

Byron Mallott  
Lieutenant Governor  
State Capitol  
Juneau, Alaska 99811  
907.465.3520  
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Anchorage, Alaska 99501  
907.269.7460  
LT.GOVERNOR@ALASKA.GOV

**OFFICE OF THE LIEUTENANT GOVERNOR  
ALASKA**

**M E M O R A N D U M**

**TO:** Micaela Fowler  
Department of Commerce, Community & Economic Development

**FROM:** Scott Meriwether, Office of the Lieutenant Governor  
465.4081

A handwritten signature in blue ink, appearing to be "SM", next to the name Scott Meriwether.

**DATE:** October 9, 2017

**RE:** Filed Permanent Regulations: Alaska Energy Authority

Alaska Energy Authority regulations re: qualified contractors to operate power projects,  
including the Bradley Lake Hydroelectric Project (3 AAC 105.300)

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|                        |                   |
|------------------------|-------------------|
| Attorney General File: | JU2017200331      |
| Regulation Filed:      | 10/6/2017         |
| Effective Date:        | 11/5/2017         |
| Print:                 | 224, January 2018 |

cc with enclosures: Linda Miller, Department of Law  
Judy Herndon, LexisNexis

ORDER CERTIFYING THE CHANGES TO  
REGULATIONS OF ALASKA ENERGY AUTHORITY

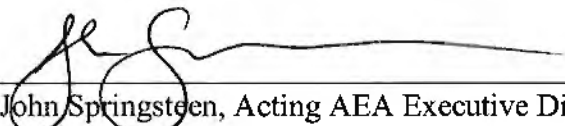
The attached 3 pages of regulations, dealing with Operators of AEA Owned Power Projects, are certified to be a correct copy of the regulation changes that the Alaska Energy Authority board adopted at its August 10, 2017 meeting, under the authority of AS 44.83.080 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

On the record, in considering public comments, the Alaska Energy Authority board paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes described in this order take effect on the 30th day after they have been filed by the lieutenant governor as provided in AS 44.62.180.

Date: 8/29/17

  
\_\_\_\_\_  
John Springsteen, Acting AEA Executive Director

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on

October 6, 2017 at 2:03 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

  
\_\_\_\_\_  
Byron Mallott, Lieutenant Governor

Effective: November 5, 2017

Register: 224, January, 2018

3 AAC 105.300 is amended to read:  
3 AAC 105.300. Operation of power projects.

(a) The provisions of this section and 3 AAC 105.310 apply only to those projects that were acquired or constructed under AS 44.83.080(18), or by the authority before August 11, 1993, authorized as part of the energy program for this state under former AS 44.83.380. The authority will operate the projects using a qualified contractor [EMPLOYEES OF THE AUTHORITY] or under a contract or lease with the authority, by a qualified utility.

(b) An electric utility or a qualified contractor may apply to operate a power project under (a) of this section by submitting a written proposal. The proposal must contain the following information:

(1) to be considered a qualified utility, proof that the utility or utilities established as an electric operating entity are holders of a certificate of public convenience and necessity issued by the Regulatory Commission of Alaska to serve all or part of the area that is, or is intended to be, served by the power project;

(2) the legal name of the utility or electric operating entity and the legal authority under which it was created and other information that will demonstrate that the applicant is eligible to do business in this state;

(3) a record of the official action taken by the applicant's governing body authorizing the proposal;

(4) the name, title, and address of the applicant's official correspondent or representative for purposes of the proposal;

(5) the names and titles of the applicant's principal officers, including the chief executive officer and the general manager;

(6) the names and addresses of the engineers, legal counsel, financial advisers or consultants that the applicant may have;

(7) a general description of the operations of the electric utility or electric operating entity, including a recent history of the costs of operating, maintaining, and replacing equipment on those operations; and

(8) an estimate of the annual costs to operate, maintain, and replace equipment on the power project.

(c) If the power project serves only one electric utility, the authority may will, in its discretion, accept a proposal from that electric utility for the operation and maintenance of the power project. If the authority, after reviewing the proposal from the electric utility, finds that the electric utility is a qualified utility, the authority will enter into a contract or lease with that qualified utility for the operation and maintenance of the power project.



