 275 NE2d 493, 59 ALR3d 899,¹⁸ in view of the fact that

15. *Application of Hawaiian Electric Co.* (1975) 56 Hawaii 260, 535 P2d 1102, 83 ALR3d 951.

16. *Fuels Research Council, Inc. v Federal Power Com.* (1967, CA7) 374 F2d 842.

17. A bill in equity to enjoin enforcement of rates was held in *Southern Bell Tel. & Tel. Co. v Georgia Public Service Com.* (1948) 203 Ga 832, 49 SE2d 38, to be the proper remedy for a public utility whose rates set by the commission were clearly confiscatory and violative of due process. It was there explained that man-

damus was an inadequate remedy, in that it was not available to require public officials (commissioners) to change their action taken in the exercise of a discretion vested in them by the law, and that it could merely require that these officials act again in the exercise of this discretion vested in them by law, which discretion was subject to errors in its conclusions.

For further discussion of this question, counsel's attention is drawn to the annotation at 8 ALR2d 839.

18. § 7, *infra*.

management should be permitted to control advertising expenditures as long as they are within the limits of reason, and so long as these expenses do not exceed what is reasonably necessary and proper in the particular case, there is no ground to distinguish such costs from other necessary and proper expenses. The court explained that to the extent that advertising fosters sound consumer relations or encourages people to invest in a company, it is clear that the consumers, as well as the stockholders, are ultimately benefited through the lessening of the expense of doing business.

If counsel can show the expenses in question to have been incurred for advertising of an informational nature, such as electric or gas utility advertisements directed to energy conservation and the proper use of energy,¹⁹ or communications utility advertisements relating to the proper use of party telephone lines, and the issuance and distribution of telephone directories,²⁰ or advertisements giving information regarding benefits available to prospective utility employees,²¹ the defense of such items of expense would seem to be complete, inasmuch as most informational advertising is

considered beneficial to a utility's customers.

Counsel should be aware that promotional expenses are a more controversial item than are expenses incurred in advertising of an informational nature. However, expenses incurred in promotions which can be shown to have added new customers and/or to have sold additional services, and which are reasonable in amount, do not seem to encounter much opposition.²² But such promotional expenditures have been disallowed by utility commissions in ratesetting cases where it was obvious that there would be no benefit to the ratepayer from such expenditures made by the utility,²³ and, as pointed out in *Application of Hawaiian Electric Co.* (1975) 56 Hawaii 260, 535 P2d 1102, 83 ALR3d 951, § 9[b], *infra*, expenses incurred for promotional practices which tend only toward wastefulness or an aggravation of the energy crisis have also recently become highly suspect.

In the area of attempting to justify expenses incurred in a utility's advertising campaign to "explain" its need for additional revenue, counsel will face a formidable array of judicial and quasi-judicial opinions running con-

19. See, for example, *Re North Carolina Natural Gas Corp.* (1973, NC) 99 PUR3d 237; *Re Michigan Consolidated Gas Co.* (1973, Mich) 1 PUR4th 229; *Re Gas Service Co.* (1974, Mo) 6 PUR4th 99; and *Washington Utilities & Transp. Com. v Pacific Power & Light Co.* (1974, Wash) 7 PUR4th 470.

20. *Southern Bell Tel. & Tel. Co. v Georgia Public Service Com.* (1948) 203 Ga 832, 49 SE2d 38.

21. *Re New York Tel. Co.* (1970, NY) 84 PUR3d 321; *Pennsylvania Public Utilities Com. v Bell Tel. Co.* (1971, Pa) 93 PUR3d 13.

Even such advertising results as obtain-

ing sufficient numbers of new employees to avoid expensive overtime pay, and reducing the cost of handling public inquiries, were held in *Re Pacific Tel & Tel. Co.* (1954, Cal) 5 PUR3d 396, to be beneficial to the ratepayer and thus the cost of such advertising was allowed as an operating cost.

22. § 9[a], *infra*.

23. § 9[b], *infra*.

See, to similar effect, *Re Pacific Tel. & Tel. Co.* (1972, Mo) 95 PUR3d 1; *Re Kansas Gas & Electric Co.* (1972, Kan) 95 PUR3d 247; and *Re Potomac Electric Power Co.* (1975, Md) 10 PUR4th 13.

tra. Perhaps with some additions, the points brought out in the dissenting opinion in *Re Southwestern Bell Tel. Co.* (1949, Mo) 77 PUR NS 33, might be put forth. There it was stated, in respect to the disallowance of advertising expenses incurred in connection with the rate case, that this advertising, in the form of newspaper advertisements, pamphlets, and bill inserts, had been a proper means which the company employed to inform its subscribers of its need for additional money; that the company should have the right to present its problems to the public using its services; and that it was fair that the company should be allowed a reasonable sum for this purpose so that its customers would not be misled by information from less authoritative sources. Counsel might also note *Cincinnati Gas & Electric Co. v Cincinnati* (1948, Ohio) 75 PUR NS 97, in which it was held that advertising expenses incurred by a gas and electric utility in presenting its case in the newspapers, while the question of rates was still a matter of negotiation with the Council of the city, would be included in the costs of service.

The question of the allowance of advertising expenses incurred in connection with political issues, such as private versus government ownership and operation of public utilities, has been resolved by utility commissions against the inclusion of such expenses as operating costs for ratemaking purposes, and counsel should be aware that these decisions have been made both on the merits and in accounting procedure determinations. Determinations on the merits have, for the most part, been made in situations involving contributions by a local util-

ity to a national advertising campaign.²⁴ The Federal Power Commission's decision in *Re Alabama Power Co.* (1959) 22 FPC 72, 29 PUR3d 209, set forth the situation with regard to such expenditures in the accounting context, and distinguished between those advertising expenses to be charged to an above-the-line advertising account and those to be charged to below-the-line accounts. The commission ruled that nonpromotional advertising of the type sometimes referred to as institutional advertising or as good will advertising, the purpose of which is to foster and maintain public good will rather than being intended for any immediate and direct promotion of sales of electricity or appliances, should be charged to account number 787.2, Advertising; however, Account 538, Miscellaneous Income Deductions, should be charged with the cost of any advertising done for the purpose of influencing public opinion as to the election of public officers, referenda, proposed legislation, proposed ordinances, repeal of existing laws or ordinances, and approval or revocation of franchises, or for the purpose of influencing decisions of public officers, or of any advertising having any direct or indirect relationship to political matters. The commission explained that the 700 and 800 series of accounts involved operating expenses charged against electric revenues normally collected from the ratepayer (in the language of accountancy, such items are classified "above the line"), while account 538 involved income deductions which, being charged against general corporate income, more directly affected the shareholders. (Such items are referred to as

24. See, for example, *Re Consumers Power Co.* (1959, Mich) 29 PUR3d 133, 972

and *Re Pacific Power & Light Co.* (1960, Or) 34 PUR3d 36.

"below the line.") The commission emphasized, however, that this proceeding dealt only with the classification of certain expenditures for accounting purposes, and that the directive requiring political advertising to be in account number 538 did not decide its final disposition for rate purposes.

II. General considerations

§ 3. General rule that corporate management should be permitted to control amount of advertising expenses

In the following cases involving the propriety of allowing advertising or promotional expenses incurred by a public utility to be included in operating expenses for ratemaking purposes, the courts recognized the general rule that corporate management should be permitted to control the amount of advertising expenses incurred by the utility.

Good faith is to be presumed on the part of the managers of a business, and in the absence of a showing of inefficiency or improvidence, a court will not substitute its judgment for theirs as to the measure of a prudent outlay, the court, speaking to the issue of the allowability of promotion expenses for ratemaking purposes, observed in *West Ohio Gas Co. v Public Utilities Com.* (1935) 294 US 63, 79 L Ed 761, 55 S Ct 316.

See *Trans World Airlines, Inc. v Civil Aeronautics Board* (1967) 128 App DC 126, 385 F2d 648, cert den 390 US 944, 19 L Ed 2d 1133, 88 S Ct 1029, an appeal from a final subsidy mail rate determination, in which the court, referring to certain selling expenses, noted the principle that good faith is presumed on the part of the managers of a business regulated

by the government, and that—in the absence of a showing of inefficiency or improvidence—their judgment on prudent outlay is not to be set aside by a commission regulating rates.

Public regulation must not supplant private management, the court noted in *Southern Bell Tel. & Tel. Co. v Georgia Public Service Com.* (1948) 203 Ga 832, 49 SE2d 38, reinstating the advertising expense item the commission had disallowed.

The propriety of spending money for advertising the wares of a utility is for the owners to determine, the court pointed out in *Wichita Gas Co. v Public Service Com.* (1930, DC Kan) 3 F Supp 722.

In view of the fact that the commission was of the opinion that management should be permitted to control advertising expenses as long as they are within the limits of reason, the expenses incurred therefor would be allowed, the court explained in *State ex rel. Dyer v Public Service Com.* (1960, Mo) 341 SW2d 795, cert den 366 US 924, 6 L Ed 2d 384, 81 S Ct 1351.

This is a field in which management must be allowed some discretion, within the bounds of good faith and prudent judgment, the court noted in *Public Service Co. v State* (1959) 102 NH 150, 153 A2d 801, in speaking of the amount claimed for promotion.

See *State v Oklahoma Gas & Electric Co.* (1975, Okla) 536 P2d 887, an appeal from a commission order prohibiting public utilities from making expenditures for promotional advertisements, in which the court pointed out that attempts to disallow promotional expenditures as operating expenses for ratemaking purposes had been held to constitute an invasion of the discretion reserved to corporate management if the expenditures were

designed to produce ultimate benefits to every customer and were not excessive or unwarranted.

The function of a public service commission is that of control and not of management, and regulation should not obtrude itself into the place of management, the court pointed out in considering the commission's action in regard to promotional expenses of the utility in *Petition of New England Tel. & Tel. Co.* (1949) 115 Vt 494, 66 A2d 135. The court declared that this rule is recognized in all of the cases. The court also noted that the matter of advertising expenses called for the exercise of judgment on the part of the management of the company and that good faith on its part was to be presumed.

§ 4. Factors considered by court in application of rule

[a] Is advertising beneficial to ratepayer?

In the following cases involving the propriety of allowing advertising or promotional expenses incurred by a public utility to be included in operating expenses for ratemaking purposes, the courts recognized that one of the factors to be considered in determining whether the company's figures on such expenses should be allowed, reduced, or disallowed as part of the operating expenses was whether or not the advertising engaged in by the public utility benefited the ratepayer.

In *El Dorado v Arkansas Public Service Com.* (1962) 235 Ark 812, 362 SW2d 680, a minimum gas service charge case, the court stated, in effect, that advertising could be charged to utility expenses where increases in sales resulting therefrom would tend to lower the price paid by consumers.

Expenditures for advertising which

did not benefit the ratepayer were disallowed as operating expenses in *Application of Hawaiian Electric Co.* (1975) 56 Hawaii 260, 535 P2d 1102, 83 ALR3d 951, where the court noted that one of the primary factors which the commission must take into consideration when it fixes rates is fairness to the ratepayer.

Advertising expenses incurred by the company and allowed as administrative costs by the commission would not be disallowed on appeal, where the commission had been unable to find that such advertising would not result in benefit to the ratepayers, the court noted in *State ex rel. Dyer v Public Service Com.* (1960, Mo) 341 SW2d 795, cert den 366 US 924, 6 L Ed 2d 384, 81 S Ct 1351.

See *State v Oklahoma Gas & Electric Co.* (1975, Okla) 536 P2d 887, an appeal from an order of the corporation commission prohibiting public utilities from making expenditures for institutional advertising, promotional advertising, and promotional practices, in which the court declared that the commission might disallow any institutional advertising expenditures from operating expenses for ratemaking purposes unless the utility established that such expenditures benefited all ratepayers.

[b] Is advertising expense reasonable?

In the following cases involving the propriety of allowing advertising or promotional expenses incurred by a public utility to be included in operating expenses for ratemaking purposes, the courts recognized that one of the factors to be considered in determining whether the company's figures on such expenses should be allowed, reduced, or disallowed as part of the operating expenses was whether the amount expended by the

utility for advertising and promotions was reasonable.

The court noted in *West Ohio Gas Co. v Public Utilities Com.* (1935) 294 US 63, 79 L Ed 761, 55 S Ct 316, that within the limits of reason, advertising or development expenses to foster normal growth are legitimate charges upon income for rate purposes as for others.

Advertising expenses were allowed where they had not been "excessive nor deemed improper," in *Illinois Bell Tel. Co. v Illinois Commerce Com.* (1973) 55 Ill 2d 461, 303 NE2d 364.

The court explained in *Peoples Gas Light & Coke Co. v Slattery* (1939) 373 Ill 31, 25 NE2d 482, app dismd 309 US 634, 84 L Ed 991, 60 S Ct 724, that ordinarily, in the absence of a showing of inefficiency or improvidence, the court will not substitute its judgment for the management's judgment as to the amount of outlay expended in procuring new business or in holding business already obtained.

Where the method used to increase business is appropriate, the amount expended for the advertising is reasonable, and the results justify the expenditure, such expenses are necessary operating expenses, the court explained in *Wichita Gas Co. v Public Service Com.* (1930, DC Kan) 3 F Supp 722.

The question is whether it clearly appears that the advertising expenses are excessive or unwarranted, the court pointed out in *Central Maine Power Co. v Public Utilities Com.* (1957) 153 Me 228, 136 A2d 726.

Promotional expenses should have been allowed as operational costs, the court declared in *State ex rel. North Carolina Utilities Com. v Piedmont Natural Gas Co.* (1961) 254 NC 536, 119 SE2d 469, where the commission

had used an unreasonable standard of comparison in disallowing the expenditures, and had otherwise found the company's management to be reasonable and of high quality.

In *Columbus v Public Utilities Com.* (1950) 154 Ohio St 107, 42 Ohio Ops 186, 93 NE2d 693 (ovrld on other grounds *Cleveland v Public Utilities Com.*, 164 Ohio St 442, 58 Ohio Ops 289, 132 NE2d 216), advertising expenses were allowed as an operational expense where the company's management had not been unreasonable in this respect.

See *State v Oklahoma Gas & Electric Co.* (1975, Okla) 536 P2d 887, an appeal from an order of the corporation commission prohibiting public utilities from making expenditures for promotional advertisements, in which the court explained that promotional expenditures may be excluded from operating expenses for ratemaking purposes if such expenditures are excessive, unwarranted, unreasonable, or incurred in bad faith.

The court in *American Can Co. v Davis* (1977) 28 Or App 107, 559 P2d 898, upheld the allowance of expenses of an advertising program directed at energy conservation, stating that there was substantial evidence enabling the commissioner to find that the utility's expenditures for such advertising were not unreasonable.

In *State v Lone Star Gas Co.* (1935, Tex Civ App) 86 SW2d 484, error ref, revd on other grounds 304 US 224, 82 L Ed 134, 58 S Ct 883, reh den 304 US 590, 82 L Ed 1549, 58 S Ct 1051, advertising or new business expenses were disapproved where the company was held not to have supported its expenditures by the quantum and character of evidence required.

See *Petition of New England Tel. & Tel. Co.* (1949) 115 Vt 494, 66 A2d

135, involving, *inter alia*, the court's response to questions presented by the briefs of both parties, which the court felt might arise for determination in a court-ordered hearing *de novo* before the commission, in which the court stated that the advertising expenses of the company should not be disallowed or reduced unless it clearly appeared that they were excessive or unwarranted or incurred in bad faith.

III. Particular types of advertising or promotional expenditures

§ 5. Advertising, generally

In the following cases involving the propriety of allowing advertising expenses incurred by a public utility to be included in operating expenses for rate-making purposes, the courts held that advertising expenses in general, as stated by the utility and allowed by the commission, were allowable.

Responding to the plaintiff cities' claim that advertising expenditures allowed by the commission as an operating expense for rate-making purposes had been excessive, the court in *Columbus v Public Utilities Com.* (1950) 154 Ohio St 107, 42 Ohio Ops 186, 93 NE2d 693 (ovrld on other grounds *Cleveland v Public Utilities Com.*, 164 Ohio St 442, 58 Ohio Ops 289, 132 NE2d 216), upheld the allowance, explaining that the commission had stated that the determination of what a reasonable expenditure for this purpose should

be was not subject to exact determination, and that the commission had been unable to say that the company's management had been unreasonable in this respect.

See *Petition of New England Tel. & Tel. Co.* (1949) 115 Vt 494, 66 A2d 135, a case in which the court responded to questions, presented by the briefs of both parties, which the court felt might arise for determination in a court-ordered hearing *de novo* before the commission, and in which the court considered the complaint of extravagant expenditures for advertising by the telephone company. Noting that the matter of advertising expense called for the exercise of judgment on the part of the management of the company and that good faith on its part was to be presumed, the court explained that although these expenses should be scrutinized with care by the commission, they should not be disallowed or reduced unless it clearly appeared that they were excessive or unwarranted or incurred in bad faith.²⁵

§ 6. Informational advertising

In the following cases involving the propriety of allowing advertising expenses incurred by a public utility to be included in operating expenses for ratemaking purposes, the courts held that the utility's informational advertising expenditures, including those directed at energy conservation, were allowable.

