

Offered: 5/2/86  
Referred: Rules

Original sponsor: Davis

1 IN THE HOUSE BY THE FINANCE COMMITTEE  
2 CS FOR HOUSE BILL NO. 314 (Finance)  
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, economics,  
21 or business administration; and two members shall be consumers. A  
22 professional member of the commission must have worked for at least  
23 five years in the member's professional field.  
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 that is related to utilities management or regu-  
27 lation for a period of five years in the practice of law or in the  
28 field of engineering or in the field of finance, accounting, econom-  
29 ics, or 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 42.05.161 is amended by adding a new subsection to read:

27 (c) A commission meeting is open to the public under AS 44.62.-  
28 310(a), except that the commission may conduct a meeting in executive  
29 session under AS 44.62.310(b) and (c). A meeting of the commission

1 may not be closed to the public under AS 44.62.310(d)(1).

2 \* Sec. 8. AS 42.05.171 is repealed and reenacted to read:

3 Sec. 42.05.171. FORMAL HEARINGS. (a) The commission may hold a  
4 hearing on a matter that is subject to the jurisdiction of the commis-  
5 sion or may assign the matter to one or more commissioners, a hearing  
6 officer, or an administrative law judge. The commission shall assign  
7 as many matters as possible to a hearing officer or administrative law  
8 judge.

9 (b) When the commission does not preside over a hearing, the  
10 presiding officer shall render a proposed decision in the case unless  
11 the commission requires, either in a specific case or by regulation  
12 applying to a class of cases, that the entire record be certified to  
13 the commission for decision. The proposed decision becomes the  
14 decision of the commission without further procedures unless there is  
15 an appeal to, or review on the motion of, the commission within the  
16 time limits provided in this chapter. On appeal from or review of the  
17 proposed decision, the commission has the powers that it would have in  
18 making an initial decision unless the commission has limited the  
19 issues it will consider by notice to the parties or by regulation.

20 (c) In a matter heard by the commission, a commissioner who has  
21 not heard or read the testimony, including the argument, shall review  
22 the record before participating in the decision.

23 (d) In determining the place of a hearing the commission shall  
24 give preference to the place most convenient for those interested in  
25 the subject of the hearing.

26 (e) The commission shall employ a sufficient number of hearing  
27 officers or administrative law judges to hear and decide matters  
28 arising before the commission under this chapter.

29 \* Sec. 9. AS 42.05.221(a) is amended to read:

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

13 \* Sec. 10. AS 42.05.241 is amended to read:

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

26 \* Sec. 11. AS 42.05.241 is amended by adding new subsections to read:

27           (b) The commission shall find an applicant fit, willing, and  
28 able to provide utility service if the commission finds that

29           (1) the applicant has the financial, operational,

1 management, and maintenance capability to provide the proposed ser-  
2 vice;

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

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

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

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

15 \* Sec. 12. AS 42.05.251 is amended to read:

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

29 \* Sec. 13. AS 42.05.361(c) is amended to read:

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

10 \* Sec. 14. AS 42.05.381 is amended by adding a new subsection to read:

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

20 \* Sec. 15. AS 42.05.421(a) is repealed and reenacted to read:

21 (a) When a tariff filing is made containing a new or revised  
22 rate, classification, rule, regulation, practice, or condition of  
23 service the commission may, either upon written complaint or upon its  
24 own motion, after reasonable notice, conduct a hearing to determine  
25 the reasonableness and propriety of the filing. Pending the hearing  
26 and decision, the commission may suspend the operation of the tariff  
27 filing by order stating the reasons for the suspension. When the  
28 commission suspends the operation of a tariff, the commission may  
29 grant an interim rate increase. The period of suspension may not

1 exceed 10 months unless

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

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

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

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

10 (5) the proceedings involve unusual or complex situations  
11 or issues.

12 \* Sec. 16. AS 42.05.421(b) is amended to read:

13 (b) An order suspending a tariff filing may be vacated if, after  
14 investigation, the commission finds that it is in all respects proper.  
15 Otherwise the commission shall hold a hearing on the suspended filing  
16 and issue its order, before the end of the suspension period, grant-  
17 ing, denying, or modifying the suspended tariff in whole or in part.  
18 If the commission does not act on the tariff filing within the period  
19 of suspension allowed under (a) of this section, the tariff filing  
20 takes effect at the end of the suspension period.

