

Introduced: 2/25/72
Referred: Resources and
Finance

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2

HOUSE BILL NO. 703

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SEVENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the creation of the Alaska Oil and
7 Gas Transportation Commission; and providing for an
8 effective date."

9

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

10

* Section 1. AS 42 is amended by adding a new chapter to read:

11

CHAPTER 6. ALASKA OIL AND GAS TRANSPORTATION

12

COMMISSION ACT.

13

ARTICLE 1. ESTABLISHMENT OF ALASKA OIL AND

14

GAS TRANSPORTATION COMMISSION.

15

Sec. 42.06.010. ALASKA OIL AND GAS TRANSPORTATION COMMISSION

16

CREATED. There is created within the Department of Revenue the
17 Alaska Oil and Gas Transportation Commission.

18

Sec. 42.06.020. COMPOSITION OF ALASKA OIL AND GAS TRANSPORTATION

19

COMMISSION. (a) The Alaska Oil and Gas Transportation Commission

20

consists of three members, appointed by the governor and confirmed by
21 the legislature in joint session.

22

(b) The governor shall designate one member of the commission as

23

chairman of the commission. This member shall serve as chairman for a

24

term of four years, and may be appointed for successive terms.

25

Sec. 42.06.030. TERM OF OFFICE: VACANCY. (a) The term of

26

office of each member is six years. The governor shall designate

27

who among his initial appointees, shall serve, respectively for terms

28

of two years, four years and six years. A commissioner, upon the

29

expiration of his term, shall continue to hold office until his

1 successor is appointed and qualified.

2 (b) A vacancy arising in the office of commissioner shall be
3 filled by appointment by the governor and confirmed by the legislature
4 in joint session and an appointee selected to fill a vacancy holds
5 office for the balance of the full term for which his predecessor on
6 the commission was appointed.

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

10 Sec. 42.06.035. REMOVAL OF COMMISSIONERS. The governor may
11 remove a commissioner from office by and with the consent of a
12 majority of the legislature.

13 Sec. 42.06.040. QUALIFICATIONS OF MEMBERS. Members of the
14 commission shall be qualified as follows: one member shall be a
15 graduate of an accredited school of law preferably with experience in
16 administrative or regulatory law; one member shall be a graduate of an
17 accredited university with a major in land management, civil engineer-
18 ing or transportation economics, preferably with experience in the
19 problems of oil transportation; one member shall be a graduate of an
20 accredited university with a major in finance, accounting, or if not
21 otherwise represented, transportation economics.

22 Sec. 42.06.071. QUORUM. Two members of the commission constitute
23 a quorum for the transaction of business, for the performance of a
24 duty, or for the exercise of a power of the commission.

25 Sec. 42.06.081. OATH OF OFFICE. Each commissioner and the
26 executive director of the commission, before entering upon the duties
27 of his office, shall take and subscribe to the oath prescribed for
28 principal officers of the state.

29 Sec. 42.06.091. COMPENSATION OF MEMBERS OF THE COMMISSION.

1 Members of the commission are in the exempt service described in
2 AS 39.25 and receive an annual salary equivalent to the salary of
3 commissioners of principal departments of state government.

4 Sec. 42.06.101. PRINCIPAL OFFICE; SEAL. (a) The commission
5 shall establish a principal office and branch offices necessary to
6 discharge its business. For the convenience of the public or of
7 parties to a proceeding the commission may hold meetings, hearings
8 or other proceedings at other locations.

9 (b) The commission shall have an official seal.

10 Sec. 42.06.111. LEGAL COUNSEL. (a) The attorney general is
11 legal counsel for the commission. He shall advise the commission in
12 legal matters arising in the discharge of its duties and represent the
13 commission in actions to which it is a party. If, in the opinion of
14 the commission, the public interest is not adequately represented by
15 counsel in a proceeding, the attorney general, upon request of the
16 commission, shall represent the public interest.

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

21 Sec. 42.06.121. EMPLOYMENT OF COMMISSION PERSONNEL. (a) The
22 commission may employ an executive director who shall have had at least
23 five years of experience in oil or gas transportation management or
24 accounting or a combination of both. The commission may employ
25 engineers, hearing officers, experts, clerks, accountants, and other
26 agents and assistants it considers necessary. The commission shall
27 make maximum possible use of employees and experts available in
28 departments of state government. The executive director and all other
29 employees and agents of the commission, other than legal counsel, are

1 in the classified service under AS 39.25.

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

5 Sec. 42.06.131. RESTRICTIONS ON MEMBERS AND EMPLOYEES. No
6 member of the commission or an employee of the commission may have
7 an official connection with, or hold stock or securities in, or have a
8 pecuniary interest in any company engaged in oil or gas production or
9 engaged in the transportation of oil or gas. No member or employee may
10 act upon a matter in which his relationship with any person creates a
11 conflict of interest.

