

**CHUGACH ELECTRIC ASSOCIATION, INC.  
ANCHORAGE, ALASKA**

**OPERATIONS COMMITTEE MEETING**

**AGENDA**

Jim Nordlund, Chair  
Sisi Cooper, Director  
Bettina Chastain, Director

Dan Rogers, Director  
Mark Wiggan, Director

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**September 16, 2024**

**4:00 P.M.**

**Chugach Board Room**

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- I. CALL TO ORDER (4:00 p.m.)
  - A. *Roll Call*
- II. APPROVAL OF THE AGENDA\* (4:05 p.m.)
- III. APPROVAL OF THE MINUTES\* (4:10 p.m.)
  - A. *July 10, 2024 (Slocum)*
- IV. PERSONS TO BE HEARD (4:15 p.m.)
  - A. *Member Comments*
- V. NEW BUSINESS (scheduled) (4:25 p.m.)
  - A. *Eklutna Project Update (Hasquet/Laughlin/Glass) (4:25 p.m.)*
  - B. *Indian to Girdwood Transmission Line Upgrade (Laughlin/Hasquet) (4:45 p.m.)*
  - C. *Renewable Programs Update (D. Highers) (5:05 p.m.)*
- VI. EXECUTIVE SESSION\* (scheduled) (5:25 p.m.)
  - Recess (20 minutes)
    - A. *Eklutna Project Update (Hasquet/Laughlin/Glass) (5:45 p.m.)*
    - B. *Gas Supply Update (Rudeck) (6:05 p.m.)*
    - C. *Anchorage Wind (Rudeck) (6:30 p.m.)*
    - D. *ERP Update (Travis/Highers) (6:55 p.m.)*
- VII. NEW BUSINESS\* (scheduled) (7:20 p.m.)
  - A. *ERP Update (Travis/Highers) (7:20 p.m.)*
- VIII. DIRECTOR COMMENTS (7:30 p.m.)
- IX. ADJOURNMENT\* (7:40 p.m.)

\* *Denotes Action Items*

\*\* *Denotes Possible Action Items*

**CHUGACH ELECTRIC ASSOCIATION, INC.**  
**Anchorage, Alaska**

**July 10, 2024**  
**Wednesday**  
**4:00 p.m.**

**OPERATIONS COMMITTEE MEETING**

Recording Secretary: Heather Slocum

**I. CALL TO ORDER**

Chair Nordlund called the Operations Committee meeting to order at 4:03 p.m. in the boardroom of Chugach Electric Association, Inc., 5601 Electron Drive, Anchorage, Alaska.

*A. Roll Call*

*Committee Members Present:*

Jim Nordlund, Vice Chair  
Bettina Chastain, Director  
Dan Rogers, Director  
Sisi Cooper, Director  
Mark Wiggin, Director

*Board Members Present:*

Susanne Fleek-Green, Director – *via teleconference* – arrived at 4:10 p.m.  
Rachel Morse, Director

*Guests and Staff Attendance Present:*

Arthur Miller	Dan Herrmann	Hans Thompson
Sherri Highers	Steve Gerlek, Consultant	Emily Cohen, Member
Andrew Laughlin	Bart Armfield, Consultant	Robert Powell, Flatlands
Matthew Clarkson	Teresa Kurka	Power
Allan Rudeck	Brett Pherson	Alex Petkanas, Member
Tiffany Wilson	Chantelle Lewis-Boutte	Donovan Russoniello,
Julie Hasquet	Bennet Perarce	Member
Trish Baker	Frank Paskvan, Member	Chad Schleusner

*Via Teleconference:*

Sandra Cacy	Stephanie Huddell	Deborah Gardino
Amanda Makel	Jason Motyka, Member	Bernie Smith, Member
Buddi Richey	Rick Whitbeck	Mitchell Roth, Member
Sean Skaling	Paul Millwood	Shaina Kilcoyne, Member

## **II. APPROVAL OF THE AGENDA**

Director Wiggin moved, and Director Cooper seconded the motion to approve the agenda. The motion passed unanimously.

## **III. APPROVAL OF THE MINUTES**

Director Chastain moved, and Director Wiggin seconded the motion to approve the May 1, 2024, Operations Committee Meeting minutes. The motion passed unanimously.

## **IV. PERSONS TO BE HEARD**

- A. Alex Petkanas, member, and Donovan Russoniello, member, gave comments on coal. Mitchell Roth, member, gave comments on the renewable energy project.
- B. Frank Paskvan, University of Alaska, Fairbanks, Chad Schleusner, Terra Energy Center, and Robert Powers, Flatlands Power, presented on southcentral coal generation with carbon sequestration.

*Director Fleek-Green arrived via teleconference at 4:10 p.m.*

*Director Morse arrived at 4:17 p.m.*

## **V. NEW BUSINESS**

- A. *Election of Operations Committee Vice-Chair (Board)*  
Director Wiggin nominated director Rogers to be the Vice-chair of the Operations Committee. The committee voted and Director Rogers was elected Vice Chair.
- B. *Review Board Policy 206 (Board)*  
The Board reviewed Board Policy 206. Director Wiggin moved, and Director Chastain seconded that Board Policy 206 remain as currently written. The motion passed unanimously.
- C. *Recap on 2024 Election, Member Appreciation Event and Annual Meeting (Lewis-Boutte/Kurka/Pherson/Hasquet)*  
Brett Pherson, Manager, Member Services, Chantelle Lewis-Boutte, Member Energy and Programs Specialist, and Julie Hasquet, Sr. Manager Corporate Communications, provided a recap on the 2024 Election, Member Appreciation Event, and Annual Meeting and responded to questions from the committee.
- D. *Quarterly Report on Beluga River Unit Performance (Armfield)*  
Bart Armfield, Consultant, presented the Quarterly Report on Beluga River Performance and responded to questions from the committee.

## **VI. EXECUTIVE SESSION (20-minute recess)**

- A. *Gas Supply Update (Rudeck/Herrmann)*
- B. *Battery Energy Storage System (S. Highers/Miller/Laughlin)*
- C. *CEO Project Specific Initiatives and Priority Area Goals (Miller)*

At 5:22 p.m. Director Wiggin moved and Director Chastain seconded that pursuant to Alaska Statute 10.25.175(c)(1), (3) and (4), the Board of Directors go into executive session to: 1) discuss and receive reports regarding matters the immediate knowledge of which would clearly have an adverse effect on the finances of the cooperative; 2) discuss with its attorneys matters the immediate

knowledge of which could have an adverse effect on the legal position of the cooperative; and 3) discuss personnel matters.

*The meeting reconvened in open session at 8:15 p.m.*

*Director Fleek-Green left the meeting during Executive Session. The time was not noted.*

## **VII. NEW BUSINESS\*\***

### **A. CEO Project Specific Initiatives and Priority Area Goals\*\* (Miller)**

Director Wiggin moved, and Director Chastain seconded that the Operations Committee recommend the Chugach Electric Association, Inc. Board of Directors approve the May 1, 2024, through April 30, 2025, CEO Project Specific Initiatives and Priority Areas with the changes as discussed in executive session.

(Director Wiggin's exact motion was "I move that we move on the PSI and PA matrices as presented in Executive Committee with the provision that we will be making changes and it will be submitted to the full Board at the next meeting." He did not read the motion language above.)

## **VIII. DIRECTOR COMMENTS**

Comments were made at this time.

## **IX. ADJOURNMENT**

At 8:21p.m., Chair Nordlund closed the meeting. A motion was not called for and a vote was not taken.

BEFORE THE OFFICE OF GOVERNOR MIKE DUNLEAVY

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*IN RESPONSE TO GOVERNOR'S STAFF REQUEST ON EKLUTNA PROJECT  
PROPOSED FINAL FISH AND WILDLIFE PROGRAM*

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CHUGACH ELECTRIC ASSOCIATION, INC. AND  
MATANUSKA ELECTRIC ASSOCIATION, INC.  
JOINT BRIEF

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September 4, 2024

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## I. INTRODUCTION

On August 15, 2024, Rachel Bylsma, Deputy Chief of Staff to Governor Mike Dunleavy, requested (“Governor’s Staff Request”) that the parties to the 1991 Fish and Wildlife Agreement<sup>1</sup> (“1991 Agreement”) and the Native Village of Eklutna (“NVE”) prepare and submit briefs in answer to six legal questions related to the Proposed Final Fish and Wildlife Program (“Proposed Final Program”) submitted to the Governor on April 25, 2024 by Chugach Electric Association, Inc. (“Chugach”) and Matanuska Electric Association, Inc. (“MEA”), and supported by the Municipality of Anchorage (“MOA”) d/b/a Anchorage Hydropower (“AHP”) (collectively, the “Project Owners”).

The Eklutna Hydroelectric Project (the “Project”) was developed by the federal government and became operational in 1955. The Project Owners purchased the Project from the federal government in 1997. In connection with that transaction, the Project Owners entered into the 1991 Agreement with two federal agencies and the State of Alaska committing to, every 35 years, study the impacts of the Project on fish and wildlife and propose – for Governor approval – a program to protect, mitigate damages to, and enhance fish and wildlife affected by the Project.

