



STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: CS HB 220 (Fin)  
Title: Relating to public utilities  
Sponsor: Lindauer  
Requestor: \_\_\_\_\_  
Date of Request: \_\_\_\_\_

FISCAL DETAIL

Agency Affected: Commerce  
Program Category Affected: APUC  
BRU, Program or Subprogram(s) Affected: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		0				
200 TRAVEL		0				
300 CONTRACTUAL		0				
400 SUPPLIES		0				
500 EQUIPMENT		0				
600 LAND & STRUCTURES		0				
700 GRANTS, CLAIMS		0				
800 MISCELLANEOUS		0				
TOTAL OPERATING		0				
CAPITAL		0				
REVENUE		0				

FUNDING: (Thousands of Dollars)

GENERAL FUND		0				
FEDERAL FUNDS		0				
OTHER		0				
TOTAL		0				

POSITIONS:

FULL-TIME		0				
PART-TIME		0				
TEMPORARY		0				

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Al Adams, Chairman *ABA* Phone: 465-3706  
Division: House Finance Committee Date: 4/10/84

Approved by Commissioner: \_\_\_\_\_ Date: \_\_\_\_\_  
Agency: \_\_\_\_\_

Distribution (by Agency preparing fiscal note):

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

12/1/83

Original sponsor: Lindauer

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 220 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to public utilities; and providing  
7 for an effective date."

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

9 \* Section 1. AS 42.05.321(a) is repealed and reenacted to read:

10 (a) All rates demanded or received by a public utility, or by  
11 any two or more public utilities jointly, for a service furnished or  
12 to be furnished shall be just and reasonable. However, a rate may not  
13 include an allowance for the costs of

14 (1) political contributions;

15 (2) lobbying;

16 (3) advertising and public relations, except for reasonable  
17 amounts spent for

18 (A) energy conservation efforts;

19 (B) public information designed to promote more effi-  
20 cient use of the utility's facilities or services or to protect  
21 the physical plant of the utility;

22 (C) informing shareholders and members of a coopera-  
23 tive of meetings of the utility and encouraging attendance; or

24 (D) emergency situations to the extent and under the  
25 circumstances authorized by the commission for good cause shown;

26 (4) consulting, management, service, administrative, in-  
27 spection, and audit fees in excess of \$1,000,000 paid during a finan-  
28 cial year of a utility for services produced outside the geographical  
29 area served by the utility, except when an inspection or audit paid

1 for by the utility verifies that the utility is unable to obtain such  
2 services within the geographical area served by that utility;

3 (5) products purchased from the owner of the public utility  
4 or from a subsidiary or affiliate of the owner, in excess of the  
5 actual cost of the products to the owner, subsidiary or affiliate; or

6 (6) services purchased from the owner of the public utility  
7 or from a subsidiary or affiliate of the owner at prices that exceed  
8 the value of such services.

9 \* Sec. 2. AS 42.05.381 is amended by adding new subsections to read:

10 (e) A rate demanded or received by a public utility for a ser-  
11 vice that is provided for a profit may not include an allowance for a  
12 rate of return on capital investments of the utility in excess of an  
13 amount equal to the paid-in capital and retained earnings of the  
14 utility less

15 (1) money provided or advanced by the utility to acquire  
16 ownership of the utility;

17 (2) money provided by the utility for a loan, advance, or  
18 deposit to an owner of the utility or to a subsidiary or affiliate of  
19 the utility;

20 (3) money invested by the utility or a subsidiary or affil-  
21 iate of the utility in a nonregulated company;

22 (4) money deposited or invested in a financial institution  
23 located outside the state; and

24 (5) money or the value of other assets pledged or guaran-  
25 teed on behalf of an owner, subsidiary, or affiliate of the utility.

26 (i) In establishing rates under this chapter the commission  
27 shall consider the revenues and profits of a public utility derived  
28 from operations in the state and shall consider the revenues and  
29 profits of other businesses operated in the state that are owned by

1 the utility or a holding company, subsidiary, or affiliate of the  
2 utility if the utility and its holding companies, subsidiaries or  
3 affiliates have combined annual sales in excess of \$5,000,000. If a  
4 nonutility company that operates in the state and is owned by a util-  
5 ity operating in the state or a holding company, subsidiary, or affil-  
6 iate of the utility, has annual sales in excess of \$1,000,000, 15  
7 percent of the gross revenues of the nonutility is considered to be  
8 utility revenue for the purpose of establishing utility rates.

9 \* Sec. 3. AS 42.05.491 is amended to read:

10 Sec. 42.05.491. RECORDS AND ACCOUNTS TO BE KEPT IN STATE. A  
11 public utility shall keep the books, accounts, papers and records  
12 required by the commission, in an office within this state, and may  
13 not remove them from the state, except upon the terms and conditions  
14 that may be prescribed by the commission. The provisions of this  
15 section do not apply to a public utility whose accounts are kept at  
16 its principal place of business outside the state, in the manner  
17 prescribed by a federal regulatory body; however, such a public util-  
18 ity shall [AT ITS OPTION, EITHER] furnish to the commission, within a  
19 reasonable time fixed by the commission, certified copies of its  
20 books, accounts, papers and records relating to the business done by  
21 the public utility within this state [, OR AGREE TO PAY THE ACTUAL  
22 EXPENSES INCURRED BY THE COMMISSION IN SENDING PERSONNEL TO EXAMINE  
23 THE UTILITY'S BOOKS AND RECORDS AT THE PLACE WHERE THEY ARE KEPT].

24 \* Sec. 4. AS 42.05 is amended by adding a new section to read:

25 Sec. 42.05.655. INSPECTION JURISDICTION. The on-site inspection  
26 jurisdiction of the commission is limited to areas within the state.

27 \* Sec. 5. AS 42.05.720(4) is amended to read:

28 (4) "public utility" or "utility" includes every corpora-  
29 tion (whether public, cooperative, or otherwise), company, individual,

1 or association of individuals, their lessees, trustees, or receivers  
2 appointed by a court, that owns, operates, manages or controls any  
3 plant, pipeline or system for

4 (A) furnishing, by generation, transmission or distribu-  
5 tion, electrical service to the public for compensation;

6 (B) furnishing telecommunications service, except for  
7 video entertainment service, to the public for compensation;

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

10 (D) furnishing, by transmission or distribution, [OF]  
11 natural or manufactured gas to the [ALASKA] public for compensa-  
12 tion;

13 (E) refining, furnishing for distribution, or dis-  
14 tributing [BY DISTRIBUTION] petroleum or petroleum products for  
15 [TO] the [ALASKA] public for compensation when the consumer has  
16 no alternative in the choice of supplier of a comparable product  
17 and service at an equal or lesser price;

18 [(F) FURNISHING COLLECTION AND DISPOSAL SERVICE OF  
19 GARBAGE, REFUSE, TRASH OR OTHER WASTE MATERIAL;]

20 \* Sec. 6. AS 42.05.711(i) is repealed.

21 \* Sec. 7. This Act takes effect July 1, 1984.

COMMITTEE REPORT

HOUSE

(11)

FURTHER:

3/16/84

Date: 4/10/84

The Committee on FINANCE has had SSHB 220

"An Act relating to public utilities; and providing for an effective date."

under consideration and recommends:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with ~~CS~~ SSHB 220 (Fin)  same title  
 new title
- and recommends Individual Recommendations
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation  Zero Fiscal Note Attached  
New 4/10/84
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

Walt Farnace

Raymond

John Ward

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

Robert Adams - No Rec

JP Bethune - No Rec

Tom Martin - No Rec

Ben [unclear] (No Rec)

John Duncan - DO NOT PASS

Fred T. Schmitt (No Rec)

John [unclear] (No Rec)

MILO H FRITZ (NO REC)

Robert Adams

CHAIRMAN

A M E N D M E N T

Offered in the HOUSE

By Lindauer

TO: SSB 220

Page 1, line 17, after "advertising" insert:

", except for advertising to promote energy conservation"

Page 2, after line 29, insert a new bill section to read:

"\* Sec. 3. AS 42.05.491 is amended to read:

Sec. 42.05.491. RECORDS AND ACCOUNTS TO BE KEPT IN STATE. A public utility shall keep the books, accounts, papers and records required by the commission, in an office within this state, and may not remove them from the state, except upon the terms and conditions that may be prescribed by the commission. The provisions of this section do not apply to a public utility whose accounts are kept at its principal place of business outside the state, in the manner prescribed by a federal regulatory body; however, such a public utility shall [AT ITS OPTION, EITHER] furnish to the commission, within a reasonable time fixed by the commission, certified copies of its books, accounts, papers and records relating to the business done by the public utility within this state [, OR AGREE TO PAY THE ACTUAL EXPENSES INCURRED BY THE COMMISSION IN SENDING PERSONNEL TO EXAMINE THE UTILITY'S BOOKS AND RECORDS AT THE PLACE WHERE THEY ARE KEPT]."

Renumber succeeding bill sections accordingly.

NOTES TO DECISIONS

Applied in United States v. RCA No. 1647 (File No. 3772), 597 P.2d 489  
Alaska Communications, Inc., Sup. Ct. Op. (1979).

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Collateral references. — Necessity of bound to render as common carrier, 19  
filing rates for services which carrier is not AIR 982.

*Sec. 42.05.380. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.381. Rates to be just and reasonable.** (a) All rates demanded or received by a public utility, or by any two or more public utilities jointly, for a service furnished or to be furnished shall be just and reasonable; however, a rate may not include an allowance for costs of political contributions, or public relations except for reasonable amounts spent for

- (1) energy conservation efforts;
- (2) public information designed to promote more efficient use of the utility's facilities or services or to protect the physical plant of the utility;
- (3) informing shareholders and members of a cooperative of meetings of the utility and encouraging attendance; or
- (4) emergency situations to the extent and under the circumstances authorized by the commission for good cause shown.

(b) In establishing the revenue requirements of a municipally owned and operated utility the municipality is entitled to include a reasonable rate of return.

(c) A utility, whether subject to regulation by the commission or exempt from regulation, may not charge a fee for connection to, disconnection from, or transfer of services in an amount in excess of the actual cost to the utility of performing the service plus a profit at a reasonable percentage of that cost not to exceed the percentage established by the commission by regulation.

(d) A utility shall provide for a reduced fee or surcharge for standby water for fire protection systems approved under AS 18.70.081 which use hydraulic sprinklers. (§ 6 ch 113 SLA 1970; am § 1 ch 86 SLA 1976; am § 5 ch 106 SLA 1977; am § 4 ch 45 SLA 1980)

**Effect of amendments.** — The 1980 amendment added subsection (d).

§ 42.05.500 PUBLIC UTILITIES AND CARRIERS § 42.05.511

*Sec. 42.05.500. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.501. Inspection of books and records by commission.** The commission shall at all reasonable times have access to, and may designate any of its employees, agents or consultants to inspect and examine, the accounts, records, books, maps, inventories, appraisals, valuations, or other reports and documents, kept by public utilities or their affiliated interests, or prepared or kept for them by others, which relate to any contract or transaction between them. The commission may require a public utility or its affiliated interest to file with the commission, copies of any or all of these accounts, records, books, maps, inventories, appraisals, valuations, or other reports and documents. (§ 6 ch 113 SLA 1970)

Collateral references. — 73 C.J.S.,  
Public Utilities, § 54.

*Sec. 42.05.510. [Repealed, § 5 ch 113 SLA 1970.]*

#### Article 7. Financial and Management Regulation.

##### Section

- 511. Unreasonable management practices
- 521. Impaired capital
- 531. Distribution of surplus and profits

**Sec. 42.05.511. Unreasonable management practices.** (a) The commission may investigate the management of a public utility, including but not limited to staffing patterns, wage and salary scales and agreements, investment policies and practices, purchasing and payment arrangements with affiliated interests, for the purpose of determining inefficient or unreasonable practices which adversely affect the cost or quality of service of the public utility.

(b) Where unreasonable practices are found to exist, the commission may, after providing reasonable notice and opportunity for hearing, take appropriate action to protect the public from the inefficient or unreasonable practices and may order the public utility to take the corrective action the commission may require to achieve effective development and regulation of public utility services.

(c) In a rate proceeding the utility involved has the burden of proving that any written or unwritten contract or arrangement it may have with any of its affiliated interests for the furnishing of any services or for the purchase, sale, lease or exchange of any property is necessary and consistent with the public interest and that the payment made therefor, or consideration given, is reasonably based, in part, upon the submission of satisfactory proof as to the cost to the affiliated interest of furnishing the service or property and, in part, upon the estimated cost the utility would have incurred if it furnished the service or property with its own personnel and capital. (6 ch. 113 SLA 1970)

*service or property with its own personnel  
and capital. (6 ch. 113 SLA 1970)*

exceeding \$100,000 shall keep continuing property records. (§ 6 ch 113 SLA 1970)

*Sec. 42.05.470. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.471. Depreciation rates, initial losses and accounts.**

(a) To provide for the loss in service value of its property, not restored by current maintenance, every utility shall charge adequate, but not excessive, depreciation expense for each major class of utility property used and useful in serving the public. From time to time the commission shall determine the proper and adequate rates of depreciation for each major class of property of a public utility. The commission shall accept rates of depreciation and depreciation accounts prescribed and maintained under regulations of a federal agency or the terms of a bond ordinance. The commission shall determine and allow depreciation expense in fixing the rates, tolls and charges to be paid for the services of a public utility.

(b) The commission is not bound in rate proceedings to accept, as just and reasonable for rate-making purposes, estimates of annual or accrued depreciation established under the provisions of this section, or to allow annual or accrued depreciation on utility property directly or indirectly contributed by customers or others. (§ 6 ch 113 SLA 1970)

*Sec. 42.05.480. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.481. Subsidiary business accounts.** A public utility engaged, directly or indirectly, in another business, including another utility business or a subsidiary business, shall keep separate accounts relating to that business. Except as the commission provides, property, expense or revenue used in or derived from that business may not be considered in establishing the rates and charges of the utility for its public services. (§ 6 ch 113 SLA 1970)

*Sec. 42.05.490. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.491. Records and accounts to be kept in state.** A public utility shall keep the books, accounts, papers and records required by the commission, in an office within this state, and may not remove them from the state, except upon the terms and conditions that may be prescribed by the commission. The provisions of this section do not apply to a public utility whose accounts are kept at its principal place of business outside the state, in the manner prescribed by a federal regulatory body; however, such a public utility shall at its option, either furnish to the commission, within a reasonable time fixed by the commission, certified copies of its books, accounts, papers and records relating to the business done by the public utility within this state, or agree to pay the actual expenses incurred by the commission in sending personnel to examine the utility's books and records at the place where they are kept. (§ 6 ch 113 SLA 1970)

ae  
5-8-109

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST  
Bill/Resolution No.: SSHB 220  
Title: relating to Public Utilities  
Sponsor: Lindauer  
Requestor: \_\_\_\_\_  
Date of Request: \_\_\_\_\_

FISCAL DETAIL  
Agency Affected: Commerce & Economic Development  
Program Category Affected: \_\_\_\_\_  
Protection  
BRU, Program or Subprogram(s) Affected: \_\_\_\_\_  
Alaska Public Utilities Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
100 PERSONAL SERVICES		228.8	228.8	228.8	228.8	228.8
200 TRAVEL		10.0	5.3	5.6	6.0	6.3
300 CONTRACTUAL		80.0	50.0	50.0	50.0	50.0
400 SUPPLIES		2.0	2.1	2.2	2.4	2.5
500 EQUIPMENT		8.0	0.0	0.0	0.0	0.0
600 LAND & STRUCTURES		14.0	14.0	14.0	14.0	14.0
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		342.8	300.2	300.6	301.2	301.6

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		342.8	300.2	300.6	301.2	301.6
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		5.0	5.0	5.0	5.0	5.0
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: for Jack Farleigh *Challen* Phone: 276-6222  
Division: Alaska Public Utilities Commission Date: \_\_\_\_\_

Approved by Commissioner: for Carolyn Guess *Challen* Date: 3/15/84  
Agency: Alaska Public Utilities Commission

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

Please deliver to Ken Johnson  
House Labor & Commerce  
Committee

Fiscal Note Analysis SSHB 220

Assumptions:

1. This bill could create significant new jurisdiction for the Alaska Public Utilities Commission.
2. The new jurisdiction is in an area of regulation for which the Commission has little or no expertise and will have to develop that expertise through the addition of staff and the training of that staff. It is assumed that the term distributing added to AS 42.05.720(4)(c) does not include retail sales.
3. Legal analysis suggests application of this legislation will create legal challenges.
4. Fiscal counter-effect of the deregulation of refuse utilities will be negligible when compared to the other jurisdictions which will be created as a result of passage of this bill.

Program Summary:

- A. Historical background and comparison of SSHB 220 with last session's HB 365.
  1. During the last legislative session HB 365 was introduced by Representative ~~Keponen~~ which specifically addressed the regulation of oil refineries. The Commission fiscal note concerning that bill stated that in order to accept this jurisdiction, the Commission would incur additional expenditures in operating categories 100 - 500. In addition, the Commission contacted the National Association of Regulatory Utility Commissioners and discovered that no other state commission regulates oil refineries as a utility.
  2. The broadness of SSHB 220, expands jurisdiction far beyond the regulation of oil refineries. Based on legal analysis, the Commission anticipates that this bill, if passed and made law, could result in much litigation concerning the scope and constitutionality of the expanded jurisdiction.

B. EXPENDITURE REQUIREMENTS

As in the fiscal note regarding HB 365, this bill would require that the Commission be provided with additional state expenditures. These requirements, and how they differ from last year's fiscal note related to HB 365 are listed below.

## 100 - Personal Services

Minimum needs have been addressed. Positions required are:

Technical:        1 Utility Engineer IV  
                  1 Utility Financial Analyst III

Support:            1 Consumer Protection Information Officer II  
                  1 Utility Tariff Analyst II  
                  1 Administrative Support Technician II

(There is no change in requirements above the level in the fiscal note accompanying HB 365.)

## 200 - Travel

Funds will be required for training travel and regulatory travel. Travel for FY 1985 is higher based on a one-time need for extensive training in order for the Commission to regulate the new jurisdictions.

## 300 - Contractual

Additional contractual funding will be needed to provide three items:

a. Funding for legal counsel to handle the litigation associated with the new APUC jurisdictions. As stated above, if passed, it is anticipated there will be much litigation concerning the constitutionality and scope of jurisdiction.

b. APUC staff does not have any experience or expertise in regulation of the additional jurisdictions. Therefore, it will be necessary to provide substantial training to the two technical positions created to handle the new jurisdiction. Existing staff and Commission members will also need some training in these areas in order to reach proper conclusions and decisions in the regulatory process.

c. Some computer software must be provided in order to put the additional jurisdictions into the APUC data base.

## 400 - Commodities

There will be a requirement for additional commodities for the new positions which will be established as a part of the new workload.

## 500 - Equipment

In addition to the equipment associated with the new employees, the Alaska Public Utilities Commission wishes to go

on record to stress the importance of the passage of its capital budget request for an expanded computer system within the APUC. (Copy is attached).

In last year's fiscal note re HB 365 the Commission had asked for additional funding to enhance its existing computer system. Since that time the situation has changed dramatically. Based on present and projected usage, the Commission and the Department of Administration Division of Data Processing, have recommended that the present system be replaced by a larger one. Those projections did not include the addition of such a broadly based jurisdiction as possible in this bill.

#### 600 - LAND AND STRUCTURES

The Alaska Public Utilities Commission is already short of space in its present location. Additional personnel will require additional space.

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
(Assumption: program basing FY 85)						
-----100-----						
SAL & BENEFITS		Note: Figures for FY 85..FY89 do not include merit increases or any negotiated salary inc				
CP OFFICER, R 17A	\$13,242.00	\$13,242.00	\$13,242.00	\$13,242.00	\$13,242.00	\$13,242.00
CE IV, R 21C	\$50,041.00	\$50,041.00	\$50,041.00	\$50,041.00	\$50,041.00	\$50,041.00
UFA III, R 21A	\$56,741.00	\$56,741.00	\$56,741.00	\$56,741.00	\$56,741.00	\$56,741.00
UTA II, R 17A	\$43,242.00	\$43,242.00	\$43,242.00	\$43,242.00	\$43,242.00	\$43,242.00
AST II, R 8A	\$25,549.00	\$25,549.00	\$25,549.00	\$25,549.00	\$25,549.00	\$25,549.00
	-----\$228,815.00	-----\$228,815.00	-----\$228,815.00	-----\$228,815.00	-----\$228,815.00	-----\$228,815.00
-----200-----						
TRAVEL-TRNG	\$5,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
TRAVEL - OTHER	\$15,000.00	\$5,300.00	\$5,618.00	\$5,955.08	\$6,312.39	
	-----\$10,000.00	-----\$5,300.00	-----\$5,618.00	-----\$5,955.08	-----\$6,312.39	
-----300-----						
LEGAL COUNSEL	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00
Add'l SOFTWARE	\$5,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
1st YR TRAINING	\$25,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	-----\$80,000.00	-----\$50,000.00	-----\$50,000.00	-----\$50,000.00	-----\$50,000.00	-----\$50,000.00
-----400-----						
5 pos times \$400	\$2,000.00 *	\$2,120.00 *	\$2,247.20 *	\$2,382.03 *	\$2,524.95	
*=6% inflation fac						
-----500-----						
3 pos times \$1200	\$6,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
1 pos times \$1000	\$2,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	-----\$8,000.00	-----\$0.00	-----\$0.00	-----\$0.00	-----\$0.00	-----\$0.00
-----600-----						
Add'l office	\$13,992.00	\$13,992.00	\$13,992.00	\$13,992.00	\$13,992.00	\$13,992.00
IP010125 SQ.FT.EA						
ISP6093 SQ.FT.EA						
EQ 583 SQ.FT						
TIMES \$2.00 TIMES						
12 MONTHS						
GRAND TOTAL	-----\$342,807.00	-----\$300,227.00	-----\$300,622.20	-----\$301,144.11	-----\$301,644.34	

1.	POSITION TITLE (CONSUMER PROTECTION & INFORMATION OFFICER)				RANGE/STEP 17A	DARG. UNIT G	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER (NEW)	BRU PRIORITY 1	LOCATION Anchorage	ELECTION DISTRICT 7	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE				AMOUNT					
	1		2		3					
	PERSONAL SERVICES									
5.	Salary		33084							
6.	Benefits		5402							
7.	Supplemental Benefits		2028							
8.	Fixed Benefits		2728							
9.	TOTAL PERSONAL SERVICES		01		43242					
10.	Travel		02		0					
11.	Contractual		03		0					
12.	Commodities		04		400					
13.	Equipment		05		2025					
14.	Other Office Space 125SQFT (P01) x 12 mo				3000					
15.	TOTAL COST @\$2.00 sq. ft.				48667					
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Hatch 1003								
18.		General Funds 1004		48667						
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								

The additional level of public contact which would result from this additional regulatory workload would require the addition of another Information Officer position. This level would provide an interim between the Consumer Protection Officer II lead position and the Consumer Protection entry level.

As with other sections, there is no further room for expansion of duties without an increase in personnel. In addition, there is no existing office space to house additional personnel.

FOR BSM USE ONLY  
NA KEY NUMBER

**13** REQUEST FOR  
NEW POSITION

AGENCY ALASKA PUBLIC UTILITIES COMMISSION  
PROGRAM CONSUMER PROTECTION  
BRU ALASKA PUBLIC UTILITIES COMMISSION  
COMPONENT

Page 1 of 5  
Revised Date

**FY 85**

1.	POSITION TITLE Utility Engineer IV				RANGE/STEP 21c	BARG. UNIT G	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.		
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER NEW	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 7	LEG.				
3.	CONTINUATION LEVEL				JUSTIFICATION							
4.	TYPE OF EXPENDITURE				<p>Engineer would be involved in reviewing engineering requirements associated with refinery regulatory activities.</p> <p>Current engineering staff is not able to absorb any more functions. It is already working at capacity level.</p> <p>Because regulatory activity concerning refineries, etc. does not exist within this Commission nor any others, it will require much training in order for the Engineer to be able to review engineering requirements associated with these activities.</p> <p>Office space will be required because existing space is at maximum usage levels already.</p>							
	1		2								3	
	PERSONAL SERVICES											
5.	Salary		46560									
6.	Benefits		8203									
7.	Supplemental Benefits		2550									
8.	Fixed Benefits		2728									
9.	TOTAL PERSONAL SERVICES		01								60041	
10.	Travel		02								2500	
11.	Contractual		03								10000	
12.	Commodities		04								400	
13.	Equipment		05								2025	
14.	Other Office space 125 sq ft (P01) x 12 mo										3000	
15.	TOTAL COST @\$2.00 sq.ft.										77966	
	RECEIPT CODE	FUNDING SOURCE										
16.		Federal Receipts 1002										
17.		G.F. Match 1003										
18.		General Funds 1004			77966							
19.		I-A Receipts 1005										
20.		Program Receipts 1028										
21.		Other										
FOR B&M USE ONLY												
4A KEY NUMBER												

**13** REQUEST FOR  
NEW POSITION

AGENCY ALASKA PUBLIC UTILITIES COMMISSION

PROGRAM CONSUMER PROTECTION

BRU ALASKA PUBLIC UTILITIES COMMISSION

COMPONENT \_\_\_\_\_

**FY 85**

Page 2 of 5

Revised Date \_\_\_\_\_

1.	POSITION TITLE Utility Financial Analyst III			RANGE/STEP 21A	DARG. UNIT G	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER NEW	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 7	LEG.	
3.	CONFIRMATION LEVEL	ADDITION			JUSTIFICATION				
4.	TYPE OF EXPENDITURE		AMOUNT		<p>This position would provide audit of refinery records and all other regulatory activity associated with the scope of SSHB 220.</p> <p>Current financial staff is not able to absorb any more functions and has, in the past, had to absorb a vacancy factor to help alleviate personnel services shortages resulting from budget cutbacks. Even if all positions were filled, workload is such that any additional activities cannot be handled by existing staff.</p> <p>Because regulatory activity concerning refineries, etc. does not exist within this Commission nor any others, it will require much training in order for the Analyst to be able to provide the auditing background necessary for this activity.</p> <p>Office space is not available for additional personnel and all new positions require that the Commission acquire more space.</p>				
	1	2	3						
	PERSONAL SERVICES								
5.	Salary	43560							
6.	Benefits	8203							
7.	Supplemental Benefits	2028							
8.	Fixed Benefits	2728							
9.	TOTAL PERSONAL SERVICES	0:	56741						
10.	Travel	02	2500						
11.	Contractual	03	10000						
12.	Commodities	04	400						
13.	Equipment	05	2025						
14.	Other Office space 125sq ft (P01) x 12 mo		3000						
15.	TOTAL COST @2.00 sq ft		74666						
	RECEIPT CODE	FUNDING SOURCE							
16.		Federal Receipts 1002							
17.		G.F. Match 1003							
18.		General Funds 1004		74666					
19.		I-A Receipts 1005							
20.		Program Receipts 1028							
21.		Other							
FOR BSN USE ONLY									
4A KEY NUMBER _____									

**13** REQUEST FOR  
NEW POSITION

AGENCY ALASKA PUBLIC UTILITIES COMMISSION

PROGRAM CONSUMER PROTECTION

BRU ALASKA PUBLIC UTILITIES COMMISSION

COMPONENT \_\_\_\_\_

**FY 85**

Page 3 of 5

Revised Date \_\_\_\_\_

1.	POSITION TITLE Utility Tariff Analyst II				RANGE/STEP 17A	BARG. UNIT G	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER NEW	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 7	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT						
	1			7			3			
	PERSONAL SERVICES									
5.	Salary			33084						
6.	Benefits			5402						
7.	Supplemental Benefits			2028						
8.	Fixed Benefits			2728						
9.	TOTAL PERSONAL SERVICES			01			43242			
10.	Travel			02			0			
11.	Contractual			03			0			
12.	Commodities			04			400			
13.	Equipment			05			2025			
14.	Other: Office space 125sqft (POL) X 12 mo						3000			
15.	TOTAL COST X \$2.00 sq.ft.						48667			
	RECEIPT CODE			FUNDING SOURCE						
16.				Federal Receipts			1002			
17.				G.F. Hatch			1003			
18.				General Funds			1004			
19.				I-A Receipts			1005			
20.				Program Receipts			1020			
21.				Other						
FOR B&M USE ONLY										
4A KEY NUMBER										

The addition of another full-time tariff analyst would be required to handle the tariff rate filings which would be a result of this additional regulatory function.

Tariff section is already functioning at capacity and is not able to absorb any further regulatory workload without the addition of another position at this level. In addition, there is no existing office space to house this position.

**13** REQUEST FOR  
NEW POSITION

AGENCY ALASKA PUBLIC UTILITIES COMMISSION

PROGRAM CONSUMER PROTECTION

BRU ALASKA PUBLIC UTILITIES COMMISSION

COMPONENT \_\_\_\_\_

**FY 85**

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Revised Date \_\_\_\_\_

1.	POSITION TITLE ADMINISTRATIVE SUPPORT TECHNICIAN II			RANGE/STEP 8a	BARC. UNIT G	FORM 12 PAGE/LINE	COV.	APPRDV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER NEW	URU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 7	LEG.	
3.	CONTINUATION LEVEL			ADDITION	JUSTIFICATION				
4.	TYPE OF EXPENDITURE			AMOUNT					
	1			2		3			
	PERSONAL SERVICES								
5.	Salary	18636							
6.	Benefits	3043							
7.	Supplemental Benefits	1142							
8.	Fixed Benefits	2728							
9.	TOTAL PERSONAL SERVICES	01	25549						
10.	Travel	02	0						
11.	Contractual	03	0						
12.	Commodities	04	400						
13.	Equipment	05	1200						
14.	Other Office Space 83 sq.ft (SP6) x 12mo			1992					
15.	TOTAL COST	@\$2.00	29141						
	RECEIPT CODE	FUNDING SOURCE							
16.		Federal Receipts 1002							
17.		G.F. Match 1003							
18.		General Funds 1004		29141					
19.		I-A Receipts 1005							
20.		Program Receipts 1078							
21.		Other							
FOR BSM USE ONLY									
4A KEY NUMBER _____									

The administrative support level is already at over-capacity level and the operating budget for FY 1985 has requested the addition of administrative support personnel to provide adequate coverage for existing regulatory activity. The addition of any new regulatory activity necessitates the need for administrative support for that new activity.

Because of the shortage of usable office space, any new positions require additional office space.

**13** REQUEST FOR  
NEW POSITION

AGENCY ALASKA PUBLIC UTILITIES COMMISSION

PROGRAM CONSUMER PROTECTION

BRII ALASKA PUBLIC UTILITIES COMMISSION

COMPONENT \_\_\_\_\_

Page 5 of 5

Revised Date \_\_\_\_\_

**FY 85**

Project Description and Justification Continued:

Corporation PDP 11/24 minicomputer in FY85 with one having far greater capacity and to expand the number of terminals. This will give most employees, including Commissioners, ready access to numerous data bases giving the status of utility operations and those of the agency itself, to specialized computational facilities for utility regulation, and to electronic drafting of documents. In addition, a large capacity computer is essential for the proper auditing of utilities, most of which maintain their financial and operations records in extensive computer files.

The plan also includes addition of graphics capabilities to the basic system in FY86. This should aid in the presentation of complex utility data to the public. Also in FY86, the Commission plans to begin computer integration of a proposed micrographics system. Filming and computer indexing of its documents onto microfiche will greatly reduce the effort needed to maintain over one million documents in order and ready for reference. In later years funds are requested for new or updated software, for a high volume automatic microfiche-to-paper printer and for automatic microfiche storage and retrieval equipment which will integrate hard copy information with the APUC central data base.

AGENCY Alaska Public Utilities Commission

CATEGORY Public Protection

PROGRAM Consumer Protection  
Information Processing

TITLE System

CP-1  
ADDITIONAL  
EXPLANATION  
FORM  
41

Page 2 of 2  
Revised Date

FY85

000026

TITLE		Alaska Public Utilities Commission Information Processing System						PRIORITY	1	OF	2
OPERATING	TOTAL PREVIOUS APPROPRIATIONS	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89				
100 PERSONAL SERVICES											
200 - 800 LINE ITEMS			33.0	56.1	50.0	50.0	50.0				
<b>TOTAL</b>			33.0	56.1	50.0	50.0	50.0				
1002 FEDERAL RECEIPTS											
1004 GENERAL FUNDS			*33.0	*56.1	*50.0	*50.0	*50.0				
OTHER FUNDS											
FULL-TIME POSITIONS											
CAPITAL	TOTAL										
1002 FEDERAL RECEIPTS											
1004 GENERAL FUNDS			345.4	154.8	23.4	91.0	80.0				
OTHER FUNDS											
REVENUE											

EXPLAIN PREVIOUS APPROPRIATIONS (GIVE SECTION, CHAPTER, SLA) AND ASSUMPTIONS FOR COST, FUNDING SOURCE, POSITION AND REVENUE ESTIMATES:

Operating funds in FY85 through FY89 include an estimate for hardware and software maintenance agreements along with a projection for professional data processing consulting services necessary to allow program conversions, maintenance and new program development. FY85's estimate is scaled down to reflect the initial acquisition and installation timeframe during which these costs will not be incurred. Estimates for FY87 and beyond are reduced to reflect completion of program conversions and a stabilization of expenses related to system maintenance and ongoing new program development.

\*O & M expenses projected through FY89 very closely approximate current funding requirements for data processing support costs and do not represent a net increase in general fund obligation.

