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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

John M. Espindola, Chairman  
Steve DeVries  
Robert M. Pickett  
John C. Springsteen

In the Matter of the Petition Filed by the )  
Municipality of Anchorage d/b/a Anchorage )  
Hydropower for Acknowledgment of Acquisition of )  
Expertise Required to Participate as a Voting )  
Member of the Eklutna Operating Committee )

U-24-024  
ORDER NO. 8

**ORDER GRANTING MOTION TO DISMISS IN PART AND DISMISSING  
NOTICE AND REQUEST, DENYING MOTION TO DISMISS IN PART,  
VACATING PROCEDURAL SCHEDULE, DENYING MOTION TO COMPEL,  
DENYING REQUEST TO CONSTRUE NOTICE AND REQUEST AS PETITION  
TO AMEND CERTIFICATE CONDITION, PROVIDING GUIDANCE FOR  
FUTURE FILINGS, AND CLOSING DOCKET**

BY THE COMMISSION:

Summary

We grant the motion to dismiss filed by the Office of the Attorney General, Regulatory Affairs and Public Advocacy Section (RAPA) in part, and dismiss the *Notice and Request for Acknowledgment of Anchorage Hydropower's Acquisition of Expertise Required to Participate as a Voting Member of the Eklutna Operating Committee* (Notice and Request) filed by the Municipality of Anchorage d/b/a Anchorage Hydropower (AHP) on July 18, 2024. We deny the motion to dismiss in part. We vacate the remaining procedural schedule adopted for resolution of this docket, including the prehearing conference scheduled for November 18, 2024, and the public hearing scheduled to begin on November 18, 2024. We deny the motion to compel discovery responses jointly filed

1 by Chugach Electric Association, Inc. (Chugach) and Matanuska Electric Association, Inc.  
2 (MEA). We deny the request by AHP to construe its Notice and Request as a petition to  
3 modify the conditions on AHP's certificate of public convenience and necessity  
4 (certificate). We provide guidance to AHP for its consideration should it make future filings  
5 related to reinstatement of Eklutna Operating Committee (EOC) voting rights. We close  
6 this docket.

7 Background

8 In Order U-18-102(44)<sup>1</sup> we described the Eklutna Hydroelectric Project  
9 (Eklutna Project) as follows:

10 The Eklutna Project was built and operated by the federal government  
11 pursuant to the Eklutna Power Act of 1950. In 1995, Congress authorized sale  
12 of the Eklutna Project to [the Municipality of Anchorage d/b/a Municipal Light  
13 & Power Department (ML&P)], Chugach, and MEA under the terms of the 1989  
14 Eklutna Purchase Agreement. Under this agreement, the three utilities  
15 received an undivided interest in all of the Eklutna Project, water rights,  
16 generation plant and the transmission assets interconnecting the Eklutna  
17 Project with ML&P, Chugach, and MEA. ML&P obtained a 53.33% ownership  
18 interest, Chugach obtained a 30% ownership interest, and MEA obtained a  
19 16.67% interest in the Eklutna Project. Eklutna Project energy, capacity, and  
20 costs are to be allocated based on these ownership interests. ML&P and  
21 Chugach assert that the Eklutna Project currently has a maximum capacity of  
22 39 MW.

23 The three utilities created the Eklutna Operating Committee (EOC) to make all  
24 management decisions related to operation, maintenance, and budgeting for  
25 the Eklutna Project. ML&P, Chugach, and MEA each have a representative on  
26 the EOC. Decisions by the EOC are made based upon a double majority  
consisting of affirmative votes by at least two of the three utilities whose  
ownership shares total at least 51% of the Eklutna Project ownership.  
Effectively, management of the Eklutna Project is limited to actions approved  
by ML&P and at least one of Chugach or MEA.<sup>2</sup>

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<sup>1</sup>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 U-18-102(44)).

<sup>2</sup>Order U-18-102(44) at 60-61 (footnotes omitted).

1 Chugach filed a petition seeking our approval of its acquisition of all service  
2 obligations and most assets of ML&P, and an application to amend its certificate to reflect  
3 the new service obligations.<sup>3</sup> Under the terms of this acquisition, Chugach would offer  
4 employment to all ML&P employees and the Municipality of Anchorage would retain no  
5 ML&P employees.<sup>4</sup> Under this acquisition, Chugach was not purchasing ML&P's interest  
6 in the Eklutna Project Power Plant, but was acquiring a portion of ML&P's share of cost  
7 responsibilities and output from the Eklutna Project for a 35 year period.<sup>5</sup> Docket  
8 U-19-020 was opened to investigate this petition and application.<sup>6</sup>

9 As part of this same transaction, ML&P filed an application to amend its  
10 certificate to delete its current service territory and add the Eklutna Project Power Plant  
11 site as its new service territory.<sup>7</sup>

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<sup>3</sup>*Petition for Approvals Needed to Acquire Anchorage Municipal Light and Power and Application to Amend Certificate of Public Convenience and Necessity No. 8*, filed April 1, 2019 (Petition for Approvals), in Docket U-19-020.

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<sup>4</sup>*Pre-filed Direct Testimony of Arthur W. Miller*, filed April 1, 2019, in Docket U-19-020, Exhibit AWM-03 at 67 (Section 6.05(a)); Docket U-19-020/U-19-021 Tr. 2708-2709.

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<sup>5</sup>Petition for Approvals at 8.

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<sup>6</sup>Order U-19-020(1), *Order Addressing Timeline for Decision, Inviting Participation by the Attorney General and Petitions to Intervene, Scheduling Prehearing Conference, Giving Notice of Possible Consolidation, Designating Commission Panel, and Appointing Administrative Law Judge*, dated April 18, 2019.

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<sup>7</sup>*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*, filed April 5, 2019 (ML&P Application).

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1 Docket U-19-021 was opened to investigate this application.<sup>8</sup> Dockets U-19-020 and  
2 U-19-021 were consolidated with Docket U-18-102.<sup>9</sup>

3 We ultimately approved the transaction under which Chugach acquired the  
4 service obligations and most of the ML&P assets, subject to conditions.<sup>10</sup> One of these  
5 conditions required ML&P to surrender its voting rights on the EOC prior to the effective  
6 date of the agreements under which ML&P's successor would be providing part of its  
7 share of the Eklutna Project output to Chugach (the Eklutna Power Purchase Agreement  
8 (PPA))<sup>11</sup> and selling the remainder of its share of the Eklutna Project output to MEA (the  
9 MEA PPA).<sup>12</sup> We required that:

10 This surrender must have a term at least equal to the term of the Eklutna PPA  
11 and the MEA PPA, as those agreements may be extended, and cannot be  
12 lifted until such time as MHP has shown to our satisfaction that MHP has  
13 acquired the expertise required to fully participate as a voting member of the  
EOC. This does not prohibit MHP from attending EOC meetings, but may not  
allow MHP any ability to delay or change the Eklutna Project decisions made  
by the Chugach and MEA representatives on the EOC.<sup>13</sup>

14 <sup>8</sup>Order U-19-021, *Order Addressing Timeline for Decision, Inviting Participation by*  
15 *the Attorney General and Petitions to Intervene, Scheduling Prehearing Conference,*  
16 *Giving Notice of Possible Consolidation, Designating Commission Panel, and Appointing*  
*Administrative Law Judge*, dated April 18, 2019.

17 <sup>9</sup>Order U-18-102(8)/U-19-020(2)/U-19-021(2), *Order Consolidating Dockets,*  
18 *Designating Party, Requiring Filing, Granting Petitions to Intervene, Adopting Procedural*  
19 *Schedule, Addressing Timeline for Final Decision, and Amending Docket Captions*, dated  
20 May 8, 2019.

21 <sup>10</sup>As part of this transaction, ML&P's ownership interest in the Eklutna Project  
22 transmission system interconnecting the Eklutna Project Power Plant with the  
23 transmissions systems of Chugach, ML&P, and MEA was transferred to Chugach and  
24 MEA. The Eklutna Project transmission system is not at issue in this docket.

25 <sup>11</sup>The Eklutna PPA is attached as Appendix D to Order U-18-102(44) and is entitled  
26 *Eklutna Power Purchase Agreement Between Chugach Electric Association, Inc.*  
*("Purchaser") and Municipality of Anchorage ("Seller").*

<sup>12</sup>Order U-18-102(44) at 65-67. The MEA PPA is attached as Appendix H to Order  
U-18-102(44) and is entitled *Eklutna Power Purchase Agreement Between Municipality*  
*of Anchorage ("Seller") and Matanuska Electric Association, Inc. ("Purchaser").*

<sup>13</sup>Order U-18-102(44) at 67.

1 In compliance with this condition, ML&P surrendered its EOC voting rights effective  
2 October 30, 2019.<sup>14</sup>

3 Almost five years later, AHP filed the Notice and Request seeking  
4 reinstatement of its EOC voting rights.<sup>15</sup> In this filing, AHP asserted that Anchorage Water  
5 and Wastewater (AWWU) General Manager Mark A. Corsentino had been appointed to  
6 be the General Manager of AHP and that AWWU Engineering Director Mark  
7 Schimscheimer would provide support to Corsentino. AHP filed the resumes of these two  
8 employees.<sup>16</sup> To reflect the time these two AWWU employees are expected to spend on  
9 AHP business, 20% of Corsentino's salary and 10% of Schimscheimer's salary would be  
10 paid by AHP.<sup>17</sup> AHP requested a decision on its Notice and Request within 30 days of  
11 the date it was filed, or by August 17, 2024.<sup>18</sup>

12 We issued public notice of the Notice and Request, with comments due by  
13 August 26, 2024.<sup>19</sup> The Native Village of Eklutna filed comments indicating the Village's  
14 endorsement of AHP's request.<sup>20</sup> Chugach and MEA jointly filed comments identifying  
15 issues related to the Notice and Request that they believed should be investigated.<sup>21</sup>

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17 <sup>14</sup>*Notice of ML&P's Surrender of Eklutna Operating Committee Voting Rights*, filed  
October 30, 2020, in Dockets U-18-102/U-19-020/U-19-021.

