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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Robert M. Pickett, Chairman
Stephen McAlpine
Antony G. Scott
Daniel A. Sullivan
Janis W. Wilson

In the Matter of the Consideration of Regulations)
Implementing Legislation Governing Electric Reliability)
Organizations, Integrated Resource Planning, and)
PreApproval Requirements for Large Energy Facilities)

R-20-001
ORDER NO. 1

**ORDER OPENING RULEMAKING PROCEEDING
AND SCHEDULING TECHNICAL CONFERENCE**

BY THE COMMISSION:

Summary

We open this docket to address a legislative mandate that we adopt regulations implementing Senate Bill 123. We schedule a technical conference.

Background

On March 20, 2020, the 31st Alaska Legislature passed Senate Bill 123 (SB 123) authorizing the certification and regulation of regional electric reliability organizations (EROs) by the Commission, defining the duties of those organizations (including submitting integrated resource plans for our approval), and mandating our

1 preapproval of certain interconnected large energy facilities.¹ SB 123 requires the
2 Commission to adopt regulations necessary to implement the legislation by July 1, 2021.²

3 We discussed SB 123 and the need to adopt regulations implementing the
4 legislation at our public meeting held April 15, 2020. We voted to open a rulemaking
5 proceeding to initiate this effort, and to convene a technical conference to discuss the
6 appropriate composition, procedural rules, and measures of competency for an ERO.³

7 Discussion

8 We issue this order to launch efforts to adopt a comprehensive regulatory
9 scheme governing the activities authorized and required by SB 123, identifying initial
10 issues we believe should be vetted with interested entities before adopting a regulatory
11 approach to those issues. We schedule a technical conference to discuss issues related
12 to our certification standards for an ERO, and anticipate holding a series of technical
13 conferences to receive input on the appropriate regulatory framework for oversight of
14 EROs, the integrated resource planning activities of the EROs, and preapproval
15 requirements for large energy projects. Before identifying issues for discussion at our
16 first technical conference, we briefly summarize the legislation.

17 Bill Summary

18 *Electric Reliability Organizations*

19 AS 42.05.760 provides explicit jurisdictional authority for this agency to
20 certificate and regulate EROs, authorizing us to certificate one ERO for each
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22 ¹SB 123 was signed into law on April 29, 2020. See Chapter 29, SLA 2020.

23 ²SB 123, Section 2; see also AS 42.05.770 (requiring us to adopt regulations
24 governing EROs, reliability standards, and modifications to reliability standards);
25 AS 42.05.780(d) (requiring us to adopt regulations governing the filing of integrated
26 resource plans); AS 42.05.785(d) (requiring us to adopt regulations governing large
energy facility preapproval and related issues).

³See April 15, 2020, Public Meeting transcript at 46-49.

1 interconnected electric energy transmission network.⁴ An electric utility operating in an
2 interconnected electric energy transmission network served by an ERO must participate
3 in the ERO, a requirement that extends to electric utilities exempt under AS 42.05.711(b).⁵
4 An entity may apply to serve as an ERO for an interconnected bulk-electric system, and
5 we may certificate the entity to act as the ERO for the network if we determine that the
6 entity has the ability to comply with AS 42.05.762 (the section that specifies the duties of
7 an ERO).⁶ We are required to notify interconnected load-serving entities within new or
8 existing interconnected bulk-power systems of the requirements of AS 42.05.760,⁷ and
9 to form and certificate an ERO for an interconnected bulk-power system if specified
10 timeframes tied to the notice pass without an ERO application being received or an ERO
11 being certificated.⁸

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14 ⁴AS 42.05.760(b). We may certificate an ERO for an interconnected electric
15 energy transmission network that is not an interconnected bulk-electric system if a load-
16 serving entity within the network petitions for a finding that an ERO should be established
17 for the network and a person applies to be certificated as an ERO for the network.
18 AS 42.05.760(f). We may not require an ERO for an interconnected bulk-electric system
19 if all load-serving entities operating in the system are exempt under AS 42.05.711(b).
20 AS 42.05.760(a). We may also waive the requirement to establish an ERO for an
21 interconnected electric energy transmission network if all interconnected load-serving
22 entities within the bulk-electric system network petition for exemption. AS 42.05.760(d).

23 ⁵AS 42.05.760(a). AS 42.05.711(b) exempts public utilities owned and operated
24 by a political subdivision of the state from aspects of regulation other than certification.

25 ⁶AS 42.05.760(b).

26 ⁷AS 42.05.760(c). This notice requirement is delayed until after July 1, 2021, the
effective date all sections of the legislation other than Section 2 (the section that requires
us to adopt regulations implementing the ERO legislation by July 1, 2021). See SB 123,
Sections 3-4. A list of interconnected load-serving entities within new or existing
interconnected bulk-power systems in Alaska is attached as an appendix.