AGENCY Alaska Public Utilities Commission

CATEGORY Public Protection

PROGRAM Consumer Protection  
Information Processing

PROJECT TITLE System

**CP-2 CAPITAL PROJECT COSTS**  
FY 85

Page 1 of 2  
Revised Date  
11/4/83

**RECEIVED**  
FY85  
NOV 29 1983

000027 BUDGET REVIEW

Appropriation and Assumptions for Cost, Funding Source, Position and Revenue Estimates Continued:

Capital expenditures in FY85 provide for a substantial portion of new hardware and software acquisition and installation. FY86 expenditures include further development of APUC order indexing capabilities and implementation of the integrated micrographics system. These items along with estimates of capital expenditures in FY87 and beyond are explained more completely in the attached APUC 1983 computer plan.

AGENCY Alaska Public Utilities Commission

CATEGORY Public Protection

PROGRAM Consumer Protection  
Information Processing

TITLE System

CP-2	ADDITIONAL EXPLANATION FORM
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41

Page 2	of 2
Revised Date	

FY85

00002E

## STATE OF ALASKA

ALASKA PUBLIC UTILITIES COMMISSION  
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

BILL SHEFFIELD, GOVERNOR

420 "L" STREET  
SUITE 100  
ANCHORAGE, ALASKA 99501  
(907) 276-6222

January 24, 1984

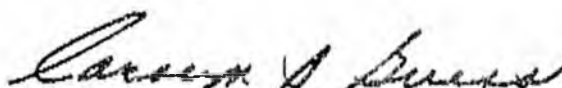
Representative John Cowdery, Chairman  
Labor and Commerce Committee  
State House of Representatives  
Juneau, Alaska 99811

Attention: Ken Johnson

Dear Representative Cowdery:

For the reasons stated in the Commission's memorandum of March 15, 1983, regarding HB 220 and the attached analysis of SSHB 220 by Mark Figura, the Alaska Public Utilities Commission opposes the enactment of SSHB 220 because it is redundant, confiscatory, ambiguous, inconsistent, will require an expenditure of dollars that is unnecessary and legislation that is likely to create a multitude of litigation opportunities. The Commission concludes that based upon its initial and subsequent analysis, the proposed modifications to AS 42.05.381 contemplated in SSHB 220 are not in the public interest.

Sincerely,



Carolyn S. Guess  
Chairman

Hearing: January 26, 1984  
8:15 a.m.

Enclosure

Carolyn S. Guess, Chairman  
Alaska Public Utilities Commission

January 20, 1984

276-3550

Norman C. Gorsuch  
Attorney General

SSHB 220

By:

Mark L. Figura  
Assistant Attorney General  
Commercial Section-Anchorage

You asked me to comment upon sections 2 - 5 of the sponsor substitute for House Bill No. 220 introduced January 10, 1984, and referred to the Labor & Commerce and Finance committees. Section 1 of the bill is similar to last years version, upon which the Commission has already commented.

Section 2 of the bill is ambiguous, and it is difficult to determine the drafter's intent. This will of course pose serious interpretation problems should the bill be passed, and will no doubt lead to extensive litigation concerning the meaning of the legislation. My guess is that the drafter intended the following meaning for his proposed AS 42.05.381(e). The Commission is to determine the equity of the utility in the usual way, but reduce the equity figure if the sum of the utility's paid-in capital and retained earnings less the values of the first numbered paragraphs of proposed section 381(e), is less than the utility equity.

Paragraph 1 includes the purchase price of a utility which has changed ownership in the past. (However, paragraph 1 could well mean only the cash used for such a purpose, or what is commonly known as an "acquisition adjustment," the amount of the purchase price in excess of the seller's net book.) Paragraph 2 includes loans made by the utility to affiliated interests. Paragraph 3 includes equity held in (or perhaps the purchase price of) an unregulated company. Paragraph 4 includes deposits in financial institutions located outside the state of Alaska, and paragraph 5 includes assets used to secure loans to affiliated interests.

The obvious legal problem with the entire proposed section 381(e) is that it would result in confiscatory rates whenever it would have any effect. Rates are generally established by the Commission at the minimal level which will enable the utility to attract capital and continue to provide adequate service. To the extent that those rates would be decreased by proposed section 381(e), the decrease would be confiscatory.

Ms. Carolyn S. Guess, Chairman  
Alaska Public Utilities Commission  
In re: SSHB 220

January 20, 1984  
Page 2

There are also a number of lesser problems with the proposed section. Proposed section 381(e)(1) is apparently aimed at the amounts that a utility may earn on plant purchased from another utility. AS 42.05.441(b) already deals with this problem, in a much more satisfactory way. Proposed section 381(e)(3) penalizes a utility for investing money in an unregulated company. The result of enacting such a provision would be to encourage companies to inflate the plant (and therefore the rate base) of the regulated utility.

Section 2 of the bill would also create a new section 381(f). I interpret proposed section 381(f) as requiring the Commission to decrease the revenue requirement of certain utilities by 15% of their gross in-state nonutility revenues. To the extent that any utility allowed proposed section 381(f) to apply, the application of this section would plainly be confiscatory. In addition, the passage of proposed section 381(f) would provide a strong disincentive to certain utilities and their affiliates to invest within the state of Alaska. Given the option of starting a business (such as a telephone equipment business) in Alaska or some other state, very few companies would choose Alaska if they be subject to a 15% tax on gross revenues on any Alaskan sales.

Section 3 of the bill would add a new section AS 42.05.655 providing that the on-site inspection jurisdiction of the Commission is limited to Alaska. The enactment of proposed section 655 would be inconsistent with AS 42.05.491, which specifically states that under certain circumstances utilities may keep records outside the state, if they agree to pay the actual expenses incurred by Commission personnel in making the out-of-state examination. Proposed section 655 would also allow utilities to avoid Commission oversight of affiliated interest transactions, merely by carrying on those transactions outside the boundaries of Alaska.

Section 4 of the bill proposes three changes in the definitions applicable in AS 42.05. The bill would delete both cable television service and waste disposal service from the services subject to public utility regulation. In addition, the bill proposes to delete the language added by ch. 36 SLA 1971 to AS 42.05.720(4)(e). The 1971 legislation limited the jurisdiction of the Commission over small petroleum fuel dealers. The purpose of the 1971 legislation was set out in the act as follows:

It is the finding of the legislature that it is necessary to avoid unnecessary regulatory procedures over petroleum dealers delivering to

Ms. Carolyn S. Guess, Chairman  
Alaska Public Utilities Commission  
In re: SSHB 220

January 20, 1984  
Page 3

trailer courts and apartment buildings having local pipe distribution systems for heating fuel, and whose owners or residents have a choice of suppliers.

Apparently the intent of the bill is to reestablish Commission jurisdiction over small petroleum dealers serving trailer courts and apartment buildings. Absent complaints from these consumers, the legislation appears unnecessary.

Section 5 of the bill would repeal AS 42.05.711(i), consistent with the elimination of waste disposal from the definition of public utilities. Since the bill also eliminates cable television service, AS 42.05.711(k) should also be repealed.

MLF:cai

4

**Alaska Telephone Association**

201 E. 58th Avenue / Suite 320  
Anchorage, Alaska 99502  
(907) 563-4000

J. Clifton Eller  
President

Gordon Parker  
Executive Director

January 25, 1984

Hon. John Cowdery, Chairman  
House Committee on Labor & Commerce  
Pouch V  
Juneau, Alaska 99811

ATTN: Ken Johnson

Dear Mr. Cowdery:

At the request of your staff and some members of your committee, I am writing in regards to HB220, "An Act Relating to Public Utilities." ATA opposes this legislation for the reasons outlined in the item by item analysis which follows.

(AS 42.05.381) Section 1. (a) (3) & (4): Current statutes place severe restrictions on advertising and public relations by regulated utilities. The language here is redundant.

(5): If the intent here is to reduce costs and the ultimate effect on the ratepayer, the actual result could be the opposite. At least four companies providing service in Alaska rely heavily on support, management and administrative services through parent companies located Outside. The net effect is that costs are lower due to avoidance of service duplication and lower costs Outside.

Additionally, a number of companies utilize consultants Outside. While we have some very qualified consultants in state, the language here would appear to preclude the companies from calling on the talents of some of the nation's leading talents.

(6) & (7): The apparent purpose of this language is already accomplished in AS42.05.511(c). The statute requires that a company purchasing products or services from an affiliate or subsidiary demonstrate to the APUC that the product or service can't be obtained elsewhere at a lower cost and that the purchase is based on the cost of the item to the affiliate or subsidiary. Current statutes do allow inclusion of a rate of return for the selling entity, a necessity if that entity is to remain in business.

Section 2. (e): The language here appears to exclude debt from the rate of return calculation. Rate of return has always been calculated on the total investment. A company must be allowed to recover interest costs through rate of return in order to finance construction.

(1): This language apparently refers to a double leverage situation in which a stockholder borrows money from the utility to buy more stock. No regulatory body would allow such an arrangement to be included in ratemaking.

Hon. John Cowdery  
1/25/84  
page 2

(2): This language would appear to penalize a company for establishing affiliates. The federal government is now urging companies to form affiliates to provide new technology (i.e., cable television) and acquiring affiliates for some traditional services (i.e., provision of terminal equipment). If this section is enacted, it simply means that an entity which may be the best provider of a service can't provide the service.

(3): This appears to duplicate (2) though specifying unregulated affiliates or subsidiaries. Again, for some services (i.e., terminal equipment) companies are now required by the FCC to establish unregulated subsidiaries, or at the least maintain separate accounts to guarantee no cross subsidy. An investment by a regulated company in a non-regulated subsidiary can not now be included in ratemaking. This is specified by the FCC and in AS42.05.481.

(4): There are clear constitutional questions involved in this requirement favoring Alaska banks. A company has the duty to its stockholders to place its funds in the financial institution offering the best return and treatment.

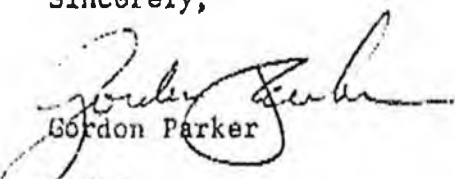
(5): It is normal business practice for a parent company to pledge its full faith and credit to guarantee loans to a subsidiary. In the case of a regulated company which must pay a loan on which a subsidiary has defaulted, such loss would not be allowed for ratemaking purposes. AS42.05.441 states that, in the case of a parent company operating more than one utility or unregulated subsidiary, a separation of property must be made among the different entities for ratemaking purposes.

(f): Both federal and state law (AS42.05.481) is clear that cross subsidy (i.e., subsidizing a non-regulated subsidiary through regulated rates) is not allowed. This language appears to require a reverse subsidy flowing from an unregulated subsidiary to a regulated parent. We believe there is a constitutional question to this requirement.

The second part of paragraph (c) does not take into account that a subsidiary may be losing money. We suggest that if it is fair to consider the revenues and profits of an unregulated subsidiary for ratemaking purposes, then it should also be fair to consider the costs and losses of the unregulated subsidiary.

I hope this information is helpful to the Committee. I am available to the Committee for questions.

Sincerely,

  
Gordon Parker

GP/jv

standards for a utility. (Eff. 10/15/82, Reg. 84)

Authority: AS 42.05.141(a)(3)

AS 42.05.151(a)

AS 42.05.711(d)

**3 AAC 50.200. INDIVIDUAL ELECTRIC METERS.** (a) Except as provided in (b) of this section, an electric utility shall install an individual meter to measure the energy consumption attributable to each residential and commercial unit in a multiple-occupancy building and each mobile home unit in a mobile home park if construction of the building or mobile home park was begun after December 31, 1982.

(b) Individual meters are not required

(1) for transient multiple-occupancy buildings and transient mobile home parks, including, but not limited to, hotels, motels, dormitories, rooming houses, hospitals, nursing homes, and mobile home parks for travel trailers;

(2) for commercial unit space which is subject to alteration with changes in tenants as evidenced by temporary construction or non-load-bearing walls or floors separating the commercial unit spaces;

(3) where alternative renewable energy resources are used in connection with central heating, ventilating, and air conditioning systems; and

(4) in common building areas such as hallways, elevators, reception areas, water pumping facilities, and electric hookups for motor vehicles.

(c) For the purpose of this section, construction begins when the footings are poured. (Eff. 10/15/82, Reg. 84)

Authority: AS 42.05.141(a)(3)

AS 42.05.151(a)

AS 42.05.291(c)

**3 AAC 50.300. INFORMATION TO ELECTRIC CONSUMERS.** (a) An electric utility shall provide to each new electric consumer, coincident with the application for service, a clear and concise explanation of any rate schedule in its currently effective tariff which applies to that consumer.

(b) Not later than 30 days after the filing of a tariff advice letter in which a change in a rate schedule is requested, an electric utility shall transmit to its affected consumers a clear and concise explanation of the proposed change. This provision does not apply to rate adjustments resulting from an automatic fuel-cost rate adjustment clause.

(c) At least once each year, an electric utility shall transmit to each of its electric consumers an informative summary of any rate schedule in its currently effective tariff which applies to those consumers.

(d) On request of an electric consumer, an electric utility shall transmit a clear and concise statement of the consumer's actual energy consumption and, if billed separately, power consumption for any billing period during the previous 12 months unless the information is not reasonably ascertainable by the utility. (Eff. 10/15/82, Reg. 84)

Authority: AS 42.05.141(a)(3)

AS 42.05.151(a)

AS 42.05.411(a)

**3 AAC 50.400. Reserved**

**3 AAC 50.500. ADVERTISING.** (a) In addition to the restrictions imposed under AS 42.05.381(a), neither an electric utility nor a gas utility may recover through rates any direct or indirect expenditure by the utility for promotional, political, or goodwill advertising.

(b) The commission will determine on a case-by-case basis whether the forms of advertising listed in (c)(3) of this section, as well as advertising not readily categorized as promotional, political, or goodwill, and any other form of advertising not covered by this section will be included in utility operating expenses for rate-making purposes.

(c) In this section

(1) "advertising" means the commercial use by a utility of any media, including newspaper, printed matter, radio, and television, in order to transmit a message to a substantial number of members of the public or to the utility's customers;

(2) "goodwill advertising" means advertising directed toward improving or enhancing the public image of a utility or its employees;

(3) "goodwill advertising," "political advertising," and "promotional advertising" do not include

(A) advertising which informs an electric or gas consumer about methods which conserve electric energy or gas or which reduce peak demand for electric energy or gas;

(B) advertising required by law or regulation, including advertising required under Part I, Title II of the National Energy Conservation Policy Act (42 USC § 8201 et seq.);

(C) advertising regarding service interruptions, safety measures, or emergency conditions;

(D) advertising concerning employment opportunities with a utility;

(E) advertising which promotes the use of energy-efficient appliances, equipment, or services;

(F) an explanation or justification of existing or proposed rate schedules or a notice of hearings concerning these rate schedules; and

(G) communications with members of a utility cooperative about the activities or internal affairs of the cooperative or which encourage or promote the participation of the members in the process of governing the cooperative;

(4) "political advertising" means advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to a controversial issue of public importance; and

(5) "promotional advertising" means advertising for the purpose of encouraging a person to select or use the service or additional service of a utility, or the selection or installation of an appliance or equipment designed to use the utility's service, except as provided in (3)(E) of this subsection. (Eff. 10/15/82, Reg. 84)

Authority: AS 42.05.141(a)(3)  
AS 42.05.151(a)  
AS 42.05.381

3 AAC 50.600. DEFINITIONS. Unless the context indicates otherwise, in 3 AAC 50.100 - 3 AAC 50.600

(1) "building" means a single erected structure, roofed and enclosed within exterior walls, built for permanent use, framed of component structural parts and unified in its entirety both physically and in operation for residential or commercial occupancy;

(2) "commercial unit" means that portion of a building or premises which is normally used for commercial purposes;

(3) "electric consumer" means a person or a public or private entity to which electric energy is sold, other than for purposes of resale, by a regulated public utility;

(4) "gas consumer" means a person or a public or private entity to which natural gas is sold, other than for purposes of resale by a public utility;

(5) "mobile home park" means a parcel of land which is used for the accommodation of occupied mobile homes;

(6) "multiple-occupancy building" means a building which is designed to house more than one residential or commercial unit;

(7) "rate" means

(A) a price, rate, charge, or classification made, demanded, observed, or received with respect to the sale of utility services to a utility consumer;

(B) a rule, regulation, condition, or practice respecting a rate, charge, or classification; and

(C) a contract pertaining to the sale of utility services to a utility consumer;

(8) "rate schedule" means the designation of the rates which an electric utility charges for electric energy; and

(9) "residential unit" means one or more rooms for use by one or more persons as a housekeeping unit which provides living,

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 23, 1984

SUBJECT: Sectional Analysis of SS HB 220

TO: House Labor and Commerce Committee

FROM: *LH* Linn H. Asper  
Legislative Counsel

You have asked for a sectional analysis of SSHB 220, relating to public utilities, including a comparison of the original bill with the sponsor substitute.

In the sponsor substitute:

\* Section 1 adds to the list of public utility costs that may not be included as elements of utility rate-setting. The current list of excluded costs is increased to take in all public relations, lobbying, advertising, certain fees paid, and certain products and services purchased from the owner or affiliate of a public utility.

\* Section 2 adds two new subsections to AS 42.05.381, regarding utility rate-setting. The new subsection (e) excludes certain cost items related to return on capital from consideration in rate-setting for public utilities that are operated for profit. The new subsection (f) considers revenues and profits from businesses operated in the state that are owned by a utility or its affiliates, in establishing rates for services provided by the utilities.

\* Section 3 limits the on-site inspection jurisdiction of the APUC to areas within the state.

\* Section 4 amends the definition of "public utility" or "utility" to exclude cable television operators and waste material collection and disposal businesses from the jurisdiction of the APUC, and to include all refiners and distributors of petroleum in the state.

\* Section 5 repeals a reference to waste collection and disposal businesses, because such businesses are removed from APCU jurisdiction by \*Sec. 4.

House Labor and Commerce Committee  
Page 2  
January 23, 1984

\* Section 6 sets a July 1, 1984 effective date.

A comparison to SSHB 220 to HB 220 is as follow:

In section 1 of SSHB 220 several changes have been made to the proposed amendment to AS 42.05.381(a). The subsection is the same in both versions through paragraph (4). Paragraph (5) of the sponsor substitute is less restrictive on fees incurred by utilities than is the original bill, and provides a more complex formula for determining those fees that are and are not allowable for purposes of rate setting by the APUC. Paragraph (6) of the substitute makes a technical change to the original bill. Paragraph (7) of the substitute is less restrictive for purposes of rate-setting, on allowable costs of services incurred by a utility.

Sections 2-6 of the sponsor substitute contain new material not found in the original bill.

LHA:ojb  
J2/058

# MEMORANDUM

State of Alaska

TO: Catherine Wallen  
Legislative Liaison  
Department of Commerce

DATE: March 15, 1983

FILE NO:

TELEPHONE NO:

FROM: Carolyn S. Guess, Chairman *CSG*  
Alaska Public Utilities Commission

SUBJECT: House Bill 220  
Senate Bill 140

Because there apparently are not Bill Analysis Forms available to us in Anchorage I am sending our comments on the proposed legislation in memo form. You may transfer our comments to the appropriate form and sign my name with your initials.

House Bill 220. There is no fiscal impact to the APUC.

Comments: House Bill 220 is redundant in part, unnecessary and could result in higher utility rates.

Section 1(a)(1)-(4) is addressed in 42.05.381(a). The Commission believes the exceptions found in 42.05.381(a)(1)-(4) are reasonable and is not aware of any reason to eliminate them.

Section 1(a)(5), a prohibition of consulting or management fees paid to the owner of a utility could affect a number of small utilities, i.e., Tanana Power Co., and Mukluk Telephone Co. where the owners are the salaried management of the utility.

In regard to Section 1(a)(6), AS 42.05.511(c) provides:

In a rate proceeding the utility involved has the burden of proving that any written or unwritten contract or arrangement it may have with any of its affiliated interests for the furnishing of any services or for the purchase, sale, lease or exchange of any property is necessary and consistent with the public interest and that the payment made therefor, or consideration given, is reasonably based, in part, upon the submission of satisfactory proof as to the cost of the affiliated interest of furnishing the service or property and, in part, upon the estimated cost the utility would have incurred if it furnished the service or property with its own personnel and capital.  
(\$ 6 ch 113 SLA 1970)

Therefore, the Commission believes this section of the proposed legislation is redundant and unnecessary.

In regard to Section 1(a)(7), the Commission does not understand what purpose this proposed section would serve and further believes it would create problems and possibly higher rates for utilities such as the Anchorage Municipal electric, telephone, water and sewer utilities which receives services from the Municipality of Anchorage i.e., data processing, legal services, etc.; privately owned utilities such as College Utilities (sewer and water) in Fairbanks. Juneau Douglas Telephone Company and Glacier State Telephone Company serving Kenai, Homer, Kodiak and North Pole could also be adversely affected.

In summary, the Commission does not believe that the public interest would be better served by the enactment of this legislation.

Senate Bill 140.

It would appear if the role of the APUC is limited to an oversight review of the regulations to be promulgated, there is no fiscal impact on the APUC.

Comments: The Commission is supportive of legislation that would result in lower utility rates for Alaskan utility consumers. The Commission observes that this legislation would only benefit consumers of electric utility cooperatives and regional electrical authorities. There are other kinds of utilities that have as much, if not more, need for the availability of low interest loans, specifically telephone, sewer, and water utilities. The Commission would recommend that consideration be given to broadening the kinds of utilities eligible to borrow long or short term monies from the State.

csg/dkd

# STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

## ALASKA PUBLIC UTILITIES COMMISSION DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

420 "L" STREET  
SUITE 100  
ANCHORAGE, ALASKA 99501  
(907) 276-6222

April 6, 1983

Representative Walt Furnace, Chairman  
House Labor and Commerce  
Pouch V  
Juneau, Alaska 99811

Dear Representative Furnace:

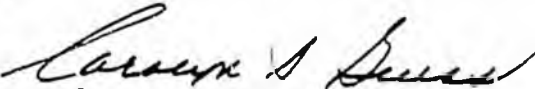
In response to your letter of March 28, 1983, concerning House Bill 220 I am enclosing relevant portions of our existing statute, AS 42.05.381(a) and AS 42.05.511(c) and a portion of our regulations 3 AAC 50.500 which is applicable to electric and gas utilities. The latter is the result of federal legislation which mandated specific consideration of the subject of advertising expenses of electric and gas utilities only.

I found it difficult to articulate in writing the deliberation process that the Commission undertakes when the costs enumerated in items 1 through 7, AS 42.05.381(a), are at issue before the Commission. Therefore you will also find portions of Commission orders in eight proceedings over the past six years where the subjects have been discussed. I have underlined the references to the sections of the statute and regs which are enclosed and believe that the Commission's review and assessment speak for themselves and support our initial position that the proposed legislation is redundant and unnecessary in part, and could result in higher rates to consumers through the foreclosure of the evaluation of the reasonableness of a specific component of a rate.

If there is additional information the Commission can provide, please do not hesitate to contact me at 263-2132.

Sincerely,

ALASKA PUBLIC UTILITIES COMMISSION

  
Carolyn S. Guess  
Chairman

dkd

Enclosures

cc: C. Wallen

○ Alascom request for permanent rate increase

1 (3) amortization of rate case expense over a  
2 number of years will eliminate or prevent  
3 over recovery of a pro forma cost. (T-9,  
4 p. 10)

5 DOD concurred with the Staff's recommendation, while ALSC  
6 and AkPIRG argued that the amortization period should be at  
7 least five years, or, alternatively, one-half of total rate  
8 case expense should be amortized over five years and one-half  
9 over ten years.

10 The Commission has previously articulated its  
11 reservations with respect to expensing total rate case  
12 expense on a current basis in U-76-6(4) and endorses the  
13 applicability of that reasoning and decision to the instant  
14 proceeding. Thus, the Commission believes that the three-  
15 year amortization period proposed by Staff is appropriate  
16 prior to consideration of adjusting the period to mitigate  
17 the effects of rate case expenses which are excessive or  
18 which produce administrative benefits beyond the scope of  
19 the rate case. The Commission will increase the allowable  
20 amortization period from three to five years to incorporate  
21 these factors.

22 Advertising Expense

23 In pro forma Adjustment No. 35 Staff recommended  
24 that the adjusted balance of Account 642, Advertising Expense,  
25 be eliminated from cost of service and reclassified as a  
26 stockholder expense. According to Staff, Alascom failed to  
27 justify the reasonableness and propriety of its advertising  
28 expenses under AS 42.05.381(a) which provides:

29 (a) All rates demanded or received by a  
30 public utility, or by any two or more public  
31 utilities jointly, for a service furnished or  
32 to be furnished shall be just and reasonable.

1 However, no rate may include an allowance for  
2 costs of political contributions, or public  
3 relations except for reasonable amounts spent  
4 for:

5 (1) energy conservation efforts;

6 (2) public information designed to  
7 promote more efficient use of the  
8 utility's facilities or services or  
9 to protect the physical plant of the  
10 utility;

11 (3) informing shareholders and  
12 members of a cooperative of meetings  
13 of the utility and encouraging  
14 attendance; or

15 (4) emergency situations to the  
16 extent and under the circumstances  
17 authorized by the commission for  
18 good cause shown.

19 The utility acknowledged under cross-examination  
20 that none of its test year advertising expense had been  
21 dedicated to the purposes prescribed in AS 42.05.381(a)(1), (3),  
22 and (4). Alascom initially estimated that approximately  
23 \$100,000 of its advertising budget had been dedicated to  
24 promotion of efficient use and protection of facilities but  
25 acknowledged that a complete review of advertising copy  
26 would be necessary to verify this figure. (II Tr. 73-76)  
27 Witness Holmstrom subsequently testified that \$209,000 of  
28 the company's expense would be permissible under AS 42.05-  
29 .381(a). (II Tr. 493)

30 Alascom opposed Staff's treatment of advertising  
31 expense on several bases. First, the utility argued that  
32 the statutory provision cited by Staff in support of its  
33 position did not become effective until June 10, 1977.  
34 Retroactive application would violate the utility's "con-  
35 stitutionally protected right to a fair return on its property,  
36 which includes the right to compensation for its operating

1 expenses which were legitimate and compensable when made."  
2 (Alascom Operating Expenses and Revenues Brief, p. 34) It  
3 was also inappropriate to assume that the company would not  
4 have modified its test year advertising program to conform  
5 to the statute were it in existence at the time, according  
6 to Alascom. Staff countered the utility's argument with the  
7 reminder that the issue before the Commission is establishing  
8 rates for the future and that the utility had already recovered  
9 its 1976 operating expenses. Staff also observed that the  
10 company failed to provide evidence that its 1978 advertising  
11 program had been modified in response to the 1977 amendment  
12 to AS 42.05, as it indicated would have been the case were  
13 the statutory change in effect prior to the test period.  
14 ALSC and AkPIRG added that the modification in AS 42.05.381(a)  
15 was a known and measurable change and must be considered in  
16 setting rates for the future.

17 A second argument presented by Alascom against  
18 Staff's reliance on AS 42.05.381(a) was that the statute did  
19 not apply to advertising but rather was limited to political  
20 contributions and public relations. In addition to relying  
21 on a literal reading of the statute, the company pointed to  
22 the legislative history of this amendment to support its  
23 contention. Specifically, an earlier draft bill had enu-  
24 merated "advertising, political or charitable contributions,  
25 lobbying expenses, or public relations" which were subse-  
26 quently foreshortened in the final version to only political  
27 contributions or public relations. (Alascom Operating  
28 Expenses and Revenues Brief, p. 35) This change reflected  
29 the legislators' intent to permit utilities to recover  
30

1 reasonable amounts expended for advertising, charitable  
2 contributions, and lobbying, according to Alascom. Staff,  
3 ALSC, and AkPIRG argued that advertising was subsumed within  
4 public relations, and, thus, the legislative history cited  
5 by the company could more properly be interpreted as a move  
6 to eliminate unnecessary verbiage. The utility disagreed  
7 with the presumption of these parties that advertising was  
8 normally incorporated within the definition of public rela-  
9 tions.

10 Third, the company noted that \$492,418 of its  
11 \$929,994 test year charges to Account 642 were expenses  
12 associated generally with the public affairs department  
13 rather than specifically with advertising. It would be  
14 improper, therefore, to eliminate this amount from cost of  
15 service on the premise that it was advertising expense.  
16 ALSC and AkPIRG argued that the non-advertising expenses in  
17 Account 642 were related to public relations as defined by  
18 Alascom and, thus, must be excluded from rates under AS  
19 42.05.381(a), since the company had failed to establish  
20 their legitimacy within statutory guidelines.

21 Fourth, the utility stated that other jurisdic-  
22 tions have allowed advertising expense in cost of service  
23 and, presumably, this Commission should follow a similar  
24 course of action. Alascom identified three categories of  
25 advertising: informational, promotional, and institutional.  
26 According to the utility, informational advertising is  
27 considered an allowable operating expense by "most commis-  
28 sions"; promotional advertising by "many commissions"; and  
29 insti tional advertising by "some commissions." (Alascom  
30

1 Operating Expenses and Revenues Brief, pp. 37-38) In any  
2 event, the company maintained that the advertising expenses  
8 it incurred during the test period were reasonable, permis-  
4 sible under the statute, and beneficial to the utility's  
5 ratepayers. Staff maintained that the authorities cited by  
6 Alascom provided less than unqualified support and, in any  
7 event, were of questionable relevance given the existing  
8 statutory guidance on this subject. Intervenors DOD, ALSC,  
9 and AkPIRG argued that institutional advertising should not  
10 be allowed because it provided a disproportionate benefit to  
11 stockholders relative to ratepayers. Staff and intervenors  
12 agreed that the burden resided with Alascom to demonstrate  
13 that advertising expense provided tangible benefits to  
14 ratepayers within the context of AS 42.05.381(a), including  
15 matching advertising copy and allowable expenses. Apparently,  
16 the advertising copy was neither audited by the utility nor  
17 provided to the Staff for analysis as it requested.

18           Setting aside the scope and timing of the applicabil-  
19 ity of AS 42.05.381(a), the Commission notes that a utility  
20 has the burden of proof that expenses for advertising are  
21 reasonable and proper in all respects. Thus, even advertising  
22       t falls within one of the four permissible categories is  
23 not exempted from this standard of review. A survey of  
24 cases in other jurisdictions indicates that advertising  
25 expense has frequently been disallowed when it does not  
26 directly benefit ratepayers such as by reducing operating  
27 costs or by providing more efficient service. (See, for  
28 example, Re Promotional Practices of Electric Utilities, 8  
29 PUR 4th 268 (Florida Public Service Commission, 1975); Re

1 Michigan Bell Telephone Company, 15 PUR 4th 209 (Michigan  
2 Public Service Commission, 1976); Re Southern Union Gas  
3 Company, 12 PUR 4th 219 (New Mexico Public Service Commis-  
4 sion, 1975)) The Commission concurs with this approach to  
5 determining the appropriateness of the amount expensed for  
6 advertising.

7 Advertising expense has long been a subject of  
8 controversy in the regulatory arena, as have contributions,  
9 lobbying, and public relations expenses. It is the Commis-  
10 sion's belief that the Legislature intended to articulate a  
11 policy with respect to all of these areas when it promulgated  
12 the amendment to AS 42.05.381(a) governing political contri-  
13 butions and public relations. However, assuming arguendo  
14 that Alascom's interpretation of legislative history is  
15 correct, the utility failed to provide sufficient proof in  
16 the form of advertising copy or other documentation that  
17 this expense provided direct benefits to the ratepayers and  
18 was appropriately included in cost of service. With respect  
19 to the non-advertising component of Account 642, which  
20 clearly falls within the scope of "public relations" under  
21 the statute, no evidence was provided by Alascom to demon-  
22 strate that test year expenses were properly incorporated  
23 within the four permissible categories or, in the alternative,  
24 that 1978 expenses had been redirected in conformance with  
25 applicable law.

26 For the above reasons, the Commission believes it  
27 has no option but to adopt Staff's pro forma Adjustment  
28 No. 35. In addition, the Commission places Alascom on  
29 notice that it considers advertising expense, as well as  
30

1 non-political contributions and lobbying expenses, to fall  
2 within the purview of public relations in AS 42.05.381(a)  
3 and will evaluate these expenses in that context in parti-  
4 cular in future proceedings.

5 Contributions Expense

6 In its pro forma Adjustment No. 11, Staff reduced  
7 total company commercial expenses by \$54,996 to eliminate  
8 contributions and donations from cost of service. Staff  
9 also recommended that these expenses be booked to Account  
10 31.363, Miscellaneous Income Charges, as prescribed in the  
11 FCC uniform system of accounts, instead of Account 31.642,  
12 Advertising Expense. It was further suggested by Staff  
13 that the utility be required to provide the requisite break-  
14 down of expenses for gifts and donations on Schedule 43 of  
15 FCC Form M.

16 Staff's proposed disallowance was based in part on  
17 the philosophy "that such donations are made without the  
18 ratepayers' knowledge or consent and therefore are properly  
19 chargeable as a stockholder item." (Staff Brief and Argument:  
20 Cost of Service Adjustments, p. 31) Staff also maintained  
21 that insofar as contributions were a form of public relations,  
22 AS 42.05.381(a) precluded their consideration in cost of  
23 service.

24 The company opposed Staff's pro forma adjustment  
25 for several reasons. First, Alascom had a responsibility as  
26 a corporate citizen to participate in community causes  
27 through some reasonable level of contributions. Second,  
28 donations benefited the ratepayers by enhancing the overall  
29 image of the company in the community. Third, the amounts  
30

1 and variety of beneficiaries of test year contributions were  
2 reasonable. Lastly, contributions have been recognized as a  
3 legitimate operating expense in a number of jurisdictions.

