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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners: Robert M. Pickett, Chairman  
Kate Giard  
Paul F. Lisankie  
T.W. Patch  
Janis W. Wilson

In the Matter of the Petition by AURORA )  
ENERGY, LLC to Exempt Steam Heat Rates from ) U-10-58  
Economic Regulation Pursuant to AS )  
42.05.711(d) ) ORDER NO. 5

**ORDER DENYING PETITION FOR EXEMPTION, GRANTING REQUEST TO  
MODIFY BILLING UNITS AND REQUIRING FILING, AND DENYING MOTION  
TO STRIKE COMMENTS**

BY THE COMMISSION:

Summary

We deny the petition by Aurora Energy, LLC (Aurora) for exemption of its steam heat utility service from economic regulation pursuant to AS 42.05.711(d). We grant Aurora’s request to modify the billing units for its steam heat service and require Aurora to file a revised tariff sheet. We deny Aurora’s motion to strike comments filed by the City of Fairbanks.

Background

Aurora was authorized to acquire the steam and water heat utilities serving downtown Fairbanks from the City of Fairbanks d/b/a Fairbanks Municipal Utility System (FMUS) in 1997.<sup>1</sup> Aurora was also authorized to charge inception rates equal

<sup>1</sup>Order U-97-44(1)/U-97-139(2), *Order Approving Applications and Power Purchase Agreement Upon Transfer, Subject to Conditions; Approving Initial Tariff; Approving Inception Rates; Requiring Filings; and Amending Docket Title*, dated December 11, 1997 (Order U-97-44(1)/U-97-139(2)).

1 to the rates FMUS had charged for these services.<sup>2</sup> This included a steam heat  
2 inception rate of \$10.50 per 1,000 pounds of steam per month.<sup>3</sup>

3 In 2001, we authorized Aurora to charge market-based rates for steam  
4 heat and hot water utility services, with a cap on steam heat utility rates of \$10.50 per  
5 1,000 pounds of steam.<sup>4</sup> We authorized these market-based rates based upon a  
6 stipulation between the Attorney General and Aurora. The stipulation represented that  
7 Aurora's district heat utility operated in a partially-competitive market.<sup>5</sup> Aurora was  
8 required to provide us with thirty days advance notice before adjusting its rates.<sup>6</sup> Aurora  
9 has not revised its steam heat utility rates pursuant to this authority.

10 We also required Aurora to propose a reasonable cost allocation  
11 methodology between its steam and hot water district heat services.<sup>7</sup> Aurora filed a  
12 Cost Allocation Manual (CAM) in compliance with this requirement.<sup>8</sup> We acknowledged  
13 Aurora's CAM.<sup>9</sup> We also required Aurora to annually file an audit report prepared by an  
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17 <sup>2</sup>Order U-97-44(1)/U-97-139(2) at 11.

18 <sup>3</sup>Aurora Energy, LLC Tariff Sheet No. 35, filed November 14, 1997.

19 <sup>4</sup>Order U-97-44(12)/U-97-139(14), *Order Accepting Stipulation, Subject to*  
20 *Conditions; and Requiring Filing*, dated October 15, 2001, (Order U-97-44(12)/  
21 U-97-139(14)) at 6-7, as corrected by Order U-97-44(13)/U-97-139(15), *Order*  
22 *Acknowledging Compliance Filings, Affirming Electronic Ruling, and Closing Dockets*,  
23 dated December 6, 2002, (Order U-97-44(13)/U-97-139(15)) at 2.

24 <sup>5</sup>Order U-97-44(12)/U-97-139(14) at 5-7.

25 <sup>6</sup>*Id.* at 2.

26 <sup>7</sup>*Id.* at 8.

<sup>8</sup>*Notice of Filing Cost Allocation Manual*, filed June 28, 2002, in Dockets U-97-44  
and U-97-139.

<sup>9</sup>Order U-97-44(13)/U-97-139(15) at 3.