(d) If the power project serves more than one electric utility, the authority will, in its discretion, operate the power project using a qualified contractor [ITSELF] or enter into a contract or lease with a qualified utility to operate the power project. The authority will, in its discretion, accept proposals from each proposed contractor, electric utility, or electric operating entity and will [EITHER

(1) REJECT ALL PROPOSALS AND OPERATE THE PROJECT ITSELF; OR

(2)] select that qualified contractor, electric utility, or electric operating entity that is a qualified utility and that the authority determines is the most capable of operating the project based upon the following criteria:

- (1) [(A)] the financial history and stability of the qualified contractor, electric utility, or electric operating entity;
- (2) [(B)] the ability of the qualified contractor, electric utility, or electric operating entity to attract qualified power project managers and operators;
- (3) [(C)] the location of the project in relation to the service area of the electric utility or electric operating entity;
- (4) [(D)] the likelihood of assisting in the lowering of rates to all classes of consumers over the longest period of time;
- (5) [(E)] the ability of the qualified contractor, electric utility, or electric operating entity to satisfy the legislative goals of the energy program for the state.

(e) Before entering into a lease or contract with an qualified contractor, electric utility, or electric operating entity to operate and maintain a power project, the authority will, in its discretion,

- (1) request additional information from the applicant considered appropriate;
  - (2) conduct its own investigation;
  - (3) receive any written comments from interested persons and organizations;
- and
- (4) consider any information received at one or more public meetings.

(f) The authority's decision to enter into a contract with a qualified contractor or a contract or lease with a qualified utility will be in writing.

(g) In accordance with sec. 37, ch. 18, SLA 1993, the authority will, to the maximum extent feasible, enter into contracts with public utilities under this section.

3 AAC 105.300 is amended by adding a new section to read:

(((bold-  
face  
and  
under-  
lining  
not  
necessary)))

**(h) in this section, “qualified contractor” means a contractor with demonstrated management capability, technical ability, and experience with projects of similar type, size, license status, complexity, and technology, to effectively operate and maintain the power project.** (Eff. 2/16/96, Register 137; am. 11/5/2017 Register 224)

Authority: Sec. 37, ch. 18, SLA 1993

AS 44.83.080

AS 44.83.396

# MEMORANDUM


State of Alaska  
Department of Law

To: Hon. Byron Mallott  
Lieutenant Governor

Date: October 3, 2017

File No.: JU2017200331

Tel. No.: 465-3600

From: Steven C. Weaver   
Sr. Assistant Attorney General  
and Assistant Regulations Attorney  
Legislation and Regulations Section

Re: Alaska Energy Authority regulations  
re: qualified contractors to operate  
power projects, including the Bradley  
Lake Hydroelectric Project (3 AAC  
105.300)

We have reviewed the attached regulations from the Alaska Energy Authority against the statutory standards of the Administrative Procedure Act. I have reviewed this project under a specific delegation dated October 3, 2017 from the Regulations Attorney. The regulations update requirements and procedures regarding the use of qualified contractors to operate power projects, including the Bradley Lake Hydroelectric Project.

We find no legal problems. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations.

The June 22, 2017 public notice and the August 29, 2017 certification of adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

Hon. Byron Mallott, Lieutenant Governor  
Our file: JU2017200331

October 3, 2017  
Page 2

We have made some technical corrections to conform the regulations in accordance with AS 44.62.125. The corrections are shown on the attached copy of the regulations.