⁸AS 42.05.760(e). We must form and certificate an ERO should either (1) no entity
apply for certification as the ERO for the interconnected bulk-power system within 90 days
of the notice required by AS 42.05.760(c), or (2) we fail to certificate an ERO for the
interconnected bulk-power system within 270 days of the notice.

1 AS 42.05.762 specifies that the duties of an ERO include (1) developing
2 reliability standards that provide for an adequate level of reliability of an interconnected
3 electric energy transmission network, and (2) developing integrated resource plans for
4 that network.⁹ AS 42.05.762 also requires an ERO to establish rules to ensure the
5 independence of the organization’s directors, to equitably allocate reasonable dues, fees,
6 and other charges for authorized activities among all load-serving entities connected to
7 the network; to provide fair and impartial procedures for enforcing reliability standards;
8 and to provide for reasonable notice and opportunity for comment, due process, and
9 balancing of interests in exercising its duties.¹⁰ In addition, this section specifies that the
10 ERO be governed by a board that (a) includes as nonvoting members the Commission
11 Chair and the Attorney General or their designees; and (b) is formed as an independent
12 or balanced stakeholder board, or combination thereof.¹¹

13 AS 42.05.765 provides specific guidance regarding the content of proposed
14 reliability standards,¹² and requires that those standards (and modifications thereof) be
15 submitted as tariff filings that are publicly noticed.¹³ The ERO’s tariff must include

16 ⁹AS 42.05.762(1)-(2).

17 ¹⁰AS 42.05.762(3).

18 ¹¹AS 42.05.762(4).

19 ¹²Approved standards (1) shall provide for the reliable operation of the
20 interconnected electric energy transmission network or an interconnected facility, (2) may
21 provide protection from a cybersecurity incident, facility security, or additions or
22 modifications to an interconnected facility to the extent necessary to provide for the
23 reliable operation of the network, and (3) may result in (but not be designed for the
24 purpose of) requiring enlargement of interconnected bulk-electric system facilities or
25 construction of new transmission or generation capacity. AS 42.05.765(a).

26 ¹³After the required public notice, we may approve a proposed standard based on
a determination that the proposed standard is just, reasonable, not unduly discriminatory
or preferential, and in the public interest. We alternatively may return the standard for
modification and resubmission after a hearing, with an ERO required to timely modify and
resubmit the standard. We may modify a resubmitted standard based on a determination
that the standard is inconsistent with our order or the public interest. AS 42.05.765(b).

1 standards for nondiscriminatory open access transmission and interconnection, and for
2 transmission system cost recovery.¹⁴ We may also order an ERO to submit or modify a
3 reliability standard that addresses a specific matter,¹⁵ and direct an ERO to conduct
4 assessments of the reliability and adequacy of the interconnected electric energy
5 transmission network.¹⁶

6 The approval process for proposed rules is more generally stated, with an
7 ERO required to file a proposed rule or rule change with this agency with an explanation
8 of the basis and purpose of the rule or rule change. We may propose a change to an
9 ERO's rules by our own motion or upon complaint. After providing notice and opportunity
10 for public comment, the rule change takes effect upon our finding that the rule change is
11 just, reasonable, not unduly discriminatory or preferential, and in the public interest.¹⁷

12 All users, owners, and operators of an interconnected electric energy
13 transmission network served by an ERO (including those exempt from regulation under
14 AS 42.05) must comply with tariffed reliability standards,¹⁸ and may be subjected to
15 penalties for failing to comply with a reliability standard.¹⁹ An ERO is authorized to impose
16 a penalty on a user, owner, or operator of an interconnected electric energy transmission
17 network for violating a reliability standard (notice and a hearing is required, and we must
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21 ¹⁴AS 42.05.770(1).

22 ¹⁵AS 42.05.765(c).

23 ¹⁶AS 42.05.765(f).

24 ¹⁷AS 42.05.767.

25 ¹⁸AS 42.05.765(a). In addition, AS 42.05.772 provides all load-serving entities in
an interconnected bulk-electric system served by an ERO (including those otherwise
exempt from regulation under AS 42.05) are subject to the ERO's tariff.

26 ¹⁹AS 42.05.775(a), (b).