1 independent certified public accountant showing compliance with this CAM.<sup>10</sup> Aurora  
2 continues to comply with this requirement.<sup>11</sup>

3 On May 7, 2010, Aurora requested elimination of the cap on steam heat  
4 rates.<sup>12</sup> Aurora also requested permission to increase the rates charged for steam heat  
5 utility service to the equivalent, on a delivered million British Thermal Units (MMBTU)  
6 basis, of rates paid for its hot water utility service.<sup>13</sup> Aurora proposed that this increase  
7 should be phased in over a 24-month period.<sup>14</sup> Aurora estimated that upon conclusion  
8 of the transition period, its average steam heat customer's bill would be approximately  
9 \$1,000 per month higher than current bills.<sup>15</sup> We rejected Aurora's filing because it did  
10 not comply with our formatting regulation at 3 AAC 48.360(i) and did not include the  
11 information required by 3 AAC 48.275.<sup>16</sup>

12 Aurora re-filed its request for elimination of the cap on steam heat rates  
13 and also requested a waiver from the requirements of 3 AAC 48.275.<sup>17</sup> We issued  
14 public notice of this filing.<sup>18</sup> We received three comments in opposition to Aurora's  
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18 <sup>10</sup>Order U-97-44(12)/U-97-139(14) at 7.

19 <sup>11</sup>See e.g., *Aurora Energy, LLC Cost Allocation Manual Attestation Report*, filed  
20 April 22, 2010, by KPMG LLP (offering opinion that Aurora had complied with its 2002  
CAM in all material respects).

21 <sup>12</sup>See TA69-119, filed May 7, 2010, at 2-3.

22 <sup>13</sup>TA69-119 at 1-3.

23 <sup>14</sup>*Id.* at 3.

24 <sup>15</sup>*Id.*

25 <sup>16</sup>Letter Order L1000171, dated May 14, 2010.

26 <sup>17</sup>TA70-119, filed May 19, 2010.

<sup>18</sup>*Notice of Utility Tariff Filing*, dated May 25, 2010.

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request.<sup>19</sup> Aurora responded to two of these comments.<sup>20</sup> We rejected Aurora's second request because it did not include the cost-support information required by 3 AAC 48.275 and did not provide sufficient facts on which we could grant a waiver of the filing requirements.<sup>21</sup>

Aurora responded to our rejection of its second request by petitioning for full exemption of its steam heat service from economic regulation. Aurora also sought permission to merge its steam heat customers into its hot water customer billing classes.<sup>22</sup> Further, Aurora's petition requested permission to change its steam heat billing units from dollars per 1,000 pounds of steam to dollars per MMBTU.<sup>23</sup> We issued public notice of the petition with comments due by September 20, 2010.<sup>24</sup> We received eight comments in response to this notice, including comments from the City of

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<sup>19</sup>Comments from: College Utilities Corporation and Golden Heart Utilities, Inc., filed June 4, 2010; JL Properties, Inc., filed June 22, 2010; and Miller-Schmidt, LLC, filed July 27, 2010.

<sup>20</sup>*Aurora Energy, LLC's Reply to Golden Heart Utilities, Inc.'s Public Comments and JL Properties, LLC's Public Comments Regarding TA70-119*, filed June 30, 2010.

<sup>21</sup>Letter Order L1000232, dated July 1, 2010.

<sup>22</sup>*Petition by Aurora Energy, LLC to Exempt Steam Heat Rates from Economic Regulation Pursuant to AS 42.05.711(d)*, filed August 4, 2010 (Aurora Petition).

<sup>23</sup>*Id.* at 17-18.

<sup>24</sup>*Notice of Utility Petition for Exemption*, dated August 19, 2010 (Public Notice).

1 Fairbanks.<sup>25</sup> All comments opposed exemption of Aurora's steam heat service from  
2 economic regulation.

3 We opened this docket to consider Aurora's petition.<sup>26</sup> Golden Heart  
4 Utilities, Inc. (GHU) and College Utilities Corporation (CUC) jointly petitioned to  
5 intervene in this docket.<sup>27</sup> We granted the GHU/CUC petition to intervene.<sup>28</sup> The  
6 Attorney General (AG) elected to participate in this docket.<sup>29</sup>

7 Aurora submitted prefiled testimony of its President, A. L. Wright,<sup>30</sup> and  
8 Dr. Paul R. Carpenter of The Brattle Group.<sup>31</sup> GHU/CUC submitted prefiled testimony  
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11 <sup>25</sup>*Public Comment for U-10-58 by Chris Miller*, filed September 5, 2010; *Public*  
12 *Comment for U-10-58 by Lillian Moore*, filed September 14, 2010; *Comments of Golden*  
13 *Heart Utilities, Inc. and College Utilities Corporation Re: Aurora Energy's Petition to*  
14 *Exempt Steam Heat Rates from Economic Regulation*, filed September 15, 2010;  
15 *Comments by the City of Fairbanks Opposing the Petition by Aurora Energy, LLC, RCA*  
16 *Docket No. U-10-58*, filed September 17, 2010 (2010 Fairbanks Comments); *Public*  
17 *Comments of D. Vonder Haar*, filed September 17, 2010; *Comments of D. Ferree*  
18 *Representing Fairbanks North Star Borough School District*, filed September 17, 2010;  
19 *Public Comment of D. Norum*, filed September 18, 2010; *Comments by JL Properties,*  
20 *Inc.*, filed September 20, 2010.

