DISMANTLING COMPETITION IN A NATURAL MONOPOLY

Walter J. Primeaux, Jr., Professor, Department of Business Administration

#685
DISMANTLING COMPETITION IN A NATURAL MONOPOLY

Walter J. Primeaux, Jr., Professor, Department of Business Administration

#685

Summary

The competitive setting for this study is Anchorage, Alaska where the Alaska Public Utilities Commission began to dismantle electric utility competition in 1971. The results reveal an unusual degree of complexity, generating many problems which caused the attempted resolution of this important issue to extend into the 1980's. This study also provides some important additional perspectives on electric utility competition.
DISMANTLING COMPETITION IN A NATURAL MONOPOLY

By: Walter J. Primeaux, Jr.

The effects of direct competition between two electric utility firms has been examined by several recent studies. In these unusual competitive situations, customers may elect to be served by one competitive firm or the other, and there is active rivalry, as the electric utility firms attempt to attract customers from one another.¹

Of these recent studies, only Primeaux (1975b) examined the suppression of competition by utility commissions after they determined to their satisfaction that competition was "uneconomic" and that competition should be modified "for the public good."² The remaining studies only considered operational features and efficiency characteristics of electric utility competition and the mechanics of commission regulation in modifying or eliminating the competitive environment were ignored.

¹See Primeaux and Bomball (1974), Primeaux (1974), (1975a), (1975b), (1977) and (1978). F. Steward Brown, then Chief of Power of the Federal Power Commission, revealed in correspondence to the author dated July 29, 1969, that direct competition between two electric utility firms existed in forty-nine cities; therefore, ninety-eight firms were engaged in direct electric utility competition. The data are as of January 1, 1966, for cities with population of 2500 or over.

²The studies cited above conclude that there are significant positive benefits which accrue from competition in this environment. They also point out that the regulatory attitude toward this competition generally creates a hostile environment. Two studies appearing in this journal much earlier, also discuss the decline in electric utility competition in other markets, where it existed in a different environment and where regulatory commissions employed different remedies to surpass this rivalry. Marlett (1938) and Gray (1939).
The Primeaux (1975b) study examined, in some detail, the transition from viable competition to modified rivalry in The Dalles, Oregon and Hagerstown, Maryland, and provided important information concerning these events. Both communities and competitive situations possessed unique characteristics and posed a different set of problems to a different set of regulators, as competition was suppressed. The Primeaux (1975b) study also provided some interesting and useful information concerning the environment in which electric utility competition takes place as well as firm behavior in that environment.

This study, in a sense, is an extension of the Primeaux (1975b) study. The competitive setting is Anchorage, Alaska where the Alaska Public Utilities Commission began to dismantle electric utility competition in 1971. The results reveal an unusual degree of complexity, generating many problems which caused the attempted resolution of this important issue to extend into the 1980's. This study also provides some important additional perspectives on electric utility competition.

**EMERGING COMPETITION**

The city operated Municipal Light and Power Department (ML&P), an electric utility system for many years; at different times the system

---

This draws heavily from information provided by the State of Alaska, Department of Commerce, Alaska Public Utilities Commission. The author is particularly grateful to Mr. James R. Hendershot, Commissioner, who provided the information and correspondence which made this examination possible. The information presented here is discussed in Alaska Public Utilities Commission Docket U-71-16, Orders 1 through 21; briefs of Chugach Electric Association, Inc. and the city of Anchorage, in response to Order No. 1; and A Statement of Position of the Alaska Public Utilities Commission. Commissioner Hendershot's correspondence also provided useful information. Since the discussion delineates specific sources, citations are not generally provided. The city's brief, which is discussed later, explains that statute AS 42.05.221(d) is a statute unique to the State of Alaska; therefore, there are no legal precedents under this statute or a similar statute.
functioned either as a department of municipal government or autonomously under a municipal utility board. ML&P did not, however, serve beyond its corporate boundaries prior to approximately 1949. Potential consumers, not able to obtain electric service from the city at that time, incorporated Chugach Electric Association, Inc. on March 1, 1948. Chugach was organized and designed to participate in Rural Electrification Administration programs, according to the Rural Electrification Act of 1936--as amended. ML&P's service area was entirely within its corporate boundaries at the time of Chugach's incorporation.

