

HPB

314

ALASKA PUBLIC UTILITIES COMMISSION

POSITION PAPER
HOUSE BILL 314

The Alaska Public Utilities Commission agrees with the following conclusion of the Performance Report of the Commission, completed by the Division of Legislative Audit on November 16, 1984:

In our opinion, the Alaska Public Utilities Commission should continue to regulate public utilities and pipelines and pipeline carriers. We believe that the public interest is being served by requiring public utilities and pipeline carriers to be certificated by the Commission. This process stabilizes demand for the utility service by eliminating competition and thereby allowing economies of scale to operate. Economic regulation by the Commission, in place of that competition, ensures that the utilities provide adequate service at the lowest reasonable rates.

To the extent of its ability the Commission has implemented the four recommendations made by the audit team to improve the efficiency and effectiveness of the Commission's operations.

March 29, 1985

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 314
Title: Extending the Alaska Public Utilities Commission

Sponsor: Davis
Requestor: _____
Date of Request: 3/22/85

FISCAL DETAIL

Agency Affected: Commerce & Ec Development
Program Category Affected: Consumer Prot.

BRU, Program or Subprogram(s) Affected: Alaska Public Utilities Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING	0	0	0	0	0	0
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 SUPPLIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS, CLAIMS	0	0	0	0	0	0
800 MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page if necessary.

The intent of this "0" Fiscal note is to indicate that passage of legislation would not increase our funding requirements beyond what we have submitted and will submit as budget requests.

Prepared By: C. Guess, Chairman Phone: 276-6222
Division: Alaska Public Utilities Commission Date: 3/29/85

Approved by Commissioner: _____ Date: _____
Agency: _____

Distribution (by Agency preparing fiscal note):

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

7/1/84

Introduced: 3/22/85
Referred: Labor & Commerce
and Finance

1 IN THE HOUSE

BY DAVIS

2

HOUSE BILL NO. 314

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act extending the termination date of the Alaska
Public Utilities Commission; and providing for an
effective date."

7

8

9

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

10

* Section 1. AS 44.66.010(a)(4) is amended to read:

11

(4) Alaska Public Utilities Commission (AS 42.05.010) --

12

June 30, 1989 [1985];

13

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-

14

10.070(c).

Original sponsor: Davis

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

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

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

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

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

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

1 degree.

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

3 Sec. 42.05.121. EMPLOYMENT OF COMMISSION PERSONNEL. (a) The
4 commission may employ an executive director who shall have had at
5 least five years of experience in public utility management or regu-
6 lation, law, accounting, engineering, or an allied field. The execu-
7 tive director is responsible for directing the administrative func-
8 tions of the commission and carrying out the policies as set by the
9 commission. The commission may employ engineers, hearing officers,
10 administrative law judges to the extent provided by AS 42.05.171 and
11 AS 47.06.140(b), experts, clerks, accountants, and other agents and
12 assistants it considers necessary. The executive director, deputy
13 director, attorneys, hearing officers, and administrative law judges
14 are in the partially exempt service under AS 39.25.120. Other employ-
15 ees [EMPLOYEES] and agents of the commission [WHO ARE NOT PARTIALLY
16 EXEMPT UNDER AS 39.25.120, OTHER THAN LEGAL COUNSEL,] are in the
17 classified service under AS 39.25.100.

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

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

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

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

27 (a) The Alaska Public Utilities Commission may

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

1 exempted by AS 42.05.171; in exercising its authority, the commission
2 has the powers expressly conferred or reasonably implied by this
3 chapter [AND THE POWERS OF THE COMMISSION SHALL BE LIBERALLY CON-
4 STRUED TO ACCOMPLISH ITS STATED PURPOSES];

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

8 (3) make or require just, fair and reasonable rates, clas-
9 sifications, regulations, practices, services and facilities for a
10 public utility;

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

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

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

22 (7) examine witnesses and offer evidence in any proceeding
23 affecting the state and initiate or participate in judicial proceed-
24 ings to the extent necessary to protect and promote the interests of
25 the state.

26 * Sec. 7. AS 42.05.171 is repealed and reenacted to read:

27 Sec. 42.05.171. FORMAL HEARINGS. (a) The commission may hold a
28 hearing on a matter that is subject to the jurisdiction of the commis-
29 sion or may assign the matter to one or more commissioners, a hearing

1 officer, or an administrative law judge. The commission shall assign
2 as many matters as possible to a hearing officer or administrative law
3 judge.

4 (b) When the commission does not preside over a hearing, the
5 presiding officer shall enter a recommended decision in the case
6 unless the commission requires, either in a specific case or by regu-
7 lation applying to a class of cases, that the entire record be certi-
8 fied to the commission for decision. The recommended decision becomes
9 the decision of the commission without further procedures unless there
10 is an appeal to, or review on the motion of, the commission within the
11 time limits provided in this chapter. On appeal from or review of the
12 recommended decision, the commission has the powers that it would have
13 in making an initial decision unless the commission has limited the
14 issues it will consider by notice to the parties or by regulation.

15 (c) Before the commission or the presiding officer enters a
16 decision the parties are entitled to a reasonable opportunity to
17 review a draft of the decision and to submit

18 (1) proposed findings and conclusions, or exceptions to the
19 draft decision; and

20 (2) supporting reasons for the exceptions or proposed
21 findings or conclusions.

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

25 (e) In determining the place of a hearing the commission shall
26 give preference to the place most convenient for those interested in
27 the subject of the hearing.

28 (f) The commission shall employ a sufficient number of hearing
29 officers or administrative law judges to hear and decide matters

1 arising before the commission under this chapter.

2 * Sec. 8. AS 42.05.271(a) is amended to read:

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

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

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

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

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

1 able to provide utility service if the commission finds that

2 (1) the applicant has the financial, operational, manage-
3 ment, and maintenance capability to provide the proposed service;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (3) the utility requests an extension, but the period of
8 suspension may not exceed 30 months plus the length of the extension;

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

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

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

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

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

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

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

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

12 * Sec. 17. AS 42.05.421 is amended by adding a new subsection to read:

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

21 * Sec. 18. AS 42.05.651 is amended to read:

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

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

9 * Sec. 19. AS 42.05.711(b) is repealed and reenacted to read:

10 (b) Except as otherwise provided in this subsection, public
11 utilities owned and operated by a political subdivision of the state,
12 or electric operating entities established as the instrumentality of
13 two or more public utilities owned and operated by political subdivi-
14 sions of the state, are exempt from this chapter, other than AS 42.-
15 05.221 - 42.05.281 and 42.05.311 - 42.05.321. However,

16 (1) a telephone utility owned by a political subdivision is
17 subject to this chapter;

18 (2) the governing body of a political subdivision may elect
19 to be subject to this chapter; and

20 (3) a utility or electric operating entity that is owned
21 and operated by a political subdivision and that directly competes
22 with another utility or electric operating entity is subject to this
23 chapter; however, except as otherwise provided in this subsection, any
24 other utility or electric operating entity owned and operated by the
25 political subdivision is not subject to this chapter.

26 * Sec. 20. AS 42.05.711(e) is amended to read:

27 (e) Notwithstanding any other provisions of this chapter, an
28 [ANY] electric [OR TELEPHONE] utility that does not gross \$50,000
29 annually is exempt from regulation under this chapter unless 25

1 percent of the subscribers petition the commission for regulation.

2 * Sec. 21. AS 42.05.711(f) is repealed and reenacted to read:

3 (f) A public utility, except a local exchange telephone util-
4 ity, that receives gross annual revenue of less than \$500,000 may,
5 under the procedures in AS 42.05.712, elect to be exempt from this
6 chapter other than AS 42.05.221 - 42.05.281.

7 * Sec. 22. AS 42.05.711(h) is amended to read:

8 (h) An electric [A] cooperative organized under AS 10.25 may
9 elect to be exempt from [THE PROVISIONS OF] this chapter, other than
10 AS 42.05.221 - 42.05.281, under the procedure described in AS 42.05.-
11 712.

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

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

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

22 (4) "public utility" or "utility" includes every corpora-
23 tion (whether public, cooperative, or otherwise), company, individual,
24 or association of individuals, their lessees, trustees, or receivers
25 appointed by a court, that owns, operates, manages or controls any
26 plant, pipeline or system for

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

29 (B) furnishing telecommunications service to the

1 public for compensation;

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

4 (D) furnishing natural or manufactured gas to the
5 public for compensation by transmission or distribution, except
6 as necessary for a producer to supply first sale gas to an entity
7 that is not an affiliated interest if the distribution or trans-
8 mission facilities are either located entirely within the produc-
9 tion leasehold of the producer, or to the extent that the facil-
10 ities are not located within the leasehold, are valued at
11 \$1,000,000 or less or are declared by the producer to be a common
12 carrier subject to regulation under AS 42.06 [OF NATURAL OR
13 MANUFACTURED GAS TO THE ALASKA PUBLIC FOR COMPENSATION];

14 (E) furnishing for distribution or by distribution
15 petroleum or petroleum products to the Alaska public for compen-
16 sation when the consumer has no alternative in the choice of
17 supplier of a comparable product and service at an equal or
18 lesser price;

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

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

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

24 * Sec. 26. Notwithstanding AS 42.05.030, as soon as the term of a
25 consumer member under AS 42.05.040 expires, the governor shall reappoint or
26 replace the member for a term of four years so that the terms of the con-
27 sumer members of the board are staggered.

28 * Sec. 27. Notwithstanding the amendments to AS 42.05.040 made by
29 sec. 2 and to AS 42.05.050 made by sec. 3 of this Act, a member of the

1 commission on the effective date of this Act may continue to serve as a
2 commission member and may be reappointed to the commission without meeting
3 the additional qualifications.

4 * Sec. 28. The amendments made by secs. 4 - 12, 14 - 16, and 18 of this
5 Act do not apply to a proceeding begun before the effective date of this
6 Act.

7 * Sec. 29. Notwithstanding the amendments made by secs. 19 - 23 of this
8 Act, a utility that was exempt from AS 42.05.221 on the day before the
9 effective date of this Act may continue to operate and to receive compen-
10 sation without holding a certificate from the Public Utilities Commission
11 until the commission has acted on the utility's application for certifica-
12 tion if the utility files an application for certification within 60 days
13 after the effective date of this Act.

14 * Sec. 30. Notwithstanding AS 42.05.371, a utility that was exempt from
15 regulation by the Public Utilities Commission on the day before the effec-
16 tive date of this Act may continue to charge the tariffs it charged on the
17 day before the effective date of this Act, until otherwise ordered by the
18 commission, if it files its complete tariff with the commission within 60
19 days after the effective date of this Act.

20 * Sec. 31. AS 42.05.711(g) and 42.05.711(i) are repealed.

21 * Sec. 32. This Act takes effect immediately in accordance with AS 01.-
22 10.076(c).

Cramer
2/26/86

Original sponsor: Davis

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

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

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

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

25 Sec. 42.05.050. ACTUAL EXPERIENCE EQUIVALENT TO A DEGREE.
26 Actual experience that is related to utilities management or regu-
27 lation for a period of five years in the practice of law or in the
28 field of engineering or in the field of finance, business administra-
29 tion, economics, or accounting is equivalent to a degree.

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

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

17 (b) In addition to its staff of regular employees, the commis-
18 sion may contract for and engage the services of consultants and
19 experts the commission considers necessary.

20 ALTERNATE: (b) In addition to its staff of regular employees,
21 the commission may contract for and engage the services of consultants
22 and experts the commission considers necessary to advise, recommend,
23 or testify in a specific proceeding. The commission may not contract
24 for advice on legal matters unless the attorney general is represent-
25 ing the public interest under AS 42.05.111.

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

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

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

2 (a) The Alaska Public Utilities Commission may

3 (1) regulate every public utility engaged or proposing to
4 engage in such a business inside the state, except to the extent
5 exempted by AS 42.05.711; in exercising its authority, the commission
6 has the powers expressly conferred or reasonably implied by this
7 chapter [, AND THE POWERS OF THE COMMISSION SHALL BE LIBERALLY CON-
8 STRUED TO ACCOMPLISH ITS STATED PURPOSES];

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

12 (3) make or require just, fair and reasonable rates, clas-
13 sifications, regulations, practices, services and facilities for a
14 public utility;

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

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

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

26 (7) examine witnesses and offer evidence in any proceeding
27 affecting the state and initiate or participate in judicial proceed-
28 ings to the extent necessary to protect and promote the interests of
29 the state.

*Oct
is change of safety code (inst 1)
need better enforcement
not
more up*

Clarify who should

1 * Sec. 7. AS 42.05.171 is repealed and reenacted to read:

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

8 (b) After the hearing, the presiding officer or the commission-
9 ers shall enter a final order of the commission. The decision of one
10 or two commissioners or of a hearing officer or administrative law
11 judge may be appealed to the commission under AS 42.05.196. The
12 appeal must be filed no later than 30 days after service of the deci-
13 sion on the party filing the appeal.

14 ALTERNATE: (b) After the hearing the commission shall enter a
15 final order. If a matter was heard by one or two commissioners or a
16 hearing officer or administrative law judge, a proposed decision shall
17 be entered. The commission shall enter a final order affirming,
18 modifying, or reversing the proposed decision within 60 days after the
19 filing of the proposed decision. The parties shall have an opportuni-
20 ty to comment on the proposed decision before the commission enters a
21 final order. When considering a proposed decision, the commission may
22 permit the parties to submit additional evidence for good cause and
23 may hear oral argument.

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

27 (d) In determining the place of a hearing the commission shall
28 give preference to the place most convenient for those interested in
29 the subject of the hearing.

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

4 * Sec. 8. AS 42.05 is amended by adding a new section to read:

5 Sec. 42.05.196. APPEAL OF FINAL DECISIONS TO THE COMMISSION.
6 When a decision of a hearing officer, administrative law judge, or one
7 or two commissioners is appealed to the commission, the commission
8 shall review the record and the briefs of the parties. The commission
9 may permit the parties to submit additional evidence for good cause
10 and may hear oral argument. If an appeal is taken from the decision
11 of one or two commissioners, the commission members who did not serve
12 on the panel shall attend the hearing. The commission shall issue a
13 decision affirming, modifying, or reversing the decision of the pre-
14 siding officer or panel within 60 days after the filing of the appeal.
15 A majority of the commission must concur in the decision.

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

17 (a) A public utility may not operate and receive compensation
18 for providing a commodity or service until it has obtained [AFTER
19 JANUARY 1, 1971 WITHOUT FIRST HAVING OBTAINED FROM THE COMMISSION
20 UNDER THIS CHAPTER] a certificate declaring that public convenience
21 and necessity require or will require the service under this chapter.
22 If [WHERE] a public utility provides more than one type of utility
23 service, a separate certificate of public convenience and necessity is
24 required for each type. A certificate shall describe the nature and
25 extent of the authority granted in it, including, as appropriate for
26 the services involved, a description of the authorized area and scope
27 of operations of the public utility.

28 * Sec. 10. AS 42.05.241 is amended to read:

29 Sec. 42.05.241. CONDITIONS OF ISSUANCE. The commission shall

1 issue a certificate if [A CERTIFICATE MAY NOT BE ISSUED UNLESS] the
2 commission finds that the applicant is fit, willing and able under (b)
3 of this section to provide the utility services applied for and that
4 the services are in the public interest. The commission may issue a
5 certificate without finding that an applicant is fit, willing, and
6 able if the service is necessary for the public interest [REQUIRED FOR
7 THE CONVENIENCE AND NECESSITY OF THE PUBLIC]. The commission may
8 issue a certificate granting an application in whole or in part and
9 attach to the grant of it the terms and conditions it considers neces-
10 sary to protect and promote the public interest including the condi-
11 tion that the applicant may or shall serve an area or provide a neces-
12 sary service not contemplated by the applicant. The commission may,
13 for good cause, deny an application with or without prejudice.

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

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

17 (1) the applicant has the financial, operational, manage-
18 ment, and maintenance capability to provide the proposed service;

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

21 (3) the applicant submits evidence, satisfactory to the
22 commission, demonstrating that the applicant will comply with the law.

23 (c) In a hearing on the issuance of a certificate under this
24 section, the applicant for the certificate has the burden of showing
25 that the proposed service is in the public interest.

26 (c) If issuance of a certificate is not contested, the commis-
27 sion shall grant or deny the application no later than six months
28 after the application was filed. If the commission has not reached a
29 decision within six months, it shall issue the certificate.

1 * Sec. 12. AS 42.05.251 is amended to read:

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

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

16 (c) The commission may reject the filing of all or part of a
17 tariff that [WHICH] does not comply with the form or filing regu-
18 lations of the commission or that [WHICH] is not consistent with this
19 chapter or the regulations of the commission. A tariff or provision
20 so rejected is void. If the commission rejects a filing, it shall
21 issue a statement of the reasons for the rejection. Unless the utili-
22 ty and the commission agree to an extension of time, the commission
23 may not reject a filing under this subsection after 45 days have
24 elapsed from the date of filing.

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

26 (e) The commission shall adopt regulations establishing a sim-
27 plified rate filing procedure for electric cooperatives.

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

29 (a) When a tariff filing is made containing a new or revised

1 rate, classification, rule, regulation, practice, or condition of
2 service the commission may, either upon written complaint or upon its
3 own motion, after reasonable notice, conduct a hearing to determine
4 the reasonableness and propriety of the filing. Pending the hearing
5 and decision, the commission may suspend the operation of the tariff
6 filing by order stating the reasons for the suspension. The period of
7 suspension for an interim rate increase may not exceed 45 days from
8 the date that the commission receives the completed application. The
9 period of suspension for a permanent rate may not exceed 12 months
10 from the date the commission receives the completed application unless

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

13 (2) the utility has delayed the proceedings, but the period
14 of suspension may not exceed 12 months plus the length of the delay;

15 (3) the utility requests an extension, but the period of
16 suspension may not exceed 12 months plus the length of the extension;

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

19 (5) an intervenor raises issues that require additional
20 time to resolve;

21 ~~ALTERNATE~~ (6) the proceedings involve a utility whose
22 total company revenue exceeds \$100,000,000;

23 ALTERNATE (7) the proceedings involve issues of safety,
24 quality of service, or reasonableness of management practices that
25 cannot be decided separately from the tariff filing;

26 ALTERNATE (8) the proceedings involve a utility whose
27 records and accounts are kept at a location outside the state;

28 ALTERNATE (9) the proceedings involve unusually complex
29 situations or issues;

1 ALTERNATE (10) The commission finds there is other good
2 cause.

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

4 (b) An order suspending a tariff filing may be vacated if, after
5 investigation, the commission finds that it is in all respects proper.
6 Otherwise the commission shall hold a hearing on the suspended filing
7 and issue its order, before the end of the suspension period, grant-
8 ing, denying, or modifying the suspended tariff in whole or in part.
9 If the commission does not act on the tariff filing within the period
10 of suspension allowed under (a) of this section, the tariff filing
11 takes effect at the end of the suspension period.

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

13 (c) If the commission authorizes an interim [IN THE CASE OF A
14 PROPOSED INCREASED] rate increase, the commission may by order require
15 the interested public utility or utilities to place the amounts re-
16 ceived from the increase in escrow in a financial institution approved
17 by the commission and keep accurate account of [ALL AMOUNTS RECEIVED
18 BY REASON OF THE INCREASE, SPECIFYING] by whom and in whose behalf the
19 amounts are paid. Upon completion of the hearing and decision the
20 commission may by order require the public utility to refund to the
21 persons in whose behalf the amounts were paid, that portion of the
22 increased rates which was found to be unreasonable or unlawful. The
23 commission shall immediately authorize release of the balance of funds
24 to the utility. Funds may not be released from escrow without the
25 commission's prior written consent and the utility shall instruct the
26 escrow agent of this requirement [SHALL BE SO INSTRUCTED BY THE UTILI-
27 TY,] in writing and send [, WITH] a copy to the commission. The
28 utility may, at its expense, substitute a bond for [IN LIEU OF] the
29 escrow requirement.

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

2 (e) At the time of a tariff filing or at any time the tariff
3 filing is under suspension, the utility may request the commission to
4 allow the tariff filing to take effect on an interim basis. The
5 commission shall process the request as a tariff filing under AS 42.-
6 05.411. If the filing contains a proposed new rate or rate increase,
7 the commission may allow that rate or a lesser rate to take effect on
8 an interim basis, subject to refund or other appropriate disposition
9 at the discretion of the commission.

10 Sec. 19. AS 42.05.431 is amended to read:

11 Sec. 42.05.431. POWER OF COMMISSION TO FIX RATES. When the
12 commission, after an investigation and hearing, finds that a rate
13 demanded, observed, charged or collected by a public utility for a
14 service, subject to the jurisdiction of the commission, or that a
15 classification, rule, regulation, practice, or contract affecting the
16 rate, is unjust, unreasonable, unduly discriminatory or preferential,
17 the commission shall determine a just and reasonable rate, classifica-
18 tion, rule, regulation, practice, or contract to be observed or al-
19 lowed and shall establish it by order. A municipality may covenant
20 with bond purchasers regarding rates of a municipally owned utility,
21 and the covenant is valid and enforceable and is considered to be a
22 contract with the holders from time to time of the bonds. A coopera-
23 tive utility organization under AS 10.25 may enter covenants contained
24 in mortgages and other debt instruments. The covenant is valid and
25 enforceable and rates set by the commission must be adequate to meet
26 the covenants. The commission may require a municipal or cooperative
27 utility to file a copy of each debt instrument affecting its rates.

28 ALTERNATE: Sec. 42.05.431. POWER OF COMMISSION TO FIX RATES.
29 When the commission, after an investigation and hearing, finds that a

already done
(but would allow utilities to file for suspension of rates when going to a stronger position when going to the market for financing)

1 rate demanded, observed, charged or collected by a public utility for
 2 a service, subject to the jurisdiction of the commission, or that a
 3 classification, rule, regulation, practice, or contract affecting the
 4 rate, is unjust, unreasonable, unduly discriminatory or preferential,
 5 the commission shall determine a just and reasonable rate, classifica-
 6 tion, rule, regulation, practice, or contract to be observed or al-
 7 lowed and shall establish it by order. A municipality may covenant
 8 with bond purchasers regarding rates of a municipally owned utility,
 9 and the covenant is valid and enforceable and is considered to be a
 10 contract with the holders from time to time of the bonds. A coopera-
 11 tive utility organization under AS 10.25 may enter covenants contained
 12 in mortgages and other debt instruments. The covenant is valid and
 13 enforceable and rates set by the commission must be adequate to meet
 14 the covenants. The commission may require a municipal or cooperative
 15 utility to file a copy of each debt instrument affecting its rates or
 16 to secure advance commission approval of the covenants.

