

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9355 HOUSE LABOR & COMMERCE

proposes to have the power delivered over the distribution system of whichever utility owns the relevant delivery facilities.

Second, ML&P's argument is directly disposed of in a recent decision of the United States Court of Appeals for the Ninth Circuit, Columbia Steel Casting Co. v. Portland General Elec. Co., 111 F.3rd 1427 (9th Cir. 1997), cert. pending ("Columbia Steel"). The Columbia Steel case is discussed at greater length below. Here it is sufficient to note that the Court found, among other things, that an Oregon Public Utilities Commission order permitting an exchange of facilities and customers between two electric utilities did not and could not, without more, provide any defense to antitrust claims.

An order in a utility boundary adjustment case has the effect of adjusting boundaries. The boundaries matter for some important purposes: Chugach cannot build distribution lines in ML&P's service territory without prior Commission approval as a result of that Commission order, for example. But, as the court ruled in Columbia Steel, an order in such a case does not supply the necessary "clear articulation and affirmative expression" to establish that the Commission -- much less the Legislature -- intended a resolution of a distribution service territory boundary dispute to preclude all future commodity sales competition between the utilities or convert either utility's distribution area into an exclusive power sales territory.

Portland General Electric, the utility that tried to rely on the Commission's ruling in Columbia Steel, lost, and was found to have violated the Sherman Act by refusing to allow one of its transferred customers to buy power from the neighboring utility. The

Antitrust Division of the U.S. Department of Justice sided with the steel company and against Portland General in that case.

8. The Rulings Chugach Seeks

The Commission can resolve the heart of this case simply, promptly, and without evidentiary hearings. The Commission need only review AS 42.05 and declare that the applicable Alaska statutes do not "clearly articulate and affirmatively express" a State legislative policy against competition in the form Chugach proposes, or in favor of monopoly power sales territories in the form ML&P desires. Chugach respectfully suggests that no other conclusion about the Alaska statutes is reasonably possible. Once the Commission makes this simple declaration, the entire debate on customer choice will shift from the wasteful expense of prevention and delay to valuable efforts to implement customer choice.

To implement competition in an "orderly" way, the Commission should further rule that (1) Railbelt consumers have a right to choose the supplier from whom they will purchase electric power; (2) ML&P must promptly file a tariff for providing access services for power sold to ML&P distribution customers by Chugach and other authorized sellers of power suppliers; and (3) meanwhile, so that ML&P is not rewarded for its own delays, ML&P should commence providing such deliveries at the interim rate such as that proposed by Chugach (which is nearly 2.9 cents per kilowatt-hour), subject to retroactive adjustment when and if the Commission establishes a different lawful charge.

Establishing an interim access services rate over the ML&P system is actually quite simple. Exhibit A to this Memorandum calculates for each customer class a transmission and distribution system access charge for the ML&P system. It is based on what we believe is the last test year filed with the Commission by ML&P for 1993. While updating and refining the rate may change it slightly, it is certainly sufficient for an interim refundable rate and Chugach has repeatedly stated it is willing to repay any underpayment should the final tariff rates be established at higher rates.

Chugach has not merely demanded that ML&P accept open access at just and reasonable rates over ML&P's delivery system. Chugach has also filed with the Commission, as Exhibit B to this memorandum, a calculation of an open access rate for sales of electric power by other suppliers to customers on Chugach's system. Chugach is prepared to file tariffs providing for open access over its system to others as soon as ML&P provides, willingly or by Commission or court order, reciprocal open access to Chugach over ML&P's system.

II. ARGUMENT

A. Federal Law Compels Competition Even For Distribution Service Unless The APUC Creates Exclusive Service Areas Pursuant To AS 42.05.221(d)

1. Competition Is The Rule

Federal law is the starting point of the analysis of competition. The basic rule in America is that businesses must compete. Anticompetitive conduct and, hence, monopolization is unlawful. Sherman Antitrust Act §§ 1, 2, 15 U.S.C. §§ 1, 2. Under both civil and criminal law, exclusive service territories are per se illegal unless they fall

within a recognized exception to the antitrust laws. Columbia Steel, 111 F.3d at 1435 n.7., cert. pending; see also Otter Tail Power Co. v. United States, 410 U.S. 366, 378 (1973). Even though this proceeding presents issues of state law, federal antitrust principles will ultimately dictate whether competitive access to distribution systems must be provided. See, e.g., Snake River Valley Elec. Ass'n v. PacifiCorp, No. CV 96-0308-E-BLW, Memorandum Decision at 10, 1997 WL 241086, at *5 (D. Idaho April 25, 1997) (overriding federal antitrust policies compel competition for existing electric power customers despite state Legislature's express prohibition against competition for those customers). Fortunately, in this case, state law and federal law can be harmonized.

2. ML&P Has The Burden Of Demonstrating A Clearly Articulated And Affirmatively Expressed State Policy In Favor Of Monopolization Of Electric Power Sales

As described more fully below, ML&P has the burden of demonstrating in this proceeding that its claim of the right to monopolize sales of electric power is based on a "clearly articulated and affirmatively expressed state policy" to eliminate competition. It is not sufficient to infer what the Legislature intended. "State-action immunity is a question of federal antitrust law that turns on the clarity of the state's expression of its policy, not the subjective intent of the policy makers....It cannot be decided simply by ferreting out extrinsic evidence in an effort to ascertain the subjective intent of the state." Columbia Steel, 111 F.3d at 1442.

Competition is the rule and repeals of the antitrust laws and creation of immunity through implication are "disfavored." Columbia Steel, 111 F.3d at 1437. For that reason,

the Federal Courts have held "private party conduct is immune from antitrust liability only if the party claiming immunity shows that its conduct satisfies" the Federal standards. Nugget Hydroelectric v. Pacific Gas and Electric, 981 F.2d 429, 434 (9th Cir. 1992) (emphasis added). Therefore, if ML&P seeks to cloak itself in state action immunity and claim the right to monopolize, ML&P has the burden of demonstrating that its actions are supported by a "clearly articulated and affirmatively expressed" state policy to permit the type of monopolization it seeks to justify. To date, it has not done so. For the reasons identified below, ML&P will be unable to meet its burden.

3. Unless State Law Clearly and Affirmatively Authorizes Their Creation, Exclusive Service Territories Violate the Antitrust Laws

The state action doctrine is a narrow exception to the antitrust laws. That doctrine permits states, by statute, to authorize monopolization through the creation of exclusive service areas for utilities. To qualify for antitrust immunity under the state action doctrine, however, the exclusive service areas must be part of a "clearly articulated and affirmatively expressed" state policy to displace competition with regulation. E.g., California Retail Liquor Dealers Ass'n v. Midcal Aluminum, 445 U.S. 97, 105 (1980) (Midcal); Columbia Steel, 111 F.3d at 1436. Like all exceptions to the antitrust laws, the state action doctrine is narrowly construed and is not lightly inferred. See, e.g., Phonetele, Inc. v. American Tel. & Tel., 664 F.2d 716, 726 (9th Cir. 1981), cert. denied, 459 U.S. 1145 (1983) (Phonetele). Unlike the statutes of "exclusive service territory" jurisdictions, the Alaska statutes do not express a legislative policy against competition between utilities generally. Bearing in mind that exceptions to the antitrust laws are not to be inferred, Phonetele,

supra, it is apparent that Alaska's utility statutes do not "clearly articulate and affirmatively express" a general policy against competition in the sale of electric power.

- i. The only clear and affirmative authority for the creation of exclusive service territories is found in AS 42.05.221(d).

AS 42.05.221(d) creates a single, limited and well-defined means for the APUC to eliminate competition for distribution service on a case-by-case basis. The Commission must find that competition (1) exists in a specific territory, and (2) is not in the public interest. AS 42.05.221(d). Once it has made those findings, the Commission may take "appropriate action" to eliminate competition and duplication of facilities. *Id.* Until the Commission acts pursuant to AS 42.05.221(d), competition for retail energy sales and for distribution services is not only permissible, but mandatory under the antitrust laws.

Therefore, only one interpretation of Alaska law is consistent with federal antitrust principles: The Legislature did not intend to eliminate all competition—even competition for distribution services and facilities. The only exception is that the Commission may create exclusive service territories when it determines that competition for distribution services in a specific area or for specific customers is not in the public interest. AS 42.05.221(d). No other clearly expressed authority to permit monopolization exists.

- ii. The expression of one means and one type of exclusive service territory excludes other means of creating exclusive territories.

A fundamental rule of statutory construction is *expressio unius est exclusio alterius*. That is, the expression of one thing is the exclusion of another. Because Alaska statutes provide one express means for the creation of an exclusive distribution territory, all other

unstated methods are excluded. This rule of statutory construction complements the general rule that exceptions to the antitrust laws are to be narrowly construed. Phonetele, 664 F.2d at 726. When considered in conjunction with the joint use and interconnection provisions of Alaska law (AS 42.05.311 and 42.05.321), it is clear that not only has the Alaska Legislature not mandated monopolization, but in fact it has disapproved of the misuse of monopoly power over "essential facilities" owned by regulated utilities by requiring joint use of such facilities.

3. Certificate Requirements Do Not Clearly Authorize Exclusive Service Territories

ML&P has asserted that AS 42.05.221(a) authorizes the APUC to eliminate competition by regulating service areas. ML&P apparently believes that it has not only a distribution monopoly over its service area, but also the right to a vertically integrated monopoly over all components of electric power sales, solely because it holds a certificate.

i. Federal Law: Creation of a distribution monopoly does not clearly articulate and affirmatively express the state's intent to create commodity sales monopoly.

ML&P's arguments misinterpret the significance of a certificate. Certificate requirements ensure that a utility is capable of serving a territory and that the availability of the utility's service in that territory is in the public interest. AS 42.05.221(a). Authorizing the Commission to define service areas does not amount to a clearly articulated and affirmatively expressed policy to eliminate competition for the sales of electric power. See Columbia Steel, 111 F.3d at 1439 (exchange of service territories, including specific customer accounts did not create exclusive territories).

- ii. State Law: The Supreme Court has held certificates do not create a monopoly.

The Alaska Supreme Court has held that certificates are not a license to monopolize. Chugach Elec. Ass'n v. City of Anchorage, 426 P.2d 1001, 1003 (Alaska 1967).

- iii. State Law: The Commission has concluded that certificates don't grant monopolies.

The Commission's own interpretation of AS 42.05.221 is telling: "[T]he Commission does not believe that the Alaska Legislature has expressly or by necessary or even reasonable implication intended the concept of a regulated monopoly to constitute part of the rights granted a certificate holder." Re Claude C. Bailey dba Valley Refuse, APUC Order No. U-83-8(4), 7 APUC 97, 112 (1985) (Valley Refuse). The certificate requirements reflect a "legislative recognition that competitive situations are not necessarily contrary to the public interest." *Id.* 7 APUC at 113. Moreover, in the case of Chugach and ML&P, a "competitive situation" is decidedly in the public interest where it would reduce consumer rates without duplication of facilities.

Viewed against this statutory scheme, the certificate, by itself, does not shield the certificated utility from the possibility of commodity sales competition for its customers in the future. The only way that the Commission may create exclusive service territories is through the proceeding authorized by to AS 42.05.221(d).

Because AS 42.05.221(d) specifies the exclusive means for the Commission to create monopoly service areas, the Commission cannot permit monopolies to be implied

from the grant of a certificate. Unless it acts pursuant to AS 42.05.221(d), the Commission cannot create monopoly distribution service territories consistent with federal antitrust laws. Midcal, 445 U.S. at 105; Columbia Steel, 111 F.3d at 1436.

- iv. AS 42.05.221(a) Authorizes exclusive distribution, but not exclusive commodity sales.

AS 42.05.221(a) provides:

A public utility may not operate and receive compensation for providing a commodity or service without first having obtained from the commission under this chapter a certificate declaring that the public convenience and necessity require or will require the service....A certificate must describe the nature and extent of the authority granted in it, including, as appropriate for the services involved, a description of the authorized area and scope of operations of the public utility.

ML&P has argued that the Commission has defined "the authorized area" within which ML&P and Chugach can operate. It is important to note, however, that the Legislature requires a certificate for "a commodity or service," but it has expressly granted the Commission authority to establish "a description of the authorized area" only for "services involved," not for commodities and services. Again, the rule of statutory construction—*expressio unius est exclusio alterius*—applies to say that although the Legislature requires a certificate to sell a commodity for compensation, it did not authorize the Commission to establish an "authorized area" for commodity sales. This is not an oversight. It makes perfect sense. If the Legislature was concerned about duplication of facilities leading to a public ill (as in AS 42.05.221(d)), it could eliminate that ill by permitting the Commission to define "authorized areas" for distribution and transmission

"services" while recognizing that the sale of commodities (kilowatt-hours) does not result in such duplication, and thus requires no creation of limited "authorized areas."

Each word of a statute is presumed to have effect. The presence of the word "commodity" in the portion of the statute requiring certificates indicates the Legislature's concern that those collecting money from consumers should be subject to oversight by the Commission. The absence of the word "commodity" from the portion of the statute dealing with "authorized areas" means that the Legislature has not clearly articulated and affirmatively expressed an intent to permit monopolization of electric commodity sales. This outcome (distribution monopolies, but not electric power sales monopolies) is consistent with the Supreme Court's and the Commission's own readings of AS 42.05.221, described above.

4. The Legislature Never Authorized the Elimination of Competition For Sales of Electric Energy Generally: It Only Allows the APUC to Eliminate the Duplication of Facilities

The legislative policy underlying AS 42.05.221(d) is to eliminate duplication of facilities. The Commission rules implementing that section underscore the focus on the elimination of duplicative facilities. See 3 AAC 52.110 ("The purpose of 3 AAC 52.110 - 3 AAC 52.150 is to prevent duplication of electric facilities and services . . .").

Permitting a utility to compete for sales of electric energy, using ML&P's distribution facilities, would not result in duplication. This is precisely the mode of competition that Chugach proposes, and precisely what ML&P has unlawfully refused to provide.

The Legislature contemplated competitive energy services by enacting a provision to require joint use of facilities. See AS 42.05.311. AS 42.05.321 provides that the Commission shall order that joint use be permitted, and to prescribe the conditions and compensation for such joint use if the Commission "finds that public convenience and necessity require the joint use...and the use will not result in substantial injury to the owner utility or its customers, or in substantial detriment to the services furnished by the owner utility, or in the creation of safety hazards." AS 42.05.321(a)(1) and (2). The form of competition that Chugach proposes--namely, competition for power sales without duplication of facilities--is entirely consistent with the legislative scheme.

Unless the Commission finds that the statutes clearly articulate and affirmatively express the intent to permit monopolization in the sale of commodity electric power, then it may not shield ML&P from the competition that Chugach proposes. If ML&P has no right to monopolize electric power sales, then the Commission may not find that competition for such sales would cause "substantial injury" to ML&P. Because Chugach proposes to deliver exactly the same amount of power over exactly the same lines to exactly the same customers as are presently provided power by ML&P, no system disturbances could result. Since Chugach proposes only to provide its power to ML&P customers who request such power, ML&P's customers would not only not receive substantial injury--they will receive substantial benefit.

To summarize, the APUC cannot lawfully prohibit competition unless state law clearly and affirmatively authorizes such action. Midcal, 445 U.S. at 105. State law

generally permits competition or, at least, does not prohibit competition. Chugach Elec. Ass'n v. City of Anchorage. 426 P.2d at 1003; Valley Refuse, 7 APUC at 112. The only way in which the APUC may eliminate competition is through the procedure set forth in AS 42.05.221(d). This proceeding does not implicate AS 42.05.221(d); there is no request for a determination that monopolization is in the public interest, merely a refusal to provide access over ML&P's distribution lines to permit a type of competition that the Alaska statutes do not prohibit.

B. The Commission Must Resolve Uncertainties Surrounding Competition and the Scope of Regulation In Favor Of Competition

The Railbelt area is unique. The population and level of commercial and industrial activity are large. The Railbelt utilities—the potential competitors—are all interconnected. Competition for retail electric sales, using the distribution facilities of the certificated utility, is highly practical right now.

The Commission's decisions in Docket No. U-71-16 (the boundary dispute between ML&P and Chugach) does not prevent Chugach from competing in the manner it proposes—the sale of electric power to customers over the distribution lines of an interconnected utility certificated to provide utility distribution service. In that docket, the Commission addressed the undesirable duplication of facilities. See APUC Order Nos. U-71-16(19) (1973); U-71-16(37) (1984). It seems evident that the only competition the Commission intended to prohibit was competition that results in duplication of facilities. To prohibit the type of competition Chugach proposes here, the Legislature would have to have clearly

articulated and affirmatively expressed an intent to create monopoly sales of power, something it did not do. Midcal, 445 U.S. at 105; Columbia Steel, 111 F.3d at 1437-38.

The Commission has before it a sufficiently ripe dispute that calls out for resolution. It must resolve the dispute over ML&P's asserted right to block competition in the sales of electric power to its distribution customers.

III. CONCLUSION

Competition is mandated by both state and federal law. ML&P has unlawfully refused to permit competition for sales of electric power within its distribution area. Such refusal is not only not sanctioned by Alaska state law, but is contrary to Alaska's joint use statute. In the absence of express Alaska statutory authority to monopolize the sales of electric power, ML&P must not use its essential distribution facilities to block its customers' choice of electric power suppliers.

The Commission need not, in this proceeding, decide issues of competition for Alaska's Bush utilities. The appropriateness and technological feasibility of competition under such conditions would more appropriately be addressed in the rulemaking proceeding already initiated on this subject.

Chugach's rather modest proposal to ML&P, and now to this Commission, is to recognize that Alaska's statutes do not express any Legislative policy against competition of the type Chugach proposes or in favor of the complete monopolies in exclusive service territories that ML&P would prefer. Because Alaska's statutes do not establish any such

right to monopolize, the Federal antitrust laws mandate competition for electric power sales where that is technologically and economically feasible.

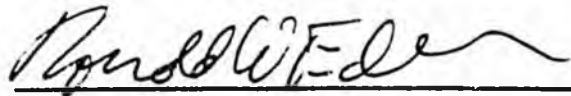
Chugach's proposal recognizes that Federal law permits consumers to choose who is to sell the electricity they buy, subject to the Commission's regulation of the utility that actually delivers that electricity.

The result Chugach seeks is compelled by both State law and Federal antitrust law. Moreover, such a result is eminently practical with today's technology, could result in significant savings to Railbelt consumers, and does not have any implications for competition for utilities in the Bush.

Based on state and federal law, Chugach respectfully asks the Commission, as promptly as possible, and without the necessity for an evidentiary hearing, to: 1) rule that Alaska state law does not clearly articulate and affirmatively express the state's intent to permit ML&P to monopolize sales of electric power for customers served by its distribution facilities; 2) issue an Order compelling ML&P immediately to commence distribution services to deliver electric power supplied by Chugach for customers requesting such service on an interim basis; and 3) issue an Order compelling ML&P immediately to submit a tariff with the Commission setting forth the terms and conditions for access services over its distribution system.

DATED this 10th day of November, 1997, at Anchorage, Alaska.

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STATE OF ALASKA
BEFORE THE ALASKA PUBLIC UTILITIES COMMISSION

Before Commissioners:

Sam Cotten, Chairman
Alyce A. Hanley
Dwight D. Ornquist
Tim Cook
James M. Posey

MUNICIPALITY OF ANCHORAGE)
d/b/a MUNICIPAL LIGHT & POWER,)

Complainant,)

vs.)

