



**STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF PARKS AND OUTDOOR RECREATION**

**Commissioner's Finding Decision
AS 38.05.020**

ADL 234303

**Chugach Electric Association, Inc.
Public Utility Easement**

Requested Action

On November 18, 2022, the Department of Natural Resources (DNR), Division of Parks and Outdoor Recreation (DPOR), received an application from Chugach Electric Association, Inc. (CEA; the applicant) for an easement for an existing 115 kilovolt (kV) electrical transmission line through Chugach State Park (CSP) from Girdwood, Alaska to Anchorage, Alaska. The applicant has requested a public easement approximately 125,136 feet in length, 100 feet in width, and 289 acres in size, for 'the maximum term allowed'.

Recommended Action

Approval of an easement within CSP to be managed by the Division of Mining, Land and Water (DMLW). DPOR permits may still be required for any work within the easement. This request shall be modified, and the easement authorized as follows:

- Type of easement: Change from Public Easement to Public Utility Easement
- Length: approximately 125,136 feet
- Width: 100 feet
- Acreage: approximately 289 acres
- Term: Change from the maximum term allowed to indefinite
- Grantee: Chugach Electric Association, Inc.

Scope of Commissioner's Finding

The scope of this DNR Commissioner's finding is to determine if it is in the State's interest to authorize an easement for a transmission line that runs through Chugach State Park. The scope of administrative review for this authorization is limited to (1) reasonably foreseeable, significant effects of the uses to be authorized; (2) applicable statutes and regulations; (3) the facts pertaining to the land or resources; and (4) issues that are material to the determination that issuing the authorization is in the interest of the State of Alaska. All other aspects of the applicant's project are outside the scope of this decision.

Statutory Authority

This easement application is being adjudicated pursuant to Section 39, ch. 91 of Session Laws of Alaska (SLA) 1997, AS 41.21.122, AS 38.05.020, AS 38.05.850 and the Alaska Land Act as amended.

Administrative Record

The administrative record for the proposed action consists of the Constitution of the State of Alaska, applicable session law, statutes, and regulations referenced herein, and the 2016 Chugach State Park Management Plan. The casefile is the administrative record and is serialized by DNR as ADL 234303.

Legal Description

Geographic Location

Within Chugach State Park starting northwest of Flattop Mountain down to Indian and then along the Seward Highway to Girdwood.

Meridian, Township, Range, Section

Seward Meridian, Township 10 North, Range 1 East, Sections 21-24, 28-30;
Seward Meridian, Township 10 North, Range 1 West, Sections 4, 5, 9, 10, 14, 23-25;
Seward Meridian, Township 11 North, Range 1 West, Sections 7, 18-20, 29, 30, 32;
Seward Meridian, Township 11 North, Range 2 West, Sections 2, 3, 11, 12;
Seward Meridian, Township 12 North, Range 2 West, Sections 7, 18-20, 28, 29, 33, 34;

Title

S001N001E Sections 21-24, 28-30

The State of Alaska received title to applicable portions of these lands on June 21, 2017, per patent 50-2017-0081, under General Grant (GS) 528 subject to standard reservations and a right-of-way (A-046811) for a transmission line for Chugach Electric Association.

S10N001W Sections 4, 5, 9, 10, 14, 23-25

The State of Alaska received title to applicable portions of these lands on October 1, 2003, per patent 50-2004-0004, under GS 524 subject to rights-of-way (A-032592, A-029885, and A-046811) for an electric distribution line for Chugach Electric Association.

S011N001W Sections 7, 18-20, 29, 32

The State of Alaska received tentative approval to applicable portions of these lands on August 28, 1967, per Tentative Approval filed in the Anchorage Recording District as Document No. 2014-007246-0, under GS 529 subject to two rights-of-way 50 feet in width (A-029885 and A-046811) and a right-of-way 10 feet in width (A-031359) for transmission lines for the Chugach Electric Association.

S011N002W Sections 2, 3, 11, 12

The State of Alaska received title to applicable portions of these lands on February 7, 2020, per patent 50-2020-0018, under GS 1403 subject to a right-of-way, A-046811, for a transmission line for the Chugach Electric Association.

S012N002W Sections 7, 18-20, 28, 33-34

The State of Alaska received title to applicable portions of these lands on September 23, 2002, per patent 50-2002-0422, under GS 1209 subject to a right-of-way, A-046811, for a transmission line for Chugach Electric Association.