12 ARTICLE 2. POWERS AND DUTIES OF THE COMMISSION.

13 Sec. 42.06.141. GENERAL POWERS AND DUTIES OF THE COMMISSION.

14 The Alaska Oil and Gas Transportation Commission shall

15 (1) regulate every oil or gas transportation facility
16 engaged or proposing to engage in such a business inside the state;

17 (2) require permits for the construction, enlargement in
18 size or operating capacity, extension, operation or abandonment of
19 any oil or gas transportation facility, subject to necessary and
20 reasonable terms, conditions and limitations;

21 (3) investigate, upon complaint or upon its own motion, the
22 rates, classifications, rules, regulations, practices, services and
23 facilities of an oil or gas transportation facility and hold hearings
24 on them;

25 (4) make or require just, fair and reasonable rates,
26 classifications, regulations, practices, services and facilities for
27 an oil or gas transportation facility;

28 (5) prescribe the system of accounts and regulate the service
29 and safety of operations of an oil or gas transportation facility;

1 (6) require an oil or gas transportation facility to file
2 reports and other information and data to the extent the commission
3 considers such information relevant or considers that it may lead to
4 the discovery of relevant information;

5 (7) appear personally or by counsel and represent the
6 interest and welfare of the state in all matters and proceedings
7 involving an oil or gas transportation facility pending before an
8 officer, department, board, commission or court of the state or of
9 another state or the United States and to intervene in, protest,
10 resist, or advocate the granting, denial or modification of any
11 petition, application, complaint or other proceeding;

12 (8) examine witnesses and offer evidence in any proceeding
13 affecting the state and initiate or participate in judicial proceedings
14 to the extent necessary to protect and promote the interests of the
15 state.

16 Sec. 42.06.151. ADMINISTRATIVE AUTHORITY OF COMMISSION; REGULA-
17 TIONS AND HEARING PROCEDURES. (a) The commission may adopt regula-
18 tions, not inconsistent with the law, necessary or proper to exercise
19 its powers and to perform its duties under this chapter.

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

29 (c) The commission, each commissioner or an employee authorized

1 by the commission may administer oaths, certify to all official acts,
2 and issue subpoenas, subpoenas duces tecum and other process to compel
3 the attendance of witnesses and the production of testimony, records,
4 papers, accounts and documents in any inquiry, investigation, hearing
5 or proceeding before the commission in the state. Each commissioner
6 is authorized to issue orders on procedural motions. The commission
7 may petition a court of this state to enforce its subpoenas, subpoenas
8 duces tecum and other process.

9 Sec. 42.06.161. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. (a)

10 The administrative adjudication procedures of the Administrative
11 Procedure Act (AS 44.62) do not apply to adjudicatory proceedings of
12 the commission except that final administrative determinations by the
13 commission are subject to judicial review under that Act as provided
14 in sec. 551(a) of this chapter.

15 (b) The Administrative Procedure Act applies to regulations
16 adopted by the commission.

17 Sec. 42.06.171. FORMAL HEARINGS. A formal hearing which the
18 commission has power to hold may be held by or before two or more
19 commissioners designated for the purpose by the commission. The
20 testimony and evidence in a formal hearing may be taken by the
21 commissioners to whom the hearing has been assigned. A commissioner
22 who has not heard the testimony, including the argument, may not
23 participate in making a decision of the commission. In determining
24 the place of a hearing the commission shall give preference to holding
25 the hearing at a place most convenient for those interested in the
26 subject of the hearing.

27 Sec. 42.06.181. FINAL ORDERS OF THE COMMISSION. No final order
28 of the commission compelling affirmative action, denying a right or
29 privilege, or granting a right or privilege over protest of the oil

1 or gas transportation facility or any party of record may be entered
2 without giving the interested party reasonable notice and an
3 opportunity to be heard.

4 Sec. 42.06.191. FORMAT OF ORDERS. Every formal order of the
5 commission shall be based upon the facts of record. Every order
6 entered pursuant to a hearing shall state the commission's findings,
7 the basis of its findings and conclusions, together with its decision.
8 These orders shall be entered of record and a copy of them shall be
9 served on all parties of record in the proceeding.

10 Sec. 42.06.201. PUBLICATION OF REPORTS, ORDERS, DECISIONS AND
11 REGULATIONS. All reports, orders, decisions and regulations of the
12 commission shall be in writing. The commission shall apprise all
13 affected operators of oil or gas transportation facilities and
14 interested parties of these reports, orders, decisions, and regulations
15 as they are issued and adopted, and, when appropriate to do so, shall
16 publish them in a manner that will reasonably inform the public or
17 the affected consumers of the services of any oil or gas transportation
18 facility. The commission may set charges for costs of printing or
19 reproducing and furnishing copies of its reports, orders, decisions
20 and regulations. The publication requirement, as it pertains to
21 regulations, does not supersede the requirements of the Administrative
22 Procedure Act (AS 44.62).