Already done

17 * Sec. 20. AS 42.05.431 is amended by adding new subsections to read:

18 (b) The commission may not amend a wholesale power agreement
 19 after it is in effect.

*Does the Comm. have the power
 to review these before they go
 into effect?*

20 ALTERNATE Do not add this subsection.

21 (c) The commission may not require a utility to refund a perma-
 22 nent rate after it is in effect.

23 ALTERNATE Do not add this subsection.

24 * Sec. 21. AS 42 05.651 is amended to read:

25 EXISTING TEX. Sec. 42.05.651. EXPENSES OF INVESTIGATION OR
 26 HEARING. After completion of a hearing or investigation held under
 27 this chapter, the commission shall allocate the costs of the hearing
 28 or investigation among the parties, including the commission, as is
 29 just under the circumstances. In allocating costs, the commission may

1 consider the results, ability to pay, evidence of good faith, other
 2 relevant factors and mitigating circumstances. The costs allocated may
 3 include the costs of any time devoted to the investigation or hearing
 4 by hired consultants, whether or not the consultants appear as wit-
 5 nesses or participants. The costs allocated may also include any
 6 out-of-pocket expenses incurred by the commission in the particular
 7 proceeding. The commission shall provide an opportunity for any
 8 person objecting to an allocation to be heard before the allocation
 9 becomes final.

should be allowed to allocate the costs to those who are being regulated, but not a blank check

10 ALTERNATE: Sec. 42.05.651. EXPENSES OF INVESTIGATION OR HEAR-
 11 ING. After [COMPLETION OF] a hearing or investigation held under this
 12 chapter, the commission shall allocate the costs of the hearing or
 13 investigation among the parties, including the commission, as is just
 14 under the circumstances. In allocating costs, the commission may
 15 consider the results, ability to pay, evidence of good faith, other
 16 relevant factors and mitigating circumstances. The costs allocated
 17 may include the costs of any time devoted to the investigation or
 18 hearing by hired consultants, whether or not the consultants appear as
 19 witnesses or participants, but only if the consultants were necessary
 20 and the costs are reasonable. The costs allocated may not include the
 21 cost of legal counsel, unless legal counsel was required because the
 22 attorney general was representing the public interest, or the cost of
 23 staff for the commission [ALSO INCLUDE ANY OUT-OF-POCKET EXPENSES
 24 INCURRED BY THE COMMISSION IN THE PARTICULAR PROCEEDING] The commis-
 25 sion shall provide an opportunity for a [ANY] person objecting to an
 26 allocation to be heard before the allocation becomes final.

TPS scenario

27 * Sec. 22. AS 42.05.711(b) is repealed and reenacted to read:

28 (b) Except as otherwise provided in this subsection, a public
 29 utility or electric operating entity to which this subsection applies

options should be allowed to X on -12- min. above

1 is exempt from this chapter except AS 42.05.221 - 42.05.281 and 42.-
 2 05.311 - 42.05.321. If a utility of a public utility or electric
 3 operating entity competes with another utility, then the public util-
 4 ity or entity is subject to this chapter. A telephone utility of a
 5 public utility is subject to this chapter. If the governing body of a
 6 political subdivision elects to be subject to this chapter, then the
 7 public utility or entity is subject to this chapter. This subsection
 8 applies to

9 (1) a public utility owned and operated by a political
 10 subdivision of the state; or

11 (2) an electric operating entity established as an instru-
 12 mentality of at least two public utilities owned and operated by a
 13 political subdivision of the state.

14 * Sec. 23. AS 42.05.711(f) is repealed and reenacted to read:

15 (f) A public utility, except a local exchange telephone util-
 16 ity, that receives gross annual revenue of less than \$500,000 may,
 17 under the procedures in AS 42.05.712, elect to be exempt from this
 18 chapter other than AS 42.05.221 - 42.05.281.

19 * Sec. 24. AS 42.05.711(h) is amended to read:

20 (h) An electric [A] cooperative organized under AS 10.25 may
 21 elect to be exempt from [THE PROVISIONS OF] this chapter, other than
 22 AS 42.05.221 - 42.05.281, under the procedure described in AS 42.05.-
 23 712.

24 * Sec. 25. AS 42.05.711(k) is amended to read:

25 (k) A utility that [WHICH] furnishes cable television service or
 26 service as a radio common carrier is exempt from the provisions of
 27 this chapter. In this subsection, "radio common carrier" means a
 28 radio, paging, mobile radiotelephone, or improved mobile telephone
 29 service [OTHER THAN AS 42.05.221 - 42.05.281 UNLESS 25 PERCENT OF THE

1 SUBSCRIBERS PETITION THE COMMISSION FOR REGULATION].

2 * Sec. 26. AS 42.05.712(a) is amended to read:

3 (a) A utility or cooperative that [WHICH] may elect to be exempt
4 from [THE PROVISIONS OF] this chapter shall poll its subscribers or
5 members in the manner described in this section. A cooperative formed
6 for the generation and transmission of electrical service may not
7 elect to be deregulated under this section unless each of its members
8 that is organized as a distribution cooperative has held an election
9 among its subscribers to determine the cooperative's vote on deregu-
10 lation.

11 ALTERNATE: (a) A utility or cooperative that [WHICH] may elect
12 to be exempt from [THE PROVISIONS OF] this chapter shall poll its
13 subscribers or members in the manner described in this section. A
14 cooperative organized under AS 10.25 may not elect to be exempt from
15 this chapter unless the cooperative has held an election among its
16 members and subscribers to determine whether the cooperative should be
17 deregulated.

18 * Sec. 27. AS 42.05.720(3) is amended to read:

19 (3) "public" or "general public" means

20 (A) any group of 10 or more customers that purchase
21 the service or commodity furnished by a public utility [AS DE-
22 FINED IN (2) OF THIS SECTION]; and

23 (B) any utility purchasing the product or service or
24 paying for the transmission of electric energy, natural or man-
25 ufactured gas, or petroleum products which are re-sold to a group
26 included in (A) of this paragraph or which are used to produce
27 the service or commodity sold to the public by the utility;

28 ALTERNATE: (B) any utility purchasing the product or
29 service or paying for the transmission of electric energy,

1 natural or manufactured gas, or petroleum products that [WHICH]
2 are re-sold to a group included in (A) of this paragraph or that
3 [WHICH] are used to produce the service or commodity sold to the
4 public by the utility except a producer of oil and gas;

5 * Sec. 28. AS 42.05.720(4) is amended to read:

6 (4) "public utility" or "utility" includes every corpora-
7 tion (whether public, cooperative, or otherwise), company, individual,
8 or association of individuals, their lessees, trustees, or receivers
9 appointed by a court, that owns, operates, manages or controls any
10 plant, pipeline or system for

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

13 (B) furnishing telecommunications service to the
14 public for compensation;

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

17 (D) transmitting or distributing [FURNISHING BY TRANS-
18 MISSION OR DISTRIBUTION OF] natural or manufactured gas to the
19 Alaska public for compensation, but not including a producer who
20 transmits or distributes natural or manufactured gas for first
21 sale to a person unless the purchaser has an affiliated interest
22 with the producer;

23 ALTERNATE: (D) furnishing natural or manufactured gas
24 to the public for compensation by transmission or distribu-
25 tion, except as necessary for a producer to supply first
26 sale gas to an entity that is not an affiliated interest if
27 the distribution or transmission facilities are either
28 located entirely within the production leasehold of the
29 producer, or to the extent that the facilities are not

1 located within the leasehold, are valued at \$1,000,000 or
2 less [OF NATURAL OR MANUFACTURED GAS TO THE ALASKA PUBLIC
3 FOR COMPENSATION];

4 (E) furnishing for distribution or by distribution
5 petroleum or petroleum products to the Alaska public for compen-
6 sation when the consumer has no alternative in the choice of
7 supplier of a comparable product and service at an equal or
8 lesser price;

9 ~~W~~(F) FURNISHING COLLECTION AND DISPOSAL SERVICE OF
10 GARBAGE, REFUSE, TRASH OR OTHER WASTE MATERIAL;]

11 * Sec. 29. AS 44.66.010(4) is amended to read:

12 (4) Alaska Public Utilities Commission (AS 42.05.010) --
13 June 30, 1990 [1986];

14 * Sec. 30. Notwithstanding AS 42.05.030, as soon as the term of a
15 consumer member under AS 42.05.040 expires, the governor shall reappoint or
16 replace the member for a term of four years so that the terms of the con-
17 sumer members of the board are staggered.

18 * Sec. 31. Notwithstanding the amendments to AS 42.05.040 made by
19 sec. 2 and to AS 42.05.050 made by sec. 3 of this Act, a member of the
20 commission on the effective date of this Act may continue to serve as a
21 commission member and may be reappointed to the commission without meeting
22 the additional qualifications.

23 * Sec. 32. AS 29.35.050(b); 42.05.711(g), and 42.05.711(i) are re-
24 pealed.

25 * Sec. 33. Sections of this Act take effect immediately in accor-
26 dance with AS 01.10.070(c).

Cramer
2/27/86

Original sponsor: Davis

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

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

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

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

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

25 Sec. 42.05.050. ACTUAL EXPERIENCE EQUIVALENT TO A DEGREE.
26 Actual experience that is related to utilities management or regu-
27 lation for a period of five years [in the practice of law] or [in the
28 field of engineering or in the field of finance, business administra-
29 tion, economics, or accounting is equivalent to a degree.

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

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

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

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

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

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

26 (a) The Alaska Public Utilities Commission may
27 (1) regulate every public utility engaged or proposing to
28 engage in such a business inside the state, except to the extent
29 exempted by AS 42.05.711; in exercising its authority, the commission

1 has the powers expressly conferred or reasonably implied by this
2 chapter [, AND THE POWERS OF THE COMMISSION SHALL BE LIBERALLY CON-
3 STRUED TO ACCOMPLISH ITS STATED PURPOSES];

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

7 (3) make or require just, fair and reasonable rates, clas-
8 sifications, regulations, practices, services and facilities for a
9 public utility;

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

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

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

21 (7) examine witnesses and offer evidence in any proceeding
22 affecting the state and initiate or participate in judicial proceed-
23 ings to the extent necessary to protect and promote the interests of
24 the state.

25 * Sec. 7. AS 42.05.171 is repealed and reenacted to read:

26 Sec. 42.05.171. FORMAL HEARINGS. (a) The commission may hold a
27 hearing on a matter that is subject to the jurisdiction of the commis-
28 sion or may assign the matter to one or more commissioners, a hearing
29 officer, or an administrative law judge. The commission shall assign

1 as many matters as possible to a hearing officer or administrative law
2 judge.

3 (b) After a hearing the commission shall enter a final order.
4 If a matter was not heard by the commission, a proposed decision may
5 be entered. The commission shall enter a final order affirming,
6 modifying, or reversing the proposed decision within 60 days after the
7 filing of the proposed decision. The parties shall have an opportuni-
8 ty to comment on the proposed decision before the commission enters a
9 final order. When considering a proposed decision, the commission may
10 permit the parties to submit additional evidence for good cause and
11 may hear oral argument.

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

15 (d) In determining the place of a hearing the commission shall
16 give preference to the place most convenient for those interested in
17 the subject of the hearing.

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

21 * Sec 8. AS 42.05 is amended by adding a new section to read:

22 * Sec. 42.05.196. RECONSIDERATION. Within 15 days after an order
23 of the commission is served, a party may file a petition for reconsid-
24 eration of the order setting out specifically the grounds upon which
25 the petitioner believes the order is unreasonable, erroneous, unlaw-
26 ful, or otherwise defective. The petitioner may also submit a pro-
27 posed order designed to cure the alleged defects of the commission's
28 order. A party opposing a petition for reconsideration has 10 days
29 after the date on which the petition is filed with the commission to

1 respond. The commission's power to order reconsideration expires 30
2 days after the date on which the petition for reconsideration is filed
3 with the commission. If the commission does not take action on a
4 petition for reconsideration within the time allowed for ordering
5 reconsideration, the petition is automatically denied. The commission
6 may order reconsideration in writing of all or part of the record in a
7 proceeding together with additional evidence and argument that may be
8 permitted either in writing or orally. The filing of a petition for
9 reconsideration does not excuse the petitioning party from compliance
10 with a decision or order of the commission.

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

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

23 * Sec. 10. AS 42.05.241 is amended to read:

24 Sec. 42.05.241. CONDITIONS OF ISSUANCE. The commission shall
25 issue a certificate if [A CERTIFICATE MAY NOT BE ISSUED UNLESS] the
26 commission finds that the applicant is fit, willing and able under (b)
27 of this section to provide the utility services applied for and that
28 the services are in the public interest. The commission may issue a
29 certificate without finding that an applicant is fit, willing, and

1 able if the service is necessary for the public interest [REQUIRED FOR
2 THE CONVENIENCE AND NECESSITY OF THE PUBLIC]. The commission may
3 issue a certificate granting an application in whole or in part and
4 attach to the grant of it the terms and conditions it considers neces-
5 sary to protect and promote the public interest including the condi-
6 tion that the applicant may or shall serve an area or provide a neces-
7 sary service not contemplated by the applicant. The commission may,
8 for good cause, deny an application with or without prejudice.

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

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

12 (1) the applicant has the financial, operational, manage-
13 ment, and maintenance capability to provide the proposed service;

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

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

18 (c) In a hearing on the issuance of a certificate under this
19 section, the applicant for the certificate has the burden of showing
20 that the proposed service is in the public interest.

21 (d) If issuance of a certificate is not contested, the commis-
22 sion shall grant or deny the application no later than six months
23 after the ^{completed} application was filed. If the commission has not reached a
24 decision within six months, it shall issue the certificate.

25 * Sec. 12. AS 42.05.251 is amended to read:

26 Sec. 42.05.251. USE OF STREETS IN CITIES AND BOROUGH. Public
27 utilities have the right to a permit to use public streets, alleys,
28 and other public ways of a municipality [CITY OR BOROUGH, WHETHER HOME
29 RULE OR OTHERWISE,] upon payment of a reasonable permit fee and on

1 reasonable terms and conditions and with reasonable exceptions the
2 municipality [CITY OR BOROUGH] requires. The fee may not exceed the
3 actual cost to the municipality of the utility's use of the public way
4 and of administering the permit program. A dispute as to whether
5 fees, terms, conditions, or exceptions are reasonable shall be decided
6 by the commission. The commission may require a utility to add the
7 amount of any permit fee paid as a pro rata surcharge to its bills for
8 service rendered at locations within the boundaries of any municipal-
9 ity that [CITY OR BOROUGH WHICH] requires payment of a permit fee.

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

11 (c) The commission may reject the filing of all or part of a
12 tariff that [WHICH] does not comply with the form or filing regu-
13 lations of the commission, or that [WHICH] is not consistent with this
14 chapter or the regulations of the commission. A tariff or provision
15 so rejected is void. If the commission rejects a filing, it shall
16 issue a statement of the reasons for the rejection. Unless the utili-
17 ty and the commission agree to an extension of time, the commission
18 may not reject a filing under this subsection after 45 days have
19 elapsed from the date of filing.

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

21 (e) The commission shall adopt regulations establishing a sim-
22 plified rate filing procedure for electric cooperatives.

23 ALTERNATE: (e) The commission shall adopt regulations setting a
24 range for adjustment of rates by a times-interest-earned-ratio (TIER)
25 for electric cooperatives. A cooperative may apply for permission to
26 adjust its rates over a period of time and without further filings
27 under the TIER regulations. The commission shall grant the applica-
28 tion if the cooperative satisfies the requirements of the regulations.
29 The commission may review implementation of the TIER at reasonable

1 intervals and may revoke permission to use the TIER or require modi-
2 fication of the rates to correct an error.

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

4 (a) When a tariff filing is made containing a new or revised
5 rate, classification, rule, regulation, practice, or condition of
6 service the commission may, either upon written complaint or upon its
7 own motion, after reasonable notice, conduct a hearing to determine
8 the reasonableness and propriety of the filing. Pending the hearing
9 and decision, the commission may suspend the operation of the tariff
10 filing by order stating the reasons for the suspension. When the
11 commission suspends the operation of a tariff, the commission may
12 grant an interim rate increase. The period of suspension may not
13 exceed 12 months unless

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

16 (2) the utility has delayed the proceedings, but the period
17 of suspension may not exceed 12 months plus the length of the delay;

18 (3) the utility requests an extension, but the period of
19 suspension may not exceed 12 months plus the length of the extension;

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

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

24 ~~ALTERNATE~~ (6) ^{AKS} the proceedings involve a utility that
25 provides intrastate toll service;

26 ~~ALTERNATE~~ (7) the proceedings involve issues of safety,
27 quality of service, or reasonableness of management practices that
28 cannot be decided separately from the tariff filing;

29 ~~ALTERNATE~~ (8) the proceedings involve a utility whose

1 records and accounts are kept at a location outside the state;

2 ALTERNATE (9) the proceedings involve unusually complex
3 situations or issues.

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

5 (b) An order suspending a tariff filing may be vacated if, after
6 investigation, the commission finds that it is in all respects proper.
7 Otherwise the commission shall hold a hearing on the suspended filing
8 and issue its order, before the end of the suspension period, grant-
9 ing, denying, or modifying the suspended tariff in whole or in part.
10 If the commission does not act on the tariff filing within the period
11 of suspension allowed under (a) of this section, the tariff filing
12 takes effect at the end of the suspension period.

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

14 (c) If the commission authorizes an interim [IN THE CASE OF A
15 PROPOSED INCREASED] rate, the commission may by order require the
16 interested public utility or utilities to place the amounts subject to
17 refund in escrow in a financial institution approved by the commission
18 and keep accurate account of [ALL AMOUNTS RECEIVED BY REASON OF THE
19 INCREASE, SPECIFYING] by whom and in whose behalf the amounts are
20 paid. Upon completion of the hearing and decision the commission may
21 by order require the public utility to refund to the persons in whose
22 behalf the amounts were paid, that portion of the increased rates
23 which was found to be unreasonable or unlawful. The commission shall
24 immediately authorize release of the balance of funds to the utility.
25 Funds may not be released from escrow without the commission's prior
26 written consent and the utility shall instruct the escrow agent of
27 this requirement [SHALL BE SO INSTRUCTED BY THE UTILITY,] in writing
28 and send [, WITH] a copy to the commission. The utility may, at its
29 expense, substitute a bond for [IN LIEU OF] the escrow requirement.

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

2 (e) At the time of a tariff filing or at any time the tariff
3 filing is under suspension, the utility may request the commission to
4 allow the tariff filing to take effect on an interim basis. The
5 commission shall process the request as a tariff filing under AS 42.-
6 05.411. If the filing contains a proposed new rate or rate increase,
7 the commission may allow that rate or a lesser rate to take effect on
8 an interim basis, subject to refund or other appropriate disposition
9 at the discretion of the commission.

10 * Sec. 19. AS 42.05.431 is amended by adding new subsections to read:

11 (b) The commission may not amend a wholesale power agreement
12 after it is in effect.

13 ALTERNATE Do not add this subsection.

14 (c) The commission may not require a utility to refund a perma-
15 nent rate after it is in effect.

16 ALTERNATE Do not add this subsection.

17 * Sec. 20. AS 42.05.511(a) is amended to read:

18 EXISTING TEXT: (a) The commission may investigate the
19 management of a public utility, including but not limited to staffing
20 patterns, wage and salary scales and agreements, investment policies
21 and practices, purchasing and payment arrangements with affiliated
22 interests, for the purpose of determining inefficient or unreasonable
23 practices which adversely affect the cost or quality of service of the
24 public utility.

25 ALTERNATE: (a) After a finding in a proceeding before the
26 commission that a public utility has questionable management
27 practices, the [THE] commission may investigate the management of the
28 [A PUBLIC] utility, including but not limited to staffing patterns,
29 wage and salary scales and agreements, investment policies and

1 practices, purchasing and payment arrangements with affiliated
2 interests, for the purpose of determining inefficient or unreasonable
3 practices that [WHICH] adversely affect the cost or quality of service
4 of the public utility. The commission must conclude the investigation
5 within 12 months.

6 * Sec. 21. AS 42.05.651 is amended to read:

7 Sec. 42.05.651. EXPENSES OF INVESTIGATION OR HEARING. After
8 [COMPLETION OF] a hearing or investigation held under this chapter,
9 the commission shall allocate the costs of the hearing or investiga-
10 tion among the parties, including the commission, as is just under the
11 circumstances. In allocating costs, the commission may consider the
12 results, ability to pay, evidence of good faith; other relevant fac-
13 tors and mitigating circumstances. The costs allocated may include
14 the costs of any time devoted to the investigation or hearing by hired
15 consultants, whether or not the consultants appear as witnesses or
16 participants, but only if the consultants were necessary under AS 42.-
17 05.121(b). The costs allocated may not include the cost of permanent
18 staff for the commission [ALSO INCLUDE AN: OUT-OF-POCKET EXPENSES
19 INCURRED BY THE COMMISSION IN THE PARTICULAR PROCEEDING]. The commis-
20 sion shall provide an opportunity for a [ANY] person objecting to an
21 allocation to be heard before the allocation becomes final.