In *Los Angeles v Public Utilities*

25. In *Re New England Tel. & Tel. Co.* (1950, Vt) 83 PURNS 414, a hearing *de novo* ordered by the court, the commission stated that it was proper to allow as a legitimate operating expense the cost of advertising designed to inform subscribers as to changes in service, its use, closing of directories, and party line relationships, since such advertising generally accrued to the benefit of the individual

customer served by the company. The commission questioned the propriety, however, of advertising expense designed to promote the good will of the company and of the Bell System in general, as well as the propriety of advertising expense incurred by the company in explanation and justification of proposed rate increases pending before regulatory bodies.

Com. (1972) 7 Cal 3d 331, 102 Cal Rptr 313, 497 P2d 785, a review of the commission's approval of telephone rate increases, the court upheld the commission's inclusion of the major portion of advertising expenditures in operating expenses. The court, pointing out that advertising which is properly classified as informative, results in more than a mere fostering of good will, and should result in reductions in operating costs and more efficient service to the ratepayer, determined that the commission could properly conclude that expenditures for such purposes were reasonable operating expenses, and that in the absence of a showing that the amount allowed for informative advertising was primarily directed for other purposes, the allowance of the commission should be upheld.

A disallowance of the telephone company's advertising expenses, on the ground that the company already had more applications for telephones than it could fill and therefore should not advertise for more, was found to be in error in *Southern Bell Tel. & Tel. Co. v Georgia Public Service Com.* (1948) 203 Ga 832, 49 SE2d 38, a suit for an injunction against obstruction of the telephone company from placing in effect emergency rates exceeding those fixed by the commission's order. Explaining that the testimony of the company's witnesses was that the advertising consisted in part of notices in the papers to acquaint the public with the proper use of party lines, others relating to the issuance and distribution of new telephone directories, some to the conversion of services from the manual to the dial telephone—all testimony of the company showing that the money was actually spent for advertising purposes considered by the management to be in the public inter-

est—the court concluded that the advertising expenditures were proper expenses and should have been considered in computing rates.

A rate set by the commission was affirmed in *American Can Co. v Davis* (1977) 28 Or App 107, 559 P2d 898, notwithstanding the contention that the cost of the utility's advertising program directed at energy conservation should not have been allowed as a ratepayer expense because it was not in the best interests of residential customers. The court stated that there was substantial evidence enabling the commissioner to find that energy conservation is in the public interest, and that the utility's expenditures for such advertising were not unreasonable. The court noted that other regulatory bodies which had considered this issue had allowed conservation advertising expenses.

§ 7. Institutional advertising

In the following cases involving the propriety of allowing advertising expenditures incurred by a public utility to be included in operating expenses for rate-making purposes, the courts held that institutional advertising expenditures made by the utility were allowable.

Holding to be error the action of the department of public utilities in disallowing, as a proper cost of service, nearly half of the claimed advertising expense of the utility, the court in *New England Tel. & Tel. Co. v Department of Public Utilities* (1971) 360 Mass 443, 275 NE2d 493, 59 ALR3d 899, rejected the department's determination that the institutional advertising relating to attempts to improve the climate of public opinion toward the company or to explain why service was not as good as it had been should be borne by the stockholders of the company. Citing with

approval a New York Public Service Commission decision²⁶ in which the commission had held that expenditures for institutional advertising were a proper expense for ratemaking purposes, the court noted that the decision stated that what was of concern there were advertisements which were obviously designed to project a favorable image of the company to its customers, its existing stockholders, and potential investors; that to the extent that such advertising fostered sound consumer relations or encouraged people to invest in the company, it was clear that the consumers, as well as the stockholders, were ultimately benefited through the lessening of the expense of doing business; that the trend in modern regulatory decisions was to allow such charges as proper for rate-making purposes. The commission had concluded that in view of the fact that management should be permitted to control advertising expenditures as long as they are within the limits of reason, and so long as these expenses do not exceed what is reasonably necessary and proper in the particular case, there was no ground to distinguish the advertising costs in question from other necessary and proper expenses. The court determined that the department's disallowance of some of the expenditures for advertising on the grounds stated by it was an unwarranted interference with the function and prerogative of the company's business managers and that it was therefore beyond the power and authority of the department. On remand the test year computations were to be made without deduction of such advertising costs, the court directed.

The court in *State ex rel. Dyer v Public Service Com.* (1960, Mo) 341 SW2d 795, cert den 366 US 924, 6 L Ed 2d 384, 81 S Ct 1351, declined to overturn a decision of the commission to allow, as an administrative expense, a contribution by an electric utility to a private utility power group for several advertisements. In this appeal from a judgment affirming orders of the public service commission made in a utility rate proceeding, the court explained (1) that the commission had found that it was a recognized fact that the principal purpose of advertising is to create good public relations and stimulate a demand for the service or product being advertised, and (2) that the commission was unable to find from the evidence offered that this particular form of advertising would do neither. The court went on to point out that the commission had further stated that in view of the fact that it was of the opinion that management should be permitted to control such advertising expenditures as long as they are within the limits of reason, and in view of the fact that the commission was unable to find that such advertising would not result in benefit to the rate payers, the expenses incurred therefor would be allowed.

See *State v Oklahoma Gas & Electric Co.* (1975, Okla) 536 P2d 887, an appeal from an order of the corporation commission prohibiting public utilities from making expenditures for institutional advertising,²⁷ in which the court declared that the prohibition on expenditures for institutional advertising was an unreasonable means of protecting rate payers from these expenditures. Noting that this

26. *Re Consolidated Edison Co.* (1961, NY) 41 PUR3d 305.

27. Institutional advertising was defined

as advertising designed to promote the corporate image of the utility and to present it in a favorable light to the public and to potential investors.

did not mean that the commission must allow all institutional advertising expenses as operating expenses for rate-making purposes, the court concluded that the commission might disallow any institutional advertising expenditures from operating expenses for rate-making purposes unless the utility established that such expenditures benefited all rate payers.

Refusing to disturb the commission's allowance of the power company's expenses incurred for trade advertising, the court in *Commonwealth v Virginia Electric & Power Co.* (1971) 211 Va 758, 180 SE2d 675, an appeal from the corporation commission's authorization of electric rate increases, pointed out that although the commission had recently disapproved further use of such advertising in the form engaged in by the company, the commission had refused to eliminate those expenses, finding it reasonable to assume that the company would substitute some other form of promotional activity at an equal or greater cost.

§ 8. Advertising supporting rate increase

In the following cases involving the propriety of allowing advertising expenses incurred by a public utility to be included in operating expenses for rate-making purposes, the courts held that advertising expenses incurred in support of attempts to obtain rate increases should be disallowed.

In *Ft. Smith v Southwestern Bell Tel. Co.* (1952) 220 Ark 70, 247

SW2d 474, wherein the Arkansas Public Service Commission's condemnation of the company's practice of using the ratepayers' money to conduct an advertising campaign to increase the rates proposed to be charged the ratepayers by the company was approved,²⁸ the court explained that the commission's language indicated that in hearings for rate increases by any utility, the commission would carefully examine to see how much was being paid for overhead and staff work directed, in whole or in part, at trying to get rate increases from the public. Making no specific reduction in the amount of advertising expenditures claimed by the company as operating expenses, the court did declare that the utility must use all its receipts as though they were a public trust, and that receipts must not be dissipated in an effort to get further increases from the public.

Affirming the commission's disallowance of expenditures during the test year for advertising purposes, including costs of advertising by means of newspaper, radio, and television, ostensibly as a means of informing the public as to the company's situation in connection with the instant application for a rate increase, the court in *Southern Bell Tel. & Tel. Co. v Louisiana Public Service Com.* (1960) 239 La 175, 118 So 2d 372, noted that proper allowance should be made for ordinary advertising expenses. The court, referring to the commission's statement, explained that after re-

28. The commission, in *Re Southwestern Bell Tel. Co.* (1951, Ark) 87 PUR NS 97, from which the above appeal was taken, had noted that during the course of the hearing, the propriety of this practice was questioned and that the company had discontinued the practice after the issue had been raised in the hearing. The com-

mission voiced the hope and assumption that the company would not engage in such practice in the future, but apparently took no further action on the matter, stating in its order that the operating revenues and expenses, as discussed in this opinion, were thereby approved.

viewing the rulings of the courts of other states which condemn the practice of utilities in using the rate payer's money to conduct an advertising campaign to increase the rates proposed to be charged to the rate payer, the commission disallowed this item, not on the grounds of impropriety, but because the record clearly showed that these expenditures were abnormal and nonrecurring in character and that their inclusion in the operating expense accounts would distort the test year earnings.

§ 9. Promotion

[a] Expenses allowed or allowable

Under the circumstances of the following cases involving the propriety of allowing promotional expenses incurred by a public utility to be included in operating expenses for rate-making purposes, the courts held that promotional expenditures made by the utility were allowable.

Within the limits of reason, advertising or development expenses to foster normal growth are legitimate charges upon income for rate purposes. The court declared in *West Ohio Gas Co. v Public Utilities Com.* (1935) 294 US 63, 79 L Ed 761, 55 S Ct 316, reversing on appeal the decree of a state Supreme Court affirming a rate order of the state public utilities commission. The commission had more than halved the expenses claimed by the gas company for procuring new business or endeavoring to procure it, on the ground that anything more than what was allowed by the commission was unnecessary and wasteful. The court responded that the criticism had no basis in evidence, either direct or circumstantial. Noting that good faith was to be presumed on the part of the managers of a business, the court stated that in the absence of a showing of ineffi-

ciency or improvidence, a court would not substitute its judgment for theirs as to the measure of a prudent outlay.

In *El Dorado v Arkansas Public Service Com.* (1962) 235 Ark 812, 362 SW2d 680, a minimum gas service charge case, the court, responding to the contention that expenses incidental to merchandising, such as advertising, should not be allowed as a utility expense, declared that the commission had correctly allowed the expense of company advertising to be charged to utilities expense. The court pointed out that the record reflected that the company engaged in merchandising only such items as were related to its utility business and would tend to increase the sale of gas. The court held, therefore, that the commission had authority to permit the company to charge to utilities expense items of merchandise advertising, and that it did not act arbitrarily in doing so on the reasonable theory that increased gas sales would tend to lower the price paid by consumers.

On appeal from a rate base determination by the public utility commission, the court in *Re Honolulu Gas Co.* (1935) 33 *Hawaii* 487, determined that the commission's division of the gas company's expenses, incurred in carrying on a merchandise business devoted to the sale locally of gas stoves, gas heaters, gas refrigerators, and other gas appliances, between utility and nonutility activities, was unwarranted, and that such expenses, including advertising, should have been considered and included in the rate base. The court, pointing out that if the commission was correct in its conclusions that the merchandise activities of the company were nonutility, it followed that the same had no proper place in the rate base, and the

division of expenses on the above basis was justified, explained that the uncontroverted evidence showed that the merchandise business of the company constituted but a small percentage of the company's total operations, and that it returned slight, if any, profit to the company and was carried on solely for the purpose of promoting or increasing the demand for manufactured gas throughout the territory in which the company was supplying that product. Noting that there was ample authority to sustain the principle that a company will not be permitted to charge as an operating expense of its public utility activities separate merchandising or other non-utility enterprises, the court stated that it was well settled that where a gas manufacturing company engages in the sale of gas appliances not as an independent or profit-making vocation but to encourage and stimulate the sale of gas, the merchandising thus carried on is a business activity beneficial to the consuming public because the increased use of gas necessarily tends to lower the rate to the consumers, and the assets and capital thus devoted should be included within the property to be appraised in determining the rate base. Recognizing that here, as in other cases, it was the practice of the gas company to conduct such business partly to aid consumers in securing gas appliances manufactured under standard specifications that would thus render most efficient service to the consumers, and partly, by thus promoting the sale of appliances to be used for additional purposes, to increase the sale of gas, the court concluded that the reasonable expenses incurred in promoting new business or in the endeavor to procure it should be incorporated into the rate base.

Notwithstanding the contention

that the commission had erred in allowing excessive amounts expended for advertising by the telephone company to be treated as operating expenses for rate-making purposes, the court in *Illinois Bell Tel. Co. v Illinois Commerce Com.* (1973) 55 Ill 2d 461, 303 NE2d 364, affirmed the commission's finding that the expenditures had not been excessive or improper. Noting that there was no quarrel with the company's expenditures for "informative" as distinguished from "promotional" advertising, the court stated that the telephone company's position was that a reduction in advertising would injure service and reduce its net earnings. The court referred to the commission's statement relative to the company's advertising and public relations programs, in which the commission had declared that the company's expense in relation thereto had not been excessive nor should it be deemed improper. The commission had gone on to add that in an economic climate involving inflationary spiraling of costs which the utilities cannot avoid and still provide adequate service to the public, it becomes apparent to the regulatory agencies that a company's operating expenses should be closely scrutinized and that those which do not specifically relate to business operations should be excluded for ratemaking purposes in the determination of the company's operating income. The commission had pointed out that this observation had also been made in a recent expression of policy on advertising by the New York Public Service Commission wherein it was stated that since management could control its advertising expenditures, it was not in the interest of anyone to have unnecessary institutional advertising

exacerbate customer resentments at a time when large rate increases were made necessary by increases in the various classes of costs beyond the control of utility management. The commission had concluded that sound business judgment indicated that the belt tightening process should begin in those areas not directly and totally related to the providing of the utility service to the public. The court explained that after the admonition that such expenditures would be carefully scrutinized in the future, the commission had then found that the telephone company's expenditures had not been excessive or improper, and the court stated that from its review of the record, it could not say that the commission's findings were without sufficient support in the evidence.

Denying the exceptions by the commission as to the gas company's advertising expenses to be included in operation costs for ratemaking purposes, the court in *Wichita Gas Co. v Public Service Com.* (1930, DC Kan) 3 F Supp 722, pointed out that the propriety of spending money for advertising the wares of a utility was for the owners to determine, and concluded that the method used by the gas company to increase its business was appropriate, the amount expended was reasonable, and the results justified the expenditure.

The court in *Central Maine Power Co. v Public Utilities Com.* (1957) 153 Me 228, 136 A2d 726, sustained the company's exception to the commission's exclusion, as operating expenses, of a large portion of the expenditures made by the company for sales promotions, with the court pointing out that the good faith of the management of the company was not challenged in the slightest degree and that the question resolved itself

into whether it clearly appeared that the expenses were excessive or unwarranted, or, stated differently, whether expenses in excess of the allowance by the commission were within the limits of reason. The court, criticizing the commission for unreasonably substituting its judgment for that of the company's management, explained that the items had not been considered by the commission to be as a whole improper or unlawful charges against the ratepayers, and that placing a more than 50 percent reduction on the amounts shown to be required to meet the company's needs in the promotional field, basing such reduction on the ground that an expanding utility such as the electric company should severely reduce expense of this type, was clearly a substitution of the commission for the company in the management of the utility.

Promotion expenses, including those of advertising, for gas appliances and gas utilization, were allowed in *Consolidated Gas Co. v Newton* (1920, DC NY) 267 F 231, mod on other grounds, 258 US 165, 66 L Ed 538, 42 S Ct 264, a suit in equity brought to enjoin the defendant commission and state officials from imposing confiscatory rates on the plaintiff gas company. The propriety of the expenses was challenged largely because the sale of gas and of machines to burn gas had not increased much. The court pointed out that the truth appeared to be that the constantly increasing use of electricity for illumination had driven out gas more and more, until, to hold its sales, the plaintiff gas company had to promote the use of gas for heating and cooking. The court noted that the company had succeeded in achieving a slight increase in sales, and its officers attributed their ability

to do even this well to such promotions. Pointing out that their decision was not now open to question since they were under a duty to keep up their sales so far as they could, and to push the use of gas in any new ways in which the public would use it, the court determined that even under municipal management, advertising, when not pushed to the useless extreme which competition too often engenders, is a necessary function.

The commission's refusal to allow the gas company's promotional expenditures as operational costs had been found by the trial court to be in error of law, and the court in *State ex rel. North Carolina Utilities Com. v Piedmont Natural Gas Co.* (1961) 254 NC 536, 119 SE2d 469, an appeal from the commission's order canceling a proposed new rate, affirmed such finding. The commission had disallowed the amount in excess of the national average of promotional expenditures for companies retailing natural gas, but the court determined that the gas company's expenditures should have been compared to those of companies in the defendant company's class instead of to the national average. Pointing out that the gas company had, within recent years, changed over from manufactured to natural gas, that all its customers had to be "sold" on natural gas, that new customers had to be won, and that competition with electricity and oil had to be met, the court added that the company was faced with promotion in a new field at a time when promotional expenditures throughout the nation (on which the national average was figured) included those of many older companies which had been in the field for years with a well-

known product and an established market. The court, noting that the commission had recognized the high quality of the company's management and that the company was rapidly expanding its facility by a heavy promotional program, remanded the proceeding to enable the commission, *inter alia*, to ascertain the company's true operating expenses.