23 Sec. 42.06.211. ANNUAL REPORT. The commission shall publish an
24 annual report reviewing its work and submit it to the legislature by
25 February 15 of each year. The report shall contain information and
26 data which bear a significant relationship to the development and
27 regulation of oil or gas transportation facilities in the state and
28 include an outline of the commission's program for the development
29 and regulation of oil or gas transportation facilities in the forth-

1 coming year.

2 ARTICLE 3. CERTIFICATE OF CONVENIENCE
3 AND NECESSITY.

4 Sec. 42.06.221. CERTIFICATES REQUIRED. (a) No oil or gas
5 transportation facility may operate and receive compensation for
6 providing transportation service after January 1, 1973 without first
7 having obtained from the commission under this chapter a certificate
8 of convenience and necessity declaring that efficient production and
9 marketing of oil or gas requires or will require the service and the
10 service can be provided without an undue adverse effect on the public
11 health or welfare. A certificate shall describe the nature and extent
12 of the authority granted in it, including, as appropriate for the
13 services involved, a description of the authorized area and scope of
14 operation of the oil or gas transportation facility.

15 (b) In an area where the commission determines that two or
16 more oil or gas transportation facilities are or are planning to
17 compete to offer identical oil or gas transportation service and this
18 competition is not in the public interest, the commission shall take
19 appropriate action to eliminate or not allow the competition and any
20 undesirable duplication of facilities.

21 (c) The commission may attach to certificates of convenience and
22 necessity terms and conditions and require issuance of securities it
23 considers necessary for the protection of the environment and for the
24 best interest of the oil or gas transportation facility and the general
25 public. The terms and conditions are temporary, and may be revoked
26 when revocation is required in order to protect the public or preserve
27 the environment.

28 (d) The commission may employ professional consultants to
29 assist it in administering the provisions of this section and may

1 apportion the expenses relating to this administration among the
2 competing oil or gas transportation facilities involved.

3 Sec. 42.06.231. APPLICATION. Application for a certificate of
4 convenience and necessity shall be in writing and shall be in the
5 form and contain the information required by the commission by re-
6 gulation. In addition to other information, each application shall
7 include a detailed statement of the environmental impact of the pro-
8 posed transportation facility sufficient to enable the commission to
9 assess the long-term social costs of possible environmental degradation
10 resulting from the proposed facility. This statement shall also in-
11 clude a discussion of alternative measures for mitigating adverse
12 environmental effects of the proposed facility, including projections
13 of the costs of these measures.

14 Sec. 42.06.233. PUBLIC HEARINGS. At least 30 days before
15 issuing a certificate of convenience and necessity, the commission
16 shall hold a public hearing on the application. Copies of the
17 completed application including the environmental impact statement
18 shall be made available to the public at least 10 days before the
19 public hearing date. A transcript of each public hearing shall be
20 included in the permanent record of agency action on that application,
21 and copies of the public hearing transcripts shall be available to the
22 public.

23 Sec. 42.06.235. INSURANCE OR DEPOSIT OF SECURITY. (a) In
24 granting a certificate of convenience and necessity the commission
25 shall require the oil or gas transportation facility to either procure
26 and file liability and property damage insurance from a company
27 licensed to write insurance in the state or deposit security for the
28 limits of liability upon the terms and conditions the commission
29 determines necessary for the reasonable protection of the public

1 against damage and injury for which the owner or operator of the oil or
2 gas transportation facility may be liable by reason of the operation of
3 an oil or gas transportation facility.

4 (b) In fixing the amount of insurance or security, the commission
5 shall give consideration to the character and amount of traffic, the
6 number of persons affected and the degree of danger which the proposed
7 operation involves.

8 Sec. 42.06.241. CONDITIONS OF ISSUANCE. No certificate of
9 convenience and necessity may be issued unless the commission finds
10 that the applicant is fit, willing and able to provide the oil or gas
11 transportation services applied for and that the services are required
12 for the efficient production and marketing of oil or gas. The
13 commission may issue a certificate of convenience and necessity grant-
14 ing an application in whole or in part and attach to the grant of it
15 the terms and conditions it considers necessary to protect and promote
16 the public interest including the condition that the applicant may or
17 shall serve an area or provide a necessary service not contemplated by
18 the applicant or the condition that the service will begin or end at
19 a prescribed point. The commission may, for good cause, deny an
20 application with or without prejudice.

21 Sec. 42.06.261. DISCONTINUANCE, SUSPENSION OR ABANDONMENT OF
22 CERTIFICATED SERVICE. (a) Except as otherwise provided in this
23 section, no oil or gas transportation facility may discontinue or
24 abandon a service for which a certificate has been issued by the
25 commission unless upon the application of the oil or gas transportation
26 facility and if, after notice and opportunity for hearing, the
27 commission finds that the continued service is not required by
28 convenience and necessity or for the efficient production or marketing
29 of oil or gas. Any interested person may file with the commission a

1 protest or memorandum of opposition to or in support of discontinuance
2 or abandonment. The commission may authorize temporary suspension of a
3 service or of part of a service.

