Original sponsor: Rules Committee by request of the Governor

Offered: 5/3/72
Referred: Rules

IN THE SENATE BY THE RESOURCES COMMITTEE

FCC

HOUSE CS FOR CS FOR SENATE BILL NO. 314

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTH LEGISLATURE - SECOND SESSION

A BILL

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

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

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

CHAPTER 6. ALASKA OIL AND GAS TRANSPORTATION COMMISSION ACT.

ARTICLE 1. ESTABLISHMENT OF ALASKA OIL AND GAS TRANSPORTATION COMMISSION.

Sec. 42.06.010. ALASKA OIL AND GAS TRANSPORTATION COMMISSION CREATED. There is created within the Department of Revenue the Alaska Oil and Gas Transportation Commission.

Sec. 42.06.020. COMPOSITION OF ALASKA OIL AND GAS TRANSPORTATION COMMISSION. (a) The Alaska Oil and Gas Transportation Commission consists of three members, appointed by the governor and confirmed by the legislature in joint session.

(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, and may be appointed for successive terms.

Sec. 42.06.030. 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 qualifies.

(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 holds 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. 42.06.035. REMOVAL OF COMMISSIONERS. The governor may remove a commissioner from office by and with the consent of a majority of the legislature.

Sec. 42.06.040. QUALIFICATIONS OF MEMBERS. Members of the commission shall be qualified as follows: one member shall be a graduate of an accredited school of law, preferably with experience in administrative or regulatory law; one member shall be a graduate of an accredited college or university with a major in land management, engineering, or economics, or have equivalent experience in the problems of oil or gas transportation; one member shall be a graduate of an accredited college or university with a major in finance, accounting, or if not otherwise represented, economics.

Sec. 42.06.071. QUORUM. Two members of the commission 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. 42.06.081. 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. 42.06.091. COMPENSATION OF MEMBERS OF THE COMMISSION. Members of the commission are in the exempt service described in AS 39.25 and

receive an annual salary equal to that of a superior court judge, to be paid in 12 equal monthly installments.

Sec. 42.06.101. PRINCIPAL OFFICE; SEAL. (a) The commission shall establish a principal office and branch offices necessary to discharge its business. 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. 42.06.111. 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 actions 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. 42.06.121. EMPLOYMENT OF COMMISSION PERSONNEL. (a) The commission may employ an executive director who shall have had at least five years of experience in oil or gas transportation, law, accounting or an allied field. The commission may employ engineers, hearing officers, experts, clerks, accountants, and other agents and assistants it considers necessary. The commission shall make maximum possible use of employees and experts available in departments of state government. The executive director shall be in the partially exempt service under AS 39.25, and all other employees and agents of the commission, other than legal counsel, are in the classified service under AS 39.25.

(4) the commission shall regulate state owned or operated oil or gas transportation facilities to the extent permitted in the covenant between bond purchasers and the state or agency of the state which owns or operates the oil or gas transportation facility; the covenant is a valid and enforceable contract which may not be overruled by the commission.

ARTICLE 2. POWERS AND DUTIES OF THE COMMISSION.

Sec. 42.06.141. GENERAL POWERS AND DUTIES OF THE COMMISSION. The Alaska Oil and Gas Transportation Commission shall

(1) regulate every oil or gas transportation facility engaged or proposing to engage in business in the state;

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

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

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

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

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

(7) appear personally or by counsel and represent the

interest and welfare of the state in all matters and proceedings involving an oil or gas transportation facility pending before an officer, department, board, commission or court of the state or of another state or the United States and to intervene in, protest, resist, or advocate the granting, denial or modification of any petition, application, complaint or other proceeding;

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

(9) investigate upon complaint or its own motion, rates, prices, services, or practices of pipeline carriers under this chapter and performance of obligations under leases issued under the Right-of-Way Leasing Act of 1972 (AS 38.35).

Sec. 42.06.143. POWERS AND DUTIES WITH RESPECT TO FEDERALLY REGULATED CARRIERS. Sec. 141 of this chapter applies to oil and gas transportation facilities regulated under the Interstate Commerce Act of 1906, or the Natural Gas Act of 1938, only to the extent not preempted under those federal Acts.

Sec. 42.06.151. 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, prehearing conferences, hearings and proceedings, and the handling of procedural motions by a single commissioner. Technical rules of evidence need not apply to investigations, prehearing 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, a 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 any inquiry, investigation, hearing or proceeding before the commission in 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 and other process.

