BRADLEY LAKE PROJECT MANAGEMENT DISPUTE RESOLUTION COMMITTEE
SPECIAL MEETING
Alaska Energy Authority, Anchorage, Alaska
February 7, 2014

1. CALL TO ORDER

Dispute Resolution Process Chair Joe Griffith called the special meeting of the Bradley Lake Hydroelectric Project Management Committee to order at 10:02 a.m.

2. COMMITTEE MEMBERS ROLL CALL

Brad Evans	Chugach Electric Association (CEA)
Cory Borgeson	Golden Valley Electric Association (GVEA)
Sara Fisher-Goad	Alaska Energy Authority (AEA)
Gary Kuhn	Matanuska Electric Association (MEA)
Dan Kendall	Anchorage Municipal Light & Power (ML&P)
John Foutz	City of Seward (SEW)
Brad Janorschke	Homer Electric Association (HEA)

3. STAFF/PUBLIC ROLL CALL

Bryan Carey, Kirk Warren, Teri Webster (AEA); Brian Bjorkquist (Department of Law); Kirk Gibson (McDowell Rackner & Gibson PC); Lee Thibert, Burke Wick, Mark Johnson, Paul Risse, Brian Hickey (CEA); Robert Day, Alan Owens, Rick Baldwin, Harvey Ambrose, Mike Tracy (HEA); Jim Brooks, David Pease (MEA); Lou Agi (ML&P); Bernie Smith (Regulatory Commission of Alaska (RCA)); Matt Clarkson, Robin Brena (Brena Bell & Clarkson); Sunny Morrison, Miranda Studstill (Accu-Type Depositions); Dave Burlingame (Electric Power Systems).

4. APPROVAL OF PRIOR MINUTES - January 15, 2014

The minutes were approved as amended.

5. PUBLIC COMMENT

There were no public comments.

6. AGENDA COMMENTS/MOTION FOR APPROVAL

The agenda was approved as amended.

Mr. Kendall requested if he could provide comments on behalf of ML&P before the meeting discussions began. He noted there have been a lot of prior events relating to the Bradley Lake agreements, which are leading a path to the court system. Mr. Kendall does not believe that is the best alternative and thinks the courts system path would take considerable time, effort,

money, and the judge may not know about electric utilities and come up with a really odd outcome.

Mr. Kendall proposed having more informal discussions on these issues. He stated the informal discussions could take place at ML&P and sandwiches would be provided. He believes there is a solution that can be discussed outside of this process in a more informal setting. Mr. Kendall noted this process is certainly allowed by the rules. He added the Legislature is closely watching the actions of the utilities and suggested a more informal meeting to talk about these issues.

7. OLD BUSINESS

Chair Griffith invited Mr. Borgeson to give an update on the discussions they had with HEA in attempt to resolve the issues. Mr. Borgeson reported they met with HEA in late November when it was realized this dispute would be difficult to resolve. A proposal was submitted by HEA in May of 2013 to lease the line for a specified dollar amount and other specified conditions. This proposal is no longer available. Mr. Borgeson explained he and Chair Griffith expressed interest in leasing or purchasing the line. GVEA and MEA initiated this discussion with HEA and intentionally left CEA out of these discussions.

Mr. Janorschke stated HEA met with Chair Griffith and Mr. Borgeson in November and in December. He noted the proposal that was made in May has become less attractive and one reason is the recent experience of transmission line outages, which impacted HEA significantly when trying to sell steam power to GVEA and CEA.

Mr. Kendall asked if there is currently a two-week outage on the Soldotna Quartz (SQ) Line. Mr. Day advised there is a three-week outage scheduled on the SQ Line to begin February 27th. This is to address safety issues by replacing insulators and correcting clearance problems.

Chair Griffith noted for the record, this is the third time Committee members have met with HEA in efforts to define the issues and proceed with the process. Chair Griffith requested counsel's opinions on what happens next if this Committee comes to a total impasse regarding this process. Mr. Gibson advised the BPMC gave the gavel to this Dispute Resolution Committee and if no compromise or dispute resolution is reached, the Dispute Resolution Committee would give the gavel back to the BPMC with a report stating there was no ability to compromise. The BPMC would then move forward as a whole.

Chair Griffith made a ruling and requested the Operators & Dispatch (O&D) Committee provide their report, next HEA provide their position, and then the disputing utilities provide their position.

O & D Committee report

Mr. Brooks, Chairman of the Bradley Lake O&D Committee, advised the O&D has been addressing some of these issues even before the first of the year in anticipation of pending problems. He noted this effort was mostly driven by Mr. Day. The O&D has categorized the list of concerns as technical issues and non-technical issues. The O&D has attempted to focus on the technical issues. Mr. Brooks stated the O&D does not believe they can resolve the many different aspects of the non-technical issues, some of which include contractual disputes.

Mr. Brooks stated the summary of the O&D report of the technical issues have been identified and include dispatch, loss compensation, and the ability to transmit power from the project into the participating authorities. The O&D does not have any hard resolution for any of the technical issues because new information is still being gathered. The O&D does not necessarily see any technological impasse on any particular issue, but it is a matter of defining the technical solution and then getting all the parties to agree.

Mr. Kendall commented the O&D Committee's report was a general summary of the last meeting. Mr. Kendall asked if Mr. Brooks is saying the issues cannot be resolvable at the O&D Committee. Mr. Brooks disagreed, and noted the O&D Committee needs more time to arrive at any fair conclusions. Mr. Brooks believes the O&D Committee can have specific solutions to present at the next meeting of the Dispute Resolution Committee.

Mr. Kendall requested the O&D Committee provide to the Dispute Resolution Committee a one or two-page report noting the date the O&D Committee met, what issues were discussed, what was resolved or not resolved because the Dispute Resolution Committee is looking to the O&D Committee for guidance on the issues. Mr. Kendall requested the O&D articulate which issues can be addressed by the O&D and which issues cannot be addressed by the O&D. Mr. Brooks stated he will provide something to the body through the Chair. Mr. Kendall commented he had expected that type of O&D report at this meeting.

Mr. Brooks believes there is a technical resolution for all of the technical issues, but the specifics have not yet been crafted. He noted dynamic dispatching appears to be something that would solve a lot of the concerns, but he does not know exactly what that looks like today.

Ms. Fisher-Goad stated the O&D report from January 22nd listed investigation and discussion questions. She understood the O&D was supposed to come back to the BPMC with their list of specific questions, including guidance on whether the issue is under a Bradley Lake agreement or if the issue is under a side agreement, and guidance on how to operate the system, which is missing because the agreements have deficiencies. Chair Griffith disagreed, but accepts that is Ms. Fisher-Goad's point of view.

Chair Griffith believes the O&D Committee's viewpoint is they need more time to dig into the technical issues and figure them out.

Mr. Foutz asked if the O&D Committee need an answer or a decision by the BPMC on some of the technical issues to help bring those to some sort of conclusion or finality. Mr. Brooks believes the technical issues stand on their own merit. He stated some of the contract issues may modify the technical solution. Mr. Brooks believes there needs to be a unified solution on all of the issues because if a technical solution is implemented and then a contract issue changes the way power is delivered or how it is dispatched, then that technical solution may no longer be applicable.

Mr. Janorschke requested the O&D Committee review the statement regarding dispute resolution procedures that HEA submitted at the last meeting, which identifies three clear issues HEA believes is within BPMC's area of responsibility and provide recommendations on how to solve or address those issues.

Chair Griffith expressed his appreciation to Ms. Fisher-Goad and Mr. Kendall for their comments and noted it may be possible to provide more clear definition to the O&D Committee today after all the items are completed.

Ms. Fisher-Goad commented there seems to be a circular argument where the O&D Committee is trying to make decisions with respect to the operation of the system following agreements that are not giving clear direction. There are disputes and issues in front of the RCA. She believes the O&D will be "stuck" until specific issues are addressed and resolved. Chair Griffith agreed.

Mr. Borgeson asked what issues Ms. Fisher-Goad believes the O&D Committee should address. Ms. Fisher-Goad requested the O&D Committee provide a list of specific disputes that need clarity in order to begin discussions about possible solutions. This would include the issues about who is controlling the system in order for the project power to go north.

Ms. Fisher-Goad noted she shares Mr. Kendall's concerns with respect to others watching these proceedings and what is being communicated by not being able to have some type of advancement in the discussion of these disputes.

Mr. Wick reported one of the questions that arose often was the calculation of losses. He does not believe there will be any problem calculating or agreeing on losses over any given segment of line. The question is regarding where the delivery points are and how those losses are going to be treated. Will the losses be treated as a segment loss or an average system loss for the delivering utility? The O&D Committee cannot answer the question on how to treat the losses until the overarching question of where the delivery points are is answered.

Mr. Brooks noted Mr. Wick articulated the situation nicely. He commented the O&D Committee is being asked to solve technical questions on a system that is undefined because of the debate in the non-technical arena.

Chair Griffith commented the Committee will try to be more specific and precise in the challenges placed before the O&D Committee in the future. Chair Griffith stated he will speak with the Chair of BPMC to assist in providing clarity.

Mr. Janorschke asked if he was correct in understanding the O&D Committee basically saying there is not much disagreement on the actual losses, especially by line segment, but it is more a matter of if the losses will be measured from Soldotna or Quartz Creek. Mr. Wick agreed and explained prior to December 31, the power was delivered to Soldotna Substation. It then entered Chugach's system and the losses were calculated as a system loss. It was averaged over Chugach's system. It did not segment out the segment from Quartz Creek to Soldotna. If the metering point is moved to Quartz Creek, is that segment treated separately? Is it counted as part of Homer's system? Does it still reside in Chugach's system? Those answers affect how to calculate the contract losses and how they will be paid for. The actual loss over any segment can be technically calculated. The old agreements did not necessarily pay exact losses for any one segment to any one utility that was being impacted.