CHUGACH ELECTRIC ASSOCIATION,)
INC.,)

Respondent.)

Docket Number U-97-201

ANSWER AND CROSS-
COMPLAINT

CHUGACH ELECTRIC ASSOCIATION,)
INC.,)

Cross-Complainant,)

vs.)

MUNICIPALITY OF ANCHORAGE)
d/b/a MUNICIPAL LIGHT & POWER,)

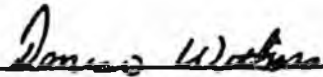
Cross-Respondent.)

CERTIFICATE OF SERVICE

Denise Withers certifies that:

I am an employee of Chugach Electric Association, Inc.; and that on the 10th day of
November, 1997, I faxed and mailed a true and accurate copy of **MOTION OF CHUGACH**

ELECTRIC ASSOCIATION, INC. FOR DECLARATORY JUDGMENT (SUMMARY OF JUDGMENT) ORAL ARGUMENT REQUESTED AND MEMORANDUM OF CHUGACH ELECTRIC ASSOCIATION, INC. IN SUPPORT OF MOTION FOR DECLARATORY JUDGMENT (SUMMARY JUDGMENT) to the parties indicated on the attached service list.



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HELLENTHAL & ASSOCIATES, INC.

GCI
CONSUMER
SURVEY
TSC/COM

METHODOLOGY AND SUMMARY

This report presents an analysis of a survey of Juneau area businesses. The survey measured properties of Juneau businesses' demographics, behaviors and attitudes concerning competition in the local telephone market. Research typically involved estimating the characteristics of a designated population. Because of the costs of conducting a census of all items in a population, and the adequacy of sample results, sample statistics were used to make statistical inferences concerning population parameters.

Two hundred and seventy-five (275) representatives of Juneau businesses were interviewed between January 19th and 22nd, 1998. Interviewing was conducted by telephone randomly. Theoretically, all Juneau businesses who are accessible by telephone had an equal chance of being interviewed.

At a 95% confidence level, the empirical proportions reported in this survey can be projected, within plus or minus 5.78%, to the entire Juneau business population. This means one can be 95% sure that the frequencies reported in this survey are within 5.78% of the true Juneau businesses population proportions.

Juneau area businesses clearly

- want competition in the local telephone market (71.7%)
- see lower prices as the most important benefit (62.6%)
- see higher prices as the biggest disadvantage of not having competition (48.5%)
- believe PTI is doing a somewhat or very good job (82.8%)
- think competition will result in new technology (81.8%)
- think competition will result in lower prices (88.9%)
- believe repackaging PTI's service will not result in the full benefits of competition (69.7%)
- would somewhat or very much worsen their impression of PTI, if they thought PTI was responsible for preventing competition for local telephone service (50.5%)
- believe Juneau is not too rural for competition (85.9%)
- think Juneau will not receive all of the advantages occurring in the telecommunication industry, if PTI maintains its monopoly (63.6%)
- believe competition in the long distance market has been good for consumers (89.9%)
- think competition in the local telephone market would be good for consumers (87.9%)

JUNEAU BUSINESS RESEARCH SURVEY

JANUARY 23 TO 28, 1998

Sample size = 217 out of 1,155 nongovernmental businesses
Margin of error ± 5.99%

HELLENTHAL & ASSOCIATES
2200 Vanderbilt Circle
Anchorage, Alaska 99508
(907) 276-1001 or
277-2315 (fax)

Hello, my name is _____ and I am calling for Helleenthal and Associates. We are conducting an marketing research survey of businesses in Juneau.

S1. Is this telephone number _____? (IF NO, TERMINATE WITH, "I'm sorry, I dialed the wrong number")

I'd like to speak to one of the people who helps make decisions about the type of telephone equipment your business uses, specifically someone who has an in depth knowledge of your systems requirements and data transport activities. (ASCERTAIN NAME OF PERSON AND, IF POSSIBLE, A MORE DIRECT NUMBER. RECORD ON ANSWER SHEET. IF THEY CAN TALK STRAIGHT AWAY, PROCEED. IF THEY CANNOT, ASK APPROPRIATE QUESTIONS AND TERMINATE...)

Your telephone number was randomly selected. The questions I need to ask will take about 5 minutes. All of your responses will be completely confidential, both in terms of your identity and that of your business. (PAUSE AND PROCEED)

I am going to start with a few questions about the company you work for.

1. How many separate telephone numbers do you have in your business?

SEPARATE TELEPHONE NUMBERS	FREQUENCY	PERCENT
One or two.....	90.....	41.4%
Three through five.....	83.....	38.4%
Six or more.....	44.....	20.2%
	(Median = 2.838)	
	(Mean = 4.657)	

2. Which of the following categories best describes the primary focus of your business, are you a retailer, financial service, medical or hospital services, business or consumer services, oil and gas, government, or other services? (OTHER SPECIFY)

PRIMARY FOCUS OF BUSINESS	FREQUENCY	PERCENT
Business/Consumer services.....	173.....	79.8%
Retail.....	26.....	12.1%
Financial.....	2.....	1.0%
Medical.....	11.....	5.1%
Oil & Gas.....	4.....	2.0%

3. How many people does your business employ in the Juneau area?

EMPLOYEES IN Juneau	FREQUENCY	PERCENT
None through two.....	94.....	43.4%
Three through nine.....	57.....	26.3%
Ten or more.....	66	30.3%
	(Median = 3.250)	
	(Mean = 12.768)	

4. In the next five years do you foresee your company growing, downsizing or remaining relatively unchanged?

FORESEE COMPANY	FREQUENCY	PERCENT
Growing.....	101.....	46.5%
Staying unchanged.....	107.....	49.5%
Downsizing.....	7.....	3.0%
Don't know.....	2.....	1.0%

5. Does your business want competition in the local telephone market?

LOCAL COMPETITION	FREQUENCY	PERCENT
YES.....	156.....	71.7%
NO.....	37.....	17.2%
DON'T KNOW.....	24.....	11.1%

6A. What is the most important benefit you see if there is competition in the local telephone market?

BENEFITS	FREQUENCY	PERCENT
Don't see any benefits.....	2.....	1.0%
Lower prices.....	136.....	62.6%
Choose quality of service.....	42.....	19.2%
More choice/no monopoly.....	11.....	5.1%
Better products/newer technology.....	2.....	1.0%
Advertising rates would go down.....	2.....	1.0%
More honesty.....	2.....	1.0%
Office in Juneau.....	2.....	1.0%
Don't know.....	7.....	2.4%

6B. What is the biggest disadvantage to consumers you see if there is no competition in the local telephone market?

DISADVANTAGES	FREQUENCY	PERCENT
Don't see any disadvantages.....	2.....	1.0%
Higher prices.....	105.....	48.5%
Inadequate service.....	15.....	7.1%
No new technology.....	2.....	1.0%
Monopoly/can do anything they want.....	26.....	12.1%
Lack of choice.....	22.....	10.1%
Lack of central source of info.....	2.....	1.0%
Inconvenience.....	2.....	1.0%
Don't know.....	31.....	11.3%

7. What type of job do you think PTI is doing in providing you with local telephone service? Do you think PTI is doing a very good, somewhat good, somewhat poor, or very poor job in providing you with local telephone service?

PTI'S JOB RATING	FREQUENCY	PERCENT
VERY GOOD.....	64.....	29.3%
SOMEWHAT GOOD.....	116.....	53.5%
NEUTRAL (DO NOT READ).....	22.....	10.1%
SOMEWHAT POOR.....	4.....	2.0%
VERY POOR.....	11.....	5.1%

8. Do you think competition in the local telephone market will result in new technology?

NEW TECHNOLOGY	FREQUENCY	PERCENT
YES.....	178.....	81.8%
NO.....	20.....	9.1%
DON'T KNOW.....	20.....	9.1%

9. Do you think competition in the local telephone market will result lower prices for telephone service?

LOWER PRICES	FREQUENCY	PERCENT
YES.....	193.....	88.9%
NO.....	15.....	7.1%
DON'T KNOW.....	9.....	4.0%

10. There are two types of competition: one way is to resell PTI's service where a competitor is only allowed to repackage that service; another way is for a competitor to build its own network and facilities. If a competitor for local telephone service is only allowed to repackage PTI's service, do you think that will result in the full benefits of competition?

REPACKAGING FULL BENEFITS	FREQUENCY	PERCENT
YES.....	28.....	13.1%
NO.....	151.....	69.7%
DON'T KNOW.....	37.....	17.2%

11. If PTI was responsible for preventing competition for local telephone service, would your impression of PTI very much worsen, somewhat worsen, or would it not make a difference to you?

PTI'S IMAGE IF PREVENTS COMPETITION	FREQUENCY	PERCENT
VERY MUCH WORSEN.....	22.....	10.1%
SOMEWHAT WORSEN.....	88.....	40.4%
NO DIFFERENCE.....	107.....	49.5%

12. The Alaska Public Utility Commission (APUC) considers Juneau to be a rural community. Do you think Juneau is too rural for competition?

FBX TOO RURAL FOR COMP	FREQUENCY	PERCENT
YES.....	22.....	10.1%
NO.....	186.....	85.9%
DON'T KNOW.....	9.....	4.0%

13. If PTI maintains its monopoly and there is no competition, will Juneau receive all of the advantages occurring in the telecommunication industry?

IF MONOPOLY ADVANTAGES	FREQUENCY	PERCENT
YES.....	50.....	23.2%
NO.....	138.....	63.6%
DON'T KNOW.....	28.....	13.1%

14. Do you think competition in the long distance market has been good for consumers?

LONG DISTANCE COMPETITION	FREQUENCY	PERCENT
YES.....	195.....	89.9%
NO.....	4.....	2.0%
DON'T KNOW.....	18.....	8.1%

15. Would competition in the local telephone market be good for consumers?

LOCAL COMPETITION GOOD	FREQUENCY	PERCENT
YES.....	191.....	87.9%
NO.....	11.....	5.1%
DON'T KNOW.....	15.....	7.1%

16. Are you registered to vote in the State of Alaska?

REGISTERED TO VOTE?	FREQUENCY	PERCENT
YES.....	208.....	96.0%
NO.....	9.....	4.0%

17. SEX (USUALLY DO NOT NEED TO ASK).....

GENDER	FREQUENCY	PERCENT
Male.....	110.....	50.5%
Female.....	107.....	49.5%

THE FOLLOWING VARIABLE IS CALCULATED USING THE TELEPHONE PREFIX.

AREAS OF JUNEAU	FREQUENCY	PERCENT
Douglas 364.....	18.....	9.7%
Juneau 463.....	33.....	8.2%
Juneau 586.....	136.....	17.1%
Lemon Creek 780.....	31.....	12.6%

THIS COMPLETES THE SURVEY, THANK YOU VERY MUCH FOR HELPING US -- GOODBYE.

GOVERNMENT AFFAIRS WEEKLY REPORT

March 30, 1998

Prepared by the NATIONAL ASSOCIATION OF REALTORS®

COMMERCIAL ISSUES

White House Releases Electric Power Deregulation Plan

The White House released its own electric power deregulation plan last week. Under the plan, consumers would pay \$3 billion annually into a new federal fund for low income energy assistance, energy efficiency, and conservation. It would allow states to pursue their own deregulation plans and encourage them to provide for the recovery of "stranded costs". The Federal Energy Regulatory Commission would also be given an expanded role enforcing both reliability and competition. The White House plan was a response to two bills, HR 655 and S 621, that address similar issues. Both bills mandate that the Public Utility Holding Company Act of 1935 be repealed. HR 655 would also require that retail customers be given a choice no later than December 15, 2000.

CONTACTS: Doug Miller 202-383-1117

ENVIRONMENT ISSUES

Land Use Forum To Feature Sen. Landries and Rep. Chenoweth

Sen. Mary Landrieu, D-La., and Rep. Helen Chenoweth, R-Idaho, have agreed to speak at the Land Use, Property Rights and Environment Forum at the Midyear Meetings in Washington, DC. The forum will take place on Friday, April 24 from 9:00 to 11:00 a.m. Sen. Landrieu will provide her political insights on the private property rights legislation currently moving through the Senate, and Rep. Chenoweth will speak about the effects the American Heritage Rivers Initiative could have on the real estate industry.

Superfund Reform Bill Makes Slow Progress in Both Chambers of Congress

By an 11-7 vote, the Senate Environment and Public Works Committee approved S. 8, a comprehensive Superfund reform bill. After months of negotiation and numerous concessions to the Democrats and the Administration, the prospects for passage remain clouded over lingering differences regarding cleanup standards, liability, and the role of the states. NAR supports the bill's provisions regarding clarification of the innocent landowner defense and funding for brownfields cleanup.

In the House, a second hearing was held on H.R. 3000, the Commerce Committee's Superfund reform bill. NAR supports the innocent landowner defense and brownfields cleanup provisions in this bill, as well.

CONTACTS: Russell Riggs 202-383-1259, Joe Maheady 202-383-1097, Jamie Gregory 202-383-1027

EQUAL OPPORTUNITY & FAIR HOUSING ISSUES

NAR Expresses Concerns with Proposed Fair Housing Amendments

In a letter to Rep. Henry Hyde, R- Ill., chairman of the House Judiciary Committee, NAR raised concerns with parts of H.R. 3206, the Fair Housing Act Amendments of 1998. The bill, which was approved by the Judiciary's Constitution Subcommittee last month, is designed to make it easier for communities and residents to have a voice in decisions regarding the placement of group homes for persons with disabilities. In his letter to Chairman Hyde, NAR President Layne Morrill asked that the bill be re-examined to determine whether there were some unintended detrimental effects on basic fair

housing protections. Specifically, NAR is concerned that language in the bill would allow a housing provider or property owner to tell prospective residents or real estate agents that certain people would not be welcomed to the community or housing because of their race. Rep. Charles Canady, R-Fla., chairman of the Constitution Subcommittee is expected to propose amendments to the bill to address NAR's concerns before the bill is considered by the full Judiciary Committee.

CONTACTS: Fred Underwood 202-383-1132, Brenda Brown 202-383-1099

FEDERAL HOUSING ISSUES

House Appropriations Subcommittee Addresses FHA

Last week, the U.S. House VA/HUD Appropriations Subcommittee addressed the Department of Housing and Urban Development's fiscal 1999 budget and the proposal to increase the limits on loans insured by the Federal Housing Administration. Responding to a flurry of questions generated by recent REALTOR® Calls For Action, Fly-Ins and grassroots activities, HUD Secretary Andrew Cuomo addressed the legislators' concerns directly and forcefully, contending the proposal helps close the nation's home ownership gap and puts HUD back in the business of helping deserving families in underserved areas obtain homes.

The subcommittee featured two days of hearings during which Secretary Cuomo and his assistant secretaries provided input and data pertaining to FHA and other HUD programs. The Secretary also decried the House's decision this week to target \$1.9 billion from the Section 8 reserve account to fund disaster relief and military operations. The action was taken during consideration of supplemental appropriations legislation and threatens housing opportunities for 210,000 low-income families next year.

HUD Preparing to Announce Single-Family REO Changes

The U.S. Department of Housing and Urban Development is planning to issue a proposed rule in the Federal Register announcing its intent to privatize the sales of its foreclosed properties. HUD Secretary Andrew Cuomo believes the current system is archaic and discourages potential buyers from purchasing HUD-owned properties. HUD officials are also concerned that its current system leads to accumulations of boarded-up, vacant properties, helping to feed the criticism of the FHA loan limit opponents who contend that FHA contributes to a high rate of foreclosures.

HUD intends to withdraw entirely from the property disposition process and turn the functions over to a private national or regional contractor. In conversations with NAR staff, HUD officials acknowledge the concerns of NAR that its proposal could affect the operations of several REALTOR® businesses engaged in this activity. But, the Department contends it is mandated by Congress to downsize staff and privatize functions to improve the agency's overall efficiency and effectiveness and hold down costs.

The proposed rule is expected to be issued in the Federal Register by mid-April and HUD is encouraging interested parties to submit a comment letter. NAR will submit a letter and has begun formulating internal strategies to inform the REALTOR® community of the planned action as well as to facilitate a broad collection of REALTOR® comments.

CONTACTS: Gary Weaver 202-383-1038, Megan Booth 202-383-1222, Amy Fletcher 202-383-1234

FINANCIAL ISSUES

Fannie Mae and Freddie Mac Release 1997 Affordable Housing Goals Results

Fannie Mae's and Freddie Mac's recently released annual housing activity reports show they both met 1997 affordable housing goals mandated by Congress. The chart below shows how each performed in terms of the percentages of total mortgage loans purchased:

1997 Goals 1997 Results

Low and Moderate Income

Fannie Mae 42% 45.46%

Freddie Mac 42 42.9

Under Served Communities

Fannie Mae 24% 28.99

Freddie Mac 24 26.3

Special Affordable

Fannie Mae 14 19.09

Freddie Mac 14 15.3

Special Affordable Multifamily

Fannie Mae \$1.29 billion \$3.19 billion

Freddie Mac \$988 million \$1.2 billion

CONTACTS: George Griffin 202-383-1102**POLITICAL ACTIVITY REPORT****Delay and Cook Confirmed for Public Policy and Political Forum**

House Majority Whip Tom DeLay, R-Texas, and political analyst Charlie Cook will be featured speaker at the Public Policy and Political Forum during the Midyear Meetings in Washington, D.C. next month. The forum will run from 1:00 to 3:00 p.m. on Saturday, April 25. DeLay will provide his insights into what legislation will pass and what won't in the abbreviated second session of the 105th Congress. Cook will give his analysis and predictions of the upcoming 1998 and 2000 elections.

New On-Line Call for Action Debuts on One Realtor Place® and NAR Home Page

In less than three weeks, visitors to One Realtor Place® and NAR's Home Page sent more than 500 letters directly to their members of Congress using a new online Call for Action feature. The service, which became available on March 17, allows users (both REALTORS® and members of the public) to send messages directly to Capitol Hill on NAR legislative issues. The first issue featured in letters prepared for the new system is NAR's campaign to raise the limits on loans insured by the Federal Housing Administration. Letters on the newly introduced Surviving Spouses Fairness Act and private property rights legislation will soon be available through this online feature, as well. To use the feature, go to the Call for Action button on the Legislative and Regulatory Floor of One Realtor Place®. Members of the general public can go to nar.realtor.com/gov to use the online Call for Action feature from there.

CONTACTS: Liz Johnson 202-383-1174

HB235

Bob Lohr, Executive Director
Alaska Public Utilities Commission

_____ characterized this standard as an "extraordinary burden of proof" that would, for example, be inappropriate for "regular commercial _____ claims against an estate," Cavanah v. (Alaska 1979). It is usually reserved for issues that have "serious social consequences or harsh or far reaching effects on individuals...." Dairy Queen of Fairbanks v. Travelers Inde Co., 748 P.2d 1169, 1171 (Alaska 1988).