Sec. 42.06.161. 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 applies to regulations adopted by the commission.

Sec. 42.06.171. 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 the 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. 42.06.181. 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 oil or gas transportation facility or any party of record may be entered without giving the interested party reasonable notice and an opportunity to be heard.

Sec. 42.06.191. FORMAT OF ORDERS. Formal orders of the commission shall be based upon the facts of record. An 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 of them shall be served on all parties of record in the proceeding.

Sec. 42.06.201. 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 operators of oil or gas transportation facilities 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 the services of any oil or gas transportation facility. 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. 42.06.211. 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 oil or gas transportation facilities in the state and include

an outline of the commission's program for the development and regulation of oil or gas transportation facilities in the forthcoming year.

ARTICLE 3. CERTIFICATE OF CONVENIENCE AND NECESSITY.

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

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

(c) The commission may attach to certificates of convenience and necessity terms and conditions and require issuance of securities it considers necessary for the protection of the environment and for the best interest of the oil or gas transportation facility and the general public.

(d) The commission may employ professional consultants to assist it in administering the provisions of this section and may apportion the expenses relating to this administration among the competing oil or

gas transportation facilities involved.

(e) The requirement for a certificate shall not operate to impose state regulation which has been preempted under the Interstate Commerce Act of 1906 or the Natural Gas Act of 1938. When federal law has preempted state regulation the commission must accept the findings made under the federal scheme of regulation.

Sec. 42.06.231. APPLICATION; ENVIRONMENTAL STATEMENT. An application for a certificate of convenience and necessity shall be in writing and shall be in the form and contain the information required by the commission by regulation. The application shall include a statement of the environmental impact of the proposed transportation facility in sufficient detail to enable assessment of the long-term social costs of possible environmental degradation resulting from the proposed facility. A statement of a facility's environmental impact meeting the requirements of the National Environmental Policy Act of 1969, 83 Stat. 853, may be submitted with the application in satisfaction of the impact statement requirements of this section.

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

Sec. 42.06.235. INSURANCE OR DEPOSIT OF SECURITY. (a) In granting a certificate of convenience and necessity the commission shall require the oil or gas transportation facility to either procure and file liability and property damage insurance from a company licensed to write

insurance in the state or deposit security for the limits of liability upon the terms and conditions the commission determines necessary for the reasonable protection of the public against damage and injury for which the owner or operator of the oil or gas transportation facility may be liable by reason of the operation of an oil or gas transportation facility.

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

Sec. 42.06.241. CONDITIONS OF ISSUANCE. No certificate of convenience and necessity may be issued unless the commission finds that the applicant is fit, willing and able to provide the oil or gas transportation services applied for and that the services are required for the efficient production and marketing of oil or gas. The commission may issue a certificate of convenience and necessity 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 or the condition that the service will begin or end at a prescribed point. The commission may, for good cause, deny an application with or without prejudice.

Sec. 42.06.261. DISCONTINUANCE, SUSPENSION OR ABANDONMENT OF CERTIFICATED SERVICE. (a) Except as otherwise provided in this section, no oil or gas transportation facility may discontinue or abandon a service for which a certificate has been issued by the commission unless upon the application of the oil or gas transportation facility and if, after notice and opportunity for hearing, the commission finds that the

continued service is not required by convenience and necessity or for the efficient production or marketing of oil or gas. 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 oil or gas transportation facility. If, after providing notice and an opportunity for a hearing, the commission finds that the efficient removal and marketing of oil or gas requires the service to be resumed, it may order the operator or owner of the oil or gas transportation facility to again provide the service.

Sec. 42.06.271. 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 of convenience and necessity, 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) the requirements of efficient production and marketing of oil and gas;

(3) misrepresentation of a material fact in obtaining the certificate;

(4) unauthorized discontinuance or abandonment of all or part of the oil or gas transportation facility service;

(5) wilful failure to comply with the provisions of this chapter or the rules, regulations or orders of the commission; or

(6) wilful failure to comply with a term, condition or

limitation of the certificate.

Sec. 42.06.281. TRANSFER OF CERTIFICATE. A certificate of convenience and necessity may not be sold or leased, rented, transferred or inherited without the prior approval of the commission.

ARTICLE 4. SERVICES AND FACILITIES.

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

(b) If the commission, upon its own motion or upon complaint, after providing reasonable notice and opportunity for hearing, finds that the service or facilities of an oil or gas transportation facility 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 and the users.