4 The intervenors generally agreed with Staff's  
5 position. DOD noted that:

6 The Federal Executive Agencies, as a ratepayer,  
7 object to the diversion of federal tax dollars  
8 intended to pay for service to serve to  
9 enhance RCAA's corporate image. Such an  
10 expenditure is clearly of greatest benefit to  
11 the shareholder and should be borne by the  
12 shareholder. (Brief of the Federal Executive  
13 Agencies on the Operating Expenses and Revenue  
14 Issues, p. 10)

15 After citing Alascom's threats to curtail contribu-  
16 tions if disallowed by the Commission, ALSC and AkPIRG  
17 observed that:

18 For all RCAA's protestations about its  
19 responsibilities as a corporate citizen, it  
20 appears to take these responsibilities seriously  
21 and genuinely only when it is the ratepayers'  
22 donation not RCAA's. (ALSC and AkPIRG Rate  
23 Base, Operating Expenses and Revenues Brief,  
24 p. 33)

25 The inclusion of contributions in allowable  
26 operating expenses is a ratemaking issue which has been  
27 exhaustively debated in other jurisdictions with resulting  
28 decisions on both sides of the question. Thus, a determina-  
29 tion turns largely on the ratemaking philosophy of the  
30 Commission. Based on its review of the arguments presented  
31 in this case and its knowledge of relevant commission and  
32 court cases, the Commission concludes as a matter of policy  
that contributions should not be permitted in cost of service.  
The rationale underlying this position is aptly stated in  
the following excerpts from decisions by other commissions:

33 Dues, as donations, and contributions, if included  
34 as an expense for rate-making purposes, become

1 an involuntary levy on ratepayers, who, because  
2 of the monopolistic nature of utility service,  
3 are unable to obtain service from another  
4 source and thereby avoid such a levy. Rate-  
5 payers should be encouraged to contribute  
6 directly to worthy causes and not involun-  
7 tarily through an allowance in utility rates.  
8 (Re Pacific Telephone & Telegraph Company,  
9 53 PUR 3rd 513 at 586 (California Public Utilities  
10 Commission, 1964))

6 \* \* \*

7 The Commission, in its past orders for  
8 applicant including the last electric rate case,  
9 Case No. U-4174, adopted the staff's position  
10 that to allow such contributions and dues would  
11 constitute an involuntary contribution by rate-  
12 payers to groups that they might not support if  
13 given a choice and since applicant's stockholders  
14 have the choice of which groups they wish to  
15 support they should bear the cost of supporting  
16 these groups. (Re Consumers Power Co., 3 PUR 4th  
17 321 at 331 (Michigan Public Service Commission,  
18 1974))

14 \* \* \*

15 We have always rejected the inclusion of these  
16 expenses in the cost of service and this position  
17 was affirmed by the Iowa Supreme Court in Davenport  
18 Water. Company asserts that making charitable con-  
19 tributions in reasonable amounts are ordinary,  
20 necessary, and appropriate costs of rendering  
21 utility services. This argument necessarily  
22 presumes that the building of goodwill in its  
23 service area is necessary for a public utility.

20 While goodwill and a good public image may  
21 be a necessary business expense for nonregulated  
22 business, as we have said before, funds expended  
23 by a regulated utility for the purpose of building  
24 goodwill or public image are not necessary to the  
25 utility nor the public and do not benefit the  
26 ratepayer. This is not to say that the company  
27 may not contribute to charity, only that such  
28 contributions should come from the stockholder's  
29 profit. Accordingly, we will exclude charitable  
30 contributions from company's cost of service.  
31 (Re Iowa Power and Light Company, 6 PUR 4th  
32 446 at 453 (Iowa State Commerce Commission, 1974))

31 Guided by the reasoning and principles articulated  
32 supra, the Commission adopts Staff's pro forma Adjustment  
No. 11 excluding contributions from permissible operating

1 expenses. This conclusion is also consistent with the  
2 spirit, if not the letter, of AS 42.05.381(a). Nonetheless,  
3 the Commission's position would be the same even if a legal  
4 interpretation of the scope of AS 42.05.381(a) contrary to  
5 its own were upheld in the courts.

6 Lobbying Expense

7 In 1976, Alascom paid \$24,045 for the retainer and  
8 expenses of a lobbyist to provide the following services:

9 (1) Keeping RCA Alascom informed of any and  
10 all state/local government actions which have  
11 or will have a bearing upon the business,  
12 reputation, public image or the success of  
13 the RCA Alascom enterprise in Alaska.

14 (2) Or, conversely, keeping state/local  
15 government representatives, legislators,  
16 committees, agencies informed of RCA  
17 Alascom's activities.

18 (3) Advising and consulting with RCA Alascom  
19 on matters arising out of Points 1 and 2.  
20 (T-11, p. 18)

21 Staff recommended that this amount, which had been  
22 booked to Account 31.661, Executive Department, be reclassi-  
23 fied to Account 31.323, Miscellaneous Income Charges, and be  
24 excluded from cost of service. The basis of Staff's pro  
25 forma Adjustment No. 12 was that lobbying was a form of  
26 public relations, and test year lobbying expenditures failed  
27 to qualify for inclusion in rates under AS 42.05.381(a).  
28 Staff also believed that "lobbying expenditures should be  
29 disallowed generally as a matter of policy." (Staff Brief  
30 and Argument: Cost of Service Adjustments, p. 33)

31 The company did not necessarily dispute Staff's  
32 characterization of lobbying as a public relations function  
but opposed Staff's proposed ratemaking treatment of this

1 expense. While acknowledging that lobbying had no immediate  
2 impact on service, Alascom maintained that it was a legitimate  
3 operating expense because it served to protect the ratepayer  
4 from imposition of additional costs by government action,  
5 for example, taxes. The utility also believed that incorpora-  
6 tion of lobbying expense in rates was permitted by AS 42.05-  
7 .381(a).

8 Intervenor DOD, ALSC, and AkPIRG supported  
9 Staff's pro forma adjustment. ALSC and AkPIRG observed:

10 The lobbying expenditures were presumably  
11 made to promote the corporate interests of  
12 RCAA, perhaps to the benefit of the rate-  
13 payer, perhaps at the ratepayer's expense,  
14 but always in the stockholder's interest  
15 [sic]. Without specific relationships in the  
16 record between cost and benefit to the rate-  
17 payer, the lobbying expense cannot be allowed.  
18 The amount here is small but the precedent  
19 dangerous. (ALSC and AkPIRG Rate Base,  
20 Operating Expenses and Revenues Brief, p. 37)

21 Like contributions, this is an issue which has  
22 been debated and variously decided in other jurisdictions  
23 primarily on the basis of ratemaking policy. In consider-  
24 ing this question the Commission finds the following discus-  
25 sion on point:

26 Denying lobbying expenses as advanced by staff is  
27 a matter of first impression for this commission.  
28 We have examined the opinions of several commis-  
29 sions of our sister states and have come to the  
30 conclusion that the bitter [sic] policy is to be  
31 to eliminate these expenses in order to maintain  
32 public confidence. See Re Lincoln Teleph. &  
Teleg. Co. (Kan. 1975) 12 PUR 4th 79, 83. Some  
commissions such as the Maine Public Utilities  
Commission have taken the position that lobbying  
expenses should be disallowed without question.  
Re Central Maine Power Co. (Me 1972). Docket F. C.  
No. 1954, and Re New England Teleph. & Teleg.  
Co. (Me 1974) 5 PUR 4th 387. Other commissions  
lean towards disallowance in the absence of a  
showing by the utility that the expenditures  
benefit its customers as distinguished from its  
investors. Re New England Teleph. & Teleg. Co.

1 (Mass 1975) 11 PUR 4th 297, 305. On balance we  
2 find that a compelling reason for not allowing  
3 lobbying expenses as a charge to operations is  
4 that the customers are not given an opportunity  
5 either to advocate or to decide which legislation  
6 should be supported or worked against. A similar  
7 decision was made by the Illinois Commerce Com-  
8 mission in the case of Illinois Bell Teleph. Co.  
9 v. Illinois Commerce Commission (1973) 55 Ill 2d  
461, 3 PUR 4th 36, 303 NE 2d 364. Our decision does  
not abrogate the right of the applicant to engage  
in lobbying activities, but we believe that the  
proper allocation of its costs should be that to  
the investor rather than to the ratepayer.  
(Re Southwestern Bell Telephone Company, 19 PUR  
4th, 1, 27-28 (Kansas State Corporation Commission,  
1977))

10 For the reasons delineated by the Kansas and other  
11 commissions and absent a clear showing of demonstrable bene-  
12 fits to ratepayers, the Commission finds that lobbying  
13 expense is not a proper component of cost of service. In  
14 addition to the principle involved, it is also reasonable to  
15 conclude that lobbying expense is precluded from consideration  
16 in rates by AS 42.05.381(a).

17 Continuing Property Records Expense

18 Staff has proposed two pro forma adjustments to  
19 costs associated with the company's CPRs, one of which has  
20 apparently been superseded by Staff's final argument on its  
21 third additional issue, reasonableness of CPR development costs.

22 Staff Adjustment No. 10 reduced Account 662,  
23 Accounting Department, by \$72,857:

24 ... to eliminate from the Company's cost of  
25 service an abnormal, non-recurring item which  
26 was charged to expense during the test year.  
27 The expense relates to special services  
28 provided by an outside consultant with respect  
29 to Continuing Property Records (CPR) and the  
30 accounts payable system. Because those services  
should not be expected to be recurring, the  
expense should be eliminated in order to  
prevent an over-recovery. (T-11, p. 18)

Alascom request for permanent rate  
increase

Affiliated Interest Expenses

1  
2 At the time of the filing of TA112-98, Alascom,  
3 formerly RCA Alaska Communications, Inc. was a wholly-owned  
4 subsidiary of RCA Corporation (RCA). The utility was sub-  
5 sequently purchased by PACOM, Inc., a wholly-owned subsidiary  
6 of Pacific Power & Light company. (U-79-11(4)) One of the  
7 conditions attached to the Commission's approval of the  
8 acquisition of Alascom by PACOM, Inc. was that the utility  
9 would continue to be treated as if it were a subsidiary of  
10 RCA for the purposes of analyzing and determining Docket  
11 U-78-4. (U-78-4(13))

12 During the test period there were several financial  
13 transactions between Alascom and its then corporate family.  
14 AS 42.05.511(c) governs the Commission's assessment of the  
15 reasonableness and propriety of such expenditures. It  
16 provides:

17 In a rate proceeding, the utility involved has the  
18 burden of proving that any written or unwritten  
19 contract or arrangement it may have with any of  
20 its affiliated interests for the furnishing of any  
21 services or for the purchase, sale, lease or  
22 exchange of any property is necessary and con-  
23 sistent with the public interest and that the  
24 payment made therefor, or consideration given, is  
25 reasonably based, in part, upon the submission of  
26 satisfactory proof as to the cost to the affiliated  
27 interest of furnishing the service or property  
28 and, in part, upon the estimated cost the utility  
29 would have incurred if it furnished the service or  
30 property with its own personnel and capital.

31 The affiliated interest transactions which follow will be  
32 evaluated under this statutory standard.

(a) General Services Agreement

33 Alascom entered a General Services Agreement with  
34 RCA, effective September 1, 1979, for the acquisition of  
35 expertise and services in a number of areas, including the

1 to be offered or provided. For the years 1976 and  
2 1977, special surveys and analyses were conducted  
3 after year end to determine that the amount of  
4 assessments was not disproportionate to the level  
5 of corporate effort expended on Alascom. Commenc-  
6 ing in 1978 and continuing thereafter, a detailed  
7 survey of corporate staff departments will be made  
8 at the end of each year and the assessment to  
9 Alascom will be adjusted in the final accounting  
10 closing in January to the exact cost of corporate  
11 staff effort determined to have been expended on  
12 Alascom's behalf.

13 \* \* \*

14 To the greatest extent possible, these amounts are  
15 determined from official time or expense records  
16 maintained by the Corporation. For example, in  
17 the case of research and development projects by  
18 the corporate research laboratories on behalf of  
19 RCA Alascom, individual project logs are main-  
20 tained, much like a "job order" system, recording  
21 labor, material and other costs associated with  
22 each project. In certain departments such as  
23 auditing and law, detailed time records are  
24 maintained by each professional. In other areas,  
25 employee expense reports or invoices provide a  
26 source of information as to time and efforts spent  
27 on Alascom matters. However, there are also  
28 departments within corporate staff where detailed  
29 records are not maintained, or where the division  
30 or level of effort cannot be easily determined but  
31 which nonetheless represent costs properly borne  
32 by Alascom. In these instances, an apportionment  
of costs is made among all of RCA's subsidiaries  
and divisions benefiting from that staff effort.  
(T-5, pp. 3-5)

During the 1976 test year \$1,314,961 was booked to  
Account 674, General Services and Licenses, for the amount  
paid RCA. This amount has also been used by Alascom for the  
purpose of computing its revenue requirement. Witness  
Butler presented the results of a study initiated by RCA in  
February, 1977, which indicated that services in the amount  
of \$1,177,600 were provided to Alascom in 1976. In addition,  
RCA was advised by RCA Globcom that the latter had provided  
services in the amount of \$351,200 to Alascom in 1976, for a  
total of \$1,528,800 worth of services under the respective  
service agreements. The results of RCA's analyses were

1 following: finance and accounting; auditing; taxes; manage-  
2 ment information systems and services; legal matters; industrial  
3 relations; insurance, pensions, and benefits; marketing;  
4 corporate administration; and research and technical services.  
5 (T-6, Schedule MEH-13) This contract superseded a similar  
6 agreement with RCA Global Communications, Inc. (RCA Globcom),  
7 governing the period prior to Alascom's divestiture from  
8 that RCA subsidiary. (T-6 Schedule MEH-11)

9 Under the terms of its contract with RCA Globcom  
10 Alascom paid charges equivalent to 1 1/2 percent of its  
11 annual gross operating revenues for the services provided by  
12 RCA Globcom. The new agreement with RCA fixed the management  
13 fee for 1976 at \$1,315,000 of which \$1,051,000 was paid to  
14 RCA Globcom for services rendered from January 1 through  
15 August 31, 1976, and \$264,000 to RCA for services provided  
16 from September 1 through December 31, 1976. Beginning  
17 January 1, 1977, the utility would pay RCA a fair and reason-  
18 able amount based on estimates of the services to be performed  
19 subject to annual review of the charges and inspection of  
20 RCA documentation of costs and cost allocations. Alascom and  
21 RCA had agreed to a 1977 estimate of \$1,700,000.

22 The mechanics of past and prospective determinations  
23 of the management fee were described in additional detail in  
24 the prefiled testimony of Alascom witness Robert C. Butler,  
25 Vice President and Controller of RCA, as follows:

26 The amount RCA Alascom is assessed annually represents  
27 the best estimate of the costs incurred by RCA  
28 Corporation in providing services to RCA Alascom.  
29 As I indicated earlier, this estimate is developed  
30 in the middle of each year for inclusion in Alascom's  
Business Plan for the succeeding year. The estimate  
is based on past experience and factored for  
inflation and any known changes in the services

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1 attached as Schedule RCB-1 to T-10 and are reproduced, as  
2 corrected, as Appendix II to this Order. Work papers  
3 supporting the study were submitted during the hearing and  
4 attached to Butler's testimony. Butler was subjected to  
5 exhaustive and detailed cross-examination with respect to  
6 this documentation. (11 Tr. 887-986)

7 In addition, Alascom independently evaluated the  
8 costs of certain services received from RCA for the express  
9 purpose of demonstrating that:

10 ... the Corporate Assessment (\$1,315,000) is  
11 reasonable with respect to the most appropriate  
12 of the following standards:

- 12 1) What it would cost Alascom to  
13 perform the same services without  
14 the aid of RCA.
- 15 2) What it would cost Alascom to  
16 purchase the services through a  
17 third party.
- 18 3) What expenses Alascom would have  
19 incurred if it were publicly held  
20 corporation. (Exhibit 12, p. 2)

21 The utility's in-house study examined services provided in  
22 the following categories: accounting and forecasting,  
23 auditing, capital projects, treasury, financial analyses,  
24 communications group staff, industrial relations, and cor-  
25 porate expense. The company was charged \$509,940 for these  
26 services, although their value to Alascom was estimated at  
27 approximately \$660,755. Applying this relationship to the  
28 balance of services not studied resulted in an estimated  
29 valuation of total services from RCA in excess of \$1.5  
30 million. Thus, the utility's study concluded that, "it is  
31 clear that the value of the services provided to Alascom by  
32 RCA exceeds the amount assessed." (Exhibit 12, p. 14)

1           Based on the detailed analysis performed by the  
2 utility and its parent, Alascom contended that the \$1.3 mil-  
3 lion management fee to RCA included in test year operating  
4 expenses was a reasonable and proper amount. The utility  
5 also maintained that "the charge in the test year for the  
6 services of RCA Corporation is a reasonable charge in light  
7 of the standard industry wide techniques of assessing such  
8 charges," i.e. on a formula basis such as a percentage of  
9 annual gross revenues. (II Tr. 240) Thus, Alascom asserted  
10 that it had met its burden of proof under AS 42.05.511(c)  
11 that the services were necessary and desirable and the  
12 charges incurred for those services reasonable.

13           In its pre-filed testimony Staff specifically  
14 questioned charges incurred for auditing services, com-  
15 munications group staff, and capital projects but did not  
16 propose any cost of service adjustments. However, in its  
17 brief in the operating expense segment of this proceeding  
18 Staff argued that the utility had failed to prove both that  
19 the services received from RCA were necessary and that the  
20 amounts paid for those services were just and reasonable  
21 under AS 42.05.511(c). Staff pointedly rejected any attempt  
22 by Alascom to support its position by relying on formulas  
23 used and approved in other jurisdictions on the basis that  
24 affiliated interest charges must be cost justified under  
25 applicable Alaska law.

26           Staff concluded that the utility's evidence was  
27 particularly deficient in a number of areas. As a result,  
28 Staff recommended the following disallowances to the total  
29 corporate assessment paid RCA reducing it from \$1,314,961 to  
30 \$756,394.

1 First, no documentation had been provided to  
2 support the \$351,200 in services allegedly provided by RCA  
3 Globcom during 1976, and thus, no amount in excess of the  
4 \$1,177,600 included in Butler's survey should be considered  
5 in cost of service, according to Staff.

6 Second, Staff reduced engineering service charges  
7 by \$29,656 for consulting services broadly related to Alaskan  
8 telecommunications and by \$56,506 for an Alascom planning  
9 model. The supporting memo described the consulting services  
10 as "a catch-all task to cover the effort required in maintain-  
11 ing liaison with the communication group of RCA businesses  
12 in defining R&D tasks to be undertaken at Princeton." (T-10,  
13 Schedule RCB-1 Supporting Data, p. 3) Staff maintained that  
14 this explanation failed to substantiate that the expenditure  
15 was used and useful in providing service to the public and,  
16 if anything, demonstrated that the task benefited the corpo-  
17 rate family more than it did Alascom. Staff rejected the  
18 amount expended for the company planning model because  
19 neither the supporting information nor the utility's witnesses  
20 were able to provide an explanation of the purposes for or  
21 uses of the model.

22 Third, Staff proposed that the \$20,200 expenses  
23 associated with the Frequency Bureau be eliminated from the  
24 management fee. The Frequency Bureau is the Washington,  
25 D.C. office of RCA which interfaces with the FCC. In February  
26 of 1977, Alascom opened its own office in Washington, D.C. and  
27 discontinued its use of the Frequency Bureau at least in part  
28 because of a determination that it would be cheaper to provide  
29 these services directly. The utility acknowledged that it was

1 no longer using or being charged for the Frequency Bureau  
2 and agreed that this amount should be eliminated from cost  
3 of service as a known and measurable change. Although the  
4 proper accounting treatment for this amount was not at  
5 issue, Staff recommended that Alascom be required to submit  
6 cost justification for opening its Washington, D.C. office  
7 and to disclose these amounts in the future on Schedule 43  
8 of Form M filed with the FCC.

9 Fourth, communications group staff expenses of  
10 \$196,200 were eliminated from the corporate management fee  
11 by Staff on the basis that the 26,000 man-hours assigned to  
12 Alascom were unsupported. Staff further noted:

13 ... not one word appears to describe the  
14 services rendered or give any indication as  
15 to how these services were used and useful in  
16 providing utility service to the public.  
17 (Staff Brief and Argument: Cost of Service  
18 Adjustments, p. 107)

19 Staff specifically objected to two subcomponents of this  
20 expense, \$62,698 for 440 hours expended by RCA Executive  
21 Vice President H.R. Hawkins and \$37,938 contributed to  
22 moving expenses, as being unsubstantiated and possibly  
23 duplicative, respectively.

24 Fifth, Staff proposed that the levy associated  
25 with community relations/publications/communications ser-  
26 vices be reduced by \$21,600. Staff maintained that com-  
27 munity relations expense of \$260,000 was superfluous given  
28 the substantial amount already incorporated in the utility's  
29 operating expenses for this purpose. Alascom's share of  
30 RCA's corporate annual report of \$19,000 was also removed by  
31 Staff on the basis that no proof was tendered that the  
32

1 company could not have provided this service at more reasonable  
2 costs using in-house personnel.

3 Sixth, Staff eliminated the charges for executive  
4 management/corporate administration of \$97,000. This repre-  
5 sented Alascom's share of 1/20 of the total cost of the  
6 chief executive officer. Staff maintained that the rate-  
7 payers were already paying a sufficient amount for the  
8 business judgment of its own executive management and within  
9 the context of the other services provided by RCA. Thus,  
10 "Absent specific and concrete instances of unique business  
11 judgments exercised by Executive Management, the line should  
12 be drawn to exclude further exactions from the consumers for  
13 apparently duplicative services of doubtful value." (Staff  
14 Brief and Argument: Cost of Service Adjustments, p. 110)

15 The resultant allowable management charge of  
16 \$756,394 could probably be reduced further, according to  
17 Staff. However, the utility's proof was more compelling for  
18 other components of the corporate assessment, and Staff  
19 acknowledged that some amount was properly includable in  
20 cost of service.

21 Finally, Staff proposed that responsibility for  
22 the amount remaining of \$756,394 be apportioned 2/3 to  
23 Alascom and 1/3 to RCA in recognition of the mutual and  
24 respective benefits accruing to the utility and its share-  
25 holder from the services provided. The resultant operating  
26 expense for corporate management services proposed by Staff  
27 was \$504,288.

28 The intervenors also raised questions with respect  
29 to whether Alascom had satisfied its burden of proof on  
30 amounts paid to its parent. GOT maintained that the utility

1 failed to comply with the requirement in AS 42.05.511(c)  
2 that the affiliated interest expense be justified relative  
3 to costs the utility would have incurred if it had furnished  
4 the services with its own personnel and capital. (Brief of,  
5 the Office Of Telecommunications Regarding Operating Expenses,  
6 p. 1) ALSC and AkPIRG basically agreed with this criticism  
7 and specifically rejected efforts to satisfy this requirement  
8 by estimating costs that would have been incurred if Alascom  
9 were a publicly held corporation. They considered this  
10 frame of reference to be speculative and irrelevant. (ALSC  
11 and AkPIRG Rate Base, Operating Expenses and Revenues Brief,  
12 p. 39)

13 ALSC and AkPIRG raised two general objections to  
14 the management fee proposed by Alascom. First, they main-  
15 tained that inadequate substantiation of this expense was  
16 presented by Alascom. "For many categories the claim for  
17 inclusion of a charge is marred because the supporting data  
18 is absent, incomplete, or confusing. In others there is no  
19 testimony, confusing testimony or lack of a knowledgeable  
20 witness. Some services were not described beyond the most  
21 general of titles." (Id., p. 40)

22 A second issue, according to ALSC and AkPIRG, was  
23 the propriety of including certain expenses, for example,  
24 nonrecurring or unusual items, arbitrary allocations of  
25 charges based on a corporate-wide allocation percentage,  
26 duplicative services, and services providing mutuality of  
27 benefit.

28 As a result, these intervenors generally concurred  
29 with Staff's recommended disallowances and also questioned  
30 inclusion of the following: all research and development;

1 \$84,600 for accounting and forecasting; some portion of the  
2 \$42,700 for capital projects and analyses; treasury department  
3 charges; \$30,500 for financial analyses; \$8,015 for tax  
4 affairs; some portion of the \$35,060 in industrial relations  
5 charges; and \$11,106 for the facilities, architecture,  
6 construction, and materials department. The principal  
7 problem with respect to all of those expenditures was a lack  
8 of sufficient substantiation thus making it "very difficult  
9 to determine what is a fair and reasonable charge." (Id.,  
10 p. 48) However, the ALSC and AkPIRG brief was inconclusive  
11 with respect to what ratemaking treatment should be applied  
12 to the questionable expense categories cited.

13 The Commission recognizes and accepts that some  
14 management fee for services provided Alascom by RCA is  
15 appropriate in the utility's cost of service. At the same  
16 time, the Commission concurs with Staff and intervenors that  
17 the supporting data provided by Alascom to justify this  
18 expense is deficient in many respects in complying with AS  
19 42.05.511(c). This may be due in part to RCA's lack of  
20 familiarity with the burden of proof requirements that are  
21 inherent to the regulatory process, a problem which should  
22 not recur under Alascom's new owner. Setting aside the  
23 issue of shared benefits, the Commission believes that  
24 Staff's proposed reduction in RCA Management Services expense  
25 to \$756,394 represents a reasonable balance between disallow-  
26 ances necessitated by the inadequacy of the utility's substan-  
27 tiation and recognition of reasonable payments for necessary  
28 services provided by RCA. Some of the questions raised by  
29 ALSC and AkPIRG also appear valid but lack the specificity  
30 required for ratemaking consideration. The question of

1 further adjusting this amount to reflect mutuality of benefit  
2 between parent and subsidiary will be deferred to a subsequent  
3 proceeding. Staff's proposed treatment in this regard  
4 raises questions of regulatory policy which have not been  
5 adequately debated on the record in this Docket.

6 (b) Management Incentive Plan

7 The second affiliated interest transaction involves  
8 payments made by Alascom to RCA for participation in the  
9 Management Incentive Plan (MIP). During 1976, Account 661,  
10 Executive Department, included \$192,388 for this expense.

11 The MIP is a corporate-wide plan of RCA designed  
12 to attract and retain top management personnel and to reward  
13 executives for their contributions to the financial success  
14 of the operations of RCA and its subsidiaries. (T-11, pp.  
15 14-15) The MIP is administered by a RCA committee which  
16 determines the funds available to each company for disburse-  
17 ment to eligible employees based primarily on the financial  
18 performance of the operating companies. To fund the plan  
19 Alascom accrued an amount monthly based on a projection by  
20 RCA of the amount it would approve at the end of the year.  
21 Distributions from the fund were made on an annual basis.  
22 After RCA established the total amount available, Alascom  
23 then determined the apportionment of this amount among  
24 eligible employees. The top ten executives of the company,  
25 i.e., those persons reporting to the president or executive  
26 vice president, received the largest share of the MIP fund.  
27 MIP awards could be paid on an installment basis and, at the  
28 discretion of RCA, could be available in stock or stock  
29 options in lieu of cash. Amounts awarded but subsequently  
30 forfeited by employees terminating their employment with

1 Alascom before receiving deferred payments reverted to RCA.  
2 (II Tr. 157)

3 In addition, a portion of the MIP fund was set  
4 aside for distribution among all other salaried employees.  
5 In 1976, the maximum award for employees in this category  
6 was \$1,500 payable in full on a current basis, and a total  
7 of \$30,000 was paid out to approximately 50 employees of the  
8 utility.

9 In its testimony in this segment of the proceeding  
10 Staff presented several arguments for and against inclusion  
11 of the MIP expenses in cost of service without offering a  
12 definitive recommendation in this regard. Arguments in  
13 favor included the inherent attractiveness of additional  
14 compensation to top executives; the incentive to continuity  
15 and tenure provided by forfeiture of accrued deferred benefits  
16 upon termination of employment; and lack of management  
17 control over the total amount awarded under the MIP. Arguments  
18 presented in opposition to this expense were the adequacy of  
19 base compensation to officers and key employees; possible  
20 inducement to seek excessive rate relief; and possible  
21 annual variations in the expense beyond the control of the  
22 utility's management.

23 During the hearings Staff queried utility witness  
24 Holmstrom at length about the operation of the MIP and its  
25 propriety as an expense for ratemaking purposes. Holmstrom  
26 maintained that the ratepayers benefited from payments under  
27 the MIP because it enabled the company to attract and retain  
28 competent executives. Furthermore, the plan was comparable  
29 to those offered in similarly situated companies.  
30

1                    However, "Based on its review of Holmstrom's  
2 testimony," Staff concluded in its brief that "the record  
3 clearly mandates disallowance of these MIP amounts" (Staff  
4 Brief and Argument: Cost of Service Adjustments, p. 98)  
5 Staff argued that the utility had failed to prove that the  
6 MIP or some similar inducement was necessary to maintain  
7 continuity of management. In addition, even if the required  
8 proof had been forthcoming, it would be necessary to justify  
9 assumption of this expense by the ratepayers rather than the  
10 shareholder. As an alternative to total disallowance, Staff  
11 recommended that the expense be equally and jointly shared  
12 by the ratepayers and shareholder.

13                    The Commission finds that the expense of the MIP  
14 should be excluded from cost of service in the instant  
15 proceeding. The principal reason for this decision is that  
16 Alascom failed to address and meet the burden of proof  
17 requirements of AS 42.05.511(c) for substantiating this  
18 affiliated interest expense. Another key consideration is  
19 that the plan has failed to fulfill its stated purpose as  
20 evidenced by the history of short tenure by employees in key  
21 executive positions. (II Tr. 138-147) In addition, the MIP  
22 raises a number of other regulatory policy issues which are  
23 not satisfactorily discussed or resolved in this case and  
24 which may be moot under the new ownership arrangement,  
25 including RCA control of distribution of funds and proper  
26 accounting of funds which revert to RCA. Accordingly, the  
27 Commission will not categorically reject the use of MIP but  
28 will require the utility to provide a detailed explanation  
29 and justification of inclusion of the expense of such a  
30

1 program in its revenue requirement in any subsequent rate  
2 proceeding in which it is proposed.

3 (c) Miscellaneous

4 The remaining affiliated interest transactions  
5 have either been resolved or are not at issue.

6 First, Alascom paid RCA Americom for transponders  
7 leased on the latter's satellite. The amount paid was  
8 prescribed by a tariff filed with the FCC, and its treatment  
9 in cost of service has previously been addressed in this  
10 Order.

11 Second, the utility purchased inventory from RCA  
12 for a company store which retailed the parent corporation's  
13 products, for example, televisions. During the test period  
14 the total amount expended for this purpose was \$37,300,  
15 which was not included in Alascom's cost of service.

16 Third, RCA made automobiles available to a number  
17 of the officers of the utility, including the president,  
18 executive vice-president, and vice presidents of operations,  
19 finance, industrial relations, and general counsel. No  
20 charge was specifically assessed for these vehicles by RCA.

21 Cash Working Capital Allowance

22 AS 42.05.441(b) provides for inclusion in rate  
23 base of a reasonable allowance for cash working capital when  
24 required. The utility and Staff used different methods to  
25 compute cash working capital with conflicting results.

26 Alascom applied the rule-of-thumb or formula  
27 approach and proposed a cash working capital allowance  
28 equivalent to 45 days or 1/8 of total annual cash operating  
29 expenses, excluding interest and income taxes. The

STATE OF ALASKA

THE ALASKA PUBLIC UTILITIES COMMISSION

Before Commissioners:      Gordon J. Zerbetz, Chairman  
                                 Marvin R. Weatherly  
                                 Carolyn S. Guess  
                                 Susan M. Knowles

In the Matter of the Reasonableness and )  
Propriety of the Interfund Charges Borne )  
by the MUNICIPALITY OF ANCHORAGE Tele- )  
phone, Electric, Water and Sewer Util- )  
ities )

U-76-26

ORDER NO. 2.

ORDER APPROVING INTERFUND METHODOLOGY

On May 3, 1976, the MUNICIPALITY OF ANCHORAGE d/b/a MUNICIPAL LIGHT & POWER DEPARTMENT (ML&P), ANCHORAGE TELEPHONE UTILITY (ATU) and the ANCHORAGE WATER UTILITY (AWU) was advised of the information to be provided with the Commission at a public hearing on June 1, 1976, for the purpose of determining the justness and reasonableness of the interfund charges paid to various departments within the Municipality by the above named utilities. The burden of proof that the interfund charges paid by ATU, ML&P and AWU were based on reasonable methodology and accurate allocation factors under the affiliated interest transactions as stated in AS 42.05.511(c) was to be borne by the Municipality.

JURISDICTION

The Municipality asserted, prior to the examination of the interfund charges, its belief that the affiliated interest section of the statute, AS 42.05.511(c), did not specifically affect the Municipality whose departments

provide services to the utilities. It was argued that no profit is to be earned by the Municipality through the interfund charges; there is no majority shareholder as in a private corporation; and the interfund charges must be approved through the budgetary process by the appropriate legislative body. The staff of the Commission contended that the Municipality does fall under the provisions of the statute by providing services to and receiving payment from each of the subject utilities and that the Municipality should bear the burden of proof that these charges are just and reasonable. The Commission concurs with the staff's position.

#### GENERAL BACKGROUND

The government entity which provided services to the above named utilities in 1974, 1975 and for the first nine months of 1976 is conceptually a different entity than is in existence today and on which the proposed 1976 budget of the Municipality is based. For the purpose of this proceeding the test year under consideration was 1975. The charges to the utilities in that year, by the providing departments of the Municipality, were used to ascertain the reasonableness and accuracy of the allocations of interfund charges. These charges were budgeted in 1974 for 1975 under the existing City of Anchorage government. The test year 1975 was used because of the permanent rate requests by ATU, ML&P and AWU pending before this Commission. For the most part, their request is based on this test year. In addition, the fact that the unified government, known today as the Municipality of Anchorage, has been in existence a relatively

short time, the workload of various departments has changed substantially, and the new government is in effect in a transitory state, make an examination of the budgeted 1976 interfund charges inappropriate at this time.