4 (b) Upon complaint or upon its own motion, the commission may
5 reinvestigate a previously authorized discontinuance, abandonment or
6 suspension of a service of an operating oil or gas transportation
7 facility. If, after providing notice and an opportunity for a hearing,
8 the commission finds that the efficient removal and marketing of oil
9 or gas requires the service to be resumed, it may order the operator
10 or owner of the oil or gas transportation facility to again provide
11 the service.

12 Sec. 42.06.271. MODIFICATION, SUSPENSION OR REVOCATION OF
13 CERTIFICATES. Upon complaint or upon its own motion the commission,
14 after notice and opportunity for hearing and for good cause shown, may
15 amend, modify, suspend, or revoke a certificate of convenience and
16 necessity, in whole or in part. Good cause for amendment, modification,
17 suspension or revocation of a certificate includes

- 18 (1) the requirements of public convenience and necessity;
19 (2) the requirements of efficient production and marketing
20 of oil and gas;
21 (3) misrepresentation of a material fact in obtaining the
22 certificate;
23 (4) unauthorized discontinuance or abandonment of all or
24 part of the oil or gas transportation facility service;
25 (5) wilful failure to comply with the provisions of this
26 chapter or the rules, regulations or orders of the commission; or
27 (6) wilful failure to comply with a term, condition or
28 limitation of the certificate.

29 Sec. 42.06.281. TRANSFER OF CERTIFICATE. A certificate of

1 convenience and necessity may not be sold or leased, rented, transferred
2 or inherited without the prior approval of the commission.

3 ARTICLE 4. SERVICES AND FACILITIES.

4 Sec. 42.06.291. STANDARDS OF SERVICE AND FACILITIES. (a) Each
5 oil or gas transportation facility shall furnish and maintain adequate,
6 efficient and safe service and facilities. This service shall be
7 reasonably continuous and without unreasonable interruption or delay.

8 (b) If the commission, upon its own motion or upon complaint,
9 after providing reasonable notice and opportunity for hearing, finds
10 that the service or facilities of an oil or gas transportation facility
11 are unreasonable, unsafe, inadequate, insufficient, or unreasonably
12 discriminatory, or otherwise in violation of this chapter, the commis-
13 sion shall prescribe by regulation or order, the reasonable, safe,
14 adequate, sufficient service or facilities to be observed, furnished,
15 enforced, or employed, including all repairs, changes, alterations,
16 extensions, substitutions, or improvements in facilities that are
17 reasonably necessary and proper for the safety, accommodation, and
18 convenience of the public and the users.

19 Sec. 42.06.301. DISCRIMINATION IN SERVICE. No oil or gas
20 transportation facility may, as to service, make or grant an unreason-
21 able preference or advantage to any person or subject any person to an
22 unreasonable prejudice or disadvantage. No oil or gas transportation
23 facility which is owned by more than one owner may require that other
24 users make separate requests of each separate owner in order to obtain
25 a reasonable share of the service provided by the oil or gas trans-
26 portation facility.

27 Sec. 42.06.311. POWER OF COMMISSION TO ALLOCATE USAGE. If the
28 commission, upon its own motion or upon complaint, after providing
29 reasonable notice and opportunity for hearing, finds that an oil or gas

1 transportation facility is making or granting an unreasonable prefer-
2 ence or advantage to any person or subjecting any person to an un-
3 reasonable prejudice or discrimination, the commission may prescribe
4 rules to end the discrimination or the commission may itself manage
5 the allocation of the service until it determines the discrimination
6 can be avoided by appropriate rules or agreements. The commission
7 shall be compensated by the oil or gas transportation facility for its
8 reasonable costs during the time it manages the allocation of services.

9 Sec. 42.06.321. FAILURE TO AGREE UPON JOINT USE OR INTER-
10 CONNECTION. In case of failure to agree upon the joint use or inter-
11 connection of oil or gas transportation facilities or the conditions or
12 compensation for joint use or interconnections, any interested person
13 may apply to the commission for an order requiring the interconnection.
14 If, after investigation and opportunity for hearing, the commission
15 finds that public convenience and necessity require the joint use or
16 connection, and that the use or connection will not result in sub-
17 stantial injury to the oil or gas transportation facility or its
18 customers, or in substantial detriment to the services furnished by the
19 oil or gas transportation facility, or in the creation of safety
20 hazards, it shall

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

28 ARTICLE 5. RATES AND RATE SCHEDULES.

29 Sec. 42.06.361 TARIFFS, CONTRACTS, FILING AND PUBLIC INSPECTION.

1 (a) Under such regulations as the commission shall prescribe, every
2 oil or gas transportation facility shall file with the commission,
3 within the time and in the form designated by the commission, its
4 complete tariff showing all rates, and charges collected and all
5 classifications, rules, regulations, and terms and conditions under
6 which it furnishes its services and facilities. The oil or gas trans-
7 portation facility shall clearly print, or type, its complete tariff
8 and keep an up-to-date copy of it on file at its principal business
9 office and at places designated by the commission. The tariffs shall
10 be made available to, and subject to inspection by, the general public
11 on demand.