S012N002W Section 29

The State of Alaska received title to applicable portions of these lands on September 9, 1993, per patent 50-93-0488, under GS 1209 subject to standard reservations and right-of-way A-046811 for a transmission line for the Chugach Electric Association.

Management Plan

Chugach State Park

Alaska Statutes (AS) 41.21.120 - 41.21.125 created CSP and defined CSP purposes, the state land included in the CSP, and DNR's and DMLW's management responsibilities within it. The CSP's purposes are described in AS 41.21.121 as:

The park was established to protect and supply a satisfactory water supply for the use of the people, to provide recreational opportunities for the people by providing areas for specified uses and constructing the necessary facilities in those areas, to protect areas of unique and exceptional scenic value, to provide areas for the public display of local wildlife, and to protect the existing wilderness characteristics of the easterly interior area. The eastern area of the park shall be operated as a wilderness area, the central area as a scenic area, and the periphery areas as recreational areas.

Within Chapter 5: Areawide Management Direction and Guidelines, the Management Plan speaks to utilities, transmission lines, and pipelines. The plan calls these activities incompatible within CSP. However, since the CEA transmission line was installed and authorized prior to the CSP's creation, it does not interfere with what the park was established for.

Public Notice

DPOR will post this Commissioner's Finding and Easement document on the State of Alaska Online Public Notice System for 30 days to notify the public of the issuance of this easement.

Environmental Considerations

The environmental risk associated with this easement is low. It is recommended that fuel, lubricants, and other hazardous materials be restricted to those necessary and be contained within tools and vehicles when equipment is necessary for maintenance activities. Additionally, no fuel or other hazardous materials should be authorized to be stored on site. Risks can be mitigated by following all stipulations within the easement document. Additionally, any maintenance activities may require an authorization by DPOR.

Background

This transmission line was constructed in the 1960s prior to the creation of Chugach State Park on August 6, 1970, and is part of the transmission infrastructure between the Quartz Creek and Anchorage substations. It is within a 100-foot-wide Right of Way (ROW) originally authorized

under a Federal Energy Regulatory Commission (FERC) License #2170 (1957) which was renewed in 2007. The license renewal did not provide authorization for the portion of the transmission line within CSP. FERC License 2170-029 issued August 24, 2007, states that the transmission line between Quartz Creek and Anchorage substations is not the project's primary transmission line, and it is therefore not required to be FERC licensed. It will, however, remain in the license until CEA receives the necessary authorization(s) for the line's occupation of state and national forest lands (FERC Project No. 2170-029 pg. 3).

Discussion

In 2005, when CEA filed an application for a new FERC license, a new 50-year license was issued; however, since the transmission line between the Quartz Creek and Anchorage substations is not the project's primary transmission line, it is not required to be licensed. The 90.4-mile-long transmission line is no longer used solely to transmit power from the project, but rather is an integral part of the connection between the Anchorage/Alaska Railbelt grid and the Kenai Peninsula grid and various distribution points. Since the line is no longer subject to the Commission's jurisdiction, a license is not required. The line will however remain in the license until CEA receives the necessary authorizations for the occupation of state and national forest lands.

The intent of this Commissioner's Finding is to transfer administration of the easement from Federal to State management. This will consist of DMLW issuing and managing an easement document with an assigned Alaska Division of Lands (ADL) number. However, Alaska Statute 41.21.122 assigns land and water within the park to DNR "for control, development, and maintenance, except that the Department of Transportation and Public Facilities is responsible for the repair and maintenance of all existing public roads within the park." The Department in this case includes both DMLW and DPOR. The purpose of this Commissioner's Finding is to move control of the transmission line from federal management (FERC license) into state management (easement). Because of AS 41.21.122, DPOR will still play a vital role in managing the easement regarding permitting any maintenance, upgrades, or changes to the transmission line consistent with State law.

The CEA transmission line predates the creation of Chugach State Park, and at that time, it was authorized by a FERC license issued in 1957. Furthermore, all lands received under patent or tentative approval listed in the "Title" section above are subject to the right-of-way for a transmission line for CEA.