1 be provided with a notice of a proposed penalty).²⁰ There is a right to appeal a penalty
2 imposed by an ERO, with our agency required to resolve such appeals in an expedited
3 manner.²¹ We also may enforce a reliability standard,²² possessing the authority to
4 require compliance with a standard and impose a penalty after notice and a hearing.²³

5 We are also required to resolve conflicts between reliability standards and
6 a Commission function, rule, tariff, rate schedule, or agreement; users, owners, and
7 operators must comply with the Commission rule, etc. until the conflict is resolved.²⁴ A
8 similar provision requires us to address conflicts between an approved reliability standard
9 and a federal standard, rule, or function that a user, owner, or operator is subject to
10 pursuant to a contract with the United States Department of Defense (DoD); however, we
11 may not resolve the conflict in a way that prevents the user, owner, or operator from
12 fulfilling the contract with the DoD.²⁵

16 ²⁰Before assessing a penalty, the ERO must provide notice and a hearing, and
17 must (1) find the user, owner, or operator has violated a reliability standard; and (2) file
18 notice of the proposed penalty and the record of the proceeding with us at least 30 days
19 before imposing the penalty. AS 42.05.775(a). The legislation also mandates that the
20 penalty imposed bear a reasonable relation to the seriousness of the violation and take
21 into consideration the effort of a user, owner, or operator to remedy the violation in a
22 timely manner. AS 42.05.775(d).

20 ²¹AS 42.05.775(c).

21 ²²AS 42.05.765(a).

22 ²³The Commission may, under its own motion or upon complaint, order a user,
23 owner, or operator of an interconnected electric energy transmission network to comply
24 with a reliability standard, and impose a penalty of after notice and hearing if the
25 Commission finds the user, owner, or operator engaged in or is about to engage in a
26 practice that violates a reliability standard. AS 42.05.775(b).

25 ²⁴AS 42.05.765(d).

26 ²⁵AS 42.05.765(e).

1 Integrated Resource Planning

2 AS 42.05.780 requires an ERO to submit an integrated resource plan (plan)
3 for our approval that provides options for meeting the collective needs of customers within
4 an interconnected network in a manner that provides the greatest value consistent with
5 the load-serving entities' obligations. The plan must evaluate a full range of cost-effective
6 means for meeting service requirements (including additional generation or transmission,
7 battery storage, and conservation or improvement in efficiency).²⁶ Public notice and our
8 review of the process for developing the plan is required, and we have 45 days to reject,
9 approve, or suspend the plan for modification. The modification process mirrors the
10 process in place for reliability standards submitted as tariff filings, with a requirement that
11 we remand the plan to the ERO for modification and the authorization for us to modify a
12 resubmitted plan if we determine it is inconsistent with our order or the public interest.²⁷

13 AS 42.05.780 also includes cost recovery provisions allow us to include in
14 a public utility's rates (1) the costs of resources acquired in accordance with a plan, (2)
15 cost-effective expenditures for improving efficiency, and (3) costs to a utility to comply
16 with planning requirements (including planning costs and portfolio development costs).²⁸
17 The legislation requires us to adopt regulations governing the filing of a plan, including
18 the content of a plan, time for filing a plan, criteria for determining cost-effectiveness and
19 greatest value, and other criteria.²⁹

20 Project Preapproval for Large Energy Facilities

21 Pursuant to AS 42.05.785, public utilities interconnected with an
22 interconnected electric energy transmission network served by a certificated ERO may

23 ²⁶AS 42.05.780(a).

24 ²⁷AS 42.05.780(b).

25 ²⁸AS 42.05.780(b).

26 ²⁹AS 42.05.780(c).

1 not construct a large energy facility³⁰ unless we determine the facility (1) is necessary to
2 the interconnected electric energy transmission network with which it would be
3 interconnected; (2) complies with reliability standards; and (3) would, in a cost-effective
4 manner, meet the needs of a load-serving entity that is substantially served by the
5 facility.³¹ Unless we find otherwise by clear and convincing evidence, a large energy
6 facility included in the most recently approved integrated resource plan is considered to
7 satisfy this standard for preapproval³² We are also precluded from requiring preapproval
8 for a project for refurbishment or capitalized maintenance, or for a hydropower project
9 licensed by the Federal Energy Regulatory Commission before September 30, 2016.³³

10 Scheduling Technical Conference

11 As noted above, we plan on conducting a series of technical conferences
12 to discuss issues related to developing a regulatory scheme governing the activities
13 authorized or mandated by SB 123. By the statutory deadline of July 1, 2021, we intend
14 to have adopted regulations that clearly and comprehensively define (1) the obligations,
15 authorities, procedures of, and our oversight over certificated EROs and other entities

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17 ³⁰SB 123 defines “large energy facility” as (1) an electric power generation plant or
18 combination of plants at a single site with a combined capacity of 15,00 kilowatts or more
19 with transmission lines that directly interconnect the plant with the transmission system;
20 (2) a high voltage above-ground transmission line that has a capacity of 69 kilovolts or
21 more and is longer than 10 miles; (3) a high-voltage submarine or underground cable that
22 has a capacity of 69 kilovolts or more and is longer than three miles; (4) an energy storage
23 device or combination of devices at a single site with a combined capacity of 15,000
24 kilowatts and one hour or more of energy storage that directly connects with the
25 interconnected bulk electric system; and (5) a reactive compensation device or
26 combination of devices at a single site with a combined reactive capability of 15, kilovars
or more with a step-up devise to regulate interconnected bulk electric system voltage.
AS 42.05.785(e).