Chugach first constructed transmission and distribution facilities to serve consumers in the areas adjacent to the city and purchased the generating and distribution facilities of Mountain View Power Company in 1950; this firm served the community of Mountain View. In 1955, Chugach purchased the utility facilities of Inlet Power and Light Company; this firm served suburban Eastchester, which was later named Fairview.

The city began to extend its transmission and distribution facilities into areas contiguous and adjacent to its corporate limits in approximately 1949. After that time the city seemed to pursue a vigorous annexation campaign which substantially enlarged its corporate boundaries. ML&P began to furnish street lighting and implemented a policy which entitled every city resident to electric service and other municipal services. ML&P constructed and installed electric distribution facilities which often paralleled those previously installed by Chugach. Active competition emerged in the area; both firms solicited new consumers and constructed facilities to meet consumer demand; this
rivalry resulted in the electric distribution facilities of the two firms becoming inter-mixed in many areas.

The competitive situation continued in spite of the fact that the parties had mutually undertaken steps to resolve the rivalry within Anchorage. Engineering consultants had been employed on at least two occasions to study the problems associated with duplication of facilities and to recommend equitable solutions to the competitive rivalry. Moreover, governing bodies of the two firms also met to attempt to answer questions surrounding the competition. These efforts, however, developed no meaningful results; from these attempts, however, the following conclusions emerged, according to Chugach:

1. a more favorable negotiation climate was necessary and
2. the commission must audit these negotiations to insure that the parties negotiated diligently and in good faith.

THE COMMISSION'S ACTIONS

Order No. 1

On March 11, 1971, the Alaska Public Utilities Commission issued Docket U-71-16, Order No. 1. The purpose of this order was to obtain the advice and assistance of Chugach and ML&P to facilitate the elimination of electric utility competition in Anchorage. The Commission indicated in the Order that it was acting under Section 42.05.221(d) of

---

4 It is apparent from the briefs of both firms that they agreed with the Commission's view that the competition was wasteful and inefficient. This attitude is fairly consistent with most of the information generated in other markets with competing electric utility firms. Moreover, it is also probably consistent with the views of most firms facing competition in non-utility businesses. The fact is, firms would prefer not to have to face the discipline of competition—no matter what business they are engaged in.
the Alaska Statutes. This statute provides that the commission should take appropriate action to eliminate competition and any undesirable duplication of facilities, where it determines that two or more public utilities are competing and that this competition is not in the public interest. The statute provides that the Commission may order the competing utilities to enter into a contract which would accomplish the following:

1. Divide the service area into designated markets for the competing utilities. The Commission would designate the boundaries of each firm in those competitive areas.

2. Eliminate existing duplication and paralleling to the extent considered to be reasonable.

3. Make future duplication and paralleling of lines impossible.

4. Arrange for the exchange of customers and facilities to eliminate duplication and paralleling of lines to provide better public service.

5. Establish other mutually equitable arrangements between competing firms which would be in the public interest.

In the Order, the Commission acknowledged that it would be difficult to eliminate the undesirable rivalry. The Commission first gave Chugach and ML&P an opportunity to express their views concerning the best procedure for elimination of competition. The Commission, however, was not interested in the views of the firms concerning the areas they would like to serve or any other controversial subject which had evolved over the years of competition. The motive for soliciting the assistance of the competing firms was to solve the problem in the shortest time possible. The Commission urged in its Order: "This is no time for fighting."
Rather it is time for everyone to find ways and means of cooperating for the mutual benefit of all who are concerned, which certainly includes the general public."

The text of the Order clearly indicates that the Commission considered briefs by both companies as the best source of ideas and suggestions for eliminating the competition. Consequently, it ordered both firms to file briefs with the Commission on or before May 3, 1971 and to provide copies to each other. The briefs were expected to outline the firms' views concerning the manner in which the Commission should proceed to eliminate the competition and also to design a model order designated to actually implement the suggestions they presented. The Order also provided for a public hearing, at a later date, to consider the briefs and proposed orders.

**Brief of the City of Anchorage**

ML&P pointed out in its brief that the means by which the Commission may take appropriate action was to eliminate competition not spelled out in the statute. It acknowledged, however, that the Commission could finally order the competing utilities to enter into an agreement. ML&P took the position that any agreement should be one arrived at voluntarily between city and Chugach; according ML&P "...the Commission should not be taxed by myriad controversies that could best be resolved by the parties in a nonlitigated and nonadversary manner... the city believes that the two parties should first attempt to reach some accord between themselves along the lines of AS 42.05.221(d), subject to certain limits and safeguards as established by the Commission."
ML&P explained that the problem was very complex. The two utilities had developed and grown without Commission regulation and the resulting expansions caused complex relationships between facilities of ML&P and Chugach which made an easy solution to the competition impossible.\(^5\) The delineation of service areas would be extremely difficult in areas where there were intermingled facilities, but there were other areas or customers outside the city in new or sparsely developed areas who could be served by both firms without any undesirable duplication or paralleling of facilities.