Under the 1997 Session Law (Chapter No. 91, Section 39), and AS 41.21.121, the Legislature determined that the commissioner of DNR may, for the purpose of relocation or widening of all or portions of the Seward Highway or relocation of railroad facilities within the CSP, grant utility easements. The highway within the CSP is affected by avalanches and other potential operational problems. CEA applied for an authorization with CSP to relocate one of the utility poles to avoid an avalanche prone area. The recommended and requested action would not

adversely affect the purposes for which CSP was created. This request prompted an additional request to get the entire transmission line authorized by DNR.

Performance Guaranty

A performance guaranty is intended to incentivize compliance with the terms and conditions of the entry authorization and easement. It also provides a mechanism for the State to ensure that the applicant shares in the financial burden in the event of noncompliance (including fee payment, survey, etc.), restoration (interim and final), and any associated costs after termination or expiration of the easement. In consideration of the low risk associated with the proposed authorization and the applicant's known history of compliance, a performance guaranty will not require at this time. DNR reserves the right to request a performance guaranty during the term of the easement.

Insurance

In consideration of the low risk associated with the proposed authorization and the applicant's known history of compliance, insurance will not be required at this time. DNR reserves the right to require insurance during the term of the easement.

Survey

A DMLW-approved as-built survey is required to determine the proper location and acreage of installed improvements and the associated easement on State-owned, DMLW-managed lands.

The applicant is required to request survey instructions prior to issuance of the entry authorization. The survey must be produced in accordance with survey instructions provided by the DMLW Survey Section and stamped by a Professional Land Surveyor registered in the State of Alaska.

An easement will not be issued until the as-built survey has been approved by DMLW.

Fees

The applicant shall pay a one-time fee of \$0.56 per linear foot for a public easement for a utility per 11 AAC 05.070(d)(2)(C) and Director's Fee Order No. 3 prior to the easement being issued. The total charge for this fee will be determined following DMLW's approval of an as-built survey document.

Fees associated with ADL 234303 may be adjusted if regulations or the Department fee schedule pertaining to the fee(s) change during the term of the easement.

The applicant shall pay applicable document recording fees prior to DMLW's execution and recordation of the easement document.

Entry Authorization and Easement

An Entry Authorization is an interim authorization for a term of 5 years issued for the purpose of installation and survey of infrastructure prior to issuance of an easement.

No easement shall be granted until:

- Land use fees as outlined above have been provided to DMLW
- An as-built survey has been approved by DMLW

Commissioner’s Decision

In consideration of all information and criteria listed above, I hereby determine that the authorizations to be granted by this decision are consistent with DNR’s mission, that this project is consistent with the overall management intent for this land, and that issuance of an authorization as described above is in the interest of the State of Alaska. The Department assumes no responsibility for maintenance or liability for injury or damages attributable to this authorization.

This decision may be rescinded by written notification if, after 60 days from the effective date of this decision, the applicant has not completed all requirements outlined in this decision for issuance of the authorization. Additional time may be allotted to complete these requirements; however, this will not extend the total term of the authorizations issued under this decision. This decision goes into effect and becomes a final administrative order and decision of the department on the 31st calendar day after issuance.



John Boyle, Commissioner
Department of Natural Resources

6 Jan 25
Date

Reconsideration

An eligible person affected by this decision may request reconsideration to the DNR Commissioner per AS 44.37.011 and 11 AAC 02. Any request for reconsideration must be received by the Commissioner’s Office within twenty (20) calendar days after issuance of the decision under 11 AAC 02.040. The Commissioner may order or deny a request for reconsideration within thirty (30) calendar days after issuance of the decision. If the Commissioner takes no action on a request for reconsideration within thirty (30) days after issuance of the decision, the request for reconsideration is considered denied. The Commissioner’s decision on reconsideration, other than a remand decision, is a final administrative order and decision of the department. An eligible person must first request reconsideration to the Commissioner before seeking relief in superior court. The Alaska Court System establishes its own rules for timely appealing final administrative orders and decisions of the department.

Reconsideration may be mailed or hand-delivered to the DNR Commissioner’s Office, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska, 99501; or faxed to (907) 269-8918, or sent by

electronic mail to dnr.appeals@alaska.gov. Reconsideration must be accompanied by the fee established in 11 AAC 05.160(d)(1)(F), which has been set at \$200.00 under the provisions of 11 AAC 05.160(a)-(b). A copy of 11 AAC 02 is available on the department's website at <https://dnr.alaska.gov/mlw/pdf/DNR-11-AAC-02.pdf>.

Attachments

- Sample Easement Document