21 <sup>26</sup>*Order U-10-58(1), Order Inviting Petitions to Intervene, Inviting Participation by*  
22 *the Attorney General, Designating Commission Panel, Appointing Administrative Law*  
23 *Judge, Addressing Statutory Timeline, and Scheduling Prehearing Conference*, dated  
24 September 14, 2010.

25 <sup>27</sup>*Golden Heart Utilities, Inc.'s and College Utilities Corporation's Joint Petition to*  
26 *Intervene*, filed September 17, 2010.

<sup>28</sup>*Order U-10-58(2), Order Granting Petition to Intervene, Adopting Procedural*  
*Schedule and Extending Statutory Timeline with the Consent of All Parties*, dated  
October 21, 2010.

<sup>29</sup>*Notice of Election to Participate*, filed September 24, 2010.

<sup>30</sup>*Prefiled Testimony of A. L. Wright*, filed December 3, 2010 (Wright Testimony).

<sup>31</sup>*Prefiled Testimony of Paul R. Carpenter*, filed December 3, 2010 (Carpenter  
Testimony).

1 Oran Paul.<sup>32</sup> The AG submitted the prefiled testimony of Cristina M. Klein.<sup>33</sup> Aurora  
2 submitted prefiled reply testimony of A.L. Wright,<sup>34</sup> and Dr. Carpenter.<sup>35</sup> A hearing was  
3 held in this matter on February 7, 2011, at which each of these witnesses testified.<sup>36</sup> A  
4 representative of the City of Fairbanks attended most of the hearing.<sup>37</sup> Each party filed  
5 written closing arguments, with proposed findings of facts and conclusions of law,<sup>38</sup> and  
6 reply arguments.<sup>39</sup>

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11 <sup>32</sup>*Prefiled Testimony of Oran Paul Regarding the Petition by Aurora Energy to*  
12 *Exempt Steam Heat Rates from Economic Regulation*, filed January 5, 2011 (Paul  
13 Testimony).

14 <sup>33</sup>*Prefiled Testimony of Christina M. Klein*, filed January 5, 2011 (Klein  
15 Testimony).

16 <sup>34</sup>*Prefiled Reply Testimony of A.L. Wright*, filed January 25, 2011 (Wright Reply  
17 Testimony).

18 <sup>35</sup>*Prefiled Reply Testimony of Paul R. Carpenter*, filed January 25, 2011  
19 (Carpenter Reply Testimony).

20 <sup>36</sup>Tr. 44-112.

21 <sup>37</sup>Tr. Appearances and 114.

22 <sup>38</sup>*Aurora Energy, LLC's Closing Argument*, filed February 23, 2011; *[Proposed]*  
23 *Findings of Fact and Conclusions of Law Regarding the Petition By Aurora Energy, LLC*  
24 *to Exempt Steam Heat Rates from Economic Regulation Under AS 42.05.711(d)*, filed  
25 February 23, 2011 (Aurora Closing); *Attorney General's Closing Brief*, filed February  
26 23, 2011 (AG Closing); *Golden Heart Utilities and College Utilities Corporation's Closing*  
*Brief Opposing Deregulation*, filed February 23, 2011 (GHU/CUC Closing); *Golden*  
*Heart Utilities and College Utilities Corporation's Errata Re: Closing Brief*, filed March 4,  
2011.

<sup>39</sup>*Aurora Energy's Reply to GHU's Closing Brief*, filed March 4, 2011 (Aurora  
Reply); *Attorney General's Closing Reply Brief*, filed March 7, 2011 (AG Reply); and  
*Golden Heart Utilities and College Utilities Corporation's Reply Opposing Deregulation*,  
filed March 4, 2011 (GHU/CUC Reply).