21 \* Sec. 17. AS 42.05.421(c) is amended to read:

22 (c) If the commission authorizes an interim [IN THE CASE OF A  
23 PROPOSED INCREASED] rate, the commission may by order require the  
24 interested public utility or utilities to place the amounts subject to  
25 refund in escrow in a financial institution approved by the commission  
26 and keep accurate account of [ALL AMOUNTS RECEIVED BY REASON OF THE  
27 INCREASE, SPECIFYING] by whom and in whose behalf the amounts are  
28 paid. Upon completion of the hearing and decision the commission may  
29 by order require the public utility to refund to the persons in whose

1       behalf the amounts were paid, that portion of the increased rates  
2       which was found to be unreasonable or unlawful. The commission shall  
3       immediately authorize release of the balance of funds to the utility.  
4       Funds may not be released from escrow without the commission's prior  
5       written consent and the utility shall instruct the escrow agent of  
6       this requirement [SHALL BE SO INSTRUCTED BY THE UTILITY,] in writing  
7       and send [, WITH] a copy to the commission. The utility may, at its  
8       expense, substitute a bond for [IN LIEU OF] the escrow requirement.

9       \* Sec. 18. AS 42.05.421 is amended by adding a new subsection to read:

10           (e) At the time of a tariff filing or at any time the tariff  
11       filing is under suspension, the utility may request the commission to  
12       allow the tariff filing to take effect on an interim basis. The  
13       commission shall process the request as a tariff filing under AS 42.-  
14       05.411. If the filing contains a proposed new rate or rate increase,  
15       the commission may allow that rate or a lesser rate to take effect on  
16       an interim basis, subject to refund or other appropriate disposition  
17       at the discretion of the commission.

18       \* Sec. 19. AS 42.05.431 is amended to read:

19           Sec. 42.05.431. POWER OF COMMISSION TO FIX RATES. When the  
20       commission, after an investigation and hearing, finds that a rate  
21       demanded, observed, charged or collected by a public utility for a  
22       service, subject to the jurisdiction of the commission, or that a  
23       classification, rule, regulation, practice, or contract affecting the  
24       rate, is unjust, unreasonable, unduly discriminatory or preferential,  
25       the commission shall determine a just and reasonable rate, classifica-  
26       tion, rule, regulation, practice, or contract to be observed or al-  
27       lowed and shall establish it by order. A municipality may covenant  
28       with bond purchasers regarding rates of a municipally owned utility,  
29       and the covenant is valid and enforceable and is considered to be a

1 contract with the holders from time to time of the bonds. The finan-  
2 cial covenants contained in mortgages and other debt instruments of  
3 cooperative utilities organized under AS 10.25 are also valid and  
4 enforceable, and rates set by the commission must be adequate to meet  
5 those covenants. However, a cooperative utility that is negotiating  
6 to enter a mortgage or other debt instrument that provides for a  
7 times-interest-earned ratio (TIER) greater than the ratio the commis-  
8 sion most recently approved for that cooperative shall submit the  
9 mortgage or debt instrument to the commission before the instrument  
10 takes effect. The commission may disapprove the instrument within 60  
11 days after its submission. If the commission has not acted within 60  
12 days, the instrument is considered to be approved.

13 \* Sec. 20. AS 42.05.431 is amended by adding a new subsection to read:

14 (b) A wholesale power agreement between public utilities is sub-  
15 ject to advance approval of the commission. After a wholesale power  
16 agreement is in effect, the commission may not invalidate any purchase  
17 or sale obligation under the agreement. However, if the commission  
18 finds that rates set in accordance with the agreement are not just and  
19 reasonable, the commission may order the parties to negotiate an  
20 amendment to the agreement and if the parties fail to agree, to use  
21 the dispute resolution procedures contained in the contract.

22 \* Sec. 21. AS 42.05.651 is amended to read:

23 Sec. 42.05.651. EXPENSES OF INVESTIGATION OR HEARING. After  
24 completion of a hearing or investigation held under this chapter, the  
25 commission shall allocate the costs of the hearing or investigation  
26 among the parties, including the commission, as is just under the  
27 circumstances. In allocating costs, the commission may consider the  
28 results, ability to pay, evidence of good faith, other relevant fac-  
29 tors and mitigating circumstances. The costs allocated may include

1 the costs of any time devoted to the investigation or hearing by hired  
2 consultants, whether or not the consultants appear as witnesses or  
3 participants, but only if the consultants were necessary under AS 42.-  
4 05.121(b). The costs allocated may not include the cost of permanent  
5 staff for the commission or the cost of services provided by the  
6 Department of Law to the commission but may include other necessary  
7 expenses not allocated in the operating budget [ALSO INCLUDE ANY  
8 OUT-OF-POCKET EXPENSES INCURRED BY THE COMMISSION IN THE PARTICULAR  
9 PROCEEDING]. The commission shall provide an opportunity for a [ANY]  
10 person objecting to an allocation to be heard before the allocation  
11 becomes final.