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

17 Sec. 42.06.371. ADHERENCE TO TARIFFS. The terms and conditions
18 under which an oil or gas transportation facility offers its services
19 and facilities to the public shall be governed strictly by the provi-
20 sions of its currently effective tariffs. If more than one tariff rate
21 or charge can reasonably be applied for billing purposes the one most
22 advantageous to the person billed shall be used.

23 Sec. 42.06.381. RATES TO BE JUST AND REASONABLE. (a) All rates
24 demanded or received by an oil or gas transportation facility, or by
25 any two or more oil or gas transportation facilities jointly for a
26 service furnished or to be furnished shall be just and reasonable.
27 In determining whether rates are just and reasonable the commission
28 shall consider the costs of efficient operation plus the reasonable
29 compensation to the sources of funds for the purpose of allowing new

1 investment and appropriate reinvestment. If the oil or gas transporta-
2 tion facility is not likely to be replaced or if depreciation charges
3 are levied as an expense in an amount greater than the amount likely
4 to be reinvested in the facility, the appropriate valuation to be
5 considered for purposes of efficient operation and for purposes of
6 adequately compensating the source of the funds is the book or
7 accounting value of the oil or gas transportation facility. The
8 return on the equity or stockholders' portion of the funds provided
9 to the facility may not be greater than the return reasonably required
10 to secure the funds considering the risk and long term profit
11 potential of the oil or gas transportation facility.

12 (b) Additional regulations and rules governing determination of
13 a reasonable tariff shall be published by the commission.

14 Sec. 42.06.391. DISCRIMINATION IN RATES. (a) No oil or gas
15 transportation facility may, as to rates, grant an unreasonable
16 preference or advantage to any of its customers or subject a customer
17 to an unreasonable prejudice or disadvantage. No oil or gas trans-
18 portation facility may establish or maintain an unreasonable differ-
19 ence as to rates, either as between localities or between classes of
20 service.

21 (b) No oil or gas transportation facility may directly or
22 indirectly refund, rebate or remit in any manner, or by any device,
23 any portion of the rates and charges or charge, demand or receive a
24 greater or lesser compensation for its services than is specified in
25 its effective tariff. No oil or gas transportation facility may extend
26 to any customer any form of contract, agreement, inducement, privilege
27 or facility, or apply any rule, regulation or condition of service
28 except such as are extended or applied to all customers under like
29 circumstances.

1 Sec. 42.06.421. SUSPENSION OF TARIFF FILING. (a) When a tariff
2 filing is made containing a new or revised rate, classification, rule,
3 regulation, practice or condition of service the commission may, either
4 upon written complaint or upon its own motion, after reasonable notice,
5 conduct a hearing to determine the reasonableness and propriety of the
6 filing. Pending such a hearing the commission may, by order stating
7 the reasons for its action, suspend the operation of the tariff filing
8 for an initial period not longer than six months beyond the time when
9 it would otherwise go into effect.

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

15 (c) In the case of a proposed increased rate, the commission may
16 by order require the interested oil or gas transportation facility to
17 place in escrow in a financial institution approved by the commission
18 and keep accurate account of all amounts received by reason of the
19 increase, specifying by whom and in whose behalf the amounts are paid.
20 Upon completion of the hearing and decision the commission may by
21 order require the oil or gas transportation facility to refund to the
22 persons in whose behalf the amounts were paid, that portion of the
23 increased rates which was found to be unreasonable or unlawful. No
24 funds shall be released from escrow without the commission's prior
25 written consent and the escrow agent shall be so instructed by the oil
26 or gas transportation facility, in writing, with a copy to the
27 commission. The oil or gas transportation facility may, at its expense,
28 substitute a bond in lieu of the escrow requirement.

29 (d) One who initiates a change in existing tariffs bears the

1 burden of proving the reasonableness of the change.

2 Sec. 42.06.431. POWER OF COMMISSION TO FIX RATES. When the
3 commission, after an investigation and hearing, finds that a rate
4 demanded, observed, charged or collected by an oil or gas transporta-
5 tion facility for service, subject to the jurisdiction of the
6 commission, or that a classification, rule, regulation, practice, or
7 contract affecting the rate, is unjust, unreasonable, unduly dis-
8 criminatorial or preferential, the commission shall determine a just and
9 reasonable rate, classification, rule, regulation, practice, or
10 contract to be observed or allowed and shall establish it by order.
11 The state or a political subdivision of the state may covenant with
12 bond purchasers regarding rates of a publicly owned or operated oil
13 or gas transportation facility, and the covenant is valid and
14 enforceable and is considered to be a contract with the holders from
15 time to time of the bonds.