2. Evidentiary Standard in General Alaska Administrative Law _____

Although the Alaska Administrative Procedures Act does not apply to adjudication before the APUC, it is used as a general guide in determining the norm for administrative practice in the state. AS 44.62.460(e) provides that unless a different standard is in the applicable law, such as the statute creating the agency, the preponderance standard applies. This is also the general rule in administrative law. "The standard of proof applicable to most disputed factual issues is preponderance of the evidence. Sometimes, however, Congress or the courts establish a higher

Bob Lohr, Executive Director

~~Alaska Public Utilities Commission~~

and Service Co., 2 APUC 100, 113 (normalization of losses of subsidiaries); Re Municipality of Anchorage dba Anchorage Utility, 2 APUC 36, 42 (1977)(disallowing construction in progress in rate base); Re Juneau and Douglas Telephone Co., 1A APUC 385 (1976)(rate of return on equity). The APUC has also explicitly used the preponderance standard in determining quality of service issues. Re North State Telephone Co., 1 APUC 464, 472 (1973). Most relevant in the context of providing electrical service is the use of the standard to determine whether Chugach and ML&P should be interconnected. Re Chugach Electric Ass'n, 5 APUC 293, 319 (1983).

The only section in the Alaska Public Utilities Commission Act, AS 42.05, which specifies the "clear and convincing" standard is AS 42.05.441(c) which requires that for

rate-making purposes, payments made to a person who owns more than 70 percent of a utility shall be considered equity, profits or dividends unless by clear and convincing evidence the need and the value of goods provided is shown. This standard was applied in

Acme Disposal Service, Inc., 1A APUC 514, 519 (1976). It is an

example of where a higher standard was imposed because

Bob Lohr, Executive Director

Alaska Public Utilities Commission

Public Service Commission, 1968). This also may have been a comment on the evidence that was unnecessary considering that the Commission had found the evidence "inconclusive."

4. Conclusion

In summary, the APUC has generally applied preponderance of the evidence standard in its dockets. There is one exception in the statute and only isolated examples where a higher standard may have been applied. The "clear and convincing evidence" standard is an extraordinary standard of proof that is usually reserved for administrative cases that are regarded as "quasi-criminal" because they have a potentially severe impact on an individual. It is fair to say that the use of the standard in H.B.235 will make it difficult to prove that another provider should be certificated in an area already served.

RZ\mgh

cc: Chairman Sam Cotten

Teresa Williams

MEMORANDUM

State of Alaska Department of Law

TO: Bob Lohr
Executive Director
Alaska Public Utilities Commission

DATE: December 8, 1997

FILE NO.:

TEL. NO.: 269-5200

SUBJECT: H.B. 235 Clear and Convincing
Evidence

FROM: Ron Zobel
Assistant Attorney General
Fair Business Practices Section Anchorage

You have asked if the evidentiary standard that is proposed in H.B. 235 for issuing more than one certificate of public convenience and necessity in an electrical service area is a change from the standard generally used by the Alaska Public Utilities Commission (APUC). The bill states that the Commission may not issue a certificate unless the commission finds by clear and convincing evidence that the additional competitive electric service is in the public interest,...¹

¹The next phrase of the bil. adds that "the result of adding the competitive service *is not likely* to adversely affect the quality of service or the rates provided to rural electric utility service customers in the certificated area." This phrase appears to use a preponderance standard as the discussion in the memorandum defines it. It is not clear that was intended by the sponsors but the bill provides the higher "clear and convincing" standard for the issue of whether a new

1. Evidentiary Standards in Alaska Law.

There are generally three standards for determining the weight of evidence in legal proceedings in Alaska. The beyond a reasonable doubt standard is reserved for criminal conviction and is not applicable in civil proceedings. See generally, Spenard Action Committee v. Lot 3, Block 1, Evergreen Subdivision, 902 P.2d 766, 774 (Alaska 1995). The usual standard in civil cases is the preponderance of the evidence standard. Justice Harlan stated that the standard requires the fact finder to believe that the existence of a fact is more probable than its nonexistence before [he] may find in favor of the party who has the burden to persuade the [judge] of the fact's existence. In re Winship, 397 U.S. 358, 371-72 (1970) cited in Cavanah v. Martin, 590 P.2d 41, 42n.4 (Alaska 1979). For example one Alaska jury instruction stated that, By a preponderance of the evidence is meant such evidence as when weighed with the opposite to it, has more convincing force and from which it results that the greater probability of truth lies therein. Dairy Queen of Fairbanks, Inc. v. Travelers Indemnity Co., 748 P.2d 1169, 1170n.3 (Alaska 1988).

The standard that is in between the criminal standard and the normal civil standard is the clear and convincing standard. Under this standard, there must be induced a belief that the truth of the asserted facts is highly probable. Saxton v. Harris, 71, 72 (Alaska 1964). The Alaska Supreme Court has

entrant is in the public interest and then uses language more appropriate to the lower preponderance standard ("is not likely") on the question of whether the new entry would "adversely affect the quality of service or the rates provided...." This language will create confusion and should be corrected to state one standard for both questions.

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White House Press Release

THE CLINTON ADMINISTRATION'S COMPREHENSIVE ELECTRICITY COMPETITION PLAN

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

March 25, 1998

THE CLINTON ADMINISTRATION'S COMPREHENSIVE ELECTRICITY COMPETITION PLAN

March 25, 1998

The Clinton Administration's Comprehensive Electricity Competition Plan will save consumers \$20 billion a year. And it combines those economic savings with environmental benefits -- both saving the typical family of four over \$230 per year and reducing greenhouse gas emissions. Retail competition will strengthen incentives to improve efficiency, and reduce the two-thirds waste of energy currently associated with fossil-fuel generation of electricity -- thereby cutting greenhouse gas emissions, saving money, reducing pollution, and conserving fuel.

The importance of the electricity sector. The electricity sector is our nation's most capital intensive industry, holding assets with a book value in 1994 of close to \$700 billion. Sales in 1996 were \$212 billion. And the industry has a significant impact on the environment.

Retail competition. Economic forces are forging a new era in electricity policy, where electricity prices will be determined primarily by the market rather than by regulation. Under this new system, often called "retail choice," consumers are allowed to choose their electricity supplier. Electricity policy is moving in this direction because subjecting utilities to competition will lead to increased efficiency in the industry and thus benefit the economy and the environment. Competition will spark innovation in the American economy, creating new industries, jobs, products and services.

The Administration's plan. The Plan is built upon the principle that customers should be allowed to benefit from the ability to choose their own electricity supplier. It advances the legislative changes necessary to provide customer choice, enhance competition, and diversify generation sources. Key components of the plan include:

1. Retail Competition - Flexible Mandate. The flexible mandate would require that all consumers be able to choose their electricity supplier by January 1, 2003, but would permit States and unregulated utilities to opt-out of the competition mandate if they find that consumers would be better served by an alternative policy. This approach strikes a balance between the need to spur competition and the importance of preserving State flexibility and authority.

2. Environmental Provisions. Environmental Provisions --The plan includes a range of provisions to protect the environment through cleaner air and reduced greenhouse gas emissions while saving consumers money. These include a \$3 billion Public Benefits Fund, to support conservation and energy efficiency measures, research and development into clean and efficient technology, and deployment of renewable energy technologies; a Renewable Portfolio Standard, to require that at least 5.5 percent of electricity sales be generated from non-hydroelectric renewable sources, subject to a cost cap; trading authority for nitrogen oxide emissions to facilitate cost-effective, market driven pollution reductions; and consumer information requirements to ensure that consumers can choose to purchase power from cleaner sources. We estimate that the plan will reduce greenhouse gas emissions by an estimated 25 million to 40 million metric tons in 2010. The Administration will monitor emissions by coordinating data received from utilities by the various agencies and such data will be provided in annual reports to the President, and will work with the Congress to ensure that any unanticipated consequences are addressed quickly and in keeping with the Administration's climate change policies.

3. Stranded Cost Principle. We support the principle that utilities should be able to recover prudently incurred, legitimate, and verifiable retail stranded costs arising from the transition to competition if these costs cannot be mitigated. States would continue to determine stranded cost recovery under State law.

4. Consumer Information. Uniform and easy to understand labeling similar to the Food and Drug Administration's nutritional labeling system will ease customer choice and facilitate the sale of environmentally responsible green power. The Department of Energy would develop a system for requiring all electricity sellers to disclose the price and environmental attributes of their power supply.

5. Strengthen Electric System Reliability. Reliability and competition can -- and must -- go hand in hand. To ensure reliability in the new market we propose to build upon the industry's tradition of self-regulation by requiring key market participants to join an organization which would establish reliability standards and enforce those standards subject to the oversight of the Federal Energy Regulatory Commission.

6. Cost Savings for Consumers and the Government. The typical family of four is expected to save over \$230 per year from this plan: \$104 per year directly -- in lower electricity bills -- and another \$128 per year indirectly -- in lower costs for goods and services that use electricity. Federal, State and local governments will also save close to \$2 billion per year.

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Monday, March 9, 1998

Energy chief seeks local leaders' feedback on utility deregulation

The Associated Press

WASHINGTON — Energy Secretary Federico Pena, addressing local leaders concerned about electrical utility deregulation, told them their input would help safeguard the success of any proposed restructuring.

Speaking to more than 2,000 regional officials Sunday at the National League of Cities conference, Pena acknowledged that there could be potential downsides if utility deregulation isn't handled properly.

"We have to be mindful that if through competition, if some companies go bankrupt," it would hurt local tax revenues, Pena said. He was joined by Transportation Secretary Rodney Slater and Commerce Secretary William Daley to address the conference here.

Pena's priority was to smooth concerns on the part of many league members about the proposed restructuring of the electric utility industry.

While some analysts estimate consumers could save \$20 to \$50 billion through consolidation, some local leaders fear a loss of tax revenue as well as a loss of their authority on local land use, zoning and other matters.



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In Montana, a Volt Out of the Blue

After State Deregulated, Utility Decides It Wants to Generate Different Business

By Tom Kenworthy
Washington Post Staff Writer
Wednesday, March 4, 1998; Page A02

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HELENA, Mont.—When the tide of electric utility deregulation started rolling in, Montana plunged in headfirst.

Encouraged by organized labor and pushed by a powerful utility that deployed lobbyists and campaign contributions at the capitol, the overwhelmingly Republican legislature in 1997 enacted a statute phasing in deregulation by the year 2002. Only four other states -- all with high electric rates -- acted before Montana, even though critics here warned it was foolhardy for a state enjoying the sixth cheapest electricity in the nation to gamble in an open market.

Less than a year later, those warnings have taken on a new urgency with the recent decision by Montana's largest utility, Montana Power Co., to sell off its generating facilities, five coal plants on the eastern Montana plains and 13 hydroelectric stations producing cheap power from western rivers. The company, which serves 275,000 customers here, has decided that its future lies elsewhere, with its electric transmission business, its oil and gas enterprises and its more recent telecommunications and fiber optics lines.

The announcement has added to fears of higher electric rates for Montana, with critics predicting that an out-of-state industrial giant will swoop in, sell the cheap power out of state and leave ratepayers here to import more costly electricity. There is reason for their concern: A Department of Energy study last year predicted the Pacific Northwest can expect higher rates with deregulation, although Montana's current rates are slightly higher than those of other Northwest states.

As a result of Montana Power's decision, some Montanans are heaving second thoughts. A growing coalition is urging the legislature to meet in special session and at least slow down the move to deregulation. And Montana's experience has encouraged neighboring states such as Idaho to take a harder look at the potential downside.

"Why would you risk cheap power, 500 good-paying utility jobs and about \$7 million in property tax revenue?" asked an outraged state Rep. Dave Ewer (D-Helena). "Once the dams are sold, this situation is irreversible."

Ewer was something of a voice in the wilderness a year ago, but now he has more company. Organized labor has reversed course. It is

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supporting the call for a special meeting of a legislature that usually convenes every two years and has never agreed to a special session.

The Democratic Party, which provided the bulk of the opposition a year ago but took no official position, has shed its neutrality. And what once was a strong coalition in Montana politics -- unions, environmentalists, seniors, advocates for the less well to do -- is firming up again.

The smart money says when Montana's 150 state legislators finish voting this Thursday on whether to hold a special session, proponents will not prevail. But the campaign to thwart deregulation will likely continue. "It's probably going to fall short," concedes Pat Judge of the Montana Environmental Information Center, "but I think with each passing week the idea is becoming more popular that we should slow down and reconsider."

Slowing down was not on the program when the legislature met last year. The deregulation measure was pushed through with Montana Power's political muscle and lubricated with promises to protect union jobs, cushion big power users like refineries and provide electric co-ops the choice of whether to join the competition or remain regulated.

By Montana standards, the money flowed freely. Montana Power, through its political action committee, was the state's most generous campaign contributor in the 1996 legislative elections. It sent 18 lobbyists to the capitol and spent more than \$132,000 on a lobbying campaign so lavish, said Ewer, "that when the bill was on the floor, I had a hard time getting to my seat there were so many lobbyists."

Among deregulation's big supporters was Senate Majority Leader John Harp (R-Kalispell), whose full-time job is vice president of Harp Line Constructors, a power line construction firm founded by his father with a \$500 Korean War bonus. According to state Public Service Commission records, Harp Line Constructor had more than \$25 million in contracts with Montana Power between 1993 and 1996 and \$6.8 million in contracts with PacifiCorp, a potential purchaser of the Montana Power generation facilities.

Harp said the potential conflict was disclosed, meeting the test of Montana's ethics rules.

Another powerful legislator, House Taxation Committee Chairman Chase Hibbard (R-Helena), serves on the Montana Power Co. board of directors. As a member of the board's personnel committee, he recently voted to award company president and CEO Bob Gannon a \$32,242 bonus on top of his base salary of \$297,500. In a statement filed with the Securities and Exchange Commission, the committee said the bonus stemmed in part from "the leadership shown by Mr. Gannon in the passage of legislation to restructure the electric and natural gas industries in Montana."

Hibbard did not participate or vote on the deregulation bill last year.

To deregulation advocates such as Harp and Gannon, it was the power of the idea of competition, along with what seemed an unstoppable

rush to deregulate across the country, that convinced the legislature to approve overwhelmingly the deregulation bill.

So why would Montana Power, so soon after clamoring to operate in a deregulated world, decide to abandon the generation business? Gannon offers three reasons: a hard look at the complexities of having the transmission part of its operations regulated and the generation part unregulated; the realization that Montana Power would have a tough time competing in a region with huge players such as the Bonneville Power Administration; and a nasty brawl before the state's utility commission over the valuation of its generating assets.

Montana Power estimated construction costs for these assets -- built into the rate system when deregulation wasn't contemplated -- at \$160 million. But the company became convinced it was not going to prevail in that view with the state's Public Service Commission.

So last December, Montana Power announced it would sell its electric plants. To many Montanans who have watched rail and air service decline in the wake of deregulation in those industries, it seemed like their remote state was going to get nailed again.

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Volvo will beat out prices on certified loose diamonds



Do you hate car shopping?

Glossary¹⁵

Avoided Costs - The incremental cost a utility would incur to produce power itself equivalent to an amount of power purchased from cogenerators or small power producers. The Public Utility Regulatory Policies Act of 1978 (PURPA) requires utilities to purchase power from qualifying facilities at prices based upon avoided cost. Many utility avoided costs were set in long-term contracts at prices now well above current market costs.

Bypass -When one or more customers within a utility's service territory obtain service from an alternative electricity provider by running a transmission line to another provider, displacing its traditional utility. Bypass might involve a wholesale or industrial customer that purchases generation and transmission services from third-party providers. Bypass usually enables a customer to avoid paying costs of social, environmental, and other programs imposed by government.

Cost-of-service Regulation - A method traditionally used as the primary basis for setting electric rates for utilities. Under cost-of-service regulation, rates for utility service are based directly on the costs a utility incurs in providing electric service to its customers, by customer class, in relation to revenues collected from each customer class. Utility costs of service include estimated operating expenses, depreciation, taxes, and a return on investments.

Cost-shifting - The allocation of a higher proportion of a utility's costs to certain customers or customer classes. This would occur if some of a utility's existing customers were allowed to leave the system as a result of changes in government regulation without paying their share of the costs of the utility system built to serve them. These costs would be shifted to other customers.

Demand-side Management (DSM) - DSM is the management of the demand for power. It consists of actions undertaken by utilities to influence customer use of electricity for the benefit of both the customer and the utility company. For example, when a utility reaches the point that more capacity is needed, it can either supply more power or reduce demand for electricity through DSM. DSM can include the shifting of demand to off-peak hours, reducing overall consumption, or increasing customers' overall energy efficiency. Many state regulatory commissions require electric utilities to conduct DSM programs, which increased greatly during the 1970s as a way for utilities to ensure an adequate electricity supply without building new generating facilities.

Direct Access - An arrangement in which customers can purchase electricity directly from any supplier in the competitive market, using the transmission and distribution lines of electric utilities to transport the electricity.

Distribution - The facilities of the electric system that deliver electricity from substations to customers. The distribution system "steps down" power from high-

¹⁵ Compiled from Edison Electric Institute and the National Rural Electric Association.

voltage transmission lines to a level that can be used in homes and businesses.

Divestiture - When a corporation separates a portion of its business and assets, such as power plants, transmission facilities, or distribution system, from the existing company. This can occur through a sale, spin-off, or other transfer of a line of business. Divestiture can occur voluntarily as a business decision driven by the market or by government mandate that a utility sell certain assets to diminish perceived market power.

Energy Policy Act (EPAAct) - Comprehensive federal legislation enacted in 1992 that is resulting in fundamental changes in the electric utility industry by promoting competition in wholesale electricity markets. Title VII, the electricity title of the Act, made it easier for non-utility producers to participate in the electric generation market by exempting them from regulatory restrictions imposed by the Public Utility Holding Company Act of 1935 (PUHCA). EPAAct also authorized FERC to order utilities to provide access to their transmission lines to other utilities, non-utility producers, and other participants in the wholesale electricity market.

Exempt Wholesale Generator (EWG) - An independent power producer that generates power and sells it in the wholesale market and is exempt from restrictions normally imposed on electricity providers by the Public Utility Holding Company Act (PUHCA). This legal class of companies was created by the Energy Policy Act of 1992 in order to expand competition in wholesale electricity generation.

Federal Energy Regulatory Commission (FERC) - A federal agency, established in 1977, which regulates the wholesale electricity market, i.e., power and transmission sales and service between utilities and between utilities and non-utility generators. An independent agency of the Department of Energy, FERC is composed of five members appointed by the President of the United States and confirmed by the Senate. Commissioners serve five-year staggered terms, and each has an equal vote on all regulatory matters.

FERC Orders 888 and 889 - The Federal Energy Regulatory Commission's (FERC's) rules to expand competition in the wholesale electric industry. The rules require utilities under FERC jurisdiction to file non-discriminatory open access transmission tariffs and offer comparable transmission services to eligible third parties. The rules also allow these utilities the opportunity to recover stranded costs (see definition elsewhere in this glossary) from departing customers for whom costs were incurred. FERC also required utilities to develop same-time information systems to make simultaneous transmission information available to those entities that are selling power.

Franchise Service Territory - The geographic area where a regulated utility provides electric service to retail customers. For decades, states have regulated electric utilities through a "regulatory compact." Under the compact, utilities are granted service territories in which they have the exclusive right to serve retail customers. This so-called "franchise" enables highly capital-intensive utility companies to raise the financing they need, spread their fixed costs over a specified customer base, and increase efficiency through economies of scale.

and load diversity.

In return for this franchise, utilities have an "obligation to serve" all consumers in that territory on demand. This means that utilities must ensure that there are sufficient generation, transmission and distribution systems to serve all their present and future customers.