18 <sup>15</sup>*Notice and Request for Acknowledgment of Anchorage Hydropower's*  
19 *Acquisition of Expertise Required to Participate as a Voting Member of the Eklutna*  
*Operating Committee*, filed July 22, 2024 (Notice and Request).

20 <sup>16</sup>Notice and Request at Exhibits 2 and 4.

21 <sup>17</sup>Notice and Request at Exhibit 3.

22 <sup>18</sup>Notice and Request at 1.

23 <sup>19</sup>*Notice of Utility Request*, dated July 26, 2024.

24 <sup>20</sup>Correspondence by Aaron Leggett, President, Native Village of Eklutna, filed  
August 2, 2024.

25 <sup>21</sup>Correspondence from Arthur W. Miller, Chief Executive Officer, Chugach Electric  
26 Association, Inc. and from Antony M. Izzo, Chief Executive Officer, Matanuska Electric  
Association, Inc., filed August 26, 2024.

1 We opened this docket to investigate the Notice and Request, denied AHP's  
2 request for an early decision, designated Chugach and MEA as parties to this docket,  
3 invited participation by the Attorney General, and scheduled a prehearing conference.<sup>22</sup>  
4 RAPA elected to participate in this docket.<sup>23</sup> Chugach and MEA have participated  
5 jointly.<sup>24</sup> We rescheduled the prehearing conference to accommodate AHP's counsel.<sup>25</sup>

6 AHP filed a motion for expedited consideration for a final decision in this  
7 docket by October 2, 2024.<sup>26</sup> RAPA agreed with AHP that a final decision in this matter  
8 could be reached by October 2, 2024.<sup>27</sup> Chugach and MEA opposed expedited  
9 consideration.<sup>28</sup> The Municipality of Anchorage Assembly (Assembly) filed a petition to  
10 intervene in this matter on August 27, 2024.<sup>29</sup> We denied AHP's motion for expedited

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13 <sup>22</sup>Order U-24-024(1), *Order Denying Request for Decision in 30 Days; Designating*  
14 *Parties; Inviting Participation by the Attorney General and Intervention; Addressing*  
15 *Timeline for Decision; Scheduling Prehearing Conference; Designating Commission*  
*Panel; and Appointing Administrative Law Judge*, dated July 30, 2024 (Order  
U-24-024(1)).

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17 <sup>23</sup>*Notice of Election to Participate*, filed August 7, 2024.  
<sup>24</sup>*Chugach Electric Association, Inc. and Matanuska Electric Association, Inc.'s*  
*Entry of Appearance*, filed August 15, 2024.

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19 <sup>25</sup>Order U-24-024(2), *Order Vacating and Rescheduling Prehearing Conference*,  
dated August 14, 2024.

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21 <sup>26</sup>*Municipality of Anchorage d/b/a Anchorage Hydropower's Motion for Expedited*  
*Consideration of Request for Acknowledgement of Acquisition of Expertise Required to*  
*Participate as a Voting Member of the Eklutna Operating Committee*, filed August 15,  
2024.

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23 <sup>27</sup>*Office of the Attorney General's Response to Anchorage Hydropower's (AHP)*  
*Motion for Expedited Consideration of its Request for Acknowledgment*, filed August 26,  
2024.

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25 <sup>28</sup>*Chugach Electric Association, Inc. and Matanuska Electric Association, Inc.'s*  
*Joint Opposition to AHP's Motion for Expedited Consideration*, filed August 26, 2024.

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<sup>29</sup>*Anchorage Assembly's Petition to Intervene*, filed August 27, 2024 (Assembly  
Petition).

1 consideration of its motion in part, and scheduled oral argument on the motion for  
2 expedited consideration for the prehearing conference on August 30, 2024.<sup>30</sup>

3 At the prehearing conference on August 30, 2024, following oral argument  
4 by the parties, the administrative law judge (ALJ) announced our denial of the motion for  
5 expedited consideration filed by AHP.<sup>31</sup> The ALJ also announced our desire for briefing  
6 on the minimum term of the EOC voting rights surrender required by Order U-18-  
7 102(44).<sup>32</sup> The parties and the Assembly then proposed a procedural schedule for  
8 resolving this docket.<sup>33</sup> We adopted the procedural schedule proposed by the parties  
9 and denied the Assembly's petition to intervene.<sup>34</sup>

10 AHP filed an initial brief on the minimum term of EOC voting rights surrender  
11 issue and testimony by Corsentino.<sup>35</sup> Chugach and MEA filed testimony by Eugene A.  
12 Ori and by Tony R. Zellers.<sup>36</sup> RAPA filed a responsive brief on the minimum term of EOC  
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17 <sup>30</sup>Order U-24-024(3), *Order Denying Motion for Expedited Consideration In Part*,  
18 dated August 20, 2024.

19 <sup>31</sup>Tr. 7-15.

20 <sup>32</sup>Tr. 17-18.

21 <sup>33</sup>Tr. 20-23.

22 <sup>34</sup>Order U-24-024(4), *Order Adopting Procedural Schedule, Denying Petition to*  
*Intervene, and Redesignating Commission Panel*, dated September 12, 2024 (Order  
23 U-24-024(4)).

24 <sup>35</sup>*Municipality of Anchorage d/b/a Anchorage Hydropower's Brief Regarding*  
*Interpretation of Order 39*, filed September 18, 2024 (AHP Initial Brief); *Prefiled Direct*  
*Testimony of Mark A. Corsentino, P.E.*, filed September 18, 2024.

25 <sup>36</sup>*Prefiled Responsive Testimony of Eugene A. Ori*, filed October 8, 2024; *Prefiled*  
*Responsive Testimony of Tony R. Zellers*, filed October 8, 2024.  
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1 voting rights surrender issue.<sup>37</sup> Chugach and MEA filed a responsive brief on the  
2 minimum term of EOC voting rights surrender issue.<sup>38</sup>

3 AHP requested that we issue an order governing confidential discovery.<sup>39</sup>  
4 We issued an order governing confidential discovery in response to that request.<sup>40</sup> RAPA  
5 filed a motion to dismiss the Notice and Request.<sup>41</sup> Chugach and MEA joined in the  
6 Motion to Dismiss.<sup>42</sup> RAPA filed a request to defer ruling on the Motion to Dismiss, and  
7 a motion for expedited consideration of the request to defer ruling.<sup>43</sup> We denied the  
8 request to defer ruling and the motion for expedited consideration of that request.<sup>44</sup>

9 Chugach and MEA filed a motion to compel discovery from AHP.<sup>45</sup> AHP  
10 filed a reply brief on the minimum term of EOC voting rights surrender and reply testimony  
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14 <sup>37</sup>*Office of the Attorney General's Brief on Interpretation of Order 39*, filed October  
15 8, 2024 (RAPA Brief).

16 <sup>38</sup>*Chugach Electric Association, Inc. and Matanuska Electric Association, Inc.'s*  
17 *Joint Brief Regarding Surrender Term*, filed October 8, 2024 (Chugach/MEA Brief).

18 <sup>39</sup>Tr. 16-17, 23-24: Correspondence from D. Thompson filed October 16, 2024.

19 <sup>40</sup>Order U-24-024(5), *Order Governing Confidential Discovery Material*, dated  
20 October 17, 2024.

21 <sup>41</sup>*Office of the Attorney General's Motion to Dismiss as Moot*, filed October 15,  
22 2024 (Motion to Dismiss).

23 <sup>42</sup>*Chugach Electric Association, Inc. and Matanuska Electric Association, Inc.'s*  
24 *Joinder in Motion to Dismiss Regarding Surrender Term*, filed October 24, 2024.

25 <sup>43</sup>*Office of the Attorney General's Request to Defer Ruling on Motion to Dismiss*,  
26 filed October 24, 2024; *Office of the Attorney General's Motion for Expedited*  
*Consideration of Request to Defer Ruling*, filed October 24, 2024.

<sup>44</sup>Order U-24-024(6), *Order Denying Request to Defer Ruling and Motion for*  
*Expedited Consideration of Request to Defer Ruling*, dated October 25, 2024.

<sup>45</sup>*Chugach Electric Association, Inc. and Matanuska Electric Association, Inc.'s*  
*Motion to Compel Discovery Responses*, filed October 28, 2024 (Motion to Compel).



1 by Corsentino.<sup>46</sup> AHP filed an opposition to the Motion to Dismiss.<sup>47</sup> RAPA filed a reply  
2 to AHP's opposition to the Motion to Dismiss.<sup>48</sup> AHP filed an opposition to the Motion to  
3 Compel.<sup>49</sup>

4 AHP filed a motion for oral argument on the Motion to Dismiss and the  
5 Motion to Compel, and a motion for expedited consideration of the motion for oral  
6 argument.<sup>50</sup> RAPA filed a response to the motion for oral argument and motion for  
7 expedited consideration of the motion for oral argument.<sup>51</sup> We denied the motion for oral  
8 argument and the motion for expedited consideration of the motion for oral argument.<sup>52</sup>  
9 Chugach and MEA filed a reply to AHP's opposition to the motion to compel.<sup>53</sup>

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11 <sup>46</sup>*Municipality of Anchorage d/b/a Anchorage Hydropower's Reply Brief Regarding*  
12 *Interpretation of Order 39*, filed October 29, 2024 (AHP Reply Brief); *Prefiled Reply*  
*Testimony of Mark A. Corsentino, P.E.*, filed October 29, 2024.

13 <sup>47</sup>*Municipality of Anchorage d/b/a Anchorage Hydropower's Opposition to the*  
14 *Office of the Attorney General's Motion to Dismiss as Moot*, filed October 30, 2024 (AHP  
Response).

15 <sup>48</sup>*Office of the Attorney General's Reply to AHP's Opposition to Motion to Dismiss*,  
filed November 4, 2024 (RAPA Reply).

16 <sup>49</sup>*Municipality of Anchorage d/b/a Anchorage Hydropower's Opposition to*  
17 *Chugach Electric Association, Inc. and Matanuska Electric Association, Inc.'s Motion to*  
*Compel Discovery Responses*, filed November 4, 2024 (AHP Opposition).

