Offered: 3/12/86
Referred: Finance

Original sponsor: Davis

1 IN THE HOUSE BY THE LABOR AND COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 314 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska Public Utilities
7 Commission Act; and providing for an effective date."

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

9 * Section 1. AS 42.05.030(a) is amended to read:

10 (a) The term of office of each member is six years. [THE GOVER-
11 NOR SHALL DESIGNATE WHO AMONG THE INITIAL APPOINTEES SHALL SERVE,
12 RESPECTIVELY, FOR TERMS OF TWO YEARS, FOUR YEARS AND SIX YEARS.] A
13 commissioner, upon the expiration of a term, shall continue to hold
14 office until a successor is appointed and qualified.

15 * Sec. 2. AS 42.05.040 is amended to read:

16 Sec. 42.05.040. QUALIFICATIONS OF MEMBERS. Members shall be
17 qualified as follows: one member shall be a graduate of an accredited
18 school of law; one member shall be a graduate of an accredited univer-
19 sity with a major in engineering; one member shall be a graduate of an
20 accredited university with a major in finance, accounting, <u>economics,</u>
21 or business administration; and two members shall be consumers. <u>A</u>
22 <u>professional member of the commission must have worked for at least</u>
23 <u>five years in the member's professional field.</u>

24 * Sec. 3. AS 42.05.050 is amended to read:

25 Sec. 42.05.050. ACTUAL EXPERIENCE EQUIVALENT TO A DEGREE.
26 Actual experience <u>that is related to utilities management or regu-</u>
27 <u>lation</u> for a period of five years in the practice of law or in the
28 field of engineering or in the field of finance, <u>accounting, econom-</u>
29 <u>ics, or</u> business administration [OR ACCOUNTING] is equivalent to a

1 degree.

2 * Sec. 4. AS 42.05.121 is amended to read:

3 Sec. 42.05.121. EMPLOYMENT OF COMMISSION PERSONNEL. (a) The
4 commission may employ an executive director who shall have had at
5 least five years of experience in public utility management or regu-
6 lation, law, accounting, engineering, or an allied field. The execu-
7 tive director is responsible for directing the administrative func-
8 tions of the commission and carrying out the policies as set by the
9 commission. The commission may employ engineers, hearing officers,
10 administrative law judges to the extent provided by AS 42.05.171 and
11 AS 42.06.140(b), experts, clerks, accountants, and other agents and
12 assistants it considers necessary. The executive director, deputy
13 director, attorneys, hearing officers, and administrative law judges
14 are in the partially exempt service under AS 39.25.120. Other employ-
15 ees [EMPLOYEES] and agents of the commission [WHO ARE NOT PARTIALLY
16 EXEMPT UNDER AS 39.25.120, OTHER THAN LEGAL COUNSEL,] are in the
17 classified service under AS 39.25.100.

18 (b) In addition to its staff of regular employees, the commis-
19 sion may contract for and engage the services of consultants and
20 experts the commission considers necessary if the commission resources
21 or expertise are insufficient to perform the necessary task.

22 * Sec. 5. AS 42.05.121 is amended by adding a new subsection to read:

23 (c) The commission shall maintain accurate records of the time
24 devoted by a consultant or expert to each matter and the services
25 provided. The services shall be described in reasonable detail.

26 * Sec. 6. AS 42.05.141(a) is amended to read:

27 (a) The Alaska Public Utilities Commission may

28 (1) regulate every public utility engaged or proposing to
29 engage in such a business inside the state, except to the extent

1 exempted by AS 42.05.711; in exercising its authority, the commission
2 has the powers expressly conferred or reasonably implied by this
3 chapter [, AND THE POWERS OF THE COMMISSION SHALL BE LIBERALLY CON-
4 STRUED TO ACCOMPLISH ITS STATED PURPOSES];
5 (2) investigate, upon complaint or upon its own motion, the
6 rates, classifications, rules, regulations, practices, services and
7 facilities of a public utility and hold hearings on them;
8 (3) make or require just, fair and reasonable rates, clas-
9 sifications, regulations, practices, services and facilities for a
10 public utility;
11 (4) prescribe the system of accounts and regulate the
12 service and safety of operations of a public utility;
13 (5) require a public utility to file reports and other
14 information and data;
15 (6) appear personally or by counsel and represent the
16 interests and welfare of the state in all matters and proceedings
17 involving a public utility pending before an officer, department,
18 board, commission or court of the state or of another state or the
19 United States and to intervene in, protest, resist, or advocate the
20 granting, denial or modification of any petition, application, com-
21 plaint or other proceeding;
22 (7) examine witnesses and offer evidence in any proceeding
23 affecting the state and initiate or participate in judicial proceed-
24 ings to the extent necessary to protect and promote the interests of
25 the state.
26 * Sec. 7. AS 42.05.171 is repealed and reenacted to read:
27 Sec. 42.05.171. FORMAL HEARINGS. (a) The commission may hold a
28 hearing on a matter that is subject to the jurisdiction of the commis-
29 sion or may assign the matter to one or more commissioners, a hearing

