HB

188

HB 188

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

JUNEAU
ALASKA 99801

MEMORANDUM

March 1, 1969

TO: Barry Jackson, Chairman
House Judiciary Committee

FROM: Arthur H. Peterson
Revisor of Statutes

SUBJECT: PSC-related bills presently before the legislature

HOUSE

HB 188, by Guess & Bradner -- full PSC chapter -- same as SB 54

HB 202, by Fink -- virtually full PSC chapter -- same as SB 128 but deletes exemption for municipally owned and operated utilities re rates

SENATE

SB 54, by Josephson, Rader & Begich -- full PSC chapter

SB 128, by request of the governor -- virtually full PSC chapter

SB 214, by Rader -- mainly deals with the definition of "public utility" and the exemptions from the application of the PSC chapter

SB 215, by Rader -- deals with the pay and removal of PSC members

Fed. Com. AB188
Dept Public Service Commission

CITY OF FAIRBANKS

MUNICIPAL UTILITIES SYSTEM

Operated By The Public Utilities Board

645 FIFTH AVENUE

FAIRBANKS, ALASKA

P.O. BOX 2215 – 99701

January 23, 1970

Senator Paul Haggland, Chairman
and Commerce Committee Members

Gentlemen:

During April 1969, testimony was presented to the Commerce Committee by Fairbanks representative, A. J. Movius. The position of the City was, at that time, and is, that the benefits to be gained in protecting the public's interest are outweighed by the burden imposed on the rate payers who will pay for the regulation.

The City of Fairbanks Public Utilities Board and Fairbanks City Council have previously gone on record as being opposed to regulation that will interfere with the regulation of local utilities on a local basis. An arbitration provision is the only forseeable genuine benefit that could accrue to the rate payer.

If a bill is to be passed, and if this is to do any good, it must contain a provision to solve the service area problems existing between contiguous utility organizations. If the legislature sincerely intends to protect the public by passage of a bill to strengthen the Public Service Commission, definite guide lines for settling border disputes will be contained in the legislation.

Finally, one practical point - it is apparent to everyone that the Public Service Commission has been overwhelmed by the RCA certificate situation and this should point out that if the Commission is to be effective in protecting the rate payer, it must first get organized.

Very truly yours,

Ray Kohler

Ray Kohler
Vice Chairman
Public Utilities Board

cc: Committee Members
Fairbanks Area Legislators
Public Utilities Board Members
City Council Members

CITY OF KETCHIKAN

KETCHIKAN PUBLIC UTILITIES

Senate Bills Nos. 54 and 128 and House Bill No. 188 have been introduced in the State Legislature. If passed, these bills would put control of municipal utilities under an appointed State Public Service Commission.

The City of Ketchikan Public Utilities have been regulated by the City Council for approximately 34 years and have provided its consumers a reasonable level of service at the lowest rates in Alaska, and at rates below the national average for residential service.

Control by a State Public Service Commission, in addition to violating the charter provisions of home rule cities, would constitute an unnecessary interference in the management of city affairs, and could, by creating additional operating expense in the operation of its utilities, result in higher rates for service to be paid by the consumer.

Wednesday, March 5, 1969, at 7:00 P.M., a hearing will be held by the Senate Commerce Committee on Senate Bill No. 128. If you feel this type of legislation would be against your best interests we would strongly urge that you send a letter or telegram expressing your opposition to Senator Paul Haggland, Chairman, Senate Commerce Committee, State Capitol Building, Juneau, Alaska.

KETCHIKAN, ALASKA, 3 MARCH, 1969
DEAR SENATOR HAGGLAND
IF I WERE A MEMBER OF THE LEGISLATURE, I WOULD VOTE "NO" ON EITHER OR BOTH OF THE ABOVE MENTIONED BILLS. IT IS MY PERSONAL OPINION THAT THE ALASKA PUBLIC SERVICE COMMISSION ALREADY HAS TOO MUCH REGULATORY POWER OVER INDUSTRIES ABOUT WHICH THE INDIVIDUAL MEMBERS OF THE COMMISSION HAVE VERY LIMITED KNOWLEDGE.
RESPECTFULLY

Paul J. Wingren

PAUL J. WINGREN, PRES.
WINGREN FOOD STORES, INC.

HB 188

KEITH H. MILLER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

Jackson
working copy

February 7, 1969

The Honorable Jay S. Hammond
Chairman, Senate Rules Committee
Alaska State Legislature
Juneau, Alaska 99801

Dear Mr. Chairman:

Pursuant to State law and the Uniform Rules of the Legislature, I am transmitting herewith a bill entitled "An Act relating to the regulation of public utilities, defining the composition, powers and duties of the Public Service Commission; and providing for an effective date."

The attached bill would effect a number of important changes in the existing Public Service Commission Act.

It will substantially strengthen the regulatory authority of the Commission in certain respects. It will broaden the Commission's base of jurisdiction; it provides a reasonable and workable means of engendering compliance and enforcement; and it gives the Commission the ability to effectively regulate within its sphere of jurisdiction.

The bill does not repeal and re-enact the entire existing PSC Act. The first several sections of Chapter 42.05 are retained or simply revised. This has the effect of leaving the composition of the Commission as it is. Revisions are included, however, which would provide means for removing a commissioner from office: either by the same procedure in which he is appointed or for cause. These removal methods are designed to provide continuity of policy of the Commission. At the same time it affords an essential ability for change in event of incompetence, etc.

Due to the rapidly increasing workload of the commissioners and the need to retain well qualified and competent men on the Commission, the bill proposes an annual salary of $5,000.

The bill does repeal and re-enact all sections beyond AS 42.05.060 of the current chapter. In many instances, however, the new provisions are the same or similar to the present ones. Re-enactment of this large block of sections was employed primarily to provide continuity and uniformity and avoid the confusion of large scale amendments, additions and deletions.

Why not amend existing service? (amend?)

The other areas of important change which this bill would affect can be summarized as follows:

Sections 42.05.141 - 171 clarify the regulatory authority of the Commission. It is divided into general and administrative authority. The latter specifies that the Commission is to provide by regulation, for its own rules of practice and procedure in its adjudicatory proceedings. The procedures of the APA (AS 44.62) were never designed, intended nor are they appropriate to the usual utility regulatory agency investigation and hearing. The authority given to the PSC to prescribe its own procedural rules is similar to such authority granted the Alaska Transportation Commission in 1966 (139 SLA 1966).

The new statutes make it clear that the Commission may employ its own hearing officers. They also clarify the Commission's authority to hear a case itself without using a hearing officer. This authority has been implied in the past but the conflicting hearing processes provided for by the APA and the current PSC statutes rendered the implication at least questionable. The new provisions also expressly state that a commissioner may act as hearing officer.

The proposed bill expands the authority of the Commission in respect to certification of utilities. It prescribes (PROSCRIBES) unauthorized discontinuance or abandonment of certificated service and gives the Commission the power to modify, suspend, or revoke a certificate under certain conditions.

The new provisions concerning utility service have been strengthened in the requirement that service be reasonable, safe, adequate and sufficient.

In the area of rate regulation, the new bill makes it clear that the Commission may make, fix, alter and amend rates. It also expressly provides for suspension of rate changes for a maximum period of seven months. The seven-month period corresponds to the rather standard statutory suspension period for Commission regulating motor carriers, etc., but is less than the ten-month period commonly provided in regulation of electric, telephone, etc., utilities.

The Commission is also given the authoritv to apportion joint rates where the participating utilities cannot agree on apportionment or an apportionment is prejudicial to one of them.

The bill provides for reparations where the Commission finds that a utility has charged unreasonable, excessive or discriminatory rates.

In valuation of utility property for rate making purposes, the Commission is required to determine fair value primarily as a function of original cost less accrued depreciation. This, in effect, codifies the approach taken by the Commission in actual practice.

For the sake of uniformity and usefulness of information, the Commission is given the authority to prescribe the accounting systems to be used.

Article 8 of the bill provides both criminal and civil penalties for violation. Adequate penalty provisions are essential to regulation. They are designed and normally act as a compliance tool; and compliance rather than levy of fines or penalities is the objective.

The general provisions of the bill include assessment of regulatory fees, a public records section and a section to the effect that the 1968 amendment to Section AS 42.05.640(2) did not abrogate any rights vested in a public utility prior to its enactment. It is also called to your attention that the 1968 amendment is repealed. The provision therein which defined public utility in terms of $25,000 minimum gross annual revenue was completely unworkable — Query and raised numerous corolary questions concerning Commission jurisdiction. — NAMELY?

The definition of public utility is broadened and like its predecessor confines itself to definition. Exemptions are incorporated in a separate section.

Municipally owned and operated utilities are exempted from regulation only in certain respects. These are specified in subsections AS 42.05.631(b)-(d). In brief, a municipal utility would be exempt from rate regulation for services provided within the city boundaries. Services which it provides outside the municipal boundaries would not be exempt. Municipal utilities would also be exempt en toto from Sections AS 42.05.491 - 511 concerning financial and management regulation, and from Section AS 42.05.641 concerning regulatory fees.

The only other exemption from regulation is the person who furnishes water, gas or petroleum products by tank, wagon, etc. However, this exemption is limited where such supplier is providing the service to a public utility in which he has an affiliated interest.

Sincerely yours,

Keith H. Miller

Keith H. Miller
Governor

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

for accident insurance policy as to whether insured had had any "physical defect or infirmity" or "any local or constitutional disease." Ocean Accident & Guaranty Corporation v. Rubin, C.C.A.Cal., 73 F.2d 157, 96 A.L.R. 412.

PHYSICAL DEPRECIATION

"Physical depreciation" of property is the result of deterioration due to age and wear. It results from use, decay and the action of the elements. "Physical depreciation" is a constant factor, and it begins as soon as the structure is exposed to the action of the elements or is put into use. Central R. Co. of New Jersey v. Martin, D.C.N.J., 30 F.Supp. 41, 60.

"Physical depreciation" is reduction in value of structure due to actual wear and tear or physical deterioration. Property consisting of paper mill, bag factory, storehouses, yard equipment, etc., used by going concern, should be assessed for taxation at valuation fixed by reconstruction cost less depreciation, in absence of market value or evidence thereof. People ex rel. Union Bag & Paper Corporation v. Fitzgerald, 2 N.Y.S.2d 290, 295, 166 Misc. 237.

PHYSICAL DETERIORATION

Company formed by merger of title companies was not entitled to deduction from income for "obsolescence" in amount of alleged decrease in value of title insurance plant which company failed to keep up to date after the merger, since loss of usefulness was not because of changing economic conditions or circumstances over which company lacked control, but was result rather of "physical deterioration." Revenue Act 1928, § 23(k), 26 U.S.C.A. (I.R.C. 1939) § 23. United States v. Real Estate-Land Title & Trust Co., C.C.A.Pa., 102 F.2d 582, 586.

PHYSICAL DIAGNOSIS

Faulty diagnosis of itself and apart from treatment does not give rise to action for malpractice, since diagnosis may rightly be changed from time to time. "Diagnosis" is defined as the art or act of recognizing the presence of disease from its symptoms, and deciding as to its character, also the decision reached, for determination of type or condition through case or specimen study or conclusion arrived at through critical perception or scrutiny. A "clinical diagnosis" is one made from a study of the symptoms only, and a "physical diagnosis" is one made by means of physical measure, such as palpation and inspection. "Malpractice" is the treatment of a case by surgeon or physician in a manner contrary to accepted rules and with injurious results to the patient; and hence any professional misconduct or any unreasonable lack of skill or fidelity in the performance of professional duties or of mistreatment of a disease or injury through ignorance and carelessness. Williams v. Lucas, 1 N.W.2d 121, 124, 140 Neb. 656.

PHYSICAL DISABILITY

Cross References

Crippling

A voter who claimed the assistance of an election officer in preparing his ballot on the ground, not that he was blind or could not read or write, but that he left his eyeglasses at home was not under "physical disability," within Rev.St. art. [illegible], as amended by Acts 36th Leg., 1919 [illegible], Vernon's Ann.Civ.St. art. 3010, Vernon's Ann.P.C. arts. 224, 225, where he made no effort to get his glasses, the law applying only to permanent disability. Hillert v. Schweppe, Tex., 254 S.W. 152, 154.

Questions in life policy application regarding deformity, amputation, and physical disability, and whether insured had disease of genito-urinary system, did not suggest to insured operation for removal of testicle so as to warrant cancellation of policy, where application did not disclose such operation; operation being neither "deformity," "amputation," nor necessarily "physical disability." American Life Ins. Co. v. Bunyan, 145 So. 617, 620, 227 Ala. 32.

The provision of charter of city of Sacramento for benefits for "physical disability" of city employees as result of injury received in performance of duty, and for reduction of such benefits by amount of any workmen's compensation award against city, does not cover death of an employee during performance of duty, and hence does not authorize pension payment to widow of employee within city retirement system to be reduced by

state-wide importance and concern and have been enacted in aid of the health, safety, and welfare of the people of this State.

LEGISLATIVE HISTORY

Enacted 1951. Based on Stats 1915 ch 91 § 43 subd (d) p 137, as amended by Stats 1917 ch 209 § 1 p 320, Stats 1927 ch 704 § 1 p 1216, State 1933 ch 855 § 1 p 2227, without substantial change.

COLLATERAL REFERENCES

Cal Jur 2d Eminent Domain § 186, Railroads § 21.

Law Review Articles:

30 SCLR 191 (public utilities regulation and community interest).

§ 1220. Legislative declaration of purpose for enactment of §§ 1206 to 1218. The Legislature declares that Sections 1206 to 1218, inclusive, are enacted as a germane and cognate part of and as an aid to the jurisdiction of the commission in the supervision and regulation of railroad and street railroad corporations.

LEGISLATIVE HISTORY

Enacted 1951. Based on Stats 1915 ch 91 § 43 subd (e)8 p 137, as amended by Stats 1917 ch 209 § 1 p 320, Stats 1927 ch 704 § 1 p 1216, Stats 1933 ch 855 § 1 p 2227, without substantial change.

COLLATERAL REFERENCES

Cal Jur 2d Eminent Domain § 186, Railroads § 21.

Law Review Articles:

30 SCLR 191 (public utilities regulation and community interest).

NOTES OF DECISIONS

Under Const Art XI, §§ 22 and 23, legislature has plenary and unlimited authority insofar as such conferred powers are germane to subject of regulation of public utilities. East Bay Municipal Util. Dist. v Railroad Com. (1924) 194 C 603, 229 P 949.

CHAPTER 7

Valuation of Public Utility Properties

CROSS REFERENCES

"Commission" and "commissioner": § 20.

§ 1351. Authority to value and revalue property of public utilities. The commission may ascertain for each purpose specified in

this part, the value of the property of every public utility in this State and every fact and element of value which in its judgment may or does have any bearing on such value. The commission may make revaluations from time to time and ascertain the value of all additions, betterments, extensions, and new construction to the property of every public utility.

LEGISLATIVE HISTORY

Enacted 1951. Based on:

(a) Stats 1915 ch 91 § 47 subd (a) p 139, as amended by Stats 1917 ch 170 § 1 p 261, without substantial change.

(b) Stats 1st Ex Sess 1911 ch 14 § 47 subd (a) p 42, as amended by Stats 1913 ch 339 § 1 p 684.

(c) Stats 1911 ch 20 § 20 p 22.

COLLATERAL REFERENCES

Cal Jur 2d Eminent Domain § 353, Public Utilities and Services §§ 53, 55.

McKinney's Cal Dig Public Utilities and Services § 52.

Am Jur Public Utilities and Services §§ 105 et seq.

Law Review Articles:

2 CLR 3 (just and scientific basis for establishment of public utility rates, with particular attention to land values).

3 CLR 500 (valuation of public service companies for rate-making purposes: going concern value).

5 CLR 1 (estimating depreciation in valuation of public utilities for rate-making purposes).

12 CLR 283 (theory of prudent investment as a rate basis).

15 CLR 445 (investigations on the commission's own motion).

32 CLR 398 (rate making of public utilities discussed).

23 St BJ 165 (lawyer's view of valuation of public utility property).

Annotations:

20 ALR 560 (effect of additions constructed at war and postwar prices on valuation for rate-making purposes).

49 ALR 1477 (valuation of street easement for street railway rates).

63 ALR 1096 (telephone company's rights in, and remedies available to protect, telephone directory and advertising material therein).

72 ALR 1232 (capitalizing or funding bond discount).

64 ALR2d 866 (liability of public utility to abutting owner for destruction or injury of trees in or near highway or street).

64 ALR 1199 (railroad company's liability for injury or death of pedestrian due to condition of surface of crossing).

64 ALR2d 1296 (admissibility of evidence of repairs, change of conditions, or precautions taken after accident).

66 ALR2d 634 (liability of municipality for torts in connection with airport).

67 ALR2d 1364 (liability of railroad for injury or damage resulting from motor vehicle striking bridge or underpass because of insufficient vertical clearance).

68 ALR2d 392 (compensation or damages for condemning public utility plant).

NOTES OF DECISIONS

I. Court Decisions.

II. Public Utilities Commission Decisions.

CALIFORNIA

In proceeding involving transfer and recapitalization of public utility properties it is not necessary that commission determine present value of lands involved. Santa Cruz County Util., In re (1928) 31 CRC 32.

Income theory as measure of value is unstable. San Francisco, In re (1929) 33 CRC 202.

Actual application of income theory is by means of a purely mathematical formula which determines the answer without the exercise of judgment. San Francisco, In re (1929) 33 CRC 202.

Just compensation cannot be found on basis of income earned from property, investments in which a utility estimates it might make in the future. It is commission's duty to fix just compensation on basis of property owned and to be taken on the day of taking. San Francisco, In re (1929) 33 CRC 202.

5. —— PROPERTY INCLUDED IN VALUATION

Unused property.—In making valuation of water utility property for rate-fixing purposes, water owned by utility entirely separated from its water system and not used or useful in service of water to its consumers, will not be included as property on the value of which a return is allowed. Watsonville Water & Light Co., In re (1919) 17 CRC 126.

Intercorporate relationship.—Worth of subsidiary electric railway to parent railroad as collector and distributor of parent company's passenger and freight traffic is factor to be considered in determining reasonable rate of return to be allowed subsidiary. Chamber of Commerce v Pacific Elec. R. Co. (1928) 31 CRC 454.

Nonoperative property.—Cost of diversion dam rendered nonoperative and no longer necessary in rendering service should be excluded from operative capital. Monterey County Waterworks, In re (1928) 31 CRC 852.

Lands.—When market value of land is found there is nothing to be added to further indicate value of land except it be that intangible value which attaches to composite property in use. San Francisco, In re (1929) 33 CRC 202.

Nonutility Property.—Water company rendering private service and utility service which contends that private properties acquired from predecessor have never been dedicated to public use has no legal right to have such properties fully valued for utility-rate fixing purposes merely because utility arm of company may be accorded by the other a revocable permissive right to use that part of the property considered private. This does not mean that were the utility to show that it has a definite legal right to the use of private property for utility purposes it would not be entitled to have a fair value accorded to such a right. Thomas v Monterey County Water Works (1937) 40 CRC 683.

6. —— COST AND INVESTMENT

Reproduction cost based upon estimate of what price of material and labor will be two years hence is speculative and of very little assistance in determining rate base. Watsonville Water & Light Co., In re (1919) 17 CRC 126.

Historical cost and present value.—Where applicant claims that rates should be established on estimated present value of property and not on historical cost new, consideration must be given the fact that it is electric utility serving under regulation in territory free from general competition and has other and different obligations imposed upon it than those to which nonpublic utility is subjected, for it may be required to meet the demands of territory whether costs are

CALIFORNIA

[II, 7]

high or low and develop plants when necessary to provide for needs of public during periods of high prices as well as of low prices, and amount invested in public utility properties, if known, or if not known, the historical cost of property, should be regarded as principal element in arriving at rate base and applicant is therefore entitled to fair return upon its reasonable historical cost rather than upon "present value." Southern Sierras Power Co. & Holton Power Co., In re (1920) 18 CRC 818.

Allowance for historical investment should not be blindly followed in case utility has unreasonably delayed in its obligation to public by failing to develop plants at time when they should have been developed and later constructing them under conditions of high cost of money and material, in such case, fairness to consumers must dictate lesser compensation to utility. Southern Sierras Power Co. & Holton Power Co., In re (1920) 18 CRC 818.

Allowance for development cost.—Commission refuses to allow as development costs, either in capital or to be amortized at this time, early losses incurred by utility prior to its purchase by present owners, as former owners would not benefit thereby and it would be equivalent to requiring consumers now to pay power bills which should have been paid at the time, were they reasonable. Southern Sierras Power Co. & Holton Power Co., In re (1920) 18 CRC 818.

Actual cost cannot be sole measure of value, admitting that expenditures for special equipment, labor and management is the best measure of value since substitution partakes of the element of speculation, yet abnormally high or abnormally low costs or costs incurred during a time long since past or for things no longer efficient cannot be the true measure of actual present-day worth of the properties for which just compensation must be fixed. Redding, In re (1921) 19 CRC 267.

The best evidence of development costs consists of showing what the costs actually amounted to during a reasonable development period and should be applied in all cases where it is possible to determine the nature and extent of actual losses, if any, during such development period. Redding, In re (1921) 19 CRC 267, 293.

Investment in advance of present needs.—In rate proceeding cost of canal enlarged beyond present needs may be appraised upon the basis of the cost of that portion of canal reasonably necessary for service to present consumers. Foothill Ditch Co., In re (1928) 32 CRC 44.

Work in progress.—Construction work in progress as of date of valuation should be included in reproduction cost new and reflected thereby in the figure of just compensation. San Francisco, In re (1929) 33 CRC 202.

Preliminary organization.—Within reasonable bounds preliminary organization expense is proper item to be included in reproduction cost new. San Francisco, In re (1929) 33 CRC 202.

Cost of acquisition of land disallowed in determination of just compensation where such amount as may be claimed is amply covered by liberal allowance for organization expense and other general overheads. San Francisco, In re (1929) 33 CRC 202.

7. —— —— CONSUMERS' ADVANCES

Consumers' advances in aid of construction being available to utility without payment of interest will be treated as proper deduction in determining rate base. Southern Calif. Gas Co., In re (1928) 32 CRC 379.

8. —— AMOUNT AND VALUE OF SECURITIES

It is not the practice to use as rate base the amount of securities outstanding, nor figures carried in fixed capital accounts in a utility's books unless, in the commission's opinion, such figures, at time of rate fixing, represent rea-

sion, 203 A.2d 515, 204 Pa.Super. 102, 1964.

52. —— Findings of commission, hearing and determination

Public Utility Commission was presumed to have considered effect of suspension of tariff supplement in fixing final gas rates, and was not required to make a specific monetary allowance for a calculated loss allegedly due to suspension. City of Pittsburgh v. Pennsylvania Public Utility Commission, 222 A.2d 395, 208 Pa.Super. 260, 1966.

Where Public Utility Commission had sufficient evidence before it in approving rate increase for steam heating company, even though defective in certain respects, to reach conclusion that proposed rates were just and reasonable and that fair value of utility's property would support proposed increase in rates, no specific finding of fair value or fair rate of return was necessary. Penn Sheraton Hotel v. Pennsylvania Public Utility Commission, 184 A.2d 324, 198 Pa.Super. 618, 1962.

54. —— Presumption and burden of proof

Shippers who attacked intrastate freight rate had burden of proof in showing that rates were unreasonable. Deitch Co. v. Pennsylvania Public Utility Commission, 203 A.2d 515, 204 Pa.Super. 102, 1964.

Burden is upon utility company seeking rate increase to establish all basic facts necessary for consideration by the Public Utility Commission. Sayre Land Co. v. Pennsylvania Public Utility Commission, 175 A.2d 307, 195 Pa.Super. 417, 1961, affirmed 185 A.2d 325, 409 Pa. 556.

62. Review

Where complainants in rate proceeding did not raise any question concerning original cost of gas utility's property before Public Utility Commission or in their appeal petitions, they ordinarily could not raise such question on appeal. City of Pittsburgh v. Pennsylvania Public Utility Commission, 222 A.2d 395, 208 Pa.Super. 260, 1966.

§ 1151. Valuation of property of a public utility

The commission may, after reasonable notice and hearing, ascertain and fix the fair value of the whole or any part of the property of any public utility, in so far as the same is material to the exercise of the jurisdiction of the commission, and may make revaluations from time to time and ascertain the fair value of all new construction, extensions, and additions to the property of any public utility. When any public utility furnishes more than one of the different types of utility service enumerated in paragraph seventeen of section two of this act,[1] the commission shall segregate the property used and useful in furnishing each type of such service, and shall not consider the property of such public utility as a unit in determining the value of the property of such public utility for the purpose of fixing rates. In fixing any rate of a public utility engaged exclusively in common carriage by motor vehicles, the commission may, in lieu of other standards established by law, fix the fair return by relating the fair and reasonable operating expenses, depreciation, taxes and other costs of furnishing service to carrier operating revenues. As amended 1963, Aug. 1, P.L. 449, § 1; 1965, Dec. 22, P.L. 1165, § 1, effective in 90 days.

[1] Section 1102 of this title.

Section 2 of act 1965, Dec. 22, P.L. 1165, provided that the act should take effect in ninety days.

Section 2 of the act of 1963 provided that the act should take effect in ninety days.

3. Valuation—In general

Public Utility Commission acted within its power in rate proceeding in refusing to reduce gas utility's trended original cost measures of value to extent of investment tax credit as too speculative. City of Pittsburgh v. Pennsylvania Public Utility Commission, 222 A.2d 395, 208 Pa.Super. 260, 1966.

Public Utility Commission's treatment in rate proceeding of investment tax credit as a reduction in cost of gas utility's property and deduction of unamortized portion thereof from original and trended cost measures on value was not an abuse of discretion. Id.

In determining fair value of physical plant of steam heating company, one measure of value, against which depreciation is accrued, is original cost of construction, that is, cost when first devoted to public service, which does not include future costs of removal. Penn Sheraton Hotel v. Pennsylvania Public Utility Commission, 184 A.2d 324, 198 Pa.Super. 618, 1962.

Negative salvage actually incurred by steam heating company, either upon actual retirement of property without replacement or upon replacement of item of property, is entitled to consideration in rate proceeding. Id.

6. —— Fair value, valuation

The Public Utility Commission is not bound to any specific formula to determine fair value, but it cannot take only one factor as the formula; it need not give equal weight to all measures of fair value, but neither can it weigh fair value only by one consideration. Scranton Steam Heat Co. v. Pennsylvania Public Utility Commission, 167 A.2d 693, 194 Pa.Super. 143, 1961, modified on other grounds, 176 A.2d 86, 405 Pa. 397.

24. Reproduction cost—In general

Reproduction cost of utility's facilities is factor which must be considered and weighed by public utility commission in arriving at fair value for rate-making purposes, and only reason for according little or no weight to such cost is when facilities have become so obsolete as to make highly improbable and unlikely the facilities' reproduction. Scranton Steam Heat Co. v. Pennsylvania Public Utility Commission, 176 A.2d 86, 405 Pa. 397, 1962.

The Public Utility Commission should have considered original cost of construction and cost of reproduction and

COMPARISON OF STATE REGULATORY BODIES
TREATMENT OF RATE BASE VALUATION

	Original Cost States		Fair Value States	No State Commis.
1.	Alaska	1.	Alabama	1. Iowa
2.	Arkansas	2.	Arizona	2. Nebraska
3.	California	3.	Delaware	3. South Dakota
4.	Colorado	4.	Illinois	
5.	Connecticut	5.	Indiana	
6.	District of Columbia	6.	Kentucky	
7.	Florida 2/	7.	Minnesota	
8.	Georgia	8.	Missouri	
9.	Hawaii	9.	Montana	
10.	Idaho 3/	10.	New Jersey	
11.	Kansas	11.	New Mexico	
12.	Louisiana 4/	12.	New York	
13.	Maine	13.	North Carolina	
14.	Maryland	14.	Ohio	
15.	Massachusetts	15.	Pennsylvania	
16.	Michigan 5/	16.	Texas	
17.	Mississippi			
18.	Nevada			
19.	New Hampshire			
1/ 20.	New York			
21.	North Dakota			
22.	Oklahoma			
23.	Oregon			
24.	Puerto Rico			
25.	Rhode Island			
26.	South Carolina			
27.	Tennessee			
28.	Utah			
29.	Vermont			
30.	Virginia			
31.	Washington			

32. West Virginia

33. Wisconsin

34. Wyoming

NOTES

1/ All utilities except telephone.

2/ Does not regulate electric and gas utilities.

3/ Uses inflation allowance only.

4/ Uses inflation allowance for telephone.

5/ Does not regulate electric utilities.

NOTE: Only one State, Ohio, prescribes a fixed RCND percentage by statute.

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

HB166

Alaska State Legislature

SENATOR
JOE P. JOSEPHSON
DISTRICT E
326 H. STREET
ANCHORAGE, ALASKA 99501

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99801

Senate

COMMITTEES
HEALTH, WELFARE, AND EDUCATION
LABOR AND MANAGEMENT

March 15, 1969

Honorable Barry Jackson,
Chairman,
House Judiciary Committee,
House of Representatives,
Juneau, Alaska

Dear Barry:

A constituent of mine, Mr. John Mlaker, recommends an express provision in proposed PSC legislation to curb discriminatory rate practices.

I am taking the liberty of enclosing Mr. Mlaker's letter to me of March 7, and his suggested statutory language, for consideration by your committee.

Sincerely,

Joe

Joe P. Josephson
State Senator

March 7, 1969

Mr. Joe Josephson
Alaska State Legislature
Pouch V
Juneau, Alaska 99801

Dear Joe:

Several Public Service Commission bills have been or perhaps will be introduced in both Alaska Legislative Houses. It appears that one of these bills in original or amended form will pass during this session.

In the past several years many of Alaska's public utilities have been guilty of a variety of discriminatory rate practices involving kick-backs, "special rates", give-aways, differential subsidies, etc. The practices take many forms but collectively they amount to taking a little bit extra from the vast majority of consumers in order to subsidize and attract potential new customers.

Attached is a section lifted from the Public Service Commission portion of the North Carolina Code. If this language is contained in any new Alaskan P.S.C. Bill, then the situations I have outlined could be prevented in the future. The North Carolina Code has been widely cited for its forthrightness and for its defense of the public interest. It could well be adopted in Alaska.

Those of us in Anchorage who have struggled with this situation for many months are very hopeful that you will work toward making these provisions a part of a new P.S.C. Bill.

Respectfully yours,

John Mlakar
Denali Fuel Company
Anchorage, Alaska

Attachment

NORTH CAROLINA CODE

Sec. 62-140

(a) No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service. The Commission may determine any questions of fact arising under this section.

(b) The Commission shall make reasonable and just rules and regulations.

(1) To prevent discrimination in the rates or services of public utilities.

(2) To prevent the giving, paying or receiving of any rebate or bonus, directly or indirectly, or misleading or deceiving the public in any manner as to rates charged for the services of public utilities.

(c) No public utility shall offer or pay any compensation or consideration or furnish any equipment to secure the installation or adoption of the use of such utility service except upon filing of a schedule of such compensation or consideration or equipment to be furnished and approval thereof by the Commission, and offering such compensation, consideration or equipment to all persons within the same classification using or applying for such public utility service; provided, in considering the reasonableness of any such schedule filed by a public utility the Commission shall consider, among other things, evidence of consideration or compensation paid by any competitor, regulated or non-regulated, of the public utility to secure the installation or adoption of the use of such competitors service.

Sec. 42.05.171(b). 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 an interested party may be entered by the commission without giving opportunity to be heard, including, if requested by the public utility or any interested party, a public oral hearing.

Sec. 42.05.171(c). DECISIONS. The commission shall make reports in writing on all proceedings under this chapter in which hearings are held. Each report shall state the commission's findings, the basis for the findings, and conclusions together with its decision and order. All reports shall be entered of record and copies shall be furnished to all the parties to the proceedings.

Sec. 42.05.431(c). AUDIT OF ACCOUNTS. An audit made by a certified public accountant, or by a person approved by the commission, shall be accepted by the commission as prima facie correct. (§ 17 ch 199 SLA 1959)

Excerpts from U. S. Supreme Court Statements on Rate Making Value, 1909–1942

AB168

1909

Willcox v Consolidated Gas Co. 212 US 19:

There must be a fair return upon the reasonable value of the property at the time it is being used for the public. . . . And we concur with the court below in holding that the value of the property is to be determined as of the time when the inquiry is made regarding the rates. If the property, which legally enters into the consideration of the question of rates, has increased in value since it was acquired, the company is entitled to the benefit of such increase.

1913

Minnesota Rate Cases, 230 US 352, 33 S Ct 729:

The making of a just return for the use of the property involves the recognition of its fair value if it be more than its cost. The property is held in private ownership and it is that property, and not the original cost of it, of which the owner may not be deprived without due process of law.

1918

Denver v Denver Union Water Co. 246 US 178, PUR1918C 640:

What we have said establishes the propriety of estimating complainant's property on the basis of present market values as to land, and reproduction cost, less depreciation, as to structures.

1923

Bluefield Water Works & Improv. Co. v West Virginia Pub. Service Commission, 262 US 679, PUR1923D 11:

The record clearly shows that the commission in arriving at its final figure did not accord proper, if any, weight to the greatly enhanced costs of construction in 1920 over those prevailing about 1915 and before the war, as established by uncontradicted evidence; and the company's detailed estimated cost of reproduction new, less depreciation, at 1920 prices, appears to have been wholly disregarded. This was erroneous.

Missouri ex rel. Southwestern Bell Teleph. Co. v Missouri Pub. Service Commission, 262 US 276, PUR1923C 193:

It is impossible to ascertain what will amount to a fair return upon properties devoted to public service without giving consideration to the cost of labor, supplies, etc., at the time the investigation is made. An honest and intelligent forecast of probable future values made upon a view of all the relevant circumstances is essential. If the highly important element of present costs is wholly disregarded such a forecast becomes impossible. Estimates for tomorrow ignore prices of today.

1926

McCardle v Indianapolis Water Co. 272 US 400, PUR1927A 15:

But in determining present value, consideration must be given to prices and wages prevailing at the time of the investigation; and, in the light of all the circumstances, there must be an honest and intelligent forecast as to probable price and wage levels during a reasonable period in the immediate future. In every confiscation case, the future as well as the present must be regarded. It must be determined whether the rates complained of are yielding and will yield, over and above the amounts required to pay taxes and proper operating charges, a sum sufficient to constitute just compensation for the use of the property employed to furnish the service; that is, a reasonable rate of return on the value of the property at the time of the investigation and for a reasonable time in the immediate future.

1929

St. Louis & O'Fallon R. Co. v United States, 279 US 461, PUR1929C 161:

The question on which the [Interstate Commerce] Commission divided is this: When seeking to ascertain the value of railroad property for recapture purposes, must it give consideration to current, or reproduction, costs? The weight to be accorded thereto is not the matter before us. No doubt there are some, perhaps many, railroads the ultimate value of which should be placed far below the sum necessary for reproduction. But Congress has directed that values shall be fixed upon a consideration of present costs along with all other pertinent facts; and this mandate must be obeyed.

1930

United R. & Electric Co. v West, 280 US 234, PUR1930A 225:

The allowance for annual depreciation made by the commission was based upon cost. The court of appeals held that this was erroneous and

that it should have been based upon present value. The court's view of the matter was plainly right. OVERRULED BY HOPE CASE 1944.

1933

Los Angeles Gas & E. Co. v California R. Commission, 289 US 287, PUR1933C 229:

We approach the decision of the particular questions thus presented in the light of the general principles this court has frequently declared. We have emphasized the distinctive function of the court. We do not sit as a board of revision, but to enforce constitutional rights. . . . The legislative discretion implied in the rate-making power necessarily extends to the entire legislative process, embracing the method used in reaching the legislative determination as well as that determination itself. We are not concerned with either, so long as constitutional limitations are not transgressed. When the legislative method is disclosed, it may have a definite bearing upon the validity of the result reached, but the judicial function does not go beyond the decision of the constitutional question. That question is whether the rates as fixed are confiscatory.

1935

West v Chesapeake & P. Teleph. Co. 295 US 662, 8 PUR NS 433:

When the property itself is taken by the exertion of the power of eminent domain, just compensation is its value at the time of the taking. So, where by legislation prescribing rates or charges the use of the property is taken, just compensation assured by these constitutional provisions is a reasonable rate of return upon that value. To an extent value must be a matter of sound judgment, involving fact data. To substitute for such factors as historical cost and cost of reproduction, a "translator" of dollar value obtained by the use of price trend indices, serves only to confuse the problem and to increase its difficulty, and may well lead to results anything but accurate and fair. . . .

We agree, therefore, with the view of the district court, that the method was inapt and improper, is not calculated to obtain a fair or accurate result, and should not be employed in the valuation of utility plants for rate-making purposes.

1942

Federal Power Commission v Natural Gas Pipeline Co. of America, 315 US 575, 42 PUR NS 129:

The Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances. Once a fair hearing has been given, proper findings made, and other statutory requirements satisfied, the courts cannot intervene in the absence of a clear showing that the limits of due process have been overstepped. If the commission's order, as applied to the facts before it and viewed in its entirety, produces no arbitrary result, our inquiry is at an end.

raised whether the conventional case-by-case approach of conventional utility rate making based on production cost was a practical or equitable approach. He criticized the "end use" theory of the majority opinion (which stressed results rather than formula used to attain it) as a form of reasoning based on the end justifying the means. He said that the prudent investment theory of the rate-making approach in the majority opinion, while meritorious in usual utility rate cases, "has no rational application when there is no such relationship between investment and capacity to serve." He viewed gas as a commodity, similar to coal, a wasting asset available at a market price. Many of the difficulties foreseen by Justice Jackson in attempting to apply utility rate case methods to gas production proved prophetic in the subsequent experience of the Federal Power Commission, as witnessed in the Phillips Petroleum Company decision, post p. 562.

Present Status of Fair Value Rule

Some economic authorities looked upon the Hope decision as signalling the end of the "fair return on fair value rule" followed since Smyth v Ames. Thus, Professor James Bonbright said, in 1948, that the rule had ceased to be the "law of the land," although conceding that it might still be followed by those states wishing to do so (38 *American Economic Review*, Supplement 455).

Nearly a decade later, Joslin and Miller were noting that the "weary old formula" was still "the dominant concept in rate regulation" ("Public Utility Rate Regulation: A Reexamination," G. Stanley Joslin and Arthur S. Miller (1957) 43 *Virginia Law Review* 1027, 1049).

Two decades later, the death knell forecasts for the "fair return on fair value" rule still seemed very much premature, notwithstanding attempts of several commissions to follow a "revenue requirements" approach rather than a direct return on a physical rate base. See "Utility Regulatory Climate in Florida," Lewis W. Petteway, 54 Public Utilities Fortnightly 563 (October 28, 1954).

Cost of capital and comparable earnings techniques as means for determining rate of return on equity have been discussed by several leading economists in the field: "*Principles of Public Utility Rates*" (Chapter XV) by James C. Bonbright (1961) Columbia University Press; "*Economics of Regulation*" (Chapter IX) Charles F. Phillips, Jr. (1965), Irwin Press, Homewood, Illinois; "*Public Utility Economics*"

(Chapter IX) by Paul J. Garfield and Wallace F. Lovejoy (1964) Prentice-Hall, Inc. According to Harold Leventhal (since made judge of the U. S. circuit court of appeals, District of Columbia) "The role of rate of return was elevated from that of a featured player to that of star." Quoted in "Vitality of the Comparable Earnings Standard for Regulation of Utilities in a Growth Economy" 75 *Yale Law Journal* 989, 990 (1965).

As of mid-1967, thirty-four state commissions followed either the original cost formula or the closely allied net investment or so-called "Prudent investment" method of determining rate valuation. These include Alabama, Alaska, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Idaho, Kansas, Louisiana, Maine, Massachusetts, Michigan, Mississippi, Nevada, New Hampshire, New Jersey, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, and Wyoming.

Sixteen states, including several of the largest, still make use of valuation factors; such as, reproduction cost, "current replacement," and other concepts associated with present fair value. But some of these combine the present fair value determination with original cost, getting a compromise or judgment figure for the rate base. In fact, only in Ohio is reproduction cost a sole consideration. Other states in this category include: Arizona, Delaware, Illinois, Indiana, Kentucky, Maryland, Minnesota (jurisdiction limited), Missouri (which also uses original cost as an alternative check), Montana, Nebraska, New Mexico, North Carolina, Pennsylvania, and Texas (regulation by municipalities). In New York, two different statutes require different treatment of telephone and transit utilities (present fair value) as compared with gas and electric utilities (original cost). In Iowa, a recently created regulatory commission had not yet become committed, although previously "present fair value" was used by court decree.

RATE OF RETURN CONSIDERATIONS GENERALLY

In the recent proceeding on an increased wholesale rate of Pan Handle Eastern Pipe Line Company:

> The commission said that many variables should be taken into account in setting the proper rate of return, and that its responsibility to fix just and reasonable rates could not be fulfilled so far as rate of return is concerned simply by applying ready-made formulae. It pointed out that no two pipelines are alike in their operations, and capital structure, but these things have a bearing on the rate of return that should be allowed. Similarly, it said return allowance is influenced by an assessment of general financial business and economic conditions, and an appraisal of the relative risks with which investors view the pipeline industry. Finally, the financial needs of the company and its investors must be weighed in the light of the commission's responsibility under the Natural Gas Act to assure consumers a continuing supply of gas at the lowest reasonable rates. Consequently, the commission rejected the idea that a return allowance can be fixed simply by an arithmetical calculation. It said that it is nevertheless helpful to consider separately debt, preferred stock, and common equity, prior to consideration of the overall return.

The indented quotation is from "Public Utilities Fortnightly," December 19, 1968.

Even today, however, the so-called "fair-value" rule of rate making has not yet suffered its oft-anticipated complete demise. Indeed, in several jurisdictions it has been restored to some measure of its earlier vigor by the action of a commission, a court, or a legislature. But one would be naive in assuming that the partial restoration has been based on any conversion of influential political interests to a reproduction-cost or present-value theory of rate making as distinct from an actual-cost theory. Almost certainly, the revival of the fair-value doctrine has been based on another consideration: namely, on the failure of the actual-cost standard, in its traditional version, to make any direct allowance for the serious, continuing price inflation. Rightly or wrongly, many fair-minded people have regarded this failure as grossly unfair to public utility stockholders, on the ground that it measures the stockholder investment in terms of dollars that have lost their former significance.

