

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA ELECTRIC LIGHT AND POWER)
COMPANY)

Appellant,)

v.)

REGULATORY COMMISSION OF)
ALASKA; OFFICE OF THE ATTORNEY)
GENERAL REGULATORY AFFAIRS &)
PUBLIC ADVOCACY SECTION; JUNEAU)
HYDROPOWER, INC.; AND ALASKA)
INDUSTRIAL DEVELOPMENT AND)
EXPORT AUTHORITY)

Appellees.)

Case No. 3AN-25-08535CI
RCA Docket No. U-24-036

ALASKA ELECTRIC LIGHT AND POWER)
COMPANY)

Appellant,)

v.)

REGULATORY COMMISSION OF)
ALASKA; OFFICE OF THE ATTORNEY)
GENERAL REGULATORY AFFAIRS &)
PUBLIC ADVOCACY SECTION; JUNEAU)
HYDROPOWER, INC.; AND ALASKA)
INDUSTRIAL DEVELOPMENT AND)
EXPORT AUTHORITY)

Appellees.)

Case No. 3AN-25-____CI
RCA Docket No. U-25-020

MEMORANDUM IN SUPPORT OF
MOTION TO CONSOLIDATE PROCEEDINGS

I. INTRODUCTION

Case No. 3AN-25-08535CI is an administrative appeal by Appellant Alaska Electric Light and Power Company (“AELP”) concerning the Regulatory Commission of Alaska’s (“RCA’s” or “Commission’s”) decision in RCA Order No. U-24-036(16), dated June 11, 2025 (“Order 16”).¹ Among other things, in Order 16, the RCA purported to “exempt” Juneau Hydropower, Inc. (“JHI”) from the definition of “public utility” in AS 42.05.990(5)(A), granted JHI a Certificate of Public Convenience and Necessity (“CPCN”) as an electric utility, subject to certain conditions, and ordered the parties to file executed interconnection, transmission, and pole attachment agreements or file a complaint by June 25, 2025.² JHI filed a Complaint for Adjudication of Joint Use and Interconnection Agreement Terms (“Complaint”) on June 25, 2025.

JHI’s Complaint became the basis for RCA Docket U-25-020, from which instant appeal derives. The instant administrative appeal originates from RCA Order No. U-25-020(7), dated August 8, 2025 (“Order 7”)³ and Order No. U-25-020(9), dated

¹ Order U-24-036(16), *Order Granting Exemption; Granting Application for Certificate of Public Convenience and Necessity, Subject to Conditions; Approving Service Area; Requiring Interconnections; Denying Motion to Strike; Requiring Joint Use; Rescinding Certificate Subject to Conditions; and Requiring Filings*, dated June 11, 2025 (Order U-24-036(16)).

² See Order No. U-24-036(16), 58-59 (June 11, 2025).

³ Order U-25-020(7), *Order Granting Motion for Expedited Consideration in Part; Finding Good Cause to Institute Investigation; Prescribing Reasonable Conditions and*

October 14, 2025 (“Order 9”).⁴ Order 7 granted, in part, JHI’s motion for expedited consideration and opened an investigation into its Complaint against AELP. The order set terms, conditions, and cost allocations for interconnection and joint use of transmission facilities among JHI, AELP, and the Alaska Industrial Development and Export Authority (“AIDEA”) related to the Snettisham and Sweetheart Lake hydroelectric projects and approved four implementing agreements governing those arrangements. In Order 9, the RCA partially granted AELP’s petition for reconsideration of Order 7 and JHI’s motion to strike in a dispute over interconnection and joint use agreements related to the Snettisham Hydroelectric Project (“Snettisham”) and AELP electric transmission facilities. Order 9 also prescribed various terms, conditions, and cost-allocation provisions, across the Interconnection Agreement (“IA”), Transmission and Ancillary Services Agreement (“TSA”), and Transmission Accommodation Agreement (“TAA”).

Both appeals should be consolidated for consideration of the shared fundamental questions of law and fact present in both actions, and a largely overlapping administrative record, as both appeals stem from JHI’s application for an electric utility

Compensation for Joint Use, Prescribing Apportionment of Costs and Responsibility for Operation and Maintenance of Interconnections, and Approving Special Contracts; Requiring Filings; Designating Commission Panel; and Appointing Administrative Law Judge, dated Aug. 8, 2025 (Order U-25-020(7)).

⁴ Order U-25-020(9), *Order Granting Petition for Reconsideration, in Part; Granting Motion to Strike, In Part; Prescribing and Approving Corrected and Revised Agreements; and Requiring Filing*, dated Oct. 14, 2025 (Order U-25-020(9)).

MEMORANDUM IN SUPPORT OF MOTION TO CONSOLIDATE PROCEEDINGS
AELP v. RCA et al.

November 13, 2025

Page 3 of 11

1 CPCN to develop the Sweetheart Lake Hydroelectric Project generation facility. Both
2 actions require the Superior Court to consider whether the RCA has erred and acted in a
3 manner that was unreasonable, arbitrary, capricious, or contrary to law, and exceeded its
4 statutory authority by granting JHI an electric utility CPCN and requiring, and setting
5 compensation, terms, and conditions for, the ownership, interconnection, and joint use of
6 Snettisham and AELP facilities.