12 \* Sec. 22. AS 42.05.711(f) is repealed and reenacted to read:

13 (f) A public utility that receives gross annual revenue of less  
14 than \$500,000 may, under AS 42.05.712, elect to be exempt from this  
15 chapter other than AS 42.05.221 - 42.05.281.

16 \* Sec. 23. AS 42.05.712(a) is amended to read:

17 (a) A utility or cooperative that [WHICH] may elect to be exempt  
18 from [THE PROVISIONS OF] this chapter shall poll its subscribers or  
19 members in the manner described in this section. A cooperative formed  
20 for the generation and transmission of electrical service may not  
21 elect to be deregulated under this section unless each of its members  
22 that is organized as a distribution cooperative has held an election  
23 among its subscribers to determine the cooperative's vote on deregu-  
24 lation.

25 \* Sec. 24. AS 42.05.720(4) is amended to read:

26 (4) "public utility" or "utility" includes every corpora-  
27 tion (whether public, cooperative, or otherwise), company, individual,  
28 or association of individuals, their lessees, trustees, or receivers  
29 appointed by a court, that owns, operates, manages or controls any

1 plant, pipeline or system for

2 (A) furnishing, by generation, transmission or distri-  
3 bution, electrical service to the public for compensation;

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

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

8 (D) furnishing natural or manufactured gas to the  
9 public for compensation by transmission or distribution, except  
10 as necessary for a producer to supply first sale gas to an entity  
11 other than a public utility in which the producer has an affili-  
12 ated interest, if the distribution or transmission facilities to  
13 the point of sale are either located entirely within the produc-  
14 tion leasehold or unit of the producer, or, to the extent that  
15 they are not located within the leasehold or unit, the facilities  
16 are valued at \$1,000,000 or less or are declared by the producer  
17 to be a common carrier subject to regulation under AS 42.06 [OF  
18 NATURAL OR MANUFACTURED GAS TO THE ALASKA PUBLIC FOR COMPEN-  
19 SATION];

20 (E) furnishing for distribution or by distribution  
21 petroleum or petroleum products to the Alaska public for compen-  
22 sation when the consumer has no alternative in the choice of  
23 supplier of a comparable product and service at an equal or  
24 lesser price;

25 (F) furnishing collection and disposal service of  
26 garbage, refuse, trash or other waste material;

27 \* Sec. 25. AS 44.66.010(4) is amended to read:

28 (4) Alaska Public Utilities Commission (AS 42.05.010) --  
29 June 30, 1989 [1986];

1 \* Sec. 26. Notwithstanding AS 42.05.030, as soon as the term of the  
2 consumer members under AS 42.05.040 expires, the governor shall reappoint  
3 or replace a member for a term of four years and a member for a term of six  
4 years so that the terms of the consumer members of the board are staggered.

5 \* Sec. 27. Notwithstanding the amendments to AS 42.05.040 made by  
6 sec. 2 and to AS 42.05.050 made by sec. 3 of this Act, a member of the  
7 commission on the effective date of this Act may continue to serve as a  
8 commission member and may be reappointed to the commission without meeting  
9 the additional qualifications.

10 \* Sec. 28. The amendments made by secs. 4 - 6, 8 - 13, 15 - 17, and 21  
11 of this Act do not apply to a proceeding begun before the effective date of  
12 this Act.

13 \* Sec. 29. AS 42.05.431(b) enacted by sec. 20 of this Act applies only  
14 to wholesale power agreements entered into after the effective date of this  
15 Act.

16 \* Sec. 30. Notwithstanding the amendments made by sec. 23 of this Act,  
17 a utility that was exempt from AS 42.05.221 on the day before the effective  
18 date of this Act may continue to operate and to receive compensation with-  
19 out holding a certificate from the Public Utilities Commission until the  
20 commission has acted on the utility's application for certification if the  
21 utility files an application for certification within 60 days after the  
22 effective date of this Act.

23 \* Sec. 31. Notwithstanding AS 42.05.371, a utility that was exempt from  
24 regulation by the Public Utilities Commission on the day before the effec-  
25 tive date of this Act may continue to charge the tariffs it charged on the  
26 day before the effective date of this Act, until otherwise ordered by the  
27 commission, if it files its complete tariff with the commission within 60  
28 days after the effective date of this Act.

29 \* Sec. 32. AS 42.05.711(g) is repealed.

1     \* Sec. 33. This Act takes effect immediately in accordance with AS 01.-  
2 10.070(c).