(c) The commission shall promulgate regulations designed to ensure safe operation of pipelines. For natural gas pipelines regulated under the Natural Gas Act of 1938, the regulations issued under this subsection shall be consistent with the Natural Gas Pipeline Safety Act of 1968, 82 Stat. 720.

Sec. 42.06.301. DISCRIMINATION IN SERVICE. No oil or gas transportation facility 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 oil or gas transportation

facility which is owned by more than one owner may require that users make separate requests of each separate owner in order to obtain a reasonable share of the service provided by the oil or gas transportation facility.

Sec. 42.06.311. POWER OF COMMISSION TO ALLOCATE USAGE. If the commission, upon its own motion or upon complaint, after providing reasonable notice and opportunity for hearing, finds that an oil or gas transportation facility is making or granting an unreasonable preference or advantage to any person or subjecting any person to an unreasonable prejudice or discrimination, the commission may prescribe rules to end the discrimination or the commission may itself manage the allocation of the service until it determines the discrimination can be avoided by appropriate rules or agreements. The commission shall be compensated by the oil or gas transportation facility for its reasonable costs during the time it manages the allocation of services.

Sec. 42.06.321. FAILURE TO AGREE UPON JOINT USE OR INTERCONNECTION. When there is failure to agree upon the joint use or interconnection of oil or gas transportation facilities or the conditions or compensation for joint use or interconnections, any 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 oil or gas transportation facility or its customers, or in substantial detriment to the services furnished by the oil or gas transportation facility, 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.

ARTICLE 5. RATES AND RATE SCHEDULES.

Sec. 42.06.361. TARIFFS, CONTRACTS, FILING AND PUBLIC INSPECTION. (a) Under such regulations as the commission shall prescribe, every intrastate oil or gas transportation facility shall file with the commission, within the time and in the form designated by the commission, all rates, tariffs, charges, classifications, rules, regulations, terms, and conditions pertaining to service provided under the certificate, and shall maintain copies on file at its principal business office and at places designated by the commission, available to, and subject to inspection by, the general public on demand.

(b) 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. 42.06.371. ADHERENCE TO TARIFFS. The terms and conditions under which an intrastate oil or gas transportation facility offers its services and facilities to the public shall be governed strictly by the provisions of its current tariffs. If more than one tariff rate or charge can reasonably be applied for billing purposes the one most advantageous to the person billed shall be used.

Sec. 42.06.381. RATES TO BE JUST AND REASONABLE. (a) All rates demanded or received by an intrastate oil or gas transportation facility, or by any two or more intrastate oil or gas transportation facilities jointly for a service furnished or to be furnished shall be just and

reasonable. In determining just and reasonable rates the commission shall permit the transportation facility to recover the costs of efficient operation and to earn a reasonable return on the capital invested to provide the service.

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

Sec. 42.06.391. DISCRIMINATION IN RATES. (a) No intrastate oil or gas transportation facility may, as to rates, grant an unreasonable preference or advantage to any customer served under the certificate, or subject the customer to an unreasonable prejudice or disadvantage or maintain an unreasonable difference as to rates, either as between localities served or between classes of service provided under the certificate.

(b) No intrastate oil or gas transportation facility may directly or indirectly refund, rebate or remit in any manner, or by any device, any portion of the rates and charges or charge, for service provided under the certificate, nor demand or receive a greater or lesser compensation for its services, than is specified in its effective tariff, nor extend to any customer served under the certificate any form of contract, agreement, inducement, privilege or facility, or apply any rule, regulation or condition of service except those extended or applied to all customers under like circumstances.

Sec. 42.06.421. 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 a 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) When an intrastate oil or gas transportation facility proposes to increase rates, the commission may by order require the interested facility 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 oil or gas transportation facility 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 oil or gas transportation facility, in writing, with a copy to the commission. The oil or gas transportation facility may, at its expense, substitute a bond in lieu of the escrow requirement.

(d) One who initiates a change in existing tariffs bears the burden of proving the reasonableness of the change.

Sec. 42.06.431. POWER OF COMMISSION TO FIX RATES. When the commission, after an investigation and hearing, finds that a rate, 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, to the extent of the commission's jurisdiction, establish it by order. The state or a political subdivision of the state may covenant with bond purchasers regarding rates of a publicly owned or operated oil or gas transportation facility, and the covenant is valid and enforceable and is considered to be a contract with the holders of the bonds.

