TO: Senator Gene Therriault
Chair
Legislative Budget and Audit Committee

FROM: Rosalie Nizich
Commission Section Manager

THROUGH: Kate Giard
Chairman


DATE: January 23, 2006

Under AS 42.05.175(g), the Commission is required to file quarterly reports with the Legislative Budget and Audit Committee identifying all extensions ordered under AS 42.05.175(f).

The Commission extended the statutory timeline in the following dockets, after consent from all parties, as follows:


The Commission reports the following orders were issued extending the statutory timeline for good cause under AS 42.05.175(f):

Order U-05-54(6), dated December 1, 2005, Order Granting in Part, Motion for Issuance of Subpoena Duces Tecum and Affirming Electronic Rulings Requiring Expedited Filings and Granting Petition for Reconsideration.


I would also like to follow-up on the dockets that had extensions reported under AS 42.05.175(f) for the period January 1 - September 30, 2005.

For the 1st quarter:

Docket U-04-22/U-04-23: final order was issued on September 2, 2005.

Docket U-04-7: as stipulated by the parties, remains open for further resolution of issues.

For the 2nd quarter:

Docket U-05-12: the parties stipulated to a hearing for January 17, 2006, with a final order to be issued by April 30, 2006; however, on January 17, 2006, the parties filed a stipulation resolving all disputed issues.

Docket U-04-104: final order was issued November 25, 2005.

For the 3rd quarter:

Docket U-03-85(9): final order was issued December 13, 2005.


Docket U-05-4: a final order is to be issued by March 24, 2006. In this docket, the statutory timeline extended by Order U-05-4(1), was vacated. In Order U-05-4(4), the statutory timeline was recalculated based on application completeness. See attached Order U-05-4(4), dated December 9, 2005, Order Vacating Portions of Orders U-05-4(1) and U-05-4(3) Regarding Statutory Timeline, Establishing Applicable Statutory Timeline, and Addressing Motion for Expedited Consideration and Petition for Reconsideration.

Attachments
STATE OF ALASKA
THE REGULATORY COMMISSION OF ALASKA

Before Commissioners: Kate Giard, Chairman
Dave Harbour
Mark K. Johnson
Anthony A. Price
James S. Strandberg

In the Matter of the Investigation into the Revenue Requirement and Proposed Rate Increase, Designated as TA2-642, Filed by MIDTOWN ESTATES WATER UTILITY, INC., a Wholly-owned Subsidiary of the Aleut Corporation, Inc.

ORDER EXTENDING STATUTORY TIMELINE, EXTENDING SUSPENSION PERIOD, AND AFFIRMING ELECTRONIC RULING

BY THE COMMISSION:

Summary

We extend, for good cause, the statutory timeline for issuing a final order in this docket for an additional sixty days until January 30, 2006. We extend the suspension of TA2-642. We also affirm our electronic ruling granting the motion to accept late filing filed by Midtown Estates Water Utility, Inc. (MEWU).

Background

We required MEWU to file additional information regarding affiliate relations and maintenance and operations.¹ We also extended the suspension of TA2-642 until December 1, 2005. We granted MEWU’s request for an additional sixty

days to file the information we required. We concluded that MEWU demonstrated that it had insufficient personnel to accumulate the data and complete other fiscal projects, and that accumulation of the data would require a substantial amount of personnel time.

MEWU filed the additional information one day late along with a motion to accept the late filing. The additional information consisted of 1,798 pages of documents. We issued an electronic ruling granting the motion to accept MEWU's late-filed data.

MEWU filed an additional seven pages of documents.

Discussion

AS 42.05.175(c) requires that we issue a final order not later than fifteen months after a complete tariff filing is made for a tariff filing that changes the utility's revenue requirement or rate design. We would therefore be required to issue a final order in this docket by December 1, 2005. AS 42.05.175(f) provides that we may extend the timeline, for 90 days or less, if good cause exists. We conclude that good cause exists to extend the statutory timeline.