The testimony of the Municipality strongly recommended that a re-evaluation of the methodology of determining interfund charges and of the appropriateness of the existing allocation factors was of paramount importance for the 1977 fiscal budget of the Municipality. Every department should be analyzed as a result of the unification of the former City of Anchorage and the Greater Anchorage Area Borough now known as the Municipality of Anchorage. Various functions and responsibilities within some departments of the new Municipality have undergone major changes. These changes have affected the kinds of services provided as well as the methods used for allocating costs for services to any or all of the utilities.

The need for a study which would thoroughly review each department within the Municipality and examine the interfund procedure has been addressed by Arthur Young and Company in the course of a data processing study.

In light of unification, examination of services which might better be performed outside the Municipality through the contracting procedure should be made. There appear to be three possible courses of action for the utilities regarding the purchase of services from within the Municipality. One, the interfund charges could continue to be handled in the same manner as previously done by the City. This would require that the methodology and allocation

factors be updated in terms of a unified government. Two, the utilities could provide some or all of the services to themselves that are now being provided by the Municipality. Three, there could be services that should be contracted outside the Municipality. In addition, the subject of the appropriateness of interfund charges for the sewer utility should be addressed. If the refuse service provided by the former City of Anchorage comes under the jurisdiction of this Commission, interfund charges to that utility must also be examined.

For the purpose of this hearing the Municipality defined interfund as a charge by one department within the municipal government (whether the former City of Anchorage or the present Municipality of Anchorage) to another department within the government for services performed. The Municipality submitted Exhibits 1 and 2 which provided the budgeted and actual amount of interfund charges to ATU, ML&P, AWU and the general government unit (which includes those departments receiving monies from the general fund) and the total amount of all budgeted and actual interfund charges for the years 1974 and 1975. Exhibit 3 provided the budgeted interfund charges for the year 1976. The Uniform System of Accounts has been used since 1973 for the preparation of the 1974, 1975 and 1976 budget.

The budgetary process includes input from the supervisory personnel within each department, the review of the City Budget Officer (now the Chief of Management Services for the Municipality in the Office of Budget and Management), any refinement or change to be made by the

Office of the City Manager (now by the Office of the Mayor) and submission to the City Council (now the Municipal Assembly) for its approval. The implementation of methodology and allocation factors regarding interfund charges are based on the approved budget document for the appropriate fiscal year.

It should be noted that the interfund charges were a subject of audit by the external auditor hired by the governmental body. The appropriateness of ATU's interfund charges was also reviewed by RCA Alaska Communications, Inc., in its determination of the separation and distribution of toll revenues. In addition, the State performed auditing functions for particular grant money that the Municipal government receives.

During the hearing there was testimony that in some instances charges are made to each of the utilities by a department not listed on Exhibits 1 through 3. For example, a service provided a utility by the Department of Public Works at the request of the utility is paid for by a transfer of equity in the cash pool. A reimbursable work order form, Exhibit 29, illustrates the procedure to be utilized in this regard. Bills for services provided by the utilities to other departments within the government are also paid by a transfer of equity in the cash pool.

In Order No. 1 the Commission required the Municipality to provide a copy of any written instructions to the appropriate person within each department calculating the interfund charges. Exhibit 27, Interfund Criteria Information, was provided as well as Exhibit 28, a copy of the 1975

annual budget which explained the "charges to others" within each department. The individual computing the budgeted and actual interfund charges and the methodology and allocation factors for those charges were provided in Exhibits 4 through 25 as required by Order No. 1. Also included in these exhibits were comparable charges, where available, and time sheets and other recordkeeping data, when used.

The Commission commends the Municipality on the thoroughness of its prefiled testimony and the presentations made by the witnesses during the hearing and will discuss each department providing services to any or all of the subject utilities in 1975. For the purpose of this discussion reference will be made to the titles of individuals and the governmental unit based on the former City of Anchorage. Where appropriate, reference will be made to the existing municipal government. It is the intention of the Commission that this discussion may be beneficial to those individuals who will review and study the interfunded services and charges in the new unified government.

The transfer of interfund charges is done monthly on the basis of the actual costs to the providing department. Any end of the year adjustments either upward or downward are made in accordance with the allocation factors outlined within each department. Reference has been made to final charges in some of the exhibits for the 1975 test year. Generally speaking, these refer to charges incurred by departments as a result of unification, and these charges were not interfunded to the utilities.

MAYOR AND CITY COUNCIL

The method for calculating the budgeted interfund charges from the Mayor and City Council to each of the subject utilities was developed by the City Budget Officer in 1972. His judgment based on observation of work sessions and City Council meetings was used to apportion the workload of the Mayor and City Council into the following categories:

Agenda relating items	50%
Personnel functions	20%
Maintenance and operations budget	15%
Capital improvement program	15%

Within these categories of workload the City Budget Officer established the allocation factors for each utility on an annual basis.

The City Budget Officer analyzed the final agendas of 8 City Council meetings in different months of 1974 to establish the percentage of agenda items relating to each utility. The charges to each utility for the workload of Mayor and City Council relating to personnel functions were expressed as a percentage of the projected authorized positions for each utility in relation to the total authorized positions for the City. The charges for the maintenance and operations budget and for the capital improvement program were expressed as a percentage of each utility's budget in relation to the entire maintenance and operation budget and capital improvement program for the City. These percentages were weighted and applied to the actual 1975 expense of this department by the Controller Division.

In addition, each utility was charged \$600 as its cost for the expenses of its advisory board. These

lay boards met monthly, and their members were paid a small stipend. The determination of these charges was made by taking the total amount of monies expended to the City boards and commissions and dividing it by 20. (There were 20 advisory boards.)

This department has undergone substantial change as a result of unification, and Exhibit 3 illustrates the separation of the Assembly from the Mayor/Manager Department for interfund purposes. The appropriateness of the workload categories and the accompanying allocation factors for each utility should be examined for the 1977 budget year.

#### CITY MANAGER

The calculation of interfund charges for services provided by this department to the utilities was the responsibility of the City Budget Officer. The allocation of workload was made to the identical categories as those in the Mayor and City Council Department. The percentage of time allocated to those categories varied slightly. The reason for this was that the personnel within this department were asked for their evaluation of time spent on work relating to these categories. The judgment of the City Budget Officer who had spent five months as Assistant City Manager, in addition to his observations of work sessions and City Council meetings, was also a criterion.

Within each category, (agenda related activities, personnel functions, maintenance and operation budget, and capital improvement program) the percentage of workload for each utility was calculated in the same manner as for the Mayor and City Council. The actual expense to each utility was calculated by the Controller Division who applied the

weighted percentage to the actual expense of the City Manager's Office less the dollars attributable for one administrative assistant and secretary whose specialized tasks had provided no service to the utility.

In 1975 the expense of this department included the functions of Labor Relations Specialist, Equal Employment Officer and Public Information Officer. It should be noted in the budgeted interfund charges for fiscal year 1976 that some of these functions have been removed from this department and the City Manager is combined with the Mayor. An evaluation for the 1977 budgeted interfund charges will be necessary for this department.

The City Budget Officer gave testimony that a time study had been attempted for this department but was not successful because the personnel did not accurately or adequately fill out the time sheets. Time cards were also proposed at one time for the Mayor and City Council but this idea was rejected.

#### INTERNAL AUDIT

The calculation of interfund charges from this department was the responsibility of the Internal Auditor working with the City Budget Officer. The actual interfund charge to the utilities was calculated by multiplying the actual auditor hours spent on each utility by the predetermined cost per hour. The hourly charge was based on the salaries and overhead of the department as outlined in Exhibit 6a. Testimony was received that the hourly rates charged by this department are readjusted as personnel changes and pay increases for Municipal employees take

effect. Exhibits showing that substantially higher costs would be incurred if these services were purchased outside the Municipality were provided. The Internal Auditor, who calculates the actual charges of this department, has an on-going workload and is able to estimate with accuracy his charges to others for budgetary purposes. He also works with staff of various departments to help determine his costs based on their needs.

#### COMMUNITY PROMOTION

The calculation of interfund charges from this department were performed by the Public Information Officer and the City Budget Officer on the basis of two costs: one, the cost of membership to the City in the Alaska Municipal League and the Alaska Chamber of Commerce and, two, the space distribution in the 1974 annual report.

The determination of each utility's cost for the Municipal League and Chamber memberships was allocated on the ratio of the number of employees per utility to the total number of City employees. The allocation for space in the annual report was expressed as a percentage of each utility's space in relationship to the entire cost of the annual report.

Testimony was given that through an inadvertent error the cost of the membership fees was not interfunded for the 1975 test year. It is the intention, however, of the Municipality to allocate the expense of these memberships in the future. In addition, the Municipality has decided to discontinue the publication of the annual report after 1975.

#### CITY CLERK ADMINISTRATION

The calculation of these interfund charges was the responsibility of the City Clerk working with the City Budget Officer. The services provided by the City Clerk to the subject utilities in this docket are the costs incurred by the Clerk's Office in providing services to the utility advisory boards and commissions. These services include recording secretaries, transcribing minutes, overhead, mailing, etc. The actual charge, calculated by the Controller Division, was based on 1/20 of the total cost of providing services to all of the City boards and commissions. There was testimony that in the future these charges will not be interfunded but will be services provided internally by each utility.

#### CITY CLERK - RECORDS RETENTION

The calculation of these interfund charges was the responsibility of the City Clerk working with the City Budget Officer using their previous experiences in providing the service of microfilming records of various departments. The actual charges were for the services received, and the cost was determined on an hourly charge based on salaries and overhead. The form for a participating department to request microfilming was provided as Exhibit 32. Time sheets were kept by the personnel in this department for the calculation of the actual cost. When budgeting for this service, a utility would consult with the City Clerk, Records Retention personnel to determine, based on the requested work, what the projected costs would be. It is noted that for the test year 1975 there were no charges to AWU and very minimal charges to ATU and ML&P.

#### CITY ATTORNEY

The calculation of these charges was the responsibility of the City Attorney working with the City Budget Officer and the actual charges were calculated by the Office of the City Attorney. A retainer was charged to each utility and the Port as its portion of the maintenance of the City Attorney's files, reference library and overhead. It should be noted that there was no retainer allocated to the general government departments. The attorney time was allocated at \$60 a billable hour, for the year 1975; each attorney kept a record of his workload attributable to the utilities. Testimony was given that at the present time and for the test year 1975, there was no form for the attorneys to fill out, and in some instances time keeping was noted on desk calendars and in other inappropriate ways. Various expenses associated with litigation were allocated to the appropriate utility. The City Budget Officer stated in the event of a monetary award by the Courts in favor of a utility those monies were directly apportioned to that utility.

If a utility would contract with an attorney outside the City Attorney's staff, the cost associated in this matter would be billed directly to the utility.

#### PROPERTY MANAGEMENT

The calculation of interfund charges by this department was done by the Property Management Officer working with the City Budget Officer. This division is the Office of Record for all real property including rights-of-way, buildings and any non-movable equipment that is Municipal property.

A retainer was charged to each utility and the general government unit which covered the salary, benefits and space allocated to the Records Clerk. The volume of records kept for each utility and general government unit was a factor taken into consideration in determining the retainer. The retainer was instituted by the City Attorney in 1974, when Property Management came under his supervision. It is now separate and the reasonableness of the retainer should be re-evaluated.

The actual interfund charge was the budgeted retainer plus the actual charge of \$17.50 an hour for appraising and right-of-way land acquisition. The hourly cost was based on an analysis by the Internal Auditor of the salary and overhead in this department. The Property Management Officer and the Controller Division calculated the actual charges.

The Municipality provided through Exhibit 11a comparable hourly costs of independent appraisers. The charge by the property management division to each utility was significantly less than the cost charged by an independent appraiser.

#### ADMINISTRATIVE SERVICES, ADMINISTRATION

The calculation of these charges was the responsibility of the City Budget Officer in consultation with the Assistant City Manager, Administrative Services, the Staff Accountant, and the Financial Management Systems Accountant. The charges to the utilities were expressed as a percentage of the total workload of the above mentioned personnel. Their workload was analyzed by the City Budget Officer

utilizing his best estimate and expertise based on the time these individuals spent on utility matters in four areas: current operating budget; existing capital improvement program; projected bond sales; use of the computerized accounting system. The actual charge, calculated by the Controller Division, was determined by applying the weighted percentages to the actual 1975 expense of this department. The actual charges for 1975 were less than the budgeted amount. The reason given was that vacancy factors were greater than budgeted, so the interfund charges were adjusted backwards on the basis of the calculated weighted percentages. The personnel of this department review their work load annually with the City Budget Officer to determine the percentage of time spent on utility matters.

This department is the Office of Management and Budget for the 1976 budget year.

CONTROLLER

The calculation of the interfund charges of this department, which was the general accounting arm of the City, was the responsibility of the Controller and staff working with the City Budget Officer.

Three categories of costs are analyzed to determine the percentage of time spent on utility matters. The first category, regular charges, (accountants' time in the general accounts payable category), allocated its costs for the 1975 test year based on desk audit time studies performed over a one month period. The Controller selected the time period and both daily and hourly time studies were

performed. Exhibit 13a was provided, which was the desk audit time sheets for November 1974. The employees were responsible for interpretation of workload and filling out time sheets.

The second category was the payroll system. The allocation factors for each utility were arrived at by determining, through desk audit time studies for a month and an analysis of payroll transactions for each utility, the workload for each utility expressed as a percentage of the total workload of this division.

The third category was the financial management system (FMS), and these costs were allocated on the basis of desk audit time studies over the same monthly period along with an analysis of the FMS transactions for each utility. This included computer machine time that the Controller used for each utility in addition to those charges allocated directly by the data processing department through the interfund process. The weighted average of the allocation percentages in each of the three categories, regular charges, payroll systems, and FMS was applied to the actual 1975 controller expense, and calculated by this department.

#### TREASURY

The calculation of the interfund charges of this department was the responsibility of the Treasurer and staff working with the City Budget Officer.

The Treasury was responsible for the receipt and custody of all funds for the City, including utility monies. The Treasurer, supervisor of this department, was responsible for the investment of all funds including utility bond

funds and handles all street and water assessments. Exhibit 30 was provided to show the monthly reports made by the Treasurer indicating the status of all cash and investments of the Municipality.

There are three sections under the Treasury Department: Receipts and Custody, Parking Violations and Assessments. The Treasurer made the determination that half of the administrative expense of this department be allocated as overhead equally to these three sections. This allocation became a part of the costs of service provided by each section.

Charges to each of the subject utilities for services rendered by the Receipts and Custody Section were based on a one week time study in 1974 in which the individuals working in this section performed a physical count of transactions handled. A sample of the time sheet was not available because of the relocation of this department and the disposal of these records. The actual expense to each utility was expressed as a percentage of the total cost of processing all transactions by this section.

Parking Violations did not affect any of the subject utilities.

The allocation of the Assessment section interfund expense was also based on a one week time study in 1974 of those individuals working in the section based on the number of hours spent on each assessment problem. It should be noted that the only utility requiring these services is AWU. The actual interfund expense of the Assessment Division was

expressed as a percentage of AWU's cost in relation to the entire cost of this section.

The remaining half of all interfund expenses of the Treasury Department was allocated to each utility and the general government unit based on their average equity in the investment accounts during the two months prior to the 1975 budget preparation. This was expressed as a percentage of the total equity investment of the City and applied by the Controller Division to the actual costs of this department.

For the 1977 budget, the sewer utility will have substantial impact on this department. Also, testimony was received that many different funds will be handled by this department as a result of unification. The methodology used to determine interfund charges for this department needs re-evaluation in light of unification.

#### PRINT SHOP

The calculation of the interfund charges for this department was the responsibility of the utility managers working with the City Budget Officer, and actual charges were computed by the Print Shop Supervisor in accordance with the Print Shop Prices provided as Exhibit 15a. These prices were based on salaries and overhead.

It should be noted that there was over a 400% increase in the budgeted and actual amounts interfunded in this category for ATU and AWU in 1975. Testimony was given that the probable reason for this was that ATU ordered a series of new forms, having used up forms that had been purchased from an outside supplier. As a result the initial cost was con-

siderably greater than a normal year's usage. A price sheet from Ken Wray's Print Shop substantiated the fact that the Print Shop prices are anywhere from one-third to over 100% less than the same service offered by a private business.

#### COURIER AND MAIL

The calculation of the interfund charges of this department was the responsibility of the City Budget Officer and actual charges were computed by the Mail Room Clerk and the Controller Division.

The allocation factor used to determine the amounts budgeted to each utility was based on an analysis of the current courier schedule (1974). The number of courier stops which served each utility was expressed as a percentage of the total amount of stops. This percentage became each utility's allocation of the actual costs of this department.

It should be noted that for 1975 ATU received no service from this section because the demands of this utility became sufficient to justify hiring its own employee to provide this service. Testimony was given that the minimum amount of times the courier serves ML&P and AWU was four times daily.

The mailroom charges were the result of joint utility mailings (not customer billing) and were minimal. Each utility has its own postage machine so these charges are no longer interfunded.

#### INSURANCE AND CLAIMS (RISK MANAGEMENT)

The calculation of the interfund charges for this department was the responsibility of the Insurance/Claims

Officer working with the City Budget Officer. The allocation of these charges was based on two categories: claims activity and insurance activity.

The actual cost of processing claims filed against the City was calculated on a cost per claim basis and charged to the appropriate utility. A quarterly report was made indicating the number of claims filed against each utility and the general government unit, the total expense of processing those claims and the calculation of charges to each utility. Exhibit 17a detailed the 1975 claims against each of the subject utilities and provided work sheets used to determine the cost of each claim based on this department's overhead to process these claims. It was emphasized that this charge is only to process claims and does not reflect payment to any third party.

The cost of providing insurance coverage to the various utilities during 1975 was allocated by weighing the type of insurance and coverage for each utility. Testimony was given regarding the diversified needs and numerous kinds of insurance needed by the utilities and the general government unit. It is apparent that this is an extremely complex subject. The judgment and experience of the Insurance/Claims Officer (Risk Manager) was the basis for the percentage of interfund charges allocated to each utility for insurance activity. The actual amount interfunded to ATU in this division doubled for the year 1975. The reason for this substantial increase was the requirements by OSHA to establish a safety program which heretofore was in the Personnel Department. The costs of this Safety Section were interfunded on the basis of the number of authorized positions

within the utility and general government unit and the percentage applied to the actual expense of this Section.

The Municipality has undertaken a self insurance program in some areas which is not reflected in the 1975 test year. There may be a decrease in expense related to insurance coverage but this will be offset by an increase in the expense of the claims activity. It will be necessary to re-examine the interfund charges in this division because of this new undertaking.

#### PERSONNEL

The calculation of the interfund charges by this department was determined by the Personnel Director and staff working with the City Budget Officer.

The allocation factors established for 1975 budget purposes were determined by a two-step process. The cost for employee/labor relations, records, and safety training was allocated based on each utilities percentage of the total employees in the City at the time the budget was prepared. The Safety Section was transferred to Risk Management thereby reducing the actual cost of this service.

The recruitment and classification costs of this division were allocated on the total number of classified employees in each utility expressed as a percentage of the total number of City classified employees at the time the budget was prepared. The actual expense to each utility, computed by the Controller Department, was determined by applying the weighted average of these two percentages to the actual 1975 expense of this department.

#### DATA PROCESSING

The calculation of the interfund charges by this department was prepared by the Data Processing Manager and

staff working with the City Budget Officer. The actual charges were computed by the Data Processing Manager and staff.

The Data Processing Department was responsible for computer time and the personnel to analyze, program, key-punch, if necessary, and maintain the computer programs. Testimony was given that there is presently no unused computer time; the machine is running beyond capacity and is working 24 hours a day, seven days a week. The Municipality is also utilizing mini-computers during the current year (1976) and is considering the purchase of a larger computer. No attempt had been made by the City, prior to unification, nor the present Municipality to contract for these services. The 1975 budgeted expenses were calculated by the computer on the basis of man months and projected cost estimates to accomplish the workload each utility requested. The actual expense was based on computer time utilized during 1975 and was calculated by a special built-in program designed for that purpose. The employees of this department kept time sheets (Exhibit 31) tracking their workload and assessing the proper utility. The hourly rates charged by this department for various data processing personnel were provided in Exhibit 19B.

Testimony was given on the plans for merging the computer systems of the former City and Borough and a possible purchase of computers as opposed to present leases. January 1977 is the target date for an integration of the two accounting systems, and this will dictate a re-evaluation of the charges for this department's services.

# AGAS Request for permanent rate increase

companies had increased 88% from 1970 to 1974 or nine times the rate of increase of the natural gas industry. Based on the uncontroverted evidence presented by AGAS, the Commission will allow use of a year-end rate base.

Staff testified that AGAS is currently in the process of developing continuing property records (CPRs). At the present time property records are maintained on a ledger card system. AS 42.05.461 requires utilities with annual revenues over \$100,000 to utilize CPRs for plant records. It will be incumbent on AGAS to achieve compliance with this statutory obligation within the timetable prescribed by the Commission.

There was general agreement among the parties regarding the reasonableness and propriety of all components of plant in service as proposed, with the exception of property purchased from the affiliate, 3000 Spenard Corporation. At issue was the determination of the appropriate value to be assigned to that property in the rate base. AGAS has included the land in rate base at the sales price paid to 3000 Spenard Corporation, which was based on an independent appraisal performed in May 1974. The staff proposed a valuation equivalent to the original cost to 3000 Spenard Corporation with the possible capitalization of certain costs for not more than two accounting periods at the discretion of the Commission. Staff opposed the inclusion of intercompany profits in the rate base and cited a 1945 Supreme Court case as principal support for its position. The burden of proof in this issue clearly resides with AGAS, pursuant to AS 42.05.511(c) which provides:

"(c) In a rate proceeding the utility involved has the burden of proving that any written or un-

written contract or arrangement it may have with any of its affiliated interests for the furnishing of any services or for the purchase, sale, lease or exchange of any property is necessary and consistent with the public interest and that the payment made therefor, or consideration given, is reasonably based, in part, upon the submission of satisfactory proof as to the cost to the affiliated interest of furnishing the service or property and, in part, upon the estimated cost the utility would have incurred if it furnished the service or property with its own personnel and capital."

Additionally, AGAS has directed the Commission to the first part of AS 42.05.411(b) for guidance:

"(b) In determining the value for rate making purposes of public utility property used and useful in rendering service to the public, the commission shall be guided by acquisition cost or, if lower, the original cost of the property to the person first devoting it to public service,..."

The properties under consideration are situated in Kenai, Eagle River, and Anchorage. The Anchorage property is comprised of three parcels on International Airport Road designated as the Operations Center. Rental payments on the former Operations Center on Spenard Road are also tangentially relevant due to the timing of the transition from the old to the new location. The dates and amounts of the purchases and sales by 3000 Spenard Corporation and the intervening rentals by AGAS are summarized on Appendix 1.

The principal business activity of 3000 Spenard Corporation, the Alaskan subsidiary of Baldwin Properties, Inc., a subsidiary of AKI, is property investment and disposition. The company is represented in Alaska by Vice President Richard Barnes, who is also an officer and employee of AGAS and APC. Mr. Barnes testified that he spends between one to two percent of his time on 3000 Spenard Corporation responsibilities. The company's current portfolio of investments is an office building in New Orleans

and 25 parcels contiguous to AGAS' office building. The only property previously owned by 3000 Spenard Corporation and not sold to AGAS was a 22 acre parcel on Kodiak. This property was sold to a company which was concurrently acquiring the assets of a former subsidiary of AKI, Burgess.

AGAS originally leased all the properties it purchased from 3000 Spenard Corporation with the exception of Parcel C on International Airport Road. A representative lease agreement (Exhibit 47), dated January 1, 1969, between the parties provided for a 15% return on the appraised valuation with re-appraisals at 5 year increments during the 16 year term of the lease. The Chief Appraiser, State of Alaska, Division of Lands, a witness for intervenors AkPIRG and Jager testified that based on his studies of the private market, the market rate for leases on bare ground with appraisals at five year increments was currently 8% and was in the 6-8% range in 1969. There was testimony that in late 1973, the decision was made by AGAS, pursuant to an unwritten option or right of first refusal, to purchase the subject properties from 3000 Spenard Corporation. As a result, there was an informal agreement between the parties for conservative rent escalation without re-appraisals for 1974 and for termination of the leases at December 31, 1974, by mutual consent. In February 1974, 3000 Spenard Corporation purchased Parcel C on International Airport Road. The appraisals on which the sales prices were based were completed in May 1974. Approximately 33% of the Eagle River parcel was sold by 3000 Spenard Corporation to the State of Alaska in October 1974, for \$48,000. The sale of the properties to AGAS was consummated in December 1974, timed to

coincide with the availability of financing. Rents paid on acquired properties were eliminated from the test year. The land, site improvements, and transportation building at International Airport Road were included in the rate base. However, since the remaining buildings at that site were completed after the end of the test year and were not incorporated in rate base, AGAS retained the expenses associated with the Spenard Road Operations Center in its operating expenses as a representative substitute for the new Operations Center. AGAS argued that this approach was conservative and thereby fair. The transition was completed in May of 1976. It is the opinion of the Commission that the treatment proposed by the utility is not unreasonable.

Section 511(c) of AS 42.05 establishes certain tests for evaluating the reasonableness and propriety of affiliated interest transactions. Property leases and sales such as those under discussion must be necessary and consistent with the public interest. Payments made therefore must be based, in part, on the cost to the affiliated interest of furnishing the property and, in part, on the cost the utility would have incurred if it had furnished the property with its own capital.

AGAS argued that the cost to 3000 Spenard Corporation of furnishing the properties was equivalent to the price it would have received for the parcels from another party at the time of the transaction, which, in turn, was equivalent to the cost AGAS would have incurred if it had purchased identical or similar properties from a third party at that time. This definition of cost is not in conformance with standard accounting nomenclature and would appear

to circumvent the intent of AS 42.05.511(c) to prohibit excessive intercompany profits. Affiliated interest transactions require the highest scrutiny by this Commission. The interpretation proposed by AGAS would preclude such a review. While the utility may argue that AGAS would have paid as much or more for similar purchases from non-affiliates, the fact remains that the sales between affiliated interests offer to the common parent immediate benefits, including favorable capital gains tax treatment of 3000 Spenard Corporation's profits, which mandate circumspection.

A review of the land activities and portfolio of 3000 Spenard Corporation in Alaska would indicate that the company has functioned historically as a land agent for AGAS. At least one parcel was rented to AGAS at the same time as its purchase, and one parcel was purchased after AGAS had apparently committed itself to re-purchase the land. The Commission is not inclined to substitute its judgment for that of management, but it is appropriate to question whether or not investments were incurred prudently by a utility in exercising its responsibility to serve the public. The timing and amounts of the land purchases certainly raise doubts. The staff has argued that intercompany profits should be prohibited regardless of an assessment of the degree to which an affiliated transaction was conducted at arms length. It has cited Colorado Interstate Gas Co. v. Federal Power Commission, 334 U.S. 581, 65 S. Ct. 829, 89 L. Ed 1206 (1945), to support its position.

It is the determination of the Commission based on the evidence presented on the record that the properties purchased from 3000 Spenard Corporation should be included

in rate base at the original cost to 3000 Spenard Corporation. An allowance will be added to the base amount, where applicable, for capitalization of the return, at the rate established by this Order, which would have been earned on properties purchased in advance of being placed in service for a reasonable period of time not to exceed two accounting periods. The resulting valuations are detailed on Appendix 1.

The original cost of plant in service is reduced by the year-end accumulated depreciation. The staff has proposed an adjustment to the asset life of the headquarters building from 20 to 33 years to conform with the depreciation rate utilized by AGAS for other structures and with Internal Revenue Service (IRS). AGAS has argued that it is inappropriate to make isolated changes in depreciation rates without a complete depreciation study, which is scheduled to be performed in the next year or so. However, if the Commission approved the adjustment proposed by staff, it would be equally appropriate to reduce the life expectancy of communications equipment from 33 to 12 years as proposed by AGAS. The staff concurred with this recommendation. The Commission cannot overlook the obvious inequities in the depreciation schedule as filed in the permanent rate request. The Commission does not agree with AGAS' assertion regarding itemized review and modification of the depreciation schedule and will endorse both depreciation adjustments.

Another component of rate base proposed by AGAS is a gas plant acquisition adjustment, less accumulated reserve for amortization. Prior to 1967, the stock of APC was owned 50.41% by AKI and 49.59% by Union-Marathon (U-M). AKI had Class A voting stock; U-M had Class B non-voting stock,

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THE STATE OF ALASKA

THE ALASKA PUBLIC UTILITIES COMMISSION

Before Commissioners:

Gordon J. Zerbetz, Chairman  
Marvin R. Weatherly  
Carolyn S. Guess  
Susan M. Knowles  
Stuart C. Hall

In the Matter of the Filing )  
of a Tariff Revision, Desig- )  
nated as TA 12-89, by KENAI )  
UTILITY SERVICE CORPORATION )  
for Permanent and Interim Rate )  
Relief and a New Rate Design )  
Schedule )

U-79-32

ORDER NO. 4

ORDER ACCEPTING STIPULATION

The Commission will accept the Stipulation dated September 5, 1979 executed by Kenai Utility Service Corporation and the Staff of the Commission, but subjects its acceptance of this Stipulation to the following express conditions:

- (1) Kenai Utility Service Corporation shall file on or before October 22, 1979 amended tariff sheets reflecting the rates and rate design approved by acceptance of this Stipulation;
- (2) Kenai Utility Service Corporation shall refund or credit the accounts of those customers that have been charged a rate on an interim basis that is in excess of those approved by this Stipulation;
- (3) Kenai Service Corporation shall file with its 1979 annual report the time record form to be used by the President of the utility, Mr. J.M. Covington, to accurately reflect the percentage of his time and his expenses attributable to utility business;
- (4) Kenai Utility Service Corporation shall file the time

ALASKA PUBLIC UTILITIES COMMISSION  
1100 MACKAY BUILDING  
338 DENALI STREET  
ANCHORAGE, ALASKA 99501

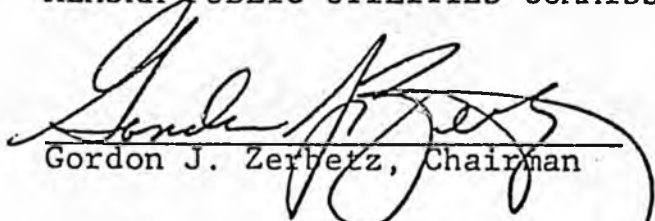
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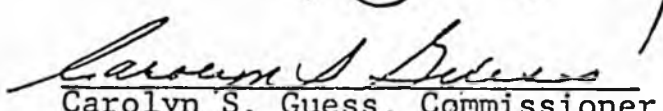
1 record of Mr. Covington for the calendar year 1980 with  
2 its 1980 annual report to the Commission;  
3 (5) Kenai Utility Service Corporation shall demonstrate to  
4 the Commission by year-end 1980 that its continuing  
5 property records exist in a form satisfactory to the  
6 Commission.

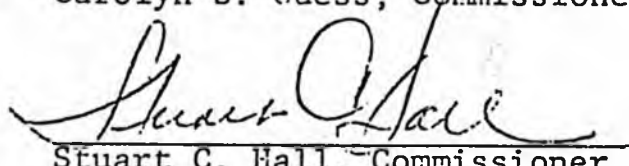
7 IT IS SO ORDERED.

8 DATED AND EFFECTIVE at Anchorage, Alaska this 26th day of  
9 September, 1979.

10 ALASKA PUBLIC UTILITIES COMMISSION

11   
12 Gordon J. Zerbetz, Chairman

13   
14 Carolyn S. Guess, Commissioner

15   
16 Stuart C. Hall, Commissioner

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STATE OF ALASKA  
THE ALASKA PUBLIC UTILITIES COMMISSION

Before Commissioners: Carolyn S. Guess, Chairman  
Marvin R. Weatherly  
Susan M. Knowles  
Stuart C. Hall  
Diana E. Snowden

In the Matter of the Filing of )  
Tariff Revisions by PELICAN ) U-81-89  
UTILITY COMPANY for Fuel Cost )  
Rate Adjustments at Sand Point, ) ORDER NO. 10  
Alaska )  
\_\_\_\_\_ )

ORDER GRANTING PERMANENT APPROVAL OF NEW FUEL SURCHARGE AND  
ESTABLISHING THE CALCULATION FOR FUTURE SURCHARGE FILINGS

BY THE COMMISSION:

On December 2, 1981, in Order No. 1 of this proceeding, the Commission suspended permanent approval of three fuel surcharge filings, designated as TA20-230, TA21-230, and TA23-230, filed by PELICAN UTILITY COMPANY (Pelco) for its Sand Point service area. In that Order the Commission raised questions about Pelco's fuel purchase arrangement with an affiliated interest, Pelican Distributing Company (PDC), and the methods used in the three filings to calculate kilowatt-hour (KWH) sales.

On the former matter, the Commission noted that in AS 42.05.511(c) it is clear that a utility has the burden of proving that a purchase arrangement with an affiliated interest is necessary and consistent with the public interest. On the latter matter, the Commission's concern centered on Pelco's subtracting five percent of its generation as a line loss to arrive at KWH sales. (A reduction in KWH sales causes an increase in the surcharge, and vice versa.) The Commission directed Pelco to reduce the billed surcharges to eliminate the effect of the five percent

ALASKA PUBLIC UTILITIES COMMISSION  
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1 reduction to KWH sales and to refund to its customers the excess  
2 revenues collected. In addition, the Commission approved, on an  
3 interim basis, surcharges recalculated without the five percent  
4 reduction to KWH sales.