SCW

cc w/enc: (via email)

John Springsteen, Acting Executive Director  
Alaska Energy Authority

Micaela Fowler, Regulations Contact  
Department of Commerce, Community, and Economic Development

Teri Webster, Executive Assistant  
Alaska Energy Authority (Alaska Industrial Development and Export Authority)

Brian D. Bjorkquist, Sr. Assistant Attorney General  
Labor and State Affairs Section

# MEMORANDUM

## State of Alaska Department of Law

**TO:** Hon. Byron Mallott  
Lieutenant Governor

**DATE:** October 3, 2017

**FILE NO.:** JU2017200331

**TELEPHONE NO.:** (907) 465-3600

**FROM:** Susan R. Pollard *SRP*  
Chief Assistant Attorney General  
and Regulations Attorney  
Legislation/Regulations Section

**SUBJECT:** Specific delegation of authority  
regarding regulations review on  
Alaska Energy Authority  
regulations re: qualified  
contractors to operate power  
projects, including the Bradley  
Lake Hydroelectric Project  
(3 AAC 105.300)

By this memorandum, I am delegating my authority as Regulations Attorney under AS 44.62 to Assistant Attorney General Steven C. Weaver for the above-referenced regulations project. Under this delegation of authority, Steven Weaver has my full authority under AS 44.62 to conduct the legal review under AS 44.62 and take necessary actions on this regulations project.

If you have questions, please let me know.

SCW

cc w/enc: Scott C. Meriwether, AAC Coordinator  
Office of the Lieutenant Governor

Steven C. Weaver  
Sr. Assistant Attorney General and  
Assistant Regulations Attorney  
Legislation/Regulations Section



NOTICE OF PROPOSED CHANGES IN THE OPERATOR OF AEA OWNED POWER  
PROJECT REGULATIONS OF THE ALASKA ENERGY AUTHORITY

Brief description: The Alaska Energy Authority proposes to change regulations regarding operators of AEA owned power projects. The regulation change would add a qualified contractor as one possible entity that AEA may choose to become an operator of AEA owned power projects.

The Alaska Energy Authority (AEA) proposes to change regulations in Title 3 of the Alaska Administrative Code, dealing with qualified operators of AEA owned power projects, including the following:

- (1) 3 AAC 105.300 is proposed to be changed as follows: Adding a qualified contractor as one possible entity that AEA may choose to become operator of AEA owned power projects.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Teri Webster, Alaska Energy Authority, 813 W. Northern Lights Blvd, Anchorage, AK 99503. Additionally, the Alaska Energy Authority will accept comments by facsimile at 907-771-3044 and by electronic mail at [twebster@aidea.org](mailto:twebster@aidea.org). Comments may also be submitted through the Alaska Online Public Notice System by accessing this notice on the system and using the comment link. The comments must be received not later than 5:00 pm on July 21, 2017.

Oral or written comments also may be submitted at a hearing to be held on July 10, 2017, at 813 W. Northern Lights Blvd, Anchorage, AK. The hearing will be held from 3:30 p.m. to 4:30 p.m. and might be extended to accommodate those present before 4:30 pm who did not have an opportunity to comment.

You may submit written questions relevant to the proposed action to Teri Webster by email at [twebster@aidea.org](mailto:twebster@aidea.org). The questions must be received at least 10 days before the end of the public comment period. The Alaska Energy Authority will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System and the agencies website <http://www.akenergyauthority.org/>

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Teri Webster by email @ [twebster@aidea.org](mailto:twebster@aidea.org) or at 907-771-3000 not later than July 7, 2017, to ensure that any necessary accommodation can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System and by contacting Teri Webster by email @ [twebster@aidea.org](mailto:twebster@aidea.org) or at 907-771-3000.

After the public comment period ends, the Alaska Energy Authority will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. Adoption may occur at the next board meeting to be held in August, or at a later date. The language of the final regulation may be different from that of the

proposed regulation. You should comment during the time allowed if your interests could be affected. Written comments received are public records and are subject to public inspection.

**Statutory authority:** AS 44.83.080; AS 83.396

**Statutes being implemented, interpreted, or made specific:** AS 44.83.396

**Fiscal information:** The proposed regulation changes are not expected to require an increased appropriation.

Date:6/21/2017

Michael E. Lamb  
Executive Director

The Alaska Energy Authority keeps a list of individuals and organizations interested in its regulations. Those on the list will automatically be sent a copy of all of the Alaska Energy Authorities notices of proposed regulation changes. To be added to or removed from the list, send a request to the Teri Webster at [twebster@aidea.org](mailto:twebster@aidea.org), giving your name, and either your e-mail address or mailing address, as you prefer for receiving notices.