While we were optimistic that we would be able to complete our review and analysis of the voluminous data submitted by MEWU within the confines of the original statutory timeline, we find that we are unable to do so. MEWU submitted 1,805 pages of data in response to our request for information. Although we need additional time to complete our review, we do not want to unduly delay this matter. We conclude that it would be reasonable to extend the statutory timeline for a commensurate period of time granted to MEWU to submit the filing. Accordingly, we extend the statutory

---


3Motion to Accept Late Filing; Notice of Filing Additional Information, filed July 1, 2005.

4On July 7, 2005, MEWU was electronically notified of this decision.

5Supplement to Notice of Filing Additional Information, filed July 7, 2005.
timeline for an additional sixty days. TA2-624 remains suspended until January 30, 2006.

We affirm our electronic ruling granting MEWU's motion to accept late filing. We conclude that MEWU presented good cause for the late filing: photocopying problems with voluminous data and counsel's office closed for funeral services.

ORDER

THE COMMISSION FURTHER ORDERS:

1. The statutory timeline for issuing a final order in this docket is extended until January 30, 2006.

2. TA2-642 remains suspended until January 30, 2006.

3. The electronic ruling granting the motion to accept late filing filed by Midtown Estates Water Utility, Inc., is affirmed.

DATED AND EFFECTIVE at Anchorage, Alaska, this 1st day of December, 2005.

BY DIRECTION OF THE COMMISSION
(Commissioners Dave Harbour and Anthony A. Price, not participating.)

(SEAL)
STATE OF ALASKA
THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:
Kate Giard, Chairman
Dave Harbour
Mark K. Johnson
Anthony A. Price
James S. Strandberg

In the Matter of the Tariff Revision, Designated as TA135-4, Filed by ENSTAR NATURAL GAS COMPANY, A DIVISION OF SEMCO ENERGY INC., for Revision of its Bill Payment Methods

ORDER GRANTING IN PART, MOTION FOR ISSUANCE OF SUBPOENA DUDES TECUM AND AFFIRMING ELECTRONIC RULINGS REQUIRING EXPEDITED FILINGS AND GRANTING PETITION FOR RECONSIDERATION

BY THE COMMISSION:

Summary
We grant, in part, the Attorney General's (AG's) motion for issuance of administrative subpoena duces tecum. We affirm electronic rulings requiring expedited filings and granting the AG's petition for reconsideration.

Background
We suspended TA135-4, filed by ENSTAR,¹ for further investigation. We allowed ENSTAR to retire its recurring credit card program and allowed the new third-party vendor program to be placed into effect on an interim basis.²

¹ENSTAR Natural Gas Company, a Division of SEMCO Energy Inc.
On September 21, 2005, the AG notified us of his intention to participate in this proceeding and requested a prehearing conference for the parties to establish a procedural schedule. In Order U-05-54(5), we established a prehearing conference to convene on November 3, 2005 and required the parties to submit a proposed procedural schedule that would allow for a two-day hearing to conclude no later than January 13, 2006.

Petition for Reconsideration

The AG petitioned for reconsideration of our requirement that the hearing be completed by January 13, 2006 and asked us to extend the statutory deadline in this docket by 90 days to accommodate the requested change in hearing schedule. The AG also moved for expedited consideration of the petition for reconsideration. We required the parties to file expedited responses and reply to the motion for expedited consideration. ENSTAR opposed expedited consideration. We granted the petition for reconsideration and extended the statutory timeline by 90 days.