5 Subsequently, in Orders Nos. 3, 4, 5, and 8 in this pro-  
6 ceeding, the Commission granted interim refundable approval to  
7 five other surcharges. In each of the latter, Pelco had calcu-  
8 lated the surcharge without making a five percent reduction to its  
9 KWH sales. Order No. 6 noted that the Commission Staff (Staff)  
10 and Pelco had agreed that the five percent reduction should not be  
11 made to KWH sales. Thus, the remaining issue was the reasonable-  
12 ness of Pelco's fuel purchase agreement.

13 On December 28, 1981, Pelco filed an analysis to justify  
14 its fuel purchase arrangement with PDC. The analysis calculated  
15 an annual expense to Pelco of \$75,520 if the utility were to in-  
16 stall and maintain its own tanks and fueling facilities. The  
17 utility's analysis was based on annual operating expenses associa-  
18 ted with the purchase of fuel tanks, including a 15.7 percent rate  
19 of return on the additional rate base, five-year depreciation  
20 lives for the tanks, and a \$1,200 annual maintenance expense  
21 thereon.

22 The Staff analyzed this filing and noted that the cal-  
23 culations and estimates provided were not supported but appeared  
24 reasonable with the exception of the depreciation lives of the  
25 tanks. Pelco estimated an annual depreciation expense of \$23,400  
26 based on an original cost of the tanks of \$117,000. Staff noted  
27 that the shortest life to be used for storage tanks would be  
28 20 years, which would mean an approximate \$17,000 reduction to the  
29 annual depreciation expense. In addition, Staff noted that the  
30 rate of return calculation of 15.7 percent was greater than the  
31 14.4 percent return recently approved for Pelco in Docket U-81-54.  
32

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1 This difference in return amounted to an approximate \$2,300 dif-  
2 ference in revenue, but Staff believed the difference was immate-  
3 rial if the revenue requirement for the storage tanks was adjusted  
4 for the depreciation expense reduction caused by the change in the  
5 service lives of the storage tanks. Staff maintained that the  
6 \$17,000 depreciation adjustment, based on the longer life, was the  
7 only appropriate reduction to the revenue requirement calculated  
8 by Pelco.

9 Staff, therefore, calculated that the revenue require-  
10 ment on the tank and fueling facility would be approximately  
11 \$58,250 (\$75,520 - \$17,000). After review of the present differ-  
12 ence between the price PDC pays for its fuel and the price PDC  
13 charges Pelco, Staff concluded that the utility had provided prima  
14 facie evidence that there would be no significant difference be-  
15 tween (a) a total revenue requirement for Pelco including costs of  
16 fuel purchased from PDC and (b) a total revenue requirement in-  
17 cluding the utility's costs of installing and maintaining its own  
18 tanks and fueling facilities.

19 However, Staff did believe that a serious potential  
20 problem existed concerning the price of fuel to be used in future  
21 FCRA filings. In particular, the method by which PDC calculates  
22 the dock price and Pelco's revenue requirement on the tank facil-  
23 ity cannot be reconciled in determining a reasonable cost justi-  
24 fication for future rate proceedings.

25 Pelco is billed by PDC at a variable rate above the  
26 Chevron price billed to PDC. The PDC price to Pelco (the dock  
27 price) is 25 percent above the Chevron price to PDC less 15¢ per  
28 gallon. However, the gallons consumed vary from period to period.  
29 For example, in a recent surcharge filing, TA35-230, Pelco showed  
30 an annual fuel consumption of 465,454 gallons. In the test year  
31 (1980) used to calculate the revenue requirement in U-81-54, the  
32 yearly fuel consumption was 516,049 gallons. Thus, the actual

1 annual expense to Pelco associated with its purchase of fuel from  
2 PDC varies. The expense increases with both increases in con-  
3 sumption and increases in the per-gallon price of fuel.

4 In effect, what is happening is that there is a fixed  
5 cost (Pelco: \$75,520; Staff: \$58,250) associated with installa-  
6 tion of the fuel tanks, but PDC's revenue is based on a variable  
7 reimbursement (the product of 25 percent of the Chevron price less  
8 15¢ per gallon multiplied by the gallons sold). The yearly ex-  
9 pense associated with Pelco's installation and maintenance of the  
10 tanks will not change significantly from year to year, but the  
11 revenue received by PDC may change significantly based on the  
12 price and amount of fuel purchased by Pelco. The annualized reim-  
13 bursement to PDC on the basis of the recent surcharge filing,  
14 TA35-230, is \$52,131. This amount is based on a dock price of  
15 11.2¢ per gallon above the Chevron price (11.2¢ per gallon price  
16 differential times annual fuel consumption of 465,454 gallons  
17 equals \$52,131).

18 Staff advised the Commission of three alternative solu-  
19 tions for dealing with this problem. The first alternative would  
20 be for PDC to charge (interfund) Pelco a flat yearly expense asso-  
21 ciated with the tanks and charge Pelco the same fuel price per  
22 gallon that PDC pays Chevron. This solution would necessitate an  
23 adjusted revenue requirement and a change in the base price of  
24 fuel for surcharge calculations.

25 A second alternative would be for Pelco to install the  
26 tanks and purchase fuel directly from Chevron. As in the alterna-  
27 tive above, an adjusted revenue requirement would have to be cal-  
28 culated.

29 A third alternative proposed by Staff would be to allow  
30 PDC to continue to use the present method of determining its price  
31 to Pelco, and Pelco would be required either to install the tank  
32

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1 farm or to interfund an annual expense in its next revenue re-  
2 quirement application presented to the Commission. Under the fuel  
3 price to Pelco from PDC which is reflected in TA35-230, the util-  
4 ity appears to be paying PDC less than it would cost Pelco to in-  
5 stall and maintain its own fuel tanks. Staff recommended that if  
6 this alternative were adopted, a ceiling of 12.5¢ per gallon  
7 should be placed on the differential between PDC's price to Pelco  
8 and the Chevron price to PDC. The 12.5¢ per gallon figure was  
9 calculated by dividing the cost of installing and maintaining the  
10 fuel tanks by the annual fuel consumption reflected in TA35-230  
11 (\$58,250 divided by 465,454 gallons equals 12.5¢ per gallon).  
12 This ceiling would protect the consumer if the price of fuel were  
13 to increase. Under this alternative, Pelco would not have to re-  
14 calculate the base price of fuel and would be allowed to continue  
15 its present surcharge computation until PDC's price to Pelco ex-  
16 ceeded the Chevron price by more than 12.5¢ per gallon. If the  
17 price charged Pelco by PDC exceeded the Chevron price by more than  
18 12.5¢ per gallon, Pelco would calculate the current fuel cost as  
19 the Chevron price plus 12.5¢ per gallon.

20 Staff expressed its belief that the third alternative  
21 was the most practical solution. Pelican's customers would be  
22 protected by the 12.5¢ ceiling discussed above, and in the next  
23 permanent rate proceeding the utility would have the option to  
24 adopt an interfund or to install and maintain its own fuel tanks.

25 The Commission concurs with Staff's analysis and be-  
26 lieves that Pelco's present method of calculating fuel surcharges  
27 should be used unless the price charged Pelco by PDC exceeds the  
28 Chevron price by more than 12.5¢ per gallon. In that case, the  
29 maximum current price used in the surcharge calculation will be  
30 the Chevron price per gallon plus 12.5¢ per gallon. In its next  
31 permanent rate relief request Pelco either should file its revenue  
32 requirement with the tank farm included in rate base or determine

1 an appropriate yearly interfund between PDC and Pelco to reflect  
2 the fuel storage service provided by PDC.

3 THE COMMISSION FURTHER FINDS AND CONCLUDES:

4 1. The fuel surcharges previously approved on an in-  
5 terim basis in this proceeding should be allowed on a permanent  
6 basis.

7 2. Pelco should be allowed to continue its present  
8 method of calculating the current cost of fuel in surcharge  
9 filings unless PDC's price to Pelco (the dock price) exceeds the  
10 Chevron price by more than 12.5¢ per gallon. Then Pelco should  
11 calculate the current cost as the Chevron price per gallon plus  
12 12.5¢ per gallon.

13 3. In conjunction with its next rate filing, Pelco  
14 either should install the tank farm and include it in Pelco's rate  
15 base or should interfund an appropriate annual expense associated  
16 with use of the PDC tank farm.

17 ORDER

18 THE COMMISSION FURTHER ORDERS:

19 1. The fuel surcharges previously approved on an  
20 interim, refundable basis in this proceeding for the Sand Point  
21 Division of Pelican Utility Company are approved on a permanent  
22 basis.

23 2. Pelican Utility Company shall continue to calculate  
24 its fuel cost rate adjustment surcharges for its Sand Point Divi-  
25 sion in the same manner as previously calculated unless the dock  
26 price exceeds the Chevron price to Pelican Distributing Company by  
27 12.5¢ per gallon. If the price to Pelican Utility Company exceeds  
28 the 12.5¢ per gallon limit, the allowed price shall be the Chevron  
29 price plus 12.5¢ per gallon.

30 3. In its next permanent rate relief request, Pelican  
31 Utility Company - Sand Point Division either shall install the  
32 tank farm and include it in rate base or charge an appropriate

1 annual interfund expense from Pelican Distributing Company to  
2 Pelican Utility Company - Sand Point Division for use of these  
3 fuel storage facilities.

4 DATED AND EFFECTIVE at Anchorage, Alaska this 26th day of Octo-  
5 ber, 1982.

6 BY DIRECTION OF THE COMMISSION  
7 (Commissioner Susan M. Knowles, not participating)

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*Matanuska Electric Assn request  
for permanent rate increase*

1 increased by \$83,124 to \$9,430,369 to reflect the increase  
2 in purchased power costs to \$.016705 per KWH. (Exhibit 13).

3 Staff reviewed the utility's expenses and adjustments  
4 and found them reasonable and proper with one exception, dereg-  
5 ulation expense. MEA accumulated the total cost of \$36,600 for  
6 the deregulation election in two subaccounts, labor costs of  
7 \$15,982 and other expenses of \$20,618. Staff maintained that  
8 the labor cost component represented a normal recurring expense  
9 which should be expensed in the current period. Staff amortized  
10 the remaining costs over a two-year period with the net result  
11 of increasing MEA's pro forma operating expenses by \$17,141 to  
12 \$9,447,510 including the additional increment of wholesale  
13 power costs per Exhibit 13 with which Staff concurred. The  
14 utility did not object to Staff's treatment of deregulation  
15 expense.

16 MVCAC suggested three specific adjustments to MEA's  
17 operating expenses. First, the intervenor stated that the  
18 utility's contributions to Susitna Power Now, which totalled  
19 \$1,000 during 1980, should be disallowed under AS 42.05.381.  
20 This section of the Commission's governing statute provides in  
21 pertinent part that:

22 No rate may include an allowance for costs of  
23 political contributions, or public relations  
24 except for reasonable amounts spent for

- 25 (1) energy conservation efforts;
- 26 (2) public information designed to promote  
27 more efficient use of the utility's  
28 facilities or services or to protect  
29 the physical plant of the utility;
- 30 (3) informing shareholders and members of  
31 a cooperative of meetings of the utility  
32 and encouraging attendance; or
- (4) emergency situations to the extent and  
under the circumstances authorized by  
the commission for good cause shown.

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1                   Second, MVCAC argued that deregulation expenses  
2 should be reduced by \$5,305 (Exhibit 3) for advertising expenses  
3 which it also believed were in violation of AS 42.05.381. The  
4 consumer group further recommended that no future deregulation  
5 elections "be funded without a petition of 20% of the member-  
6 ship prior to any future expenditures by MEA." (T-7, p. 2).

7                   Third, MVCAC averred that the savings experienced by  
8 MEA for reductions in its premiums for property and liability  
9 insurance should be passed on to the ratepayers as a reduction  
10 in operating expenses. The cost of property insurance coverage  
11 was reduced by \$2,745 per Exhibit 2 and of liability insurance  
12 coverage by \$81 (\$75,217 minus \$74,980 times 29 percent).

13                   The Commission concurs with Staff's recommendation  
14 that the labor component of the deregulation election costs be  
15 fully expensed in the test year, since it is an ongoing oblig-  
16 ation of the utility.

17                   The Commission also believes that expenses for ad-  
18 vertising MEA's position in the deregulation election in 1980 -  
19 - both in newspapers and on the radio -- should be disallowed.  
20 An examination of the text of advertising placed by MEA Board  
21 and management in the newspapers circulating in the MEA service  
22 area during the course of the election reveals numerous false  
23 statements and errors of both fact and law. (Exhibit 3). For  
24 example, one appearing in the Chugiak-Eagle River Star on Sep-  
25 tember 18, 1980, stated that even if economically deregulated,  
26 MEA still would "be fully regulated by REA" and that the "REA  
27 will regulate rate adjustments." That statement is false and  
28 misleading. As MEA's management is aware, the REA does not pass  
29 on the reasonableness and propriety of the rates MEA or any  
30 other electric cooperatives charge for electric energy. As the  
31 utility's "banker", REA's sole interest is whether the revenue  
32 MEA earns from its rates is sufficient to pay back the loans

1 made to MEA for construction projects and expansion of its  
2 services. Another ad asserted, without listing any examples,  
3 that the Commission was "less sensitive to local economic con-  
4 ditions than the MEA Board" and that APUC regulation did not  
5 permit MEA "to carry out the stated preference of its members  
6 regarding rate adjustments, that of smaller incremental rate  
7 changes." That, too, is false. The MEA Board determines when  
8 that utility's rate filings are made. Obviously the less fre-  
9 quently rate increases are requested, the larger the percentage  
10 increment is apt to be. Moreover, the MEA General Manager ad-  
11 mitted under cross-examination that he ordered the MEA drafting  
12 department to "reconfigure" the standard artwork of the cari-  
13 cature symbol (an animated electric plug) supplied by the  
14 National Rural Electric Cooperative Association (NRECA) to mem-  
15 ber cooperatives for the deregulation election campaign in the  
16 election. Thus, in the display advertisements in question, the  
17 caricature appears swinging a baseball bat at alleged "unnec-  
18 essary regulation" (Valley Sun, Eagle River Sun, Frontiersman,  
19 Chugiak-Eagle River Star); using a pair of shears to, presum-  
20 ably, eliminate "red tape" (Valley Sun, September 16, 1980);  
21 painfully straining to obtain release from an animal trap  
22 (Chugiak-Eagle River Star, September 4, 1980); and removing a  
23 ball and chain (Valley Sun, Eagle River Sun, Frontiersman,  
24 Chugiak-Eagle River Star, Anchorage Times, Anchorage Daily News).  
25 In short, the Commission believes that the misleading text of  
26 the so-called "Pro" and "Con" arguments that appeared in the  
27 display advertisements, as well as the doctored caricature, un-  
28 fairly weighted the advertising campaign in favor of the MEA  
29 Board's position on deregulation. The entire MEA-sponsored  
30 campaign lacked the fairness and balance surely contemplated by  
31 the Legislature under AS 42.05.712.  
32

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1 For the foregoing reasons the Commission will allow  
2 the expenses essential to the mechanics of conducting the  
3 election, e.g., ballot printing, mailing and tabulation, but  
4 believes the expenses of \$5,305 associated with MEA's adver-  
5 tising campaign should be rejected. The balance of \$15,312 in  
6 other deregulation expenses will be amortized over two years in  
7 equal annual installments. The two-year period appears reason-  
8 able inasmuch as AS 42.05.712 allows a utility to conduct  
9 deregulation elections at two-year intervals.

10 MVCAC has suggested that a petition of 20 percent of  
11 the membership be required prior to the cooperative expending  
12 funds on any future deregulation election. The Commission  
13 believes this recommendation would posit an unreasonable impedi-  
14 ment to operation of the law governing deregulation elections.  
15 In particular, the Commission notes that the numerical threshold  
16 proposed for spending funds is higher than that established  
17 under AS 42.05.712(b) for a quorum or deciding vote in the  
18 election. While it cannot adopt MVCAC Recommendation No. 5,  
19 the Commission will continue to monitor the amount and scope of  
20 deregulation expenses to assure their reasonableness and pro-  
21 priety.

22 MVCAC's argument to disallow the utility's contri-  
23 butions to Susitna Power Now is rejected without prejudice to  
24 its resubmission. There is virtually no evidence on the record  
25 with respect to the appropriateness of this expenditure, and it  
26 would be improper to base a decision solely on general awareness  
27 of the environmental and economic debate surrounding the Susitna  
28 hydroelectric project. The Commission also recognizes that  
29 this issue affects other utilities and therefore, believes that  
30 it should be considered with the benefit of a fully-developed  
31 record.

32



*Enstar permanent rate increase request*

1 submit progress reports on a quarterly schedule, or sooner if  
2 substantive developments occur with respect to the gas supply  
3 contract negotiations. Further, once negotiated, the contracts  
4 themselves should be submitted to the Commission for approval.

5 3. Continuing Property Records System. Upon review of  
6 this utility's prior rate proceeding, the Commission finds that  
7 ENSTAR has not complied with the directive in U-75-95(7) in which  
8 the Commission ordered the utility to institute a continuing  
9 property records (CPR) system, as required by AS 42.05.461, on or  
10 before September 30, 1976. Despite the failure of ENSTAR to  
11 comply with the Commission's prior order, the Commission perceives  
12 that the utility now intends to proceed in good faith. Accord-  
13 ingly, the Commission accepts as reasonable the utility's estimate of  
14 one year to complete its new CPR system. ENSTAR will be required  
15 to institute the CPR system not later than October 31, 1983.  
16 Staff will then be required to review the CPR system to assure its  
17 compliance with the statute and to report the results of that  
18 review to the Commission.

19 4. Management Fees Paid to Parent Corporation The

20 Commission finds that ENSTAR has not fully met its burden of proof  
21 that the intercompany management fees paid to its parent corpora-  
22 tion are just and reasonable. However, the Commission believes  
23 that the amount actually paid during the test year is not unrea-  
24 sonable when compared to the figures approved in the last perma-  
25 nent rate case wherein a more exhaustive audit was conducted by  
26 Staff to verify this expenditure. For this reason, the \$611,000  
27 in intercompany management charges will be accepted for purposes  
28 of this proceeding, but the acceptance will be conditional upon  
29 the requirement that ENSTAR submit by April 29, 1983, a new, mor-  
30 auditable contract for Commission approval. The Staff should th  
31 file a report with the Commission providing its criticisms or  
32 suggestions for changes in the contract formula.

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1                   5. Advertising Expenses. Upon review of the testimony  
2 and evidence on the record, the Commission finds that the expenses  
3 associated with ENSTAR's sponsorship of public television program-  
4 ming are clearly and appropriately categorized under the Commis-  
5 sion's regulations as "good will advertising." While this aspect  
6 of ENSTAR's advertising is reflective of a laudable civic commit-  
7 ment, nonetheless it also reflects the utility's desire to enhance  
8 its public image. Furthermore, this expenditure does not fit into  
9 one of the allowable public relations expense categories  
10 scribed in AS 42.05.381(a). Accordingly, \$30,296 in advertising  
11 expenses should be disallowed for ratemaking purposes as expressly  
12 provided under AS 42.05.381(a) and 3 AAC 50.500.

13                   6. Lobbying Expenses. Although the Commission recog-  
14 nizes that there may be instances in which a utility perceives  
15 that certain congressional or State legislation is not in its best  
16 interest, the Commission's interpretation of AS 42.05.381(a),  
17 particularly in conjunction with 3 AAC 50.500(a)-(c), its consid-  
18 eration of the weight of regulatory precedent, and its limited  
19 intent as expressed in U-78-4(33), collectively dictate that  
20 \$18,000 in lobbying expenses incurred during test year operations  
21 should be disallowed. In addition to any legal restrictions, the  
22 Commission observes that when a utility claims direct benefits to  
23 its ratepayers as a result of lobbying efforts, the utility is  
24 presuming to determine without the prior knowledge or consent of  
25 its ratepayers what pending legislation is or is not beneficial to  
26 them. Alternatively, even if the Commission were to determine the  
27 appropriateness of a given lobbying effort on a case-by-case  
28 basis, the Commission, in attempting to rule on the question of "  
29 clear showing of demonstrable benefits to ratepayers," would be  
30 required to offer judgments on such issues as: Is the Legislature  
31 (or Congress) acting wisely in changing existing laws? What type  
32 of proposed legislation should be defeated? Should a utility be

1 reimbursed for meritorious but unsuccessful lobbying efforts? How  
2 should legislation beneficial to one utility's ratepayers but  
3 detrimental to others be treated?, etc. In sum, even if the Com-  
4 mission were to artfully circumvent the statute (AS 42.05.381(a))  
5 and disregard its own regulations (3 AAC 50.500), the fact that  
6 the Commission would be required to render such subjective and  
7 judgmental decisions with respect to direct ratepayer benefits  
8 effectively relegates political lobbying in this and all future  
9 proceedings as the proper expense of a utility's stockholders.

10           7. Rate Case Expenses. The Commission will allow  
11 ENSTAR an upward adjustment in rate case expenses to \$61,598  
12 amortized over three years, on the basis of estimates found rea-  
13 sonable during the hearing, subject to the submission of documen-  
14 tation to fully support all actual expenses at the end of both  
15 this phase and the rate design phase of the proceeding. Addi-  
16 tionally, the Commission will allow the utility the option of  
17 requesting a further adjustment if documented rate case expenses  
18 for the rate design phase of this proceeding exceed the utility's  
19 projections.

20           8. Treatment of \$3.2 Million Line of Credit. Histori-  
21 cally, the Commission has not permitted short-term debt to be  
22 treated as a component of a utility's debt capital structure.  
23 Because ENSTAR has not offered any justification for changing this  
24 policy, the Commission believes that the \$3,200,000 line of credit  
25 should be deleted from the cost of capital computation.

26           9. Consolidated Federal Income Taxes. The Commission  
27 reaffirms the policy previously articulated in U-75-95(16) and  
28 U-78-4(33) that the benefits which result from the filing of a  
29 consolidated federal income tax return must be shared equitably  
30 with the utility and its ratepayers. For the purpose of estab-  
31 lishing the federal income tax allowance in cost of service, the  
32

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# ENSTAR permanent rate increase request

1 submit progress reports on a quarterly schedule, or sooner if  
2 substantive developments occur with respect to the gas supply  
3 contract negotiations. Further, once negotiated, the contracts  
4 themselves should be submitted to the Commission for approval.

5       3. Continuing Property Records System. Upon review of  
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18 eration of the weight of regulatory precedent, and its limited  
19 intent as expressed in U-78-4(33), collectively dictate that  
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28 basis, the Commission, in attempting to rule on the question of "a  
29 clear showing of demonstrable benefits to ratepayers," would be  
30 required to offer judgments on such issues as: Is the Legislature  
31 (or Congress) acting wisely in changing existing laws? What types  
32 of proposed legislation should be defeated? Should a utility be

1 reimbursed for meritorious but unsuccessful lobbying efforts? How  
2 should legislation beneficial to one utility's ratepayers but  
3 detrimental to others be treated?, etc. In sum, even if the Com-  
4 mission were to artfully circumvent the statute (AS 42.05.391(a))  
5 and disregard its own regulations (3 AAC 50.500), the fact that  
6 the Commission would be required to render such subjective and  
7 judgmental decisions with respect to direct ratepayer benefits  
8 effectively relegates political lobbying in this and all future  
9 proceedings as the proper expense of a utility's stockholders.

10           7. Rate Case Expenses. The Commission will allow  
11 ENSTAR an upward adjustment in rate case expenses to \$61,598  
12 amortized over three years, on the basis of estimates found rea-  
13 sonable during the hearing, subject to the submission of documen-  
14 tation to fully support all actual expenses at the end of both  
15 this phase and the rate design phase of the proceeding. Addi-  
16 tionally, the Commission will allow the utility the option of  
17 requesting a further adjustment if documented rate case expenses  
18 for the rate design phase of this proceeding exceed the utility's  
19 projections.

20           8. Treatment of \$3.2 Million Line of Credit. Histori-  
21 cally, the Commission has not permitted short-term debt to be  
22 treated as a component of a utility's debt capital structure.  
23 Because ENSTAR has not offered any justification for changing this  
24 policy, the Commission believes that the \$3,200,000 line of credit  
25 should be deleted from the cost of capital computation.

26           9. Consolidated Federal Income Taxes. The Commission  
27 reaffirms the policy previously articulated in U-75-95(16) and  
28 U-78-4(33) that the benefits which result from the filing of a  
29 consolidated federal income tax return must be shared equitably  
30 with the utility and its ratepayers. For the purpose of estab-  
31 lishing the federal income tax allowance in cost of service, the  
32

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# Alaska Statutes

## Title 42. Public Utilities and Carriers.

### Chapter

- 05. Alaska Public Utilities Commission Act (§§ 42.05.010 — 42.05.721)
- 06. Pipeline Act (§§ 42.06.140 — 42.06.640)
- 07. Alaska Transportation Commission Act (§§ 42.07.011 — 42.07.191)
- 10. Alaska Motor Freight Carrier Act (§§ 42.10.010 — 42.10.430)
- 20. Telegraph and Telephone Systems and Cable Lines (§§ 42.20.010 — 42.20.340)
- 30. Miscellaneous Regulations Governing Public Utilities and Carriers (§§ 42.30.010 — 42.30.190)

**Revisor's notes.** — The provisions of this title were redrafted in 1983 to remove personal pronouns pursuant to § 4, ch. 58, SLA 1982. Other minor word changes were made in this title in 1981 and 1983.

**Editor's notes.** — Section 18, ch. 110, SLA 1981 provides: "TRANSITION. (a) All orders, determinations, regulations, contracts, certificates, decisions, and privileges that have been issued, made, adopted, granted, or allowed to become effective by the Alaska Pipeline Commission or by a court of competent jurisdiction, in the performance of functions or in the conduct of proceedings that are transferred by this Act, continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Alaska Public Utilities Commission or other authorized officials, a court of competent jurisdiction, or by operation of law.

"(b) The provisions of this Act do not affect a tariff proceeding or an application for a certificate that is pending before the Alaska Pipeline Commission on the effective date of this Act [July 1, 1981], but these proceedings and the processing of applications continue under the Alaska Public Utilities Commission. Orders shall be issued in these proceedings, and appeals may be taken from them, as if this Act had not been enacted; and orders

issued in these proceedings continue in effect until modified, terminated, superseded, or revoked by an authorized official, or by a court of competent jurisdiction or by operation of law. Nothing in this subsection prohibits the discontinuance or modification of these proceedings under the same terms and conditions and to the same extent that these proceedings could have been discontinued or modified if this Act had not been enacted.

"(c) The Alaska Public Utilities Commission, with the advice of the Alaska Pipeline Commission, shall provide for the orderly transfer of proceedings from the Alaska Pipeline Commission to the Alaska Public Utilities Commission.

"(d) Except as provided in this subsection, the personnel employed in connection with, and the personnel positions, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available with, the functions and programs transferred by this Act are transferred from the Alaska Pipeline Commission to the Alaska Public Utilities Commission for appropriate allocation in accordance with law. The positions of commissioner and of executive director of the Alaska Pipeline Commission are abolished."

**Chapter 05. Alaska Public Utilities Commission Act.**

**Article**

1. Establishment of Public Utilities Commission (§§ 42.05.010 — 42.05.131)
2. Powers and Duties of the Commission (§§ 42.05.141 — 42.05.211)
3. Certificate of Public Convenience and Necessity (§§ 42.05.221 — 42.05.281)
4. Services and Facilities (§§ 42.05.291 — 42.05.351)
5. Rates and Rate Schedules (§§ 42.05.361 -- 42.05.441)
6. Accounts, Records and Reports (§§ 42.05.451 — 42.05.501)
7. Financial and Management Regulation (§§ 42.05.511 — 42.05.531)
8. Judicial Review, Penalties and Enforcement (§§ 42.05.541 — 42.05.621)
9. Miscellaneous Provisions (§§ 42.05.631 — 42.05.691)
10. General Provisions (§§ 42.05.711 — 42.05.721)

**Article 1. Establishment of Public Utilities Commission.**

Section	Section
10. Alaska Public Utilities Commission created	81. Oath of office
20. Composition of Alaska Public Utilities Commission	91. Compensation
30. Term of office; vacancy	101. Principal office; seal
35. Removal of commissioners	111. Legal counsel
40. Qualifications of members	121. Employment of commission personnel
50. Actual experience equivalent to a degree	123. Communications carriers section
71. Quorum	131. Restrictions on members and employees

Collateral references. — 64 Am. Jur. 2d, Public Utilities, §§ 230, 231. 73 C.J.S., Public Utilities, §§ 31 — 37.

**Sec. 42.05.010. Alaska Public Utilities Commission created.** There is created within the Department of Commerce and Economic Development the Alaska Public Utilities Commission. (§ 2 ch 199 SLA 1959; am § 1 ch 156 SLA 1960; am § 1 ch 113 SLA 1970; am § 83 ch 218 SLA 1976)

Cross references. — For termination of commission under "Sunset" law, see AS 44.66.010(a)(4).

**NOTES TO DECISIONS**

Legislative history of chapter. — See Homer Elec. Ass'n v. City of Kenai, Sup. Ct. Op. No. 390 (File No. 675), 423 P.2d 285 (1967).

Cited in Greater Anchorage Area Borough v. City of Anchorage, Sup. Ct. Op. No. 856 (File No. 1569), 504 P.2d 1027 (1972).

**Sec. 42.05.020. Composition of Alaska Public Utilities Commission.** (a) The Alaska Public Utilities Commission consists of five members, appointed by the governor and confirmed by the legislature in joint session assembled.

(b) The governor shall designate one member of the commission as chairman of the commission. This member shall serve as chairman for a term of four years, but may be appointed for successive terms. (§ 2 ch 199 SLA 1959; am § 1 ch 156 SLA 1960; am § 2 ch 113 SLA 1970; am § 1 ch 213 SLA 1975)

**Sec. 42.05.030. Term of office; vacancy.** (a) The term of office of each member is six years. The governor shall designate who among the initial appointees shall serve, respectively, for terms of two years, four years and six years. A commissioner, upon the expiration of a term, shall continue to hold office until a successor is appointed and qualified.

(b) A vacancy arising in the office of commissioner shall be filled by appointment by the governor and confirmed by the legislature in joint session and an appointee selected to fill a vacancy shall hold office for the balance of the full term for which the appointee's predecessor on the commission was appointed.

(c) A vacancy in the commission does not impair the authority of a quorum of commissioners to exercise all the powers and perform all the duties of the commission. (§ 2 ch 199 SLA 1959; am § 1 ch 156 SLA 1960; am § 3 ch 113 SLA 1970)

**Sec. 42.05.035. Removal of commissioners.** The governor may remove a commissioner from office by and with the consent of a majority of the legislature. (§ 4 ch 113 SLA 1970)

**Sec. 42.05.040. Qualifications of members.** Members shall be qualified as follows: one member shall be a graduate of an accredited school of law; one member shall be a graduate of an accredited university with a major in engineering; one member shall be a graduate of an accredited university with a major in finance, accounting, or business administration; and two members shall be consumers. (§ 2 ch 199 SLA 1959; am § 1 ch 156 SLA 1960; am § 2 ch 213 SLA 1975)

**Sec. 42.05.050. Actual experience equivalent to a degree.** Actual experience for a period of five years in the practice of law or in the field of engineering or in the field of finance, business administration or accounting is equivalent to a degree. (§ 2 ch 199 SLA 1959; am § 1 ch 156 SLA 1960)

*Secs. 42.05.060 — 42.05.070. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.071. Quorum.** Three members of the commission consti-

tute a quorum for the transaction of business, for the performance of a duty, or for the exercise of a power of the commission. (§ 6 ch 113 SLA 1970; am § 3 ch 213 SLA 1975)

**Opinions of attorney general.** — When only three members of the Public Utilities Commission are sitting, a minimum of two members concurring is all that is required for the commission to act. March 22, 1976, Op. Att'y Gen.

*Sec. 42.05.080. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.081. Oath of office.** Each commissioner and the executive director of the commission, before entering upon the duties of their respective offices, shall take and subscribe to the oath prescribed for principal officers of the state. (§ 5 ch 113 SLA 1970)

*Sec. 42.05.090. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.091. Compensation.** Members of the commission are in the exempt service and are entitled to a monthly salary equal to Step C, Range 26 of the salary schedule in AS 39.27.011(a) for Juneau, Alaska. (§ 6 ch 113 SLA 1970; am § 6 ch 47 SLA 1974; am § 14 ch 148 SLA 1976; am § 14 ch 263 SLA 1976; am §§ 10, 25 ch 3 SLA 1980)

**Effect of amendments.** — Section 10, ch. 3, SLA 1980, retroactive to January 1, 1979, and applicable for calendar year 1979, substituted "are entitled to an annual salary of \$49,000, payable monthly in 12 equal installments" for "shall receive an annual salary as established under AS 39.23." Section 25 of ch. 3, retroactive to January 1, 1980, substituted "are entitled to a monthly salary equal to Step C, Range 26 of the salary schedule in AS 39.27.011(a) for Juneau, Alaska" for the language substituted by § 10 of ch. 3.

*Sec. 42.05.100. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.101. Principal office; seal.** (a) The commission shall establish a principal office and branch offices necessary to discharge its business efficiently. For the convenience of the public or of parties to a proceeding the commission may hold meetings, hearings or other proceedings at other locations.

(b) The commission shall have an official seal. (§ 6 ch 113 SLA 1970)

*Sec. 42.05.110. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.111. Legal counsel.** (a) The attorney general is legal counsel for the commission. The attorney general shall advise the commission in legal matters arising in the discharge of its duties and represent the commission in actions to which it is a party. If, in the opinion of the commission, the public interest is not adequately represented by counsel in a proceeding, the attorney general, upon request of the commission, shall represent the public interest.

