

Commissioner of Natural Resources shall designate by regulation, adopted in accordance with the Administrative Procedure Act (AS 44.62), incompatible uses within the boundaries of the Chugach State Park in accordance with secs. 200 - 240 of this chapter, and those incompatible uses designated shall be prohibited or restricted, as provided by regulation.

(b) In adopting regulations under this section and in complying with AS 44.62.210, the Commissioner of Natural Resources shall provide the opportunity for the oral presentation of statements, arguments or contentions.

(c) Except for areas within one mile of maintained roads, trails and camp grounds, hunting with a firearm in Chugach State Park when authorized by the Board of Fish and Game under AS 16.05, is not subject to the provisions of AS 11.55.050 which prohibit the discharge of a firearm in a public park.

Sec. 41.20.240. PURCHASE AUTHORIZED. The Commissioner of Natural Resources may acquire, by purchase in the name of the state, title to or interest in real property lying within or abutting the boundaries of the Chugach State Park.



LAWS OF ALASKA

1970

Source

Chapter No.

SCS CSHB 202 am S

113

AN ACT

Relating to the regulation of public utilities; defining the composition, powers and duties of the Alaska Public Utilities Commission; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 42.05.010 is amended to read:

Sec. 42.05.010. ALASKA PUBLIC UTILITIES COMMISSION CREATED. There is created within the Department of Commerce the Alaska Public Utilities Commission.

* Sec. 2. AS 42.05.020 is amended to read:

Sec. 42.05.020. COMPOSITION OF ALASKA PUBLIC UTILITIES COMMISSION. (a) The Alaska Public Utilities Commission consists of three members, appointed by the governor and confirmed by the legislature in joint session assembled.

(b) The governor shall designate one member of the commission as chairman of the commission. This member shall serve as chairman for a term of four years, but may be appointed for successive terms.

* Sec. 3. AS 42.05.030 is amended to read:

Sec. 42.05.030. TERM OF OFFICE; VACANCY. (a) The term of office of each member is six years. The governor shall designate who among his initial appointees, shall serve, respectively for terms of two years, four years and six years. A commissioner, upon the expiration of his term, shall continue to hold office until his successor is appointed and qualified.

(b) A vacancy arising in the office of commissioner shall be filled by appointment by the governor and confirmed by the legislature in joint session and an appointee

selected to fill a vacancy shall hold office for the balance of the full term for which his predecessor on the commission was appointed.

(c) A vacancy in the commission does not impair the authority of a quorum of commissioners to exercise all the powers and perform all the duties of the commission.

* Sec. 4. AS 42.05 is amended by adding a new section to read:

Sec. 42.05.035. REMOVAL OF COMMISSIONERS. The governor may remove a commissioner from office by and with the consent of a majority of the legislature.

* Sec. 5. AS 42.05.060 - 42.05.650 are repealed.

* Sec. 6. AS 42.05 is amended by adding new sections to read:

Sec. 42.05.071. QUORUM. Two members of the commission shall constitute a quorum for the transaction of business, for the performance of a duty, or for the exercise of a power of the commission.

Sec. 42.05.081. OATH OF OFFICE. Each commissioner and the executive director of the commission, before entering upon the duties of his office shall take and subscribe to the oath prescribed for principal officers of the state.

Sec. 42.05.091. COMPENSATION OF MEMBERS OF COMMISSION. Members of the commission are in the exempt service and shall receive an annual salary of \$26,500 to be paid in equal monthly installments.

Sec. 42.05.101. PRINCIPAL OFFICE; SEAL. (a) The commission shall establish a principal office and branch offices necessary to discharge its business efficiently. For the convenience of the public or of parties to a proceeding the commission may hold meetings, hearings or other proceedings at other locations.

(b) The commission shall have an official seal.

Sec. 42.05.111. LEGAL COUNSEL. (a) The attorney general is legal counsel for the commission. He shall advise the commission in legal matters arising in the discharge of its duties and represent the commission in suits to which it is a party. If, in the opinion of the commission, the public interest is not adequately represented by counsel in a proceeding, the attorney general, upon request of the commission, shall represent the public interest.

(b) The commission may employ temporary legal counsel from time to time in proceedings before the commission in which the attorney general is representing the public interest or a party before the commission.

Sec. 42.05.121. EMPLOYMENT OF COMMISSION PERSONNEL.

(a) The commission may employ an executive director who shall have had at least five years of experience in an administrative capacity and who is experienced in public utility management or regulation. The executive director may be one of the commission members. The commission may employ engineers, hearing officers, experts, clerks, accountants, and other agents and assistants it considers necessary. The executive director, if not a member of the commission, and all other employees and agents of the commission, other than legal counsel, are in the classified service under AS 39.25. The combined salary of an executive director who is a member of the commission may not exceed that of a superior court judge.

(b) In addition to its staff of regular employees, the commission may contract for and engage the services of consultants and experts the commission considers necessary.

Sec. 42.05.131. RESTRICTIONS ON MEMBERS AND EMPLOYEES. No member of the commission or an employee of the commission may have an official connection with, or hold stock or securities in, or have a pecuniary interest in a public utility within the state. Membership in a cooperative association is not a "pecuniary interest" within the meaning of this section; however, no member or employee of the commission may be an officer, board member or employee of a cooperative association. No member or employee may act upon a matter in which his relationship with any person creates a conflict of interest.

ARTICLE 2. POWERS AND DUTIES OF THE COMMISSION.

Sec. 42.05.141. GENERAL POWERS AND DUTIES OF THE COMMISSION. The Alaska Public Utilities Commission may

(1) regulate every public utility engaged or proposing to engage in such a business inside the state, except to the extent exempted by sec. 711 of this chapter and the powers of the commission shall be liberally construed to accomplish its stated purposes;

(2) investigate, upon complaint or upon its own motion, the rates, classifications, rules, regulations, practices, services and facilities of a public utility and hold hearings thereon;

(3) make or require just, fair and reasonable rates, classifications, regulations, practices, services and facilities for a public utility;

(4) prescribe the system of accounts and regulate the service and safety of operations of a public utility;

(5) require a public utility to file reports and other information and data.

