

Mr. Charlie Bussell
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Eliminating government
offices from Power Cost
Equalization Program

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You have requested an opinion regarding the possible exclusion of federal and state offices, and schools, from the Power Cost Equalization Program by regulatory change. Our conclusion is that such an exclusion cannot be accomplished by a change of regulations; rather a change in the applicable statutes would be necessary to accomplish such an exclusion.

The Power Cost Equalization Program was begun in 1980, in order to provide "power production cost assistance to an eligible electric utility." Sec. 42, ch. 83, SLA 1980. Later, the legislature more specifically defined the aid as "for the purpose of equalizing power cost per kilowatt-hour statewide at a cost close or equal to the mean of the cost per kilowatt-hour in Anchorage, Fairbanks, and Juneau by paying money from the fund to eligible electric utilities in the state." AS 44.83.162(a). Two agencies, the Alaska Energy Authority and the Alaska Public Utilities Commission, have been given specific roles in the administration of this program.

The legislature has set out specifications for eligibility, in terms of electric utilities and customers. AS 44.83.162(c) provides:

(c) An eligible electric utility is entitled to receive power cost equalization for

(1) sales of power to local community facilities, calculated in the aggregate for each community served by the electric utility, for actual consumption of not more than 70 kilowatt-hours per month for each resident of the community; and

(2) actual consumption of not more than 750 kilowatt-hours per month sold to each customer in all classes served by the electric utility except to customers of the utility under (1) of this subsection.

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(Emphasis added.) The legislature further provided, in AS 44.83.162(e):

Power cost equalization paid under this section shall be used to reduce the cost of all power sold to local community facilities, in the aggregate, to the extent of 70 kilowatt-hours per month per resident of the community, and to reduce the cost of the first 750 kilowatt-hours per customer per month for all other classes served by the electric utility.

(Emphasis added.) The use of the word "shall" is essentially a mandate from the legislature, leaving no discretion in the administering agency as to that particular section. In addition, the phrases "all power sold to local community facilities" and "all other classes served" leave no room for exclusion of any class by the regulatory process. It is clear from the plain language of the statute that the legislature intended to include all customers of eligible electric utilities, whether private, residential, non-profit, commercial, or government. In addition, there is no legislative history to suggest the legislature intended otherwise.

The legislature has defined "community facility", in AS 44.83.162(p)(2), as follows:

(2) "community facility" means a water and sewer facility, public outdoor lighting, charitable educational facility, or community building whose operations are not paid for by the state, the federal government, or private commercial interests[.]

By omission, the legislature has allowed any customer that is not a "community facility" to fall into the "all other classes served" category.

However, nowhere in the statutes has the legislature permitted, or allowed one of the administering agencies to permit, distinguishing between any other classes of electric customers, or within classes of electric customers, for purposes of differentials in rates or eligibility for the program. On the contrary, the specific language quoted above in AS 44.83.162 indicates that "all power" to "all other classes" of customers shall be subject to the program, so long as the eligible electric utility itself complies with the program's requirements.

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In conclusion, there appears to be no authority by which the Alaska Energy Authority could, by regulation, alter the classes of utility customers eligible for the Power Cost Equalization Program. This conclusion is reached specifically as to your question about the exclusion of eligibility and benefits to federal offices, state offices, and schools. In our opinion, a change in applicable statutes, AS 44.83.162-44.83.165, would be necessary to distinguish between such classes of customers.

RBR:bb