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(b) The commission may employ temporary legal counsel from time to time in proceedings before the commission in which the attorney general is representing the public interest or a party before the commission. (§ 6 ch 113 SLA 1970)

**Sec. 42.05.120. [Repealed, § 5 ch 113 SLA 1970.]**

**Sec. 42.05.121. Employment of commission personnel.** (a) The commission may employ an executive director who shall have had at least five years of experience in public utility management or regulation, law, accounting, engineering, or an allied field. The executive director is responsible for directing the administrative functions of the commission and carrying out the policies as set by the commission. The commission may employ engineers, hearing officers, administrative law judges to the extent provided by AS 42.06.140(b), experts, clerks, accountants, and other agents and assistants it considers necessary. Employees and agents of the commission who are not partially exempt under AS 39.25.120, other than legal counsel, are in the classified service under AS 39.25.100.

(b) In addition to its staff of regular employees, the commission may contract for and engage the services of consultants and experts the commission considers necessary. (§ 6 ch 113 SLA 1970; am § 2 ch 103 SLA 1978; am § 2 ch 136 SLA 1980; am § 5 ch 110 SLA 1981)

**Revisor's notes.** — Section 6, ch. 110, SLA 1981 amended this section by adding a subsection (c), which was renumbered as AS 23.06.140(b) in 1981.

**Effect of amendments.** — The 1980 amendment in subsection (a), substituted the present second sentence for the former, which read: "The executive director may be one of the commission members," deleted "if not a member of the commission" near the middle of the fourth sentence, and deleted the former sixth sentence, which read: "The combined salary of an executive director who is a member of the commission may not exceed that of a superior court judge."

The 1981 amendment added "engineering" following "accounting" in the first sentence and added "administrative law judges to the extent provided by AS 42.05.121(c)" [now AS 42.06.140(b)] following "hearing officers" in the third sentence of subsection (a). The amendment, also in subsection (a), deleted the former fourth sentence which read "The executive director and his deputy are in the partially exempt service under AS 39.25.120" and substituted "Employees" for "all other employees" and added "who are not partially exempt under AS 39.25.120" in the present fourth sentence.

**Sec. 42.05.123. Communications carriers section.** (a) There is established within the commission a communications carriers section which shall develop, recommend and administer policies and programs with respect to the regulation of rates, services, accounting and facilities of communications common carriers within the state involving the use of wire, cable, radio and space satellites.

(b) The section shall advise and make recommendations to the commission and represent the commission in matters pertaining to com-

munication common carrier regulation and licensing and shall participate, as a party, in adjudicatory hearings in which significant common carrier issues are involved.

(c) It is the responsibility of the communications carrier section in its participation in rate or tariff adjudication proceedings to advocate and provide support for the lowest practicable rate under the circumstances. (§ 1 ch 224 SLA 1976)

**Collateral references.** — Community antenna television systems (CATV) as subject to jurisdiction of state public utility or service commission, 61 ALR3d 1150.

Who is a "common carrier" or "carrier" within the meaning of § 3(h) of the Com-

munications Act of 1934 (47 USCS § 153(h)), 46 ALR Fed 626.

Federal legal problems arising from subscription television or "pay TV" broadcast over the air, 61 ALR Fed 809.

*Sec. 42.05.130. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.131. Restrictions on members and employees.** (a) A member of the commission or an employee of the commission may not have an official connection with, or hold stock or securities in, or have a pecuniary interest in a public utility within the state. Membership in a cooperative association is not a "pecuniary interest" within the meaning of this section; however, a member or employee of the commission may not be an officer, board member or employee of a cooperative association. A member or employee may not act upon a matter in which a relationship of the member or employee with any person creates a conflict of interest.

(b) A member or employee of the commission may not, after leaving the position as a member or employee of the commission, act as agent for or on behalf of a public utility in any matter before the commission that was before the commission during the employee's employment or the member's term of office. A violation of this subsection is a class A misdemeanor. (§ 6 ch 113 SLA 1970; am § 3 ch 136 SLA 1980)

**Effect of amendments.** — The 1980 amendment added subsection (b).

*Sec. 42.05.140. [Repealed, § 5 ch 113 SLA 1970.]*

**Article 2. Powers and Duties of the Commission.**

<b>Section</b>	<b>Section</b>
141. General powers and duties of the commission	161. Application of Administrative Procedure Act
151. Administrative authority of commission; regulations and hearing procedures	171. Formal hearings
	181. Final orders of the commission
	191. Format of orders

**Section**

201. Publication of reports, orders, decisions and regulations  
 211. Annual report

**Collateral references.** — 64 Am. Jur. 73 C.J.S., Public Utilities, §§ 38 — 62.  
 2d, Public Utilities, §§ 231 — 235, 264 — 275.

**Sec. 42.05.141. General powers and duties of the commission.**  
 The Alaska Public Utilities Commission may

(1) regulate every public utility engaged or proposing to engage in such a business inside the state, except to the extent exempted by AS 42.05.711, and the powers of the commission shall be liberally construed to accomplish its stated purposes;

(2) investigate, upon complaint or upon its own motion, the rates, classifications, rules, regulations, practices, services and facilities of a public utility and hold hearings on them;

(3) make or require just, fair and reasonable rates, classifications, regulations, practices, services and facilities for a public utility;

(4) prescribe the system of accounts and regulate the service and safety of operations of a public utility;

(5) require a public utility to file reports and other information and data;

(6) appear personally or by counsel and represent the interests and welfare of the state in all matters and proceedings involving a public utility pending before an officer, department, board, commission or court of the state or of another state or the United States and to intervene in, protest, resist, or advocate the granting, denial or modification of any petition, application, complaint or other proceeding;

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

(b) The commission shall perform the duties assigned to it under AS 44.83.162.

(c) In the establishment of electric service rates under this chapter the commission shall promote the conservation of resources used in the generation of electric energy. (§ 6 ch 113 SLA 1970; am § 1 ch 33 SLA 1971; am § 43 ch 83 SLA 1980)

**Effect of amendments.** — The 1980 amendment added subsections (b) and (c). 1985, was repealed by § 13, ch. 118, SLA 1981.

**Editor's notes.** — Section 51, ch. 83, SLA 1980, which provided for the repeal of subsections (b) and (c) effective July 1,

**Opinions of attorney general.** — Where public utility company entered into contract to sell natural gas to federal mili-

tary installations pursuant to federal statute governing such contract negotiations, Alaska Public Utility Commission was precluded by supremacy clause of U.S. Constitution (Art. VI, cl. 2) for asserting its jurisdiction over the sale. August 4, 1976, Op. Att'y Gen.

The Alaska Public Utility Commission can require that a public utility file copies of its military supply contracts with the Commission pursuant to AS 42.05.361(a). August 4, 1976, Op. Att'y Gen.

#### NOTES TO DECISIONS

The general powers and duties of the Public Utilities Commission are set forth in this section. Greater Anchorage Area Borough v. City of Anchorage, Sup. Ct. Op. No. 856 (File No. 1569), 504 P.2d 1027 (1972), overruled on other grounds, 595 P.2d 629 (Alaska 1979).

The essence of the administrative power conferred upon the Public Utilities Commission is regulatory; the commission is empowered to set rates, promulgate regulations, collect information, process complaints against utilities and the like. Greater Anchorage Area Borough v. City of Anchorage, Sup. Ct. Op. No. 856 (File No. 1569), 504 P.2d 1027 (1972), overruled on other grounds, 595 P.2d 629 (Alaska 1979).

The statutory framework does not grant unlimited adjudicatory authority to the Public Utilities Commission. Greater Anchorage Area Borough v. City of Anchorage, Sup. Ct. Op. No. 856 (File No. 1569), 504 P.2d 1027 (1972), overruled on other grounds, 595 P.2d 629 (Alaska 1979).

This chapter simply does not contemplate the establishment of an administrative body with the authority to adjudicate disputes over the authority of boroughs to control construction along their rights of way. Greater Anchorage Area Borough v. City of Anchorage, Sup. Ct. Op. No. 856 (File No. 1569), 504 P.2d 1027 (1972), overruled on other grounds, 595 P.2d 629 (Alaska 1979).

The Public Utilities Commission is not empowered to decide disputes between municipalities over the control of construction: activities within rights of way belonging to one of the disputants. Greater Anchorage Area Borough v. City of Anchorage, Sup. Ct. Op. No. 856 (File No. 1569), 504 P.2d 1027 (1972), overruled on other grounds, 595 P.2d 629 (Alaska 1979).

There is no "right" to have the commission act. Jager v. State, Sup. Ct. Op.

No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

The matter of rate discrimination and investigation is such that the commission must be free to weigh the charges and data presented and the costs to the public and the utility, against which a complaint has been brought, to determine whether further proceedings are in the public interest. Jager v. State, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

The Public Utilities Commission is not compelled to act by the mere filing of a complaint. Jager v. State, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

Nor can the commission arbitrarily deny relief to a citizen who can demonstrate a sufficient probability that his complaint is valid. Jager v. State, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

At the least the Public Utilities Commission must offer some justification for its dismissal of a complaint of discrimination in the rate structure based on a prior determination of allocation methods, previous adjudication of permissible discrimination, or other such factors. Jager v. State, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

Confiscation. — A court may evaluate the showing of confiscation. That is, although the process of determining whether a rate is confiscatory involves fact/law determinations which require the special competence of the commission, the ultimate issue in confiscation questions is whether due process will be violated by the continued operation of the rate. United States v. RCA Alaska Communications, Inc., Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

Standard of review of rate-making decisions. — Since generally rate-making decisions relate to complex subject matter which requires the particularized knowledge and experience of the rate-making

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body, the appropriate standard of review is normally whether the administrative body had a reasonable basis for its decision. *United States v. RCA Alaska Communications, Inc.*, Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

The following requirements must be met before the superior court can intervene and overrule or modify an order of the Public Utilities Commission affecting utility rates. First, the utility must make a serious and substantial showing that the existing rates are so low as to be confiscatory. Second, the utility is obligated to show that no date has been set by the commission for a prompt final hearing, and that the existing confiscatory rates are likely to remain in force for an unreasonable period of time before the Public Utilities Commission makes its permanent rate determination. Third, the utility must convince the court that without the benefit of being permitted to operate under an interim rate increase, it will face irreparable harm. Fourth, the utility is required to demonstrate that if the interim rate relief is granted, the public can be adequately protected. Fifth, the utility must show that "serious" and "substantial" questions are involved in the rate

case it has presented. *United States v. RCA Alaska Communications, Inc.*, Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

Standard used in determining whether to initiate rate investigation upheld. — Under the "reasonable and not arbitrary" standard for review of administrative regulations, the supreme court upheld the standard employed by the Public Utilities Commission in determining whether to initiate a thorough rate investigation, i.e., whether public interest would be served by such investigation. *Jager v. State*, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

Municipally owned utilities in competition with other utilities subjected to full gamut of regulation pertaining to other utilities, with exception relating to bond covenants. — See *Alaska Pub. Utils. Comm'n v. Municipality of Anchorage*, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

Collateral references. — 73 C.J.S., Public Utilities, §§ 38 — 45, 49, 52.

Prohibition to control action of commission, 115 ALR 34; 159 ALR 627.

Public regulation of nuclear power plants, 82 ALR3d 751.

*Sec. 42.05.150. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.151. Administrative authority of commission; regulations and hearing procedures.** (a) The commission may adopt regulations, not inconsistent with the law, necessary or proper to exercise its powers and to perform its duties under this chapter.

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

(c) The commission, each commissioner or an employee authorized by the commission may administer oaths, certify to all official acts, and issue subpoenas, subpoenas duces tecum and other process to compel the attendance of witnesses and the production of testimony, records, papers, accounts and documents in an inquiry, investigation, hearing or proceeding before the commission in any part of the state. Each commissioner is authorized to issue orders on procedural motions. The

commission may petition a court of this state to enforce its subpoenas, subpoenas duces tecum or other process. (§ 6 ch 113 SLA 1970)

#### NOTES TO DECISIONS

Cited in *Jager v. State*, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975); *United States v. RCA Alaska Communications, Inc.*, Sup. Ct. Op. No. 1647 (File No.

3772), 597 P.2d 489 (1979).

Collateral references. — 73 C.J.S., Public Utilities, §§ 54, 55.

*Sec. 42.05.160. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.161. Application of Administrative Procedure Act.**

(a) The administrative adjudication procedures of the Administrative Procedure Act (AS 44.62) do not apply to adjudicatory proceedings of the commission except that final administrative determinations by the commission are subject to judicial review under that Act as provided in AS 42.05.551(a).

(b) The Administrative Procedure Act applies to regulations adopted by the commission. (§ 6 ch 113 SLA 1970)

#### NOTES TO DECISIONS

Standard of review of rate-making decisions. — See *United States v. RCA Alaska Communications, Inc.*, Sup. Ct. Op.

No. 1647 (File No. 3772), 597 P.2d 489 (1979).

*Sec. 42.05.170. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.171. Formal hearings.** A formal hearing which the commission has power to hold may be held by or before three or more commissioners, a hearing officer, or an administrative law judge designated for the purpose by the commission. The testimony and evidence in a formal hearing may be taken by the commissioners, by the hearing officer, or by the administrative law judge to whom the hearing has been assigned. A commissioner who has not heard or read the testimony, including the argument, may not participate in making a decision of the commission. In determining the place of a hearing the commission shall give preference to holding the hearing at a place most convenient for those interested in the subject of the hearing. (§ 6 ch 113 SLA 1970; am § 45 ch 94 SLA 1980; am § 7 ch 110 SLA 1981)

**Effect of amendments.** — The 1980 amendment substituted "three" for "two" near the middle of the first sentence.

The 1981 amendment added "a hearing

officer, or an administrative law judge" following "three or more commissioners" in the first sentence, added "by the hearing officer, or by the administrative law judge"

following "by the commissioners" in the second sentence and added "or read" preceding "the testimony" in the third sentence.

*Sec. 42.05.180. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.181. Final orders of the commission.** A final order of the commission compelling affirmative action, denying a right or privilege, or granting a right or privilege over protest of the public utility or any party of record may not be entered without giving the interested party reasonable notice and an opportunity to be heard. (§ 6 ch 113 SLA 1970)

*Sec. 42.05.190. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.191. Format of orders.** Every formal order of the commission shall be based upon the facts of record. Every order entered pursuant to a hearing shall state the commission's findings, the basis of its findings and conclusions, together with its decision. These orders shall be entered of record and a copy of them shall be served on all parties of record in the proceeding. (§ 6 ch 113 SLA 1970)

#### NOTES TO DECISIONS

The standard of review of agency findings of fact is that they will be set aside if they are not supported by substantial evidence on the whole record. Inherent in this standard is a requirement, in part statutory, that the facts found be based on evidence in the record. *City of Fairbanks v. Alaska Pub. Utils. Comm'n & Wire Communications, Inc.*, Sup. Ct. Op. No. 2079 (File No. 3977), 611 P.2d 493 (1980).

The requirement that the facts found be based on evidence in the record serves three purposes: First, it helps to ensure that the agency does not make decisions that have no adequate basis in fact; second, it gives opposing parties the opportunity to challenge the agency's reasoning process and the correctness of the decision; and third, it affords reviewing courts the opportunity to evaluate the decision. *City of Fairbanks v. Alaska Pub. Utils. Comm'n & Wire Communications, Inc.*, Sup. Ct. Op. No. 2079 (File No. 3977), 611 P.2d 493 (1980).

**Commission's handling of financial information unconstitutional.** — Where both the city of Fairbanks and a corporation sought a certificate of public convenience and necessity to provide telephone service; at the hearing to decide the

matter the Alaska public utilities commission staff requested two years' annual balance sheets and income statements from the corporation; the corporation agreed to supply them to the staff, but requested that they not be divulged to Fairbanks or become part of the record, claiming that they were proprietary and that revealing them could place the corporation at a competitive disadvantage in its telecommunications contracting business; Fairbanks objected and suggested as an alternative that the income statements and balance sheets could be revealed to certain representatives of Fairbanks under an order of confidentiality; the commission ruled that the information was proprietary and should be kept confidential and did not allow any representative of Fairbanks to see it; a commission staff member reviewed the income statements and balance sheets and based on that review testified that the corporation could meet its financial commitments and was financially fit; and the information upon which this determination was based was never placed in the record, the commission's handling of the information relating to the corporation's financial fitness violated procedural due process.

City of Fairbanks v. Alaska Pub. Utils. Sup. Ct. Op. No. 2079 (File No. 3977), 611 Comm'n & Wire Communications, Inc., P.2d 493 (1980).

*Sec. 42.05.200. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.201. Publication of reports, orders, decisions and regulations.** All reports, orders, decisions and regulations of the commission shall be in writing. The commission shall apprise all affected utilities and interested parties of these reports, orders, decisions, and regulations as they are issued and adopted, and, when appropriate to do so, shall publish them in a manner that will reasonably inform the public or the affected consumers of any public utility service. The commission may set charges for costs of printing or reproducing and furnishing copies of its reports, orders, decisions and regulations. The publication requirement, as it pertains to regulations, does not supersede the requirements of the Administrative Procedure Act (AS 44.62). (§ 6 ch 113 SLA 1970)

*Sec. 42.05.210. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.211. Annual report.** The commission shall publish an annual report reviewing its work and submit it to the legislature by February 15 of each year. The report shall contain information and data which bear a significant relationship to the development and regulation of public utility services in the state and include an outline of the commission's program for the development and regulation of public utility services in the forthcoming year. (§ 6 ch 113 SLA 1970)

*Sec. 42.05.220. [Repealed, § 5 ch 113 SLA 1970.]*

**Article 3. Certificate of Public Convenience and Necessity.**

Section	Section
221. Certificates required	271. Modification, suspension or revocation of certificates
231. Application	281. Transfer of certificate
241. Conditions of issuance	
251. Use of streets in cities and boroughs	
291. Discontinuance, suspension or abandonment of certificated service	

Collateral references. — 73 C.J.S., Public Utilities, § 42.

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**Sec. 42.05.221. Certificates required.** (a) A public utility may not operate and receive compensation for providing a commodity or service after January 1, 1971 without first having obtained from the commission under this chapter a certificate declaring that public convenience and necessity require or will require the service. Where a public utility provides more than one type of utility service, a separate certificate of convenience and necessity is required for each type. A certificate shall describe the nature and extent of the authority granted in it, including, as appropriate for the services involved, a description of the authorized area and scope of operations of the public utility.

(b) All certificates of convenience and necessity issued to a public utility before July 1, 1970 remain in effect but they are subject to modification where there are areas of conflict with public utilities that have not previously been required to have a certificate or where there is a substantial change in circumstances.

(c) A certificate shall be issued to a public utility which was not required to have one before July 1, 1970, and which is required to have one after that date, if it appears to the commission that the utility was actually operating in good faith on that date. Such a certificate is subject to modification where there are areas of conflict with other public utilities or where there has been a substantial change in circumstances.

(d) In an area where the commission determines that two or more public utilities are competing to furnish identical utility service and that this competition is not in the public interest, the commission shall take appropriate action to eliminate the competition and any undesirable duplication of facilities. This appropriate action may include, but is not limited to, ordering the competing utilities to enter into a contract that, among other things, would:

- (1) delineate the service area boundaries of each in those areas of competition;
- (2) eliminate existing duplication and paralleling to the fullest reasonable extent;
- (3) preclude future duplication and paralleling;
- (4) provide for the exchange of customers and facilities for the purposes of providing better public service and of eliminating duplication and paralleling; and
- (5) provide such other mutually equitable arrangements as would be in the public interest.

(e) The commission may employ professional consultants to assist it in administering the provisions of this section and may apportion the expenses relating to this administration among the competing utilities involved.

(f) *[Repealed, § 12 ch 136 SLA 1980.]* (§ 6 ch 113 SLA 1970; am § 1 ch 76 SLA 1973; am § 12 ch 136 SLA 1980)

**Effect of amendments.** — The 1980 amendment repealed subsection (f).

#### NOTES TO DECISIONS

**A certificate of public convenience and necessity is a property right and as such entitled to protection.** Homer Elec. Ass'n v. City of Kenai, Sup. Ct. Op. No. 390 (File No. 675), 423 P.2d 285 (1967).

**Certificate does not grant monopoly.** — A certificate of public convenience and necessity to a public utility by the Alaska Public Service Commission is not an exclusive, or monopoly, grant to furnish electrical energy within the corporate limits of a city. Chugach Elec. Ass'n v. City of Anchorage, Sup. Ct. Op. No. 407 (File Nos. 705, 706), 426 P.2d 1001 (1967).

A public utility's certificate did not grant to it the exclusive right to furnish electrical energy within the corporate limits of a city. Homer Elec. Ass'n v. City of Kenai, Sup. Ct. Op. No. 390 (File No. 675), 423 P.2d 285 (1967).

**Municipality may compete with certificated utility.** — The delineation of a service area contained in a certificate of public convenience and necessity does not provide the basis for precluding a municipality from competing, within its own corporate limits, with a certificated utility. Chugach Elec. Ass'n v. City of Anchorage, Sup. Ct. Op. No. 407 (File Nos. 705, 706), 426 P.2d 1001 (1967).

The legislature did not intend, by virtue of its passage of the 1963 amendments to this chapter, that a certificate of public convenience and necessity was to be a monopoly grant in relation to competition from a municipally owned and operated utility. Homer Elec. Ass'n v. City of Kenai, Sup. Ct. Op. No. 390 (File No. 675), 423 P.2d 285 (1967).

The Public Service Commissioner's issuance, to a public utility, of a certificate of public convenience and necessity providing for a service area which encompassed within its territory a city did not preclude such city from furnishing electrical energy within its own city limits, in competition with such public utility's electrical distribution system. Homer Elec. Ass'n v. City of Kenai, Sup. Ct. Op. No. 390 (File No. 675), 423 P.2d 285 (1967).

**Legislative intent.** — In enacting subsection (b) of this section the legislature

indicated its intention that any right afforded certificated utilities under former AS 42.05.196 was not saved. Alaska Pub. Utils. Comm'n v. Chugach Elec. Ass'n, Sup. Ct. Op. No. 1636 (File Nos. 2969, 2993), 580 P.2d 687 (1978), overruled on other grounds, Sup. Ct. Op. No. (File No. 3636), 595 P.2d 626 (1979).

Subsection (b) of this section was supplemented by AS 42.05.271, which provides for the modification, suspension or revocation of certificates for several listed reasons, including the requirements of public convenience and necessity. Alaska Pub. Utils. Comm'n v. Chugach Elec. Ass'n, Sup. Ct. Op. No. 1636 (File Nos. 2969, 2993), 580 P.2d 687 (1978), overruled on other grounds, Sup. Ct. Op. No. (File No. 3636), 595 P.2d 626 (1979).

Subsection (d) of this section relates to questions of duplication of electrical services or facilities and the interpretation of a utility's certificate of public convenience and necessity. Greater Anchorage Area Borough v. City of Anchorage, Sup. Ct. Op. No. 856 (File No. 1569), 504 P.2d 1027 (1972), overruled on other grounds, 595 P.2d 629 (Alaska 1979).

**Operation of garbage disposal sites does not constitute a utility service;** it is only the passing over of control of solid waste to the disposal site operator which is regulated as a utility function. McClellan v. Kenai Peninsula Borough, Sup. Ct. Op. No. 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977).

**Dumpsters are not equivalent of final landfill sites.** — Interpretation that dumpsters serving as intermediate dump sites qualify as the functional equivalent of final landfill sites is not reasonable in that it would allow the Borough to place dumpsters in such a pervasive fashion as to completely vitiate the requirement of AS 29.48.033(b) and former subsection (f) of this section that certificate holders be compensated for their interests. McClellan v. Kenai Peninsula Borough, Sup. Ct. Op. No. 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977).

§ 42.05.221

that any rights under former Alaska Pub. Util. Code, ch. 113, § 221, which was amended by AS 42.05.221, are preserved. Alaska Pub. Util. Code, ch. 113, § 221, (File Nos. 2969, 78), overruled on Op. No. 1 (File 1979).

This section was amended by AS 42.05.271, which provides for suspension of the requirements and necessity. *Chugach v. Alaska Pub. Util. Code*, No. 1636 (File 1978), 2d 687 (1978), 595 P.2d 626.

This section relates to the interpretation of public utility. *Greater Anchorage Area Borough v. City of Anchorage*, No. 856 (File No. 2), overruled on 1 629 (Alaska

disposal sites for utility service; it is the control of solid waste by the operator which is the issue. *McClellan v. Alaska Pub. Util. Code*, Sup. Ct. Op. No. 2543, 565 P.2d

equivalent of the interpretation that the immediate dump is a reasonable alternative in order to place the waste in a safe fashion as required by the provision of subsection (f) of AS 42.05.261. *McClellan v. Alaska Pub. Util. Code*, Sup. Ct. Op. No. 2543, 565 P.2d

§ 42.05.230

PUBLIC UTILITIES AND CARRIERS

§ 42.05.261

*Sec. 42.05.230. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.231. Application.** Application for a certificate shall be in writing and shall be in the form and contain the information required by the commission by regulation. (§ 6 ch 113 SLA 1970)

*Sec. 42.05.240. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.241. Conditions of issuance.** A certificate may not be issued unless the commission finds that the applicant is fit, willing and able to provide the utility services applied for and that the 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 of it the terms and conditions it considers necessary to protect and promote the public interest including the condition that the applicant may or shall serve an area or provide a necessary service not contemplated by the applicant. The commission may, for good cause, deny an application with or without prejudice. (§ 6 ch 113 SLA 1970)

*Sec. 42.05.250. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.251. Use of streets in cities and boroughs.** Public utilities have the right to a permit to use public streets, alleys and other public ways of a city or borough, whether home rule or otherwise, upon payment of a reasonable permit fee and on reasonable terms and conditions and with reasonable exceptions the city or borough requires. A dispute as to whether fees, terms, conditions or exceptions are reasonable shall be decided by the commission. The commission may require a utility to add the amount of any permit fee paid as a pro rata surcharge to its bills for service rendered at locations within the boundaries of any city or borough which requires payment of a permit fee. (§ 6 ch 113 SLA 1970)

NOTES TO DECISIONS

Municipal franchises granted to a cable television company were not superseded by the Alaska Public Utilities Commission Act, AS 42.05, since provisions of a municipal franchise not in

actual conflict with commission regulatory activity remain in force. *B-C Cable Co. v. City of Juneau*, Sup. Ct. Op. No. 2112 (File No. 4587), 613 P.2d 616 (1980).

*Sec. 42.05.260. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.261. Discontinuance, suspension or abandonment of certificated service.** (a) Except as otherwise provided in this section, a public utility may not 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 the continued service is not required by public convenience and necessity. Any interested person may file with the commission a protest or memorandum of opposition to or in support of discontinuance or abandonment. The commission may authorize temporary suspension of a service or of part of a service.

(b) Upon complaint or upon its own motion, the commission may reinvestigate a previously authorized discontinuance, abandonment or suspension of a service of an operating public utility. If, after providing notice and an opportunity for a hearing, the commission finds that the public convenience and necessity require the service to be resumed, it may order the public utility to again provide the service. (§ 6 ch 113 SLA 1970)

*Sec. 42.05.270. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.271. Modification, suspension or revocation of certificates.** Upon complaint or upon its own motion the commission, after notice and opportunity for hearing and for good cause shown, may amend, modify, suspend, or revoke a certificate, in whole or in part. Good cause for amendment, modification, suspension or revocation of a certificate includes

- (1) the requirements of public convenience and necessity;
- (2) misrepresentation of a material fact in obtaining the certificate;
- (3) unauthorized discontinuance or abandonment of all or part of a public utility's service;
- (4) wilful failure to comply with the provisions of this chapter or the regulations or orders of the commission;
- (5) wilful failure to comply with a term, condition, or limitation of the certificate. (§ 6 ch 113 SLA 1970)

#### NOTES TO DECISIONS

AS 42.05.221(b) was supplemented by this section, which provides for the modification, suspension or revocation of certificates for several listed reasons, including the requirements of public convenience and necessity. Alaska Pub. Utils. Comm'n v. Chugach Elec. Ass'n, Sup. Ct. Op. No. 1636 (File Nos. 2969, 2993), 580 P.2d 687 (1978), overruled on other grounds, Sup. Ct. Op. No. (File No. 3636), 595 P.2d 626 (1979).

The term "wilful" itself is not a "word of art" or a "technical term." It has many different meanings, depending upon the context in which it is used. North State

Tel. Co. v. Alaska Pub. Util. Comm'n, Sup. Ct. Op. No. 1035 (File No. 1838), 522 P.2d 711 (1974).

The word "wilful" often denotes an act which is voluntary, knowingly or permissively done, as distinguished from one which is accidental or otherwise beyond the control of the person to be charged. North State Tel. Co. v. Alaska Pub. Util. Comm'n, Sup. Ct. Op. No. 1035 (File No. 1838), 522 P.2d 711 (1974).

If a person (1) intentionally does an act which is prohibited, irrespective of evil motive or reliance on erroneous advice, or (2) acts with careless disregard of statu-

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tory requirements, the violation is wilful. North State Tel. Co. v. Alaska Pub. Util. Comm'n, Sup. Ct. Op. No. 1035 (File No. 1838), 522 P.2d 711 (1974).

The concept of wilfulness, i.e., failure to meet responsibility and exercise control, is in accordance with case law. North State Tel. Co. v. Alaska Pub. Util. Comm'n, Sup. Ct. Op. No. 1035 (File No. 1838), 522 P.2d 711 (1974).

"Wilful failure" may be such behavior through acts of commission or omission which justified belief that there was an intent entering into and characterizing the failure complained of. North State Tel. Co. v. Alaska Pub. Util. Comm'n, Sup. Ct. Op. No. 1035 (File No. 1838), 522 P.2d 711 (1974).

A failure to perform an act for a long period of time, which is required by law to be performed, generally constitutes a wilful failure to perform. North State Tel. Co. v. Alaska Pub. Util. Comm'n, Sup. Ct. Op. No. 1035 (File No. 1838), 522 P.2d 711 (1974).

The general notion that a wilful act

implies a bad purpose is derived from criminal statutes. It has no such meaning when used in a statute to denounce an act not in itself wrong. North State Tel. Co. v. Alaska Pub. Util. Comm'n, Sup. Ct. Op. No. 1035 (File No. 1838), 522 P.2d 711 (1974).

Commission's definition of "wilful" did not shift burden of justification. — The commission's definition of "wilful" as "requiring only a showing that the failure to comply was with knowledge of the consequences of such failure" in finding that there was a "wilful failure" to meet the condition in the certificate, i.e., "good cause," did not shift the burden of justification to the telephone company; rather, the commission was merely delineating the nature of what would be reasonable justification, so as to render a failure to meet the condition nonwilful and, thus, the nature of the case that had to be made out by the evidence. North State Tel. Co. v. Alaska Pub. Util. Comm'n, Sup. Ct. Op. No. 1035 (File No. 1838), 522 P.2d 711 (1974).

*Sec. 42.05.280. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.281. Transfer of certificate.** A certificate may not be sold or leased, rented, transferred or inherited without the prior approval of the commission. (§ 6 ch 113 SLA 1970)

*Sec. 42.05.290. [Repealed, § 5 ch 113 SLA 1970.]*

#### Article 4. Services and Facilities.

Section	Section
291. Standards of service and facilities	331. Standards for measurement
301. Discrimination in service	341. Testing of meter standards
311. Joint use and interconnection of facilities	351. Testing of appliances
321. Failure to agree upon joint use or interconnection	

Collateral references. — 64 Am. Jur. 2d, Public Utilities, §§ 236 — 239.  
73 C.J.S., Public Utilities, § 44.

**Sec. 42.05.291. Standards of service and facilities.** (a) Each public utility shall furnish and maintain adequate, efficient and safe service and facilities. This service shall be reasonably continuous and without unreasonable interruption or delay.

(b) Subject to the provisions of this chapter and the regulations or orders of the commission, a public utility may establish reasonable rules and regulations governing the conditions under which it will render service.

(c) The commission may, upon its own motion or upon complaint after providing reasonable notice and opportunity for hearing, adopt as to service and facilities, including the crossing of facilities, just and reasonable standards, classifications, regulations, and practices to be furnished, imposed, observed, and followed by public utilities; adopt adequate and reasonable standards for the measurement of quantity, quality, pressure, initial voltage, or other conditions pertaining to the supply of the service of public utilities; adopt reasonable regulations for the examination and testing of the service, and for the measurement of it; adopt or approve reasonable regulations, specifications, and standards to secure the accuracy of meters and appliances for measurement; and provide for the examination and testing of appliances used for the measurement of a service of a public utility. In doing so, the commission shall conform to the standard practices of the industry.

(d) If the commission, upon its own motion or upon complaint, after providing reasonable notice and opportunity for hearing, finds that the service or facilities of a public utility are unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory, or otherwise in violation of this chapter, the commission shall prescribe, by regulation or order, the reasonable, safe, adequate, sufficient service or facilities to be observed, furnished, enforced, or employed, including all repairs, changes, alterations, extensions, substitutions, or improvements in facilities that are reasonably necessary and proper for the safety, accommodation, and convenience of the public. (§ 6 ch 113 SLA 1970)

#### NOTES TO DECISIONS

**Jurisdiction over complaints.** — When a disgruntled phone subscriber seeks to recover damages for inadequate telephone service which is common to the public, the complaint may properly be referred to the public utilities commission for exercise of primary jurisdiction. When, however, a phone customer alleges that he has suffered from acts or omissions of the

utility which result in inadequate service which is different from that provided to the public as a whole, the complaint should be handled as a traditional common-law action, and the superior court should determine the issues in accordance with settled principles of tort liability. *Jeffries v. Glacier State Tel. Co.*, Sup. Ct. Op. No. 1985 (File No. 4298), 604 P.2d 4 (1979).