22 ALTERNATE: Sec. 42.05.651. EXPENSES OF INVESTIGATION OR HEAR-
23 ING. After [COMPLETION OF] a hearing or investigation held under this
24 chapter, the commission shall allocate the costs of the hearing or
25 investigation among the parties, including the commission, as is just
26 under the circumstances. In allocating costs, the commission may
27 consider the results, ability to pay, evidence of good faith, other
28 relevant factors and mitigating circumstances. The costs allocated
29 may include the costs of any time devoted to the investigation or

1 hearing by hired consultants, whether or not the consultants appear as
 2 witnesses or participants, but only if the consultants were necessary
 3 under AS 42.05.121(b). The costs allocated may not include the cost
 4 of permanent staff for the commission but may include other necessary
 5 expenses not allocated in the operating budget [ALSO INCLUDE ANY
 6 OUT-OF-POCKET EXPENSES INCURRED BY THE COMMISSION IN THE PARTICULAR
 7 PROCEEDING]. The commission shall provide an opportunity for a [ANY]
 8 person objecting to an allocation to be heard before the allocation
 9 becomes final.

Renewable?

10 * Sec. 22. AS 42.05.711(b) is repealed and reenacted to read:

11 (b) Except as otherwise provided in this subsection, public
 12 utilities owned and operated by a political subdivision of the state,
 13 or electric operating entities established as the instrumentality of
 14 two or more public utilities owned and operated by political
 15 subdivisions of the state, are exempt from this chapter, other than
 16 AS 42.05.221 - 42.05.281 and 42.05.311 - 42.05.321. However,

17 (1) a telephone utility owned by a political subdivision is
 18 subject to this chapter;

19 (2) the governing body of a political subdivision may elect
 20 to be subject to this chapter; and

21 (3) a utility or electric operating entity that is owned
 22 and operated by a political subdivision and that directly competes
 23 with another utility or electric operating entity is subject to this
 24 chapter and any other utilities or electric operating entities owned
 25 and operated by the political subdivision are also subject to this
 26 chapter.

27 * Sec. 23. AS 42.05.711(f) is repealed and reenacted to read:

28 (f) A public utility, except a local exchange telephone util-
 29 ity, that receives gross annual revenue of less than \$500,000 may,

1 under the procedures in AS 42.05.712, elect to be exempt from this
2 chapter other than AS 42.05.221 - 42.05.281.

3 * Sec. 24. AS 42.05.711(h) is amended to read:

4 (h) An electric [A] cooperative organized under AS 10.25 may
5 elect to be exempt from [THE PROVISIONS OF] this chapter, other than
6 AS 42.05.221 - 42.05.281, under the procedure described in AS 42.05.-
7 712.

8 * Sec. 25. AS 42.05.711(k) is amended to read:

9 (k) A utility that [WHICH] furnishes cable television service or
10 service as a radio common carrier is exempt from the provisions of
11 this chapter. In this subsection, "radio common carrier" means a
12 radio, paging, mobile radiotelephone, or improved mobile telephone
13 service [OTHER THAN AS 42.05.221 - 42.05.281 UNLESS 25 PERCENT OF THE
14 SUBSCRIBERS PETITION THE COMMISSION FOR REGULATION].

15 * Sec. 26. AS 42.05.712(a) is amended to read:

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

24 * Sec. 27. AS 42.05.720(3) is amended to read:

25 (3) "public" or "general public" means

26 (A) any group of 10 or more customers that purchase
27 the service or commodity furnished by a public utility [AS DE-
28 FINED IN (2) OF THIS SECTION]; and

29 (B) any utility purchasing the product or service or

1 paying for the transmission of electric energy, natural or man-
2 ufactured gas, or petroleum products which are re-sold to a group
3 included in (A) of this paragraph or which are used to produce
4 the service or commodity sold to the public by the utility;

5 ALTERNATE: (B) any utility purchasing the product or
6 service or paying for the transmission of electric energy, natu-
7 ral or manufactured gas, or petroleum products that [WHICH] are
8 re-sold to a group included in (A) of this paragraph or that
9 [WHICH] are used to produce the service or commodity sold to the
10 public by the utility except a producer of oil and gas;

11 * Sec. 28. AS 42.05.720(4) is amended to read:

12 (4) "public utility" or "utility" includes every corpora-
13 tion (whether public, cooperative, or otherwise), company, individual,
14 or association of individuals, their lessees, trustees, or receivers
15 appointed by a court, that owns, operates, manages or controls any
16 plant, pipeline or system for

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

19 (B) furnishing telecommunications service to the
20 public for compensation;

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

23 (D) transmitting or distributing [FURNISHING BY TRANS-
24 MISSION OR DISTRIBUTION OF] natural or manufactured gas to the
25 Alaska public for compensation, but not including a producer who
26 transmits or distributes natural or manufactured gas for first
27 sale to a person unless the purchaser has an affiliated interest
28 with the producer;

29 ALTERNATE: (D) furnishing natural or manufactured gas

1 to the public for compensation by transmission or distribu-
2 tion, except as necessary for a producer to supply first
3 sale gas to an entity that is not an affiliated interest if
4 the distribution or transmission facilities are either
5 located entirely within the production leasehold of the
6 producer, or to the extent that the facilities are not
7 located within the leasehold, are valued at \$1,000,000 or
8 less [OF NATURAL OR MANUFACTURED GAS TO THE ALASKA PUBLIC
9 FOR COMPENSATION];

10 (E) furnishing for distribution or by distribution
11 petroleum or petroleum products to the Alaska public for compen-
12 sation when the consumer has no alternative in the choice of
13 supplier of a comparable product and service at an equal or
14 lesser price;

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

17 * Sec. 29. AS 44.66.010(4) is amended to read:

18 (4) Alaska Public Utilities Commission (AS 42.05.010) --
19 June 30, 1990 [1986];

20 * Sec. 30. Notwithstanding AS 42.05.030, as soon as the term of a
21 consumer member under AS 42.05.040 expires, the governor shall reappoint or
22 replace the member for a term of four years so that the terms of the con-
23 sumer members of the board are staggered.

24 * Sec. 31. Notwithstanding the amendments to AS 42.05.040 made by
25 sec. 2 and to AS 42.05.050 made by sec. 3 of this Act, a member of the
26 commission on the effective date of this Act may continue to serve as a
27 commission member and may be reappointed to the commission without meeting
28 the additional qualifications.

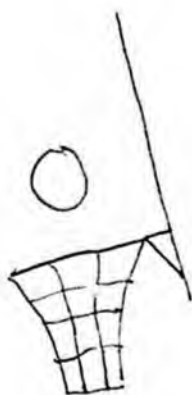
29 * Sec. 32. AS 29.35.050(b); 42.05.711(g), and 42.05.711(i) are

1 repealed.

2 * Sec. 33. Sections of this Act take effect immediately in accor-
3 dance with AS 01.10.070(c).
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Cramer
3/6/86 ✓

Original sponsor: Davis



Mike N

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

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

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

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

24 * AS 42.05.050 is amended to read:

25 Sec. 42.05.050. ACTUAL EXPERIENCE EQUIVALENT TO A DEGREE.
26 Actual experience that is related to utilities management or regu-
27 lation for a period of five years ~~in the practice of law or~~ in the
28 field of engineering or in the field of finance, business administra-
29 tion, economics, or accounting is equivalent to a degree.

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

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

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

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

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

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

26 (a) The Alaska Public Utilities Commission may

27 (1) regulate every public utility engaged or proposing to
28 engage in such a business inside the state, except to the extent
29 exempted by AS 42.05.711; in exercising its authority, the commission

has the powers expressly conferred or reasonably implied by this chapter [, 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.

* Sec. 7. AS 42.05.161 is amended by adding a new subsection to read:

(c) A commission proceeding is open to the public under AS 44.62.310(a) unless closed under AS 44.62.310(b). Commission proceedings are not considered adjudicatory proceedings under AS 44.62.310(d)(1).

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

*Rate making
certification
are not adjudicatory*

open meeting

open mtg law

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

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

18 (c) Before the commission or the presiding officer enters a
19 decision the parties are entitled to a reasonable opportunity to
20 review a draft of the decision and to submit

21 (1) proposed findings and conclusions, or exceptions to the
22 draft decision; and

23 (2) supporting reasons for the exceptions or proposed
24 findings or conclusions.

25 (d) In a matter heard by the commission, a commissioner who has
26 not heard or read the testimony, including the argument, shall review
27 the record before participating in the decision.

28 (e) In determining the place of a hearing the commission shall
29 give preference to the place most convenient for those interested in



1 the subject of the hearing.

2 (f) The commission shall employ a sufficient number of hearing
3 officers or administrative law judges to hear and decide matters
4 arising before the commission under this chapter.

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

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

18 * Sec. 10. AS 42.05.241 is amended to read:

19 Sec. 42.05.241. CONDITIONS OF ISSUANCE. The commission shall
20 issue a certificate if [A CERTIFICATE MAY NOT BE ISSUED UNLESS] the
21 commission finds that the applicant is fit, willing and able under (b)
22 of this section to provide the utility services applied for and that
23 the services are not contrary to the public interest [REQUIRED FOR THE
24 CONVENIENCE AND NECESSITY OF THE PUBLIC]. The commission may issue a
25 certificate granting an application in whole or in part and attach to
26 the grant of it the terms and conditions it considers necessary to
27 protect and promote the public interest including the condition that
28 the applicant may or shall serve an area or provide a necessary ser-
29 vice not contemplated by the applicant. The commission may, for good

1 cause, deny an application with or without prejudice.

2 * Sec. 11. AS 42.05.24 is amended by adding new subsections to read:

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

5 (1) the applicant has the financial, operational, manage-
6 ment, and maintenance capability to provide the proposed service;

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

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

11 (c) In a hearing on the issuance of a certificate under this
12 section, the applicant for the certificate has the burden of showing
13 that the proposed service is not contrary to the public interest.

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

18 * Sec. 12. AS 42.05.251 is amended to read:

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

1 service rendered at locations within the boundaries of any municipal-
2 ity that [CITY OR BOROUGH WHICH] requires payment of a permit fee.

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

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

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

14 (e) The commission shall adopt regulations for electric coopera-
15 tives setting a range for adjustment of rates by a simplified rate
16 filing procedure. ~~The commission shall consider implementing a times-~~
17 ~~interest-earned-rate (TIER) rate procedure.~~ A cooperative may apply
18 for permission to adjust its rates over a period of time ~~and without~~
19 ~~further filings~~ under the simplified rate filing procedure regula-
20 tions. The commission shall grant the application if the cooperative
21 satisfies the requirements of the regulations. [The commission may
22 review implementation of the simplified rate filing procedure at
23 reasonable intervals and may revoke permission to use the procedure or
24 require modification of the rates to correct an error.]

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

26 (a) When a tariff filing is made containing a new or revised
27 rate, classification, rule, regulation, practice, or condition of
28 service the commission may, either upon written complaint or upon its
29 own motion, after reasonable notice, conduct a hearing to determine

1 the reasonableness and propriety of the filing. Pending the hearing
2 and decision, the commission may suspend the operation of the tariff
3 filing by order stating the reasons for the suspension. When the
4 commission suspends the operation of a tariff, the commission may
5 grant an interim rate increase. The period of suspension may not
6 exceed ~~nine~~¹⁰ months unless

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

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

11 (3) the utility requests an extension, but the period of
12 suspension may not exceed ~~nine~~¹⁰ months plus the length of the exten-
13 sion;

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

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

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

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

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

28 (c) If the commission authorizes an interim [IN THE CASE OF A
29 PROPOSED INCREASED] rate, the commission may by order require the

1 interested public utility or utilities to place the amounts subject to
2 refund in escrow in a financial institution approved by the commission
3 and keep accurate account of [ALL AMOUNTS RECEIVED BY REASON OF THE
4 INCREASE, SPECIFYING] by whom and in whose behalf the amounts are
5 paid. Upon completion of the hearing and decision the commission may
6 by order require the public utility to refund to the persons in whose
7 behalf the amounts were paid, that portion of the increased rates
8 which was found to be unreasonable or unlawful. The commission shall
9 immediately authorize release of the balance of funds to the utility.
10 Funds may not be released from escrow without the commission's prior
11 written consent and the utility shall instruct the escrow agent of
12 this requirement [SHALL BE SO INSTRUCTED BY THE UTILITY,] in writing
13 and send [, WITH] a copy to the commission. The utility may, at its
14 expense, substitute a bond for [IN LIEU OF] the escrow requirement.

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

16 (e) At the time of a tariff filing or at any time the tariff
17 filing is under suspension, the utility may request the commission to
18 allow the tariff filing to take effect on an interim basis. The
19 commission shall process the request as a tariff filing under AS 42.-
20 05.411. If the filing contains a proposed new rate or rate increase,
21 the commission may allow that rate or a lesser rate to take effect on
22 an interim basis, subject to refund or other appropriate disposition
23 at the discretion of the commission.

24 * Sec. 19. AS 42.05.431 is amended by adding new subsections to read:

25 (b) The commission may not amend a wholesale power agreement
26 after it is in effect.

27 ~~(c) The commission may not require a utility to refund a perma-~~
28 ~~ment rate after it is in effect.~~

29 * Sec. 20. AS 42.05.651 is amended to read:

1 Sec. 42.05.651. EXPENSES OF INVESTIGATION OR HEARING. After
 2 completion of a hearing or investigation held under this chapter, the
 3 commission shall allocate the costs of the hearing or investigation
 4 among the parties, including the commission, as is just under the
 5 circumstances. In allocating costs, the commission may consider the
 6 results, ability to pay, evidence of good faith, other relevant fac-
 7 tors and mitigating circumstances. The costs allocated may include
 8 the costs of any time devoted to the investigation or hearing by hired
 9 consultants, whether or not the consultants appear as witnesses or
 10 participants, but only if the consultants were necessary under AS 42.-
 11 05.121(b). The costs allocated may not include the cost of permanent
 12 staff for the commission but may include other necessary expenses not
 13 allocated in the operating budget [ALSO INCLUDE ANY OUT-OF-POCKET
 14 EXPENSES INCURRED BY THE COMMISSION IN THE PARTICULAR PROCEEDING].

15 * The commission shall provide an opportunity for a [ANY] person object-
 16 ing to an allocation to be heard before the allocation becomes final.

17 ~~⊗~~ Sec. 21. AS 42.05.711(b) is repealed and reenacted to read:

18 (b) Except as otherwise provided in this subsection, public
 19 utilities owned and operated by a political subdivision of the state,
 20 or electric operating entities established as the instrumentality of
 21 two or more public utilities owned and operated by political subdivi-
 22 sions of the state, are exempt from this chapter, other than AS 42.-
 23 05.221 - 42.05.281 and 42.05.311 - 42.05.321. However, ~~⊗~~ ~~⊗~~

24 ~~⊗~~ → (1) a telephone utility owned by a political subdivision is
 25 subject to this chapter; FMUS - Ketch.

26 (2) the governing body of a political subdivision may elect
 27 to be subject to this chapter; and

28 (3) a utility or electric operating entity that is owned
 29 and operated by a political subdivision and that directly competes

1 with another utility or electric operating entity is subject to this
 2 chapter and any other utilities or electric operating entities owned
 3 and operated by the political subdivision are ~~also~~ ^{not} subject to this
 4 chapter.

5 * Sec. 22. AS 42.05.711(e) is amended to read:

6 (e) Notwithstanding any other provisions of this chapter, an
 7 [ANY] electric [OR TELEPHONE] utility that does not gross \$50,000
 8 annually is exempt from regulation under this chapter unless 25 per-
 9 cent of the subscribers petition the commission for regulation.

10 * Sec. 23. AS 42.05.711(f) is repealed and reenacted to read:

11 (f) A public utility, except a local exchange telephone util-
 12 ity, that receives gross annual revenue of less than \$500,000 may,
 13 under the procedures in AS 42.05.712, elect to be exempt from this
 14 chapter other than AS 42.05.221 - 42.05.281.

15 * Sec. 24. AS 42.05.711(h) is amended to read:

16 (h) An electric [A] cooperative organized under AS 10.25 may
 17 elect to be exempt from [THE PROVISIONS OF] this chapter, other than
 18 AS 42.05.221 - 42.05.281, under the procedure described in AS 42.05.-
 19 712.

20 * Sec. 25. AS 42.05.711(k) is amended to read:

21 (k) A utility that [WHICH] furnishes one-way cable television
 22 service or service as a radio common carrier is exempt from the pro-
 23 visions of this chapter. In this subsection, "radio common carrier"
 24 means a radio, paging, mobile radiotelephone, or improved mobile
 25 telephone service [OTHER THAN AS 42.05.221 - 42.05.281 UNLESS 25
 26 PERCENT OF THE SUBSCRIBERS PETITION THE COMMISSION FOR REGULATION].

old language

27 * Sec. 26. AS 42.05.712(a) is amended to read:

28 (a) A utility or cooperative that [WHICH] may elect to be exempt
 29 from [THE PROVISIONS OF] this chapter shall poll its subscribers or

1 members in the manner described in this section. A cooperative formed
 2 for the generation and transmission of electrical service may not
 3 elect to be deregulated under this section unless each of its members
 4 that is organized as a distribution cooperative has held an election
 5 among its subscribers to determine the cooperative's vote on deregu-
 6 lation.

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

8 (4) "public utility" or "utility" includes every corpora-
 9 tion (whether public, cooperative, or otherwise), company, individual,
 10 or association of individuals, their lessees, trustees, or receivers
 11 appointed by a court, that owns, operates, manages or controls any
 12 plant, pipeline or system for

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

15 (B) furnishing telecommunications service to the
 16 public for compensation;

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

Other language

19 (D) transmitting or distributing [FURNISHING BY TRANS-
 20 MISSION OR DISTRIBUTION OF] natural or manufactured gas to the
 21 Alaska public for compensation, but not including a producer who
 22 transmits or distributes natural or manufactured gas for first
 23 sale to a person unless the purchaser has an affiliated interest
 24 with the producer;

25 (E) furnishing for distribution or by distribution
 26 petroleum or petroleum products to the Alaska public for compen-
 27 sation when the consumer has no alternative in the choice of
 28 supplier of a comparable product and service at an equal or
 29 lesser price;

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

3 * Sec. 28. AS 44.66.010(4) is amended to read:

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

6 * Sec. 29. Notwithstanding AS 42.05.030, as soon as the term of a
7 consumer member under AS 42.05.040 expires, the governor shall reappoint or
8 replace the member for a term of four years so that the terms of the con-
9 sumer members of the board are staggered.

10 * Sec. 30. Notwithstanding the amendments to AS 42.05.040 made by
11 sec. 2 and to AS 42.05.050 made by sec. 3 of this Act, a member of the
12 commission on the effective date of this Act may continue to serve as a
13 commission member and may be reappointed to the commission without meeting
14 the additional qualifications. *grandfather MAUV*

15 * Sec. 31. The amendments made by secs. 4 - 6, 8 - 13, 15 - 17, and 20
16 of this Act do not apply to a proceeding begun before the effective date of
17 this Act.

18 * Sec. 32. Notwithstanding the amendments made by secs. 21 - 26 of this
19 Act, a utility that was exempt from AS 42.05.221 on the day before the
20 effective date of this Act may continue to operate and to receive compen-
21 sation without holding a certificate from the Public Utilities Commission
22 until the commission has acted on the utility's application for certifica-
23 tion if the utility files an application for certification within 60 days
24 after the effective date of this Act.

25 * Sec. 33. Notwithstanding AS 42.05.371, a utility that was exempt from
26 regulation by the Public Utilities Commission on the day before the effec-
27 tive date of this Act may continue to charge the tariffs it charged on the
28 day before the effective date of this Act, until otherwise ordered by the
29 commission, if it files its complete tariff with the commission within 60

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days after the effective date of this Act.

* Sec. 34. AS 42.05.711(g) and 42.05.711(i) are repealed.

* Sec. 35. This Act takes effect immediately in accordance with AS 01.10.070(c).

AS 42.05.431

1 rate demanded, observed, charged or collected by a public utility for
2 a service, subject to the jurisdiction of the commission, or that a
3 classification, rule, regulation, practice, or contract affecting the
4 rate, is unjust, unreasonable, unduly discriminatory or preferential,
5 the commission shall determine a just and reasonable rate, classifica-
6 tion, rule, regulation, practice, or contract to be observed or al-
7 lowed and shall establish it by order. A municipality may covenant
8 with bond purchasers regarding rates of a municipally owned utility,
9 and the covenant is valid and enforceable and is considered to be a
10 contract with the holders from time to time of the bonds. A coopera-
11 tive utility organization under AS 10.25 may enter covenants contained
12 in mortgages and other debt instruments. The covenant is valid and
13 enforceable and rates set by the commission must be adequate to meet
14 the covenants. The commission may require a municipal or cooperative
15 utility to file a copy of each debt instrument affecting its rates or
16 to secure advance commission approval of the covenants.

17 * Sec. 20. AS 42.05.431 is amended by adding new subsections to read:

18 (b) The commission may not amend a wholesale power agreement
19 after it is in effect.

20 ALTERNATE Do not add this subsection.

21 (c) The commission may not require a utility to refund a perma-
22 nent rate after it is in effect.

23 ALTERNATE Do not add this subsection.

24 * Sec. 21. AS 42.05.651 is amended to read:

25 EXISTING TEXT: Sec. 42.05.651. EXPENSES OF INVESTIGATION OR
26 HEARING. After completion of a hearing or investigation held under
27 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

CSHB

BRIEFING PAPER

GCI proposes that the wording of Section 7 of the March 6, 1986 Committee Work Draft be changed. We would add a new subsection to AS 42.05.161 as follows:

"(c) A commission proceeding is open to the public under AS 44.62.310(a) unless closed under AS 44.62.310(b) or (d)(1). Rule making, rate making, and certification proceedings shall not be considered adjudicatory proceedings for the purpose of AS 44.62.310(d)(1). The Commission shall promulgate regulations further defining the term adjudicatory for the purpose of AS 44.62.310(d) in a manner not inconsistent with this subsection within 90 days of the passage of this Act. After such 90 day period, all APUC actions not defined as adjudicatory shall be made in an open meeting pursuant to AS 44.62.310(a).

The first sentence reiterates existing law: APUC proceedings are subject to the Open Meetings Act.

What the proposed amendment does in the second sentence is to make certain that rule making, rate making, and certification proceedings are done in public. Rule making, rate making, and certification proceedings have a tremendous economic effect on every Alaskan, yet they are now done behind closed doors. Adjudicatory proceedings are exempt from the Open Meetings Act (See AS 44.62.310(d)(1)). The APUC has treated rate making and certification proceedings as adjudicatory and thus allows these decisions to be made behind closed doors. It has not always done rule making in public, even though required to do so. By approving the amendment the Committee would cause all of these proceedings to be done in public.