3 Notice of Election to Participate, filed September 21, 2005; Request for Prehearing Conference to Set Schedule, filed September 21, 2005.
4 Order U-05-54(5), Order Inviting Intervenors; Scheduling Prehearing Conference And Appointing Hearing Examiner, dated October 26, 2005.
5 Petition for Reconsideration from Order 5 and Motion to Find Good Cause to Extend the Statutory Deadline by 90 Days, filed October 27, 2005.
6 The parties were electronically notified on October 28, 2005.
7 ENSTAR’s Opposition to the Attorney General’s Motions for Immediate Decision and Expedited Consideration, filed October 31, 2005.
8 The parties were electronically notified on November 3, 2005.
Subpoena Duces Tecum

The AG also moved for issuance of an administrative subpoena requiring the Official Payments Corporation and EPOS Corporation (collectively, OPC) to produce records and other information. ENSTAR opposed the motion and the AG replied.

Discussion

Subpoena Duces Tecum

The AG stated that the issue in this proceeding is whether TA135-4 should be granted permanent status. TA135-4 is a request by ENSTAR to revise its credit card and electronic check billing services by outsourcing the processing of such methods of payment to OPC. OPC assesses a fee for processing ENSTAR customer payments. As OPC is not a party to this proceeding, the AG stated that the subpoena duces tecum is necessary to require document production from OPC.

The AG's proposed subpoena duces tecum sets forth eight specific requests for production of information from OPC. Three requests seek documents regarding ENSTAR customers; four requests seek information regarding OPC's costs.
and profits, and the last seeks information regarding payments between OPC and ENSTAR.

ENSTAR opposed the motion for subpoena on the grounds that it seeks irrelevant information on a non-issue from an unregulated third-party. ENSTAR stated that after the Commission denied ENSTAR the right to recover the full costs of the credit card fees in its rates, ENSTAR was no longer willing to absorb those costs; ENSTAR's request to discontinue its pilot credit card program was granted; and ENSTAR is not willing to participate in an evaluation of the defunct pilot program.

The AG replied that ENSTAR's claimed need to outsource this part of its billing and collection activity due to its cost requires evaluation in tandem with the resulting impact from such outsourcing. The AG stated that the resulting impact from such outsourcing necessarily requires an evaluation of whether the fees assessed for this service are excessive to consumers.

We address discovery requests AG-EP1-1 to AG-EP1-3 and AG-EP1-8 as these relate to documents regarding ENSTAR customers and information ENSTAR states it can make available to the AG.

The AG states that the information sought in these requests is needed to evaluate the cost to ratepayers for different types of billing processing. ENSTAR noted that the first three discovery requests, AG-EP1-1 to AG-EP1-3, seek information

18ENSTAR's Opposition to the Attorney General's Motion for Subpoena, filed October 17, 2005 at 4-5 (Opposition).
19Reply to ENSTAR's Opposition to Motion for Issuance of Administrative Subpoena Duces Tecum, filed October 21, 2005 at 2 (Reply).
20Memorandum at 5.
about ENSTAR customers and the credit card fees they have paid to date. ENSTAR stated that information is in ENSTAR’s possession and can be provided by ENSTAR, eliminating the need for a third-party subpoena.\textsuperscript{21} ENSTAR also asserted that AG-EP1-8 asks for records of payments between ENSTAR and OPC. ENSTAR asserted there have been no such payments, in either direction, which is information available through ENSTAR. Again, ENSTAR asserted that a third-party subpoena is not needed for AG-EP1-8.\textsuperscript{22}

The AG replied that while it may be possible that ENSTAR has the information contained in AG-EP1-1 to AG-EP1-3, the AG should be entitled to corroborate data produced by ENSTAR with that subpoenaed from OPC and that ENSTAR has no right to dictate discovery sources.\textsuperscript{23}

We agree with the AG and grant the AG’s request for information requests AG-EP1-1 through AG-EP1-3 and AG-EP1-8. Further, we find the information about the costs ENSTAR’s customers have incurred from ENSTAR’s outsourcing of this previously internal function is within the scope of this investigatory docket and that such information will aid us in determining whether to allow TA135-4 to go into effect on a permanent basis.