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Collateral references. — Federal control as affecting power of public service commission, 4 ALR 1703, 1718, 1719; 8 ALR 969, 981; 10 ALR 956; 11 ALR 1450; 14 ALR 234; 19 ALR 678; 52 ALR 296.

Right of public utility company to discontinue its entire service, 11 ALR 252.

*Sec. 42.05.300. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.301. Discrimination in service.** A public utility may not, as to service, make or grant an unreasonable preference or advantage to any person or subject any person to an unreasonable prejudice or disadvantage. A public utility may not establish or maintain or provide an unreasonable difference as to service, either as between localities or as between classes of service, but nothing in this section prohibits the establishment of reasonable classifications of service or requires unreasonable investment in facilities. (§ 6 ch 113 SLA 1970)

Collateral references. — Discrimination in provision of municipal services or facilities as civil rights violation, 51 ALR3d 950.

injunction in furnishing of public utilities, services or facilities, 53 ALR3d 1027.

Use priorities: validity of imposition, by state regulation, of natural gas use priorities, 84 ALR3d 541.

*Sec. 42.05.310. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.311. Joint use and interconnection of facilities.** (a) A public utility having sewers, conduits, utilidor, poles, pole lines, pipes, pipelines, mains or other distribution or transmission facilities shall, for a reasonable compensation, permit another public utility to use them when the public convenience and necessity require this use and the use will not result in substantial injury to the owner, or in substantial detriment to the service to the customers of the owners. The cost of modifications or additions necessary to a joint use shall be at the expense of the public utility requesting the use of the facilities.

(b) A telecommunications utility shall permit connection to be made and service to be furnished between a system operated by it and the system or toll facilities operated by another public utility or with the communications facility or system of a nonutility, or between its toll facilities and the toll facilities of another public utility, when public convenience and necessity require the connection and the connection will not result in substantial injury to the owner or other users of the facilities of either public utility or in substantial detriment to the service of either public utility.

(c) The tariff of a public utility shall include rules setting out the terms and conditions under which it will construct, or permit its customers or subscribers to construct, and install lines, cables, radio

links, or pipes from its existing facilities to the premises of applicants for service. (§ 6 ch 113 SLA 1970)

**Cross references.** — For applicability of this section to otherwise exempt utilities, see AS 42.05.321(b).

*Sec. 42.05.320. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.321. Failure to agree upon joint use or interconnection.** (a) In case of failure to agree upon the joint use or interconnection of facilities or the conditions or compensation for joint use or interconnections, the public utility, including any municipality, or an interested person may apply to the commission for an order requiring the interconnection. If, after investigation and opportunity for hearing, the commission finds that public convenience and necessity require the joint use or connection, and that the use or connection will not result in substantial injury to the owner utility or its customers, or in substantial detriment to the services furnished by the owner utility, or in the creation of safety hazards, it shall

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

(b) This section and AS 42.05.311 apply to all utilities whether or not they are exempt from other regulation under AS 42.05.711. (§ 6 ch 113 SLA 1970; am § 4 ch 136 SLA 1980)

**Effect of amendments.** — The 1980 amendment added subsection (b).

*Sec. 42.05.330. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.331. Standards for measurement.** The commission shall establish by regulation adequate, fair and realistic standards for the measurement of quality, pressure, voltage or other conditions of utility services and shall prescribe reasonable regulations for examination and testing of the service and the accuracy of the devices used to measure it. (§ 6 ch 113 SLA 1970)

*Sec. 42.05.340. [Repealed, § 5 ch 113 SLA 1970.]*

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**Sec. 42.05.341. Testing of meter standards.** The commission shall provide by regulation for the periodic testing and certification of meter standards by laboratories acceptable to the commission. The commission shall also provide by regulation for the taking of appeals to the commission from the findings of a utility which tests its own meters or appliances for measurement. (§ 6 ch 113 SLA 1970)

*Sec. 42.05.350. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.351. Testing of appliances.** The commission shall provide for the examination and testing of appliances used for the measuring of a service of a public utility and may purchase equipment, apparatus, and standards required for this purpose. The commissioner of commerce and economic development may assign the examination and testing function to the section of weights and measures. Upon the payment of a reasonable fee established by the commission, a consumer may have the appliance, which is used by the consumer, tested. The commission shall establish by regulation allowable tolerances with respect to the functioning or operation of the appliance. If the measuring appliance does not perform within these tolerances, the utility concerned shall pay the costs of the test by reimbursing the person requesting the test for the fee paid by that person. This reimbursement shall be made no later than at the time of the next regular billing following the test. (§ 6 ch 113 SLA 1970; am § 43 ch 127 SLA 1974; am § 84 ch 218 SLA 1976)

*Sec. 42.05.360. [Repealed, § 5 ch 113 SLA 1970.]*

**Article 5. Rates and Rate Schedules.**

Section	Section
361. Tariffs, contracts, filing and public inspection	411. New or revised tariffs
371. Adherence to tariffs	421. Suspension of tariff filing
381. Rates to be just and reasonable	431. Power of commission to fix rates
391. Discrimination in rates	441. Valuation of property of a public utility
401. Apportionment of joint rates	

Collateral references. — 64 Am. Jur. 73 C.J.S., Public Utilities, §§ 13 — 30, 2d, Public Utilities, §§ 240 — 245. 41.

**Sec. 42.05.361. Tariffs, contracts, filing and public inspection.**  
(a) Under regulations the commission shall adopt, every public utility

shall file with the commission, within the time and in the form the commission designates, its complete tariff showing all rates, including joint rates, tolls, rentals, and charges collected and all classifications, rules, regulations, and terms and conditions under which it furnishes its services and facilities to the general public, or to a regulated or municipally owned utility for resale to the public, together with a copy of every special contract with customers which in any way affects or relates to the serving utility's rates, tolls, charges, rentals, classifications, services or facilities. The public utility shall clearly print, or type, its complete tariff and keep an up-to-date copy of it on file at its principal business office and at a designated place in each community served. The tariffs shall be made available to, and subject to inspection by, the general public on demand.

(b) The tariffs of a public utility which are also subject to the jurisdiction of a federal regulatory body shall correspond, so far as practicable, to the form of those prescribed by the federal regulatory body.

(c) The commission may reject the filing of all or part of a tariff which does not comply with the form or filing regulations of the commission or which is not consistent with this chapter or the regulations of the commission. A tariff or provision so rejected is void. (§ 6 ch 113 SLA 1970)

**Opinions of attorney general.** — Where public utility company entered into contract to sell natural gas to federal military installations pursuant to federal statute governing such contract negotiations, Alaska Public Utility Commission was precluded by supremacy clause of U.S. Constitution (Art. VI, cl. 2) from asserting

its jurisdiction over the sale. August 4, 1976, Op. Att'y Gen.

The Alaska Public Utility Commission can require that a public utility file copies of its military supply contracts with the Commission pursuant to subsection (a) of this section. August 4, 1976, Op. Att'y Gen.

#### NOTES TO DECISIONS

**Stated in United States v. RCA Alaska Communications, Inc.,** Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 469 (1979).

**Collateral references.** — Excessiveness of rates filed and published by carrier

pursuant to law, right to maintain action against carrier on ground of, 97 ALR 420.

Variation of utility rates based on flat and meter rates, 40 ALR2d 1331.

*Sec. 42.05.370. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.371. Adherence to tariffs.** The terms and conditions under which a public utility offers its services and facilities to the public shall be governed strictly by the provisions of its currently effective tariffs. A legally filed and effective tariff rate, charge, toll, rental, rule, regulation or condition of service may not be changed except in the manner provided in this chapter. If more than one tariff rate or charge can reasonably be applied for billing purposes the one most advantageous to the customer shall be used. (§ 6 ch 113 SLA 1970)

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## NOTES TO DECISIONS

Applied in United States v. RCA No. 1647 (File No. 3772), 597 P.2d 489  
Alaska Communications, Inc., Sup. Ct. Op. (1979).

Collateral references. — Necessity of bound to render as common carrier, 19  
filing rates for services which carrier is not ALR 982.

*Sec. 42.05.380. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.381. Rates to be just and reasonable.** (a) All rates demanded or received by a public utility, or by any two or more public utilities jointly, for a service furnished or to be furnished shall be just and reasonable; however, a rate may not include an allowance for costs of political contributions, or public relations except for reasonable amounts spent for

(1) energy conservation efforts;  
(2) public information designed to promote more efficient use of the utility's facilities or services or to protect the physical plant of the utility;

(3) informing shareholders and members of a cooperative of meetings of the utility and encouraging attendance; or

(4) emergency situations to the extent and under the circumstances authorized by the commission for good cause shown.

(b) In establishing the revenue requirements of a municipally owned and operated utility the municipality is entitled to include a reasonable rate of return.

(c) A utility, whether subject to regulation by the commission or exempt from regulation, may not charge a fee for connection to, disconnection from, or transfer of services in an amount in excess of the actual cost to the utility of performing the service plus a profit at a reasonable percentage of that cost not to exceed the percentage established by the commission by regulation.

(d) A utility shall provide for a reduced fee or surcharge for standby water for fire protection systems approved under AS 18.70.081 which use hydraulic sprinklers. (§ 6 ch 113 SLA 1970; am § 1 ch 86 SLA 1976; am § 5 ch 106 SLA 1977; am § 4 ch 45 SLA 1980)

Effect of amendments. — The 1980 amendment added subsection (d).

## NOTES TO DECISIONS

Separation of intrastate and interstate properties, expenses and revenues is required for properly determining the adequacy of a utility's

intrastate rates. *United States v. RCA Alaska Communications, Inc.*, Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

Collateral references. — Charitable contributions by public utility as part of operating expense, 59 ALR3d 941.

Fuel adjustment clauses: validity of "fuel adjustment" or similar clauses authorizing electric utility to pass on increased costs of fuel to its customers, 83 ALR3d 933.

Advertising or promotional expenditures of public utility as part of operating expenses for ratemaking purposes, 83 ALR3d 963.

Affiliates: amount paid by public utility to affiliate for goods or services as

includible in utility's rate base and operating expenses in rate proceeding, 16 ALR4th 454.

Injunctions — rates: validity, construction, and application of Johnson Act (29 USCS § 1342), prohibiting interference by Federal District Courts with state orders affecting rates chargeable by public utilities, 28 ALR Fed 422.

Applied in *Alaska Pub. Util. Comm'n v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 1139 (File No. 2314), 534 P.2d 549 (1975).

*Sec. 42.05.390. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.391. Discrimination in rates.** (a) A public utility may not, as to rates, grant an unreasonable preference or advantage to any of its customers or subject a customer to an unreasonable prejudice or disadvantage. A public utility may not establish or maintain an unreasonable difference as to rates, either as between localities or between classes of service. A municipally owned utility may offer uniform or identical rates for a public utility service to customers located in different areas within its certificated service area who receive the same class of service. Any uniform or identical rate shall, upon complaint, be subject to review by the commission and may be set aside if shown to be unreasonable.

(b) A rate charged by a municipality for a public utility service furnished beyond its corporate limits is not considered unjustly discriminatory solely because a different rate is charged for a similar service within its corporate limits.

(c) A public utility may not directly or indirectly refund, rebate or remit in any manner, or by any device, any portion of the rates and charges or charge, demand or receive a greater or lesser compensation for its services than is specified in its effective tariff. A public utility may not extend to any customer any form of contract, agreement, inducement, privilege or facility, or apply any rule, regulation or condition of service except such as are extended or applied to all customers under like circumstances. A public utility may not offer or pay any compensation or consideration or furnish any equipment to secure the installation or adoption of the use of utility service unless it conforms

United States v. RCA  
 Communications, Inc., Sup. Ct. Op.  
 No. 1647 (File No. 3772), 597 P.2d 489

Rate base and  
 rate proceeding, 16

Issues: validity, con-  
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 prohibiting interference  
 of Courts with state  
 chargeable by public  
 utility, 122.

Public Util. Comm'n v.  
 Pennsylvania Borough, Sup.  
 Ct. Op. No. 2314, 534 P.2d

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to a tariff approved by the commission, and the compensation, consideration or equipment is offered to all persons in the same classification using or applying for the public utility service; in determining the reasonableness of such a tariff filed by a public utility the commission shall consider, among other things, evidence of consideration or compensation paid by a competitor, regulated or nonregulated, of the public utility to secure the installation or adoption of the use of the competitor's service.

(d) Nothing in this section prevents a public utility from charging reduced rates to customers transferred to it from a competing utility provided the reduction is an integral part of a contract, arrangement or plan to eliminate the overlapping of service areas or to minimize duplication of facilities and competition between public utilities. (§ 6 ch 113 SLA 1970; am § 5 ch 136 SLA 1980)

**Effect of amendments.** — The 1980 amendment substituted "A public utility may not" for "No public utility may" at the beginning of the first and second sentences

in subsection (a), and added the present third and fourth sentences in subsection (a).

NOTES TO DECISIONS

**Uniform rates are not required.** Jager v. State, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

**Only unreasonable or undue preferences are forbidden.** Jager v. State, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

**When the rate structure is such that one class of customers subsidizes another, discrimination may pass beyond its permitted scope and become undue or unreasonable.** Jager v. State, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

**Use of existing pre-tax profits builds into new rates any existing discrimination in the rate structure.** Jager v. State, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

**Discrimination based on justified differences is permissible.** — Since only that discrimination which is unreasonable is unlawful, discrimination based on justified differences in the cost of service or

which is otherwise within the zone of reasonableness is permissible. Jager v. State, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

**Language of section and of former AS 42.05.460 and 42.05.520 compared.** — See Oil Heat Inst., Inc. v. Alaska Pub. Serv. Corp., Sup. Ct. Op. No. 960 (File No. 1850), 515 P.2d 1229 (1973).

**Whether subsection (c) violated is question for initial consideration by commission.** — Whether as a matter of law a gas company's plan to increase its sales of natural gas violates the provisions of subsection (c) is a question particularly suited for initial consideration by the Public Utilities Commission. Oil Heat Inst., Inc. v. Alaska Pub. Serv. Corp., Sup. Ct. Op. No. 960 (File No. 1850), 515 P.2d 1229 (1973).

**Applied in United States v. RCA Alaska Communications, Inc.,** Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

*Sec. 42.05.400. [Repealed, § 5 ch 13 SLA 1970.]*

**Sec. 42.05.401. Apportionment of joint rates.** (a) If public utilities share in a joint rate the apportionment of receipts shall be just and reasonable. The method of apportionment shall be approved by the commission and the commission may, if it considers it to be in the public interest, establish the portion to which each public utility shall be entitled.

(b) If the commission does not have professional staff to investigate, evaluate and testify regarding any proceeding under (a) of this section it may employ qualified professional consultants for this purpose at the direct expense of the parties to the dispute and divide the cost among the parties in the proportion of their respective operating revenues before commencement of the proceeding. The cost allocation to each party shall be determined before employment of the consultants and after giving the parties reasonable notice and opportunity to be heard. (§ 6 ch 113 SLA 1970)

#### NOTES TO DECISIONS

Applied in *United States v. RCA Alaska Communications, Inc.*, Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

*Sec. 42.05.410. [Repealed, § 5 ch 13 SLA 1970.]*

**Sec. 42.05.411. New or revised tariffs.** (a) A public utility may not establish or place in effect any new or revised rates, charges, rules, regulations, conditions of service or practices except after 45 days' notice to the commission and 30 days' notice to the public. Notice shall be given to the commission by filing with the commission and keeping open for public inspection the revised tariff provisions which shall plainly indicate the changes to be made in the schedules then in force and the time when the changes will go into effect. The commission shall prescribe means by regulation whereby notice is given to the public before or no later than 15 days after the filing which shall be reasonably adequate to notify customers affected by the filing. The commission, for good cause shown, may allow changes to take effect on less than 45 days' notice to the commission or 30 days' notice to the public under conditions the commission prescribes.

(b) New and revised tariffs shall be filed in the manner provided in AS 42.05.361(a).

(c) Upon the filing of a new or revised tariff, the commission, upon complaint or upon its own motion, without notice, may initiate an investigation of the reasonableness and lawfulness of the change. (§ 6 ch 113 SLA 1970; am § 1 ch 64 SLA 1975)

#### NOTES TO DECISIONS

**Nature of tariff.** — This section provides only that a filing of a new or revised tariff be made; it contains no requirement that the tariff be permanent or interim in nature. *United States v. RCA Alaska Communications, Inc.*, Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

Stated in *Alaska Pub. Util. Comm'n v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 1139 (File No. 2314), 534 P.2d 549 (1975).

Cited in *Jager v. State*, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

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e. Sup. Ct. Op. No.  
 7 P.2d 1100 (1975).

*Sec. 42.05.420. [Repealed, § 5 ch 13 SLA 1970.]*

**Sec. 42.05.421. Suspension of tariff filing.** (a) When a tariff filing is made containing a new or revised rate, classification, rule, regulation, practice, or condition of service the commission may, either upon written complaint or upon its own motion, after reasonable notice, conduct a hearing to determine the reasonableness and propriety of the filing. Pending such a hearing the commission may, by order stating the reasons for its action, suspend the operation of the tariff filing for

(1) an initial period not longer than six months beyond the time when it would otherwise go into effect if the annual gross revenues of the utility making the filing are more than \$3,000,000; and

(2) not longer than 150 days before an interim rate equal to the requested new rate goes into effect and not longer than one year before a permanent rate goes into effect if the annual gross revenues of the utility making the filing are \$3,000,000 or less.

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

(c) In the case of a proposed increased rate, the commission may by order require the interested public utility or utilities to place in escrow in a financial institution approved by the commission and keep accurate account of all amounts received by reason of the increase, specifying by whom and in whose behalf the amounts are paid. Upon completion of the hearing and decision the commission may by order require the public utility to refund to the persons in whose behalf the amounts were paid, that portion of the increased rates which was found to be unreasonable or unlawful. Funds may not be released from escrow without the commission's prior written consent and the escrow agent shall be so instructed by the utility, in writing, with a copy to the commission. The utility may, at its expense, substitute a bond in lieu of the escrow requirement.

(d) One who initiates a change in existing tariffs shall bear the burden to prove the reasonableness of the change. (§ 6 ch 113 SLA 1970; am § 6 ch 136 SLA 1980)

**Effect of amendments.** — The 1980 amendment restructured subsection (a) into the present introductory paragraph and paragraphs (1) and (2) by dividing the former second sentence following the word "for," adding "if the annual gross revenues

of the utility making the filing are more than \$3,000,000; and" following "go into effect" at the end of the former second sentence, and adding the material contained in present paragraph (2).

## NOTES TO DECISIONS

It was error for the superior court to dispense with the commission's order that a utility place funds received pursuant to an interim increase in an escrow account pending the final rate determination since subsection (c) of this section specifically authorizes the commission to take such action. *Alaska Pub. Utils. Comm'n v. Municipality of Anchorage*, Sup. Ct. Op. No. 1645 (File No. 2934), 579 P.2d 1071 (1978).

For discussion of imperfections in the escrow procedure. — See *Alaska Pub. Util. Comm'n v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 1139 (File No. 2314), 534 P.2d 549 (1975).

Denial of interim rate increase held arbitrary. — Where the superior court found that the existing rate was confiscatory, where the borough was clearly operating the sewer utility at a great loss, where the period prior to a final hearing could be construed to be unreasonable and where the commission failed to provide any further justification for its decision, the denial of the interim rate increase was arbitrary, and the supe-

rior court's injunction voiding the commission's order did not constitute an abuse of its discretion. *Alaska Pub. Util. Comm'n v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 1139 (File No. 2314), 534 P.2d 549 (1975).

Commission determination that proposed rates were reasonable was not supported by substantial evidence on the record as a whole. *Jager v. State*, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

Procedure consistent with statutory allocation of burden of proof. — Where the commission had first been satisfied by a public utility's evidence that the rates were reasonable and thereafter turned to complainant to show otherwise, this procedure, consistent with the statutory allocation of the burden of proof, is clearly reasonable. *Jager v. State*, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

Refund methods. — See *United States v. RCA Alaska Communications, Inc.*, Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

*Sec. 42.05.430. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.431. Power of commission to fix rates.** When the commission, after an investigation and hearing, finds that a rate demanded, observed, charged or collected by a public utility for a service, subject to the jurisdiction of the commission, or that a classification, rule, regulation, practice, or contract affecting the rate, is unjust, unreasonable, unduly discriminatory or preferential, the commission shall determine a just and reasonable rate, classification, rule, regulation, practice, or contract to be observed or allowed and shall establish it by order. A municipality may covenant with bond purchasers regarding rates of a municipally owned utility, and the covenant is valid and enforceable and is considered to be a contract with the holders from time to time of the bonds. (§ 6 ch 113 SLA 1970)

## NOTES TO DECISIONS

History of section. — See *Alaska Pub. Utils. Comm'n v. Municipality of Anchorage*, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

Separation of intrastate and interstate properties, expenses and revenues is required for properly determining the adequacy of a utility's

intrastate rates. *United States v. RCA Alaska Communications, Inc.*, Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

Confiscation. — A court may evaluate the showing of confiscation. That is, although the process of determining whether a rate is confiscatory involves

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fact/law determinations which require the special competence of the commission, the ultimate issue in confiscation questions is whether due process will be violated by the continued operation of the rate. United States v. RCA Alaska Communications, Inc., Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

This section requires the commission to set rates so as to assure that existing bond covenants are met. Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

As to existing bonds, i.e., those bonds which have actually been marketed and for which there are present purchasers or holders, this section requires that the commission set rates so as to assure that bond covenants will not be breached. Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

And not so as to allow municipality to market proposed bonds. — This section does not require the commission to set rates so as to allow the municipality to market proposed bonds, i.e., bonds which have not yet been sold. Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

Prior to the issuance of bonds, the commission is not required by this section to set a rate which would meet the revenue requirements which would be necessary under the covenants if the bonds were sold. Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

This section specifically provides that bond covenants are "valid and enforceable." Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

Covenants must be honored by commission. — Since the commission's approval of a certain rate is necessary, the covenants must be honored by the commission; otherwise there would be no enforceability of the covenants. Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

The plain meaning of this section requires that once the bonds are actually purchased, and actual bond purchasers and holders exist, the covenants are valid and enforceable. The validity of the bond covenants thus requires the commission to respect the provisions of the covenants,

and insure that they will not be breached. Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

No covenant exists where no purchasers or holders. — An existing covenant requires two parties, and until the municipality's bonds have actual purchasers or holders, no covenant is in existence. Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

And commission's rate-setting authority not interfered with. — Until there is an existing covenant with bond purchasers, there is nothing which is valid and enforceable, and therefore nothing to interfere with the commission's general rate-setting authority. Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

Municipally owned utilities in competition with other utilities subjected to full gamut of regulation pertaining to other utilities, with exception relating to bond covenants. — See Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

Standard of review. — Since generally rate-making decisions relate to complex subject matter which requires the particularized knowledge and experience of the rate-making body, the appropriate standard of review is normally whether the administrative body had a reasonable basis for its decision. United States v. RCA Alaska Communications, Inc., Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

The following requirements must be met before the superior court can intervene and overrule or modify an order of the Public Utilities Commission affecting utility rates. First, the utility must make a serious and substantial showing that the existing rates are so low as to be confiscatory. Second, the utility is obligated to show that no date has been set by the commission for a prompt final hearing, and that the existing confiscatory rates are likely to remain in force for an unreasonable period of time before the Public Utilities Commission makes its permanent rate determination. Third, the utility must convince the court that without the benefit of being permitted to operate under an interim rate increase, it will face irreparable harm. Fourth, the utility is required to demonstrate that if

the interim rate relief is granted, the public can be adequately protected. Fifth, the utility must show that "serious" and "substantial" questions are involved in the rate

case it has presented. *United States v. RCA Alaska Communications, Inc.*, Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

**Collateral references.** — State regulation of rates to consumers of gas or electricity transported across state lines for light or power purposes, 7 ALR 1094.

Municipally owned or operated public utility, power of state or public service commission to regulate rates of, 76 ALR 851, 127 ALR 94.

Power of state to fix a minimum public utility rate, 68 ALR 1002.

*Sec. 42.05.440. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.441. Valuation of property of a public utility.** (a) The commission may, after providing reasonable notice and opportunity to be heard, ascertain and set the fair value of the whole or any part of the property of a public utility, insofar as it is material to the exercise of the jurisdiction of the commission. The commission may make revaluations from time to time and ascertain the fair value of all new construction, extensions, and additions to the property of a public utility. If a public utility furnishes more than one classification of utility service the utility shall allocate the investment and expenses associated with the property used and useful in furnishing service among the utility services and it may not solely consider the utility's total investment and expenses in fixing rates for a particular service.

(b) In determining the value for rate-making purposes of public utility property used and useful in rendering service to the public, the commission shall be guided by acquisition cost or, if lower, the original cost of the property to the person first devoting it to public service, less accrued depreciation, plus materials and supplies and a reasonable allowance for cash working capital when required.

(c) For rate-making purposes, indebtedness, debt service and payments by a regulated public utility to a person having an ownership interest of more than 70 per cent in the utility shall be considered to be ownership equity, profits or dividends except to the extent that there is a clear and convincing showing that

(1) the indebtedness was incurred, or the payments made, for goods or services which were reasonably necessary for the operation of the utility; and

(2) the goods or services were provided at a cost which was competitive with the price at which they could have been obtained from a person having no ownership interest. (§ 6 ch 113 SLA 1970; am § 1 ch 228 SLA 1976)

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utility. (a) The opportunity to exercise or any part of the utility's total service may make value of all new of a public utility expenses asso- g service among ie utility's total lar service. es of public util- the public, the ver, the original blic service, less id a reasonable

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NOTES TO DECISIONS

Separation of intrastate and inter- state properties, expenses and reve- nues is required for properly determining the adequacy of a utility's intrastate rates. United States v. RCA Alaska Communications, Inc., Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

Sec. 42.05.450. [Repealed, § 5 ch 113 SLA 1970.]

Article 6. Accounts, Records and Reports.

Section	Section
451. System of accounts and reports	491. Records and accounts to be kept in state
461. Continuing property records	501. Inspection of books and records by commission
471. Depreciation rates, initial losses and accounts	
481. Subsidiary business accounts	

Collateral references. — 64 Am. Jur. 2d. Public Utilities, § 235.

Sec. 42.05.451. System of accounts and reports. (a) The commis- sion may classify the public utilities under its jurisdiction and pre- scribe a uniform system of accounts for each class and the manner in which the accounts and supporting records shall be kept.

(b) Each public utility shall maintain its accounts on a calendar year basis unless specifically authorized by the commission to maintain its accounts on a fiscal year basis. Within 90 days after the close of its authorized annual accounting period, or additional time granted upon a showing of good cause, each public utility shall file with the commis- sion a verified annual report of its operations during the period reported, on forms prescribed by the commission. (§ 6 ch 113 SLA 1970)

Sec. 42.05.460. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.461. Continuing property records. The commission may require a public utility to establish, provide, and maintain as a part of its system of accounts, continuing property records segregated by the year of placement in service, including a list or inventory of all the units of tangible property used or useful in the public service, showing the current location of the property units by definite reference to the specific land parcels upon which the units are located or stored. The commission may require a public utility to keep accounts and records in such a manner as to show, currently, the original cost of the property when first devoted to the public service, and the related reserve for depreciation. Each public utility with annual revenues

exceeding \$100,000 shall keep continuing property records. (§ 6 ch 113 SLA 1970)

*Sec. 42.05.470. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.471. Depreciation rates, initial losses and accounts.**

(a) To provide for the loss in service value of its property, not restored by current maintenance, every utility shall charge adequate, but not excessive, depreciation expense for each major class of utility property used and useful in serving the public. From time to time the commission shall determine the proper and adequate rates of depreciation for each major class of property of a public utility. The commission shall accept rates of depreciation and depreciation accounts prescribed and maintained under regulations of a federal agency or the terms of a bond ordinance. The commission shall determine and allow depreciation expense in fixing the rates, tolls and charges to be paid for the services of a public utility.

(b) The commission is not bound in rate proceedings to accept, as just and reasonable for rate-making purposes, estimates of annual or accrued depreciation established under the provisions of this section, or to allow annual or accrued depreciation on utility property directly or indirectly contributed by customers or others. (§ 6 ch 113 SLA 1970)

*Sec. 42.05.480. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.481. Subsidiary business accounts.** A public utility engaged, directly or indirectly, in another business, including another utility business or a subsidiary business, shall keep separate accounts relating to that business. Except as the commission provides, property, expense or revenue used in or derived from that business may not be considered in establishing the rates and charges of the utility for its public services. (§ 6 ch 113 SLA 1970)

*Sec. 42.05.490. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.491. Records and accounts to be kept in state.** A public utility shall keep the books, accounts, papers and records required by the commission, in an office within this state, and may not remove them from the state, except upon the terms and conditions that may be prescribed by the commission. The provisions of this section do not apply to a public utility whose accounts are kept at its principal place of business outside the state, in the manner prescribed by a federal regulatory body; however, such a public utility shall at its option, either furnish to the commission, within a reasonable time fixed by the commission, certified copies of its books, accounts, papers and records relating to the business done by the public utility within this state, or agree to pay the actual expenses incurred by the commission in sending personnel to examine the utility's books and records at the place where they are kept. (§ 6 ch 113 SLA 1970)

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*Sec. 42.05.500. [Repealed, § 5 ch 113 SLA 1970.]*

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**Sec. 42.05.501. Inspection of books and records by commis-  
sion.** The commission shall at all reasonable times have access to, and  
may designate any of its employees, agents or consultants to inspect  
and examine, the accounts, records, books, maps, inventories,  
appraisals, valuations, or other reports and documents, kept by public  
utilities or their affiliated interests, or prepared or kept for them by  
others, which relate to any contract or transaction between them. The  
commission may require a public utility or its affiliated interest to file  
with the commission, copies of any or all of these accounts, records,  
books, maps, inventories, appraisals, valuations, or other reports and  
documents. (§ 6 ch 113 SLA 1970)

Collateral references. — 73 C.J.S.,  
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*Sec. 42.05.510. [Repealed, § 5 ch 113 SLA 1970.]*

### Article 7. Financial and Management Regulation.

#### Section

511. Unreasonable management practices

521. Impaired capital

531. Distribution of surplus and profits

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**Sec. 42.05.511. Unreasonable management practices.** (a) The  
commission may investigate the management of a public utility,  
including but not limited to staffing patterns, wage and salary scales  
and agreements, investment policies and practices, purchasing and  
payment arrangements with affiliated interests, for the purpose of  
determining inefficient or unreasonable practices which adversely  
affect the cost or quality of service of the public utility.

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(b) Where unreasonable practices are found to exist, the commission  
may, after providing reasonable notice and opportunity for hearing,  
take appropriate action to protect the public from the inefficient or  
unreasonable practices and may order the public utility to take the  
corrective action the commission may require to achieve effective  
development and regulation of public utility services.

(c) In a rate proceeding the utility involved has the burden of  
proving that any written or unwritten contract or arrangement it may  
have with any of its affiliated interests for the furnishing of any ser-  
vices or for the purchase, sale, lease or exchange of any property is  
necessary and consistent with the public interest and that the payment  
made therefor, or consideration given, is reasonably based, in part,  
upon the submission of satisfactory proof as to the cost to the affiliated  
interest of furnishing the service or property and, in part, upon the  
estimated cost the utility would have incurred if it furnished the ser-

vice or property with its own personnel and capital. (§ 6 ch 113 SLA 1970)

NOTES TO DECISIONS

Quoted in Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1645 (File No. 2934), 579 P.2d 1071 (1978).

Collateral references. — 73 C.J.S., Public Utilities, § 46 et seq.

Sec. 42.05.520. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.521. Impaired capital. When the commission finds that the capital of a public utility corporation is impaired, or might become impaired, it may, after investigation and hearing, issue an order directing the public utility to cease paying dividends on its common stock until the impairment has been removed. (§ 6 ch 113 SLA 1970)

Sec. 42.05.530. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.531. Distribution of surplus and profits. The surplus and profits of public utilities shall be distributed in accordance with the bylaws or ordinances controlling the utility. (§ 6 ch 113 SLA 1970)

Sec. 42.05.540. [Repealed, § 5 ch 113 SLA 1970.]

Article 8. Judicial Review, Penalties and Enforcement.

Section	Section
541. Effect of regulations	601. Actions to recover penalties; disposition
551. Review and enforcement	611. Penalties cumulative
561. Injunctive and monetary sanctions	621. Joinder of actions
571. Civil penalties	
581. Each violation a separate offense	

Collateral references. — 64 Am. Jur. 2d, Public Utilities, §§ 276 — 291. 73 C.J.S., Public Utilities, §§ 64 — 68.

Sec. 42.05.541. Effect of regulations. Regulations adopted and issued by the commission in accordance with this chapter have the effect of law. (§ 6 ch 113 SLA 1970)

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NOTES TO DECISIONS

Regulation requiring jurisdictional separations to be based upon Ozark methodology held mandatory. — See *United States v. RCA Alaska Communications, Inc.*, Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

*Sec. 42.05.550. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.551. Review and enforcement.** (a) All final orders of the commission are subject to judicial review in accordance with AS 44.62.560 — 44.62.570 of the Administrative Procedure Act.

(b) If an appeal is not taken from a final order of the commission, the commission may apply to the superior court for enforcement of this chapter, the regulations adopted under it and the orders of the commission. The court shall enforce the order by injunction or other process. (§ 6 ch 113 SLA 1970)

NOTES TO DECISIONS

Orders of commission expressly made subject to Administrative Procedure Act. — Subsection (a) of this section expressly makes orders of the Public Utilities Commission subject to the provisions of the Alaska Administrative Procedure Act (AS 44.62). *Greater Anchorage Area Borough v. City of Anchorage*, Sup. Ct. Op. No. 856 (File No. 1569), 504 F.2d 1027 (1972), overruled on other grounds, 595 P.2d 626 (Alaska 1979).

