

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Robert M. Pickett, Chairman
Kate Giard
Paul F. Lisankie
T.W. Patch
Janis W. Wilson

In the Matter of the Revenue Requirement and
Cost of Service Study Designated as TA381-1
Filed by ALASKA ELECTRIC LIGHT AND
POWER COMPANY

U-10-29

ORDER NO. 2

**ORDER GRANTING INTERIM AND REFUNDABLE RATE INCREASE,
APPROVING TARIFF SHEETS AND REQUIRING FILING**

BY THE COMMISSION:

Summary

We grant the interim and refundable rate increase requested by Alaska Electric Light and Power Company (AEL&P).

Background

We denied the request in TA381-1 filed by AEL&P for a 20 percent across the board interim and refundable increase in energy and demand rates.¹ We scheduled a prehearing conference and hearing on AEL&P's request for an interim and refundable rate increase.² The chairman invited the Attorney General to participate in this

¹Order U-10-29(1), *Order Suspending TA381-1, Denying Request for Interim Rates, Scheduling a Hearing on Interim Rates, Scheduling a Prehearing Conference, Inviting Petitions for Intervention and Participation by the Attorney General, Addressing Timeline for Decision, Designating Commission Panel, and Appointing Administrative Law Judge*, dated June 17, 2010, (Order U-10-29(1)), at Ordering Paragraph 2.

²Order U-10-29(1) at Ordering Paragraphs 3 and 4.

1 conference and hearing.³ At the hearing AEL&P had the opportunity to supplement its
2 initial filing in this matter with additional evidence supporting its requested interim and
3 refundable rate increase.⁴

4 At the prehearing conference, counsel for AEL&P orally requested that we
5 establish a deadline for issuance of a decision on interim and refundable rates following
6 the scheduled hearing.⁵ We are aware that the rule against retroactive ratemaking
7 effectively requires expedited review of interim and refundable rate increase requests.
8 For that reason, the commission set a hearing in this proceeding much earlier than
9 could have been achieved through the petition for reconsideration process.⁶ For the
10 same reason, we electronically granted AEL&P's oral request and committed to issuing
11 a decision on this issue on or before July 16, 2010.⁷

12 AEL&P filed a witness list,⁸ an errata to TA381-1,⁹ and a prehearing
13 brief.¹⁰ The hearing was held as scheduled on July 6, 2010. AEL&P was specifically
14 informed that exhibits accepted into the record for the purposes of this hearing could be
15 subject to challenge at later stages of this proceeding.¹¹ Counsel for AEL&P made an
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17
18 ³*Id.* at 6.

19 ⁴*Id.*

20 ⁵Tr. 12-14.

21 ⁶See 3 AAC 48.105

22 ⁷*Order Granting Request for Establishment of Order Deadline and Requiring*
23 *Filings*, filed electronically on June 24, 2010, (Electronic Ruling).

24 ⁸*Witness List of Alaska Electric Light and Power Company*, filed July 1, 2010.

25 ⁹*Errata to Tariff Advice No. 381-1*, filed July 6, 2010.

26 ¹⁰*Alaska Electric Light and Power Company Interim Rate Relief Request*
Prehearing Brief, filed July 6, 2010 (AEL&P Prehearing Brief).

¹¹Tr. 25-26.

opening statement.¹² AEL&P called Kenneth Scott Willis (Willis)¹³ as its first witness, and through him introduced eight exhibits into the record.¹⁴ AEL&P next called Constance S. Hulbert (Hulbert)¹⁵ as its second witness, and through her introduced thirteen exhibits into the record.¹⁶ AEL&P then called Timothy D. McLeod¹⁷ as its final witness,¹⁸ and AEL&P's counsel provided closing argument.¹⁹

¹²Tr. 26-30.

¹³AEL&P's Vice President, generation department.