18 <sup>50</sup>*Municipality of Anchorage d/b/a Anchorage Hydropower's Motion for Oral*  
19 *Argument*, filed November 5, 2024; *Municipality of Anchorage d/b/a Anchorage*  
20 *Hydropower's Motion for Expedited Consideration of its Motion for Oral Argument*, filed  
21 November 5, 2024, as corrected by *Municipality of Anchorage d/b/a Anchorage*  
*Hydropower's Errata to Motion for Expedited Consideration of its Motion for Oral*  
*Argument*, filed November 6, 2024.

22 <sup>51</sup>*Office of the Attorney General's Response to AHP's Motions for Oral Argument*  
*and Expedited Consideration*, filed November 6, 2024.

23 <sup>52</sup>Order U-24-024(7), *Order Denying Motion for Oral Argument and Motion for*  
24 *Expedited Consideration of Motion for Oral Argument*, dated November 6, 2024.

25 <sup>53</sup>*Chugach Electric Association, Inc. and Matanuska Electric Association, Inc.'s*  
*Reply to AHP's Opposition to Motion to Compel Discovery Responses*, filed November 6,  
26 2024 (Chugach/MEA Reply).

1 Discussion

2 Motion to Dismiss

3 In its Motion to Dismiss, RAPA seeks dismissal of AHP's Notice and  
4 Request on two grounds. First, RAPA asserts that AHP only desires to have its EOC  
5 voting rights restored so that it could have greater input on the Eklutna Project Fish and  
6 Wildlife Program identified in Section 104(a) of Public Law 104-58. RAPA states that the  
7 Governor has now approved the Eklutna Project Fish and Wildlife Program. Based on  
8 this action, RAPA concludes that the Notice and Request is now moot and should be  
9 dismissed.<sup>54</sup> Second, RAPA also asserts that the Notice and Request should be  
10 dismissed because it is premature under the minimum term of EOC voting rights  
11 surrender specified in Order U-18-102(44).<sup>55</sup>

12 We raised the issue that the Notice and Request appears to be premature  
13 under the minimum term of EOC voting rights surrender specified in Order U-18-102(44)  
14 at the prehearing conference.<sup>56</sup> That issue has been extensively briefed by the parties  
15 and we will address it first.

16 Dismissal as Premature Under the Terms of Order U-18-102(44)

17 In Order U-18-102(44) we established a minimum term for ML&P's  
18 surrender of its EOC voting rights as a condition of AHP's certification as a public utility  
19 and as a condition of our approval of the Eklutna PPA and the MEA PPA. This term is  
20 stated as follows:

21 We can only find that [AHP] is managerially and technically fit to maintain an  
22 ownership interest in the Eklutna Project subject to the condition that before  
the effective date of either the Eklutna PPA or the MEA PPA, ML&P surrenders

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24 <sup>54</sup>Motion to Dismiss at 1-7. See, Order U-18-102(44) at 61, and the materials cited  
in footnote 175, for a discussion of the Fish and Wildlife Program requirements.

25 <sup>55</sup>Motion to Dismiss at 7-8.

26 <sup>56</sup>Tr. 6-7.

1 its vote on the EOC under the Eklutna Project agreement so that Chugach and  
2 MEA can jointly manage and operate the Eklutna Project, including negotiating  
3 compliance with the Fish and Wildlife Agreement, without [AHP] having a vote  
4 on operating or management decisions. **This surrender must have a term  
at least equal to the term of the Eklutna PPA and the MEA PPA, as those  
agreements may be extended, and cannot be lifted until such time as  
[AHP] has shown to our satisfaction that [AHP] has acquired the  
expertise required to fully participate as a voting member of the EOC.**<sup>57</sup>

5 AHP based its request for reinstatement of EOC voting rights on the assertion that it had  
6 acquired the expertise required to fully participate as a voting member of the EOC in  
7 compliance with the second half of this condition.<sup>58</sup> AHP initially made no reference to  
8 the minimum term of EOC voting rights surrender required by Order U-18-102(44).<sup>59</sup>

9 We raised the minimum term of EOC voting rights surrender issue at the  
10 prehearing conference, and AHP responded that it disagreed with the suggestion that  
11 Order U-18-102(44) mandated a minimum term of EOC voting rights surrender.<sup>60</sup> We  
12 requested briefing on this issue.<sup>61</sup> In its briefing on this issue, AHP acknowledged that if  
13 Order U-18-102(44) mandated a minimum term of EOC voting rights surrender it would  
14 not have EOC voting rights until both the Eklutna PPA and the MEA PPA elapsed.<sup>62</sup> AHP  
15 raised several grounds on which it based its belief that Order U-18-102(44) did not  
16 mandate a minimum term of EOC voting rights surrender. We address those grounds  
17 separately.

#### 18 Rules of Statutory and Contract Interpretation

19 AHP asserts:

20 It is a principle of both contract law and statutory interpretation that  
21 contracts and statutes should not be interpreted in a manner that renders

22 <sup>57</sup>Order U-18-102(44) at 67 (emphasis added).

23 <sup>58</sup>Notice and Request at 3-7.

24 <sup>59</sup>Notice and Request at 1-14.

25 <sup>60</sup>Tr. 6-7, 15.

26 <sup>61</sup>Tr. 17-18.

<sup>62</sup>AHP Initial Brief at 9.

1 language superfluous. To the extent there is any ambiguity in the language of  
2 a past Commission Order, the Commission should apply the same rules of  
3 interpretation here.<sup>63</sup>

4 AHP cites to no authority for application of this rule of interpretation to our orders. For the  
5 sake of clarity in this proceeding we address this issue as if these rules of interpretation  
6 do apply to our orders, without determining if these rules do apply to our orders.

7 The minimum term of EOC voting rights surrender is stated in Order  
8 U-18-102(44) as:

9 This surrender must have a term at least equal to the term of the Eklutna  
10 PPA and the MEA PPA, as those agreements may be extended, and cannot  
11 be lifted until such time as [A]HP has shown to our satisfaction that [A]HP  
12 has acquired the expertise required to fully participate as a voting member of  
13 the EOC.

14 As an initial matter, we agree with RAPA that there is no grammatical ambiguity in the  
15 minimum term of EOC voting rights surrender language.<sup>64</sup> AHP has disputed RAPA's  
16 grammatical evaluation of this language.<sup>65</sup> However, each of AHP's arguments would  
17 result in portions of the language actually used in Order U-18-102(44) being rendered  
18 superfluous in violation of the very rules of interpretation AHP suggests that we follow.  
19 AHP's arguments for finding a grammatical ambiguity are not convincing and we do not  
20 agree with AHP's assertion that there is grammatical ambiguity in the minimum term of  
21 EOC voting rights surrender language used in Order U-18-102(44).

22 AHP also argues that there is a contextual ambiguity in the minimum term  
23 of EOC voting rights surrender language in Order U-18-102(44). Specifically, AHP argues  
24 that the minimum term of EOC voting rights surrender renders Section 4.2 of the Eklutna  
25 PPA and Section 4.2 the MEA PPA superfluous in violation of the rules of construction it

26 <sup>63</sup>AHP Initial Brief at 13 (footnote omitted).

<sup>64</sup>RAPA Brief at 3-5

<sup>65</sup>AHP Reply Brief at 7-14.

1 relies upon.<sup>66</sup> Examination of the context in which the minimum term of EOC voting rights  
2 surrender language is stated in Order U-18-102(44) shows that there is no contextual  
3 ambiguity between that language and the two Section 4.2 referred to by AHP.

4 AHP argues that if we intended the minimum term of EOC voting rights to  
5 be enforced as written, we would have disapproved the Section 4.2 referred to by AHP.<sup>67</sup>  
6 However, in crafting Order U-18-102(44) we “sought to find a way to approve this  
7 transaction while leaving as much of the parties’ bargain intact as possible.”<sup>68</sup> We did not  
8 disapprove any part of the transaction documents unless we specifically found that the  
9 public interest required disapproval of that part. Our failure to completely harmonize the  
10 transaction documents with the substance of Order U-18-102(44) cannot be taken as a  
11 basis for nullifying or rendering superfluous any express term stated in Order  
12 U-18-102(44).

13 Section 4.2 of the Eklutna PPA states:

14 Section 4.2 Operation of the Facility.

15 (A) In accordance with the Operations Agreement (as may be amended  
16 by the Operations Agreement Amendment), during the Term Purchaser shall  
17 manage, control, operate and maintain the Chugach Portion in a manner  
18 consistent with Prudent Utility Practice.

19 (B) During the Term, Seller shall, in consultation with Purchaser, select  
20 the person to serve as Seller's representative to the Operating Committee (the  
21 "Seller's Representative"). The Seller's Representative shall make all  
22 decisions on the Operating Committee consistent with Prudent Utility Practice  
23 and the rights and obligations of the Parties under this PPA. Seller's  
24 Representative shall also be Seller's representative for any consultation,  
25 study, and implementation processes required under the Fish and Wildlife  
26 Agreement relating to the Facility. The Seller's Representative shall make all  
27 decisions with respect to any processes required under the Fish and Wildlife  
28 Agreement with due regard for the rights and obligations of the Parties under  
29 this PPA.

66 AHP Initial Brief at 9-19; AHP Reply Brief at 14-17, 19-36.

67 AHP Initial Brief at 9-19

68 Order U-18-102(44) at 11.

1 (C) The Parties acknowledge and agree that Seller has prior rights to  
2 not less than 41 million gallons of water per day from Eklutna Lake for public  
3 water supply pursuant to the Act of October 30, 1984, 98 Stat. 2823; Alaska  
4 Statutes 46.15.150(a); and Certificate of Appropriation AOL 44944. The  
5 Parties agree that during the Term, the supply of water available for production  
6 of Power by the Seller's Interest shall be net of all water taken by Anchorage  
7 Water and Wastewater Utility for public water supply purposes.<sup>69</sup>

8 Eklutna PPA Subsection 4.2(A) deals with Chugach's obligations as Purchaser and  
9 Subsection 4.2(C) only identifies the Municipality of Anchorage's rights to water from  
10 Eklutna Lake. Neither of these two subsections are relevant to AHP's argument and we  
11 do not address them further.