Sec. 42.05.151. ADMINISTRATIVE AUTHORITY OF COMMISSION; REGULATIONS AND HEARING PROCEDURES. (a) The commission may adopt regulations, not inconsistent with the law, necessary or proper to exercise its powers and to

perform its duties under this chapter.

(b) The commission shall adopt regulations governing practice and procedure, consistent with due process of law, including the conduct of formal and informal investigations, pre-hearing conferences, hearings and proceedings, and the handling of procedural motions by a single commissioner. Technical rules of evidence need not apply to investigations, pre-hearing conferences, hearings and proceedings before the commission. The commission shall provide for representation by out-of-state attorneys substantially in accordance with Civil Rule 81.

(c) The commission, each commissioner or an employee authorized by the commission may administer oaths, certify to all official acts, and issue subpoenas, subpoenas duces tecum and other process to compel the attendance of witnesses and the production of testimony, records, papers, accounts and documents in an inquiry, investigation, hearing or proceeding before the commission in any part of the state. Each commissioner is authorized to issue orders on procedural motions. The commission may petition a court of this state to enforce its subpoenas, subpoenas duces tecum or other process.

Sec. 42.05.161. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. (a) The administrative adjudication procedures of the Administrative Procedure Act (AS 44.62) do not apply to adjudicatory proceedings of the commission except that final administrative determinations by the commission are subject to judicial review under that Act as provided in sec. 551(a) of this chapter.

(b) The Administrative Procedure Act shall apply to regulations adopted by the commission.

Sec. 42.05.171. FORMAL HEARINGS. A formal hearing which the commission has power to hold may be held by or before two or more commissioners designated for the purpose by the commission. The testimony and evidence in a formal hearing may be taken by the commissioners to whom such hearing has been assigned. A commissioner who has not heard the testimony, including the argument, may not participate in making a decision of the commission. In determining the place of a hearing the commission shall give preference to holding the hearing at a place most convenient for those interested in the subject of the hearing.

Sec. 42.05.181. FINAL ORDERS OF THE COMMISSION. No final order of the commission compelling affirmative action, denying a right or privilege, or granting a right or privilege over protest of the public utility or any party of record may be entered without giving the interested party reasonable notice and an opportunity to be heard.

Sec. 42.05.191. FORMAT OF ORDERS. Every formal order of the commission shall be based upon the facts of record. Every order entered pursuant to a hearing shall state the commission's findings, the basis of its findings and conclusions, together with its decision. These orders shall be entered of record and a copy thereof shall be served on all parties of record in the proceeding.

Sec. 42.05.201. PUBLICATION OF REPORTS, ORDERS, DECISIONS AND REGULATIONS. All reports, orders, decisions and regulations of the commission shall be in writing. The commission shall apprise all affected utilities and interested parties of these reports, orders, decisions, and regulations as they are issued and adopted, and, when appropriate to do so, shall publish them in a manner that will reasonably inform the public or the affected consumers of any public utility service. The commission may set charges for costs of printing or reproducing and furnishing copies of its reports, orders, decisions and regulations. The publication requirement, as it pertains to regulations, does not supersede the requirements of the Administrative Procedure Act (AS 44.62).

Sec. 42.05.211. ANNUAL REPORT. The commission shall publish an annual report reviewing its work and submit it to the legislature by February 15 of each year. The report shall contain information and data which bear a significant relationship to the development and regulation of public utility services in the state and include an outline of the commission's program for the development and regulation of public utility services in the forthcoming year.

ARTICLE 3. CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

Sec. 42.05.211. CERTIFICATES REQUIRED. (a) No public utility may operate and receive compensation for providing a commodity or service after January 1, 1971 without first having obtained from the commission under this chapter a certificate declaring that public convenience and necessity require or will require the service. Where a public utility provides more than one type of utility service, a separate certificate of convenience and necessity shall be required for each type. A certificate shall describe the nature and extent of the authority granted therein, including as appropriate for the services involved, a description of the authorized area or areas and scope of operations of the public utility.

(b) All certificates of convenience and necessity issued to a public utility before the effective date of this Act shall remain in effect but 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.

(c) A certificate shall be issued to a public utility not required to have one before the effective date of this Act, and which is required to have one after that date, if it appears to the commission that the utility was actually operating in good faith on that date. Such a certificate is subject to modification where there are areas of conflict with other public utilities or where there has been a substantial change in circumstances.

(d) In an area where the commission determines that two or more public utilities are competing to furnish identical utility service and that such competition is not in the public interest, the commission shall take appropriate action to eliminate such competition and any

undesirable duplication of facilities. Such appropriate action may include, but is not limited to, ordering the competing utilities to enter into a contract which, among other things would:

- (1) delineate the service area boundaries of each in those areas of competition;
- (2) eliminate existing duplication and paralleling to the fullest reasonable extent;
- (3) preclude future duplication and paralleling;
- (4) provide for the exchange of customers and facilities for the purposes of providing better public service and of eliminating duplication and paralleling; and
- (5) provide such other mutually equitable arrangements as would be in the public interest.

(e) The commission may employ professional consultants to assist it in administering the provisions of this section and may apportion the expenses relating thereto among the competing utilities involved.

Sec. 42.05.231. APPLICATION. Application for a certificate shall be in writing and shall be in the form and contain the information required by the commission by regulation.