Homer Electric position

Mr. Janorschke stated he will present the highlights of HEA's position paper (attached). He explained the three main issues within Resolution 2013-02 include the scope of BPMC's authority, the wheeling compensation, and the impact of the termination of the transmission lease. Mr. Janorschke stated this is an HEA system asset and any attempts to separate the SQ Line from HEA system is failing to recognize the fact that power flows through the majority of HEA system. The losses can and will be measured. Mr. Janorschke noted HEA has not at any point tried to limit anybody's access to that line.

Mr. Janorschke believes the scope of the BPMC's authority is limited strictly over the Operations & Maintenance (O&M) of the project and HEA's transmission system is not part of the project. This argument was brought before the RCA as an issue regarding tariffs. Mr. Janorschke directed the Committee's attention to the last sentence of the first paragraph on page four, which shows the terms of the service agreement under Section 13, definitions, making Soldotna or a successor facility the delivery point. Quartz Creek is the successor facility.

Mr. Janorschke does not believe the BPMC has authority to dictate tariffs on HEA's system and the operation of HEA's system. He noted HEA is more than willing and has provided information to CEA so they can monitor the HEA system and see breaker indications. He does not believe CEA's purview includes physically controlling the HEA system.

Mr. Janorschke stated Bradley Lake uses a significant portion of the HEA system and historically, the O&D has recognized that. When the Diamond Ridge Substation was improved, HEA was going to open up the west loop and move the transformer. He noted the O&D Committee stated HEA could not do that because it would impact the reliability of Bradley Lake. As a result, funds were provided to build a shoe fly around the loop so it would not have to be opened.

Mr. Janorschke noted the tariff that is currently in front of the RCA has to do with the power going across the HEA system, excluding the Soldotna segment. He agreed the proposed tariff rates seem high, compared to zero, but believes they are still lower than any of the other wheeling tariffs in existence on the Railbelt today.

Mr. Borgeson asked for HEA's position on the services agreement they signed wherein CEA would provide services and dispatch of the lines for Bradley Lake power during the course of the 50 years of the services agreement. Mr. Janorschke believes HEA is bound only to the obligations they agreed to in the services agreement. He noted when the contract was developed, CEA was dispatching the majority of HEA's system because HEA did not have a dispatch facility.

Mr. Borgeson asked specifically about the agreement that CEA would be responsible for the services and dispatch of the Bradley Lake lines. He stated GVEA understands there has to be services and costs of getting the power from Bradley north into GVEA's system. Mr. Borgeson explained GVEA signed a services agreement stating they will pay Chugach to provide the services and now HEA disputes CEA's obligation under the services agreement and wants GVEA to pay HEA for the same services GVEA has agreed to pay Chugach for under the same services agreement. He requested clarity.

Mr. Janorschke commented he does not believe HEA has ever stated they want to dispatch Bradley Lake. Mr. Borgeson asked why HEA is proposing GVEA pay for dispatch services under HEA's tariff. Mr. Janorschke stated the tariff is for dispatch services and wheeling on the transmission side of HEA's system. He noted HEA has not received adequate compensation for using their system since the project came online over 20 years ago. Mr. Janorschke added CEA does not have authority to use HEA's system to dispatch power and in order to do that, CEA has to work with HEA's dispatchers and local dispatching authority (LDA). This is impacting HEA's entire system.

Mr. Borgeson commented whether this was a good deal or a bad deal, it was the deal agreed to under the original obligations. He believes there were benefits HEA received when they signed the agreement.

Mr. Janorschke requested if anyone could pinpoint the language in the services agreement that puts the obligation on HEA. Mr. Day explained part of open access tariffs pays for the cost of dispatching services so power can flow, lines are not overloaded and there is coordination of outages. He believes the services agreement says CEA will accept Bradley power and move it to the other utilities. The hole exists in that what CEA used to pay to lease the facilities at HEA was in that part of the cost and part of the tariff, but now that CEA no longer leases those facilities from HEA, those costs should no longer be accruing to the wheeling utilities. The costs still exist and now HEA has taken over those costs. Mr. Day believes there should be a shifting of costs and losses, which becomes a technical question. Bradley is a very significant resource on the HEA system. Mr. Day noted HEA's relative size is 80 megawatts and Bradley Lake is 120 megawatts. Bradley is very large compared to HEA, which causes problems and that is the reason HEA is before the Committee with these issues.

Mr. Kuhn asked Mr. Janorschke what are the successor facilities to the Soldotna Substation and how does it work. Mr. Janorschke explained the successor facility is Quartz Creek, which is the edge of HEA's system and where all the metering points exist today. He suspects this was intended back when the agreement was originally signed, even though he was not present when the agreement was signed. Mr. Janorschke noted it was known the wholesale power contracts, the transmission lease agreement with CEA for the SQ Line, and the SVC maintenance agreement all were to expire at the end of 2013. He believes those who signed the agreements knew it would be a potentially different world in 2014.

Mr. Kuhn asked how HEA provides the voltage support to its transmission segments from the perspective of the Bradley power delivery. Mr. Day noted the first component is the Bradley SVC that was installed at Soldotna, which is a major voltage support. The second component is supporting the voltage with HEA's Excitation rotating equipment as part of the system voltage control. Mr. Day noted he needs to verify the records, but believes there were issues with limited transmission capability of the power north without the SVC at Soldotna.

Mr. Burlingame stated he will add to Mr. Day's comments. The SVCs were an afterthought and were added to increase the transient stability and not the steady state transfer of power. Chair Griffith agreed. Mr. Burlingame noted the steady state transfer of power was a byproduct of the transient stability increase, which is why both SVCs actually have a reservation of more transient stability in the SVC control module.

Mr. Pease believes that issue was initially addressed in the transmission agreement under Section 2B where HEA was supposed to take measures to provide voltage support along that segment of line.

Mr. Kendall requested clarification on the reconciliation HEA has with the BPMC agreements that did not expire compared to the HEA's list of agreements that did expire on December 31, 2013. Mr. Kendall commented it seems HEA anticipated there would be a series of negotiations relating to HEA trading their own electrical generation and no longer purchasing power from CEA, because this discussion started seven years ago when notice had to be given to CEA.

Mr. Janorschke noted HEA recognized, as he suspects many of the other utilities did too, that there was going to be an issue coming up at the end of 2013 with HEA's addition of a new generation and creation of a dispatch center with a wheeling tariff. Mr. Janorschke stated this is no surprise to anybody on the Railbelt and HEA has been talking about the new generation and dispatch for three years. HEA has been talking about the wheeling tariff for at least a year now in an attempt to head off what has become the current situation. Proposals were made in 2011 or 2012 trying to make sure HEA's new generation had the least impact on the deliverability of Bradley power off the Peninsula.

Chair Griffith restated the question of what did HEA do to notify the parties seven years ago. Mr. Janorschke believes HEA gave CEA notification three years ago they were not going to extend the wholesale power agreement.

Mr. Kendall stated the BPMC oversees the movement of Bradley Lake power from Kenai to Anchorage and north. Mr. Kendall asked if the BPMC received a proposal stating HEA will take the place of CEA on the Kenai. Mr. Janorschke stated he does not believe the BPMC has the authority to tell HEA what HEA can do on the Kenai. Mr. Janorschke stated the BPMC responsibilities are limited to the Bradley Project, which stops at Bradley Junction.

Mr. Kendall commented he would like to know if those types of discussions took place at the BPMC level. Mr. Janorschke stated that discussion did take place at the BPMC level and requests for solutions were proposed to each participant on the BPMC. Mr. Janorschke believes HEA's original proposal would have alleviated many of the current disputes, but the response from BPMC was "we appreciate it, but we are not ready for that." Mr. Janorschke believes MEA was the only one who responded in writing and noted these issues deserve some additional discussion at a later date.

Mr. Gibson understands HEA believes they have been subsidizing the BPMC power flows through HEA's system. Mr. Gibson stated the approximate cost for the lines in December was $250,000 and under the HEA tariff, the cost for the lines will be about $2.9 million. Mr. Gibson asked if that is the amount of subsidization that has been occurring and if it is, how much is the new generation adding to the $2.9 million in the system cost.

Mr. Janorschke believes the $240,000 was for the Bernice to Soldotna to Quartz (BQ) Line and did not include the rest of HEA's system. There are no new generation costs included, but dispatching costs are included.

Mr. Gibson asked if the delivery points change the general amount of losses from Bradley up to Quartz Creek. Mr. Janorschke noted where the losses are measured does not change the loss amount. The largest driver in the losses right now is how the units are dispatched.

Mr. Thibert understood HEA to state no generation costs were included in their tariff. He asked if the T1 and T2 rates do include a portion of generation. Mr. Janorschke commented Mr. Thibert was correct that there is a small component for voltage support included in the tariff. Mr. Day noted definitely voltage support from the rotating equipment is a portion included in the tariff, but he does not know about T1/T2 rates to answer whether or not they are included.

Mr. Pease addressed HEA's request for anybody to show them in the agreement the obligation that Bradley Lake power has a priority to move north from Soldotna to University. He directed attention to the services agreement under the last "whereas" on page one, which reads, "under the circumstance, participation in a project where all the parties can reasonably be achieved only if some alternative solution to the problem of transmitting or otherwise utilizing project power devised by the parties, such alternative arrangement to be terminated if and when adequate alternate transmission facilities are constructed." Alternate transmission facilities are defined in the agreement as something other than what is covered by the agreement.

Mr. Pease directed attention to the services agreement Section 2B, Non-exclusivity of Services, at the end, which reads, "provide that no other agreement shall have the effect of reducing a priority access to services enjoyed by Bradley Lake energy under this agreement." He noted another area for consideration is Section 8A, IV, talks about coordination between CEA and HEA with respect to dispatching Bradley Lake power, the dispatch of project generation, and provisional services to the wheeling utilities.