Adoption of a fair-value measure of the rate base has been seen as the most expedient way by which to make amends for this failure. For this purpose "fair value" is not identified with a reproduction-cost rate base, since such a rate base would often confer upon the common stockholders enhancements in the dollar values of their equity securities far in excess of any increases in general price levels or in current "costs of living." But in line with traditions followed at times (though rejected at other times) by the Supreme Court, "fair value" has been interpreted to mean a rate base which, while derived in large measure from actual costs, gives some "equitable consideration" to estimates of depreciated replacement cost. And in this way, what goes under the name of the "fair-value" rule can really be turned into a liberalized version of the actual-cost rule, the liberalization taking the form of some equitable upward adjustment in the rate base as an offset to price inflation.

(The above quotation is from "Principles of Public Utility Rates" - James C. Bonbright, Chapter XII "The Rate Base: Actual Cost", pages 190, 191)

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

RATE CASES RELATED TO FAIR VALUE

ILLINOIS Re Northern Ill. Water Corp. (1959) 26 PUR 3d 497

The commission, in arriving at a fair value rate base, must use reasonable judgment in determining the weight to be given reproduction cost, original cost, depreciation, book cost, work in progress, materials and supplies and cash working capital.

Re General Telephone Co. of Illinois (1959) 29 PUR 3d 369

Fair value is not original cost depreciated, nor is it reproduction cost depreciated, nor is it a matter of formulas, but it is rather a matter of reasonable judgment based upon the consideration of all relevant facts.

(1964) 56 PUR 3d 66

DELAWARE Re Wilmington Suburban Water Corp. (1962) 47 PUR 3d 175

In determining a fair value rate base, the commission must give weight to original cost depreciated and reproduction cost depreciated.

MONTANA Re Little Chicago Water Co. (1962) 46 PUR 3d 300

In fixing a fair value rate base, the commission should consider reproduction new less depreciation, assessment values, original cost, prudent investment, and certain public records.

NEW MEXICO Re Moyston (Hobbs Gas Co.) (1963) 48 PUR 3d 459

A fair value rate base for a gas utility was computed on the basis of the average of original cost and reproduction cost.

OHIO Re Cleveland Electric Illum. Co. (1963) 47 PUR 3d 44

A fair rate of return is a figure which must be determined under Ohio law on the reproduction cost new less depreciation rate base.

TEXAS Re Houston Nat. Gas Corp. (1963) 52 PUR 3d 244

The commission, in fixing rates, must determine a reasonable balance between original cost less book depreciation and replacement cost new less an adjustment for present age and condition, and in doing so it must use its own judgment and discretion.

PENNSYLVANIA Re Penn. Pub. Utility Commission v. Columbia Gas of Penn., Inc. (1965) 60 PUR 3d 385

Trended original cost figures were accepted for rate base purposes where a comparison of the 5-year average trended original cost study with actual construction experience of 10.1 per cent of the total footage of mains pointed up the reasonableness of the 5-year estimates.

ILLINOIS Commerce Commission v. Peoples Gas, Light & Coke Co. (1953) 99 PUR NS 361

The Commission, in determining present fair value for rate making, is required to consider current economic conditions, price levels, reproduction cost, and original cost as well as the cost of improvements and the probable earning capacity of the property under prescribed rates.

NORTH CAROLINA Re Piedmont Nat. Gas Co. (1961) 40 PUR 3d 62

Upon evidence of average net original cost of a gas company's properties of $17 million, net property value at the end of the period of $19,600,000, and trended original cost of $31,500,000, and considering that no evidence of reconstruction new cost or present-day values by visual appraisal was offered, the commission fixed a fair value rate base of $20,300,000.

Re Nantahala Power & Light Co. (1963) 51 PUR 3d 96

The commission, in establishing a fair value rate base, considered all the evidence offered relating thereto, including, but not limited to, trended cost, reproduction cost new, original cost, average net investment, allocated cost, actual investment, normal depreciated value, and accelerated depreciation value.

ALABAMA Re Southern Bell Teleph. & Telegr. Co. (1963) 47 PUR 3d 77

A reasonable value rate base was determined for a telephone company by giving one-third weight to original cost depreciated, one-third weight to reproduction cost depreciated, and one-third weight to invested capital.

INDIANA Re Indiana Bell Teleph. Co. (1950) 85 PUR NS 129

The commission, indetermining the fair value of utility property, must give consideration to all bases of valuation which may be presented and to the reasonable cost of bringing the property to its present state of efficiency.

MISSOURI Missouri ex rel. Dyer v. Missouri P.S.C. (1960) 37 PUR 3d 507

The commission did not act arbitrarily or unreasonably in fixing a rate base calculated upon the fair value of utility properties (an amount between net original cost and net reproduction cost).

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Public Utilities FORTNIGHTLY

Regulators Have Problems

A plethora of controversial issues continues to confront public utilities: safety and reliability, promotional practices, profit incentives, rate base and rate of return, a high money market. These, of course, are merely illustrative, not a comprehensive list. If the utilities are concerned, so too are their regulators. A leading state commissioner here gives his views on these and other problems with which both management and regulation must deal.

By The Honorable JAMES W. KARBER
PRESIDENT, NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

REGULATION of rates of utilities of all kinds—gas, electric, telephone, water, sewer, and transportation—has long been a matter of major concern both to the utilities affected and their customers, and to the general public. While there are many who quarrel with specific regulatory actions, I think it is safe to say that there are few who believe the utilities, their customers, and the public would be better off without regulation of any kind.

Any regulatory agency, be it federal or state, must at all times keep in mind that it has a responsibility not only to the general public and to the customers of utilities, but — because of these — to the utilities as well. If utilities are required by regulatory agencies to maintain rates that are not fully compensatory or that do not provide a fair rate of return, in my opinion, the agency or commission is doing the general public and the utility customers a disservice as great, in fact, as it would if it permitted the utility to maintain rates that provided a higher rate of return than could reasonably be justified.

IN other words, a regulatory agency must maintain a balance. The ideal rate should be one that would deliver the best possible gas, electricity, telephone, water, sewer, or transportation services to the general public at the lowest possible cost and still yield a rate of return to the utility high enough to enable the utility to obtain additional capital at reasonable costs. For this is mandatory if the utility is to provide modern equipment, improve its methods of production, and provide its investors with a reasonable return on their investment. When the commission permits an adequate return, it provides to the utility the wherewithal for research and development and for capital expenditures. The utility, in turn, obtains the means of achieving more efficient and less costly production with the end result that it will provide the most efficient service at the lowest rate to its customers.

Much of any commission's work is done continuously through intimate knowledge and surveillance of the utilities it regulates with informal action through negotiation much more frequently than formal action through rate cases. But the same

ground rules apply and these are most easily stated in terms of the formal rate case.

Rate Determination

How should regulatory agencies proceed to determine what rates are the best for the utilities, their customers, and the general public? It would be ideal if all of the agencies, state and federal, could follow the same guidelines in any rate case and have the same rules and regulations. Although during the passing of years there has been an increasing uniformity in the treatment of utility rates among regulatory agencies, there still, of course, is not complete uniformity.

However, in considering the propriety of earnings levels, the first requisite, I believe, is that the various regulatory agencies give appropriate consideration to the effects of past and currently renewing inflation either in the rate base or rate of return. In Illinois, for example, we are required to do so by developing a fair value rate base. This involves many questions like the following:

What is the original cost of the property?

What is the original cost depreciated?

What is the reproduction cost new and depreciated and how was it determined? What is the per cent condition that should be applied?

What is the weight that should be given to original cost depreciated and to reproduction cost new depreciated in determining fair value?

What consideration should be given to property under construction but not put into the working plant accounts on the books of the company?

What consideration should be given to property used and useful in the operations of the company and to contributions in aid of construction?

All of these factors enter into the determination of the fair value on which a rate of return must be based.

Fixing the Rate Base

Original cost of the property of any utility that keeps its books in accordance with the accounting rules and regulations of a commission should be easily determined as should be the depreciation accrued thereon. Reproduction cost new, however, cannot be determined with absolute finality. The method of trending prices has often been used to determine reproduction cost new. This is a theoretical method that employs appropriate tables. A more accurate but expensive and time-consuming method, the "unit cost" method, prices an inventory of plant units of the various types at current costs.

Both methods, however, run into difficulty when it comes to determining the reproduction cost new of property that is no longer manufactured. There is, of course, really no point in determining the reproduction cost new of property that cannot be replaced. Consequently, under these circumstances it seems proper either to determine the present-day cost of some given equipment that would be an adequate replacement, or to accept a trended value of the original cost.

Determination of the useful condition of the various plant units is also a difficult problem. This is a question of judging the degree of obsolescence of any given property; i.e., its per cent operating condition. In my opinion, the per cent condition can be adequately determined only through the physical inspection of the property by qualified engineers.

It is also necessary in any computation of either original cost or reproduction cost new of a utility's property to separate the property that is used and useful in the operations of the company from property that is not useful or that has no use in the immediate future.

Having determined the basic factors that comprise fair value, it is necessary for the regulatory agency to decide the weights to be given to

The Honorable James W. Karber is chairman of the Illinois Commerce Commission. Chairman Karber is a graduate of the University of Illinois, AB ('34) and LLB ('36). He was appointed to the commission in 1961 and in that same year moved up to the position of chairman. He is also currently serving as the president of the National Association of Regulatory Utility Commissioners.

original cost depreciated and reproduction cost new depreciated. No fixed formula has been found that can be applied for such a weighting. It thus becomes a judgment factor for any commission to consider the relative age of the property, the per cent increase to original cost of reproduction cost new, the per cent condition of the property, the degree of obsolescence, the condition of the economy, and the probable future trend of costs of materials and labor. There are no set percentages that can be assigned in the weighting of original cost depreciated and reproduction cost new depreciated. Rather, this must be determined on its own merits in each particular proceeding.

Fair value of the plant accounts, of course, does not comprise the entire rate base. To determine the full rate base there must be added to fair value, working capital, including a sufficient amount of cash to meet the needs of the utility (after considering the cash made available through unpaid taxes), materials and supplies, property under construction (to the extent that "interest during construction" is short of a full return), and contributions in aid of construction. Although there has been much discussion pro and con, I think there should be deducted from the base all contributions in aid of construction made by other than the utility or its stockholders that the utility is not obligated to refund.

Considering Expenses

In any rate proceedings, after determining a rate base, it is necessary to determine the per cent of return a given utility is earning on its rate base under the rates in effect at the time of any proposed change in rates. For this purpose a determination must be made of the current income and expenses resulting from the so-called "above the line" operations of the utility. An analysis of income for any given so-called "test year" presents no great problem, for it is relatively simple to determine the income derived from property devoted to utility operation and to eliminate nonoperating income.

In considering allowable expenses, however, questions arise as to the proper treatment of the deferred federal income taxes resulting from accelerated depreciation; that is, whether the "flow through" method or the "normalization" method should be used. Also, the unamortized portion of the investment credit is of concern, and so is the question of charitable contributions — should they be allowed as deductions?

The Federal Power Commission and the state commissions themselves have differed in the handling of taxes. At the present time, the Federal Power Commission seems to have adopted the so-called "flow through" method. In the state of Illinois, however, we have considered it reasonable to normalize these tax items and to allow reasonable contributions to charity, but we deduct from the rate base the unamortized investment credit.

Rates are made for the future and, accordingly, operating expenses, in my opinion, must be adjusted to reflect as much as possible all known changes that have occurred during any so-called test year. They must also be adjusted for any changes that it is *known* will occur in the immediate future, such as wages or tax increases, changes in expense from putting new equipment into operation, and changes in the cost of fuel or materials used for maintenance. In some instances, we have adjusted for increases both in operating revenues because of a natural increasing trend in the sale of the utility's product and in expenses because of a period of inflation. These latter two decisions, however, are made only after deep study and serious consideration.

In some instances, utilities have prepared their operating expenses on the basis of forecasts; e.g., an "estimated year." In allowing for an increase in revenue or an increase in expenses because of natural growth, we have in a way used an estimated year. However, the adjustment of actual past operating results for known changes is quite different from forecasting future results. I believe a regulatory agency is not justified in adjusting either operating income or operating expenses, except for known changes that have occurred or that it is known, with a degree of certainty, will occur.

Needless to say, operating revenues of a utility should be adjusted to annualize all rate changes that have occurred during the test year or that are *known* will occur thereafter. Wage and tax changes which have occurred during the year or are known to be impending are other items which it is appropriate to annualize.

Rate of Return

THUS far, fair value, a rate base, and an adjusted income account of a utility for a test year have been determined and we must now apply a rate of return. The current rate of return of a utility is simply a matter of division. How then does a regulatory agency determine the reasonableness of such a rate of return? How does it evaluate the present-day cost of capital, the capital structure of the utility, the impact of the rate of return of companies in other fields, and the rate of return necessary to permit the utility to compete for capital successfully with other industries?

In order to conclude what rate of return a given utility should be allowed to earn, regulators of utilities must constantly reappraise their policies in view of currently changing economic conditions. What might have been a reasonable and fair rate of return yesterday obviously may not be a fair rate of return today. Nor is a rate of return susceptible to precise determination. The Supreme Court of the United States said in the Bluefield case, "A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time in the same general parts of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties . . ."[1] It is no mean problem, however, to determine just what businesses do have corresponding risks and uncertainties.

The actual capitalization of the utility is a factor in determining a rate of return. I can find no ideal capitalization ratios. Reasonable capitalization figures may well vary with the industry and company under review and there is no set combination of debt, preferred stock, and common equity which is universally appropriate. In a number of instances, in attempting to justify a rate of return, utilities have used a so-called ideal capitalization rather than their current capitalization. I do not think, however, that a utility is entitled in determining a rate of return to do other than use its capitalization as it exists or as it may be in the foreseeable future.

[1] Bluefield Water Works & Improv. Co. v West Virginia Pub. Service Commission, 262 US 679, PUR1923D 11, 20.

Cost of Money

THE cost of capital is an important factor in determining a rate of return and it is important that this phase be carefully developed. But the regulator's problem goes much further. In addition to determining the cost of capital, he must

Appraise the rate of return earned by comparable industries, with due regard for differences in risk.

Make a judgment as to what rate of return is required to bring the most service to utility users at the lowest rates.

Make allowance for a reasonable profit above the confiscatory level in the rate of return.

Keep at least one eye fixed on the competitive sources of energy, gas, and communications.

Above all, the rate of return must be sufficient to permit the utility to earn the money it needs to continue to research and provide new and better technologies with a resultant decrease in the costs of operation and a greater service to the utility's users — sufficient, in short, to stimulate management through profit incentives for better performance to the consumer benefit.

The Rate Case

IT is the duty of the utility in any rate proceeding to present competent and qualified witnesses and complete and thorough testimony and evidence. The burden of proof is upon the utility and no utility should appear before a regulatory agency in a rate proceeding without first having prepared all of its exhibits as to original cost and reproduction cost (both gross and depreciated), income and expense, rate of return, and all of the other factors that go into the making of a rate case.

On the other hand, it is the duty of the commission to provide a full and fair hearing; to require any interveners in the case to supply full and complete evidence to sustain their positions; and to provide a staff that is experienced, capable, and competent so that it may properly analyze all of the testimony and evidence submitted in the case and in turn introduce competent witnesses, testimony, and evidence upon all of which the commission may base its decision.

Commissioners cannot be expected to have the

time or, in some instances, the specialized knowledge to analyze thoroughly all of the important problems that arise in a rate case. That is why it is so important that every commission have at its disposal personnel that can supply the expertise necessary to supply the commission with facts and accurate data upon which it may base its conclusions.

Beyond the immediate case, commission regulation must be capable of formulating policies and plans which are applicable to present as well as future situations. There must be a constant review of all relevant factors and an overall policy for all utilities, with allowance for particular situations. Regulatory agencies must gear their thinking to the present space age and give up what now may be nonapplicable traditional thinking. The utility must have a rate of return that reflects the present buying power of money; that will permit financially sound and economic operations; that will stimulate management to maintain operational efficiency and introduce new and improved service; and that will give the most adequate and satisfactory service at the most reasonable rates—the primary goal of all regulatory agencies.

It should be remembered, however, that regulatory commissions cannot fix rates so as to guarantee a specific rate of return. Their function is to fix rates which will permit the utility to earn a reasonable rate of return by its own efforts under the economic conditions existing at the time the rates are set.

Promotional Practices and Allowances

ALTHOUGH the establishment of fair and reasonable rates and the issues that arise in connection therewith are major regulatory problems, there are other problems that contribute to the regulator's headache and for which solutions must be found. One of these is the use of promotional practices and allowances.

Until recently, cases concerning the legality and propriety of promotional practices and allowances usually involved complaints of the oil industry against local gas distributors and dealt with limited and specific promotional practices. Now, increasing competition between electric and gas companies has caused the issue to spread to many states throughout the country and to the federal government.

I believe that the Illinois Commerce Commission was the first to begin a general investigation of promotional practices. That investigation is continuing and we hope we can issue a final order before the end of this year. Now, general investigations are being made by other states and by agencies of the federal government.

PROMOTIONAL practices themselves are a matter of definition and the first problem of any regulatory agency is to define and determine just what it considers promotional practices to be. I would define promotional practices to include, but not necessarily to be limited to

1. Any payment by a public utility, its subsidiaries, or its agent (in cash, merchandise, or labor) donation, gift, subsidy, conveyance, transfer, or other consideration to any person, corporation, association, or group for the purpose or evident design of inducing the recipient to

a) Purchase or use the utility's service or to use additional service;
b) Purchase or install equipment, facilities, or appliances designed to use such utility service;
c) Specify the purchase or installation of equipment, facilities, or appliances designed to use such utility service.

2. Free (or less than cost) installation, operation, or maintenance of equipment, facilities, or appliances.
3. Free or less than cost service.
4. Free or less than cost nonutility professional service.
5. Payment of cash or other consideration to architects, builders, subdividers, developers, or others in the same category for work done on property not owned by the utility for the purpose of inducing the recipient to purchase or use the utility service or to use additional service.
6. Financing equipment, facilities, or appliances at less than cost.
7. Guaranties as to the maximum level of bills.
8. Financing assistance—the extension of credit, making of a loan or an investment, directly or indirectly to any person or corporation by any means whatsoever for the purpose or evident design of inducing said person or corporation to select or use the service (or additional service) of such public utility or to select or purchase equipment, facilities, or appliances designed to use such utility service, including, without limitation, loans, advances, guaranties, investments, leases, sale, and repurchase or sale and leaseback agreements, sales on open account, and conditional or instalment sales contracts.
9. Special discounts.
10. Trade-in allowances at greater than value.
11. Discounts or allowances for the purchase or service of air-conditioning or heating equipment, stoves, refrigerators, washing machines, dryers, or other appliances.
12. Installation of free wiring or piping.
13. Advertising or contributing to advertising on account of a customer or a potential user of the utility's service.
14. Replacement allowances for equipment, facilities, or appliances.
15. Free certificates or premiums offered for or with the purchase of equipment, facilities, or appliances.
16. Sales bonuses and allowances to dealers for the sale of equipment, facilities, or appliances.
17. Free heat correction programs.
18. Special rates for the installation of equipment facilities or appliances.

THERE are those who believe that promotional practices should be entirely a matter for control by the utilities themselves and I would agree that ideally this would occur. But the fact of the matter is that too frequently competing utilities have tried to outrival each other in promotional offers to the detriment of those users who are not in position to share the favors. Under these circumstances, it is the duty of the regulator to see that promotional practices are beneficial both to the utility and the customer, are uniformly applied, and comply with federal and state laws.

During the early course of the investigation in Illinois, the commission concluded that certain promotional practices and allowances should be prohibited. Consequently, on July 12, 1967, the commission issued an interim order [2] prohibiting electric and gas utilities from

1. Making any loans, guarantee of loans or grants to any corporation, group, or individual for building construction; or engaging, in any way, in the investment in or financing of any nonutility property;
2. Making any promotional allowance to any corporation, group, or individual for any promotional, advertising, or publicity purpose of any of said corporation, group, or individual;
3. Making any payment, or extending any other consideration, to architects, engineers, builders, subdividers, or others for work done on property not owned by said electric or gas utility and/or its subsidiary or affiliated companies;
4. Purchasing or acquiring for the purpose of leasing or renting to others, or making loans to others for the purchase of, any electric or gas equipment, appliances, or facilities, the cost of which exceeds $1,000 for each specific location without first having obtained the approval of this commission.

[2] Re Promotional Practices of Electric and Gas Utilities (Ill 1967) 69 PUR3d 317.

The commission also ordered that promotional practices and allowances should be available on a uniform basis and should not be unlawfully discriminatory.

THE final decision and order of the Illinois commission in any individual case will be determined by the answers to the following questions:

1. Are the promotional practices and allowances economically feasible?
2. Are they to the best interest of the utility, its customers, and the public?
3. Are they uniformly granted?
4. Do they violate any federal or state anti-trust laws?
5. Are they unlawfully discriminatory?

The Issue of Safety

BECAUSE of the current emphasis placed on pipeline safety by the Congress of the United States, safety has been pushed to the forefront in Illinois, as well as other states as an important regulatory problem. Last February 27th, I testified before a House Committee on Interstate and Foreign Commerce with respect to the National Association of Regulatory Utility Commissioners' position on pending gas safety legislation. Under SB 1166, the Department of Transportation will be given authority to establish minimum safety standards for the construction, operation, and maintenance of all gas systems in the United States. The Senate bill, as passed by that body, will permit the states to continue supervision of pipeline safety, provided the state agencies will enter into an agreement with the Department of Transportation to carry out the minimum safety requirements of the federal law. Final control, however, will rest with the Department of Transportation.

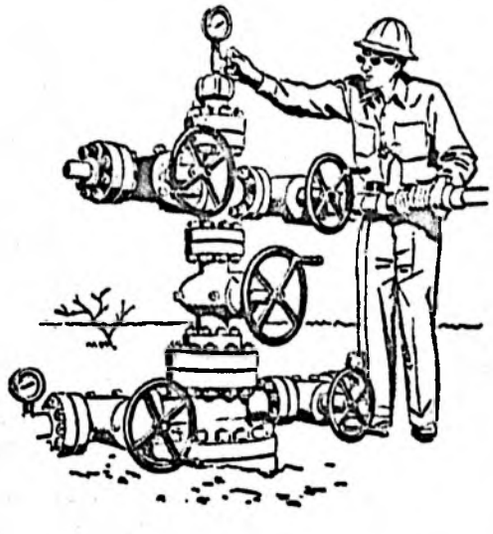
If you were to listen to the proponents of the federal safety bills you might draw the conclusion that regulation of safety was something new. This is not the case, however, because when many of the public utility laws across the land were first passed, such laws provided for general supervision of safety. In our own case, the Illinois Commerce Commission or its predecessors have had jurisdiction of safety since at least 1914. The Illinois commission has carried out its responsibility of assuring public safety in a number of ways. First, before a public utility can expand its service into a new area, the utility must obtain a certificate of public convenience and necessity from the commission. A part of the evidence deemed necessary in such certificate cases is the construction, operation, and maintenance specifications for the mains. Secondly, the commission's investigation of accidents, review of accident reports, inspection of pipelines, investigation of complaints, analyses of depreciation, and analyses of per cent of new physical condition during rate proceedings, keeps the commission and its staff advised as to the degree of maintenance and safety of the gas utility system operating in Illinois.

THIRDLY, the commission used the ASA (now referred to as USASI) B31.8 Code for Pressure Piping as its guide in construction and safety matters long before the commission officially adopted a mandatory version of this code as our General Order 192. We adopted General Order 192 last year to indicate to Congress that Illinois was supervising safety.

In carrying out our supervision of safety, only once in the last ten years have we found it necessary to suggest to a utility that a certain line was dangerous and should be removed from service. On a few occasions the staff has found that a degree of inspection on construction jobs to be too lax and the systems were not being installed in as good a condition as they could have been. But, these things are all history.

With respect to the future, the commission's action will be determined by what Congress decides with respect to safety legislation. If the vote by the Senate is an indication of what may happen, we will have some form of federal regulation.

In anticipation of the future, the NARUC Com-



ing price levels and is unrealistic and erroneous. Current cost accruals do not represent amounts expended for the rendition of service and should not be included in rates. Such depreciation would necessitate conjectural variations in the annual accrual. It would compel an involuntary contribution of capital by the ratepayers and require them to pay a return on capital contributed by them, resulting in an unwarranted profit to the utility. Ratepayers would sustain alone the impact of inflation.

In any event, said the commission, current cost depreciation is based upon a fiction since property taken out of service is not replaced in kind but by other and different property (34 PUR3d 257).

On appeal of this decision to the Kansas supreme court, the commission argued that the depreciation expense allowance is not intended to provide a surplus for replacing the original assets upon their retirement. The company argued that it sought only to recover through depreciation the value of its plant as it is consumed in the furnishing of service, in order that the integrity of the plant may be preserved. It said it could not do this by basing depreciation expense on plant investment made at preinflation price levels.

The purpose of annual depreciation, said the court, is to return to the investors the amount of their investment in the original plant. It is not intended to return the cost of reproducing a new plant when the old one is worn out. If the construction of a new plant requires additional capital, a fair rate of return will be allowed on the additional cost (51 PUR3d 113).

Present Customers Not to Be Burdened for Future Costs

The Wyoming commission allowed depreciation expense based on original cost of plant and denied any additional allowance to reflect current price levels. The company contended that when the original investment is returned through depreciation charges measured in current dollars, the stockholders are not recovering the full amount thereof. It asked for an additional allowance, to be set up as a capital reserve, prorated between debt and equity capital. It claimed a return on the portion allocated to common equity.

Any such additional allowance, said the commission, quoting from a Michigan commission decision (22 PUR3d 369), would involve an involuntary contribution of capital by the customers. Present customers who pay the legitimate costs of present service cannot be expected to pay additional sums which may be needed to provide plant to serve future customers. This is the responsibility of the investors. Moreover, the commission declared, to allow the company to create the proposed capital reserve and earn a return on it would require the customers to pay a return on capital contributed by them (23 PUR3d 68).

The Hawaii commission refused to authorize earnings at such a level as to accrue a depreciation fund to meet an anticipated higher equipment replacement cost than the actual cost of the equipment. Only the return of actual dollars in existing equipment is allowed. To grant an additional allowance, said the commission, would call for higher rates today for a future service and, in effect, would seek a return on capital paid in through these very rates in the future. Even if such a present-day extra burden in expenses were justified, the commission pointed out, it would be limited to the present worth of the future incremental higher replacement cost (40 PUR3d 140).

The District of Columbia commission observed that original cost is the conventional depreciation base approved by the weight of authority. Depreciation in theory, it pointed out, is unrelated to replacement because depreciation

occurs whether or not the property is replaced. It would be unfair to the company to deny any depreciation expense simply because the company did not propose to replace the depreciating property. If a replacement cost basis were used and prices were rising, consumers would become involuntary investors though with no right to a return on their investment. What is even worse, they would thereafter be required to provide a fair return and depreciation allowance on capital which they themselves had contributed. Original cost, the commission held, is just and equitable for both investors and consumers (38 PUR3d 19).

The Virginia commission indicated that depreciation expense should be based on original cost and not on reproduction cost, because it would be unjust to make present consumers pay for new plant to be consumed by a future generation of consumers (19 PUR3d 1).

Rate of Return Provides for Inflation

A company before the Alaska commission argued for depreciation expense based on fair value. The commission found that this would be inequitable. Fair value, it explained, may be more or less than original cost. If fair value is set at less than cost, the investor is penalized by depreciation expense based on that value because he would not recover his cost. This would amount to confiscation. On the other hand, if fair value is set at more than cost and depreciation is based on that figure, the investor would recover more than his cost under the guise of depreciation expense, with a consequent understatement of the rate of return. The commission indicated that the rate of return is the proper place to make adjustments for inflation or attrition if any are required (62 PUR3d 113).

Cost Basis Recognized but Extra Accrual Suggested

The cost of an asset of a public utility is a prepaid operating expense to be apportioned as depreciation over the years of its life by some more or less systematic procedure, the Ohio supreme court declared. It is cost, not a higher or lower value, that is to be so apportioned whether value for rate-making purposes is determined on a reproduction cost new basis or otherwise. Thus, the court saw no occasion for any "hypothetical depreciation" allowance, as suggested by the company here concerned.

The court recognized, on the other hand, that where costs have risen, the depreciation charged on a cost basis will not be sufficient to replace an asset when it is used up. Theoretically, such depreciation should at that time have provided an amount sufficient to replace the used-up asset. The court indicated that where reproduction cost new less depreciation is higher than the book depreciated cost of an asset, some amount for annual depreciation probably should be allowed in addition to the annual depreciation expense. Probably for this reason, it was noted, an Ohio statute provides for "making reservations from the income for surplus, depreciation, and contingencies." In the instant case, however, it appeared that dividend requirements on the company's common stock were only 5 per cent while 7 per cent was allowed on the common equity. It was intimated that the extra 2 per cent might provide for any additional depreciation requirement (45 PUR3d 1).

Right to Restoration of Capital Recognized

The Iowa supreme court said the allowance for depreciation expense should be based on present value rather than original cost. Logic, the court pointed out, requires that the valuation for depreciation be consistent with the rate

base, which was fair value in this case. It would do the utility company no good to set rates on a fair present value base if that base is then to be ignored and its value annually eroded away by the denial of an adequate depreciation expense allowance. The company's right properly considered, the court declared, should be the right to restoration of its invested capital (20 PUR3d 159). The court followed this decision in a 1964 case in which it indicated that it would be inequitable to refuse to permit a company to recover fair value over the remaining service life of its property (54 PUR3d 464).

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

HB/CB

Jackson

CITY OF NOME STATEMENT IN OPPOSITION TO THE PASSAGE OF ANY PUBLIC SERVICE COMMISSION LEGISLATION THAT WOULD REGULATE OUR PUBLIC UTILITY SYSTEM.

Senate Commerce Committee
Mr. Chairman, Legislators:

We do not feel that there is any need for any legislation to regulate our utilities for the following reasons:

1. We are from a remote area where communication is difficult and expensive.

2. We do not have any utility problems that we cannot resolve on our own. Our utilities are protected by city ordinance against competition from within the city or outside of our city.

In 1954 the City of Nome purchased a privately owned power system paying two prices for it. At that time power was sold at a consumer cost of 15¢ per KWH down to 10¢ per KWH. Since that time we have built a new system, increased the voltage, increased load capacity capability, consequently resulting in improved service. Consumption has steadily increased, costs have steadily increased. Yet our rate has decreased to 10¢ and 7¢ per KWH over this 15-year period.

Democracy works best where we have strong local home rule governments, be it a village, a city, a county, or a borough.

The Public Service Commission legislation infringes on our local home rule government prerogatives and responsibilities. This would weaken local government.

In areas where problems do exist that cannot be resolved between factions, i.e. Chugach Electric and the City of Anchorage, we suggest legislation be prepared and enacted to resolve the problem, that specific problem.

While we are doing well with our utility we absolutely cannot afford the luxury of additional costs that we would obviously be confronted with as a result of Public Service Commission regulation. We have been told that PSC regulation will not cost us any money. Maybe it will not -- initially. But once PSC gets us in their grasp it is inevitable that costs will arise. You cannot prove otherwise. We have had ample experience with state government administering our affairs by remote control. When we need help we'll let you

know about it. In the meantime we are doing fine with our utility.

Respectfully submitted on behalf of the City of Nome, Alaska,

Stanley L. Sobocienski
Secretary
Nome Light & Power Utilities

Attested to:

Elmer C. Straub
Member
Nome Light & Power Utilities

Robert H. Renshaw
Member
Nome Common Council

HB186

CITY OF KETCHIKAN STATEMENT IN OPPOSITION TO THE PASSAGE OF SENATE BILL NUMBER 128

SENATE COMMERCE COMMITTEE

Submitted by Elmer B. Titus, Utilities Manager, on behalf of the City of Ketchikan, March 5, 1969

Mr. Chairman, Members of the Committee:

For the record, I am Elmer Titus, Manager of Ketchikan Public Utilities, City of Ketchikan, Alaska, representing the views of the City Council and the Advisory Board for Ketchikan Public Utilities.

The City of Ketchikan is opposed to the passage of Senate Bill 128, an act granting the Alaska Public Service Commission regulatory authority and jurisdiction over municipally-owned utilities.

Historically, public service commissions were created to provide for the regulation of utilities to protect the interest of the consumer-public from gouging and poor service from private utilities. The need for this type of protection for the public against privately-owned utilities is still apparent; however, since the consumer-public served by municipally-owned utilities is adequately protected by the regulation and control of locally elected government bodies, the need for such further regulation has not been demonstrated. Such regulation by the State of Alaska as proposed in SB 128, would, in our opinion, constitute an unnecessary interference in the management of cities affairs and create great additional expense in the operation of its utilities which could only result in higher rates for service to be paid by the consumer.

Article 10 of the State Constitution, Section 1, entitled "Purpose and Construction", was designed to allow local charter cities the maximum local control. Section Number 1 reads as follows:

> "The purpose of this article is to provide for maximum local self government with a minimum of local government units, and to prevent duplication of tax levying jurisdictions. A liberal construction shall be given to the powers of local government units."

The City Council of Ketchikan has been able to regulate and operate the municipally-owned utilities for a period of approximately 34 years and to provide to its people a good level of service at the lowest rates in Alaska, and at rates below the national average for residential electrical services. No private utility presently under the jurisdiction of the Public Service Commission in Alaska can match this performance.

It would appear that the present duties now imposed on the commissioners will

require as much time as the commissioners could reasonably be expected to give to their duties in view of the fact that the members will be paid $5,000 plus per diem and travel expenses. If the commission is further burdened with the duties set forth in S.B. 128 and are required to regulate power and light, telephone, telegraph, gas, oil, water and sewer throughout the state, such members will have to be placed on a full-time salary basis.

The proposed bill makes no provision for resolving conflicts which may occur between commission orders on the form of accounts and other records with requirements of federal agencies where licensing by such federal agency for hydro-electric projects carry with it certain record keeping and reporting requirements.

To regulate all the public utilities in Alaska, both private and municipally-owned, as required by this bill would be very costly. Thousands of dollars in additional expense would have to be borne by the consumers and tax payers of the State. In the absence of need for such regulation, particularly in the case of municipally-owned utilities, such expense cannot be justified at a time when the cities require every available dollar for their development and growth. Certainly the utilities of the City of Ketchikan cannot afford any additional expense to which it may be subjected if this bill is passed. In fact, with increased labor and material costs it has been a most difficult task in recent years to maintain a reasonable standard of service and carry debt service requirements without a general rate increase. Any additional expense brought about by regulation of its utilities by the State could very well require the City of Ketchikan to increase its rates for this purpose.

In order to operate, the bill requires all public utilities to obtain a certificate of public convenience and necessity. It is almost unthinkable that after 34 years of ownership and operation of the power and light, telephone and water utilities by the City of Ketchikan that its continued operation of these utilities would become dependent upon a certificate of convenience and necessity to be issued at the pleasure of an appointed commission. This right of franchise, which in effect this provides for, is in conflict with the City's Charter adopted under the Constitution and laws of the State of Alaska. The operation of the city-owned utilities is provided for in this Charter and, in fact, any sale of its utilities can be made only upon the affirmative vote of the majority of the qualified voters of the City.

Relating to rates and changes in rates, the Bill is in conflict with the Charter of the City of Ketchikan, wherein the power to fix rates and charges for public utility services is vested in the Council. Such Charter provision also prescribes the procedure. private utilities?

In conclusion it would appear that any act passed by the Legislature which would impose regulation by the Alaska Public Service Commission on municipally-owned utilities of charter cities would raise very serious legal questions. More important than the legal aspect is the fact that the need for regulating municipally-owned utilities does not exist, such regulation would be an expensive undertaking for both the State and the cities, and in the end would serve no useful purpose because municipal utilities are already regulated by city councils who are probably more conscientious and responsive to the requirements of its utility customers than any state commission.

We feel this bill is a continuing effort to legislate for a problem that has existed elsewhere that can and should be resolved by local communities.

I wish to express the appreciation of the City Council and the Ketchikan Public Utilities Advisory Board for the opportunity to be represented before the Committee, and to those appreciations I wish to add my own personal thanks for the Committee's courtesy.

Elmer B. Titus, Manager
Ketchikan Public Utilities

EBT:jh

April 9, 1969

HOUSE JUDICIARY COMMITTEE

SECTIONAL ANALYSIS OF CSHB 202

The original HB 202 is identical to SB 128 (introduced by request of the governor), except for the exemption section (proposed AS 42.05.691). In the preparation of its committee substitute, the House Judiciary Committee considered the comments and suggestions numerous individuals presented at hearings and meetings held on the PSC bills, particularly the detailed written analyses of Don Hall, executive director of the Alaska Public Service Commission, and Karl Walter, Anchorage City Attorney. (It should also be noted that HB 188 and SB 54 are identical to each other. SB 54 is based on, and is very similar to, 1965 CSHB 138, as is 1967 HB 164.)

AS 42.05.010. This section implements the recommendation of Don Hall consistent with the practice in many other states where the state name precedes the commission name.

AS 42.05.020. This section is amended in the original bill to provide that the governor shall designate the chairman of the commission. The committee substitute amends the original bill by specifying that his term is four years rather than two years. The reason for this change is that two years seems like too short a term and by lengthening it the chairman is less subject to the pressures of politics.

AS 42.05.030. This section of the original bill is primarily concerned with providing for vacancies in the office of commissioner and specifies that they shall be filled by appointment by the governor and confirmed by the legislature. The committee substitute deletes some unnecessary language regarding the confirmation by the legislature (but confirmation will still be required).

AS 42.05.035. This section provides two methods of removal of commissioners. One is with the consent of a majority of the legislature and the other is for cause, such as incompetence or misconduct. The committee substitute does not change the original bill in this regard.

AS 42.05.040 is not amended by either the original HB 202 or the committee substitute. It ~~provides for a~~ states the professional qualifications required of commissioners.

AS 42.05.071. This section begins the entirely revised portion of the PSC chapter. The old sections 70 - 650 are repealed. Section 71 provides that two members of the commission constitute a quorum. Present law is silent on this point.

AS 42.05.081. This section requires the commissioner and, under the committee substitute, the executive director to take the oath of office required of principle officers of the state. The language in the original bill said "each commissioner and each person appointed to a civil executive office", which language is not appropriate to Alaska law.

AS 42.05.091 provides for compensation of the members. It gives them per diem and travel expenses and an annual salary of $6,000 (it was $5,000 in the original bill). The chairman of the commission however, is to serve fulltime and is entitled to the salary of a superior court judge.

AS 42.05.101. This section simply provides for a principal office and branch offices and requires the commission to have an official seal. The committee substitute does not change this section. ST RCOD

AS 42.05.111. This section specifies that the attorney general is legal counsel for the commission. The section is not amended by the committee substitute.

AS 42.05.121. This provides that the commission may employ an executive director, requires him to be an experienced administrator and the committee substitute adds the provision that he may be one of the commission members. The committee substitute deletes the authority to hire hearing officers. It also deletes some unnecessary language regarding appointment of personnel. Both the original bill and the substitute provide for contracting for the services of consultants.

The following language should be added after the period on line 5 page 4 of CSHB 202: "The salary of the executive director may not exceed that of a superior court judge." This would prevent him from being paid the full salary for both the directorship and the chairman's position if he should happen to be appointed to both.

AS 42.05.131 is a section added by the committee substitute in order to protect against conflicts of interests of commissioners and employees. This provision is a slightly broadened version of [illegible] sec. 45 in HB 188.

AS 42.05.141 specifies the general powers and duties of the commission. The committee substitute makes some minor language changes in this section. One change is the deletion of the word "supervise" so that the commission will regulate utilities but not supervise them. (This section is a combination of AS 42.10.070 and California Public Utilities Code, sec. 701.)

AS 42.05.151 gives the commission authority to adopt regulations, requires the adoption of certain types of procedural regulations, and gives the commission and employees certain administrative authority. The committee substitute expands slightly upon the type of regulations the commission is required to promulgate, specifically mentioning the handling of procedural motions by a single commissioner. The committee substitute also allows for representation by out-of-state attorneys in accordance with Civil Rule 81. The committee substitute further provides for each commissioner acting alone to issue orders on procedural motions; this should expedite much of the commission's proceedings. ~~(the original version is a combination of AS 42.10.070 and California Public Utilities Code, sec. 701)~~ (Part of this section is based on AS 42.07.150(b).)

AS 42.05.161. This section specifies that the Administrative Procedure Act applies to regulations adopted by the commission but does not apply to adjudicatory proceedings of the commission. It is felt that the provisions of the APA regarding accusations, ~~and~~ statements of issues and hearing officers are not appropriate to proceedings of the PSC, such as rate hearings, ~~etc.~~ The committee substitute deletes some of the original bill's exceptions for the types of regulations required to be filed under the APA. (The deleted portion of (b) was based on the federal APA – 5 USC, § 553.)

AS 42.05.171. This deals with investigations and hearings. The committee substitute makes a distinction between formal investigations and hearings and informal ones, requiring that for formal proceedings two or more commissioners must be present. It also requires a commissioner to hear or read the record before participating ~~or~~ in making a decision of the commission. (The original section was adapted from the Calif. Public Utility Code, sec. 310. of Pa. Stat., Title 66, sec. 458.) The committee substitute deletes a section (derived from Pa. Stat., Title 66, sec. 458) which is AS 42.05.181 in the original bill, dealing with hearing officers and agents. The intent is to do away with the position of hearing officer and require hearings to be held by the commissioners themselves. ~~(Part of this section is based on AS 42.07.150(b).)~~

AS 42.05.181. This requires, providing an opportunity to be heard before a final order of the commission may issue.

AS 42.05.191. This requires the commission to make reports on all proceedings held under this chapter.