12 Subsection 4.2(B) requires AHP, as Seller, to consult with Chugach in the  
13 selection of AHP's representative on the EOC. In Order U-18-102(44), we stated:

14 We can only find that MHP is managerially and technically fit to maintain an  
15 ownership interest in the Eklutna Project subject to the condition that before  
16 the effective date of either the Eklutna PPA or the MEA PPA, ML&P surrenders  
17 its vote on the EOC under the Eklutna Project agreements so that Chugach  
18 and MEA can jointly manage and operate the Eklutna Project, including  
19 negotiating compliance with the Fish and Wildlife Agreement, without MHP  
20 having a vote on operation or management decisions. This surrender must  
21 have a term at least equal to the term of the Eklutna PPA and the MEA PPA,  
22 as those agreements may be extended, and cannot be lifted until such time as  
23 MHP has shown to our satisfaction that MHP has acquired the expertise  
24 required to fully participate as a voting member of the EOC. This does not  
25 prohibit MHP from attending EOC meetings, but may not allow MHP any ability  
26 to delay or change the Eklutna Project decisions made by the Chugach and  
27 MEA representatives on the EOC.<sup>70</sup>

28 This language allows, but does not require, AHP to have a non-voting representative  
29 attend EOC meetings. Not disapproving Subsection 4.2(B) leaves intact the parties  
30 bargain requiring AHP to consult with Chugach when selecting AHP's representative to  
31 the EOC. Further, nothing in the Order U-18-102(44) prevents AHP's non-voting EOC  
32 representative from participating in EOC meetings "consistent with Prudent Utility Practice

33 <sup>69</sup>Order U-18-102(44), Appendix D at 9.

34 <sup>70</sup>Order U-18-102(44) at 67.

1 and the rights and obligations of the Parties under this PPA.” The “consistent with Prudent  
2 Utility Practice and the rights and obligations of the Parties under this PPA” language of  
3 Eklutna PPA Subsection 4.2(B) places boundaries on the AHP non-voting  
4 representative’s participation in EOC meetings and our not disapproving Subsection  
5 4.2(B) leaves intact the parties’ bargain for this limitation on AHP.

6 Subsection 4.2 of the MEA PPA states:

7 Section 4.2 Operation of the Facility.

8 (A) During the Term Seller shall, at its cost and expense, manage,  
9 control, operate, and maintain the MEA Portion in accordance with the  
10 Operations Agreement and in a manner consistent with Prudent Utility  
11 Practice. Without limiting the foregoing, during the Term, as between Seller  
12 and Purchaser. Seller shall be responsible for all capital costs, all operations  
13 and maintenance expenses, and all costs and expenses for environmental  
14 compliance and compliance with Applicable Laws relating to the MEA Portion.

15 (B) During the Term. Seller shall, after giving Purchaser a reasonable  
16 opportunity to consult with Seller. but without in any way limiting Seller's  
17 discretion as a result of any such consultation, select the person to serve as  
18 Seller's representative to the Operating Committee (the "Seller's  
19 Representative"). The Seller's Representative shall make all decisions on the  
20 Operating Committee consistent with Prudent Utility Practice and the rights  
21 and obligations of the Parties under this PPA and the rights and obligations of  
22 the parties under the Chugach Power Purchase Agreement. The Seller's  
23 Representative shall also be Seller's representative for any consultation,  
24 study. and implementation processes required under the Fish and Wildlife  
25 Agreement relating to the Facility. The Seller's Representative shall make all  
26 decisions with respect to any processes required under the Fish and Wildlife  
27 Agreement with due regard for the rights and obligations of the Parties under  
28 this PPA.

29 (C) The Parties acknowledge and agree that Seller has prior rights to  
30 not less than 41 million gallons of water per day from Eklutna Lake for public  
31 water supply pursuant to the Act of October 30, 1984. 98 Stat. 2823; Alaska  
32 Statutes 46.15.150(a); and Certificate of Appropriation AOL 44944. The  
33 Parties agree that during the Term, the supply of water available for production  
34 of Power by the Seller’s Interest shall be net of all water taken by Anchorage  
35 Water and Wastewater Utility for public water supply purposes consistent with  
36 the aforementioned water rights.

37 MEA PPA Subsection 4.2(A) does not address AHP’s representation on the EOC and  
38 Subsection 4.2(C) only identifies the Municipality of Anchorage’s rights to water from

1 Eklutna Lake. Neither of these two subsections are relevant to AHP’s argument and we  
2 do not address them further.

3 As discussed above, the minimum term of EOC voting rights surrender  
4 condition allows AHP to have a representative attend EOC meetings. The MEA PPA  
5 Section 4.2(B) requirement that AHP consult with MEA on AHP’s choice of that  
6 representative remains effective even if the AHP representative has no voting rights.  
7 Also, as discussed above, the “consistent with Prudent Utility Practice and the rights and  
8 obligations of the Parties under this PPA” language of MEA PPA Subsection 4.2(B) places  
9 boundaries on the AHP non-voting representative’s participation in EOC meetings and  
10 our not disapproving Subsection 4.2(B) leaves intact the parties’ bargain for this limitation  
11 on AHP.

12 Eklutna PPA Section 4.2(B) and MEA PPA Section 4.2(B) are both silent on  
13 voting rights and thus the requirement that ML&P surrender its EOC voting rights does  
14 not expressly nullify any part of these provisions. Both subsections include the phrase:  
15 “Seller’s Representative shall make all decisions on the Operating Committee consistent  
16 ....” This language could imply that AHP makes EOC decisions. As discussed in Order  
17 U-18-102(44), with its EOC voting rights intact ML&P had authority to veto decisions of  
18 the EOC but did not have authority to make decisions for the EOC except with the  
19 agreement of at least Chugach or MEA.<sup>71</sup> Because ML&P never had the authority to  
20 make EOC decisions, we read the “Seller’s Representative shall make all decisions on  
21 the Operating Committee consistent” language to refer to the decisions AHP, as ML&P’s  
22 successor, makes about its own participation in EOC decisions. Nothing in Order  
23 U-18-102(44) renders the language in Eklutna PPA Section 4.2(B) or MEA PPA Section  
24 4.2(B) superfluous, and the existence of the language in these two subsections does not

25 \_\_\_\_\_  
26 <sup>71</sup>Order U-18-102(44) at 60-61.



1 create any contextual ambiguity in the minimum term of EOC voting rights surrender  
2 language used in Order U-18-102(44).

3 AHP points to history of TA525-18 and TA379-121 where our Staff asked  
4 AHP and MEA if MEA PPA Section 4.2(B) needed to be revised based upon the apparent  
5 inconsistency with the minimum term of surrender language in Order U-18-102(44) as  
6 evidence of contextual ambiguity.<sup>72</sup> In TA525-18 and TA379-121, on October 22, 2020,  
7 our Staff asked MEA and ML&P to respond to the following:

8 I believe there is an inconsistency between the MEA Eklutna PPA and the final  
9 order (U-18- 102(44)/U-19-020(39)/U-19-021(39)) (U-18-102(44)).

10 At page 67 of U-18-102(44) the Commission required MOA/ML&P to surrender  
11 its vote on the EOC so Chugach and MEA could manage the Eklutna Hydro  
12 project.

13 The MEA Eklutna PPA, at page 4, Section 4.2(B) appears to allow MOA/ML&P  
14 to keep its vote on the EOC.

15 Does MEA [or ML&P] believe the language between the final order and the  
16 MEA Eklutna PPA as summarized above are in conflict? Please explain your  
17 response and provide a remedy if appropriate.

18 MEA responded to this request as follows:

19 Mr. Layne, regarding your inquiry, MEA offers the following response.

20 The MEA Eklutna Hydro PPA, by and between MEA and the MOA, was  
21 entered into and executed in September 2019, several months prior to the  
22 RCA's May 2020 decision requiring ML&P to surrender its vote on the EOC as  
23 a condition of approving the sale of ML&P. This appears to be the reason for  
24 the "conflict" you reference because at the time the PPA was negotiated, the  
25 parties had no way of knowing the future RCA decision regarding ML&P's  
26 surrendering of EOC voting rights. MEA notes that the provision you reference  
and cite as a conflict in the MEA Eklutna Hydro PPA is contained verbatim in  
the Chugach Eklutna Hydro PPA (see Appendix D of Order U-18-102(44),  
Section 4.2(B) at page 9 of 92), which the RCA conditionally approved as part  
of Order U-18-102(44).

In MEA's view, if the RCA wishes to resolve this perceived conflict, the remedy  
should be similar and consistent with how the RCA remedied the same conflict  
in the Chugach Eklutna Hydro PPA, which could include approving the MEA  
PPA subject to the same conditions the RCA previously imposed in Order  
U-18-102(44). Specifically, MEA is agreeable to having the same vote

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<sup>72</sup>AHP Initial Brief at 14-18; AHP Reply Brief at 15-17 (in this brief, AHP  
erroneously refers to TA525-18 as being TA525-15).

1 surrender language in order U-18-102(44) at page 67 apply to the MEA  
Eklutna Hydro PPA. Hopefully this helps resolves this matter.<sup>73</sup>

2 ML&P responded to this request as follows:

3 The MOA/ML&P do not believe that the MEA Eklutna PPA is inconsistent  
4 Order No. U-18-102(44)/U-19-020(39)/U-19-021(39) ("Order 39"). The part of  
Order 39 that you cite states:

5 "We can only find that MHP is managerially and technically fit to maintain an  
6 ownership interest in the Eklutna Project subject to the condition that before  
7 the effective date of either the [Chugach] Eklutna PPA or the MEA PPA, ML&P  
8 surrenders its vote on the EOC under the Eklutna Project agreements so that  
9 Chugach and MEA can jointly manage and operate the Eklutna Project,  
10 including negotiating compliance with the Fish and Wildlife Agreement, without  
11 MHP having a vote on operation or management decisions." Order 39 at 67.