The Project Owners began the first process to implement the 1991 Agreement in 2019; over the last five years, the Project Owners have spent approximately \$8 million, countless staff resources, and significant management time conducting a process of consultation with state and federal resource agencies, rigorous scientific and engineering studies, stakeholder engagement, and careful analysis of dozens of fish and wildlife protection, mitigation, and enhancement proposals. These efforts culminated in the Project Owners’ release of a Draft Fish and Wildlife Program (“Draft Program”) in October 2023. After subsequent public comment, meetings to reconcile differences, and negotiations with the other parties to the 1991 Agreement and NVE, the Project Owners

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<sup>1</sup> [Agreement](#) Between the Municipality of Anchorage d/b/a Anchorage Municipal Light and Power, Chugach Electric Association, Inc., Matanuska Electric Association, Inc., U.S. Fish and Wildlife Service, National Marine Fisheries Service, Alaska Energy Authority, and the State of Alaska Relative to the Eklutna and Snettisham Hydroelectric Projects (Aug. 7, 1991) (“1991 Agreement”).

modified the program to account for such comments and negotiations, while still conforming to the 1991 Agreement requirements. The Project Owners submitted the Proposed Final Program to the Governor on April 25, 2024, who must issue a Final Fish and Wildlife Program (“Final Program”) by October 2024.

The Proposed Final Program meaningfully protects, mitigates damages to, and enhances fish and wildlife affected by the Project while balancing numerous public uses of the Eklutna River and Eklutna Lake, including power production and municipal water supply. The process conducted by the Project Owners followed and exceeded the 1991 Agreement’s requirements and the Proposed Final Program represents the consensus of the Project Owners and multiple negotiated compromises among the 1991 Agreement parties, and is supported on balance by the state and federal agencies that are party to the 1991 Agreement, as reflected in their comment letters to the Governor on the Proposed Final Program.<sup>2</sup> Consequently, the Project Owners respectfully request the Governor adopt the Proposed Final Program as the Final Program without material modification.

In support of such approval, the following brief responds to each of the six questions posed in the Governor’s Staff Request. Please note that the Project Owners have previously addressed the substance of the questions at across hundreds of pages of documents submitted to the Governor in connection with the Proposed Final Program. **Appendix A** provides a reference to such additional Project Owner provided information.

## **II. RESPONSES TO GOVERNOR’S STAFF REQUEST QUESTIONS**

### **A. Question 1 Response: The Proposed Final Program meets and successfully balances the eight factors set forth in the 1991 Agreement; NVE’s proposal does not.**

The Governor’s Staff Request asks how the Proposed Final Program, or an alternate program promoted by any other party to the 1991 Agreement, or NVE, meets the eight factors in Section 5 of the 1991 Agreement: (1) efficient and economical power

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<sup>2</sup> [Letter](#) from Jonathan M. Kurland, Regional Administrator, National Marine Fisheries Service to Mike Dunleavy, Governor of Alaska (June 21, 2024), (“NMFS Comment Letter”); [Letter](#) from Sara Boario, Regional Director, U.S. Fish and Wildlife Service to Mike Dunleavy, Governor of Alaska (Jun. 24, 2024).



production; (2) energy conservation; (3) the protection, mitigation of damages to, and enhancement (“PME”) of fish and wildlife (including spawning grounds and habitat); (4) the protection of recreational opportunities; (5) municipal water supplies; (6) the protection of other aspects of environmental quality; (7) other beneficial public uses; and (8) requirements of State law (the “Eight Factors”).

The Proposed Final Program represents a well-balanced approach to each of the Eight Factors. This balance reflects intention. While no language in the 1991 Agreement required the Project Owners to analyze each of the Eight Factors directly when developing the Proposed Final Program, they did. Section 2 of the 1991 Agreement requires that the Project Owners fund studies to examine and quantify, if possible, the impacts to fish and wildlife from the Project, and to examine the impacts of fish and wildlife measures on electric rate payers, municipal water utilities, recreational users and adjacent land use. As a result, during the study process, the Project Owners amassed and analyzed a significant amount of scientific data and engineering information about how various fish and wildlife PME proposals would impact power production, surrounding land, recreation, and water supply.<sup>3</sup> Based on this data, the Project Owners crafted their Proposed Final Program with the goal of ensuring that the Governor could meet his obligations to give equal consideration to the Eight Factors.

The federal and state resource agency parties do not oppose the negotiated Proposed Final Program and consequently did advance alternative proposals to the Governor for consideration. NVE’s most recent proposal<sup>4</sup>, like its previous proposals<sup>5</sup>, is not a balanced approach in that it focuses only on one factor (fish and wildlife impacts) and is centered on dam removal, which would be costly to power production, reliability, and rates, and risk the municipal water supply.

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<sup>3</sup> See, e.g., Proposed Final Fish and Wildlife Program, Eklutna Hydroelectric Project [Supporting Information Document](#) (Apr. 25, 2024) (“SID”); [Final Summary of Study Results](#), Attachment B to SID (“Final Study Summary”).

<sup>4</sup> [Letter](#) from Aaron Leggett, Chair/President, Native Village of Eklutna to Mike Dunleavy, Governor of Alaska (June 21, 2024) (“NVE Comment Letter”).

<sup>5</sup> See SID at §§ 4.12.1-4.12.3 (summarizes NVE alternatives).

## **1. Factors 1-2: Efficient and Economic Power Production and Energy Conservation**

As member-owned cooperatives and public utilities regulated by the Regulatory Commission of Alaska (“RCA”), with corporate and legal obligations to provide reliable electricity to their ratepayers<sup>6</sup> at just and reasonable rates,<sup>7</sup> Chugach and MEA are legally constrained in their ability to put forth a Proposed Final Program that would put place power production or grid/service reliability at risk or significantly increase rates for member-ratepayers in pursuit of speculative or unknown resource benefits. Both natural gas supply constraints and renewable generation acquisition goals also necessitate the conservation of existing reliable and clean energy baseload resources like the Project. Considering these realities, ensuring that the Proposed Final Program appropriately considers Factors 1 and 2 of the 1991 Agreement is both essential to the 1991 Agreement and Chugach and MEA’s obligations to their member-ratepayers.

The Project produces nearly 6 percent of the Project Owners’ combined total generation portfolio, about 25 percent of Chugach’s renewable energy, about 44 percent of MEA’s renewable energy, and is also consistently the lowest-cost resource for power in the Alaska Railbelt.<sup>8</sup> Additionally, the Project is also critical to grid reliability and has been particularly essential in emergency situations as demonstrated in early 2024 during an extended period of cold weather in Anchorage. When ENSTAR Natural Gas Company (“ENSTAR”) experienced gas deliverability problems, Chugach and MEA voluntarily maximized their usage of the Project (and other hydro resources) to maintain system reliability.<sup>9</sup> The Project provided 8 percent and 9 percent of their respective energy needs

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<sup>6</sup> AS 42.05.291(a) (“[e]ach public utility shall furnish and maintain adequate, efficient, and safe service and facilities. This service shall be reasonably continuous and without unreasonable interruption or delay.”).

<sup>7</sup> AS 42.05.381(a) (“[a]ll rates demanded... by a public utility... for a service furnished... shall be just and reasonable...”).

<sup>8</sup> See SID at § 2.2.2.

<sup>9</sup> See [Letter](#) from Andrew Laughlin, Chief Operating Officer, Chugach Electric Association, Tony R. Zellers, Chief Operating Officer, Matanuska Electric Association, and Kolby Hickel, Deputy Municipal Manager, Municipality of Anchorage, to Assembly

to meet MEA’s load and Chugach’s load during the cold snap and created significant natural gas savings, decreased emissions, and allowed ENSTAR to avoid issuing a yellow alert designation for natural gas delivery to its customers, which would have included, in part, requiring MEA and Chugach to shift to available diesel generation to provide additional gas to ENSTAR, and use fuel more than twice as expensive as natural gas that would have increased bills for utility customers.<sup>10</sup>

Based on the study results, the Project Owners committed to establish year-round instream flows in the Eklutna River as the foundation of the fish and wildlife program.<sup>11</sup> All water that is released into the Eklutna River, however, is no longer available to be sent through the Project powerhouse and is lost generation of the Project’s reliable, low-cost clean power that provides significant benefits to customers and region. To be clear, all lost generation as a result of a Final Program will need to be replaced with more expensive power, the costs of which will be borne by ratepayers.<sup>12</sup> The amount of water released and the timing also impacts the amount of lost generation and its costs; proposals that require shutdowns of the Project create exorbitant costs and would even cause MEA to violate its power capacity reserve reliability standard requirements if not replaced with costly new diesel generation. Accordingly, the Project Owners sought to minimize the cost and operational impacts of releasing instream flows, used cost effectiveness, cost-benefit, and incremental cost analyses to find the most efficient means to provide instream flows, and rejected all proposals that would have shut down the project operations for a significant portion of the year and undermined the value of the Project to capacity reserves and grid reliability.<sup>13</sup>

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Vice Chair Zaletel and Members of the Municipal Assembly, Municipality of Anchorage at 7 (February 12, 2024) (“Owners’ 2/12/24 Letter to Assembly”).

<sup>10</sup> *Id.*

<sup>11</sup> *See* SID at § 4.5.

<sup>12</sup> *See id.* at § 4.5.4.4 (showing the replacement energy costs associated with different proposed flow regimes and fish passage proposals), § 2.2.2 (discussing value capacity).