AS 42.05.201 requires reports, orders, etc., to be in writing and requires that they be published and be given proper distribution.

AS 42.05.211 simply requires the publication of annual reports by the commission. (IT is the same as AS 42.07.140.)

AS 42.05.221 requires a public utility to get a certificate of convenience and nedessity before operating as a utility. It also provides for the commission to eliminate the duplication of facilities. The committee substitute adds a subsection which grants grandfather rights to public utilities not presently required to have a certificate of convenience and necessity. ST RC.03 Subsection (c) should be amended by adding the following language after the period in line 16 on page 8 of CSHB 202: "Such a certificate is subject to modification where there are areas of conflict with other utilities."

(Subsection (a) is similar to present AS 42.05.193, and subsection (b) was taken from proposed AS 42.05.245 in 1967HB 164.)

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AS 42.05.231. This section provides for the filing of applications in the form and with the information required by the commission. The committee substitute deletes the requirement that the application be "verified", believing that this is unnecessary.

AS 42.05.241. This section requires that the utility be able to provide the utility services applied for and allows the commission to specify conditions for the issuance of a certificate. (It is adapted from proposed AS 42.05.265 in 1967 HB 164.)

AS 42.05.251. This section, which is added by the committee substitute, provides that public utilities have the right to use public streets, etc., upon the payment of a reasonable fee and upon reasonable conditions which the city or borough requires. Disputes as to reasonableness are to be decided by the commission.

AS 42.05.261. This section allows for the discontinuance of a service only when the commission finds that the continued service is no longer required by public convenience and necessity. It also allows the commission to require the reinstatement of service previously discontinued, again if the public convenience and necessity require it.

AS 42.05.271. This section sets out the basis for ~~a~~ the commission's ordering the modification, suspension, or revocation of a certificate. The committee substitute adds a requirement that failure to comply with the provisions of the chapter or failure to comply with conditions of the certificate must be a wilful failure.

AS 42.05.281 prohibits the transfer of a certificate ~~but not~~ without prior approval of the commission.

AS 42.05.291. This section requires public utilities to furnish and maintain adequate, efficient, safe and reasonable service and facilities, and allows the commission to set standards for this. The

(Cf. present AS 42.05.190, and 42.05.460 and Pa. Stat., Title 66, sec. 1171.)

committee substitute adds the requirement that the commission's standards shall conform to standard practices of the industry. Under this section, the commission also has the authority to require certain services or facilities or certain repairs, extensions, etc., which are reasonably necessary for the public.

AS 42.05.301 prohibits discrimination in service but allows the establishment of reasonable classifications of service. (This was adapted from Pa. Stat., Title 66, sec. 1172. Cf. present AS 42.05.460.)

AS 42.05.311 requires a public utility having certain distribution or transmission facilities such as conduits, poles, pipelines, etc., to allow the joint use and interconnection of these facilities upon being paid a reasonable compensation, when the public necessity and convenience requires. This section also requires that the tariff of a public utility include rules setting out the terms by which its customers may hook up with certain facilities. The committee substitute deletes, as being unnecessary to state, the provision in the original bill that dealt with the contents of these rules, with regard to the customers aiding in construction of certain facilities. (This section is a revised version of present AS 42.05.360.)

AS 42.05.321 provides for the commission's resolution of conflicts when there is a failure to agree upon joint use or interconnection. (This section is a revised version of present AS 42.05.370.)

AS 42.05.331 gives the commission authority to set standards for the measurement of utility services. SLA 03 (Presently AS 42.05.410.)

AS 42.05.341 requires the commission to provide for periodotic testing and certification of meter standards. (Presently AS 42.05.420.)

AS 42.05.351 requires the commission to provide for the examination and testing of measuring appliances used by a utility's customer. The committee substitute changes this section by making it identical to chapter 4, SLA 1969, (amending present AS 42.05.430) which will be repealed if the Public Service Commission bill passes.

AS 42.05.361 requires each public utility to file its complete tariff with the commission and requires that these tariffs be kept available for public inspection. (Cf. present AS 42.05.470.) The committee substitute changes this latter requirement so that the tariffs need be kept only at the principle office in each community served. The committee substitute also classifies special arrangement contracts which affect rates and charges as special tariffs. This classification is a suggestion of Karl Walter, as is the slightly expanded basis for the commission's rejection of the filing of a ~~the~~ tariff (in (c) of this section).

AS 42.05.371 prohibits deviation from a filed tariff. (Cf. present AS42.05.510.)

AS 42.05.381 requires rates to be just and reasonable. (Cf. present AS42.05.190.) The committee substitute adds a subsection which specifies that a municipality is entitled to a fair and reasonable rate of return in establishing the rates of a municipally owned and operated utility. In order to put municipal utilities on a par with other utilities, a municipality may include a reasonable street permit fee in determining the utility revenue requirements. (This new provision is also a suggestion of Karl Walter.)

AS 42.05.391 prohibits discrimination in rates. However, it provides that the rate charged by a municipality for a utility service furnished beyond the corporate limits is not necessarily unjustly discriminatory solely because it is ~~might be~~ different from the rate charged for service within the corporate ~~for~~ limits. The committee substitute deletes the provision amplifying sp. on the discrimination prohibition, the feeling being that the point was adequately covered by subsection (a). The substitute also adds a provision prohibiting other types of discrimination, such as by the payment of ~~rebates~~ or bonuses or by furnishing special facilities or services. The furnishing of equipment must conform to a tariff approved by the commission. (Cf. present AS 42.05.190; Calif. Public Utility Code, sec. 461; Pa. Stat., Title 66, sec. 1141.)

AS 42.05.401. This gives the commission authority to settle disputes as to the apportionment of joint rates. The committee substitute deletes the provision which allows the commission to employ consultants and require utilities to pay the fees and expenses of consultants, believing that this authority is already covered in other sections of the bill.

AS 42.05.411 requires commission approval for filing of new tariffs and changes in old ones. (Cf. present AS 42.05.490.)

AS 42.05.421 allows for commission investigation of a tariff change. (Cf. ~~present AS 42.05.490.~~ 46 USC § 845 and proposed AS 42.05.345 in 1967 HB 164.) The committee substitute changes the seven-month period for which the commission may suspend the operation of a tariff change to five months. ~~The~~ commission may require a utility to place in escrow all amounts received by reason of an increased rate. The committee substitute deletes the provision that required the utility to pay interest on amounts collected which have been found to be unreasonable or unlawful and which are required to be returned to the consumer.

AS 42.05.431. This section simply gives the commission power to determine just and reasonable rates, classifications, regulation, practices, etc. (Cf. present AS 42.05.520.) The committee substitute adds a provision allowing the municipalities to covenant with bond holders with regard to rates of municipally owned utilities. This additional provision was picked up from sec. 335 of HB 188. ~~(which bill is identical to SB 54).~~

The committee substitute deletes two sections in the original House Bill 202 which provided for reparations and the recovery of reparation payments. (They were taken from Calif. Public Utility Code, secs. 734 and 735.)

AS 42.05.441 provides for the commission's ~~determination of the~~ valuation of property of ~~the~~ a public utility. The original bill required the commission to be guided primarily by the elements of original cost, less accrued depreciation. The committee substitute changes this by requiring the commission to be guided primarily by the average of original cost, less accrued depreciation, and reproduction cost, less physical deprication. (There is a typographical error on page 19, line 19 of the committee substitute; there should be a comma after the word depreciation in that line.)

AS 42.05.451. The original bill required public utilities to use an accounting system prescribed by the commission and the committee substitute allows the utility to use a generally recognized system of public utility accounting; if the utility does not do this then the commission will prescribe for the accounting system. (Cf. present AS 42.05.290 & 310.) This section also requires each utility to submit an annual report to the commission. The original bill required this to be done within 75 days after the close of the utility's annual accounting period; the committee substitute changes this to 90 days and allows additional time to be granted upon a showing of good cause. (The committee substitute provision regarding the accounting system was picked up from HB 188, sec. 435.)

AS 42.05.461. This section allows the commission to require a utility to maintain a continuing inventory of all units of tangible property, showing the current location of the property, the original cost of the property, etc.

AS 42.05.471 requires utilities to keep depreciation accounts. The commission is to determine and allow depreciation expense in fixing rates, etc. (cf. present AS 42.05.340.) The committee substitute adds a provision which allows a new utility to amortize operating losses, if any, which it has incurred in developing its market and system.

AS 42.05.481 requires utilities to keep accounts of subsidiaries separate and prohibits consideration of the property, expense and revenue of a subsidiary in the determination of rates and charges. (cf. present AS 42.05.300.)

AS 42.05.491 simply requires that records and accounts be kept in ~~this state~~ Alaska. (cf. Pa. Stat., Title 66, sec. 1214.)

AS 42.05.501 gives the commission access at all reasonable times to the books of a utility and, in the committee substitute, the affiliated interests of a utility. (cf. present AS 42.05.540.)

AS 42.05.511 gives the commission authority to investigate management of a public utility to determine whether unreasonable practices are found to exist which adversely affect the cost or quality of service of the public utility. SR RUCS

AS 42.05.521 gives the commission authority to direct a utility to cease paying dividends on its common stock when the capital of the utility is impaired, or, under the committee substitute, when it might become impaired by a continuation of current practices. (This new language was suggested by Karl Walter. Cf. proposed AS 42.05.535 in 1967 HB 164.)

AS 42.05.531 requires surplus and profits to be distributed in accordance with bylaws and governing ordinances. (Cf. present AS 42.05.200.) The committee substitute deletes the reference to operating margins, the committee believing that to be an inappropriate term here. The substitute also deletes two sentences allowing the commission to govern the distribution of surplus and profits through regulation. This deletion implements a suggestion of Karl Walter, and it is believed that once the utility has made a profit the distribution of that profit is not a proper concern of the commission.

AS 42.05.541 simply gives regulations and orders adopted under this chapter the effect of law.

AS 42.05.551 allows for judicial review in accordance with the specified sections of the Administrative Procedure Act and provides for superior-court enforcement of this chapter. (Cf. proposed AS 42.05.555 in 1967 HB 164.)

AS 42.05.561 makes violation of a provision of this chapter or a regulation or order issued under it a misdemeanor. The committee substitute simply cleans up the language of the section deleting unnecessary words.

AS 42.05.571 - 591 establish a system of civil penalties for violations of this chapter or orders or regulations issued under it. These sections are adopted primarily from the California Public Utility Code.

Sections 5312 - 5317, with some modifications reflecting Washington Public Utility Code, section 80.04.405. They allow the commission to impose a ~~simple~~ civil penalty as a means of enforcement. The committee substitute makes these provisions applicable only to a public utility and not to individuals.

AS 42.05.601 requires the attorney general to bring actions to recover penalties for imposed fines under this chapter and specifies that they shall be paid to the commission and deposited by it in the general fund.

AS 42.05.611 provides that penalties imposed under this chapter are cumulative. The committee substitute clarifies this language and specifies that a criminal prosecution is not a bar to an action of a recovery of a civil penalty.

AS 42.05.621 allows for the joining of actions ~~of~~ for recovery ~~from a~~ of penalty ~~and~~ joining of applications for enforcement of commission orders and joining of appeals from orders of the commission. (Cf. proposed AS 42.05.575 in 1967 HB 164.)

AS 42.05.631 gives public utilities the power of eminent domain for public utility purposes. (Taken from proposed AS 42.05.585 in 1967 HB 164.)

AS 42.05.641. Subsection (a) of this section in the original bill was a carry over from existing section 620. The committee substitute deletes that subsection in the belief that it is no longer necessary to provide for pre-1959 grants or franchises. The language that remains in the committee substitute provides that orders, decisions, etc., of the commission prevail over charters, franchises, ordinances, etc., of a local government when there is a conflict. (Cf. proposed AS 42.05.587 in 1967 HB 164.)

AS 42.05.651. This section simply provides for the allocation among the parties, including the commission, of the cost of a ~~public~~ hearing. This allocation itself is subject to a hearing at the request of any party. (Cf. present AS 42.05.610.)

AS 42.05.661. In the original bill this section required the payment of regulatory fees by all utilities. The committee substitute deletes the provision for regulatory fees, and retains only the provision for the submission of an application fee which will be paid to the commission and deposited into the general fund.

AS 42.05.671. To make the intent of this section clearer the committee substitute picks up a provision from existing section 180 of the PSC chapter providing that information in the possession of the commission is public. The language, from the original bill (which was taken from AS 02.05.240), then provides for a person making a written objection to public disclosure of certain information.

AS 42.05.681. This section, which is unchanged in the committee substitute, protects the certificates already issued to public utilities grossing less than $25,000, which utilities were exempted from regulation by section 2, chapter 188 SLA 1968.

AS 42.05.691 is designed to fit the general plan of greater jurisdiction and authority of the commission. By allowing classification of utilities the commission can provide regulatory requirements that will fit the circumstances of utility variations.

AS 42.05.701. In this section the definition of "public utility" includes municipally owned utilities and, to a limited extent in the committee substitute, pipelines carrying products for sale or resale to a fully regulated public utility. (This latter language was proposed by Paul Robison.) Both the original bill and the committee substitute

contain definitions of "public" and "affiliated interests", which terms are not defined in existing law. The definition of "affiliated interests" is taken from Washington Statute 80.16.010. Upon the recommendation of Don Hall the committee substitute also includes a definition of the word "tariff". In the definition of "public utility" the reference to steam in sub-paragraph (2)(C) to "steam" refers to steam heat, as it does in (2)(E). (The present definition section is AS 42.05.640.)

AS 42.05.711. In its comparable section, SB 128 provided for the exemption of municipally owned and operated utilities from the provisions regarding the regulation of rates, financial management regulations, and the requirement of a regulatory fees. (Cf. present AS 42.05.645 and Pa. Stat., Title 66, sec. 1141.) The original HB 202 deleted the exemption regarding rates. The committee substitute deletes the regulatory-fee exemption because the provision for regulatory fees itself has been deleted. The committee substitute also deletes the exemption from the financial ~~advantage~~ management regulations since it is considered appropriate that a municipally owned and operated utilities ~~is to~~ be subject to PSC jurisdiction in this regard. ¶ Section 7 of the committee substitute (which was section ~~five~~ 5 of the original HB 202) provides for the continuation of ~~the~~ presently pending proceedings and for the continuation of current certificates, orders, etc. The committee substitute adds a sentence continuing the existing rates, charges, etc., of municipally owned and operated utilities unless otherwise ordered by the commission under this act.

Sections 8 and 9 of the committee substitute have no counterpart in the original bill. They provide that the limitations in Title 29, relating to the granting of franchises and regulation of public utilities, apply to home rule boroughs and cities, respectively. ¶ Section 10 of the committee substitute limits the jurisdiction of cities over public utilities regulated under AS 42.05, the Public Service Commission Act. It also makes clear that utilities have the right to use the streets upon the

payment of a reasonable permit fee and on reasonable terms and with reasonable exceptions the city council requires. These provisions with regard to cities also apply to boroughs, under AS 07.

Sections 11 and 12 of the committee substitute make existing language consistent with the limitations established in section 10.

Section 13 of the committee substitute sets July 1, 1969 as the effective date of the act. The original bill contained an immediate effective date clause.

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

Jackson

Sectional Analysis of SB 128 and HB 202 ~~(Insofar as the House Bill corresponds with the Senate Bill)~~ By George Bernard Assist. Attorney General

The following brief sectional analysis of SB 128 covers primarily those sections which make substantial changes in the existing law or language. This bill was drafted on the premise that

(1) the public interest requires that the commission's jurisdiction should encompass all public utilities whether publicly owned or otherwise, and whether large or small;

(2) regulation should be directed to the benefit of the public; ~~and~~ the creation of utility monopolies and other benefits accruing to the utilities are the results of good regulation, but not the purpose;

(3) good regulation in the public interest can only be accomplished where the regulatory body has ~~the~~ SUFFICIENT jurisdiction and authority to do whatever is necessary to accomplish it;

(4) special exemptions from the commission's jurisdiction create regulatory problems which go far beyond the usual intended objective of the exemption and substantially disrupt the regulatory processes; more orderly, uniform and fair regulation will result if the question of ~~regulatory need~~ the extent of regulation is left to the discretion of the commission;

(5) the commissioners appointed to the commission will be competent in that capacity;

(6) the commissioners will exercise good judgment in regulating; and

(7) the commission will have an adequate and competent staff.

By Phil ~~The Attorney~~ General office,

In drafting this bill, the changes in existing law and the additions were researched against the laws of other states, primarily California and Pennsylvania. In two instances, federal laws were reviewed for appropriate language. In no case was a statute of another

state used without analysis as to its effect and application

Reference was also made to HB 164 which was introduced in the Alaska legislature in 1967.

The Alaska Public Service Commission members and executive director were consulted on most of the proposed changes and their suggestions were incorporated to the extent deemed appropriate.

The draftsman of the has considerable background in utility operations and regulation having been employed in Alaska as a professional electrical engineer in electric power development for 11 years, a licensed electrical contractor in Alaska for several years and as an Assistant Attorney General for 3 1/2 years in work with both federal and state regulatory agencies.

strike?

* Sec. 42.05.035. REMOVAL OF COMMISSIONERS.

The present law (AS 42.05.030) and the amended sec. 30 included in this bill both provide for tenure of six years for commission appointees. The commissioners do not serve at the pleasure of the governor. Since the commission acts in a quasi judicial capacity this tenure provides an essential freedom from possible sudden and sweeping changes in commission make-up and policies.

At the same time it is necessary to provide means of removal which will assure that commission members are capable of doing and actually do their assigned jobs.

Sec. 35 provides two means of removal; one is removal for cause; the second is removal in a manner similar to that in which installed. The first means is fairly standard in most state PSC Acts where tenure is provided. The second is not generally found in other states. It is included here for the purpose of assuring that the commission will be accountable to some degree for its policies. This bill grants the commission a very broad sweep of authority and jurisdiction. Theoretically the commission could adopt a particular policy which would be unreasonably burdensome to a segment of the industry or a segment of the public but which nevertheless would not be reversible in court or constitute a technical "cause" for removal.

Admittedly this second removal method can be subject to political abuse but only in the case where an administration and a majority of the legislature act in consort. Some additional safety factor could be provided if the simple majority of the legislature was changed to a 2/3 majority.

* Sec. 42.05.071. QUORUM.

The present PSC law is silent as to the number of commissioners necessary to constitute a quorum.

* Sec. 42.05.091. COMPENSATION OF MEMBERS OF COMMISSION.

There is little doubt that the public would be better served by a full-time commission. But this is not to say that a part-time commission cannot do an adequate job at the present time if it is composed of competent and concientious members. Furthermore, the workload of the commission is not so substantial at present as to require a full-time commission. However the commissioners should be paid for their time. This is not presently the case. An annual salary of $5,000 as provided in this bill is the very minimum which should be considered.

* Sec. 42.05.121. EMPLOYMENT AND COMPENSATION OF COMMISSION PERSONNEL.

The commission presently employs an executive director who is not a member of the commission itself. This feature is carried over into this bill.

The separation between the functions of the commissioners and the functions of the commission's staff is an important one. Without such separation the staff is substantially precluded from representing the public interest in a proceeding before the commission. Fundamentally this is a separation of the decisional process from the investigation and prosecution process.

In formal proceedings before public service commissions of other states and before federal regulatory commissions such as the F.T.C. and the F.M.C. the commission staff acts substantially in the capacity of an independent party, developing and putting on its own case before the commission. It occasionally happens that the staff will even appeal a decision of the commission. Such participation by the staff is subject to the same rules of procedure as are all other parties including the matter of ex-parte communications with the commission. The courts have been quick to strike down commission decisions where it has been shown that substantive ex-parte communications have occurred between the commission and its staff.

This section also gives the commission the authority to employ

its own hearing officers. Tne existing statute, AS 42.05.160, does likewise; however since the commissions adjudicatory procedures are presently prescribed by the A.P.A. (See AS 42.05.150) and since the A.P.A. requires hearing officers to be appointed by the governor, there is serious question whether the commission does, in fact, have such authority.

Sec. 42.05.161(a) of this bill removes the commission's adjudicatory procedures from the A.P.A. except those sections pertaining to judicial review.

* Sec. 42.05.121(b).

This section makes it clear that the commission may employ consultants etc. Such authority is essential. The commission cannot reasonably hire a staff of full-time employees that will have all of the expertise necessary for a complex rate case, etc. The use of consulting firms which specialize in such matters is a vital necessity.

* Sec. 42.05.131. ANNUAL REPORT.

This section is adopted from AS 42.07.140 and replaces AS 42.-05.140.

* Sec. 42.05.151. GENERAL POWERS AND DUTIES OF THE COMMISSION.

This section is designed to establish in one place the general regulatory powers and duties of the commission and to set them out in clear, concise language. Under the present chapter AS 42.05 some of these powers are merely inferential and others are found scattered through the provisions relating to regulation of rates, services, etc.

This section was put together in part from the California Public Utilities Code, sec. 701, and in part from AS 42.10.070. In both instances the referred statutes were modified to fit the needs of this bill.

* Sec. 42.05.151. ADMINISTRATIVE AUTHORITY OF COMMISSION.

This section covers the commissions authority in procedural and

administrative functions. Again, it has no specific counterpart in the present P.S.C. law.

It has been adopted in part from AS 42.07.150(b). The last sentence of subsec. (b) of this section 42.05.151 provides that "technical rules of evidence need not apply to investigations, hearings. . . ." This relaxed evidentiary provision is the guideline of nearly all state public service commissions as well as federal regulatory agencies.

The present law requires the commission to comply with the adjudicatory procedures provided in the A.P.A. However, as now constituted these procedures are neither appropriate nor adaptable to the procedures which should be followed by a utility regulatory agency. It is the common practice to give the agency the authority to prescribe its own procedural rules. The problem was recognized and its solution was provided with respect to the Alaska Transportation Commission when that commission was established in 1966.

* Sec. 42.05.161. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.

Subsection (a) removes the commission's adjudicatory procedures from the coverage of the A.P.A. except for judicial review.

Subsection (b) is adapted from the federal APA 5 U.S.C. 553.

* Sec. 42.05.171. INVESTIGATIONS AND HEARINGS -- ACTIONS DEEMED THOSE OF THE COMMISSION.

No section similar to this one is found in the current PSC law. It is adapted from the California Public Utility Code, sec. 310. Similar provisions are also found in several other state utility codes (e.g. Penna. Statutes, Title 66 Sec. 458). Under the present workload it is anticipated that the commission itself will be able to hear most of the cases. The commission should have the authority to do so without also requiring the services of a hearing officer. In other words a commissioner should be able to act in the capacity of a hearing officer (See proposed section 42.05.181(c)).

At the same time it is not realistic to conclude that the full commission shall be able to hear all cases. Therefore to cover as many eventualities as possible it is provided that any one or more of the

commissioner may hear a case.

The idea of requiring at least two commissioners to be present when the commission hears a case was rejected as unnecessary since a majority confirmation is required of any decision or opinion. Such a requirement would also preclude concurrent hearings by the commission on different cases and would cause considerable delay or disruption or necessitate starting over again if one of the commissioners had to withdraw from a hearing for any reason.

* Sec. 42.05.181. HEARING OFFICERS AND AGENTS.

This section has no counterpart in our existing PSC law. Subsec. (a) is a substantially modified version of the Pennsylvania Code, Title 66, sec. 458.

One main objective of this section is to give the commission the authority to hear a proceeding without the need for a separate hearing officer. At the same time it provides guidelines and authority for using hearing officers when desired.

Although this bill does not necessarily ~~complete~~ contemplate the need to regularly use hearing offices at this time, it will probably be necessary within the near future. Occassion may also arise at present when the use of a hearing office would be highly beneficial. Therefore this bill gives the commission to the authority to employ hearing officers and delineates the authority of such employees.

* Sec. 42.05.191. CERTIFICATE REQUIRED.

Subsection (a) of this section is similar to AS 42.05.193 of the current PSC law which is here modified to reflect suggestions of the commission.

Subsection (b) is taken from proposed sec. 42.05.245 of House Bill No. 164 (1967).

The language in subsec. (c) was settled upon in discussions with the executive director of the commission. It is considered advisable to permit the commission to exercise considerable discretion in attempting to resolve the overlapping service area problems. Therefore the language does not attempt to pin down any specific remedy. It is sufficiently broad to even allow the commission to act as an arbitrator or order arbitration if that appears to be the best approach.

The question of grandfather rights was considered. However no such provision was included. Constitutional due process of law requires the commission to recognize and provide for the rights of prior operating utilities and any provision requiring such certification will only tend to compound the service area delineation problems where overlapping facilities are found.

* Sec. 42.05.211 CONDITIONS OF ISSUANCE.

This section is adapted from House Bill No. 164, sec. 265 (1967) and modified.

* Sec. 42.05.221. DISCONTINUANCE OR ABANDONMENT ---

The present PSC law does not proscribe abandonment or discontinuance of service by a utility.

This proposed section restricts abandonment or discontinuance unless approved by the commission after public hearing.

* Sec. 42.05.231. MODIFICATION, SUSPENSION OR REVOCATION OF CERTIFICATES.

The commission can presently issue certificates but can do nothing about them thereafter. The authority provided in this section is necessary to resolve problems of overlapping service areas, as an enforcement

tool, and to assure adequate and reasonable service.

* Sec. 42.05.251. STANDARDS OF SERVICE AND FACILITIES.

This section brings together in revised form the service standards currently prescribed in AS 42.05.190 and 460. Subsecs. (a) and (b) of this section reflect similar provisions of Pennsylvania statutes, Title 66, sec. 1171. Subsecs. (c) and (d) are modified versions of AS 42.-05.460.

* Sec. 42.05.261. DISCRIMINATION IN SERVICE.

This section separates the discrimination provisions relating to service, from "standards". It is adapted from Pennsylvania statutes Title 66, sec. 1172.

A service discrimination proscription is currently found in AS 42.05.460.

* Sec. 42.05.271. JOINT USE AND INTERCONNECTION OF FACILITIES.

This section is a modified version of AS 42.05.360. The revisions are those suggested by the commission.

* Sec. 42.05.281. FAILURE TO AGREE UPON JOINT USE OR INTERCONNECTION.

This section is a revised form of AS 42.05.370.

* Sec. 42.05.291. STANDARDS FOR MEASUREMENT.

Currently AS 42.05.410.

* Sec. 42.05.301. TESTING OF METER STANDARDS.

Currently AS 42.05.420.

* Sec. 42.05.311. TESTING OF APPLICANCES.

Currently AS 42.05.430. One change should be made in this section as written. The third sentence, providing for use of testing appliance by the consumer, is improper. The revision recommended by Don Hall in his comments of March 4, 1969 would be appropriate.

* Sec. 42.05.321. TARIFFS, FILING AND INSPECTION.

The provisions of subsec. (a) of this section are found to some extent in AS 42.05.470.

Subsecs. (b) and (c) are new and self-explanatory.

* Sec. 42.05.331. ADHERENCE TO TARIFFS.

This section is similar in its provisions to AS 42.05.510.

* Sec. 42.05.341. RATES TO BE JUST AND REASONABLE.

The provisions of this section are pulled out of AS 42.05.190 and modified.

* Sec. 42.05.351. DISCRIMINATION IN RATES.

Subsec. (a) is a revised version of provisions found in AS 42.05.-190.

Subsec. (b) is similar to the provisions of California Public Utility Code, sec. 461.

Subsec. (c) is a revision of Pennsylvania Statute, Title 66, sec. 1141.

* Sec. 42.05.361. APPORTIONMENT OF JOINT RATES.

No similar provision is contained in the present PSC law. Its principal application would arise in connection with telephone toll separation charges.

* Sec. 42.05.371. Tariff Changes.

Basically subsection (a) of this section is contained in AS 42.05.491.

Subsections (b) and (c) are new and self explanatory.

* Sec. 42.05.381. Suspension of Tariff Filing or Contract.

The Commission does not presently have suspension authority.

Subsections (a) and (b) are similar to provisions found in 46 U.S.C. 845. The remaining subsections are modified versions of section 345 in H.B. 164 (1967).

* Sec. 42.05.391. Power of Commission to Fix Rates.

Provisions of this section are presently found in AS 42.05.520.

* Sec. 42.05.401 and 411. Concerning Reparations.

These two sections are taken from California Public Utilities Code, Secs. 734 and 735.

* Sec. 42.05.421. Valuation of Property of a Public Utility.

Although taken from AS 42.05.250, the provisions in this proposed section bear little resemblance to its predecessor. The Executive Director of the P.S.C. suggested much of the language employed here.

Subsection (b) relating to "fair value" codifies the rate-base policy adopted by the Commission in recent rate proceedings. The RCND (Reconstruction cost new depreciated) philosophy was specifically rejected as being inappropriate to Alaska at this time. The State's current law permits the Commission to consider RCND.

* Sec. 42.05.431. System of Accounts and Reports.

The principal changes from existing law (AS 42.05.290 and 310) are (a) the requirement that a utility adopt a system of accounting prescribed by the Commission instead of "a generally recognized system; and (b) the requirement that a utility keep its accounts on a calendar year basis.

Both of these changes were suggested by the Commission.

The uniformity which would result will materially assist the Commission in evaluating and analyzing utility operations and drawing comparisons with the norm of other similar utilities. These provisions are standard in most states.

* Sec. 441. Continuing Property Records.

This section has no counterpart in current Alaska law. Its objectives are similar to those of requiring uniform accounting and reporting.

The ability to make continuing evaluations, analyses and comparisons is of significant assistance to the Commission in determining the reasonableness of rates.

* Sec. 42.05.451. Depreciation Rates and Accounts.

Subpart (a) of this section is a modified version of AS 42.05.340.

Subpart (b) is new and its need is fairly obvious.

* Sec. 42.05.461. Subsidiary Business Accounts.

The counterpart of this section in existing law is AS 42.05.300. Changes are minor.

* Sec. 42.05.471. REcords and Accounts to Be Kept in State.

This section is new and necessary. The Commission ran into a problem in this regard in the A.J. case. The language is similar in part to that of Pennsylvania Statutes, Title 66, Sec. 1214. The Alaska Public Service Commission recommended the alternative provided in the last sentence of the section.

* Sec. 42.05.481. Inspection of Books and Records by Commission.

Inspection is currently provided for in AS 42.05.540. Although substantial revisions have been made in the language, there is little change of a substantive nature.

* Sec. 42.05.491. Unreasonable Management Practices.

Considerable change is provided in this section over the current provisions of AS 42.05.530. These changes are designed to clarify and beef up the Commission's authority in this area.

* Sec. 42.05.501. Impaired Capital.

The language in this section is taken from Sec. 535 of H.B. 164 (1967).

* Sec. 42.05.511. Distribution of Surplus,Profits and Operating Margins.

This section is a modified version of AS 42.05.200.

* Sec. 42.05.521. Effect of Rules, Regulations and Orders.

The language of this section was taken from H.B. 164, Sec. 545 (1967). It revises the current statute AS 42.05.230.

* Sec. 42.05.531. Review and Enforcement.

This section is adopted from H.B. 164, Sec. 555 (1967). There is no such provision in Alaska's current P.S.C. law.

* Secs. 42.05.541, 561, 571, 581 and 591. Concerning Penalties.

These sections are new to Alaska's law. They are adopted primarily from the California Public Utility Code, Sections 5312 - 5317 with some modifications reflecting Washington Public Utility Code, Sec. 80.04.405.

Under present law the P.S.C. has no means of enforcement other than to seek injunctive relief from the Court. This limitation is a unique situation in utility regulatory codes. The normal situation in most states is that injunctive relief is turned to as a last resort.

These sections provide both criminal and civil penalties Criminal penalties are fairly standard but more and more states are adopting alternative civil penalties as well as a better enforcement tool. Criminal penalties are difficult to secure, are not particularly desirable and are normally resorted to only in cases of very flagrant and continuing violations. As a result they are not especially useful in securing compliance.

Civil penalties work quite well as a means of obtaining compliance with the regulations and orders of the Commission. They work so well, in fact, that it is seldom necessary to recover them.

Section 571 gives the Commission the discretionary authority to determine whether a civil penalty should be levied and the extent (within maximum limits) if it is to be levied. It also provides authority to mitigate such a penalty if circumstances warrant.

* Sec. 42.05.601. Joinder of Actions.

This section is adopted from H.B. 164, Sec. 575 (1967).

* Sec. 42.05.611. Eminent Domain.

This section is new and is adopted from H.B. 164, Sec. 585 (1967).

* Sec. 42.05.621. Regulation by Municipality.

Subsection (a) of this section is taken from current law AS 42.05.620.

Subsection (b) is a substantially modified version of Sec. 587, H.B. 164 (1967).

* Sec. 42.05.631. Expenses of Investigation and Hearing.

With only minor changes, the provisions of this section are currently found in AS 42.05.610.

* Sec. 42.05.641. Regulatory Fees.

This is a new provision and is fairly standard in other state public utility codes. Its objective is to have the regulated industry pay at least a part of the cost of regulation.

In motor freight carrier regulation by the Alaska Transportation Commission, such regulatory fees are provided for in the form of weight fees (AS 42.10.240) and application fees (AS 42.10.160)

* Sec. 42.05.651. Public Disclosure of Information.

This section is taken from AS 02.05.240 of Alaska's Air Commerce Act.

See AS 09.25.110 - 120 provide in essence that all public records are open to public inspection, etc. "unless specifically

provided otherwise. Thus, the need here is not to provide that Commission records are open to public inspection, but merely to provide for those few circumstances under which they should not be available for public review.

* Sec. 42.05.661. Validity of Certain Certificates.

This section was considered necessary to protect the certificates, aready issued, of public utilities grossing less than $25,000, which utilities were exempted from regulation by Sec. 2, Ch. 188, SLA 1968.

* Sec. 42.05.671. Utility Classes.

This section is designed to fit the general plan of greater jurisdiction and authority of the Commission. It is easily recognized that all utilities should not be regulated to the same degree. Therefore,through the mediums of classifications and broad discretionary authority, the Commission can easily provide regulatory requirements that will fit the circumstances of utility variations, without encountering the disruption of statutory exemptions.

* Sec. 42.05.681. Definitions.

The general approach taken in the current statute, AS 42.05.640, was adopted here.

The definition of Public Utility confines itself to the extent possible with the matter of defining the term and leaves "exemptions" to a section of that title. The definition is quite comprehensive. However, it is noted that the furnishing of heat was inadvertently left out. This would appear to be easily corrected by inserting a comma and the word "heat" in subsection (1)(c) between the words "water" and "or" to read "furnishing water, heat, or sewer. . . ."

Two new definitions have been added and some of the existing definitions are modified to a limited extent.

The definition of "public" includes "public utility." This definition, when applied to the definition of public utility, assures the coverage by the Act of those utilities who may have a public utility as their only customer. An example

would be A. J. Industries at Juneau who wholesales all of its electric power and energy to Alaska Electric Light & Power Co.

The definition of "affiliated interest" is taken from Washington Statute 80.16.010. Its principal applications are found in proposed sections 42.05.491 and 691(a).

* Sec. 42.05.691. Exemptions.

Exemptions have been restricted to a very minimum in keeping with the overall plan of the bill.

Subsection (a) exempts supplies by truck, etc. as currently provided in AS 42.05.645. However, when the operator has an "affiliated interest" in a "public utility" which he is serving, this exemption does not apply.

All other exemptions relate to municipally owned and operated utilities. These municipal exemptions are not necessarily desireable from the regulatory viewpoint, but represent an effort to permit local governments as much freedom from state regulation as possible without disrupting the overall regulatory program.

This section in H.B. 202 differs from the Governor's bill, S.B. 128 in that S.B. 128 exempts municipal utilities from rate regulation within municipal boundaries. The question has been raised whether regulation of municipal utility rates outside the municipality only, can be accomplished. A similar provision is contained in Pennsylvania Statutes, Title 66, Section 1141. Time did not permit a thorough research of the degree of success the Pennsylvania Commission has had in its application. The annotations to the statute, however, indicate that such regulatory authority has been exercised by that Commission.

As stated earlier, the statutory exemptions tend to substantially compound regulatory problems. An excellent example of this is the exemption enacted in 1968 for utilities grossing less than $25,000. It immediately placed in question the legal status of certificates already issued to such utilities. Even more importantly, the exemption placed in question the Commission's jurisdiction to certificate any prospective utility because such utility, irrespective of size, would not have earned $25,000 prior

to actual operation. A third area of serious conflict was also raised, in that, anyone could provide unregulated utility service in any area already certificated and being served by an existing utility.

Another well known example of the regulatory problems created by exemptions is the duplication of facilities by municipal utilities and certificated utilities, particularly in the Anchorage area.

I have reviewed very hurriedly Committee Substitute for HB 202. Three of the revisions would have very substantial effects on the Act, & raise significant questions of desireability they are amended sections

42.05.121

42.05.171

42.05.441

I will comment on these & other revisions as soon as possible. If it is desireable I will be pleased to appear before the committee to discuss these matters as well as the bills.

I feel that most of the changes in the committee substitute are an improvement & make it a better bill.

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

SECTIONAL ANALYSIS OF CSHB 202

* Sec. 42.05.020. Composition of Alaska Public Service Commission.

I have already commented at length on subsection (b) so will avoid repeating here.

* Sec. 42.05.030. Term of Office; Vacancy.

Changes made here are appropriate.

* Sec. 42.05.035 and .071.

No significant changes made.

* Sec. 42.05.081. Oath of Office.

The change here is appropriate.

* Sec. 42.05.091. Compensation of Members of Commission.

The question of dual salaries has already been brought to the Committee's attention.

* Sec. 42.05.101 and .111.

No significant changes made.

* Sec. 42.05.121. Employment of Commission Personnel.

The matter of a commissioner also serving as executive director has already been discussed. This, however, is optional. The question should be thoroughly researched before implementation.

The elimination of provisions for employing hearing officers has merit provided it does not contribute to delay rather than remedy the P.S.C. sad experiences with hearing officers in the past.

I agree that it is much more desirable to have the Commission hear all formal proceedings rather than use hearing officers. I do not foresee any problems from the exclusion of hearing officers for at least a couple of years.

* Sec. 42.05.131. Restrictions on Members and Employees.

The extension of restrictions is good.

* Sec. 42.05.141. General Powers and Duties of the Commission.

The revisions to subsection (1) should accomplish the objectives of the original bill. The revisions are an improvement.

Changes in other subsections are minor.

* Sec. 42.05.151. Administrative Authority of Commission; Regulations and Hearing Procedures.

I commented in some detail on the corresponding section in H.B. 202. The revised version is equally appropriate.

* Sec. 42.05.161. Application of Administrative Procedure Act.

I concur in the revisions made in the corresponding section in H.B. 202.

* Sec. 42.05.171. Formal Investigations and Hearings.

The objectives of this revised section are substantially the same as in the original. One difference is the number of commissioners required to hear a case. I commented on this aspect in my notes on this section in H.B. 202.

The restriction that a commissioner must have read or heard the entire record is well stated and appropriate.

* Deletion of section on Hearing Officers and Agents.

This substitute bill deletes the subject section (42.05.181 of H.B. 202). Since the committee has determined to eliminate the hearing officer from the procedural processes, this deletion is appropriate.

The purposes of the original section are expressed in my comments on the original bill.

* Sec. 42.05.181. Final Orders of the Commission.

This section has been added and is appropriate.

* Sec. 42.05.191. Reports on Proceedings.

This section has been added and is appropriate.

* Sec. 42.05.201. Publication of Reports, Orders, Decisions and Regulations.

This section has been added. To some extent it duplicates provisions of sections 42.05.161 and 191. The section is appropriate .

* Sec. 42.05.211. Annual Report.

The provisions of this section are found in Sec. 42.05.131 of H.B. 202.

* Sec. 42.05.221. Certificates Required.

This section contains the same provisions as Sec. 42.05.191 of H.B. 202 plus the addition of a subsection granting grandfather rights. I have commented on this previously.

* Secs. 42.05.231 and 241.

No substantive change from counterparts in H.B. 202.

* Sec. 42.05.251. Use of Streets In Cities and Boroughs.

This is a new section and is desirable.

* Sec. 42.05.261. Discontinuance, Suspension, or Abandonment of Certificated Service.

No substantive changes from original provisions.

* Sec. 42.05.271. Modification, Suspension or Revocation.

The inclusion of the word "willful" in subsections (4) and (5) is beneficial.

* Secs. 42.05.281, 291, 301, 311, 321, 331 and 341.

No substantive changes from corresponding sections in H.B. 202.

* Sec. 42.05.351. Testing of Appliances.

The Principal revision in this section corrects an error in the original.

* Sec. 42.05.361. Tariffs, Filing and Public Inspection.

The principal revision in subsection (a) reclassifies contracts which affect rates as special tariffs. This is a matter of convenience and not substantive. The word "rate" is defined in the definitions section as including "charges."

The revision to subsection (c) should not require a hearing but simply give opportunity for hearing after notice.

* Sec. 42.05.371. Adherence to Tariffs.

No substantive change from counterpart.

* Sec. 42.05.381. Rates to Be Just and Reasonable.

The addition of subsection (b) is probably unnecessary except the provision for taxes.

* Sec. 42.05.391. Discrimination in RAtes.

No objection to deletion of subsection (b) contained in the original. No other substantive changes have

been made.

* Sec. 42.05.401. Apportionment of Joint RAtes.

The deletion of subsection (b) of the original was discussed with the committee. I agree that the objectives are satisfactorily provided for in other sections.

* Sec. 42.05.411. New Or Revised Tariffs.

No substantive changes.

* Sec. 42.05.421. Suspension of Tariff Filing.

The only significant change here is in subsection (b) which reduces the suspension period from 7 to 5 months. The standard in most states is 10 months.

* Sec. 42.05.431. Power of Commission to Fix Rates.

No substantive changes.

* Deletion of Secs. on "reparations"

No objection to such deletion.

* Sec. 42.05.441. Valuation of Property of a Public Utility.

Subsection (b) of this section has been changed substantially. I have already commented on it in some detail to the Committee so will limit my statements here to matters not already covered.

Assuming that no change is to be made in the "original cost" - RCND formula, I suggest the addition of the words "and obsolescence" at the end of the sentence. The first sentence would then read:

> "(b) In determining fair value of public utility property for rate making purposes, the commission shall be guided primarily by the average of original cost, less accrued depreciation and reproduction cost, less physical depreciation and obsolescence."