Sec. 42.05.241. CONDITIONS OF ISSUANCE. No certificate may be issued unless the commission finds that the applicant is fit, willing and able to provide the utility services applied for and that the services are required for the convenience and necessity of the public. The commission may issue a certificate granting an application in whole or in part and attach to the grant of it the terms and conditions it considers necessary to protect and promote the public interest including the condition that the applicant may or shall serve an area or provide a necessary service not contemplated by the applicant. The commission may, for good cause, deny an application with or without prejudice.

Sec. 42.05.251. USE OF STREETS IN CITIES AND BOROUGHES. Public utilities have the right to a permit to use public streets, alleys and other public ways of a city or borough, whether home rule or otherwise, upon payment of a reasonable permit fee and on reasonable terms and conditions and with reasonable exceptions the city or borough requires. A dispute as to whether fees, terms, conditions or exceptions are reasonable shall be decided by the commission. The commission may require a utility to add the amount of any permit fee paid as a pro rata surcharge to its bills for service rendered at locations within the boundaries of any city or borough which requires payment of a permit fee.

Sec. 42.05.261. DISCONTINUANCE, SUSPENSION OR ABANDONMENT OF CERTIFICATED SERVICE. (a) Except as otherwise provided in this section, no public utility may discontinue or abandon a service for which a certificate has been

issued by the commission unless upon the application of the public utility and if, after notice and opportunity for hearing, the commission finds that the continued service is not required by public convenience and necessity. Any interested person may file with the commission a protest or memorandum of opposition to or in support of discontinuance or abandonment. The commission may authorize temporary suspension of a service or of part of a service.

(b) Upon complaint or upon its own motion, the commission may reinvestigate a previously authorized discontinuance, abandonment or suspension of a service of an operating public utility. If, after providing notice and an opportunity for a hearing, the commission finds that the public convenience and necessity require the service to be resumed, it may order the public utility to again provide the service.

Sec. 42.05.271. MODIFICATION, SUSPENSION OR REVOCATION OF CERTIFICATES. Upon complaint or upon its own motion the commission, after notice and opportunity for hearing and for good cause shown, may amend, modify, suspend, or revoke a certificate, in whole or in part. Good cause for amendment, modification, suspension or revocation of a certificate includes

- (1) the requirements of public convenience and necessity;
- (2) misrepresentation of a material fact in obtaining the certificate;
- (3) unauthorized discontinuance or abandonment of all or part of a public utility's service;
- (4) wilful failure to comply with the provisions of this chapter or the rules, regulations or orders of the commission; or
- (5) wilful failure to comply with a term, condition, or limitation of the certificate.

Sec. 42.05.281. TRANSFER OF CERTIFICATE. A certificate may not be sold or leased, rented, transferred or inherited without the prior approval of the commission.

ARTICLE 4. SERVICES AND FACILITIES.

Sec. 42.05.291. STANDARDS OF SERVICE AND FACILITIES. (a) Each public utility shall furnish and maintain adequate, efficient and safe service and facilities. This service shall be reasonably continuous and without unreasonable interruption or delay.

(b) Subject to the provisions of this chapter and the regulations or orders of the commission, a public utility may establish reasonable rules and regulations governing the conditions under which it shall render service.

(c) The commission may, upon its own motion or upon complaint after providing reasonable notice and opportunity

for hearing, prescribe as to service and facilities, including the crossing of facilities, just and reasonable standards, classifications, regulations, and practices to be furnished, imposed, observed, and followed by public utilities; prescribe adequate and reasonable standards for the measurement of quantity, quality, pressure, initial voltage, or other conditions pertaining to the supply of the service of public utilities; prescribe reasonable regulations for the examination and testing of the service, and for the measurement of it; prescribe or approve reasonable regulations, specifications, and standards to secure the accuracy of meters and appliances for measurement; and provide for the examination and testing of appliances used for the measurement of a service of a public utility. In doing so, the commission shall conform to the standard practices of the industry.

(d) When the commission, upon its own motion or upon complaint, after providing reasonable notice and opportunity for hearing, finds that the service or facilities of a public utility are unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory, or otherwise in violation of this chapter, the commission shall prescribe, by regulation or order, the reasonable, safe, adequate, sufficient service or facilities to be observed, furnished, enforced, or employed, including all repairs, changes, alterations, extensions, substitutions, or improvements in facilities that are reasonably necessary and proper for the safety, accommodation, and convenience of the public.

Sec. 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 localities 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.

Sec. 42.05.311. JOINT USE AND INTERCONNECTION OF FACILITIES. (a) A public utility having sewers, conduits, utilidoros, poles, pole lines, pipes, pipelines, mains or other distribution or transmission facilities shall, for a reasonable compensation, permit another public utility to use them when the public convenience and necessity require this use and the use will not result in substantial injury to the owner, or in substantial detriment to the service to the customers of the owner. The cost of modifications or additions necessary to a joint use shall be at the expense of the public utility requesting the use of the facilities.

(b) A telecommunications utility shall permit connection to be made and service to be furnished between a system operated by it and the system or toll facilities operated by another public utility or with the communications facility or system of a nonutility, or between its toll facilities and the toll facilities of another public utility, when public convenience and necessity require the connection and the connection will not result in

substantial injury to the owner or other users of the facilities of either public utility or in substantial detriment to the service of either public utility.

(c) The tariff of a public utility shall include rules setting out the terms and conditions under which it will construct, or permit its customers or subscribers to construct, and install lines, cables, radio links, or pipes from its existing facilities to the premises of applicants for service.

Sec. 42.05.321. FAILURE TO AGREE UPON JOINT USE OR INTERCONNECTION. In case of failure to agree upon the joint use or interconnection of facilities or the conditions or compensation for joint use or interconnections, the public utility, including any municipality, or an interested person may apply to the commission for an order requiring the interconnection. If, after investigation and opportunity for hearing, the commission finds that public convenience and necessity require the joint use or connection, and that the use or connection will not result in substantial injury to the owner utility or its customers, or in substantial detriment to the services furnished by the owner utility, or in the creation of safety hazards, it shall

- (1) order that the use be permitted;
- (2) prescribe reasonable conditions and compensation for the joint use;
- (3) order the interconnection to be made;
- (4) determine the time and manner of the interconnection;
- (5) determine the apportionment of costs and responsibility for operation and maintenance of the interconnection.

