

HOUSE BILL NO. 277

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES DAHLSTROM, Kohring

Introduced: 4/17/03

Referred: House Special Committee on Oil and Gas. Labor and Commerce

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the powers of the Regulatory Commission of Alaska in regard to
2 intrastate pipeline transportation services and pipeline facilities, to the rate of interest
3 for funds to be paid by pipeline shippers or carriers at the end of a suspension of tariff
4 filing, and to the prospective application of increased standards on regulated pipeline
5 utilities; allowing the commission to accept rates set in conformity with a settlement
6 agreement between the state and one or more pipeline carriers and to enforce the terms
7 of a settlement agreement in regard to intrastate rates; and providing for an effective
8 date."

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

10 * **Section 1.** AS 42.06.140(a) is amended to read:

11 (a) The commission

12 (1) shall regulate the provision of intrastate pipeline transportation

1 services within the state, including rates, classifications, regulations, practices,
 2 and conditions of service, but only to the extent applicable to the delivery of
 3 intrastate transportation services [PIPELINES AND PIPELINE CARRIERS IN
 4 THE STATE];

5 (2) may investigate, upon complaint or its own motion, the rates,
 6 classifications, rules, regulations, prices, services, **and** practices [, AND FACILITIES]
 7 of pipeline carriers [, AND THE PERFORMANCE OF OBLIGATIONS UNDER
 8 AND COMPLIANCE WITH THE TERMS OF LEASES ISSUED BY THE STATE];

9 (3) may make, prescribe, or require just, fair, and reasonable rates,
 10 classifications, regulations, practices, **and service** [SERVICES, AND FACILITIES]
 11 for pipeline carriers;

12 (4) may require pipeline carriers and affiliated interests to file with the
 13 commission reports and other information and data required or permitted to be
 14 required by other provisions of this chapter;

15 (5) may adopt regulations that are necessary and proper to the
 16 performance of its duties under this chapter, including regulations governing practices
 17 and procedures of the commission; the regulations may not be inconsistent with state
 18 law;

19 (6) shall, during normal business hours, have access to and may
 20 designate any of its employees, agents, or consultants to inspect and examine the
 21 accounts, financial and property records, books, maps, inventories, appraisals,
 22 valuations, and related reports kept by a pipeline carrier, or kept for it by others, that
 23 directly affect the interests of the state and directly relate to pipelines located in the
 24 state;

25 (7) may initiate, intervene in, and appear personally or by counsel and
 26 offer evidence in and participate in [,] any proceedings involving a pipeline carrier [,]
 27 and affecting the interests of the state, before any officer, department, board,
 28 commission, or court of this state;

29 (8) shall require permits for the construction, enlargement in size or
 30 operating capacity, extension, connection and interconnection, **or** operation [OR
 31 ABANDONMENT] of any oil or gas pipeline facility or facilities, subject to necessary

1 and reasonable terms, conditions, and limitations;

2 (9) may prescribe the system of accounts and regulate the service of an
3 oil or gas pipeline facility;

4 (10) shall provide all reasonable assistance to the Department of Law
5 in intervening in, offering evidence in, and participating in proceedings involving a
6 pipeline carrier or affiliated interest and affecting the interests of the state, before an
7 officer, department, board, commission, or court of another state or the United States.

8 * **Sec. 2.** AS 42.06.230 is amended by adding a new subsection to read:

9 (c) Notwithstanding any other provision of this chapter, the commission does
10 not have jurisdiction over a pipeline carrier with respect to the dismantlement,
11 removal, and restoration of any part of a pipeline facility, or over any amount
12 collected or held by a pipeline carrier for performing dismantlement, removal, and
13 restoration except amounts included in a pipeline carrier's intrastate rates.

14 * **Sec. 3.** AS 42.06.245 is amended to read:

15 **Sec. 42.06.245. Federally regulated carriers.** The requirements of this
16 chapter pertaining to permits and certificates of public convenience and necessity do
17 not apply to the construction of a pipeline facility exclusively subject to federal
18 jurisdiction or to the interstate portion of the business of a pipeline or pipeline carrier
19 [EXCLUSIVELY] subject to federal jurisdiction, **including rates, tariffs, charges,**
20 **classification, rules, regulations, terms, and conditions pertaining to the interstate**
21 **portion of the business subject to federal jurisdiction.** However, the requirements
22 of this chapter for permits and certificates of public convenience and necessity do
23 apply to [ALL] the intrastate portion of the business of a pipeline or pipeline carrier
24 subject to federal jurisdiction **to the extent the pipeline or pipeline carrier is**
25 **engaged** [WHENEVER IT ENGAGES] in intrastate commerce, **including rates,**
26 **tariffs, charges, classification, rules, regulations, terms, and conditions pertaining**
27 **solely to the intrastate portion of the business. The commission may not consider**
28 **revenue collected on interstate transportation when evaluating intrastate rates or**
29 **tariffs** [HOWEVER, NOTHING LIMITS THE POWERS OF THE COMMISSION
30 SET OUT IN THIS CHAPTER EXCEPT TO THE EXTENT THEY ARE
31 PREEMPTED BY FEDERAL LAW].

