



THE STATE  
of **ALASKA**  
GOVERNOR MIKE DUNLEAVY

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April 8, 2020

The Honorable Mike Dunleavy  
Governor  
State of Alaska  
P.O. Box 110001  
Juneau, Alaska 99811-0001

Re: SB 123: Electric Reliability  
Organizations; Telecom Co-ops  
(CSSB 123(RBE) am H)  
Our file: 2020200283

Dear Governor Dunleavy:

At the request of your legislative director, we have reviewed SB 123, relating to electric and telephone cooperatives, to telephone service and related telecommunications services, to the creation and regulation of electric reliability organizations, to participation of electric utilities in electric reliability organizations, to duties of electric reliability organizations, providing for integrated resource planning, and requiring project preapproval for certain interconnected large energy facilities. This bill provides the Regulatory Commission of Alaska (commission) with the authority to regulate electric reliability organizations and create common standards across interconnected utilities in Alaska's Railbelt region. This bill also allows telephone cooperatives to organize to provide related telecommunications services, such as internet, and for electric and telephone cooperatives to use electronic methods of governing, including providing notice and holding meetings.

This bill as introduced focused on electric reliability organizations. It was amended on March 19, 2020, to incorporate the substance of SB 81, relating to electric and telephone cooperatives and telecommunications.

## **I. ELECTRIC AND TELEPHONE COOPERATIVES**

Sections 1-20 and 22 of the bill relate to electric and telephone cooperatives. Sections 1-3 add the language "or a related telecommunications [service]" to sections in AS 10.15, the Alaska Cooperative Corporations Act. Section 1 amends AS 10.15.005, purposes available for organizing a cooperative, by further limiting the lawful purposes for which a cooperative may be organized by adding "furnishing ... a related

telecommunications service” to the list of exclusions. Section 2 amends AS 10.15.575(a), relating to using the term “cooperative,” by adding “related telecommunications service” to the list of cooperative types exempted from restrictions on using the word “cooperative” in its title. Section 3 amends AS 10.15.585, application of chapter, exempting “related telecommunications service” from the application of the Alaska Cooperative Corporations Act. Electric and telephone utilities are already exempted in these sections from the application of the Act.

When the Alaska Cooperative Corporations Act was originally adopted in 1959, electric and telephone services were regulated, monopoly utility services. The utility cooperatives needed to have additional, unique powers, such as eminent domain. In addition, electric and telephone service was capital-intensive and funded extensively by the federal government through the Department of Agriculture’s Rural Utility Service.

Deregulation of the telephone industry began on the national level over 35 years ago, and telephone service is exempt from state regulation under AS 42.05.711(u). Consequently, the addition of “related telecommunications services” may have unintended consequences, as the term includes the internet, which is currently and historically unregulated at either the federal or state level. For example, because the provision of internet service is not regulated, it is unknown whether any non-utility cooperative currently offers internet service or whether non-utility cooperatives may plan to do so in the future. Emerging technologies that do not depend on traditional wireline service make this possibility increasingly likely.

Sections 4-20 of the bill amend sections in AS 10.25, the Electric and Telephone Cooperative Act.

Section 4 amends AS 10.25.010(a), providing that a telephone cooperative has the power to maintain “related telecommunications service lines” under and across publicly owned lands and public thoroughfares, in addition to existing line types.<sup>1</sup> Section 5 amends AS 10.25.030(a), relating to the purpose of telephone cooperatives. This amendment provides that telephone cooperatives may offer related telecommunications services to the same extent as telephone services. Section 6 amends AS 10.25.040(a), adding terms that must appear within the name of the cooperative based on the services provided, including “telecommunications” and “telecom.”

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<sup>1</sup> This section may create uncertainty regarding the interpretation of AS 42.05.251, which grants utilities the right to use municipal rights of way for utility purposes. Related telecommunications services are not utility services.