Sec. 42.05.331. STANDARDS FOR MEASUREMENT. The commission shall establish by regulation adequate, fair and realistic standards for the measurement of quality, pressure, voltage or other conditions of utility services and shall prescribe reasonable regulations for examination and testing of the service and the accuracy of the devices used to measure it.

Sec. 42.05.341. TESTING OF METER STANDARDS. (a) The commission shall provide by regulation for the periodic testing and certification of meter standards by laboratories acceptable to the commission. The commission shall also provide by regulation for the taking of appeals to the commission from the findings of a utility which tests its own meters or appliances for measurement.

Sec. 42.05.351. TESTING OF APPLIANCES. The commission shall provide for the examination and testing of appliances used for the measuring of a service of a public utility and may purchase equipment, apparatus, and standards required for this purpose. The commissioner of commerce may assign the examination and testing function

to the division of weights and measures. Upon the payment of a reasonable fee established by the commission, a consumer may have the appliance, which is used by him, tested. The commission shall establish by regulation allowable tolerances with respect to the functioning or operation of the appliance. If the measuring appliance does not perform within these tolerances, the utility concerned shall pay the costs of the test by reimbursing the person requesting the test for the fee paid by him. This reimbursement shall be made no later than at the time of the next regular billing following the test.

ARTICLE 5. RATES AND RATE SCHEDULES.

Sec. 42.05.361. TARIFFS, CONTRACTS, FILING AND PUBLIC INSPECTION. (a) Under such regulations as the commission shall prescribe, every public utility shall file with the commission, within such time and in such form as the commission shall designate, its complete tariff showing all rates, including joint rates, tolls, rentals, and charges collected and all classifications, rules, regulations, and terms and conditions under which it furnishes its services and facilities to the general public, or to a regulated or municipally owned utility for resale to the public, together with a copy of every special contract with customers which in any way affects or relates to the serving utility's rates, tolls, charges, rentals, classifications, services or facilities. The public utility shall clearly print, or type, its complete tariff and keep an up-to-date copy of it on file at its principal business office and at a designated place in each community served. The tariffs shall be made available to, and subject to inspection by, the general public on demand.

(b) The tariffs of a public utility which are also subject to the jurisdiction of a federal regulatory body shall correspond, so far as practicable, to the form of those prescribed by the federal regulatory body.

(c) The commission may reject the filing of all or part of a tariff which does not comply with the form or filing regulations of the commission or which is not consistent with this chapter or the regulations of the commission. A tariff or provision so rejected is void.

Sec. 42.05.371. ADHERENCE TO TARIFFS. The terms and conditions under which every public utility offers its services and facilities to the public shall be governed strictly by the provisions of its currently effective tariffs. No legally filed and effective tariff rate, charge, toll, rental, rule, regulation or condition of service shall be changed except in the manner provided in this chapter. If more than one tariff rate or charge can reasonably be applied for billing purposes the one most advantageous to the customer shall be used.

Sec. 42.05.381. RATES TO BE JUST AND REASONABLE. (a) All rates demanded or received by a public utility, or by any two or more public utilities jointly, for a service furnished or to be furnished shall be just and reasonable.

(b) In establishing the revenue requirements of a municipally owned and operated utility the municipality is entitled to include a reasonable rate of return.

Sec. 42.05.391. DISCRIMINATION IN RATES. (a) No public utility may, as to rates, grant an unreasonable preference or advantage to any of its customers or subject a customer to an unreasonable prejudice or disadvantage. No public utility may establish or maintain an unreasonable difference as to rates, either as between localities or between classes of service.

(b) A rate charged by a municipality for a public utility service furnished beyond its corporate limits is not considered unjustly discriminatory solely because a different rate is charged for a similar service within its corporate limits.

(c) No public utility shall directly or indirectly refund, rebate or remit in any manner, or by any device, any portion of the rates and charges or charge, demand or receive a greater or lesser compensation for its services than is specified in its effective tariff. No public utility may extend to any customer any form of contract, agreement, inducement, privilege or facility, or apply any rule, regulation or condition of service except such as are extended or applied to all customers under like circumstances. No public utility may offer or pay any compensation or consideration or furnish any equipment to secure the installation or adoption of the use of utility service unless it conforms to a tariff approved by the commission, and the compensation, consideration or equipment is offered to all persons in the same classification using or applying for the public utility service; in determining the reasonableness of such a tariff filed by a public utility the commission shall consider, among other things, evidence of consideration or compensation paid by a competitor, regulated or nonregulated, of the public utility to secure the installation or adoption of the use of the competitor's service.

(d) Nothing in this section prevents a public utility from charging reduced rates to customers transferred to it from a competing utility provided the reduction is an integral part of a contract, arrangement or plan to eliminate the overlapping of service areas or to minimize duplication of facilities and competition between public utilities.

Sec. 42.05.401. APPORTIONMENT OF JOINT RATES. (a) If public utilities share in a joint rate the apportionment of receipts shall be just and reasonable. The method of apportionment shall be approved by the commission and the commission may, if it considers it to be in the public interest, establish the portion to which each public utility shall be entitled.

(b) If the commission does not have professional staff to investigate, evaluate and testify regarding any proceeding under (b) of this section it may employ qualified professional consultants for this purpose at the direct expense of the parties to the dispute and divide

the cost among the parties in the proportion of their respective operating revenues before commencement of the proceeding. The cost allocation to each party shall be determined prior to employment of the consultants and after giving the parties reasonable notice and opportunity to be heard.