See *State v Oklahoma Gas & Electric Co.* (1975, Okla) 536 P2d 887, an appeal from commission order prohibiting public utilities from making expenditures for promotional advertisements,²⁹ wherein the court declared that such prohibitions were invalid. The commission had argued that if such expenditures did not sell energy, they were wasteful, and rate payers should not be required to pay them, but the court responded that this argument did not justify prohibiting such expenditures, because the same result could be obtained by excluding such expenditures from operating expenses for rate-making purposes. To the opposite argument, that if such practices sold energy, they increased the use of fossil fuels and should be prohibited, the court replied that many promotional expenditures are designed to achieve conversion to competing utilities, and to instill preferences for one form of energy over another, rather than to increase overall consumption of energy, and that since the commission did not have jurisdiction over appliance manufacturers and distributors, and since the proposed prohibitions did not prohibit appliance manufacturers and distributors from advertising their products, the prohibited practices and expenditures had little, if any, effect upon overall consump-

29. Promotional advertising was defined as advertising designed to increase usage,

obtain new customers, or encourage use of one form of energy over another.

tion of energy. As long as appliance manufacturers and distributors were allowed to advertise their products, it was arbitrary to deny utilities the right to counteract this advertising at the expense of the stockholders on the ground that promotional advertising and practices by utilities increased overall consumption of fossil fuels, the court explained. Turning then to testimony that if peak load demand for electricity exceeded peak capacity, a brownout would occur, the court declared that if a particular utility faced a foreseeable danger of being unable to meet peak demand, the commission might have authority to prohibit it from engaging in any promotional activities which would further increase its peak demand, but the court pointed out that this did not justify a rule prohibiting all utilities from engaging in such activities. Noting that attempts to disallow promotional expenditures as operating expenses for ratemaking purposes had been held to constitute an invasion of a discretion reserved to corporate management if the expenditures were designed to produce ultimate benefits to every customer and were not excessive or unwarranted, the court concluded that promotional practices which were reasonably calculated to improve the utility's load factor and benefit all consumers by reducing the average unit cost of energy were not unjustly discriminatory, and prohibitions against such practices constituted an invasion of the discretion reserved to corporate management.

[b] Expenses reduced or disallowed

Under the circumstances of the following cases involving the propriety of allowing promotional expenses incurred by a public utility to be included in operating expenses for rate-

making purposes, the courts held that promotional expenditures made by the utility should be reduced or disallowed.

See *Trans World Airlines, Inc. v Civil Aeronautics Board* (1967) 128 App DC 126, 385 F2d 648, cert den 390 US 944, 19 L Ed 2d 1133, 88 S Ct 1029, a case involving a government subsidy mail rate determination rather than a determination of consumer rates, in which the court upheld the Civil Aeronautics Board's disallowance of a specified amount of selling expense as in excess of the amount appropriate under the honest, economical, and efficient management criterion, over the airline's contention that the disallowance was an unwarranted interference with the airline's managerial discretion. The court explained that once the principle of setting a ceiling on selling expenses was established, it was plain that the Board had acted reasonably and that its action had support in the record. In response to the airline's charges of interference with managerial discretion, the court pointed out that a company which sought and pocketed the boon of subsidy or protective contracts could not assail the restraint inherent in accountability to government officials as a tyrannical burden. The government officials were themselves accountable in court for compliance with the rule of law applicable to administrative agencies, the court explained, concluding that the petitioner had not established the agency's action in this case to be arbitrary or capricious.

In reversing that part of the public utility commission's ratemaking order which had allowed a sizable sum for promotional expenses, the court in *Application of Hawaiian Electric Co.* (1975) 56 Hawaii 260, 535 P2d 1102, 83 ALR3d 951, noted that the bur-

den was always on the applicant to prove justification for a requested rate increase, and that the electric company had the burden of showing the propriety of its request for these promotional expenditures. The court held that the electric company had not carried its burden. Part of the expenditures claimed were for allowances or payments to owners and developers who built all-electric homes and apartments and advertised them for sale as such, the court pointed out, declaring that in the context of present times, these promotional expenditures on the part of a regulated public service company were wasteful and unreasonable, and their allowance by the commission was an abuse of its discretion. The disturbing aspect of the public utility commission's decision to allow expenditures for these programs was the rationale behind it, the court observed, noting that the basis of the allowance seemed to be the circuitous reasoning by which an earlier allowance of promotional expenditures to the applicant's competitor, on the ground that the expenditures were necessary to attract away customers from the applicant, now necessitated a like allowance to the applicant. Disapproving the public utility commission's consistent failure to meet squarely the issue of the reasonableness of competitive advertising expenditures, the court explained that one of the primary factors which the public utility commission must take into consideration when it fixes rates is fairness to the ratepayer, and that it was obvious that the particular type of advertising competition involved here did not benefit the ratepayer. Turning then to the propriety of allowing a sizable sum for promotion programs designed to increase the use of electricity and purportedly to

improve the company's load factor, the court indicated that these programs consisted essentially of direct advertising and contributions to dealer and distributor advertising of certain electric appliances. The electric company was, in effect, subsidizing the promotional activities of dealers and distributors whose commercial transactions formed no part of the electric company's own business venture, the court remarked, distinguishing such expenses from those of the gas company competitor, which sold gas appliances as an essential component of its commercial operations. The electric company failed to satisfactorily show how much of an improvement in its load factor these expenses could reasonably be said to make, the court observed, adding that since the appliances being promoted by the electric company were those generally in use during peak load periods, it was difficult to see how the electric company could argue that these expenses encouraged the increase of off-peak utility loads. In conclusion, the court spoke of the stark reality of energy problems and environmental concerns, and insisted that in the face of dwindling oil supplies and spiraling costs, promotional practices which were wasteful or which only served to aggravate the energy crisis should be viewed by a regulatory agency with extreme caution.

The commission, in setting new gas rates, had disallowed as operating expense one-third of the amount claimed by the appellant gas company as new business expense, and in *Peoples Gas Light & Coke Co. v Slattery* (1939) 373 Ill 31, 25 NE2d 482, app dismd 309 US 634, 84 L Ed 991, 60 S Ct 724, the court affirmed the commission's action in this regard, viewing the company's promotional prac-

tice of rental purchase plans for putting gas appliances on the premises of customers as creating an unduly large expenditure for business promotion to be charged as an operating account. The court explained that since gas appliances were sold by many other dealers, and since those sales made by the gas company, if conducted as a separate business, would not be subject to regulation, the advisability of such a method of promoting sales of gas and the propriety of the amount thus expended became matters entirely for the commission. Concluding that the action of the commission in disallowing part of the claimed promotional expenses was not unjustified, the court pointed out that in the very nature of things, a sale of outside articles to promote the sales of a commodity regulated by a utility must be controlled by the commission, since otherwise it would be possible to either raise the operating expenses to unreasonable heights or convert the utility into a mere medium for the sale of appliances and merchandise not regulated by the commission.

In *Boston Consol. Gas Co. v Department of Public Utilities* (1951) 327 Mass 103, 97 NE2d 521, a suit in equity to determine whether rates permitted by the department were confiscatory, it was determined that costs involved in the sale of gas appliances, including the cost of advertising appliances for sale, stood on a different footing than did expenses of sending repairmen to customers in response to complaints of leaks, faulty operation of appliances, etc., which were considered proper charges to the operating expenses of a gas business. The court noted that the gas

company had treated the appliance business as a separate entity for most purposes, but had sought to treat the expenses of the appliance business, including the advertising expenditures, as a part of the company's business of supplying gas. The company had argued that gas could not be bought by the consumer like ordinary merchandise, but could be bought only by having it flow through appliances of one kind or another; that apart from these appliances it could not be advertised effectively; and that whatever promoted the flow of gas through appliances promoted the sale of gas. The court observed that the difficulty with the argument seemed to be that it either fell short of proving the point or it proved too much: if the appliance business was really a part of the gas business, the gas customers were entitled to have the profits from appliances included in the earnings of the gas business, but if it was really a separate business, its expenses ought not to be charged against the gas customers. The court cited an earlier case³⁰ in which it had been stated that the sale and servicing of gas appliances constituted a separate business from the supplying of gas, so that it would not be fair, on the one hand, to charge all customers with higher rates so that some might buy appliances and have them serviced at less than cost, or, on the other hand, to lower the cost of gas service because of a profit on those items. The court recommitted the case for purposes of having the company's earnings determined by correct legal standards.

While the public utility commission had determined that in the absence of evidence of bad faith or imprudence,

30. *Lowell Gas Co. v Department of Public Utilities* (1949) 324 Mass 80, 84 986

NE2d 811, cert den 338 US 825, 94 L Ed 501, 70 S Ct 71.

the advertising and promotional expenditures by an electric company were within the limits of the discretion of the management, the court in *Public Service Co. v State* (1973) 113 NH 497, 311 A2d 513, upheld the contention that all promotional advertising expense should be disallowed because the company and the industry was encountering increased unit costs and decremental profits. The court noted that it was not disputed that increased demand had caused the purchase of power from outside sources so that increased costs would result, and further observed that the parties making the contention disclaimed any concern with past advertising and promotion, seeking only to preclude further such expense. Pointing out that the merchandise and promotional advertising aggregated a comparatively insignificant figure, the court nevertheless held that under present conditions, promotional advertising might well be disallowed, and distinguished the holding of *Pub-*

lic Service Co. v State (1959) 102 NH 150, 153 A2d 801,³¹ which, the court explained, was decided under circumstances quite different from those of this case and could not stand in the way of disallowance of proposed expenses where appropriate under current conditions.

The commission's disallowance, for rate-making purposes, of certain claimed advertising or new business expenses, was upheld in *State v Lone Star Gas Co.* (1935, Tex Civ App) 86 SW2d 484, error ref, revd on other grounds 304 US 224, 82 L Ed 134, 58 S Ct 883, reh den 304 US 590, 82 L Ed 1549, 58 S Ct 1051, a suit by the state to restrain the defendant gas company from violating a rate setting order of the commission. The court explained that only a small amount of advertising was proved, nothing in proportion to the charges made for it, and concluded that the high annual expense claimed for advertising was not supported by the quantum and character of evidence required.

31. In the above-cited case, wherein the commission's action in making no reduction in the questioned accounts was upheld, the court voiced its unwillingness to question the judgment of the commission

in its treatment of the amounts claimed by the company for sales and new business, of which promotional expenses were a part.

Consult POCKET PART in this volume for later cases



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Competition heats up

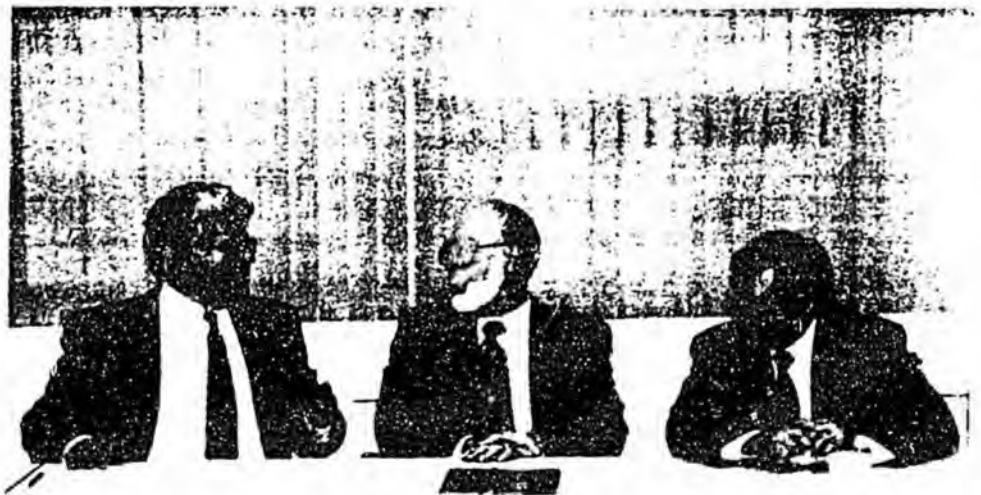
Chugach goes after a neighbor's customers

Chugach Electric Association has declared it intends to serve customers in a sister utility's service territory, firing the opening shot in what could become a competitive war for electric utility customers.

Chugach fired a shot across Anchorage Municipal Light & Power's bow in the form of a Sept. 19 letter saying it intended to begin serving one or more of ML&P's customers - beginning with a condominium office complex that houses Ray Kreig & Associates, among other firms. Kreig is a member of Chugach's board of directors.

Chugach has also approached several other ML&P customers, including the Anchorage Daily News and Columbia Alaska Regional Hospital, claiming it can provide them with electricity at a lower cost than ML&P charges.

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HYDRO PURCHASE -- At the October signing, ownership of the Eklutna Hydroelectric Plant transfers from the federal government to MEA, Chugach Electric Association and Anchorage Municipal Light & Power. From left are MEA General Manager Wayne Carmony, Chugach General Manager Gene Bjornstad and Municipality of Anchorage Operations Manager George Vakalis. MEA operates the plant. (See January 1998 Powerlines for a feature story.)

IBEW wages 'corporate campaign' at MEA

Surrounded by customer-hungry utilities, MEA management believes the co-op needs to become more competitive without sacrificing customer service.

"This is a difficult task, even in the best of circumstances," said co-op spokesman Bruce D. Scott, "but MEA has been gearing up for competition in the midst of an all-out effort to resist it by higher-ups from the International Brotherhood of Electrical Workers."

MEA and the IBEW, Local 1547, are

presently negotiating separate contracts for the Information Services (computer) and Eklutna power plant employees represented by the union. But even as they sit at the bargaining table, the IBEW is waging a "corporate campaign" at the co-op, said Scott, MEA director of member and public relations.

In a corporate campaign, "the union uses all the leverage at its disposal to harass the company and make fighting the union so distracting and so expensive that management caves in on its bargaining demands,"

says an article in *Electric Light and Power Magazine*.

Author Ronald Meisburg writes that the tactics used in a corporate campaign may include conducting a public relations campaign against company management and obtaining unfavorable coverage in the media. He says other tactics include "inundating the company with information requests" and "filing unfair labor practice charges" against the company.

Whether or not IBEW leaders read Meisburg's article, Scott said they seem

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IBEW wages 'corporate campaign' at MEA

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to be following the blueprint for a corporate campaign, such as by making an attempt to bury MEA in information requests, Scott said.

Human Resources Director James Woodcock said that this year's correspondence from the IBEW requesting information from the co-op's management fills two fat binders.

Examples include a request from the IBEW for all daily time sheets for all linemen for a period of five years – literally thousands of pieces of paper, he said. In a separate request, a union representative asked for a list of all jobs performed by engineering supervisors from Aug. 1, 1996 to date, "along with all documents related to the jobs." The demand gave MEA less than 10 days to come up with the information.

While information requests are time-consuming and costly, Scott said, "two of the biggest weapons in the IBEW's arsenal are the grievance and the unfair labor practice complaints."

Between Jan. 1, 1996 and Oct. 20, the IBEW filed 84 grievances with the co-op and a dozen unfair labor practice complaints with the National Labor Relations Board (NLRB) against MEA. Scott said 40 of those grievances were filed through Oct. 20 of this year.

"The grievances cost the co-op thousands of dollars in attorneys' fees, in addition to consuming a great deal of staff time and associated in-house expenses," he said. "If the corporate campaign continues through the end of the year, MEA's legal expenses for labor relations are on a pace to average \$240,000 per year since 1995," he said.

"But much more is at stake than attorney fees," he said. "Let's take one example, a disagreement that crops up with the IBEW on a regular basis – whether to enroll employees in the IBEW's \$1 billion pension fund or the national plan MEA participates in."

"The national plan most of MEA's employees are enrolled in has performed so well that MEA has frequently enjoyed a moratorium on investing in the fund, saving the co-op about \$2 million since 1994 and \$5.5 million in the past decade," he

said. "During this 10-year period, our members would have had to pay out millions of additional dollars if the union's pension plan had been in place."

Scott said that in the normal course of events, grievances are filed with the company and, if management and the union are unable to resolve them, the IBEW has the option to send them to arbitration (see box).

"Lately, however, the union, in its enthusiasm for the corporate campaign, has sent grievances straight to arbitration, before MEA management has even seen them," he said.

"The IBEW has even filed a complaint over our bylaws with the NLRB," he said. The union contends that a bylaw amendment proposed and approved by MEA's members last year is unlawful because it effectively excludes IBEW members and interdependent relatives from serving on the co-op's Board of Directors.

Subcontracting a concern

Many of the grievances filed this year stem from an amendment to MEA's bylaws approved by the co-op's members in 1994, Scott said. The amendment requires the co-op to engage in "free, open and competi-

tive bidding" and says MEA cannot require contractors to sign labor agreements with the IBEW or any other union. Chugach Electric Association has a similar bylaw.

"This bylaw has the effect of placing IBEW members in competition with non-union workers, as well as members of other unions," Scott said.

MEA awarded several major construction contracts this year to a nonunion firm – a firm that won the bids in free, open and competitive bidding, he said. "Since then, the IBEW has stepped up its corporate campaign, turning in stacks of grievances and unfair labor practice complaints, sometimes on a daily basis, even though our labor agreements allow MEA to subcontract work."