Section 7 of the bill amends AS 10.25.080(a), providing that in order to be a cooperative member, a person must agree to use related telecommunications, in addition to the other services furnished by the cooperative, when made available. Sections 8 and 9 of the bill amend AS 10.25.090, relating to annual meetings of the cooperative. Section 8 allows the cooperative to hold annual member meetings as determined in the cooperative bylaws, removing the obligation to hold a meeting at a “time and place” provided in the bylaws. Section 8 also explicitly provides that the annual meetings may be conducted by teleconference or another medium, so long as all participating members can hear each other adequately. Section 9 likewise removes language requiring that a meeting be held at a “time and place,” providing that the annual meeting of district delegates may be conducted as provided in the cooperative bylaws.

Section 10 of the bill amends AS 10.25.100, relating to notice of meetings. This section allows for written notice to be provided in person or by mail, and adds e-mail or text message as options for providing written notice. Notice is considered given when the text is sent to the member’s telephone number, if the phone can receive text messages, or when sent to the e-mail address on record with the cooperative. This section also provides that the articles or bylaws of the cooperative can provide for additional notice requirements.

Sections 11 and 12 amend AS 10.25.110, related to voting. Section 11 makes two changes. First, it removes the requirement that a member be present in person. Second, it allows a majority of members present to vote to adjourn if there is less than a quorum present at a meeting. Section 12 adds a new subsection, allowing a member to be considered “present” for all or part of a meeting if the member voted electronically on an issue before the membership, unless the cooperative articles or bylaws provide otherwise.

Sections 13 and 14 amend AS 10.25.175, relating to meetings of a cooperative’s board of directors. Section 13 amends subsection (a), which allows for meeting by teleconference “or similar communications equipment.” The amendment removes the quoted language and replaces it with the option of using another means of communication that allows participants to hear each other during the meeting. In sec. 14, subsection (c) amends the topics available to discuss in executive session to include personnel matters.

Section 15 amends AS 10.25.290 to add “related telecommunications services” to the type of services a corporation could offer and be permitted to convert to a cooperative if other requirements of the chapter are met. Section 16 updates chapter references to the federal Rural Electrification Act in AS 10.25.430. Section 17 amends AS 10.25.460, relating to a cooperative’s registered office and registered agent. This amendment provides the option that the cooperative’s agent may be a domestic or foreign corporation, instead of an individual, so long as the corporation is located at the cooperative’s registered office and authorized to operate in the state.

Section 18 amends AS 10.25.810, relating to the purpose of this chapter, to add providing “related telecommunications service” as a potential purpose for organizing a cooperative, nonprofit, membership organization. Section 19 amends AS 10.25.820, extending the chapter to existing cooperatives, to add providing “related telecommunications service” to the services of existing nonprofits subject to the chapter. Section 20 amends AS 10.25.840 to define “related telecommunications service” in two parts. First, it can mean the transmission and reception of messages, impressions, pictures, and signals through an electric or other energy source, whether conveyed by cable, radiated through air, or other transmission. Second, it can mean “a service capable of electronically generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information through the use of broadband Internet access, data center services, information technology, or other technology services.”

Section 22 repeals AS 10.25.030(b) and 10.25.400(e). The text of AS 10.25.030(b) outlined the original meaning of “related telecommunications service.” AS 10.25.400(e) excluded certain telephone cooperatives from AS 10.25.400(b), relating to actions before disposing of or selling more than 15 percent of a cooperative’s assets, unless the cooperative’s board of directors passes a resolution applying subsection (b). The affected cooperatives were those with an annual gross revenue exceeding \$25,000,000.

## **II. ELECTRIC RELIABILITY ORGANIZATIONS**

Section 21 of the bill amends AS 42.05 by creating Electric Reliability Organizations, Plans, and Standards. As mentioned above, the Regulatory Commission of Alaska (commission) has the authority to regulate, and in some cases requires the formation of, an electric reliability organizations. The following are all new sections created in this bill.