1           Our general rule is that the party seeking to change the status quo bears  
2 the burden of proof.<sup>47</sup> When the change sought is exemption under AS 42.05.711(d),  
3 this burden is significant.<sup>48</sup> The burden of proof is even higher if the utility is seeking  
4 exemption for an essential utility service.<sup>49</sup>

5           We find that where a utility serves customers who do not have a readily-  
6 available alternative or substitute for the utility's service, those customers are effectively  
7 captives of the utility, particularly when the service in question is an essential service.  
8 We believe it is self-evident that heat for a dwelling, a store or an office is an essential  
9 utility service in Fairbanks, Alaska, where winter ambient air temperatures routinely drop  
10 to minus 40 degrees Fahrenheit and colder. Aurora admits that its steam heat  
11 customers are "captive."<sup>50</sup> Accordingly, we conclude as a matter of law that in order to  
12 justify our grant to Aurora of the exemption from economic regulation it seeks in this  
13 proceeding, Aurora must prove with clear, and convincing evidence that the public  
14 interest will be better served by exempting Aurora from our regulatory oversight than it  
15 would be by maintaining that oversight.

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20           <sup>47</sup> See e.g. Order U-04-81(10), *Order Assigning Burden of Proof*, dated May 13,  
21 2005, at 6-10.

22           <sup>48</sup> See e.g. Order U-90-19(6)/U-90-20(5)/U-90-21(5), *Order Denying Petitions for*  
23 *Exemption*, dated September 5, 1991, at 17-18 ("the utility making the request has the  
24 burden of proving that [exemption] is in the public interest").

25           <sup>49</sup> See e.g. Order U-92-4(7)/U-91-71(3), *Order Supplementing Order U-92-4(6)/*  
26 *U-91-71(2)*, dated November 4, 1992, at 13 (finding cellular phone service in Fairbanks  
not essential).

<sup>50</sup> Aurora Petition at 16; Wright Testimony at 7; Tr. 54.

1                    Unlawful Rate Discrimination

2                    Aurora asserts that it is effectively providing just one form of utility service,  
3 district heat, delivered either as steam or as hot water.<sup>51</sup> In 2000, Aurora sought partial  
4 exemption from rate regulation pursuant to AS 42.05.711(d) so that it could compete  
5 with unregulated fuel oil companies.<sup>52</sup> At that time, Aurora had 94 steam heat  
6 customers who provided approximately 64 percent of Aurora's revenue, and 38 hot  
7 water customers.<sup>53</sup> Aurora asserted that 30 of the hot water customers had fuel  
8 switching capability such that they could heat their buildings with fuel oil rather than use  
9 Aurora's services.<sup>54</sup> Because 30 of 38 hot water customers could switch between heat  
10 sources, we granted Aurora a partial exemption from rate regulation when we accepted  
11 the stipulation of the parties in that proceeding.<sup>55</sup> This partial exemption allowed Aurora  
12 to modify rates for all customers without our prior approval, upon thirty days advance  
13 notice to the customers and to us, subject to a rate cap of \$10.50 per 1,000 pounds of  
14 steam for steam heat customers.<sup>56</sup>

15                    Aurora submitted testimony that 1,000 pounds of steam heat is equal to  
16 one MMBTU of energy.<sup>57</sup> Using this conversion factor, Aurora's steam heat customers  
17 are paying \$10.50 per MMBTU of delivered heat while its hot water customers are  
18 paying between \$23.40 and \$20.38 per MMBTU of delivered heat.<sup>58</sup> Aurora argues that

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20 <sup>51</sup>Aurora Petition at 1.

21 <sup>52</sup>Order U-97-44(12)/U-97-139(14) at 3.

22 <sup>53</sup>*Id.* at 3, n. 3.

23 <sup>54</sup>Order U-97-44(12)/U-97-139(14) at 3, n. 6.

24 <sup>55</sup>*Id.*, at 5-7.

25 <sup>56</sup>*Id.* at 6-7, as modified by Order U-97-44(13)/U-97-139(15) at 2.

26 <sup>57</sup>Wright Testimony at 3-4.

<sup>58</sup>Aurora Petition at 16.

1 this price differential is discriminatory.<sup>59</sup> If exemption is granted, Aurora intends to  
2 merge the rates charged for steam heat service into the rate structure of its currently  
3 exempted hot water utility service.<sup>60</sup> Aurora asserts that increasing its steam heat  
4 customer rates to the rates paid by hot water customers is required by AS 42.05.391.<sup>61</sup>  
5 The AG disagreed.<sup>62</sup>

6 AS 42.05.391(a) states in relevant part that:

7 a public utility may not, as to rates, grant an unreasonable preference or  
8 advantage to any of its customers or subject a customer to an  
9 unreasonable prejudice or disadvantage. A public utility may not establish  
10 or maintain an unreasonable difference as to rates, either between  
localities or between classes of service.