Ms. Fisher-Goad expressed her concern that Mr. Day mentioned the burden of transmitting Bradley power through HEA's system. She asked for him to provide further explanation of how the asset that has been on the system for a long time has become a burden. Mr. Day explained before January 1, 2014, CEA dispatched the system and dealt with losses in a very generic way. HEA has an ongoing investigation with CEA as to how they compensated HEA for the measurement of wholesale power because it included Bradley losses. There was a calculation in the wholesale bill where CEA gave credit to HEA for a certain portion of energy that was attributed to the wheeling utilities of Bradley losses on the HEA system.

Ms. Fisher-Goad clarified she is asking if it is technically burdensome for HEA to deal with Bradley power on the system. Mr. Day stated it is not technically burdensome and their issue is how to apportion the calculated losses. Ms. Fisher-Goad asked if she is correct in understanding the reason for the tariff is that there is significant burden for HEA to be able to deal with Bradley power on the system. Mr. Day stated that is correct.

Ms. Fisher-Goad asked if HEA's burden also impacts how they feel about operating the project. Ms. Fisher-Goad expressed her concern that HEA is very focused on its own generation and its own transmission system. She asked if the BPMC should have a concern with respect to HEA operating the project. Ms. Fisher-Goad noted this is an asset that is supposed to service the entire Railbelt. She believes the Committee and the utilities are expected to cooperate in order to get the power to all the utilities subject to the power sales agreement.

Mr. Janorschke believes HEA's intent is that the Bradley power has a large impact on the HEA system and not that it is a burden to the HEA system. He noted all the non-HEA power produced at Bradley has to go through HEA system and go to Anchorage, as opposed to utilizing those electrons to serve HEA native load. Mr. Janorschke stated it is not a burden, but it has a large impact on HEA's system. He believes if a large portion of the HEA system is going to be used, then the cost should be shared. Mr. Janorschke noted HEA has never said they intend to restrict the flow of Bradley power to the Peninsula.

Mr. Janorschke believes that any concerns Ms. Fisher-Goad has about the O&M at Bradley goes beyond the issues currently before the Committee. There is an entirely separate group maintaining the O&M at Bradley. Mr. Janorschke asked Chair Griffith to please voice any concerns regarding operation and maintenance at the plant. Mr. Janorschke asked how many people from the Committee have actually been to the plant in the last two years. He believes the crew is fantastic.

Ms. Fisher-Goad commented she understands the focus of HEA's technical team is on the new generation and their transmission system. She wants to ensure there is focus with respect to the project operating appropriately. She expressed her concern that the Railbelt system is less and less of a Railbelt system when utilities are not working as part of a team to provide service and delivery of power to the entire Railbelt.

Mr. Baldwin responded to the comments about the services agreement made by Mr. Pease. Mr. Baldwin believes Mr. Pease accurately read the provisions, but thinks the interpretation of those provisions is overstated as far as any argument that CEA or others might have an ability to impose CEA's duties onto HEA under the contract. He noted with respect to the alternative solution, the parties were looking for an alternative solution to transmitting Bradley power so that everyone could get their Bradley power when the project was built. The word "alternative" implies there is more than one solution. Mr. Baldwin believes an alternative solution to CEA providing the services over HEA's system is HEA providing the services of its system as the owner of its system.

Mr. Baldwin responded to the comments regarding Section Two and priority access to the services enjoyed by Bradley Lake energy under this agreement. He noted nothing in the agreement requires HEA to give people a bargain on their wheeling rates in order to qualify as providing priority access to services. Mr. Baldwin argues the services agreement does not even apply to HEA, as far as the dispatcher's duties are concerned.

Mr. Baldwin responded to the comments about Section 8A4 delineating dispatcher's duty. CEA has the duty to coordinate with HEA in order to minimize potential conflicts between HEA system operations, CEA system operations and the dispatch of project generation. HEA is definitely trying to cooperate and coordinate with CEA. Mr. Baldwin does not believe when one is asked to surrender one's own property and property rights, one can be accused of not cooperating by refusing to surrender those rights to a third-party when there is clearly an alternate available and if there is no obligation on the part of the owner of those rights.

Mr. Baldwin explained HEA has offered a typical alternative offered by typical utilities to people passing energy over their systems and that is to offer a tariff that is cost-based. He stated it

seems like there is some denial that HEA is actually incurring these transmission costs and some wish on the part of the other utilities to have HEA continue to provide transmission over its system at a bargain rate, even though we are in a new world. This is a new contractual system that has to be recognized.

Mr. Baldwin stated the parties understood at the time the services agreement was signed this lease was going to terminate. He believes CEA was certainly aware the lease was going to terminate. The lease was honored and the lease terminated. There was a bargain rate for a long time and there is no longer a bargain rate. All HEA is asking for at this point is to be fairly compensated, as any other utility would.

Utilities position

Mr. Brena expressed his appreciation for being able to appear telephonically from Washington, D.C. Mr. Brena stated his viewpoint, quoting from the services agreement, that all parties, including HEA, agree that HEA "will in good faith and at all times operate, maintain, and repair the electrical facilities used to perform the services provided under the services agreement." He believes the contract is clear that HEA agreed CEA will operate the lines necessary to wheel Bradley Lake power from the Soldotna Substation north.

Mr. Brena stated footnote five in the brief prepared for this meeting today (attached) details all the places in the services agreement where it is very specific that virtually all of CEA's rights and obligations to wheel power are defined in terms of receiving the power at the Soldotna Substation. Mr. Brena does not believe this case is about HEA's ability to generate or manage their own system. He believes it is about their agreement that CEA can operate the SQ Line from wheeling the Bradley Lake power, which CEA has operated for 25 years.

Mr. Brena commented HEA has two arguments to contradict the plain language of the services agreement. The first is that a lease that is not one of the Bradley Lake agreements has expired. The expired lease had to do with the wholesale power sales that CEA was making to HEA. He noted all parties were aware of the least at the time the Bradley Lake agreements were entered into and the services agreement is a 50-year lease. Mr. Brena does not believe there is a single term or condition in the services agreement that changes one bit as a result of the expiration of that lease. The dispute is whether or not the expiration of the lease impacted any of the Bradley Lake agreements.

If the original makers had intended for the services agreement to only run 25 years and all the other Bradley agreements to operate for 50 years, the could have stated that. The agreements were made long-term on purpose because they were interrelated agreements associated with undertaking take-or-pay obligations by everybody to fund through bonding an asset project that benefitted everybody. Mr. Brena noted the expired lease included the SQ Lines, the electrical facilities north of the Soldotna Substation, as well as for other facilities. The lease does not say anything about Bradley Lake or Bradley Lake power.

Mr. Brena noted on page five of his brief, former HEA general manager points out that the entire structure of the Bradley Lake agreements prevents any one party from taking advantage of the others and that all parties have to agree to any amendments to the Bradley Lake agreements. The

rates are hemmed in specific negotiated formulas and cannot be changed by any one party. Mr. Brena believes HEA is unhappy with the compensation they are receiving under the Bradley Lake agreements and in the middle of the deal are trying to reprice the SQ Line from a little over $200,000 to almost $3 million.

Mr. Brena believes the other argument presented by HEA has to do with the definition of the successor facilities to the Soldotna Substation, which he noted HEA's counsel stated he does not remember what it meant. Mr. Brena stated a CEA employee gave uncontested testimony to the RCA about what the phrase meant and noted it was a reference to if the southern intertie got built and it replaced the Soldotna Substation with some other substation. Mr. Brena commented even if a broader definition is used, it does not mean HEA has a unilateral right to disconnect the breaker at the Soldotna Substation and move them to Quartz Creek and unilaterally move that point in the contract.

There are 13 specific amendments that are necessary to make that change to the document and an amendment to the services agreement requires a unanimous consent to all the parties. Mr. Brena noted the idea the successor facility language in the contract somehow permits HEA to take unilateral acts to change the point at which CEA receives power or its grant of authority by HEA to operate the SQ Line is simply not credible. Mr. Brena believes the unilateral acts of HEA to file a tariff to try and bypass the BPMC and the entire Bradley Lake process and its efforts to reprice this deal in the middle of the deal is not in good faith.

Mr. Brena requested the Committee rule today on the issue of the BPMC's authority. He noted the power sales agreement and the services agreement both anticipate very broad authority by the BPMC. He explains this on page six of the brief. The power sales agreement says the BPMC is responsible for the management, operation, maintenance, and improvements of the project and shall also arrange for scheduling and dispatch of project power. The services agreement entrusts the BPMC to establish procedures necessary to resolve disputes.

Mr. Brena cited Article 12 of the BPMC bylaws which provides if the authority of the BPMC to act is challenged, the BPMC will rule on its authority and if it has authority, it will rule on the dispute. This is not discretionary. It is a mandatory valuation. Mr. Brena agreed with earlier comments regarding taking every potential avenue to work this out because the courts and litigation is not an efficient way to resolve these issues. He noted all the Bradley Lake participants went to the Legislature and requested the series of contracts be exempt from regulatory oversight and the BPMC will work through its own issues.

Mr. Brena stated the issue is whether CEA or HEA has the right under the services agreement and the Bradley Lake agreements to operate the facilities north of the Soldotna Substation, including the SQ Line. Mr. Brena believes it is clearly within the Committee's authority to act on these issues and in the absence of acting, there only other place to go is the Superior Court and the Legislature trusts the specialized experience and expertise of the industry to address these conflicts and questions. He encouraged the Committee to take every opportunity to try and negotiate a reasonable resolution.

Mr. Brena commented on the issue of whether or not HEA is entitled to additional compensation. He stated he does not know anybody that would not like to redo a deal after they entered into it

and to get more from the parts that are disadvantaged to them. Everyone agreed the Bradley Lake agreement brought net benefits to every project participant. There is no failure of consideration. There is no failure to compensation. Everyone got the benefit of the project and everyone agreed that CEA would operate the SQ Line and if that changed, it would take a unanimous consent of all parties. Everyone agreed on the exact formula that would determine the cost and compensation for all the parties involved. There is nothing in the Bradley Lake agreements that has changed. HEA and all of the project participants are getting exactly the deal they benefitted from and it is not permitted to reprice in the middle of the deal by 1,100%.