Chugach had explained that the exchange of facilities or relinquishment of territory must be approved by the REA administrator. In ML&P's opinion, however, that requirement was not actually created by statute but by contractual arrangements between REA and Chugach. There were, however, important limiting provisions of the city charter concerning the exchange of facilities. The limiting provision, of interest here, is the requirement that any proposition to sell, lease, or otherwise dispose of a municipal utility or a property and interest in a property used or useful in the operation of a utility required approval of three-fifths of the electors of the city voting on the proposition. ML&P's brief pointed out that this provision could have posed some serious problems concerning the Commission's objective.

---

\(^5\) Utility regulation on a statewide basis first became a reality in Alaska in 1959. Certificates of Convenience and Necessity (which allowed entry into the electric utility business) were first required in 1963. These certificates are discussed in more detail later. Competition between ML&P and Chugach occurred before these dates. See: Alaska, 580 P.2d 687.
ML&P argued that a voluntary agreement, if one was possible with Chugach, could achieve the requirements of AS 42.05.221(d) and avoid the serious question of whether the Commission could legally require the two firms to enter into a contract which would require the exchange of customers and facilities. Moreover, the city claimed that this type of arrangement would be less time consuming and costly than a proceeding before the Commission.

Both firms, according to ML&P, should be permitted to serve those areas in which there were no existing services. Future expansion, therefore, would not be limited for either firm. The agreement which the city advocated would have been limited to a delineation of service area or exchange of existing services and facilities.

**Brief of Chugach**

Chugach alleged that a major impediment to diligent, good faith negotiations between the parties had been the failure to restrict, during the period of negotiations, the activities which created the problem. In the past, negotiations had been undertaken between the parties without an effective interim agreement to control consumer solicitations and line extensions to avoid further duplication of facilities.

Chugach proposed that the Commission issue an order to restrict, in a reasonable and rational manner, the further duplication of electric distribution facilities, during the period required to make proper delineations of the respective service areas.
Moreover, the brief explained that the summer construction season would be particularly troublesome in terms of controlling competition unless it was regulated during negotiations. Chugach explained: "Assuming that the final resolution of the problem of service areas will require a substantial period—which is hardly an unreasonable assumption, if the present practices are permitted to continue, the problem may grow much faster than its solutions."

Chugach charged ML&P with behavior which it considered to be of questionable legality and appealed to the Commission to review the following problems concerning "incentive practices."

1. Land subdividers were "financed" by the city of Anchorage with respect to streets, sewers, and other public improvements necessary to obtain FHA approval of their properties. These financial arrangements were conditioned upon their agreeing to annexation by the city and installation of ML&P services.

2. "Chugach has had frequent reports in the past, and has evidence supporting such reports, that the city has on occasion used both telephone and water services as leverage to induce potential consumers to accept its electric utility service."

The brief argued that the above practices raise important legal questions concerning the city's behavior:

1. Whether the city could "package" its regulated utilities and make the availability of one conditional upon the applicant taking all city utilities.

2. Whether the city could "finance" charges for utility installations for subdividers, entering into subdivision agreements, when similar credit arrangements were not generally available to the public.
Chugach alleged that these practices were in violation of Section 42.05.301 of the Alaska Public Utilities Commission Act.⁶

There were several areas of "types of" service in and around the city. There was the area served exclusively by ML&P, the area served exclusively by Chugach, the area served jointly by the two firms, and the area to be served in the future, but not requiring service at that time. Chugach alleged that each area should be treated differently by the Commission in the interim period to control competition.

The brief explained that ML&P should be permitted to serve its consumers in areas not serviced by Chugach. The municipal firm should be allowed to make improvements to its facilities and provide services, not prohibited by law, without approval of the Commission. Similarly, in the areas served only by Chugach, that firm should be allowed to take all appropriate actions, not prohibited by law or regulation, to serve its customers and make improvements and additions to facilities to furnish service to buyers.