The third sentence requires that the definition of "adjudicatory proceedings" be spelled out in regulations to be promulgated by the APUC. This would give the public the opportunity to comment upon the APUC's plans for meeting the requirements of the Open Meeting Act. If the APUC has not promulgated regulations in 90 days, everything would be public.

Under the proposed language, the APUC can still go into closed session for certain purposes spelled out in the Open Meetings Act. However, it must first announce on the public record that it is going into closed session and the business it intends to conduct in closed session.

In short, the amendment allows rule making, rate making, and certification proceedings to be done in public and allows the public to know the reason if the session is closed. If the reason for the closed session is improper, the public would have enough knowledge to protest the closed session. Further, the regulations which the APUC would promulgate defining "adjudicatory" would let the public participate in the APUC's plans for implementing the Open Meeting Law. The Federal Communications Commission (FCC) is subject to these requirements, why not the APUC?

For further information, please call
Jim Clark - 586-3340

March 10, 1986

APUC AMENDMENTS

Page 3, Line 25

delete sec. 7:

[() A commission proceeding is open to the public under AS 44.62.310(a) unless closed under AS 44.62.310(b). Commission proceedings are not considered adjudicatory proceedings under AS 44.62.310(d)(1).]

Page 5, Line 10

the service is [not contrary to the public interest]

Page 5, Line 23

the services are [not contrary to the public interest]

Page 6, Line 13

that the proposed service is [not contrary to the public interest]

Replace all three sections with:

required for the public convenience and necessity or in the public interest.

Page 7, Line 17

interest-earned-ratio (TIER) rate procedure. [A cooperative may apply for permission to adjust its rates over a period of time without further filings under the simplified rate filing procedure regulations. The commission shall grant the application if the cooperative satisfies the requirements of the regulations.]

Page 9, Line 25

delete (b) [The commission may not amend a wholesale power agreement after it is in effect.]

3/10/86

A M E N D M E N T

TO: HB 314

BY: Pearce

IN THE HOUSE LABOR & COMMERCE COMMITTEE

pg. 9 ; line 24 insert following language

10 * Sec. 19. AS 42.05.431 is amended to read:

28 | Sec. 42.05.431. POWER OF COMMISSION TO FIX RATES.

29
1 a) When the commission, after an investigation and hearing, finds that a
2 rate demanded, observed, charged or collected by a public utility for
3 a service, subject to the jurisdiction of the commission, or that a
4 classification, rule, regulation, practice, or contract affecting the
5 rate, is unjust, unreasonable, unduly discriminatory or preferential,
6 the commission shall determine a just and reasonable rate, classifica-
7 tion, rule, regulation, practice, or contract to be observed or al-
8 lowed and shall establish it by order. A municipality may covenant
9 with bond purchasers regarding rates of a municipally owned utility,
10 and the covenant is valid and enforceable and is considered to be a
11 contract with the holders from time to time of the bonds. A coopera-
12 tive utility organization under AS 10.25 may enter covenants contained
13 in mortgages and other debt instruments. The covenant is valid and
14 enforceable and rates set by the commission must be adequate to meet
15 the covenants. [The commission may require a municipal or cooperative
16 utility to file a copy of each debt instrument affecting its rates or
to secure advance commission approval of the covenants.]

*
* DELIVER TO: LTCJ *
* *
* *
* ORIGINAL *
* SENT: 03/06/86 TIME: 14:27 *
* FROM: TCANC *
* SUBJECT: H L AND C - HB 314 *
* PRINT DATE: 03/06/86 TIME: 14:27 *
* *

TO: BILL IN JUNEAU

FROM: SAM IN ANCHORAGE

TO TESTIFY: JEFF BOHMAN-AKPIRG

TO OBSERVE: JULIE SIMON

*
* DELIVER TO: LTCJ
*
*
*

* ORIGINAL

* SENT: 03/06/86 TIME: 13:23

* FROM: TCANC

* SUBJECT: 1ST EMAIL-H. L. & C.

* PRINT DATE: 03/06/86 TIME: 13:23
*

TO: BILL IN JUNEAU

FROM: SAM IN ANCHORAGE

TO TESTIFY: ~~GORDON PARKER~~

~~---~~CRAUM GUESS-HERE TO RESPOND TO QUESTIONS

~~---~~SUSAN KNOWLES-HERE TO RESPOND TO QUESTION

JACK FARLEIGH-HERE TO RESPOND TO QUESTION

TO OBSERVE: BERNIE MURRAY
VIRGINIA RUSCH
DEBRAH RICKER
LOUIE AGH
JEANNE MCPHERREN
LINDSEY BURROUGHS
TED MONINSKI

*
* DELIVER TO: LTCJ *
* *
* *
* ORIGINAL *
* SENT: 03/06/86 TIME: 13:20 *
* FROM: PAULA GRAY *
* SUBJECT: EMAIL 1, AFUC *
* PRINT DATE: 03/06/86 TIME: 13:20 *
* *

EMAIL # 1 - FAIRBANKS PARTICIPANTS - A.F.U.C.

TO TESTIFY:

1. PERRY STOOP, SUMMIT TELEPHONE
2. VIRGIL GILLESPIE, F.M.U.S.

OBSERVING

1. SUSAN FISHER, NEWS MENER
2. ERNEST CUZZOCREO, M.U.S.
3. SUSAN ANDREWS, CH 2 NEWS

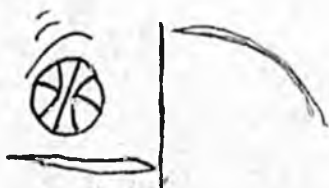
*
* DELIVER TO: LTCJ *
* *
* ORIGINAL *
* SENT: 03/06/86 TIME: 13:16 *
* FROM: JUNE GALLEY *
* SUBJECT: PARTICIPANT--UTILITIES T/C *
* PRINT DATE: 03/06/86 TIME: 13:16 *
* *



EMAIL #1

HERE TO TESTIFY:

1. TED FERRY
EOM/JG



*
* DELIVER TO: LTCJ *
* *
* ORIGINAL *
* SENT: 03/06/86 TIME: 13:47 *
* FROM: PAULA GRAY *
* SUBJECT: NEW PARTICIPANT LIST *
* PRINT DATE: 03/06/86 TIME: 13:47 *
* *

EMAIL # 2 - A.P.U.C. TELECONFERENCE

TO TESTIFY:

ERNEST CUZZOCREO WOULD LIKE TO TESTIFY, MY PARTICIPANTS HAVE
AGREED TO HEAR FROM HIM FIRST.

FAIRBANKS PARTICIPANTS - TESTIFY:

~~✓~~ ERNEST CUZZOCREO

~~✓~~ PERRY STOOF

~~✓~~ VIRGIL GILLESPIE



*
* DELIVER TO: LTCJ *
* *
* *
* ORIGINAL *
* SENT: 03/06/86 TIME: 13:55 *
* FROM: PAULA GRAY *
* SUBJECT: APUC PARTICIPANTS *
* PRINT DATE: 03/06/86 TIME: 13:56 *
*

EMAIL # 3 - FAIRBANKS - A.P.U.C.

TO TESTIFY:

4. TED LEHNE

129
3/7/86

ALASKA PUBLIC UTILITIES COMMISSION COMMENTS ON SEC. 7,
AS 42.05.161(c) of 3/6/86 CRAMER DRAFT OF CS for HB 314 (L&C)

The first sentence in new subsection (c) is already in existing law and is therefore unnecessary.

The second sentence which would require adjudicatory decisions to be made in public is in conflict with basic state policy on open meetings under the Administrative Procedures Act. The existing state law allows judicial and quasi judicial bodies, such as the Commission, to decide contested cases in closed session. It is both logical and appropriate that the same decision-making process that is used by trial juries and Appellate and Supreme Court Justices be applied to the Commission because our adjudicatory proceedings are conducted like and have the protection of court proceedings. Specifically, parties before the Commission are entitled to the full range of due process protections, including notice, public hearings, right of cross-examination, a written decision which sets forth the findings on which the decision is based, and the right to appeal to a higher tribunal. In addition, closed session deliberations encourages free and open discussion among decision-makers.

The Commission is unaware of the reasons for the addition of language which would single out our agency for this specialized, if not punitive treatment. If modifications are needed to the Open Meeting Law, they should be proposed for all agencies and bodies with full consideration of all ramifications of those changes.

Time:05:38 PM 05-Mar-86

ALTERNATE: (D) furnishing natural or manufactured gas to the public for compensation by transmission or distribution, except as necessary for a producer to supply first sale gas to an entity, other than a public utility in which the producer has an affiliated interest, if the distribution or transmission facilities to the point of sale are either located entirely within the production leasehold or unit of the producer or, to the extent that they are not located within the leasehold or unit, the facilities are valued at \$1,000,000 or less or are declared by the producer to be a common carrier subject to regulation under AS 42.06 (OF NATURAL OR MANUFACTURED GAS TO THE ALASKA PUBLIC FOR COMPENSATION);

TESTIMONY BEFORE THE HOUSE LABOR AND COMMERCE COMMITTEE
REGARDING HB CS HB 314 (L&C)
BY GENERAL COMMUNICATION, INC.
MARCH 6, 1986

For the record, my name is Dana Tindall, and I am an economist with General Communication, Inc. (GCI). I would like to thank you for the opportunity to testify today and to compliment your subcommittee for its excellent work on this bill. The subcommittee has put in a lot of hours and has been very receptive to the comments and concerns of interested parties. I have just a few specific remarks regarding the version of the bill before the Committee.

1. Earlier drafts deleted language in the purposes section (AS 42.05.141(a)) that read; "and the powers of the Commission shall be liberally construed to accomplish its stated purposes." While this was deleted, no substitute language was provided. The Committee substitute now reads "in exercising its authority, the Commission has the powers expressly conferred or reasonably implied by this chapter." This is an improvement that adequately fills the gap between stated and implied powers, while effectively narrowing the definition of Commission powers in the existing statute.

2. There should be a provision in the bill which coordinates this statute with the open meetings law. There is no such language in the draft now before you. The Alaska Public Utilities Commission is required to hold open meetings on all

subjects excepting those listed in Section 44.62.310(c) and (d).

GCI has been concerned for some time that the Commission holds open meetings only for the purposes of hearing oral argument, taking testimony, and conducting weekly tariff meetings. The majority of Commission decisions are carried out behind closed doors. Decisions on setting rates and other determinations of major concern to the public are not held in public.

Subsection (d)(1) of Section 44.62.310 excepts judicial or quasi-judicial bodies from open meetings when such meetings are held solely to make a decision in an adjudicatory proceeding. The statute is unclear concerning which, if any, Commission actions are adjudicatory in nature. GCI proposes the following amendment to AS 42.05.161:

Subsection (c) is added to read:

(c) For the purpose of determining the applicability of Section 44.62.310(d)(1), no Commission proceeding shall be defined as adjudicatory within the meaning of that provision and thus all Commission proceedings shall be subject to Section 44.62.310(a) unless excepted pursuant to Section 44.62.310(c).

This would define adjudicatory matters in such a way as to make all proceedings open to the public.

State policy regarding meetings is very clear when it states in Section 44.62.312(4), "the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know." Clearly, the public has a right to be present at

Commission proceedings affecting the public interest. This right needs to be made clear in the statute. The amendment suggested above would do that.

3. Section 42.05.241 (Conditions of Issuance) of the draft bill states,

"The Commission shall issue a certificate if the Commission finds that the applicant is fit, willing and able under (b) of this section to provide the utility services applied for and that the services are not contrary to the public interest."

This proposal would put Alaska in accord with the current trend of deregulation in other states. The focus nationally is now on a "fit, willing, and able" criterion alone. The idea is to encourage competition to help reduce rates.

Using the negative language of "not contrary to the public interest" effectively shifts the focus to "fit, willing, and able" while still maintaining a public interest requirement. This language provides flexibility to the Commission during this nationwide period of transition to competition.

4. AS 42.095.241(c) provides that the applicant "has the burden of showing that the proposed service is "not contrary to the public interest." This requires an applicant to prove a negative which is logically impossible to do.

Unless there is some reason not to grant the service, it should be granted. An opponent of the application should have the burden of coming forward with any reason why the service is contrary to the public interest. It will then be up to the applicant to respond to that particular issue. However, the

applicant cannot prove in the abstract that the service is not contrary to the public interest.

Assigning a burden of proof for conditions of issuance serves no useful purpose and should not be added to the existing statutes. Accordingly, subsection (c) of AS 42.05.241 should be deleted.

5. Subsection (d) of AS 42.05.241 "Conditions of Issuance" proposes a six month time limit on an uncontested issuance. GCI proposes an additional time limit to read:

"If issuance is contested, the Commission shall grant or deny the application no later than one year after the application was filed. If the Commission does not reach a decision within one year, it shall issue the certificate."

This simply prohibits lengthy certification procedures and provides an incentive for the APUC to act within time limits as other state agencies have been required to do as part of regulatory reform.

6. Section 42.05.431(c) states, "The Commission may not require a utility to refund a permanent rate after it is in effect." The current Commission procedure is to affirmatively examine every initial tariff or tariff change which is filed. This affirmative examination creates a permanent tariff which is not retroactively subject to refund under existing case law. Once an order has been issued making a tariff interim and refundable, however, it is subject to possible refund from that point forward.

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It is in the public's interest that the Commission be able to make permanent rates interim and refundable. No utility has the right to excessive earnings and should a utility be earning an excess amount, the public should have the right to relief.

The Commission recently exercised its power by making a portion of Alascom's rates interim and refundable in a situation where Alascom was earning an excessive rate of return. The proposed subsection confuses the Commission's ability to act and ties its hands in a case where a refund is in the public interest. Accordingly, it should be deleted.

That concludes my comments. I would like to thank the Committee for their time and patience and to say once again I think you have done a wonderful job.



STATE OF ALASKA
HOUSE OF REPRESENTATIVES

TESTIMONY BY REP. PETER GOLL
TO HOUSE LABOR AND COMMERCE COMMITTEE
ON CS FOR HOUSE BILL 314 (L&C)

1. On page 4, line 10:

Time limits provided in this section limit the appeal time to nine months. This will hamper the ability of the APUC to perform its duties in the public interest. The Legislative Budget and Audit report recommended a 12 month time limit after lengthy and exhaustive study. Protection of the public interest must be guaranteed by ensuring that sufficient time is available to the APUC.

The LB&C auditors only looked at the statistics of utility requests. No consideration was given to the additional workload of the commission not included therein. Such as: its responsibilities to implement FCC requirements; its responsibilities to carry out what the FERC requires it to do; and the fact that the APUC is an agency which responds to requests for help by utilities, members of the public, the legislature and other state entities which do not lead to such statistics. The APUC workload is extraordinary and its record of performance is equal to the level of staff funding.

2. Regarding page 5, line 5; page 5, line 18; page 6, line 9:

Delete: "is not contrary to the public interest"

Replace with: public convenience and necessity language found in existing law.

Comment: The new language reverses the historic position that a utility must be operating as a public service. The new language suggests that a utility must only show that it does no damage to the public in order to be certificated.

3. On page 7, line 13:

After "procedure," Delete: all language to end of paragraph.

Comment: The remaining language allows the commission to adopt both tier system and simplified rate filing.

The deleted language permits rate adjustments without further filing and compromises the interests of the public.

4. Page 8, line 2: Delete "nine months."
Replace with "12 months."

Now the APUC is permitted six months which can be extended if necessary. This limitation, even at 12 months is arbitrary. However, if a limit is to be introduced, then at least permit 12 months. Nine months is not consistent with the public interest.

5. Page 8, line 13: insert new subsection (6).

~~The~~ proceedings involved unusually complex situations or issues or other good cause, including safety.

Comment: We cannot anticipate every situation which might require the APUC--our regulatory arm--to exceed the twelve month suspension period. A waiving of that period for good cause is essential to the public interest.

The court system recognizes good cause as an exception of the requirement of a speedy trial in a criminal case. We must be equally sensitive to specific circumstances.

- Page 9, line 21, delete (b).

Comment: The commission must have the authority to adjust not only retail rates but also wholesale rates when the utility provides both services. To do otherwise can result in either an under recovery for the utility in question or the subsidization of the wholesale customer by the retail customer.

Page 9, line 23, delete (c). Replace with commission language: The commission may not require a utility to refund a permanent rate; provided however that this provision shall not preclude the commission from declaring existing rates interim and refundable from the date of such

declaration forward, if warranted, pending further investigation and hearing.

Comment: The commission's practice is to declare a utility's existing rates interim and subject to refund only after finding sufficient cause to believe that the existing rates are unreasonably high. The rates are made refundable prospectively. This is important. The commission has never required a utility to refund monies which were collected in the past under permanent rates.



STATE OF ALASKA
HOUSE OF REPRESENTATIVES

TESTIMONY BY REP. PETER GOLL
TO HOUSE LABOR AND COMMERCE COMMITTEE
ON CS FOR HOUSE BILL 314 (L&C)

1. On page 4, line 11:

Time limits provided in this section limit the appeal time to nine months. This will hamper the ability of the APUC to perform its duties in the public interest. The Legislative Budget and Audit report recommended a 12 month time limit after lengthy and exhaustive study. Protection of the public interest must be guaranteed by ensuring that sufficient time is available to the APUC.

The LB&C auditors only looked at the statistics of utility requests. No consideration was given to the additional workload of the commission not included therein. Such as: its responsibilities to implement FCC requirements; its responsibilities to carry out what the FERC requires it to do; and the fact that the APUC is an agency which responds to requests for help by utilities, members of the public, the legislature and other state entities which do not lead to such statistics. The APUC workload is extraordinary and its record of performance is equal to the level of staff funding.

2. Regarding page 5, line 10; page 5, line 23; page 6, line 13:

Delete: "is not contrary to the public interest"

Replace with: public convenience and necessity language found in existing law.

Comment: The new language reverses the historic position that a utility must be operating as a public service. The new language suggests that a utility must only show that it does no damage to the public in order to be certificated.

3. On page 7, line 17:

After "procedure," Delete: all language to end of paragraph.

Comment: The remaining language allows the commission to adopt both tier system and simplified rate filing.

The deleted language permits rate adjustments without further filing and compromises the interests of the public.

4. Page 8, line 6: Delete "nine months."
Replace with "12 months."

Now the APUC is permitted six months which can be extended if necessary. This limitation, even at 12 months is arbitrary. However, if a limit is to be introduced, then at least permit 12 months. Nine months is not consistent with the public interest.

5. Page 8, line 18: insert new subsection (6).

The proceedings involved unusually complex situations or issues or other good cause, including public safety.

Comment: We cannot anticipate every situation which might require the APUC--our regulatory arm--to exceed the twelve month suspension period. A waiving of that period for good cause is essential to the public interest.

The court system recognizes good cause as an exception of the requirement of a speedy trial in a criminal case. We must be equally sensitive to specific circumstances.

Page 9, line 24, delete (b).

Comment: The commission must have the authority to adjust not only retail rates but also wholesale rates when the utility provides both services. To do otherwise can result in either an under recovery for the utility in question or the subsidization of the wholesale customer by the retail customer.

Page 9, line 27, delete (c). Replace with provided as comments language: The commission may not require a utility to refund a permanent rate; provided however that this provision shall not preclude the commission from declaring existing rates interim and refundable from the date of such

declaration forward, if warranted, pending further investigation and hearing.

Comment: The commission's practice is to declare a utility's existing rates interim and subject to refund only after finding sufficient cause to believe that the existing rates are unreasonably high. The rates are made refundable prospectively. This is important. The commission has never required a utility to refund monies which were collected in the past under permanent rates.

SUSPENSION PERIOD

MONTHS
1 2 3 4 5 6 7 8 9 10 11 12

- * $\xrightarrow{\hspace{10em}}$ • Staff audit and investigation
- ** • Prehearing conference
- ** • Utility supplemental testimony

$\xrightarrow{\hspace{1em}}$
Staff
prefile
testimony
due

$\xrightarrow{\hspace{1em}}$
Intervenor
testimony
due

$\xrightarrow{\hspace{1em}}$
utility
rebuttal
testimony
due

$\xrightarrow{\hspace{1em}}$
Statement
of issues
due -
time to see
if any
issues can
be stipulated

$\xrightarrow{\hspace{1em}}$
Hearing

$\xrightarrow{\hspace{1em}}$
transcript
available

$\xrightarrow{\hspace{1em}}$
Briefs due

$\xrightarrow{\hspace{1em}}$
Deliberation
by Commissioners
written formal
order issued

* If staff expertise is not available & consultants are required, it takes 60 days to negotiate a contract. (see attached memo)

** requested by utility attorneys if the utility is required to prefile its testimony at the time its tariff request is filed with the Commission.

MEMORANDUM

To: Carolyn S. Guess
Commissioner

Date: February 26, 1986

From: Ted Moninski
Deputy Director

Subject: Professional
Service
Contracting

This memorandum outlines the steps involved in the process to secure a professional services contract as defined by AS 36.98 and Sections 8102 - 8193 of the Alaska Administrative Manual. Attached is a list prepared during the course of the "Sunset" review which identifies actual contracts from 1978 through October, 1985, with a computation of the average processing time (in days) from Authority to Negotiate (ATN) to contract approval. Also attached is a copy of my October 11, 1985, memo to you interpreting this information.

Professional Services Contracting

- Identify need for professional contract services.
- Prepare ATN request (includes description of services to be provided and justification for use of contract services).
- If agency proposes to use any solicitation method other than that described in statute and regulations (ie. sole source), an Alternative Procurement Method (APM) package must accompany the ATN. The ATN/APM steps will take from one day to one week.
- ATN approval through the Department of Commerce (DC & ED) and approval by Department of Administration's (DOA) Contract Review Committee (CRC) takes from two to four weeks. If contract is for legal services (attorney or hearing officer), ATN must also be approved by the Department of Law (Law) adding approximately one to two weeks to the ATN approval process.
- ATN approved; the agency proceeds to a formal Request for Proposal (RFP) step if the ATN amount is \$ 25,000 or greater. If less than \$ 25,000, the RFP step is scaled down to an informal process as approved in the ATN (ie. requiring the contacting of at least three prospective contractors.) This step, measured from preparation of RFP to closing date for responses will take from 3 weeks (informal) to six weeks for formal RFP's.