Full Requirements Customer - A type of wholesale customer, such as a municipal utility, who commits to purchase all of its electric power generation needs from a single generator.

Genco - A type of company that is solely engaged in the business of generating electricity. Short for generating company.

Grid - The transmission network (or "highway") over which electricity moves from suppliers to customers.

Grid Operator - An entity that oversees the delivery of electricity over the grid to the customer, ensuring reliability and safety. A grid operator potentially could be independent of electric utilities or other suppliers. (See Independent System Operator)

Holding Company - A corporation (called the parent company) that directly or indirectly owns a majority or all of the voting securities of one or more electric utility companies which are located in the same or contiguous states. The Public Utility Holding Company Act of 1935 (PUHCA) defines a holding company as a company that owns ten percent or more of a utility. As most states do not permit a utility company which operates in another state to operate within their own boundaries, the holding company type of organization is used to bring into one family, consistent with state law, companies that can best be operated as part of an integrated utility system. Of the total number of electric utility holding companies, only a small number - 11 - are registered and subject to the full restrictions of PUHCA (see PUHCA in this glossary).

Host Utility - The local franchised utility that serves retail customers in its service territory.

Independent Power Producer (IPP) - A non-utility power generator that is not a regulated utility, government agency, or Qualifying Facility under the Public Utility Regulatory Policies Act of 1978 (PURPA). IPPs sell the power they generate in the wholesale market, typically to electric utilities. The terms of power purchase agreements between IPPs and power purchasers are subject to approval by the Federal Energy Regulatory Commission (FERC).

Independent System Operator (ISO) - The ISO is an evolving concept. In general usage, an ISO is a voluntarily formed entity that ensures comparable and non-discriminatory access by power suppliers to regional electric transmission systems. As currently envisioned, ISOs would be governed in a manner that renders them "independent" of the commercial interests of power suppliers who also may be owners of transmission facilities in the region. The ISO assumes operational control of the use of transmission facilities, administers a systemwide transmission tariff applicable to all market participants, and maintains short-term system reliability. ISOs will develop on a regional basis, reflecting differences among regions in operating and structural characteristics

of the transmission grid. Some ISOs also may be responsible for long-range system planning.

Kilowatt - A measure of electric energy equal to 1,000 watts. Put another way, it's the amount of electric energy required to light ten 100-watt light bulbs.

Kilowatthour - A measure of electricity consumption equivalent to the use of 1,000 watts of power over a period of one hour. Ten 100-watt light bulbs burning for one hour would consume one kilowatthour of electricity.

Market-based Rates - Rates for power or electric service that are established in an unregulated, competitive market. These rates can be established through competitive bidding or through negotiations between the buyer and seller, rather than set by a regulator. As portions of the electric industry become less regulated, market prices are increasingly important for making business decisions.

Market Power - The ability of a single firm or a group of competing firms to control barriers to entry into a market, allowing them to raise prices above competitive levels and restrict output below competitive levels for a sustained period of time.

Megawatt - A unit of power equal to one million watts. Put another way, it's the amount of electric energy required to light 10,000 100-watt bulbs.

Megawatthours - A measure of electricity generation equivalent to the use of one million watts of power over a period of one hour.

Municipal Utility (Municipally-owned electric system) - A utility that is owned and operated by a city. In most cases, municipal utility rates are set at the city level, either by the municipal administration or by a local utility board or commission. In some limited circumstances, state-level regulation applies. Municipal utilities often have access to low-cost power from federal hydroelectric projects and can obtain low interest loans, and they are exempt from income and other taxes at the federal and state levels. These factors contribute to lower financing costs for plant and equipment. Municipal utilities serve roughly 14 percent of the nation's electric customers.

Native Load Customers - Existing customers of a utility who are located within the utility's franchised service territory and who have paid for the utility's system through their rates under traditional regulation. It is a term used to make a distinction between these customers and customers outside the normal service territory to which a utility might sell power. Regulated shareholder-owned utilities are required to serve all native load customers on demand.

Non-Utility Generator (NUG) - A term coined to describe Qualifying Facilities, independent power producers, exempt wholesale generators, and any other company in the power generation business which has been exempted from traditional utility regulation. Some NUG facilities are built by users primarily for their own energy needs. Other NUG plants are built specifically to sell power to utilities under long-term contracts. In the last five years, over 50 percent of new generation capacity has been constructed by non-utility generators.

North American Electric Reliability Council (NERC) - A nonprofit organization formed by the electric utility industry to ensure reliable, adequate power supply

in North America. NERC plays an important role in establishing the standards, rules, and forms of cooperation that make a major contribution to system reliability.

NERC was formed in 1968 and is organized through ten regional councils comprised of individual electric utilities in the United States, Canada, and Mexico. The transmission systems of the members of these regional councils are interconnected, creating flexible regional systems that allow the transfer of power among areas to maintain one of the world's most reliable electric systems.

Obligation to Serve - The responsibility of a regulated utility, under traditional regulation, to provide service to all customers in its service territory on a non-discriminatory basis. This means that utilities must build, operate, and maintain generating plants and transmission and distribution systems to serve all their present and future customers.

Open Access Same-Time Information System (OASIS) - An electronic information system that allows users to instantly receive data on the current operating status and transmission capacity of a transmission provider. FERC established standards for OASIS in Order 889. Examples of the type of information that might be available on a transmission system OASIS include: availability of transmission services; hourly transfer capacities between control areas; hourly amounts of firm and non-firm power scheduled at various points; current outage information; load flow data; current requests for transmission service; and secondary market information regarding capacity rights that customers wish to resell.

Open Transmission Access - Enables all participants in the wholesale market equal access to transmission service, as long as capacity is available, with the objective of creating a more competitive wholesale power market. The Energy Policy Act of 1992 gave the Federal Energy Regulatory Commission (FERC) authority to order utilities to provide transmission access to third parties in the wholesale electricity market.

Partial Requirements Customer - A type of wholesale customer, such as a municipal utility, who purchases, or is committed to purchase, only a portion of its electric power generation needs from a particular generator. There often is a specified contractual ceiling on the amount of power that a partial requirements customer can take from the generator, based on demand for power.

Performance-based Rates - One of various ratemaking alternatives to traditional cost-of-service regulation. Under performance-based ratemaking, rates for utility service are based on objectives or standards for a utility's operating performance, rather than being based directly on the costs a utility incurs in providing service. This kind of ratemaking can provide incentives for utilities to reduce costs and/or meet other specified performance targets. An example would be a demand-side management (DSM) program where the company can earn additional profits based on how well the DSM program is run and the extent to which its goals are achieved.

POOLCO - An independent power pool company that operates the electric transmission grid and dispatches generating plants by buying and selling

wholesale power. Under most scenarios, the POOLCO would continually take bids from generators offering to sell electricity at specific prices. The POOLCO would then purchase the required energy, based on the price, and resell it for distribution at prices that reflect purchase costs as those costs vary during different time periods.

Power Broker - An individual who arranges power sales between other parties, but never actually owns the power. Power brokers are not required to register with the Federal Energy Regulatory Commission. Essentially anyone can be a power broker.

Power Marketer - An individual who sells power that it either buys or generates on its own. Power marketers are a type of electricity supplier greatly expanded by the Energy Policy Act of 1992. Sales of electricity by power marketers jumped from near zero in 1992 to 70 million megawatt hours in 1996. Power marketers are required to be certified by the Federal Energy Regulatory Commission (FERC).

Power Pool - An arrangement between two or more interconnected electric systems, planned and operated to supply power in the most reliable and economical manner for their combined load requirements. Benefits can include improved reliability of power supply, shared reserve generating capability, economy energy sales, power exchange agreements, diversity of resource mix, coordinated maintenance programs, and joint ownership of new power plants. Power pooling has become an integral part of the electric utility industry; currently, there are more than 150 power pools in the United States.

Public Utilities Commission - The state regulatory agency that governs retail utility rates and practices and, in many cases, issues approvals for the construction of new generation and transmission facilities. On average, roughly 90 percent of a utility's operations are regulated by the state commission.

There are regulatory commissions in all 50 states, as well as the District of Columbia, Puerto Rico, and the Virgin Islands. The state commissions vary in size from three to seven members, and most states provide that commissioners shall be appointed by the state governors. In some states, commissioners are elected. The typical term of office is six years. Also called Public Service Commission.

Public Utility Holding Company Act (PUHCA) - Federal legislation, enacted in 1935, which regulates the corporate structure and financial operations of certain utility holding companies. PUHCA was intended to simplify the holding company structure and to require holding companies and their subsidiaries to form a single integrated utility system where possible. But for all practical purposes, PUHCA today imposes significant regulatory restrictions on the 11 electric utility holding company systems which are registered because they operate in more than two states and are subject to the restrictions of PUHCA. Such restrictions do not apply to their competitors.

Public Utility Regulatory Policies Act (PURPA) - One of five bills signed into law on November 8, 1978, as the National Energy Act. PURPA is a broad statute aimed at expanding the use of cogeneration and renewable energy resources.

PURPA created a new class of power producers called Qualifying Facilities (QFs). PURPA requires electric utilities to buy power from non-utility generators who qualify under PURPA's criteria. Utilities must purchase this power, regardless of whether they need it, at a price equal to the incremental cost they would incur to produce power itself equivalent to the amount of power purchased from cogenerators or small power producers. This is called the utilities' "avoided cost." Some states set the avoided cost rate above true avoided cost in order to encourage QF development. It has been estimated that, between the years 1994 and 2005, electric consumers will pay roughly \$38 billion above utilities' current avoided costs for power purchased under PURPA's requirements.

Qualifying Facility (QF) - A small power producer or cogenerator that qualifies under the Public Utility Regulatory Policies Act of 1978 (PURPA) to supply electric energy and generating capacity that regulated utilities must purchase at a price approved by state regulatory bodies. QF generators include those power producers that use renewable and alternative energy resources such as hydro, wind, solar, or geothermal energy; or biomass, municipal solid waste, or landfill gas fuel to generate power. Other QF power producers include cogenerators, which are power producers that apply the thermal energy created during one process to a second process and thereby use the available thermal energy twice. At the end of 1995, there were 2,828 QFs in the power market.

Regional Transmission Group (RTG) - A voluntary organization of transmission owners, transmission users, and other entities interested in coordinating transmission planning, expansion, operation, and use within a region. The Federal Energy Regulatory Commission (FERC) is encouraging the formation of these voluntary associations to resolve technical transmission and pricing issues. Procedures developed by the groups would be subject to FERC approval.

Reliability - The ability to deliver uninterrupted electricity to customers on demand, and to withstand sudden disturbances such as short circuits or loss of major system components. This encompasses both the reliability of the generation system and of the transmission and distribution system. Reliability may be evaluated by the frequency, duration, and magnitude of any adverse effects on consumer service.

Retail Customers - Customers, including residences and businesses, who themselves use the electricity that they purchase; also referred to as end-use customers.

Retail Wheeling - A transmission or distribution service by which utilities deliver electric power sold by a third party directly to retail customers. This would allow an individual retail customer to choose his or her electricity supplier, but still receive delivery using the power lines of the local utility.

Rural Electric Cooperative (Cooperatively-owned electric utility) - A customer-owned electric utility that was created to transmit and distribute power in rural areas. Rural electric cooperatives benefit from below-market financing from the Rural Utilities Service (formerly the Rural Electrification Administration), as well as low-cost power from federal hydroelectric projects. In addition, most

do not pay state or federal income taxes. Rates for rural electric cooperatives typically are set by a board of directors elected from among the cooperative's members. Today, rural electric cooperatives serve about 11 percent of the nation's electric customers.

Securities and Exchange Commission (SEC) - An agency created by Congress in 1933 to regulate interstate transactions in corporation securities and stock exchanges. It was expressly authorized in 1935 to enforce the Public Utility Holding Company Act (PUHCA). The agency has five members, appointed by the President and confirmed by the Senate.

Service Obligation - A term used to mean the duties a regulated public utility must perform for its customers. Service obligation includes the duty: (1) to serve all prospective customers; (2) to provide adequate, reliable service; and (3) to render safe, efficient, and nondiscriminatory service.

Sham Transaction - A transaction structured to appear as if it complies with a legal requirement, but does not. For example, the Energy Policy Act of 1992 (EPAAct) allows companies that make sales for resale in the wholesale market to apply for a Federal Energy Regulatory Commission (FERC) order requiring utilities to provide transmission service. However, EPAAct specifies that transmission cannot be required where a sham transaction is involved and the entity making the sale for resale is not a public utility or other specified wholesale supplier.

Shareholder-owned Electric Utilities - Public utilities that are owned by shareholders, organized as corporations, and regulated by FERC and state public utilities commissions. About three-quarters of all Americans receive electric service from shareholder-owned electric utilities. The majority of electric utility shareholders are at or near retirement age and are looking for income to supplement pensions and Social Security benefits.

Stranded Costs - Costs that were incurred by utilities to serve their customers with the understanding that state regulatory commissions would allow the costs to be recovered through electric rates. Stranded costs can occur either because particular customers discontinue their use of a service or because such customers are no longer willing to pay the full costs incurred to provide a service.

Potentially stranded costs are the result of decisions that were reviewed and approved by government regulators and were made by utilities under the unique regulatory compact with their state and their customers.

The Federal Energy Regulatory Commission (FERC) has determined that stranded costs at the wholesale level should be paid by electric customers desiring to exit a system built to serve them.

Tariff - A collection of public schedules detailing utility cost-of-service rates, rules, service territory, and terms of service that a regulated utility files with its public utilities commission for official approval. Tariffs that have been approved by a public utilities commission are binding legal documents and must be made available to the public. In effect, they constitute the contract between a utility and its customers.

Transco - A type of company that is engaged solely in the bulk transmission of electricity. Short for transmission company.

Transition Costs - Refers to utility costs that have not yet been recovered through electricity rates and now are above market costs. These costs would become "stranded" in competitive markets. They include costs such as above-market generation costs, and costs known as regulatory assets, such as deferred taxes.

Unbundling - Electric service is traditionally provided on a bundled basis, meaning that generation, transmission, and distribution services are provided as a single package. By unbundling, the packaged offering of the various services that make up traditional utility service are separated into discreet, separately-priced components. An example would be selling electric power distribution as a separate service without including costs associated with power generation or transmission services.

Unbundling could allow the customer to select a different supplier or source for each of the components required to obtain a product or service. Also referred to as functional unbundling.

Wholesale Customers - Any entity that purchases electricity at the wholesale level, including municipal utilities, private utilities, rural electric cooperatives, or government-owned utility districts. Wholesale customers purchase electricity from other wholesale suppliers to resell to their own retail customers.

Wholesale Wheeling - The process of sending electricity from one utility to another wholesale purchaser over the transmission lines of an intermediate utility. Under the Energy Policy Act of 1992, utilities are required to provide wholesale transmission wheeling services to any electric utility, federal power marketing agency, or other company generating electric energy for sale in the wholesale market.

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CHUGACH ELECTRIC ASSOCIATION, INC.

February 25, 1998

Representative Norm Rokeberg
Room 24
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Rokeberg:

Thank you for taking the time to meet with us to discuss Customer Choice of electric power suppliers. As we explained, Chugach Electric favors open competition and deregulation of electrical utilities in Alaska because:

- Consumers want and deserve a choice as to their electrical service provider. Poll results indicate overwhelming support of Customer Choice in Anchorage.
- Competition will lower prices to consumers by causing competing companies to become more efficient.
- Competition in Anchorage is already developing through cogeneration and self generation. The discipline imposed by competition will help prevent loss of these loads.
- Electrical utilities in Alaska already successfully compete to provide wholesale power.
- APUC oversight and anti-trust laws will prevent monopolies; APUC will be able to designate providers of last resort.
- Competition will prepare Alaska utilities to compete and survive when "outside" utilities enter the Alaska market.
- Competition in Anchorage needs to begin now; long studies which maintain the status quo will only put Alaska utilities further behind and would be of doubtful value unless they are based on actual experience in Anchorage.
- Customers should not have to file a Federal court suit to enforce their right to choose. If the legislature or the commission do not act, these policy issues will be decided by litigation as occurred in the Portland Columbia Steel case where the Federal court decided that competition must be allowed.
- Rural utilities face competition from cogeneration installations which must be allowed under the 1987 Public Utilities Regulatory Policy Act. This competition will not be affected by competition in Anchorage.

We appreciate your willingness to hear our views on this matter of important public policy. We will be continuing our efforts to give customers the choice they deserve and will keep you advised of our progress.

Sincerely,

A handwritten signature in cursive script that reads "Patricia B. Jasper".

Patricia B. Jasper, President
Board of Directors

Electricity

Fourteen states are deregulating their electric utilities and more are expected to follow

The electric utility industry today is like a child on its own for the first time. Sure, a world without parents can be fun. But dangers lurk for the unwary.

For decades, regulators have called the shots in electricity: If projected demand exceeded supply, they ordered a new plant. If a utility wanted a rate hike, it went hat in hand and pleaded its case.

But winds of change are blowing. Businesses and consumers want lower rates and more choice. Meanwhile, technology has made electricity cheaper and the business easier to get into.

Together, these forces are turning the utility world upside down.

1. THE BUSINESS

Making and selling power used to be a simple affair. A government-regulated company built plants, strung wire and delivered power to homes and businesses. Its rates and profits were determined by state officials.

But now, many states are making utilities restructure. They're bringing in competition by forcing the old vertically integrated utilities to break up.

This shakeup involves a complete restructuring of the industry into power generation, transmission and marketing companies. So far, 14 states have begun to deregulate.

One part of the industry, transmission, will remain regulated so new players will be guaranteed access. But power generation and marketing are being thrown open.

■ **Name of the game:** For most existing companies, it's figuring out how and where they want to compete.

2. THE MARKET

Investor-owned utilities last year had \$208 billion in revenue from generating, delivering and selling electricity. The industry is growing 2.7% a year.

In states where reforms are under way, companies are jockeying for position. Westborough, Mass.-based New England Electric System is shedding its nonnuclear electrical generation sys-

tems. It's becoming a "wires company" — focusing on local delivery and transmission, marketing and energy services.

Why would NEES want to sell power plants? It agreed with the state to do so. Massachusetts wanted competitors with local generating plants. In return, NEES can recoup "stranded costs."

Those occur when consumers switch and leave old utilities with excess capacity. The value of potential stranded assets could be \$200 billion.

NEES' plants are being acquired by California's Pacific Gas & Electric for \$1.6 billion in cash.

Meanwhile, PG&E is selling half of its generation assets to comply with California's deregulation.

As in California and New England, deregulation is moving along in New York. Consolidated Edison must divest at least 50% of its New York City power generation capability to get a competitive market going. Con Ed will split up into regulated and unregulated parts and can recover stranded costs.

3. THE CLIMATE

The feeling is that deregulation, competition and restructuring "will put downward pressure on prices," said Andy Ragogna, integrated resource planning division manager at Long Island Lighting Co. "But it's virtually impossible to predict."

In the short term, residential customers will get a 10% to 15% price cut in states where reform is under way.

Large industrial users may not see cuts for some time. Under California's plan, their bills will be made up of three equal parts: electricity costs, transmission and a stranded-costs "adder."

Even the most efficient providers will still have to pay for access to the power grid that all players share and collect the "adder" that helps old utilities recover costs. This billing scheme will last for a number of years.

► At A Glance

Y N



Regulated?

■ Transmission remains regulated, but power generation is being reformed



Global?