This additional language should be acceptable to everyone since the principal concern is, or should be, that the value to be determined by the formula more nearly reflects the actual value at the time the determination is made. No reasonable argument can be made that the fair value should exceed the actual value at any given point in time. Requiring obsolescence to be taken into account provides an additional safeguard against the possibilities that a fixed RCND formula will yield something greater than actual value.

An accounting for physical depreciation does not necessarily account for obsolescence.

One additional matter should be touched upon and that is the relationship between plant valuation and financing. It has been suggested that a utility cannot obtain financing under an "original cost" valuation policy. However, a very substantial majority of the states apply original cost and reject RCND completely. I know of no instance (and I m sure that no one else can cite one) where these states have experienced abnormal utility growth. As

a matter of fact, California has one of the most vigorous and advanced electric utility industries in the nation and it has always been strictly an "original cost" state.

Public utilities cannot be compared with other industries in most respects and particularly financing, because they

(1) occupy a lawful monopoly position;

(2) the service is essential to their customer and is bought continuously by many small buyers;

(3) the consumer has an urgent need for the service and that need cannot be postponed; and

(4) the consumer has no acceptable alternative.

* Sec. 42.05.451. System of Accounts and Reports.

Subsection (a) will permit utilities to "adopt a generally recognized system of public utility accounting." This is the language of the current statute. H.B. 202 would revise this provision to allow the commission to prescribe the system.

The reasons for this revision are covered in my comments on Sec. 42.05.431 of H.B. 202.

Suffice it to repeat here that uniform accounting by all utilities of a type, is highly beneficial to the regulatory process. Subsection (b) relating to annual reporting changes the time allowance for annual reports from 75 to 90 days with provision for extensions if circumstances warrant. These are beneficial revisions.

* Sec. 42.05.461. Continuing Property Records.

No change from H.B. 202, Sec. 441.

* Sec. 42.05.471. Depreciation Rates, Initial Losses and ACcounts.

Subsection (a) and (b) - no substantive change from H.B. 202, Sec. 451(a) and (b).

Subsection (c) - This is a new subsection and allows a new utility to amortize operating losses, if any, which it has incurred in developing its market and system. This

provision has merit but could be the subject of abuse and possibly extra profit. I suggest that the commission be given additional discretionary control over the extent to which losses may be amortized. This could perhaps be accomplished by providing additional qualifications.

At the very least, the word "reasonable" should be inserted between the words "of" and "net" and the word "necessarily" be inserted between "losses" and "incurred." I would also suggest that the phrase "not otherwise compensable" be added after the word "losses." The subsection would then read, "(c) The amount of reasonable net operating losses, not otherwise compensable and necessarily incurred by. . . ."

To some extent net operating losses are compensated for by carry-over into future years for purposes of computing income taxes payable in such future years. Since a utility's profit is computed as a rate of return <u>after taxes</u> the utility could realize extra profit in the carry-over years unless the commission can take this factor into account.

* Sec. 42.05.481. Subsidiary Business Accounts.

No substantive changes.

* Sec. 42.05.491. Records and Accounts to be Kept in State.

No substantive changes.

* Sec. 42.05.501. Inspection of Books and Records by Commission.

Only clarifying langauge added.

* Sec. 42.05.521. Impaired Capital.

The added expression "or might become impaired by continuation of current practices" is desirable.

* Sec. 42.05.531. Distribution of Surplus and Profits.

I agree with the changes here.

* Secs. 42.05.541 - 621 - Re. Judicial Review, Penalties and Enforcement.

The principal substantive change in these sections is to remove their application to non-utilities. As indicated

in my comments on H.B. 202, these provisions, as originally drafted, k were similar to the California Code as well as that of Washington and Pennsylvania. (These were the only states researched on the subject.) Their application to non-utilities as well as utilities assures non-interference by parties not otherwise covered by the Act. I do not know to what extent, if any outside interference is or might be a problem.

Another change made in the substitute bill removes application of civil penalties to officers, etc. of the utility. I see no problem from this revision since they are covered under criminal penalties.

Sec 42.05.131. Regulation by Municipality
The provision (a) in the Bill 202 was taken from the current statute. By its deletion [Sec. 42.05.861 (a)] I take it the committee feels it has outlived it's usefulness or else the committee believes that such prior contractual arrangements should be terminated.

* Sec. 42.05.671. Public Disclosure of Information
This matter is covered in my comments on HB202. I do not believe the added language is necessary but at the same time no problem is created by leaving it in.

Anchorage, Alaska
March 6, 1965

TO: The Honorable Eugene Guess
Chairman - House Judiciary Committee

Re: House Bill No. 138

The Honorable Homer Moseley
Chairman - House Commerce Committee

Gentlemen:

Following is a summary of the amendments requested on behalf of ALASKA PIPELINE COMPANY - ANCHORAGE NATURAL GAS COMPANY, and in some instances utilities in general, presented and requested by the undersigned near the close of the hearings of your joint committees in Juneau last week.

We favor a board of not less then five (5) members, and feel that appointment from the various segments of the utilities industry has merit. Unless members are appointed who have some background in utility operation, whether from experience in the industry, accounting, legal, engineering, or as a previous service in regulation, it will take some time to become familiar with the philosophy,concepts, and obligations to protect the public, protect the utility, and to protect the investors. We feel that the proposed six-year term is moritorious and that removal should be for cause. We would like to see some independence,in the commission, whether it be organized within the Department of Commerce, or otherwise, such as election as the chairman by the commission, each two years. However, we are confident that the most capable commissioners will be sought out. The importance of having the most fit and capable commissioners cannot be over-emphasized, as a very large segment of the Alaskan economy will be under complete regulation under the terms of the proposed Act.

.035: add at end of section ", based on their professional qualifications and experience."

.055: We do not feel that high-type commissioners would be prejudiced in their decision making by owning stock in a truckline, gas company, air operation, telephone, or electrical utility.

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Thus we would be willing to see this entire section stricken. However, if it is not stricken, we see no reason that the equity holder of a REA financed co-op should be an exception in the restrictions. With the admitted lack of qualified persons, the restrictions eliminate a great mass of potentially qualified members for the Commission.

.085: If the Commission is to proceed to full scale regulation as this Bill contemplates, members of the Commission will have to be compensated on at least a part-time basis.

.105: In proceedings in which the Attorney General represents a party as a advocate in a proceeding, the Act should provide that his services terminate at the end of the taking of testimony so that he cannot continue to advise the Commission during the process of their making findings, conclusions, and decisions. The Commission will have in its staff, at that time, professionally trained persons competent to draw the findings, and the basis therefor.

.125: The Commission should not be permitted to delegate all of its functions, e.g. the judicial or quasi-judicial functions of decision making. Request that the word procedural or ministerial be inserted at line 18 before the word "function".

.165: A number of States finance utility regulation from the general fund. In the case of ALASKA PIPELINE - ANCHORAGE NATURAL GAS, franchise fees,or taxes of 2% of gross revenue,are paid within the Cities of Anchorage and Soldotna, and within the Greater Anchorage Borough for the services furnished within what was the Spenard Public Utility District, where a franchise is also held. These companies also pay real and personal property taxes within the cities - borough, presently pay gross business license tax to the State, and it is anticipated that substantial income tax payments will be made to the State and to the Federal

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Government when profits result. Thus, from this variety of tax contributions to local - State government, it can be argued that this industry is entitled to some services of the regulatory body. However, if an additional tax is to be imposed, it is obvious that the 1% tax on the entire industry in Alaska would bring in some $400,000 at this time, and that the amounts of this revenue would probably increase rapidly. Any such tax is burdensome, the burden being relative to the amount of the tax, and the method of collecting it. Comments at the hearing indicated the likelihood of applying the tax, if imposed, to wholesale sales, and to retail sales. In this event, we would request a specific provision, that where a company sells at wholesale to a wholly owned subsidiary, the tax would be collected but once, on total ultimate sales to consumers.

.175: Amendment is indicated in light of exemptions and definitions contemplated in the Act.

.185: The last sentence of this provision permits the Commission to delegate in writing to "any person" its authority to conduct an informal investigation. This would permit conceivably, the appointment of either an irate consumer, or a disgruntled competitor, to investigate the utility affected. We would suggest that an additional provision be inserted to the effect either that it be a person "having no interest in the outcome of the investigation," or, that the person appointed, if not a regular member or employee of the Commission, have the concurrence of the utility affected.

We note that the proposed Act has no prohibition or penalty against disclosure of information by members or employees without the approval of the Commission. This could be extremely dangerous to a utility. We recommend the language of the Illinois Statute, but others would probably be just as good. Section 18 of the Illinois Act, 111 2/3 §18, Penalty for Divulging Information

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provides as follows:

> "Any officer or employee of the Commission who divulges any fact or information coming to his knowledge during the course of an inspection, examination or investigation of any account, record, memorandum, book or paper of a public utility except in so far as he may be authorized by the Commission or by a court of competent jurisdiction, or a judge thereof, shall be guilty of a misdemeanor, and upon conviction, be subject to imprisonment in the county jail not exceeding one year, or to a fine not exceeding one thousand dollars, or to both."

This provision, and requirement, is important to all utilities, although none noted at the hearing the absence of such a provision.

.215: In the first sentence, insert after the words "shall make", "or cause to be made". Line 26, after the word "hearings", insert, "or investigations, formal or informal" are held.

The reason for this is that both the complaining party, and the utility, should be able to see and read in the Commission files or receive a report of the investigation, whether it be only a paragraph long.

Also, at line 26, and 27, and 28, after the words, "its decision and order", insert, "and the basis therefor".

I am advised that this serves a highly useful purpose in insuring against any pre-conceived or immature conclusions, or conclusions entered upon incomplete investigation. Such a requirement insures further thoroughness and fairness to all parties and provides a more clearcut record in the event appeal is sought by any party.

.225: Line 5, delete, "OR PRIVILEGE".

We cannot see and do not visualize any instance in which the denial of a privilege should result in a hearing It would seem that the present language might result in burdensome, numerous hearings, requested by parties wishing a privilege which does not

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exist under the law, or the rules and regulations of any affected utility.

In the last line of the same section, following the words "public utility", change the language to read, "or any party to the proceeding."

This change is recommended for clarification so that the Commission and the parties to any proceeding will be protected from demands for hearing by any one of a multitude of interested persons who are not, in the legal sense, interested parties or "party to the proceeding".

.235: As pointed out earlier, some States pay the entire costs of regulation from the general funds. Others, to varying degrees, pass the costs of hearing on to the party concerned, as anticipated by this section of the bill. We requested and recommended that in the basis for apportioning costs, the section making "ability to pay", one of the criteria be deleted. This is too much of an open invitation to load the costs against what might appear to be a prosperous utility, even though the utility were found to be acting in good faith. It must be remembered that the costs of a proceeding are not only the costs incurred by the Commission, but generally equal costs will be incurred by the utility affected, which it must absorb. Ultimately of course, all of the costs of the utility in preparing for and conducting its presentation before the commission, have to be borne by the consumers - rate payors of the utility, as would any portion of the commission's cost which are assessed against the utility. Therefore we further recommend the addition of further limiting language at line 17 after the words "mitigating circumstances" as follows: "HOWEVER, IN NO EVENT, SHALL ANY UTILITY, PARTY TO THE PROCEEDING, BE ASSESSED MORE THAN ONE-HALF THE COSTS THEREOF."

.245: There was general agreement that grandfather's rights should be preserved, or specifically, that existing certificates obtained under the present law of Alaska, should be validated.

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Otherwise, a tremendous amount of work already done by the utilities and the Commission, would be wasted and time and expense of re-application would be burdensome to all. At this point we recommended a new provision as follows:

> "Until changed by Order of the Commission, the rates rules, and regulations of Utilities, operating under franchises, or under the jurisdiction or local regulatory bodies empowered by law to so regulate, are hereby approved."

This brings us to the question we raised at the opening of our presentation, which is: What is the status under the proposed legislation of utilities presently regulated by Home Rule Cities under franchise granted by such Home Rule Cities? We feel that there is a real and serious question for the legislature to resolve at this time. Are we, for example, subject to dual regulation, and if so, do the determinations of the PSC override those of the Home Rule City where they conflict, or does the conferring of power by this Act upon PSC displace and negate the former powers of the home Rule City to regulate the matters over which jurisdiction is given to the PSC, or, as suggested by some of the electrical co-operatives and cities, in testimony before the Committees, would Home Rule Cities retain the power to regulate franchised utilities within their geographic boundaries and the PSC regulate only beyond the city limits.

.295: We recommend addition at the end of the Section, the following language:

> "Sale of equipment, appliances, and materials, and installation thereof, by the utility, directly or by contract, are hereby excluded, provided however, that records of all the revenues and costs associated therewith shall be maintained separate from the remainder of, or the general operating accounts of the utility."

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.325: The requirement of filing with rate schedules "all contracts which affect or relate in any manner to the rates" can be terrifically burdensome, both to the utility and to the Commission. This language would require filing copies of contracts for every purchase, every employment, every job, etc., as these do "relate in any manner". Our suggestion and recommendation is preferably to delete this requirement, otherwise the Commission will soon have warehouses full of copies of purchase orders, work orders, etc., and the utility will be burdened in its administration, or in the alternative, if the requirement must exist, change the language to read, "and all contracts which directly affect the rates." It should be pointed out that the Commission, through its very general and generous powers, can at all times ascertain any of these matters without having to become a great storehouse for a volume of paperwork, to which it could never pay any attention, without maintaining a horde of agents to scrutinize the minute detail of daily operations of all utilities affected.

.425: We find this section unclear and meaningless. We do not know the origin or intent of this section, and feel that the prior and subsequent two sections probably accomplish the intent of the drafter. If there is a purpose which we have overlooked or failed to understand, I would greatly appreciate an explanation, so that we would not be in a position of opposing something proper simply because of ignorance upon our part.

.435: At line 20, we recommend deleting the word "APPLIANCES" , and substituting the words, "metering equipment".

In our industry, appliances are conceived to be household items, such as ranges, heaters, dryers, etc.

Again, we do not understand the use of the word "standards" at line 22, of this section.

.455: In previous hearings on the present Act concerning valuation of public utility properties, our representative and perhaps others, sought and obtained the present reference to

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"fair value of such property", which appears in the present Act, and the language of the proposed Section. We propose a further revision which makes fair value a more significant ultimate goal of the Commission in determining valuation of utility property rate-making purposes. The language we propose and recommend is as follows:

> "The Commission may, when necessary, for rate-making purposes, investigate and ascertain the actual legitimate costs of the property used and useful of every public utility, the depreciation therein, and other facts which bear on the determination of such cost or depreciation, and the fair value in fact of such property."

The remainder of the proposed section seems satisfactory.

.465: This is a typical section, and exists in our present law. The need for it has generally disappeared with exemption of small utilities under $100,000.00 gross, as practically all larger utilities do utilize "generally recognized systems". Line 29 at the bottom of page 15, we recommend changing the word "system" to "systems", so that the Commission will not feel bound to prescribe one system which must be used by all varities of utilities. We further recommend and request the following addition within the section:

> "A public utility presently using a generally recognized system of accounting, will not be required to change to another system."

.475 and .485: We recommend substitution of provisions similar to that in effect in Illinois, at Section 111 2/3, §14, which provides as follows:

> "Depreciation accounts. The Commission shall have power, after hearing, to require any or all public utilities to keep such accounts as will adequately reflect depreciation, obsolescence and the progress of the arts. The Commission, may, from time to time, ascertain and determine and by order fix the proper

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and adequate rate of depreciation of the several classes of property for each public utility; and each public utility shall conform its depreciation accounts to the rates so ascertained, determined and fixed."

In order to prevent misuse or dissipation of depreciation and other reserves, we would suggest addition of the following language:

"And may govern the use of such reserves to prevent any improper alienation of assets of the utility."

Our particular concern, and that expressed by other utilities at the hearing is, that the Commission should not be empowered to require the utility to maintain the reserve in the form of cash, or investment in U. S. or State bonds, or bank savings accounts, as none of these pay, or yield a return as high as the rate charged on the bonds and borrowings of the utilities. It is thus common practice, and the practice of the company making this presentation to project, schedule, and use these reserves for payment and repayment of interest, and indebtedness, and for extension of new facilities to obviate additional borrowing. The contrary situation is true in the case of REA financed co-operatives paying 2% interest. They, of course, could use their reserve account for investment earnings at a rate higher than their required interest payments. However, they too should have the right to utilize their funds to maximum advantage with the Commission empowered simply to see that they are not wasted dissipated, or alienated.

.485: We question whether the State is ready, or should be required to regulate the financing of all utilities. If it must, we strongly urge some definition and exceptions. Our information is that the Wisconsin Commission, whose Act was copied in this section, is a very mature Commission, which has gained a great deal of competence through the many years it has been in

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existance, and that it operates with a view to assuring and maintaining the health of the utilities as well as protecting the consumers, and that they also attempt to protect the purchasers of securities in their investments. I understand further that by practice, some leeway is given the utilities that is not actually provided within the strict language of the Act. We recommend and urge the following:

a. Exempt utilities complying with this act from the provisions of Alaska's general securities Act, "the Blue Sky Law", so that utilities would not be burdened with the administrative detail, costs and expenses of compliance with both. Regulation under this Act is much more comprehensive and affords the public full protection.

b. Exempt stock dividends and stock splits from the operation of this act. These do not affect the financial condition of the utility.

c. Exempt short-term borrowing. We would like to see borrowing up to three years exempt as such financing on a relatively minor scale is generally available in the normal money market to a sound utility, permitting the utility to finance temporary requirements in this manner without undertaking the burden of preparing and selling a bond issue for long-term financing, which is believed to be the true objective of this section. The Legislature could well consider in granting the exemption of short-term financing up to three years, placing some limitation on such borrowing, such as "not to exceed 10% of the total debt of the utility". This exception for short-term borrowing makes possible temporary financing from time to time, should the money market not be favorable to long-term bonded indebtedness.

d. Exempt endorsements and guarantee of the undertakings of others in due course of business. Many utilities, electrical co-operatives, as well as the gas industry . sell appliances, etc.

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on contracts, or take installment notes, which are then endorsed, sold, or assigned, to other financial institutions for cash. It would be extremely burdensome on the utility as well as the PSC to require these transactions to be processed by the Commission.

It is our strong recommendation that Section .585, the Power of Eminent Domain, is a definite and common requisite of public utilities. This power exists, and is presently exercised under the Code of Civil Procedure, Section 00.53.340, et seq. It might be well to so clearly state by adoption of this section, (.585), in the proposed Act.

We appreciate the opportunity to appear before the joint Committees and the fine manner in which the hearings were conducted, and the fair treatment accorded all witnesses including the undersigned.

If we can be of any assistance whatever, or if our comments or help is desired at any time in the process of preparing or considering the Act, we would be happy to be called upon.

Very truly yours,

Paul F. Robison

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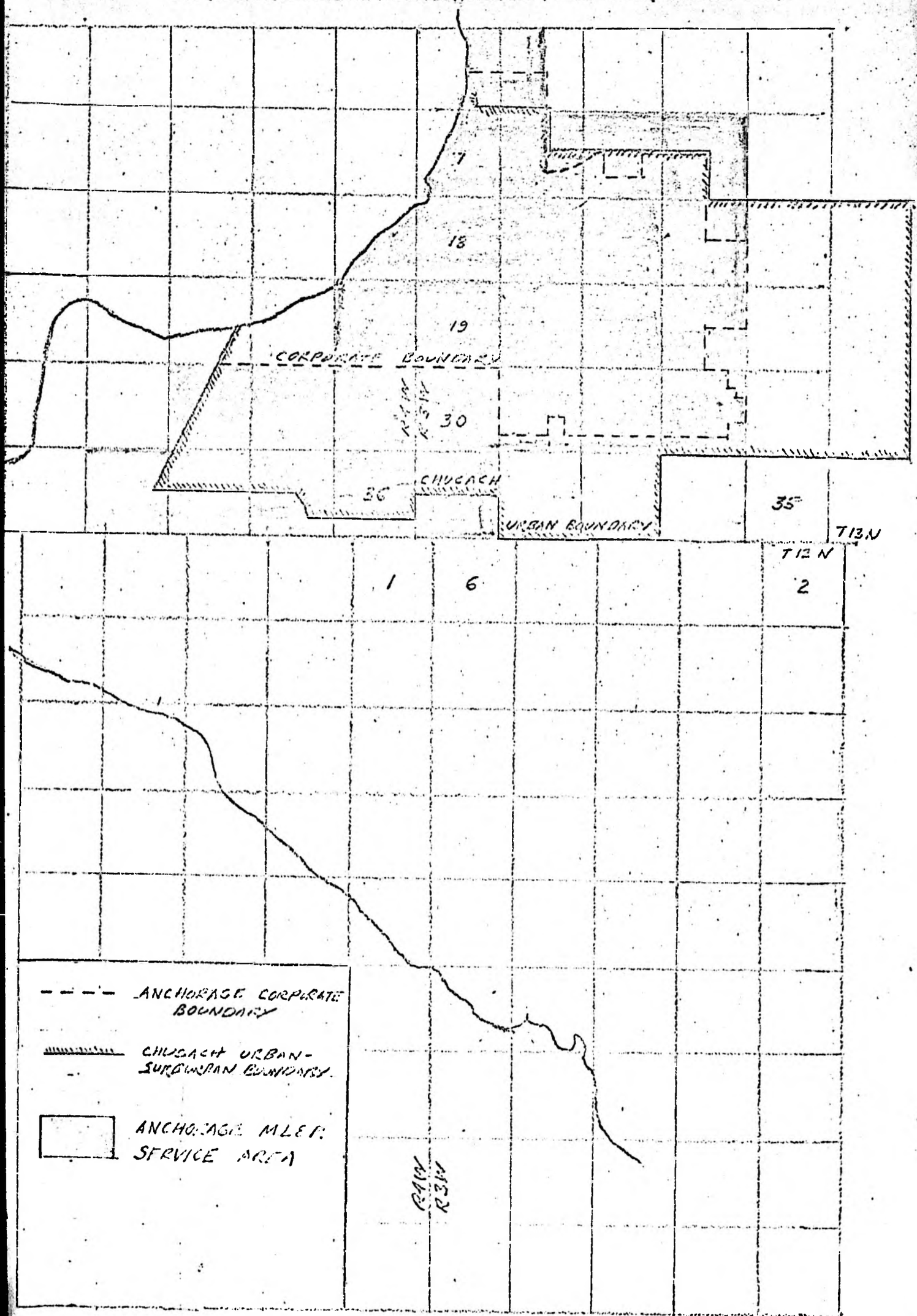
MAP 2 -- SHOWING RELATIONSHIP OF Exhibit

CHUGACH URBAN ZONE & M.L.E.P. SERVICE AREA



UTILITY COMMISSION DATA

Jackson
PSC

I. Number of Commissions 57
   A. Includes District of Columbia and Puerto Rico; these and 48 others have one commission.
   B. Alaska and Arkansas are the only states that have two commissions.
      (a) Alaska has ATC and APSC.
      (b) Arkansas has a Commerce Commission and a Public Service Commission.
   C. Kentucky has 3 Commissions
      (a) State Corporation Commission
      (b) Department of Motor Transportation
      (c) Railroad Commission

II. Number of Commissioners
   A. 36 have 3 full time commissioners.
   B. 4 have 3 part time commissioners.
      APSC in Alaska, Del., Ky. RR Comm., and Md.
   C. 1 (NY) has 5 full time commissioners plus 2 part time commissioners.
   D. 1 (Va) has 1 full time commissioner plus 2 part time commissioners.
   E. 7 have 5 full time commissioners.
      Calif., Ga., Ill., Mo., Neb., N.C., and Penn.
   F. 1 (Hawaii) has 5 part time commissioners.
   G. 1 (Ark. Commerce Comm.) has 6 full time commissioners.
   H. 2 (Mass. and S.C.) have 7 full time commissioners.
   I. 3 (Ky. Dept. of Motor Trans., Oregon, and R.I.) have 1 commissioner.
   J. 1 (Alaska Trans. Comm.) has 2 full time and 1 part time commissioner.

   57 Total

III. Financing of Commission operations
   A. Power to assess cost of special investigations against the regulated utilities.
      (a) 24 Commissions do
      (b) 29 Commissions do not
      (c) 4 Commissions facts unknown
   B. Power to charge fees for special transactions and proceedings (i.e. application fees, etc.).
      (a) 29 Commissions do
      (b) 24 Commissions do not
      (c) 4 Commissions facts unknown
   C. Per cent of Commission expenditures paid from general tax funds.
      (a) 13 Commissions 100%
      (b) 8 Commissions None
      (c) 7 20% or less
      (d) 5 20% to 50%
      (e) 3 50% to 75%
      (f) 4 75% to 99%
      (g) 17 Commissions percentage not known
   D. Power to assess fees for general regulation
      (a) 31 Commissions do in varying percentages
      (b) 16 Commissions do not
      (c) 10 Commissions facts unknown

IV. Regulatory Jurisdiction over

A. Wholesale electric rates

(a) Private utilities

(1) Facts unknown 9 Commissions
(2) Yes 41 Commissions
(3) No 9 Commissions

(b) Publicly-owned utilities

(1) Facts unknown 12 Commissions
(2) Yes 14 Commissions
(3) No 31 Commissions

(c) Cooperative utilities

(1) Facts unknown 12 Commissions
(2) Yes 16 Commissions
(3) No 29 Commissions

B. Retail electric rates

(a) Private utiliites

(1) Facts unknown 8 Commissions
(2) Yes 47 Commissions
(3) No 2 Commissions

(b) Publicly-owned utilities

(1) Facts unknown 11 Commissions
(2) Yes 15 Commissions
(3) No 31 Commissions

(c) Cooperative utilities

(1) Facts unknown 12 Commissions
(2) Yes 17 Commissions
(3) No 28 Commissions

C. Power to suspend rate changes

(1) Facts unknown 12 Commissions
(2) Yes 45 Commissions
(3) No 5 Commissions

D. Rate change suspension period

Number of Commissions	Number of Months
1	2
2	3
4	4
3	5
8	6
1	7
1	8
2	9
5	10
1	11
3	12
1	Until Hearing
4	Indefinite
9	No detail

E. Power to initiate rate investigations

(1)	Facts unknown	6 Commissions
(2)	Yes	50 Commissions
(3)	No	6 Commissions

F. Power to prescribe uniform system of accounting

(1)	Facts unknown	4 Commissions
(2)	Yes	53 Commissions
(3)	No	0

G. Other Powers

		No. of Commissions		
		Yes	No	Facts Unknown
(1)	Permit to initiate service	47	7	3
(2)	Re discontinuance of service	50	4	3
(3)	Regulate territorial disputes	47	6	4
(4)	Issuing indeterminate permits	26	18	12
(5)	Allocate unincorporated areas	37	13	7
(6)	Regulate purchase, sale, merger or consolidation of facilities	37	15	5
(7)	Regulate issuance of securities	43	9	5
(8)	Regulate affiliated interest transactions	37	14	6
(9)	Regulate dividend payments	22	28	7
(10)	Require submission of budgets	20	32	6
(11)	Require competitive bidding on major projects	15	36	6

V. Method of Selecting Commissioners

Direct election	16 Commissions
Appointed by Governor	16 Commissions
Appointed by Governor with approval of Legislature	2 Commissions
Appointed by Governor with approval of Senate	18 Commissions
Elected by Legislature	2 Commissions
Facts unknown	3 Commissions

VI. Minority party representation on Commission

Facts unknown	10 Commissions
Yes	19 Commissions
No	28 Commissions

VII. Specific Qualifications of Commissioners, Other than Age, Citizenship, Residence, Conflict of Interest, or Previous Relationship with Regulated Utilities.

A. APSC--See AS 42.05.040 and .050.
B. Indiana--2 Commissioners must be attorneys.
C. Michigan--1 attorney; others must have knowledge of traffic and transportation matters.
D. Virginia--1 must have qualifications of a member of Supreme Court.
E. West Virginia--1 must be a lawyer.

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

INDEX TO SB 54

INDEX TO SB 54 (Cont.)

INDEX TO SB 54 (Cont.)

COMMENTS OF DON HALL, EXECUTIVE DIRECTOR
OF ALASKA PUBLIC SERVICE COMMISSION, ON SB 54

SB 54
Section No.

.005 In my opinion 5 part-time commissioners would be impractical and needlessly expensive. Hawaii is the only state that now has 5 part-time commissioners. Seven commissions have 5 full-time commissioners, but they have large staffs and all of them regulate transportation agencies as well as public utilities. If there is anything wrong with the Commission it cannot be attributed to the fact that it only has 3 instead of 5 part-time commissioners. Thirty-six of the 57 state regulatory commissions have 3 full-time commissioners and four have 3 part-time commissioners; so it is apparent that three commissioners are all that are really needed. If we should have 5 commissioners in this State I am confident the Governor would find it advisable to appoint them so that various population centers and geographic areas were represented. Thus, the State would have to bear the expense of bringing 5 instead of 3 commissioners to meetings approximately once a month which would greatly increase inside travel costs. Moreover, I can testify to the fact that it requires a great deal of staff time to keep three Commissioners informed of current developments, as they occur, between regular meetings and that the task of assembling records and material for every Commission meeting takes far more time and effort than is generally realized. The staff burden would obviously be greater if there were 5 Commissioneers.

In the final analysis, I think it can be generally agreed that a Commission's success or failure depends mainly on how wise and fair the decisions are rather than how many people participate in the decisions that must be made. After all, three commissions have only one commissioner. This has been going on for many, many years.

.015 6 years is the term of office 35 states prescribe for commissioners.. 11 states prescribe 4-year terms. Only one prescribes a 5-year term. What if February 1, 1969 passes without enacting the law. It would be better to make the terms effective as of the effective date of the law.

.025 The term "fitness to exercise the powers and duties of the commission" is almost meaningless, unless it made meaningful by some procedure such as that of Idaho which requires an investigation by a gubernatorial appointment committee. Our present law is far superior in this respect to that of any other state. The qualifications should be definite. Since

Alaska is already head and shoulders above all other states in spelling out the qualifications of commissioners, we should not go backward. Only four other states now require specific qualifications as distinguished from those such as age, citizenship, residency, etc., namely; Indiana, Michigan, Virginia and West Virginia.

.035 In most states (28) the Governor names the Chairman during his term of office. In 22 others, however, the Commission elects one of its members as chairman. In 2 states the Chairman is designated by rotation and in one by seniority.

.045 No response

.055 No response

.065 No response

.075 The salary of $6000 is the maximum amount recommended by APSC consultants and the amount suggested in APSC proposed legislation for a 3-member Commission.

.085 OK except that the Commission would apparently be unable to name an Executive Director who did not meet the minimum qualifications established by the Personnel Department. This might hamper the selection if the Personnel Department should adopt the recommendation of the APSC consultants who suggested a college degree with emphasis in engineering, accounting, economics, business administration or a utility oriented field plus 10 years of experience in a governmental agency that regulates public utilities.

.095 Under what circumstances will the Attorney General be <u>required</u> to represent the public interest? The way the law is <u>written</u>, it appears that the Attorney General is the only one who would make this decision. There is a question in my mind as to the propriety of allowing the Attorney General to represent the Commission as well as the public in the same proceeding. In Washington State the Attorney General engages the services of an attorney in private practice. This, I believe, would be a more acceptable procedure.

.105 The word "are" in lines 13 and 14 seems to be the wrong word. "Shall be" would be better.

.115 No response

.125 Line 24: Place period after parentheses and strike the rest of the sentence. Is it necessary to include hearing officers, or would the would the word "officers" include hearing officers who are not on the Commission's regular payroll?

.135 No response

.145 If this means the Commission must print or mimeograph or multilith all of its orders and give copies to anyone who asks for them, free of charge, the cost could be prohibitive. Moreover, it would require a lot of staff time which could be better devoted to other matters. Large, well financed commissions can do this, and some do, but I doubt that it would be practical for Alaska. It would be more practical to simply provide that all of the Commission's orders and regulations shall be open to public inspection. Ordinarily people are interested only in a particular order or a particular set of regulations, and they would undoubtedly ask for a copy too, and maybe a certified copy, even if they already had a publication containing all orders or all regulations. In short, I feel that the implementation of this section would be needlessly burdensome and costly to the State. To save staff time, I think that if this section becomes law, the APSC would have to request contractual funds to have all the orders in its order book printed. Some idea of the extent of the printing bill can be gained by the fact that our order book for the year ended December 31, 1968 contains 379 pages 8½ x 14 in size.

.165 It should be realized that the Commission's budget does not now include sufficient funds to adequately regulate municipally-owned utilities and the Alaska Pipeline Company in addition to the ACS when it is sold. In fact, the present budget (after two revisions) is not even sufficient to take care of the problem of assembling a qualified staff to prepare for the job of regulating the ACS purchaser. This is something that needs to be started this year because it is going to be extremely difficult to find qualified employees. Without adequate funding the APSC could not possibly hope to effective regulate any more utilities than it already regulates.

.175(a) Utilities should be subject to "surprise audits." With a five day notice requirement, the Commission would often be frustated in its efforts to determine whether or not a utility is guilty of infractions of the law. This is clearly a utility-oriented provision which I believe is ill advised. Five days would give a utility plenty of time to hide or revise pertinent records.

.175(b) This does not help solve one of the biggest problems the Commission has encountered; namely, whether or not the Commission can, or should, issue a subpoena duces tecum order for the benefit of a party to an adversary proceeding. In our Cause No. U-68-7 the City of Anchorage asked the Commission to issue a subpoena duces tecum order requiring Chugach Electric Association to produce a vast amount of data--much of it, according to Chugach, for discovery purposes to find out if the City had a good case. As I understand it, subpoenas are issued only with respect to people, not records.

.185 This section is satisfactory but should possibly be accompanied by a provision allowing the Commission to assess the costs of an investigation against the utility investigated which is the situation in 29 other state commissions. Also nothing is said about instituting a formal investigation on the motion of a complainant with suitable safeguards to prevent expensive investigations from being instituted, on a mandatory basis, based only upon frivolous and totally unsupported allegations. Although this section, as written, does not prohibit investigations by the Commission on the motion of other parties, it could be improved by making the fact clear.

.195(a) Should specify a time for notice such as at least 10 days prior to the hearing--also specify the manner of determining the days such as 10 days not counting the mailing date or the hearing date.

.195(b) Trying to comply with the APA on hearings has proven to be so difficult and impractical that George Benesch and another Assistant Attorney General have concluded the APSC should be exempt from the APS except in respect to the provisions thereof relating to regulations. Other attorneys have concurred.

.205 Requiring reports in writing is an unnecessary and burdensome requirement. So long as written orders are entered in respect to all formal proceedings it should not be necessary to make written reports. Also, the word "proceeding" should be defined to mean only formally docketed proceedings. This is the present system--and it works. Informal investigations could also be classified as proceedings, but it would be highly impractical to make a written report on proceedings of that kine. If all formal files are open to public inspection the Commission should not have to also make written reports. Possibly a satisfactory solution would be to require that all formal orders in formal proceedings must include a reasonably complete statement of all the pertinent facts and circumstances. Then the order itself would be the equivalent of a written report. We simply do not have staff enough to do anything that is not absolutely necessary. In the past, APSC orders have been sufficiently detailed, in my opinion, to obviate the necessity of a separate written report.

.215 No response

.235 How about grandfather certificates? Does this section mean that grandfather rights will no longer be recognized? In view of Sec. 42.05.615 (2)(A) does this section make it clear that utilities that already hold a certificate will continue to be regulated even if their gross revenues do not exceed $25,000. In this connection, I refer to the words "now

issued" in line 24. The phrase (in line 23) "delineating the area where service is to be provided." is not adequate. When the ACS purchaser applies for a certificate it would be inadvisable to grant it the whole State of Alaska as its service area because this would give it a monopoly of all toll service. Instead, it will be found that the practical way to proceed in many cases is to grant it the right to provide toll service between point A and point B by wire line, or radio links. In other words, we will often be certifying toll routes, rather than areas; although certain area certifications will also be required such as the places where toll centers are located.

It has also been found wise to require a separate certificate for each kind of utility service a utility provides. In view of the foregoing, I would suggest that a period be placed after the word "option" on line 22; then strike the rest of the section and substitute the following:
When a utility seeks to provide more than one kind of utility service a separate certificate of public convenience and necessity shall be required for each of such utility services. Every certificate shall describe the nature and extent of the authority granted therein including, as appropriate for the utility services involved, a description of the area or areas granted and the authorized scope of operations of the utility.

.245 No response

.255 I suggest that this section be revised to read as follows:
No certificate shall be issued unless the commission finds that the applicant is fit, willing, and able to provide the utility services applied for and that such services are required for the convenience and necessity of the public. The commission may issue a certificate granting an application in whole or in part and attach to the grant thereof such terms and conditions as it deems necessary to protect and promote the public interest including the condition that the applicant must serve an area or provide a necessary service not contemplated by the applicant. The commission may, for good cause, deny an application with or without prejudice.

.275 I suggest a period be placed after the word "stated" in line 25 and strike the rest because it places the Commission is the impossible position of making a "finding" as to the reasonableness of rates charged within a municipality. This would require an investigation concerning the reasonableness of rates within corporate boundaries of every municipality that wants to place in effect a franchise tax or other charge to be separately stated on the utility bills of customers who reside in the municipality. I submit that the proposed statement would place an unwarrented burden on municipalities. It is enough to simply require that the city's charges be separately stated.

.295 Suggested Revision: (Should be .305)

Sec. 42.05.295. COMPLIANCE WITH TARIFFS. No public utility may, directly or indirectly, demand, charge, or receive a greater or lesser compensation for any utility service rendered or utility commodity furnished than is specified in its effective tariff filed in the manner provided in this Act, or fail to provide facilities of the kind and quality offered pursuant to its effective tariff. A public utility may charge its customers, and others, an amount not exceeding the actual cost for extraordinary services provided, including the cost of repairing damages to its facilities.

.305 Suggested Revision: (Should be .295)

Sec. 42.05.305. FILING OF TARIFFS AND CONTRACTS. (a) Under regulations prescribed by the commission each public utility shall file with the commission its tariffs and all contracts. Such tariffs and contracts shall show every rate and charge associated with the sale of any utility service or commodity and every classification, rule, regulation or practice affecting rates or charges. Each public utility shall print, or type, its complete tariff and keep an up-to-date copy of it on file at its principal business office and at each station or office where payments for service are accepted. Such tariffs shall be made available to, and be subject to inspection by, the general public on demand.

(b) The commission may reject, or modify, any tariff or any provision thereof which it finds inconsistent with the public interest or the utility tariff regulations of the commission. Any tariff or tariff provision which is rejected is void.

.315 Suggested Revision:

Sec. 42.05.315. NEW AND REVISED TARIFFS AND CONTRACTS. (a) Unless the commission otherwise orders no new rate or charge, classification of service, or contract relating thereto shall become effective and no change in any existing rate, charge, classification, regulation or contract shall become effective, except after 30 days' notice to the commission and to the public. This notice shall be given by the utility by filing with the commission and keeping open for public inspection the new or revised tariff or contract plainly stating the nature of the filing and the effective date thereof and by issuing a public notice briefly summarizing the facts and the effect of the filing in such a way as to clearly acquaint the public with its scope and purpose. The commission may prescribe additional means of giving notice. For good cause shown, the commission may allow a new or revised tariff or contract to take effect without requiring 30 days notice by issuing an order specifying the changes to be made, the time they shall take effect and the manner in which they

shall be filed and published. [Note: This supersedes (and improves upon) previously proposed legislation I suggested which is word for word the same as sec. 42.05.315 of SB 54.]

(b) Coincident with the filing of any new or revised tariff or contract with the commission the utility shall also place a true copy thereof on file at its principal business office and at every office or station where payments for service are accepted. [Note: This provision is in AS 42.05.500 of present law.]

.325 Line 28--Change heading as follows:

Sec. 42.05.325. SUSPENSION OF TARIFF OR CONTRACT FILING. (a) When a tariff or contract is filed containing a new or revised rate, charge, toll, rule, regulation, classification, or practice, the commission may, either upon complaint or upon its own iniative without complaint, at once, or if it so orders, upon reasonable notice, enter upon an investigation and hearing on the lawfulness of the proposed filing.

(b) Pending the investigation, hearing and decision, the commission may, by order, suspend the operation of the proposed new or revised tariff or contract for a period of time not more than ten (10) months beyond the date the proposed filing would otherwise go into effect. After a full hearing, during the suspension period, the commission may issue orders granting, denying or modifying the proposed new or revised tariff or contract in whole or in part. If no order is issued during the suspension period, the proposed revision shall go into effect at the end of the 10-month suspension period.

(c) In the case of a proposed increased rate or charge, the commission may be order require the interested utility or utilities to keep accurate account, in detail, 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 be order require the public utility to refund, with interest not exceeding six per cent per annum, to the persons in whose behalf the amounts were paid, that portion of the increased rates or charges which by its decision was found not to be justified.

(d) At any hearing involving any proposed new or revised tariff or contract filing the burden of proof to show that the filing is fair and reasonable shall be upon the public utility. The commission shall give to the hearing and decision of these questions priority over other questions pending before it and render its decision thereon as speedily as possible.

NOTE: Sec. 42.05.325 of SB 54 reduces suspension period to 5 months. Only 3 states now have a 5-month suspension period. Eight states have a 6-months period and 5 have a 10-month period. I favor a 10-month period because of the Commission's limited staff, which makes it difficult to complete investigations within a short period of time. This should be the determining factor--and 10 months is not out-of-line. Ten months gives greater flexibility since if an investigation can be completed in 5 months there is nothing to prevent limiting the suspension period to 5 months. On the other hadn, a 5-month period could force the staff to do a sloppy job in order to meet the statutory deadline.

The filing of a written statement of the reasons for a suspension together with the suspended filing would be a burdensome and unnecessary requirement. The suspended tariff or contract would be on file anyway; so all that need be done, actually, is for the Commission to make a complete statement of the reasons for the suspension in the suspension order itself. This would be adequate, in my opinion, since a suspension order would have to be served on the utility in any event.