ADDITIONAL REGULATION NOTICE INFORMATION  
(AS 44.62.190(d))<sup>1</sup>

1. Adopting agency: Alaska Energy Authority
2. General subject of regulation: Operator for AEA owned power projects
3. Citation of regulation (may be grouped): 3 AAC 105.300
4. Department of Law file number, if any: JU2017200331
5. Reason for the proposed action:  
Development of program standards
6. Appropriation/Allocation: Alaska Energy Authority
7. Estimated annual cost to comply with the proposed action to:  
A private person: \$0  
Another state agency: \$0  
A municipality: \$0
8. Cost of implementation to the state agency and available funding (in thousands of dollars): No costs are expected in FY 18 or in subsequent years.
9. The name of the contact person for the regulation:  
  
Teri Webster  
Executive Assistant  
813 W. Northern Lights Blvd. Anchorage, AK 99503  
907-771-3000  
[twebster@aidea.org](mailto:twebster@aidea.org)
10. The origin of the proposed action: AEA Board
11. Date: June 21, 2017      Prepared by: Teri Webster  
Executive Assistant  
907-771-3000

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION  
AND FURNISHING OF ADDITIONAL INFORMATION

I, Teri Webster, Executive Assistant, of Alaska Energy Authority, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 3 AAC 105.300 dealing with qualified operators for AEA owned power projects has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to interested persons;
- (3) furnished to appropriate state officials;
- (4) furnished to the Department of Law, along with a copy of the proposed regulation;
- (5) furnished electronically to incumbent State of Alaska legislators;
- (6) furnished to the Legislative Affairs Agency, Division of Legal and Research Services;
- (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1);
- (8) furnished electronically, along with a copy of the proposed regulation, to the Legislative Affairs Agency, the chair of the Labor & Commerce Committee of the Alaska Senate and House of Representatives, the Administrative Regulation Review Committee, and the legislative council.

As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (5) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

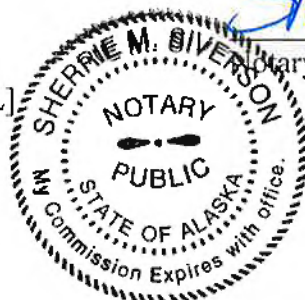
Date: 8/29/17

Teri Webster  
Teri Webster, Executive Assistant

Subscribed and sworn to before me at Anchorage Alaska on  
8/29/17  
(date)

Sherrie M. Siverston  
Notary Public in and for the State of Alaska

[NOTARY SEAL]



AFFIDAVIT OF ORAL HEARING

I, Teri Webster, Executive Assistant for the Alaska Energy Authority, being sworn, state the following:

On July 10, 2017, at 3:30 pm, in the Board Room at 813 W Northern Lights Blvd, Anchorage, Alaska, I presided over a public hearing held under AS 44.62.210 for the purpose of taking testimony in connection with the adoption of changes to 3 AAC 105.300 dealing with qualified operators for AEA owned power projects.

Date: 8/29/17

Teri Webster  
Teri Webster, Executive Assistant

Subscribed and sworn to before me at Anchorage Alaska on  
8/29/17  
(date)

[NOTARY SEAL]



Sherrie M Siveron  
Notary Public in and for the State of Alaska



AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Teri Webster, Executive Assistant for the Alaska Energy Authority, being duly sworn, state the following:

In compliance with AS 44.62.215, the Alaska Energy Authority has kept a record of its use or rejection of factual or other substantive information that was submitted in writing as public comment and that was relevant to the accuracy, coverage, or other aspect of the Alaska Energy Authority regulation on operators of AEA owned power projects.

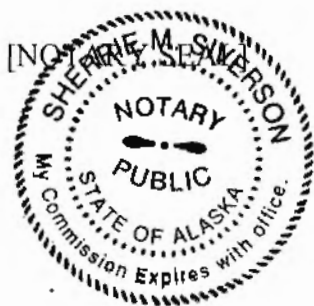
The Alaska Energy Authority did not receive any factual or other substantive information that was submitted orally as public comment and that was relevant to the accuracy, coverage, or other aspect of the Alaska Energy Authority regulation on AEA owned power projects.