Mr. Brena stated there are safety and reliability issues to the distribution and dispatch of Bradley Lake power raised by these disputes. The Committee has asked HEA twice now to maintain the status quo regarding the Bradley Lake agreements until such time as the issues can be addressed and negotiated in good faith between the parties. HEA is continuing to change locks, change out breakers and impact CEA's ability to operate the facility. Mr. Brena commented there cannot be a high-power transmission line in place with people not agreeing who has physical control of it, how it is going to be scheduled or how it is going to be dispatched.

Mr. Brena reported under HEA's tariff, the Bradley Lake power does not have any priority. The entire structure of the Bradley Lake agreement was to give the Bradley Lake power specifically negotiated priorities over the entire system, so it could be delivered to the utilities that needed it. He believes HEA does not only want physical control and 1,100% more than they are entitled to under the agreement, but they want to determine the Bradley Lake power priority status. Mr. Brena stated one of the footnotes included in the brief submitted by HEA to the RCA was that HEA had no obligation to agree Bradley Lake power could be wielded over their facilities at all. That is not the deal any of the project participants signed up for.

Mr. Baldwin requested a few minutes for rebuttal. Chair Griffith noted he does not want a long rebuttal. The issues have been stated and he intends for the Committee to vote on the questions pretty quickly.

Mr. Foutz stated he does not oppose a brief rebuttal, but this is the time for questions for the disputing utilities' point of view. Chair Griffith requested Mr. Baldwin be brief in his rebuttal.

Mr. Baldwin believed the comment made that HEA is guilty of bad faith because of its position is outrageous. He believes that is an insult and it should not stand. Mr. Baldwin advised HEA's position is that it intends to honor the contracts. He noted the contracts were written without having any specific provision to deal with the specific contingency of the lease terminating. Mr. Baldwin stated the negotiators at the time can be faulted or accept the fact they intended to let the lease terminate and for the then available alternatives to be put into place.

Mr. Baldwin stated HEA takes the position they will vigorously defend the existing contracts and are not asking for any additions to those contracts. He noted there is no agreement by HEA that CEA may do the O&M on the Soldotna segment. The section that has been quoted is a duty to operate and maintain the system on behalf of CEA in accordance with prudent utility practice. The same language is in HEA's transmission contract where HEA undertakes in good faith and at all times to operate, maintain and repair the electrical facilities and to perform the services here under.

Mr. Baldwin commented on the definition of a successor facility, which clearly indicates that the negotiators of the contract anticipated a time in the future when there may be a need for a successor facility for CEA to take power. Mr. Baldwin commented on the point made that the contracts do not provide for HEA to receive any compensation for wheeling power. He agreed and stated that is because there is not a provision in the contract to deal with that contingency. The fact there is not a provision in the contract to deal with the contingency does not thereby allow people to say the contingency was never contemplated or to ignore the fact that this has, in fact, occurred. He stated there are no rights under any of the contracts that provide other utilities with rights to HEA's system and should have been negotiated into the contracts if they were going to be there.

Mr. Baldwin stated the comment the utilities have potentially no right to Bradley Lake power under HEA's tariff is nonsense. That is the reason the tariff was created. He added that without the tariff, he agrees that statement is true, but with the tariff, he believes it is an untrue statement.

Mr. Brena stated HEA's brief says, "the opposing utilities are now demonstrating a lack of good faith by directing punitive action at HEA." With regard to the successor substation, he believes there is no reasonable interpretation and the parties' expectations at the time that HEA would change the breakers from Soldotna Substation to Quartz Creek unilaterally and without unanimous consent of the parties.

Mr. Brena noted HEA has asserted they do not have an obligation to transfer the power. He agreed with Mr. Baldwin that under the tariff, HEA would have an obligation to transfer power. Mr. Brena stated HEA included in their brief they did not have to file the tariff and they did not have to wheel power at all. Mr. Brena does not believe it was ever the deal to be completely dependent going forward to get power based on HEA's decision on whether to file a tariff.

Mr. Brena clarified he did not say HEA was not compensated. HEA is being compensated. They are receiving the benefit of the deal they struck. They got the benefit of cheap power from Bradley Lake. They got the benefit of all the utilities helping them build out the Soldotna segment of their system. They got huge benefits from the Bradley Lake power by having this huge power source in the middle of their service area. The fact HEA does not get an additional payment specifically linked to transmission over the SQ Line should come as no surprise to anybody.

Mr. Agi asked if Mr. Brena recalled that AEA started surfacing affirmatively a concern earlier today whether HEA or any of the issues being discussed today is threatening the benefits of the deliverability of the Bradley project. Mr. Brena noted he recalled the concern. Mr. Agi asked if Mr. Brena has reviewed any materials that purports to impose a monetary limit or a formula on wheeling for Bradley power. Mr. Brena advised the agreements have specific formulas for how people are going to be compensated for their participation as operators in the agreement. HEA has a formula with regard to the Soldotna segment and CEA has a formula with regard to facilities from the Soldotna Substation north. Mr. Brena does not believe the contract included a specific payment to HEA for CEA's control, operation and maintenance of the SQ Line, but believe it is still with the formulas in the contract agreed to by HEA at the time.

Mr. Agi asked if there is a formulated limitation to what CEA may charge for wheeling across the SQ Line? Mr. Brena noted the formula is locked into the contract. The inputs into the formula are subject to RCA review and approval for their reasonableness. Mr. Agi asked if CEA could raise their wheeling rates. Mr. Brena noted anybody can negotiate any change they want, but it requires cooperation and unanimous consent by everybody. It cannot be a unilateral decision. Mr. Brena believes people have been understating the significance of this dispute for the reliability of power. There are two different operators with two different sets of priorities. He noted HEA's mechanism moving forward is the Bradley Lake agreements apply to everything, but that 40-mile SQ Line, and if people do not like what HEA decides, they can take it to the Commission. Mr. Brena believes when there are overlapping operators with locks being changed based on unilateral interpretation and there is a refusal to maintain the status quo at physical facilities during a dispute, this creates substantial safety and reliability risk.

Chair Griffith brought the question before the Committee today; does the BPMC have authority to decide these issues that are before the BPMC? Chair Griffith requested to hear points of view, if there were any.

Ms. Fisher-Goad requested counsel for the BPMC, Mr. Gibson, provide perspective on whether the BPMC has authority. Mr. Gibson believes the BPMC does have the authority to address the issues. The issues involve scheduling, production and dispatch of the project power and interpretation of the obligations of the power sales agreement and the associated agreements that involve it.

Mr. Bjorkquist stated he disagrees with Mr. Gibson's opinion regarding the dispute over the SQ Line and whether the services agreement applies to that or not. The SQ Line is not part of the Bradley Lake Project. It is outside of the Bradley Lake Project and so all of the BPMC authority with respect to the project has no application to the disputes on the SQ Line. The reason the BPMC is involved with this is under the services agreement saying, "the parties agree that any further procedures for dispute resolution under this agreement shall be entrusted if the authority concurs to good faith negotiation and adoption by the Project Management Committee with Chugach's affirmative vote required for adoption of such procedures."

Mr. Bjorkquist advised under the services agreement, the role that the BPMC has is to adopt procedures for the parties to deal with dispute resolution. The parties to the services agreement are the utilities here at the table. AEA is not a party to the services agreement and it is not a project asset. The BPMC cannot dictate solutions to how to resolve the SQ Line disputes under the services agreement.

Mr. Bjorkquist pointed out what that means in context of what Mr. Kendall mentioned earlier on, the idea of trying to move forward with some informal conversations and that the utilities might be able to work together and solve something. Mr. Bjorkquist believes the question that should be asked is; can the utilities here resolve and implement a solution to every dispute that there is? The answer to that is obviously yes.

Mr. Bjorkquist noted the one advantage the utilities have in this context is all of the agreements we are dealing with are exempt from RCA jurisdiction. The utilities have the capability of coming up with any solution that makes sense, amending those agreements and implementing

that solution, regardless of what the RCA might otherwise deal with or say about that. Mr. Bjorkquist believes having an informal conversation between the utilities trying to come up with a solution that makes sense for everybody is certainly a viable option.

Mr. Gibson commented he realizes these disputes do not come under the power sales agreement and are not project oriented, but there is the power to set up some dispute procedures to solve these problems under the services agreement.

Mr. Brena noted all the project assets are not down at the hydro. There are breakers that are owned by the project through the system. He believes the power sales agreement is not limited to the project and also includes the scheduling, production and dispatch of project power. Mr. Brena concludes the BPMC has authority under the power sales agreement and agreed with the analysis regarding the services agreement. These are already integrated agreements. Mr. Brena commented the only other choice to the BPMC taking authority is turning these issues and resolutions over the Superior Courts. He noted this was exempted out of the regulatory authorities so the BPMC would have the opportunity to address the issues.

Mr. Bjorkquist stated the scheduling, production and dispatch of project power in the power sales agreement is not the transmission or wheeling. That is a different topic and is the topic in dispute with the services agreement and the Soldotna to Quartz Creek Line.

Mr. Brena added the scheduling, production and dispatch of project power is not a reference to the project. It is a reference to the project power, which is also a defined term which flows all the way through the system, as does the scheduling.

Mr. Kendall noted the question seems to be whether the BPMC actually has some authority over the SQ Line, since the SQ Line is tied up in the BPMC agreements. Mr. Kendall asked if the BPMC can move operator or ownership of that line from one utility to another, which seems to be happening unilaterally. Mr. Gibson believes the authority of the BPMC is found only within the four squares of the power sales agreement.