Regarding the provision beginning on line 26 with the words "At a hearing involving a rate or charge sought to be increased...: I don't believe it is a good idea to limit the burden of proof requirement only to increased rates or charges. Right now we have a proceeding before the Commission which was instituted by Chugach Electric Association to reflect a substantial rate reduction. The City of Anchorage and a number of CEA's customers have objected to the reduction on the grounds it is unjustly discriminatory. Chugach should, and is, assuming the burden of proof in this case. Therefore the controlling law shoudl be substantially like section (d) of my suggested revision.

.335 No comment except that if the rates of a municipality should be changed pursuant to any covenant with bondholders (which, more aptly, should be bond purchasers) the law should require the municipality to file its revised rates with the Commission together with a statement, under oath, setting forth the reason for the filing (along with supporting documents and data) and require that the Commission allow such rates to become effective of the desired date, if properly supported, without regard to any complaint that might be filed. In any event the rates, when fixed by contract with bond purchasers, should be filed with the Commission as provided in AS 42.05.305 and .315 rather than being completely exempt from all filing requirements as indicated by the reference to "secs. 275 - 405" on line 14.

.345(a) No comment

.345(b) Line 23: examine misspelled.
This section should be strong enough to enable the Commission to make all salaries subject to the Commission's prior approval to the extent they are not established by arms-length bargaining. Otherwise the owners of small utilities and the affiliated interests of large utilities will be in a position to absolutely control their rate of return by salary charges to utility operating expenses over which the Commission has no control. I question whether the section, as written goes far enough to give the Commission a chance to control salaries adequately.

.355 Suggest that AS 42.05.271 of SB 128 be substituted for following reasons:
1. Line 29, p. 9: the utilities regulated by the Commission do not have tracks or subway so these words should come out.
2. Line 12, p. 10: a telephone utility is the only kind that transmits messages.
3. Line 13, p. 10: telephony in this day and age has gone far beyond the simple transmission of messages. It now includes circuitry for data processing, facsimile transmission, remote control faciliites, etc. In addition, we must recognize that many telephoee connections are now effected by radio links rather than the physical connection of wires.
4. Line 21, p. 10: the word "physical" should be omitted for the reason indicated above.
5. Sec. (c), pp. 10-11: it is a recognized and normal industry practice for public utilities to include a line extension policy in their tariffs. I wrote section (c) of 42.05.271 in SB 128 and believe it is a better way to handle the problem because, among other reasons, it is uniformly applicable to all utilities rather than being limited only to electric utilities.

.365 Sec. 42.05.281 of SB 128, as drafted, includes a number of suggested revisions I made--and I think it is better. Subsection (b) is a case in point because there are times when it would be totally unfair to require one party or the other to bear all the cost of maintaining a connection. Sometimes both parties benefit from a connection, or share the revenues (as when toll revenues are shared or when EAS is established between adjoining exchanges of two utilities.)

.375 I think this section should be omitted. Industry practice determines the commercial units of any utility product or service. Further, I can see no practical need for any such provisions. I suggested it be omitted from an early draft of SB 128, for the above reasons, and it was.

.385 No response

.395 No response

.405 In actual practice this sort of thing is never done because it is not necessary for the Commission to "provide for a comprehensive classification of services for each public utility" except in an indirect way by regulatory supervision over tariff filings. Large utilities employ highly skilled consultants to advise them on classifications of service--and it is not uncommon for them to recommend that previous classifications be revised to adjust to changed conditions. Any comprehensive classifications the Commission might prescribe would tend to place all utilities in an undesirable straight jacket and make it difficult for them to achieve the flexibility required to adopt to changed costs and new market conditions. As for the smaller utilities, the problem of classification is usually so simple and self-evident that no regulatory control is necessary. In short, this is an area where regulatory safeguards need not be provided.

.425 Commissions in twenty-eight states, the District of Columbia and Puerto Rico plus the Federal Power Commission and the Federal Communications Commission follow the so-called original cost theory of rate base determination. The fact that a total of 32 regulatory commissions (including the largest such as California and New York) consider this method feasible provides a rather convincing argument for Alaska to do likewise. It is mainly for this reason that I recommend the section 42.05.411 of SB 128 be substituted for the language in sec. 42.05.425 of SB 54. There is a vast body of law and precedent for the original cost theory which, in essence, reduces rate base determinations mainly to an accounting procedure. Even a state, like Ohio, the only one in the nation that follows the reproduction cost theory, finds it it expedient to adopt, for accounting purposes, that uniform systems of accounts prescribed by the FPC and the FCC--both of which require original cost accounting.

.435 P. 13, lines 8-9: I am unable to reconcile the phrase "which are otherwise exempt from this chapter" with the broad definition of the term "public utility" as set forth in sec. 42.05.615(2) as applied to municipal corporations.

P. 13, lines 9-10: The present law, AS 42.05.290, provides that any "generally recognized system of accounting" can be followed, but the term "generally recognized" is not defined. Consequently, the various utilities in any given class are free to follow different systems. This completely destroys any effort to bring about uniformity of accounting procedures. Accounting uniformity is essential in utility regulation because without it the Commission cannot compare the accounts of one utility with those of others of the same kind without extensive analysis. Meaningful statistics cannot be compiled without such analyses in the absence of uniformity. In my 34 years of regulatory experience I have never found a state or federal regulatory agency that does not require uniform systems of accounts for the utilities they regulate. It is important to

achieve effective regulation because it simplifies the task of maintaining constant surveillance which enables commissions to quickly determine whether or not there is good cause to suspect that any given utility is earning more than a reasonable return on its investment. In short the law, as it stands, should be changed in the manner indicated so that the Commission will not be hampered in its efforts to regulate utilities effectively--and without excessive and unnecessary cost to the State. The Commission is, of course, aware of the fact that the task of bringing about accounting uniformity cannot be accomplished overnight. It may take a considerable period of time--but it is something which, in the long run, must be done, as other states have discovered after many years of experience.

In view of the foregoing facts and circumstances I am compelled to say I prefer section 42.05.431 of SB 128 over section 42.05.435(a) of SB 54. However, I see nothing wrong with subsection (b) of 42.05.435.

.455 I think this section should be omitted because it requires burdensome reporting by utilities for no good reason other than to obtain information. The information that is required is along the lines of what is required in a public law regulating the issuance of securities by public utilities such as RCW 80.08.030 of the laws of Washington State which I administered for over 17 years. But the Washington law gives the Commission the power to grant, deny, or condition and restrict the issuance of securities. In the absence of this follow-up power, I see no good reason for this section. Further, I believe the APSC would be better off, at this stage of the game, if it did not undertake the task of regulating utility security issues.

.465 No response

.475 No response

.505 No comment except I recommend that a period be placed after the word "chapter" in line 3 and the rest of the sentence be stricken.

.515 No response

.525 I suggest that this section be re-written as follows:

Penalties. (a) In addition to all other penalties provided by law, any person who knowingly violates or knowingly aids in the violation of any provision of this chapter, or of any rule, regulation or order of the commission adopted under this chapter, is subject to a penalty of not more than $100 for each violation and, in the event of a continuing violation, not more than $100 for each day that the violation continues.

(b) The commission is authorized to determine, after hearing initiated by a complaint describing the alleged violation or violations with reasonable particularity, the existence of any violation described in (a) of this section and to impose such monetary penalties, not to exceed the amount provided in (a) of this section, as it deems justified under the circumstances. The determination and penalty imposed by the commission shall be enforced by suit commenced in the Superior Court by the Attorney General in the name of the commission.

(c) In the event the commission elects not to proceed pursuant to (b) of this section, or in the event a complaint is not answered within the time provided by the commission for answer, the Attorney General shall enforce the provisions of (a) of this section by suit commenced in the Superior Court in the name of the commission. In all such actions, the procedure and rules of evidence shall be the same as are applicable in ordinary civil actions.

(d) All penalties recovered under this section shall be paid into the general fund of the State of Alaska.

REASONS: At a meeting of the Legislative Council in Anchorage on October 12, 1968, Senator Brad Phillips asked me what the Commission could do in the event it made an investigation of a utility and found its services and facilities were sub-standard and that complaints to that effect by its customers were fully justified. I had to inform him our only recourse, under the present law, would be to revoke the utility's certificate of public convenience and necessity, in which event the company would then be free to completely abandon service if it so desired. It was then I informed him I had suggested last year that we have a monetary penalty law to take care of such cases and he seemed to think it was a good idea. In fact, he said the Legislative Council was going to meet again before the next session and would like to have all of our recommendations at that time.

It is very apparent to anyone who views the matter realistically that one of the most outstanding defects in AS 42.05 is the almost complete absence of any effective enforcement tools. The only specific enforcement provisions I find in the law as it stands now are for the purpose of dealing with specific problems. (See AS 42.05.055, AS 42.05.200, and AS 42.05.550). Insofar as I can determine, if there are any other enforcement tools that can be applied to other infractions of the governing law, they will be found in AS 44.62--the Administrative Procedure Act. It is my understanding, also, that the Commission must turn <u>all</u> of

its enforcement problems over to the Attorney General--a tremendous burden. There is no procedure whereby the Commission can take direct action to deal with violations of AS 42.05. This is comparable to depriving State Patrolmen of the power to arrest traffic violators. The purpose of this proposed legislation is to remedy the situation and at the same time relieve the Attorney General of carrying the full burden of enforcement. There is absolutely nothing more frustrating to an administrator of laws containing numerous mandatory provisions than to be forced, as a practical matter, to depend almost exclusively upon voluntary compliance with the law and to have no prompt and effective recourse when voluntary cooperation is not forthcoming. In short, it is completely unrealistic to expect truly effective administration of AS 42.05 as it is now written, unless the APSC has a realistic means of enforcement.

.535 No response

.555 No response

.565 No response

.575 No response

.605 Sec. (2) cannot be reconciled with lines 8 and 9 on page 13 where reference is made to the exemption of municipally-owned utilities.

Sec. (2)(A) This section in the present law has been extremely difficult to interpret and administer as evidenced by the attached request for an opinion of the Attorney General and the opinion which contains the following statement: "But only one thing seems certain, the legislature must not have been aware of the collateral problems it created by the amendment."

Attention is also directed to omission of the words "for compensation" which is a qualification that is present in the definitions of all other types of utilities.

There is reason to believe that the term "telephone" needs to be more specifically defined. Should it include mobile telephone systems that are not connected with a local telephone exchange or a long-lines carrier? Shoudl it also include a wire line telephone utility not connected to a long-lines carrier? Should it include a mobile telephone service operated by a certificated company that has no telephone exchange of its own but does have a patch connection with a wire line exchange that, in turn, is connected with a long-lines carrier?

In view of previously recommended changes, I suggest that the term "tariff" be defined as follows:

"Tariff" means any or all rates, charges, tolls, rules or regulations of a utility relating to commodities or services furnished by a utility to the general public for compensation and every map, page, adoption notice, instrument or other document filed with the Commission setting forth the terms and conditions under which utility services or commodities are offered to the public together with instruments of concurrence and all other documents and data setting forth the terms of a utility's business relations with any other utility insofar as they affect the general public either directly or indirectly.

MEMORANDUM

State of Alaska

TO: Kent Edwards
Attorney General
Department of Law

DATE : September 12, 1968

FROM: Don Hall
Executive Director
Public Service Commission

SUBJECT: AS 42.05.640(2) as Re-enacted by HCSCSSB 167 (Chapter 188, Laws of 1968, Second Session)

AS 42.05.640(2), (A) provides that the term "public utility" or "utility" includes electric, telephone, and telegraph utilities "which produce an annual gross income in excess of $25,000. Prior to the effective date of the new law (July 29, 1968), all such utilities were included in the term "public utility" without regard to their annual gross revenue. It appears from the latest available information that approximately 16 electric, telephone, and telegraph utilities had gross revenues of less than $25,000 from operations during their latest fiscal year, and therefore, are not subject to regulation by the Commission.

Unfortunately, the problem of administering the new law is not limited to a simple determination of which utilities no longer fall within the definition of the term "public utility." The Alaska Public Service Commission has directed me to ask you for a legal opinion on these additional administrative problems as outlined below:

1. Can the Commission continue to regulate a utility simply because it states that it wishes to submit to regulation even though it is exempt from regulation by the controlling law? This is not a theoretical question as evidenced by the attached letter dated July 31, 1968 from John B. Heafer, President of Greater Anchorage Borough Telecommunications, Inc.

2. Is there an implied requirement that the Commission must specifically revoke all certificates of public convenience and necessity previously issued to utilities that are no longer required to have a certificate? The problem here is that these utilities were put to considerable time, effort, and expense to obtain their certificates. Some are now approaching the $25,000 gross revenue figure, and may reach it in the near future, at which time they would again be required to have a certificate.

In addition, there is a possibility the next legislature might strike the gross revenue requirement from the law, in which case all utilities would again be required to have a certificate. If it is discretionary with the Commission as to whether or not it should revoke the aforementioned certificates, could the Commission legally reinstate them (due to increased revenues or a change in the law) without requiring a new application and possibly a hearing? If the Commission could legally reinstate such certificates without application or hearing, it would simplify the task of reasserting its regulatory jurisdiction and, of course, spare the utilities a lot of time and expense. If this procedure is improper, what course of action would be open to the Commission to force the re-certification of a utility in the event it does not voluntarily make application?

3. If a utility with annual gross revenue in excess of $25,000 should apply for a certificate to serve an area served by a utility that has been de-regulated, would the Commission be within its legal rights to deny it on the grounds that it would result in duplication of utility facilities? Would it be within its legal authority to grant such an application if it found that the area could be served more adequately by the certificated utility?

4. Attached hereto is a letter from the Alaska Village Electric Cooperative, Inc. inquiring if it is required to obtain a certificate to serve five villages this year. The basic question is whether or not the Commission should require the Cooperative to apply for a certificate on the basis of projected revenues in excess of $25,000 or whether the Commission should inform the Cooperative that no certificate will be required until such time as it has actually earned $25,000 gross revenue during any consecutive 12-month period. Your opinion in this regard is needed right away because of the urgent need to start construction to serve five villages this year. If a certificate is required, the REA probably will not advance construction funds until the Cooperative has obtained

a certificate authorizing it to serve the five villages.

5. In the event the Commission had good reason to believe, or even suspected, that an electric, telephone, ~~communications~~ had earned gross revenue in excess of $25,000 in any given annual period, would it have a right to demand access to its accounting records to determine the facts in regard to its annual revenue? If not, what legal recourse, if any, would the Commission have to ascertain the facts necessary to require certification? This will undoubtedly become a problem in respect to certifying the Alaska Village Electric Cooperative either this year or next year when its gross revenues will apparently exceed $25,000. A corollary question is what legal penalty a utility would become subject to if it failed, or refused, to apply for a certificate after its annual revenue exceeds $25,000.

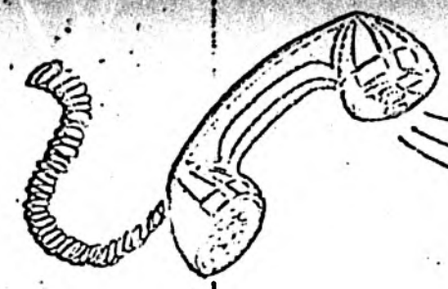
6. Also attached hereto is a copy of the statement of profit and loss of Sidney C. and Shirley J. Childers, dba Communications Equipment & Service Co., who have applied for a certificate of public convenience and necessity. The Commission received the said application prior to the effective date of the new law.

According to the data they submitted, the public utility portion of their business had expenses in 1967 of $27,541 from which could be imputed a gross revenue greater than $25,000; however, the question is whether or not the Commission may issue a certificate to the Childers at this time when their actual "utility" revenue was only $15,322 for the year.

A decision on the issuance of a certificate is a matter of urgency for the Childers since the FCC won't grant them an MCC license until they are able to show either that they have appropriate operating authorization from the State or that no such authorization is required. (They are

operating now under the pseudo-authority of an FCC license which was issued to a predecessor company.)

By Don Hall
Don Hall.



GREATER ANCHORAGE BOROUGH

TELECOMMUNICATIONS COMPANY, INC.

PHONE 272-5132
BOX 2473
ANCHORAGE, ALASKA

31 July 1968

Mr. Don Hall, Executive Director
Alaska Public Service Commission
700 MacKay Building
338 Denali Street
Anchorage, Alaska 99501

Reference: APSC Letter, dated 21 June 1968, re: Exclusion of Utility Under $25,000 Revenue From Regulation

Dear Mr. Hall:

This utility has complied with the request contained in the above reference. However, the Alaska Statute does not prohibit a utility from voluntarily subjecting itself to regulation by the Commission. Accordingly, in the public interest, this utility respectfully requests that it be continued under regulation for the service area so designated in its certificate.

Sincerely,

John B. Heafer

John B. Heafer
President

cc: Governor Walter J. Hickel
Commissioner George Sharrock
Commissioner James R. Clouse
Commissioner Loren H. Lounsbury
Commissioner Gordon J. Verbetz

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Alaska Village Electric Cooperative, Inc.

Room 25 Reed Building 608 Fourth Avenue P. O. Box 1739
ANCHORAGE, ALASKA 99501

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August 21, 1968

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Mr. Don Hall
Executive Director
ALASKA PUBLIC SERVICE COMMISSION
700 Mackay Building
338 Denali Street
Anchorage, Alaska 99501

Dear Mr. Hall:

This letter is to advise you that we are starting construction on a Rural Electrification Project to include approximately 60 villages in the State of Alaska.

The projected gross revenue upon completion of the entire construction project is $1,500,000 per year. Present plans indicate that we will complete construction of distribution systems in five villages in this calendar year. Annual revenue will be less than $25,000 per year from each of the five villages during the first five years of their operation. However, next year we contemplate the installation of an additional 25 projects and some of these will exceed $25,000 per year in revenue.

Will you please acertain for us whether or not our entire project will be subject to regulation by the Public Service Commission or will it be necessary for us to apply for certificates only for these individual villages where we expect the revenue to exceed $25,000 per year.

Any cooperation you can give us in this matter will be greatly appreciated.

Sincerely yours,

W. C. Rhodes
MANAGER

WCR:dba

COMMUNICATION EQUIPMENT & SERVICE Co.
1010 College Road
Fairbanks, Alaska

PROFIT & LOSS STATEMENT
for
Year of 1967

		Total	General Sales	Radio Telephone
INCOME		$87,625.23	$71,001.05	$16,624.18
Inventory 12/31/66	$ 6,125.00			
Parts Purchased	12,692.06			
	$18,817.06			
Less Inventory 12/31/67	13,610.00			
		5,207.06	3,905.30	1,301.76
Equipment Purchased for Resale		13,370.86	13,370.86	
		$69,047.31	$53,724.89	($15,322.42)
EXPENSES:				
Payroll		$11,410.64	$8,557.98	$2,852.66
Shop Expense		2,344.10	1,758.08	586.02
Supplies		142.04	106.53	35.51
Office Expense		1,199.30	899.47	299.83
Vehicles Expense		938.26	703.70	234.56
Telephone		1,408.22	352.06	1,056.16
Electricity		904.74	678.56	226.18
Fuel		1,056.57	792.43	264.14
Advertising		1,180.96	590.48	590.48
Repair		512.08	384.06	128.02
Promotion & Entertainment		899.09	674.32	224.77
Dues & Subscriptions		295.46	221.60	73.86
Rent		1,125.00		1,125.00
Insurance		2,451.80	1,225.90	1,225.90
Equipment Rental		495.03	371.27	123.76
Professional Services		373.53	186.76	186.77
Airplane Expense		246.50	184.88	61.62
Contract Labor		3,115.32	2,336.49	778.83
Travel Expense		735.48	551.61	183.87
Fed. Unemployment Tax		76.47	57.35	19.12
Fed. Excise Tax		495.45		495.45
Business License		25.00	18.75	6.25
Sales Tax		467.29	350.47	116.82
Auto Licenses		140.00	105.00	35.00
Property Tax		243.60	182.70	60.90
Interest Expense		2,358.62	1,768.97	589.65
Freight		238.21	178.66	59.55
MCC Dispatch Expense		541.67		541.67
E.S.C. Taxes		331.22	248.42	82.80
F.I.C.A. Taxes		506.87	380.15	126.72
Misc. Expense		242.00	181.50	60.50
Bad Debts		743.78	371.89	371.89
Depreciation Expense		25,094.75	10,377.57	14,717.18
Total Expense		62,339.05	34,797.61	(27,541.44
NET PROFIT OR LOSS		$ 6,708.26	$18,927.28	($12,219.02)

FORM SA-18

MEMORANDUM State of Alaska

TO: Don Hall, Executive Director
Alaska Public Service Commission
Anchorage

DATE : November 13, 1968

FROM: G. Kent Edwards
Attorney General

By: George L. Benesch
Assistant Attorney General

SUBJECT: Effect of 1968 amendment (Sec. 1, Ch. 188, SLA 1968) on jurisdiction of Public Service Commission to certificate utilities prior to actual operation.

The question to which this opinion is primarily directed can be stated as follows:

Does the 1968 amendment establish the prerequisite that a new utility actually be operating and have realized the specified revenue before it comes within the jurisdiction of the Public Service Commission? Stated another way, does it preclude commission certification of all prospective utilities?

At the outset we advise that all interpretations of the amendment create difficult problems, of application, regulation, enforcement and discretion. The answer is essentially a matter of determining the legislative intent. But only one thing seems certain, the legislature must not have been aware of the collateral problems it created by the amendment.

In our judgment, the matter requires legislative clarification. This should be sought at the earliest possible time.

If it is necessary or desirable for the commission to take positive action within the framework of the amendment prior to legislative clarification, our interpretation is as follows:

(a) An operating utility which grosses $25,000 or less during a full year of operation is not a public utility for the purposes of regulation.

(b) A utility which has not yet operated a full year but which is not expected to receive more than $25,000 gross revenue during its first full year of operation, is not subject to the commission's regulatory jurisdiction.

(c) A prospective utility whose gross revenue during its first full year of operation is reasonably projected at $25,000 or less is not subject to the commission's regulatory jurisdiction.

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(d) All other utilities, whether prospective or operating, are within the commission's jurisdiction unless specifically exempted by AS 42.05.645.

(e) All utilities exempt from regulation simply because of the $25,000 limitation come within commission jurisdiction as soon as that limitation is exceeded in actual operations.

Although the language of the amendment is, in many respects, unfortunate and inadequate, we believe that the single, basic objective of the legislature was simply to relieve small utility systems from the presumed burdens of regulation. The systems it had in mind are defined in terms of annual monetary income. We are convinced that the legislature did not intend to otherwise change the commission's jurisdiction beyond achieving that objective. It is reasonably certain that the legislature considered the application of the amendment to be one of simple mechanics and procedure. That the application may prove to be difficult and involve numerous unforeseen legal problems does not necessarily mean that the legislature must have intended a more far-reaching jurisdiction restriction which would avoid some of those problems. This is particularly true in this case. Any interpretation of the amendment, different from that we have given here, also involves comparable difficulties and legal problems.

The provisions of the 1968 amendment with which we are here concerned reads as follows:

> AS 42.05.640(2). "'Public utility' or 'utility' 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 any plant, pipeline, or systems for
>
> (A) the generation, transmission, or distribution of electric energy and power, or the furnishing of telephone or telegraph communications, any of which produces an annual gross income in excess of $25,000;". (Underlining added.)

Except for the language underlined above (which is new language) this quoted portion of the amendment reads exactly the same as the statute it supersedes.

The amendment is written in the present tense. But, as a matter of fact, the superseded statute also sounded in the present tense. Neither the previous statute nor the amendment says anything about a prospective utility. The tense employed in both appears to have been essentially a matter of convenience, without special meaning. AS 01.10.050 together with AS 01.10.020 provide the interpretive rule that "words in the present tense include the past and future tenses" unless "the construction would be inconsistent with the manifest intent of the legislature."

The "manifest intent" which must be ascertained here is not whether the legislature intended to exclude small utility systems from regulation. This intent is quite obvious. The interpretive problem is rather to determine whether the legislature intended to do away with certification of all prospective utilities irrespective of size.

If the legislature did not intend the broader exemption, then the achievement of the more limited objective is a matter of commission procedure rather than statutory interpretation.

In assessing the legislative intent, AS 42.05.640(2) must be read in context with the other provisions of AS 42.05. In this vein it should be kept in mind that AS 42.05.640(2) is simply a "definition" statute. It merely defines a "public utility" or "utility." The amended definition even encompasses municipal utilities.

As a definition statute the 1968 amendment reflects some improvements over its predecessor. The statute previously included a number of exemptions to the commission's jurisdiction. These exemptions are now removed from the definition and incorporated in a separate exemption statute, AS 42.05.645.

Having determined to remove primarily jurisdictional matters from the definition, it would be inconsistent to conclude that the legislature intended to nevertheless provide therein a new, purely jurisdictional limitation that removes all authority over all non-operating utilities. If this had been an objective of the legislature, it seems certain that it would have been expressly stated and placed elsewhere in the chapter, for example as an amendment to AS 42.05.193 or as an exemption in AS 42.05.645.

As a practical matter, the definition provided in the amendment is also jurisdictional in nature. But, aside from the fact that the amendment is written in the present tense (a matter already discussed), there is nothing to indicate that the legislature intended it to revoke commission jurisdiction over all prospective utilities.

The 1963 Legislature imposed certification requirements upon all public utilities coming within the commission's jurisdiction. (Sec. 1, Ch. 95, SLA 1963). Thus prospective as well as operating utilities were to be regulated. But this was accomplished by enacting a new statute, AS 42.05.193, not by amending the definition statute. AS 42.05.193 provides that "no public utility shall operate after January 1, 1964, without first having obtained . . . a certificate. . . ." By law, then, no public utility can now gain operating experience prior to certification unless otherwise exempt.

A companion statute, AS 42.05.196, enacted by the same legislature, grants the commission discretionary authority to "issue a certificate as requested or for good cause shown deny the same in whole or part." This discretionary authority is limited by a grandfather clause applied to utilities which were "actually operating in good faith on October 15, 1962 . . . or . . . installing the facilities necessary to furnish service under a franchise as of that date." (AS 42.05.194).

The language of these certification statutes remains the same today. The commission derives its jurisdictional authority and guidance from them insofar as prospective utilities are involved. Neither the definition statute nor the exemption statute expressly revokes that authority.

Certification of prospective utilities is a very important function to effective regulation. The rescission of such authority should not be presumed in the absence of a clear indication that that was the result intended. In order to find such an intention in the 1968 definition amendment it would also be necessary to conclude that the legislature intended to do away with all future certification. Delay of certification until after a utility has commenced operation is analogous to closing the barn door after the horse escapes. A principal objective of certification is establishment of controlled monopoly. Furthermore, this interpretation would lead to perhaps the most complicated legal problems of any interpretation.

What, for example, happens to the utility that builds its system, commences operations and shortly thereafter grosses $25,000? Must it wait until that point in time to receive certification? And must it cease operation thereafter until certified? Furthermore, does the commission still have the discretion at that time to grant or deny certification?

Theoretically, the answers to all three questions would be yes. The 1968 amendment could not be construed as yielding a different result. These could be very serious problems where two prospective utilities build competing facilities to serve the same area; or if the new utility was seeking a certificate in an area already certificated.

Thus we arrive at the conclusion that if the commission previously had jurisdiction to certificate proposed utility systems (and we find that it did), it was not divested of that authority by the 1968 amendment. The basic difference now is that the commission must first determine whether a particular system or prospective system is that of a utility within the "25,000" definition. Although it may be difficult in some instances, we doubt that this is an insurmountable task. The degree of difficulty in performing a task does not negate jurisdiction.

Even though the commission may not have jurisdiction over a particular utility system which will not gross $25,000, it nevertheless has the inherent authority to make that determination. 1/

We recognize that our conclusions in this matter leave a number of pressing questions on application unanswered. Hopefully, however, it provides a sufficient working guide to permit reasonable functioning of the commission in the area of prospective utilities until such time as the legislature takes corrective measures. It would be our thought that any prospective utility can voluntarily confer jurisdiction on the commission by stating that it expects to produce an annual gross income in excess of $25,000. Whether or not the commission necessarily loses jurisdiction thereafter if the first full year of actual operating experience shows less than $25,000 is a question we defer until such time as it may arise. We suggest, however, that in the case of a voluntary invitation to continued jurisdiction there may be room for relying on a future projection, even for an operating utility.

GKE:GLB:rw

1/ In Sayre Land Co. v. Pennsylvania Public Utilities Commission, (1959) 27 PUR3d 502, the Pennsylvania Court of Common Pleas stated "The commission has the function to determine the existence of the fact of ownership or operation of public utility facilities, upon which fact the commission's jurisdiction over public utilities depends."

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

Jackson PSC

SUMMARY

Rank of Alaska Public Service Commission compared with All Other State Regulatory Agencies in Respect to the Following:

Subject	Alaska No.	Alaska Rank
No. of Regulated Electric, Gas and Telephone Utilities	60	28
Total No. of Regulated Electric Utilities	35	14
No. of Private Electric Utilities Regulated	24	1
No. of Publicly-Owned Electric Utilities Regulated *32 other commissions share 21st place.	0	21*
No. of Regulated Cooperative Electric Utilities	11	14
No. of Regulated Gas Utilities	3	45
No. of Private Gas Utilities Regulated	3	44
No. of Publicly-Owned Gas Utilities Regulated #41 other commissions share 12th place.	0	12#
No. of Regulated Telephone Utilities	22	33

No. of Employees:

	No.	Ratio (a)
Professional Staff	4	1
Clerical Staff	3	3/4
Total Staff	7	50

(a) The nationwide average ratio is 2 clerical employees for each professional employee.

TOTAL OF REGULATED ELECTRIC, GAS AND TELEPHONE UTILITIES

State	Total	State	Total	State	Total
Iowa	491	North Carolina	90	Montana	38
Puerto Rico	361	Arkansas	85	Maryland	37
Wisconsin	264	West Virginia	84	Utah	36
Indiana	238	Virginia	75	Tennessee	35
Kansas	206	Wyoming	73	Arizona	33
Pennsylvania	192	New Mexico	72	Idaho	31
New York	173	Washington	62	New Jersey	29
Minnesota	165	Alaska	60	Connecticut	22
Illinois	138	South Carolina	58	Rhode Island	14
Texas	138	Georgia	57	Delaware	8
Missouri	133	Nebraska	54	Hawaii	8
Ohio	120	Oregon	54	District of Columbia	3
Kentucky	119	Maine	53	Virgin Islands	1
California	112	Vermont	53		
Michigan	110	Alabama	52		
Oklahoma	110	South Dakota	52		
Colorado	101	North Dakota	45		
Louisiana	97	Florida	42		
Mississippi	95	Nevada	42		
Massachusetts	94	New Hampshire	40		

This information was taken from the 1967 Federal and State Commission Jurisdiction and Regulation of Electric, Gas and Telephone Utilities published by the Federal Power Commission and from the 1966 Statistics of the Independent Telephone Industry published by the United States Independent Telephone Association.

NUMBER OF REGULATED
TOTAL ELECTRIC UTILITIES PER STATE

State	Utilities	State	Utilities
Iowa	225	New Jersey	15
Wisconsin	107	Utah	15
Indiana	97	California	14
New York	67	Missouri	13
Massachusetts	60	Ohio	12
North Carolina	51	Connecticut	11
Colorado	49	South Carolina	8
Illinois	47	Idaho	7
Kansas	45	Hawaii	6
Mississippi	43	Rhode Island	6
Wyoming	42	Florida	5
Kentucky	38	Louisiana	5
Vermont	35	Montana	5
Alaska	35	Tennessee	5
Arkansas	31	Oklahoma	4
Michigan	29	Oregon	4
New Mexico	29	Washington	4
West Virginia	26	Delaware	3
Virginia	24	North Dakota	3
Maryland	23	Alabama	2
Pennsylvania	20	Georgia	2
Maine	19	District of Columbia	1
New Hampshire	18	Minnesota	0
Nevada	17	Nebraska	0
Arizona	15	Puerto Rico	0
		South Dakota	0
		Texas	0
		Virgin Islands	0

This information was taken from the 1967 Federal and State Commission Jurisdiction and Regulation of Electric, Gas, and Telephone Utilities Published by the FPC.

NUMBER OF REGULATED
PRIVATE ELECTRIC UTILITIES PER STATE

State	Utilities	State	Utilities
Alaska	24	Idaho	7
New York	22	Kansas	7
West Virginia	21	Arizona	6
Wisconsin	21	Hawaii	6
Massachusetts	20	Connecticut	5
Pennsylvania	18	Florida	5
Vermont	16	Louisiana	5
Illinois	14	Montana	5
Michigan	14	New Jersey	5
Missouri	13	Rhode Island	5
North Carolina	13	Colorado	4
Maryland	12	Oklahoma	4
Nevada	12	Oregon	4
Ohio	12	Washington	4
Indiana	11	North Dakota	3
Maine	11	Tennessee	3
New Hampshire	11	Utah	3
Iowa	10	Alabama	2
California	9	Delaware	2
Kentucky	9	Georgia	2
Wyoming	9	Mississippi	2
New Mexico	8	District of Columbia	1
South Carolina	8	Minnesota	0
Virginia	8	Nebraska	0
Arkansas	7	Puerto Rico	0
		South Dakota	0
		Texas	0
		Virgin Islands	0

This information was taken from the 1967 Federal and State Commission Jurisdiction and Regulation of Electric, Gas, and Telephone Utilities Published by the FPC.

NUMBER OF REGULATED
PUBLIC ELECTRIC UTILITIES PER STATE

State	Utilities
Iowa	142
Wisconsin	86
Indiana	81
New York	45
Massachusetts	40
Mississippi	15
Vermont	15
Colorado	12
New Jersey	9
Maryland	7
Wyoming	7
Connecticut	6
New Hampshire	6
Arkansas	5
Maine	5
Pennsylvania	2
Tennessee	2
West Virginia	2
Rhode Island	1
Utah	1
Alabama	0
Alaska	0
Arizona	0
California	0
Delaware	0
District of Columbia	0
Florida	0
Georgia	0
Hawaii	0
Idaho	0
Illinois	0
Kansas	0
Kentucky	0
Louisiana	0
Michigan	0
Minnesota	0
Missouri	0
Montana	0
Nebraska	0
Nevada	0
New Mexico	0
North Carolina	0
North Dakota	0
Ohio	0
Oklahoma	0
Oregon	0
Puerto Rico	0
South Carolina	0
South Dakota	0
Texas	0
Virginia	0
Virgin Islands	0
Washington	0

This information was taken from the 19[illegible] Federal and State Commission Jurisdiction and Regulation of Electric, Gas, and Telephone Utilities Published by the FPC.

NUMBER OF REGULATED
COOPERATIVE ELECTRIC UTILITIES PER STATE

State	Utilities	State	Utilities
Iowa	73	Alabama	0
Kansas	38	Connecticut	0
North Carolina	38	District of Columbia	0
Colorado	33	Florida	0
Illinois	33	Georgia	0
Kentucky	29	Hawaii	0
Mississippi	26	Idaho	0
Wyoming	26	Louisiana	0
New Mexico	21	Massachusetts	0
Arkansas	19	Minnesota	0
Virginia	16	Missouri	0
Michigan	15	Montana	0
Utah	11	Nebraska	0
Alaska	11	New York	0
Arizona	9	North Dakota	0
California	5	Ohio	0
Indiana	5	Oklahoma	0
Nevada	5	Oregon	0
Maryland	4	Pennsylvania	0
Vermont	4	Puerto Rico	0
Maine	3	Rhode Island	0
West Virginia	3	South Carolina	0
Delaware	1	South Dakota	0
New Hampshire	1	Tennessee	0
New Jersey	1	Texas	0
		Virgin Islands	0
		Washington	0
		Wisconsin	0

This information was taken from the 1967 Federal and State Commission Jurisdiction and Regulation of Electric, Gas, and Telephone Utilities Published by the FPC.

NUMBER OF REGULATED
TOTAL GAS UTILITIES PER STATE

State	Utilities	State	Utilities
Puerto Rico	360	Arizona	8
Texas	138	Connecticut	8
Pennsylvania	87	Montana	8
Louisiana	60	North Carolina	8
Kentucky	50	Tennessee	7
Indiana	48	Washington	7
West Virginia	43	Arkansas	6
Iowa	40	Nevada	6
Oklahoma	36	New Jersey	6
New York	34	Rhode Island	6
Ohio	33	South Carolina	6
Massachusetts	30	Alabama	5
Mississippi	27	New Hampshire	5
Kansas	24	Delaware	4
Missouri	21	North Dakota	4
Virginia	21	Oregon	4
Illinois	20	Utah	4
New Mexico	20	Vermont	4
California	18	Georgia	4
Colorado	17	Alaska	3
Wisconsin	17	Idaho	2
Florida	16	Maine	2
Wyoming	16	District of Columbia	1
Maryland	12	Hawaii	1
Michigan	11	Minnesota	0
		Nebraska	0
		South Dakota	0
		Virgin Islands	0

This information was taken from the 1967 Federal and State Commission Jurisdiction and Regulation of Electric, Gas and Telephone Utilities published by the FPC.

NUMBER OF REGULATED
PRIVATE GAS UTILITIES PER STATE

State	Utilities	State	Utilities
Puerto Rico	360	Arizona	8
Pennsylvania	87	North Carolina	8
Texas	76	Connecticut	7
Louisiana	60	Montana	7
Kentucky	50	Tennessee	7
West Virginia	43	Washington	7
Oklahoma	36	Arkansas	6
Indiana	34	Nevada	6
Ohio	33	New Jersey	6
New York	32	Rhode Island	6
Massachusetts	26	South Carolina	6
Kansas	24	Alabama	5
Missouri	21	New Hampshire	5
Virginia	21	Delaware	4
Illinois	20	North Dakota	4
California	18	Oregon	4
New Mexico	17	Utah	4
Wisconsin	17	Vermont	4
Colorado	16	Georgia	3
Florida	16	Alaska	3
Wyoming	16	Idaho	2
Iowa	12	Maine	2
Maryland	11	District of Columbia	1
Michigan	11	Hawaii	1
Mississippi	9	Minnesota	0
		Nebraska	0
		South Dakota	0
		Virgin Islands	0

This information was taken from the 1967 Federal and State Commission Jurisdiction and Regulation of Electric, Gas and Telephone Utilities published by the FPC.

NUMBER OF REGULATED PUBLIC GAS UTILITIES PER STATE

State	Utilities
Texas	62
Iowa	28
Mississippi	18
Indiana	14
Massachusetts	4
New Mexico	3
New York	2
Colorado	1
Connecticut	1
Maryland	1
Montana	1
Alabama	0
Alaska	0
Arizona	0
Arkansas	0
California	0
Delaware	0
District of Columbia	0
Florida	0
Georgia	0
Hawaii	0
Idaho	0
Illinois	0
Kansas	0
Kentucky	0
Louisiana	0
Maine	0
Michigan	0
Minnesota	0
Missouri	0
Nebraska	0
Nevada	0
New Hampshire	0
New Jersey	0
North Carolina	0
North Dakota	0
Ohio	0
Oklahoma	0
Oregon	0
Pennsylvania	0
Puerto Rico	0
Rhode Island	0
South Carolina	0
South Dakota	0
Tennessee	0
Utah	0
Vermont	0
Virginia	0
Virgin Islands	0
Washington	0
West Virginia	0
Wisconsin	0
Wyoming	0

This information was taken from the 1967 Federal and State Commission Jurisdiction and Regulation of Electric, Gas and Telephone Utilities published by the FPC.

NUMBER OF REGULATED
TELEPHONE UTILITIES PER STATE

State	Utilities	State	Utilities
Iowa	226	Kentucky	31
Minnesota	165	North Carolina	31
Wisconsin	140	Virginia	30
Kansas	137	Mississippi	25
Missouri	99	Montana	25
Indiana	93	New Mexico	23
Pennsylvania	85	Tennessee	23
California	80	Alaska	22
Ohio	75	Florida	21
New York	72	Idaho	22
Illinois	71	Nevada	19
Michigan	70	New Hampshire	17
Oklahoma	70	Utah	17
Nebraska	54	West Virginia	15
Georgia	52	Wyoming	15
South Dakota	52	Vermont	14
Washington	51	Arizona	10
Arkansas	48	New Jersey	8
Oregon	46	Massachusetts	4
Alabama	45	Connecticut	3
South Carolina	44	Maryland	2
North Dakota	38	Rhode Island	2
Colorado	35	Delaware	1
Louisiana	32	District of Columbia	1
Maine	32	Hawaii	1
		Puerto Rico	1
		Virgin Islands	1
		Texas	0

This information was taken from the 1967 Federal and State Commission Jurisdiction and Regulation of Electric, Gas and Telephone Utilities Published by the FPC and from the 1966 Statistics of the Independent Telephone Industry Published by the USITA.

SA-12
State of Alaska
Department of Administration
Budget & Management Div.
(Rev. 5-68)

STATEMENT OF PROGRAM

For the Fiscal Year Ending June 30, 1970

		Code
Department	Commerce	08
Division	Public Service	3
Program	Operations	1
	Utility Regulation	01

STAFFING COMPARISON OF REGULATORY AGENCIES BY STATE

State	Professional Staff	Clerical Staff	Total Staff
Alabama	13	12	25
Alaska	4	3	7
Arizona	1	102	103
Arkansas	15	0	15
California	280	515	795
Colorado	8	44	52
Connecticut	14	35	49
Delaware	2	5	7
District of Columbia	11	20	31
Florida	30	111	141
Georgia	8	26	34
Hawaii	21	9	29
Idaho	5	11	16
Illinois	55	187	242
Indiana	17	28	45
Iowa	20	90	110
Kansas	26	137	163
Kentucky	20		
Louisiana	10	19	29
Maine	14	28	42
Maryland	25	33	58
Massachusetts	11	107	118
Michigan	69	29	98
Minnesota	11	47	58
Mississippi	5	47	52
Missouri	91	5	96
Montana	4	13	17
Nebraska	10	65	75
Nevada	13	11	24
New Hampshire	5	6	11
New Jersey	58	72	130
New Mexico	8	0	8
New York	295	331	626
North Carolina	19	37	56
North Dakota	12	17	29
Ohio	62	64	126
Oklahoma	28	164	192
Oregon	76	151	227
Pennsylvania	204	143	347
Puerto Rico	28	8	36
Rhode Island	4	11	15
South Carolina	7	43	50
South Dakota	4	3	7
Tennessee	7	27	34
Texas			
Utah	6	6	12
Vermont	9	4	13
Virginia	19	258	277
Virgin Islands	0	4	4
Washington	46	83	129
West Virginia	23	64	87
Wisconsin	73	61	134
Wyoming	5	35	40

ANALYSIS	NO. EMPLOYEES		RATIO	
	Nationwide	Alaska	Nationwide	Alaska
Professional	1810	4	1	1
Clerical	3331	3	2	3/4

This information was taken from the 1967 Federal and State Commission Jurisdiction and Regulation of Electric, Gas, and Telephone Utilities published by the Federal Power Commission.