We evaluate the AG’s request and ENSTAR’s opposition to information requests AG-EP1-4 through AG-EP1-7. These requests relate specifically to internal costs and profit margins of OPC; the service contracts OPC has with credit card companies VISA, AMEX, Mastercard and Discover; the fees OPC pays for processing ENSTAR customers’ credit cards, the personnel and overhead costs incurred by OPC

\textsuperscript{21}Opposition at 2.
\textsuperscript{22}Opposition at 2.
\textsuperscript{23}Reply at 4-5.
for processing ENSTAR’s customer payments, and OPC’s rate of profit earned on ENSTAR’s customers’ bill processing

In its Memorandum, the AG stated its evaluation will need to include a comparison of ENSTAR’s internal processing and fee costs for processing customers’ credit card and electronic payments with that of OPC’s charges and costs for processing ENSTAR customer credit card and electronic check payments.24

ENSTAR opposed, stating that third-party supplier’s internal costs are beyond our jurisdiction and are part of this analysis only if there is an affiliate relationship. ENSTAR stated that OPC is not an affiliate of ENSTAR and that the affiliate statute (AS 42.05.511(c)) does not apply.25 ENSTAR also stated that ENSTAR’s management made diligent efforts to find the most reputable and reliable third-party provider at the lowest price and listed the reasons that it chose OPC’s services. ENSTAR stated it rejected the other candidates because they were either more expensive or did not have the experience. ENSTAR concluded by stating it would be appropriate for the AG to ask ENSTAR about the procedure it followed to select OPC from among the available competitive choices, but not appropriate to inquire into the internal cost structure of an unaffiliated third party providing a voluntary service to the customers of a public utility.26

24 Memorandum at 5.
25 Opposition at 3.
26 Opposition at 4.
Ratepayers using the voluntary OPC payment method are charged a fixed (“convenience”) fee of $3.50 for the service.\textsuperscript{27} The AG stated, in its Memorandum, that a comparison of ENSTAR’s internal processing and fee costs for processing customers’ credit card and electronic payments with OPC’s charges and costs for processing ENSTAR’s customers’ credit card and electronic check payments is necessary to evaluate the cost to ratepayers for different types of billing processing.

ENSTAR stated that the AG goes astray with its contention that its evaluation must compare ENSTAR’s costs with those of OPC. ENSTAR asserted that the way to evaluate the reasonableness of a third-party supplier’s fees is to compare them to the other choices available in the competitive marketplace.

We deny the AG’s requests designated as AG-EP1-4 through AG-EP1-7. We agree with ENSTAR that OPC’s internal costs and profit do not provide a relevant basis for comparison to ENSTAR’s internal costs and fees. ENSTAR is a public utility and its internal costs are those of a regulated utility. In this order, we grant the AG the ability to determine what the transition to a voluntary third-party processing agent has cost the ratepayers by allowing discovery on items AG-EP1-1 through AG-EP1-3 and AG-EP1-8.

\textsuperscript{27}Letter to RCA from ENSTAR, filed October 28, 2005. The $3.50 fee was effective November 1, 2005. Before that date, the fee paid by ENSTAR ratepayers varied according to type and amount of payment:

Electronic Checks:
- $2.50 per transaction up to $10,000 for all customer types; or
- $15.00 per transaction for all transactions greater than $10,000.

Credit Cards:
- $3.50 per transaction up to $400 for residential payments
- $6.00 per transaction up to $700 for commercial users.
A subpoena duces tecum is a tool for prehearing discovery. In our proceedings, each party has the right to request discovery from other parties and the obligation to respond to other parties' discovery requests.\textsuperscript{28} We issued an order governing discovery and an order governing confidential discovery in this proceeding. However, neither provides for discovery from a third-party contractor such as OPC. We are persuaded that some of the information requested by the AG is necessary for the AG to have an adequate opportunity to investigate issues relevant to this proceeding. It appears that the only means of eliciting documents from OPC is through the use of our subpoena power. Therefore, pursuant to AS 42.05.151(c) and 3 AAC 48.055 we grant, in part, the AG's motion for subpoena duces tecum and require OPC to produce documents.