Sec. 42.06.441. VALUATION OF PROPERTY OF AN OIL OR GAS TRANSPORTATION FACILITY. 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 an oil or gas transportation facility, 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 certificated oil or gas transportation facility.

ARTICLE 6. ACCOUNTS, RECORDS AND REPORTS.

Sec. 42.06.451. SYSTEM OF ACCOUNTS AND REPORTS. (a) The commission may classify oil or gas transportation facilities under its jurisdiction and prescribe a uniform system of accounts for each class and the manner in which the accounts and supporting records shall be kept. The commission may determine a system of accounts which best represents and clearly reveals the operations of the facility. The commission may require the owner or operator of an undivided interest in an oil or gas transportation facility to maintain accounts showing clearly the revenue and costs pertaining only to that facility and consolidating the revenue and costs of each individual undivided interest.

(b) Accounts shall be maintained 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 oil or gas transportation facility shall file with the commission a verified annual report of its operations during the period reported, on forms prescribed by the commission.

Sec. 42.06.461. CONTINUING PROPERTY RECORDS. The commission may require an oil or gas transportation facility to establish, provide, and maintain as a part of its system of accounts, continuing property records segregated by the year of placement in 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 an oil or gas transportation facility to keep accounts and records in a manner which shows, currently, the original cost of the property, and the related reserve for depreciation. Each oil or gas transportation facility with annual revenue exceeding $100,000 shall keep continuing property records.

Sec. 42.06.471. DEPRECIATION RATES. To provide for the loss in service value of its property, not restored by current maintenance, every oil or gas transportation facility shall charge adequate depreciation expense for each major class of facility property used. From time to time the commission shall determine the proper and adequate rates of depreciation for each major class of property of an oil or gas transportation facility.

Sec. 42.06.481. SUBSIDIARY BUSINESS ACCOUNTS. An oil or gas transportation facility engaged, directly or indirectly, in another business, including another oil or gas transportation facility 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 the other business may be considered in establishing the rates and charges of the facility.

Sec. 42.06.491. RECORDS AND ACCOUNTS TO BE KEPT IN STATE. An oil or gas transportation facility shall keep the original books, accounts, papers and records, or certified copies, required by the commission in an office in this state and may not remove them from the state, except upon the terms and conditions that may be prescribed by the commission.

Sec. 42.06.501. INSPECTION OF BOOKS AND RECORDS BY COMMISSION. Subject to AS 31.05.035(c), 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 an oil or gas transportation facility or its affiliated interests, or prepared or kept for it by others, which relate to any contract or transaction between them. The commission may require an oil or gas transportation facility 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. 42.06.511. UNREASONABLE MANAGEMENT PRACTICES. (a) The commission may investigate the management of an oil or gas transportation facility for the purpose of determining inefficient or unreasonable practices which adversely affect the cost or quality of service provided by the oil or gas transportation facility.

(b) When inefficient or unreasonable practices are found to exist, the commission may, after providing reasonable notice and opportunity for hearing, take appropriate action to insure that neither the direct nor the indirect costs of the practices are borne by the public.

(c) In a rate proceeding the oil or gas transportation facility

has 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 for it, 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 oil or gas transportation facility would have incurred if it furnished the service or property with its own personnel and capital.

ARTICLE 8. JUDICIAL REVIEW, PENALTIES AND ENFORCEMENT.

Sec. 42.06.531. DESIGNATION OF SERVICE AGENTS. Each oil or gas transportation facility shall file with the commission a written appointment of a named permanent resident of the state as its registered agent in the state. The agent so appointed is the person upon whom service of all notices, regulations, decisions and orders of the commission may be made. The appointment shall specify an address in Alaska of the appointed agent. The address may be changed at any time by filing a new Alaska address with the commission. If an oil or gas transportation facility fails to appoint an agent for service, service of a notice, regulation, decision or order of the commission authorized by this chapter may be made by posting it in an office of the commission and filing a copy of it in the office of the lieutenant governor.

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

Sec. 42.06.551. 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.

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

(b) If a person, for the purpose of evading this chapter, or a regulation or order of the commission adopted under this chapter, wilfully makes a false entry in a record, account or memorandum required by this chapter, or by a regulation or order, or wilfully omits, or causes to be omitted, from the record, account or memorandum, full, true and correct entries as required by this chapter, or by a regulation or order, or removes from the state or destroys, mutilates, alters or falsifies a record, account or memorandum, the person is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $5,000, or by imprisonment in jail for not more than six months, or by both.

