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MEMORANDUM

TO: Haines Borough Assembly

FROM: Patrick W. Munson
Boyd, Chandler & Falconer, LLP 

DATE: February 7, 2014

RE: Petition to Intervene – U-14-002 – APC Rate-Making Case

The Borough asked our office to prepare a petition to intervene in APC's rate-making case. As you know, APC has proposed a permanent rate increase of over 18%. An interim increase of 6% has already been approved on a refundable basis. The Order outlining the Regulatory Commission of Alaska's findings so far is attached for your reference and to fill in some of the details available at this very early stage. The remaining documentation is available on the RCA website by searching the matter number listed above.

At this early stage, the Borough is only asking to be allowed to participate. Given the significance of the rate increase, the commission's invitation for interested parties to intervene, and the Borough's substantial financial stake in this matter, we expect the commission to grant the petition. This might occur within a month or so. If granted, the Borough will become a party to the docket, which allows it to participate fully in the proceedings, conduct discovery, file testimony, and argue the substance of the case at a hearing. The case may not be resolved until approximately February 20, 2015 if the commission takes the full amount of time it is allowed by statute to rule.

The Borough has engaged Mr. Tom Lovas, an expert on utility rate-making with many years of experience on both sides of this issue, to assist in our technical review of the documentation provided so far. With your approval, we will likely call on him again to review the detailed transactions, revenues, and expenses that APC will be required to provide to support its request during this proceeding. So far, Mr. Lovas has evaluated the publicly-available information and identified several issues that we believe will offer potential arguments against granting the full rate increase, but until we see the details, it is impossible to identify which arguments are most likely to succeed, if any.

Based on our review of the pleadings and discussions with Mr. Lovas, our office recommends filing the petition to intervene. Please note that this is not in any way a prediction

that the Borough will prevail on the merits, or that the rate increase will not be granted. In fact, it is almost certain that the request will be granted at least in part, so the question is really whether and how much we can hope to reduce the proposed rate increase. We cannot predict the answer to that question until we see more financial details from APC. In order to demand those details and ask the questions we want to ask, the Borough must become a party to the case.

After we become a party to the case, we expect both our office and Mr. Lovas to become increasingly involved in reviewing APC's financials and the details of its rate increase request. If it appears that the Borough has a strong case we would continue to recommend pursuing the case to a hearing. If the Borough participates through a hearing and final order in this case, it is not unreasonable to expect to spend at least \$25,000 or more on attorney's fees. Mr. Lovas could not predict how much time it might take him to review the financials and prepare testimony, but it would not be unreasonable to expect to spend \$15-25,000 for consultant time as well if this matter proceeds to a hearing. These very rough estimates could vary substantially, but we can work within whatever budget the Assembly deems appropriate. In addition, if our analysis determines that APC is likely to prevail, or that the issues on which the Borough could arguably prevail are not likely to limit the rate increase significantly, then we would advise the Assembly that it may not be worth continuing to pursue the case. However, given the increase APC is requesting, even a partial victory could greatly reduce the Borough's energy costs and those of its citizens.

The next step will be for the Commission to issue a scheduling order. That order will describe the deadlines for discovery, motions, and pre-filed testimony, and likely set a hearing date. We will keep the Assembly thoroughly apprised of these deadline and our efforts to pursue this case should the Assembly authorize our office to file a final version of the attached Petition to Intervene.