Sec. 42.05.411. NEW OR REVISED TARIFFS. (a) No public utility may establish or place in effect any new or revised rates, charges, rules, regulations, conditions of service or practices except after 30 days notice to the commission and to the public. Notice shall be given by filing with the commission and keeping open for public inspection the revised tariff provisions which shall plainly indicate the changes to be made in the schedules then in force and the time when the changes will go into effect. The commission may prescribe additional means of giving notice. The commission, for good cause shown, may allow changes to take effect on less than 30 days notice under conditions the commission prescribes.

(b) New and revised tariffs shall be filed in the manner provided in sec. 361(a) of this chapter.

(c) Upon the filing of a new or revised tariff, the commission, upon complaint or upon its own motion, without notice, may initiate an investigation of the reasonableness and lawfulness of the change.

Sec. 42.05.421. SUSPENSION OF TARIFF FILING. (a) When a tariff filing is made containing a new or revised rate, classification, rule, regulation, practice, or condition of service the commission may, either upon written complaint or upon its own motion, after reasonable notice, conduct a hearing to determine the reasonableness and propriety of the filing. Pending such hearing the commission may, by order stating the reasons for its action, suspend the operation of the tariff filing for an initial period not longer than six months beyond the time when it would otherwise go into effect.

(b) An order suspending a tariff filing may be vacated if, after investigation, the commission finds that it is in all respects proper. Otherwise the commission shall hold a hearing on the suspended filing and issue its order, before the end of the suspension period, granting, denying or modifying the suspended tariff in whole or in part.

(c) In the case of a proposed increased rate, the commission may by order require the interested public utility or utilities to place in escrow in a financial institution approved by the commission and keep accurate account of all amounts received by reason of the increase, specifying by whom and in whose behalf the amounts are paid. Upon completion of the hearing and decision the commission may by order require the public utility to refund to the persons in whose behalf the amounts were paid, that portion of the increased rates which was found to be unreasonable or unlawful. No funds shall be released from escrow without the commission's prior written consent and the escrow agent shall be so instructed by the

utility, in writing, with a copy to the commission. The utility may, at its expense, substitute a bond in lieu of the escrow requirement.

(d) One who initiates a change in existing tariffs shall bear the burden to prove the reasonableness of the change.

Sec. 42.05.431. POWER OF COMMISSION TO FIX RATES. When the commission, after an investigation and hearing, finds that a rate demanded, observed, charged or collected by a public utility for a service, subject to the jurisdiction of the commission, or that a classification, rule, regulation, practice, or contract affecting the rate, is unjust, unreasonable, unduly discriminatory or preferential, the commission shall determine a just and reasonable rate, classification, rule, regulation, practice, or contract to be observed or allowed and shall establish it by order. A municipality may covenant with bond purchasers regarding rates of a municipally owned utility, and the covenant is valid and enforceable and is considered to be a contract with the holders from time to time of the bonds.

Sec. 42.05.441. VALUATION OF PROPERTY OF A PUBLIC UTILITY. (a) The commission may, after providing reasonable notice and opportunity to be heard, ascertain and set the fair value of the whole or any part of the property of a public utility, insofar as it is material to the exercise of the jurisdiction of the commission. The commission may make revaluations from time to time and ascertain the fair value of all new construction, extensions, and additions to the property of a public utility. If a public utility furnishes more than one classification of utility service the utility shall allocate the investment and expenses associated with the property used and useful in furnishing service among the utility services and it may not solely consider the utility's total investment and expenses in fixing rates for a particular service.

(b) In determining the value for rate making purposes of public utility property used and useful in rendering service to the public, the commission shall be guided by acquisition cost or, if lower, the original cost of the property to the person first devoting it to public service, less accrued depreciation, plus materials and supplies and a reasonable allowance for cash working capital when required.

ARTICLE 6. ACCOUNTS, RECORDS AND REPORTS.

Sec. 42.05.451. SYSTEM OF ACCOUNTS AND REPORTS. (a) The commission may classify the public utilities under its jurisdiction and prescribe a uniform system of accounts for each class and the manner in which such accounts and supporting records shall be kept.

(b) Each public utility shall maintain its accounts on a calendar year basis unless specifically authorized by the commission to maintain its accounts on a fiscal year basis. Within 90 days after the close of its authorized annual accounting period, or additional time

granted upon a showing of good cause, each public utility shall file with the commission a verified annual report of its operations during the period reported, on forms prescribed by the commission.

Sec. 42.05.461. CONTINUING PROPERTY RECORDS. The commission may require a public utility to establish, provide, and maintain as a part of its system of accounts, continuing property records segregated by the year of placement in service, including a list or inventory of all the units of tangible property used or useful in the public service, showing the current location of the property units by definite reference to the specific land parcels upon which the units are located or stored. The commission may require a public utility to keep accounts and records in such a manner as to show, currently, the original cost of the property when first devoted to the public service, and the related reserve for depreciation. Each public utility with annual revenues exceeding \$100,000 shall keep continuing property records.

Sec. 42.05.471. DEPRECIATION RATES, INITIAL LOSSES AND ACCOUNTS. (a) To provide for the loss in service value of its property, not restored by current maintenance, every utility shall charge adequate, but not excessive, depreciation expense for each major class of utility property used and useful in serving the public. From time to time the commission shall determine the proper and adequate rates of depreciation for each major class of property of a public utility. The commission shall accept rates of depreciation and depreciation accounts prescribed and maintained under regulations of a federal agency or the terms of a bond ordinance. The commission shall determine and allow depreciation expense in fixing the rates, tolls and charges to be paid for the services of a public utility.

(b) The commission is not bound in rate proceedings to accept, as just and reasonable for rate-making purposes, estimates of annual or accrued depreciation established under the provisions of this section, or to allow annual or accrued depreciation on utility property directly or indirectly contributed by customers or others.