■ But some large U.S. companies are beginning to diversify across borders



Consolidating?

■ Big players are teaming up to improve their positions. But new players are flocking to the market, hoping to find a profitable niche



Tech-driven?

■ Cost-saving technology created today's cry for deregulation. Technology will be the key to serving and keeping customers



Cyclical?

■ People use electricity whether there's an economic boom or bust



Capital intensive?

■ Building power plants is costly and time-consuming. Going forward, big bucks will also have to be spent on computer systems, software, acquisitions and asset purchases

Generating companies, brokers and marketers offering price concessions to their large customers "are betting they can beat the wholesale price," said Scott Gebhardt, chief executive at San Francisco-based PG&E Energy Services. "That's not easy to do."

4. TECHNOLOGY

While government mandates are a driving force in reform, technology has a hand, too, in the form of the gas combined-cycle electric generator — a cleaner, better type of electric turbine.

Its 25% jump in efficiency revolutionized the industry, says John W. Rowe, chief executive at NEES.

Its efficiency can be achieved in small plants. And in today's climate, that's a big plus since access to transmission capacity is tight in some markets.

To ration access at peak demand, all players will be forced to pay a "congestion" surcharge. One way of beating this surcharge: Build small, cost-effective generators downstream from the bottleneck.

But in tomorrow's world, advances won't be limited to generating. "Utility companies must also make new investments in billing and software technology in order to support customers who will have a choice," said Pamela Bonnie, analyst with Salomon Smith Barney.

5. THE OUTLOOK

Over the next decade, the industry will be broken up and reassembled, NEES' Rowe expects.

Companies "will try to create the critical mass to be a national player," predicts PG&E's Gebhardt. "Today's competitor is tomorrow's... partner."

Mergers will be plentiful. Today, there are more than 100 investor-owned utilities. Some see this shrinking to 50.

The big question is whether today's utilities can compete with younger, nimbler competitors, like Enron Corp., in an unregulated market. The answer is yes "if there's a level playing field," said Salomon's Bonnie. That will depend on whether old utilities "are allowed to recover past investments."

■ **Upside:** Deregulation will let utilities go after new markets. PG&E's foray into New England is one example. Con Ed is also eyeing New England. "We now have new flexibility," said Hyman Schoenblum, Con Ed's controller.

■ **Risks:** Still, the caution flag is out for investor-owned utilities. They must choose the right technology — both for generating and marketing. And new environmental rules could be a nightmare, especially for coal-fired plants.

Also, utilities will have to develop new and friendlier billing and marketing systems or lose out to those who do.

Risk management will become important, too. In the past, a multitude of sins could be swept under the regulatory rug. In the face of competition, one big mistake could mean the difference between being No. 1 and an also-ran.

In the near term, there are bound to be problems. Naysayers will point to them as reasons to turn back the clock. But deregulation is already too far along. For utilities, it's much wiser to come up with a plan and hang on for dear life.

— Gerard A. Achstatter

► Who's Who In The Group

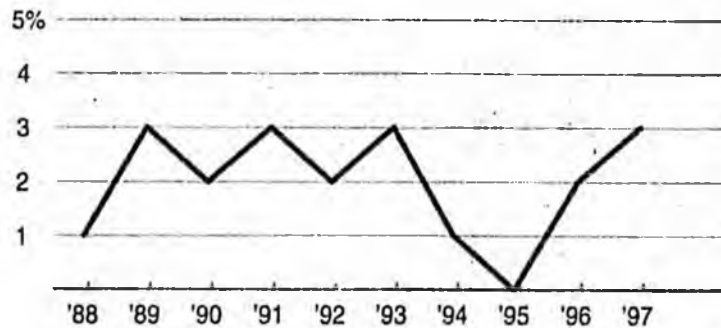
Top 15 of 100 Utility — Electric Power companies ranked by a combination of their Earnings Per Share and Relative Strength ranks

Company	EPS Rank	Rel Str	Stock Price	Mkt Val (\$Mil)	Sales (\$Mil)	Qtr EPS%	12-Mo EPS%	2/3-Yr EPS%	Qtr Sales%	12-Mo Sales%	ROE	Yield	
1 New York St Elec & Gas	82	92	34.56	\$2,333	\$2,082.4	46%	-1%	2%	8%	1%	9%	4.1%	
► Selling 18% of Nine Mile Point 2 nuclear facility													
2 Montana Power Co	81	84	30.19	1,650.1	1,026.5	83	83	-14	8	8	11	5.3	
► To sell all of its electricity-generating facilities, including 13 dams and four coal-fired plants													
3 Rochester Gas & Electric	89	93	31.75	1,233.5	1,040	6	0	1	-6	-1	11	5.7	
► Buying back up to 11.5% of its common stock over the next three years													
4 Upper Peninsula Energy	72	85	27.25	80.9	59.8	26	26	-2	2	2	12	4.7	
► To be acquired by WPS Resources for \$29.49 a share in WPS stock													
5 Ipalco Enterprises Inc	72	83	40.81	1,820.4	772.3	29	8	13	2	2	13	2.5	
► Buying back preferred stock of Indiana Power & Light unit (face value \$52 million)													
6 Unisource Energy Corp	85	63	18	578.4	728.6	-22	-22	179	4	4	91	0	
7 T N P Enterprises Inc	61	86	32.19	422.5	583.6	15	17	60	24	19	8	3.4	
8 Minnesota Power & Light	61	86	41.75	1,392.2	919.3	20	20	3	12	12	10	4.9	
9 M D U Resources Group	73	74	29.5	847.5	573	22	22	9	16	16	12	3.9	
10 Illinois Cp Holding Co	59	83	28.94	2,074.3	2,395.8	-5	-5	15	45	45	10	4.3	
11 C M S Energy Corp	60	80	43.88	4,183	4,367	5	5	9	4	4	11	2.7	
12 Black Hills Corp	60	77	35.31	510.8	223.5	10	10	9	38	38	16	4	
13 NipSCO Industries Inc	60	77	49.94	3,132.6	2,193.2	2	2	7	9	51	17	14	3.9
14 Houston Industries Inc	63	73	25.94	7,398.8	5,008.9	27	27	-4	26	26	10	5.8	
15 F P L Group Inc	58	78	57.06	10,379.9	8,326.7	8	8	6	6	6	12	3.4	

► Trends To Watch

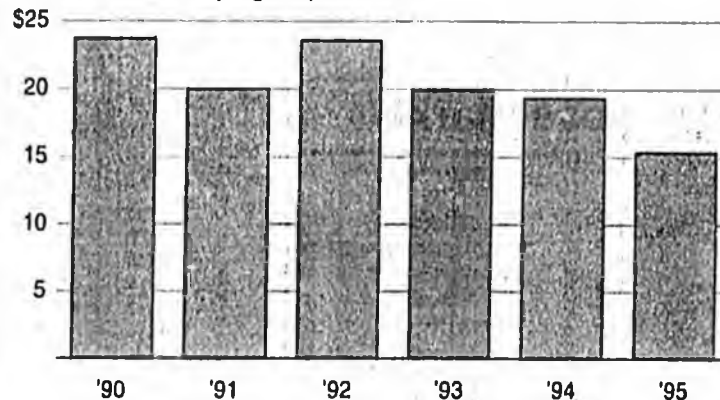
With rates likely to fall under deregulation . . .

Annual change in consumer electricity and gas prices



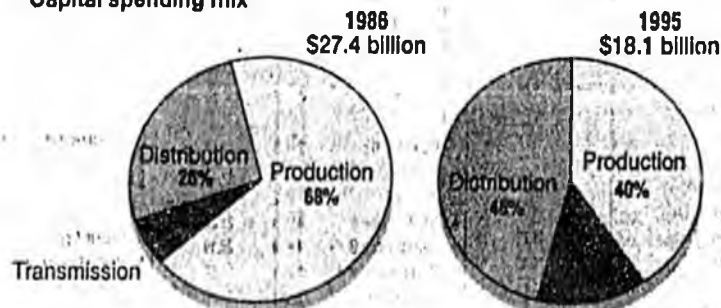
. . . utilities have slashed construction of new plants . . .

Construction in progress, in billions



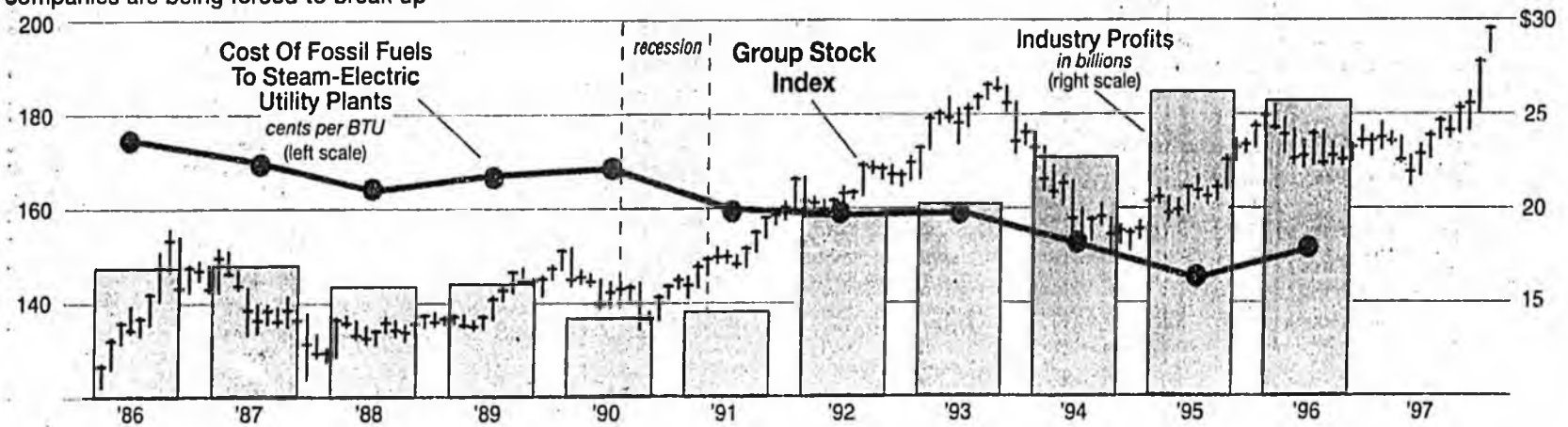
. . . and shifted spending more to still-regulated areas

Capital spending mix



► **Macroscope:** Utilities — Electric Power

Power company profits are closely tied to fuel costs. As energy costs have fallen in the 1990s, utility profits have climbed. Now, many old-line power companies are being forced to break up



California Attorney General Sues Power Supplier Over 'Pyramid Scheme'

By Victoria A. Rodia

Electric power will be the hottest product of the 21st century! Soon you will be able to buy elec-



California Attorney General Dan Lungren

power supplier Boston-Finney sound too good to be true? California Attorney General Dan Lungren thinks so.

tric power at a fraction of the current cost and make thousands per day, offering others the opportunity to do the same."

Do these words from the World Wide Web site of

Late in January, Lungren filed a \$1.5 million lawsuit against the company, based in Harrisburg, Pa., for making misleading statements about savings and breaking California's laws prohibiting "endless chain" or "pyramid" marketing schemes.

The California Public Utilities Commission has set a Feb. 13 hearing date in San Francisco. If ruled against, Boston-Finney could lose its license and be subject to fines.

In his complaint against Boston-Finney, Lungren alleged that the company and its president, Christopher Meier—who is between 19 and 29 years old, according to news reports—made misleading statements about the benefits it will provide to customers who switch to the company. Specific allegations

included misrepresentation that the company will offer electric power at 20 percent below average market rates and that it is "one of the leading public utility retailers in the nation...obtaining a significant
(Continued on Page 6)

California Attorney General Sues Power Supplier

Continued from Page 1

market share in both the residential and commercial environments."

D. Jack Smith, Boston-Finney's Memphis-based attorney, said, "We are in discussions with the attorney general's office. I don't know how the case is going to go, but I'm very encouraged. Personally, I don't think it will amount to anything."

Lungren's lawsuit also alleged that under the Boston-Finney program, distributors, who each paid the company \$295, were promised they would be paid commissions based on the number of other distributors they signed up, even before the company had secured customers for its electricity service. According to the commission, the company claimed to have signed up anywhere from 10,000 to 30,000 California customers.

Eric Borgus, a Boston-Finney distributor who had enlisted 30 other distributors and 10 customers, said that the California attorney general's office had ordered the company late last year to stop advertising its claims about beating its competi-

tion's rates and entering into contracts with major IOUs.

Borgus, speaking out of his Boston home, said that Boston-Finney "didn't do a good job of getting the word out. I'd say that half the distributors were operating under old information. It's too early to say whether they didn't live up to their promises, but all of it will be irrelevant if they lose their license."

Roxanne Figueroa, a policy analyst at Latino Issues Forum, a consumer watchdog group in San Francisco that is monitoring consumer protection practices in the electric utility industry, said that the lawsuit could have been avoided if the commission had exercised stricter rules on who can market electricity. Boston-Finney had filed an application with the commission, but the regulators' requirements that marketers submit a brief application and a \$100 fee are too lax, she said.

A commission spokesman said that the agency could impose additional requirements on suppliers doing business in the state, pending the outcome of the Feb. 13 hearing. □

ADN - 2-22-78

CEA oversimplifies issue

Chugach Electric Association would like to persuade the public that CEA is trying to bring choice to Anchorage electric consumers and that Municipal Light & Power is standing in the way. CEA's general manager recently expressed his view that ML&P is required by law to allow competitors to use its distribution system (Letters, Feb. 3). The issue is not nearly so clear-cut.

Both CEA and ML&P are certified electric utilities regulated by the Alaska Public Utilities Commission, an agency created in 1959 to, among other things, define service territories and oversee rates. In fact, in 1973, the APUC created exclusive service areas for CEA and ML&P after a protracted dispute.

CEA has recently decided that the APUC cannot prevent duplicate service areas and is trying to force immediate competition in Anchorage. CEA has neglected to consider overall implications for consumers and utilities alike.

CEA recently sponsored a customer survey that posed these questions: Should customers have a right to choose their electric utility? Will electric bills decrease and service improve with choice? Would the customer switch providers for better rates and service? Would customers think more favorably of legislators that support choice? Respondents are left with the impression that lower bills and better service will magically arrive with competition.

CEA has stated that it expects lower costs with competition because it will have more sales over which to spread its fixed costs. Of course, this means higher costs for the utility that loses sales.

Many complex questions must be answered before unfettered competition can occur anywhere. California, which is closest to implementing "retail" competition, has toiled on the issue for four years. Congress has not yet passed restructuring legislation, and our Legislature is only beginning to grapple with the issue.

Both ML&P and Chugach are owned by the public they serve and Anchorage has enjoyed competitive electric rates for years. ML&P is not opposed to competition. But if it is to come, it must be carefully orchestrated by regulators and legislature and must be crafted so no electric customers are harmed in the process.

— Meera Kohler, general manager
Municipal Light & Power

**KETCHIKAN PUBLIC UTILITIES**

2930 TONGASS AVENUE

KETCHIKAN, ALASKA 99901

TELEPHONE 907-225-1000
FAX 907-225-1088MUNICIPALLY OWNED
ELECTRIC TELEPHONE WATER

April 6, 1998

The Honorable Norm Rokeberg
Chairman, Labor & Commerce Committee
Alaska State Legislature
Juneau, AK 98901

Subject: HCR-34: Electric Utility Restructuring

Dear Representative Rokeberg:

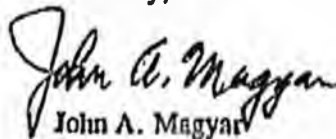
Ketchikan Public Utilities supports House Concurrent Resolution No. 34 establishing a joint committee on electric utility restructuring in Alaska.

The United States Congress is considering the establishment of mandatory electric utility restructuring that will apply to electric utilities in Alaska in the same manner that it will apply to utilities in the lower 48. We recognize that electric consumers in Alaska have the same needs for low cost electric energy as do consumers in the lower 48. And we recognize that the objective of restructuring is to provide such lower costs. However, the electric industry in Alaska is vastly different from the electric industry in the lower 48 and mandatory regulations that are good for consumers in the lower 48 may not be good for consumers in Alaska. As an example of that difference I point out that except for the rail belt area in Alaska there is little, if any, interconnection of utilities in Alaska. Where the lower 48 has a grid that connects nearly all utilities and their customers, Alaska has, essentially, no grid at all. Where electric distribution utilities in the lower 48 buy their electric energy at substations in their service areas and have no responsibility for generation and transmission, nearly all non-rail belt Alaskan utilities have complete responsibility for generation and transmission as well distribution.

Senator Murkowski, Chairman of the Senate Energy Committee which has jurisdiction over the national legislation on restructuring, has advised the Alaska utility industry to seek state legislation that will define the parameters of deregulation (restructuring) for the State of Alaska so that national legislation could take into account that very unique differences exist between the electric utility industry in Alaska and the electric utility industry in the lower 48. Unless the State of Alaska demonstrates that it intends to deal with restructuring, federal legislation will likely include Alaska in the broad sweeping changes that will be mandated in the lower 48. Neither the electric utility consumers nor the industry can afford to let that happen in Alaska.

For this reason, we support and ask your support for HCR No. 34.

Sincerely,


John A. Magyar
General Manager

A L A S K A C O N S E R V A T I O N V O I C E

ACV Member Organizations

- Alaska Center for the Environment
- Alaska Clean Water Alliance (ACWA)
- Alaska Forum for Environmental Responsibility
- Alaska Wilderness League
- Anchorage Audubon Society
- Arctic Audubon Society
- Chitcheagof Conservation Council
- Earthjustice Legal Defense Fund
- Juneau Audubon Society
- Kachemak Bay Conservation Society
- Kodiak Audubon Society
- Kodiak Community Conservation Network
- League of Conservation Voters Education Fund
- Lynn Canal Conservation
- National Audubon Society
- National Wildlife Federation
- Northern Alaska Environmental Center
- Sierra Club, Alaska Chapter
- Sitka Conservation Society
- Southeast Alaska Conservation Council
- Tongass Conservation Society
- Trustees for Alaska
- Valley Alaska Center for the Environment

February 1998

Dear Member of Alaska's Conservation Community,

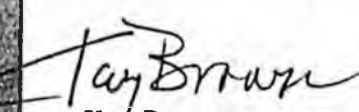
The staff and volunteers of the Alaska Conservation Alliance hit the ground running when the legislature reconvened in Juneau last month, but we need your help today to ensure that our elected representatives don't do irreparable harm to Alaska's resources and our quality of life.

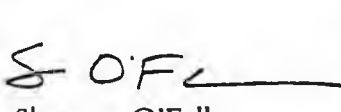
There's no shortage of anti-conservation, anti-Alaskan bills moving through the Alaska Legislature. Here are some of the challenges we're going to face this session:

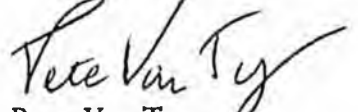
- Rep. Norm Rokeberg's Dirty Water Bill (HB 51) would make Alaska's water quality standards the weakest in the nation and makes the polluters' costs one of the determining factors in establishing water quality standards.
- Rep. Beverly Masek's Motorized Access Bill (HB 168) would prevent the Department of Fish & Game, the Board of Game, and the Board of Fish from limiting motorized access to state lands in order to protect important fish and wildlife habitat.
- Rep. Mark Hodgins' Must-Log Bill (HB 284) would *require* salvage logging in forests that *could be* impacted by bark beetles, regardless of the cost to the state or the damage to critical wildlife habitat.
- Sen. Robin Taylor's Intentional Mismanagement Bill (SB 16); which would virtually cripple wildlife viewing and educational programs such as Creamer's Refuge in Fairbanks and Potter's Marsh in Anchorage, and limit The Department of Fish & Game's ability to manage game populations for anything other than human harvest.