¹⁴Tr. 30-122. Exhibits H-1 (untitled, 15 pages), H-2 (*Lake Dorothy Milestones*, 2 pages), H-3 (*Volume 1, Juneau 20 Year Power Supply Plan, December 1984*, 222 pages), H-4 (*Juneau 20-Year Power Supply Plan Update, August 1990*, 274 pages), H-5 (*Consulting Engineer's Report – Alaska Industrial Development and Export Authority Power Revenue Bonds Secured by Loan to Alaska Electric Light and Power Company*, 41 pages), H-6 (*Advantages and Disadvantages of Hydroelectric Power*, 1 page), H-7 (*Summary of Benefits to Customers of Lake Dorothy*, 1 page), and H-8 (*Hydro Project Cost Comparisons*, 1 page).

¹⁵AEL&P's Vice President and Secretary-Treasurer.

¹⁶Tr. 122-180. Exhibits H-9 (*Alaska Electric Light and Power Company Achieved Rate of Return on Equity (Unadjusted Calendar [sic] Year) For 12 Month Period Ending December 31, 2009*, 2 pages), H-10 (*AEL&P Docket U-10-29, Calculation of Achieved Rate of Return Regulatory Method Using Pro forma Test Year Data*, 1 page), H-11 (untitled, 3 pages), H-12 (*Master Loan Agreement*, 15 pages), H-13 (*Alaska Electric Light and Power Company Debt Service Coverage For 12 Month Period Ending December 31, 2009*, 1 page), H-14 (*Sample of COPA Increases*, 1 page), H-15 (*Residential Utility Rates per kWh for 750 kWh*, 2 pages), H-16 (*Alaska Electric Light and Power Revenue Requirement Study – No Lake Dorothy Scenario*, 49 pages), H-17 (*\$ per kWh – Base Forecast Average Water year*, 8 pages), H-19 (*Projected Rev Req (2004 RCA)*, 1 page), H-20 (*Tariff Advice Letter No 381-1*, 314 pages), and H-21 (*Errata To Tariff Advice No. 381-1*).

¹⁷AEL&P's President and General Manager.

¹⁸Tr. 180-187.

¹⁹Tr. 187-194.

Discussion

We are required to ensure that rates charged by the utilities we regulate are just and reasonable.²⁰ A just and reasonable rate must include a fair return to the utility on property used to provide utility service.²¹ Fundamental to the ratemaking process is the rule that changes in rates may only be applied prospectively.²² Under this rule, if a utility provides utility services at a rate that is unreasonably low, the utility forever loses the opportunity to recover the difference between the rates charged and just and reasonable rates. Similarly, if consumers pay permanent rates that are unreasonably high, there is no opportunity to recoup excess payments.²³

Consistent with this rule against retroactive ratemaking, we have the authority to declare a portion of rates charged by a utility to be interim and refundable.²⁴ Typically, we exercise this authority by requiring that portion of interim rate increases not found just and reasonable to be refunded to consumers. This allows us to minimize potential harm to utilities caused by the delay between filing and resolution of rate increase requests and protects consumers from paying excessive rates.

In evaluating requests for interim and refundable rate increases, we balance the hardships to determine if the utility has made a serious and substantial

²⁰AS 42.05.141(a)(3) and 42.05.381(a)

²¹See *Alaska Public Utilities Commission v. Municipality of Anchorage d/b/a Anchorage Telephone Utility*, 902 P.2d 783, 789 (Alaska 1995). See e.g., *United States Gypsum, Inc. v. Indiana Gas Co., Inc.*, 735 N.E.2d 790, 797 (Ind. 2000) (general discussion of “regulatory compact”).

²²*Regulatory Commission of Alaska v. Tesoro Alaska Co.*, 178 P.3d 1159, 1171 (Alaska 2008) (citing *Matanuska Electric Association, Inc. v. Chugach Electric Association, Inc.*, 53 P.3d 578, 583 (Alaska 2002)).

²³*Matanuska Electric Association, Inc.*, *supra*.

²⁴*Far North Sanitation, Inc. v. Alaska Public Utilities Commission*, 825 P.2d 867, 873-874 (Alaska 1992).