16 Sec. 42.06.441. VALUATION OF PROPERTY OF AN OIL OR GAS TRANS-
17 PORTATION FACILITY. The commission may, after providing reasonable
18 notice and opportunity to be heard, ascertain and set the fair value
19 of the whole or any part of the property of an oil or gas transporta-
20 tion facility, insofar as it is material to the exercise of the
21 jurisdiction of the commission. The commission may make revaluations
22 from time to time and ascertain the fair value of all new construction,
23 extensions, and additions to the property of an oil or gas transporta-
24 tion facility. If an oil or gas transportation facility furnishes
25 more than one classification of service the oil or gas transportation
26 facility shall allocate the investment and expenses associated with
27 the property used and useful in furnishing service among the services.

28 ARTICLE 6. ACCOUNTS, RECORDS AND REPORTS.

29 Sec. 42.06.451. SYSTEM OF ACCOUNTS AND REPORTS. (a) The

1 commission may classify oil or gas transportation facilities under its
2 jurisdiction and prescribe a uniform system of accounts for each class
3 and the manner in which the accounts and supporting records shall be
4 kept. The commission may determine a system of accounts which best
5 represents and clearly reveals the operations of the facility. The
6 commission may require the owner or operator of an undivided interest
7 in an oil or gas transportation facility to maintain accounts showing
8 clearly the revenues and costs pertaining only to that facility and
9 consolidating the revenues and costs of each individual undivided
10 interest.

11 (b) Each oil or gas transportation facility shall maintain its
12 accounts on a calendar year basis unless specifically authorized by the
13 commission to maintain its accounts on a fiscal year basis. Within
14 90 days after the close of its authorized annual accounting period, or
15 additional time granted upon a showing of good cause, each oil or gas
16 transportation facility shall file with the commission a verified
17 annual report of its operations during the period reported, on forms
18 prescribed by the commission.

19 Sec. 42.06.461. CONTINUING PROPERTY RECORDS. The commission may
20 require an oil or gas transportation facility to establish, provide,
21 and maintain as a part of its system of accounts, continuing property
22 records segregated by the year of placement in service, showing the
23 current location of the property units by definite reference to the
24 specific land parcels upon which the units are located or stored. The
25 commission may require an oil or gas transportation facility to keep
26 accounts and records in a manner which shows, currently, the original
27 cost of the property, and the related reserve for depreciation. Each
28 oil or gas transportation facility with annual revenues exceeding
29 \$100,000 shall keep continuing property records.

1 Sec. 42.06.471. DEPRECIATION RATES, INITIAL LOSSES AND ACCOUNTS.

2 (a) To provide for the loss in service value of its property, not
3 restored by current maintenance, every oil or gas transportation
4 facility shall charge adequate but not excessive, depreciation expense
5 for each major class of facility property used. From time to time the
6 commission shall determine the proper and adequate rates of depreci-
7 ation for each major class of property of an oil or gas transportation
8 facility. The commission shall accept rates of depreciation and
9 depreciation accounts prescribed and maintained under regulations of a
10 federal agency or the terms of a bond ordinance. The commission shall
11 determine and allow depreciation expense in fixing the rates, tolls and
12 charges to be paid for the services of an oil or gas transportation
13 facility.

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

19 Sec. 42.06.481. SUBSIDIARY BUSINESS ACCOUNTS. An oil or gas
20 transportation facility engaged, directly or indirectly, in another
21 business, including another oil or gas transportation facility business,
22 or a subsidiary business shall keep separate accounts relating to that
23 business. Except as the commission provides, no property, expense or
24 revenue used in or derived from the other business may be considered
25 in establishing the rates and charges of the facility.

26 Sec. 42.06.491. RECORDS AND ACCOUNTS TO BE KEPT IN STATE. An
27 oil or gas transportation facility shall keep the books, accounts,
28 papers and records required by the commission in an office within
29 this state and may not remove them from the state, except upon the

1 terms and conditions that may be prescribed by the commission. The
2 provisions of this section do not apply to an oil or gas transportation
3 facility whose accounts are kept at its principal place of business
4 outside the state, in the manner prescribed by a federal regulatory
5 body; however, the oil or gas transportation facility shall at its
6 option, either furnish to the commission, within a reasonable time
7 fixed by the commission, certified copies of its books, accounts,
8 papers and records, relating to the business done by the oil or gas
9 transportation facility within this state, or agree to pay the actual
10 expenses incurred by the commission in sending personnel to examine
11 the facility's books and records at the place where they are kept.

12 Sec. 42.05.501. INSPECTION OF BOOKS AND RECORDS BY COMMISSION.

13 The commission shall at all reasonable times have access to, and may
14 designate any of its employees, agents or consultants to inspect and
15 examine, the accounts, records, books, maps, inventories, appraisals,
16 valuations, or other reports and documents, kept by an oil or gas
17 transportation facility or its affiliated interests, or prepared or
18 kept for it by others, which relate to any contract or transaction
19 between them. The commission may require an oil or gas transportation
20 facility or its affiliated interest to file with the commission,
21 copies of any or all of these accounts, records, books, maps,
22 inventories, appraisals, valuations, or other reports and documents.