<sup>13</sup> *Id.* at § 4.5.

As a result of this work, the Proposed Final Program reflects a balanced approach to the efficient and economic power production and energy conservation criteria with its annual replacement energy cost of \$1.3 million per year, and limited estimated ratepayer increases of 0.53 percent for Chugach and 0.84 percent for MEA.<sup>14</sup> Other options analyzed by the Project Owners were unacceptable because they were technologically or operationally infeasible and replacement energy would have cost up to \$4 million *annually*, resulting in ratepayer increases of 4.7 percent for Chugach and 5.8 percent for MEA.<sup>15</sup> The Proposed Final Program capitalizes on existing infrastructure efficiencies, conserves a reliable and clean source of affordable electricity that has proven system benefits in times of gas shortages, and keeps impacts on Railbelt energy and costs manageable, while still providing for meaningful instream flows, habitat increases, and benefits to fish and wildlife.

## **2. Factor 3: Fish and Wildlife Protection, Mitigation and Enhancement**

The 1991 Agreement requires consideration of the protection, mitigation of damages to, and enhancement of fish and wildlife (including related spawning grounds and habitat). The benefits to fish and wildlife of the Proposed Final Program were analyzed and discussed in great length in the Proposed Final Program itself and in the hundreds of pages of supporting materials submitted to the Governor.<sup>16</sup> In short, the Proposed Final Program meaningfully protects, mitigates, and enhances fish and wildlife impacted by the Project: it proposes to release significant monthly instream flows of water from Eklutna Lake into Eklutna River in rates ranging from 27 cubic feet per second (“cfs”) in winter months to 40 cfs in summer months,<sup>17</sup> along with additional periodic channel maintenance flows up to 220 cfs.<sup>18</sup> The Proposed Final Program

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<sup>14</sup> *Id.* at § 4.5.4.4.

<sup>15</sup> *Id.*

<sup>16</sup> *See, e.g., id* at 50-53; *see generally* Final Study Summary; [Comparison to Existing Conditions](#), Attachment H to SID (“Comparison to Existing Conditions”).

<sup>17</sup> [Eklutna Hydroelectric Project Proposed Final Fish and Wildlife Program](#) (Apr. 25, 2024), § 2.1.2 (“Proposed Final Program”).

<sup>18</sup> *Id.* at § 2.2.

empowers a Monitoring and Adaptive Management Committee (“Committee”) of agency and NVE experts<sup>19</sup> to evaluate and modify flow regimes within a water budget to increase fish habitat and effectiveness.<sup>20</sup> These releases will rewater 11 out of 12 river miles year-round, where regular flows have not existed for decades before the Project Owners bought the Project from the federal government.<sup>21</sup> Modeling results indicate that spawning and rearing habitat for Chinook will increase by 209 percent and 53 percent respectively, and that spawning and rearing habitat for coho will increase by 65 percent and 67 percent respectively.<sup>22</sup> Models of the increased flows and potential resulting salmon reveal benefits to other wildlife species such as bear and moose.<sup>23</sup>

The Proposed Final Program is also just the beginning of a decades long process to protect, mitigate damages to, and enhance fish and wildlife affected by the Project through adaptive management led by the Committee’s fisheries experts, with significant reopeners for installation of a fixed wheel gate and fish passage – before the 1991 Agreement calls upon the Project Owners to begin the process again – based on ongoing monitoring.<sup>24</sup> The reopeners are the result of negotiations between the state and federal agencies and the Project Owners to address unknowns in the future after instream flows start to enhance fish and wildlife. For instance, the Project Owners and agencies recognized that water inflows into Eklutna Lake are likely to increase due to climatic effects on glaciers and negotiated an ongoing monitoring mechanism that allocates any such increase in water between the instream flow budget and hydro production.<sup>25</sup> Additionally, while no party knows of means to achieve successful upstream and downstream volitional fish passage within the project’s operational constraints *now*, the

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<sup>19</sup> *Id.* at § 3.1.

<sup>20</sup> *Id.* at § 3.3.

<sup>21</sup> Proposed Final Program at § 2.1.2; *see* BUREAU OF RECLAMATION, U.S. DEP’T INTERIOR, [TECHNICAL RECORD OF DESIGN AND CONSTRUCTION: EKLUTNA DAM, POWERPLANT AND TUNNEL](#) (1958).

<sup>22</sup> SID at § 4.10.1.

<sup>23</sup> *Id.*

<sup>24</sup> Proposed Final Program at § 4.0.

<sup>25</sup> *Id.* at § 3.3.3.

parties recognized opportunities might arise in the *future* and created a mechanism and a process through which the Committee of experts may reopen the program to take additional steps to add fish passage.<sup>26</sup>

### **3. Factor 4: Protection of Recreational Opportunities**

The 1991 Agreement requires consideration of the protection of recreational opportunities. The Project Owners assessed the recreational opportunities existing near the Project and ensured that the Proposed Final Program enhances, does not adversely impact, or mitigates against any negative impacts to, such opportunities.<sup>27</sup>

The Project Owners identified the following recreational activities related to the Project near Eklutna Lake and Eklutna River: (i) the use of a lakeside trail and other Chugach State Park infrastructure around Eklutna Lake, (ii) potential fishing opportunities in the Eklutna River; (iii) kayaking on Eklutna Lake; (iv) camping (including in cabins) nearby to Eklutna Lake; (v) hunting nearby to Eklutna Lake and Eklutna River; and (vi) wildlife viewing.<sup>28</sup> Fishing is also popular at the Eklutna tailrace fishery where the water through the Project is released into the Knik River.

Implementation of the Proposed Final Program will not impact camping or kayaking, and increases in hunting opportunities, wildlife viewing, and Eklutna River fishing opportunities are expected with any return of fish and the wildlife that benefit from any increased salmon abundance.<sup>29</sup> Bear-human interactions may also increase as a result; the release of water one mile downstream of the dam, however, helps to mitigate against potential increased bear presence at Eklutna Lake-area campsites.<sup>30</sup> While no impacts are expected to the lakeside trail from the Proposed Final Program directly, high lake levels during past spill events have caused erosion along discrete segments of the

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<sup>26</sup> *Id.* at § 4.2.

<sup>27</sup> *See, e.g.,* Comparison to Existing Conditions at 11-12.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*; *see also* Proposed Final Program at § 2.5.3.

<sup>30</sup> ALASKA DEPARTMENT OF NATURAL RESOURCES DIVISION OF PARKS AND OUTDOOR RECREATION, CHUGACH STATE PARK MANAGEMENT PLAN (2016) at 33; *see also* Comparison to Existing Conditions at 12 (Safety).

trail and the Project Owners committed \$234,000 for lakeside trail repairs (to match other funds already secured) to improve recreation around the lake.<sup>31</sup> The Proposed Final Program also protects the existing Eklutna Tailrace fishery by (1) continuing to provide water to the fishing area and avoiding operational changes that could adversely impact fishing opportunities; and (2) monitoring any straying of fish from the Tailrace fishing to the Eklutna River and developing appropriate mitigation measures if needed.<sup>32</sup>

#### **4. Factor 5: Municipal Water Supplies**

The 1991 Agreement requires consideration of municipal water supplies. The Project and Anchorage's water supply have been inextricably linked as a matter of physical infrastructure, operations, contract, water rights, and authorizing law since the 1980s when AWWU connected its intake pipe to the Project's intake structure. The Project provides infrastructure necessary for AWWU to collect and deliver water to Anchorage.<sup>33</sup> Accordingly, before proposing using AWWU infrastructure for instream flows, the Project Owners worked closely with AWWU leadership and engineers over many months in advance of the Draft Program release, and again in advance of Proposed Final Program submission to the Governor, to develop legal terms and agreements by which AWWU would be comfortable should the Governor issue a Final Program requiring the use of AWWU infrastructure to release water into the Eklutna River.<sup>34</sup>

These efforts resulted first in the execution of a binding term sheet in October of 2023 ("Binding Term Sheet"), prior to the release of the Draft Program, pursuant to which AWWU and the Project Owners agreed to key terms to be included in agreements to govern the construction and use of an "Eklutna River Release Facility", along with an agreement governing the long-term sharing of Eklutna Lake water rights between the

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<sup>31</sup> Proposed Final Program at § 2.5.1 - 2.5.2.

<sup>32</sup> *Id.*

<sup>33</sup> See Project Owner [Responses to Comments](#) on Proposed Final Program (Jul. 24, 2024), at 19-21 ("Owners' Comment Responses").

<sup>34</sup> See Proposed Final Program at § 2.1.1; Owners' Comment Responses at 19-21.