1 showing that existing rates are confiscatory.²⁵ The utility meets this burden by showing
2 that its request is not frivolous or obviously without merit.²⁶ It has been recognized that
3 this test will almost invariably result in the granting of interim and refundable rate
4 requests by utilities.²⁷

5 TA381-1

6 A major basis for AEL&P's requested rate increase is the additional costs
7 incurred to construct and operate Phase I of the Lake Dorothy Hydroelectric Project.²⁸
8 Other than a few unsupported assertions by management in its tariff advice filing,
9 AEL&P provided us with no evidence that the Lake Dorothy Project is used or useful in
10 the provision of electric utility service.²⁹ We received numerous comments from the
11 public questioning these assertions.³⁰ We denied AEL&P's request for an interim and
12 refundable rate increase in part because of the lack of evidence that the Lake Dorothy
13 Project is required to provide reasonably reliable utility service, or is used and useful in
14 the provision of utility service.³¹ Any proposal adding significant assets to rate base and
15 resulting in significant impacts on rates must be supported in the tariff advice filing with
16 substantially more evidence than AEL&P included in TA381-1.

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19 ²⁵*Alaska Public Utilities Commission v. Greater Anchorage Area Borough*, 534
20 P.2d 549, 559 (Alaska 1975) (GAAB).

21 ²⁶*See City of Kenai v. Friends of Recreation Center, Inc.*, 129 P.3d 452, 456
(Alaska 2006).

22 ²⁷*See GAAB.*

23 ²⁸TA381-1, filed May 3, 2010, at 2.

24 ²⁹*See TA381-1, Prefiled Direct Testimony of Timothy D. McLeod*, at 6-9, and
Prefiled Direct Testimony of Constance S. Hulbert, at 7.

25 ³⁰Order U-10-29(1) at 2.

26 ³¹*Id.* at 5.

Lake Dorothy Project

At the July 6, 2010 hearing, AEL&P presented Willis as its primary witness on the Lake Dorothy Project.³² Willis testified about AEL&P's generation resources and loads.³³ Willis also testified and presented evidence related to the planning efforts that resulted in the decision to build Phase I of the Lake Dorothy Project.³⁴ Willis provided a detailed description of the Lake Dorothy Project and the consumer benefits expected from that Project.³⁵ Finally, Willis testified about the construction and operational history of the Lake Dorothy Project, including the seepage problems encountered, and the construction cost overruns incurred.³⁶

Among the exhibits introduced by Willis was the *Juneau 20 Year Power Supply Plan*, dated December 1984.³⁷ This plan addressed load growth projections and power supply options available for the Juneau area. This plan found that construction of the Lake Dorothy Project had several advantages over other potential generation resource additions.³⁸ Willis also introduced the 1990 *Juneau 20-Year Power Supply Plan Update*.³⁹ This update found the Lake Dorothy Project to be the lowest-cost generation option over its life cycle, but expressed cost concerns if mine customers were not willing to sign long-term power purchase agreements.⁴⁰

³²Tr. 30.

³³Tr. 33-34, 68-81, 85-87; Exhibit H-1.

³⁴Tr. 34-55; Exhibits H-2, H-3, H-4, H-5.

³⁵Tr. 55-68, 81-85, 87-90, 120-121; Exhibits H-1, H-6, H-7.

³⁶Tr. 90-115, 116-120, 121; Exhibit H-8.

³⁷Exhibit H-3.

³⁸*Id.* at pages 6-2 through 6-4.

³⁹Exhibit H-4.

⁴⁰*Id.* at pages ES-3 through ES-4.