In the areas served by both firms, both ML&P and Chugach would continue to serve their respective customers. Moreover, both firms could serve applicants for their services, not receiving services from the other utility at the time of application, under the following conditions. 1. If the applicant's premises were already on the requested suppliers system, or

---

⁶Sec. 42.05.301. Discrimination in service. No public utility may, as to service, make or grant an unreasonable preference or advantage to any person or subject any person to an unreasonable prejudice or disadvantage. No public utility may establish or maintain or provide an unreasonable difference as to service, either as between locatilities or as between classes of service, but nothing in this section prohibits the establishment of reasonable classifications of service or requires unreasonable investment in facilities. (6ch 113SLA 1970)
2. If the service requested would require the installation of facilities to be operated only at secondary voltage. Whenever these two exceptions existed, the requested supplier could furnish service only if it obtained a statement of non-objection from the other utility, or Commission authorization.

In one particular area of the city, Chugach argued that ML&P should be prevented from servicing any additional subdivisions without first obtaining a statement of non-objection from Chugach or Commission authorization.

The firms should be permitted to continue serving any consumer, regardless of location, which it was servicing at the date of the interim order. The interim order, however, should not prevent the utilities, with Commission approval, from entering into voluntary agreements for the exchange of consumers or areas of service, to re-locate service area boundaries, or otherwise eliminate or prevent unnecessary duplication of facilities.

As did ML&P, Chugach asserted, that negotiation and mutual agreement between the parties would provide a better solution than an imposed settlement. Chugach asserted that "...the parties hereto, the Commission, and the public generally will be better served if the service area issue can be resolved by direct negotiations between the parties, subject to the audit of such negotiations by one or more of the Commission's staff, and the final approval of any resulting agreement by the Commission."

Chugach's explained that the Commission should set a "realistic date" for reaching final agreement between the parties; in the absence
of diligent, good-faith negotiations Chugach asserted that the Commission should assume complete control and initiate such action as necessary to formulate a settlement of the problem.

In addition to the above suggestions, Chugach also furnished proposed solutions which had been suggested in the past to help eliminate the problem of competition. Through an extensive study in 1968, the firm had determined that it would be beneficial to all parties if the city leased its utility system to Chugach as the sole operator. In that year, Chugach determined that considerable savings could be incurred, if that firm generated all power in the area.\footnote{This assertion is in direct conflict with several of the empirical studies of electric utility competition cited earlier, including Primeaux (1975a; 1977).}

In summary, Chugach's brief contained a number of suggestions; however, the most important were: 1. the Commission should issue an interim order to regulate service area problems during the period of negotiation, and 2. an order should be issued requiring negotiations between the parties to settle service area problems and establish the terms and conditions under which such negotiations would be conducted.

Order No. 3

On June 11, 1971, the Commission issued Order No. 3, which essentially accepted the suggestions presented by Chugach. The Commission pointed out that its purpose was to regulate the operations of firms with respect to service areas and to encourage and facilitate negotiations of a definitive agreement resolving the duopoly situation. The Commission explained that "By restricting their respective activities
with respect to new customers, but without interfering with their continued service to those being served as of the date hereof, the Commission believes that the two utilities will negotiate more diligently and in better faith, and their respective economic interest will not be unduly prejudiced." As Chugach had pointed out earlier, the summer season in Alaska is particularly active in construction of local electric utilities; the Commission acknowledged that condition and indicated that line extensions and related activities needed to be controlled without delay. The Commission stated that unrestrained competition between ML&P and Chugach during the period of negotiation would continue the wasteful duplication and also be a strong irritant between the firms when harmonious relations and good will were essential.

The Commission's order contained the following directives:
1. Neither ML&P nor Chugach were to construct or install electric facilities of any kind, except as provided in (2). This restriction was effective with the date of the order and it applied to the areas where a particular utility was not the predominant supplier of electric service.
2. The restrictions set forth in (1) did not apply to:
   (a) Service to existing customers by either utility, if construction of primary distribution or transmission facilities were not required.
   (b) Additions, removals, changes of transformers or system protective, regulating, and control devices.
   (c) Service to a new customer at secondary voltage below 1000 volts.
(d) Reasonable routine maintenance procedures.

(e) Emergency procedures of any kind.

3. With Commission approval, however, firms were free to enter into voluntary agreements for the exchange of consumers or service areas or otherwise to eliminate duplication of facilities. ML&P was required, on or before June 30, 1971, to file with the Commission a detailed statement of any opposition it may have had to this interim order.