Woodcock said that about a third of the complaints filed in 1997 appear to be tied to MEA's award of contracts to the non-union firm, Irby Construction, one of several contractors performing work for MEA this year.

'Preparation' expense

In 1996, the IBEW filed 40 grievances and four unfair labor practice (ULP) complaints. Later, it withdrew 14 of the grievances and three of the ULPs (the NLRB

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How the grievance process works

In short, the grievance process works like this: A grievance is filed by the union and submitted to the company. The company and the union discuss the issue to see if the two parties can resolve it. If it is not resolved to the union's satisfaction, the IBEW can ask that the grievance proceed to arbitration.

Arbitration is a process whereby the parties select an individual to act as an arbitrator. The arbitrator listens to the arguments on each side and then issues a decision. The arbitrator has the authority to determine whether the grievance has merit and whether or not the company should be ordered to take steps to remedy the complaint. The arbitrator also has the authority to deny the union's grievance.

In two of MEA's three bargaining union agreements – the Engineering, Operations and Accounting unit and the Information Services unit, respectively, the employee is supposed to discuss the issue of concern with his or her supervisor and the next level of supervision prior to filing a grievance.

Under the third agreement, which covers the "Outside" unit which includes linemen, meter readers and other employees, the process starts with a grievance. MEA is negotiating an agreement covering a fourth work unit consisting of employees at the Eklutna Hydroelectric Plant.

Approximately one-half of MEA's workforce is nonunion.

Competition heats up in the Anchorage Bowl

Continued from Page 1

Chugach unilaterally declared it would pay ML&P a rental fee – called a “wheeling” charge – for using ML&P’s lines to serve customers that presently “belong” to the municipal utility. MEA analysts said the rate chosen by Chugach “has no demonstrated basis in fact.” It would take a fairly extensive study, and likely hearings before the Alaska Public Utilities Commission (APUC), to determine what the wheeling charge should be, and whether Chugach should even be allowed to pay one, the analysts said.

ML&P responded to Chugach’s letter by filing a complaint with the APUC. Its complaint says ML&P is certified by the commission to provide service in an exclusive territory; Chugach, therefore, lacks the authority to provide service to customers within ML&P’s territory.

Both utilities provide electrical service in Anchorage. ML&P serves an area sweeping north of Tudor Road, west of Boniface Parkway and east of Arctic Boulevard. Chugach serves most of the remaining Anchorage area. MEA provides service to Eagle River and Chugiak in the northern part of the Municipality of Anchorage.

Chugach representatives have stated that the APUC has the authority to determine when and where utilities can compete. But just in case that argument fails, Chugach is supporting a bill in the state legislature that would expressly give the APUC authority to regulate competition.

In the waning hours of the last legislative session, Chugach lobbyists introduced a different bill that would allow Chugach to compete with ML&P. The bill is now in the House of Representatives’ Labor and Commerce Committee.

“MEA is opposing the bill because it would allow Chugach to set the rules for competition statewide, without grass roots involvement from the state’s other utilities,” said MEA General Manager Wayne D. Carmony. “There is a chance that the state could rush into defining how competition will be practiced before we assess the impact on ratepayers.”

“There is a possibility, for example, that power providers would sell electricity at a discount to large commercial users. But because the fixed costs of a utility’s investment do not go away, this could result in increased costs to residential customers,” he said.

Carmony said that a competitive battle is also being waged by private energy firms trying to do just that – pick up the largest

customers at a discount.

An Anchorage-based firm called Alaska Power Systems is marketing on-site diesel generators to Copper Valley Electric Association customers in Glennallen and Valdez. Another private firm, Aurora Power Resources (APR), is pooling its large commercial natural gas customers into one group “and going to all the power generators in the Railbelt and asking them to bid for the group,” according to an APR spokeswoman.

In Fairbanks, Golden Valley Electric Association (GVEA) recently signed a power supply contract with ML&P. GVEA previously had purchased as much as 300 million kilowatt-hours per year from Chugach, at less than half of what Chugach charges MEA. Chugach responded by suing GVEA for breach of contract.

MEA spokesman Bruce D. Scott said that increased competition has not been without its costs, particularly in the arena of legal expenses. MEA invested a considerable sum to fight off hostile takeover at-

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Who’s who among Railbelt utilities

A member-owned cooperative, Chugach Electric Association, serves approximately 66,600 retail customers in Anchorage and provides wholesale electricity to MEA, Homer Electric Association, the city of Seward, Golden Valley Electric Association (GVEA) in Fairbanks and Chugach itself.

Owned by the Municipality of Anchorage, Anchorage Municipal



Light & Power (ML&P) serves some 46,000 customers in Anchorage and recently signed a five-year contract to supply wholesale power to GVEA, in competition with Chugach.

Incorporated in 1941 as a member-owned cooperative, MEA serves 34,000 customers in the Chugiak-Eagle River area and throughout the Mat-Su Valley.

MEA's next Board of Directors meetings:

Monday, November 10 - 7 p.m.
Monday, December 8 - 7 p.m.

at MEA's main office in Palmer.
Call 745-3231 for directions.

Web site: www.Matanuska.com

Board of Directors:

Barbara J. "Tamie" Miller <i>Acting President</i>	376-5636
William A. "Bill" Folsom <i>Secretary-Treasurer</i>	745-4339
Rodney R. Cottle	376-5711
James S. Hermon	745-3558
Frank G. Mielke	688-9754
Douglas R. Mills	745-3867
Wayne D. Carmony <i>General Manager</i>	745-9211

What's at stake for the IBEW

The International Brotherhood of Electrical Workers' corporate campaign at MEA is one of the ways the union is working to resist competition, said Bruce D. Scott, MEA director of co-op member and public relations.



coming much more competitive.

"This is forcing employers to operate more efficiently, to change the way we do business," he said. "We've always been extremely cost-conscious at MEA, but

we're under pressure to become even more cost-efficient and concerned about the costs we pass on to our members than we have been in the past."

He noted that MEA has instituted three rate reductions – and no rate increases – during the past 18 months.

Scott said that IBEW, Local 1547, appears to be in a financially healthy position to wage its corporate campaign at MEA (See Page 1) and tackle competition in its labor market.

According to a federal report the IBEW filed, the local had revenues of more than \$6.5 million in 1996 and assets with a fair market value of nearly \$1.7 million. All but \$200,000 of its revenues came from its dues-paying members. Scott said the dues represent only a fraction of the value of the contracts it negotiates for its members. The union paid out some \$2.1 million in gross salaries to its union hall employees in 1996, as well as \$122,000 in allowances and disbursements, says the report filed with the U.S. Department of Labor.

"The IBEW is fighting to negotiate exclusive labor agreements and maintain the ones it has," Scott said. "The 5,000 or so IBEW members have had a fairly captive labor market in Alaska for decades. Now they're facing increased competition from nonunion workers, who make up the majority of Alaskans, as well as from workers in other unions."

Scott noted that the members of both MEA and Chugach Electric Association have changed their respective bylaws during the past few years to demand the utilities engage in "free, open and competitive bidding." Both sets of bylaws say that bidders may not be required to sign labor agreements with the IBEW or any other union.

"This throws open the doors to competition," he said, adding that the availability of such "open bid" work could even attract more skilled workers to Alaska.

General Manager Wayne D. Carmony said the electric industry as a whole is be-

Competition heats up

Continued from Page 3

tempts by Chugach in 1994 and 1995, as well as tens of thousands of dollars for APUC proceedings, he said.

He said the co-op also spent \$179,000 in a successful effort to defeat a \$5 million lawsuit filed by GVEA. The Fairbanks utility attempted to force MEA to upgrade some of its lines to allow other utilities to ship more cheap power to GVEA without providing sufficient compensation to MEA or giving adequate consideration of safety and related issues, he said.

"It is too soon to predict the shape of competition, or even if we will truly have it here in Alaska," he said. "In the Lower 48, there is more impetus for competition because major transmission lines flow from one state to another, enabling an electric utility in Georgia, for example, to purchase wholesale power from a power generation company in Florida. Alaska's power lines are all in-state."

Scott said a recent Federal Energy Regulatory Commission order directed electric utilities under its jurisdiction to allow others to use their transmission lines to provide electricity, charging them the same rates the utilities would charge themselves to provide power.

FERC also directed those utilities to "unbundle" services they provide to encourage competition, a process that ultimately could require a utility such as Chugach to break its generation, transmission, and distribution components into separate components or companies.

"Unbundling is a prerequisite if you're going to identify the costs of using a transmission or distribution line, such as Chugach is proposing to do with ML&P's lines," Scott said.

Carmony said that in its proposed 1998 budget, MEA is dividing itself on paper into a "wire company" and "service company" to better identify and control costs.

IBEW's 'corporate campaign'

Continued from Page 2

dismissed the fourth) – a third of the 44 complaints it filed. Scott said there is a possibility the union may drop some of the dozens of grievances it has filed in 1997. But even if the union eventually drops some of its complaints, they are extremely costly to MEA and its members, he said.

"The union may know in advance that it intends to drop a grievance at some point in the future. But the co-op has to treat every complaint as if the IBEW planned to take the issue to arbitration or file a complaint with the NLRB," he said.

"Filing grievances is one way for the IBEW to put pressure on MEA management to comply with the union's demands," he said. "Filing grievances and unfair labor

practice complaints forces the co-op to hire attorneys to defend its members' interests. The IBEW's representatives then turn around and accuse management of having bad labor relations and 'wasting' funds on attorneys."

Since the IBEW began the corporate campaign, the charges against management have become part of the campaign rhetoric during the annual election for MEA directors, he said.

"Regardless of what happens Outside," Scott said, "MEA will do its best to represent the interests of our members, while preparing for the larger competitive battle with other electric utilities and private power providers."

POWERLINES is published monthly by Matanuska Electric Association Inc., a non-profit electric cooperative owned and operated by the people it serves.

MEA's goal is to provide reliable power at the lowest possible cost.

Questions and suggestions regarding this publication should be addressed to Bruce D. Scott, CREC or Pamela Sadloske in Member and Public Relations, 745-3231.

To report a power outage, call 745-3231 or MEA's toll-free number, 800-478-5150.

CHUGACH ELECTRIC

CONSUMER CHOICE PHONE INFORMATION

4/3/98

Have you heard that you may soon be able to choose your electric company? Consumer choice of electric providers is happening nationwide. What that means is the electric industry is becoming deregulated, similar to telephone and the airlines.

Why Choice?

We think choice is good for consumers and many of our customers think so, too. In fact, in a recent survey in Anchorage, 92% of those surveyed said they were in favor of choosing their energy provider. Given a choice, we know many people will decide to stay where they are. Some will decide to switch. Of course, we hope you'll stay with us here at Chugach, but we do think you deserve to make that choice for yourself -- rather than having the electric company or the government require you to have service from a provider based on where you live. We think choice is good for Alaskans. Just like in other industries, competition should bring new services and make the industry more cost effective. These efficiencies will let families spend money currently used on electric service on other things. Also, it will allow Alaska providers to compete with Lower 48 electric companies. Otherwise, there could be a company from another state providing electricity to Alaskans.

Other States

California just gave consumers a choice starting April 1 and New York is close behind.

In Alaska

In Alaska, the Public Utilities Commission is currently considering the issue and there is a bill in the legislature.

DO YOU THINK CONSUMERS SHOULD HAVE A CHOICE?

If yes:

List

- We'd appreciate if we could add you to the list of consumers who do support choice. We already have a lot of other Alaskans on the list.

Bylaws

(Up until April 30)

- Also, please vote yes on the bylaws revisions on the ballot which you just received. It will give Chugach the flexibility to offer competitive energy services for you in the future.

Legislators

- Finally, we also encourage you to contact your state representatives and let them know you want choice. Most of the legislators in Juneau we have talked to support choice, but they have many important issues on the agenda to consider. So we're asking those who want choice to please let their elected representatives know as soon as possible so the Legislature can consider the issue before they conclude in May. Since time is running short, it's important to tell them now. There's a very easy and quick way to send a message. Just call the Legislative Information Office at 258-8111 and ask to leave a Public Opinion Message that you're in favor of consumer choice for electric providers. Or you can also write or send an e-mail.

Need More Information?

Do you have access to Internet? If so, click on the Chugach site at www.chugachelectric.com and you can get more information, plus a form to let us know you support choice as well as the information on how to contact your legislator. Or, we can also fax or e-mail one to you.

Wrap Up/Information Collection

Let me get your name and address for the list of consumers who support choice.

Name

Address (including ZIP)

Are You a Chugach member? Yes No

May we use your name as a supporter of consumer choice? Yes No

(We will use names with permission for a list of those who support choice in Alaska.)

Internal Information for List

Please include with each entry on the list:

Date/Time of Call Taken By

Thank you very much for your interest in consumer choice.

Additional Resources

Webpage

www.chugachelectric.com

Brochure

To send, fax or e mail (on I drive)

E-Mail Address at Chugach for Choice Comments
choice@chugachelectric.com

E Mail Addresses for Legislators

Senators

Senator_First Name_Last name@legis.state.ak.us

(_ = underscore)

Example: Senator_John_Smith@legis.state.ak.us

Representatives

Representative_First Name_Last Name@legis.state.ak.us

Other Resources for Consumer Service Reps or Consumers

(If transferring a customer call, please ensure someone is there to answer the phone before transferring and announce it is a *Choice* call. Thanks.)

Phil Steyer	4766
Patti Bogan	4736
Dianne Hillemeier	4709
Gayle Knepper	4814
Debbie Debnam	4554
Priscilla Erickson	4505
Vivian Hamilton *	4344
Vivian Kinnaird *	4512

* out of the office frequently

YOU Choose . . .

- Your bank
- Your doctor
- Your phone company
- What about your
electric company?

**Shouldn't that be
your choice too?**

At Chugach . . . we think so.

Choose Your Electric Company?

We believe you have a right to choose, and most consumers feel the same. That's why we're talking about choice. And it's the reason you need to know more.

There's a lot of confusion about deregulation and competition. But deregulation is really the freedom to choose — for you and your family. Did you know that Americans from California to Maine already have the right to choose their electric provider? Don't you think Alaskans should have that right, too?

At Chugach, we think the choice should be yours and we're working hard to make that happen. You can help us by letting your elected representatives in Juneau know you want a choice. Are you a Chugach member? Then you can also vote "yes" on the upcoming bylaws revisions. We've included more details on the last page.

Chugach

Why Choose An Electric Company?

There are many benefits of choosing your electric company. Think about the benefits of deregulation in other industries: telecommunications and airlines, for example. Letting you make the choice has lowered prices and provided better, more competitive services. ***Alaskans already know they want a choice:*** 92% of Anchorage residents surveyed in a recent study said they were in favor of choosing their electric company.

What About Other Electric Providers? What Do They Think?

In our opinion, most other electric companies in Alaska are taking an approach to protect themselves. They are trying to stop consumer choice by suggesting 'let's slow down and study it' or by talking about how choice could hurt Alaskans. But this just stands in the way of progress. Even if you like how the current system works now, we think it can be even better.

Given a choice, we know that many consumers will decide to stay with their current provider. Some will decide to switch. We believe that should be your option — not the electric company's nor the government's.

Why Now?

Sooner is better than later. Here are five reasons why:

1. There are many benefits that competition brings to consumers and businesses. Avoiding a decision or putting it off will only delay the time when you can take advantage of these benefits.
2. Many electric utilities in the Lower 48 are already offering choice to their consumers. That means that those utility companies have learned how to operate effectively in a competitive market — providing the services their consumers want. Those companies that excel at competition are now moving into other states to offer choice to the residents in those areas.

Alaskan electric providers will also become more efficient as a result of competition. We think Alaska's utilities should learn how to compete with Lower 48 companies now. Otherwise, there may be a company from another state providing energy to Alaskans.

3. By offering choice and learning to compete, Alaska's utilities can continue to provide electric services. If the state's utilities are not competitive, these services will be provided by non-Alaskan companies that will move jobs outside.
4. Choice makes the entire industry more effective and able to offer more benefits to consumers. The efficiencies that result from competition will allow Alaskan businesses and families to spend money currently used for electric service on other things — supporting the local economy and increasing the standard of living.
5. Finally, as 92% of consumers already know, time and money is being wasted on *debating* about whether choice is good. Don't you agree that it's better just to get on with it — like other states — and focus on how to make choice work best for Alaskans?

What is Being Done So I Can Choose?

At Chugach, we've been working for over a year to make it possible for you to choose your electric company. Here are some of the things we've done.

Alaska Public Utilities Commission

Alaska statutes do not prohibit competition and choice in the electric industry, a fact many Alaskans don't know. That means you already have the right to choose. Before choice becomes a reality, however, the Commission must determine access charges so that electricity can be moved by one electric company across the lines owned by another company. Chugach has asked for this access and the Commission is considering the request.

Legislative Action

Many meetings with state legislators have been held to advocate consumer choice. Most lawmakers have expressed support. But they also have many other important issues to be discussed this year which could delay consideration of electric choice unless they know that their constituents want action before the session is over in May.