11 It has long been established that under AS 42.05.391, “only that discrimination which is  
12 unreasonable is unlawful, discrimination based on justified differences in the cost of  
13 service or which is otherwise within the zone of reasonableness is permissible.”<sup>63</sup>

14 It is undisputed that Aurora’s steam heat customers pay a different price  
15 for delivered heat than hot water customers. However, Aurora has provided us with no  
16 evidence on the cost of providing these two different types of service. Aurora’s witness  
17 testified that:

18 Since [1997], Aurora has invested in many upgrades at the plant and has  
19 constructed significant expansions to the hot water district heat systems.  
20 There are now three distinct hot water heat systems and one steam heat  
21 system. The steam system is the original heat system from the plant,  
dating to the early 1950s. The original hot water heat system was  
constructed in the early 1980s. A second hot water system was built in

22 <sup>59</sup>Wright Reply Testimony at 20-21; Tr. 29, 33-35, 38, 39-40; Aurora Closing at 7.

23 <sup>60</sup>Wright Testimony at 3-6.

24 <sup>61</sup>Aurora Petition at 4, 19-20.

25 <sup>62</sup>Klein Testimony at 35-36.

26 <sup>63</sup>*Jager v. State*, 537 P.2d 1100, 1109 (Alaska 1975).

1 1999 and 2000, followed by an expansion in 2006 to serve the railroad  
2 industrial area on the north side of the Chena River.<sup>64</sup>

3 Based upon this testimony, it appears probable that there is a significant – albeit  
4 unquantified – difference in Aurora’s cost of delivering steam heat as distinguished from  
5 its cost of delivering hot water service to customers. In the absence of any evidence to  
6 the contrary, Aurora has failed to meet its burden of proving that the rate differential  
7 between its steam heat service and its hot water service is unreasonable.

8 Rate differentials that require one class of customers to subsidize another  
9 have been held, in certain instances, to be unlawful under AS 42.05.391.<sup>65</sup> Aurora’s  
10 witness states:

11 “[steam heat] customers enjoy an unfair advantage over similarly-situated  
12 hot water customers, who pay competitive market rates and, *arguably,*  
13 *cross-subsidize their neighbors who use steam heat.*”<sup>66</sup>

14 Other than this conclusory speculation, we find that Aurora has failed to present any  
15 quantification or other documented evidence that the utility’s hot water customers are  
16 currently subsidizing the steam heat customers.

17 We may not defer to bald assertions by utilities, particularly when  
18 evidence supporting such assertions can be obtained at a reasonable cost.<sup>67</sup> As noted  
19 above, we have approved Aurora’s CAM separating steam heat and hot water service  
20 expenses. Aurora’s independent accountant has certified that Aurora is in compliance

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23 <sup>64</sup>Wright Testimony at 2.

24 <sup>65</sup>Jager at 1109-1110.

25 <sup>66</sup>Wright Reply Testimony at 20 (emphasis added).

26 <sup>67</sup>Jager at 1113-1114.

1 with its CAM. Given these circumstances and the lack of any evidence to the contrary,  
2 we conclude that Aurora should have been able to produce, at a reasonable cost,  
3 financial records documenting unlawful cross-subsidization of its steam heat service  
4 customers by its hot water service customers, if such evidence exists.

5 Accordingly, we find that Aurora has failed to meet its burden of proving  
6 the existence of a discriminatory, or otherwise unreasonable, difference between the  
7 rate it currently charges for its steam heat service and the rate it presently charges for  
8 its hot water service. In consequence of this failure of proof by Aurora, we cannot and  
9 we do not find that the rate cap previously established for Aurora's steam heat service  
10 contravenes AS 42.05.391. Absent proof that there is an unreasonable difference  
11 between its steam heat and hot water rates we need not consider further Aurora's  
12 argument for deregulating its steam heat rates on that basis.

13 Competitive Market for Space Heat in Fairbanks

14 Aurora points to several instances where we have discontinued economic  
15 regulation of utilities based upon findings that a sufficiently competitive market exists to  
16 protect rate payers.<sup>68</sup> Aurora argues that the space heat market in Fairbanks is  
17 similarly competitive.<sup>69</sup> Aurora cites several orders in prior dockets as evidence that we  
18 have recognized the competitive nature of the Fairbanks space heat market.<sup>70</sup> These  
19 include

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24 <sup>68</sup>Aurora Petition at 12-14.

25 <sup>69</sup>*Id.* at 14.

26 <sup>70</sup>*Id.* at 8-10, 14.