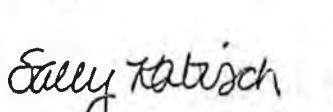
To fight these bills and many others like them, we're working with our member groups to get the word out to concerned Alaskans, and to do this, we need your help. Please support the Alaska Conservation Voice's work to protect Alaska wildlife, wildlands, and quality of life by making a donation of \$35 or more today.

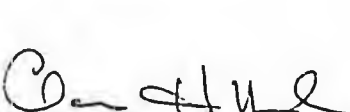
Thank you for your support!



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Speaking Out for Alaska's Future

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Yes!

I want to help make the voice of Alaska's environmental community heard throughout the halls of the Capitol and beyond by supporting the Alaska Conservation Voice.

- I am contributing \$35.00 to become an individual member of ACV
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Thank you for your support!

Please note that contributions to ACV are not tax-deductible.

Chugach makes its case

Utility wants lawmakers to end 'exclusive service' areas

By MIKE HINMAN
Daily News reporter

Chugach Electric Association has gone to Juneau armed with new information that an overwhelming majority of Anchorage Bowl residents would like to choose its own electric supplier.

Executives of Chugach, the state's largest electric utility, have been pushing for the past year for deregulation they say will end monopoly power, lower prices for consumers and bring better service.

"We think it's good for people to have competition," said Gene

Bjornstad, Chugach general manager.

Chugach wants legislators to allow electric-company competition in the Anchorage Bowl. Chugach is attacking the issue on a second front by urging the Alaska Public Utilities Commission to end the "exclusive service" areas the APUC dictated in 1973.

In the Anchorage Bowl, Chugach serves the part of town roughly south of Tudor Road, east of Boniface Parkway and west of Arctic Boulevard, while city-owned Municipal Light & Power serves the rest.

In Chugach's new survey, people who paid their own electric bills were asked: "Do you think that customers should have the right to choose which company they buy their electric power from?"

Of the 384 respondents, 93 percent said yes in the poll conducted for Chugach by Ivan Moore Research.

"We knew people favored competition," said Bjornstad, "(but) the numbers were so much higher."

The poll of Anchorage-area residents did not include Eagle

River or Chugiak areas, according to Moore.

The poll also asked if the respondents believed that competition in the electric industry would result in lower "electric prices" (76 percent yes) and better services (75 percent yes).

Unlike city-owned ML&P, Chugach is a cooperative owned by its customers. Rates for both companies are set by the state utilities commission.

Meera Kohler, general manager of ML&P, said the survey re-

Please see Page F-4, POWER

POWER: Chugach fights 'exclusive service' areas

Continued from Page F-1

sults aren't too meaningful because the wording was flawed.

"Competition drives us to deliver same quality for lower price," said Bill Stewart, manager of retail services for Chugach.

Ending the monopoly service areas in the Anchorage Bowl would give businesses and residential customers the choice of which company would generate their power, but not which would deliver the electricity.

The power lines still are owned by either Chugach or ML&P. Chugach would need to buy space on the ML&P lines to provide power in ML&P territory, and a customer could get a bill from each company for the part of the service they delivered, Kohler said. Bjornstad believes from-

petition from Outside power companies is coming to Alaska, and that Chugach and ML&P are big enough to compete.

Last year Chugach pushed a bill to allow much broader electric-company competition within Alaska. That bill stalled because of the objection of rural utilities that feared a competitor could come into a village and steal the big customer — such as a school — leaving the residents with much higher power costs.

Chugach's approach this year is to limit its bill to competition within the Anchorage Bowl.

"No single utility should be directing the terms under which deregulation occurs," Kohler said.

"If and when it happens, it should be structured so that no customer should be harmed."

ARECA

"Keeping Alaska's Future Bright"



February 1998

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"Restructuring for 2000"

ARECA's 1998 Legislative Conference

ARECA's 1998 Legislative Conference, "Restructuring for 2000," will be held February 18-19 at the Elks in Juneau. Meetings of the Alaska Systems Coordinating Council, the Rural Issues Forum, and the Managers Association will be held on Feb. 17 at the Westmark Baranof Hotel. ARECA's Legislative Reception will be held on Tuesday, February 17 from 5-7 p.m. at the Elks at 109 S. Franklin Street.

The conference agenda has been changed this year; there will be morning programs only on the 18th and 19th, to be sure members have time to meet with their legislators in the afternoon. Governor Tony Knowles has been invited to speak on the morning of Feb. 18.

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Checking the Legal Foundation of Competition

APUC hears from Chugach Electric and Anchorage Municipal Light and Power

Attorneys for two Anchorage-based utilities sparred before the Alaska Public Utilities Commission (APUC) January 20 about the statutory foundation for regulation of electric utility retail competition in Alaska. Each utility, Chugach Electric Association and Anchorage Municipal Light and Power (ML&P), claims the other is breaking the law.



Don Edwards (right) looks at notes as Jim Walker presents ML&P's case.

Chugach Electric attorney Don Edwards told commissioners that by seeking to serve customers in ML&P's territory last September, the co-op was deliberately creating a test case for competition. Edwards indicated he has moved in the past couple of years from believing competition is illegal in Alaska to believing it is illegal to stand in its way.

"The Commission has a great ability to cut through the smoke and the fog on this issue," Edwards said. He urged the APUC to take quick action that would change the tenor of the discussion about competition in Alaska from whether it will occur to how it will be implemented.

"The only question for you is whether the Legislature has declared a general policy against competition unless and until the Commission has granted that right," he said. If the state has not clearly articulated a policy against competition, federal anti-trust laws prohibiting barriers to competition apply and ML&P breaks the law by refusing to allow Chugach to serve customers in its service territory, Edwards asserted.

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Currents

PCE Task Force to Begin Work

Governor Knowles' 10-member Blue Ribbon Committee on Power Cost Equalization (PCE) was to meet for the first time on January 29 in Juneau to review the program's history and consider five principles for PCE policy: 1) A program like PCE is to be the only realistic way to substantially reduce rural power costs; 2) Residential users and community facilities that are essential for public health and safety should receive highest priority; 3) Program changes should restore efficiency incentives; 4) Extend PCE if progress is made over time to bring down the actual cost of power and there is an end point to the program; and 5) PCE should have a stable and predictable financial basis.

The committee is charged with providing recommendations regarding the future of the PCE program to the Alaska Legislature by the end of 1998.

The Alaska Rural Electric Cooperative Association, Inc. (ARECA) is a utility trade association in Alaska. Forty electric and telephone utilities are members of the association. Most Alaskans get the electricity they use from one of our members. *ARECA* is a newsletter published monthly to inform ARECA members about the organization and about activities within and issues pertaining to electric and cooperative utilities in Alaska.

Submissions are welcomed and will be considered for publication. ARECA reserves the right to edit submissions. Commentaries, news items and letters to the editor should be addressed to:

Editor, ARECA,

703 West Tudor Road, #200, Anchorage, AK 99503
Telephone (907) 561-6103

Eric Yould, ARECA Executive Director
Mary Fisher, ARECA Newsletter Editor

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- Sen. Drue Pearce
- Randy Simmons
Executive Director, AIDEA
- Sam Gotten
Chairman, APUC
- Eric Yould
Executive Director, ARECA
- Gayway Skon
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- Robert Seane
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- Nancy James
Port Yukon
- Joe Griffith
Board Chairman, Anchorage
Chamber of Commerce
- Robert Martin, Jr.
General Manager, T-AREA

ARECA Board Report



The ARECA Board of Directors approved a 1998 operating budget of \$1.3 million for ARECA at its Dec. 5 meeting in Anchorage. Of this amount, \$390,196 will come from dues, representing about a one percent increase in total dues from the previous year. However, the percentage of dues funding the total budget drops slightly, to 29 percent because of increased funding coming from the organization's contract to provide services to the ARECA Insurance Exchange.

Among other action at the meeting, the board approved a work plan for 1998 that is substantially similar to 1997, affirmed legislative priorities including obtaining a commitment to study deregulation, passed a resolution supporting the Power Cost Equalization program, and tabled consideration of proposed bylaw changes to expand the voting membership.

Interested members are encouraged to contact their ARECA representative for more information, or call the ARECA office.

Competition Debate

con't. from page 1

Chugach brought in Mike Dotien, an attorney from Portland who represented Columbia Steel in its successful effort to switch electricity providers. Dotten said he believes the circumstances of that case are similar to those in the Chugach-ML&P dispute.

The Ninth Circuit Court of Appeals decision favoring his client found that exclusive service territories did not exist, that a commission order was not needed in order for an electricity provider to serve a customer in the other territory and that anti-trust laws had been violated, said Dotten.

Although the likelihood of a change in the decision is slim, a petition has been filed asking the Supreme Court to hear the Columbia Steel case and is still pending.

ML&P's attorney, Jim Walker, disagreed with Dotten's assessment that the circumstances are similar, and suggested Chugach seek relief in federal court if it believes federal law has been violated. "The Sherman Anti-Trust Act does not require this Commission to do anything," he said. ML&P asked the Commission to dismiss Chugach's request. "There's no need for this proceeding," Walker said.

Walker said the Ninth Circuit didn't rule that exclusive service territories wouldn't be protected, but rather that one had never been established.

In Alaska, he said, the Legislature has clearly articulated that the APUC is to regulate competition in the electric utility industry through issuing certificates of public convenience and necessity for service in specific areas. ML&P asserts that

continued on page 4

What Do They Mean?

Key Statutes at Issue in the Competition Debate

ALASKA LAW

Alaska Public Utilities Commission Act

42.05.221

(a) Certificates required. (a) A public utility may not operate and receive compensation for providing a commodity or service without first having obtained from the commission under this chapter a certificate declaring that public convenience and necessity require or will require the service. Where a public utility provides more than one type of utility service, a separate certificate of convenience and necessity is required for each type. A certificate must describe the nature and extent of the authority granted in it, including, as appropriate for the services involved, a description of the authorized area and scope of operations of the public utility.

(d) In an area where the commission determines that two or more public utilities are competing to furnish identical utility service and that this competition is not in the public interest, the commission shall take appropriate action to eliminate the competition and any undesirable duplication of facilities. This appropriate action may include, but is not limited to, ordering the competing utilities to enter into a contract that, among other things, would:

- (1) delineate the service area boundaries of each in those areas of competition;
- (2) eliminate existing duplication and paralleling to the fullest reasonable extent;
- (3) preclude future duplication and paralleling;
- (4) provide for the exchange of customers and facilities for the purposes of providing better public service and of eliminating duplication and paralleling; and
- (5) provide such other mutually equitable arrangements as would be in the public interest.

Competitive Practices and Regulation of Competition

45.50.572 Exemptions (from restraint of trade provisions)

(d) AS 45.50.562-45.50.596 apply to long distance telecommunications services provided by public utilities. AS 45.50.562-45.50.596 do not apply to other services provided by public utilities that have been issued a certificate of public convenience and necessity under AS 42.05.

FEDERAL LAW

United States Code Title 15 – Commerce and Trade. Chapter 1 – Monopolies and Combinations in Restraint of Trade

Section 14. Sale, etc., on agreement not to use goods of competitor

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

Alaska On Line

Healy Clean Coal Project

The Alaska Industrial Development and Export Authority (AIDEA) announced that construction on the Healy Clean Coal Project (HCCP) has been completed. On January 14 one combustor was successfully fired on coal and the control system worked as designed. Demonstration testing of the completed plant will start in 1998 and commercial operation will begin in 1999. The HCCP consists of a power plant with a combustion system that burns coal in stages to minimize formation of nitrogen and sulfur oxides. HCCP will produce up to 50 megawatts of electricity for use by Golden Valley Electric Association (GVEA), which will operate the facility and purchase its power.

KEA Capital Credits

Kodiak Electric Association (KEA) issued capital credit checks totaling \$1,004,423.22 to its members on December 15, 1997. KEA reported this was its largest capital credits distribution ever and gave a boost to the local economy right before Christmas. In November, the KEA board voted to retire 5 percent of each member's total capital credits.

APUC Denies Homer Gas

On November 3, 1997, the Alaska Public Utilities Commission (APUC) awarded Enstar Natural Gas Company a Certificate of Public Convenience and Necessity to serve the Homer area with natural gas, according to a report in Homer Electric Association's *Kilowatt Courier*. The City of Homer had supported HEA's application to provide gas service and more than 500 HEA members sent letters, cards and made telephone calls to the APUC to show their support. The APUC concluded the co-op was competent, willing and capable to build and maintain a natural gas system, but chose Enstar based on its longtime experience in the gas industry.

HEA Wins Communications Awards

Homer Electric Association (HEA) won top publication awards in their division at the Northwest Public Power Association's (NWPPA) 1997 Excellence in Communications competition. Donna Martin of HEA accepted the awards that included first-place in the Employee Newsletter or Magazine category, second place in the Consumer Newsletter or Magazine category, third place in the Print Ad category and a third-place tie in the Special Pamphlet or Booklet category. HEA entered the contest for the first time this year.

Competition Debate

con't. from page 1

Chugach violated state law by seeking to serve customers in its territory without applying for a modification to its certificate.

When asked by Chairman Sam Cotten if ML&P believes the Commission has the authority to issue overlapping certificates, Walker replied that it's clear the APUC may revoke a certificate, but it's not clear that it can issue overlapping certificates. He said the key issue would be how overlapping certificates affect the link in state law between the obligation and the right to serve customers in an area.

Walker said ML&P is not opposed to competition but believes that before it may occur, the APUC must find it is in the public interest, and that a level playing field must be established. "Unless you find that's (competition) in the public interest, then you can't authorize it," he said. Looking at past orders, Walker concluded: "You've found that separate service territories with firm boundaries are in the public interest."

Walker said the municipality is concerned about the potential cost to consumers of having to refinance tax-free municipal bonds used to finance projects if competition results in a requirement that those bonds be defeased.

While retail competition was the issue of the day, the two sides argued about why utilities are able to sell wholesale energy and how that might affect the issue of the right to sell retail energy. Chugach argued that wholesale energy sales demonstrate utilities are able to sell outside their certificated area, whereas Municipal Light and Power said wholesale energy sales are possible be-

continued on page 7

Administrative & Legislative Offices

Gov. Tony Knowles	465-3500
Lt. Gov. Fran Ulmer	3520
Ofc. of Mngmt. & Budget	3568
Senate President (Miller)	3755
Senate Secretary (Quinto)	3701
Senate Records	2870
Senate Finance Secretary	4935
House Speaker (Phillips)	3720
House Chief Clerk (Lowell)	3725
House Records	2214
House Finance Secretary	6814
Ombudsman	4970

Legislative Agencies

Legislative Affairs Agency	3800
Legislative Research	3991
Legislative Audit	3830
Legislative Finance	3795

Legislative Information

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Barrow	852-7111
Bethel	543-3541
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Delta Junction	895-4236
Dillingham	842-5319
Fairbanks	452-4448
Glennallen	822-5588
Homer	235-7878
Juneau	465-4648
Kenai	283-2030
Ketchikan	225-9675
Kodiak	486-8116
Kotzebue	442-3880
Mat-Su	376-3704
Nome	443-5555
Petersburg	772-3741
Seward	224-5066
Sitka	747-5807
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*Note: ARECA can provide you with a copy of the legislators and their phone/fax numbers in database format upon request.

Twentieth Alaska State Legislature

State Capitol, Juneau, AK 99801-1182

(Interdepartmental Mail Stop, 3101)

Internet Address: Senator_First Name_Last Name@legis.state.ak.us

--SENATE--

Name	Phone Number	Fax Number	Office/Address
ADAMS, Al	465-3707	465-4821	Room 417
DONLEY, Dave	465-3892	465-6595	Room 508
DUNCAN, Jim	465-4766(4767(Minority Ldr.)	465-4748	Room 119
ELLIS, Johnny	465-3704	465-2529	Room 9
GREEN, Lyda	465-6600(St. Alf. 4522)	465-3805	Room 125
HALFORD, Rick	465-4958(Res. 4907/3711)	465-4928	Room 121
HOFFMAN, Lyman	465-4453	465-4523	Room 7
KELLY, Tim	465-3822(Rules 3770)	465-3756	Room 101
LEMAN, Loren	465-2095(L&C 3844)	465-3810	Room 113
LINCOLN, Georgianna	465-3732	465-2652	Room 11
MACKIE, Jerry	465-4925(C&RA 4989)	465-3517	Room 427
MILLER, Mike	465-4976(President 3755)	465-3883	Room 107
PARNELL, Sean	465-2995	465-6592	Room 504
PEARCE, Drue	465-4993(co-Finance)	465-3872	Room 518
PHILLIPS, Randy	465-4949(LB&A 6590)	465-4979	Room 103
SHARP, Bert	465-3004(co-Finance)	465-2070	Room 516
TAYLOR, Robin	465-3873(Jud.3717)(Maj. Ldr 6550)	465-3922	Room 30
TORGERSON, John	465-2828	465-4779	Room 514
WARD, Jerry	465-4940(Trans. 4921)	465-3766	Room 423
WILKEN, Gary	465-3709(HESS 3762)	465-4714	Room 510

--HOUSE OF REPRESENTATIVES--

Name	Phone Number	Fax Number	Office/Address
AUSTERMAN, Alan	465-2487(Fisheries 4230)	465-4956	Room 434
BARNES, Ramona	465-3438(Leg. Coun. 4920/WT)	465-4565	Room 403
BERKOWITZ, Ethan	465-4919	465-2137	Room 406
BRICE, Tom	465-3466	465-2937	Room 426
BUNDE, Con	465-4843(HESS 3759)	465-3871	Room 104
COWDERY, John	465-3879(Trade & Tourism)	465-2069	Room 416
CROFT, Eric	465-4998	465-4419	Room 430
DAVIES, John	465-4457	465-3519	Room 422
DAVIS, Gary	465-2693	465-3835	Room 513
DYSON, Fred	465-2199	465-4587	Room 428
ELTON, Kim	465-4947	465-2108	Room 400
FOSTER, Richard	465-3789	465-3242	Room 410
GREEN, Joe	465-4931(Jud.4990)	465-4316	Room 118
GRUSSENDORF, Ben	465-3824	465-2278	Room 415
HANLEY, Mark	465-4939(co-Finance 3757)	465-2418	Room 507
HODGINS, Mark	465-3779(Oil & Gas 2283)	465-2833	Room 110
HUDSON, Bill	465-3744(co-Resources 3715)	465-2273	Room 108
IVAN, Ivan	465-4942(C&RA 3882)	465-4589	Room 418
JAMES, Jeannette	465-3743(St. Alf. 4963, ARR)	465-2381	Room 102
JOULE, Reggie	465-4833	465-4586	Room 405
KELLY, Pete	465-2327	465-5241	Room 411
KEMPLEN, J. Allen	465-2435	465-6615	Room 112
KOHRING, Vic	465-2186	465-3818	Room 421
KOOKESH, Albert	465-3473	465-2827	Room 114
KOTT, Pete	465-3777(Rules 3764)	465-2819	Room 204
KUBINA, Gene	465-4859	465-3799	Room 404
MARTIN, Terry	465-3783	465-2293	Room 502
MASEK, Beverly	465-2679	465-4822	Room 432
MOSES, Carl	465-4451	465-3445	Room 521
MULDER, Eldon	465-2647	465-3518	Room 501
NICHOLIA, Irene	465-4527	465-2197	Room 409
OGAN, Scott	465-3878(co-Resources)	465-3265	Room 128
PHILLIPS, Gail	465-2689(Speaker 3720)	465-3472	Room 208
PORTER, Brian	465-4930(Maj. Leader 3718)	465-3834	Room 214
ROKEBERG, Norman	465-4968(L&C 4954)	465-2040	Room 24
RYAN, Joe	465-3875	465-4588	Room 420
SANDERS, Jerry	465-4945(Econ. Dev.)	465-3476	Room 414
THERRIault, Gene	465-4797(co-Finance 3757)	465-3884	Room 511
VEZEY, Al	465-3719	465-3258	Room 13
WILLIAMS, Bill	465-3424(Trans. 4858)	465-3793	Room 424