Initially, the AG stated that EPOS and OPC have not provided Alaska with the name and address of a registered agent for service of process and asked that, pursuant to AS 10.06.765, service of process be made on the Commissioner of the Department of Commerce, Community and Economic Development.\textsuperscript{29} In his Reply,\textsuperscript{30} the AG provided additional information. The AG stated that both EPOS and OPC are wholly owned subsidiaries of Tier Technologies, Inc. and that Corporation Service Company is the registered agent for Tier Technologies, Inc. Therefore, the AG requested that we issue a subpoena to both Corporation Service Company and the Commissioner of the Department of Commerce, Community and Economic

\textsuperscript{28} 3 AAC 48.155(a)(8) and 3 AAC 48.155(b)(1).
\textsuperscript{29} Memorandum at 5.
\textsuperscript{30} Reply at 5.
Development to ensure proper service is provided. A subpoena duces tecum addressed to each is attached to this order as an appendix.

Petition for Reconsideration

In Order U-05-54(5), issued October 26, 2005, we granted the AG's motion for a prehearing conference and set an outside deadline of January 13, 2006 to complete a hearing in this docket. We established the January 13, 2006 date for completion of the hearing to allow sufficient time for us to review the record, adjudicate the merits of this proceeding, and issue a final order before the statutory timeline for a final order, February 20, 2006.

The AG petitioned for reconsideration of the provisions of Order U-05-54(5) that required the hearing to be completed by January 13, 2006 and requested that we find good cause under AS 42.05.175(f) to extend the statutory deadline by 90 days to accommodate the hearing schedule change. In addition, the AG filed for expedited consideration of the requests.

The AG asserted that adhering to the proposed deadline of January 13, 2006 will work an unreasonable hardship and the "[t]he true casualty . . . will be the public interest . . . " The AG also asserted that the Commission cannot meet its statutory mandate to ensure ENSTAR's tariff filing is "fair, just and reasonable to

31Id. at 6.

32See AS 42.05.175(b) which states "[n]otwithstanding a suspension ordered under AS 42.05.421, the commission shall issue a final order not later than nine months after a complete tariff filing is made for a tariff filing that does not change the utility's revenue requirement or rate design.

33Petition for Reconsideration from Order 5 and Motion to Find Good Cause to Extend the Statutory Deadline by 90 Days, filed October 27, 2005.

34Memorandum in Support of Petition for Reconsideration from Order 5 and Motion to Find Good Cause to Extend the Statutory Deadline by 90 Days, filed October 27, 2005 at 5.
consumers and the public interest if an abbreviated schedule forces a truncated period for discovery and analysis" and that the January 13, 2006 deadline fails to take into account other demands on counsel. For these reasons, the AG petitioned for reconsideration and also asked us to find good cause to extend the statutory deadline for issuance of a final order in this proceeding.

ENSTAR asserted that the AG apparently misunderstood the scope of the docket and did not provide good cause for us to extend the statutory timeline. According to ENSTAR, only two narrow issues remain. In addition, ENSTAR expressed its willingness to provide complete documentation of its selection criteria and to explain its reasons for choosing OPC. ENSTAR asserted that “[o]nce that documentation is reviewed, the docket can be quickly and easily decided, within the statutory timeline.”

ENSTAR opposed expedited consideration stating that the AG allowed nearly three months to pass before electing to participate and should not now be allowed to claim that there is insufficient time to decide this matter before the statutory timeline expires. ENSTAR disagreed with the AG’s assertion that there was an urgent need to reconsider the hearing date and to extend the statutory timeline.

The AG replied that the current schedule substantially prejudices the AG in investigating issues in this docket, conducting discovery, preparing testimony, reviewing reply filings and preparing for hearing.