23 ARTICLE 7. FINANCIAL AND MANAGEMENT REGULATION.

24 Sec. 42.06.511. UNREASONABLE MANAGEMENT PRACTICES. (a) The
25 commission may investigate the management of an oil or gas transporta-
26 tion facility, including but not limited to staffing patterns, wage
27 and salary scales and agreements, investment policies and practices,
28 purchasing and payment arrangements with affiliated interests for the
29 purpose of determining inefficient or unreasonable practices which

1 adversely affect the cost or quality of service of an oil or gas
2 transportation facility.

3 (b) Where unreasonable practices are found to exist, the commis-
4 sion may, after providing reasonable notice and opportunity for hearing,
5 take appropriate action to protect the public from the inefficient or
6 unreasonable practices and may order the oil or gas transportation
7 facility to take the corrective action the commission may require to
8 achieve effective development and regulation of oil or gas transporta-
9 tion facility services.

10 (c) In a rate proceeding the oil or gas transportation facility
11 has the burden of proving that any written or unwritten contract or
12 arrangement it may have with any of its affiliated interests for the
13 furnishing of any services or for the purchase, sale, lease or
14 exchange of any property is necessary and consistent with the public
15 interest and that the payment made therefor, or consideration given,
16 is reasonably based, in part, upon the submission of satisfactory
17 proof as to the cost to the affiliated interest of furnishing the
18 service or property and, in part, upon the estimated cost the oil or
19 gas transportation facility would have incurred if it furnished the
20 service or property with its own personnel and capital.

21 ARTICLE 8. JUDICIAL REVIEW, PENALTIES AND
22 ENFORCEMENT.

23 Sec. 42.06.531. DESIGNATION OF SERVICE AGENTS. Each oil or gas
24 transportation facility subject to the provisions of this chapter
25 shall file with the commissioner a written appointment of a named
26 permanent resident of the state as its registered agent in the state.
27 The agent so appointed is the person upon whom service of all notices,
28 regulations, decisions and orders of the commission, may be made. The
29 appointment shall specify an address in Alaska of the appointed agent.

1 The address may be changed at any time by filing a new Alaskan
2 address with the commission. If an oil or gas transportation facility
3 fails to appoint an agent for service, service of a notice, regulation,
4 decision or order of the commission authorized by this chapter may be
5 made by posting it in an office of the commission and filing a copy of
6 it in the office of the lieutenant governor.

7 Sec. 42.06.541. EFFECT OF REGULATIONS. Regulations adopted and
8 issued by the commission in accordance with this chapter have the
9 effect of law.

10 Sec. 42.06.551. REVIEW AND ENFORCEMENT. (a) All final orders of
11 the commission are subject to judicial review in accordance with AS
12 44.62.560 - 44.62.570 of the Administrative Procedure Act.

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

18 Sec. 42.06.556. CRIMINAL PENALTIES. (a) A person who wilfully
19 violates a provision of this chapter, or a regulation or order of the
20 commission adopted under this chapter is subject to a penalty of not
21 more than \$10,000 for each act of violation and for each day the
22 violation continues, unless the penalty for violation is otherwise
23 provided for and made exclusive in this chapter.

24 (b) If a person, for the purpose of evading this chapter, or a
25 regulation or order of the commission adopted under this chapter,
26 wilfully makes a false entry in a record, account or memorandum
27 required by this chapter, or by a regulation or order, or wilfully
28 omits, or causes to be omitted, from the record, account or memorandum,
29 full, true and correct entries as required by this chapter, or by a

1 regulation or order, or removes from the state or destroys, mutilates,
2 alters or falsifies such a record, account or memorandum, the person
3 is guilty of a misdemeanor, and upon conviction is punishable by a fine
4 or not more than \$5,000, or by imprisonment in jail for not more than
5 six months, or by both.

6 (c) A person who knowingly aids or abets another person in the
7 violation of a provision of this chapter, or a regulation or order of
8 the commission adopted under this chapter is subject to the same
9 penalty as that prescribed by this chapter for the violation by the
10 other person.

11 (d) The penalties provided in this section are recoverable in an
12 action filed by the attorney general in the name and on behalf of the
13 commission in the superior court in the judicial district in which the
14 defendant resides or in which any defendant resides, if there is more
15 than one defendant, or in the superior court of the judicial district
16 in which the violation occurs. The payment of a penalty does not
17 relieve a person on whom the penalty is imposed from liability to any
18 other person for damages arising out of the violation.

19 Sec. 42.06.561. INJUNCTIVE AND MONETARY SANCTIONS. (a) A
20 civil penalty may be compromised by the commission. In determining the
21 amount of the penalty, or the amount agreed upon in compromise, the
22 appropriateness of the penalty to the size of the business of the
23 person charged, the gravity of the violation, and the good faith of
24 the person charged in attempting to achieve compliance, after notifi-
25 cation of a violation, shall be considered. The amount of the penalty,
26 when finally determined, or the amount agreed upon in compromise, may
27 be deducted from any sums owing by the state to the person charged or
28 may be recovered in a civil action in the state courts.