- *RFP evaluation: Informal RFP's can be evaluated in one to two weeks. Formal RFP's, by law, require a minimum three-person evaluation team using a point-scoring method to select the ultimate contractor and will take from two to four weeks depending on the complexity of the engagement.*
- *Contract drafting and execution: This function is performed by the agency and takes from one to two weeks depending on the standard nature (or lack thereof) of the engagement.*
- *Contract document approval: The executed contract takes the exact same approval route as the original ATN (DC & ED to CRC with approval by Law required for legal services contracts). This step will take from two to four weeks depending on current approving agency workload and the degree of priority this agency is able to attach to the transaction.*
- *Once the contract document is approved by CRC, the parties may commence performance according to its terms and conditions.*

By this scenario, the optimum time-line for professional services contracts is approximately sixty days (ATN to contract approval). The worse-case time-line is about one hundred sixty days. Actual experience as reflected in the attachments seem to support this analysis with an average processing time for all contracts at eighty-four days.

cc. John B. Farleigh

MEMORANDUM

State of Alaska

TO: Representative Mike Navarre
Chairman, House Labor & Commerce
Committee

DATE: February 26, 1986

FILE NO:

TELEPHONE NO:

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

SUBJECT: Comments on HB 314
(2/22/86 Subcommittee draft)

Attached is the Commission's response to some of the proposed changes and additions to AS 42.05. We hope this information will assist your Committee in its deliberations on February 27, 1986.

Because a number of changes to AS 42.05 have been telephonically communicated to me, we would like the opportunity to refine or correct our comments, if necessary, after the workshop tomorrow.

Jack Farleigh, the Executive Director of the Commission and Virginia Rusch, one of the assistant attorneys general assigned to the Commission, will be in attendance in addition to myself to answer question from members of the Committee.

AS 42.05.141(a)

The Commission opposes the deletion of the language in (a)(1) "and the powers of the commission shall be liberally construed to accomplish its stated purpose."

From a practical standpoint, the elimination of the words "liberally construed" could sharply curtail the Commission's authority to assist utilities in "gray" circumstances. For example, could the Commission grant temporary operating authority to address emergency conditions such as those found in Cold Bay in 1984 and in Central in 1985?

In addition, the Commission is concerned that removal of the words "liberally construed" could affect its decision (now on appeal in Superior Court) to deregulate garbage service in the Mat-Su Borough as well as to limit the Commission's authority in allowing competitive utility service in other utility areas.

AS 42.05.171.196

The Commission opposes placing the appeal procedure in the statute. We believe it is appropriately adopted through regulations.

However, if the Committee intends to statutorily define the appeal procedure, the Commission requests that the 60-day timeframe refer to the time the appeal is submitted to the Commission for decision. Because an appeal may necessitate briefing, oral argument and possibly the submission of additional evidence, a 60-day timeframe may be inadequate if it starts running when the appeal is filed. In addition, in complicated proceedings or in the event of an unexpected occurrence such as a Commissioner participating in an appeal leaving the Commission, an extra 60-days decision time should be provided.

The Commission believes that the statute should specifically set forth that the appeal of a Commission decision and subsequent Commission action should not be included within the 12-month suspension period.

The following language carries out the intent of our comments:

AS 42.05.196 APPEAL OF THE FINAL DECISIONS TO THE COMMISSION. When a decision of a hearing officer, administrative law judge, or panel of the commission is appealed to the commission, the commission shall review the record and the briefs of the parties. The commission may permit the parties to submit additional evidence for good cause and may hear oral argument. If an appeal is taken from the decision of a panel of the commission, the commission members who did not serve on the panel shall attend the hearing. The commission shall issue a decision affirming, modifying, or reversing the decision of the presiding officer or panel within 60 days after [THE FILING OF] the appeal[.] is submitted for decision, absent entry of a finding of good cause to extend the period for no more than an additional 60 days. A majority of the commission must concur in the decision[.] on the appeal. Any time required to decide an appeal under this section shall be added to the time permitted for the commission to make final decision under AS 42.05.421(a).

AS 42.04.361(c)

The Commission does not object to the additional language; however, it proposes that this subsection be perfectly clear that it references only the form or filing requirements of the Commission. Therefore, the language "or that is not consistent with this chapter or regulation of the Commission" should be eliminated. Without this deletion it could be argued that the Commission might have to make a final decision on the justness and reasonableness of a utility request within 45 days. The Commission does not believe that that is the Committee's intent.

AS 42.05.421(a)

The Commission supports the proposed language that would require it to issue a final order within a 12-month suspension period which should begin after the 45-day public notice and response period. This is consistent with Recommendation No. 6 of the Legislative Budget and Audit Sunset Review.

However, the Commission believes, based on its experience over the past ten years, that the list of exceptions to the 12-month suspension period should be increased to include the following:

o Issues of safety, quality of service or reasonableness of management practices which cannot be decided separately from the tariff filing;

o a utility whose records and accounts are kept at a location outside the state;

o unusually complex situations or issues or other good cause.

In addition, the Commission opposes the qualifier in proposed AS 42.05.421(a)(2) that the period of suspension must equal the length of delay caused by the utility. The Commission's hearing schedule is generally set three to four months in advance; therefore, if a utility request causes delay for 30 days, it cannot be guaranteed that the Commission could fit a hearing into its existing schedule within a 30-day timeframe. If a utility requests a delay, it should be rescheduled for the first available hearing slot in the Commission's current schedule.

This procedure is used by the court system and appears fair to the utility causing the delay and to those utilities whose calendared hearings would be subject to change to "squeeze" in a proceeding in order to accommodate the proposed language.

AS 42.05.431(b)

The Commission opposes new 431(b). It believes it must have the authority to amend the rates in a wholesale power agreement when costs change. Without this authority, wholesale power sales will be effectively deregulated and could be made at rates which do not properly recover the utility's costs. This could result in either an overrecovery or underrecovery of revenues. In addition, together with the proposed language in AS 42.05.431 which mandates rates adequate to meet debt covenants, this proposed language could result in subsidization of wholesale rates by retail ratepayers. There should be no more support for this legislation than legislation which would exempt from Commission regulation large industrial user contracts with utilities, thereby creating a situation in which residential and small commercial customers could be made to subsidize the rates of a large customer. At the present time, wholesale power agreements exist between Chugach Electric and Matanuska Electric and Homer Electric; in addition the tie-line between Anchorage and Fairbanks is being used to transport wholesale power from Anchorage electric utilities to Golden Valley Electric Cooperative.

The Commission believes the proposed addition to the statute would result in bad regulation which is worse than no regulation. For that reason it believes it is preferable to deregulate cooperative utilities that sell wholesale power rather than insert the new provision.

AS 42.05.431(c)

The Commission's practice is to declare a utility's existing rates to be interim and subject to refund only after finding sufficient cause to believe that the existing rates are unreasonably high. Furthermore, the rates are made refundable prospectively, that is forward from the date the rates are declared interim. The Commission has never required a utility to refund monies which were collected in the past under permanent rates. If the Committee wants statutory language to expressly prohibit the latter practice only, the following language will maintain the Commission's existing authority to declare permanent rates interim and refundable prospectively, but will prevent the Commission from requiring a utility to refund any monies which have already been collected pursuant to permanent rates.

AS 42.05.431(c) The commission may not require a utility to refund a permanent rate; provided, however, that this provision shall not preclude the commission from declaring existing rates interim and refundable from the date of such declaration forward, if warranted, pending further investigation and hearing.

AS 42.05.651

The Commission allocates only those costs it incurs which are not funded as part of its overall operating budget. These costs include the travel and per diem of Staff incurred during its investigation, travel and per diem of Commissioners to attend a hearing away from Anchorage, the costs of a court reporter, the costs to transcribe a proceeding, long distance telephone charges, xeroxing and postage associated with a specific proceeding. These are referred to in AS 42.05.631 as out-of-pocket expenses.

In addition, if the Commission Staff lacks the professional staff necessary in a specific investigation, because of either the magnitude of the proceeding (all Alascom proceedings) or the complexity of the issues (anti-trust law, rate of return expertise), consultants are hired. The process for hiring a consultant must conform to the regulation of the Department of Administration (see attachment).

Because the Commission's budget funds only one-half of an assistant attorney general funded in its operating budget and the workload of the Commission requires two full-time attorneys to aid and represent the Commission and its Staff, the Commission has interpreted its statute to provide authority to allocate unfunded costs of its assistant attorneys general to the specific proceedings in which they represent Commission Staff. Some utilities do not agree that the Commission has the authority to allocate these contracted costs and the matter is currently before the Superior Court.

The Commission acknowledges that any costs allocated to a utility as a result of a Commission proceeding are passed on to its consumers; this is analogous to current practice which allows a utility to include its costs of processing a case before the Commission in rates charged to its consumers, including its attorney's costs. If the Commission's budget were fully funded to cover costs of its attorneys general, there would be no allocation of these costs. Because the Commission has not been persuasive in this argument in its budget presentations, the result is to recover these costs from the utility's consumers who benefit from adequate Commission processing of a utility's request.

The proposed amendment to AS 42.05.651 would restrict the Commission's ability to thoroughly process a utility's request and is strongly opposed.

MEMORANDUM

To: Carolyn S. Guess
Commissioner

Date: February 26, 1986

From: Ted Moninski
Deputy Director

Subject: Professional
Service
Contracting

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By this scenario, the optimum time-line for professional service contracts is approximately sixty days (ATN to contract approval). The worse-case time-line is about one hundred sixty days. Actual experience as reflected in the attachments seem to support this analysis with an average processing time for all contracts at eighty-four days.

John B. Farleigh

FILE CONTENTS HB 314

1. HB 314
2. Draft of Senate Bill
3. Fiscal Note
4. Budget & Audit Report
5. Alaska Statutes
6. APUC comments on proposed changes
7. Legal opinions on Sunset of APUC
8. Testimony by Dr. Joyce Murphy, Pres. Chugach Electric, to Joint Labor & Commerce meeting

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 25, 1985

SUBJECT: Termination of APUC

TO: Senator Fred Zharoff, Chair
Senate Labor and Commerce Committee

Representative Mike Navarre, Chair
House Labor and Commerce Committee

FROM: Billy G. Berrier *BGB*
Director
Division of Legal Services

You have asked whether in our opinion if no legislation were enacted to extend the Alaska Public Utilities Commission under the sunset provision of AS 44.66.010(4) which provides for expiration of the Commission on June 30, 1985 would the operation of the Commission be impaired during the following year.

This question was examined in connection with the sunset of the Alaska Transportation Commission and opinions from the Ombudsman, the Department of Law and the Division of Legal Services were published in a report of the House Commerce Committee entitled Interim Report - Sunset In Alaska 1979-1980. Copies of the opinions are enclosed.

There has been nothing since which would clarify the question.

It is still my opinion that there is serious question concerning the power of the Alaska Public Utilities Commission to consider new matters in the year following the expiration date.

BGB:oib
J14/044



ombudsman

Frank Flavin

State of Alaska

Reply to:

January 17, 1980

- 840 K Street, Room 203
Anchorage, Alaska 99501
(907) 276-4011
- Pouch W0
Juneau, Alaska 99811
(907) 465-4970
- P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452 4001

Keith Miller
Commissioner
Alaska Transportation Commission
Department of Commerce & Economic Development
338 Denali Street
Anchorage, AK 99501

Re: Ombudsman Complaint A79-0668

Dear Commissioner Miller:

Since your September 5, 1979, letter expressing ATC's opinion of the Sunset Law's impact on the functioning of the Commission after June 30, 1979, we have reviewed or sought opinions from three other sectors of the state government.

Your opinion, apparently based on being "prudent" in a situation of uncertainty, contends that the Commission ought to go forward in the exercise of all its "powers and authority." This position seemingly ignores any consequence of ATC's being named at AS 44.66.010 (a) (2).

Gerald Wilkerson, Legislative Auditor, when asked his opinion, responded in a fashion similar to ATC's. He felt, based only on his impression of the legislature's state of mind, that the section .010 (b) language, "concluding its affairs," permitted the ATC to retain all its power, unless or until it went out of existence. Your opinion and his both give weight to the two year continuation of the ATC that was vetoed by the governor. However, neither of you seem to take the "sunsetting" consequences of that veto into consideration.

The Department of Revenue requested an Attorney General opinion concerning the status of the ABC Board in FY 1980. This ostensible "legal opinion" puts forth an established principle of law to base the opinion on, then disregards it in favor of a blind, unsupportable guess. Observing the difference between AS 44.66.010 (b) and AS 08.03.020 (a), the Assistant Attorney General states that

Ordinarily, when two provisions are enacted together on related matters and are distinguishable in this manner, the distinction is considered to intend a substantial difference, i.e., here, that agencies terminated under AS 44.66.010 do not continue to possess their powers during this closing-out year.

Page two

He dismisses this, however, when he can see no reason for differential treatment between the Title 8 Regulatory Boards and the Title 44 State Boards and Commissions. He concludes, from an insufficient legal basis, and without any reference to historical materials showing legislative intent, that the difference in wording must be

inadvertant and that there was no intention to strip the regulatory boards terminated under AS 44.66 of their powers during the year in which they are closing out.

This office sought an opinion from the Legislative Affairs Agency on this matter. That response recognized that AS 44.66 "contains no clarification or definition of the clause 'for the purpose of concluding its affairs.' " To that, this opinion contrasts AS 08.03.020 (a) which modifies the shared phrase above with

During this period, termination does not reduce or otherwise limit the powers or authority of each board.

From this, it is derived that

This omission from AS 44.66.010 (b), an otherwise parallel provision, indicates that a different result was intended. (Emphasis added.)

The most obvious result of this, according to the Legislative affairs legal opinion, was that ATC would be limited to acting solely on matters brought before the Commission on or before June 30, 1979, "but could not act on new matters."

A "plausible," but not his primary construction of the statutory scheme was also postulated by the author of the LAA legal opinion. It was conceivable to him that

the legislative intent was to allow this group of agencies discretion to determine what actions are necessary in winding up the affairs of the agency.

While admitting that he cannot be certain, he leans toward agency self-determination.

The finding of this office, with respect to the underlying complaint that ATC is improperly conducting business as usual, is: INDETERMINATE.

There is no known legislative history which resolves this dilemma, nor are there other serious resources, save the language of the statutes themselves. It is the opinion of this office that the difference in language between Title 8 and Title 44 is significant, and cannot be assumed or guessed away. The additional language found in Title 8 is seen as a modification of the concept espoused in the parallel language of Titles 8 and 44. We believe the statement in AS 08.03.020 (a) that

Keith Miller
January 17, 1980

Page three

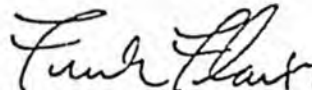
"termination does not reduce or otherwise limit the powers or authority of each board" (which does not appear in Title 44) implies that the preceding language, "continue in existence...for the purpose of concluding its affairs," must contain a limitation on those powers and authority. The greatest difficulty, however, is the determination of the extent of that limitation.

The closest analog in Alaska law is the position of an Alaskan corporation after the filing of a statement of intent to dissolve. AS 10.05.486 defines that position as one wherein "the corporation shall cease to carry on business, except that necessary for the winding up of its business." Subsection 489 (2) characterizes this as collecting assets, satisfying and discharging liabilities, and the like, but allows for nothing new.

On the spectrum of permitting "everything-something-nothing" new, the Office of the Ombudsman believes that the proper interpretation of the present state of the laws falls in "something-nothing," and that "everything" has no basis.

We feel it is urgent that the Legislature be made aware of the ambiguous situation which presently exists, for if clarity is to be attained, that body is the most appropriate forum. We are, therefore, sending a copy of these findings to the Legislature as an expression of our concerns in this matter.

Sincerely,



Frank Flavin
Ombudsman

FF/RB/jm

cc: Speaker of the House
President of the Senate

Hon. Thomas K. Williams
Commissioner
Department of Revenue
ATTN: Joseph K. Donohue
Deputy Commissioner

November 9, 1979

J-66-103-30

AVRUM M. GROSS
ATTORNEY GENERAL

Status of ABC
Board in 1980

By:
Rodger W. Pegues
Assistant Attorney General

You have asked if it is within the scope of the Sunset Law to continue the normal exercise of the powers of the ABC Board at least until March 1980 and then, absent any statutory resurrection, phasing it out.

We believe that you are acting within the scope of the law.

The 1977 Legislature enacted a sunset law for two classes of agencies. §§ 2 and 3, ch. 149, SLA 1977. One section applies to 22 expressly designated professional and occupational licensing boards. It has been codified as AS 08.03.010. The other applies, first, to five expressly designated regulatory commissions and then to certain other agencies. It is codified as AS 44.66.010, 020. The latter, over a period of years, provides for review and potential termination of all state agencies and institutions. */ The ABC Board is one of the regulatory agencies specified in AS 44.66.010.

Both provide for "termination" on dates certain, e.g., June 30, 1979, in the case of the ABC Board. Both provide for a terminated agency to "continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs." Compare AS 08.03.010(c) with AS 44.66.010(b). It is at this point, however, that an apparent distinction arises.

Under AS 08.03.010(c), during its year of continued "existence," the terminated agency's powers expressly remain undiminished. A similar provision does not occur in AS 44.66.010(b). It is silent on the matter. Ordinarily,

*/ Because they are constitutionally established or mandated, certain agencies cannot be abolished, e.g., the Alaska Legislative Council, Alaska Const., art. II, § 11.

Joseph K. Donohue
November 9, 1979
Page #2

When two provisions are enacted together on related matters and are distinguishable in this manner, the distinction is considered to intend a substantial difference, i.e., here, that agencies terminated under AS 44.66.010 do not continue to possess their powers during this closing-out year. There is no reason, however, to perceive such a difference here. The situation is the same for both classes of agencies and for the objects of regulation and public protection. Indeed, AS 08.03.010(d) provides that the provisions of AS 44.66.050 govern the termination of agencies under AS 08.03, a rather persuasive indication that the same rules are to apply to both classes of agencies.

Our conclusion is, therefore, that the difference in wording is inadvertent and that there was no intention to strip the regulatory boards terminated under AS 44.66 of their powers during the year in which they are closing out. If the boards are not resurrected during that last year, then their powers cease to exist, and they cannot -- absent new legislation -- be delegated to the departments in which the boards were located.

RMP/pjg

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

December 14, 1979

SUBJECT: Alaska Transportation Commission Activities
(Work Order Number 7552)

TO: Frank Flavin, Ombudsman

FROM: Billy G. Berrier *BGB*
Director
Division of Legal Services

You have asked for an opinion from this division on the extent of business the Alaska Transportation Commission may conduct since AS 44.66(a)(2) (the Sunset Statute) provides that the commission expired June 30, 1979 and its existence was not continued by law.

AS 44.66.010 provides in relevant part:

"(a) Boards and Commissions listed in this subsection expire on the date set out after each: . . .

(2) Alaska Transportation Commission (AS 42.-
07.011) June 30, 1979; . . .

(b) Upon termination, a commission listed in (a) of this section shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs. "

The directly relevant chapter contains no clarification or definition of the clause "for the purpose of concluding its affairs". However AS 08.30.020, which is the Sunset section establishing procedures governing termination, transition and continuation of regulatory boards provides in subsection (a):

(a) Upon termination, each board listed in AS 08.-
03.010 shall continue in existence until June 30 of the

next succeeding year for the purpose of concluding its affairs. During this period, termination does not reduce or otherwise limit the powers or authority of each board. One year after the date of termination, a board not continued shall cease all activities."

The sunset law as originally enacted provided for termination of both groups of agencies in the same act. (Sections 2 and 3, ch. 149 SLA 1977). This originated as HB 1 of the Tenth Legislature, First Session. The bill as introduced included more agencies than in the final law adopted and contained only one provision for termination. The language of that provision was identical to the present language of AS 08.03.020 except for the scope of application clause. The present format occurred in the Committee Substitute by the House State Affairs Committee. In that version and all succeeding versions the effect of termination sections were identical to existing law.

Both provisions were adopted in the same law and derive from the same section in the bill as introduced. The two sentences with which AS 08.03.020(a) conclude with which read "During this period, termination does not reduce or otherwise limit the powers or authority of each board. One year after the date of termination, a board not continued shall cease all activities." clearly specify the permissible activities after termination of boards terminated under that section. This omission from AS 44.66.010(b), an otherwise parallel provision, indicates that a different result was intended.

The most obvious different result is that the boards and commissions terminated under AS 44.66 were to be limited to activities which were necessary or incidental to concluding their affairs. Under that construction the Alaska Transportation Commission could clearly continue to act on all matters before the board on June 30, 1979 and could act to provide an orderly termination of its duties but could not act on new matters.

Another plausible construction is that the legislative intent was to allow this group of agencies discretion to determine what actions are necessary in winding up the affairs of the agency. It is clear from the text of AS 08.03.020(a) that the legislature did not consider that continued exercise of the powers or authority of an agency was necessarily outside

Frank Flavin
Page 3
December 14, 1979

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the scope of concluding the affairs of the agency. Since the agencies included within AS 44.66.010 have broad and diverse authority concerning major segments of the economy there is strong policy support for allowing each agency to determine the scope of its activities within very broad guidelines.

Without more specific statutory guidance I cannot determine with any reasonable certainty the scope of powers of the Alaska Transportation Commission subsequent to its termination. It is very probable that the agencies own determinations in light of the statute and the pattern of its activities would be given great weight.

BGB:ljb

JOINT HOUSE AND SENATE
LABOR AND COMMERCE COMMITTEES HEARING

TESTIMONY OF DR. JOYCE MURPHY
PRESIDENT, BOARD OF DIRECTORS
CHUGACH ELECTRIC ASSOCIATION, INC.