12 To comply with the Order, ML&P will surrender its vote on the EOC prior to the  
13 closing of the ML&P sale to Chugach, which will be before the effective date  
14 of the Chugach Eklutna PPA and of the MEA Eklutna PPA. ML&P will promptly  
15 file a notice of that surrender with the RCA. The surrender will have a term at  
16 least equal to the term of the two PPAs, subject to termination of the surrender  
17 upon MHP showing to the RCA's satisfaction "that MHP has acquired the  
18 expertise required to fully participate as a voting member of the EOC." Order  
19 39 at 67. If and when MHP has a proposed EOC representative that satisfies  
20 the qualifications, MHP will file that information and request that the RCA make  
21 the necessary finding for termination of the EOC vote surrender.

22 Like Section 4.2(B) of the Chugach Eklutna PPA, Section 4.2(B) of the MEA  
23 Eklutna PPA requires MHP, in consultation with the Purchaser, to select  
24 MHP's representative on the EOC. As a result of Order 39, MHP won't have  
25 any voting representative on the EOC until the surrender is terminated upon a  
26 positive finding by the RCA that MHP's proposed representative is qualified.  
Thus, Section 4.2(B) of neither PPAs need to be amended. In addition, Section  
4.2(B) should remain as written as it will be relevant if and when MHP's voting  
rights surrender is terminated in the future upon the necessary finding of the  
RCA.<sup>74</sup>

19 The ambiguity that our Staff was inquiring about is different from the ambiguity alleged by  
20 AHP. Staff was concerned that MEA PPA Section 4.2(B) contractually allowed AHP to  
21 exercise a vote on the EOC after the surrender was in effect. This is due to the language  
22 used in the MEA PPA, and as noted by MEA, language that is also in the Eklutna PPA.

25 <sup>73</sup>Correspondence from T. Clark, filed October 23, 2020, in TA525-18.

26 <sup>74</sup>Correspondence from D. Thompson, filed October 27, 2020, in TA379-121.

1 MEA responded that the MEA PPA was negotiated several months before  
2 Order U-18-102(44) was issued, and that the language of the MEA PPA did not reflect  
3 the surrender of ML&P’s voting rights on the EOC required by Order U-18-102(44)  
4 because the parties were not aware that we were going to order that surrender. Both  
5 MEA and ML&P assured us that the language in Order U-18-102(44) was sufficient to  
6 prevent ML&P from having voting rights on the EOC after the effective date of surrender.

7 ML&P stated in the correspondence quoted above that: “As a result of  
8 Order [U-18-102(44)], [A]HP won’t have a voting representative on the EOC until the  
9 surrender is terminated upon a positive finding by the RCA that MHP’s proposed  
10 representative is qualified.” In the paragraph immediately above, ML&P restated the  
11 requirement for restoration of their vote on the EOC as: “The surrender will have a term  
12 at least equal to the term of the two PPAs, subject to termination of the surrender upon  
13 MHP showing to the RCA’s satisfaction “that MHP has acquired the expertise required to  
14 fully participate as a voting member of the EOC.”” ML&P appears to assert that their  
15 modification from the minimum term of EOC voting rights surrender language of Order  
16 U-18-102(44) in their informal response to Staff’s request should have put us on notice  
17 that they were nullifying the first part of the condition stated in Order U-18-102(44).<sup>75</sup>

18 We disagree with that assertion. If ML&P considered the language we used  
19 in Order U-18-102(44) to be unreasonable, erroneous, unlawful, or otherwise defective,  
20 their remedy was to timely file a petition for reconsideration under 3 AAC 48.105 or an  
21 appeal under AS 22.10.020(d) and Alaska Rule of Appellate Procedure 602(a)(2).<sup>76</sup> As  
22 Order U-18-102(44) was issued May 28, 2020, any petition for review was required to be  
23 filed by June 12, 2020 and any appeal was due to be filed by June 30, 2020. ML&P

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25 <sup>75</sup>AHP Initial Brief at 16.

26 <sup>76</sup>Order U-18-102(44) at 143.

1 waived its right to challenge the language used in Order U-18-102(44) by failing to take  
2 either of those routes. ML&P has no authority to unilaterally revise the requirements of  
3 Order U-18-102(44) based on correspondence with our Staff on October 27, 2020,  
4 months after waiving its right to seek such revisions.

5 Staff was specifically asking if the MEA PPA Section 4.2(B) language  
6 conflicted with the EOC voting rights surrender required by Order U-18-102(44). Staff  
7 was not asking about the minimum term of EOC voting rights surrender or about the  
8 methodology for restoration of those voting rights and AHP has provided no evidence that  
9 Staff paid any attention at all to ML&P's superfluous comments on those issues. AHP  
10 cites to no authority where such remarks can effectively rewrite the express terms of our  
11 orders.

12 In responding to Staff's request, ML&P stated: "Section 4.2(B) should  
13 remain as written as it will be relevant if and when [A]HP's voting rights surrender is  
14 terminated in the future upon the necessary finding of the RCA." As noted by AHP, we  
15 have authority under AS 42.05.271 to modify certificate conditions after providing notice  
16 and opportunity for hearing and for good cause shown.<sup>77</sup> Such modification is not  
17 necessarily tied to AHP's acquisition of adequate technical and managerial resources to  
18 fully participate on the EOC. For example, MEA PPA Section 11.2(A)(3) allows for early  
19 termination of the MEA PPA in the event of an uncured default.<sup>78</sup> Eklutna PPA Section  
20 9.2(A)(3) allows for early termination of the Eklutna PPA in the event of an uncured  
21 default.<sup>79</sup> Without prejudging the matter, AHP might be able to show good cause for  
22 reinstatement of its EOC voting rights, at least in part, upon the early termination of one  
23

24 <sup>77</sup>AHP Reply Brief at 43.

25 <sup>78</sup>Order U-18-102(44), Appendix H at 15.

26 <sup>79</sup>Order U-18-102(44), Appendix D at 16.

1 of these agreements but not the other. Therefore, leaving Eklutna PPA Section 4.2(B)  
2 and MEA PPA Section 4.2(B) intact leaves that portion of the parties' bargain intact in the  
3 event that we do someday modify the minimum term of EOC voting rights surrender stated  
4 in order U-18-102(44).

5 For all the reasons discussed above, AHP has failed to establish a  
6 contextual ambiguity based on the language of Eklutna PPA Section 4.2(B) and MEA  
7 PPA Section 4.2(B) or our strict interpretation of the minimum term of EOC voting rights  
8 surrender stated in Order U-18-102(44). Eklutna PPA Section 4.2(B) and MEA PPA  
9 Section 4.2(B) are both currently effective in part and may become fully effective in the  
10 manner AHP desires sometime in the future. The continued existence of these two  
11 provisions do not justify a revision of the minimum term of EOC voting rights surrender  
12 language stated in Order U-18-102(44).

13 Public Understanding

14 AHP also suggests that we should modify the minimum term of EOC voting  
15 rights surrender stated in Order U-18-102(44) based upon the "public" understanding of  
16 that term expressed in various places.<sup>80</sup> AHP cites to no authority for this proposition.  
17 We note that part of the "public" understanding AHP relies upon is implied from past  
18 statements of Chugach, MEA, and RAPA.<sup>81</sup> In response, RAPA stated:

19 At the August 30, 2024, prehearing conference, the Commission—  
20 through ALJ Walker—noted two things. First, that neither AHP's request for  
21 acknowledgement nor the motion for expedited consideration discussed why  
22 the Commission should set aside the minimum time-period for the voting rights  
23 surrender. And second, "it appears that the Commission should be  
24 considering dismissal of the notice and request for acknowledgment as being  
25 prematurely filed...."

26 When examining AHP's Notice and Request for Acknowledgment, the  
Office of the Attorney General, Regulatory Affairs & Public Advocacy Section

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<sup>80</sup>AHP Initial Brief at 14-20.

<sup>81</sup>AHP Initial Brief at 19-20.

1 (RAPA) incorrectly focused on the second half of the above-quoted language  
from Order 39 and not the issues raised by the Commission.<sup>82</sup>

2 Chugach and MEA stated:

3 Chugach and MEA admit that until ALJ Walker raised this issue in this  
4 proceeding, they had not examined this issue closely and were theoretically  
5 comfortable with an interpretation of the Surrender that if and when the MOA  
6 could demonstrate technical and managerial fitness, potentially with certain  
7 conditions imposed on the MOA to require MOA act consistently with prudent  
utility practice, to prevent the MOA from undermining the Project Owners' work  
in implementing the Final Fish and Wildlife Program, and to protect the Eklutna  
Project as a valuable resource in the Railbelt, the MOA would be entitled to  
regain its voting rights on the EOC and with respect to the Fish and Wildlife  
Agreement before the end of the PPA terms.

8 Upon further review in this proceeding, however, Chugach and MEA no  
9 longer think that this matter is so simple for two primary reasons. First, with  
10 respect to this narrow issue, the Commission is asking the parties if they agree  
11 or disagree with the Commission's interpretation of the applicability of the term  
12 length language, and because Chugach and MEA do see ambiguity in the  
13 language, the Commission is in the best position to explain what it intended.  
14 There also exists ample reasonable legal basis, well supported by facts, for  
15 the Commission's interpretation that the Surrender must last for the duration  
16 of the PPA terms centered on the fact that MOA has ceded most of its rights  
17 and responsibilities to the Eklutna Project during the duration of those PPAs.  
Further, the facts that justified the Surrender requirement in the first place are  
materially unchanged. Second, even if the Commission intended, through its  
language, to create a path for MOA to regain its voting rights before the end of  
the PPA terms, such process should not render the length of term requirement  
language meaningless as MOA's Brief position would. Rather, there must be  
an acknowledgement of the Surrender term requirement and a demonstration  
that the concerns behind such requirement will be addressed for the duration  
of the PPA terms.<sup>83</sup>

18 In reply, AHP asserts that the responsive arguments of RAPA, Chugach, and MEA are in  
19 error.<sup>84</sup> AHP acknowledges that RAPA, Chugach, and MEA changed their position after  
20 reviewing the minimum term of EOC voting rights surrender language in Order  
21 U-18-102(44) when that language was pointed out to them at the prehearing conference  
22 held August 30, 2024.<sup>85</sup>

23 <sup>82</sup>RAPA Brief at 2.