--SENATE--

COMMITTEE ON COMMITTEES (CCM)	
Miller,	Chair
Leman, Pearce, Taylor, Duncan	
COMMUNITY & REGIONAL AFFAIRS (CRA)	465-4989
Mackie,	Chair
Wilken,	Vice Chair
Donley, Phillips, Hoffman	
FINANCE (FIN)	465-2618
Pearce,	Co-Chair
Sharp,	Co-Chair
Donley, Parnell, Phillips, Torgerson, Adams	
HEALTH, ED. & SOCIAL SERVICES - (HES)	465-3762
Wilken,	Chair
Leman,	Vice Chair
Green, Ward, Ellis	
JUDICIARY (JUD)	465-3717
Taylor,	Chair
Pearce,	Vice Chair
Miller, Parnell, Ellis	
LABOR & COMMERCE (L&C)	465-3844
Leman,	Chair
Mackie,	Vice Chair
Kelly, Miller, Hoffman	
RESOURCES (RES)	465-4907
Halford,	Chair
Green,	Vice Chair
Leman, Sharp, Taylor, Torgerson, Lincoln	
RULES (RLS)	465-3770
Kelly,	Chair
Leman,	Vice Chair
Taylor, Torgerson, Duncan	
STATE AFFAIRS (STA)	465-4522
Green,	Chair
Ward,	Vice Chair
Mackie, Miller, Duncan	
TRANSPORTATION (TRA)	465-4921
Ward,	Chair
Wilken,	Vice Chair
Green, Halford, Lincoln	

--Joint Committees--

Administrative Regulation Review (ARR)	
House - James, Chair	Senate - Mackie, Vice Chair
Austerman, Croft	Wilken, Lincoln
Ethics (ETH)	
Public Members: Joseph P. Donohue, Ed Granger, Margie MacNeille, Shirley McCoy, Edith Vorderstrasse	
House - Rep. Bunde, Elton	Senate - Sen. Pearce, Duncan
Legislative Budget and Audit (BUD)	
House - Martin, Vice Chair	Senate - Phillips, Chair
Bunde, James, Therriault, Croft	Donley, Halford, Pearce, Adams
Alternate: Hanley	Alternate: Torgerson
Legislative Council (LEC)	
House - Barnes, Chair	Senate - Kelly, Vice Chair
Chair	
Kott, Masek, Ogan, Phillips, Porter, Kubina	Miller, Pearce, Sharp, Green, Leman, Hoffman

--HOUSE COMMITTEES--

COMMITTEE ON COMMITTEES (CCM)	
Phillips,	Chair
Barnes, Green, Kott, Porter, Elton, Kubina	
COMMUNITY & REGIONAL AFFAIRS (CRA)	465-3882
Ivan,	Chair
Dyson, Ogan, Ryan, Sanders, Joule, Kookesh	
FINANCE (FIN)	465-3757
Hanley,	Co-Chair
Therriault,	Co-Chair
Mulder,	Vice Chair
Davis, Foster, Kelly, Kohring, Martin, Davies, Grussendorf, Moses	
HEALTH, ED. & SOCIAL SERVICES (HES)	465-3759
Bunde,	Chair
Green,	Vice Chair
Dyson, Porter, Vezey, Brice, Komplen	
JUDICIARY (JUD)	465-4990
Green,	Chair
Bunde,	Vice Chair
James, Porter, Rokenberg, Berkowiz, Croft	
LABOR & COMMERCE (L&C)	465-4954
Rokeberg,	Chair
Cowdery, Hudson, Ryan, Sanders, Croft, Kubina	
RESOURCES (RES)	465-3715
Hudson,	Co-Chair
Ogan,	Co-Chair
Masek,	Vice Chair
Barnes, Dyson, Green, Williams, Nicholia, Joule	
RULES (RLS)	465-3764
Kott,	Chair
Phillips, Porter, Vezey, Williams, Elton, Nicholia	
STATE AFFAIRS (STA)	465-4963
James,	Chair
Dyson, Ivan, Hodgins, Vezey, Berkowiz, Elton	
TRANSPORTATION (TRA)	465-4858
Williams,	Chair
Masek,	Vice Chair
Cowdery, Hudson, Sanders, Elton, Kookesh	

--House Special Committees--

Fisheries (FSH)	
Austerman,	Chair
Hodgins, Ivan, Ogan, Kubina	
International Trade and Tourism (ITT)	
Cowdery,	Chair
Barnes, Kott, Mulder, Phillips, Elton, Joule	
Military and Veterans' Affairs (MLV)	
Masek,	Chair
Foster, Kott, Mulder, Ryan, Joule, Nicholia	
Oil and Gas (O&G)	
Hodgins,	Chair
Ogan, Rokeberg, Ryan, Bunde, Brice, Komplen	
World Trade and State/Federal Relations (WTR)	
Barnes,	Chair
Austerman,	Vice Chair
Kott, Cowdery, Phillips, Nicholia, Kubina	
Economic Development (ECD)	
Sanders,	Chair
Hodgins, Ivan, Williams, Austerman, Komplen, Berkowiz	

Plug In

New Safety Videos

ARECA's safety and training department has received the following new tapes in their library: Workplace Violence: Recognizing and Defusing Aggressive Behavior; Hypothermia: Coldweather Prevention; Five Forbidden Phrases; Manual Load Handling In the Warehouse; Working Safely with Compressed Gas Cylinders; and Personal Protective Equipment. These tapes are available for use by ARECA's members as part of our efforts to help encourage safe work environments and control insurance losses. Call Melissa Grant at 561-6106 for more information.

Environmental Regulations Committee Update

ARECA's Environmental Regulations Committee (ERC) recently elected a new chairperson, Kate Lamal of Golden Valley Electric Association, and vice-chair, Jim Pfeiffer of Anchorage Municipal Light & Power. The ERC was formed about a year ago to provide a link between the utilities and the many environmental regulatory agencies. Some of the critical issues the committee has been concerned with include air pollution, contaminated site cleanup, and water and soil contamination. Carl Harmon of Chugach Electric Association chaired the committee during its first year and devoted a lot of time and energy to keeping ARECA members informed of the numerous revised and/or new environmental regulations.

ASCC Expands National Outreach

T.C. Wilson, Executive Director of the Alaska Systems Coordinating Council (ASCC) and Tom Lovas, chairman of ASCC's Reliability Criteria Committee, recently attended the Board of Trustees meeting of the National Electric Reliability Committee (NERC) in Phoenix. They presented ASCC's position regarding mandatory compliance initiatives and discussed Alaska's unique circumstances. The Federal government's recent interest in increasing regulations and laws to control the industry and prevent system-wide blackouts have caused ASCC to step up its efforts to engage in the most effective involvement with NERC initiatives. This involvement helps ASCC members understand what the national reliability issues are and how to relate these to their own systems and operating conditions in Alaska. ASCC sent representatives to several national committee meetings in the latter part of 1997 and recently approved sending representatives to some committee meetings in 1998. The next ASCC meeting is February 17th at 1:00 p.m. at the Westmark Baranof Hotel in Juneau.

Competition Debate

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cause they are not linked to the obligation to serve.


Every commissioner asked questions during the proceeding, many of which involved details of how competition would work in reality, rather than in law.

Edwards urged commissioners to resolve the base question, saying the details will never be worked out until there is an imperative to do so and that delay will result in Alaska utilities being poorly prepared to survive in a competitive environment. Walker urged commissioners to consider the hazards of acting without exploring the complexities of competition.

On behalf of Golden Valley Electric Association (GVEA), which has intervened, attorney Kirk Gibson agreed with ML&P that the Legislature has given the APUC the authority to determine where and how competition may occur, and has provided the defining mechanism of the certification process to determine the public interest.

He also suggested that the exemption of public utilities from the state's restraint of trade statutes clearly articulates that utility monopolies are possible in Alaska.

Gibson urged commissioners not to take sweeping action in this case that could affect other utilities, saying they haven't been provided adequate notice, nor has there been appropriate or significant input from other utilities on the issue.

Paul Morrison, Chief Engineer for the APUC and the staff manager of the docket, said there is no set timeline for the next step in the docket, an order regarding requests from the utilities for summary judgment on the issues. 

People

Mary Fisher New at ARECA

Mary Rucker Fisher joined ARECA in January as Director of Member and Public Relations. She replaces Patti Harper, previous Director of Information, who has started a new writing and consulting business, Nature Connections. The change in title reflects a new emphasis on member services and external communications.



Mary Fisher

Mary has worked in sales, marketing and program management in Alaska for 16 years. Previously, she was Program Director of BUY ALASKA, developing public awareness campaigns and member service programs to increase purchasing within Alaska. Mary holds a B.S. in Marketing from Southwest Missouri State University.

Heidi Jo Gagnon Presented Award

Heidi Jo Gagnon received the first ever David Hutchens Scholarship Award from ARECA's Executive Director, Eric Yould, at the Homer Electric Association Board of Directors meeting January 13. The scholarship for attending the NRECA Youth Tour is given to the student selected each year to represent Alaska on the NRECA Your Leadership Council (formerly the Youth Consulting Board.) Heidi, a junior at Skyview High in Kenai, will begin her term of service by attending the week-long Washington D.C. Tour in June. As part of her service she will also attend a leadership camp in Nebraska in July and the NRECA Annual meeting in Anaheim in March, 1999.



Heidi Jo Gagnon

New GM at Naknek

The Naknek Electric Association (NEA) Board of Directors appointed Donna Vukich as General Manager in a unanimous vote at the January 26 board meeting. Vukich has been with NEA for 11 years and in the position of office manager since 1991.

Tom Stahr Honored

The ARECA Board of Directors presented Tom Stahr with a resolution of appreciation and a plaque at its Dec. 5 meeting, in recognition of his decades of dedicated efforts on behalf of electricity consumers in Anchorage and Alaska.

Tom was in the electric utility business for more than 40 years and served as the General Manager of Municipal Light and Power (ML&P) since 1974 before resigning last year. Among his many accomplishments, he was a key participant in development of the Bradley Lake Hydroelectric Project and Railbelt interties, and in gaining the right for local utilities to purchase the federal Eklutna Hydroelectric Project.



Tom Stahr (left) and Ken Lancaster

Petrie to AVEC

Alaska Village Electric Cooperative (AVEC) has hired Brent Petrie to head a new department under the title of Manager of Key Accounts and Special Projects. He will work with AVEC's large consumers on their energy needs as well as provide special project and utility management services internal and external to the AVEC system. Petrie, who is to start in March, comes to AVEC from his role as general manager at INN Electric Cooperative, where he managed construction of the Tazimina Hydroelectric Project. Petrie has more than 16 years experience working with the State of Alaska on natural resources and energy matters.

Cottle is a CPS

Luanne Cottle, an administrative assistant at Kodiak Electric Association (KEA) has passed an examination and is now a Certified Professional Secretary (CPS). Cottle has been at KEA since November 1990. She works with the Engineering Superintendent and the Operations Manager and also provides assistance to the General Manager.

Jobs

Chief Financial Officer: Nome Joint Utility System is seeking candidates for the position of Chief Financial Officer. Applicants must have a BA and/or extensive experience in accounting or related field, good communications skills, and an ability to manage multiple projects, operate a computer with financial software and other business machines. Prior experience in government agencies and 3 or more years of utility accounting experience is desirable. Applicants holding a CPA certification are preferred. NJUS offers a competitive salary commensurate with experience plus an excellent benefits package including PERS retirement. Contact Jim Taylor, Utility Manager, at (907) 443-5288 for more information. Applications are available at the Nome Joint Utility System office, P.O. Box 70, Nome, Alaska 99762. Resumes will also be accepted and the position will be open until filled.

ARECA 1998 Calendar

Below are ARECA events that have already been scheduled for 1998. Mark your calendars! Look for additional events each month in "Upcoming Events."

- | | |
|------------|--|
| Feb. 3 | ARECA Insurance Exchange Mgmt. Inc. Teleconference, ARECA Office |
| Feb. 17 | ASCC, Managers and Rural Issues Forum Westmark Baranof; Juneau, AK |
| Feb. 17 | ARECA Legislative Reception Elks; Juneau, AK |
| Feb. 18-19 | ARECA Legislative Conference Elks; Juneau, AK |
| March 25 | ARECA Communication Committee ARECA Office; Anchorage, AK |
| May 18-19 | ARECA Accounting Workshop Dillingham, AK |
| Aug. 18 | ARECA Director Training Lake Lucille Inn; Wasilla, AK |
| Aug. 19 | ARECA Insurance Exchange Dinner Lake Lucille Inn; Wasilla, AK |
| Aug. 20-21 | ARECA Annual Meeting Lake Lucille Inn; Wasilla, AK |

Conference

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Other invited speakers include:

Sen. Mike Miller

Senate President

Rep. Gail Phillips

Speaker of the House

Percy Frisby

Director, Division of Energy

Ernie Brannon

Rural Utilities Service.

A Round Table on Restructuring is planned for the morning of Feb.

18. Steve Daniel, a consultant with GDS and Associates will speak on his experiences with deregulation in the Lower '48 in comparison with current Alaska issues and moderate the discussion. Sam Cotten, Chairman of the Alaska Public Utilities Commission, Rep. Norman Rokeberg and Sen. Loren Leman have also been invited.

Members who have not yet registered are encouraged to call the ARECA office.

Insurance Exchange Enters its 15th Year

In the early 1980's, affordable business insurance was getting hard to find, so ARECA members joined together to provide nonprofit utilities in Alaska with access to insurance at reasonable prices. Members first created a self-insurance pool, and in 1983 replaced that by launching the fledgling ARECA Insurance Exchange.

In 1998, the Exchange celebrates its 15th year of service as a mature and strong company, successful in its effort to provide stability in the volatile insurance marketplace.

In its first year, the Exchange provided casualty coverages for 14 utilities; it now writes property and casualty insurance for 22 utilities. In addition to providing reasonably-priced insurance, the Exchange has earned \$16.5 million for its subscriber-owners.

Join us in celebrating the Exchange's success throughout 1998.

*Building on a
Firm Foundation*



Celebrating 15 years of service to subscribers

The ARECA Insurance Exchange was incorporated on December 15, 1983.

The next day, the interim board of trustees,
Dave Bouker, NEC
Lloyd Hodson, AVEC
John Parker, MEA
Jack Randolph, GVEA
Lynn Saupe, KEA

voted to enter into a management agreement with ARECA Insurance Management, Inc. Lloyd Hodson was later elected as the first president of the new company.



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HCR34

Alchem, Inc.

3617 STRAWBERRY ROAD
ANCHORAGE, ALASKA 99502-7111
PHONE & FAX (907) 243-2177

March 31, 1998

Page 1 of 1
File 1997-21

Representative Norman Rokeberg
State Capitol
Juneau, AK 99801-1182

FAX 907-465-3834

PARTER'S FAX #

Subject: Electric Power Choice

Dear Representative Rokeberg:

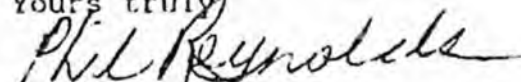
Alchem Inc. wants the opportunity to choose an electric power provider.

The time is now and not later to pass this legislation.

This legislation must be passed NOW so that local companies can resist takeover or competition from large Lower 48 utility companies.

Thank you.

Yours truly,



Phil Reynolds
President



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Los Angeles Times FRONT PAGE HELP



Friday, February 13, 1998

Reports of Fraud Taint Deregulation of Power Industry

• Utilities: Head of state PUC admits that screening process for firms offering lower rates was bungled. Several probes of possibly misleading claims are underway.
By NANCY RIVERA BROOKS, Times Staff Writer

PREV STORY

NEXT STORY

Rising reports of fraud in California's new free market for electricity have triggered a series of investigations and prompted an admission by the head of the California Public Utilities Commission that it bungled the process of screening prospective power companies.

The investigations center on possible misleading tactics by some of the electricity sales agents who have plied the state in recent months, acting on behalf of companies that critics say often are ill-prepared to provide the cheap power they promise.

Under power deregulation, set to begin March 31, electricity marketers promise lower rates for electricity by buying and selling power on an open market, then arranging for the electricity to be delivered on an independently operated power grid over the same lines used now. Most customers of these new power providers are expected to be big businesses, at least initially.

(Customers of municipal utilities such as the Los Angeles Department of Water and Power will not be allowed to choose their electricity providers for another year or more.)

Many would-be power marketers are large, established corporations such as Enron Corp. of Houston and marketing subsidiaries of major utilities such as Edison International and Pacific Gas & Electric.

But almost anybody who is not a criminal can register with the state to become a power marketer. Corporations need not prove their financial stability or a bond, but are required only to fill out an application form and pay a \$100 fee.

To
Shirley
Rep. Rokeberg's
office.
15 pages 2

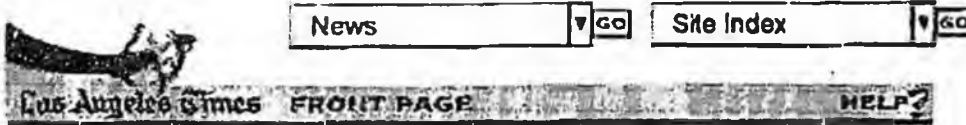
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[PREV STORY](#)

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To
Shirley
Rep. Rokeberg's
office.

15 pages ²

"There's kind of been a joke going around that 25 cents and two box tops get you in," said Wilson Lewis, acting supervisor of the PUC's enforcement branch. He called that "somewhat of an exaggeration."

PUC President Richard A. Bilas acknowledged Thursday that the agency has made mistakes setting up the system by which companies register to sell electricity. He said the agency has instituted new rules and will increase its scrutiny of these firms, which now number nearly 300.

"We will better scrutinize people when they apply and we will go back and scrutinize those that have already applied," Bilas said.

But state Sen. Steve Peace (D-El Cajon), co-author of California's electricity deregulation legislation, said he is not yet satisfied that the PUC is being aggressive enough in protecting electricity customers, from large businesses to individual consumers.

"I can't imagine the PUC could have set out to do a worse job if they had tried to," Peace said.

* * *

The specter of fraud threatens to undermine the credibility of the state's landmark power deregulation program before the switch is even turned on. Already, the original Jan. 1 starting date had to be delayed three months because of computer problems.