Mr. Kendall asked if the BPMC has authority over the SQ Line within the power sales agreement. Mr. Gibson does not believe BPMC could take the line and give it to someone. He believes the BPMC can enforce obligations and responsibilities that have been agreed to.

Mr. Kendall commented the utilities have agreed that CEA would be the operator, even though CEA had an existing lease at the time with HEA and is obligated to come to some agreement over the use of that line with HEA. Mr. Kendall noted the SQ Line cannot be separated from the discussion because CEA was already designated an operator.

Mr. Kendall asked if the SQ Line is part of the project because the utilities had designated an operator and HEA agreed. Mr. Borgeson believes the SQ Line is part of the project because it has been agreed that Bradley power has to get all the way pass Quartz Creek Soldotna Line to get to the utilities' service territories. Mr. Borgeson believes HEA agreed to this when they signed the services agreement.

Mr. Borgeson believes this dispute is proffered before this Committee and will make a motion or a resolution to that end when the Chair is ready. He believes the BPMC has the authority to

enforce the agreement with HEA. The line is going to be maintained by CEA and available for Bradley power to come across the system.

Mr. Kendall asked a follow-up question. He stated the next segment of the delivery of Bradley power north is the line that goes from Quartz Creek to University Station. He asked if CEA was also bound by the same BPMC agreement, so they cannot go to the RCA and ask for a raise in tariff as HEA is doing. Mr. Gibson noted CEA did come to the BPMC with a formulaic approach and asked this Committee to change the rate. The Committee agreed to change the rate. Mr. Gibson stated CEA is bound by these documents and have honored the documents on the flow of power north.

Mr. Kendall asked if he understood correctly that CEA was given a rate increase for their segment at some point in the past. Mr. Gibson agreed that between five or seven years ago, CEA came to the Committee as a whole and brokered and compromised an arrangement that has been honored ever since.

Mr. Janorschke added to the comment Mr. Bjorkquist made earlier that the SQ Line is not part of the project, because the project is clearly defined as the generation facility, the transmission line up to Bradley Junction where it terminates and the SVC project. Those are the pieces of assets that are part of the project and do fall within the purview of the BPMC. Mr. Janorschke disagreed with Mr. Borgeson that the BPMC has authority over this issue.

Mr. Janorschke stated he heard a comment that CEA, as the dispatcher, has been operating and maintaining the SQ Line. He clarified CEA has been dispatching over it prior to this year, but HEA has been the one maintaining the line. The line is an HEA asset. The agreement was CEA would pay for the maintenance if it was an ordinary expense and HEA would pay for the maintenance if it was a capitalized improvement. HEA has been maintaining the facility all the way to Quartz.

Mr. Kendall asked if the maintenance was part of the cooperative BPMC project. Mr. Janorschke stated that was through an agreement HEA made with CEA, which is separate from the project. Mr. Day believes the distinction between minor and major maintenance was under the lease agreement. Mr. Evans noted on a higher level, if a party has an obligation to make something happen, it does not mean that party has to put on boots and go do it. The party has to arrange for it to happen. He stated Mr. Thibert would have the specifics.

Mr. Thibert advised the lease agreement gave the responsibility of maintenance to CEA and it defined two terms of minor maintenance and major maintenance. A series of meetings were held and it was determined that any unit that could be capitalized would be considered major maintenance. As per the contract, HEA had the right to either perform the major maintenance themselves or have CEA perform the major maintenance.

Mr. Thibert noted over the years, CEA did a lot of the up-front maintenance and the right-of-way clearing. It became cheaper for HEA to do the maintenance because of location in the later years. HEA would bill CEA and this was built into the formula for the Bradley Lake wheeling rate. Mr. Thibert explained capital costs were also built into the wheeling rate. Where there has been a rate change, it was because CEA's costs had increased. Cost increases have been

approved by the Commission and then once they are approved, the cost changes are inserted into the formula.

Mr. Thibert reported CEA began with a ramp-in rate, where they were only moving costs across starting at 10% and the percentage increased each year for 15 years, not to exceed the cap of 90%. The current costs are at the 90% cap. Mr. Thibert noted CEA will never get 100% reimbursement.

Mr. Kendall requested counsel explain the bylaws relating to the Committee's authority and if a decision has to be made unanimously. He does not believe a unanimous decision will be made today. Mr. Gibson stated Section 12.2 says, "if the Committee determines that it has the authority to consider a matter, it shall decide the issue on the merits." Section 5.10 has specific rules about the Committee voting for scheduling, production and dispatch of power and a decision needs four voting members that equal greater than 51% of the Bradley Lake allocation. If the Committee is voting on changing the dispute resolutions, the vote must be unanimous. Mr. Gibson advised he would look to the bylaws to determine the manner of voting for each specific area and if it is not specifically listed in the bylaws, the vote becomes by majority of the present quorum.

Mr. Kendall asked what would be the voting application today. Mr. Gibson stated voting for adoption of procedures for scheduling would take 51%. Mr. Gibson would have to review the bylaws to determine the voting procedure for the issue of how the contract should be interpreted.

Mr. Baldwin commented CEA has the right to dispatch the Bradley plant, which is clearly a huge economic advantage for CEA and would justify CEA only charging 90% of its transmission costs. Mr. Baldwin noted the irony of the position of at least four people at the table that HEA should be contributing its transmission facilities and receive no compensation. Mr. Baldwin cited Section 13A.C.2.A which explains the Committee's responsibilities to arrange for the operation, maintenance, scheduling, production and dispatch of the project power, but conspicuously excludes transmission. Mr. Baldwin noted the BPMC has no authority under the power sales agreement to address transmission issues of Bradley power.

Mr. Brena believes one of the issues before the Committee is how many votes are needed to rule on the authority of the Committee. The provision in the bylaws that controls this issue is Article 5.1.10 stating the act of a majority of votes taken in any meeting when a quorum is present shall be the act of the Committee and binding on the members.

Mr. Brena commented the bylaws provide for a unanimous consent required on issues of process, not on issues of substantive determinations of authority. He noted the Bradley Lake agreements give a majority vote the opportunity to change the bylaws. Article 5.10.2 explains voting on the Committee's authority. He believes this Committee has an obligation to vote on whether the Committee has authority over these issues.

Mr. Gibson agreed the Committee has an obligation to decide on the Committee's authority and a majority vote to pass would be appropriate. He corrected Mr. Brena's statements regarding the manner of acting stating it is except for those matters which expressly require alternative voting procedures, the act of the majority of the votes during a meeting will be the act of the

Committee. Mr. Gibson gave the clarification regarding changing the bylaws, which Article 5.10 requires the unanimous vote for dispute resolution procedures. He agreed with Mr. Brena and does not believe obligations under the services agreement are procedural issues.

8. NEW BUSINESS

A. Applicability of Resolution 2013-02 (HEA Tariff Filing) - Action Item

MOTION: Mr. Borgeson made a motion that the BPMC has the authority and responsibility to determine the resolution of the issues before us. Further, that this body should immediately adjourn before the other business and meet informally in an attempt to resolve the issues. Additionally, the O&D Committee should report to this body at the direction of the Chairman. Motion seconded by Mr. Kuhn.

Mr. Janorschke expressed his appreciation for Mr. Borgeson's willingness to continue to move forward on these issues, but he believes there is a wide sweep of issues, some of which fall with the purview of the BPMC and some of them do not, and unless those are identified and separated, he will vote against the motion.

The motion passed with HEA opposed and AEA abstained.

9. NEXT MEETING DATE

The informal lunch meeting was scheduled for February 20th, 2014, at 12:30 p.m. at the offices of Anchorage Municipal Light & Power.

10. ADJOURNMENT

There being no further business for the committee, the meeting adjourned at 12:52 p.m.

BY: _____
Joe Griffith, Chair BPMC Dispute Resolution Committee

Attest: _____
Sara Fisher-Goad
Alaska Energy Authority, Secretary

DESIGNATED UTILITIES'[1] BRIEF ON DISPUTES WITH HOMER ELECTRIC ASSOCIATION, INC.

I. INTRODUCTION

The Bradley Lake Hydroelectric Project ("Project") was made possible through the compromises among the Project participants[2] set forth in the Bradley Lake Agreements.[3] For whatever reasons, HEA is disregarding the controlling terms of the Bradley Lake Agreements and taking unilateral actions to gain operational control of the electrical facilities used to wheel Project energy north from the Soldotna substation that HEA had previously agreed would be operated by Chugach throughout the term of the Bradley Lake Agreements. HEA's unilateral actions raise significant financial, safety, and reliability concerns as well as run the risk of unwinding the Bradley Lake Agreements and the Project.

The Bradley Lake Project Management Committee ("PMC") clearly has the authority as well as the obligation to act to address the disputes raised by HEA's unilateral acts. To do so, the PMC must find (1) the PMC has the authority to address the underlying disputes, (2) Chugach is required to continue to operate, maintain, and repair the electrical facilities used to wheel Project energy from the Soldotna substation north under the terms of the Services

[1] The "designated utilities" are Chugach Electric Association, Inc. ("Chugach"), Municipality of Anchorage, d/b/a Municipal Light & Power ("ML&P"), Golden Valley Electric Association, Inc. ("GVEA"), and Matanuska Electric Association, Inc. ("MEA").

[2] The Project participants include Chugach, ML&P, GVEA, MEA, Homer Electric Association, Inc. ("HEA"), Alaska Power Authority (now the Alaska Energy Authority) ("Authority"), and the City of Seward d/b/a Seward Electric System ("Seward").

[3] The "Bradley Lake Agreements" include the Agreement for the Sale and Purchase of Electric Power, dated December 8, 1987 ("Power Sales Agreement"); the Agreement for the Sale of Transmission Capability, dated December 8, 1987, and the Amendment to Agreement for Sale of Transmission Capability, dated March 7, 1989 ("Transmission Agreement"); and the Agreement for the Wheeling of Electric Power and for Related Services, dated December 8, 1987 ("Services Agreement").