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March 3, 1969

Senator P. B. Haggland
Chairman, Senate Commerce Committee
Alaska State Legislature
Juneau, Alaska 99801

Re: Senate Bill No. 128 - Alaska Public Service Commission

Dear Senator Haggland:

I wrote to you on February 17, 1969 regarding Senate Bills Nos. 54 and 128. That letter was principally with respect to the composition of the Commission, the employment of Hearing Officers and the advantages of having at least one full-time Commissioner. Since writing that letter I have obtained from the Secretary of State information concerning the amount paid for Hearing Officers in the important proceedings before the Commission. The following is offered for your information:

1966-67 Application of Native Village of Tyonek, $1,680.00

Rates, services and facilities of Alaska Electric Light and Power Company, $3,318.50

1967-68 Rates of A. J. Industries, Inc.,$3,279.02

Applications of North State Telephone and Glacier State Telephone, $13,369.20.

The following are observations concerning Senate Bill No. 128 and to some extent the same apply to Senate Bill No. 54.

The present law requires that one member of the Commission be an attorney, one an engineer and one an accountant. I was instrumental in having that provision put in the present law and I think it is essential that the Commission have talent which includes all of these three fields in order for the Commission to be able to sit down and make intelligent decisions without reference to information other than is contained in the record of the proceeding. Under my proposal

for a full-time Commissioner I believe he should be an attorney.

The bill requires that tariffs be filed according to rules set by the Commission. The Commission has never adopted any tariff rules, but it is in the process of doing so.

The bill sets up a procedure for obtaining reparations for charges which have been unreasonable, but collected according to a tariff, provided that the rates have not previously been determined by the Commission as fair and reasonable. The Commission has had a rate proceeding for Alaska Electric Light and Power Company in which it has approved the rates. So far as I know, all other utilities filed their rates at the time they received Certificates of Public Convenience and Necessity and have never had those rates approved. Therefore, in any future proceeding, if the Commission determines that the rates which have been charged have been excessive, it could order a refund to customers, many of whom could not even be found. This would be making rates retroactively and in my opinion is strictly unconstitutional. The common law is that rates cannot be made retroactively and refunds cannot be ordered to be made by a Commission except where rates have been put into effect on the condition that a portion of the revenue be put in a trust fund and refunded later if it is determined that the temporary rates are excessive. I have been advised by the attorney for the Commission that he caused this provision to be inserted in the law and admitted it was a job done in a hurry without a great deal of thought.

Section 42.05.351 provides that there be no unreasonable discrimination in rates "either as between localities or between classes of service". Therefore, if you are furnishing telephone service in a city where you have a density of population amounting to hundreds or thousands per square mile you cannot charge any more than you would in a rural area where the density of population is only ten or fifteen customers to the square mile. Moreover, a utility which operates in several communities would have to have the same rate for each community regardless of the cost of service. For instance, in one community you may have a fine head of water and produce all of the power by a hydroelectric system at a very low cost whereas in another community you have to operate with small diesel engines at very

high cost. The provision against discriminating for classes of service is also unrealistic. Almost all electric and telephone rates distinguish between the service for business establishments and those for domestic establishments. Under this provision a business establishment which may have hundreds of telephone calls in a day could not be charged any more than a householder who only had a few calls a day.

Section 42.05.431 provides for a system of accounts and submission to the Commission within 75 days after the close of an annual accounting period of a report of the operations. These reports are prepared and certified by the accountants under present law. Particularly at the end of the calendar year corporations find it impossible to get their auditors to complete their audits and submit reports within 75 days. The Internal Revenue Service allows three and one-half months for filing income tax returns and an accountant can automatically get an extension of time by mailing a form stating that he is unable to complete the audit and returns on time. Most corporations do not file within the three and one-half months because they do not have the reports. This provision is wholly unrealistic and there should be an allowance of three and one-half months with the right of the Commission to extend the time for good cause shown.

Section 42.05.511 needs revision. It provides that the surplus, profits and operating margins of public utilities shall be distributed in accordance with the bylaws or ordinances controlling the utility. The words "operating margins" should be deleted for obvious reasons. Since utilities are under the control of the Public Service Commission, no control by municipal ordinances should be permitted. This section would allow the Commission to adopt regulations governing the distribution of surplus, profits and operating margins. In other words, the Commission could regulate by some unknown manner the amount of distributions to shareholders or prohibit them entirely. There is nothing wrong with allowing a public utility commission to enjoin the distribution of profits in the form of dividends if such distribution will impair the ability of the utility to furnish adequate and reliable service. There is no reason to give the Commission any more than this limited authority.

The Legislature has never amended the Municipal Code to delete the power of political subdivisions to regulate

utilities so as to prevent a conflict between the powers granted to political subdivisions and those granted to the Public Service Commission.

Section 29.10.141 allows the Council to grant franchises for the exclusive right to furnish utility services. This power has been transferred to the Public Service Commission which issues Certificates of Public Convenience and Necessity. Since the authority of the Commission was granted subsequent to the authority granted to municipalities it is my opinion that the authority of the Commission is exclusive but it is very confusing to laymen to find that the law still gives the right to the municipalities to determine who shall furnish the service and in what areas. The authority of the Council to grant the use of the streets and other public places is also contained in the same section. In my opinion this power should be transferred to the Public Service Commission to be exercised under such rules and regulations as the Commission shall promulgate. In other words, if the Commission wants to allow a municipality to make a charge for the use of its streets such as the 3 per cent gross franchise tax imposed by the City of Juneau on Alaska Electric Light and Power Company, it should be allowed to do so but no municipality should be allowed to determine which utilities can use the streets when the Public Service Commission has determined who shall furnish the service. When the franchises of the presently operating utilities expire, the utilities have no rights to use the public streets and could theoretically be put out of business unless the municipalities are willing to grant such privilege on some reasonable basis. The Commission should be able to determine what is reasonable and to protect the utilities against municipalities making unreasonable charges. Alaska Electric Light and Power Company is now paying the City of Juneau in excess of $35,000 a year for the use of the streets while other public utilities pay nothing.

Section 29.10.144 gives the political subdivisions the right to regulate public utility rates and the Public Service Commission has subsequently been granted that right. This resulted about three years ago in the Attorney General of Alaska giving the Greater Juneau Borough an opinion that there was concurrent jurisdiction in both the Public Service Commission and the City to regulate rates. It seems to me that the opinion is ridiculous on its face. I have advised my clients that the Public Service Commission received its authority subsequent to the receipt of such authority by municipalities. Therefore,

the Commission has exclusive jurisdiction and the Municipal Code should be amended in this regard. However, armed with that opinion from the Attorney General, the Chairman of the Greater Juneau Borough stated in a large public meeting that the Borough would regulate utility rates outside of the City of Juneau and outside of the City of Douglas.

I hope to be able to appear at the meetings which you will have on Senate Bill No. 128 but if I am not able to be present I would like to have my two letters to you on this subject read at the meeting.

Yours very truly,

N. C. Banfield

NCB:db

cc: Clarence D. Bramhall
Don H. Wallach
Don H. Brooks
F. D. Nagel

STUDY OF STATE SUPERVISION OVER MUNICIPALLY OWNED UTILITIES

Prepared by the City of Fairbanks
Office of the City Attorney
January 3, 1961

INDEX

STUDY OF STATE SUPERVISION OVER MUNICIPALLY OWNED UTILITIES

I. INTRODUCTION

This study is based primarily upon the article on the same subject by Charles M. Kneier appearing in 49 Columbia Law Review, pp. 180-200. Other sources are indicated by the citations.

The principal of regulation of public utilities is generally accepted since they are ordinarily monopolies, and where there is a monopoly, regulation is necessary to insure adequate service at reasonable rates. As of 1948, therefore, all of the states but Delaware had state commissions regulating public utilities. In some of these, local public utilities were largely regulated by the cities they served.

However, it is frequently questioned whether such regulation should extend to municipally owned utilities. Do the reasons for control of private monopolies apply to municipally owned public utilities? If regulation is needed, should it be by the state or by the voters of the city through their control over the city officials and by the initiative and referendum? As might be expected, the states vary greatly in the extent of regulation of such utilities.

II. DIFFERING POLICIES OF THE STATES

In many states, including Oregon, such utilities are exempt from state regulation by constitutional or statutory provisions, at least as to service within the city. A smaller group of states

have statutes clearly giving some degree of state control. In some it is over service beyond the corporate limits. In others it is limited to such matters asprescribing methods of keeping accounts, requiring reports, and requiring certificates of convenience and necessity. In a third group of states the statutes and constitutions neither expressly include nor expressly exclude, control by the state commissions.

Three states, Lousiana, New Mexico, and Indiana, leave the question of state regulation up to the voters of the city, the first two by voting to ask for regulation. In Michigan and Kansas the commissions are required to advise the cities upon request, but cannot regulate city owned utilities. Other commissions give such advice and assistance informally.

III. STATE POWER TO REGULATE

A. General.

In the absence of a constitutional prohibition it is clear that the legislature may provide for regulation of municipally owned utilities by a state commission. It is equally clear that such utilities may be exempted, and privately-owned utilities cannot complain of deprivation of due process or equal protection under either the state or federal constitutions.

In Colorado, Montana and Utah the state constitutions provide that the legislature shall not delegate to a special commission any power to make, supervise, or interfere with any municipal functions. Holding that the purpose of such a provision is to "hold inviolate the right of local self-government...with re ct to municipal improvements, money, property, effects, the lev ng of taxes, and

the performance of municipal functions" the Utah Supreme Court held unconstitutional a statute attempting to confer regulatory powers upon the state commission. Logan City v. Public Utilities Comm'n, (1928) 72 Utah 536, 271 Pac. 961, 972. Accord, Holyoke v. Smith, (1924) 75 Colo. 286, 226 Pac. 158; contra, Public Service Comm'n. v. Helena, (1916, held not a "special commission") 52 Mont. 527, 159 Pac. 24.

B. Home Rule As a Restriction On State Power.

Home rule usually restricts the power of the state legislature to interfere in local affairs. Under this doctrine Ohio has held that the state commission has no power to regulate rates of municipally-owned utilities, Shoemaker v. Village of Granville (Ohio Civil App., 1958) 156 N.E.2d 757. Water supply is a local affair in Oklahoma, Pitts v. Aleen (1929) 138 Okla. 295, 281 Pac. 126, and California, City of Pasadena v. Charleville, (1932) 215 Cal. 384, 10 P.2d 745. Sale and distribution of electricity is a local affair in California, Los Angeles Gas and Electric Corp. v. City of Los Angeles, (1922) 188 Cal. 307, 205 Pac. 125. The only state which permits a measure of control is Michigan, which has held that the provisions of the state labor mediation act is applicable to city employees of the utility, Local Union No. 876 v. State of Michigan Labor Mediation Board, (1940) 294 Mich. 629, 293 N.W. 809, 811. See also Antieau, Municipal Corporation Law, Section 3.19. Colorado has also held that home rule cities cannot be regulated as to utility services, at least as to service within the city limits, see infra.

C. Home Rule in Alaska.

Despite these cases and the lack of contrary decisions it is questionable whether they will be of help to Alaskan home rule cities in avoiding regulation. The local affairs-state concern dichotomy does not appear to be embodied in the Constitution of Alaska.

The convention, believing that the dichotomy led to an erosion of local powers through court decisions, instead vested "all legislative powers not prohibited by law or by charter" in home rule cities. It appears to be the intent of the framers that home rule cities would never have to ask for any enabling legislation, while reserving to the legislature the power to limit the city's powers in the event the city "abused" its powers or in the event the city came into conflict with the home rule borough (county) of which it is a part. See Article X, Constitution of Alaska, especially Sections 1, 2, and 11.

> "3. Specifically reviewed were the provisions authorizing the adoption of home rule charters. It was generally agreed that the procedure should be left to the legislature and to the local government body. The grant of powers is to be based upon "legislative powers" rather than a specific enumeration. Enumerations have frequently been restrictively interpreted by the courts. Nor was it felt desirable that the grant be on the basis of powers covering "local affairs" or "local government". Such terms have also given rise to continuous judicial interpretations, causing great uncertainty in what the actual powers of local government are. The grant of "legislative" power would be subject to restrictions contained in the constitution, to powers specifically withheld by the legislature and to powers withheld by the people in the adoption of their local charter." (emphasis added) Minutes, 24th Meeting, Committee on Local Government, Constitutional Convention. See also Minutes of the 35th and 40th Meetings.

Nevertheless, since the distriction was avoided in order to

to protect the powers of home rule cities, such cities may argue that the omission was not intended to and did not sweep away the protection from unwanted and unwarranted interference by the legislature in municipal affairs, the protection which is afforded by constitutional home rule in the other states. Otherwise, the legislature could provide, for example, that home rule cities shall not use the city manager plan. Obviously there must be a line drawn somewhere, and in view of the cases cited it is at least possible that the courts would hold that the legislature cannot vest in the State Public Service Commission the power to regulate municipally-owned public utilities as to service within city limits.

This reasoning is especially applicable to certain aspects of such regulation contemplated by Chap. 199, S.L.A. 1959. Section 37 appears to give the commission control over staffing patterns, wage and salary scales, and management generally and the commission may order the correction of "abuses" which "adversely affect the cost...or service." Section 50 requires the commission to review municipal bonding ordinances, providing for issuance of bonds to construct or improve a public utility, and permits the commission to make orders in the event the commission finds that the ordinance will preclude the operation of the utility in the "best" public interest. Presumably the commission could order that proposed bonds not be issued.

It is probable that the extensions of the Fairbanks water system will be financed in part by revenue bonds and, at a lower interest rate, by general obligation bonds. Revenues would not be sufficient to finance wholly by revenue bonds. Though the interest

rate would be lower, the City will probably not want to finance the extensions wholly by general obligation bonds because of the limit on such bonds in the city charter. Could the commission order the city to finance such extensions wholly by general obligation bonds? Apparently so, yet if the commission can do so, home rule in Alaska will not be a guarantee of maximum local self-government. The annual trek of city lobbyists to the state legislature will not be diminished, the only change will be that instead of seeking legislative authorization to handle their own affairs, they will be seeking to prevent further inroads of state interference.

Of course, home rule cities could, by ordinance, exempt their utilities from state control, but there can be little doubt that the legislature would react immediately to "specifically" withhold this legislative power from the cities.

D. Alaska Constitution, The "Appropriation"Clause.

One constitutional protection is, however, clearly available. "Local acts necessitating appropriations by a political subdivision may not become effective unless approved by a majority of the qualified voters voting thereon in the subdivision affected." Section 19, Article II, Constitution of Alaska. While restricted to local acts of the legislature, it seems doubtful that the State Public Service Commission could make orders requiring appropriations by the cities, as for example, to make extensions of a utility system, and avoid the election where the legislature could not do so. Not being bound by such a constitutional limitation, the state of New York appears to have required the City of New York to acquire and finance the public transit systems in that city, operational control

of which was vested in a state board. See McCabe v. Voorhis (1926) 243 N.Y. 401, 153 N.E. 849 and McAneny v. Board of Estimate and Approptionment of City of New York, (1922) 232 N.Y. 377, 134 N.E. 187.

IV. EXTENT OF STATE REGULATION

A. Management.

In those states which do give regulatory powers over municipally-owned public utilities, some commissions have been relatively liberal in regulation, as compared to regulation of privately owned utilities, especially as to extensions. Further, the commissions repeatedly state that the power to regulate municipally-owned utilities is not the power to manage. Yet on occasion the commissions have invaded the area of management, ordering such utilities to give discounts on bills paid before the first of the month, to require safety guards on equipment, and to require the city to employ an engineer to inspect a building to ascertain whether the roof was in danger of collapse. Section 38 of Chapter 199, S.L.A. 1959 would appear to give carte blanche to the commission to manage city utilities once a complaint has been made. In this respect Alaska appears to vary greatly from the practice in the other states.

B. Rates and Discriminatory Practices.

Only nine states, as of 1948, gave their state commissions power to fix rates for municipal utility service within the city limits. An argument advanced in support of such regulation is that without it rates have been kept high and the surplus transferred to the general fund. This is condemned by some as inequitable, as

favoring business property by reducing property taxes through surplus accumulated from the small holders, who are said to use proportionately more utilities.

Yet if to some it seems unwise to finance general city services out of utility earnings, is it necessary or good policy to control this through a state commission? If the citizens approve, why should the state interfere? If the citizens do not approve they can easily effect a change by election, recall, initiative or referendum. If such control is said to be more theoretical than practical, the same can be said of citizen control of all governmental activities. Shall the state now regulate and control the fire protection services of cities? And who shall regulate and control the state ferry system if the democratic controls provided by our constitution are deemed inadequate to prevent the state from operating it at a profit?

Speaking of profit, it should be noted that the Municipal Utilities System of the City of Fairbanks makes no contributions to the general fund, except by way of in lieu of tax payments, and the general fund is charged for utilities furnished to the city.

Though it is not yet true in Alaska, some cities have financed general operations out of utility earnings not by choice but by necessity, since many states have taken over all the best sources of tax revenue, and only through surplus earnings have city property taxes been kept within reasonable limits.

Finally, it has been well said that "experience teaches us that state government is not the repository of all wisdom."

State commissions which do have jurisdiction have found and removed discriminatory rates and other practices and, while

there is somewhat greater justification for control to prevent discrimination as contrasted with control of profits, yet it is often a reasonable question as to whether a particular practice is discriminatory. Further, not only is state control contrary to the principle of local self-government, but bad practices may be corrected by the voters or by the courts, under the common law. The courts have not hestitated to correct real discrimination and other abuses wherever they have found such to exist, see McQuillin, Municipal Corporations, Sections 35.34 and 35.35, Antieau, Municipal Corporation Law, Sections 19.01, 19.02, 19.03 and 19.04.

C. Accounting and Reporting.

About 18 states have given state commissions the power to prescribe accounting methods and require reports from municipal utilities. A strong case can be made for this. Comparable statistics are needed by the public as well as the commission, and proper accounting and reporting are essential if the citizens of cities are to exercise effective local control over their municipally-owned utilities.

D. Critique.

> "Advocates of state control over municipal utilities take the position that if not necessary it is nevertheless desirable. They cite cases in jurisdictions making use of state control where rates have been increased or lowered on the basis of scientific ratemaking and not on the basis of what an uninformed public favors; where questions of discrimination in service or rates have been decided on the basis of experience and accepted practice rather than according to the influence or persuasivenss of the individual persons objecting; and where by the requirement of proper accounting and reporting not only the state commission but the people of the city have been able to judge the results of municipal operation of utilities. They look upon

state control of municipal utilities as a means by which a staff of experts with accumulated knowledge assists and guides cities in the operation of their plants and saves them from errors.

A distinction might be made between the technical questions of operation of a municipally owned utility and questions of public policy. As to the latter, good practice would seem to dictate local determination, even though some mistakes might be made. The New York Public Service Commission, in refusing to grant a certificate to a village for the construction of a publicly owned electric plant, said: "The Commission is therefore called on to protect the village against itself. Public convenience and necessity do not require a village to embark on a disastrous business enterprise." Even though we assume that the case was properly decided and that the Commission did, as it suggested, protect the City against itself, there is a serious doubt as to whether the policy question of municipal ownership should be left to the determination of a state commission. If a city in some cases "burns its fingers," this is a small price to pay for local determination of public policies. And if, as many city officials feel, state commissions are in general believers in the principle of private ownership and public regulation, state control may place a serious obstacle in the path of the spread of municipal ownership. The Montana Commission, in ordering service restored to a customer, condemned as "inhuman, inconsiderate, cruel and un-American the action of the water commission and clerk in shutting off water." The customer, a county charge who failed to pay his bill, was, according to the Commission, "denied service without consideration and more despicably, more lowly and more contemptibly than he would have been by any of the predatory and greedy privately owned utilities in this state". It appears as if the practice here was bad, and the Commission was right in its disapproval. However, the management of the utility was subject to control by the electorate and the situation might have been remedied there. And if the principle of state supervision is accepted in such a case, then the door is open for interference in other questions of policy." Cited, Columbia Law Review, pp. 192, 193.

V. REGULATION WHEN SERVICE RENDERED OUTSIDE MUNICIPAL LIMITS

Here is the strongest case for state control, as the consumers are not citizens who can effect a change in policies if they are dissatisfied. In addition to nine states which regulate within as well as without the city limits, ten other states, in 1948, had given to their commission jurisdiction over service performed outside the city limits by municipally-owned public utilities. In some this is by statute, in others it is by judicial decision, and the courts have noted the need for protecting such consumers.

However, such jurisdiction is generally restricted to those cases where the city holds itself out as serving the general public beyond the city limits, thus becoming a public utility. If the city acts on a limited, contractual basis, the state commission will have no jurisdiction. Denver thus avoided regulation, though it had 4500 water users outside the city limits. Re City and County of Denver, (1937) 18 P.U.R. (N.S.).

In the absence of commission control there are varying state doctrines on the remedies available in the courts to consumers residing outside the city limits. The majority rule appears to be that the city is subject to all the common law duties of a public utility, at least where it holds itself out as such. At the other extreme, Georgia and South Carolina appear to impose no duties upon the city. At the risk of over simplification, it may be said that the remaining states require that the city not discriminate in service among such consumers and that the out of city rates not be excessive in comparison to the rates within the

city, but the courts will not require the city to make extensions into new areas, nor will the courts examine the overall rate structure to determine whether the rate of return is excessive.

The reaction of this third group of states to these problems is reflected by the actions of the commissions which have regulatory powers. Most commissions permit higher rates to be charged to those consumers outside the city. Justifications for such a practice are said to be the added cost of service, the city assumes the risk of casualty losses, and, most frequently, such consumers have foregone nothing as taxpayers, and cannot expect to share in the benefits. Most commissions hesitate to order major extensions, recognizing this to be a matter of internal management, and that financing problems of such a utility are different from privately owned utilities.

VI. KNEIER'S CONCLUSION

> "That no right, conclusive, and unquestionable solution have yet been found to the problem of whether a state commission should have the same supervisory control over municipal utilities that it does over privately owned utilities is indicated by the varying practices in the states. City officials speaking as individuals and through state municipal leagues oppose such control. They look upon it as a further unnecessary interference with the right of cities to manage their own affairs. They believe that a remedy is available to the voters if there is mismanagement or if unpopular policies are adopted. If the state commissions have technical experts who can be helpful, then city officials believe their assistance should be available on a voluntary basis. The evidence, however, indicates that in the states where the latter practice has been adopted, cities have made little use of the technical service.
>
> Those who favor state control point to what they consider to be cases of mismanagement, discrimination in service and rates based on the political influence of individuals or groups, poor accounting methods, and rates that cannot be justified on economic grounds.

Some advocates of state control favor such a policy on the ground that it is fairer to privately owned utilities; "otherwise privately owned plants operate at a competitive disadvantage compared with municipally owned plants".

Opponents of state control are on their weakest ground when opposing supervision over methods of accounting and the requirement that reports be made to the state commission. Proper methods of accounting are not questions of policy to be left to local discretion. A state commission should be helpful, and giving control in this area can hardly be considered an encroachment on local self-government.

With an increase in the service by municipal plants beyond the corporate limits of the city, a strong case for state supervision of the rates and service can be made. Otherwise the remedies available to the outside consumer are inadequate. When served by a municipal plant he should pay higher rates than those who reside within the city. And state commissions have approved such higher rates. However, there should be a limit to the amount which he must pay for the privilege of living outside. To say that he can resort to the courts or that he can have a privately owned utility invade the field is hardly adequate.

State control of accounting or of rates charged beyond the corporate limits appears to the cities, however, as merely an opening wedge, a toe-in-the-door, and a step to full control of municipal utilities. On the basis of experience with state legislatures and with state boards and commissions, they fear a further invasion of the rights of local self-determination. The right of self-government is still charished, and this includes the management of municipally owned utilities." Cited, Columbia Law Review, pp. 196, 197.

STATE COMMISSION JURISDICTION OVER MUNICIPALLY OWNED UTILITIES*
(Electric, Gas, and Water Unless Otherwise Indicated)

	Regulate Rates		Regulate Service				License for Operation	
	Within Corp. Limits	Outside Corp. Limits	Within Corp. Limits	Outside Corp. Limits	Prescribe or Control Accounting	Require Reports	Within Corp. Limits	Outside Corp. Limits
Alabama	No	No	No	No	No	No	No	No
Arizona	No	No	No	No	No	No	No	No
Arkansas	No	Yes	No	Yes	No	No	No	Yes
California	No	No	No	No	No	No	No	No
Colorado	No	Yes[1]	No	Yes	Yes	Yes	No	Yes
Conn.	No	No	No	No	Yes	Yes	No	No
Delaware	No Commission							
Florida	No	No	No	No	No	No	No	No
Georgia	No	Yes	No	Yes	No	No	No	No
Idaho	No	No	No	No	No	No	No	No
Illinois	No	No	No	No	No	No	No	No
Ind.[2]	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Iowa	No	No	No	No	No	No	No	No[3]
Kansas	No	No	No	No	No	No	No	No
Kentucky	No	Yes	No	Yes	No	No	Yes	Yes
Louisiana	No	No	No	No	No	No	No	No
Maine	Yes	Yes	Yes	Yes	Yes	Yes	No	No
Maryland[4]	Yes	Yes	Yes	Yes	Yes	Yes	Yes[5]	Yes[5]
Mass.[6]	No[7]	No[7]	Yes	Yes	Yes	Yes	Yes[8]	Yes[9]
Michigan	No	No	No	No	Yes[10]	Yes[10]	No	No
Minnesota	No	No	No	No	No	No	No	No
Miss.	No	No	No	No	No	No	No	No
Missouri	No	No[11]	No	No[11]	No	No	No	No[11]
Montana	Yes	Yes	Yes	Yes	Yes	Yes	No	No
Nebraska	No	Yes	No	Yes	No	No	No	No[12]
Nevada	Yes	Yes	Yes	Yes	Yes	Yes	No	No
N. H.	No	Yes	No	Yes	Yes	Yes	No	No
New Jersey	No	Yes[13]	No[14]	Yes[15]	Yes	Yes	No	Yes[16]
New Mexico	No	No	No	No	No	No	No	No
New York[17]	Yes	Yes	Yes	Yes	Yes	Yes	No	No[18]
No. Carolina	No	No	No	No	No	Yes	No	No
No. Dakota	No	No	No	No	No	No	No	No

STATE COMMISSION JURISDICTION OVER MUNICIPALLY OWNED UTILITIES*
(Electric, Gas, and Water Unless Otherwise Indicated)

	Regulate Rates		Regulate Service				License for Operation	
	Within Corp. Limits	Outside Corp. Limits	Within Corp. Limits	Outside Corp. Limits	Prescribe or Control Accounting	Require Reports	Within Corp. Limits	Outside Corp. Limits
Ohio	No	No	No	No	No	No	No	No
Okla.	No	No	No	No	No	No	No	No
Oregon	No	No	No	No	No	No	No	No
Penn.[19]	No	Yes	No	Yes	Yes	Yes	No	Yes
R. I.[20]	No	No	No	No	No	No	No	No
So. Carolina	No	Yes[21]	No	Yes[21]	No	No	No	Yes[21]
So. Dakota[22]	No	No	No	No	No	No	No	No
Tenn.	No	No	No	No	No	No	No	No
Texas	No	No	No	No	No	No	No	No
Utah	No	No	No	No	No	No	No	No
Vermont[23]	No	Yes	No	Yes	Yes	Yes	No	No
Virginia	No	No	No	No	No	No	No	No[24]
Wash.	No	No	No	No	No	No	No	No
West. Vir.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Wisc.	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Wyoming	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Source: This table is reproduced from Kneier State Supervision Over Municipally Owned Utilities, 49 Columbia Law Review, 180, 198-200 (1948).

*This table is based on state laws and the decisions of courts and public utilities commissions. The answers given in the table have been approved by the commissions in the following states: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. The Indiana, Maryland, Massachusetts, Pennsylvania, and Rhode Island Commissions have furnished data on which the table is based, but they have not passed upon the specific answers given in the table. Data in table as of August 15, 1948.

1. Where the city takes on a few customers by special contract the commission has no jurisdiction.
2. The Indiana statute is very confusing and in fact the provisions are in conflict as to state supervision over municipally owned utilities. Data in the table based in part on Opinions of Attorney General of Indiana given to Chairman of the Public Service Commission of that state under date of April 24, 1947, and April 5, 1948.
3. The "Commission does have jurisdiction over construction and operation of all electric transmission lines outside cities and towns. Franchise is required and given after application, hearing and determination of propriety."
4. The Maryland Commission has no jurisdiction over water utilities except some very limited jurisdiction when water is supplied outside the municipal limits.
5. Baltimore is excepted from this requirement.
6. The Department of Public Utilities has no regulatory authority over municipal water system.
7. Municipal plant may not sell at less than cost of production without approval of state Department of Public Utilities; and it is limited to profit of eight per cent. Mass. Ann. Laws c.164 § 58 (1933).
8. The statutory requirement is for "towns", but this has been construed to include cities.
9. Required only for municipal gas and electric utilities.
10. No statutory provision for enforcing compliance. "Municipally owned utilities may completely disregard the forms as prescribed by the Commission."
11. Missouri municipalities have very limited power to furnish utility service beyond their corporate limits. City of Springfield v. Monday, 353 Mo. 981, 185 S.W. 2d 788 (1945); Re City of Springfield, 58 P.U.R. (N.S.) 237, 60 P.U.R.(N.S.) 161 (No. 1945); Taylor v. Dimmitt, 336 Mo. 330, 78 S.W.2d 841 (1934). The General Counsel of the Missouri Public Service Commission writes (letter dated Aug. 9, 1948) that: "If a municipally owned utility should attempt to render service to customers outside of the corporate limits, then to that extent it would lose its status as a municipal operation and would become subject to the regulation of the Commission in the same manner as any other privately owned public utility."
12. "Authorizes construction of lines, but does not issue certificates of convenience and necessity."
13. No jurisdiction over municipal water utilities except in cities of second class having over 120,000 population supplying water to inhabitants of another municipality.

14. The answer is "yes" for municipal electric utilities.
15. The answer would be "no" for municipal water utilities.
16. The answer would be "no" for municipal water utilities.
17. Commission no jurisdiction over municipal water works.
18. Consent of commission is necessary if service is extended to adjoining municipalities and a private utility is operating in the new territory.
19. "Municipal Corporation" as used in the statute means cities, boroughs, towns, townships, or counties, and also any public corporation, authority, or body whatsoever created for the purpose of rendering service similar to that of a public utility.
20. The only municipally owned utilities in Rhode Island are water works, and they are exempt from supervision by the Public Utility Administrator.
21. Electric utilities only.
22. The commission has no jurisdiction over municipally owned water, gas, or electric plants; it does have jurisdiction over the two municipally owned telephone systems. (Brookings and Beresford).
23. The Vermont commission has no jurisdiction over municipally owned water utilities.
24. The answer would be "yes" for transportation, but no municipally owned systems are operating in Virginia.

The Legislature of the State of Alaska
FISCAL NOTE
First Session - Sixth State Legislature

COPIES: ___THE CHAIRMAN OF THE COMMITTEE MAKING THE REQUEST, POUCH V
___THE LEGISLATIVE FINANCE COMMITTEES' STAFF, POUCH Y
___THE DIVISION OF BUDGET & MANAGEMENT, POUCH C
___RETAIN A COPY FOR YOUR FILES

subject HB 202 SB
requested by Chairman Barry W. Jackson, House Judiciary Committee
referred to date of request
completion date requested date received

EXPENDITURE DETAIL	FY 1969-70	FY 1970-71	FY1971-72
100 PERSONAL SERVICES	$228,300	$250,400	$257,700
200 TRAVEL	26,500	24,300	25,000
300 CONTRACTUAL SERVICES	120,400	73,000	73,000
400 COMMODITIES	4,000	5,000	5,000
500 EQUIPMENT	7,700	2,500	2,500
600 LAND AND STRUCTURES			
700 GRANTS, CLAIMS & SHARED REVENUE			
900 Inter-agency Charges	22,000	23,000	23,000
TOTAL	$408,900	$378,200	$386,400
FUNDING DETAIL			
FEDERAL RECEIPTS	$	$	$
SPECIAL FUNDS			
UNRESTRICTED GENERAL FUND RECEIPTS	408,900	378,200	386,400
Man Months	180	204	216
Permanent Positions	15	17	18
Temporary Positions	0	0	0

FISCAL ANALYSIS

Please see attached.

DATE 3/4/69 SIGNATURE George Sharrock

NAME & TITLE George Sharrock, Commissioner of Commerce

FORM SA-18

MEMORANDUM State of Alaska

TO: B. L. McMurtrey
Deputy Commissioner
Department of Commerce

DATE : February 27, 1969

FROM: Don Hall
Executive Director
Public Service Commission

SUBJECT: HB 188 and HB 202

You asked for my comments in regard to HB 188 but made no similar request in regard to HB 202.

I have compared HB 188 and SB 54 and find that they are identical in every respect. I have also compared HB 202 with SB 128 and find that they too are identical in every respect with one exception; namely, that Sec. 42.05.691(b) of SB 128 has been omitted from HB 202. This deletion has the effect of broadening the Commission's authority.

I have already prepared detailed comments on SB 54 and SB 128, copies of which are in Mr. Sharrock's possession--and these comments, of course, apply also to their respective House companion bills.

You have the Commission's original budget in the amount of $347,800 as subsequently modified by the cost of upgrading certain positions and by adding $8,500 to cover the cost of regulating pipeline companies (principally the Alaska Pipeline Company). The cost of administering SB 54 would be somewhat greater than the cost of administering SB 128 because of the fact that SB 54 requires more extensive regulation of municipally owned and operated utilities. However, I believe that the aforementioned original budget as modified would be adequate to administer SB 54, at least during the first year.

Estimates have also been submitted regarding our budgetary requirements for the years ending June 30, 1970, 1971, and 1972. These estimates were specifically based upon administering SB 128 and consist of a three-year projection compiled in one document.

I believe the foregoing is an adequate response to your request for information in regard to the House and Senate bills mentioned above.

By Don Hall

DH:SG

ALASKA PUBLIC SERVICE COMMISSION

Detail of Personnel Requirements

NOTE #1

Position Title	Approved FY 1968-1969	Projected FY 1969-1970	Projected FY 1970-1971	Projected FY 1971-1972
Executive Director	18,888	21,612	21,612	21,612
Deputy Director	17,844	19,992	19,992	19,992
Utilities Engineer	14,916	17,844	17,844	17,844
Financial Analyst II	15,876	15,876	15,876	15,876
Tariff Specialist II		15,876	15,876	15,876
Financial Analyst I	12,156	13,908	13,908	13,908
Tariff Specialist I		13,908	13,908	13,908
Accountant IV			13,032	13,032
Assistant Utilities Engineer		12,156	12,156	12,156
Administrative Officer I		12,156	12,156	12,156
Accountant II	9,960			
Secretary III		8,496	8,496	8,496
Secretary II	7,956			
Secretary I		7,488	7,488	7,488
Secretary I		7,488	7,488	7,488
Documents Clerk III		7,488	7,488	7,488
Clerk Steno II	6,420	6,420	6,420	6,420
Clerk Steno II			6,420	6,420
Clerk Typist III	6,420	6,420	6,420	6,420
Clerk Typist III				6,420
Sub-total	110,436	187,128	206,580	213,000
Commissioner		5,000	5,000	5,000
Commissioner		5,000	5,000	5,000
Commissioner		5,000	5,000	5,000
Employee Benefits	11,164	26,172	28,820	29,700
Total Personnel Services	$121,600	$228,300*	$250,400	$257,700

*The difference between this amount and the request for personnel services included on our original FY 1969-1970 budget request ($228,300 - $194,900 = $33,400) is comprised of nominal salaries for the three Commissioners plus six reclassifications which were recommended by consultants in recommendations on Commission Staffing.

NOTE # II

200 Travel
We anticipate that our travel fund requirements, both outside and within the State, will remain fairly constant for the next three years. The moderate decrease projected for FY 1970-1971 is comprised of two items included in our present budget (ACS Sale Bid Proposal Evaluation conferences and transportation of new employees) which will no longer be needed. The moderate increase in FY 1971-1972 is anticipated because of increase in workload.

NOTE # III
300 Contractual Services
The $28,500 increase in FY 1969-1970 projected requirements is made up of the following costs:

a) $20,000 to provide funds for hearing officers appointed pursuant to AS 42.05, Section 181 of SB 128
b) $8,500 to provide funds for consultants to investigate operations of existing oil transmission pipelines within the State

The $47,400 decrease in FY 1970-1971 was computed as follows:

a) $5,100 increase in overall contractual services account due to increase in workload and change in methods and procedures utilized in accomplishing program of utility regulation.
b) $52,500 total decrease possible because of anticipated finalization of ACS sale by July 1, 1970 ($35,000); completion of investigation of safety programs of natural gas utilities ($18,500); completion of investigation of oil transmission pipelines ($8,500); and an increase of $10,000 for hearing officer fees.

NOTE # IV
400 Commodities
Our requirements in this area have reached a fairly stable level. The increase in FY 1970-1971 is necessary because of additional personnel to handle the added workload. However, we then expect requirements in this account to level off at the amount shown.

NOTE V
500 Equipment
Continuing decrease in requirements in this area is a reflection of the adequacy of budget requests made and appropriations received in the past.

NOTE VI
900 Interagency Charges
Moderate increase is for additional travel funds for the attorney on full-time assignment from Department of Law.

	FY 1969 - 1970	FY 1970 - 1971				FY 1971 - 1972			
	Original APSC Request	Increase	Decrease	Projected Budget Requirement	Increase	Decrease	Projected Budget Requirement	Increase	Decrease	Projected Budget Requirement
- General Services (See attached Note I)	194900	33400		228300	22100		250400	7300		257700
- Travel (See attached Note II)	26500			24500		2200	24300	200		24500
- Contracted Services										
1. Communications	5100			5100	900		6000	500		6500
2. Printing & Binding	3500			1500	1500		3000		2000	3000
3. Rent	4900			4900	1200		10500			10500
4. Repairs	700			700	300		1000	200		1200
5. Transportation of Things	1200			1200		500	700			700
6. Spec. Rental	2400			2400	1000		3400			3400
7. Misc. & Reserve	700			300	100		400			400
8. Professional Services	63000	25500		76000		52000	47500	1500		49000
9. Utility Fees	300			200	100		1000			1000
Sub-total (See attached Note II)	91900			120400			73000			73200
- Commodities (See attached Note III)	4000			4000	1000		5000			5000
- Equipment (See attached Note IV)	7700			7700		5200	2500			2500
- Contingency Charges (See attached Note V)	22000			22000	1000		23000			23000
TOTALS	342000			405700			378200			386400

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

The Legislature of the State of Alaska
FISCAL NOTE
First Session - Sixth State Legislature

COPIES: ___THE CHAIRMAN OF THE COMMITTEE MAKING THE REQUEST, POUCH V
___THE LEGISLATIVE FINANCE COMMITTEES' STAFF, POUCH Y
___THE DIVISION OF BUDGET & MANAGEMENT, POUCH C
___RETAIN A COPY FOR YOUR FILES

subject HB 188 SB
requested by Chairman Barry W. Jackson, House Judiciary Committee
referred to date of request
completion date requested date received

EXPENDITURE DETAIL	FY 1969-70	FY 1970-71	FY1971-72
100 PERSONAL SERVICES	$243,300	$265,400	$272,700
200 TRAVEL	28,500	26,300	27,000
300 CONTRACTUAL SERVICES	120,400	73,000	73,200
400 COMMODITIES	4,000	5,000	5,000
500 EQUIPMENT	7,700	2,500	2,500
600 LAND AND STRUCTURES			
700 GRANTS, CLAIMS & SHARED REVENUE			
900 Inter-agency Charges	22,000	23,000	23,000
TOTAL	$425,900	$395,200	$403,400

FUNDING DETAIL			
FEDERAL RECEIPTS	$	$	$
SPECIAL FUNDS			
UNRESTRICTED GENERAL FUND RECEIPTS	425,900	395,200	403,400
Man Months	180	204	216
Permanent Positions	15	17	18
Temporary Positions	0	0	0

FISCAL ANALYSIS

Please see attached.

DATE 3/4/69 SIGNATURE George Sharrock

NAME & TITLE George Sharrock, Commissioner of Commerce

ALASKA PUBLIC SERVICE COMMISSION

Detail of Personnel Requirements

NOTE #1

Position Title	Approved FY 1968-1969	Projected FY 1969-1970	Projected FY 1970-1971	Projected FY 1971-1972
Executive Director	18,888	21,612	21,612	21,612
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Secretary I		7,488	7,488	7,488
Documents Clerk III		7,488	7,488	7,488
Clerk Steno II	6,420	6,420	6,420	6,420
Clerk Steno II			6,420	6,420
Clerk Typist III	6,420	6,420	6,420	6,420
Clerk Typist III				6,420
Sub-total	110,436	187,128	206,580	213,000
Commissioner **5 ea @$6,000 each per year**		**30,000**	**30,000**	**30,000**
Employee Benefits	11,164	26,172	28,820	29,700
Total Personnel Services	$121,600	**$243,300**	**$265,400**	**$ 272,700**

*The difference between this amount and the request for personnel services included on our original FY 1969-1970 budget request ($228,300 - $194,900 = $33,400) is comprised of nominal salaries for the **five** Commissioners plus six reclassifications which were recommended by consultants in recommendations on Commission Staffing.