Bylaws Revisions

At Chugach, we know you will expect us to provide the best, most competitive energy services for you in the future. The bylaws amendments and corresponding revisions to the articles of incorporation in your upcoming ballot will give Chugach the flexibility to offer these services to meet your needs. The Board of Directors and the Bylaws Committee, both composed of Chugach members, strongly support these changes.

What Can I Do To Help?

There are several important steps you can take to help support consumer choice.

1. *If you are a Chugach member, vote "yes" on the bylaws changes on the ballot, which you will receive soon by mail.*
2. For all consumers: *Let your elected representatives in Juneau know you want to choose your electric company.* Because time is running short in this year's legislative session, it is important to tell them NOW.

You can contact your legislator in several different ways:

By phone or mail

Call the legislative information office in Anchorage at (907) 258-8111 or the office in your community and ask to leave a public opinion message. You can also call or write to the senator and representatives from your area. Their numbers are in the blue pages in the telephone directory or available at the legislative information office. Be sure to tell your legislators you want choice and you want them to consider it during this legislative session.

By e-mail

You can also e-mail your representatives.

Senators

Senator_first name_lastname@legis.state.ak.us

Example: Senator_John_Smith@legis.state.ak.us

Representatives

Representative_first name_lastname@legis.state.ak.us

Example: Representative_Mary_Smith@legis.state.ak.us

We'd also like to know what you think about choice. You can send us a copy of your legislative correspondence or other comments to

Chugach Electric
5601 Minnesota Drive
Anchorage, AK 99519-64300

You can also complete and return the short form below or send an e-mail to
choice@chugachelectric.com

Not Yet a Chugach Member?

If you're not a Chugach member, but would like to choose your electric company, you can help by contacting your legislators and letting them know you support choice.

Are you interested in receiving energy from Chugach for your home or business when it is available? Complete and return the information below, or you can call or send an e-mail. We'll keep you updated on progress, and let you know when you can receive power from Chugach.

Thank you for your support of this important choice for Alaskans.

Choice.
It's the
Chugach
difference

I'm Interested in Choice

Yes. I'm interested in receiving energy from Chugach when it is available. Keep me updated on progress.

I'm already a Chugach member. I support Alaskan's right to choose their electric provider.

Name _____ *

Address _____

Business Name (if applicable) _____

City _____ Zip _____

Telephone: Day _____ Evening _____

Fax _____ E-mail address _____

* May we use your name as a supporter of consumer choice? Yes No

Return to: Chugach Electric, 5601 Minnesota Drive, Anchorage, AK 99519-64300 or fax to (907) 562-0027

Chugach 
YOUR ENERGY COMPANY

**ATTITUDES TOWARDS COMPETITION IN
THE ELECTRIC INDUSTRY**

February 1998

Chugach Electric

ATTITUDES TOWARDS COMPETITION IN
THE ELECTRIC INDUSTRY

IVAN MOORE RESEARCH

TEL: 278-4600

Hello, my name is _____ and I'm calling for Ivan Moore Research, an Anchorage marketing research firm. We are conducting an Anchorage area public opinion survey concerning your household's utility services that should take no more than a few minutes. Your opinions are important to us, and we'd really appreciate your participation. (PAUSE)

S1. Is this a residential telephone?

IF "YES", CONTINUE...

IF "NO", TERMINATE...

S2. I need to speak with the person in your household who pays your utility bills, or who makes decisions about utility services. Would that be you?

IF "YES", CONTINUE...

IF "NO", ASK FOR PERSON...

S3. Do you pay your own electric bill or do you have a landlord that pays it for you?

IF "YES", THEN PROCEED...

IF "DON'T PAY ELECTRIC BILL/LANDLORD PAYS", THEN TERMINATE...

1. Which company provides your household with its electric service, Chugach Electric or ML+P?

	FREQUENCY	PERCENT
CHUGACH.....	1016.....	72.6%
ML+P.....	384.....	27.4%

OK, across the country, efforts are underway to allow individual customers to choose their electric provider. In Alaska, both the Legislature and Public Utilities Commission are now reviewing this issue. I'd like to ask you a few questions to see how you feel about this topic.

2. First, do you think that customers should have the right to choose which company they buy their electric power from?

	FREQUENCY	PERCENT
YES.....	1272.....	90.9%
NO.....	76.....	5.4%
DON'T KNOW.....	52.....	3.7%

3. Do you think competition in the electric industry would result in lower electric prices?

	FREQUENCY	PERCENT
YES.....	1032.....	73.7%
NO.....	233.....	16.7%
DON'T KNOW.....	135.....	9.6%

4. Do you think competition in the electric industry would result in better services?

	FREQUENCY	PERCENT
YES.....	1017.....	72.7%
NO.....	247.....	17.7%
DON'T KNOW.....	135.....	9.7%

5. If you could get better services or lower prices from a different power provider, would you want to be able to switch?

	FREQUENCY	PERCENT
YES.....	1276.....	91.1%
NO.....	80.....	5.7%
DON'T KNOW.....	44.....	3.2%

6. If a legislator were to vote in favor of allowing customers to choose their power supplier, would that make you feel more positive or more negative toward that legislator?

	FREQUENCY	PERCENT
MORE POSITIVE.....	904.....	64.6%
MORE NEGATIVE.....	71.....	5.1%
NO DIFFERENCE.....	425.....	30.3%

The following questions are for statistical purposes only.

7. In what year were you born?

	FREQUENCY	PERCENT
18-39.....	445.....	31.8%
40-47.....	332.....	23.7%
48-57.....	327.....	23.4%
58+.....	296.....	21.2%

(Mean = 47.7 years)
(Median = 45.8 years)

8. Of the people currently living in your household, how many are children or adolescents aged 18 or under?

	FREQUENCY	PERCENT
None.....	766.....	54.7%
One.....	222.....	15.9%
Two.....	273.....	19.5%
Three or more.....	139.....	9.9%
(Mean = 0.89 children)		

9. Are you married or single?

	FREQUENCY	PERCENT
MARRIED.....	1079.....	77.1%
SINGLE.....	321.....	22.9%

10. GENDER...

	FREQUENCY	PERCENT
MALE.....	700.....	50.0%
FEMALE.....	700.....	50.0%

Thankyou very much for your help. Goodbye.

THE FOLLOWING VARIABLE WAS RECORDED FROM THE VOTER LIST:

	FREQUENCY	PERCENT
House District 10.....	100.....	7.1%
House District 11.....	100.....	7.1%
House District 12.....	100.....	7.1%
House District 13.....	100.....	7.1%
House District 14.....	100.....	7.1%
House District 15.....	100.....	7.1%
House District 16.....	100.....	7.1%
House District 17.....	100.....	7.1%
House District 18.....	100.....	7.1%
House District 19.....	100.....	7.1%
House District 20.....	100.....	7.1%
House District 21.....	100.....	7.1%
House District 22.....	100.....	7.1%
House District 23.....	100.....	7.1%

THE FOLLOWING VARIABLE WAS COMPUTED FROM THE PREVIOUS VARIABLE:

	FREQUENCY	PERCENT
Senate District E.....	100.....	7.1%
Senate District F.....	200.....	14.3%
Senate District G.....	200.....	14.3%
Senate District H.....	200.....	14.3%
Senate District I.....	200.....	14.3%
Senate District J.....	200.....	14.3%
Senate District K.....	200.....	14.3%
Senate District L.....	100.....	7.1%

THE FOLLOWING VARIABLE WAS CALCULATED FROM THE GENDER AND MARITAL STATUS VARIABLES:

	FREQUENCY	PERCENT
Married Males.....	552.....	39.4%
Married Females.....	528.....	37.7%
Single Males.....	148.....	10.6%
Single Females.....	172.....	12.3%

THE FOLLOWING VARIABLE WAS CALCULATED FROM THE AGE, MARITAL STATUS AND CHILDREN VARIABLES:

	FREQUENCY	PERCENT
Young Singles.....	73.....	5.2%
Adult Singles.....	167.....	11.9%
Single Parent.....	80.....	5.7%
Young Couple.....	71.....	5.1%
Mature Couples.....	454.....	32.4%
Young Family.....	261.....	18.7%
Mature Family.....	292.....	20.9%

	RIGHT TO CHOOSE?			Total
	Yes	No	Not sure	Col %
	Row %	Row %	Row %	
ELECTRIC PROVIDER:				
Chugach	91.3%	5.2%	3.5%	72.6%
ML+P	89.8%	6.1%	4.1%	27.4%
LOWER PRICES?				
Yes	96.3%	1.6%	2.1%	73.7%
No	68.7%	24.4%	6.9%	16.7%
Not sure	87.5%	2.2%	10.3%	9.6%
BETTER SERVICES?				
Yes	97.7%	1.2%	1.1%	72.7%
No	69.1%	22.8%	8.0%	17.7%
Not sure	79.2%	5.2%	15.5%	9.7%
WANT TO BE ABLE TO SWITCH?				
Yes	94.3%	3.3%	2.4%	91.1%
No	47.6%	36.5%	15.9%	5.7%
Not sure	70.0%	10.8%	19.2%	3.2%
EFFECT ON LEGISLATOR:				
More positive	98.9%	1.1%		64.6%
More negative	35.4%	52.7%	11.9%	5.1%
No difference	83.2%	6.7%	10.2%	30.3%
AGE OF RESPONDENT:				
18-39	96.9%	1.7%	1.4%	31.8%
40-47	91.4%	4.3%	4.4%	23.7%
48-57	87.5%	7.8%	4.7%	23.4%
58+	85.0%	9.7%	5.3%	21.2%
NUMBER OF CHILDREN:				
None	88.3%	6.6%	5.1%	54.7%
One	93.4%	3.8%	2.7%	15.9%
Two	92.2%	5.7%	2.1%	19.5%
Three or more	98.4%	.8%	.8%	9.9%
MARITAL STATUS:				
Married	90.6%	5.9%	3.5%	77.1%
Single	91.7%	4.0%	4.3%	22.9%
GENDER OF RESPONDENT:				
Male	91.2%	6.5%	2.3%	50.0%
Female	90.6%	4.3%	5.1%	50.0%
Total	90.9%	5.4%	3.7%	100.0%

	RIGHT TO CHOOSE?			Total
	Yes	No	Not sure	Col %
	Row %	Row %	Row %	
MARITAL STATUS BY GENDER:				
Married Males	91.0%	7.1%	1.9%	39.4%
Married Females	90.2%	4.6%	5.2%	37.7%
Single Males	91.8%	4.5%	3.8%	10.6%
Single Females	91.6%	3.6%	4.8%	12.3%
FAMILY STATUS:				
Young Single	95.8%	1.5%	2.8%	5.2%
Adult Single	88.5%	4.5%	7.0%	11.9%
Single Parent	94.7%	5.3%		5.7%
Young Couple	100.0%			5.1%
Mature Couple	85.2%	9.3%	5.5%	32.4%
Young Family	96.0%	2.5%	1.6%	18.7%
Mature Family	92.1%	4.9%	3.0%	20.9%
LEGISLATIVE HOUSE DISTRICT:				
House District 10	84.1%	8.9%	7.0%	7.1%
House District 11	96.3%	3.7%		7.1%
House District 12	93.9%	2.3%	3.8%	7.1%
House District 13	85.3%	9.7%	5.0%	7.1%
House District 14	95.7%	2.1%	2.1%	7.1%
House District 15	92.8%	3.0%	4.2%	7.1%
House District 16	92.2%	5.9%	1.9%	7.1%
House District 17	92.9%	4.4%	2.7%	7.1%
House District 18	88.0%	7.5%	4.5%	7.1%
House District 19	90.7%	2.9%	6.4%	7.1%
House District 20	86.5%	7.2%	6.4%	7.1%
House District 21	91.0%	5.2%	3.8%	7.1%
House District 22	91.2%	4.9%	3.8%	7.1%
House District 23	91.7%	8.3%		7.1%
LEGISLATIVE SENATE DISTRICT:				
Senate District E	84.1%	8.9%	7.0%	7.1%
Senate District F	95.1%	3.0%	1.9%	14.3%
Senate District G	90.5%	5.9%	3.6%	14.3%
Senate District H	92.5%	4.4%	3.1%	14.3%
Senate District I	90.5%	6.0%	3.6%	14.3%
Senate District J	88.6%	5.0%	6.4%	14.3%
Senate District K	91.1%	5.1%	3.8%	14.3%
Senate District L	91.7%	8.3%		7.1%
Total	90.9%	5.4%	3.7%	100.0%

International Brotherhood of Electrical Workers
Local 1547

2702 DENALI STREET
ANCHORAGE, ALASKA 99503-2779

TELEPHONE DISPATCH FAX
(907) 272-6571 (907) 276-1547 (907) 276-1963

GARY BROOKS
BUSINESS MANAGER • FINANCIAL SECRETARY

KNUTE ANDERSON
PRESIDENT

Testimony of Gary Brooks
HB 487



Alaska Electrical Consumer's Bill of Rights

Good Afternoon, and thank you Mr. Chairman and Committee members for this opportunity to comment on this important legislation.

The IBEW, on behalf of the over one thousand members and their families who make their living in the utility industry in Alaska, and on behalf of our five thousands members who are consumers of electricity, views this proposed legislation as positive for consumers and our members who work in the industry.

Throughout this industry in the lower forty-eight states, we, the IBEW workforce have been hit hard by rapid, radical restructuring of the electric power provider industry, only to later see these impacts reversed. In California, years before any actual restructuring policy, thousands of employees were laid off, in the name of competition, downsizing and preparedness for the eventuality of restructuring. Then powerful storms hit, knocking out power systems statewide and the utility industry found itself completely unprepared to respond. In parts of the state, consumers went for more than a month with electricity. In Alaska, this is simply a risk we cannot afford to take. California has the luxury of a milder climate and an interconnected power grid.

Adding to the personal pain of the workers who were downsized out of jobs, who saw lifetime careers eliminated, and were forced to relocate to other parts of the country was the human toll on their families. College educations were postponed, families were disrupted -- only to be reversed by the state utilities commission who reacted to public complaints and ordered the utilities to re-man themselves. In the meantime, apprenticeship programs were shut down, workers moved away and even today, three years later, an open call for Power Lineman remains on our bulletin board, offering to pay moving expenses and signing bonuses for locating back in California.

We hope to learn from this lesson, and the lesson of the Northeast who went through much the same thing after the disastrous ice storms of last winter.

What we see this legislation doing, is calming the process in anticipation of deregulation, allowing all the stakeholders to plan and prepare for whatever change in the market is eventually adopted, without compromising reliability safety or the working lives of hundreds of Alaskans.

We are not opposed to restructuring of the electric utility market. What we ask is that any restructuring answer basic fundamental questions about universal access, job safety, cherry picking, rate ramping, societal impacts, stranded costs, cost to consumers, reliability, tax revenues, mega-mergers and market dominance and other issues. We are hopeful that the final policy will adequately address these issue, but in the meantime, we urge you to consider enacting this legislation so that good public policy can be enacted without the hysteria, hoopla and hyperbole that we may otherwise see and have already witnessed in other parts of the country.

HCR

4

(7)

Date Referred to Committee: February 3, 1997

FURTHER REFERRALS:

Finance

Date of Committee Action: 2/19/97

The JUDICIARY Committee considered:

HCR 4

HOUSE CONCURRENT RESOLUTION NO. 4

SEPARATE RECORDS FOR DELINQUENTS & CINA

Relating to records generated and maintained by the Department of Health and Social Services.

recommends it be replaced with the following committee substitute

CS HCR 4 (JUD)

the same title
 a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) _____

fiscal note(s) HSS

zero fiscal note(s) _____

zero fiscal note(s) ADMIN (P.D)

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i> CROFT	✓			
<i>[Signature]</i> ROKEBERG			✓	
<i>[Signature]</i> PORTER	✓			
<i>[Signature]</i> GREEN			✓	
<i>[Signature]</i> JAMES	✓			
<i>[Signature]</i> BERKOWITZ	✓			
<i>[Signature]</i> BUNDE	✓			

CHAIR'S SIGNATURE _____

[Handwritten Signature]

CS FOR HOUSE CONCURRENT RESOLUTION NO. 4(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES KELLY, Phillips, Dyson, Ryan

A RESOLUTION

**1 Relating to records generated and maintained by the Department of Health and
2 Social Services.**

3 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

**4 WHEREAS the Department of Health and Social Services currently generates and
5 maintains records relating to minors who are or are alleged to be children in need of aid
6 (CINA) and relating to minors who are or are alleged to be delinquent; and**

**7 WHEREAS CINA and delinquency records may be subject to different treatment
8 under laws and court rules governing their use and disclosure;**

**9 BE IT RESOLVED that the Alaska State Legislature respectfully requests the
10 Governor to direct the Department of Health and Social Services to undertake whatever
11 administrative actions may be necessary so that delinquency information can be disclosed with
12 minimal loss of federal funds.**

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Bill Version: HCR 4
(H) Publish Date: 1/31/97

Revision Date: _____
Title: Relating to records generated and
maintained by the Department of Health and Social Services
Sponsor: Rep. Kelly
Requestor: House (HES)

Dept. Affected: Health and Social Services
BRU: Family and Youth Services
Component: DFYS Central Office
COMPONENT SERIAL NO. 259
See also (SN#): 252,253,255,258,264,2134

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGES IN REVENUES ()						
-------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY97) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

This resolution as currently drafted has no fiscal impact on the department because the Division of Family and Youth Services already maintains separate records for CINA and delinquency cases, even when such cases pertain to the same minor. However, we are aware that the sponsor's intent is to ask the administration to make whatever changes are required to allow for some public disclosure of juvenile records, and the financial impact of that action is outlined below.