Sec. 42.05.481. SUBSIDIARY BUSINESS ACCOUNTS. A public utility engaged, directly or indirectly, in another business, including another utility business, or a subsidiary business shall keep separate accounts relating to that business. Except as the commission provides, no property, expense or revenue used in or derived from that business may be considered in establishing the rates and charges of the utility for its public services.

Sec. 42.05.491. RECORDS AND ACCOUNTS TO BE KEPT IN STATE. A public utility shall keep the books, accounts, papers and records required by the commission, in an office within this state, and may not remove them from the state, except upon the terms and conditions that may be prescribed by the commission. The provisions of this section do not apply to a public utility whose accounts are kept at its principal place of business outside the state, in the manner prescribed by a federal regulatory

body; however, such a public utility shall at its option, either furnish to the commission, within a reasonable time fixed by the commission, certified copies of its books, accounts, papers and records relating to the business done by the public utility within this state, or agree to pay the actual expenses incurred by the commission in sending personnel to examine the utility's books and records at the place where they are kept.

Sec. 42.05.501. INSPECTION OF BOOKS AND RECORDS BY COMMISSION. The commission shall at all reasonable times have access to, and may designate any of its employees, agents or consultants to inspect and examine, the accounts, records, books, maps, inventories, appraisals, valuations, or other reports and documents, kept by public utilities or their affiliated interests, or prepared or kept for them by others, which relate to any contract or transaction between them. The commission may require a public utility or its affiliated interest to file with the commission, copies of any or all of these accounts, records, books, maps, inventories, appraisals, valuations, or other reports and documents.

ARTICLE 7. FINANCIAL AND MANAGEMENT REGULATION.

Sec. 42.05.511. UNREASONABLE MANAGEMENT PRACTICES. (a) The commission may investigate the management of a public utility, including but not limited to staffing patterns, wage and salary scales and agreements, investment policies and practices, purchasing and payment arrangements with affiliated interests for the purpose of determining inefficient or unreasonable practices which adversely affect the cost or quality of service of the public utility.

(b) Where unreasonable practices are found to exist, the commission may, after providing reasonable notice and opportunity for hearing, take appropriate action to protect the public from such inefficient or unreasonable practices and may order the public utility to take the corrective action the commission may require to achieve effective development and regulation of public utility services.

(c) In a rate proceeding the utility involved shall have the burden of proving that any written or unwritten contract or arrangement it may have with any of its affiliated interests for the furnishing of any services or for the purchase, sale, lease or exchange of any property is necessary and consistent with the public interest and that the payment made therefor, or consideration given, is reasonably based, in part, upon the submission of satisfactory proof as to the cost to the affiliated interest of furnishing the service or property and, in part, upon the estimated cost the utility would have incurred if it furnished the service or property with its own personnel and capital.

Sec. 42.05.521. IMPAIRED CAPITAL. When the commission finds that the capital of a public utility corporation is impaired, or might become impaired, it may, after investigation and hearing, issue an order directing the public utility to cease paying dividends on its common stock until the impairment has been removed.

Sec. 42.05.531. DISTRIBUTION OF SURPLUS AND PROFITS. The surplus and profits of public utilities shall be distributed in accordance with the bylaws or ordinances controlling the utility.

ARTICLE 8. JUDICIAL REVIEW, PENALTIES AND ENFORCEMENT.

Sec. 42.05.541. EFFECT OF REGULATIONS. Regulations adopted and issued by the commission in accordance with this chapter have the effect of law.

Sec. 42.05.551. REVIEW AND ENFORCEMENT. (a) All final orders of the commission are subject to judicial review in accordance with AS 44.62.560 - 44.62.570 of the Administrative Procedure Act.

(b) Where an appeal is not taken from a final order of the commission, the commission may apply to the superior court for enforcement of this chapter, the regulations adopted under it and the orders of the commission. The court shall enforce the order by injunction or other process.

Sec. 42.05.561. INJUNCTIVE AND MONETARY SANCTIONS. (a) Any person who violates any provision of sec. 291 of this chapter insofar as it governs the safety of pipeline facilities and the transportation of gas or of any regulation issued under sec. 291 of this chapter is subject to a civil penalty of not to exceed \$1,000 for each violation for each day that the violation persists. However, the maximum civil penalty shall not exceed \$200,000 for any related series of violations.

(b) Any civil penalty may be compromised by the commission. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the state to the person charged or may be recovered in a civil action in the state courts.

(c) Any person may be enjoined by the superior court from committing any violation mentioned in this section.

Sec. 42.05.571. CIVIL PENALTIES. (a) In addition to all other penalties and remedies provided by law, a public utility and every person, and their lessees or receivers appointed by a court in any way subject to the provisions of this chapter, together with their officers, managers, agents or employees that either violate or procure, aid or abet in the violation of any provision of this chapter, or of any order, rule, regulation or written requirement of the commission are subject to a maximum penalty of \$100 for each violation. Each act of omission as well as each act of commission shall be considered a violation subject to the penalty.

(b) No penalty may be assessed unless the commission

first issues an order to show cause why the penalty shall not be levied. The order shall describe each violation with reasonable particularity and designate the maximum penalty which may be assessed for each violation. The order shall be served on the alleged violator named in the order. The order shall state a time and place for the hearing.

(c) After a hearing the commission shall enter its findings of fact and final order which shall state when the penalties, if any, are payable.

Sec. 42.05.581. EACH VIOLATION A SEPARATE OFFENSE. Each violation of a provision of this chapter or of an order, decision, regulation or written requirement of the commission is a separate and distinct offense, and in case of a continuing violation each day's continuance is a separate and distinct offense.

Sec. 42.05.601. ACTIONS TO RECOVER PENALTIES; DISPOSITION. (a) Actions to recover penalties under this chapter shall be brought by the attorney general in a court of competent jurisdiction.

(b) All penalties recovered under the provisions of this chapter shall be paid to the commission and deposited by it in the general fund of the state.