ALASKA PUBLIC SERVICE COMMISSION Cont.

NOTE # II

200 Travel
We anticipate that our travel fund requirements, both outside and within the State, will remain fairly constant for the next three years. The moderate decrease projected for FY 1970-1971 is comprised of two items included in our present budget (ACS Sale Bid Proposal Evaluation conferences and transportation of new employees) which will no longer be needed. The moderate increase in FY 1971-1972 is anticipated because of increase in workload. **Add increase of 2,000 for each Year covering additional 2 commissioners for a total of 5 .**

NOTE # III

300 Contractual Services
The $28,500 increase in FY 1969-1970 projected requirements is made up of the following costs:

a) $20,000 to provide funds for hearing officers appointed pursuant to AS 42.05, Section 181 of SB 128
b) $8,500 to provide funds for consultants to investigate operations of existing oil transmission pipelines within the State

The $47,400 decrease in FY 1970-1971 was computed as follows:

a) $5,100 increase in overall contractual services account due to increase in workload and change in methods and procedures utilized in accomplishing program of utility regulation.
b) $52,500 total decrease possible because of anticipated finalization of ACS sale by July 1, 1970 ($35,000); completion of investigation of safety programs of natural gas utilities ($18,500); completion of investigation of oil transmission pipelines ($8,500); and an increase of $10,000 for hearing officer fees.

NOTE # IV

400 Commodities
Our requirements in this area have reached a fairly stable level. The increase in FY 1970-1971 is necessary because of additional personnel to handle the added workload. However, we then expect requirements in this account to level off at the amount shown.

NOTE V

500 Equipment
Continuing decrease in requirements in this area is a reflection of the adequacy of budget requests made and appropriations received in the past.

NOTE VI

900 Interagency Charges
Moderate increase is for additional travel funds for the attorney on full-time assignment from Department of Law.

	FY 1969 - 1970			FY 1970 - 1971			FY 1971 - 1972			
	Original APSC Request	Increase	Decrease	Projected Budget Requirement	Increase	Decrease	Projected Budget Requirement	Increase	Decrease	Projected Budget Requirement
- General Services (See attached Note I)	194900	33400		228300	22100		250400	7300		257700
- Travel (See attached Note II)	26500			24500 + 2000		2200	24700 + 2000	200		25000 + 2000
- Contractual Services										
(a) Communications	5100			5100	900		6000	500		6500
(b) Printing & Binding	3500			1500	1500		3000		2000	3000
(c) Rent	9600			9600	1200		10800			10800
(d) Repairs	700			700	300		1000	200		1200
(e) Transportation of Things	1200			1200		500	700			700
(f) Office Rental	2000			2400	1000		3400			3400
(g) Fees & Books	500			300	100		400			400
(h) Professional Services	65000	28500		93500		52000	41500	1500		43000
(i) Utility fees	1000			2000	100		1000			1000
Sub-total (See attached Note II)	91900			120400			73000			73200
- Commodities (See attached Note III)	4000			4000	1000		5000			5000
- Equipment (See attached Note IV)	1700			7700		5200	2500			2500
- Contingency Charges (See attached Note V)	22000			22000	1000		23000			23000
TOTALS	347000			468900			378200			384400
			+	17000		+	17000		+	17000

FORM SA-1B

MEMORANDUM State of Alaska

TO: B. L. McMurtrey
Deputy Commissioner
Department of Commerce

DATE : February 27, 1969

FROM: Don Hall
Executive Director
Public Service Commission

SUBJECT: HB 188 and HB 202

You asked for my comments in regard to HB 188 but made no similar request in regard to HB 202.

I have compared HB 188 and SB 54 and find that they are identical in every respect. I have also compared HB 202 with SB 128 and find that they too are identical in every respect with one exception; namely, that Sec. 42.05.691(b) of SB 128 has been omitted from HB 202. This deletion has the effect of broadening the Commission's authority.

I have already prepared detailed comments on SB 54 and SB 128, copies of which are in Mr. Sharrock's possession--and these comments, of course, apply also to their respective House companion bills.

You have the Commission's original budget in the amount of $347,800 as subsequently modified by the cost of upgrading certain positions and by adding $8,500 to cover the cost of regulating pipeline companies (principally the Alaska Pipeline Company). The cost of administering SB 54 would be somewhat greater than the cost of administering SB 128 because of the fact that SB 54 requires more extensive regulation of municipally owned and operated utilities. However, I believe that the aforementioned original budget as modified would be adequate to administer SB 54, at least during the first year.

Estimates have also been submitted regarding our budgetary requirements for the years ending June 30, 1970, 1971, and 1972. These estimates were specifically based upon administering SB 128 and consist of a three-year projection compiled in one document.

I believe the foregoing is an adequate response to your request for information in regard to the House and Senate bills mentioned above.

By Don Hall

DH:SG

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

Jackson

COMMENTS OF CITY OF ANCHORAGE
S.B. 128 - PROPOSED AMENDMENTS

INTRODUCTION

The City of Anchorage has reviewed S.B. 128 and in this commentary would point out certain deficiencies in the bill and offer amendments to the bill. The fact that the City makes these comments and proposed amendments does not signify that the City is not strongly opposed to any jurisdiction of the Public Service Commission over municipally owned and operated utilities. The City still maintains that no sound reason exists for public service commission regulation, and that such regulation would constitute an unnecessary costly and time-consuming process to add to the almost prohibitive cost of living in this state.

This bill would establish a commission practically unlimited in its powers as the analysis will show. In addition, this bill could eliminate the City's municipal light and power utility because of its certificate requirements. This bill as designed is punitive in nature and proposes an invidious discrimination against municipally owned and operated utilities.

COMMENTS

ESTABLISHMENT

1. AS 42.05.020(a)

Add: "The Commission shall be an independent, quasi-judicial body."

Comment: The purpose of this amendment would be to establish the Commission as a "Section 26" board and to carry out the proposal that any commission having jurisdiction over valuable public properties should be a full-time commission.

2. AS 42.05.040-050.

These two sections should be repealed and reenacted as a new section to provide for qualifications commensurate with the concepts of a full-time commission .

Comment: A full-time commission is contemplated by the proposed amendment. A full-time commission should not necessarily be limited to a lawyer, engineer or accountant. The expertise in these fields, although helpful, could be

supplied by staff members. Nevertheless, some qualifications should be stated so that the commission offices do not become patronage plums. It is a serious business to regulate one of the largest businesses in this state, as many of the utilities in this state constitute multi-million dollar operations. A bad commission decision may involve hundreds of thousands of dollars, and the commission should be composed of the most competent people with the full time available to dispatch with adequate review the commission business.

3. AS 42.05.091(d)

Amend the first sentence to read:

> "The annual salary for each member of the commission is the same annual salary received by the head of a principal department of the state."

Comment: The salary should be commensurate with the responsibility, and a commission member should be paid as well as the head of a state department, or as much as a superior court judge. Without such a salary incentive, it is doubtful that competent persons would be attracted to the position. The present $5,000 salary proposal may make a commissioner feel that he could afford a little more commission time, but it does not resolve the problem of providing a commission which would adequately tend to the increased number of utilities and their problems caused by regulation. The present commission apparently is of the opinion that it cannot adequately handle its present business. The present commissioners are doing the best job they can, but it is unfair to classify them as even being "part-time" commissioners because of the two or three days a month that they are able to meet. However, the extra $5,000 is not going to create even a part-time commission.

4. AS 42.05.133. Add a new section to replace existing AS 42.05.180 to read:

> "Facts and information in the possession of the commission are public and reports, files, books, accounts, papers and memoranda of every nature in its possession are open to public inspection at reasonable times, except commission work papers or agency memoranda not used by the commission in determining an issue before it. Facts and information developed or used by the commission, its staff or consultants affecting a commission proceeding or decision shall be disclosed to the parties prior to the hearing and are subject to cross-examination."

Comment: The total elimination of existing AS 42.05.180 would undoubtedly see materials required to be filed by the commission be classified as confidential information. If the commission is to regulate utilities, the utilities regulated should have full access to all of the facts, documents and statistics available to the commission without a Supreme Court case to obtain the information. The public should have a right to readily determine if the commission is accomplishing its tasks. Courts require commissions to divulge and make available for cross examination facts and statistics developed by staff personnel and usually used to brief the commission in secret. The prejudice of unknown evidence influencing a decision is evident and its use should be eliminated.

5. AS 42.05.135. Add a section to read:

"The commission shall provide for the publication of its reports, orders, decisions, rules and regulations. Publication shall be in a manner and form best adapted to public information and use."

Comment: Under the total regulation proposed by the bill the commission will build up a body of commission law and guideline which should be known to all utilities spread throughout this vast state, many of which just cannot afford to hire lawyers or other experts in Anchorage to find out what the commission requires, but who would be substantially affected by many of the commission actions, otherwise buried in files known only to the commission. Utilities and the public should have a readily available source of commission laws, decisions, policies, etc., in order to comply with proper regulations and to review the work of the commission.

POWERS AND DUTIES OF THE COMMISSION

6. AS 42.05.141(1) Amend to read:

"Supervise and regulate every public utility engaged or proposing to engage in such business within the state of Alaska except to the extent exempted by AS 42.05.641 [AND MAY DO ALL THINGS, WHETHER SPECIFICALLY DESIGNATED IN THIS CHAPTER OR IN ADDITION THERETO, WHICH ARE NECESSARY OR CONVENIENT IN THE EXERCISE OF SUCH POWER AND JURISDICTION] and the powers of the commission shall be reasonably construed to accomplish its stated purposes;"

Comment: This section clearly states that the commission may do all things in addition to those things which the Legislature

has expressly empowered the commission to do. This is dangerous language and grants the commission carte blanche powers to regulate in areas in which the legislature undoubtedly would not desire the commission to regulate. No utility in this state should be subject to a complete legislative delegation of all regulatory powers to the commission. The proposed language is probably what is intended, and that is to give the powers of the commission a reasonable and not a strict construction by courts of law.

7. AS 42.05.141(6). Delete in its entirety.

[SUPERVISE AND REGULATE A PUBLIC UTILITY IN ALL OTHER MATTERS AFFECTING ITS RELATIONSHIP WITH OTHER PUBLIC UTILITIES, ITS CUSTOMERS AND WITH THE GENERAL PUBLIC.]

Make clear what is meant?

Comments: This provision is so vague as to be utterly meaningless. If a public utility is to be regulated, the public utility should understand in exactly what way it is being regulated so that it may protect itself against unwarranted and litigious commission interference. For example, this section could be construed to give the commission regulatory authority over the manner in which a city may establish a special assessment district for the furnishing of sewer or water service. The commission could presumably prescribe uniforms for customer service representatives. Such a vague grant of powers should not be tolerated by the legislature if only because the commission would not have the staff to handle every conceivable detail entrusted to it by this provision. If the commission is given power to regulate, it should be entrusted only with those matters it can regulate effectively within the power granted.

8. AS 42.05.151(a). Amend to read:

"The commission may make such reasonable regulations . . .".

Comment: As commission regulations have the effect of law, the commission regulations at their inception should be reasonable and not arbitrary.

9. AS 42.05.151(b). Amend to read:

"The commission shall by regulation establish reasonable rules of practice and procedure . . .".

Comment: The term "reasonable" here implies fundamental fairness, and due process of law does not in every case accord with what is reasonable.

10. AS 42.05.161(a) Amend to read:

> "The administrative adjudication procedures of the Administrative Procedures Act (AS 44.62) do not apply to adjudicatory proceedings of the commission except as final administrative determination by the commission are subject to decision procedure and judicial review as provided in AS 44.62.510,.520, .540, .560,.570."

Comment: The sections on judicial review are correlated to the APA sections concerning the commission decision and reconsideration. The APA provides mechanics for reconsideration of a final decision, and the judicial review sections, particularly the time for appeal, would be confusing without the prior sections containing decisions.

11. AS 42.05.161(b). Delete: Words after "rules of agency organization", lines 9-13, page 6.

Comment: The APA was originally conceived to correct the abuse of agencies adopting unknown (even to the agency) rules, including rules of practice and procedure. A person desiring to process a matter before the commission should have the right to consult the Alaska Administrative Code to determine what the rules of practice and procedure are. The APA does provide for emergency rule changes, and it is hard to visualize a situation which would be "contrary to the public interest" to avoid publication of a rule affecting public utilities. The commission should abide by its rules, and these rules should be available to everyone. The interpretive rules, general statements of policy and rules of agency organization should also be promulgated if the proposed amendment in Comment No. 5, appropriate means of making this information available, is not adopted.

12. AS 42.05.171. Amend next to last sentence to read:

> "A determination or order of a commissioner or commissioners on such an investigation or hearing, undertaken or held by him or them shall not be effective until approved and confirmed by at least a quorum of the commission upon a review of the entire record and after the parties have the opportunity for argument, to the commissioners not present at the hearing."

Comment: The amendment would add a procedural safeguard in that any commissioner who did not sit in on the hearing must

have a record available and review that record. All parties should have the right to make an argument to at least a quorum of the commission when they must rely upon the cold record.

13. AS 42.05.181(d). Add new subsection to read:

"(d) The commission shall hold hearings in the locality where the utility involved is located."

pmb OK

Comment: Because of the drastic powers of the commission, it should hold hearings where the utilities are located. This amendment points out the insurmountable task of an effective commission regulation in this state.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

14. AS 42.05.191(b). Delete this subsection.

Comment: This provision is discriminatory as to utilities previously not subject to public service commission regulation. Most, if not all, service areas were granted by the commission in 1964 without a hearing or even notice of hearing, and certificates were issued without regard to the service areas of utilities not subject to commission jurisdiction.

For example, Chugach Electric Association was granted a certificate which blankets almost the entire City of Anchorage, even though Chugach was not in fact serving all of the city which was being served by the city utility. The problem becomes more acute where the blanket certificate of Chugach contains an area which is not served by either utility, and there is no actual conflict as to facilities. The fairest way to treat the new certificate problem would be to repeal without a savings clause all certificates. Further analysis will indicate that the discrimination between municipally owned utilities is even more invidious by the failure to include a grandfather clause.

15. 42.05.191(c) Delete this subsection.

Comment: Much ado has been made about service area conflicts, and protaganists for public service commission regulation have always pointed to the conflict of service area problems. Subsection (c) constitutes the magic formula of public service commission regulation which is intended to solve this conflict. The legislature merely states that the commission shall take "appropriate action" to eliminate competition and duplication of facilities" by delineation of service area or services. Surely, is the commission to be granted absolute regulation over municipal electric, telephone

water and sewer utilities just so a bill may be passed to require the commission to take "appropriate action". No standards are supplied or direction given, even though the answer to the problem is simple. Unless the commission shall order one utility to relinquish its service, a doubtful conclusion of the authorization, no ready solution is offered by this entire bill. A court under simple standards, could easily and readily resolve the problem and would grant a local forum.

The commission will undoubtedly spend a couple of years and thousands of dollars of everyone's time in delineating and apportioning each resident, lot and parcel to each and every utility within this state. An appeal is bound to follow to ensure years of litigation at great cost to the consumer. But the fact exists that no duplication of facilities can be avoided except by expropriation and the payment of just compensation, a judicial matter. However, this bill does provide the commission with an even greater tool, it could conceivably destroy the competition altogether by not granting the municipal utility a certificate of public convenience and necessity.

16. AS 42.05.192. Add a section to read:

> "A certificate shall be granted if it appears to the commission that the public utility was actually operating in good faith on October 15, 1969, within the confines of the requested area, or that the public utility was installing the facilities necessary to furnish service to the requested area as of that date."

Comment: The absence of such a section in the bill as drafted represents invidious discrimination to municipally owned and operated utilities. The above section is commonly referred to as a "grandfather" provision, because it must constitutionally recognize existing rights. When the public service commission granted the original certificates of public convenience and necessity in 1964, every existing utility in this state regulated by the commission received a certificate based on its "grandfather" rights. Without exception, this state has provided in granting licenses to professions and operating authorities to motor carriers, air carriers and in all other situations where a person or entity was operating prior to the licensing, without requiring an examination or a showing of right to continue an occupation or operation within this state. However, publicly owned and financed municipally owned and operated utilities are not to be granted this long recognized right which could be destroyed by a prejudiced commission under this Act.

Certificated utilities in this state have received their grandfather certificates without a hearing or notice of hearing and have been granted more than their fair share of service areas, and have been granted areas within cities not served by them. Only an application was required to be filed with certain relevant information to grant a grandfather certificate, and most utilities had to make no showing other than to describe its area and scope of operations on the grandfather date.

Municipally owned and operated utilities, on the other hand, must come before the commission as if they were a brand new utility desiring to operate in an area with a certain utility service for the first time. The burden of proof would be upon the municipally owned and operated utilities that it would be to the public convenience and necessity to operate in each and every area in which it had previously operated prior to regualtion. The existing utility, where there is a service area conflict, would be the utility to be protected by the commission from the invasion of the certificated area by the upstart municipality, and the municipally owned and operated utilities would in most every case suffer an extreme loss of its operating territory. Municipal and bond revenues would be impaired, and the ability of the utilities to expand could be effectively destroyed. A city would undoubtedly have to hire experts and expend thousands of dollars of the consumer's money in trying to prove to the commission that it is entitled to serve a territory which conceivably could be, but in fact is not, served by the existing certificated utility.

The absence of the above section violates every concept of due process and fundamental fairness. Surely a municipally owned and operated utility should not have to bear the expense of proving public convenience and necessity, and/or of a long drawn out court fight to prevent its property being taken without due process of law and its bonding being impaired by the absence of such a right. The commission would be flooded by public convenience and necessity hearings, and without doubt many municipally owned and operated utilities would, in effect, be out of business, if the commission procedures take the not unusual two or three years for hearing and decision.

17. AS 42.05.193. Add new section to read:

"The commission upon obtaining jurisdiction and after notice and hearing shall proceed to delineate the service areas between public utilities with conflicting service areas in order to avoid duplicating facilities and services, and the commission shall consider and make full findings as to each of the following standards and preferences in making the

delineation of the service areas:

(1) The commission shall consider the capabilities of the utilities involved to furnish an economically feasible and adequate service to the public in the areas in conflict without excessive or major extensions of facilities to serve the areas. The commission shall consider the ability of the utilities to expand their services and facilities into areas other than those in conflict in order to maintain appropriate expansion and a proper level of service.

(2) In areas where the conflicting facilities are close, but not intersecting or crossing, the commission shall apportion the service areas between the existing facilities in order that the existing facilities may be utilized to the fullest extent possible without duplication or unreasonable extensions of service between the existing facilities.

(3) In areas where the conflicting utility facilities are intermingled, each utility may continue to serve its existing customers. The commission shall apportion the service area to enable each utility to recoup its investment in the facilities and to make the best economic utilization of the existing facilities with the fewest and least expensive extensions of facilities.

(4) Where the facilities of one utility are substantially surrounded by the facilities of the other utility, the surrounded utility may continue to serve the existing customers within the enclave and such other customers in the proximity of the existing facilities as may enable the utility to recoup its investment and to make the best economic use of the existing facilities with the fewest and least expensive extension of facilities in the enclave.

(5) In contiguous areas where there are no existing facilities and no present demand, but a significant demand for services in the near future is likely, the commission, all other matters being equal, shall include the service area within the service area of the utility nearest the area to be served if the utility is ready, willing and able to furnish an adequate service at reasonable rates to the area and such service is economically feasible.

(6) In areas where there are no existing facilities and no present demand and a significant demand for electric utility services in the near future is unlikely to arise, the commission, particularly when an area exceeds five acres, shall not include the area within any service area until a reasonable demand or need for the service exists.

(7) In delineating any service area within a municipality, the commission shall give a preference to the municipally owned and operated utility if the municipality is ready, willing and able to serve the service area in conflict, and the extension of the municipal utility facilities into the area would be economically feasible. In delineating service areas outside municipalities, a municipally owned and operated utitity shall be given the same and equal consideration as any other public utility.

(8) Where a customer may be served by the existing facilities of more than one utility, the commission shall consider the customer's preference.

(9) The public utilities may, with the approval of the commission, assign, exchange, or otherwise transfer in writing to each other customers, facilities or service areas.

(10) "service area" as used in this section, includes any territory in which the utility is furnishing service to the public, or any territory which a utility claims is an extension of the territory in which the utility is presently providing service."

Comment: This section would provide the commission with reasonable guidelines to delineate areas and to protect municipal utilities from unfortuitous commission action based on the sole fact that cooperatives have received prior certificates from the commission. The section would permit the commission to apportion the service area with the least possible additions of new facilities and to avoid the taking of property without due process payment of just compensation.

The section illustrates the fact that the commission just cannot order a utility to abandon facilities and customers at the whim of the commission. If the legislature intends to "clean up" service areas, the legislature must provide other legislation which will contain provisions for the payment of just compensation for the facilities and business lost. Because any such matter will be appealed to the courts, jurisdiction in the courts in the first instance will save the affected utilities and the state thousands of dollars and time in having only one procedure. Besides, the commission has no expertise in such matters.

Any legislative action does not establish standards and the vested rights of cities is totally unacceptable to cities which recognize the announced prejudice of the commission to protect its regulated utilities.

The City of Anchorage is working on a bill which it intends to propose to the legislature to resolve the conflict problem as to duplicating and intermingled facilities, based on legislation from other jurisdictions having the same problem. The City legislation would not involve commission action.

18. AS 42.05.221(a). Amend the first sentence to read:

> "Except as otherwise provided in this section, no public utility may discontinue or abandon a service for which a certificate has been issued by the commission unless upon the application of the public utility and if after notice and opportunity for hearing the commission finds that discontinuance or abandonment [WILL NOT MATERIALLY HARM THE PUBLIC INTEREST] is not required by public convenience and necessity.

Appears good amendment

Comment: The same test set forth in (b) for resumption should be required for discontinuance. A discontinuance of service may be justified on the grounds of economic feasibility, lack of facilities, etc., even though the public interest might be "materially harmed".

19. AS 42.05.231. Delete in line 22, page 9 the language

> "includes but is not limited to" and lines 28-29 stating: [FAILURE TO COMPLY WITH THE PROVISIONS OF THIS CHAPTER OR THE RULES, REGULATIONS OR ORDERS OF THE COMMISSION]"

Comment: No utility should be placed in the position of having to guess what might be good cause for the loss of its certificate to operate, where the "not limited to" language grants the commission unlimited grounds. If the commission may revoke a certificate, the

standards for revocation should be specifically set forth. Blanket provisions such as this have been stricken as being unconstitutional.

The fourth ground is extremely and unreasonably punitive. In the first place, no allowance is made for a lawful failure to comply with a commission order, etc. In the second place, there are ample grounds for enforcement of a commission order both civilly and criminally. The purpose of the public service commission is to "regulate" a utility and not to have the power of life or death over that utility. The commission did not create or finance the utility, nor should it have the unrestrained authority to revoke a certificate upon the slightest pretext that an insignificant regulation of the commission has been violated. In view of the prior section, which does not require "reasonable" rules or regulations, this provision is extremely onerous. The ability of the commission to revoke a certificate upon the slighest pretext can lead to great abuses of power because a utility must live in fear of punitive action in a variety of unknown ways, including specially designed orders and regulations to be punitive.

SERVICES AND FACILITIES - JOINT USE

20. AS 42.05.251(a). Amend the first sentence to read:

> "Each public utility shall furnish and maintain reasonably adequate [EFFICIENT, SAFE AND REASONABLE] service and facilities.

Comment: The amendment would change the statute back to the existing language. The added words seem to be innocuous enough, but they do underly a basic concept of more commission control and authority.

For example, what are "safe" services and facilities? By the addition of this little word, the legislature makes the public service commission the guardian and inspector for the state of the safety of every utility and utility plant in this state. It is submitted that there are other local and state laws and methods of enforcement of this provision which could permit the revocation of a certificate for what the commission thinks is a minor safety violation. If a safety problem exists the commission can refer the matter to the proper authority.

The commission is further given the power to inquire into management prerogatives and utility financing to an unreasonable extent. In the first place the word "adequate" generally includes efficiency. In the second place, the word "efficient" is not

qualified by the word "reasonably" and this qualification is important. There is little doubt in this state that many utilities exist which do not have efficient service and facilities if only because of the economic feasibility to provide them. The word "reasonably" implies that a utility cannot do what it does not have the resources to do. Again the commission has arbitrary authority to dictate to a utility how the utility shall conduct its business, even though adequate facilities are provided.

21. AS 42.05.251(c). Delete on lines 16-17 the language:

"including the crossing of facilities".

Add the following sentence:

"In so doing, the commission shall conform to the standard practices of the industry."

Comment: It is not clear what the phrase "the crossing of facilities" means, a term more appropriate to Luther Burbank. The phrase could mean that the state and municipalities would no longer have any authority to control over roads and rights-of-way, a not too unlikely a possibility, in view of prior public service commission attempts to destroy the operations of the city electric utility by having the state highway department deny permits. The commission apparently acknowledges that it cannot handle today's business let alone handle all right-of-way permits.

The addition of the sentence would require the commission, as much as possible, to adhere to the standards of the industry. A utility and its management necessarily is bound by certain national standards in its practices and equipment, and a nascent public service commission hardly has the wisdom to change these standards. The utilities should have some objective standard by which they are protected against arbitrary and unreasonable commission action.

22. AS 42.05.251(d). Amend to read as follows:

"Whenever the commission, upon its own motion or upon complaint, after providing reasonable notice and opportunity for hearing finds that the service or facilities of a public utility are unreasonable, [UNSAFE] inadequate, [INSUFFICIENT], or unreasonably discriminatory, or otherwise in violation of this chapter, the commission shall determine and prescribe by regulation or order the reasonable [,] and [SAFE] adequate [SUFFICIENT] service or facilities to be

observed, furnished, enforced or employer [INCLUDING ALL SUCH REPAIRS, CHANGES, ALTERATIONS, EXTENSIONS, SUBSTITUTIONS OR IMPROVEMENTS IN FACILITIES] as shall be reasonably necessary and proper for the [SAFETY] accommodation [,] and convenience of the public and shall fix the same by its order or regulation."

Comment: Changes are to clean up and delete unnecessary language in view of the prior comments concerning safety and in that adequate certainly includes sufficient service. The "including" language is not necessary in view of the prior comprehensive language.

23. AS 42.05.271(a). Amend the first section to read:

"A public utility having sewers, conduits, utilidors, poles, pole lines, pipes, pipelines, mains or other distribution or transmission facilities shall, for reasonable compensation, permit another utility to use them when public convenience and necessity requires such use and the use will not then or in the planned forseeable future result in substantial injury to the owner, or in substantial detriment to the service to the customers of the owner.

Comment: The planned upgrading or change in facilities may create, not now but a future situation which would cause substantial injury.

24. AS 42.05.271(b). Amend by inserting in line 8, page 12, after "public utility" the words:

"subject to regulation by the commission".

Comment: No interconnection should be required by a regulated to a nonregulated utility. At present telephone toll facilities are owned and operated by the federal government. The federal government has always used it leverage of not being subject to regulation in enforcing its will upon all telephone utilities in this state. No utility in this state should be required to connect merely because ACS expects the Alaska consumers to subsidize its entire operations by unfair toll separation settlements or other actions.

25. AS 42.05.301. Add a new subsection (b) to read:

"(b) In providing for testing, standards and measurements of meters or appliances, the commission shall conform to the standard practices of the industry."

Comment: Again industry standards should be followed by the

commission, as the commission undoubtedly should adopt such standards when required.

26. AS 42.05.311. Add a new sentence after the first sentence to read:

"In so doing, the commission shall conform to the standard practices of the industry."

Comment: Again the commission would be required to do what it probably would do in any event.

RATES AND RATE SCHEDULES

27. AS 42.05.321(c) Amend to read:

"The commission may reject for filing all or part of a tariff which does not comply with the reasonable form or filing regulations of the commission. The commission may reject upon notice and hearing all or part of a tariff which is not consistent with this chapter or the reasonable regulations of the commission. A tariff or provision so rejected is void."

Comment: The commission should be able to reject a tariff which does not meet the minor, ministerial form and filing requirements of a tariff without notice and hearing. However, the commission should not arbitrarily be permitted to reject a tariff without a notice and hearing, and a public utility should be protected from arbitrary action, in having its vital rates denied without reason and hearing.

28. AS 42.05.321(d). Add a new subsection to read:

"Special arrangement contracts affecting rates and charges shall likewise be filed with the commission."

Comment: A utility at times, because of unusual or special circumstances not precisely covered by tariff, will enter into an agreement to furnish a utility service. Such agreements are usually made with a large user of electric power for example, because of the load and other factors not commonly present. Wholesale contractors for power are another source of agreement. The act should be made clear that these agreements are permissible under special circumstances.

29. AS 42.05.321(e). Add a new section to read:

"A municipality is entitled to a fair and reasonable rate of return in fixing the rates of municipally

owned and operated utility, and a municipality may include in the utility revenue requirements a franchise fee and an amount the utility, if investor owned, would have paid to the municipality for taxes."

Comment: This section would insure that a municipally owned and operated utility will not be treated differently than an investor owned utility as to rates. A municipally owned and operated utility is entitled to the same return on its invested capital and should meet the same requirements as to franchise fees and taxes as would an investor owned utility.

29. AS 42.05.351(b). Delete this section.

Comment: This section apparently serves no good purpose if the commission does have the jurisdiction over the utility furnishing the toll. At present the commission has no jurisdiction over ACS and it is difficult to determine what this specific section intends. On the other hand, it appears that the utility "demanding" the charge is the culprit. Telephone utilities in Alaska operate as the collector of ACS tolls in return for which they obtain a certain toll settlement charge per call. The local telephone company has absolutely no authority over the rates charged by ACS, or over any connecting carrier. A local interconnecting company should not be responsible for irresponsible toll rates. A telephone toll rate is not the sum of various segments of rates, but is related to other factors. A ten mile call in Los Angeles is much more expensive than a ten mile call in rural Nebraska, because the plant, expenses and service necessary is much more complicated and expensive. However, the wisdom of a toll rate should be left to the commission, and certainly this provision could be a commission regulation or policy. Unless there is some unknown justification for this section, it should be omitted.

30. AS 42.05.361(b). Delete this subsection.

Comment: In this section the public service commission makes no decision but the vital rights of the utilities involved are left to "professional consultants" to decide the issue. If the commission does nothing except to select an arbitrator, the section should say so. But this the courts can do. If the parties desire to arbitrate the matter, the parties should provide for their own arbitrator and mode of arbitration. The costs of this section could be prohibitive. In a telephone toll separation settlement controversy, both sides could expend twenty-five or fifty thousand dollars apiece to prepare its case, and then have to spend an additional twenty-five or fifty thousand dollars apiece for the commission's consultants who must examine both utilities. The additional expense is unwarranted, and the consultants are not given any kind of standards by which valuable rights are to be tested.

31. AS 42.05.371(a). Amend the first sentence to read:

> "[UNLESS THE COMMISSION OTHERWISE ORDERS NO] Changes may be made by a public utility in its rates, classifications, rules, regulations or practices where any contract or agreement relating to a rate, classification, rule, regulation or practice upon [EXCEPT AFTER] thirty days notice to the commission and to the public."

Comment: The present statute, and the usual regulatory practice, is to permit a utility to file a rate which will become effective within thirty days and which will be the lawful rate unless objection to the rate is made within the thirty day period of time. Again the commission desires arbitrary powers to tell a utility how that utility is to be operated, when it may file a tariff and when a tariff becomes effective. A utility cannot operate and meet its financial commitments under this discretionary provision. Under the language perhaps the public utility could never change a tariff if the commission merely decides to order otherwise. The utility cannot wai months or years while the commission decides what it is going to do and the rate should become effective without commission interference upon suspension or punitive action.

32. AS 42.05.381(b), (d) Delete these subsections.

Comment: This suspension provision does not exist in the present statute and a commission suspension of seven months is totally unreasonable.

Once a rate is not charged, then the utility is the looser forever. City bonds and bondholders would be affected if a rate could not go into effect for a period of up to eight months (including the initial filing period). The suspension provision does not even contain a date in which the commission must act, and conceivably the commission could suspend a new tariff change which had been in actual operation for several months. Subsection (d) would give the commission the power to escrow a proposed rate increase, a much fairer provision. But the costs of such escrow would probably exceed any refund to the average small consumer in Alaska. Again no period is given in which the commission may order an escrow, and the commission should act within the thirty day objection period. (Subsection (e) should also be changed to eliminate the suspension language.) With the commission meeting generally only once a month and the demonstrated slow decision process of the commission the commission should first justify to the legislature that it has the maturity to exercise a suspension clause before such power is granted to the commission,

and not to a court. Let the commission operate and show to the legislature that a suspension clause is necessary and will be administered properly before the power is given to cripple the ability of a utility to earn a timely and reasonable rate of return. In other words, if the commission is wrong the utility will have lost seven or eight months of its ability to earn a fair rate of return and to protect its finances and investment.

33. AS 42.05.391(b). Add a new subsection (b) to read:

> "No order of the commission shall change or affect any rates established or to be maintained under the covenants of any general obligation or revenue bonds of a municipality."

Comment: The contractual rights of bondholders should not be subject to possible impairment.

34. AS 42.05.401. Delete this section. The punitive nature of this bill is again demonstrated by this particular provision which enables the commission, at any time, to order reparations for perhaps ten or twenty years. In any event, once a tariff has been filed and no objection has been made to the tariff then no reparations should be required. If experience and facts show an abuse, then perhaps this power could be granted to the commission, otherwise, the utilities must have some indication and body of law and experience on which to draw to avoid what may be unlawful charges subject to reparation. If the commission is doing its job, a tariff change would be analyzed and proper proceedings instituted before reparations are necessary.

35. AS 42.05.411. Delete this section.

Comment: See above comments.

ACCOUNTS RECORDS AND REPORTS

36. AS 42.05.431(a). Amend to read:

> "Each public utility shall use and follow a system of public utility accounting prescribed by order of the commission [.], except where the public utility uses and follows a system of federal regulatory agency. The Commission shall prescribe wherever possible a generally recognized syster of public utility accounting.

Comment: Most of the large utilities in the state are required to maintain records by a federal regulatory agency which have developed generally accepted forms of utility accounting. The commission should not put a utility at the expense of adopting a whole new system of accounting merely to suit commission procedures. Where there is no federal regulation, then the commission should, nevertheless, follow recognized systems of public utility accounting wherever possible as these systems are generally used by most utilities and would enable accurate comparisons with other utilities.

36. AS 42.05.431(b). Amend line 23, page 20, by inserting "reasonable" before the word "regulation".

Comment: This requirement could cost a utility thousands of dollars and the utility, even with the inclusion of the word "reasonable", would probably have to spend thousands of dollars preparing the necessary reports and statistics. The maintaining of records is quite expensive, and it is doubtful that smaller communities in this state could keep up the required accounts and reports except at prohibitive costs. A continuing property record requires expert accounting preparation and supervision.

37. AS 42.05.451(a). Insert in line 8, page 21, the words "by reasonable regulation" after the word "determine". Amend line 13, page 21, by inserting "allow" for "determine allowable". If the commission is to establish rates of depreciation, the commission should do so by regulation so that all public utilities affected may have an opportunity to be heard and to be guided by a proper regulation. The last sentence has been changed to require the commission to allow depreciation expense rather than to let stand the impression that the commission need not so allow.

38. AS 42.05.451(b). Delete this subsection.

Comment: This subsection is vague and evidently serves no good purpose. If the section is merely an attempt to establish an evidentiary rule, the commission can certainly do this by its reasonable regulations governing its proceedings. In any forecast "estimates" must be given because no actual depreciation and "statements" of depreciation under the section are inexplicable. If the subsection cannot be understood, the section should be stricken.

39. AS 42.05.481. Insert in line 17, page 22, the words "person authorized by it" for "of its employees". Insert in line 19, page 22, the words "or their affiliated interests", after the words "public utilities". Insert on line 20, page 22, the words "or its employees". ~~Insert in line 19, page 22, the words "or their affiliated interests" after the words "public utilities".~~ Insert on line 20, page 22, the words "or its affiliated interest"

after the words "public utility".

Comments: The commission should have the authority to designate persons, such as its consultants, other than employees to examine records. The Section should make clear that affiliated interest records may be inspected.

FINANCIAL AND MANAGEMENT REGULATIONS

40. AS 42.05.501. Insert in line 8, page 23, the words:

"or may become impaired by continuation of current practices" after the word "impaired".

Comment: The proposed amendment would eliminate the "lock the barn door after the horse is stolen" situation, because it would make clear that practices which would impair the capital should be immediately stopped.

41. AS 42.05.511. Delete the second and third sentences of the subsection, lines 15-19, page 23.

Comment: Once the utility has somehow managed to receive a profit, what business is it of the commission to determine how that profit is to be distributed? Certainly the by-laws or ordinances are supposed to prevail, and the distributees would have their lawful recourse in the event that some ordinance or by-law was not followed. Just how the commission should interfere with corporate business in a matter which has nothing to do with the rates and services of the utility is not clear. What evil is to be avoided by this section is not explicit, and if there is a particular problem, then that problem should be dealt with openly. Again, the all powerful, arbitrary commission is promoted.

JUDICIAL REVIEW, PENALTIES AND ENFORCEMENT

42. AS 42.05.531(a). Insert "AS 44.65.510,.520,.540,.560, .570" for AS 44.62.560" in line 26, page 23. See comment No. 10.

43. AS 42.05.531(b). Delete in line 3, page 24, the words "and other process".

Comment: The words "and other process" are unknown in effect. Injunction is a normal remedy by which a commission order is enforceable, and whether dire, unpredictible consequence may ensue is unknown. If a reasonable explanation can be given as to how the court would otherwise act to enforce the order, other than an injunction, perhaps that form of relief should be provided.

44. AS 42.05.541. Reenact new section to read:

> "A public utility which knowingly and willfuly violates any provision of this chapter, or a rule, regulation or requirement, or order adopted under this chapter, or a term or condition of a certificate is guilty of a misdemeanor, and upon conviction is punishable for each offense by a fine of not more than $500.00."

Comment: This section illustrates the cops and robbers approach to the entire bill. The commission is the "good guy" and all utilities, including everybody that works for a utility, or is affiliated with a utility, is a "bad guy" who needs to be brought to justice. The vagaries of the proposed criminal section would place every employee of a public utility in jeopardy, particularly when the intricacies of utility regulation are present. A simple violation would subject a minor employee to criminal sanction. The commission has civil means of enforcement of its orders without resort to criminal process which in practice is a last resort in any event. The above amended section has been taken from the Motor Carrier Act, AS 42.10.410, and appears to be a more reasonable provision, passed by a prior legislature.

45. AS 42.05.551, .571, .581(a), .591(a). Delete these sections and subsections.

Comment: These provisions are unconscionable. These provisions transform the public service commission into a court of law for no good reason. If a utility has not acted properly, the utility may be coerced by court action or deterred by criminal violation. A third, additional "civil penalty" may be applied to anyone who happens to be concerned with the violation and that person is subject to a fine without any legal safeguard other than to have an "opportunity to be heard" in the commission kangeroo court. A penalty may be levied even if a person in ignorance or negligently violates, or aids or abets any violation of any of the what should be numerous technical provisions, orders, rules or regulations of the commission. This concept of a civil penalty certainly is foreign to commission regulation, and probably unconstitutional in making the commission a court. If there is to be a civil penalty, the activities of the commission should be specifically spelled out in great detail so that a person may know in fact and law what he is supposed to do to avoid the commission kangeroo court.

GENERAL PROVISIONS

46. AS 42.05.611. Amend to read as follows:

"A public utility may exercise the power of eminent domain for public uses authorized by law, except as to publicly owned property. This section does not authorize the use of a declaration of taking by any public utility which does not have that power under another law."

Comment: A utility should not be permitted to condemn state, borough, and city properties and rights-of-way which should at all times be responsible to public needs. The other amendment makes clear that the declaration of taking is not limited if otherwise granted.

47. AS 42.05.621. Add a section as follows:

"Nothing in this chapter shall be interpreted to limit the power of a municipality to regulate and control, in the manner and to the extent provided by law, a public utility not otherwise subject to the express provisions of this chapter. Jurisdiction and control of public streets and rights-of-way within a municipality shall be vested in the municipality."

Comment: The amendment reinstates the present existing AS 42.05.620 with the addition that control of streets would remain with the municipality. In other words, the public service commission cannot authorize Anchorage Natural Gas to excavate under the city streets without meeting the city requirements. Nor can the commission supersede the city's building code, electrical safety code, etc. The extent of commission regulations should be to establish service areas and to review the rates and service provided by a public utility. This bill creates a commission with powers so broad that the commission, even with the best intentions, could not even review the paperwork necessary to review its jurisdiction.

48. AS 42.05.621(c). Add a new section to read:

"The commission shall have concurrent jursidiction with a municipality as to a franchise held by a public utility subject to regulation by the commission. Except when the commission acts on its own motion, the jurisdiction of the commission shall be to decide appeals from the franchise holder or grantor as to a decision of the grantor concerning rates or services."

Comment: A franchise holder obtains valuable rights from a city in exchange for a promise to render a service at certain rates. It would be manifestly unjust for a utility to obtain a franchise from a city, and then to evade its responsibilities under the franchise by obtaining the franchise and then turning around to the commission for different rates and service. The commission could still act in the public interest, but would give the franchise grantor the first opportunity to enforce the franchise on a local level. The commission just does not have the tools to enforce all franchises, and the local entity is the best means of seeing that the franchise is enforced.

49. AS 42.05.622. Add a new section to read:

"(a) The attorney general may, upon the complaint of the commission, or upon the complaint of customers of a municipally owned and operated utility residing outside the municipality, commence an action in the superior court in the judicial district in which the entity is located for relief to

(1) Order the municipality to cease and desist from imposing unreasonable rates or charges upon customers residing outside the boundaries of the municipality; or

(2) Order the municipality to cease and desist from any unreasonable difference in the standard of service provided nonresident customers of the utility.