24 <sup>83</sup>Chugach/MEA Brief at 11-12.

25 <sup>84</sup>AHP Reply Brief at 6-43.

26 <sup>85</sup>AHP Reply Brief at 3-6.

1 From the explanations provided by RAPA, Chugach, and MEA, their earlier  
2 positions on the restoration of EOC voting rights to AHP was based on an incomplete  
3 reading of Order U-18-102(44). ML&P never asked us for clarification of the minimum  
4 term of EOC voting rights surrender language in Order U-18-102(44), and thus we do not  
5 know if ML&P's understanding of that language was based on a complete reading of the  
6 order either.

7 AHP cites to the language used by ML&P in its written surrender of EOC  
8 voting rights as evidence that ML&P understood that AHP's EOC voting rights could be  
9 restored whenever it made a showing that it had acquired the expertise to fully participate  
10 as a voting member of the EOC. AHP quoted from the surrender as follows:

11 In accordance with the requirements of order U-18-102(44), the  
12 Municipality of Anchorage, dba Municipal Light & Power(ML&P), hereby  
13 surrenders its voting rights as an EOC member and under the Fish and Wildlife  
14 Agreement effective as of the Closing of the Asset Purchase Agreement  
15 between ML&P and Chugach Electric Association (Chugach). **This surrender  
16 of voting rights shall remain in effect until ML&P's successor complies  
17 with the RCA requirements pertaining to qualifications for ML&P's  
18 representation on the EOC.**

19 **Until ML&P's successor complies with the qualification terms of  
20 RCA order U-18-102(44),** all EOC decisions will be by unanimous vote of  
21 Chugach and Matanuska Electric Association, Inc. (MEA). Eklutna hydro  
22 operations, dispatch and maintenance will continue to follow past practices  
23 and policies unless changes are approved through the EOC process.<sup>86</sup>

24 There is nothing in this surrender language indicating that ML&P is only surrendering its  
25 EOC voting rights until such time as its successor makes a showing that it has acquired  
26 the expertise required to fully participate as a voting member of the EOC. This surrender  
language states that ML&P is surrendering its voting rights in accordance with the  
requirements of Order U-18-102(44) and that the surrender remains in effect until ML&P's  
successor complies with our requirements pertaining to qualifications for ML&P's

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<sup>86</sup>AHP Initial Brief at 17 (emphasis is by AHP in the Brief and is not in the original  
surrender of EOC voting rights).

1 representation on the EOC. Those requirements include the minimum term of surrender  
2 and our approval of the transaction under which Chugach acquired ML&P's service  
3 obligations and most ML&P assets was conditioned on ML&P's surrender of its voting  
4 rights in conformance with that entire requirement.

5 We are not convinced that there is any reason to change the minimum term  
6 of EOC voting rights surrender expressly stated in Order U-18-102(44) based upon  
7 'public' understanding when that understanding was based upon an incomplete reading  
8 of the order. We also do not find that ML&P or AHP has the right to modify the minimum  
9 term of EOC voting right surrender stated in Order U-18-102(44) based upon a post-hoc  
10 assertion that it misunderstood the terms of that order. We note that ML&P's surrender  
11 of its EOC voting rights was filed well after the time to request reconsideration of Order  
12 U-18-102(44) had passed and the time for appeal of that order had also passed. Thus  
13 ML&P no longer had any right to seek revision of the minimum term of EOC voting rights  
14 surrender except under a new proceeding seeking revision of that term. Inserting what  
15 may now be considered ambiguous language in a compliance filing is not adequate to  
16 make such a change.

17 Evidentiary Context

18 AHP further claims that we must interpret prior orders within the context of  
19 the evidence on which the prior order was based.<sup>87</sup> That is our standard practice. In  
20 Dockets U-18-102/U-19-020/U-19-021, we received written testimony from Municipal  
21 Attorney Rebecca Windt Pearson<sup>88</sup> that included the following:

22 \_\_\_\_\_  
23 <sup>87</sup>AHP Reply Brief at 19-21.

24 <sup>88</sup>*Prefiled Reply Testimony of Rebecca Windt Pearson*, filed August 2, 2019 (Windt  
25 Pearson Testimony), in Dockets U-18-102/U-19-020/U-19-021; as corrected by *Municipal*  
26 *Light and Power's Errata to the Prefiled Reply Testimony of Rebecca Windt Pearson*, filed  
August 9, 2029. This testimony was marked as Hearing Exhibit T-22 in Dockets  
U-19-020/U-19-021.



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Q12. Why did ML&P retain its ownership share of the Eklutna generation plant and sell the output to Chugach, rather than simply including its share of the Eklutna generation plant in the sale?

A12. Both Chugach and the MOA had interests that were served by having the MOA continue to own its share of the Eklutna generation plant and sell the output of the MOA's share to Chugach (and possibly also to MEA).

Initially, the parties discussed Chugach financing a portion of the asset acquisition price through unsecured payments over a period of time. That changed, however, when the MOA expressed concern regarding the lack of security associated with those payments. The MOA was concerned that, if it sold all of ML&P's assets to Chugach, but Chugach failed to make an unsecured future payment, the MOA would have no recourse other than litigation or pursuing a claim as a general unsecured creditor in a bankruptcy proceeding.

The parties resolved this concern by carving ML&P's ownership interest in the Eklutna generation plant out of the sale. As a result of the MOA retaining the ML&P share of the Eklutna generation plant, Chugach was able to pay for the Transactions without requiring the MOA to incur the risk of unsecured future payments. The Parties then entered into the Chugach PPA to allow Chugach to receive the output from ML&P's Eklutna interest at Chugach's avoided cost.

This arrangement served each party's interests. It benefits the MOA because, if Chugach ever fails to make future payments under the Chugach PPA, ML&P can, as a result of its retained ownership of its share of Eklutna, sell the power from that share to another entity—likely another Railbelt utility, and likely at a higher "avoided cost." The fact that Chugach's avoided costs are lower than other Railbelt utilities also informed the allocation of risks in the Chugach PPA. The MOA likely could sell power from its retained share of Eklutna to another entity at a higher avoided cost rate, but any such transaction would likely require the MOA to accept greater risks. The MOA agreed to sell power to Chugach, at Chugach's avoided cost, at least partly because of the transaction's more preferable risk profile. The Chugach PPA benefits Chugach because it allows it to make power purchase payments over time, thereby avoiding the added margin costs associated with additional upfront financing.<sup>89</sup>

Windt Pearson swore under oath that her written testimony was true and correct, and it was admitted as evidence into the record of Dockets U-19-020/U-19-021.<sup>90</sup> In its

Application filed in Docket U-19-021, ML&P stated:

ML&P will continue to be a department of the MOA, however it will have no employees and any function requiring labor will be performed by the MOA (e.g.

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<sup>89</sup>Windt Pearson Testimony at 8-9.

<sup>90</sup>Docket U-19-020/U-19-021 Tr. 2489-2489.

1 billing and financial statement preparation will be performed by the MOA  
Finance Department).<sup>91</sup>

2 ...

3 As mentioned above, historically the operation and maintenance activities of  
4 Eklutna have been performed by Chugach, MEA, and ML&P. After the  
5 Transactions close, the division of responsibilities will be allocated between  
6 Chugach and MEA. Both Chugach and MEA have power production and  
transmission experience. They have the necessary expertise to perform all  
necessary functions to operate Eklutna. As has been the practice in the past,  
any operational or capital function that is beyond their expertise will be  
contracted to a firm specializing in the function.

7 The MOA will receive payments under the Chugach PPA and Chugach will  
8 pay all operating, maintenance, and capital costs associated with ML&P's  
Eklutna interest. If MEA enters into a PPA for its pro rata share of ML&P's  
9 Eklutna output, ML&P will be responsible for the operating, maintenance, and  
10 capital costs associated with that share of ML&P's Eklutna interest. The MEA  
11 PPA payments ML&P receives, however, will be sufficient to pay any  
operating, maintenance, and capital costs that ML&P will be responsible for. If  
12 MEA enters into a PPA for its pro rata share of ML&P's Eklutna output, ML&P  
will establish a \$3 million reserve fund in the first year of operation to address  
13 any intra-year revenue shortfalls, to be called upon if revenues received are  
not sufficient in any year to cover the operating, maintenance, or capital costs  
of ML&P's Eklutna interest. In addition, if unforeseen adverse events require  
14 it, the MOA has sufficient borrowing capacity to make necessary operating,  
maintenance, or capital investments related to ML&P's Eklutna interest.

15 The MOA has a Finance Department with experienced professional  
16 accountants that have the necessary expertise to perform the required  
accounting functions for ML&P's limited post-Transactions Eklutna interest  
17 ownership and long term wholesale bulk power sales to Chugach or Chugach  
and MEA under the PPAs. The Finance Department will maintain ML&P's  
18 books and records, consistent with the Uniform System of Accounts. These  
books and records will include ML&P's revenues received under the PPAs and  
19 ML&P's share of monthly operational and capital costs. The Finance  
Department will track any assets purchased or constructed by the EOC, to  
20 include tracking operation and maintenance costs for the assets. Further, the  
Finance Department will maintain continuing property records to include  
original asset cost, annual depreciation, and net book value of all assets.<sup>92</sup>

21 At hearing in Dockets U-19-020/U-19-021, Windt Pearson orally testified as follows:

22 ALJ WALKER: Is the Municipality, after closure of this transaction, retaining  
any employees of ML&P?

23 MS. WINDT PEARSON: The plan is not to. And I know that we have  
24 discussed what we would need to do to have the necessary advice, expertise,

25 <sup>91</sup>ML&P Application at 12.

26 <sup>92</sup>ML&P Application at 12-14 (heading omitted).