Project Owners and AWWU.<sup>35</sup> As contemplated in the term sheet, AWWU and the Project Owners then negotiated three agreements to detail and govern the arrangement, which were submitted to the Governor in final agreed form (the “AWWU Final Agreements”) along with the Proposed Final Program.<sup>36</sup>

Pursuant to the Proposed Final Program and the terms of the AWWU Final Agreements, there is no reduction in the amount of water guaranteed to be provided to AWWU for municipal water supplies.<sup>37</sup> The Project Owners also commit to not take any action in connection with the Fish and Wildlife Program that would compromise the Anchorage water supply and they expressly take on the liability should they do so.<sup>38</sup> The Project Owners will cover all costs of constructing and interconnecting new facilities for the purpose of the Final Program<sup>39</sup> and AWWU has design approval rights.<sup>40</sup> In order to accommodate instream flows and coordinated operations, the Project Owners will pay for eight new bridges over the Eklutna River for AWWU to maintain access to its infrastructure,<sup>41</sup> new communication systems, new flow meters, and a new isolation valve structure for safer maintenance of their facilities.<sup>42</sup> The AWWU Final Agreements also address and extend AWWU’s interconnection rights to the Project, use of the Project Owners’ water rights for Anchorage drinking water at a compensation rate capped at

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<sup>35</sup> See [Binding Term Sheet](#) for Water Facilities Interconnection and Long-Term Water Transportation Services, by and between Chugach Electric Association, Matanuska Electric Association, the Municipality of Anchorage, and Anchorage Water & Wastewater Utility (Oct. 27, 2023), (“Binding Term Sheet”); see also [Letter](#) from Mark C. Wiggin, Chair, Board of Director, and Arthur W. Miller, Chief Executive Officer, Chugach Electric Association to Members of the Municipal Assembly, Municipality of Anchorage, at 5-7 (May 23, 2024).

<sup>36</sup> See the form of [Long-Term Water Transportation Agreement](#), the form of [Public Water Supply Agreement](#), and the Form of [Water Facilities Interconnection Agreement](#), each attached as Attachment D to the SID.

<sup>37</sup> See form of Public Water Supply Agreement § 2.4.

<sup>38</sup> See form of Long-Term Water Transportation Agreement § 11.2.

<sup>39</sup> See form of Water Facilities Interconnection Agreement § 5.1.

<sup>40</sup> *Id.* at § 4.3.

<sup>41</sup> See form of Water Facilities Interconnection Agreement § 2.1; see also SID at § 2.4.

<sup>42</sup> See *id.* at Exhibit A-1.



roughly half of its current costs, and replaces a 1984 agreement that expires in 2025.<sup>43</sup> AWWU would also gain a right to purchase the Project Owners' water infrastructure used to transport AWWU's water allocation in the event that the Project Owners cease operating the Project<sup>44</sup>, as well as rights to priority water rights without the need for further compensation at the end of the new public water supply agreement in 2060.<sup>45</sup>

AWWU engineers have closely reviewed and contributed to the Proposed Final Program and current design drawings of the Eklutna River Release Facility and AWWU presented no concerns with respect to safety or feasibility to the Project Owners. AWWU has also raised no concerns to the Project Owners as to the impacts of the Proposed Final Program on municipal water supplies. Rather, AWWU has agreed to the AWWU Final Agreements and on balance, if executed, such agreements will represent a net positive benefit to AWWU and municipal water supplies as compared with the status quo.

#### **5. Factor 6: Other Aspects of Environmental Quality**

Factor 6 requires consideration of other aspects of environmental quality. As a renewable resource, the Project currently offsets approximately 72,500 metric tons of CO<sub>2</sub> equivalent each year and represents 25 percent and 44 percent of Chugach's and MEA's renewable electricity portfolio, respectively.<sup>46</sup> Because all water released through the Eklutna River Release Facility and not into the Project powerhouse will reduce the generation of carbon-free power in the Railbelt and at least in the short term, will need to be replaced with natural gas generation, the Proposed Final Program, which will cause increased carbon emissions of 6,900 metric tons of CO<sub>2</sub> annually<sup>47</sup>, therefore weights negatively when considering the preservation of other aspects of environmental quality.

While this is a negative result in analyzing Factor 6, all proposals that were analyzed by the Project Owners required the release of water and reduction in Project generation, and therefore a direct associated increase in carbon emissions. Nonetheless,

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<sup>43</sup> See form of Public Water Supply Agreement.

<sup>44</sup> See *id.* at § 6.1.

<sup>45</sup> *Id.* at § 6.2.

<sup>46</sup> *Id.* at §§ 2.2 and 2.2.2.

<sup>47</sup> See, e.g., Comparison to Existing Conditions at 13.

all parties and all stakeholders want to see some level of flows in the Eklutna River. This emissions result is therefore unavoidable. Given, however, that the Proposed Final Program represents a measured approach to water release that still allows for significant hydroelectric generation from the Project, the Proposed Final Program ultimately has the least negative carbon emissions impact of all alternatives proposed.

#### **6. Factor 7: Other Beneficial Public Uses**

Factor 7 requires consideration of other beneficial public uses. The Proposed Final Program relates to at least two other such beneficial uses, both positively and neutrally.

First, the Proposed Final Program creates benefits to cultural resources. NVE has informed the Project Owners on numerous occasions of the important cultural benefit of the Eklutna River as a salmon river.<sup>48</sup> While the Project Owners acknowledged that NVE and Eklutna, Inc. do not believe that the Proposed Final Program goes far enough,<sup>49</sup> nonetheless, the measures outlined in the Proposed Final Program will unequivocally provide year-round instream flows in the Eklutna River and increase salmon habitat for all four known species of salmon currently observed spawning in the Eklutna River.

Second, the Old Glenn Highway Bridge, the New Glenn Highway Bridges and the Railroad Bridge pass over the Eklutna River downstream of the Project.<sup>50</sup> While increases in flows certainly increase risk to downstream infrastructure, each of these bridges has a hydraulic capacity of at least 1800 cfs (or higher) and the proposed flows in the Proposed Final Program are therefore well within the hydraulic capacity of each of the existing bridges and will not impact the beneficial public use of such bridges.<sup>51</sup>

#### **7. Factor 8: Requirements of State Law**

The 1991 Agreement requires consideration of the requirements of State law. While multiple State laws are relevant to the Proposed Final Program, throughout the

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<sup>48</sup> See, e.g., Letter from Aaron Leggett, President of NVE to Eklutna Hydroelectric Project Owners at 1 (April 24, 2020) (“The Eklutna River has provided salmon for nutritional and cultural benefit to Eklutna Dena’ina throughout time immemorial...”)

<sup>49</sup> See, e.g., Owners’ 2/12/24 Letter to Assembly at 2.

<sup>50</sup> See Comparison to Existing Conditions at 9-10.

<sup>51</sup> *Id.*

process leading to the Proposed Final Program, the Project Owners engaged with state officials with respect to dam safety, water rights, fish and wildlife, cultural resources, and public access for recreation; at this point, they know of no legal impediments beyond permits, approvals, and water rights amendment. Specifically, the Project Owners will seek an amendment to their current Certificate of Appropriation from the Alaska Department of Natural Resources to allow for conveyance and release of Project water for instream flows.<sup>52</sup> Numerous state permits<sup>53</sup> will also be required for the construction of the Eklutna River Release Facility and implementation of the Proposed Final Program.

The Project Owners anticipate obtaining these permits during the three-year period of 2024-2027.<sup>54</sup> The Project Owners anticipate that these permits and permissions will be obtainable in due course given the measured and well-supported approach of the Proposed Final Program, and assuming the Project Owners are able to obtain all necessary permits and permissions for the implementation of the Proposed Final Program, the Project Owners have identified no violations of or needed modifications in State law to implement the Proposed Final Program by the stage agencies involved.

#### **8. NVE's Proposals Do Not Equally Consider the Eight Factors**

NVE has proposed three different program alternatives since July 2023 and the Project Owners have studied, conducted engineering analyses, and responded to each.<sup>55</sup> Like the earlier proposals, NVE's alternative overviewed to the Governor on June 21, 2024<sup>56</sup> is not a balanced approach with respect the Eight Factors because it fundamentally centers on dam removal in order to promote one factor above all others (Factor 3: fish and wildlife), would be costly to power production, reliability, and utility rates, and

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<sup>52</sup> 11 AAC 93.930.

<sup>53</sup> See SID at § 4.10.3.3 (including a discussion of anticipated required permissions).

<sup>54</sup> See Eklutna Hydroelectric Project [Draft Fish and Wildlife Program](#) (Oct. 27, 2023), 81.

<sup>55</sup> See SID at § 4.12; see also [Eklutna Dam Removal Assessment](#), Attachment F to SID (Apr. 24, 2024), ("Dam Removal Assessment"); Owners' Comment Responses at § 4.4; see also Letter from Kolby Hickel, Deputy Municipal Manager, AHP, Andrew Laughlin, COO, Chugach Electric Association, and Tony R. Zellers, COO, Matanuska Electric Association to Aaron Leggett, President, Native Village of Eklutna (April 25, 2024).

<sup>56</sup> NVE Comment Letter at 5-7.

would risk municipal water supplies and downstream infrastructure. It poses significant cost, engineering and feasibility challenges and risks that the Project Owners analyzed at great length in their Cost and Risk Assessment submitted to the Governor as Appendix D to the Project Owners Responses to Comments in July<sup>57</sup> and as Attachment F to the Supporting Information Document submitted with the Proposed Final Program.