MARCH 5, 1985

THANK YOU, CHAIRMAN ZHAROFF, CHAIRMAN NAVARRE, MEMBERS OF THE COMMITTEES. MY NAME IS JOYCE MURPHY AND I AM PRESIDENT OF THE CHUGACH ELECTRIC ASSOCIATION BOARD OF DIRECTORS.

CHUGACH IS HEADQUARTERED IN ANCHORAGE. WE ARE THE LARGEST ELECTRIC COOPERATIVE AND THE LARGEST ELECTRIC UTILITY IN THE STATE. WE SERVE APPROXIMATELY 60,000 RETAIL CONSUMERS IN ANCHORAGE AND IN THE KENAI PENINSULA. IN ADDITION, WE ARE THE WHOLESALE POWER SUPPLIER FOR MATANUSKA ELECTRIC ASSOCIATION, HOMER ELECTRIC ASSOCIATION AND THE CITY OF SEWARD. OVERALL, CHUGACH HAS THE POWER SUPPLY RESPONSIBILITY FOR HALF THE POPULATION OF OUR STATE.

LAST YEAR WAS CHUGACH'S BEST EVER. WE SETTLED A LONG-STANDING TERRITORIAL DISPUTE WITH ANCHORAGE MUNICIPAL LIGHT AND POWER, WE DRAMATICALLY REDUCED OUTAGE TIMES AND WE ENDED 1984 WITH MORE THAN \$13 MILLION IN MARGINS -- WITHOUT A RATE INCREASE. THE POINT IS THAT CHUGACH IS A HEALTHY CO-OP CAPABLE OF MAKING OUR OWN DAY-TO-DAY DECISIONS. THE PROBLEM IS THAT THE ALASKA PUBLIC UTILITIES COMMISSION WON'T LET US.

MARCH 5, 1985

I WANT TO MAKE IT CLEAR RIGHT OFF THAT CHUGACH IS NOT ADVOCATING ELIMINATION OF THE APUC. WE BELIEVE THE COMMISSION SERVES A NECESSARY PURPOSE IN ESTABLISHING SERVICE AREAS, REGULATING RATES AND PURSUING CONSUMER COMPLAINTS.

I SAY THIS AS PRESIDENT OF THE CHUGACH BOARD AND AS A CONSUMER WITH A STRONG CONSUMER ADVOCACY BACKGROUND. I AND SEVERAL OTHER MEMBERS OF THE BOARD WERE ACTIVELY INVOLVED IN THE ALASKA CONSUMER ADVOCACY PROGRAM AND OTHER CONSUMER-RELATED ACTIVITIES. WE WERE ELECTED TO THE BOARD ON THIS BASIS. I GOT ACQUAINTED WITH THE APUC AS A CONSUMER ACTIVIST, AND I HAVE TESTIFIED BEFORE THE COMMISSION AS A CONSUMER AND AS CHUGACH BOARD PRESIDENT.

I AND OTHER CHUGACH BOARD MEMBERS -- WHO HAVE BEEN DIRECTLY ELECTED BY OUR CONSUMER/OWNERS -- HONESTLY BELIEVE THE APUC HAS OVEREXTENDED ITSELF. IT HAS BECOME MORE THAN THE REGULATORY AGENCY IT SHOULD BE. IT HAS BECOME A SUPER BOARD OF DIRECTORS AND MANAGEMENT, INVOLVING ITSELF IN DAY-TO-DAY ACTIVITIES OF CHUGACH AND OTHERS OF THE 112 UTILITIES IT REGULATES.

THIS IS WRONG, AND IT IS CONTRARY TO THE NATIONAL TREND TOWARD Deregulation. THIS OVER-INVOLVEMENT BY THE COMMISSION IS ALSO WHY IT HAS STRETCHED ITSELF TOO THIN. THE ANSWER IS NOT MORE MONEY AND MORE STAFF. THE ANSWER IS FOR THE COMMISSION TO CONCENTRATE ON THE BASIC REGULATORY AREAS AS CONTEMPLATED BY THE LEGISLATURE -- SERVICE AREA CERTIFICATION, RATE MAKING AND CONSUMER FOLLOW-UP. THE COMMISSION SIMPLY MUST MAKE BETTER USE

OF ITS HUMAN AND FINANCIAL RESOURCES, AND LET THE CONSUMER-ELECTED POLICY BOARD AND ITS MANAGERS MANAGE THE UTILITIES.

LET ME GIVE YOU A FEW EXAMPLES:

COST

THROUGH ITS ABILITY TO ALLOCATE HEARING AND OTHER COSTS TO UTILITIES, THE COMMISSION HAS A VIRTUAL BLANK CHECK. IT CAN GO ANYWHERE IT WANTS WITH LITTLE IF ANY ACCOUNTABILITY -- LEGISLATIVE OR OTHERWISE -- BECAUSE MANY COSTS CAN SIMPLY BE PASSED ON TO THE UTILITIES. THE COMMISSION IS ALLOCATING MORE AND MORE OF THESE COSTS TO THE UTILITIES.

TO ILLUSTRATE MY POINT, HERE IS AN EXCERPT FROM THE COMMISSIONERS' JANUARY 30, 1985, LETTER RESPONDING TO THE DIVISION OF LEGISLATIVE AUDIT'S NEW PERFORMANCE REPORT ON THE COMMISSION. THE COMMISSIONERS' LETTER IS AN ATTACHMENT TO THE PERFORMANCE REPORT ITSELF. THE EXCERPT READS:

"DUE TO THE APUC'S GENERAL OPERATING BUDGET SHORTFALL FOR THE PAST TWO FISCAL YEARS, IT HAS BEEN THE POLICY OF THE APUC TO ALLOCATE, WHEREVER PRACTICAL, ALL ALLOCATABLE EXPENSES ... TO ALL PARTIES EXCEPT THE APUC STAFF. PRIOR TO FY83 THE APUC HAD ALLOCATED SOME EXPENSES INCURRED FROM THE OPERATING BUDGET TO THE APUC STAFF." (Emphasis added.)

SB '64 WOULD EXPAND AND ACCELERATE THIS COURSE. THE BILL WOULD PERMIT ALLOCATION TO UTILITIES OF ALL STAFF AND LEGAL EXPENSES, INCLUDING THOSE OF THE ATTORNEY GENERAL'S OFFICE. THIS IS IN ADDITION TO CONSULTANT EXPENSES. SB 64 ALSO WOULD PERMIT THE ASSESSMENT OF EXPENSES DURING AS WELL AS AFTER PROCEEDINGS, THE LATTER NOW BEING THE CASE.

THESE ACTIONS, IF ALLOWED TO OCCUR, WOULD REMOVE THE LEGISLATURE EVEN FURTHER FROM EXERTING ANY MEANINGFUL BUDGETARY CONTROL OVER THIS MOST IMPORTANT STATE AGENCY. CHUGACH JOINS OTHER UTILITIES ACROSS THE STATE IN STRONGLY URGING YOU NOT TO PASS SB 64.

NOT SO INCIDENTALLY, COMMISSION ACTIONS (INCLUDING STUDIES) HAVE COST CHUGACH MORE THAN \$2.2 MILLION IN THE PAST THREE YEARS ALONE. THIS IS A CONSERVATIVE FIGURE, AND DOES NOT INCLUDE STAFF TIME, WHICH IS STAGGERING.

LEVEL OF INVOLVEMENT

YOU HAVE HEARD, OR WILL HEAR, MANY EXAMPLES FROM MANY UTILITIES REGARDING HOW THE COMMISSION HAS TRANSCENDED ITS REGULATORY MANDATE AND NOW WORRIES ABOUT TIME-CONSUMING AND COSTLY DETAILS WHICH ARE RIGHTLY THE PROVINCE OF UTILITIES' BOARDS AND MANAGEMENT.

HERE IS JUST ONE MORE EXAMPLE: JUST A FEW DAYS AGO, WE RECEIVED A LETTER FROM THE APUC REQUIRING THAT CHUGACH SEEK THE

COMMISSION'S APPROVAL -- "REGARDLESS OF ESTIMATED COST" -- FOR ANY CHANGES OR ADDITIONS TO OUR MICROWAVE SYSTEM. NO MATTER HOW SMALL, THESE CHANGES MUST FIRST RECEIVE THE BLESSING OF THE APUC. CERTAINLY, THIS AGENCY HAS MORE IMPORTANT WAYS TO SPEND ITS STAFF TIME AND MONEY, EVEN ASSUMING THAT SUCH COSTS MIGHT END UP BEING CHARGED TO CHUGACH CONSUMERS.

REGULATORY LAG

IN LARGE PART BECAUSE THE COMMISSION HAS INVOLVED ITSELF IN TOO MUCH DETAIL, REGULATORY LAG HAS BECOME A SERIOUS PROBLEM. A RECENT STUDY OF APUC FILES BY THE ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION SHOWED THAT THE AVERAGE RATE CASE DOCKET REMAINS OPEN BETWEEN 15 AND 16 MONTHS. FOR NON-RATE CASES, DOCKETS REMAIN OPEN BETWEEN 14 AND 15 MONTHS. IT IS NOT UNUSUAL FOR DOCKETS TO STAY OPEN FOR TWO TO THREE YEARS. THIS ADDS A CONSIDERABLE FINANCIAL BURDEN TO THE UTILITIES AND OUR CONSUMERS, MANY OF WHOM ARE YOUR CONSTITUENTS.

SERVICE AND SAFETY STANDARDS REGULATIONS

IN 1982, THE COMMISSION ISSUED SEVEN PAGES OF PROPOSED SERVICE AND SAFETY REGULATIONS. FOLLOWING A PUBLIC HEARING IN MID-1983, THE REGULATIONS DISAPPEARED. THEY RESURFACED THIS PAST JANUARY AS 49 PAGES, COVERING A FAR BROADER RANGE OF ISSUES AND AREAS. THE COMMISSION IS NOW ATTEMPTING TO APPLY AT LEAST SOME OF THESE REGULATIONS TO UNREGULATED UTILITIES, INCLUDING THREE

COOPERATIVES WHOSE MEMBERS HAVE VOTED TO DISSOCIATE FROM COMMISSION REGULATION. SUFFICE IT TO SAY, THOSE THREE CO-OPS ARE UP IN ARMS.

THE REGULATIONS ARE STILL JUST PROPOSED. THEY ARE STILL OPEN FOR PUBLIC COMMENTS AND A HEARING. HOWEVER, HAVING MULTIPLIED SEVEN-FOLD AND NOW MUCH BROADER IN SCOPE AND APPLICABILITY, THESE REGULATIONS CLEARLY SHOW WHERE THE COMMISSION IS HEADING, AND WHAT IT SEES AS ITS MANDATE.

LET ME TOUCH ON A FEW OF CHUGACH'S CONCERNS WITH THE PROPOSED REGULATIONS THEMSELVES:

ONE AREA IN WHICH THE COMMISSION APPEARS TO BE INCREASINGLY INTERESTED IS UTILITY PLANNING FOR GENERATION. THE REGULATIONS WOULD REQUIRE CHUGACH AND OTHERS TO FILE WITH THE COMMISSION, A FULL 180 DAYS BEFORE CONSTRUCTION, THE FOLLOWING INFORMATION ON A GENERATION UNIT:

- PROPOSED SITE
- GENERATING CAPACITY
- FUEL TYPE AND SOURCE
- OPERATING DATA
- LOAD FORECASTING DATA JUSTIFYING PLANT FINANCING
- ANY OTHER INFORMATION THE COMMISSION DECIDES IS RELEVANT

ATOP ALL THIS, THERE IS NO APPARENT OBLIGATION FOR THE COMMISSION TO ACT TIMELY IN APPROVING OR DISAPPROVING A UTILITY'S GENERATION PLANS. THE POTENTIAL CONSEQUENCES HERE ARE OBVIOUS.

QUALITY OF SERVICE IS ANOTHER MAJOR AREA ADDRESSED BY THE REGULATIONS. I WANT TO STRESS THAT ON THIS QUESTION WE ALL HAVE THE SAME GOAL -- SAFE, RELIABLE AND ENVIRONMENTALLY ACCEPTABLE POWER SUPPLY. CHUGACH ADHERES STRINGENTLY TO THE MANDATORY NATIONAL ELECTRIC SAFETY CODE AND OTHER INDUSTRY STANDARDS.

HOWEVER, THE DETAIL AND OBJECTIVES IN THE PROPOSED QUALITY OF SERVICE REGULATIONS ARE SURE TO TRY -- OR EXCEED -- THE KNOWLEDGE, EXPERTISE AND STAFF RESOURCES OF THE APUC. THE REGULATIONS SET UNREALISTIC GOALS -- SUCH AS MANDATING THAT NO OUTAGE LAST MORE THAN 90 SECONDS -- AND WOULD REQUIRE NON-EXISTENT OR OUTRAGEOUSLY EXPENSIVE TECHNOLOGY. IT WOULD BE VIRTUALLY IMPOSSIBLE FOR THE SMALLER UTILITIES TO COMPLY, BUT VIOLATION OF THE REGULATIONS WOULD CONSTITUTE PRESUMPTION OF INADEQUATE SERVICE AND/OR SAFETY VIOLATIONS.

AT THE VERY LEAST, THE COMMISSION WOULD HAVE TO BEEF UP ITS OWN STAFF TO TRY TO ENFORCE ALL THIS DETAIL. UTILITIES WOULD BE EXPOSED TO POTENTIALLY STAGGERING LIABILITY, REGARDLESS OF THEIR NEGLIGENCE. LET ME STRESS AGAIN THAT CHUGACH MEETS OR EXCEEDS INDUSTRY SAFETY STANDARDS.

WHOLESALE POWER CONTRACTS

HERE IS ANOTHER EXAMPLE OF THE COMMISSION NOT CONSIDERING THE IMPLICATIONS OF ITS ACTIONS.

IN THE SUMMER OF 1983, THE COMMISSION ASSERTED JURISDICTION OVER AT LEAST THE PRICING COMPONENT OF THE WHOLESALE POWER CONTRACTS BETWEEN CHUGACH AND TWO NEIGHBORING COOPERATIVES -- MATANUSKA ELECTRIC AND HOMER ELECTRIC. IN THE WAKE OF THIS, THERE HAS BEEN WIDE CONFUSION AMONG THE CO-OPS AND OUR LENDERS REGARDING THE STATUS OF THE WHOLESALE CONTRACTS.

ONE EFFECT HAS BEEN A DETERIORATION IN RELATIONS AMONG OUR THREE CO-OPS AND WITH OUR LENDERS, INCLUDING THE FEDERAL RURAL ELECTRIFICATION ADMINISTRATION. THIS HAS LED TO CONFUSION OVER FINANCING FOR FUTURE POWER PROJECTS SUCH AS BRADLEY LAKE. THE STAKES AND RESPONSIBILITIES ARE VERY HIGH.

I AND OTHER CHUGACH BOARD MEMBERS COULD GO ON FOR MANY HOURS, BUT TIME IS VERY LIMITED HERE. THANK YOU FOR THIS OPPORTUNITY. CHUGACH STANDS READY TO PROVIDE OTHER INFORMATION, AND WE LOOK FORWARD TO TESTIFYING AT FUTURE HEARINGS ON THIS MOST IMPORTANT MATTER. WHILE I HAVE SYNOPSISIZED MY TESTIMONY TODAY, MY FULL WRITTEN COMMENTS WILL BE PROVIDED TO MEMBERS OF YOUR COMMITTEES.

THANK YOU.

m/testimony/11MAR85

Built-in Controls

An electric cooperative utility is a self-regulating entity, owned and controlled by the consumers it serves. The consumers elect the board of directors who, in turn, hire a manager to administer the day-to-day activities of the cooperative.

The board establishes guidelines, policies and financial controls under which the manager must operate. Whenever a board member or manager strays from the best interest of the utility and its consumers, the membership has the power to "rise up and throw the rascals out" in good democratic tradition. In short, electric cooperatives have their own inherent check and balance system and their regulation by the APUC should be basic.

The State of Wisconsin, for example, recognizes this democratic tradition. Wisconsin law established a Public Utility Commission with powers almost as broad as those found in Alaska. The Badger State, however, has purposely exempted co-ops from the Commission's jurisdiction, allowing the co-ops to regulate themselves.

What We Want

Alaska's electrical cooperatives are not advocating that they be exempted from APUC control. They do, however, agree on the following list of suggestions for improvement:

1. Changes needed to obtain non-government financing
 - a. Amend AS 42.05.431 to treat cooperative mortgage obligations the same as municipal bond obligations.
 - b. Prevent APUC from changing wholesale power agreements after they are in effect.
 - c. Prevent APUC from making permanent rates approved by the Commission later subject to refund.

2. Narrow the scope of APUC authority

- a. Reservation of management rights to governing bodies of utilities for subjects not specifically granted to APUC.
- b. Trim some specific grants of authority, i.e. AS 42.05.291 (standards of service and facilities) and AS 42.05.511 (management practices).
- c. Simplify ratemaking process by authorizing TIER indexing of rates upon application by a cooperative utility.

3. Speed up the regulatory process

- a. Authorize the APUC to suspend action for only one period of six months
- b. Require the Commission to rule promptly on matters before them.
- c. Enforce this statutory limitation by requiring the commissioners to forfeit their pay when dockets are not completed on time.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : 12/19/85

REQUEST

Bill/Resolution No. : HB 63
 Title: An Act relating to the plumbing code"
 Sponsor : Governor
 Requestor : House Labor & Commerce
 Date of Request : 3/15/85

FISCAL DETAIL

Agency Affected : Labor
 BRU : Labor Standards & Safety
 Components : Mechanical Inspection

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
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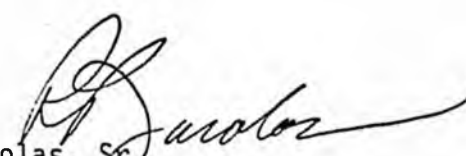
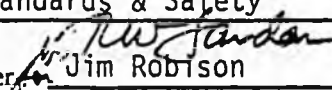
FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: ^{1/3} Robert J. Bacolas, Sr.  Phone : 465-4870
 Division : Labor Standards & Safety Date : 12/19/85
 Approved by Commissioner: Jim Robison  Date : 12/19/85
 Agency : Labor

Distribution (by Agency preparing fiscal note):

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

SUMMARY OF PROPOSED CHANGES

TO AS 42.05 (Alaska Public Utilities Commission Act)

AS 42.05.091

Add section (b) - requires commissioners to complete their work within six months or have their pay withheld, as is now the case for judges and justices in the Alaska Court System.

AS 42.05.141

(1) deletes provision which allows commission powers to be liberally construed.

(d) adds provision reserving management authority for cooperatives organized under AS 10.25 (Alaska's cooperative statute) to the boards of those cooperatives.

AS 42.05.221

(e) expressly allows commission to assign costs to various parties involved in commission proceedings -- not just utilities.

AS 42.05.291

(c) and (d) require petition by a cooperative's membership for the commission to adopt service and safety regulations applicable to that cooperative.

Current section (d) is relettered (e).

AS 42.05.381

(c) allows a cooperative's rates to be set within a commission-approved range, thus avoiding costly new rate cases for minor rate fluctuations.

Current sections (c) and (d) are relettered (d) and (e)

AS 42.05.421

(1) deletes word "initial" and requires commission action within six months on tariff filings.

(3) adds new section providing that tariff filings automatically go into effect on a permanent basis unless the commission acts within six months.

AS 42.05.431

(a) requires commission to respect the financial obligations of cooperatives, as the commission is currently required to respect the financial obligations of municipal utilities.

(b) prohibits commission from changing wholesale power contracts after they are in effect.

(c) prohibits commission from ordering refunds from permanent rates.

AS 42.05.461

deletes cumbersome requirement that utilities inventory property by specific land parcel and be required to furnish commission with such information.

AS 42.05.511

(a) places responsibility on the commission for proving, in a rate proceeding, that the management practices of a utility are inefficient or unreasonable.

AS 42.05.711

(h) provides that commission authority over areas other than service area boundaries does not apply to deregulated cooperatives.

AS 42.05.712

(a), (b) and (d) provide that cooperatives are deregulated generally unless a majority of 15% of a cooperative's membership votes to be regulated.

AS 42.05.720

(7) limits a "tariff" to filings related to rates and charges, to avoid costly and time consuming delays and paperwork.

Changes Proposed by Cliff Eilen

*Section 1. AS 42.05.711 is amended to read:

(f) Telephone utilities which serve less than fifteen hundred subscribers within the state shall not be subject to economic regulation by the Public Utilities Commission pursuant to Section 42.05.141 (3) unless the company elects by action of its board of directors to be subject to such economic regulation by the Commission; or the proposed increases exceeds 30 percent in any one year; or 20 percent of the subscribers petition the Commission to regulate rates pursuant to (1) and (3) of this subsection; or the Commission declares that the company shall be subject to economic regulation by the Commission pursuant to (4) of this subsection.

(1) Each telephone company not subject to economic regulation pursuant to (f) of this section shall, at least 60 days before the effective date of any proposed rate increase, notify the Commission and each of the company's subscribers of the proposed rate increase. Notice by the company to all subscribers shall be in a form prescribed by the Commission, shall be by first-class mail, and shall include a schedule of the proposed rates, the effective date of the rate increase, and the procedure necessary for the subscribers to petition the Commission to determine rates in lieu of the proposed rates. If the telephone directory published by the company for its subscribers sets forth the procedure for petitioning the Commission, a reference to the location in the directory shall be adequate notice of the procedure.

(2) The subscribers of a telephone company not subject to the Commission's economic regulation pursuant to (f) of this section may petition the Commission to determine rates in lieu of any rate increase proposed by the company pursuant to (1) of this subsection.

The Commission shall adopt and promulgate rules and regulations governing the form of such petitions and a petition substantially in compliance with such rules and regulations shall not be deemed invalid due to minor errors in its form.

(3) If, by the effective date of the company's proposed rate increase, the Commission has received petitions from fewer than 20 percent of the subscribers requesting that the Commission determine rates, the Commission shall certify such fact to the company and the company's proposed rates shall become effective as published in the notice to subscribers. If, on or before the effective date of the proposed rate change, the Commission has received petitions from 20 percent or more of the subscribers requesting that the Commission determine rates, the Commission shall notify the company that it will determine rates for the company in lieu of the company's proposed rate increase.