Other Commission Orders

Several additional Commission orders were issued during the various stages of this case. The most important, perhaps, concerned the establishment of a negotiating committee to resolve the "competition problem;" the committee, however, did not settle the question. On April 4, 1972, the Commission issued order No. 13, which provided that the two firms file proposals and establish schedules to resolve all matters pending before the Commission. In order No. 14, dated May 3, 1972, the Commission provided that proposals, statements, petitions and motions regarding the competition issue in Anchorage be public information. On August 31, 1971, the city of Anchorage had requested that all reports and other information be withheld from the public until completion of all negotiation except for information jointly released by both firms.

On September 27, 1973, the Commission issued order No. 19 which provided for the elimination of competition and duplication of electric utility facilities. Order 19 established the following:

1. "It was neither feasible to attempt nor possible to achieve the immediate elimination of existing duplication previously created by CEA (Chugach) and ML&P (city) because of the existence of long term loan encumbrances and bond covenants relating to the properties."
2. "ML&P and CEA should be permitted to continue to own and operate existing facilities, as appropriate, within the authorized service areas of the other utility for the remainder of the useful service life of the associated pole, wire, and cable lines."

3. "CEA and ML&P should be permitted to acquire new customers and build new electric distribution facilities within the authorized service area of the other utility when dictated by reasonableness and economic factors if a waiver from the other utility or approval of the Commission is obtained first and the utility to which the area is certificated is provided the written option to purchase these new facilities at depreciated cost at such time as the electric distribution plant to which these new facilities are to be connected are retired."

4. "Elimination of paralleling facilities through the premature retirement of duplicating plant could only result in either increased rates for the customers or decreased margins for the utilities in the absence of any significant improvement in service."

5. "ML&P and CEA should be permitted to renew fully depreciated facilities located within the authorized service area of the other utility, if the other utility is not in an immediate position to furnish the replacement plant, provided however, that approval of the Commission is obtained and a written option is issued to the permanently certificated utility to purchase the replacement plant at depreciated cost upon reasonable notice to do so."

6. "Although the long term growth patterns desired by CEA and ML&P may be altered by the service area delineations, terms, and conditions set forth in this order, there will be no significant adverse financial or
operational impact upon the existing operations of either utility or its customers."

7. "The service area delineations, terms, and conditions set forth herein will result in the prevention of further undesirable competition between the utilities, the curtailment of unnecessary new paralleling of facilities, and the ultimate elimination of existing duplication of electric distribution plant on an ordinary basis, while at the same time providing for the continued growth of each utility within its assigned service area."

In order No. 20, issued October 22, 1973, the Commission set aside order 19, for a period of 90 days, and reaffirmed Orders 1 through 18. At the same time, the Commission amended order No. 19 to correct certain minor errors in reference to certain past orders. The major amendment to Order No. 19 contained the following provisions: "Neither the city of Anchorage d/b/a Municipal Light and Power Department nor Chugach Electric Association, Inc. shall acquire new customers or extend existing electric distribution facilities (as described by Orders No. 3 and 6 herein) within its own authorized service area without first obtaining a 'waiver of objection' from the other utility or approval of the Commission in accordance with the procedures set forth in Orders No. 8 and 10 herein, if such electric construction or installation will duplicate or parallel existing electric distribution facilities of the other utility."

Order No. 19 was set aside to give the two firms an opportunity to file or supplement petitions or motions for reconsideration and Order No. 21 granted an additional seven days for the filing of petitions, as requested by Chugach.
On December 4, 1973, Chugach filed a supplement to its original petition and on December 14, 1973, ML&P filed a petition in opposition to that petition. Chugach had wanted to reopen the docket for further hearing pertaining to service areas and other related matters. On January 3, 1974, Commissioner James R. Hendershot signed a STATEMENT OF POSITION, explaining the unique situation and conditions which existed concerning this case.

Commissioner Hendershot explained in the Statement that there was one vacancy on the Commission; therefore, both of the incumbent Commissioners must agree upon a common action in order to issue an order. In the event the two Commissioners did not agree, there was no quorum and no affirmative action could be taken. Commissioner Hendershot and the Commission Chairman (Zerbetz) could not reach a full agreement on the petition filed by Chugach. Hendershot noted, in the Order, that the inability of the Commission to act in this case would most likely result in an appeal to the Superior Court.