1 officer, or an administrative law judge. The commission shall assign
2 as many matters as possible to a hearing officer or administrative law
3 judge.
4 (b) When the commission does not preside over a hearing, the
5 presiding officer shall enter a recommended decision in the case
6 unless the commission requires, either in a specific case or by regu-
7 lation applying to a class of cases, that the entire record be certi-
8 fied to the commission for decision. The recommended decision becomes
9 the decision of the commission without further procedures unless there
10 is an appeal to, or review on the motion of, the commission within the
11 time limits provided in this chapter. On appeal from or review of the
12 recommended decision, the commission has the powers that it would have
13 in making an initial decision unless the commission has limited the
14 issues it will consider by notice to the parties or by regulation.
15 (c) Before the commission or the presiding officer enters a
16 decision the parties are entitled to a reasonable opportunity to
17 review a draft of the decision and to submit
18 (1) proposed findings and conclusions, or exceptions to the
19 draft decision; and
20 (2) supporting reasons for the exceptions or proposed
21 findings or conclusions.
22 (d) In a matter heard by the commission, a commissioner who has
23 not heard or read the testimony, including the argument, shall review
24 the record before participating in the decision.
25 (e) In determining the place of a hearing the commission shall
26 give preference to the place most convenient for those interested in
27 the subject of the hearing.
28 (f) The commission shall employ a sufficient number of hearing
29 officers or administrative law judges to hear and decide matters

1 arising before the commission under this chapter.

2 * Sec. 8. AS 42.05.221(a) is amended to read:

3 (a) A public utility may not operate and receive compensation
4 for providing a commodity or service until it has obtained [AFTER
5 JANUARY 1, 1971 WITHOUT FIRST HAVING OBTAINED FROM THE COMMISSION
6 UNDER THIS CHAPTER] a certificate under this chapter declaring that
7 public convenience and necessity require or will require the service
8 or that the service is in the public interest. If [WHERE] a public
9 utility provides more than one type of utility service, a separate
10 certificate of public convenience and necessity is required for each
11 type. A certificate shall describe the nature and extent of the
12 authority granted in it, including, as appropriate for the services
13 involved, a description of the authorized area and scope of operations
14 of the public utility.

15 * Sec. 9. AS 42.05.241 is amended to read:

16 Sec. 42.05.241. CONDITIONS OF ISSUANCE. The commission shall
17 issue a certificate if [A CERTIFICATE MAY NOT BE ISSUED UNLESS] the
18 commission finds that the applicant is fit, willing and able under (b)
19 of this section to provide the utility services applied for and that
20 the services are required for the convenience and necessity of the
21 public or are in the public interest. The commission may issue a
22 certificate granting an application in whole or in part and attach to
23 the grant of it the terms and conditions it considers necessary to
24 protect and promote the public interest including the condition that
25 the applicant may or shall serve an area or provide a necessary ser-
26 vice not contemplated by the applicant. The commission may, for good
27 cause, deny an application with or without prejudice.

28 * Sec. 10. AS 42.05.241 is amended by adding new subsections to read:

29 (b) The commission shall find an applicant fit, willing, and

able to provide utility service if the commission finds that

(1) the applicant has the financial, operational, management, and maintenance capability to provide the proposed service;

(2) the applicant has or will have adequate equipment and facilities to provide and maintain the proposed service; and

(3) the applicant submits evidence demonstrating that the applicant will comply with the law.

(c) In a hearing on the issuance of a certificate under this section, the applicant for the certificate has the burden of showing that the proposed service is required for the convenience and necessity of the public or is in the public interest.

(d) If issuance of a certificate is not contested, the commission shall grant or deny the application no later than six months after the application was filed. If the commission has not reached a decision within six months, it shall issue the certificate.