(4) In addition to the procedure for petition prior to any proposed rate increase pursuant to (1) through (3) of this subsection, the subscribers of a telephone company not subject to the Commission's economic regulation may at any time petition the Commission to declare that the company shall be subject to such economic regulation. If the Commission determines that at least 51 percent of a company's subscribers have properly petitioned that the company be subject to the Commission's economic regulations, the Commission shall certify such fact to the company and thereafter the company shall be subject to economic regulation by the Commission until at least 51 percent of the company's subscribers petition that the company no longer shall be subject to the Commission's economic regulation. The

Commission shall adopt and promulgate rules and regulations governing the petition procedure and the form of such petitions and a petition substantially in compliance with such rules and regulations shall not be deemed invalid due to minor errors in its form.

3 of 3

*Alie Simons
Harry Markly
from Chugach } ARECA*

BILL SHEFFIELD, GOVERNOR

ALASKA PUBLIC UTILITIES COMMISSION

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

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April 23, 1985

Honorable Fred F. Zharoff
Chairman, Senate Labor and
Commerce Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Honorable Mike Navarre
Chairman, House Labor and
Commerce Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Zharoff and Representative Navarre:

This letter and its enclosures are submitted in response to your meeting of April 11, 1985 with Jack Farleigh, Executive Director of the Commission and representatives of ARECA and Chugach Electric Association. The Commission's comments include an initial assessment of the impact of the proposed statutory changes and our reaction to the effect of those changes.

The Commission has addressed only those proposed amendments in which it was indicated that there is active legislative interest. The Commission did not address proposed revisions to AS 42.05.091, .291(c) and (d) since it was our understanding that those sections would not be given consideration at this time. However, if that is not the case, the Commission will provide comment on those sections immediately.

The Commission has noted for each proposed amendment which utilities would be affected by the changes; we believe this information is an extremely critical consideration for legislative deliberation. The Commission regulates utilities as large as Alascom, serving over 400,000 consumers and collecting annual revenues in excess of \$276 million to small utilities such as Pelican Utility Company, serving 76 customers with annual revenues of \$257,000. It appears to the Commission that the proposed changes are being suggested by only one segment of the regulated industry, and we would note that among that industry there is not unanimous support for all the changes suggested by ARECA.

In regard to those changes which would substantially alter the regulation of cooperative utilities, it would be preferable to the Commission, to deregulate cooperatives rather than to give the appearance of regulation through verbage which in effect eliminates Commission review and authority.

Senator Zharoff
Representative Navarre

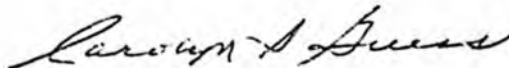
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April 23, 1985

It should be remembered that the Commission is charged with the responsibility of protecting the utility consumers because the State has seen fit through AS 42.05 to grant public and private utilities monopoly power. We cannot emphasize too strongly the argument that the needs of the regulated industry to operate within reasonable regulatory constraints must be balanced with the protection that the existing statutory language of AS 42.05 provides to the consumers of regulated monopoly businesses.

Sincerely,

ALASKA PUBLIC UTILITIES COMMISSION



Carolyn S. Guess, Chairman

CSG/wfs2192W
42285a
Enclosures

APUC Comments on Proposed Statutory Revisions

Section 42.05.141(a)(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 power of the commission shall be liberally construed to accomplish its stated purpose];

Impact:

- * Affects all regulated utilities
- * Removes flexibility to deal with varied situations that benefit both utilities and consumers.
- * Could create judicial confusion as to how to interpret Commission authority.
- * May eliminate Commission authority to issue temporary certificates of public convenience and necessity.

Comments:

Language similar to the current language exists in the statutes of most states and is necessary for a utility commission to achieve effective regulation over a wide variety of utilities operating under different circumstances.

Repeal of the existing language represents a "broad brush" attempt to limit the Commission's power. The Commission respectfully suggests that it would be preferable for the Legislature to specifically address any particular powers of the Commission which are of concern.

APUC Comments on Proposed Statutory Revisions

AS 42.05.141(d) - Notwithstanding any other provision to the contrary, none of the general powers and duties of the commission operate to divest the board of directors of a cooperative organized under AS 10.25 from exercising management authority for the conduct of that cooperative's affairs.

Impact:

- * Affects regulated cooperative utilities, both electric and telephone.
- * Eliminates traditional regulatory oversight.
- * Language contained in this provision may conflict with Commission's responsibilities articulated in AS 42.05.511.
- * Intent of this provision is not clear.

Comments:

Primary responsibility for utility management resides within the sound discretion of its board of directors and appointed managers. However, this has and should be subject to regulatory oversight under an effective regulatory scheme. The proposed revision appears to either eliminate entirely this oversight or radically curtail it (see also comments under proposed AS 42.05.511(a)).

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AFUC Comments on Proposed Statutory Revisions

AS 42.05.221(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] parties involved[.], including but not limited to utilities, commission staff and consumer intervenors, other than individual consumers.

Impact:

- * Affects all regulated utilities.
- * Intent of the proposed revision is unclear.
- * Does not appear to change existing Commission practice.

Comments:

Supreme In practice, this section which relates to utility certification and service area boundaries has been generally used to allocate costs of hearing officers in competing cable television certification proceedings. The only other instance where this section of the statute has been invoked was the result of a ~~Superior~~ Court decision to remand a case to the Commission to receive further evidence in order to finalize the service area boundaries of Chugach Electric Association and Municipal Light and Power.

Absent clarifying language or some other indication of the drafter's intended purpose, the Commission is unable to offer a meaningful response beyond that noted above.

APUC Comments on Proposed Statutory Revisions

AS 42.05.381(c) - In establishing the revenue requirement of a cooperative organized under AS 10.25 the commission shall, upon application of the cooperative, allow the cooperative to, without further filing, adjust rates to earn a times interest earned ratio within a range approved by the commission. the results of such adjustments shall be subject to verification by the commission and the operation of this adjustment procedure shall be reviewed by the commission at reasonable intervals.

Impact:

- * Affects regulated cooperative utilities, both electric and telephone.
- * Allows cooperatives whose rates are currently regulated by the Commission to modify rates merely by making application (of unspecified content) to the Commission.
- * Allows modification of rates without justification by a utility, without notice to or recourse by consumers, and without review by the Commission to determine that the rates are just and reasonable as otherwise required by AS 42.05.381.
- * Allows rate increases to achieve a Commission established times interest earned ratio (TIER) without restriction as to frequency and amount of changes, and without requiring a concomitant decrease should the cooperative exceed the allowed TIER.
- * Allows modification of rates charged to consumers without consideration of discrimination between classes of service, i.e., residential and commercial, as prohibited by AS 42.05.391.

Comments:

Because rate regulation is a cost plus exercise, this proposed change partially deregulates cooperative rates. The adequacy of a return or TIER is a function of the level of a utility's expenses. Therefore, an allowable TIER range while giving the appearance of reasonableness, in effect, provides no restraints on the expenses of a cooperative.

It should be noted that the Commission provides for automatic adjustment of a energy utility's fuel costs, generally its largest expense item, with Commission verification subsequent to the adjustment.

The Legislature should consider the fact that the proposed revision implements a far reaching and not commonly utilized rate methodology with a simplistic statement in the statute.

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APUC Comments on Proposed Statutory Revisions

AS 42.05.421(a)(1) - [an initial] a 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

AS 42.05.421(a)(3) - failure by the commission to issue a final order on a tariff filing within six months of the filing will result in the tariff filing requested going into effect on a permanent basis.

Impact:

*or maybe
interim rate*

- * Affects all regulated utilities.
- * Eliminates flexibility in processing cases; for example, forces Commission to reject incomplete tariff applications totally rather than to assist utilities to complete their filings.
- * Fails to consider the scheduling impact of independent actions by parties which can create delay.
- * Fails to include the due process requirements of a quasi-judicial proceeding.
- * Severely disadvantages intervenor participation in Commission proceedings.
- * Mandatory six-month processing deadline would be impossible to accomplish with existing resources (see attached fiscal note).
- * Reduces existing processing time by 45 days by beginning the six-month suspension period from the point of filing (as opposed to the point of suspension as is the practice under the current statute) by reducing existing processing time.

Comments:

The Commission does not believe that its case processing delays warrant such drastic statutory changes without evidence from an objective source that the proposed change will "cure the perceived problem" without compromising the mission of the Commission to protect the interest of the consumers while creating a healthy operating environment for the utilities. In its last three budget submissions, the Commission has acknowledged delays in case processing due largely to its limited resources. In FY '85, a hearing officer position (unfunded) was created. In October 1985, a part-time hearing officer was hired and substantial improvement in case processing has been effected. The Commission expects this favorable trend to continue.

APUC Comments on Proposed Statutory Revisions

Where final decision making occurs outside the initial six month suspension period (which is less than 10% of our cases), it is (1) because a utility has requested the delay because of its constraints; (2) the utility and Commission staff have agreed to a delay for mutually beneficial reasons; (3) the utility proceeding is unusually large or complex, i.e., Alascom's pending rate design case; (4) generic proceedings as a result of federal decisions affecting all of one regulated industry, i.e., Federal Communications Commission decisions mandating State Commission actions; and (5) lack of Commissioner support staff to assist in preparing legally defensible, written decisions (see page 470 of APUC budget document for verification).

The proposed amendment allows no extension of the six months for those cases which are so complex as to make meaningful review by the Commission, and meaningful participation by intervenors, impossible in the six-month period. Nor does it make an exception for the many instances where the utility itself requests a delay. The Legislature should also consider the balance achieved under the current provision. At present, the Commission is able to fairly consider the interests of both the utility and the consumer as it decides tariff changes. The utility is protected by the Commission's ability to grant interim relief during the period of full review of the permanent request. The consumer is protected by the Commission's careful consideration of the issues and the potential impact on rate payers that takes place during the suspension period. Imposition of an absolute decision deadline will certainly impact the protection now available to the consumer and create an imbalance of consideration in favor of the utility that may not be the real intent of the Legislature.

The Commission notes that an alternative proposal may be considered which would, in effect, add an additional six months to the suspension period for a total suspension period of 12 months. The impact statements presented above would equally apply to a proposed 12-month suspension. There would be some minimal change in the fiscal impact which can be forecasted at the Committee's request.

AS 42.05.421(A)(1) FISCAL NOTE BASED ON MANDATORY SIX MONTH SUSPENSION PERIOD

LINE ITEM	FY '85	FY '86	FY '87	FY '88	FY '89	FY '90
100-PERSONAL SERVICES: MERIT OR NEGOTIATED SALARY INCREASES NOT INCLUDED)						
Hrg. Officer, R 24A (ex.)	68,967	68,967	68,967	68,967	68,967	68,967
Paralegal I, R 13A	34,076	34,076	34,076	34,076	34,076	34,076
Paralegal I, R 13A	34,076	34,076	34,076	34,076	34,076	34,076
Economist, R 20A	53,306	53,306	53,306	53,306	53,306	53,306
AST II, R 8A	25,947	25,947	25,947	25,947	25,947	25,947
100 TOTAL =	<u>216,372</u>	<u>216,372</u>	<u>216,372</u>	<u>216,372</u>	<u>216,372</u>	<u>216,372</u>
200-TRAVEL (THIS LINE ITEM INCLUDES A 0% INFLATION FACTOR 86-90)						
	-0-	-0-	-0-	-0-	-0-	-0-
300-CONTRACTUAL (NO INFLATION FACTOR)						
Computer Programming	-0-	-0-	-0-	-0-	-0-	-0-
Other	-0-	-0-	-0-	-0-	-0-	-0-
300 TOTAL =	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
400-COMMODITIES (THIS LINE ITEM INCLUDES A 0% INFLATION FACTOR 85-90)						
Hrg. Officer, R 24A (ex.)	400	400	400	400	400	400
Paralegal I, R 13A	400	400	400	400	400	400
Paralegal I, R 13A	400	400	400	400	400	400
Economist, R 20A	400	400	400	400	400	400
AST II, R 8A	400	400	400	400	400	400
	<u>2,000</u>	<u>2,000</u>	<u>2,000</u>	<u>2,000</u>	<u>2,000</u>	<u>2,000</u>
500-EQUIPMENT (ONE TIME PURCHASES, FIRST YEAR ONLY)						
Hrg. Officer, R 24A (ex.)	2,025	-0-	-0-	-0-	-0-	-0-
Paralegal I, R 13A	2,025	-0-	-0-	-0-	-0-	-0-
Paralegal I, R 13A	2,025	-0-	-0-	-0-	-0-	-0-
Economist, R 20A	2,025	-0-	-0-	-0-	-0-	-0-
AST II, R 8A	1,200	-0-	-0-	-0-	-0-	-0-
	<u>9,300</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
600-LAND (NO INFLATION AND FORMULA IS SQ. FT. X 12 MONTHS X \$2.00 PER SQ. FT.)						
Hrg. Officer, R 24A (ex.)	3,000	3,000	3,000	3,000	3,000	3,000
Paralegal I, R 13A	3,000	3,000	3,000	3,000	3,000	3,000
Paralegal I, R 13A	3,000	3,000	3,000	3,000	3,000	3,000
Economist, R 20A	3,000	3,000	3,000	3,000	3,000	3,000
AST II, R 8A	1,992	1,992	1,992	1,992	1,992	1,992
	<u>13,992</u>	<u>13,992</u>	<u>13,992</u>	<u>13,992</u>	<u>13,992</u>	<u>13,992</u>
GRAND TOTAL	241,664	232,364	232,364	232,364	232,364	232,364

APUC Comments on Proposed Statutory Revisions

AS 42.05.431(a) - 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. The financial covenants contained in mortgages and other debt instruments of cooperative utilities organized under AS 10.25 are likewise valid and enforceable, and rates set by the commission must be adequate to merit those covenants. Municipal utilities and cooperative utilities organized under AS 10.25 shall file an informational copy of debt instruments affecting rates with the commission upon execution.

Impact:

- * Affects regulated cooperative utilities, both telephone and electric, and regulated municipal utilities.
- * Requires the Commission to automatically grant rates which will generate income sufficiently in excess of expenses to cover any financial covenants that cooperatives might have in their debt instruments, regardless of their reasonableness.
- * Eliminates Commission review of whether utility facilities are used and useful or otherwise prudent, and replaces it with whatever terms the utility and its lenders have agreed to.

Comments:

As proposed, .381(c) eliminates Commission review of cooperative expenses, this provision eliminates Commission review of the reasonableness of cooperative debt instruments. REA, on whose behalf these changes were suggested according to ARECA, has been contacted by the Commission and has indicated it (1) does not require the changes, (2) it was not contacted about the proposed changes, and (3) it has no problems with the Commission's past decision making under current statutory language.

APUC Comments on Proposed Statutory Revisions

AS 42.05.431(b) - The commission may not alter, change, modify or amend wholesale power agreements after they are in effect.

Impact:

- * Affects all regulated utilities.
- * Is contrary to REA requirements.
- * Destroys Commission ability to protect wholesale and retail consumers.
- * Eliminates Commission oversight of a potentially large element of a utility's operating expenses and revenues.

Comments:

Evidence in a Commission proceeding confirms that until the Commission exercised its jurisdiction over Chugach Electric's wholesale rates, the consumers in Anchorage were subsidizing the rates of Matanuska Electric and Homer Electric Association Cooperatives.

The Commission should have continuing jurisdiction over wholesale rates. Periodic review of wholesale power contracts is necessary to prevent some consumers from subsidizing other consumers.

APUC Comments on Proposed Statutory Revisions

AS 42.05.431(c) - Permanent rates shall not be subject to refund.

Impact:

- * Affects all regulated utilities.
- * Eliminates Commission authority to make refundable permanent rates when evidence provided by a utility indicates that its rates are excessive and a Commission investigation is underway.
- * If rates were ultimately found excessive, the customer would not be entitled to any refund for the period during which the rates were under investigation by the Commission, and arguably under appeal in the courts.

Comments:

Permanent rates are ordinarily not refundable. However, if costs have decreased or revenues increased substantially the Commission has an obligation to determine whether current permanent rates are excessive, just as the Commission has an obligation to determine when a utility requests an interim (emergency) rate increase whether current permanent rates are too low. Interim rate increases are generally granted within 45 days of a utility's request and are refundable. Where the Commission becomes aware, via credible evidence, that rates are too high, current rates are declared interim and refundable, subject to the Commission's final determination. This approach protects both the utility and the ratepayer under either scenario. Legislative adoption of the proposed revision would continue the utility's protected status, but would leave the consumer vulnerable during the intervening period if the investigation confirmed the rates were too high.

At this time, the Commission has made refundable, permanent rates of Matanuska Electric Association when it requested the reinstatement of a fuel surcharge that had been eliminated due to an overrecovery of revenues because of substantial growth in its service area; and permanent rates of Alaska Village Electric Cooperative when it updated its request for Power Cost Assistance and the utility's financial information indicated a substantial overrecovery of revenues.

APUC Comments on Proposed Statutory Revisions

AS 42.05.461 - 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.

Impact:

- * Affects all regulated utilities.
- * Eliminates certain data elements that are essential for rate making and full compliance with other provisions of this chapter (i.e., location of plant in service, original cost, depreciation reserve, depreciation expense, etc.).
- * Makes auditing of utility more difficult.
- * Prevents verification of whether plant is being used to provide utility services.
- * Encourage subjective instead of objective arguments in rate cases.

Comments:

Continuing Property Records (CPR's) provide a complete record of each type of property owned by a utility. The Commission uses these records to verify the net value of plant on which a utility is allowed to earn a return and for which a depreciation expense is allowed.

In order for the utility to prove that its investment is being used for utility service as required by AS 42.05.461(b) without adequate accounts and records, it is anticipated that additional utility funds would be expended to prove to the Commission that utility plant exists and to verify its original cost. This expense, which the Commission believes is unnecessary, would be passed on to the ratepayer.

APUC Comments on Proposed Statutory Revisions

AS 42.05.511(a) - [The commission may investigate the management of a public utility,] In a rate proceeding, the commission has the burden of proving that the management practices 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] are inefficient or unreasonable practices which adversely affect the cost or quality of service of the public utility.

Impact:

- * Affects all regulated utilities.
- * There is an immediate conflict between the proposed language in 511(a) and the existing language in 511(c).
- * Effectively eliminates Commission oversight into management practices of a utility.
- * Burden is shifted from the utility to Commission staff and provides an opportunity for a utility so inclined to slow-roll an investigation.
- * Could result in unreasonable delay in approving permanent rates which could jeopardize utility funding and which arguably will result in increased litigation.
- * If management practices can only be reviewed in the context of rate proceedings, then the Commission is forced either to expand a management investigation into a rate proceeding or to regularize review of management practices during a rate proceeding. In either event, this would unnecessarily complicate and lengthen rate proceedings as well as create delays in timely Commission response to pressing management problems affecting service quality.

Comments:

Management investigations are few and instituted only after documented evidence that serious problems affecting the safety, reliability or quality of a utility's service exists. Exhibit 1 shows 14 investigations during a four-year period.

Docket Number	Docket Title	Reason for Docket	Documentation	Result
U-81-9	Carl N. Gonder complaint against NEA, Inc. (Electric Mat-Su Borough)	Alleged inadequate Service & Facilities of NEA	Carl N. Gonder formal complaint Re: Installing of a Breaker	Favor of Gonder
U-81-13	Investigation of NEA, Inc. (Electric Mat-Su Borough)	Service Disconnection	Evidence Re: Energy Theft	Agreement between Mr. Zwert & NEA
U-81-20	Investigation of CEA, Inc. (Electric-Anchorage Borough)	Petition Wholesale Power Billing Practices	Petition by APUC STAFF to open docket of investigation	Cost-based Wholesale Rates Established
U-81-34	Investigation of Gen-Tel of Alaska (Telephone-Bethel)	Complaint Quality of Service in the Bethel Exchange Area	Consumers complaints and APUC STAFF formal complaint Quality of Service as a result of total Facility Breakdown	Stipulation between Staff & Gen-Tel to Upgrade Equipment
U-81-53	Investigation of CEA, Inc. (Electric-Chudach)	Service Reliability	Evidence from APUC PROCEEDING To Hear SIZ Rate Inc. Request	153 Recommendations Ordered \$ by Commission
U-82-49	Investigation of NPEC, Inc. (Electric-Cold Bay)	Complaint Quality of Electric Ser to Cold Bay/Ak.	Complaint by City, Consumers and APUC Staff	Resolved by Transfer of Certificate
U-82-51	Investigation of APIT (Electric-Skasway & Craig)	Services & Rates	Complaints & Staff on-site Investigation	Stipulation Between Staff & APT to Correct Documented Service Cond.
U-82-52	Investigation of NUI (Telephone-Tok & Craig)	Quality of Service	Complaint ltr from City of Craig and Tok Consumers	Stipulation between Staff & NUI to correct deficiencies
U-82-70	Dept of Labor complaint against APIT (Electric-Dot Lake)	Safety of facilities at the Tanacross to Bot Lake Lake Transmission Line	Evidence From Dept. Labor	Favor of Utility Subj. to cond.
U-83-6	Investigation of Teller Power (Electric-Teller)	Unauthorized Use of Fuel Surcharge	Ltrs from Consumers Enclosing Bills	Fine Levied Unless Immediate Response to Commission Order
U-83-25	Mark Hite Complaint against Dawn Development Corp. (Water Utility Peter Creek)	Alleged non-compliance with Tariffed discount procedures	Hite's Formal complaint ltr and Staff Recommendations	Favor of Hite

Exh. 1

Docket Number	Docket Title	Reason for Docket	Documentation	Result
J-87-73	Wasilla Refuser, Inc. complaint against Charles Ingram d/b/a Charles's Garbage & Trash Collection (Garbage Hat-Su Borough)	Alleged Unauthorized Provision of Service Within an Existing Certificated Area	Memorandum from existing carrier in support of complaint with proposed order and proposed summons	Pending
* -84-64	Investigation of AVEC (Electric-Rural Village)	Alleged unsafe facilities, inadequate management practices, and overrecovery of rates	Followup to Order requiring correction of Svs Safety Hazards (1978) as a Result of Legislative Inquiry and two resolutions from North & Northwest Ak. Mayors Conference	Pending
* -84-65	Investigation of Norfolk (Water Utility-Eagle River)	Alleged inadequate management practices & inferior Service for temporary Period of Time	54 complaint ltrs about water service	Pending

APUC Comments on Proposed Statutory Revisions

AS 42.05.711(h) - The provisions of this chapter other than AS 42.05.221 - 42.05.251 do not apply to a cooperative organized under AS 10.25, unless that cooperative elects to be subject to the provisions of this chapter under the procedure described in AS 42.05.712. [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.]