1 and personnel in order to continue to participate in the Eklutna Operating  
2 Committee. I think that we envision the stub utility being the department that  
3 reports up to the municipal manager. And that, more likely than not, we would  
4 utilize consultant services to provide that industry-specific expertise and  
5 staffing to help us make informed decisions as a continuing member of the  
6 Eklutna Operating Committee. Because we would not be retaining any  
7 employees of Municipal Light & Power.

ALJ WALKER: Have you investigated to see if any such expertise exists in  
the consulting community?

MS. WINDT PEARSON: We have not done so yet.<sup>93</sup>

7 Based on the record from Dockets U-18-102/U-19-020/U-19-021, ML&P  
8 was retaining the Eklutna Project Power Plant only for the purpose of preserving a cash  
9 flow in the event Chugach defaulted on its payments under the Eklutna PPA. ML&P  
10 planned only on collecting revenue under the Eklutna PPA and the MEA PPA, keeping  
11 track of the expenses it incurred under the MEA PPA for bookkeeping purposes, and  
12 maintaining the net book value of Eklutna Project assets. Maintaining accurate  
13 accounting of the net book value of assets will be necessary for calculation of the price  
14 Chugach and MEA will have to pay to purchase their proportionate shares of AHP  
15 ownership interest in the Eklutna Project under the Eklutna PPA and the MEA PPA.<sup>94</sup>

16 ML&P assured us that revenue earned under the MEA PPA would be  
17 adequate to cover all Eklutna Project capital, operating, and maintenance expense that it  
18 would be obligated to pay under that agreement. ML&P further assured us that it would  
19 maintain a \$3,000,000 cash reserve for the Eklutna Project which, with the Municipality  
20 of Anchorage's existing credit capacity, would be adequate to meet any cash flow  
21 contingencies that may arise.

22 On this record, none of the purposes for which ML&P was retaining its  
23 ownership interests in the Eklutna Project Power Plant required or would benefit from

24 <sup>93</sup>Docket U-19-020/U-19-021 Tr. 2708-2709.

25 <sup>94</sup>Order U-18-102(44), Appendix D at 19-20 (Eklutna PPA) and Appendix H at 23,  
26 39 (MEA PPA).

1 ML&P’s participation as voting member of the EOC. ML&P effectively admitted that, as  
2 of the time of hearing in Dockets U-19-020 and U-19-021, it would not retain the staff  
3 expertise required to sit as a voting member of the EOC and had made no plans to acquire  
4 such expertise. ML&P also admitted that Chugach and MEA did have the expertise to sit  
5 as voting members of the EOC. These circumstances provide good cause under  
6 AS 42.05.271 for conditioning AHP’s certificate with a requirement that ML&P’s surrender  
7 its EOC voting rights for a term at least equal to the term of the Eklutna PPA and the term  
8 of the MEA PPA.

9 Finding Notice and Request Premature Under Order U-18-102(44)

10 In Order U-18-102(44) we stated that:

11 Under these circumstances, we cannot unconditionally find that MHP is  
12 managerially or technically fit to maintain majority ownership of the Eklutna  
13 Project. We can only find that MHP is managerially and technically fit to  
14 maintain an ownership interest in the Eklutna Project subject to the condition  
15 that before the effective date of either the Eklutna PPA or the MEA PPA, ML&P  
16 surrenders its vote on the EOC under the Eklutna Project agreements so that  
17 Chugach and MEA can jointly manage and operate the Eklutna Project,  
18 including negotiating compliance with the Fish and Wildlife Agreement, without  
19 MHP having a vote on operation or management decisions. **This surrender  
20 must have a term at least equal to the term of the Eklutna PPA and the  
21 MEA PPA, as those agreements may be extended, and cannot be lifted  
22 until such time as MHP has shown to our satisfaction that MHP has  
23 acquired the expertise required to fully participate as a voting member  
24 of the EOC.** This does not prohibit MHP from attending EOC meetings, but  
25 may not allow MHP any ability to delay or change the Eklutna Project decisions  
26 made by the Chugach and MEA representatives on the EOC.<sup>95</sup>

19 In its briefing, AHP has not shown good cause for modifying or interpreting this certificate  
20 condition in a manner that nullifies the minimum term of EOC voting rights surrender  
21 specified in Order U-18-102(44). Therefore, AHP’s voting rights on the EOC are  
22 surrendered for at least the term of the Eklutna PPA and the MEA PPA.

23 The Eklutna PPA and the MEA PPA both became effective on October 30,  
24 2020, the date on which Chugach acquired the service responsibilities and most assets

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26 <sup>95</sup>Order U-18-102(44) at 67 (Emphasis added).

1 of ML&P.<sup>96</sup> The Eklutna PPA and the MEA PPA are both scheduled to expire on  
2 October 31, 2055, roughly 31 years from now.<sup>97</sup> There are provisions in these two  
3 agreements allowing for both extending them and for terminating them early. At this time,  
4 no entity, including ourselves, can predict when the terms of the Eklutna PPA and the  
5 MEA PPA will expire.

6 We have reviewed the documents filed in this docket by AHP and found no  
7 commitment on the part of Corsentino or Schimscheimer to remain employed by AHP  
8 until such time as the terms of the Eklutna PPA and the MEA PPA expire. We do not  
9 know how we could verify the veracity of such commitments had they been made. We  
10 also have no way of evaluating what the requirements to fully participate as a voting  
11 member of the EOC might be at that time. For these reasons, we grant RAPA's motion  
12 to dismiss the Notice and Request on the grounds that it premature under the terms of  
13 Order U-18-102(44). This dismissal is without prejudice to refile closer to the time that  
14 Eklutna PPA and the MEA PPA will expire.

15 Dismissal as Moot

16 In addition to moving for dismissal of the Notice and Request as being  
17 premature under the terms of Order U-18-102(44), RAPA moved for dismissal on the  
18 grounds that the Notice and Request were now moot. RAPA asserted that AHP only  
19 wanted to have its EOC voting rights reinstated so that it could have greater input on  
20 design of the Eklutna Project Fish and Wildlife Program identified in Section 104(a) of  
21 Public Law 104-58. RAPA further asserts that the Governor has now approved the  
22 Eklutna Project Fish and Wildlife Program. Based on this action, RAPA concludes that  
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24 \_\_\_\_\_  
25 <sup>96</sup>See, Order U-18-102(44), Appendix D at 3-4, 35; Appendix H at 7, and *Notice of*  
*Transaction Closing*, filed October 30, 2020, in Dockets U-18-102/U-19-020/U-19-021.

26 <sup>97</sup>Order U-18-102(44), Appendix D at 9, 41; Appendix H at 7, 40.

1 the Notice and Request is now moot and should be dismissed.<sup>98</sup> AHP has disputed  
2 RAPA's assertions on this issue and claims that dismissal on this ground would be  
3 inappropriate.<sup>99</sup> RAPA has replied that its assertions are supported by the record.<sup>100</sup>

4           Given our decision above to dismiss the Notice and Request on the ground  
5 that it is premature under the requirements of Order U-18-102(44), we do not need to  
6 decide if the Notice and Request is also moot. We deny RAPA's motion to dismiss on  
7 the ground that the Notice and Request is moot on the ground that the mootness issue is  
8 now moot.

9 Vacate Procedural Schedule

10           We adopted a procedural schedule for resolution of this docket.<sup>101</sup> With our  
11 decision to dismiss the Notice and Request there is no need to proceed through hearing  
12 in this docket. Therefore, we vacate the remaining procedural schedule for this docket  
13 including the prehearing conference scheduled for November 18, 2024, and the hearing  
14 scheduled to begin on November 18, 2024.

15 Deny Motion to Compel Discovery Responses

16           Chugach and MEA filed a motion to compel discovery responses intended  
17 to produce information to be used in their examination of Corsentino.<sup>102</sup> AHP has  
18 opposed this motion primarily on the ground that the information requested is not relevant  
19 to the scope of this docket.<sup>103</sup> Chugach and MEA have responded to this opposition by  
20 asserting that the requested information is relevant to any determination of Corsentino's

21 \_\_\_\_\_  
22 <sup>98</sup>Motion to Dismiss at 1-7.

23 <sup>99</sup>AHP Response at 2-6.

24 <sup>100</sup>RAPA Reply at 2.

25 <sup>101</sup>Order U-24-024(4).

26 <sup>102</sup>Motion to Compel at 1-18.

<sup>103</sup>AHP Opposition at 7-22.

1 understanding of prudent utility practice and that this determination is within the scope of  
2 this docket.<sup>104</sup>

3 With our decisions above to dismiss the Notice and Request and to vacate  
4 the procedural schedule for this docket, there will be no examination of Corsentino.  
5 Therefore, we deny the Motion to Compel on the ground that it is now moot.

6 Deny Request to Construe Notice and Request

7 AHP has asked us to construe its Notice and Request to be an application  
8 to amend its certificate conditions if we find that the minimum term of EOC voting rights  
9 surrender in Order U-18-102(44) is enforceable.<sup>105</sup> The timeline under which we are  
10 required to resolve this docket runs out January 14, 2025.<sup>106</sup> This would leave  
11 approximately 60 days to address modification of AHP's certificate. Under  
12 AS 42.05.175(a)(2) we are typically allowed 180 days to resolve a certificate amendment  
13 application. We find that there is too little time for us and the parties to address  
14 amendment of AHP's certificate in this docket. Therefore, we deny the request to  
15 construe the Notice and Request to be an application to modify AHP's certificate.

16 Guidance for Future Filings

17 AHP states that if we do not construe its Notice and Request as an  
18 application to amend its certificate, or otherwise grant it the relief it seeks in this  
19 proceeding, it "could simply file a new application to modify its certificate."<sup>107</sup> We have  
20 not construed AHP's Notice and Request to be an application to amend its certificate or  
21 otherwise granted AHP the relief it has requested in this proceeding. We provide AHP  
22 with guidance on future filings seeking relief from the minimum term of EOC voting rights

23 <sup>104</sup>Chugach/MEA Reply at 2-10.