Sec. 42.05.611. PENALTIES CUMULATIVE. (a) All penalties imposed under this chapter are cumulative and an action for the recovery of a civil penalty is not a bar to any criminal prosecution; a criminal prosecution is not a bar to an action for the recovery of a civil penalty.

(b) Neither a criminal prosecution nor an action to recover a civil penalty is a bar to an enforcement proceeding to require compliance, or to any other remedy provided by this chapter.

Sec. 42.05.621. JOINDER OF ACTIONS. Under the applicable court rules, appeals from orders of the commission, applications for enforcement of commission orders and actions for recovery of a penalty may be joined. The court may in the interests of justice separate the actions.

ARTICLE 9. GENERAL PROVISIONS.

Sec. 42.05.631. EMINENT DOMAIN. A public utility may exercise the power of eminent domain for public utility uses. This section does not authorize the use of a declaration of taking.

Sec. 42.05.641. REGULATION BY MUNICIPALITY. The commission's jurisdiction and authority extend to public utilities operating within a city or borough, whether home rule or otherwise. In the event of a conflict between a certificate, order, decision or regulation of the commission and a charter, permit, franchise, ordinance, rule or regulation of such a local governmental entity, the certificate, order, decision or regulation of the commission shall prevail.

Sec. 42.05.651. EXPENSES OF INVESTIGATION OR HEARING. After completion of a hearing or investigation held under this chapter, the commission shall allocate the costs of such hearing or investigation among the parties, including the commission, as is just under the circumstances. In allocating costs, the commission may consider the results, ability to pay, evidence of good faith, other relevant factors and mitigating circumstances. The costs allocated may include the costs of any time devoted to the investigation or hearing by hired consultants, whether or not such consultants appear as witnesses or participants. The costs allocated may also include any out-of-pocket expenses incurred by the commission in the particular proceeding. The commission shall provide an opportunity for any person objecting to an allocation to be heard before such allocation becomes final.

Sec. 42.05.661. APPLICATION FEES. With each application relating to a certificate the applicant shall pay the commission a fee of \$50 which shall be deposited in the general fund of the state.

Sec. 42.05.671. PUBLIC DISCLOSURE OF INFORMATION. Facts and information in the possession of the commission are public, and reports, files, books, accounts and papers of every nature in its possession except records which by regulation are designated to be of a nonpublic or privileged nature are open to public inspection at reasonable times. However, a person may make written objections to the public disclosure of information contained in an application, report or document filed under the provisions of this chapter or of information obtained by the commission under the provisions of this chapter, stating the grounds for the objection. When an objection is made, the commission shall order the information withheld from public disclosure if the information would adversely affect the interest of that person and is not required in the interest of the public.

Sec. 42.05.681. VALIDITY OF CERTAIN CERTIFICATES. No certificate issued before July 29, 1968, to a public utility for the generation, transmission, or distribution of electric energy and power, or for the furnishing of telecommunications may be considered as terminated, or voided, for the sole reason that such utility did not or would not produce an annual gross income in excess of \$25,000.

Sec. 42.05.691. UTILITY CLASSES. The commission may by regulation provide for the classification of public utilities based upon differences in annual revenue, assets, nature of ownership and other appropriate distinctions and as between such classifications, by regulation, provide for different reporting, accounting and other regulatory requirements.

Sec. 42.05.701. DEFINITIONS. In this chapter

- (1) "commission" means the Alaska Public Utilities Commission;
- (2) "public utility" or "utility" includes every

corporation (whether public, cooperative, or otherwise), company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that owns, operates, manages or controls any plant, pipeline or system for

(A) furnishing, by generation, transmission or distribution, electrical service to the public for compensation;

(B) furnishing telecommunications service to the public for compensation;

(C) furnishing water, steam or sewer service to the public for compensation;

(D) furnishing by transmission or distribution of natural or manufactured gas to the Alaska public for compensation;

(E) furnishing for distribution or by distribution petroleum or petroleum products to the Alaska public for compensation;

(3) "service" means (unless the context indicates otherwise) every commodity, product, use, facility, convenience or other form of service which is offered for and provided by a public utility for the convenience and necessity of the public;

(4) "rate" includes each rate, roll, fare, rental, charge, or other form of compensation demanded, observed, charged or collected by a public utility for its services;

(5) "public" or "general public" means

(A) any group of 10 or more customers that purchase the service or commodity furnished by a public utility as defined in (2) of this section; and

(B) any utility purchasing the product or service or paying for the transmission of electric energy, natural or manufactured gas, or petroleum products which are re-sold to a group included in (A) of this paragraph or which are used to produce the service or commodity sold to the public by the utility.

(6) "affiliated interest" includes:

(A) a person owning or holding directly or indirectly five per cent or more of the voting securities of a public utility engaged in intrastate business in this state;

(B) a person, other than those specified in (A) of this paragraph, in a chain of successive ownership of five per cent or more of voting securities, the chain beginning with the holder of the voting securities of such public utility;

(C) a corporation five per cent or more of whose voting securities are owned by a person owning

five per cent or more of the voting securities of the public utility or by a person in such a chain of successive ownership of five per cent or more of voting securities;

(D) a corporation five per cent or more of whose voting securities are owned or held by a public utility;

(E) a person with whom the public utility has a management or service contract;

(F) a person who is an officer or director of such a public utility or of a corporation in a chain of successive ownership of five per cent or more of voting securities;

(G) a corporation which has one or more officers or directors in common with a public utility;

(H) a person or corporation who or which the commission determines as a matter of fact, after investigation and hearing, actually is exercising such substantial influence over the policies and actions of a utility in conjunction with one or more other corporations or persons with whom they are related by ownership or blood, or by action in concert, that together they are affiliated with the utility within the meaning of this section even though none of them alone is so affiliated; or

(I) a person or corporation who or which the commission determines as a matter of fact after investigation and hearing actually is exercising substantial influence over the policies and actions of a utility even though such influence is not based upon stockholdings, stockholders, officers or directors to the extent specified in this section;

(7) "tariff" means a rate, charge, toll, rule or regulation of a utility relating to services furnished by the utility to the general public for compensation and every map, page, adoption notice, instrument or other document filed with the commission setting out the terms and conditions under which utility services are offered to the public and instruments of concurrence and all other documents and data setting out the terms of a utility's business relations with another utility insofar as they affect the general public either directly or indirectly;

(8) "telecommunications" means the transmission and reception of messages, impressions, pictures and signals by means of electricity, electromagnetic waves and any other kind of energy, force variations or impulses whether conveyed by cable, wire, radiated through space, or transmitted through other media within a specified area or between designated points.