The Division of Family and Youth Services currently receives approximately \$7.5 M in federal funds as reimbursement for foster care and administrative services provided to Children in Need of Aid (CINA) and Delinquents. Federal law prohibits disclosure of information regarding DFYS clients except in certain circumstances. In order to disclose information on juvenile offenders as desired by the sponsor while minimizing the loss of federal funds, the division must revise the organizational and financial structure of the agency to clearly separate costs and services associated with juvenile offenders from those associated with CINA's. DFYS must then discontinue claiming federal reimbursement for those costs and services. This restructuring will

5/22/97

Prepared by: L. Diane Worley, Director
Division: Family & Youth Services
Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services

Phone: 465-3191
Date: 01/21/97

Date: 1/22/97

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COMMITTEE COPY

ANALYSIS (cont.):

preserve the majority of federal receipts but will still result in some reductions which must be replaced by general funds. That loss in federal funds and the costs associated with the restructuring are reflected on the attached spreadsheet.

In addition to the ability to disclose information, the division will be able to improve the consistency, coordination, and quality of services provided to communities and offenders by more clearly focusing the leadership provided to the youth corrections section.

Total Costs Involved Due to Disclosure of Juvenile Information

	IVE Revenue <u>Loss</u>	Cost of <u>Restructure</u>	<u>Total Cost</u>
SERO	\$44,227.00	(\$8,800.00)	\$35,427.00
SCRO	\$157,505.00	(\$18,400.00)	\$139,105.00
NRO	\$113,770.00	(\$212,200.00)	(\$98,430.00)
CO	\$80,000.00	\$120,800.00	\$200,800.00
Probation		\$482,800.00	\$482,800.00
MYC		(\$24,100.00)	(\$24,100.00)
FC	\$18,554.00		\$18,554.00
RCC	\$284,115.00		\$284,115.00
	\$698,171.00	\$339,700.00	\$1,037,871.00

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HCR 4

Revision Date: _____
 Title: Relating to records generated and maintained by the Department of Health and Social Services
 Sponsor: Rep. Kelly
 Requestor: House (HES)

Dept. Affected: Health and Social Services
 BRU: Family and Youth Services
 Component: DFYS Central Office
 COMPONENT SERIAL NO. 259
 See also (SN#): 252,253,255,258,264,2134

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGES IN REVENUES ()						
-------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY98	FY99	FY00	FY01	FY02	FY03
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

POSITIONS	FY98	FY99	FY00	FY01	FY02	FY03
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY97) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

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S/22/97
 Prepared by: L. Diane Worley, Director *L. Diane Worley* Phone: 465-3191
 Division: Family & Youth Services Date: 01/21/97
 Approved by Commissioner: Karen Perdue, Commissioner *Karen Perdue* Date: 1/22/97
 Agency: Department of Health & Social Services

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HSS p 2

ANALYSIS (cont.):

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HCR 4

Revision Date: _____
 Title: "Relating to records generated and maintained by the Department of Health and Social Services"
 Sponsor: Representative Kelly
 Requestor: (H) HES

Department Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

The resolution requests the Governor to direct the Department of Health and Social Services to separate existing and future CINA and delinquency records. There is no fiscal impact on the Public Defender Agency.

Prepared by: Barbara K. Brink, Acting Director
 Division: Public Defender Agency

Phone: (907) 264-4414
 Date: _____

Approved by Commissioner: Mark Bover
 Agency: Department of Administration

Date: 1-23-97

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STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date: _____
 Title: "Relating to records generated and maintained by the Department of Health and Social Services"
 Sponsor: Representative Kelly
 Requestor: (H) HES

Department Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

The resolution requests the Governor to direct the Department of Health and Social Services to separate existing and future CINA and delinquency records. There is no fiscal impact on the Public Defender Agency.

Prepared by Barbara K. Brink, Acting Director
 Division: Public Defender Agency

Phone: (907) 264-4414
 Date: _____

Approved by Commissioner Mark Boyer
 Agency Department of Administration

Date: 1-23-97

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HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 13, 1997

FURTHER REFERRALS:

Finance

Date of Committee Action: 1/28/97

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HCR 4

HOUSE CONCURRENT RESOLUTION NO. 4

SEPARATE RECORDS FOR DELINQUENTS & CINA

Relating to records generated and maintained by the Department of Health and Social Services.

recommends it be replaced with the following committee substitute _____ [] the same title [] a new title

[] additional referral to _____ Committee [] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)

[] fiscal note(s) _____ [] fiscal note(s) _____

② [X] zero fiscal note(s) Admin, H+SS [] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			

CHAIR'S SIGNATURE *[Signature]*

AMENDMENT #1 *adopted*

OFFERED IN THE HOUSE

BY REPRESENTATIVE KELLY

TO: HCR 4

Change title?

1 Page 1, line 8:

2 Delete the last occurrence of "and" *JKK per Kelly's office*

3 Page 1, lines 9 - 10:

4 Delete all material.

5 Page 1, line 13:

6 Delete "existing CINA and delinquency records are"

7 Insert "delinquency information can be disclosed with minimal loss of federal funds."

8 Page 1, lines 14 - 15:

9 Delete all material.

JUDICIARY SUBCOMMITTEE REPORT

The Judiciary Subcommittee met February 14, 1997 at 9:00am in Room 250 of the Assembly Building.

MEMBERS OF THE SUBCOMMITTEE:

Representative Con Bunde, Chairman
Representative Brian Porter
Representative Eric Croft

MEMBERS ABSENT:

Representative Brian Porter

PARTICIPANTS:

Representative Pete Kelly
Margaret Pugh, Commissioner
Corrections
Del Smith, Deputy Commissioner
Department of Public Safety
Russ Webb, Deputy Commissioner
Health and Social Services
Karen Purdue, Commissioner
Health and Social Services
Ronald Otte, Commissioner
Department of Public Safety

The Judiciary Subcommittee met February 14, 1997 at 4:00pm in Room 106 of the Capitol.

MEMBERS ABSENT:

No members absent.

PARTICIPANTS:

Representative Pete Kelly
Bruce Campbell, Legislative Aide to Representative Kelly
Russ Webb, Deputy Commissioner
Health and Social Services

The Judiciary Subcommittee met February 17, 1997 at 4:00pm in Room 106 of the Capitol.

MEMBERS ABSENT:

Representative Eric Croft

PARTICIPANTS:

Representative Pete Kelly
Bruce Campbell, Legislative Aide to Representative Kelly
Margo Knuth, Department of Law
Representative Pete Kott

JUDICIARY SUBCOMMITTEE FINDINGS

REPRESENTATIVE PETE KELLY presented to the subcommittee an update to the release of information felony list that would accommodate some of the concerns addressed in the full committee.

THE MAJORITY, recognizing the incentives behind HB 6 to enhance public safety and provide a deterrent to juvenile crime, recommended that a CS for HB 6 be incorporated. A blank CS will be provided by the sponsor and HCR 4 is to accompany it.

REPRESENTATIVE PETE KOTT spoke to HB 3.

THE MAJORITY recommended that a CS be drafted for HB 3 that would tailor the release of information to match the types of crimes listed in HB 6.

Alaska State Legislature



House of Representatives
House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

MEMORANDUM

Date: February 19, 1997
To: Terri Lauterbach, Legislative Legal Services
Fax: 465-2029
From: Lisa Kirsch, House Judiciary Committee
Re: HCR 4

Please make the amendment you prepared for Kelly (0-LS0052\A.1) to HCR 4 (0-LS0052\A).

We assumed that the quotation marks were meant bracket "and" so your line 2 would read: Delete the last occurrence of "and" HCR 4 has passed out of committee, so we need a final CS.

Call if you have any questions (4990).

Thanks for your assistance.

Alaska State Legislature

REPRESENTATIVE

PETER KELLY

Mailing Address:

119 N. Cushman, Suite 203

Fairbanks, Alaska 99701

(907) 456-8161



While in Juneau

State Capitol

Juneau, Alaska

99801-1182

(907) 465-2327

House District 31

House Of Representatives

Sponsor Statement

HCR 4

Separate Records for Delinquents & CINA

Federal laws relating to minors require confidentiality of records relating to abused children. Because children involved in troubled homes often go on to commit criminal acts, DFYS has maintained one set of records for minors under its child abuse and delinquency jurisdiction. This legislation allows the administration to develop separate criminal records in a manner that will best prevent the loss of significant federal funding sources.

Alaska State Legislature

REPRESENTATIVE
PETER KELLY

Mailing Address:
119 N. Cushman, Suite 203
Fairbanks, Alaska 99701
(907) 456-8161



While in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-2327

House District 31

House Of Representatives

Sponsor Statement House Concurrent Resolution 4

Separating DFYS CINA records from criminal records of minors.

Federal laws relating to minors require confidentiality of records relating to abused children. Because children involved in troubled homes often go on to commit criminal acts DFYS has maintained one set of records for minors under its child abuse and delinquency jurisdiction. This legislation allows the administration to develop separate criminal records in a manner that will best prevent the loss of significant federal funding sources.

Data Summary

Volume 1
Number 1
August, 1996



DFYS

Alaska Dept. of Health and Social Services
Division of Family and Youth Services
P.O. Box 110630
Juneau, Alaska 99811-0630
(VOICE) 907-465-3170
(FAX) 907-465-3397
(EMAIL) DFYS@HEALTH.STATE.AK.US

Tony Knowles
Governor

Karen Perdue
Commissioner

L. Diane Worley
Director

Patty Ware
Juvenile Probation Officer III / Author

Roger P. Withington
Research Analyst III / Author

The mission of the Division of Family and Youth Services is to protect children at risk of abuse and neglect and to rehabilitate juvenile offenders while providing community protection.

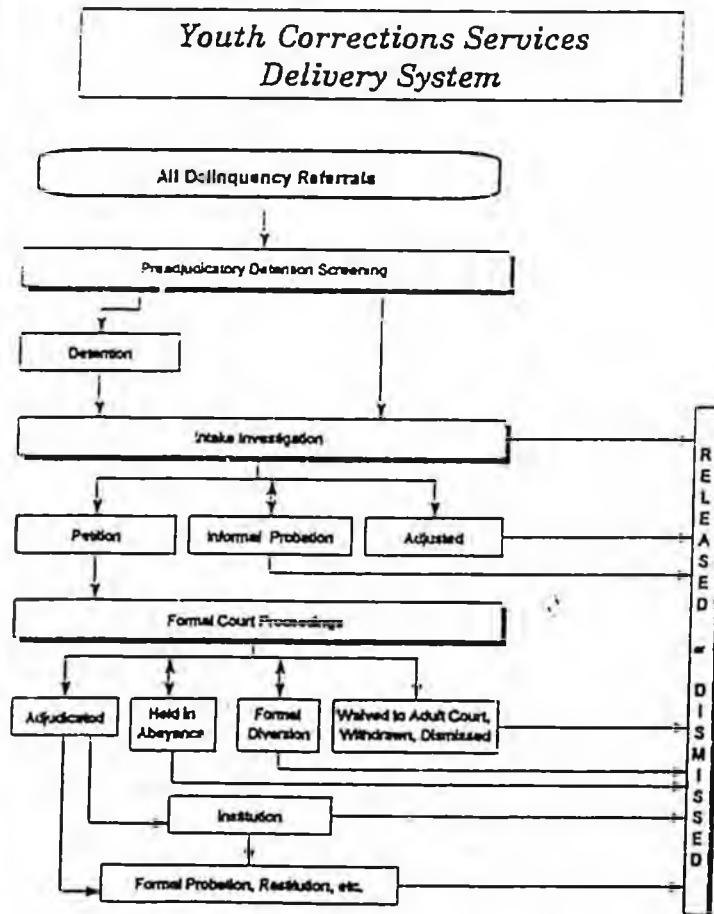
ALASKA'S JUVENILE JUSTICE SYSTEM

DFYS reduces or prevents delinquency by meeting the needs of youthful offenders in a manner consistent with protection of the public. To accomplish this DFYS provides the following services:

- Juvenile delinquency prevention
- Screening referrals
- Short-term detention of preadjudicated youth
- Investigation of alleged offenses
- Identification of each youth's and family's strengths and needs
- Legal intervention
- Informal and formal probation
- Out-of-home placement
- Long-term confinement/treatment for adjudicated offenders

Figure 1 illustrates the DFYS portion of Alaska's juvenile justice system.

Figure 1



As Figure 1 illustrates, there are four principal decision points in the DFYS youth corrections delivery system: referral, preadjudicatory detention screening, intake investigation, and court proceedings.

A delinquency referral is the juvenile's initial point of entry into the DFYS youth corrections delivery system. A referral is a law enforcement report to DFYS of criminal conduct on the part of a juvenile.

Preadjudicatory detention screening is the process of determining if preadjudicatory detention is appropriate for those youth for whom it has been requested as part of the law enforcement referral. There are five possible outcomes in the detention screening process: Detention, Released, Emergency Placement, Attendant Care Shelter, and Not Requested. During the analysis period, 18.5% of all referrals were accompanied by a request for detention.

Once DFYS receives a referral that includes a request for detention, DFYS performs a detention determination. The detention determination considers a number of factors in determining if detention is in the juvenile's and community's best interest. Some examples are: severity of the offense, imminent harm to the juvenile or community, a history of violent conduct on the part of the juvenile, and whether or not the crime contains elements of serious physical harm. DFYS determined that secure Detention was appropriate for 77.6% of these referrals.

The purpose of the intake investigation is to determine if the referral is legally sufficient to support the filing of a court petition. If DFYS determines that sufficiency exists, the agency gathers information to determine the type of action that would best serve both the juvenile and the public. There are six possible investigation outcomes: In Process, Adjusted, Dismissed, Detention Screen Only, Informal Probation, and Petition.

Court proceedings result from DFYS filing a formal petition for adjudication of a juvenile. Each referral that resulted in an investigation outcome of Petition will have a court proceedings decision. The seven possible court proceeding decisions are: In Process, Dismissed, Diverted, Held in Abeyance, Adjudicated, Withdrawn, and Waived.

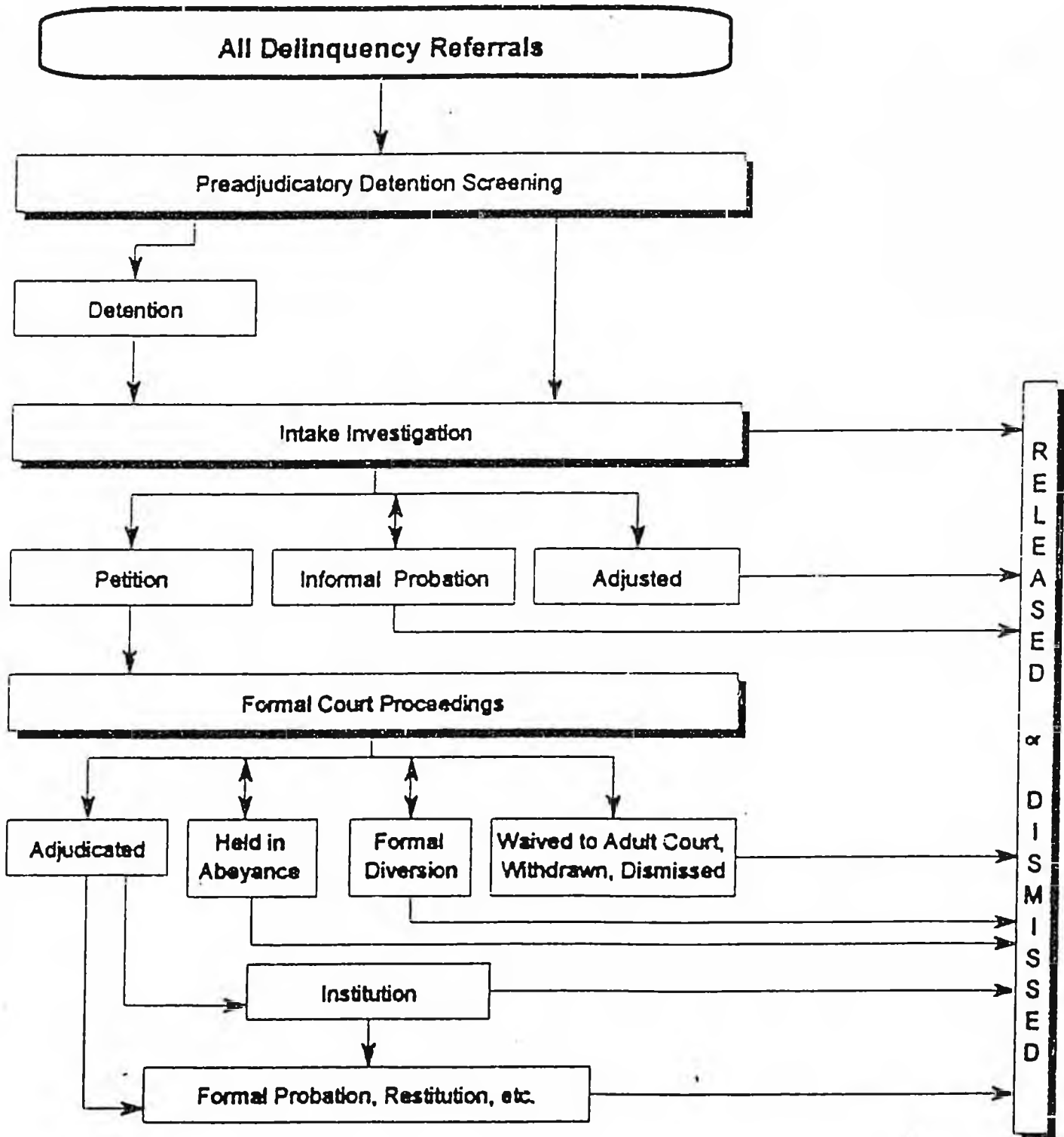
Although it is not specifically delineated in Figure 1, youth corrections supervision plays a very large role in the DFYS youth corrections delivery system, thus, we have included these records in this analysis.