³¹AS 42.05.785(a).

³²AS 42.05.785(b).

³³AS 42.05.785(c).

1 operating in an interconnected electric energy transmission network served by an ERO;
2 (2) the parameters for the integrated resource planning activities of the ERO, and (3)
3 preapproval requirements for large energy projects.

4 The first set of issues we wish to discuss relate to certification of an ERO.
5 As explained in the *Bill Summary/Electric Reliability Organization* section of this order, we
6 may certificate an ERO based on a determination that the ERO has the ability to comply
7 with AS 42.05.762, the statutory section that establishes the duties of an ERO.³⁴ Those
8 duties include developing reliability standards and integrated resource plans,³⁵ activities
9 that involve a certain level of competency and expertise. One area we will explore at the
10 upcoming technical conference is what standards should apply to ensure an ERO
11 applicant has sufficient competency to perform these duties.

12 An additional requirement in AS 42.05.762 is for the ERO to establish rules
13 to ensure its directors act independently from the users, owners, and operators of the
14 network.³⁶ That section also requires that the ERO be governed by a board that is formed
15 as an independent or balanced stakeholder board, or combination thereof.³⁷ We believe
16 that additional procedural rules and definitions would be appropriate to ensure an ERO's
17 directors act independently from users, owners, and operators, and to clarify what we
18 consider to be a balanced board. This is another issue we wish to vet at the upcoming
19 technical conference before reaching a final decision on appropriate regulations.

20 AS 42.05.762 also requires an ERO to equitably allocate reasonable dues,
21 fees, and charges among all load-serving entities connected to the interconnected
22 electrical transmission network; to provide fair and impartial procedures for the

23 ³⁴AS 42.05.760(b).

24 ³⁵AS 42.05.762((1)-(2).

25 ³⁶AS 42.05.762(3)(A).

26 ³⁷AS 42.05.762(4)(B).

1 enforcement of reliability standards; and to provide reasonable notice and opportunities
2 for public comment, due process, openness, and the balancing of interests in exercising
3 ERO duties.³⁸ These are all areas we should consider before addressing any ERO
4 application that may be filed with this agency, and should be among the topics for
5 discussion at our upcoming technical conference. We may also wish to consider the
6 degree to which the approaches we pursue with regard to cost recovery, enforcement
7 procedures, and procedural measures for the ERO have applicability to procedures we
8 may adopt regarding integrated resource plans and large energy facility preapproval.

9 We schedule a technical conference to discuss these issues. We will
10 convene a technical conference in Docket R-20-001 at 9:30 a.m., on June 3, 2020, to
11 facilitate a discussion of (1) standards to ensure a certificated ERO can competently
12 perform the duties stated at AS 42.05.762; (2) procedural rules and definitions that ensure
13 the independence of an ERO's board of directors and clarify what is considered a
14 balanced board; and (3) additional rules or standards that will ensure the equitable
15 allocation of allowable ERO costs among all interconnected load-serving entities, fair and
16 impartial procedures for enforcing reliability standards, and a public process for ERO
17 activities that satisfies due process expectations and reasonably balances various
18 interests.

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³⁸AS 42.05.762(3)(B)-(D).

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ORDER

THE COMMISSION FURTHER ORDERS that a technical conference is scheduled to convene on Wednesday, June 3, 2020, at 9:30 a.m., via Cisco Webex. Any parties that wish to participate in the technical conference should email our law office assistants at LOA.RCA@alaska.gov to request an invitation. Due to the online format of the hearing, we request that parties submit any documents they intend to use at the technical conference electronically to our law office assistants by 5 p.m., Monday, June 1, 2020.³⁹

DATED AND EFFECTIVE at Anchorage, Alaska, this 18th day of May, 2020.

BY DIRECTION OF THE COMMISSION



³⁹If you are a person with a disability who may need a special accommodation, auxiliary aid or service, or alternative communication format to participate in the scheduled event, please contact Valerie Fletcher-Mitchell at 1-907-276-6222, toll free at 1-800-390-2782, or TTY/Alaska Relay at 7-1-1 or 1-800-770-8973, or send your request by electronic mail to rca.mail@alaska.gov at least three business days before the scheduled event to make the necessary arrangements.

Any party wishing to appear telephonically at the scheduled event must advise us in advance and provide a telephone number where it may be reached for that appearance.