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Agreement, until it expires or is amended, and (3) HEA is compensated for its electrical facilities used to wheel Project energy under the terms of the Bradley Lake Agreements.

II. THE BRADLEY LAKE AGREEMENTS REQUIRE CHUGACH TO OPERATE THE ELECTRICAL FACILITIES USED TO WHEEL PROJECT POWER FROM THE SOLDOTNA SUBSTATION NORTH

Among the three Bradley Lake Agreements, the Services Agreement primarily governs Chugach's wheeling, storage, and energy purchase services as well as its authority to dispatch, operate, repair, and maintain the electrical facilities used to provide those services from the Soldotna substation north.[4] Since this dispute primarily concerns Chugach's and HEA's relative rights and responsibilities with regard to the portion of the transmission line from the Soldotna substation north to Quartz Creek ("S/Q Line"), the dispute is largely governed by the terms of the Services Agreement.

Chugach has multiple responsibilities and duties under the Services Agreement, many of which are framed by the point at which it receives Project energy--the Soldotna substation.[5]

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[4] The Power Sales Agreement is a core underlying agreement and it concerns the overall terms and conditions associated with the sale of Project power. The Transmission Agreement concerns the Project participants' contribution toward, and ownership of transmission capacity and other relative rights and responsibilities over that portion of the transmission line that runs from the Bradley Lake junction to the Soldotna substation.

[5] Under the Services Agreement, Chugach is required to wheel Project energy delivered to it at the Soldotna substation, section 4(a) Services Agreement, for a rate based on the costs of providing the wheeling service from the Soldotna substation, section 4(d) Services Agreement. Chugach is required to store Project energy delivered to it at the Soldotna substation, section 5(a) Services Agreement. Chugach is required to purchase Project energy delivered to it at the Soldotna substation, section 6(a) Services Agreement, for a rate based on the cost of purchasing the energy at the Soldotna substation, section 6(d) Services Agreement. And, Chugach is required to schedule Project energy based on the energy delivered to it at the Soldotna substation, section 8 Services Agreement, and may only assure deliveries of energy based on energy delivered to it at the Soldotna substation, section 8(g) Services Agreement. Chugach's performance of these responsibilities may be excused under a force majeure provision which defines a force majeure event based, in part, on energy delivered to it at the Soldotna substation, section 12(h) Services Agreement. Bradley Lake energy, direct transmission, and offsetting

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With these responsibilities, the Services Agreement also provides Chugach with the authority necessary to ensure it can perform its responsibilities. Among the grants of authority to Chugach, HEA and all Project participants agreed that Chugach "*will* in good faith *and at all times*: . . . *operate, maintain, and repair the electrical facilities used to perform the services provided*" under the Services Agreement.[6] Through this language, HEA agreed that Chugach not only could but would be *required* to operate, maintain, and repair HEA's electrical facilities, including the S/Q Line, used to perform the services under the Services Agreement from the Soldotna substation north.

This agreement by HEA and other Project participants to require Chugach to operate, maintain, and repair the electrical facilities including the S/Q Line from the Soldotna substation north under the Services Agreement is (1) mandatory and not discretionary, using the word "will," (2) continues through the entire 50-year term of the Services Agreement, using the words "at all times," and (3) is not conditioned upon or limited by leasehold or other unrelated rights as between HEA and Chugach.[7] This unconditional agreement by all the Project participants, including HEA, to permit and require Chugach to operate the electrical facilities north of the Soldotna substation should be enforced by the PMC.

HEA's arguments to the contrary have never been clearly articulated. HEA seems to

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flows are all defined, in part, based on energy "with a physical flow of energy north from the Soldotna substation," section 13(g), (k) & (u) Services Agreement.

[6] Section 7 and 7(a) Services Agreement (emphasis added).

[7] And, for the past 25 years, Chugach has operated, maintained, and repaired the electrical facilities including the S/Q Line used by Chugach in performing its services under the Services Agreement. That said, in fulfilling its responsibilities, Chugach had contracted with HEA to physically perform certain repairs and maintenance by separate agreement.

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argue that the expiration of a lease between HEA and Chugach for certain electrical facilities (which included the S/Q Line and other electrical facilities) used to effect wholesale power sales from Chugach to HEA ("Lease") has somehow resulted in the parallel expiration of Chugach's rights and obligations under the Services Agreement 25 years before it expires. This is simply not the case.[8] The expiration of the Lease did not impact a single term of the Services Agreement. Chugach's rights and obligations to operate the S/Q Line for wheeling Project energy are not contained in the Lease; they are primarily contained in the Services Agreement.[9]

HEA also seems to argue that the point of delivery for Project energy may simply be changed from the Soldotna substation to Quartz Creek. Such a change to the point of delivery under the Services Agreement would require the amendment of at least 13 provisions of the Services Agreement and raises several significant financial, safety, and reliability concerns.[10] Such amendments are possible, but require coordinated action among the Project participants,[11] which in the case of the Services Agreement is the "written consent of all Parties."[12]

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[8] The Lease was entered into two years *before* the Bradley Lake Agreements, was not one of the Bradley Lake Agreements, was not exempt from the regulatory oversight of the Regulatory Commission of Alaska ("RCA"), and was not incorporated by even a single reference into any of the Bradley Lake Agreements.

[9] HEA sometimes articulates that its ownership of the S/Q Line is relevant to who should be required to operate it. As the owner, HEA agreed that Chugach would be required to operate the S/Q Line under the terms of the Services Agreement. Simply because HEA is the owner does not mean it does not have to honor its agreement that Chugach will operate the S/Q Line.

[10] Several coordinated amendments to related provisions of the Power Sales Agreement and the Transmission Agreement may be necessary, as well.

[11] The need for coordinated action to amend essential terms of the Bradley Lake Agreements is by design. Since the wheeling utilities had to undertake significant take-or-pay obligations to make the Project possible, every Project participant wanted to be assured that the deal could not be changed by the unilateral actions of a single Project participant.

[12] Section 3(b) Services Agreement.

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Finally, HEA's position today directly contradicts its position at the time the Bradley Lake Agreements were executed. Kent Wick, HEA's former general manager, stated:

> [F]irst of all, to make any amendments to any of [the Bradley Lake agreements], all of the parties have to agree to it – parties to whichever contract we might be amending. So no one party could take advantage of another . . . . The rates and so forth are hiding in various formulas, whether you're talking about wheeling rates or the way that costs from the Bradley Lake project – and those formulas can only be changed if all the parties agree to it. No one party can do it unilaterally . . . . But I think the main thing is that there are specific formulas that have been negotiated and no one party can change those formulas. So I – I feel it was protected.[13]

Any reasonable reading of the Services Agreement requires Chugach to continue to operate, maintain, and repair the electrical facilities including the S/Q Line used for wheeling Project energy north of the Soldotna substation. All Project participants, including HEA, should be required to honor the terms of the Services Agreement until it expires or is amended.

III. THE PMC HAS AUTHORITY TO RESOLVE THE DISPUTES

The Power Sales Agreement initially creates and defines the PMC's rights and obligations.[14] Section 13(c) of the Power Sales Agreement provides that the PMC "shall be responsible for the management, operation, maintenance, and improvement" of the Project and that the PMC "*shall* take the following actions" . . . "[a]rrange for the operation and maintenance of the Project and the scheduling, production, and dispatch of Project power."[15]

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[13] House Judiciary Committee meeting minutes, HB 356, H.J. 1330 (January 28, 1988), *available at* http://www.legis.state.ak.us/ftr/archives/1988/HJUD/90-HJUD-880128.mp3; *see also* Services Agreement at 6.

[14] Power Sales Agreement at 22-26.

[15] Section 13(c)(i) justified these broad grants of authority based on the "recognition that as take-or-pay purchasers of Project Capacity . . . the Purchasers have substantial long-term financial interests in, and service and planning responsibilities affected by, the Project." These broad grants of authority are also consistent with the exemption of the Bradley Lake Agreements from the regulatory oversight of the RCA under AS 42.05.431(c).

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Further, Section 13(b) of the Power Sales Agreement provides that the PMC "shall adopt . . . procedural rules governing the conduct of the Committee's affairs" including procedures for "dispute resolution." Pursuant to this authority, the PMC unanimously adopted the Bradley Project Management Committee Bylaws ("PMC Bylaws"). Article 12 of the PMC Bylaws sets forth the "Procedures for Dispute Resolution,"[16] and Article 12.2 gives the PMC the authority to decide, on the merits, those issues the PMC determines are within its authority to consider.[17] Further, Article 5.10.2 of the PMC Bylaws provides that "*the act of a majority of votes* taken during a meeting at any time when a quorum is present, shall be an act of the Committee, and binding on the members."[18]

Similarly, the Services Agreement provides that all disputes arising thereunder are within the PMC's authority to adopt procedures to resolve.[19] Specifically, the Services Agreement provides:

> [T]he Parties shall also review performance under this Agreement, including difficulties encountered under the Agreement by any of the Parties and allegations (if any) of failure of any Party to perform the Agreement in good faith in accordance with its terms of intent. The Parties agree that any further procedures for dispute resolution under this Agreement shall be entrusted (if the Authority concurs) to good faith negotiation and adoption by the [PMC], with Chugach's affirmative vote required for adoption of such procedures.[20]

Thus, under the Power Sales Agreement, the PMC Bylaws, *and* the Services Agreement, the PMC clearly has authority to resolve—on the merits by majority vote—the disputes arising

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[16] PMC Bylaws at 23.
[17] PMC Bylaws at 23.
[18] PMC Bylaws at 9 (emphasis added).
[19] Services Agreement at 17-18.
[20] Services Agreement at 18.

from HEA's unilateral actions.