Sec. 42.05.711. EXEMPTIONS. (a) The provisions of this chapter do not apply to a person who furnishes water, gas or petroleum or petroleum products by tank, wagon, or similar conveyance, unless the person is thereby supplying water, gas, petroleum or petroleum products to a public

utility in which he has an "affiliated interest".

(b) Public utilities owned and operated by a political subdivision of the state and none of whose utilities is in competition with any other utility, are exempt from the provisions of this chapter, other than the provisions of secs. 211 - 281 of this chapter, unless such an owner and operator elects to be subject to all provisions of this chapter.

(c) The ownership in whole or part, of the corporate stock of a public utility shall not make the owner a public utility.

(d) The commission, on a finding that no legitimate public interest will be served, may exempt a utility from all or any portion of this chapter.

(e) Notwithstanding any other provisions of this chapter, any electric or telephone utility that does not gross \$25,000 annually is exempt from regulation hereunder unless 25 per cent of the subscribers petition the commission for regulation.

Sec. 42.05.721. SHORT TITLE. This chapter may be cited as the Alaska Public Utilities Commission Act.

* Sec. 7. All litigations, hearings, investigations, and other proceedings whatsoever, pending under any law repealed by this Act, shall continue and remain in full force and effect, and may be continued and completed under the provisions of this Act. All certificates, orders, rules, regulations, or tariffs, made, issued, or filed under any law repealed by this Act, and in full force and effect upon the effective date of this Act, shall remain in full force and effect for the term issued, or until revoked, vacated, or modified under the provisions of this Act. All existing contracts and obligations of the commission, entered into or created under any law repealed by this Act, and in force and effect upon the effective date of this Act, shall remain in full force and effect and shall continue to be performed by the commission. The existing rates, charges, tariffs, rules, regulations, service and service area of the municipally owned utility shall continue and remain in full force and effect unless otherwise ordered by the commission under the provisions of this Act.

* Sec. 8. AS 07.12 is amended by adding a new section to read:

Sec. 07.12.030. LIMIT ON POWER TO GRANT FRANCHISES AND REGULATE UTILITIES. AS 29.10.141 - 29.10.153, relating to the granting of franchises and regulation of public utilities apply to home rule boroughs.

* Sec. 9. AS 29.08 is amended by adding a new section to read:

Sec. 29.08.020. LIMIT ON POWER TO GRANT FRANCHISES AND REGULATE UTILITIES. AS 29.10.141 - 29.10.153, relating to the granting of franchises and regulation of public utilities apply to home rule cities.

* Sec. 10. AS 29.10.141 is amended to read:

Sec. 29.10.141. FRANCHISES AND PERMITS. (a) The council may grant franchises, including exclusive franchise privileges, for the construction, operation and maintenance of bus transportation systems and public utilities not regulated under AS 42.05, and may permit them the use of streets and other public places under regulations prescribed by ordinance.

(b) No franchise is valid until it has been submitted to the electors of the municipality and at least 55 per cent of the votes cast are in favor of the franchise. At least 30 days notice of a franchise referendum election shall be given in the same manner as is provided for notice of general city elections and the notice shall specify the purpose of the election. Every ordinance granting a public service franchise shall provide for its submission for ratification to the qualified voters of the city at either a general or special election, and the result of the election shall be canvassed publicly by the council and spread upon the records of the minutes and the result declared and certified in the same manner as in a general election.

(c) Public utilities regulated under AS 42.05 have the right to use the streets and other public places, upon payment of a reasonable permit fee and on reasonable terms and conditions and with reasonable exceptions the council requires. A dispute as to whether fees, terms, conditions or exceptions are reasonable shall be decided by the Alaska Public Utilities Commission.

* Sec. 11. AS 29.10.144(a) is amended to read:

(a) The council may regulate, fix, establish and change, as it considers proper, the rates and charges imposed for utilities services given to the city or its inhabitants by a public service association, corporation or individual, not regulated under AS 42.05, and may regulate and provide what is a reasonable deposit for meters and security for service to be given, and provided that interest be paid on the deposit. All rates, charges and regulations shall be reasonable and shall permit a fair and reasonable return on invested capital.

* Sec. 12. AS 29.10.147 is amended to read:

Sec. 29.10.147. HEARING FOR REGULATION OF UTILITIES RATES. If the council considers it advisable to regulate, change or fix the rates to be charged by any public service corporation, association or individual, not regulated under AS 42.05, it shall order a hearing to be held before the council at a time and place specified and notice of the hearing shall be given by at least one publication in a newspaper of general circulation in the city, if the paper is published in the city. If no newspaper is published in the city, notice shall be given by posting a notice in three public places in the city, and by serving written notice upon the corporations, associations and individuals whose rates are to be regulated, fixed or changed in the same manner that summons are served. The notices shall be published or posted and served at least 15 days before the hearing.

* Sec. 13. AS 39.25.110 is amended by adding a new paragraph

to read:

(13) commissioners of the Alaska Public Utilities Commission.

* Sec. 14. This Act takes effect on July 1, 1970.