Supervision of a juvenile is established as a result of a formal probation agreement, diversion agreement, acceptance of interstate supervision, a court disposition order, or an order for probation without adjudication. This analysis compares the initial supervision level that was assigned to the juvenile for each supervision episode that occurred during the analysis period. There are seven possible supervision levels: Maximum Probation, Medium Probation, Minimum Probation, Informal Probation, Residential Care, Correctional Institution, and Out-of-State Institution.

BACKGROUND INFORMATION

Figure 1

Youth Corrections Services Delivery System



HSS

↳ Kathy Tibbels 3023
RE: HCR4

Q What do we want HCR4 to do?
— Not records?

How is Fed. Funding linked?

Why no continuing annual
debit on fiscal note?

3y of records not issue
— Chain of command
— Separate

Prob & Family Ser need Sep
Child protect / Commissioners

Direct

— Diane Worley - be here today

Bruce Campbell

Dept HSS

CIWA

DEL

disclosure not record
have sep records already

HCRY This divides agency

HOUSE CONCURRENT RESOLUTION NO. 4

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES KELLY, Phillips, Dyson

Introduced: 1/13/97

Referred: Health, Education and Social Services, Finance

A RESOLUTION

1 **Relating to records generated and maintained by the Department of Health and**
2 **Social Services.**

3 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **WHEREAS** the Department of Health and Social Services currently generates and
5 maintains records relating to minors who are or are alleged to be children in need of aid
6 (CINA) and relating to minors who are or are alleged to be delinquent; and

7 **WHEREAS** CINA and delinquency records may be subject to different treatment
8 under laws and court rules governing their use and disclosure; and

9 **WHEREAS** those laws and rules may be better applied and the records may be more
10 efficiently maintained if they are kept separately from each other;

11 **BE IT RESOLVED** that the Alaska State Legislature respectfully requests the
12 Governor to direct the Department of Health and Social Services to undertake whatever
13 administrative actions may be necessary so that existing CINA and delinquency records are
14 separated from each other and so that future CINA and delinquency records are generated and
15 maintained separately from each other, even when they relate to the same minor.

HCR

11

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

NO. _____
BILL VERSION: HCR 11
PUBLISH DATE: _____

Revision Date: _____
Title: Urging the Attorney General of the State of Alaska to use every appropriate resource and due...
Sponsor: Representative Phillips
Requestor: House Judiciary

Department Affected: Legislative Affairs Agency
BRU: All
Component: All

COMPONENT SERIAL NO:

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE	0	0	0	0	0	0
---------------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary)

Zero fiscal impact to the Legislature.

Prepared By: Karla Schofield, Deputy Director *Karla Schofield* Phone: 465-3852
 Division: Administrative Services Date: 2/27/97
 Approved By: Pamela A. Varni, Executive Director *Pamela Varni*
 Agency: Legislative Affairs Agency Date: 2/27/97

Distribution (by preparer): Leg. Finance, Legislative Sponsor, Requestor, OMB, Gov. , & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 119

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: Small claims actions BRU: Trial Courts
 Component: _____
 Sponsor: _____
 Requestor: _____ COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	37.3	37.3	37.3	37.3	37.3	37.3
TRAVEL	4.0					
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	41.3	37.3	37.3	37.3	37.3	37.3

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	41.3	37.3	37.3	37.3	37.3	37.3
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	41.3	37.3	37.3	37.3	37.3	37.3

Estimate of any current year (FY 97) cost: None

Positions

Full-Time	1.0	1.0	1.0	1.0	1.0	1.0
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel
 Agency: Alaska Court System
 Approved by: Arthur H. Snowden, II, Administrative Director
 Agency: Alaska Court System

Phone: 264-8228
 Date: 02/14/97
 Date: 02/14/97

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

Alaska Court System
Fiscal Analysis
HB 119

HB 119 substantially increases the limit for small claims jurisdiction. Currently, small claims procedures can be elected in cases claiming \$5,000 or less; this limit was enacted in 1986. HB 119 reflects an increase in this limit to \$10,000. According to federal figures, the consumer price index has increased approximately 35 percent since 1986; when adjusted to 1996 dollars, the \$5,000 limit should thus be approximately \$6,850.

Contrary to popular belief, cases proceeding under small claims rules are more expensive for the court system to handle than are small cases subject to formal rules. Small claims procedures exist to lessen the burden on private citizens, not to lessen the burden on the courts. Small claims cases require a substantially larger per-case commitment of clerical resources, because court clerks are required to provide procedural assistance to litigants who are proceeding without the benefit of an attorney. A large percentage of small claims cases result in a trial, however brief; very few cases under \$10,000 proceeding under formal rules would result in a trial. Moreover, unlike small claims litigants, most litigants subject to formal rules will consult an attorney before filing a case, and thus the court system never sees many cases which are settled or otherwise disposed of by the lawyer prior to filing.

At court locations where there is a superior court or district court judge, the caseload shift (of claims in the \$5,000 to \$10,000 range, from district court to small claims court) will have a measurable but not severe impact on court resources. The primary impact will be an increased trial rate, some new cases, and increased clerical workload. However, at court locations served only by a magistrate, the impact will be more substantial.

More than half the magistrates employed by the court system are not attorneys. The 100 percent increase in jurisdictional limit will substantially increase the complexity of the small claims caseload. This fiscal note reflects increased costs for magistrate training and increased costs for clerical time.

Alaska Court System

Fiscal Analysis

HB 119

Personal Services

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Court Clerk II, range 10A, PFT, 12 months, Anchorage/Statewide	\$25,260	\$12,063	\$37,323

Travel (one-time costs)

Extend annual magistrate training conference by one day to accommodate session on small claims actions.

4,000

Estimated Total Cost

\$41,323

House Judiciary Committee

Jack Griffin / HCR 11

269-5268

Northstar Litig.

465 4135

2/25 Mike Heatwold
will drop off

House Judiciary Committee

① // Complaint

② // Editorial
From Daily News

HB 53

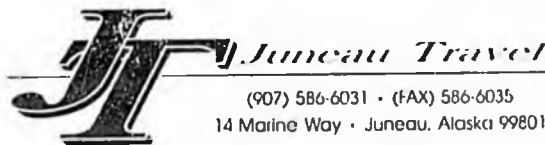
Corrections

Admin

Gen services
lease/purch

DOT

Revenue



LISA:

FOR HCR 11

COMMITTEE

PROJECT -

CALL w/

QUESTIONS

MIKE H.

X321



Alaska State Legislature

Please enter into the record my testimony to the HJUD
 committee name
 committee on HCR 11 , dated 2-26-97
 bill/subject

This special non-competitive give away of the Northstar royalty provision is another lump in the present legislature's give-away program of Alaska's publicly owned resources for the real purpose of increasing industries' profits at the expense of the public's long-term benefits. Even after the industry enters into and are successful in the open, competitive bidding process, they come back and demand self-interest benefit changes in their contracts and commitments. That is an example of industries' talking out of both sides of their mouths, when on one side they refuse any more restrictive, needed regulations, and on the other they readily demand the lowering of their contractual commitment, including their constant refusal to voluntarily pay their royalty debt.

This resolution, and the voluntary change of industries bidded contractual liabilities, are just examples of the numerous pending bills intending to lower responsibility to environmental protection, resource conservation and the public trust rights as owners of Alaska's common property resources. The 1997 legislature's attitude flies in the face of HCR 11's first statement, "Whereas a majority of Alaskans support safe and responsible oil development in the state..." I challenge the sponsors to add the following statement, "As proof of this responsibility, we offer the examination of the content of the following pending legislation: HB 28, HB 29, HB 4, HB 23, HB 51, HB 58, HB 31, HB 60, HB 68, HB 109 and HB 128." End of challenge.

The extractors' continuing demand for a more favorable financial climate shows their self-interest attitude by extending it to the lobbying for a reduction in the state budget for the funding of educational support, including a reduced commitment for extra curricular activities, such as sports, music, crafts, social activities, and school lunches, and further cuts in meeting health care needs of the young and elderly. Shame on the greed of the present legislature, who reflect their commitment to the power and intrusion of these multi-international corporations to the detriment of the true owners of these public resources.

Signed: Dale Bondurant
 Testifier
Self PHONE 262-0818
 Representing (Optional)

Alaska State Legislature



State Capitol
Juneau, AK 99801-1182
(907) 465-3720
(907) 465-2689

Official Business
Fax: (907) 465-3472

Speaker of the House of Representatives

SPONSOR STATEMENT REPRESENTATIVE GAIL PHILLIPS HCR 11

On February 13th of this year, British Petroleum announced they would immediately stop fabrication work on their Northstar oil field development project. The company indicated the reason for the work stoppage was their concern with a lawsuit challenging revisions to the Northstar lease terms ratified by the Alaska Legislature and signed by the Governor last year.

HCR 11 asks the Attorney General of the State of Alaska to use every appropriate resource and due diligence to defend the state's interests in this case. HCR 11 also respectfully requests the Superior Court to expedite consideration of the pending legislation so that work on the project can resume as quickly as possible.

In 1996 the legislature authorized the Commissioner of Natural Resources to revise the Northstar unit oil and gas leases. At the time there was a strong commitment to Alaska-hire, Alaska-build, and Alaska-buy in the development of the field.

Following the revised lease agreement, construction of modules for the Northstar project began in Anchorage. Several Alaskan construction and oil services companies made preparations for the increased work load. People were hired. Plans were put into place.

The lawsuit has directly resulted in many Alaskans losing their jobs. In the interest of all Alaskans, this case must be resolved quickly.

Our resolution simply asks the Courts to act as expeditiously as possible on this hearing in order to put Alaskan families back to work.

FINAL
FORM

CS FOR HOUSE CONCURRENT RESOLUTION NO. 11(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE PHILLIPS

A RESOLUTION

1 **Urging the Attorney General of the State of Alaska to use every appropriate**
2 **resource and due diligence to defend the state's interests in the civil action filed**
3 **against the state challenging the 1996 revisions of the Northstar unit leases, and**
4 **respectfully requesting the Superior Court of the State of Alaska to give**
5 **expeditious consideration to the matter.**

6 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 **WHEREAS** a majority of Alaskans support safe and responsible oil development in
8 the state and the jobs it creates for Alaskans; and

9 **WHEREAS** development of other oil fields in Alaska has resulted in thousands of jobs
10 throughout this state and the United States; and

11 **WHEREAS** Prudhoe Bay production is declining by approximately 10 percent a year;
12 and

13 **WHEREAS** Alaskans recognize that oil production from the North Slope is declining
14 and new development is needed to create new jobs in the state and to bring additional revenue
15 to the state; and

1 **WHEREAS**, the commissioner of natural resources negotiated revisions to existing
2 Northstar unit leases between the state and BP Exploration (Alaska), Inc.; the lease revisions
3 have the effect of expediting the development of the Northstar field and ensure oil production
4 under a new payment system; and

5 **WHEREAS**, last year, the legislature overwhelmingly approved legislation, ch. 139,
6 SLA 1996, authorizing the commissioner of natural resources to revise the Northstar unit oil
7 and gas leases; and

8 **WHEREAS** the legislature and British Petroleum, the lessee's parent company, have
9 acknowledged the importance of a strong commitment to Alaska-hire, Alaska-build, and
10 Alaska-buy in the development of the Northstar field; and

11 **WHEREAS** British Petroleum, honoring its voluntary commitments, has already hired
12 many residents and companies holding state business licenses; and

13 **WHEREAS** a civil action was recently filed in the superior court challenging the 1996
14 revisions of the Northstar unit leases; and

15 **WHEREAS**, in response to dislocations arising from the filing of the court challenge,
16 the Attorney General has publicly commented that the state has asked the court to expedite
17 consideration and resolution of the litigation; and

18 **WHEREAS** the legislature recognizes the grave effects this challenge to the revisions
19 of the Northstar leases are having on the development of the Northstar field;

20 **BE IT RESOLVED** that the Alaska State Legislature urges the Attorney General of
21 the State of Alaska to use every appropriate resource and due diligence to defend the state's
22 interests in this civil action challenging the 1996 amendment of the Northstar unit leases; and
23 be it

24 **FURTHER RESOLVED** that the legislature respectfully requests the Superior Court
25 in which this litigation is filed and scheduled for hearing to expedite consideration of the
26 pending litigation.

**THE FOLLOWING PAGES MAY
NOT FILM LEGIBLY BECAUSE OF
THE POOR QUALITY OF THE ORIGINAL**

STATE FILED
BY DEPUTY CLERK

1 LEUTWYLER, BRION & ASSOCIATES
2 631 K Street
3 Anchorage, AK 99501
4 Telephone: (907) 272-5325
5 Facsimile: (907) 272-5317
6
7 Attorneys for Plaintiff Clyde Baxley and The Republican Moderate Party

9 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

11 THIRD JUDICIAL DISTRICT AT ANCHORAGE

14 CLYDE BAXLEY, individually, and)
15 on behalf of the citizens of the State of)
16 Alaska, and THE REPUBLICAN)
17 MODERATE PARTY, a political group,)
18 on behalf of the citizens of the State of)
19 Alaska.)
20)
21 Plaintiffs,)
22)
23 vs.)
24)
25 STATE OF ALASKA and JOHN SHIVELY,)
26 Commissioner, Department of Natural)
27 Resources,)
28)
29 Defendant.)
30 _____)

Case No. 3AN-97- 708

31 Complaint for Declaratory Judgment

32 COME NOW Plaintiffs Clyde Baxley, individually, and upon behalf of the
33 citizens of the State of Alaska, and The Republican Moderate Party, a political
34 group, upon behalf of the citizens of the State of Alaska, by and through counsel
35 of record Leutwyler, Brion & Associates, and, pursuant to AS 22.010.020 (g), for
36 their causes of action against the Defendant State of Alaska, allege as follows:

37

JURISDICTION AND VENUE

38 1. Plaintiff Clyde Baxley is a citizen and resident of the Third Judicial District of
39 the State of Alaska and is subject to the jurisdiction of this court, and venue is
40 proper.

41 2. Plaintiff The Republican Moderate Party is a non-profit Alaska corporation and
42 an Alaskan political group as defined by AS 15.60.010 (19), composed of
43 Alaska citizens and residents, and is subject to the jurisdiction of this court,
44 and venue is proper.

45 3. Both Plaintiffs are public interest litigants, and bring this action upon behalf of
46 themselves and other citizens of the State of Alaska, for the common good of
47 the State of Alaska.

48 4. Defendant State of Alaska (hereinafter "State") is a government unit/entity duly
49 organized under the Constitution and laws of the United States of America and
50 the State of Alaska and is subject to the jurisdiction of this court.

51 5. Defendant John Shively is Commissioner of the Department of Natural
52 Resources of the State of Alaska, and is subject to the jurisdiction of this court.

53

STANDING

54 6. The government action being challenged in this Complaint for Declaratory
55 Judgment is a matter of significant public concern.

56 7. There are no other plaintiffs more directly affected by the challenged
57 government action who have brought suit to challenge it.

58 8. There are no other plaintiffs more directly affected by the challenged
59 government action who are more likely than the instant plaintiffs to bring suit
60 to challenge it.

61 9. Plaintiffs Clyde Baxley and The Republican Moderate Party are capable of
62 competently advocating the positions being asserted by the Plaintiffs in this
63 action.

64 10. Plaintiff Clyde Baxley has standing in this suit based on his status as a
65 taxpayer-citizen in good standing in the State of Alaska.