Chugach wanted to discuss the case in full detail but the Order called for additional hearings "...limited solely to issues relating to the realignment of applicable electric distribution plant and facilities within those specific service areas assigned by Order No. 19, and to minor service area boundary changes as provided for by that order. No other issues will be considered." In correspondence dated May 3, 1974, Commissioner Hendershot indicated that the final order of the Commission was on appeal with the Superior Court.8

---

8 Correspondence with the author from Commissioner James R. Hendershot, dated May 3, 1974. Followup correspondence dated February 6, 1976 indicated that Commissioner Hendershot had resigned from the Commission and that the appeal of the Commission's order had not been heard in the Alaska Superior Court. This information was revealed in correspondence from Mr. J. Lowell Jensen, P.E. Executive Director Alaska Public Utility Commission dated February 6, 1976.
The Superior Court concluded that there was insufficient evidence to support the Commission's conclusions (Order No. 19) and ordered that the matter be remanded to the Commission for reconsideration. ML&P and the Alaska Public Utility Commission appealed the Superior Court ruling to the Alaska Supreme Court and Chugach cross appealed.

Chugach claimed in its cross appeal that its right to provide service was improperly taken, without due process, when the Commission granted ML&P the right to offer services within its service area. This argument provides an excellent illustration of the complexities involved when laws are changed in a competitive utility setting.

To more fully understand the difficulties surrounding the case some additional background is useful. Statewide regulation was instituted when the Alaska Public Service Commission was established in 1959. The newly formed Commission was constrained from acting with respect to electric, telegraphic and telephone utilities, pending submission of a report to the legislature. Certificates of Convenience and Necessity were not required until AS 42.05 et seq. was amended in 1963. 10

Chugach argued that it had "grandfather rights" to operate because it obtained its certificate to operate under a section of the 1963 act which provided:

9 Correspondence from Mr. J. Lowell Jensen, P.E. Executive Director of the Alaska Public Utilities Commission dated April 12, 1977 and Alaska, 580 P.2d 687.

10 Entry by an existing or new company to serve a new area is rigidly controlled by the regulatory commissions. Certificates of public convenience and necessity are required. Each applicant must show that the proposed service is required by public convenience and necessity and that it is qualified and competent to provide the service; see Phillips (1969).
A certificate shall be granted if it appears to the Commission that the public utility was actually operating in good faith on October 15, 1962, within the confines of the requested area, or that the public utility was installing the facilities necessary to furnish service under a franchise as of that date.\textsuperscript{11}

The Supreme Court pointed out that another subsection\textsuperscript{12} provided that certificates of convenience and necessity issued prior to July 1, 1970, were to remain in effect and did provide "grandfather rights." However, they expressed an important additional provision:

\ldots they are subject to modification where there are areas of conflict with public utilities that have not previously been required to have a certificate or where there is a substantial change in circumstances.\textsuperscript{13}

The Supreme Court ruled that the above provisions covered the exceptional circumstances involved in this case. Chugach had not, according to this ruling, been denied due process by the Commission.\textsuperscript{14}

The Supreme Court further examined the provision of Order No. 19, delineating service areas and its plan for the retirement and transfer of service facilities from Chugach to ML&P, where duplicate facilities existed.

The Supreme Court ruled that the portion of the Commission's order, designating service areas for Chugach and ML&P, had a reasonable basis. The Court explained:

\begin{itemize}
\item \textsuperscript{11} Alaska, 580 P.2d 687.
\item \textsuperscript{12} AS 42.05.221 had been enacted in place of various repealed sections.
\item \textsuperscript{13} Alaska, 580 P.2d 687.
\item \textsuperscript{14} Alaska, 580 P.2d 687.
\end{itemize}
The Commission allocated service areas in such a way as to resolve the competing interests of both Chugach and ML&P and the public they serve.15

The Supreme Court received an affidavit from a consultant defending Chugach's cross appeal. This affidavit apparently had an important influence on the court's decision to reverse the Commission's plan for retirement and transfer of Chugach's facilities to ML&P. The consultant raised important questions which seemed to undermine the basis of the Commission's earlier ruling.16

The consultant questioned the appropriate definition of "retirement" of facilities, the definition of the term "facilities," and pointed out that the nature of electric public utility firms makes impossible the actual withdrawal of the utility equipment from service. He explained that "retirement could occur when the facilities are fully depreciated on Chugach's books or when they physically have no remaining useful life."17 He also pointed out that "the term facilities could mean either the entire distribution line, circuit or section of a system, or it could mean simply units or components of a system." The most significant point made by the consultant was the following:

15 Ibid.

16 This consultant was T. Foley Treadway, President of Southern Engineering Company. See Alaska, 580 P.2d 687. ML&P and the Alaska Public Utilities Commission argued that the superior court had erred in considering an affidavit by Foley. The gist of their arguments was that the reviewing court should not consider evidence which could have been presented to the Commission before Order No. 19 was issued. The Supreme Court, however, ruled in favor of Chugach on the grounds that the affidavit was not introduced as evidence but as an argument to prove the unreasonableness of a matter of law. See: Alaska, 580 P.2d 687.

17 Alaska, 580 P.2d 687.
...in reality, electrical service facilities are never retired, either actually or on the books. This is because it is necessary to maintain these facilities in good working condition so that they may continue to provide adequate service. Separate components of a distribution system may be retired at a given point due to damage or wear, but they must be replaced for the system to continue in operation. Thus...not only is an electrical facility never fully retired, but, despite the Commission's order that no replacement or maintenance of a facility be done with the intent to extend its useful life, such replacement or maintenance must necessarily extend the life of the property.\textsuperscript{18}

The Supreme Court indicated that the consultant's affidavit

...persuades us that these portions of Order No. 19 lack a reasonable basis and that a remand to the Commission is required for further evidence regarding the retirement and transfer of Chugach's facilities to ML&P.\textsuperscript{19}

The Supreme Court, therefore, remanded this case to the superior court.

...with directions that the case be remanded to the Commission so that it may take further evidence and such other action as it deems necessary regarding the retirement and transfer of Chugach's facilities to ML&P.\textsuperscript{20}

**CONCLUSIONS**

The ML&P-Chugach case was unsettled at the time of this writing, but it does present some interesting insights into the problems and difficulty of eliminating rivalry between electric utility firms when active competition exists in a market. The long time interval between issuance of Order No. 1 (March 11, 1971), and the ruling by the Supreme

\textsuperscript{18} Ibid.
\textsuperscript{19} Ibid.
\textsuperscript{20} Ibid.
Court of Alaska (May 26, 1978), reflects the complexity of the case, as well as the difficulty in arriving at a final resolution, which would be acceptable to both companies and their customers.

Most important matters involved in this case, including service area delineation, have been resolved; but the very complex question concerning retirement of facilities remains to be answered.  

Many features of this case are of particular interest to students of public utilities. One important conclusion from this research and the Primeaux (1975b) study is that each competitive situation is unique; different complications arise as Commissions attempt to make changes, depending upon the historical background surrounding the rivalry, the attitude of the regulatory Commission toward the competition, and the stance taken by each utility firm as the Commission attempts to modify the competitive structure.

This case and the two presented in Primeaux (1975b) may also seem to raise some questions concerning the natural monopoly concept. The traditional folklore of natural monopoly is that competitive situations in the utility business would be so unfavorable that firms would be driven from the business. These kinds of expectations are discussed in Primeaux (1975a; 1979; 1974) and Behling (1931). One familiar with the natural monopoly literature must ask why, if competition does actually impose such burdens, do utility firms resist pressure from regulation to cut or consolidate their markets. It would seem that if such unfavorable conditions did actually exist, as expected by the proponents

---

21An extensive search of library references at June 12, 1980, failed to reveal that this issue has been resolved.
of natural monopoly, that one member of a duopoly would desire to go out of business to cut losses. This situation did not occur either in the Alaska Case or in the two cases discussed in Primeaux (1975b). The conclusion must be that both parties in these duopoly situations were earning a return sufficient to keep them in competition with one another. It was the hostile stance taken by the regulatory Commission, which threatened the competitive situations in each of these cases, not the attitude of the regulated firms or conditions of natural monopoly.22

22 The hostility of regulators toward public utility competition is specifically mentioned in Primeaux (1974; 1975a; 1979).
REFERENCES

1. Alaska Public Utilities Commission Docket U-71-16
   ______. Orders 1 through 21
   ______. Brief of the Chugach Electric Association, Inc.
   ______. Brief of the City of Anchorage.
   ______. Statement of Position of the Alaska Public Utilities Commission


4. Hendershot, Commissioner James R. Correspondence to the author, various dates.

5. Jensen, Mr. J. Lowell. Correspondence to the author, various dates.