1 Order U-97-44(12)/U-97-139(14), Order U-02-48(1),<sup>71</sup> U-06-107(5),<sup>72</sup> and U-08-61(9).<sup>73</sup>

2 We note that Orders U-97-44(12) and U-08-61(9) were decisions accepting stipulations  
3 of the parties, subject to the express condition that:

4 no issue should be considered to have been finally determined or  
5 adjudicated by virtue of our acceptance of the stipulation.<sup>74</sup>

6 Given this express condition, we find that our acceptance of the stipulations in Orders  
7 U-97-44(12) and U-08-61(9) is of limited precedential value in this proceeding.

8 In Order U-02-48(1), we granted Fairbanks Natural Gas, LLC (FNG)  
9 exemption from economic regulation pursuant to AS 42.05.711(d) based upon a finding  
10 that a substantial number of FNG's customers could cost-effectively obtain space heat  
11 fuel from suppliers of propane, fuel oil and coal.<sup>75</sup> In Docket U-06-107(5), we inquired  
12 about economically regulating FNG based upon a fuel supply emergency experienced  
13 by that utility.<sup>76</sup> Eight current or potential FNG customers responded to our inquiry that  
14 they opposed the institution of economic regulation, and only one FNG customer  
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16 <sup>71</sup>Order U-96-129(4)/U-01-19(5)/U-02-48(1)/U-02-62(1), *Order Accepting Filings;*  
17 *Granting Petition for Exemption from Regulation Under AS 42.05.711(d); Vacating Filing*  
18 *Requirements, Rendering Moot the Petition for Continuance of Revenue Requirement*  
19 *and Cost-of-Service Filings; Requiring Tariff Filing; and Closing Docket*, dated  
20 January 31, 2003 (Order U-02-48(1)).

21 <sup>72</sup>Order U-06-107(5), *Order Approving Special Contract with Revisions and*  
22 *Subject to Conditions, Declining to Further Investigate Economic Regulation, and*  
23 *Imposing Certain Regulatory Requirements*, dated March 22, 2007 (Order U-06-107(5)).

24 <sup>73</sup>Order U-08-61(9), *Order Accepting Settlement Agreement, Subject to*  
25 *Condition; Redesignating Commission Panel; and Closing Docket*, dated June 4, 2009  
26 (Order U-08-61(9)).

<sup>74</sup>Order U-08-61(9) at 3 (similar language in Order U-97-44(12)/U-97-139(14), at  
8).

<sup>75</sup>Order U-02-48(1) at 4-7.

<sup>76</sup>Order U-06-107(5) at 22.

1 favored economic regulation.<sup>77</sup> The one FNG customer who favored economic  
2 regulation indicated that he could switch from FNG's natural gas service to propane  
3 without major difficulty.<sup>78</sup>

4 Aurora has indicated that only one of its steam heat customers was  
5 capable of cost effectively switching to another provider to meet its space heating  
6 needs.<sup>79</sup> As noted above, we received responses from eight Aurora steam heat  
7 customers to our public notice of Aurora's petition for economic deregulation of its  
8 steam heat services, none of whom supported granting Aurora's petition. These facts  
9 clearly distinguish this proceeding from the FNG deregulation decisions, and therefore  
10 we do not view Order U-02-48(1) or Order U-06-107(5) as establishing precedent for  
11 our decision in this proceeding. As we have previously stated:

12 Our economic regulation is designed to protect the ratepayer when there  
13 is a single utility provider. Under these conditions, we set cost-based  
14 rates and regulate the utility to ensure that its costs are reasonable, and  
15 neither excessive nor confiscatory. This works well in monopoly  
markets.<sup>80</sup>

16 Aurora's steam heat customers, with possibly one exception, can heat their structures  
17 only with steam heat provided by Aurora.<sup>81</sup> Therefore, Aurora is a monopoly provider of  
18 essential steam heat services to these customers. Aurora attempts to dispute the  
19 significance of this point by asserting that unlike the customers of electric or water

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20 <sup>77</sup>Order U-06-107(5) at 25.

21 <sup>78</sup>*Id.*

22 <sup>79</sup>Aurora Petition, at 16, n. 15 ("one customer), *but c.f.* Carpenter Testimony, at  
23 10 ("none of Aurora's steam heat customers currently have the ability to switch to oil  
24 heating service"), *and* Tr. 54 ("We have, I believe, one steam customer who has an  
alternative source of heat").

25 <sup>80</sup>Order U-02-48(1) at 5.

26 <sup>81</sup>Aurora Petition at 16; Carpenter Testimony at 10; Tr. 54.