Date: 9-26-17

Teri Webster  
Teri Webster, Executive Assistant

Subscribed and sworn to before me at Anchorage Alaska on  
9-26-17  
(date)

Sheree M. Swenson  
Notary Public in and for the State of Alaska



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## AFFIDAVIT OF PUBLICATION

STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

Joleesa Stepetin  
being first duly sworn on oath deposes and  
says that he/she is a representative of the  
Alaska Dispatch News, a daily newspaper.  
That said newspaper has been approved  
by the Third Judicial Court, Anchorage,  
Alaska, and it now and has been published  
in the English language continually as a  
daily newspaper in Anchorage, Alaska, and  
it is now and during all said time was  
printed in an office maintained at the  
aforesaid place of publication of said  
newspaper. That the annexed is a copy of  
an advertisement as it was published in  
regular issues (and not in supplemental  
form) of said newspaper on

June 22, 2017

and that such newspaper was regularly  
distributed to its subscribers during all of  
said period. That the full amount of the fee  
charged for the foregoing publication is not  
in excess of the rate charged private  
individuals.

Signed

Subscribed and sworn to before me  
this 22nd day of June, 2017

Notary Public in and for  
The State of Alaska.  
Third Division  
Anchorage, Alaska  
MY COMMISSION EXPIRES

4/14/21



### NOTICE OF PROPOSED CHANGES IN THE OPERATOR OF AEA OWNED POWER PROJECT REGULATIONS OF THE ALASKA ENERGY AUTHORITY

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Additionally, the Alaska Energy Authority will accept comments by  
facsimile at 907-771-3044 and by electronic mail at  
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Oral or written comments also may be submitted at a hearing to be  
held on July 10, 2017, at 813 W. Northern Lights Blvd, Anchorage, AK.  
The hearing will be held from 3:30 p.m. to 4:30 p.m. and might be  
extended to accommodate those present before 4:30 pm who did not  
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received at least 10 days before the end of the public comment period.  
The Alaska Energy Authority will aggregate its response to substantially  
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<http://www.akenergyauthority.org/>

If you are a person with a disability who needs a special  
accommodation in order to participate in this process, please contact  
Teri Webster by email @ twebster@aidea.org or at 907-771-3000 not  
later than July 7, 2017, to ensure that any necessary accommodation  
can be provided.

A copy of the proposed regulation changes is available on the Alaska  
Online Public Notice System and by contacting Teri Webster by email @  
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After the public comment period ends, the Alaska Energy Authority will  
either adopt the proposed regulation changes or other provisions  
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no action. Adoption may occur at the next board meeting to be held in  
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**Statutory authority:** AS 44.83.080; AS 83.396

**Statutes being implemented, interpreted, or made specific:** AS  
44.83.396

**Fiscal Information:** The proposed regulation changes are not  
expected to require an increased appropriation.

Date: 6/21/2017

Michael E. Lamb, Executive Director

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from the list, send a request to the Teri Webster at  
twebster@aidea.org, giving your name, and either your e-mail address  
or mailing address, as you prefer for receiving notices.

Published: June 22, 2017

AFFIDAVIT OF BOARD ACTION

I, Teri Webster, Executive Assistant for the Alaska Energy Authority, being duly sworn, state the following:

The attached motion dealing with Operators of AEA Owned Power Projects was passed by the Alaska Energy Authority board during its August 10, 2017 meeting.