NVE's proposed alternative contains two core components that if adopted by the Governor in a Final Program, would unreasonably harm efficient and economical power production, downstream infrastructure, recreational opportunities, other aspects of environmental quality, municipal water supplies, and in the event of an engineering failure, could also have extremely harmful impacts on fish and wildlife populations. First, NVE's proposal calls for a pump station at Eklutna Lake to pump water into the pond between a glacial berm and the Eklutna Lake dam for ultimate release into Eklutna River.<sup>58</sup> While the Project Owners considered variations of this approach during their analysis of alternatives, it was ultimately not selected because it depends on a powered mechanical system; if that powered mechanical system fails, the consequence could be devastating to the downstream fish populations and habitat that would depend on future flow releases.<sup>59</sup> Unlike the pump station, if a power outage occurs (which is likely given its remote location), then the Project Owners' Eklutna River Release Facility would continue to function by simple gravity flow from the river release valve.<sup>60</sup>

Second, NVE's proposal is centered on establishing complete connection between Eklutna Lake and Eklutna River by 2034 by dam removal.<sup>61</sup> The Project Owners have analyzed dam removal in depth<sup>62</sup> and have concluded that if the Project were removed and Eklutna River flows were unregulated, AWWU's pipeline infrastructure would be at significant risk and the New Glenn Highway bridges and Alaska Railroad bridge, which

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<sup>57</sup> See Owners' Comment Responses at § 4.4.

<sup>58</sup> NVE Comment Letter at 5-6.

<sup>59</sup> See Owners' Comment Responses at § 4.4.

<sup>60</sup> *Id.*

<sup>61</sup> NVE Comment Letter ("preferred solution is the removal of the Eklutna Lake Dam").

<sup>62</sup> See Dam Removal Assessment.

were not built to withstand a free-flowing river, would need to be replaced.<sup>63</sup> Replacing the Project energy and capacity with firm renewable energy would cost more than \$500 million in total known costs in 2034, and if full replacement by renewable energy is not possible, additional carbon-intense resources would need to come online.<sup>64</sup> It would also eliminate the Eklutna Tailrace fishery. These are very harmful results to multiple public uses that the Governor is required to give equal consideration to. The Governor adopting NVE's approach would be a clear violation of the 1991 Agreement and would require significant state agency action, including the authorizing of new bridges, new municipal water supply infrastructure, and significant new electric generation infrastructure.<sup>65</sup>

**B. Question 2: The 1991 Agreement is silent on specific measures and does not require complete connection between the river and the lake to support fish passage.**

The Governor's Staff Request asks if the 1991 Agreement requires complete connection between the Eklutna River and Eklutna Lake to support fish passage. The 1991 Agreement contains no such requirement – explicitly or implicitly. Like the Federal Energy Regulatory Commission ("FERC") hydroelectric relicensing process upon which the 1991 Agreement is modeled,<sup>66</sup> the 1991 Agreement sets forth a *process* for the scientific development of a plan to protect, mitigate, and enhance fish and wildlife affected by the Project. The 1991 Agreement neither requires nor prohibits specific protection, mitigation, and enhancement *measures*. Contrary to NVE's demands and the Anchorage Assembly's ("Assembly") attempts to impose new objectives,<sup>67</sup> neither the language of the 1991 Agreement nor the history behind it support a requirement for complete river-lake connection or fish passage.

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<sup>63</sup> Owners' Comment Responses at § 4.4.

<sup>64</sup> See Owners' Comment Responses § 4.12.2.

<sup>65</sup> See, e.g., AS 46.03.720; AS 19.05.040.

<sup>66</sup> See 18 CFR §§ 5.1 et seq.

<sup>67</sup> See Owners' Comment Responses at §§ 4.2.1 – 4.2.2; see also Anchorage Municipal Code 26.30.025A ("[i]t is the policy of the [MOA] and [AHP] to restore the continuous water flow of the Eklutna River and the fish populations of the River and Eklutna Lake, to the greatest extent possible, subject to all provisions of the [1991 Agreement]").

First, none of the phrases “fish passage”, “river restoration”, “river connection” nor any similar phrases or objectives appear in the 1991 Agreement. The 1991 Agreement requires the Project Owners to develop, fund and carry out study plans, to review and summarize findings and facilitate a comment period, to develop a draft program to protect, mitigate and enhance fish and wildlife, to attempt to resolve differences among the parties, to develop a final proposed program and to submit it to the Governor, who then is required to weigh the Eight Factors, seven of which are unrelated to fish habitat. The only content-based requirement of the program to be submitted is that it includes measures to “protect, mitigate, and enhance fish and wildlife resources.”<sup>68</sup>

The plain language of the 1991 Agreement (including its omissions) controls. Except where Congress has explicitly adopted another standard or where doing so would “frustrate specific objectives of federal programs”,<sup>69</sup> the interpretation of federal government contracts is generally governed by federal common law, which incorporates the “core principles” of common law in force in most states.<sup>70</sup> A core principle of common law regarding the interpretation of contracts is the plain-meaning rule, which requires that where contract terms are “clear and unambiguous,” they must be given their “plain and ordinary meaning.”<sup>71</sup> A contract is only ambiguous if reasonable people could find its terms “susceptible to more than one interpretation,” and the fact that parties dispute the meaning of a contract does not establish that it is ambiguous.<sup>72</sup> The 1991 Agreement terms are clear: they include no reference to river restoration or fish passage. Given that Congress passed the Alaska Power Administration Asset Sale and Termination Act<sup>73</sup> (“Sale Act”) in 1995 based in part on the language of the 1991

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<sup>68</sup> 1991 Agreement at § 5.

<sup>69</sup> United States v. Kimbell Foods, Inc., 440 U.S. 715, 728 (1979).

<sup>70</sup> Equal Emp’t Opportunity Comm’n v. Fed. Express Corp., 268 F. Supp. 2d 192, 204 (E.D.N.Y. 2003).

<sup>71</sup> George Hyman Constr. Co. v. United States, 832 F.2d 574, 579 (Fed. Cir. 1987).

<sup>72</sup> Klamath Water Users Protective Ass’n v. Patterson, 204 F.3d 1206, 1210 (9th Cir. 1999).

<sup>73</sup> Public Law 104-58 (Nov. 28, 1995).

Agreement, no reasonable argument can be made to add language into its text that isn't there.

Second, while the 1991 Agreement is not ambiguous so evidence outside of its plain meaning is not relevant, an examination of extrinsic evidence even further reveals that no party intended river restoration or fish passage to be required as part of a Proposed Final Program. The Project was built by the federal government in 1955, decades after a dam in the Eklutna River below it had eliminated historical fish runs.<sup>74</sup> Prior to 1991 there is no evidence that fish and wildlife was even considered in connection with the Project.<sup>75</sup> In 1991, in connection with the then-proposed sale of the Project from the federal government to the Project Owners and associated proposed Federal Power Act exemption of the Project, exempting it specifically from FERC licensing requirements, concerns were raised that the impacts to fish and wildlife from the Project had not been, and as a result of the exemption, would never be examined or addressed and the 1991 Agreement was the compromise reached.<sup>76</sup> While it was based on the FERC relicensing process, the 1991 Agreement deviates in significant ways, including by adding additional non-fish habitat related factors to what the Governor is required to balance upon reviewing a the Proposed Final Program.<sup>77</sup> Congress subsequently approved the sale of the Project to the Project Owners, inclusive of the FPA

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<sup>74</sup> ALASKA POWER ADMINISTRATION, U.S. DEPARTMENT OF ENERGY, DIVESTITURE SUMMARY REPORT, SALE OF EKLUTNA AND SNETTISHAM PROJECTS (April 1992) (“Divestiture Report”) at 1, Appendix E at 11 (“Complete loss of the anadromous salmon run (Sockeye) undoubtedly occurred with the construction of the 1929 dam”).

<sup>75</sup> *Id.* at 19 (“Specific fish and wildlife measures were not contemplated in earlier divestiture summaries and reports... this was because the projects were generally viewed as not involving fish and wildlife.”).

<sup>76</sup> *Id.*

<sup>77</sup> *See* 1991 Agreement at § 5; *compare* Section 4(e) the Federal Power Act: “. . . equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality.” *See* 16 U.S.C. § 797(e). Factors (1) efficient and economical power production, (5) municipal water supplies, (7) other beneficial public uses; and (8) requirements of State law are therefore unique to the 1991 Agreement.

exemption, via the Sale Act in 1995.<sup>78</sup> Given this history, there are therefore ample records available that deal with the intentions behind the 1991 Agreement, including federal agency and Congressional records.<sup>79</sup> None, including the Divestiture Summary Report written in 1992 by the Alaska Power Administration in support of the Project sale transaction, reference “fish passage” or “river restoration.” Notably, the National Marine Fisheries Services has also specifically written that, unlike the analog in federal law, the federal government does not have the authority to prescribe fish passage pursuant to the 1991 Agreement.<sup>80</sup> There is therefore simply no evidence suggesting that any party, or Congress, intended the 1991 Agreement to require fish passage or river connection.

**C. Question 3: Assembly Approval is not required for the Proposed Final Program.**

The Governor’s Staff Request asks whether Assembly approval is required for the Proposed Final Program. In short, the Assembly has no approval authority over the Fish and Wildlife Program developed by the Project Owners pursuant to the 1991 Agreement process. The Assembly’s authority only applies to the MOA and AHP, but the MOA surrendered all decision-making rights over the Project management, and development and implementation of the Proposed Final Program in October 2020.