24 <sup>105</sup>AHP Reply Brief at 43.

25 <sup>106</sup>Order U-24-024(1) at 5.

26 <sup>107</sup>AHP Reply Brief at 43.

1 surrender required by Order U-18-102(44). We provide this guidance without having  
2 completed our investigation of the qualifications of Corsentino and Schimscheimer, and  
3 this guidance is not a judgement on their qualifications to be AHP's representative on the  
4 EOC.

5 We start by pointing out that in Order U-18-102(44) we did not require ML&P  
6 to surrender its EOC voting rights merely because the then Municipal Manager was not  
7 qualified to sit as a voting member of the EOC. What we stated was:

8 ML&P asserts that billing and record keeping under the Uniform System  
9 of Accounts will be done for MHP by the professional accountants working for  
10 the MOA's Financial Department. These accountants will also maintain MHP's  
11 continuing property records, calculating annual depreciation and net book  
12 value of plant in service. ML&P has provided no evidence in support of this  
13 assertion that accountants employed by the MOA's Financial Department are  
14 trained to maintain records in accordance with the Uniform System of Accounts  
15 or to maintain continuing property records. However, we are aware that many  
16 of our smaller regulated utilities retain outside accountants to maintain their  
17 records in accordance with our regulations and thus we are aware that those  
18 private resources are available.

19 ML&P proposes that MHP will have a seat on the EOC, even though it  
20 will have no employees. ML&P states that MHP will be managed by the  
21 Municipal Manager, a position currently filled by William D. Falsey. Falsey has  
22 a law degree from Yale Law School and a Bachelor of Science degree in  
23 physics from Stanford University. Falsey has worked as the MOA's manager  
24 since 2017 and worked in legal positions from 2003 through 2017.

25 Chugach witness Dustin Highers testified based on his experience as  
26 chair of the EOC that to be an owner representative on the EOC, it was  
essential that the representative have knowledge of prudent utility practice and  
the Railbelt electric generation and transmission system. Dustin Highers  
testified that there were two ML&P employees he was aware of qualified to sit  
on the EOC and that both of those employees were being transferred to  
Chugach as part of the transaction. There is nothing in Falsey's resume  
indicating that he has any knowledge of the Railbelt generation and  
transmission system, or prudent utility practice which is the management  
standard specified for the MHP EOC representative in both the Eklutna PPA  
and the MEA PPA. ML&P indicated "that, more likely than not, we would utilize  
consultant services to provide that industry-specific expertise and staffing to  
help us make informed decisions as a continuing member of the [EOC]." However,  
ML&P admitted that it has not investigated whether such expertise  
exists in the consulting community.

Under these circumstances, we cannot unconditionally find that MHP is  
managerially or technically fit to maintain majority ownership of the Eklutna  
Project. We can only find that MHP is managerially and technically fit to



1 maintain an ownership interest in the Eklutna Project subject to the condition  
2 that before the effective date of either the Eklutna PPA or the MEA PPA, ML&P  
3 surrenders its vote on the EOC under the Eklutna Project agreements so that  
4 Chugach and MEA can jointly manage and operate the Eklutna Project,  
5 including negotiating compliance with the Fish and Wildlife Agreement, without  
6 MHP having a vote on operation or management decisions. This surrender  
7 must have a term at least equal to the term of the Eklutna PPA and the MEA  
8 PPA, as those agreements may be extended, and cannot be lifted until such  
9 time as MHP has shown to our satisfaction that MHP has acquired the  
10 expertise required to fully participate as a voting member of the EOC. This  
11 does not prohibit MHP from attending EOC meetings, but may not allow MHP  
12 any ability to delay or change the Eklutna Project decisions made by the  
13 Chugach and MEA representatives on the EOC.<sup>108</sup>

8 We required ML&P to surrender its EOC voting rights because it had no person qualified  
9 to sit in EOC meetings and understand the discussion, and because ML&P was proposing  
10 no definitive support team for their EOC representative.

11 Prior to the transaction under which Chugach acquired the ML&P service  
12 obligations and most of the ML&P assets, each member of the EOC was qualified to  
13 participate in meetings and knowledgeably discuss all issues related to management and  
14 operation of the Eklutna Project. Each of those representatives was also supported by  
15 an independent team consisting of the employees, contractors, and consultants required  
16 to operate their vertically integrated electric utility, each of which was interconnected with  
17 other vertically integrated electric utilities.

18 With Chugach's acquisition of ML&P's employees, in addition to ML&P's  
19 service obligations and most assets, ML&P, and its successor AHP have no identified  
20 support team of employees, contractors, or consultants with the breadth and scope of  
21 relevant knowledge that the Chugach and MEA representatives continue to bring to the  
22 EOC meetings. In the Notice and Request, AHP addressed this issue merely by stating:

23 In addition to the auxiliary in-house expertise that Mr. Schimscheimer  
24 provides, AHP will also have access to, and the right to use (at AHP's  
25 expense), contracts of the [Municipality of Anchorage] in order to access any  
26 additional technical and engineering expertise necessary.

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<sup>108</sup>Order U-18-102(44) at 65-67.

1 In footnote 30 at the end of this statement, AHP states:

2 Exhibit 3 at 2. Such firms include Electric Power Systems, Inc., EDC, Inc.,  
3 CRW Engineering Group, Inc. and Taku Engineering.

4 Exhibit 3 to the Notice and Request is a *Memorandum of Understanding Between*  
5 *Anchorage Water and Wastewater Utility and Anchorage Hydropower Utility Re*  
6 *Resolution of Conflicts of Interest*, signed July 18, 2024. The relevant part of this  
7 Memorandum is paragraph 3 on page 2, which states:

8 AH[P] will have access to and right to use, at AH[P]' expense, contracts of the  
[Municipality of Anchorage] to access technical and engineering expertise  
9 necessary to oversee and conduct operations.<sup>109</sup>

10 AHP included no resumes for the proposed support group, no contracts  
11 showing the term and extent of commitment by the contractors or consultants, and no  
12 information about what process AHP will have to go through to pay its contractors and  
13 consultants. We find this generic assertion of support for the proposed AHP voting  
14 representative on the EOC to be no more substantive than ML&P's assertion in Dockets  
15 U-18-102/U-19-020/U-19-021 that they would primarily rely on consultants for the  
16 expertise required to fully participate on the EOC even though they admitted that they  
17 had not yet investigated to determine if consultants with the required expertise were  
18 available.

19 In addition to addressing the minimum term of EOC voting rights surrender  
20 issue, we suggest that in future filings seeking reinstatement of EOC voting rights AHP  
21 provide the information to show that it can bring to EOC meetings a depth and breadth of  
22 technical and managerial expertise at least comparable to the level of expertise that MEA  
23 and Chugach bring to those meetings. This suggestion does not just include the technical  
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25 \_\_\_\_\_  
26 <sup>109</sup>Notice and Request, Exhibit 3 at 2.

1 expertise of AHP's representative to the EOC, but also includes the team of employees,  
2 contractors, and consultants supporting that representative.

3 We denied AHP's motion for expedited consideration of its Notice and  
4 Request because AHP had failed to adequately support its request for reinstatement of  
5 its EOC voting rights. Upon initial review of AHP's filings in this docket we could see no  
6 way of moving forward without taking the time for prefiled testimony, discovery, and  
7 holding a hearing to gather the information necessary to determine if AHP had acquired  
8 the expertise required to fully participate as a voting member of the EOC.<sup>110</sup> We believe  
9 that efficient resolution of future filings on this issue by AHP will be more likely if AHP  
10 provides adequate information in its initial filing.

11 Final Order

12 This order constitutes the final decision in this proceeding. This decision  
13 may be appealed within thirty days of this order in accordance with AS 22.10.020(d) and  
14 Alaska Rule of Appellate Procedure 602(a)(2). In addition to the appellate rights afforded  
15 by AS 22.10.020(d), a party has the right to file a petition for reconsideration in  
16 accordance with 3 AAC 48.105. If such a petition is filed, the time period for filing an  
17 appeal is tolled and then recalculated in accordance with Alaska Rule of Appellate  
18 Procedure 602(a)(2).

19 Docket Closure

20 No substantive or procedural matters remain in this proceeding.  
21 Accordingly, we close this docket.

22  
23  
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25 <sup>110</sup>At the prehearing conference and through the ALJ we denied AHP's motion for  
26 expedited consideration and stated that we would explain that decision in a written order  
to follow. Tr. 15. This is that explanation.

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**ORDER**

THE COMMISSION FURTHER ORDERS:

1. The *Office of the Attorney General’s Motion to Dismiss as Moot*, filed October 15, 2024, by the Office of the Attorney General, Regulatory Affairs and Public Advocacy Section is granted in part and denied in part as discussed in the body of this order.

2. The *Notice and Request for Acknowledgment of Anchorage Hydropower’s Acquisition of Expertise Required to Participate as a Voting Member of the Eklutna Operating Committee*, filed July 18, 2024, by the Municipality of Anchorage d/b/a Anchorage Hydropower, is dismissed as being premature under the requirements of Order U-18-102(44)/U-19-020(39)/U-19-021(39).

3. *Chugach Electric Association, Inc. and Matanuska Electric Association, Inc.’s Motion to Compel Discovery Responses*, filed October 28, 2024, is denied as being moot.

4. The request at page 43 in the *Municipality of Anchorage d/b/a Anchorage Hydropower’s Reply Brief Regarding Interpretation of Order 39*, filed October 29, 2024, to have the *Notice and Request for Acknowledgment of Anchorage Hydropower’s Acquisition of Expertise Required to Participate as a Voting Member of the Eklutna Operating Committee*, filed July 18, 2024, construed as an application to modify Certificate of Public Convenience and Necessity No. 780 is denied as discussed in the body of this order.

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5. Docket U-24-024 is closed.

DATED AND EFFECTIVE at Anchorage, Alaska, this 14th day of November, 2024.

BY DIRECTION OF THE COMMISSION  
(Commissioner Steve DeVries, not participating.)



**Regulatory Commission of Alaska**  
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