AS 44.62.570 is made applicable to review of final orders of the Public Utilities Commission by this section. *Jager v. State*, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

Applied in *Jeffries v. Glacier State Tel. Co.*, Sup. Ct. Op. No. 1985 (File No. 4298), 604 P.2d 4 (1979).

*Sec. 42.05.560. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.561. Injunctive and monetary sanctions.** (a) A person who violates a provision of AS 42.05.291 insofar as it governs the safety of pipeline facilities and the transportation of gas or of any regulation issued under AS 42.05.291 is subject to a civil penalty of not more than \$1,000 for each violation for each day that the violation persists. However, the maximum civil penalty shall not exceed \$200,000 for any related series of violations.

(b) A civil penalty may be compromised by the commission. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the state to the person charged or may be recovered in a civil action in the state courts.

(c) A person may be enjoined by the superior court from committing any violation mentioned in this section. (§ 6 ch 113 SLA 1970)

*Sec. 42.05.570. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.571. Civil penalties.** (a) In addition to all other penalties and remedies provided by law, a public utility and every person, and their lessees or receivers appointed by a court in any way subject to the provisions of this chapter, together with their officers, managers, agents or employees that either violate or procure, aid or abet the violation of any provision of this chapter, or of any order, regulation or written requirement of the commission are subject to a maximum penalty of \$100 for each violation. Each act of omission as well as each act of commission shall be considered a violation subject to the penalty.

(b) A penalty may not be assessed unless the commission first issues an order to show cause why the penalty should not be levied. The order shall describe each violation with reasonable particularity and designate the maximum penalty which may be assessed for each violation. The order shall be served on the alleged violator named in the order. The order shall state a time and place for the hearing.

(c) After a hearing the commission shall enter its findings of fact and final order which shall state when the penalties, if any, are payable. (§ 6 ch 113 SLA 1970)

*Sec. 42.05.580. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.581. Each violation a separate offense.** Each violation of a provision of this chapter or of an order, decision, regulation or written requirement of the commission is a separate and distinct offense, and in case of a continuing violation each day's continuance is a separate and distinct offense. (§ 6 ch 113 SLA 1970)

*Secs. 42.05.590 — 42.05.600. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.601. Actions to recover penalties; disposition.** (a) Actions to recover penalties under this chapter shall be brought by the attorney general in a court of competent jurisdiction.

(b) All penalties recovered under the provisions of this chapter shall be paid to the commission and deposited by it in the general fund of the state. (§ 6 ch 113 SLA 1970)

*Sec. 42.05.610. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.611. Penalties cumulative.** (a) All penalties imposed under this chapter are cumulative and an action for the recovery of a civil penalty is not a bar to any criminal prosecution; a criminal prosecution is not a bar to an action for the recovery of a civil penalty.

(b) Neither a criminal prosecution nor an action to recover a civil penalty is a bar to an enforcement proceeding to require compliance, or to any other remedy provided by this chapter. (§ 6 ch 113 SLA 1970)

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*Sec. 42.05.620. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.621. Joinder of actions.** Under the applicable court rules, appeals from orders of the commission, applications for enforcement of commission orders and actions for recovery of a penalty may be joined. The court may in the interests of justice separate the action. (§ 6 ch 113 SLA 1970)

*Sec. 42.05.630. [Repealed, § 5 ch 113 SLA 1970.]*

### Article 9. Miscellaneous Provisions.

#### Section

631. Eminent domain  
641. Regulation by municipality  
651. Expenses of investigation or hearing  
661. Application fees

#### Section

671. Public records  
681. Validity of certain certificates  
691. Utility classes

**Sec. 42.05.631. Eminent domain.** A public utility may exercise the power of eminent domain for public utility uses. This section does not authorize the use of a declaration of taking. (§ 6 ch 113 SLA 1970)

**Cross references.** — For laws on eminent domain, see AS 09.55.240 — 09.55.640.

**Collateral references.** — Right to enter for preliminary survey or examination, 29 ALR3d 1104.

Power of eminent domain as between state and subdivision or agency thereof, or as between different subdivisions or agencies themselves, 35 ALR3d 1293.

Applicability of zoning regulations to projects of nongovernmental public utilities as affected by utility's power of eminent domain, 87 ALR3d 1265.

Unskillfulness of powerline or other wire, or related structure, as element of damages in easement condemnation proceeding, 97 ALR3d 587.

Review of electric power company's location of transmission line for which condemnation is sought, 19 ALR4th 1026.

Negotiations: sufficiency of condemnor's negotiations required as preliminary to taking in eminent domain, 21 ALR4th 765.

*Sec. 42.05.640. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.641. Regulation by municipality.** The commission's jurisdiction and authority extend to public utilities operating within a city or borough, whether home rule or otherwise. In the event of a conflict between a certificate, order, decision or regulation of the commission and a charter, permit, franchise, ordinance, rule or regulation of such a local governmental entity, the certificate, order, decision or regulation of the commission shall prevail. (§ 6 ch 113 SLA 1970)

### NOTES TO DECISIONS

Municipal franchises granted to a cable television company were not superseded by the Alaska Public

Utilities Commission Act, AS 42.05.010 — 42.05.721, since provisions of a municipal franchise not in actual conflict with com-

mission regulatory activity remain in force. B-C Cable Co. v. City of Juneau, Sup. Ct. Op. No. 2112 (File No. 4587), 613 P.2d 616 (1980).

Collateral references. — 64 Am. Jur. 2d, Public Utilities, §§ 101 — 109.

*Sec. 42.05.650. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.651. Expenses of investigation or hearing.** After completion of a hearing or investigation held under this chapter, the commission shall allocate the costs of the hearing or investigation among the parties, including the commission, as is just under the circumstances. In allocating costs, the commission may consider the results, ability to pay, evidence of good faith, other relevant factors and mitigating circumstances. The costs allocated may include the costs of any time devoted to the investigation or hearing by hired consultants, whether or not the consultants appear as witnesses or participants. The costs allocated may also include any out-of-pocket expenses incurred by the commission in the particular proceeding. The commission shall provide an opportunity for any person objecting to an allocation to be heard before the allocation becomes final. (§ 6 ch 113 SLA 1970)

**Sec. 42.05.661. Application fees.** With each application relating to a certificate the applicant shall pay the commission a fee of \$50 which shall be deposited in the general fund of the state. (§ 6 ch 113 SLA 1970)

**Sec. 42.05.671. Public records.** (a) Except as provided in (b) of this section, records in the possession of the commission are open to public inspection at reasonable times.

(b) The commission may, by regulation, classify the records submitted to it by regulated utilities as privileged records that are not open to the public for inspection. However, if a record involves an application or tariff filing pending before the commission, the commission shall release the record for the purpose of preparing for or making a presentation to the commission in the proceeding if the record or information derived from the record will be used by the commission in the proceeding.

(c) A person may make written objection to the public disclosure of information contained in a record under the provisions of this chapter or of information obtained by the commission under the provisions of this chapter, stating the grounds for the objection. When an objection is made, the commission may not order the information withheld from public disclosure unless the information adversely affects the interest of the person making written objection and disclosure is not required in the interest of the public.

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(d) In this section, "record" means a report, file, book, account, paper, or application, and the facts and information contained in it. (§ 6 ch 113 SLA 1970; am § 8 ch 110 SLA 1981)

Effect of amendments. — The 1981 amendment rewrote this section.

NOTES TO DECISIONS

Narrow construction. — The privilege reflected by this section should be construed narrowly so that it does not conflict with the constitutional requirements of due process. *City of Fairbanks v. Alaska Pub. Utils. Comm'n & Wire Communications, Inc.*, Sup. Ct. Op. No. 2079 (File No. 3977), 611 P.2d 493 (1980).

Due process controls over section. — The requirement of this section that infor-

mation not be withheld if "required in the interests of the public" will normally prevent a conflict with due process requirements. If a conflict nevertheless occurs, due process must control. *City of Fairbanks v. Alaska Pub. Utils. Comm'n & Wire Communications, Inc.*, Sup. Ct. Op. No. 2079 (File No. 3977), 611 P.2d 493 (1980).

Sec. 42.05.681. **Validity of certain certificates.** A certificate issued before July 29, 1968, to a public utility for the generation, transmission, or distribution of electric energy and power, or for the furnishing of telecommunications may not be considered as terminated, or voided, for the sole reason that the utility did not or would not produce an annual gross income in excess of \$25,000. (§ 6 ch 113 SLA 1970)

Sec. 42.05.691. **Utility classes.** The commission may by regulation provide for the classification of public utilities based upon differences in annual revenue, assets, nature of ownership and other appropriate distinctions and as between these classifications, by regulation, provide for different reporting, accounting and other regulatory requirements. (§ 6 ch 113 SLA 1970)

Article 10. General Provisions.

Section	Section
711. Exemptions	720. Definitions
712. Deregulation ballot	721. Short title

Sec. 42.05.701. [Renumbered as AS 42.05.720.]

Sec. 42.05.711. **Exemptions.** (a) The provisions of this chapter do not apply to a person who furnishes water, gas or petroleum or petroleum products by tank, wagon, or similar conveyance, unless the person is thereby supplying water, gas, petroleum or petroleum products to a public utility in which the person has an "affiliated interest."

(b) Public utilities owned and operated by a political subdivision of the state and none of whose utilities is in competition with any other utility, are exempt from the provisions of this chapter, other than the provisions of AS 42.05.221 — 42.05.281, unless the owner and operator elects to be subject to all provisions of this chapter.

(c) The ownership in whole or part, of the corporate stock of a public utility does not make the owner a public utility.

(d) The commission, on a finding that no legitimate public interest will be served, may exempt a utility from all or any portion of this chapter.

(e) Notwithstanding any other provisions of this chapter, any electric or telephone utility that does not gross \$50,000 annually is exempt from regulation under this chapter unless 25 percent of the subscribers petition the commission for regulation.

(f) Notwithstanding any other provisions of this chapter, an electric or telephone utility that does not gross \$325,000 annually may elect to be exempt from the provisions of this chapter other than AS 42.05.221 — 42.05.281 under the procedure described in AS 42.05.712.

(g) A utility, other than a telephone or electric utility, that does not gross \$100,000 annually may elect to be exempt from the provisions of this chapter other than AS 42.05.221 — 42.05.281 under the procedure described in AS 42.05.712.

(h) A cooperative organized under AS 10.25 may elect to be exempt from the provisions of this chapter, other than AS 42.05.221 — 42.05.281, under the procedure described in AS 42.05.712.

(i) A utility which furnishes collection and disposal service of garbage, refuse, trash, or other waste material and has annual gross revenues of \$200,000 or less is exempt from the provisions of this chapter, other than the certification provisions of AS 42.05.221 — 42.05.281, unless 25 percent of the subscribers or subscribers representing 25 percent of the gross revenue of the utility petition the commission for regulation.

(j) The provisions of this chapter do not apply to sales, exchanges or gifts of energy to an electric utility certificated under this chapter when the energy which is the subject of the sale, exchange or gift is waste heat, electricity, or other energy which is surplus or the by-product of an industrial process. In an area in which no electric utility is certificated for service, energy provided by sale, exchange or gift may be provided to any utility which is certificated for service to that area. A contract for the sale, exchange or gift of energy exempt under this subsection does not make the supplier a public utility, and does not transfer the responsibility to provide utility services from a certificated utility to any other person.

(k) A utility which furnishes cable television service is exempt from the provisions of this chapter other than AS 42.05.221 — 42.05.281 unless 25 percent of the subscribers petition the commission for regulation.

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(I) A person, utility, or cooperative that is exempt from regulation under AS 42.05.711(a) or (d) — (k) is not subject to regulation by a municipality under AS 29.48.060 — 29.48.090. (§ 6 ch 113 SLA 1970; am § 3 ch 76 SLA 1973; am § 8 ch 83 SLA 1980; am §§ 7-9 ch 136 SLA 1980; am § 89 ch 59 SLA 1982; am § 1 ch 30 SLA 1983)

**Cross references.** — For limitations on these exemptions, see AS 42.05.321(b) and AS 42.05.381(c).

**Effect of amendments.** — The first 1980 amendment added subsection (j).

The second 1980 amendment deleted "excepting the furnishing of collection and disposal service of garbage, refuse, trash or other waste material" following "none of whose utilities" near the beginning of subsection (b), deleted the former second sentence in subsection (b), which read: "Notwithstanding any other provisions of this chapter, municipalities providing collection and disposal service of garbage, refuse, trash or other waste material within their corporate boundaries are not subject to regulation by the Alaska Public Utilities Commission unless the municipality elects to be subject to the provisions of this chapter," substituted "\$50,000" for "\$25,000" following "does not gross" near the middle of subsection (e), substituted

"under this chapter" for "hereunder" following "exempt from regulation" near the middle of subsection (e), and added subsections (f) through (i).

The 1982 amendment, effective May 28, 1982, deleted "on June 30, 1980" preceding "a utility," and inserted "annual" preceding "gross revenue" in subsection (i).

The 1983 amendment added subsections (k) and (l).

**Opinions of attorney general.** — An electrical utility owned and operated by a regional electrical authority would continue to qualify for the broad exemption from this chapter, available to political subdivisions under subsection (b) of this section once the regional electrical authority had completed its proposed organization as a nonprofit corporation pursuant to AS 10.20.005 et seq. June 7, 1976, Op. Att'y Gen.

NOTES TO DECISIONS

**Municipally owned utilities in competition with other utilities subjected to full gamut of regulation pertaining to other utilities, with exception**

relating to bond covenants. — See Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

**Sec. 42.05.712. Deregulation ballot.** (a) A utility or cooperative which may elect to be exempt from the provisions of this chapter shall poll its subscribers or members in the manner described in this section.

(b) The votes of a majority of those voting in an election in which at least 15 percent of the eligible subscribers or members return ballots are required for a utility or cooperative to elect exemption under (a) of this section.

(c) Each subscriber or member of the utility or cooperative shall receive notice of an election under this section with the subscriber's or member's regular bill for service at least 60 days before the date set for the election. The notice shall contain impartial language informing the subscribers or members that an election on the option of deregulation or regulation by the Alaska Public Utilities Commission will be held within 60 days and that a ballot to participate in that election will be mailed or delivered to each subscriber or member of the utility or cooperative with the regular bill for service. The notice shall also state

that a subscriber or member of the cooperative is entitled to vote in the election without regard to whether the subscriber's or member's account with the utility or cooperative is current and that the ballot must be postmarked or returned to the commission within 30 days after it was mailed or otherwise delivered to the subscriber or member. The notice shall also announce the schedule for one or more public meetings which shall provide an opportunity for the subscribers or members to discuss this election. The public meeting or meetings shall be held not more than 30 days before the ballots are mailed or distributed to those eligible to vote. A cooperative may satisfy this requirement by including a discussion of this election on the agenda of an annual meeting if the annual meeting is scheduled to be held not more than 30 days before the election.

(d) A ballot with return postage paid shall be mailed or delivered to each subscriber or member of the utility or cooperative with the subscriber's or member's bill for service and shall contain only the following language:

"Shall . . . . . (name of utility or cooperative) be exempt from regulation by the Alaska Public Utilities Commission?

[    ] YES                    [    ] NO"

(e) The results of an election under this section shall be certified by the commission within 60 days after the ballots are mailed or delivered to the subscribers or members.

(f) During the 60 days immediately preceding an election under this section a list of subscribers or members of the utility or cooperative shall be made available at cost to any subscriber or member of the utility or cooperative who requests one. The list shall be in the same form that is available to the utility or cooperative.

(g) The board of directors of a utility or cooperative may call an election under this section on its own initiative and shall call an election upon receipt of a valid petition from its subscribers or members. A petition shall be considered valid if it is signed by not less than the number of subscribers or members equal to ten percent of the first 5,000 subscribers or members and three percent of the subscribers or members in excess of 5,000. An election under this section may only be held once every two years.

(h) A utility or cooperative which is already exempt from regulation under this section may elect to terminate its exemption in the same manner. (§ 10 ch 136 SLA 1980)

**Sec. 42.05.720. Definitions.** In this chapter

(1) "affiliated interest" includes:

(A) a person owning or holding directly or indirectly five per cent or more of the voting securities of a public utility engaged in intrastate business in this state;

(B) a person, other than those specified in (A) of this paragraph, in a chain of successive ownership of five per cent or more of voting

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securities, the chain beginning with the holder of the voting securities of such public utility;

(C) a corporation five per cent or more of whose voting securities are owned by a person owning five per cent or more of the voting securities of the public utility or by a person in such a chain of successive ownership of five per cent or more of voting securities;

(D) a corporation five per cent or more of whose voting securities are owned or held by a public utility;

(E) a person with whom the public utility has a management or service contract;

(F) a person who is an officer or director of such a public utility or of a corporation in a chain of successive ownership of five per cent or more of voting securities;

(G) a corporation which has one or more officers or directors in common with a public utility;

(H) a person or corporation who or which the commission determines as a matter of fact, after investigation and hearing, actually is exercising such substantial influence over the policies and actions of a utility in conjunction with one or more other corporations or persons with whom they are related by ownership or blood, or by action in concert, that together they are affiliated with the utility within the meaning of this section even though none of them alone is so affiliated; or

(I) a person or corporation who or which the commission determines as a matter of fact after investigation and hearing actually is exercising substantial influence over the policies and actions of a utility even though such influence is not based upon stockholdings, stockholders, officers or directors to the extent specified in this section;

(2) "commission" means the Alaska Public Utilities Commission;

(3) "public" or "general public" means

(A) any group of 10 or more customers that purchase the service or commodity furnished by a public utility as defined in (2) of this section; and

(B) any utility purchasing the product or service or paying for the transmission of electric energy, natural or manufactured gas, or petroleum products which are re-sold to a group included in (A) of this paragraph or which are used to produce the service or commodity sold to the public by the utility;

(4) "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 system for

(A) furnishing, by generation, transmission or distribution, electrical service to the public for compensation;

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

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

(D) furnishing by transmission or distribution of natural or manufactured gas to the Alaska public for compensation;

(E) furnishing for distribution or by distribution petroleum or petroleum products to the Alaska public for compensation when the consumer has no alternative in the choice of supplier of a comparable product and service at an equal or lesser price;

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

(5) "rate" includes each rate, toll, fare, rental, charge, or other form of compensation demanded, observed, charged or collected by a public utility for its services;

(6) "service" means (unless the context indicates otherwise) every commodity, product, use, facility, convenience or other form of service which is offered for and provided by a public utility for the convenience and necessity of the public;

(7) "tariff" means a rate, charge, toll, rule or regulation of a utility relating to services furnished by the utility to the general public for compensation and every map, page, adoption notice, instrument or other document filed with the commission setting out the terms and conditions under which utility services are offered to the public and instruments of concurrence and all other documents and data setting out the terms of a utility's business relations with another utility insofar as they affect the general public either directly or indirectly;

(8) "telecommunications" means the transmission and reception of messages, impressions, pictures and signals by means of electricity, electromagnetic waves and any other kind of energy, force variations or impulses whether conveyed by cable, wire, radiated through space, or transmitted through other media within a specified area or between designated points. (§ 6 ch 113 SLA 1970; am § 2 ch 36 SLA 1971; am § 2 ch 76 SLA 1973)

**Revisor's notes.** — Formerly AS 42.05.701. Renumbered in 1983 and reorganized to alphabetize the defined terms.

**Cross references.** — For legislative purpose of paragraph (4)(E) of this section, see § 1, ch. 36, SLA 1971 in the Temporary and Special Acts.

#### NOTES TO DECISIONS

Applied in *McClellan v. Kenai Peninsula Borough*, Sup. Ct. Op. No. 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977); *Alaska Pub. Utils. Comm'n v. Chugach Elec. Ass'n*, Sup. Ct. Op. No. 1636 (File Nos. 2969, 2993), 580 P.2d 687

(1978), overruled on other grounds, Sup. Ct. Op. No. (File No. 3636, 595 P.2d 626 (1979)); *B-C Cable Co. v. City of Juneau*, Sup. Ct. Op. No. 2112 (File No. 4587), 613 P.2d 616 (1980).

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Collateral references. — 64 Am. Jur.  
2d, Public Utilities, §§ 1 — 2.  
73 C.J.S., Public Utilities, §§ 1 — 3.  
What are "public utilities" within provi-  
sions relating to municipal purchase, con-  
struction or repair of public utility, 9 ALR  
1033; 35 ALR 592.

Conclusiveness of charter as regards  
character of corporation as a public utility  
corporation, 119 ALR 1019.  
Electricity, gas, or water furnished by  
public utility as "goods" within provisions  
of Uniform Commercial Code Article 2 on  
Sales, 48 ALR3d 1060.

**Sec. 42.05.721. Short title.** This chapter may be cited as the Alaska  
Public Utilities Commission Act. (§ 6 ch 113 SLA 1970)

Cross references. — For transition  
provisions, see § 7, ch. 113, SLA 1970 in  
the Temporary and Special Acts.

### Chapter 06. Pipeline Act.

#### Article

1. Powers and Duties of Commission (§§ 42.06.140 — 42.06.230)
2. Certificate of Public Convenience and Necessity (§§ 42.06.240 — 42.06.305)
3. Services and Facilities (§§ 42.06.310 — 42.06.340)
4. Rates and Rate Schedules (§§ 42.06.350 — 42.06.420)
5. Accounts, Records, and Reports (§§ 42.06.430 — 42.06.460)
6. Enforcement Provisions (§§ 42.06.470 — 42.06.590)
7. General Provisions (§§ 42.06.605 — 42.06.640)

Revisor's notes. — Section 20, ch. 110,  
SLA 1981 repealed former Articles 1 and 2  
of this chapter. The remaining sections in  
this chapter, which had been designated  
Article 3, were designated Articles 1 — 7  
in 1983.

Legislative history reports. For report  
on ch. 139, SLA 1972 (FCCS HCS CSSB  
314), see 1972 Senate Journal, p. 1072;

1972 House Journal, p. 1420.

Cross references. — For transition  
provisions, see the editor's notes following  
the title analysis.

Collateral references. — 13 Am. Jur.  
2d, Carriers, §§ 20 — 32, 75 — 104; 61 Am.  
Jur. 2d, Pipelines, § 1 et seq.; 64 Am. Jur.  
2d, Public Utilities, § 292 et seq.  
13 C.J.S., Carriers, §§ 15 — 24.

**Sec. 42.06.010. Legislative declaration of policy.** [Repealed, § 20 ch  
110 SLA 1981.]

**Secs. 42.06.020 — 42.06.120. Establishment of Alaska Pipeline  
Commission.** [Repealed, § 20 ch 110 SLA 1981.]

**Sec. 42.06.130.** [Renumbered as AS 42.06.605.]

#### Article 1. Powers and Duties of Commission.

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| Section  | Section                         |
| 140. General powers and duties   | 220. Annual report              |
| 150. Powers and duties with respect to<br>federally regulated carriers | 230. Jurisdiction of commission |
| 210. Publication of reports, orders, deci-<br>sions and regulations    |                                 |

**Sec. 42.06.140. General powers and duties.** (a) The commission

- (1) shall regulate pipelines and pipeline carriers in the state;
- (2) may investigate upon complaint or its own motion, the rates, classifications, rules, regulations, prices, services, practices and facilities of pipeline carriers, and the performance of obligations under and compliance with the terms of leases issued by the state;
- (3) may make, prescribe or require just, fair and reasonable rates, classifications, regulations, practices, services and facilities for pipeline carriers;
- (4) may require pipeline carriers and affiliated interests to file with the commission reports and other information and data required or permitted to be required by other provisions of this chapter;
- (5) may adopt regulations that are necessary and proper to the performance of its duties under this chapter, including regulations governing practices and procedures of the commission, which regulations shall not be inconsistent with state law;
- (6) shall during normal business hours have access to and may designate any of its employees, agents or consultants to inspect and examine, the accounts, financial and property records, books, maps, inventories, appraisals, valuations, and related reports kept by a pipeline carrier, or kept for it by others, which directly affect the interests of the state and directly relate to pipelines located in the state;
- (7) may initiate, intervene in, and appear personally or by counsel and offer evidence in and participate in, any proceedings involving a pipeline carrier, and affecting the interests of the state, before any officer, department, board, commission or court of this state;
- (8) shall require permits for the construction, enlargement in size or operating capacity, extension, connection and interconnection, operation or abandonment of any oil or gas pipeline facility or facilities, subject to necessary and reasonable terms, conditions and limitations;
- (9) may prescribe the system of accounts and regulate the service of an oil or gas pipeline facility;
- (10) shall provide all reasonable assistance to the Department of Law in intervening in, offering evidence in, and participating in proceedings involving a pipeline carrier or affiliated interest and affecting the interests of the state, before an officer, department, board, commission or court of another state or the United States.

(b) The commission may assign a qualified, unbiased, and impartial administrative law judge, with experience in the general practice of law, to conduct hearings under this chapter. The administrative law judge may perform other duties in connection with the administration of this chapter and other laws. An administrative law judge hired to conduct hearings under this chapter shall have been admitted to prac-

§ 42.05.380

PUBLIC UTILITIES AND CARRIERS

§ 42.05.381

NOTES TO DECISIONS

Applied in *United States v. RCA Alaska Communications, Inc.*, Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

Collateral references. — Necessity of filing rates for services which carrier is not bound to render as common carrier, 19 AIR 982.

*Sec. 42.05.380. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.381. Rates to be just and reasonable.** (a) All rates demanded or received by a public utility, or by any two or more public utilities jointly, for a service furnished or to be furnished shall be just and reasonable; however, a rate may not include an allowance for costs of political contributions, or public relations except for reasonable amounts spent for

- (1) energy conservation efforts;
- (2) public information designed to promote more efficient use of the utility's facilities or services or to protect the physical plant of the utility;
- (3) informing shareholders and members of a cooperative of meetings of the utility and encouraging attendance; or
- (4) emergency situations to the extent and under the circumstances authorized by the commission for good cause shown.

(b) In establishing the revenue requirements of a municipally owned and operated utility the municipality is entitled to include a reasonable rate of return.

(c) A utility, whether subject to regulation by the commission or exempt from regulation, may not charge a fee for connection to, disconnection from, or transfer of services in an amount in excess of the actual cost to the utility of performing the service plus a profit at a reasonable percentage of that cost not to exceed the percentage established by the commission by regulation.

(d) A utility shall provide for a reduced fee or surcharge for standby water for fire protection systems approved under AS 18.70.081 which use hydraulic sprinklers. (§ 6 ch 113 SLA 1970; am § 1 ch 86 SLA 1976; am § 5 ch 106 SLA 1977; am § 4 ch 45 SLA 1980)

Effect of amendments. — The 1980 amendment added subsection (d).

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§ 42.05.500 PUBLIC UTILITIES AND CARRIERS § 42.05.511

Sec. 42.05.500. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.501. Inspection of books and records by commission. The commission shall at all reasonable times have access to, and may designate any of its employees, agents or consultants to inspect and examine, the accounts, records, books, maps, inventories, appraisals, valuations, or other reports and documents, kept by public utilities or their affiliated interests, or prepared or kept for them by others, which relate to any contract or transaction between them. The commission may require a public utility or its affiliated interest to file with the commission, copies of any or all of these accounts, records, books, maps, inventories, appraisals, valuations, or other reports and documents. (§ 6 ch 113 SLA 1970)

Collateral references. — 73 C.J.S., Public Utilities, § 54.

Sec. 42.05.510. [Repealed, § 5 ch 113 SLA 1970.]

Article 7. Financial and Management Regulation.

Section

- 511. Unreasonable management practices
- 521. Impaired capital
- 531. Distribution of surplus and profits

Sec. 42.05.511. Unreasonable management practices. (a) The commission may investigate the management of a public utility, including but not limited to staffing patterns, wage and salary scales and agreements, investment policies and practices, purchasing and payment arrangements with affiliated interests, for the purpose of determining inefficient or unreasonable practices which adversely affect the cost or quality of service of the public utility.

(b) Where unreasonable practices are found to exist, the commission may, after providing reasonable notice and opportunity for hearing, take appropriate action to protect the public from the inefficient or unreasonable practices and may order the public utility to take the corrective action the commission may require to achieve effective development and regulation of public utility services.

(c) In a rate proceeding the utility involved has the burden of proving that any written or unwritten contract or arrangement it may have with any of its affiliated interests for the furnishing of any services or for the purchase, sale, lease or exchange of any property is necessary and consistent with the public interest and that the payment made therefor, or consideration given, is reasonably based, in part, upon the submission of satisfactory proof as to the cost to the affiliated interest of furnishing the service or property and, in part, upon the estimated cost the utility would have incurred if it furnished the service or property with 33 its own personnel and capital. (6 ch. 113 SLA 1970)

42 AIRS 67-1-1

*with 33 its own personnel and capital. (6 ch. 113 SLA 1970)*

exceeding \$100,000 shall keep continuing property records. (§ 6 ch 113 SLA 1970)

*Sec. 42.05.470. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.471. Depreciation rates, initial losses and accounts.**

(a) To provide for the loss in service value of its property, not restored by current maintenance, every utility shall charge adequate, but not excessive, depreciation expense for each major class of utility property used and useful in serving the public. From time to time the commission shall determine the proper and adequate rates of depreciation for each major class of property of a public utility. The commission shall accept rates of depreciation and depreciation accounts prescribed and maintained under regulations of a federal agency or the terms of a bond ordinance. The commission shall determine and allow depreciation expense in fixing the rates, tolls and charges to be paid for the services of a public utility.

(b) The commission is not bound in rate proceedings to accept, as just and reasonable for rate-making purposes, estimates of annual or accrued depreciation established under the provisions of this section, or to allow annual or accrued depreciation on utility property directly or indirectly contributed by customers or others. (§ 6 ch 113 SLA 1970)

*Sec. 42.05.480. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.481. Subsidiary business accounts.** A public utility engaged, directly or indirectly, in another business, including another utility business or a subsidiary business, shall keep separate accounts relating to that business. Except as the commission provides, property, expense or revenue used in or derived from that business may not be considered in establishing the rates and charges of the utility for its public services. (§ 6 ch 113 SLA 1970)

*Sec. 42.05.490. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.491. Records and accounts to be kept in state.** A public utility shall keep the books, accounts, papers and records required by the commission, in an office within this state, and may not remove them from the state, except upon the terms and conditions that may be prescribed by the commission. The provisions of this section do not apply to a public utility whose accounts are kept at its principal place of business outside the state, in the manner prescribed by a federal regulatory body; however, such a public utility shall at its option, either furnish to the commission, within a reasonable time fixed by the commission, certified copies of its books, accounts, papers and records relating to the business done by the public utility within this state, or agree to pay the actual expenses incurred by the commission in sending personnel to examine the utility's books and records at the place where they are kept. (§ 6 ch 113 SLA 1970)

1 \* Sec. 2. AS 42.05.381 is amended by adding new subsections to read:

2 (e) A rate demanded or received by a public utility for a ser-  
3 vice that is provided for a profit may not include an allowance for a  
4 rate of return on capital investments of the utility in excess of an  
5 amount equal to the paid-in capital and retained earnings of the  
6 utility less

7 (1) money provided or advanced by the utility to acquire  
8 ownership of the utility;

9 (2) money provided by the utility for a loan, advance, or  
10 deposit to an owner of the utility or to a subsidiary or affiliate of  
11 the utility;

12 (3) money invested by the utility or a subsidiary or affil-  
13 iate of the utility in a nonregulated company;

14 (4) money deposited or invested in a financial institution  
15 located outside the state; and

16 (5) money or the value of other assets pledged or guaran-  
17 teed on behalf of an owner, subsidiary, or affiliate of the utility.

18 (f) In establishing rates under this chapter the commission  
19 shall consider the revenues and profits of a public utility derived  
20 from operations in the state and shall consider the revenues and  
21 profits of other businesses operated in the state that are owned by  
22 the utility or a holding company, subsidiary, or affiliate of the  
23 utility if the utility and its holding companies, subsidiaries or  
24 affiliates have combined annual sales in excess of \$5,000,000. If a  
25 nonutility company that operates in the state and is owned by a util-  
26 ity operating in the state or a holding company, subsidiary, or affil-  
27 iate of the utility, has annual sales in excess of \$1,000,000, 15  
28 percent of the gross revenues of the nonutility is considered to be  
29 utility revenue for the purpose of establishing utility rates.

1 \* Sec. 3. AS 42.05 is amended by adding a new section to read:

2           Sec. 42.05.655. INSPECTION JURISDICTION. The on-site inspection  
3 jurisdiction of the commission is limited to areas within the state.

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

5           (4) "public utility" or "utility" includes every corpora-  
6 tion (whether public, cooperative, or otherwise), company, individual,  
7 or association of individuals, their lessees, trustees, or receivers  
8 appointed by a court, that owns, operates, manages or controls any  
9 plant, pipeline or system for

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

12                   (B) furnishing telecommunications service, except for  
13 cable television service, to the public for compensation;

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

16                   (D) furnishing by transmission or distribution [OF]  
17 natural or manufactured gas to the [ALASKA] public for compensa-  
18 tion;

19                   (E) refining, furnishing for distribution, or  
20 distributing [BY DISTRIBUTION] petroleum or petroleum products  
21 for [TO] the [ALASKA] public for compensation [WHEN THE CONSUMER  
22 HAS NO ALTERNATIVE IN THE CHOICE OF SUPPLIER OF A COMPARABLE  
23 PRODUCT AND SERVICE AT AN EQUAL OR LESSER PRICE;

24                   (F) FURNISHING COLLECTION AND DISPOSAL SERVICE OF  
25 GARBAGE, REFUSE, TRASH OR OTHER WASTE MATERIAL];

26 \* Sec. 5. AS 42.05.711(i) is repealed.

27 \* Sec. 6. This Act takes effect July 1, 1984.