1 Willis also introduced a 2006 consulting engineer's report prepared by
2 CH2MHill for AEL&P and the Alaska Industrial Development and Export Authority.⁴¹
3 CH2MHill reviewed AEL&P's load forecast and existing generation resources.⁴²
4 CH2MHill also investigated the Lake Dorothy Project design, output projections,
5 economic projections, and risks.⁴³ CH2MHill found that the Lake Dorothy Project
6 design and projections were reasonable, and that the risks were accounted for
7 prudently.⁴⁴

8 When CH2MHill evaluated the Lake Dorothy Project, it was estimated to
9 cost \$51.8 million, including allowance for funds used during construction (AFUDC) but
10 excluding financing costs.⁴⁵ CH2MHill identified construction cost overruns as one of
11 the key project risks.⁴⁶ The Lake Dorothy Project has reportedly cost AEL&P, including
12 AFUDC but excluding financing costs, in the range of \$79 million.⁴⁷ Willis testified about
13 the cause of the Lake Dorothy Project cost overruns.⁴⁸

14 The Lake Dorothy Project began generating electricity on August 31,
15 2009⁴⁹ with a nameplate capacity of 14.3 MW.⁵⁰ It was operated at 14-15 MW's
16 between that date and March 8, 2010, partially to test the facility and partially to dewater

18 ⁴¹Exhibit H-5.

19 ⁴²*Id.* at 3-18.

20 ⁴³*Id.* at 18-39.

21 ⁴⁴*Id.* at 40.

22 ⁴⁵*Id.* at 30; Tr. at 108.

23 ⁴⁶Exhibit H-5, at 38.

24 ⁴⁷Exhibit H-8; Tr. at 109.

25 ⁴⁸Tr. at 109-114.

26 ⁴⁹Tr. at 55.

⁵⁰Tr. at 60.

1 Bart Lake in preparation for the construction work designed to reduce seepage at the
2 dam.⁵¹ The Lake Dorothy Project has been out of service since March 8, 2010,⁵² but is
3 expected back into service by July 20, 2016.

4 Based upon this record, we cannot find AEL&P's assertion that the Lake
5 Dorothy Project is required to provide reasonably reliable utility service to be frivolous or
6 obviously without merit. Nor can we find AEL&P's assertion that the Lake Dorothy
7 Project is used and useful in the provision of public utility service to be frivolous or
8 obviously without merit. Therefore, we find that AEL&P has made a serious and
9 substantial showing that costs related to the Lake Dorothy Project should be considered
10 in evaluating AEL&P's request for an interim and refundable rate increase.

11 Contributed Capital

12 AEL&P's rate increase was premised in part on inclusion of \$6,771,451 of
13 Contributed Capital in rate base.⁵³ Hulbert addressed our concerns regarding this
14 issue.⁵⁴ Specifically, Hulbert identified this line item as including \$5 million of new
15 equity investment by AEL&P's parent company in conformance with Lake Dorothy
16 Project debt covenants.⁵⁵ She identified the remainder as being the cost incurred by
17 AEL&P's parent company to obtain the federal license authorizing construction of the
18 Lake Dorothy Project, which was subsequently transferred to AEL&P.⁵⁶

21 ⁵¹Tr. at 60 and 97-99.

22 ⁵²Tr. At 97.

23 ⁵³TA381-1, at Revenue Requirement Study, Schedules 1, 5, 9 and 12.

24 ⁵⁴Tr. 147-149, 177-179.

25 ⁵⁵Tr. 179.

26 ⁵⁶Tr. at 178-179.

1 Debt Covenants

2 AEL&P asserted in TA381-1 that a rate increase was required to help it
3 meet debt covenants.⁵⁷ In response to our concern about this assertion, AEL&P
4 submitted a copy of its debt instrument.⁵⁸ Hulbert testified that with current rates,
5 AEL&P is substantially exceeding the debt service coverage ratio required by its debt
6 instrument.⁵⁹

7 Rate Shock

8 In response to our concern about potential rate shock, AEL&P cited to
9 prior decisions where utility rate increases of 18.5 percent or more have been granted.⁶⁰
10 Additionally, absent a finding of good cause, AEL&P is entitled to its full requested
11 interim rate increase as a matter of law in a little more than three months time.⁶¹ Given
12 the lack of any testimony or evidence contrary to the assertions of AEL&P, we do not
13 have a basis for delaying implementation to AEL&P's requested interim and refundable
14 rate increase.