IV. HEA IS COMPENSATED

HEA has been and is still being fairly compensated for the use of its electrical facilities for wheeling Project energy. All Project participants acknowledged the Project would produce "net economic benefits."[21] HEA is receiving every benefit it negotiated to receive or is entitled to receive under the Bradley Lake Agreements. HEA is not entitled to any additional compensation nor has it been able to point to a single term of the Bradley Lake Agreements that entitles it to recover additional compensation.[22] Under the Services Agreement, HEA contractually committed a portion of its transmission system to be used for the transmission of Project energy northward to the other Project participants.[23] For that use, HEA has and is continuing to recover all the considerable benefits under the Bradley Lake Agreements.

DATED this 4th day of February, 2014.

BRENA, BELL & CLARKSON, P.C.
Counsel for the Designated Utilities

By /s/ Robin O. Brena

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[21] Services Agreement at 1.

[22] The expiration of the Lease does mean that HEA is no longer entitled to recover its payments under that Lease. Those Lease payments, however, are not required to be made to HEA or consideration due HEA under the terms of the Bradley Lake Agreements.

POSITION STATEMENT OF
HOMER ELECTRIC ASSOCIATION, INC.

At its meeting of January 24, 2014, the Bradley Lake Project Management Committee (BPMC) asked interested parties to address three issues with respect to the matters raised in Resolution No. 2013-02: the scope of the BPMC's authority, compensation to HEA for wheeling Bradley power and the effect of the termination of the transmission facilities lease between Homer Electric Association, Inc. (HEA) and Chugach Electric Association, Inc. (CEA). In Resolution No. 2013-02 the BPMC resolved that: the BPMC and not the Regulatory Commission of Alaska (RCA) has the authority to resolve HEA tariff issues relating to wheeling Bradley Lake power; HEA's transmission and line loss tariff filings are harmful to the interests of the BPMC members; the BPMC intends to install CEA as the operator of the Soldotna to Quartz Creek (S/Q) Line, to request the RCA to reject the HEA tariff filings, and to take legal action to enforce the terms of the "Bradley Lake Agreements;"[1] and that the members of the BPMC would enter into good faith negotiations, apparently concerning some or all of the matters raised in the resolution.

Summary of HEA's Position

HEA will not negotiate away its right to operate its electrical system or the right to be fairly compensated for providing wheeling services over its system. It is clear to HEA at this point that the opposing utilities are motivated in their actions solely by monetary considerations and they have little or no interest in arriving at a settlement where HEA's interest of being fairly compensated is even acknowledged as legitimate. The opposing utilities are now demonstrating a lack of good faith by directing punitive action at HEA, including signaling an intention to remove HEA as the Bradley operator and engaging in a concerted refusal to consider any matters brought by HEA to the BPMC. Unless and until the opposing utilities (and the Alaska Energy Authority) are able to accept that HEA is operating and has the right to control its own load balancing area without the interference of others, and has the right and duty to its members to be fairly compensated for providing transmission services, little will be gained by further discussion.

[1] The resolution was not clear as to which agreements HEA is charged with violating, so a more precise response to that issue is not possible at this time.

The Scope of the BPMC's Authority

The BPMC's authority over HEA cannot extend beyond the authority HEA has conceded to the BPMC by contract. The Bradley Lake Power Sales Agreement (PSA) gives the BPMC only the responsibility for the management, operation, maintenance, and improvement of the Bradley Lake Hydroelectric Project (Project); to arrange for the scheduling, production, and dispatch of Project power; and to develop dispute resolution procedures.

The PSA does not impose an obligation on HEA to allow a third party to control any point within its system and consequently gives the BPMC no power to do so. The suggestion has been made that HEA's obligation to operate its system in accordance with Prudent Utility Practice (§10(c) of the PSA), might give rise to an obligation for HEA to operate its system to the commercial advantage of the other utilities to the financial detriment of its own members, or the right by the BPMC to somehow compel such operation. Even the broadest possible reading of the duty to operate in accordance with Prudent Utility Practices does not leave room for such a conclusion.

Compensation for Wheeling Bradley Power

For the past 23 years the members of HEA, to a greater or lesser extent, have been subsidizing the cost of wheeling Bradley power over the HEA system. The value of the current subsidy can be determined by looking at HEA's transmission rate case. HEA's members have no obligation to continue to subsidize the transmission costs of other utilities. No provision in any of the "Bradley Lake Contracts" speaks to the issue of compensation to HEA for wheeling Bradley power, thus the ultimate decision as to compensation will be made by the RCA or by a court. In either event HEA will be entitled to fair compensation for the use of its system. The RCA will apply the principle that the "cost-causer should be the cost payer" and the constitutional principle that a regulatory agency cannot require a utility to offer services at rates lower than cost plus a reasonable return. A court will either accept HEA's published price or award "reasonable compensation."

The Purchasers under the Amendment to Agreement for Sale of Transmission Capability (Transmission Agreement) have no basis to claim special consideration for having purchased transmission capability on the Soldotna Segment. Given that CEA had leased and was dispatching a significant portion of the HEA transmission system at the time the Project was built, HEA was not in a position to offer wheeling services. In lieu of paying for wheeling across

the Soldotna Segment, each utility agreed to pay for a pro rata share of the capability of the line equal to its respective MW share of Project Power. HEA has paid the balance of the cost of the Soldotna Segment. The payments by the other utilities were not a windfall to HEA, but represented a more than fair charge for the purchase of the acquired transmission capability.

The revenue requirement calculation for HEA's transmission tariff removes all costs associated with the Soldotna Segment.

The Impact of the Bernice-Quartz Creek (B/Q) Lease Expiration

Under the lease of Bernice Lake Substation to Quartz Creek Substation (B/Q) transmission facilities,[2] CEA operated a substantial portion of the HEA transmission system. HEA also delegated to CEA the right to operate the Soldotna Segment even though the Transmission Agreement called for HEA to operate the Segment. The expiration of both the B/Q lease and the HEA-CEA power sales agreement removed from CEA the right to operate any of HEA's transmission facilities. The event also removed any right of access CEA may have had to HEA's substations and rights of way and removed CEA's right to transmit energy over the HEA facilities. HEA has sole ownership and control over the facilities and the facilities are free of any encumbrances other than a mortgage. No party has been able to produce any contract, deed, easement, tariff or other rule that constrains HEA in its use of the facilities. The B/Q facilities have merged into the HEA transmission system. Bradley power of other parties is being transmitted across the HEA transmission system solely at HEA's sufferance, while the parties await a decision by the RCA regarding its jurisdiction over the wheeling of Bradley Lake power over HEA's system. If the RCA declines jurisdiction, given that the Superior Court does not have the statutory power to order interconnection (that power is given exclusively to the RCA), the Court would apply general principles of contract and property law in deciding whether or to what extent HEA has an obligation to wheel Bradley power in the absence of an agreement to do so.

CEA no longer has the right to use the B/Q facilities to deliver power under the Agreement for the Wheeling of Electric Power and for Related Services (Services Agreement). CEA no longer enjoys the right to receive power at HEA's Soldotna Substation, without having permission from

[2] The S/Q line was but one line segment included in the B/Q lease, thus the lease is more properly referred to as the "B/Q lease."

HEA to do so. Upon termination of both the B/Q lease and the HEA- CEA power purchase agreement, HEA began operating as an independent load balancing authority (LBA) and is now the transmission provider for power between Bradley Junction and Quartz Creek. The result is elimination of CEA's right to dispatch electric power through HEA's system. Under the terms of the Services Agreement, (§13(aa)), the Quartz Creek Substation becomes the new contract delivery point for Bradley Power delivered to CEA.

Maintaining "Status Quo"

The obligation for a party to maintain the "status quo" is very limited and of no applicability to the issues raised by the BPMC. The status quo as of January 1, 2014, was that the B/Q lease had terminated and HEA began operating its own generation and transmission system. Under the Services Agreement, pending resolution of a dispute each party is obligated to "continue to perform its obligations under (the) Agreement." As noted above and shown in the attached compilation of relevant contract references, HEA's obligations under the Services Agreement are few and unrelated to power transmission, regardless of how fervently the other members of the BPMC might wish otherwise. Further, no party has yet been able to articulate a legal basis for the existence of a bona fide dispute concerning whether CEA has or should have any legal right to operate any portion of the HEA transmission system. Nothing in the language of the agreement obligates HEA to ignore the present reality.

HEA's Complaints are Supported by Contract References and Need No Further Elucidation Pending a Response

At the direction of the chair, HEA submitted to the BPMC a statement listing five issues concerning its dispute with the Dispatcher of Bradley power and three issues concerning the action or inaction of BPMC. Unlike the "disputes" raised in Resolution 2013-02 the statement of issues submitted by HEA alleged specific facts which could be either admitted or denied and cited the specific contractual provision applicable to the issue. To date there has been no response by either party against whom the complaint was directed and thus no reason for HEA to comment further.

RELEVANT CONTRACT REFERENCES

Power Sales Agreement Provisions

BPMC's Responsibilities

§13(c) Committee Responsibilities.

(i) ". . . the Committee shall be responsible for the management, operation, maintenance, and improvement of the Project . . . ."

(ii) The Committee shall take the following actions

(A) Arrange for the operation and maintenance of the Project, and the scheduling, production, and dispatch of Project Power;

(H) Adopt procedures . . . for the resolution of disputes that may arise between or among the Purchasers and the Authority concerning the interpretation of this Agreement, the obligations created by this Agreement, or the performance of such obligations.

The "Project" is defined as the "Bradley Lake Hydroelectric Project as defined in Exhibit C." An excerpt from Exhibit C reads:

> The (Bradley Junction) switching station will connect to a 115 kV transmission line (not included in the Project) which will transmit power between Fritz Creek and Soldotna on the Kenai Peninsula.

HEA's Obligations

§10(c) Operation and maintenance of Purchasers' Systems. Each Purchaser covenants and agrees that it will operate and maintain its System in good repair, working order and condition, and in accordance with Prudent Utility Practice.