* Sec. 11. AS 42.05.251 is amended to read:

Sec. 42.05.251. USE OF STREETS IN CITIES AND BOROUGHS. Public utilities have the right to a permit to use public streets, alleys, and other public ways of a municipality [CITY OR BOROUGH, WHETHER HOME RULE OR OTHERWISE,] upon payment of a reasonable permit fee and on reasonable terms and conditions and with reasonable exceptions the municipality [CITY OR BOROUGH] requires. The fee may not exceed the actual cost to the municipality of the utility's use of the public way and of administering the permit program. A dispute as to whether fees, terms, conditions, or exceptions are reasonable shall be decided by the commission. The commission may require a utility to add the amount of any permit fee paid as a pro rata surcharge to its bills for service rendered at locations within the boundaries of any municipality that [CITY OR BOROUGH WHICH] requires payment of a permit fee.

1 * Sec. 12. AS 42.05.361(c) is amended to read:

2 (c) The commission may reject the filing of all or part of a
3 tariff that [WHICH] does not comply with the form or filing regu-
4 lations of the commission [OR WHICH IS NOT CONSISTENT WITH THIS CHAP-
5 TER OR THE REGULATIONS OF THE COMMISSION]. A tariff or provision so
6 rejected is void. If the commission rejects a filing, it shall issue
7 a statement of the reasons for the rejection. Unless the utility and
8 the commission agree to an extension of time, the commission may not
9 reject a filing under this subsection after 45 days have elapsed from
10 the date of filing.

11 * Sec. 13. AS 42.05.381 is amended by adding a new subsection to read:

12 (e) The commission shall adopt regulations for electric coopera-
13 tives setting a range for adjustment of rates by a simplified rate
14 filing procedure. A cooperative may apply for permission to adjust
15 its rates over a period of time under the simplified rate filing
16 procedure regulations. The commission shall grant the application if
17 the cooperative satisfies the requirements of the regulations. The
18 commission may review implementation of the simplified rate filing
19 procedure at reasonable intervals and may revoke permission to use the
20 procedure or require modification of the rates to correct an error.

21 * Sec. 14. AS 42.05.421(a) is repealed and reenacted to read:

22 (a) When a tariff filing is made containing a new or revised
23 rate, classification, rule, regulation, practice, or condition of
24 service the commission may, either upon written complaint or upon its
25 own motion, after reasonable notice, conduct a hearing to determine
26 the reasonableness and propriety of the filing. Pending the hearing
27 and decision, the commission may suspend the operation of the tariff
28 filing by order stating the reasons for the suspension. When the
29 commission suspends the operation of a tariff, the commission may

grant an interim rate increase. The period of suspension may not exceed 10 months unless

(1) the proceedings involve substantial affiliated interest transactions or complex rate design issues;

(2) the utility has delayed the proceedings, but the period of suspension may not exceed 10 months plus the length of the delay;

(3) the utility requests an extension, but the period of suspension may not exceed 10 months plus the length of the extension;

(4) another legal or regulatory body is considering the issue and has not entered its decision;

(5) a consumer of the utility raises issues that require additional time to resolve;

(6) the proceedings involve unusual or complex situations or issues.

* Sec. 15. AS 42.05.421(b) is amended to read:

(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. <u>If the commission does not act on the tariff filing within the period of suspension allowed under (a) of this section, the tariff filing takes effect at the end of the suspension period.</u>

* Sec. 16. AS 42.05.421(c) is amended to read:

(c) <u>If the commission authorizes an interim</u> [IN THE CASE OF A PROPOSED INCREASED] rate, the commission may by order require the interested public utility or utilities to place <u>the amounts subject to refund</u> in escrow in a financial institution approved by the commission and keep accurate account of [ALL AMOUNTS RECEIVED BY REASON OF THE