1 * **Sec. 4.** AS 42.06.290(a) is amended to read:

2 (a) A pipeline carrier may not [ABANDON OR PERMANENTLY
3 DISCONTINUE USE OF ALL OR ANY PORTION OF A PIPELINE OR] abandon
4 or discontinue any service rendered by means of a pipeline that is the subject of a
5 certificate of convenience and necessity [,] without the permission and approval of the
6 commission, after due notice and hearing, and a finding by the commission that
7 continued service is not required by public convenience and necessity. Any interested
8 person may file with the commission a protest or memorandum of opposition to or in
9 support of discontinuance or abandonment. The commission may authorize temporary
10 suspension of a service or of part of a service.

11 * **Sec. 5.** AS 42.06.370 is amended by adding a new subsection to read:

12 (d) Rates agreed to or rates set in conformity with a rate methodology agreed
13 to by a pipeline carrier, or by any two or more pipeline carriers jointly, in a settlement
14 agreement with the state are considered to be in the public interest and are
15 conclusively considered just and reasonable under (a) of this section and not unduly
16 discriminatory under AS 42.06.380(a) during the term of the settlement agreement.
17 However, the commission is not prohibited from hearing a protest or petition by the
18 state regarding an intrastate rate charged by a pipeline carrier, or by any two or more
19 pipeline carriers jointly, to the extent that the protest or petition is based on an
20 allegation that the rate does not conform to the terms of a settlement agreement
21 entered into by the carrier or carriers and the state with respect to the intrastate rate. In
22 a hearing under this subsection, the commission is limited to determining whether the
23 challenged intrastate rate conforms to the agreed-upon rate or rate methodology set out
24 in the settlement agreement.

25 * **Sec. 6.** AS 42.06.400(b) is amended to read:

26 (b) An order suspending a tariff filing may be vacated if, after investigation,
27 the commission finds that it is, in all respects, proper. Otherwise, the commission
28 shall hold a hearing on the suspended filing and issue its order, before the end of the
29 suspension period, granting, denying, or modifying the suspended tariff in whole or in
30 part. If an initial tariff is suspended, the commission shall establish a reasonable
31 temporary tariff. The commission may allow the collection of the filed initial tariff, or

1 it may require collection of the temporary tariff. If the commission allows collection
 2 of the filed initial tariff, it shall require the pipeline carrier to place the revenue
 3 representing the difference between the filed tariff and the temporary tariff in escrow
 4 in a financial institution approved by the commission, and keep accurate accounts of
 5 all amounts received, specifying by whom and in whose behalf the amounts are paid.
 6 At the end or vacation of the suspension period, the amount, if any, owing to the
 7 pipeline carrier from the difference between the temporary tariff and the permanent
 8 tariff shall be paid to the pipeline carrier. The surplus, if any, shall be refunded to the
 9 persons in whose behalf the amounts were paid into escrow. Funds may not be
 10 released from escrow without the commission's prior written consent and instructions
 11 to the escrow agent. The commission may allow the pipeline carrier, at the carrier's
 12 expense, to substitute a bond or letter of credit in lieu of the escrow requirement. If
 13 the commission requires collection of the temporary tariff, it shall require the shipper
 14 to place the revenue representing the difference between the filed initial tariff and the
 15 temporary tariff in escrow in a financial institution approved by the commission, and
 16 require that accurate accounts similar to those specified above in this section be kept
 17 by the carrier and the shipper. The person owing shall pay the person owed to the
 18 satisfaction of the commission within 30 days after the commission order allowing or
 19 setting a permanent tariff. The amount, if any, by which the permanent tariff exceeds
 20 the temporary tariff shall be paid by the shipper to the carrier, or, if the temporary
 21 tariff exceeds the permanent tariff, the difference shall be paid by the carrier to the
 22 shipper, and, in either event, **provided that the funds were not placed in escrow as**
 23 **provided by this subsection, the** [SUCH] payment shall be made with interest
 24 calculated on the balance due at the end of each calendar month at the **rate of interest**
 25 **specified in AS 09.30.070(a)** [LEGAL RATE, AS DEFINED IN AS 45.45.010(a)].
 26 The commission may allow the shipper, at the shipper's expense, to substitute a bond
 27 or letter of credit in place of the escrow requirement.

28 * **Sec. 7.** AS 42.06.410(a) is amended to read:

29 (a) When the commission, after an investigation and hearing, finds that a rate
 30 demanded, observed, charged, or collected by a pipeline carrier for a service, subject
 31 to the jurisdiction of the commission, or that a classification, rule, regulation, practice,

1 or contract affecting the rate, is unjust, unreasonable, unduly discriminatory, or
 2 preferential, the commission shall determine a just and reasonable rate, classification,
 3 rule, regulation, practice, or contract to be observed or allowed **in the future** and shall
 4 establish it by order. **An order may not be retrospective in its application.**

5 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to
 6 read:

7 APPLICABILITY. Sections 1 - 7 and 9 of this Act apply to any matters pending
 8 before the Regulatory Commission of Alaska involving pipelines or a pipeline carrier on the
 9 effective date of secs. 1 - 7 and 9 of this Act.

10 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
 11 read:

12 RETROACTIVITY. Section 6 of this Act is retroactive to August 7, 1997.

13 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to
 14 read:

15 CONDITIONAL EFFECT OF SECTION 5. AS 42.06.370(d), enacted by sec. 5 of
 16 this Act, takes effect only if Executive Order No. 111 takes effect.

17 * **Sec. 11.** If, under sec. 10 of this Act, sec. 5 of this Act takes effect, it takes effect
 18 immediately under AS 01.10.070(c) or on the effective date of Executive Order No. 111,
 19 whichever is later.