The first new section, AS 42.05.760, creates the requirement that certain electric utilities participate in an electric reliability organization based on whether the utility operates in a bulk power system served by a certificated electric reliability organization. In order to become a certified electric reliability organization, a person must apply to the commission, which may approve one organization for each bulk power system if the organization is able to comply with the duties of an electric reliability organization. This section charges the commission with providing notice to operators of bulk power systems and lays out the commission’s powers to certificate or decline to certificate electric reliability organizations.

Section 42.05.762 lists the duties of an electric reliability organization, including development of reliability standards and integrated resource plans; establishment of rules to insure the independence of the electric reliability organization from the users, operators, or owners of the interconnected electric energy transmission network; allocation of funds; and provisions for enforcement standards and a public process. An

electric reliability organization must be governed by either an independent board, a balanced stakeholder board, or a combination of the two.

Section 42.05.765 covers reliability standards for electric reliability organizations and gives the commission authority to approve, modify, require, and enforce the standards. An electric reliability organization must file each reliability standard or modification with the commission as a tariff provision. The standards approved under this section must provide for reliable operation of the bulk power network, so that there are not major problems in the event of a disturbance. Reliability standards include providing for cybersecurity, facility security, and modifications or additions to the network necessary for reliable operation. This section also provides that if a user, owner, or operator is obligated by a Department of Defense contract to observe a federal rule that contradicts an applicable standard, the user, owner, or operator must comply with the contractual obligation until the commission resolves the conflict.

Section 42.05.767 governs electric reliability organization rules and approval. It requires an electric reliability organization to file proposed rules or changes, including an explanation of the basis and purpose, with the commission. This section also authorizes the commission to make changes to a rule of an electric reliability organization, after a public notice and comment period, if certain findings are made.

Section 42.05.770 requires the commission to adopt regulations governing electric reliability organizations, reliability standards, and modifications to reliability standards. This section also requires that the regulations cover topics including nondiscriminatory open access, a process for resolving conflicts, and cost recovery.

Section 42.05.772, imposes duties on load-serving entities, otherwise known as a distribution utility with end users, in a bulk power system served by an electric reliability organization with a tariff on file with the commission containing the reliability standards, even if the load-serving entity is not otherwise subject to regulation under AS 42.05.

Section 42.05.775 provides for penalties. This section authorizes an electric reliability organization to impose a reasonable penalty on a user, owner, or operator for violations of a reliability standard after a hearing and notice to the commission. A person may appeal the penalty to the commission. This section also authorizes the commission to order compliance with a reliability standard and, if a hearing shows that the person engaged or was about to engage in a violation, impose a reasonable penalty.

Section 42.05.780 addresses integrated resource planning by an electric reliability organization. An integrated resource plan filed with the commission would include an evaluation of generation, transmission, battery storage, and conservation or similar improvements in efficiency necessary to meet the reliability requirements of all customers of the interconnected electric energy transmission network in a way that

provides the greatest value consistent with the obligations of the load-serving entities. This section specifies the content of the plan and the commission approval process. The commission is also authorized to include certain costs in a public utility's rates related to the integrated resource plan and is required to adopt regulations governing filing the plan and its contents.

Section 42.05.785 requires project preapproval for large energy facilities and would set standards for the approval of a large energy facility that is interconnected with an existing network served by an electric reliability organization. This section prohibits the commission from requiring preapproval for certain maintenance or hydropower projects and requires the commission to adopt regulations related to preapproval. Finally, this section defines "large energy facility."

Section 42.05.790 provides definitions for the various terms used throughout the new sections, including "electric reliability organization," "interconnected electric energy transmission network," and "load serving entity."

The remaining sections of the bill provides a transition process for electric reliability organizations and effective dates. Section 23 requires the commission to adopt regulations to implement sec. 21 of the bill, relating to electric reliability organizations, on or before July 1, 2021. Section 24 of the bill provide that secs. 1-20, 22, and 23 take effect immediately. Section 25 provides for an effective date of July 1, 2021, for the remaining sections.

This bill presents no legal problems or other concerns.

Sincerely,

KEVIN G. CLARKSON  
ATTORNEY GENERAL

By:



Susan R. Pollard  
Chief Assistant Attorney General  
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