15 Conclusion

16 We are required by statute to grant the interim rate increase requested by
17 AEL&P within six months, unless we find good cause to deny such request.⁶² In a
18 proceeding where the evidentiary record includes only information presented by the
19 requesting utility, it is difficult for us to deny an interim rate increase. The Attorney
20 General was invited, but did not participate in the July 6, 2010 hearing on AEL&P's

21 ⁵⁷TA381-1 at 4.

22 ⁵⁸Tr. 146; Exhibit H-12.

23 ⁵⁹Tr. 146-147; Exhibit H-13.

24 ⁶⁰Tr. 151-155; Exhibits H-14 and H-15

25 ⁶¹AS 42.05.421(a)(1)

26 ⁶²*Id.*

1 interim and refundable rate increase request.⁶³ Participation by the Attorney General
2 would have been helpful.

3 Based upon our review of the information provided, and the public
4 comments received, we are concerned about certain aspects of AEL&P's requested
5 rate increase. In particular, we are concerned about the amount of cost overruns
6 incurred by AEL&P in construction of the Lake Dorothy Project. We still have doubts
7 about AEL&P's assertion that the Lake Dorothy Project began commercial operation on
8 August 31, 2009. We are concerned about the ongoing seepage issues at the Bart
9 Lake dam, and the costs that might yet be incurred to resolve those issues.⁶⁴ Related
10 to the seepage issue, we are concerned by the testimony indicating that Bart Lake dam
11 was constructed without adequate subsurface investigation.⁶⁵ However, a full
12 evidentiary hearing with adverse parties and/or AG participation will provide a more
13 complete record for us to reach a final decision regarding the Lake Dorothy Project at
14 the conclusion of this proceeding.

15 Based upon the record to date, we find that AEL&P is entitled to recover
16 costs related to the Lake Dorothy Project on an interim and refundable basis during the
17 course of this proceeding. By approving AEL&P's request, we provide AEL&P with the
18 opportunity to earn a reasonable rate of return on its plant investment while providing
19 the highest level of consumer protection available to us.

24 ⁶³Order U-10-29(1) at 6.

25 ⁶⁴Tr. at 91-97.

26 ⁶⁵Tr. at 92, 94.

Interim and Refundable Rates

AEL&P may place the amounts received by reason of the interim and refundable rate increase in escrow pursuant to AS 42.05.421(c), or agree to pay the interest rate of 10.5 percent per annum, specified by AS 45.45.010(a), on any refunds that may be required at the conclusion of this docket. Interest will begin to accrue when customers pay bills based on the interim and refundable rates and will continue until all refund amounts, if any, are paid to customers. We require AEL&P to keep an accurate account of the amounts subject to refund. If refunds are required at the conclusion of this proceeding, we will require AEL&P to file a plan for the disbursement of refunds. We require AEL&P to advise us as to its choice between these options within seven days of the effective date of this order.

Tariff Sheets

We approve revised Tariff Sheet Nos. 104, 105, 113, 114, 119, 132, 135, and 136, filed May 3, 2010, with TA381-1 under the cover sheet entitled Interim Rates, effective July 16, 2010.⁶⁶

ORDER

THE COMMISSION FURTHER ORDERS:

1. A 20 percent across-the-board interim and refundable rate increase on energy and demand charges, as requested by Alaska Electric Light and Power Company in TA381-1, filed May 3, 2010, is approved.

2. By 4 p.m., July 23, 2010, Alaska Electric Light and Power Company shall advise as to whether it will place the amounts received by reason of the interim

⁶⁶Validated copies of the approved tariff sheets will be returned under separate cover.

1 and refundable rate increase in escrow or will pay the statutory interest rate of 10.5
2 percent per annum on any refunds that may be required in this proceeding.

3 3. Revised Tariff Sheet Nos. 104, 105, 113, 114, 119, 132, 135, and
4 136, filed May 3, 2010, by Alaska Electric and Power Company, are approved effective
5 July 16, 2010.

6 DATED AND EFFECTIVE at Anchorage, Alaska, this 14th day of July, 2010.

7 BY DIRECTION OF THE COMMISSION
8 (Commissioner Kate Giard, not participating.)