1 utilities, its steam heat customers can convert to some other space heating  
2 methodology.<sup>82</sup> However, electric utility customers can always choose to self-generate  
3 electricity, and water utility customers can always choose to self-haul water. The  
4 possibility that, by incurring a substantial economic penalty, customers might obtain an  
5 essential utility service from a source other than their certificated public utility, does not  
6 render that utility any less a monopoly.<sup>83</sup> Where competition is conceivably possible,  
7 but for all practical purposes a monopoly exists, we have chosen to protect customers  
8 through economic regulation.<sup>84</sup>

9 Aurora asserted that by merging its steam heat customers into its hot  
10 water customer rate classes, competition with fuel oil providers for the hot water  
11 customers can adequately protect steam heat customers from unreasonable pricing  
12 practices.<sup>85</sup> The AG and GHU/CUC disputed this assertion.<sup>86</sup> Aurora disagreed with  
13 the AG's and GHU/CUC's analysis.<sup>87</sup> Aurora's witness also testified that natural gas is  
14 a minor competitor for customers that Aurora is capable of serving, and that fuel oil is  
15 the market driver.<sup>88</sup> The AG and Aurora entered into an agreement, under which  
16 Aurora agreed to cap rates for the merged district heat classes at the British Thermal

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17 <sup>82</sup>Wright Testimony at 7-8.

18 <sup>83</sup>See e.g. Order U-83-8(4)/U-83-43(4)/U-83-73(4)/U-83-82(1), *Order Allowing*  
19 *Limited Competitive Provision of Refuse Collection in the Matanuska-Susitna Borough*,  
20 dated November 15, 1985, at 37-40 (discussing characteristics of monopoly).

21 <sup>84</sup>See Order U-06-21(3)/U-06-22(3), *Order Addressing Economic Regulation,*  
22 *Approving Tariff Sheets and Map, Requiring Filings, and Closing Dockets*, dated  
23 February 15, 2007, at 3.

24 <sup>85</sup>Aurora Petition at 18-19; Wright Testimony at 5-6; Carpenter Testimony at 7-  
25 20.

26 <sup>86</sup>Klein Testimony at 10-39; Paul Testimony at 3-7.

<sup>87</sup>Wright Reply Testimony at 3-20; Carpenter Reply Testimony at 2-10.

<sup>88</sup>Tr. 58-59.

1 Unit (BTU) equivalent price of fuel oil.<sup>89</sup> This agreement alleviated the AG's concerns  
2 about economic deregulation of Aurora's steam heat service.<sup>90</sup>

3 Aurora's witness testified that fuel oil distribution is a competitive market.<sup>91</sup>  
4 However, this competition affects the retail market price of fuel oil by merely a few cents  
5 per gallon.<sup>92</sup> Testimony has been presented to us to the effect that only two fuel oil  
6 refiners serve the Fairbanks market, and possibly only one serves the retail consumer  
7 market.<sup>93</sup> It appears from the testimony that the fuel oil market in Fairbanks may be  
8 characterized more accurately as an oligopoly than as a competitive market, inasmuch  
9 as the individual oil refiners serving Fairbanks appear to be capable of establishing  
10 retail market prices independently of competitive forces. No witness testified that the  
11 retail fuel oil market in Fairbanks, as distinguished from fuel oil distribution, is  
12 competitive.<sup>94</sup>

13 Aurora's witness stated that "[h]eating oil acts as the competitive  
14 benchmark in the Fairbanks market."<sup>95</sup> As amended by its agreement with the AG,  
15 Aurora's proposal is to eliminate the existing steam heat utility services rate cap of  
16 \$10.50 per 1,000 pounds of steam and replace it with a cap tied to the equivalent price  
17 of heating oil, calculated on an MMBTU basis.<sup>96</sup> In the absence of convincing evidence  
18 that the retail fuel oil market in Fairbanks is competitive, we cannot find and we do not

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19 <sup>89</sup>Tr. 29-30, 33, 39, 40, 54-55, 63, 73-77.

20 <sup>90</sup>Tr. 77.

21 <sup>91</sup>Carpenter Testimony at 4.

22 <sup>92</sup>Tr.103-104.

23 <sup>93</sup>Tr. 86, 103.

24 <sup>94</sup>See Tr. 86.

25 <sup>95</sup>Carpenter Testimony at 7.

26 <sup>96</sup>Tr. 73-78.