We reviewed the record and determined that, with a prehearing conference scheduled for November 3, 2005, we would make the most efficient use of

---

35 Id.

36 ENSTAR’s Opposition to the Attorney General’s Motions for Immediate Decision and Expedited Consideration, filed October 31, 2005 at 6.

37 ENSTAR’s Opposition to the Attorney General’s Motions for Immediate Decision and Expedited Consideration, filed October 31, 2005.
administrative and parties' resources by granting expedited consideration of the AG's petition for reconsideration and motion to extend the statutory timeline. While a significant amount of time elapsed between the suspension date and the date the AG filed an appearance, we find that the AG's meaningful participation in this docket will provide us with a more complete record upon which to base a reasoned decision.

Electronic Rulings

When the AG moved for expedited consideration of the petition for reconsideration and of the motion to find good cause to extend the statutory timeline, we determined that the parties should make expedited filings. We notified the parties in an electronic ruling issued October 28, 2005. This order affirms that electronic ruling.

After ruling on the petition for reconsideration and the motion to extend the statutory timeline, we found it reasonable to inform the parties of our rulings and ask them to come to the prehearing conference with a procedural schedule based on dates consistent with the extended statutory timeline. We notified the parties in an electronic ruling dated November 3, 2005. This order affirms that electronic ruling.

ORDER

THE COMMISSION FURTHER ORDERS:

1. The motion for issuance of administrative subpoena duces tecum filed by the Attorney General on October 6, 2005 is granted, in part. The subpoenas are attached to this order as appendices.

2. The electronic ruling issued October 28, 2005 that required expedited filings is affirmed.

3. The electronic ruling issued November 3, 2005 that granted the motion for expedited consideration filed by the Attorney General on October 27, 2005; granted

38 The parties were electronically notified on October 28, 2005.
the petition for reconsideration; extended the statutory timeline 90 days and required the
parties to bring a revised procedural schedule to the November 3, 2005 prehearing
conference is affirmed.

4. The extended statutory timeline in this docket is May 22, 2006.

DATED AND EFFECTIVE at Anchorage, Alaska, this 1st day of December, 2005.

BY DIRECTION OF THE COMMISSION

(SEAL)
STATE OF ALASKA
THE REGULATORY COMMISSION OF ALASKA

Before Commissioners: Kate Giard, Chairman
                      Dave Harbour
                      Mark K. Johnson
                      Anthony Price
                      James S. Strandberg

In the Matter of the Development of Regulations to Establish a Regulatory Program for Water-Power Development Projects
                       R-03-5

ORDER EXTENDING STATUTORY TIMELINE

BY THE COMMISSION:

We issued proposed regulations for public comment concerning state licensing of water-power development projects.\(^1\) We then extended the comment period through May 25, 2005, with written reply comments to be filed by June 8, 2005.\(^2\)

As the statutory timeline\(^3\) in this proceeding expires on January 3, 2006, for good cause and as authorized by AS 42.05.175(1), at our December 14, 2005 Public Meeting, we extended the statutory timeline for ninety days,\(^4\) or until April 3, 2006. The additional time permits us to continue working with FERC\(^5\) representatives to resolve

\(^1\)R-03-5(2), Order Issuing Proposed Regulations for Comment and Setting Public Hearings, dated March 25, 2005.
\(^2\)Order R-03-5(3), Order Granting Requests to Extend Comment Period, dated April 20, 2005.
\(^3\)AS 42.05.175(e).
\(^4\)AS 42.05.175(f).
\(^5\)Federal Energy Regulatory Commission.
several issues. We will then schedule a Public Meeting to discuss the issuance of revised draft regulations for further public comment.

ORDER

THE COMMISSION FURTHER ORDERS that the statutory timeline in this proceeding is extended ninety days, until April 3, 2006, as provided for under AS 42.05.175(f).

DATED AND EFFECTIVE at Anchorage, Alaska, this 16th day of December, 2005.

BY DIRECTION OF THE COMMISSION

( SEAL )