When the Project Owners purchased the Project in 1997, Chugach obtained 30 percent of undivided interests in the Project, MEA obtained 16.67 percent, and MOA, doing business as Municipal Light and Power (“ML&P”), obtained 53.33 percent.<sup>81</sup> The Project Owners agreed to jointly manage the Project through an Eklutna Operating Committee (“EOC”)<sup>82</sup> and did so until October 2020. In 2019, MOA sought approval

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<sup>78</sup> Public Law 104-58 (Nov. 28, 1995).

<sup>79</sup> *See* Divestiture Report; *see also* See Conference Report 104-312 to accompany S. 395, 104th Cong. (Nov. 6, 1995) (“Conference Committee Report”)

<sup>80</sup> *See* NMFS Comment Letter at 5.

<sup>81</sup> *See* 1996 Eklutna Hydroelectric Project Transition Plan by and among the United State of America d/b/a Alaska Power Administration. . . MOA d/b/a ML&P, Chugach, and MEA, May 29, 1996, as extended by the Agreement for Extension by and among MOA d/b/a ML&P, Chugach and MEA (“Transition Plan”) at Recitals, Exhibit E.

<sup>82</sup> *See id.* at Exhibit E.



from the RCA to sell ML&P's assets to Chugach, to terminate ML&P's Certificate of Public Convenience and Necessity and to eliminate staff and cease to operate as an electric utility, with one notable exception.<sup>83</sup> The MOA proposed to retain its ownership interests in the Project and to enter into two long-term power purchase agreements ("PPAs") with Chugach and MEA, pursuant to which MOA would sell its share of the power generated by the Project to Chugach and MEA for a period of 25 years each.<sup>84</sup> These PPAs include requirements that MOA operate "consistent with prudent utility practice and the rights and obligations of the parties to the [PPAs]" and "not curtail Project power deliveries except as required by law or Prudent Utility Practice."<sup>85</sup> For the purpose of owning MOA's share of the Project and performing under the PPAs, a Municipal Hydropower utility (now AHP) was to be maintained.<sup>86</sup>

The RCA, when reviewing this proposal, noted that such municipal hydropower utility would not, after the transaction, have the staff or expertise of the Railbelt electric generation system necessary to effectively participate in the EOC, writing:

. . . we can only find that MHP is managerially and technically fit to maintain an ownership interest in the Eklutna Project subject to the condition that... ML&P surrenders its vote on the EOC... so that Chugach and MEA can jointly manage and operate the Eklutna Project, *including negotiating compliance with the Fish and Wildlife Agreement*, without MHP having a vote on operation or management decisions.<sup>87</sup>

Accordingly, the RCA issued Order 39 approving the transaction, but conditioning its approval of the ML&P transaction upon the MOA's surrender of its voting rights until

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<sup>83</sup> See Application of the Municipality of Anchorage d/b/a Municipal Light and Power to Amend Certificate of Public Convenience and Necessity No. 121 and to Terminate Dividend Restriction, April 5, 2019, RCA Docket U-18-102/U-19-020/U-19-021.

<sup>84</sup> See RCA Order U-18-102(44)/U-19-020(39)/U-19-021(39), Order Accepting Stipulation in Part, Subject to Conditions; Transferring and Issuing Certificates of Public Convenience and Necessity, Subject to Conditions; Addressing Beluga River Unit Management, Gas Transfer Prices, and Third-Party Sales Gas Pricing; and Requiring Filings, dated May 28, 2020 (Order 39), at 17.

<sup>85</sup> *Id.* at 61-62.

<sup>86</sup> *Id.* at 59-60.

<sup>87</sup> *Id.* at 67 (emphasis added).

such time as it could demonstrate the necessary technical and managerial fitness.<sup>88</sup> The MOA complied, executed a binding surrender of voting rights with Chugach and MEA, and filed it on October 30, 2020.<sup>89</sup> After the MOA willingly surrendered its EOC decision-making authority in 2020, neither the MOA’s approval, nor the Assembly’s approval, is not required for decisions related to implementing the 1991 Agreement, including approval of the Proposed Final Program.

Despite the surrender and in contravention to the RCA’s explicit requirement that the MOA should not have “any ability to delay or change the Eklutna Project decisions made by Chugach or MEA” during such surrender period,<sup>90</sup> the Assembly has taken several actions in an attempt to change, delay and undermine the Proposed Final Program, including (1) adding language to the Anchorage Municipal Code stating that it is the MOA’s policy to restore continuous water into the Eklutna River;<sup>91</sup> and (2) passing an ordinance calling upon the Governor to modify the process outlined in the 1991 Agreement and require the Project Owners to use two years of the three-year implementation period to identify an alternative solution and to remove substantive aspects (the “limited reopeners”) from the Proposed Final Program.<sup>92</sup> Yet, the Assembly has no authority over the decisions that Chugach and MEA make with respect to the 1991 Agreement pursuant to the RCA’s Order 39. Under Alaska law, in all situations where municipal ordinances conflict with the RCA’s jurisdiction and authority over public utilities operating within that municipality, RCA regulatory authority shall prevail.<sup>93</sup> The

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<sup>88</sup> *Id.* at 67.

<sup>89</sup> Surrender of Eklutna Operation Committee (EOC) Voting Rights dated as of October 27, 2020, and filed with the RCA in docket number U-18-102(44) (“Surrender”).

<sup>90</sup> Order 39 at 67 (the MOA shall not have “any ability to delay or change the Eklutna Project decisions made by the Chugach and MEA representatives on the EOC”).

<sup>91</sup> Anchorage Municipal Code 26.30.025A.

<sup>92</sup> AR No. 2024-218(S), As Amended.

<sup>93</sup> AS 42.05.641 (“[i]n the event of a conflict between a ... regulation of the commission and a ... regulation of such a local governmental entity, the ... regulation of the commission shall prevail.”)

Assembly's actions are "substantially irreconcilable"<sup>94</sup> with the RCA's clear order regarding the MOA's surrender of its rights regarding implementation of the 1991 Agreement and operations of the Project. Therefore, the Assembly actions attempting to modify the Proposed Final Program are superseded by RCA plenary authority over public utilities in the State of Alaska.

Consequently, no Assembly approval of the Proposed Final Program is required. Chugach and MEA acknowledge that the MOA has requested that the RCA approve return of its AHP's voting rights.<sup>95</sup> Until it regains such voting rights, however, the Assembly has no approval authority over the Proposed Final Program.

**D. Question 4: The lack of MOA voting rights had no effect on the process and the Proposed Final Program.**

The Governor's Staff Request asks if the MOA's lack of a vote on the Proposed Final Program affected the process set forth in the 1991 Agreement. No, the lack of a MOA vote had no effect on process or the result. Even though the MOA surrendered its vote on the EOC, per the direction of Chugach and MEA's Chief Executive Officers and MOA's Municipal Manager, the three Project Owners conducted themselves as equals and made all decisions through unanimous consent. No formal vote among the Project Owners was ever taken with respect to the process, the Draft Program, or the Proposed Final Program. All three Project Owners maintained complete agreement on the Proposed Final Program process, development, and submission; and the MOA's support of the process and the Proposed Final Program is clearly reflected in Mayor Dave Bronson's letter to the Governor on April 26, 2024.<sup>96</sup> The subsequent election of Mayor Suzanne LaFrance – and potential associated changes in policy position – could not have impacted the process given that she took office after the Proposed Final Program was submitted.<sup>97</sup>

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<sup>94</sup> See Jefferson v. State, 527 P.2d 37, 43 (Alaska 1974).

<sup>95</sup> This proceeding is open in RCA Docket No. U-24-024; the RCA expects to issue an order no later than the statutory deadline which is January 14, 2025.

<sup>96</sup> [Letter](#) from Dave Bronson, Mayor, Municipality of Anchorage to Mike Dunleavy, Governor of Alaska (Apr. 26, 2024).

<sup>97</sup> Letter to Governor Dunleavy from Mayor Suzanne LaFrance (July 19, 2024).

**E. Question 5: The 1991 Agreement does not give the Governor authority to impose a two-year delay.**

The Governor's Staff Request asks if the Governor has the authority to impose a two-year extension on the process. The 1991 Agreement grants no such authority to the Governor or any other 1991 Agreement party. The 1991 Agreement is a contract that sets forth certain scheduled requirements with dates calculated from October 2, 1997, which is the date that the Project Owners took ownership of the Project: the Project Owners were required to initiate the consultation, study and program development process by October 2, 2022, the Governor should issue a Final Program by October 2, 2024, and implementation should begin by October 2, 2027 and be complete by October 2, 2032.<sup>98</sup> No provisions for delay or extension exist within the 1991 Agreement.<sup>99</sup>

Central to this analysis is the fact that the Governor, in reviewing the Proposed Final Program, is not acting as a governmental authority providing a regulatory approval; rather, the Governor is fulfilling contractual obligations on behalf of the State of Alaska as a party to the 1991 Agreement. No federal or Alaska law empowers the Governor to exercise regulatory authority over the Project's fish and wildlife program.<sup>100</sup> Rather, the Governor has the authority to weigh the Eight Factors and issue a Final Program because the parties to the 1991 Agreement gave him that authority. Governor Walter Hickel signed the 1991 Agreement on behalf of the State, agreeing that the future Governor would serve this role under the 1991 Agreement.<sup>101</sup> Without a formal amendment to the 1991 Agreement, Governor actions to delay the issuance or implementation of a Final Program beyond October 2, 2024, and October 2, 2027, respectively, would be a breach of the State's obligations under the 1991 Agreement.