7 While these two appeals could be considered in separate Superior Court
8 cases, the shared nucleus of facts, and the interrelated nature of legal and factual issues, are
9 sufficient to make consolidation under Alaska Rule of Appellate Procedure 602(i) and
10 Alaska Rule of Civil Procedure 42(a) appropriate.⁵ At its foundation, the parties in both
11 actions will be better served if the Superior Court considers the claims in a consolidated
12 action. Consolidation also has the mutual benefit of conserving judicial and administrative
13 resources as well as preventing the possibility of conflicting Superior Court decisions on
14 similar issues.

15 **II. BACKGROUND**

16 These related proceedings arise from JHI's efforts to develop and operate the
17 Sweetheart Lake Hydroelectric Project and to provide public utility service in the City and
18 Borough of Juneau. On June 11, 2025, the RCA issued Order 16, granting JHI's
19 application for a CPCN subject to several conditions, including requiring JHI to

20 ⁵ Alaska R. Civ. P. 42(a).
21

1 interconnect its proposed facilities with existing transmission systems.⁶ The RCA required
2 interconnection “between the Snettisham Hydroelectric Project (Snettisham) transmission
3 system and the proposed Sweetheart Lake Hydroelectric Project (Sweetheart)” and
4 required interconnection between the AELP “transmission system at Lena Substation and
5 JHI’s proposed 69 kilovolt (kV) transmission system running north to the Kensington
6 Mine.”⁷ The RCA further directed AELP to “permit joint use of its transmission system
7 by wheeling up to 8.5 megawatts (MW) of Sweetheart produced power” across the
8 Snettisham and AELP systems to the Lena Substation.⁸ Order 16 also imposed
9 construction timing requirements and established that the certificate could be rescinded if
10 JHI did not begin or complete construction within specified deadlines unless good cause
11 was shown.

12 Because JHI and AELP were unable to reach agreement on the terms of the
13 required interconnection and joint-use arrangements, JHI filed a complaint on June 25,
14 2025, initiating the adjudication that led to Order Nos. U-25-020(7) and (9). With Order 7
15 the RCA opened an investigation and addressed the formation of the agreements needed to
16 implement the requirements imposed in Order 16. Order 7 addressed a limited
17 interconnection agreement for the Mist Island Substation, an IA, a TSA, and a TAA.
18

19 ⁶ Order U-24-036(16), 3.

20 ⁷ *Id.*

21 ⁸ *Id.*

1 Through these components, Order 7 addressed the terms and conditions needed to carry
2 out the interconnection and joint use mandates established in Order 16.

3 Following the issuance of Order 7, AELP filed a petition for partial
4 reconsideration, and JHI filed a motion to strike protest language AELP inserted on the
5 signature pages of the agreements. On October 14, 2025, the RCA issued Order 9, granting
6 AELP’s petition in part—limited to typographical corrections and modification of a cost-
7 overrun limit in one section of the TAA—and denying the remainder of AELP’s requested
8 revisions after reviewing each challenged provision.⁹ The RCA also granted JHI’s motion
9 to strike in part, removing only the portion of AELP’s protest statement that referenced
10 future reconsideration of Order 7, while allowing the remainder to continue as a
11 preservation of AELP’s appellate rights.¹⁰ The RCA then prescribed corrected versions of
12 the agreements and required the parties to file executed copies by October 21, 2025.

13 Together, Order Nos. U-24-036(16), U-25-020(7), and U-25-020(9) are part
14 of a continuous regulatory process and identical parties. In Order 16, the RCA purported
15 to “exempt” JHI from the statutory definition of a “public utility,” granted JHI an electric
16 utility CPCN, and ordered interconnection and joint use of Snettisham and AELP facilities.
17 In Order 7, the RCA then prescribed the terms of the required interconnection and joint use
18 agreements when the parties could not reach consensus. And finally, in Order 9, the RCA

20 ⁹ Order U-25-020(9), 8-11

21 ¹⁰ Order U-25-020(9), 13.

subsequently addressed reconsideration and related filings arising from that adjudication.

III. ARGUMENT

A. The Same Issues of Law and Fact are Present in the Appeals stemming from Order 16, Order 7, and Order 9, and Should Be Consolidated.

Appellate Rule 602(i) provides in relevant part, “Appeals may be consolidated by order of the appellate court upon its own motion or upon motion of a party.” Alaska case law and Civil Rule 42(a) provide that separate actions may be consolidated when they involve common questions of law or fact.¹¹ In this case, all three administrative orders in question share a common factual core: the RCA’s “exemption” of JHI from the statutory definition of a “public utility,” the RCA’s granting to JHI a conditional electric utility CPCN, the ordering of interconnection and joint use of public utility facilities, and the determination of mandatory contractual provisions for such interconnection and joint use.