§1(x) "Prudent Utility Practice" shall mean at a particular time any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry at such time, or which, in the exercise of reasonable judgment in light of facts known at such time, could have been expected to accomplish the desired results at the lowest reasonable cost consistent with good business practices, reliability, safety and reasonable expedition. Prudent Utility Practice is not intended to be the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts which could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. . . . In evaluating whether any matter conforms to Prudent Utility Practice, the parties shall take into account (i) the nature of the parties hereto under the laws of the State of Alaska and their statutory duties and responsibilities, and (ii) the objective of integrating Project Capacity with the generating resources of the Purchasers, including resources available under contract, to achieve optimum utilization of the resources and achieve effective and economical operation of each Purchaser's System . . . .

Services Agreement Provisions

BPMC's Authority

§10(b) . . . The parties agree that any further procedures for dispute resolution under this Agreement shall be entrusted (if the Authority concurs) to good faith negotiation and adoption by the Project Management Committee . . . .

§8(a)(i) (the Dispatcher's duties shall include) Dispatching power generation at the Bradley Lake Project in accordance with the requests of the Parties, the availability of services under this Agreement, and the applicable operating criteria or guidelines adopted by the Project management Committee.

HEA's Obligations

§8(c) . . . Unless the Project Management Committee adopts and implements procedures to the contrary, each party shall be responsible for ensuring that it does not cause to be generated at the Bradley Lake Project any power to which that Party is not entitled by the terms of the Power Sales Agreement and the criteria, guidelines, and procedures adopted by the Project Management Committee.

"Soldotna Substation" defined.

§13(aa) Soldotna Substation. The Soldotna Substation owned and operated by Homer Electric Association, Inc., *or any successor facility at which Bradley Lake Energy can be and is delivered to Chugach at Chugach's metering point by a Wheeling Utility for services under this Agreement.* (Emphasis supplied)

§12(c) Performance Pending Resolution Of Disputes. Pending resolution of any dispute, each Party shall continue to perform its obligations under this Agreement . . . . All Parties shall be entitled to seek immediate judicial enforcement of this continued performance obligation notwithstanding the existence of a dispute. Application for such enforcement shall be made to the Superior Court for the State of Alaska, Anchorage District.

Transmission Agreement Provisions

BPMC's Authority

§3(b) . . . Operation; Line Losses. HEA shall be compensated for line losses, if any, resulting from power of the Purchasers flowing over the Soldotna Segment. The Project Management Committee will determine the amount of line losses and the appropriate amount and manner of compensation.

HEA's Obligations

§3(a)(i) On the date of Commercial Operation, HEA shall sell and each Purchaser agrees to purchase a share of the capability of the Soldotna Segment in an amount (stated in megawatts) equal to that Purchaser's Percentage Share (stated in megawatts) of the Project.

§3(b) Operation; Line Losses. HEA shall operate the Purchaser's Soldotna Segment capability as if it were part of HEA's system and make the Purchaser's Soldotna

Segment transmission capability available for the use of the Purchaser to deliver energy and power in the manner directed by the Purchaser.

§5 - DUTY TO OPERATE AND MAINTAIN. So long as HEA owns the Transmission Line, HEA will in good faith and at all times operate, maintain and repair the electrical facilities used to perform the services provided hereunder in accordance with Prudent Utility Practice in a manner consistent with HEA's obligations under this Agreement.

§18 (kk) Transmission Line. The transmission line, approximately 59.7 miles in length, to be constructed by HEA between the Fritz Creek Substation and the Soldotna Substation, and composed of the Soldotna Segment and the Fritz Creek Segment.

Formula for calculating a Purchaser's share of the Soldotna Segment:

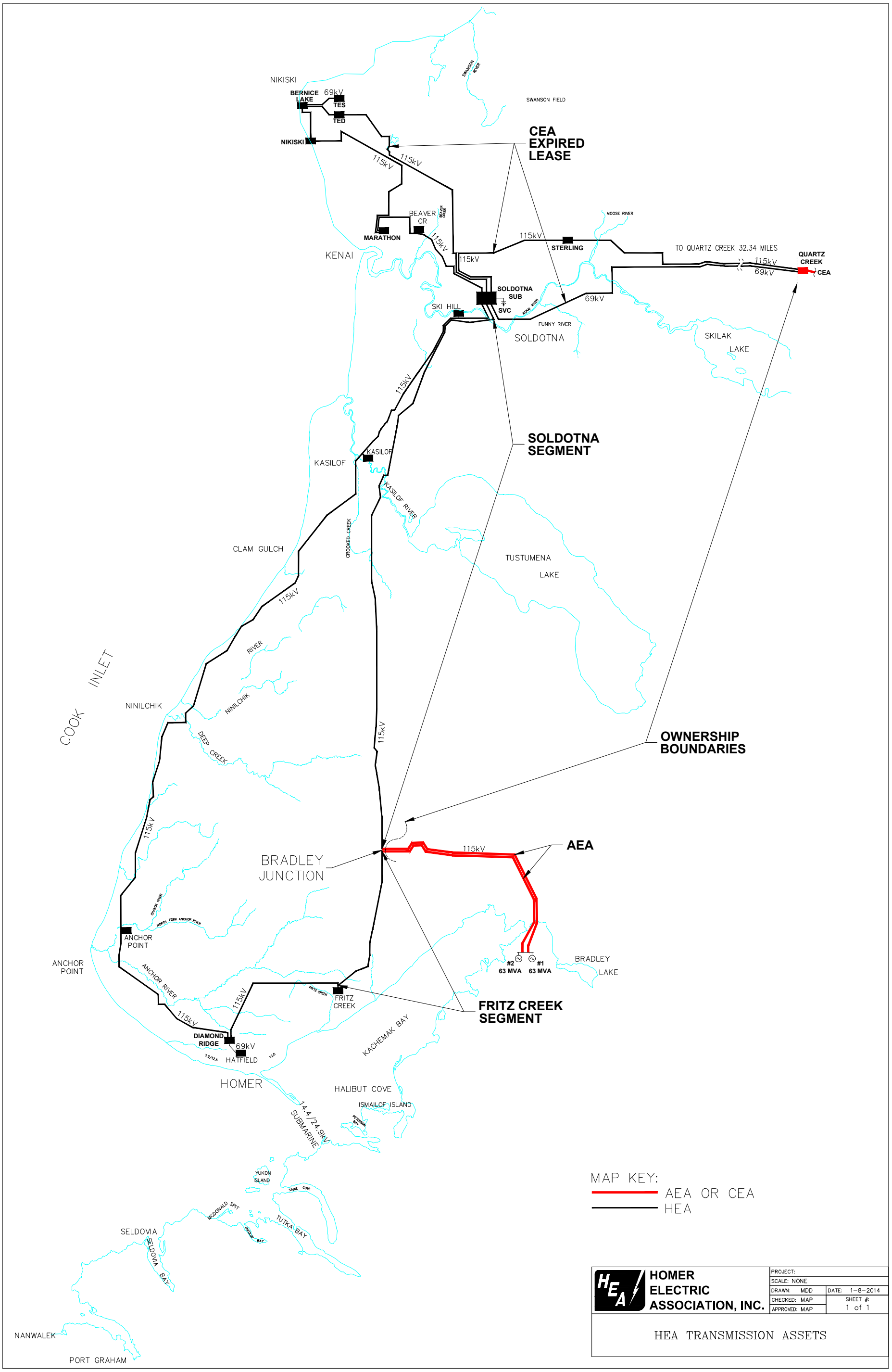
Attachment A – Computation of a Purchaser's Prepaid Share of Construction Cost

$$p_p = \frac{U}{135\ MW} \times C$$

Where:

p_p = Principal amount (in dollars) for which the Purchaser is directly responsible
U = . . . the Purchaser's actual MW share of the Project
C = The Construction Cost

Attached is a map of the HEA transmission system.


NIKISKI
BERNICE LAKE
69kV
TES
TED
NIKISKI
SWANSON RIVER
SWANSON FIELD
CEA EXPIRED LEASE
115kV
115kV
BEAVER CR
BEAVER CREEK
MARATHON
115kV
MOOSE RIVER
115kV
STERLING
TO QUARTZ CREEK 32.34 MILES
115kV
69kV
QUARTZ CREEK
CEA
KENAI
115kV
SOLDOTNA SUB
SVC
KENAI RIVER
69kV
SKI HILL
FUNNY RIVER
SOLDOTNA
SKILAK LAKE
SOLDOTNA SEGMENT
KASILOF
KASILOF
KASILOF RIVER
CROOKED CREEK
CLAM GULCH
TUSTUMENA LAKE
115kV
RIVER
COOK INLET
NINILCHIK
NINILCHIK
DEEP CREEK
115kV
OWNERSHIP BOUNDARIES
115kV
BRADLEY JUNCTION
AEA
ANCHOR RIVER
NORTH FORK ANCHOR RIVER
ANCHOR POINT
ANCHOR POINT
#2 63 MVA
#1 63 MVA
BRADLEY LAKE
ANCHOR RIVER
115kV
115kV
FRITZ CREEK
FRITZ CREEK
FRITZ CREEK SEGMENT
DIAMOND RIDGE
69kV
HATFIELD
KACHEMAK BAY
HOMER
HALIBUT COVE
ISMAILOF ISLAND
14.4/24.9kV SUBMARINE
YUKON ISLAND
SADIE COVE
MCDONALD SPIT
TUTKA BAY
JACKSON BAY
SELDOVIA
SELDOVIA BAY
NANWALEK
PORT GRAHAM
MAP KEY:
AEA OR CEA
HEA
HOMER ELECTRIC ASSOCIATION, INC.
PROJECT:
SCALE: NONE
DRAWN: MDD
DATE: 1-8-2014
CHECKED: MAP
APPROVED: MAP
SHEET #: 1 of 1
HEA TRANSMISSION ASSETS