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<sup>98</sup> 1991 Agreement at § 7.

<sup>99</sup> *Id.*; see also Closing Agreement between the United States of America, acting through the Alaska Power Administration... the MOA d/b/a ML&P, Chugach and MEA, October 2, 1997 (evidencing closing date of October 2, 1997).

<sup>100</sup> Compare the Governor's lack of statutory authority over the Eklutna Project with the statutory authority that FERC wields with respect to hydroelectric project licensing under Part 1 of the Federal Power Act, §§ 4-36, 16 U.S.C. §§ 797-823d (2024).

<sup>101</sup> See 1991 Agreement.

Further, given the unique history and circumstances surrounding the 1991 Agreement, there is no clear path forward to so amend the 1991 Agreement. The 1991 Agreement reflects the negotiated consensus of three utilities, two federal agencies, and the State of Alaska in agreeing to an alternative to FERC hydropower licensing requirements for two federal hydroelectric projects to be purchased (the Project and the Snettisham Hydroelectric Project).<sup>102</sup> The Congressional record demonstrates that such consensus and the resulting 1991 Agreement were the reason why federal agencies and Congress were comfortable with, and ultimately provided, an exemption for the Project to Part I of the Federal Power Act for the Project in Sale Act in 1995.<sup>103</sup>

While the 1991 Agreement is silent on extensions and excused delays, it is also silent on amendment that would allow for such extensions and delays. Had the parties intended to allow for amendment to the 1991 Agreement in the future, they could have and would have done so. Yet, all of the principals and lawyers representing the utilities, federal agencies, and the State of Alaska omitted any provision for amendment. The parties to the 1991 Agreement cannot assume today that such omission was simply an oversight, particularly because the 1991 Agreement was an essential component behind the passage of the Sale Act authorizing the sale of the Project to the Project Owners. The 1991 Agreement (without a provision for amendment) was reviewed and acknowledged and made enforceable by Congress in the Sale Act and Congress also omitted any mention of future amendments.<sup>104</sup> Interpretation of the 1991 Agreement must respect the due weight of Congressional review and action and there exists no basis to amend the 1991 Agreement or authority of the Governor to unilaterally delay implementation.

Because the 1991 Agreement is an agreement with federal agencies that was approved by Congress, it is a federal contract that must be analyzed in accordance with

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<sup>102</sup> *Id.* at § 1.

<sup>103</sup> See Conference Committee Report (“...as a result of the [1991 Agreement], the Department of Energy, the Department of the Interior and NMFS all agree that the two hydroelectric projects warrant exemption from the Federal Energy Regulatory Commission (FERC) licensing under Part I of the Federal Power Act.”)

<sup>104</sup> Public Law 104-58 (Nov. 28, 1995).

federal common law. Section 3(c) of the Sale Act also makes the 1991 Agreement legally enforceable and reviewable in federal court.<sup>105</sup> While when reviewing federal contracts, federal courts often adopt state common law principles to govern federal contract disputes, as discussed in Section II.B, but only to the point that doing so “would not frustrate specific objectives of federal programs”<sup>106</sup>, or if incorporating state common law “would not give due regard to the federal interest in maintaining”<sup>107</sup> the existing terms. To allow for an amendment to delay the 1991 Agreement schedule, a federal court would need to read in a general right to amend any provision of the 1991 Agreement. This would “frustrate the specific objectives”<sup>108</sup> of the Sale Act, which directly references the 1991 Agreement, and would be without “due regard to the federal interest in maintaining”<sup>109</sup> the terms of the 1991 Agreement as they are, which informed and were relied upon by Congress in passing the Sale Act.

**F. Question 6: AWWU and the Project Owners have reached final agreement concerning the use of AWWU infrastructure, subject to certain conditions precedent.**

The Governor’s Staff Request asks if the Project Owners and AWWU have reached a final and binding agreement concerning the use of AWWU’s infrastructure as outlined in the Proposed Final Program. Yes, subject to necessary approvals, AWWU and the Project Owners must execute the AWWU Final Agreements in their current form.

In connection with the negotiations between AWWU and the Project Owners about how AWWU infrastructure could be used for the Proposed Final Program, AWWU and the Project Owners initially signed the Binding Term Sheet.<sup>110</sup> After this, the AWWU Final Agreements were negotiated and fully agreed to, with the exception of a

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<sup>105</sup> *Id.* at § 104(3)(c).

<sup>106</sup> *United States v. Kimbell Foods, Inc.*, 440 U.S. 715, 734 (1979).

<sup>107</sup> *West Virginia v. United States*, 479 U.S. 305, 309 (1987).

<sup>108</sup> *Kimbell Foods*, 440 U.S. at 734.

<sup>109</sup> *West Virginia v. United States*, 479 U.S. at 309.

<sup>110</sup> Binding Term Sheet as amended by the [Amendment to Binding Term Sheet](#) between the Project Owners and Anchorage Water & Wastewater Utility dated March 27, 2024.

handful of non-substantive or technical exhibits to be completed before execution.<sup>111</sup> AWWU and the Project Owners then entered into an amendment to the Binding Term Sheet, pursuant to which they agreed to execute the AWWU Final Agreements without any substantive revisions thereto, within 30 days of the following limited conditions precedent being met: (1) the Governor issuing a Final Program including the use of AWWU facilities; (2) the Assembly approving the agreements to the extent necessary for the MOA to execute and perform under them; and (3) Chugach and MEA obtaining necessary board approvals.<sup>112</sup> If either Governor approval or Chugach and MEA board approval fail, then the AWWU Final Agreements will not be signed and the Project Owners will have to pursue other means to implement the Final Program.

The Assembly's approval was also included as a condition precedent given that (1) AWWU is an MOA utility and (2) the Assembly expressly requires such approval.<sup>113</sup> The Project Owners hope that if the Governor issues a Final Program including the joint use of AWWU infrastructure, the Assembly would limit its review of the AWWU Final Agreements to their content and assess whether they are beneficial to the residents of Anchorage, rather than attempt to block the implementation of the Final Program. If the Assembly rejects the AWWU Final Agreements, however, the Project Owners will pursue other available avenues to implement the Final Program.

### **III. CONCLUSION**

The Proposed Final Program is the result of a 5-year \$8 million process of rigorous scientific study and stakeholder consultation and represents a balanced approach that allows for equal consideration of the Eight Factors and meets all requirements of the 1991 Agreement. It was developed by consensus by the Project Owners. It also meets the scheduling requirements of the 1991 Agreement, which does not authorize delay. The Governor should therefore approve the Proposed Final Program without material changes and allow the Project Owners to begin the process of implementation on schedule.

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<sup>111</sup> See Final AWWU Agreements.

<sup>112</sup> *Id.*

<sup>113</sup> Anchorage Municipal Code 7.15.040A; 7.14.040F(2).

## APPENDIX A

### SUPPLEMENTAL MATERIALS WRITTEN BY PROJECT OWNERS

	<u>Proposed Final Program and Supporting Information Document (“SID”)</u>	<u>Project Owner Responses to Comments on Proposed Final Program (“Owners’ Comment Responses”)</u>	<u>Other Documents</u>
Question 1: Eight Factor Analysis	<ol style="list-style-type: none"> <li>Section 4.5 of the SID overviews the alternative proposals analyzed by the Project Owners.</li> <li>Attachment B to the SID is a “Final Summary of Study Results”.</li> <li>Attachment C to the SID provides “Supporting Data for Cost Effectiveness Modeling”.</li> <li>Attachment H to the SID is a “Comparison to Existing Conditions”. It overviews how the Proposed Final Program will compare to the status quo and includes information directly relevant to each of the Eight Factors.</li> <li>Section 4.12 of the SID includes an overview and analysis of NVE’s requested alternatives (as of April 25, 2024).</li> </ol>	<ol style="list-style-type: none"> <li>Section 4.2.1 of the Owners’ Comment Responses analyzes why the Project Owners focused on all Eight Factors in developing the Proposed Final Program, rather than just Factor 3.</li> <li>In Section 4.3 of the Owners’ Comment Responses, the Project Owners respond to comments that the Proposed Final Program “jeopardizes the Anchorage drinking water system”.</li> <li>Section 4.4 of the Owners’ Comment Responses overview NVE’s Proposed Alternative Final Program.</li> <li>Appendix D to the Owners’ Comment Responses includes a cost and risk assessment of NVE’s proposed alternative centered on a pump station and a dam removal reopener.</li> </ol>	<ol style="list-style-type: none"> <li>On April 25, 2024, all three Project Owners sent a letter to NVE (“4/25/24 Letter to NVE”), which includes an overview of the Project Owners’ analysis of and response to NVE’s proposed alternative.</li> </ol>



	<u>Proposed Final Program and Supporting Information Document</u> ("SID")	<u>Project Owner Responses to Comments on Proposed Final Program</u> ("Owners' Comment Responses")	Other Documents
Question 2: Fish Passage Requirement		1. Section 4.2.2 of the Owners' Comment Responses includes an analysis as to why Sockeye restoration or restoring the Eklutna River is not a requirement of the 1991 Agreement and includes relevant language from the Divestiture Summary Report written a year after the 1991 Agreement describing the 1991 Agreement.	1. On April 3, 2024, the Project Owners sent a letter to Michael Curry, Board Chair and President of Eklutna, Inc. which includes a response regarding the lack of a restoration requirement in the 1991 Agreement.
Question 3: Assembly Approval	1. Each of the forms of AWWU Final Agreements ( <a href="#">Long Term Water Transportation Agreement</a> ; <a href="#">Public Water Supply Agreement</a> ; <a href="#">Water Facilities Interconnection Agreement</a> ) attached to the SID as Attachment D. In each, the first footnote states that the MOA will not sign until signatures have been authorized by the Assembly.	1. Section 4.5.3 of the Owners' Comment Responses responds to the Assembly's AR No. 2024-218(S).  2. A copy of MOA's surrender of voting rights on the EOC is also included in Section 4.5.3 of the Owners' Comment Responses.	
Question 4: Impact of MOA Lack of Vote			1. Mayor Bronson sent a letter detailing his support of the Proposed Final Program to the Governor on April 26, 2024.  2. The Draft Program, AWWU Binding Term Sheet and amendment thereto were signed by all Project Owners, demonstrating consensus.