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

(d) The penalties provided in this section are recoverable in an

action filed by the attorney general in the name and on behalf of the commission in the superior court in the judicial district in which the defendant resides or in which any defendant resides, if there is more than one defendant, or in the superior court of the judicial district in which the violation occurs. The payment of a penalty does not relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of the violation.

Sec. 42.06.561. INJUNCTIVE AND MONETARY SANCTIONS. (a) The full amount of damages determined by a civil action 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.

(b) A person may be enjoined by the superior court from committing a violation mentioned in this section.

Sec. 42.06.571. CIVIL PENALTIES. (a) In addition to all other penalties and remedies provided by law, every person subject to the provisions of this chapter, together with their officers, managers, agents or employees that either violates or procures, aids, or abets the violation of any provision of this chapter, or of an order, rule, regulation or written requirement of the commission is subject to a maximum penalty of $500 for each violation.

(b) No penalty may be assessed unless the commission first issues an order to show cause why the penalty should not be levied. The order

shall describe the violation with reasonable particularity and designate the maximum penalty which may be assessed for the 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. 42.06.581. 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 the violation continues constitutes a separate offense.

Sec. 42.06.601. 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. 42.06.611. 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. 42.06.621. 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. MISCELLANEOUS PROVISIONS.

Sec. 42.06.631. EMINENT DOMAIN. An oil or gas transportation facility may exercise the power of eminent domain for facility uses except that eminent domain shall not apply to state land. An oil or gas transportation facility must first request approval of the Department of Natural Resources before exercising the power of eminent domain and, if the state wishes to take the land and lease it to the facility under the provisions of AS 38.35, the state has a prior right to purchase the property. The state has 120 days after receiving the request or notice of the actual purchase by an oil or gas transportation facility in which to exercise its prior right to purchase the property and in the event the oil or gas transportation facility has already purchased the property the state may acquire it by paying the fair value of the property on the date of notification to the state of the oil company's intention to purchase or the date of purchase of the property by the oil or gas transportation facility, whichever is later. This payment shall be to the owner of the property at the time the state chooses to exercise its right to purchase. This section does not authorize the use of a declaration of taking, nor does it authorize the avoidance of any requirements set by the state for the leasing of rights-of-way over state land, nor does it restrict the right of the state to acquire an interest in rights-of-way as provided in AS 38.35.-150.

Sec. 42.06.641. REGULATION BY MUNICIPALITY. The commission's jurisdiction and authority extend to an oil or gas transportation facility operating in a city or borough, whether home rule or otherwise. If 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 occurs, the certificate, order, decision or regulation of the commission prevails.

Sec. 42.06.651. EXPENSES OF INVESTIGATION OR HEARING. After completion of a hearing or investigation held under this chapter, the commission shall allocate the costs of the 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 the 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 the allocation becomes final.

Sec. 42.06.661. APPLICATION FEES. The commission may establish reasonable fees to cover the costs of initial processing of applications for certificates or amendments to certificates.

Sec. 42.06.671. 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 the public if disclosure would

adversely affect the interest of that person and if no public interest would be served by release of the information.

Sec. 42.06.691. CLASSIFICATION. The commission may by regulation provide for the classification of oil or gas transportation facilities based upon differences in annual revenue, assets, nature of ownership and other appropriate distinctions and as between these classifications, by regulation, provide for different reporting, accounting and other regulatory requirements.

ARTICLE 10. GENERAL PROVISIONS.

Sec. 42.06.701. DEFINITIONS. In this chapter

(1) "commission" means the Alaska Oil and Gas Transportation Commission;

(2) "intrastate oil and gas transportation facility" means an oil or gas transportation facility or part of an oil or gas transportation facility not regulated as to fair and reasonable tariffs under the Interstate Commerce Act of 1906 or the Natural Gas Act of 1938;

(3) "oil or gas transportation facility" 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 a pipeline or system for transporting oil, gas or petroleum product;

(4) "tariff" means a rate, charge, toll, rule or regulation of an oil or gas transportation facility relating to services furnished by the facility to the general public or other users for compensation.

Sec. 42.06.721. SHORT TITLE. This chapter may be cited as the Alaska Oil and Gas Transportation Commission Act.

* Sec. 2. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.