(b) The consumers and the consumer's complaint shall meet all requirements of a complaint as required in § 672 of this chapter.

(c) The rates, charges or service of a municipality for a public utility service furnished beyond the corporate boundaries shall not be considered unreasonably discriminating solely by reason of the fact that a different rate, charge or standard of service exists for a similar service within its corporate limits.

Comment: This section would give consumers outside municipal boundaries the additional right to address a grievance to the attorney general over municipal service outside the boundaries. In view of the lack of justified complaints in this area, the commission and attorney general should be able to resolve the matter before the courts without costly commission jurisdiction.

50. AS 42.05.631. Amend the first sentence to read:

"At the conclusion of any public hearing held under this chapter the commission shall determine the cost and <u>may apportion</u> the costs among the parties, including the

commission, as shall be [IT CONSIDERS] just."

Comment: The sentence as written is ungrammatical because the apportionment provision has been left out. The City of Anchorage has just experienced the arbitrary use of this section by the commission. The intent was not to give the commission arbitrary power to unreasonably assess costs, as the commission has done, and the objective standards should be made certain by striking the words "it consider". This provision is certainly unjust in many ways, because the utility, which may be brought into a public hearing by the commission, must pay for its share of the costs, even when it is not at fault.

51. AS 42.05.641(b). Amend to read as follows:

"With each application, except one filed under §192 of this chapter, filed with the commission pursuant to §191 of this chapter, the applicant shall pay the commission a fee of $50.00.

52. AS 42.05.651. Add a sentence to read:

"The superior court may permit an examination of the information filed upon a showing of good cause for the examination."

Comments: Secrecy of information is proper, provided that the statute does not preclude a legitimate reason or purpose for the examination. A court should permit the examination if good cause is shown.

53. AS 42.05.671. Insert "reasonable" after the word "by" on line 29, page 27, and on line 4, page 28.

54. AS 42.05.673. Add a new section to read:

"(a) A complaint involving the service, rates, charges, rules or regulations of a public utility shall first be made to the utility pursuant to such reasonable procedures as the utility or municipality owning and operating the public utility may prescribe. The decision of the utility or municipality on the complaint may be appealed to the commission.

(b) A complaint involving the rates, charges, rules or regulations of the utility may be appealed to the commission only if the complaint when first made to the utility was signed by not less than 25 directly affected consumers of the utility, or signed by

the executive officer of a municipality when the complaint is made by a municipality.

(c) An appeal to the commission need not be in any particular form, but shall be in writing and verified, and shall state that the complainant has exhausted his administrative remedies as provided by the rules of the public utility. The commission may prescribe a fee for filing complaints. The commission shall proceed, with or without notice, to make an investigation of the complaint which it considers necessary or convenient. No order affecting a rate, toll, charge, schedule, regulation, practice or act complained of may be entered by the commission without giving the public utility a public hearing.

(d) The public utility may file a complaint as to any matter affecting its own rates or service with the same effect as a consumer or user.

(e) The commission shall not have any jurisdiction over disputed claims for debt between the utility and a customer, or any other billing or collection of a utility rate, charge or tariff.

Comment: The protagonists of commission regulation have insisted that no person outside a city has a forum, but they would have such a forum before the commission. Strangely, S.B. 128 does not provide for any complaints by consumers. Throughout the bill there are numerous references to the commission acting "upon a complaint", but nothing is stated as to how these complaints are to be made. It appears that the commission could act upon an anonymous complaint over the telephone by a person not even a consumer of a utility. Nothing is more fair than to require a person having a complaint to first exhaust his complaint with the utility involved, rather than to engulf the commission with hundreds of disputes. The commission is also entitled to some protection from unwarranted complaints. Complaints as to service should be appealable on an individual basis, but complaints involving rates, charges and other matters of a general application should be substantial enough before commission intervention is necessary. An individual has recourse before the utility, utility board or city council.

54. AS 42.05.691(b) - (d). Delete the subsections, and add new subsection to read:

"(b) The provisions of this chapter do not apply to municipally owned and operated public utilities."

Comment: This act should not apply to municipally owned and operated utilities within or outside the corporate boundaries. A discussion of this amendment is too lengthy to include in this commentary. The intent of the Alaska Constitution is that municipalities should have local authority to the fullest extent possible and that "home rule" means home rule without state interference.

55. Section 5. Delete "certificate" on line 20, page 30. Add new section to read:

> "The existing rates, charges, tariffs, rules and regulations, service and service area of a municipally owned utility shall continue and remain in full force and effect unless otherwise ordered by the commission under the provisions of this Act."

Comment: The deletion is necessary because all certificates are not grandfather certificates. The amended sentence is necessary to protect the cities' rights pending commission action. If a city's application takes two or three years to process through the courts, the city should be permitted to operate without a certificate under its existing policies.

Karl L. Walter, Jr.,
City Attorney,
City of Anchorage, Alaska

KLW:LCM

TRANSMITTAL MEMORANDUM

March 4, 1969

By: Don Hall
Executive Director
Alaska Public Service Commission

Re: SB 128 Comments and Suggestions

Major Policy Decisions

In transmitting my comments on SB 128 I think it is important to inform everyone who is interested in the Bill that the Alaska Public Service Commission did not submit any legislative proposal to extend its jurisdiction in any manner whatsoever. Specifically it did not recommend that gas and oil pipelines or municipally owned and operated utilities be regulated. This does not indicate that the Commission is either for or against the idea. The Commission's reason for taking a neutral position on this important subject is first, because it feels such legislation should properly emanate from other sources and second, because it believe any attempt to suggest legislation in this area would be misinterpreted as a self-serving bureaucratic effort motivated solely by a desire to arrogate additional powers to the Commission.

Chairman Clouse and Commissioners Lounsbury and Zerbetz and I were given an opportunity to review early drafts of the Administration's proposed legislation affecting the APSC. We made numerous suggestions which, for the most part, are embodied in SB 128. I have not commented on the wisdom or need for regulating municipal utilities or pipelines because the Commission feels, as I previously indicated, that this is a matter requiring major policy decisions which already have been decided by the Administration and rightfully should be resolved by the legislative process.

Funding

I have been informed that the Commission's original budget proposal, seeking an appropriation of $347,800, was to be submitted at the time SB 128 was introduced. This budget was designed mainly to enable the Commission to meet the greatest regulatory challenge in its history--that of preparing, in advance, to regulate the purchaser of the Alaska Communication System. Incidentally (although it has nothing to do with SB 128) the ACS Sale bids were opened March 1, 1969 and it is my understanding that I will be designated to represent Governor Miller, and the State of Alaska, in the evaluation of the bids at Scott Air Force Base in Illinois. Arrangements have been made for financial and engineering consultants, specializing

in communications, to assist me. This work will begin March 10, 1969 if present plans can be effectuated.

The Commission's original budget, submitted September 30, 1968 is based upon recommendations of professional consultants engaged to advise the Commission on how it should be organized and staffed. It contains the following statement of significance to the enactment of SB 128:

> "If history repeats itself, legislation will again be introduced to place municipally-owned and operated public utilities under the Commission's regulatory jurisdiction. In the event this should occur this budget, which is based primarily on regulating the ACS purchaser, will also be adequate to regulate the municipals unless new laws are enacted requiring expensive new regulatory programs."

Because our original budget did not provide funding for the regulation of gas and oil pipeline companies I have since informed Commissioner Sharrock of the Commerce Department that the Commission will need an additional $8,500 for this purpose in the event SB 128 becomes law.

It was not possible, under established budgetary procedures, to budget presently established positions at pay ranges equal to those recommended by our consultants. Our vacant position of Utilities Engineer, for example, was budgeted at pay range 20 because we are not permitted to budget it at pay range 23 which our consultants feel is necessary to attract qualified applicants. Since June 30, 1968, we have advertised this position in national trade magazines and in local newspapers, but it is still vacant--which indicates the consultants are right. As I understand it, however, their recommendations cannot be implemented unless the Personnel Department agrees with them.

What I have done, at Commissioner Sharrock's request, is the only thing I could do under the circumstances; namely, submit P-402 forms of the Personnel Department in respect to the six new positions included in our original budget and to up-grade existing positions to the pay ranges recommended by our consultants. In addition, I have submitted detailed figures to Commissioner Sharrock showing the budget increases that will be required for these purposes and to provide $20,000 for the purpose of initially paying hearing officer costs that may be incurred under sec. 42.05.631 of SB 128, and AS 42.05.610 of the present law. These figures show that our original budget will have to increased to $409,700 (or $61,900) to cover the aforementioned costs.

If all of our budget proposals are approved the Commission will wind up with sixteen authorized positions instead of the ten positions it has. It should be apparent, however, that the new positions will remain vacant if the salaries are not adequate. This undoubtedly explains why we still have three vacant positions, and only seven people actually on the job--which makes our staff smaller than any of the other 56 Commissions except the Virgin Islands.

If SB 131, SB 214 and SB 215 are enacted significant additional funding will be required, but since I have not yet seen the last two measures I am unable, at this time, to do anything except direct attention to the fact that they present an additional funding problem which cannot be ignored if they are enacted.

Commission's Minimum Requirements

Experience has demonstrated the fact that the present law under which the Commission operates is deficient in a number of respects. The correction of these deficiencies was the main thrust of the proposed legislation which the Commission submitted to Mr. Walter L. Kubley, the Governor's Legislative Assistant. Most of these proposals are embodied in the following thirteen sections of SB 128:

Section 42.05	Page
.091(b)	3
.121	3-4
.371	16-17
.381	17-18
.391	18
.431	20
.521	23
.621(b)	26
.641	27
.681(2)(B)	28-29

The foregoing should not be taken as a blanket endorsement of the sections listed. To the extent that comments have been made, they should, of course, be considered. In addition to the specific comments relating to the above-listed sections, I feel it is also important that the comments regarding omissions be given consideration. These include my first two comments relating to the title of the Act as well as the two matters discussed under the heading of "Specific Omissions" plus the additional definitions set forth in my comments designated as sections .681(6)(F), .681(7), .681(8), and .681(9).

SB 128 and SB 54 Compared

I find that SB 54 contains 31 sections that are substantially the same as those in SB 128. These comparable sections are shown in the following tabulation:

SB 128 Section*	Section Heading Used in SB 128	Comparable Section in SB 54*
.131	Annual Report	.135
.141	General Powers and Duties of the Commission	.125
.181	Hearing Officers and Agents	.095
.191	Certificates Required	.235
.201	Application	.245
.211	Conditions of Issuance	.255
.231	Modification, Suspension or Revocation of Certificates	.235
.251	Standards of Service and Facilities	.345
.271	Joint Use and Interconnection of Facilities	.355
.281	Failure to Agree upon Joint Use or Interconnection	.365
.291	Standards for Measurement	.385
.301	Testing of Meter Standards	.395
.321	Tariffs; Filing and Inspection	.305
.331	Adherence to Tariffs	.295
.341	Rates to be Just and Reasonable	.275
.351	Discrimination in Rates	.285
.371	Tariff Changes	.315
.381	Suspension of Tariff Filing or Contract	.325
.391	Power of Commission to Fix rates	.335
.461	Subsidiary Business Accounts	.435(b)
.481	Inspection of Books and Records by Commission	.175(a)
.501	Impaired Capital	.465
.511	Distribution of Surplus, Profits and Operating Margins	.475
.521	Effect of Rules, Regulations and Orders	.505
.531	Review and Enforcement	.515
.541	Violation a Misdemeanor	.525
.601	Joinder of Actions	.535
.611	Eminent Domain	.565
.621(b)	Regulation by Municipality	.575
.641	Regulatory Fees	.555

*Sec. 42.05 ommitted preceding sub-sections shown.

Conclusion

Although there will undoubtedly be heated arguments regarding extending the Commission's jurisdiction to industries and operations that are now exempt from regulation, the Commission is hopeful the Legislature will not allow such controversies to overshadow, and perhaps eclipse, the genuine need for constructive legislation which is desperately needed to enable the State of Alaska to effectively regulate the purchaser of the Alaska Communication System. Our Annual Report and our original budget both emphasize this as its primary goal.

The purchaser of the ACS will be selected before the end of the fiscal year and the final transfer of the facilities is now scheduled to occur on July 1, 1970. Public Law 90-135 requires that the purchaser obtain a certificate of public convenience and necessity from the APSC prior to the date of transfer. Consequently, it is imperative that laws be enacted during this session of the legislature which will enable the Commission to certificate and effectively regulate the purchaser. The sections of SB 128 which will enable the Commission to do the job properly have been set forth under the heading of "Commission's Minimum Requirements." Most of these sections are comparable to sections in SB 54. It would be a travesty of justice to deny the Commission this non-controversial legislation because of arguments that may develop over provisions that are controversial.

The eyes of the Nation are on Alaska right now, because of its involvement in the sale of the ACS. We simply cannot afford to fall on our face in meeting the challenge of regulating the purchaser. Yet I am confident this is exactly what will happen if the Commission is not given the laws and financial resources it must have to perform its regulatory functions in a manner that will reflect credit on the State of Alaska.

By Don Hall

March 4, 1969

INDEX TO SB 128

INDEX TO SB 128 (Cont.)

INDEX TO SB 128 (Cont.)

COMMENTS OF DON HALL, EXECUTIVE DIRECTOR OF
ALASKA PUBLIC SERVICE COMMISSION, ON SB 128

Sub-section of SB 128	
Title	Almost every other state in the nation has the name of the state as part of the name of its commission (i.e. New York Public Service Commission, California Public Utilities Commission, Washington Utilities and Transportation Commission). Therefore, I strongly urge we officially designate our Commission as the Alaska Public Service Commission.
.010	Not in SB 128, but should be so that name can be changed to Alaska Public Service Commission.
.020(a)	Line 13: Insert "Alaska" after "The" and before "Public".
.020(b)	Line 16: Suggested revision: One of the three members shall be appointed by the Governor to serve as chairman of the Commission during the term of the appointing governor. This is substantially like the wording of the comparable law in Washington State (see RCW 80.01.010). Reason: This will enable each new governor to designate the chairman of the Commission during his term of office and prevent an outgoing governor from saddling the new one with his appointee. Governors like to name the heads of the various agencies of government. Also SB 128 provides $300 additional compensation for the Chairman.
.091	P. 3, Line 1: Don't understand meaning of word "civil". The term should be clarified if its meaning is not common knowledge.
.091(b)	If the state can afford to pay 5 Commissioners $6000 a year (as provided in SB 54) it should certainly be able to afford $6000 for three Commissioners plus $300 more for the Chairman. Consultants engaged by the Commission recommended a salary range of $5000 to $6000.
.141(3)	The way this section now reads, the Commission would have the power to alter and amend "fair and reasonable rates" etc. If a rate is already fair and reasonable there would be no need to alter or amend it. I suggest the following revision.

(3) make and fix just, fair and reasonable rates, classifications, rules, regulations, practices, services and facilities;

(4) alter and amend ~~an fact~~, unfair and unreasonable rates, classifications, rules, regulations, practices, services and facilities.

Re-number secs. (4), (5) and (6) to (5), (6) and (7).

.151(b) Line 21: Add following sentence:
The commission shall apply analogous rules of the superior court in regulating the appearance before it of attorneys not admitted to practice in this state.
Reason: This proposal stems from the attached communication from Mr. Stanley Howitt, Executive Director of the Alaska Bar Association. In all the states I have knowledge of the state public service commission includes in its rules of practice and procedure a section titled "Appearance and Practice Before the Commission" which states who may appear before it in a representative capacity. I know of no other state which prohibits attorneys in other states from appearing before it. However, it is not uncommon for them to require that out-of-state attorneys be qualified and entitled to practice before the highest court of record of their own state.

The APSC is a quasi-judicial agency and should, therefore, be accorded the same right of waiver that a superior court has when it is performing its judicial functions.

The Commission engaged the services of a hearing officer in the so-called "Cook Inlet Telephone Case" (Cause No. U-66-24 et al.) who had the case 679 days during which time there were 8 days of hearings, 12 briefs with an aggregate total of 239 pages, and a hearing transcript of 1312 pages. From the time the first application was filed until the Commission entered its final order, the total elapsed time was 969 days. Much of the delay and resulting expense to the parties was due to the fact that several of them were represented by attorneys who had little or no experience. The hearing officer's bill for his services was $13,310.50 so the State (specifically the Secretary of State) certainly shared in the cost. Were it not for the fact that some of the attorneys were knowledgable in the field of public utility law, the case would have been even more expensive to all concerned.

I can sympathize with the desire of Alaska attorneys to get all the business they can but I can also see why the law gives our superior courts the right to allow out-of-state attorneys to represent those who appear before it. Whatever the reasons may be that superior courts have this privilege, by law, it should apply with equal force to the APSC.

.181(b) Does the term "special agent" include the contractual hiring of an accountant or engineer to make a special investigation of a company such as the Anchorage Natural Gas Company and the Alaska Pipeline Company or engaging the services of an attorney to prepare rules of practice and procedure? If so, would it be possible to appoint them without a contract for personal service which is the way that hearing officers are now appointed? These questions should be clarified in the law if there are any doubts--hopefully in a way that simplifies, rather than complicates.

the procedure that has heretofore been required to engage the services of professional engineers or accountants.

.191(c) The words "appropriate action" leave much to be desired. I suggest the addition of a sentence reading somewhat as follows: Appropriate action shall include, but not be limited to voluntary agreements between competing utilities subject to approval by the commission and compulsory arbitration by order of the commission.

It has been my observation that the problem of competition between utilities and the resulting duplication of facilities is pretty much limited to electric utilities in the cities of Kenai, Fairbanks and Anchorage.

.211 Line 25: After word "may" insert words "or shall".

.221(a) P. 9, Line 3: Strike "unless" and insert "except after".
P. 9, Line 4: Strike first word "the"; change "of" to "by"; and strike word "if".

.221(b) P. 9, Line 15: After "resumed", insert these words "and the resumption is found to be economically feasible".

.311 Consumers should never be permitted to use testing equipment or apparatus. I suggest the following revision of the third sentence: Upon payment of a reasonable fee, as provided in a utility tariff accepted by the commission for filing, a utility customer may demand that a scientific test be conducted as to the accuracy of any equipment or apparatus used by a utility to measure the utility services or commodities it furnishes.

.321 P. 15, Line 2: Change "is" to "a[illegible]".

.371(a) P. 16, Line 25: Change heading to read as follows:
NEW OR REVISED TARIFFS AND CONTRACTS
Reason: This section deals with contracts as well as tariffs; so the fact should be indicated in the heading. The section should also cover new rates, classifications, rules, regulations or practices and new contracts as well as changes in existing tariffs or contracts.

.371(b) P. 17, Line 9: Change as follows:
New tariff and contract rates, classifications, rules, regulations and practices and revisions thereof shall be filed in the manner provided in sec. 321(a) of this chapter.

371(c) P. 17, Line 11: Change as follows:
Upon the filing of a new tariff or contract, or the revision of an existing tariff or contract, the commission, upon complaint or upon its own motion, without notice, may initiate an investigation of the reasonableness and lawfulness thereof.

.401 This section was included at the suggestion of the Assistant Attorney General assigned to the APSC. It is not at all unusual in comparable laws of other states but the need for it is more common in the regulation of transportation companies. Washington State has one like it (RCW 80.04.020) which has been on the books since 1937. I was with that Commission from 7/10/34 to 9/30/67 but cannot recollect that it was ever implemented in respect to a public utility. Several people have already expressed concern about this section. Actually, I doubt that they have good cause to worry about it, but they certainly cannot be blamed for worrying. Consequently, if it should become a major issue I would suggest that it be deleted or amended to make it apply only when a utility charges more than the rates in its effective tariff. After all if a utility charges the rates in its tariff (as required by Sec. 42.05.331 of SB 128) it should not be required to make reparations except to the extent it deviates from its tariff.

.481 P. 22, Line 17: After "employees" insert agents or consultants. Reason: Section 42.05.361(b) provides for the employment of consultants and section 42.05.181 provides for the appointment of agents; so the fact should not be ignored is this section.

.491(a) P. 22: Revise as follows:
The commission may investigate the management of a public utility including but not limited to salaries fixed by the recipient and salaries established in the absence of arms-length bargaining and payments to affiliated interests for services rendered or for the purchase, sale, lease, rental or exchange of any property, right, or thing, or loans to or from affiliated interest, and any practice which may adversely affect the cost or quality of the services or commodities furnished by the utility.

.491(b) Revise as follows:
When any unreasonable managerial practice, payment, or loan is found to exist, the commission may, after providing reasonable notice and an opportunity for hearing, order the public utility to take such corrective action as the commission may require.
Reason: Two of the biggest loopholes in utility regulation relate to self-serving decisions by the management of the utility or by their corporate affiliates. These decisions sometimes include placing holding company officers on the payroll of a utility at high salaries when the services they perform for such salaries are minimal. Closely held corporations, as well as partnerships and individual proprietorships often succumb to the temptation of fixing their own salaries at unreasonably high levels--thus enabling them to virtually control their own rate of return. Holding companies that control local operating companies sometimes charge the local utility an excessive amount for services rendered, for interest on loans, or for the sale, lease or exchange of any property, right or thing. I know, because I administered the affiliated interest law of the Washington Utilities and Transportation Commission for 17 years-- and the above proposed revision contains some of the suggested language I have used (see RCW 80.08.12).

.631 P. 26, Line 20: Strike words "Investigation and" from heading. Reason: the word "investigation" does not appear in this section; so it should be omitted in the heading or else the section should be re-worded so as to clearly include investigations.

This section is the same as AS 42.05.610 of the present law. I seriously question the advisability of including it in SB 128 unless it is revised to require a hearing on the costs prior to entering an order and more realistic and precise criteria are specified for determining the amount assessed the various parties. I say this because I believe it is almost impossible to successfully apply any degree of mathematical precision to the criteria the Commission is now required to consider in assessing hearing costs; namely:

ability to pay
evidence of good faith
other relevant factors
mitigating circumstances

Moreover, there is a need to specify exactly what costs the Commission may include as hearing costs. Does it include the traveling expenses of the Commission and its staff? Does it include the costs of any investigation prior to the hearing? Is it limited to the hearing officer's fees and expenses plus time charges of reporters? Then there is the question of who should apy the costs initially--the Secretary of State (who has been paying them) or the Commission. In the Cook Inlet case the hearing officer's fee was over $13,000 and the Secretary was not funded to pay the bill. I think he had to get it from the Governor's emergency fund. No matter which agency pays the hearing costs initially, it should be funded for it and the law should designate the agency. Judging from past experience, it is estimated that $20,000 will be required to pay hearing officer costs most of which, hopefully, can be recovered. It should be emphasized, however, that the Commission's current budget request does NOT include this $20,000.

P. 26, Line 22: .631 is same as AS 42.05.610 except for omission of words "of the hearing and shall by order apportion" after the word "costs"

For all practical purposes, this section could well be limited to apportioning the fees and expenses of hearing officers. The parties now pay for their own copy of hearing transcripts and the Commission gets one free if any other party orders one. The hourly rate paid for court reporters is not so great that the Commission could not pay it--and, next to the hearing officer's fee, this is the next largest expense of a hearing.

There is a possibility that the State might eventually decide it would be cheaper to hire its own full-time hearing officer.

.641(a) P. 27, Line 7: Insert word "intrastate" between "from" and "operations".

Under the provisions of SB 123 the Alaska Pipeline Company will become subject to regulation. For this reason, I suggest that consideration be given to whether or not it would be fair to collect a regulatory fee from the Pipeline Company on the basis of its sales to Anchorage Natural Gas Corporation and then require ANG to pay a regulatory fee on its gross revenues. This would result in a double regulatory fee on the same gas--which would then be passed on to ANG's customers. Under these circumstances I think it would be wise to add a sentence reading substantially as follows:

"Gross operating revenues from intrastate sales to a utility for resale to its customers shall be excluded from gross operating revenues for the purpose of this section."

Such a provision would relieve the Pipeline Company from paying a regulatory fee on gross revenues represented by sales to ANG but would require a fee on revenues from sales to the military bases and other customers.

.681 P. 28, Line 15: Strike "microwave". Microwave is not a service. It is only one means by which service can be provided.

P. 28, Line 16: Make it communication services instead of communications service.

P. 28, Line 20: If the State really wants to regulate LPG (propane or butane) distribution systems the fact should be made clear.
Reason: Petrolane, in Anchorage, apparently intends to take the position that propane is not a petroleum product. If the APSC is given authority to regulate the Alaska Pipeline Company it should be noted that funds for that purpose have not been included on the Commission's original budget request. Obviously any such request would be improper under the present law. If the Pipeline Company is brought under regulation there will undoubtedly be an immediate demand to investigate it. This will probably necessitate the employment of an accounting consultant at an estimated contractual cost of $8500. In this particular case I feel that independent professional consultants should be engaged for any investigation that is required so that the Commission can at least partially insulate itself against any accusation of bias.

.681(5) There appears to be no question but that this section, when read in conjunction with Sec. 42.05.681(2)(D), would extend the Commission's regulatory jurisdiction to the Alaska Pipeline Company--which, perhaps, may be its primary objective. There is a possibility, however, that it may go much much farther than was actually intended. For example, there is a relatively short natural gas pipeline between the Beluga power plant of Chugach Electric Association and the gas well that supplies the plant. Im my opinion this transmission line would be furnishing natural gas to a "limited portion of the public" and would therefore become a public utility. I doubt that any such thing was intended.

AS 42.05.645 of the present law specifically exempts the following from regulation by the APSC:
A. A person engaged in the production or gathering of natural gas or petroleum, and the plant, pipeline or system used for these purposes.
B. A person engaged in the distribution of natural or manufactured gas, or petroleum or petroleum products "to industrial customers only and not to the public generally" and the "plant, pipeline, or system used for these purposes."
C. Any plant, pipeline, or system used to distribute any concentrate or liquid substance by the owner or operator thereof "used solely for transportation."

The above provisions were enacted into law in 1968. As a result the Commission dismissed a proceeding then in progress to determine the regulatory status of the Kenai Pipeline Company. SB 128 would, in effect, cancel the 1968 amendment.

I also understand there is a pipeline from the Port Dock in Anchorage to the Internation Airport which is used to transport jet fuel. This is presumably a pipeline used to furnish petroleum or petroleum products to a "limited portion of the public" and would therefore be regulated.

There would undoubtedly be other pipelines that would come within the definition of the term "public utility" as defined in SB 128.

In keeping with the Commission's position of neutrality in respect to the extension of its regulatory authority, I would prefer not to express an opinion on this matter. However, I feel obligated to point to the possible ramfication of SB 128 as written and to suggest that the matter be given careful consideration with due regard to the question of whether or not there is an actual need to extend the Commission's jurisdiction to all of the pipelines which would be made subject to regulation under SB 128. If specific exemptions are disired the bill should be amended, or additional funding be provided.

.681(6)(F) New Section to read as follows:
"Any corporation 5% or more of whose voting securities are owned or held, directly or indirectly, by a public utility or by any corporation designated in secs. (A) (B) and (C) of this sub-section.
Reason: To make it clear that the subsidiaries of public utilities are affiliated interests as well as the owners of their voting securities. Subsections (A) (B) and (C) define up-stream affiliates; (F) would take care of down-stream affiliates.

.681(7) "tariff" means any or all rates, charges, tolls, rules or regulations of a utility relating to commodities or services furnished by a utility to the general public for compensation and every map, page, adoption notice, instrument or other document filed with the Commission setting forth the terms and conditions under which utility services or commodities are offered to the public together with instruments of concurrence and all other documents and data setting forth the terms of a utility's business relations with any other utility insofar as they affect the general public either directly or indirectly.

.681(8) "telephone exchange" means an operating unit consisting of one or more central offices together with the associated plant and switching equipment used in furnishing communication services within a defined geographic area embracing a city, town, village or area in which the subscribers served have a general community of interest.

.681(9) "telephone" means the transmission of voice communications, or in some cases, data or signals, by means of wire lines or Hertzian waves, between subscriber stations or central office stations located within one or more telephone exchanges or specified service areas, but excluding transmissions wholly within a radiocommunication system which is not interconnected with a telephone exchange or long lines system or another radiocommunication system.

.691(a) P. 30, Line 3: Place period after word "utility" and strike the rest of the line.

Prepared 2/18/69

SIGNIFICANT OMISSIONS

I

No provision for power of Commission to assess the costs of special investigations against the utilities investigated. The present law gives the Commission this power--but only in connection with proceedings involving the valuation of utility property (see AS 42.05.270). There are 57 regulatory commissions, including the District of Columbia and Puerto Rico. Twenty-four (24) of them have this power, including California, New York, Michigan, Pennsylvania, Washington, Arizona, Wisconsin, Wyoming, etc.

The Washington State law provides as follows:

> .80.20.020. Cost of investigation may be assessed against company. Whenever the commission in any proceeding upon its own motion or upon complaint shall deem it necessary in order to carry out the duties imposed upon it by law to investigate the books, accounts, practices and activities of, or make any valuation or appraisal of the property of any public service company, or to investigate or appraise any phase of its operations, or to render any engineering or accounting service to or in connection with any public service company, and the cost thereof to the commission exceeds in amount the ordinary regulatory fees paid by such public service company during the preceding calendar year or estimated to be paid during the current year, whichever is more, such public service company shall pay the expenses reasonably attributable and allocable to such investigation, valuation, appraisal or services. The commission shall ascertain such expenses, and, after giving notice and an opportunity to be heard, shall render a bill therefor by registered mail to the public service company, either at the conclusion of the investigation, valuation, appraisal or services, or from time to time during its progress. Within thirty days after a bill has been mailed such public service company shall pay to the commission the amount of the bill, and the commission shall transmit such payment to the state treasurer who shall credit it to the public service revolving fund. The total amount which any public service company shall be required to pay under the provisions of this section in any calendar year shall not exceed one percent of the gross operating revenues derived by such public service company from its intrastate operations during the last preceding calendar year. If such company did not operate during all of the preceding year the calculations shall be based upon estimated gross revenues for the current year. [1961 c 14 §80.20.020. Prior: 1939 c 203 §2(a); RRS § 10458-6a(a).]

80.20.030 Interest on unpaid assessment--Action to collect. Amounts so assessed against any public service company not paid within thirty days after mailing of the bill therefor, shall draw interest at the rate of six percent per annum from the date of mailing of the bill. Upon failure of the public service company to pay the bill, the attorney general shall proceed in the name of the state by civil action in the superior court for Thurston county against such public service company to collect the amount due, together with interest and costs of suit. [1961 c 14 § 80.20.030. Prior: 1939 c 203 § 2(b); RRS § 10458-6a(b).]

80.20.040 Commission's determination of necessity as evidence. In such action the commission's determination of the necessity of the investigation, valuation, appraisal or services shall be conclusive evidence of such necessity, and its findings and determination of facts expressed in bills rendered pursuant to RCW 80.20.020 through 80.20.060 or in any proceedings determinative of such bills shall be prima facie evidence of such facts. [1961 c 14 § 80.20.040. Prior: 1939 c 203 § 2(c); RRS § 10458-6a(c).]

80.20.050 Order of commission not subject to review. In view of the civil action provided for in RCW 80.20.020 through 80.20.060 any order made by the commission in determining the amount of such bill shall not be reviewable in court, but the mere absence of such right of review shall not prejudice the rights of defendants in the civil action. [1961 c 14 § 80.20.050. Prior: 1939 c 203 § 2 (d); RRS § 10458-6a(d).]

80.20.060 Limitation on frequency of investigation. Expenses of a complete valuation, rate and service investigation shall not be assessed against a public service company under this chapter if such company shall have been subjected to and paid the expenses of a complete valuation, rate and service investigation during the preceding five years, unless the properties or operations of the company have materially changed or there has been a substantial change in its value for rate making purposes or in other circumstances and conditions affecting rates and services. [1961 c 14 § 80.20.060. Prior 1939 c 203 § 2(e); RRS § 10458-6a(e).]

Please note the provision for an opportunity to be heard and the 5-year limitation on the frequency of a "complete valuation, rate and service investigation."

If it should be decided that SB 128 should be amended to include authority to assess costs of an investigation against the utilities investigated, possibly it could be included as part of sec. 42.05.631.

II

SB 128, as written, provides for APSC investigations, upon complaint, in the following sections: 42.05.221(b), .231, .251(c) and (d), .371(c), .381(a), .401.

I am of the opinion some safeguards should be included in SB 128 to protect utilities and the Commission from needlessly spending time and money to deal with frivolous, unfounded, or harassing complaints. Attached hereto is a Xerox copy of an article in the February 8, 1969 issue of Telephony (p. 44) indicating what Colorado proposes to do to solve the problem. I am not sure I agree with Colorado's proposed solution to the problem, but the article does indicate that, potentially at least, there is a problem. At a recent meeting of Alaska City Managers, which I attended, considerable concern was expressed about the possibility that the cities, if regulated, would be subjected to the expense of defending every single complaint. I agree that they should be concerned and that the law should protect utilities in some manner.

We have a few regulated utilities that have only one customer; so the present Colorado law (and one like it in Washington State) could not be used as a guide since they allow 25 or more customers to file a complaint. It seems to me that the best procedure would be to insert in the law somewhere a provision to the effect that the Commission may in its rules of practice and procedure establish the terms, conditions, and restrictions applicable to the filing of complaints. Since the rules themselves could not be adopted without giving the public a chance to be heard, the Commission presumably could not be arbitrary or unreasonable. Further, if experience should demonstrate the need for a subsequent change, it could be accomplished without revising the law.

No matter give power for informal investigation or in Josephson bill

• FROM PAGE 21

west Tennessee member of the commission. He has been on the Tennessee commission since 1953, and served as chairman in 1957-58 and 1963-64.

North Carolina asks Bell for improvements under raise

The North Carolina State Utilities Commission on Jan. 17 reversed a former decision and ordered Southern Bell Tel & Tel Co. to file a detailed list of service improvements it would institute if a company request for rate charges were approved and put into effect (TELEPHONY, Jan. 11).

In an order of Dec. 18, setting a public hearing on the company's rate request, the commission stated that "the proceeding would not be considered as a general case."

In the order of Jan. 17, it said "such a conclusion was based, at least in part, upon the understanding that the tariff filing was part of Southern Bell's service improvement plan, and was not offered primarily for revenue purposes."

Since the Dec. 18 order, the North Carolina attorney general's office and the North Carolina Consumer Council have raised the question of whether the real reason for the rate request is service improvements or increased profits. Both argued, contending the matter should be considered a general rate case and that the question whether the company's service has improved or declined in recent years also should be a matter for study.

In the Jan. 17 order reversing its former stand, the North Carolina commission said, "In view of the questions raised at the prehearing, the commission is now of the opinion that Southern Bell should specify in a verified pleading whether the tariff filing in question is part of a service improvement plan . . . and if so, should specify in detail the facts and details of such service improvement plan."

The commission asked that the list of service improvements planned be filed by Jan. 24 and if details are not provided by that date, the company's request would be considered solely on the basis of whether it is reasonable as a revenue-generating device, and without regard to promised improvements.

Southern Bell has proposed a 50-cent increase in service charges on private one-party lines, a $2 increase in installation fees and reductions up to $3.50 a month in some zone and mileage charges.

A company spokesman has said the changes would bring in about $2 million in additional revenue during the first year, and that the extra income is needed to carry out the company's planned service improvements.

Colorado bill would erase right to protest rates

A bill aimed at streamlining Colorado's public utility laws would also take away a right of utility customers to protest unreasonable rates, it was reported Jan. 8.

Colorado law now allows 25 or more customers to file a complaint with the Colorado Public Utilities Commission, and the commission is required to consider it. The proposed law, written by an interim study committee, would delete that provision.

Consumers still would be able to complain indirectly about utility rates, it was explained. But in order to get an investigation and hearing, they would first have to convince their city council, county commissioners or the state commission that their complaint had merit.

The 78-page bill, printed for introduction Jan. 8 in the Colorado Senate, is designed generally to modernize the laws dealing with the commission.

Have written for copy of this bill

It repeals obsolete wording of many sections.

It also writes into law the tradition of having both major political parties represented on the three-man commission.

Elimination of the provision for customer complaints was recommended to the study committee by the commission. The commission said under the present law "a single disgruntled customer can very easily obtain not only 25, but a considerable number of signatures, to institute a rate proceeding that could be wholly without merit."

Commissioner Howard Bjelland, starting his second six-year term, said he has no clear recollection of any commission inquiry arising from a consumer complaint. He said he felt the provision ought to be repealed, anyway, to avoid a potential waste of time and money.

It would be "pretty expensive" for a public utility (such as the Public Service Co. of Colorado or Mountain States Tel & Tel Co.) to answer an unfounded complaint in a public hearing, Bjelland said. And in the end, the cost of such a hearing would be paid by consumers, he pointed out.

Chief sponsor of the bill, Sen. George Jackson (R., Colorado Springs) said the committee discussed the possibility of requiring more than 25 customers to sign complaints, but concluded it would be better to repeal the whole thing. An alternative to repealing the provision would be to require a greater number of signatures on customer petitions, Jackson said.

Oklahoma hearings begin on unauthorized Bell charges

Hearings began on Jan. 30 before the Oklahoma Corporation Commission on the joint applications of several business firms,

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STANLEY HOWITT, EXECUTIVE DIRECTOR AND BAR COUNSEL

February 10, 1969

TO: Donald E. Hall, Executive Director
Public Service Commission
338 Denali
Anchorage, Alaska

Neil Harper, Chairman and
Commissioner of Surface
Alaska Transportation Commission
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Anchorage, Alaska

Mr. William Burns
Commissioner of Air Commerce
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Subject: Unauthorized Practice of Law by Out-of-State Attorneys before Administrative Agencies

Gentlemen:

A number of cases have been reported to the Alaska Bar Association concerning the unauthorized practice of law by out-of-state counsel before administrative agencies such as the Public Service Commission, Alaska Transportation

Commission, Department of Highways-Contract Claims Board and Air Commerce Commission.

This memorandum is to advise you that under the present law, out-of-state attorneys may not appear before administrative agencies even if they are associating with Alaska counsel. Usually however, no attempt has been made by the out-of-state attorney to associate.

The conclusion reached by the Alaska Bar Association on this matter is based upon the fact that there is no provision whatsoever for appearances of out-of-state attorneys before administrative agencies in law, by court rule, or by rule of the Board ofGovernors. The occasional appearance of an out-of-state attorney in the courts of the state is governed by Rule 81, Rules of Civil Procedure, Out-of-state attorneys are allowed to appear in the state courts on a case by case basis. But such appearances are at the discretion of the Court, and the Court may deny such appearances if such action is warranted. This rule was promulgated by the court system itself. There is no similar rule regarding out-of-state attorney appearances before administrative agencies and therefore the statutory provisions would apply. The provision in point is A.S. 08.08.230 which reads as follows:

> "Section 08.08.230. Unlawful Practice a Misdemeanor. Any person not an active member of the Alaska Bar who engages in the private practice of law or represents himself as entitled to engage in the private practice of law in the state other than as permitted by this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both."

There is no other provision in the chapter 8 of Title 8 of Alaska Statutes to permit the appearances before administrative agencies by outside counsel. Appearances before administrative agencies have been defined as the practice of law by the Alaska Supreme Court in the case of Application of Babcock , 387 P.2d 694 (Alaska 1963) wherein the Court stated at page 697:

> "One is engaged in the practice of law when he, for a valuable consideration, engages in the business of advising persons, firms, associations or corporations as to their rights under the law, or appears in a representative capacity as an advocate in the proceedings pending or prospective, before any court, commissioner, referee, board, body, committee, or commission constituted by law or authorized to settle controversies, and there, in such representative capacity, performs any act or acts for the purpose of obtaining or defending the rights of their [sic] clients under the law. Otherwise stated, one who, in a representative capacity, engages in the business of advising clients as to their rights under the law, or while so engaged, performs any act or acts either in court or outside of court for that purpose, is engaged in the practice of law." (Underlining added).

and the Court further stated that the practice of law is:

> "Not limited to appearing in court, or advising and assisting in the conduct of litigation, but embracing the preparation of pleadings, and other papers incident to actions and special proceedings, conveyancing, the preparation of legal instruments of all kinds, and the giving of all legal advice to clients: State v. Chamberlain, 132 Wash. 520, 232 Pac. 337, 338. It embraces all advice to clients and all actions taken for them in matters connected with the law. Rhode Island Bar Ass'n v. Lesser, 68 R.I. 14, 26 A.2d 6, 7." (Underlining added).

In order to eliminate this area of unauthorized practice of law, you are asked to submit to the Alaska Bar Association

the following information for the years 1967-1968-1969 to date:

1. A list of all out-of-state attorneys who have appeared before your administrative agency at hearings or in any other proceeding.

2. The docket number of the hearing or proceeding.

3. Please indicate if the out-of-state attorney attempted to associate with Alaska counsel.

4. Please state the name of the client who was represented by the out-of-state attorney.

We intend to inform the out-of-state attorneys whose names you submit to us of the fact that they are engaged in the unauthorized practice of law in this state.

We would appreciate your aid and assistance with regard to future hearings and proceedings in which out-of-state counsel attempt to represent clients within this state. Please serve us with a notice of such appearances so that we can raise proper objections. We also request that your agency take action to prevent such unauthorized practice of law from occurring.

We are aware that this matter has been going on for a considerable length of time owing to the fact that the Alaska Bar Association has not previously notified your agency and requested your assistance to eliminate this area of unauthorized practice of law. With the inauguration of a bar office and the employment of a full time staff, this situation is now altered so that the association is in a position to go forward and clarify and define this area of unauthorized practice. Permitting this unauthorized practice to continue over a period of time does not give it any legal status.

It might be mentioned furthermore, that even when an out-of-state attorney attempts to associate with Alaska counsel, at the present time there is no provision to permit this activity and his activities in the proceedings or hearings is still considered unauthorized practice of law.

We would appreciate your immediate assistance in this matter. Should you have any questions, please do not hesitate to inquire.

Very truly yours,

Stanley Howitt

Stanley Howitt,
Executive Director and
State Bar Counsel

SH:sb

cc: Department of Revenue
Pouch S
Juneau, Alaska

G. Kent Edwards
Department of Law
Pouch K
Juneau, Alaska

Board of Governors