1 find that the public interest would be served by exempting Aurora’s monopoly steam  
2 heat service from the partial rate regulation it currently operates under or by capping  
3 steam heat rates by tying them to the price for fuel oil calculated on an MMBTU basis.

4           Based on our findings of fact and our analysis as set forth above, we deny  
5 that portion of Aurora’s Petition seeking exemption of Aurora’s steam heat utility service  
6 from economic regulation under AS 42.05.711(d). Included with its Petition, Aurora  
7 requested that we permit it to reassign its steam heat customers into its hot water  
8 service class. In declining to exempt Aurora from economic regulation with respect to  
9 its steam heat service, we thereby also deny its request to merge its steam heat  
10 customers with its hot water customers.

11 Modification of Steam Heat Billing Units

12           In addition to seeking exemption from economic regulation, Aurora also  
13 sought permission to modify its steam heat billing units from “1,000 pounds of steam”  
14 delivered to “MMBTU” delivered.<sup>97</sup> Wright testified for Aurora that these units are  
15 equivalent.<sup>98</sup> No party objected to this modification.<sup>99</sup> We therefore grant Aurora  
16 authority to modify its rate cap for steam energy from “\$10.50 per 1,000 pounds” to  
17 “\$10.50 per MMBTU.” Aurora shall submit a revised Tariff Sheet No. 35 reflecting this  
18 change before implementing this change on its customer bills.

19 Motion to Strike Comments

20           Aurora moved to strike the comments filed by the City of Fairbanks on  
21 March 7, 2011, because the comments were filed after the deadline stated on our public  
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23  
24 <sup>97</sup>Tr. 17-18, 22.

25 <sup>98</sup>Wright Testimony at 3-4.

26 <sup>99</sup>Klein Testimony at 37.

1 notice of Aurora's Petition.<sup>100</sup> Our Public Notice of Aurora's Petition requested that  
2 comments be filed by September 20, 2010.<sup>101</sup> Aurora objects to comments filed late in  
3 the proceeding, but our regulations clearly contemplate comments being submitted by  
4 interested persons late in proceedings.<sup>102</sup>

5           Comments are not evidence, and there is no right to respond to  
6 comments. The comments Aurora would have us strike substantially reiterate the City  
7 of Fairbanks' initial comments filed with us on September 17, 2010, well before the  
8 close of the comment period.<sup>103</sup> We note that the City of Fairbanks attended a  
9 significant portion of the public hearing held on Aurora's Petition.<sup>104</sup> We find no reason  
10 to strike the comments filed by the City of Fairbanks in 2011, and we therefore deny  
11 Aurora's Motion to Strike.

12 Final Order

13           This order constitutes the final decision in this proceeding. This decision  
14 may be appealed within thirty days of the date of this order in accordance with  
15 AS 22.10.020(d) and the Alaska Rules of Court, Rules of Appellate Procedure, Rule  
16 602(a)(2). In addition to the appellate rights afforded by the aforementioned statute, a  
17 party may file a petition for reconsideration in accordance with 3 AAC 48.105. In the  
18 event such a petition is filed, the time period for filing an appeal is then calculated in  
19 accordance with Alaska Rules of Court, Rules of Appellate Procedure, Rule 602(a)(2).

21 \_\_\_\_\_  
22 <sup>100</sup>Aurora Motion.

23 <sup>101</sup>Public Notice.

24 <sup>102</sup>See e.g., 3 AAC 48.151(5) (allowing presiding officer to allow comments of  
interested persons at any convenient point during hearings).

25 <sup>103</sup>*Compare* 2010 Fairbanks Comments *with* 2011 Fairbanks Comments.

26 <sup>104</sup>Tr. Appearances and 114.

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**ORDER**

THE COMMISSION FURTHER ORDERS:

1. The *Petition by Aurora Energy, LLC to Exempt Steam Heat Rates from Economic Regulation Pursuant to AS 42.05.711(d)*, filed August 4, 2010, is denied.

2. Aurora Energy, LLC is authorized to render bills for district steam heat service based upon the number of “million BTUs per month” instead of “1,000 pounds per month”.

3. Aurora Energy, LLC shall file a revised tariff sheet before implementing the billing unit change, as set forth in the body of this order.

4. The *Motion to Strike Late Filed Comments by the City of Fairbanks*, filed March 8, 2011, by Aurora Energy, LLC, is denied.

DATED AND EFFECTIVE at Anchorage, Alaska, this 29th day of April, 2011.

BY DIRECTION OF THE COMMISSION  
(Commissioners Kate Giard and Janis W. Wilson,  
not participating.)