	<u>Proposed Final Program and Supporting Information Document (“SID”)</u>	<u>Project Owner Responses to Comments on Proposed Final Program (“Owners’ Comment Responses”)</u>	<b>Other Documents</b>
Question 5: 2-Year Extension		<ol style="list-style-type: none"> <li>Sections 4.5.1 – 4.5.2 of the Owners’ Comment Responses overviews the legal problems and costs associated with a 2-year delay.</li> <li>Appendix A to the Owners’ Comment Responses is a letter that the Project Owners sent to NVE on June 30, 2020, outlining the reasons behind denying to pursue an amendment to the 1991 Agreement.</li> </ol>	<ol style="list-style-type: none"> <li>The 4/24/25 Letter to NVE includes an overview of why the Project Owners do not see a path to 1991 Agreement amendment.</li> </ol>
Question 6 – AWWU Agreements	<ol style="list-style-type: none"> <li>Section 4.6 of the SID includes an overview of the AWWU negotiation process.</li> <li>The Binding Term Sheet and amendment to the Binding Term Sheet were linked within the SID in Section 4.6 and are <a href="#">here</a> and <a href="#">here</a> on the Eklutna Hydro website.</li> <li>All forms of agreements made with AWWU are attached to the Proposed Final Program as Attachment D (see Question 3 above).</li> </ol>	<ol style="list-style-type: none"> <li>Appendix B to the Owners’ Comment Responses is a letter that the Project Owners sent to the Assembly on February 12, 2024, which includes an overview of the AWWU negotiation process to date and responses to concerns about impacts on AWWU water supply.</li> <li>Appendix C to the Owners’ Comment Responses is a letter that Chugach’s Board Chair and CEO wrote to the Anchorage Assembly on May 23, 2024, which overviews the AWWU agreement and process.</li> </ol>	

September 16, 2024

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**RE: Notice of Errata in Chugach and MEA Joint Brief**

Dear Ms. Bylsma and Mr. Hickey:

In reviewing the Joint Brief of Chugach Electric Association, Inc. and Matanuska Electric Association, Inc. regarding the Eklutna Project Proposed Final Fish and Wildlife Program that we submitted to Governor Dunleavy and you on September 4, 2024, we have noted and wish to hereby correct the following two errors:

1. On the sixth line of page 19 of the Joint Brief, the length of the term for each of the PPAs is incorrectly stated as being “a period of 25 years each”; the correct term length for each is “35 years”. Footnote number 84 references the Regulatory Commission of Alaska Order 39 that states correctly the 35-year term lengths for both PPAs on pages 59-60.
2. Footnote number 66, on page 15 of the Joint Brief, includes an incorrect Code of Federal Regulations citation. Rather than referencing “18 CFR §§ 5.1 et seq.”, this should instead reference “18 CFR §§ 4.1 et seq.”, which is the traditional FERC hydroelectric relicensing process upon which the 1991 Agreement is modeled.

Please do not hesitate to reach out with any questions about these corrections.

Sincerely,

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation



Todd G. Glass, AK Bar #1810083  
Stephanie McFall

# **Girdwood to Indian and Southern Intertie Rebuilds**

**Operations Committee Meeting  
September 16, 2024**



# Southern Intertie Rebuild Schedule

Completed Rebuilds	Approx. Miles	Year	Status
Ingram to Silvertip	15	2012	Complete
Powerline Pass	6	2016	Complete
Silvertip to Hope Sub.	4	2017	Complete
Hope Sub. to Summit Sub.	10	2018	Complete
Placer River	1	2020	Complete
<b>Completed Subtotal</b>	<b>36 miles</b>		
Planned Rebuilds			
Girdwood Sub. to Indian	11	2024/5	In-progress
SSQ Phase 1 (AEA Owned, Chugach Const.)	8	2025	Scheduled
Soldotna to Sterling Subs. (AEA Owned, HEA Const.)	12	2026	Planned
SSQ Phase 2 (AEA Owned, Chugach Const.)	17	2027	Planned
SSQ Phase 3/4 (AEA Owned, Chugach Const.)	14	2028	Planned
Summit Lake to Daves Creek Subs.	10	2029	Planned
Daves Creek to Quartz Creek Subs.	7	2030	Planned
Girdwood Sub. to Ingram Creek	15	2031	Planned
Tudor Junction to Powerline Pass	11	2032	Planned
<b>Planned Subtotal</b>	<b>105 miles</b>		
<b>Total</b>	<b>141 miles</b>		

Planned outage dates are tentative.

Alaska Energy Authority (AEA) owned sections of transmission line.

# Decarbonization Program

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PROGRAM STATUS REPORT

OPERATIONS COMMITTEE  
SEPTEMBER 2024



# ACTIVITIES REPORT

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- **Small Projects Accelerated**

- Shifted toward small projects to accelerate progress, especially on Chugach land

- **Engaged Military on Potential Projects**

- Meetings held with:
  - Assistant Secretary of the Air Force for Energy, Installations, and Environment
  - Office of Energy Assurance, Air Force
  - Office of the Secretary of Defense
  - Defense Logistics Agency, Energy
  - 673d Civil Engineering Squadron
- Meeting scheduled with OEA project management team

- **Promoted Joint Project with Municipality**

- EV charging initiative being coordinated

- **DOE Energy Grand Storage Grand Challenge (ESGC) Storage Acceleration Voucher Award**

- Received award of ~40 lab hours
- RFP development of control system to integrated anticipated LDES technologies into a single, dispatchable, utility-scale renewables power regulation resource

- **Program Management**

- Decarbonization Program Manager position description developed and being processed



# ACTIVITIES REPORT - PROJECTS

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- **Renewables Power Purchase Agreements**
  - Four contracts in negotiation
- **SPP & Sullivan Solar**
  - SPP Solar panels being installed
  - Sullivan Solar ground work underway
- **Retherford Solar (for Community Solar)**
  - RFP responses just received and under review
- **One Campus Solar**
  - New building in construction
- **Sullivan Gas Storage**
  - Engineering task order executed
- **International BESS Expansion**
  - Engineering proposal requested and in process
- **Grid Renewables Integration Project**
  - Received an encouragement from DOE on FOA 3331 to perform preliminary engineering
- **Cooper Lake Runner Upgrade**
  - Received notice of award under FOA 3088 “EPAAct 2005 Section 247 Maintaining and Enhancing Hydroelectricity incentive” for \$835,773; initial response in process
- **Beluga Wind + Solar Project**
  - Preliminary estimates received; LNTP (charter) documents being prepared
- **JBER Solar + Storage Project**
  - Preliminary estimates received; LNTP (charter) documents being prepared
- **SPP-Airgas CO2 Utilization Project**
  - Economic evaluation in progress
- **Port Microgrid**
  - Contract revision in progress



# Questions?



**CHUGACH ELECTRIC ASSOCIATION, INC.**  
**Anchorage, Alaska**

**OPERATIONS BOARD OF DIRECTORS' MEETING**  
**AGENDA ITEM SUMMARY**

**September 16, 2024**

**ACTION REQUIRED**

**AGENDA ITEM NO. VII.A.**

☐ **Information Only**  
☒ **Motion**  
☐ **Resolution**  
☐ **Executive Session**  
☐ **Other**

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**TOPIC**

Enterprise Resource Planning Project Authorization

**DISCUSSION**

Chugach Electric Association, Inc. (Chugach) is implementing a new Enterprise Resource Planning (ERP) software suite that was selected through a competitive bidding process and approved at the January 19, 2022, Regular Board Meeting.

The replacement project is expected to address cybersecurity vulnerabilities, aging infrastructure, member facing improvements, improved billing functionality for alternative energy sources, and operating efficiencies.

In addition, significant cost avoidance has been realized through an alternative credit processing vendor, which is compatible with the proposed ERP software suite.

**MOTION**

Move that the Operations Committee recommend the Board of Directors authorize the Chief Executive Officer to complete the ERP Project in the manner discussed in executive session.