66 11. Plaintiff The Republican Moderate Party has standing in this suit based on its
67 status as an Alaskan political group composed of tax-paying Alaskan citizens
68 and residents.

69 FIRST CAUSE OF ACTION

70
71 **VIOLATION OF ARTICLE VIII, SEC. 17 OF THE ALASKA**
72 **CONSTITUTION (UNIFORM APPLICATION CLAUSE)**
73

74 12. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

75 13. Defendant State of Alaska originally entered into a net profit leasing
76 arrangement on the Northstar tracts with Amerada-Hess, a corporation,
77 whereby the successful bidder and the State would share the net profits from
78 the development of the lease. This arrangement is set out in House Bill No.
79 548, and is hereinafter referred to as the "original Northstar lease."

- 80 14. The State was aware that the successful bidder (Amerada-Hess) sold its
81 interest in the original Northstar lease to BP Exploration Inc. (hereinafter
82 "BP").
- 83 15. The State was approached by BP to renegotiate the original Northstar lease.
- 84 16. The State, through the Commissioner of Natural Resources, (hereinafter
85 "Commissioner.") agreed in a privately negotiated arrangement to amend the
86 original Northstar lease, substituting a sur-royalty based on market price with a
87 cap.
- 88 17. Other changes in the original Northstar lease were negotiated between BP and
89 the Commissioner.
- 90 18. The legislature ratified the negotiated arrangement between BP and the
91 Commissioner without modification.
- 92 19. The final negotiated arrangement between BP and the Commissioner in regard
93 to the Northstar lease is set out in the amendments to House Bill 548, and is
94 hereinafter referred to as the "modified Northstar lease."
- 95 20. This arrangement was not offered by the State to other bidders on the original
96 Northstar lease, nor to other oil and gas leaseholders in Alaska.
- 97 21. The modified Northstar lease makes no effort or attempt to treat equally all
98 persons similarly situated so that the net profit share leases other than those
99 held by BP may be considered.
- 100 22. Revised HB 548 violates the Uniform Application Clause of the Alaska

101 Constitution in that only the Northstar unit leases held by BP are addressed and
102 that it demonstrates a privileged status for BP in the use of natural resources
103 subject to the disposition of the State

104 SECOND CAUSE OF ACTION

105
106 VIOLATION OF ARTICLE VIII, SEC. 10 OF THE ALASKA
107 CONSTITUTION (PUBLIC NOTICE)
108

109 23. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

110 24. The State did not provide legal or actual notice to any other net profit bidder
111 that it was proposing the option of a sur-royalty substitute for net profit lease
112 holders.

113 25. The modified Northstar lease was a result of a privately negotiated
114 arrangement between BP and the State.

115 26. The State did not offer a similar arrangement to others.

116 27. Neither was the public notified, until it was finalized, of the arrangement
117 between BP and the State.

118 28. This lack of notice by the State to other net profit lease holders and to the
119 public at large is in violation of Article VIII, Sec. 10 of the Alaska Constitution
120 which requires public notice of any disposal or lease of state lands or interests
121 therein.

122

THIRD CAUSE OF ACTION

123

VIOLATION OF ARTICLE IV, SEC. 2 OF THE
ALASKA AND UNITED STATES CONSTITUTIONS
(PRIVILEGES AND IMMUNITIES CLAUSE)

124

125

126

127 29. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

128 30. The modified Northstar lease contains local hire provisions mandating that BP

129 voluntarily agree to hire residents of Alaska and to fabricate certain materials

130 in Alaska.

131 31. In entering into the modified Northstar lease, the State of Alaska is favoring

132 residents over non-residents in regard to the development of the Northstar

133 leases.

134 32. The local hire provisions contained in the modified Northstar lease interfere

135 with the rights of non-residents to earn a living.

136 33. The local hire provisions contained in the modified Northstar lease were

137 imposed upon BP by the State of Alaska and constitute impermissible state

138 action.

139 34. The local hire provisions contained in the modified Northstar lease

140 discriminate against non-residents in violation of the Privileges and Immunities

141 Clause, as well as the Equal Protection Clause and the Commerce Clause of

142 both the United States and Alaska Constitutions.

143 35. The local hire provisions contained in the modified Northstar lease are not

144 severable since the legislative record provides that a substantial motivation for

145 the State in changing the lease terms is the fact that the Northstar project will
146 create jobs and opportunities for Alaskans. Moreover, the legislature directed
147 the Commissioner of Natural Resources to refrain from amending the leases
148 until all the representations made by BP and the State were in substantial
149 compliance.

150 36. Since the local hire provisions are both unconstitutional and unseverable from
151 the remainder of the legislation, the entire modified Northstar lease is invalid.

152 FOURTH CAUSE OF ACTION

153
154 VIOLATION OF THE RULE AGAINST MATERIAL AMENDMENTS

155
156 37. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

157 38. The changes ultimately made to the original Northstar lease were substantial.

158 39. These changes could reasonably have been foreseen at the time of formation of
159 the original lease.

160 40. The net profit share was the sole variable in the lease sale and a material term
161 since it could influence the judgment or decision on the award of the contract
162 and gave BP a substantial advantage over other potential bidders.

163 41. The changes made to the net profit share violated competitive bidding statutes
164 and law which prohibit material amendments to competitively bid contracts.

165

HB0548
SCS CSHB 548(FIN) AM S

SENATE CS FOR CS FOR HOUSE BILL NO. 548(FIN) am S
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Amended: 5/6/96
Offered: 5/6/96

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

"An Act authorizing the amendment of Northstar Unit oil and gas leases between the State of Alaska and BP Exploration (Alaska) Inc.; and providing for an effective date."

BE IT ENACTED BY THE STATE OF ALASKA:

- * **Section 1. LEGISLATIVE FINDINGS AND INTENT.** (a) The legislature finds that
- (1) the production of oil and gas from state land is a matter of statewide interest and effect because it is an important source of revenue to the state and job opportunities for the people of the state;
 - (2) BP Exploration (Alaska) Inc. holds state oil and gas leases in the Northstar Unit that include net profit share provisions;
 - (3) unless the net profit share provisions of the Northstar Unit leases are amended, production of oil and gas from the unit is highly unlikely to begin before the year 2002, if at all;
 - (4) because of the development account provisions of the net profit share leases, the later that these leases are developed, the less "net profits" the state receives;
 - (5) if the net profit share provisions of the Northstar Unit leases are amended, full production of oil and gas from the unit may begin as early as the year 1999;
 - (6) amending the net profit share provisions of the Northstar Unit leases to provide for a supplemental royalty will maximize the economic benefits of oil and gas production to the people of the state by encouraging timely production from the unit;
 - (7) the development of the Northstar Unit will provide additional revenue to the state;
 - (8) the timely development of the unit may result in increased state revenue in future lease sales; and
 - (9) the timely development of the unit may result in technological breakthroughs and other cost savings that may make other development opportunities in Alaska economically feasible.
- (b) With respect to the effect of the effort to secure earlier development of the leases on employment opportunities for state residents and on the state's economy, the legislature finds that
- (1) paragraph 41 of the 1980 lease and paragraph 31 of the 1983 lease are to be amended; under each of the proposed amendments,
 - (A) the lessee, BP Exploration (Alaska) Inc., undertakes
 - (i) to use its best efforts to advertise for, recruit, and employ qualified residents of the state;
 - (ii) to contract with existing licensed Alaska firms to fabricate the

modules to develop the Northstar Unit leases within the state and, in contracting with those firms, to encourage its contractors to employ and, when necessary, train existing state residents;

(iii) to enter into contracts with Alaska-licensed vendors, contractors, and suppliers for the provision of supplies and services; and

(B) several state agencies with responsibility for improving the employment opportunities of state residents, including training, commit to efforts to supplement and support the lessee's undertakings;

(2) the lessee, BP Exploration (Alaska) Inc., has made significant investments in the state, is ranked as one of the state's largest private sector employers, and regularly enters into contracts to obtain support services; consequently, the lessee's fulfillment of the undertakings described in (1) of this subsection should materially contribute to existing resident workforce employment opportunities and to the state's economic stability;

(3) a good faith effort by the lessee, BP Exploration (Alaska) Inc., and the state agencies to fulfill the undertakings described in (1) of this subsection should ensure that, under the amended leases, benefits will accrue directly and immediately to the people of the state; and

(4) the mutual commitments made by the parties to the lease in these amendments to secure to state residents and businesses the advantages and benefits of both expanded resident hire opportunities and additional work by in-state businesses are in the best interests of the people of the state and are considerations of paramount importance to the legislature in its decision to conditionally approve the proposed amendments of the Northstar Unit leases.

*** Sec. 2. LEGISLATIVE INTENT REGARDING MEANING OF SPECIFIC RESIDENT EMPLOYMENT REQUIREMENTS.** (a) The legislature wishes to set out its intent regarding meaning of certain words and phrases used in the "First Amendment to the Northstar Unit Leases between the State of Alaska and BP Exploration (Alaska) Inc. ('Northstar Amendment')" that is approved by this Act. Specifically, the legislature wishes to set out its intent regarding the interpretation of the reporting obligations set out in Paragraph 41 of the 1980 Leases titled "Employment of Alaskan Residents" and Paragraph 31 of the 1983 Lease titled "Employment of Alaskan Residents" in the Northstar Amendment, collectively the "Employment Paragraphs." The legislature intends that the Alaska residents and contractors discussed in the Employment Paragraphs are truly Alaskan and that Alaska residents throughout the state be given an opportunity to obtain employment on the Northstar project.

(b) The legislature believes that

(1) the findings made by the legislature in AS 36.10.005(a)(1) - (8) and (11) - (18), (c), and (d), regarding an employment preference for Alaska residents on state construction projects are equally applicable to the Northstar Amendment; and

(2) the state has a compelling interest in reducing the level of unemployment among its residents.

(c) The legislature intends, for purposes of accounting and reporting under the Employment Paragraphs, that

(1) the phrases "Alaska resident," "residents of Alaska," and "resident personnel" mean an individual who is physically present in the state with the intent to remain in the state indefinitely and has a home in the state;

(2) an individual demonstrates that intent by maintaining a residence in the state;

(3) the individual possesses a resident fishing, trapping, or hunting license or receives a permanent fund dividend; and

(4) the hiring entity may also require that the individual state under oath that the individual is not claiming residency outside of the state or obtaining benefits under a claim of residency outside of the state.

(d) The legislature intends that for purposes of accounting and reporting under the Employment Paragraphs,

(1) the word "available" means Alaska residents who are located anywhere in the state, not just in the area of the state where the work is to be performed; and

(2) the word "qualified" means an individual who either currently possesses the requisite education, training, skills, or experience to perform the work necessary for a particular position or is capable of performing such skills after completing one of the job training programs contemplated in the Employment Paragraphs.

(e) The legislature understands that nonresidents will be hired only if there are no available and qualified Alaska residents to perform the work. For purposes of accounting and reporting under the Employment Paragraphs, the legislature intends that the requirement to "advertise for available positions locally" includes advertising in newspapers and other publications located throughout the state, including rural areas, not just in the location where the work is to be performed.

(f) The legislature further intends that the requirement to "use Alaska job service organizations" includes those offices maintained by the Department of Labor whose functions are to aid the unemployed in finding employment and any job service organization located throughout the state, not just the location where the work is to be performed.

(g) The legislature intends that, for purposes of accounting and reporting under the Employment Paragraphs, the phrases "Alaska Contractors" and "Alaska firms" mean a firm or contractor that

(1) has held an Alaska business license for one year before performing any work in connection with the Northstar leases;

(2) has maintained for one year a place of business within the state that deals in the supplies, services or construction of the nature required for the project before performing any work in connection with the Northstar leases; and

(3) is

(A) a sole proprietorship and the proprietor is an Alaska resident;

(B) a partnership and more than 50 percent of the partners are Alaska residents;

(C) a corporation that has been incorporated in the state or is authorized to do business in the state, or

(D) is a joint venture composed entirely of ventures that qualify under this paragraph.

(h) For purposes of Employment Paragraphs, the legislature intends that the lessee's reporting obligations comply with the reporting requirements of 8 AAC 30.062 and shall include information regarding the number of nonresidents hired within the past year, and the number of Alaska contractors and non-Alaska contractors hired within the past year.

* **Sec. 3. AMENDMENT OF LEASES AUTHORIZED.** (a) The State of Alaska and BP Exploration (Alaska) Inc. are parties to the following leases in the Northstar Unit:

(1) ADL 312798, effective February 1, 1980;

(2) ADL 312799, effective February 1, 1980;

(3) ADL 312808, effective February 1, 1980;

(4) ADL 312809, effective February 1, 1980; and

(5) ADL 355001, effective August 1, 1983.

(b) The commissioner of natural resources may amend the Northstar Unit leases described in (a) of this section to the extent set out in the "First Amendment to the Northstar Unit Leases Between the State of Alaska and BP Exploration (Alaska) Inc.", dated March 22, 1996, if the amendment includes a provision as follows:

(1) Paragraph 41 of each of the leases described in (a)(1) - (4) of this section is replaced in its entirety as follows:

"41. **EMPLOYMENT OF ALASKAN RESIDENTS.** Lessee shall comply with all valid federal, State and local laws in hiring Alaska residents and contractors and shall not discriminate against Alaska residents or contractors. Within the constraints of law, lessee shall employ Alaska residents and contractors to the extent they are available and qualified. Subject to the foregoing:

Lessee voluntarily agrees to adopt a program to hire residents of Alaska.

Lessee shall advertise for available positions locally and use Alaska job service organizations to notify the Alaskan public. For work in connection with this lease, lessee shall use best efforts to contract with Alaska firms and fabricate modules in Alaska, whenever feasible. Lessee shall encourage its contractors to employ and train, when necessary, residents of Alaska. In determining feasibility, lessee shall consider commercial, health, safety, and environmental conditions and requirements to ensure maintenance of lessee's operational standards. Lessee shall submit annually to the director, division of oil and gas, for transmission to the Department of Labor, a report that details the specific measures lessee and its contractors and subcontractors have taken or are planning to take to recruit qualified Alaska residents for available jobs, describes on-the-job training opportunities, and describes lessee's efforts to hire Alaska firms for work in connection to this lease. Lessee shall furnish the Department of Labor a quarterly report regarding the employment of Alaska residents on the leased area in compliance with regulations by the Commissioner of Labor. The report must also include statistical data concerning the number of resident personnel hired within the past year for this lease";

(2) Paragraph 31 of the lease described in (a)(5) of this section is replaced in its entirety as follows:

"31. EMPLOYMENT OF ALASKAN RESIDENTS. Lessee shall comply with all valid federal, State and local laws in hiring Alaska residents and contractors and shall not discriminate against Alaska residents or contractors. Within the constraints of law, lessee shall employ Alaska residents and contractors to the extent they are available and qualified. Subject to the foregoing:

Lessee voluntarily agrees to adopt a program to hire residents of Alaska. Lessee shall advertise for available positions locally and use Alaska job service organizations to notify the Alaskan public. For work in connection with this lease, lessee shall use best efforts to contract with Alaska firms and fabricate modules in Alaska, whenever feasible. Lessee shall encourage its contractors to employ and train, when necessary, residents of Alaska. In determining feasibility, lessee shall consider commercial, health, safety, and environmental conditions and requirements to ensure maintenance of lessee's operational standards. Lessee shall submit annually to the director, division of oil and gas, for transmission to the Department of Labor, a report that details the specific measures lessee and its contractors and subcontractors have taken or are planning to take to recruit qualified Alaska residents for available jobs, describes on-the-job training opportunities, and describes lessee's efforts to hire Alaska firms for work in connection to this lease. Lessee shall furnish the Department of Labor a quarterly report regarding the employment of Alaska residents on the leased area in compliance with regulations by the Commissioner of Labor. The report must also include statistical data concerning the number of resident personnel hired within the past year for this lease"; and

(3) These amendments take effect when and if an Act(s) substantially similar to the act, attached as Exhibit D and incorporated by reference, takes effect. This amendment is dated for reference purposes as of March 22, 1996.

* **Sec. 4. REPORTING PROVISIONS.** (a) The lessee, BP Exploration (Alaska) Inc., shall file with the commissioner of labor at least every six months the reports that the commissioner of labor determines are necessary to evaluate the lessee's efforts described under sec. 3(b) of this Act. The commissioner shall submit copies of these reports to the legislature. (b) The commissioner of labor shall also prepare and present to the legislature annually a comprehensive report by company on resident hire in the oil fields of the North Slope of Alaska, which shall indicate residency of employees by borough, unorganized borough, or economic region, and which shall compare the lessee's effort on voluntary resident hire to the comparable data for other North Slope oil field projects.

* **Sec. 5. AUDITING AND REPORTING.** Four years after the effective date of this Act, the Legislative Budget and Audit Committee shall undertake an audit of the lessee's compliance with its obligations under the "First Amendment to the Northstar Unit Leases between the State of Alaska

and BP Exploration (Alaska) Inc." and make a report of its findings to the president of the senate and the speaker of the house of representatives.

* **Sec. 6. SEVERABILITY.** Under AS 01.10.030, the provisions of this Act are severable.

* **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).