29 (b) A person may be enjoined by the superior court from

1 committing any violation mentioned in this section.

2 Sec. 42.06.571. CIVIL PENALTIES. (a) In addition to all other
3 penalties and remedies provided by law, an oil or gas transportation
4 facility and every person, and their lessees or receivers appointed by
5 a court in any way subject to the provisions of this chapter, together
6 with their officers, managers, agents or employees that either violate
7 or procure, aid or abet the violation of any provision of this chapter,
8 or of any order, rule, regulation or written requirement of the
9 commission are subject to a maximum penalty of \$500 for each violation.
10 Each act of omission as well as each act of commission shall be
11 considered a violation subject to the penalty.

12 (b) No penalty may be assessed unless the commission first issues
13 an order to show cause why the penalty should not be levied. The
14 order shall describe each violation with reasonable particularity and
15 designate the maximum penalty which may be assessed for each violation.
16 The order shall be served on the alleged violator named in the order.
17 The order shall state a time and place for the hearing.

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

21 Sec. 42.06.581. EACH VIOLATION A SEPARATE OFFENSE. Each viola-
22 tion of a provision of this chapter or of an order, decision, regula-
23 tion or written requirement of the commission is a separate and
24 distinct offense and in case of a continuing violation each day's
25 continuance is a separate and distinct offense.

26 Sec. 42.06.601. ACTIONS TO RECOVER PENALTIES; DISPOSITION. (a)
27 Actions to recover penalties under this chapter shall be brought by
28 the attorney general in a court of competent jurisdiction.

29 (b) All penalties recovered under the provisions of this chapter

1 shall be paid to the commission and deposited by it in the general
2 fund of the state.

3 Sec. 42.06.611. PENALTIES CUMULATIVE. (a) All penalties imposed
4 under this chapter are cumulative and an action for the recovery of a
5 civil penalty is not a bar to any criminal prosecution; a criminal
6 prosecution is not a bar to an action for the recovery of a civil
7 penalty.

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

11 Sec. 42.06.621. JOINDER OF ACTIONS. Under the applicable court
12 rules, appeals from orders of the commission, applications for enforce-
13 ment of commission orders and actions for recovery of a penalty may be
14 joined. The court may in the interests of justice separate the
15 actions.

16 ARTICLE 9. MISCELLANEOUS PROVISIONS.

17 Sec. 42.06.631. EMINENT DOMAIN. An oil or gas transportation
18 facility may exercise the power of eminent domain for facility uses
19 except that eminent domain shall not apply to state land. This
20 section does not authorize the use of a declaration of taking, nor
21 shall it authorize the avoidance of any requirements set by the state
22 for the leasing of rights of way over state land.

23 Sec. 42.06.641. REGULATION BY MUNICIPALITY. The commission's
24 jurisdiction and authority extend to an oil or gas transportation
25 facility operating within a city or borough, whether home rule or
26 otherwise. In the event of a conflict between a certificate, order,
27 decision or regulation of the commission and a charter, permit,
28 franchise, ordinance, rule or regulation of such a local governmental
29 entity, the certificate, order, decision or regulation of the

1 commission shall prevail.

2 Sec. 42.06.651. EXPENSES OF INVESTIGATION OR HEARING. After
3 completion of a hearing or investigation held under this chapter, the
4 commission shall allocate the costs of the hearing or investigation
5 among the parties, including the commission, as is just under the
6 circumstances. In allocating costs, the commission may consider the
7 results, ability to pay, evidence of good faith, other relevant
8 factors and mitigating circumstances. The costs allocated may include
9 the costs of any time devoted to the investigation or hearing by hired
10 consultants, whether or not the consultants appear as witnesses or
11 participants. The costs allocated may also include any out-of-pocket
12 expenses incurred by the commission in the particular proceeding. The
13 commission shall provide an opportunity for any person objecting to an
14 allocation to be heard before the allocation becomes final.

15 Sec. 42.06.661. APPLICATION FEES. With each application relating
16 to a certificate the applicant shall pay the commission a fee of \$5,000
17 plus .001 per cent of the value of the oil or gas transportation
18 facility. This money shall be deposited in the general fund of the
19 state.

20 Sec. 42.06.671. PUBLIC DISCLOSURE OF INFORMATION. Facts and
21 information in the possession of the commission are public, and reports,
22 files, books, accounts and papers of every nature in its possession
23 except records which by regulation are designated to be of a nonpublic
24 or privileged nature are open to public inspection at reasonable times.
25 However, a person may make written objections to the public disclosure
26 of information contained in an application, report or document filed
27 under the provisions of this chapter or of information obtained by the
28 commission under the provisions of this chapter, stating the grounds
29 for the objection. When an objection is made, the commission shall

Page 27+ not present in paper or microfilm.