1 INCREASE, SPECIFYING] by whom and in whose behalf the amounts are
2 paid. Upon completion of the hearing and decision the commission may
3 by order require the public utility to refund to the persons in whose
4 behalf the amounts were paid, that portion of the increased rates
5 which was found to be unreasonable or unlawful. The commission shall
6 immediately authorize release of the balance of funds to the utility.
7 Funds may not be released from escrow without the commission's prior
8 written consent and the utility shall instruct the escrow agent of
9 this requirement [SHALL BE SO INSTRUCTED BY THE UTILITY,] in writing
10 and send [, WITH] a copy to the commission. The utility may, at its
11 expense, substitute a bond for [IN LIEU OF] the escrow requirement.
12 * Sec. 17. AS 42.05.421 is amended by adding a new subsection to read:
13 (e) At the time of a tariff filing or at any time the tariff
14 filing is under suspension, the utility may request the commission to
15 allow the tariff filing to take effect on an interim basis. The
16 commission shall process the request as a tariff filing under AS 42.-
17 05.411. If the filing contains a proposed new rate or rate increase,
18 the commission may allow that rate or a lesser rate to take effect on
19 an interim basis, subject to refund or other appropriate disposition
20 at the discretion of the commission.
21 * Sec. 18. AS 42.05.651 is amended to read:
22 Sec. 42.05.651. EXPENSES OF INVESTIGATION OR HEARING. After
23 completion of a hearing or investigation held under this chapter, the
24 commission shall allocate the costs of the hearing or investigation
25 among the parties, including the commission, as is just under the
26 circumstances. In allocating costs, the commission may consider the
27 results, ability to pay, evidence of good faith, other relevant fac-
28 tors and mitigating circumstances. The costs allocated may include
29 the costs of any time devoted to the investigation or hearing by hired

1 consultants, whether or not the consultants appear as witnesses or
2 participants, but only if the consultants were necessary under AS 42.-
3 05.121(b). The costs allocated may not include the cost of permanent
4 staff for the commission but may include other necessary expenses not
5 allocated in the operating budget [ALSO INCLUDE ANY OUT-OF-POCKET
6 EXPENSES INCURRED BY THE COMMISSION IN THE PARTICULAR PROCEEDING].
7 The commission shall provide an opportunity for a [ANY] person object-
8 ing to an allocation to be heard before the allocation becomes final.
9 * Sec. 19. AS 42.05.711(b) is repealed and reenacted to read:
10 (b) Except as otherwise provided in this subsection, public
11 utilities owned and operated by a political subdivision of the state,
12 or electric operating entities established as the instrumentality of
13 two or more public utilities owned and operated by political subdi-
14 visions of the state, are exempt from this chapter, other than AS 42.-
15 05.221 - 42.05.281 and 42.05.311 - 42.05.321. However,
16 (1) a telephone utility owned by a political subdivision is
17 subject to this chapter;
18 (2) the governing body of a political subdivision may elect
19 to be subject to this chapter; and
20 (3) a utility or electric operating entity that is owned
21 and operated by a political subdivision and that directly competes
22 with another utility or electric operating entity is subject to this
23 chapter; however, except as otherwise provided in this subsection, any
24 other utility or electric operating entity owned and operated by the
25 political subdivision is not subject to this chapter.
26 * Sec. 20. AS 42.05.711(e) is amended to read:
27 (e) Notwithstanding any other provisions of this chapter, an
28 [ANY] electric [OR TELEPHONE] utility that does not gross $50,000
29 annually is exempt from regulation under this chapter unless 25

1 percent of the subscribers petition the commission for regulation.
2 * Sec. 21. AS 42.05.711(f) is repealed and reenacted to read:
3 (f) A public utility, except a local exchange telephone util-
4 ity, that receives gross annual revenue of less than $500,000 may,
5 under the procedures in AS 42.05.712, elect to be exempt from this
6 chapter other than AS 42.05.221 - 42.05.281.
7 * Sec. 22. AS 42.05.711(h) is amended to read:
8 (h) An electric [A] cooperative organized under AS 10.25 may
9 elect to be exempt from [THE PROVISIONS OF] this chapter, other than
10 AS 42.05.221 - 42.05.281, under the procedure described in AS 42.05.-
11 712.
12 * Sec. 23. AS 42.05.712(a) is amended to read:
13 (a) A utility or cooperative that [WHICH] may elect to be exempt
14 from [THE PROVISIONS OF] this chapter shall poll its subscribers or
15 members in the manner described in this section. A cooperative formed
16 for the generation and transmission of electrical service may not
17 elect to be deregulated under this section unless each of its members
18 that is organized as a distribution cooperative has held an election
19 among its subscribers to determine the cooperative's vote on deregu-
20 lation.
21 * Sec. 24. AS 42.05.720(4) is amended to read:
22 (4) "public utility" or "utility" includes every corpora-
23 tion (whether public, cooperative, or otherwise), company, individual,
24 or association of individuals, their lessees, trustees, or receivers
25 appointed by a court, that owns, operates, manages or controls any
26 plant, pipeline or system for
27 (A) furnishing, by generation, transmission or distri-
28 bution, electrical service to the public for compensation;
29 (B) furnishing telecommunications service to the