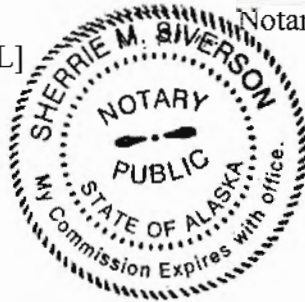
Date: 8/29/17

Teri Webster  
Teri Webster, Executive Assistant

Subscribed and sworn to before me at Anchorage Alaska on  
8/29/17  
(date)

Sherrie M. Siverson  
Notary Public in and for the State of Alaska

[NOTARY SEAL]



# **ALASKA ENERGY AUTHORITY**

## **RESOLUTION NO. 2017-05**

### **RESOLUTION OF THE ALASKA ENERGY AUTHORITY ADOPTING POWER PROJECT OPERATOR REGULATIONS FOR THE AUTHORITY**

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**WHEREAS**, the Alaska Energy Authority ("Authority") has legal authority to own certain power projects, and has the power and duty to operate and maintain owned power projects either itself or through a contract with a power project operator;

**WHEREAS**, 3 AAC 105.300(a) currently provides that the Authority will operate an owned power project either using the Authority's employees or by contracting with a "qualified utility," which is defined, in part, by AS 44.83.425(3) to mean a utility to be served by the power project that the Authority determines is capable of operating and maintaining the power project;

**WHEREAS**, using the Authority's employees to operate an Authority owned project is not a viable option to the Authority, and is inconsistent with legislative direction in sec. 37, ch. 18, SLA 1993 that the Authority "shall, to the maximum extent feasible, enter into contracts with public utilities and other entities to carry out its duties with respect to the maintenance and operation of power projects owned by the Alaska Energy Authority."

**WHEREAS**, the Authority's provided public notice of the proposed regulations, solicited public comment through July 21, 2017, conducted a public hearing on July 10, 2017, and otherwise followed procedures required by the Administrative Procedures Act;

**WHEREAS**, the time period for public comment has passed, and the Authority has reported about the oral and written public comment received and the consideration the Authority gave to each public comment received; and

**WHEREAS**, the proposed regulations attached as Exhibit A reflect the originally proposed regulations, as revised by the Authority in response to public comments and further evaluation by the Authority.

**NOW, THEREFORE, BE IT RESOLVED BY THE ALASKA ENERGY AUTHORITY AS FOLLOWS:**

Section 1. The Board of Directors of the Authority adopts as regulations of the Authority the amendments to 3 AAC 105.300, a copy of which is attached as Exhibit A.

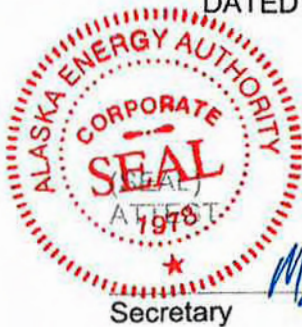
Section 2. The Executive Director of the Authority is authorized and directed to file the regulations with the lieutenant governor, and take other steps necessary or



desirable under the Administrative Procedures Act to make the regulations become effective.

Section 3. This Resolution shall become effective immediately upon its passage and approval.

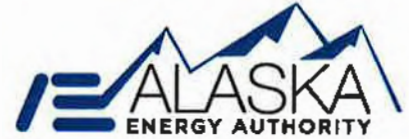
DATED at Anchorage, Alaska, this 10<sup>th</sup> day of August, 2017.



Secretary

Chairman





## **Excerpt of August 10, 2017 AEA Board Meeting Minutes**

### **7C. Resolution 2017-05 - Regulation Changes for Power Project Operator**

Mr. Lamb informed Resolution 2017-05 is a regulation change for the power project operator, which broadens the language in terms of who can be a respondent for Bradley Lake operations and maintenance (O&M) to be more in line with the broader language of the statutes. Mr. Bjorkquist explained the current regulation is not practical in today's climate, limiting the operator to either one of the qualified utilities or AEA employees. The current regulation is not consistent with the legislative directive from 1993, to maximize the use of contracts with utilities and other entities. Mr. Bjorkquist believes this regulation change should have occurred a long time ago. Mr. Bjorkquist discussed the concerns contained within the public comments received from Homer Electric Association and International Brotherhood of Electric Workers and the responses provided. The summary of the comments was provided in the Board packet.

**MOTION: Deputy Commissioner Parady made a motion to approve Resolution 2017-05. Ms. Brown seconded the motion.**

**Motion passed unanimously.**