Order 16 established these foundational facts by requiring JHI to interconnect with both the Snettisham transmission system and the AELP system at Lena Substation, and by mandating the joint use of 8.5 MW of transmission capacity between Mist Island and Lena Substation points of interconnection.¹² These requirements generated

¹¹ *Baseden v. State*, 174 P.3d 233, 242 (Alaska 2008) (“Alaska case law places the decision to consolidate cases firmly within the discretion of the superior court judge.”).

¹² Order U-24-036(16), 57.

1 the factual and legal disputes carried forward into Docket U-25-020’s Orders 7 and 9,
2 including where and how the systems must connect, how capacity will be allocated, and
3 which party must bear particular operational or construction-related obligations.

4 Each order also involves the same underlying legal issue: the RCA’s
5 statutory authority to grant a CPCN to an entity that does not meet the statutory definition
6 of a “public utility,” and its authority under AS 42.05.321 to prescribe “just and reasonable”
7 terms for interconnection and joint use when public utilities cannot reach agreement. Order
8 16 invoked this authority by directing JHI and AELP to file executed agreements or, if they
9 could not reach agreement, a complaint seeking adjudication of disputed terms.¹³ Order 7
10 represented the RCA’s exercise of that same statutory authority after JHI filed a complaint
11 stating that the parties could not agree on required interconnection and joint-use terms,
12 including joint use of 8.5 MW of transmission capacity, interconnection at Lena Substation,
13 and joint use of JHI’s 69 kV line.¹⁴ In turn, Order 9 applied the same statutory standard in
14 evaluating AELP’s petition for reconsideration.¹⁵

15 Another shared factual and legal question across all three orders concerns the
16 manner in which transmission capacity, operational responsibilities, and cost-related risks
17 are allocated among the parties. Order 16 established the baseline obligations by requiring
18

19 ¹³ Order U-24-036(16), 18, 58.

20 ¹⁴ Order U-25-020(7), 6.

21 ¹⁵ Order U-25-020(9), 13.

1 joint use of transmission facilities and specifying the amount of capacity that must be
2 available for Sweetheart power.¹⁶ Order 7 then prescribed detailed contract language
3 implementing those obligations, including terms governing interconnection, wheeling,
4 ancillary services, and accommodation of construction activities.¹⁷ Finally, Order 9
5 addressed disputes over specific terms involving cost-overrun protections and AELP's
6 proposed revisions, ultimately modifying only one cost-related provision and rejecting the
7 remainder as unsupported.¹⁸

8 Taken together, the three orders address similar and related legal and factual
9 issues. In particular, the disputes in Order 7 and Order 9 relate directly to whether JHI
10 meets the statutory definition of "public utility" and whether the RCA exceeded its
11 statutory authority by granting JHI a CPCN.

12 Each order addresses how JHI's proposed 69 kV and 138 kV transmission
13 lines will interconnect with existing AELP and AIDEA facilities, as well as the terms,
14 costs, and responsibilities for joint use and operation of those systems.¹⁹ The factual basis
15 for this case, and the questions that arise herein, are derivative of those raised in Case No.
16 3AN-25-08535CI and should be consolidated into that matter. Moreover, consolidating
17 these actions will prevent unnecessary duplication of work by the parties and this Court, as

18 ¹⁶ Order U-24-036(16), 4.

19 ¹⁷ *See generally*, Order U-25-020(7).

20 ¹⁸ Order U-25-020(9), 8-11.

21 ¹⁹ Order U-24-036(16), 33-57.

1 well as avoiding the possibility of conflicting rulings on the above-mentioned questions.

2 Finally, the administrative record for the two appeals largely overlap, as they
3 relate to two sequential RCA dockets, one of which had two hearings (Docket U-24-036),
4 followed by Docket U-25-020, implementing the RCA's decisions from Order 16.

5 **B. Recommended Procedure Going Forward Once Appellant's Cases Are**
6 **Consolidated.**

7 Should the Court grant the AELP's requested consolidation, AELP requests
8 that the Court vacate the current briefing schedule in Case No. 3AN-25-08531CI and issue
9 a consolidated Notice Setting Appeal Procedure

10 **IV. CONCLUSION**

11 Case No. 3AN-25-08535CI and the present action deal with similar questions
12 of law and fact and overlapping administrative records, which should be consolidated to
13 permit all parties the opportunity to address the issues underlying the appeals efficiently in
14 one appellate case. The parties and this Court would be best served by consolidation of
15 these actions. Consolidation would promote the conservation of judicial, administrative,
16 and litigant resources and avoid the potentially conflicting rulings from the Superior Court.

RESPECTFULLY SUBMITTED this 13th day of November, 2025, at
Anchorage, Alaska.

KEMPEL, HUFFMAN AND ELLIS, P.C.
Counsel for Alaska Electric Light and Power
Company

By: /s/ Dean D. Thompson
Dean D. Thompson, Alaska Bar No. 9810049
Emily M. Walker, Alaska Bar No. 2211108
Paige P. Kendrick, Alaska Bar No. 2511088
Kempel, Huffman and Ellis, P.C.
255 East Fireweed Lane, Suite 200
Anchorage, Alaska 99503
Telephone: (907) 277-1604
Facsimile: (907) 276-2493
E-mails: ddt@khe.com
emw@khe.com
ppk@khe.com