The stakes are high, both for consumers and for legitimate power providers seeking a piece of California's \$20-billion electricity market.

"We don't like [fraud] because it gives the good, solid, well-managed companies like New Energy Ventures a bad name," said Lew Phelps, a spokesman for New Energy, a Los Angeles-based power marketer. "In the short run, if people don't trust that it's an honest market, it's not going to work very well."

California is the farthest along of 15 states embarked on power deregulation, and its undertaking is the most ambitious and complex. The Legislature acted in 1996 in a bid to introduce competition to a system that has produced electric rates 30% to 50% higher than the national average.

Officials say it was inevitable that unscrupulous operators would be attracted by the opening of such a vast market. Telephone deregulation in the 1980s was also accompanied by fraudulent marketing schemes.

Only one company has been charged to date. The PUC is holding a hearing today to decide whether to revoke the registration of Boston-Finney Inc., a Pennsylvania company that was sued Jan. 27 by California Atty. Gen. Dan Lungren for allegedly

running an illegal pyramid scheme to sell electricity distributorships.

Via its Web site, Boston-Finney declined comment on the charges.

"We learned a very important lesson with the Boston-Finney issue, that we have not been as diligent as we should be at the front end," the PUC's Bilas said.

The PUC, which does conduct criminal background checks of applicants, has now instituted a minimum 30-day waiting period before applicants can be registered, Bilas said.

Boston-Finney is not the only potential electricity provider being investigated by the PUC and the attorney general's office, although representatives would not detail which companies are being probed.

"There are a lot of companies that seem to be making outrageous claims and we're trying to keep up with them as best we can," said Al Sheldon, supervising deputy attorney general in the consumer law division. "There are other investigations."

Peace wants the PUC to investigate the financial strength of potential electricity providers and to create definitions of common terms that marketers use, such as "free electricity" and "green energy."

"It never occurred to me that they would actually credential people without first developing regulations" mandating, among other things, a company's ability to provide electricity to customers, Peace said.

The company that sparked the dispute, Boston-Finney, is a multilevel marketing firm run by a man identified as Christopher S. Mee, who state regulators say is 19 years old. The company is accused of targeting not consumers, but distributors it recruits and charges a stiff fee.

Boston-Finney, based in Harrisburg, Pa., claims to have signed up more than 3,800 distributors in California, charging them a \$295 fee and promising commissions based on the number of other account executives each recruits, according to Lungren's office.

Lungren's lawsuit says Boston-Finney made misleading promises to lure account executives and to persuade electricity customers to switch to Boston-Finney. The complaint accuses Boston-Finney of operating an "endless chain" or "pyramid" marketing scheme in which early investors make money only by recruiting more investors, without actually selling any electricity.

* * *

The suit seeks \$1.5 million in penalties and restitution and an injunction to stop the company from

claiming that it can save customers about 20% off average market rates and that account executives can earn large sums by easily recruiting more account executives and electricity customers.

Boston-Finney's phones are answered by an answering machine that prompts callers to leave a message because of the overwhelming volume of calls the company is receiving. No Boston-Finney official returned a reporter's call.

On its home page on the World Wide Web, Boston-Finney has posted a notice that it "cannot comment on the investigation while it is in progress and we are looking to clear up these issues with the attorney general."

Nicolette Toussaint, media director for the Utility Reform Network, said the San Francisco consumer advocacy group has been gathering anecdotal stories of suspect electricity claims, including those from aggressive multilevel marketing operations and promises of so-called "green" energy that may not actually be from environmentally approved sources.

"Consumers are very vulnerable," Toussaint said.

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**ATTITUDES TOWARDS COMPETITION
IN THE ELECTRIC INDUSTRY**

January 1998

Chugach Electric

RESEARCH METHODOLOGY

This project was conducted between January 16th and January 21st, 1998. Three hundred and eighty-four Anchorage adults aged 18 and over participated in the study. Respondents were selected randomly, and screened to establish their qualification for the survey as a utility billpayer in their household. Respondents who rent their homes and whose landlords pay their utility bills were also screened out of the survey sample.

A sample size of 384 yields results with a maximum margin of error of $\pm 5.00\%$ at 95% confidence. This means we can be 95% sure that the results of our survey lie within 5.00% of the true proportions for the population being studied. This is a good sample size for a study of this type, and one that ensures a good margin of error for subgroups as well as for the total sample.

Collected data has been verified, checked for accuracy, coded and weighted to reflect the nature of the population. Weighting involves the calculation of a gender weight to balance gender distribution by prefix. This is standard procedure in survey research.

Quality control measures were taken to ensure as high a response rate as possible for this study. These included supervision of interviewers, repeated callbacks, calling at various times of day and evening, over the course of the fielding period. As a result, we can be very confident of the accuracy of results within the statistical margin of error.

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.....	293.....	76.3%
ML+P.....	91.....	23.7%

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.....	356.....	92.6%
NO.....	18.....	4.7%
DON'T KNOW.....	10.....	2.7%

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

	FREQUENCY	PERCENT
YES.....	290.....	75.4%
NO.....	58.....	15.0%
DON'T KNOW.....	37.....	9.6%

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

	FREQUENCY	PERCENT
YES.....	293.....	76.2%
NO.....	55.....	14.4%
DON'T KNOW.....	36.....	9.3%

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.....	354.....	92.2%
NO.....	19.....	4.9%
DON'T KNOW.....	11.....	2.9%

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.....	272.....	70.7%
MORE NEGATIVE.....	12.....	3.0%
NO DIFFERENCE.....	101.....	26.3%

The following questions are for statistical purposes only.

7. In what year were you born?

	FREQUENCY	PERCENT
18-42.....	197.....	51.2%
43+.....	187.....	48.8%
(Mean = 44.2 years)		
(Median = 41.7 years)		

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

	FREQUENCY	PERCENT
None.....	202.....	52.6%
One or more.....	182.....	47.4%
(Mean = 0.914)		

9. Are you married or single?

	FREQUENCY	PERCENT
Married.....	224.....	58.3%
Single.....	160.....	41.7%

10. GENDER...

	FREQUENCY	PERCENT
Male.....	192.....	50.0%
Female.....	192.....	50.0%

Thankyou very much for your help. Goodbye.

SUMMARY OF CHUGACH ELECTRIC POSITION

- A. **Customer's Choice is compelled by law.** It can be simple, practical, orderly.
- B. **Why are we doing this?** Customers want it. To deliver highest value to customers.
- C. **How we decided to embrace competition.**
- Where other industries moved from monopoly to competition, the customers had benefitted.
 - Customer Choice cannot be stopped.
 - How do we get ready? The best way to learn to compete is to compete.
- D. **Our view of the law.**
- Columbia Steel is remarkably similar to our situation.
 - To qualify for exemption from antitrust laws, the State must have **"clearly articulated and affirmatively expressed"** a policy to displace competition with regulation.
 - It must be explicit.
 - It canNOT be inferred.
 - It canNOT be established by a course of conduct.
 - When in doubt, competition wins.
- E. **What is our strategy?**
- Legislature, APUC, Federal Court
- F. **The role of the legislature.** The legislature sets policy. The legislature can confirm that it never took away the customer's right to choose.
- G. **The role of the APUC.**
- The Commission has all the tools necessary to ensure an orderly transition.
 - All the Commission has to say:
"We have read Section 221 and we see no clearly articulated, affirmatively expressed policy precluding competition other than in 221(d) which allows restrictions on competition **only after the fact** and on a case by case basis."
- II. **There is a lot of agreement**
- Certificates do not confer monopoly rights.
 - 221(d) gives the Commission explicit authority to eliminate competition.
- I. **THE HEART OF THE MATTER**
- The only question is whether the legislature has declared a general policy against competition unless and until the commission grants that right.*
- Step One** - What did the legislature say about limiting competition?
- Step Two** - What are the rules of interpretation that apply?
- To be effective, State Action precluding competition must be Clearly Articulated and Affirmatively Expressed. Explicit, not inferred, when in doubt, competition wins.
- Step Three** - Reality Check. Does it make any sense to read 221(a) as preventing competition?
- Statutory construction - Particular vs. general.
 - 221(a) calls for **geographic territories "as appropriate for the services involved"**
Only makes sense to prevent duplication.
 - About half of the power we sell is sold outside our certificated area. Because the statute does not require it and there is no point in geographic description for commodity sales.
 - Legislature would not ambiguously prohibit all competition in 221(a) and then in the same breath say explicitly that if competition occurs then you can stop it.
 - Is certification a mere formality? **A triumph of form over substance?** The result makes no sense.
 - It would be still illegal under federal antitrust laws to prevent competition.
 - A competitor still has expand its certificate to sell on the other side of the street.
 - **BUT** not if you are an unregulated power marketer.
 - And not if you are selling wholesale power.

Legislative agenda: customer choice

The legislature reconvenes in Juneau this month. A number of legislators have announced issues they see as high priorities this season, including subsistence, child welfare and the budget. I'd like to add one to the list: confirming that customers have the right to choose the company that provides their electric power.

As I've been saying for some time now in this column, Chugach supports customer choice and competition in the electric industry. History has shown that competition leads to better services, lower prices and innovative thinking - all of which benefits customers.

However, while competition is the rule in most businesses, the electric utility industry has until recently operated as regulated monopolies. Consequently, there is a great deal of ingrained institutional resistance to the idea of change. That has often made Chugach's position as the

champion of customer choice a lonely one.

Across the country, efforts are underway to reshape our industry and empower individual customers with the ability to choose the company that provides their electric power at home and work. The pace of change varies from state to state. However, one thing is clear. Change is coming.

In the old days, if a person wanted to change electric providers, they had to sell their house or give up their lease and physically move to another territory. That seems like a pretty drastic thing to ask people to do. Especially when the infrastructure is in place to allow power to flow over an interconnected grid from a variety of generation sources to individual homes and businesses. We think it would be much easier on customers if they could choose a power provider by picking up the phone or clicking a

mouse.

Chugach's position is that free trade law says that competition is not just "allowed," but the rule for the electric industry in Alaska. However, not everyone involved in the discussion agrees. That's why we are planning to push for legislative action to confirm that customers have the right to choose. At the same time, we are arguing our case before the Alaska Public Utilities Commission.

We expect to find strong support in Juneau for the right of customers to make their own buying decisions. I'll let you know how we do.

Eugene M. Bjork

Residential Service Costs	
Customer charge	\$8.25/month
Kilowatt-hour charges:	
Energy charge	7.727¢
Fuel adjustment	1.731¢
State tax (RCCT)	0.028¢
Total per kWh	9.486¢

News notes continued from page 1

• **Gift of Light gift certificates** are available year-round in any amount. You can buy one in person or order one over the phone. Call 563-7366 for more information.

• **Call 762-7888 to report a power outage**, day or night. It's a special number just for outages, and will be faster than going through customer service or our main number, although they'll both work too. If you are calling to report a hazard or medical alert situation, use 762-7880. Both numbers are in the phone book.

• **Finding your member number in the Outlet** is worth \$50. Each month we put three member numbers into the copy inside brackets like this {}. Your member number is the root of the account number printed on your bill. It's the set of numbers preceding the dash and three sub-account numbers. We've also included the first two letters of the name on the account as a helpful hint. If you find your member number, call the service center at 563-7366 to claim your prize. You may win for either the current or immediate past month's issue of the Outlet.

Budget 1998 continued from page 1

The decision to raise the fuel surcharge in 1998 came after much effort to buffer customers from the impact of rising fuel costs. Chugach elected to hold the line on rates and write off a total of \$3.6 million in increased fuel and purchased power expenses in 1997. Continued higher fuel costs have driven the decision to pass along the actual cost of fuel to customers. Chugach is paying more for the natural gas it purchases to generate electricity. That's because a combination of national and world events in the past year have led to increases in the indexes used to adjust the prices paid to the various companies which supply fuel to the

Collateral references. — 73B C.J.S., Public Utilities, § 42.

Sec. 42.05.221. Certificates required. (a) A public utility may not operate and receive compensation for providing a commodity or service without first having obtained from the commission under this chapter a certificate declaring that public convenience and necessity require or will require the service. Where a public utility provides more than one type of utility service, a separate certificate of convenience and necessity is required for each type. A certificate must describe the nature and extent of the authority granted in it, including, as appropriate for the services involved, a description of the authorized area and scope of operations of the public utility.

(b) All certificates of convenience and necessity issued to a public utility before July 1, 1970 remain in effect but they are subject to modification where there are areas of conflict with public utilities that have not previously been required to have a certificate or where there is a substantial change in circumstances.

(c) A certificate shall be issued to a public utility that was not required to have one before July 1, 1970, and that is required to have one after that date, if it appears to the commission that the utility was actually operating in good faith on that date. Such a certificate is subject to modification where there are areas of conflict with other public utilities or where there has been a substantial change in circumstances.

(d) In an area where the commission determines that two or more public utilities are competing to furnish identical utility service and that this competition is not in the public interest, the commission shall take appropriate action to eliminate the competition and any undesirable duplication of facilities. This appropriate action may include, but is not limited to, ordering the competing utilities to enter into a contract that, among other things, would:

- (1) delineate the service area boundaries of each in those areas of competition;
- (2) eliminate existing duplication and paralleling to the fullest reasonable extent;
- (3) preclude future duplication and paralleling;
- (4) provide for the exchange of customers and facilities for the purposes of providing better public service and of eliminating duplication and paralleling; and
- (5) provide such other mutually equitable arrangements as would be in the public interest.

(e) If the commission employs professional consultants to assist it in administering this section, it may apportion the expenses relating to their employment among the competing utilities.

(f) [Repealed, § 12 ch 136 SLA 1980.] § 6 ch 113 SLA 1970; am § 1 ch 76 SLA 1973; am § 12 ch 136 SLA 1980; am §§ 15, 16 ch 168 SLA 1990)

Effect of amendments. — The 1990 amendment, effective June 22, 1990, deleted "after January 1, 1971" following "commodity or service" in the first

sentence in subsection (a) and made a series of minor stylistic changes in subsection (e).

NOTES TO DECISIONS

A certificate of public convenience and necessity is a property right and as such entitled to protection. Homer Elec. Ass'n v. City of Kenai, 423 P.2d 285 (Alaska 1967).

Substantial need for service. — This section requires a showing of public convenience and necessity and is limited specifically to "services;" thus, the Alaska Public Utilities Commission (APUC) only needs to determine whether there is a substantial need for a service. Similarly, the requirement of AS 42.05.241 that APUC find the applicant to be "fit,

willing and able to provide the utility services applied for" only requires the commission to focus on the applicant. Neither inquiry requires an exploration into the costs associated with environmental externalities or public subsidies not paid for by consumers as part of the rate charged for the service. Alaska Fed'n for Community Self-Reliance v. Alaska Pub. Util. Comm'n, 879 P.2d 1815 (Alaska 1994).

Certificate does not grant monopoly. — A certificate of public convenience and necessity to a public utility by the Alaska Public Service Commission is not

an exclusive, or monopoly, grant to furnish electrical energy within the corporate limits of a city. Chugach Elec. Ass'n v. City of Anchorage, 426 P.2d 1001 (Alaska 1967).

A public utility's certificate did not grant to it the exclusive right to furnish electrical energy within the corporate limits of a city. Homer Elec. Ass'n v. City of Kenai, 423 P.2d 285 (Alaska 1967).

Municipality may compete with certificated utility. — The delineation of a service area contained in a certificate of public convenience and necessity does not provide the basis for precluding a municipality from competing, within its own corporate limits, with a certificated utility. Chugach Elec. Ass'n v. City of Anchorage, 426 P.2d 1001 (Alaska 1967).

The legislature did not intend, by virtue of its passage of the 1963 amendments to this chapter, that a certificate of public convenience and necessity was to be a monopoly grant in relation to competition from a municipally owned and operated utility. Homer Elec. Ass'n v. City of Kenai, 423 P.2d 285 (Alaska 1967).

The Public Service Commissioner's issuance, to a public utility, of a certificate of public convenience and necessity providing for a service area which encompassed within its territory a city did not preclude such city from furnishing electrical energy within its own city limits, in competition with such public utility's electrical distribution system. Homer Elec. Ass'n v. City of Kenai, 423 P.2d 285 (Alaska 1967).

Legislative intent. — In enacting subsection (b) of this section the legislature indicated its intention that any right afforded certificated utilities under former AS 42.05.196 was not saved. Alaska Pub. Util. Comm'n v. Chugach Elec. Ass'n, 680 P.2d 687 (Alaska 1978), overruled on other grounds, City & Borough of Juneau v. Thibodeau, 696 P.2d 626 (Alaska 1979).

Sec. 42.05.230. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.231. Application. Application for a certificate shall be in writing and shall be in the form and contain the information required by the commission by regulation. (§ 6 ch 113 SLA 1970)

Sec. 42.05.240. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.241. Conditions of issuance. A certificate may not be issued unless the commission finds that the applicant is fit, willing and able to provide the utility services applied for and that the services are required for the convenience and necessity of the public. The commission may issue a certificate granting an application in whole or in part and attach to the grant of it the terms and conditions it considers necessary to protect and promote the public interest including the condition that the applicant may or shall serve an area or provide a necessary service not contemplated by the applicant. The commission may, for good cause, deny an application with or without prejudice. (§ 6 ch 113 SLA 1970)

NOTES TO DECISIONS

Services of particular applicant. — Under AS 42.05.221, a showing of public convenience and necessity is required and is limited specifically to "services;" thus, the Alaska Public Utilities Commission (APUC) only needs to make a determination whether there is a substantial need for a service. Similarly, the require-

ment of AS 42.05.241 that APUC find the applicant to be "fit, willing and able to provide the utility services applied for" only requires the commission to focus on the applicant. Neither inquiry requires an exploration into the costs associated with environmental externalities or public subsidies not paid for by consumers as

Subsection (b) of this section was supplemented by AS 42.05.271, which provides for the modification, suspension or revocation of certificates for several listed reasons, including the requirements of public convenience and necessity. Alaska Pub. Util. Comm'n v. Chugach Elec. Ass'n, 680 P.2d 687 (Alaska 1978), overruled on other grounds, City & Borough of Juneau v. Thibodeau, 696 P.2d 626 (Alaska 1979).

Subsection (d) of this section relates to questions of duplication of electrical services or facilities and the interpretation of a utility's certificate of public convenience and necessity. Greater Anchorage Area Borough v. City of Anchorage, 504 P.2d 1027 (Alaska 1972), overruled on other grounds, City & Borough of Juneau v. Thibodeau, 696 P.2d 626 (Alaska 1979).

Operation of garbage disposal sites does not constitute a utility service; it is only the passing over of control of solid waste to the disposal site operator which is regulated as a utility function. McClellan v. Kenai Peninsula Borough, 665 P.2d 176 (Alaska 1977).

Dumpsters are not equivalent of final landfill sites. — Interpretation that dumpsters serving as immediate dump sites qualify as the functional equivalent of final landfill sites is not reasonable in that it would allow the Borough to place dumpsters in such a pervasive fashion as to completely vitiate the requirement of former AS 29.48.033(b) and former subsection (f) of this section that certificate holders be compensated for their interests. McClellan v. Kenai Peninsula Borough, 665 P.2d 176 (Alaska 1977).

Quoted in Homer Elec. Ass'n v. City of Kenai, 416 P.2d 182 (Alaska 1991).

Cited in Drake v. Fairbanks N. Star Borough, 716 P.2d 1167 (Alaska 1986).