1 public for compensation;
2 (C) furnishing water, steam or sewer service to the
3 public for compensation;
4 (D) furnishing natural or manufactured gas to the
5 public for compensation by transmission or distribution, except
6 as necessary for a producer to supply first sale gas to an entity
7 that is not an affiliated interest if the distribution or trans-
8 mission facilities are either located entirely within the produc-
9 tion leasehold of the producer, or to the extent that the facil-
10 ities are not located within the leasehold, are valued at
11 $1,000,000 or less or are declared by the producer to be a common
12 carrier subject to regulation under AS 42.06 [OF NATURAL OR
13 MANUFACTURED GAS TO THE ALASKA PUBLIC FOR COMPENSATION];
14 (E) furnishing for distribution or by distribution
15 petroleum or petroleum products to the Alaska public for compen-
16 sation when the consumer has no alternative in the choice of
17 supplier of a comparable product and service at an equal or
18 lesser price;
19 (F) furnishing collection and disposal service of
20 garbage, refuse, trash or other waste material;
21 * Sec. 25. AS 44.66.010(4) is amended to read:
22 (4) Alaska Public Utilities Commission (AS 42.05.010) --
23 June 30, 1989 [1986];
24 * Sec. 26. Notwithstanding AS 42.05.030, as soon as the term of a
25 consumer member under AS 42.05.040 expires, the governor shall reappoint or
26 replace the member for a term of four years so that the terms of the con-
27 sumer members of the board are staggered.
28 * Sec. 27. Notwithstanding the amendments to AS 42.05.040 made by
29 sec. 2 and to AS 42.05.050 made by sec. 3 of this Act, a member of the

1 commission on the effective date of this Act may continue to serve as a
2 commission member and may be reappointed to the commission without meeting
3 the additional qualifications.
4 * Sec. 28. The amendments made by secs. 4 - 12, 14 - 16, and 18 of this
5 Act do not apply to a proceeding begun before the effective date of this
6 Act.
7 * Sec. 29. Notwithstanding the amendments made by secs. 19 - 23 of this
8 Act, a utility that was exempt from AS 42.05.221 on the day before the
9 effective date of this Act may continue to operate and to receive compen-
10 sation without holding a certificate from the Public Utilities Commission
11 until the commission has acted on the utility's application for certifica-
12 tion if the utility files an application for certification within 60 days
13 after the effective date of this Act.
14 * Sec. 30. Notwithstanding AS 42.05.371, a utility that was exempt from
15 regulation by the Public Utilities Commission on the day before the effec-
16 tive date of this Act may continue to charge the tariffs it charged on the
17 day before the effective date of this Act, until otherwise ordered by the
18 commission, if it files its complete tariff with the commission within 60
19 days after the effective date of this Act.
20 * Sec. 31. AS 42.05.711(g) and 42.05.711(i) are repealed.
21 * Sec. 32. This Act takes effect immediately in accordance with AS 01.-
22 10.070(c).

1 commission on the effective date of this Act may continue to serve as a
2 commission member and may be reappointed to the commission without meeting
3 the additional qualifications.
4 * Sec. 28. The amendments made by secs. 4 - 12, 14 - 16, and 18 of this
5 Act do not apply to a proceeding begun before the effective date of this
6 Act.
7 * Sec. 29. Notwithstanding the amendments made by secs. 19 - 23 of this
8 Act, a utility that was exempt from AS 42.05.221 on the day before the
9 effective date of this Act may continue to operate and to receive compen-
10 sation without holding a certificate from the Public Utilities Commission
11 until the commission has acted on the utility's application for certifica-
12 tion if the utility files an application for certification within 60 days
13 after the effective date of this Act.
14 * Sec. 30. Notwithstanding AS 42.05.371, a utility that was exempt from
15 regulation by the Public Utilities Commission on the day before the effec-
16 tive date of this Act may continue to charge the tariffs it charged on the
17 day before the effective date of this Act, until otherwise ordered by the
18 commission, if it files its complete tariff with the commission within 60
19 days after the effective date of this Act.
20 * Sec. 31. AS 42.05.711(g) and 42.05.711(i) are repealed.
21 * Sec. 32. This Act takes effect immediately in accordance with AS 01.-
22 10.070(c).