Impact:

- * Affects regulated cooperatives, both telephone and electric.
- * Eliminates Commission authority to take action on service discontinued or suspended by a cooperative utility.
- * Eliminates Commission authority to modify or revoke a certificate of a cooperative utility.
- * Eliminates Commission authority to approve the transfer of a cooperative's certificate to another utility.
- * Grants to a cooperative a certificate of public convenience and necessity in perpetuity without regard for changes in public need or in fitness and ability of the cooperative utility to serve.

Comments:

This language, like proposed changes to .381(c) and .431(a), virtually eliminates Commission oversight of cooperative utilities after the initial certificate is granted. The Commission believes this suggested change to be contrary to the interests of the consuming public.

APUC Comments on Proposed Statutory Revisions

AS 42.05.712(a) - A utility or cooperative which may elect to be regulated under [exempt from] the provisions of this chapter shall poll its subscribers or members in the manner described in this section.

AS 42.05.712(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 to be regulated [exemption] under (a) of this section.

Impact:

- * Affects regulated cooperatives, both telephone and electric.
- * Legislatively deregulates all cooperatives, some of whose members have already voted to retain regulation.
- * There is no procedure provided for the consumers to petition the Commission for regulation. Utility management would determine if there would be a vote on regulation.
- * Even if a vehicle existed for consumer initiative, a vote to opt into regulation would come only in a crisis situation, where irreversible harm may have already occurred.

Comments:

This proposal is contrary to position of some cooperative boards of directors, (see comments of J. Murphy, President of Chugach to House and Senate Commerce Committees, March 1985).

The Commission believes that it is the Legislature's prerogative to determine what utilities require regulation to protect the public interest. The Commission believes that the current procedure of allowing consumers who are satisfied with the management of their cooperative to vote on "opting out" represents the approach most in the public interest.

APUC Comments on Proposed Statutory Revisions

AS 42.05.720(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;]

Impact:

- * Affects all regulated utilities.
- * Intent of the proposed revision is unclear.

Comments:

Without some clarifying language or other indication of the drafter's intent, it is not possible for the Commission to provide meaningful comment regarding the potential impact of the proposed revision.

APUC Comments on Proposed Statutory Revisions

AS 42.05.720(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;]

Impact:

- * Affects all regulated utilities.
- * Intent of the proposed revision is unclear.

Comments:

Without some clarifying language or other indication of the drafter's intent, it is not possible for the Commission to provide meaningful comment regarding the potential impact of the proposed revision.

CITY OF KODIAK
REGULATION NUMBER 03-85

A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK, ALASKA, ENCOURAGING
THE ALASKA STATE LEGISLATURE TO ADOPT THE 1985 UNIFORM PLUMBING CODE

WHEREAS, reliance by the State on the 1979 Uniform Plumbing Code has
unnecessarily burdened local developers and contractors by denying them the
use of current proven products and practices; and

WHEREAS, the adoption of the 1985 Uniform Plumbing Code would help
alleviate local problems caused by use of such an outdated code,

NOW, THEREFORE, BE IT ESTABLISHED by the Council that the Alaska State
Legislature is hereby urged to pass legislation adopting the 1985 Uniform
Plumbing Code early in the 1985 session.

BE IT FURTHER RESOLVED that copies of this resolution be sent to:

The Honorable Fred Chernoff, Alaska State Senator
The Honorable Uwe Thompson, Alaska State Representative
David Gray, Lobbyist for the City of Kodiak

PASSED AND APPROVED this 10TH day of JANUARY, 1985.

CITY OF KODIAK


MAYOR

ATTEST:


CITY CLERK

CITY OF KODIAK
RESOLUTION NUMBER 25-85

A RESOLUTION OF THE CITY OF KODIAK SUPPORTING HOUSE BILL 63 AND OPPOSING SENATE BILL 238 RELATED TO THE PLUMBING CODE

WHEREAS, both House Bill 63 and Senate Bill 238 have been filed in the first session of the Fourteenth Legislature; and

WHEREAS, House Bill 63 would adopt the 1985 Plumbing Code and, as introduced, is responsive to our needs; and

WHEREAS, Senate Bill 238, which would also adopt the 1985 Plumbing Code, restricts the expanded use of plastic pipe as allowed in said Plumbing Code; and

WHEREAS, it is to the advantage of our community to adopt the 1985 Plumbing Code without amendments which would restrict the use of plastic pipe beyond the restrictions found in the Plumbing Code as published by the International Association of Plumbers and Mechanical Officials,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kodiak, Alaska, that the Fourteenth State Legislature is respectfully urged to pass House Bill 63 in its present form and to oppose Senate Bill 238.

BE IT FURTHER RESOLVED that copies of this resolution be sent to:

The Honorable Bill Sheffield, Governor of Alaska
The Honorable Fred Sheroff, Alaska State Senator
The Honorable Dave Thompson, Alaska State Representative

PASSED AND APPROVED this 25th day of MARCH, 1985.

CITY OF KODIAK

ATTEST:

Marella S. Sells
CITY CLERK

[Signature]
CITY MANAGER

HB 314 File Contents

April 29, 1985

- 1) Overview -- Roger Poppe, Committee Staff
- 2) Proposed Draft Legislation -- Senate L & C -- April 22, 85
- 3) Written response to Proposed Draft Legislation -- April 23, 85
- 4) Additional Proposed Legislation for Telephone utilities, and written response by APUC
- 5) Copy of CSSB 247

Offered: 4/25/85
Referred: Rules

Original sponsor: Ferguson

1 IN THE SENATE
2 CS FOR SENATE BILL NO. 247 (L&C)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - FIRST SESSION
5 A BILL.
6 For an Act entitled: "An Act extending the termination date of the Alaska
7 Public Utilities Commission; and providing for an
8 effective date."
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
10 * Section 1. AS 44.66.010(a)(4) is amended to read:
11 (4) Alaska Public Utilities Commission (AS 42.05.010) --
12 June 30, 1986 [1985];
13 * Sec. 2. This Act takes effect immediately in accordance with AS 01.-
14 10.070(c).

BY THE LABOR AND
COMMERCE COMMITTEE

M E M O R A N D U M

To: All Members, House Labor and Commerce Committee

From: Roger Poppe, Committee Aide

Date: April 29, 1985

Subject: Overview, HB 314

Since the public hearing on the APUC sunset which was held on April 3, 1985, Chairman Navarre and Chairman Zharoff have had further meetings with representatives of the utilities, and with a representative of APUC. Subsequently, it was agreed that the Senate L & C draw up a draft bill that would get beyond simple extension of sunset such as HB 314 and CSSB 247 propose, and try to resolve specific areas of concern.

With this goal of compromise in mind, a meeting was held on Tuesday, April 23, 1985 from 1:00 to 5:00 with the following people present: Senator Zharoff and Aide Michael Thill; Representative Navarre and Aide Roger Poppe; Dave Hutchens of Alaska Rural Electric Cooperatives Association; Larry Markley and Julie Simon of Chugach Electric; APUC Commissioner Carolyn Guess, Exec. Director Jack Farleigh, and Virginia Rush, the APUC attorney for the APUC. The proposed Senate bill draft and the APUC's response were discussed, point by point (see file).

At the end of 4 hours, only 4 of the 16 points to be discussed had been covered, and judging from the tenor of the discussion, it was apparent that major differences remained. As a result, it was decided that there would not be enough time left in this first session to work them out. So the Chairmen reluctantly decided that the best approach might be to spend the interim working on and resolving the issues.

There was some consideration as to what to do legislatively to accommodate this interim process. On the one hand, no legislative action now would lead to sunset. However, this process takes a year and it would not be finalized until June 30, 1986. With new legislation in place before the second session ends, we could prevent the APUC from sunseting next year, so this approach was considered. After checking with Billy Berrier for a legal opinion, it was established that while sunseting would not drastically affect many Boards for a year (eg. look at Barber and Hairdressers or Pharmacy), it would have a profound effect on regulatory boards such as APUC. It would mean that APUC could continue to work on cases this coming year, but could not accept any new cases. This was considered unacceptable.

There was also a consideration that we simply extend the Board for 4 more years, and not develop any new corrective legislation for four more years. However, there has been much widespread concern that has been expressed by the utilities this year for the first time; and we have to look at the problems that will be developing before the next set of sunset hearings in 1990, such as the withdrawal of federal REA loans from the electrical coops, which currently are used to fund most bush electrical energy. Consequently, the Chairmen propose as a compromise that the APUC be extended for 1 year to give us time to examine problems in detail.

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 23, 1985

Honorable Fred F. Zharoff
Chairman, Senate Labor and
Commerce Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Honorable Mike Navarre
Chairman, House Labor and
Commerce Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Zharoff and Representative Navarre:

This letter and its enclosures are submitted in response to your meeting of April 11, 1985 with Jack Fauleigh, Executive Director of the Commission and representatives of ARECA and Chugach Electric Association. The Commission's comments include an initial assessment of the impact of the proposed statutory changes and our reaction to the effect of those changes.

The Commission has addressed only those proposed amendments in which it was indicated that there is active legislative interest. The Commission did not address proposed revisions to AS 42.05.091, .291(c) and (d) since it was our understanding that those sections would not be given consideration at this time. However, if that is not the case, the Commission will provide comment on those sections immediately.

The Commission has noted for each proposed amendment which utilities would be affected by the changes; we believe this information is an extremely critical consideration for legislative deliberation. The Commission regulates utilities as large as Aiascom, serving over 400,000 consumers and collecting annual revenues in excess of \$276 million to small utilities such as Pelican Utility Company, serving 76 customers with annual revenues of \$257,000. It appears to the Commission that the proposed changes are being suggested by only one segment of the regulated industry, and we would note that among that industry there is not unanimous support for all the changes suggested by ARECA.

In regard to those changes which would substantially alter the regulation of cooperative utilities, it would be preferable to the Commission, to deregulate cooperatives rather than to give the appearance of regulation through verbiage which in effect eliminates Commission review and authority.

Senator Zharoff
Representative Navarre

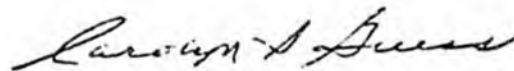
-2-

April 23, 1985

It should be remembered that the Commission is charged with the responsibility of protecting the utility consumers because the State has seen fit through AS 42.05 to grant public and private utilities monopoly power. We cannot emphasize too strongly the argument that the needs of the regulated industry to operate within reasonable regulatory constraints must be balanced with the protection that the existing statutory language of AS 42.05 provides to the consumers of regulated monopoly businesses.

Sincerely,

ALASKA PUBLIC UTILITIES COMMISSION



Carolyn S. Guess, Chairman

CSG/wfs2192W
42285a
Enclosures

Senator Zharoff
Representative Navarre

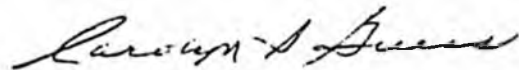
-2-

April 23, 1985

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Sincerely,

ALASKA PUBLIC UTILITIES COMMISSION



Carolyn S. Guess, Chairman

CSG/wfs2192W
42285a
Enclosures

APUC Comments on Proposed Statutory Revisions

Section 42.05.141(a)(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 power of the commission shall be liberally construed to accomplish its stated purpose];

Impact:

- * Affects all regulate' utilities
- * Removes flexibility to deal with varied situations that benefit both utilities and consumers.
- * Could create judicial confusion as to how to interpret Commission authority.
- * May eliminate Commission authority to issue temporary certificates of public convenience and necessity.

Comments:

Language similar to the current language exists in the statutes of most states and is necessary for a utility commission to achieve effective regulation over a wide variety of utilities operating under different circumstances.

Repeal of the existing language represents a "broad brush" attempt to limit the Commission's power. The Commission respectfully suggests that it would be preferable for the Legislature to specifically address any particular powers of the Commission which are of concern.

APUC Comments on Proposed Statutory Revisions

AS 42.05.141(d) - Notwithstanding any other provision to the contrary, none of the general powers and duties of the commission operate to divest the board of directors of a cooperative organized under AS 10.25 from exercising management authority for the conduct of that cooperative's affairs.

Impact:

- * Affects regulated cooperative utilities, both electric and telephone.
- * Eliminates traditional regulatory oversight.
- * Language contained in this provision may conflict with Commission's responsibilities articulated in AS 42.05.511.
- * Intent of this provision is not clear.

Comments:

Primary responsibility for utility management resides within the sound discretion of its board of directors and appointed managers. However, this has and should be subject to regulatory oversight under an effective regulatory scheme. The proposed revision appears to either eliminate entirely this oversight or radically curtail it (see also comments under proposed AS 42.05.511(a)).

APUC Comments on Proposed Statutory Revisions

AS 42.05.221(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] parties involved[.], including but not limited to utilities, commission staff and consumer intervenors, other than individual consumers.

Impact:

- * Affects all regulated utilities.
- * Intent of the proposed revision is unclear.
- * Does not appear to change existing Commission practice.

Comments:

In practice, this section which relates to utility certification and service area boundaries has been generally used to allocate costs of hearing officers in competing cable television certification proceedings. The only other instance where this section of the statute has been invoked was the result of a ~~Superior~~ ^{Supreme} Court decision to remand a case to the Commission to receive further evidence in order to finalize the service area boundaries of Chugach Electric Association and Municipal Light and Power.

Absent clarifying language or some other indication of the drafter's intended purpose, the Commission is unable to offer a meaningful response beyond that noted above.

APUC Comments on Proposed Statutory Revisions

AS 42.05.381(c) - In establishing the revenue requirement of a cooperative organized under AS 10.25 the commission shall, upon application of the cooperative, allow the cooperative to, without further filing, adjust rates to earn a times interest earned ratio within a range approved by the commission the results of such adjustments shall be subject to verification by the commission and the operation of this adjustment procedure shall be reviewed by the commission at reasonable intervals.

Impact:

- * Affects regulated cooperative utilities, both electric and telephone.
- * Allows cooperatives whose rates are currently regulated by the Commission to modify rates merely by making application (of unspecified content) to the Commission.
- * Allows modification of rates without justification by a utility, without notice to or recourse by consumers, and without review by the Commission to determine that the rates are just and reasonable as otherwise required by AS 42.05.381.
- * Allows rate increases to achieve a Commission established times interest earned ratio (TIER) without restriction as to frequency and amount of changes, and without requiring a concomitant decrease should the cooperative exceed the allowed TIER.
- * Allows modification of rates charged to consumers without consideration of discrimination between classes of service, i.e., residential and commercial, as prohibited by AS 42.05.391.

Comments:

Because rate regulation is a cost plus exercise, this proposed change partially deregulates cooperative rates. The adequacy of a return or TIER is a function of the level of a utility's expenses. Therefore an allowable TIER range while giving the appearance of reasonableness, in effect, provides no restraints on the expenses of a cooperative.

It should be noted that the Commission provides for automatic adjustment of a energy utility's fuel costs, generally its largest expense item, with Commission verification subsequent to the adjustment.

The Legislature should consider the fact that the proposed revision implements a far reaching and not commonly utilized rate methodology with a simplistic statement in the statute.

APUC Comments on Proposed Statutory Revisions

Where final decision making occurs outside the initial six month suspension period (which is less than 10% of our cases), it is (1) because a utility has requested the delay because of its constraints; (2) the utility and Commission staff have agreed to a delay for mutually beneficial reasons; (3) the utility proceeding is unusually large or complex, i.e., Alascom's pending rate design case; (4) generic proceedings as a result of federal decisions affecting all of one regulated industry, i.e., Federal Communications Commission decisions mandating State Commission actions; and (5) lack of Commissioner support staff to assist in preparing legally defensible, written decisions (see page 470 of APUC budget document for verification).

The proposed amendment allows no extension of the six months for those cases which are so complex as to make meaningful review by the Commission, and meaningful participation by intervenors, impossible in the six-month period. Nor does it make an exception for the many instances where the utility itself requests a delay. The Legislature should also consider the balance achieved under the current provision. At present, the Commission is able to fairly consider the interests of both the utility and the consumer as it decides tariff changes. The utility is protected by the Commission's ability to grant interim relief during the period of full review of the permanent request. The consumer is protected by the Commission's careful consideration of the issues, and the potential impact on rate payers that takes place during the suspension period. Imposition of an absolute decision deadline will certainly impact the protection now available to the consumer and create an imbalance of consideration in favor of the utility that may not be the real intent of the Legislature.

The Commission notes that an alternative proposal may be considered which would, in effect, add an additional six months to the suspension period for a total suspension period of 12 months. The impact statements presented above would equally apply to a proposed 12-month suspension. There would be some minimal change in the fiscal impact which can be forecasted at the Committee's request.

AS 42.05.421(A)(1) FISCAL NOTE BASED ON MANDATORY SIX MONTH SUSPENSION PERIOD

LINE ITEM	FY '85	FY '86	FY '87	FY '88	FY '89	FY '90
100-PERSONAL SERVICES: MERIT OR NEGOTIATED SALARY INCREASES NOT INCLUDED)						
Hrg. Officer, R 24A (ex.)	68,967	68,967	68,967	68,967	68,967	68,967
Paralegal I, R 13A	34,076	34,076	34,076	34,076	34,076	34,076
Paralegal I, R 13A	34,076	34,076	34,076	34,076	34,076	34,076
Economist, R 20A	53,306	53,306	53,306	53,306	53,306	53,306
AST II, R 8A	25,947	25,947	25,947	25,947	25,947	25,947
100 TOTAL =	<u>216,372</u>	<u>216,372</u>	<u>216,372</u>	<u>216,372</u>	<u>216,372</u>	<u>216,372</u>
200-TRAVEL (THIS LINE ITEM INCLUDES A 0% INFLATION FACTOR 86-90)						
	-0-	-0-	-0-	-0-	-0-	-0-
300-CONTRACTUAL (NO INFLATION FACTOR)						
Computer Programming	-0-	-0-	-0-	-0-	-0-	-0-
Other	-0-	-0-	-0-	-0-	-0-	-0-
300 TOTAL =	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
400-COMMODITIES (THIS LINE ITEM INCLUDES A 0% INFLATION FACTOR 86-90)						
Hrg. Officer, R 24A (ex.)	400	400	400	400	400	400
Paralegal I, R 13A	400	400	400	400	400	400
Paralegal I, R 13A	400	400	400	400	400	400
Economist, R 20A	400	400	400	400	400	400
AST II, R 8A	400	400	400	400	400	400
	<u>2,000</u>	<u>2,000</u>	<u>2,000</u>	<u>2,000</u>	<u>2,000</u>	<u>2,000</u>
500-EQUIPMENT (ONE TIME PURCHASES, FIRST YEAR ONLY)						
Hrg. Officer, R 24A (ex.)	2,025	-0-	-0-	-0-	-0-	-0-
Paralegal I, R 13A	2,025	-0-	-0-	-0-	-0-	-0-
Paralegal I, R 13A	2,025	-0-	-0-	-0-	-0-	-0-
Economist, R 20A	2,025	-0-	-0-	-0-	-0-	-0-
AST II, R 8A	1,200	-0-	-0-	-0-	-0-	-0-
	<u>9,300</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
600-LAND (NO INFLATION AND FORMULA IS SQ. FT. X 12 MONTHS X \$2.00 PER SQ. FT.)						
Hrg. Officer, R 24A (ex.)	3,000	3,000	3,000	3,000	3,000	3,000
Paralegal I, R 13A	3,000	3,000	3,000	3,000	3,000	3,000
Paralegal I, R 13A	3,000	3,000	3,000	3,000	3,000	3,000
Economist, R 20A	3,000	3,000	3,000	3,000	3,000	3,000
AST II, R 8A	1,992	1,992	1,992	1,992	1,992	1,992
	<u>13,992</u>	<u>13,992</u>	<u>13,992</u>	<u>13,992</u>	<u>13,992</u>	<u>13,992</u>
GRAND TOTAL	241,664	232,364	232,364	232,364	232,364	232,364

AS 42.05.421(A)(1) FISCAL NOTE BASED ON MANDATORY SIX MONTH SUSPENSION PERIOD

LINE ITEM	FY '85	FY '86	FY '87	FY '88	FY '89	FY '90
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Economist, R 20A	53,306	53,306	53,306	53,306	53,306	53,306
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	-0-	-0-	-0-	-0-	-0-	-0-
300-CONTRACTUAL (NO INFLATION FACTOR)						
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Other	-0-	-0-	-0-	-0-	-0-	-0-
300 TOTAL =	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
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	<u>2,000</u>	<u>2,000</u>	<u>2,000</u>	<u>2,000</u>	<u>2,000</u>	<u>2,000</u>
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Economist, R 20A	3,000	3,000	3,000	3,000	3,000	3,000
AST II, R 8A	1,992	1,992	1,992	1,992	1,992	1,992
	<u>13,992</u>	<u>13,992</u>	<u>13,992</u>	<u>13,992</u>	<u>13,992</u>	<u>13,992</u>
GRAND TOTAL	241,664	232,364	232,364	232,364	232,364	232,364

APUC Comments on Proposed Statutory Revisions

AS 42.05.431(a) - 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. The financial covenants contained in mortgages and other debt instruments of cooperative utilities organized under AS 10.25 are likewise valid and enforceable, and rates set by the commission must be adequate to merit those covenants. Municipal utilities and cooperative utilities organized under AS 10.25 shall file an informational copy of debt instruments affecting rates with the commission upon execution.

Impact:

- * Affects regulated cooperative utilities, both telephone and electric, and regulated municipal utilities.
- * Requires the Commission to automatically grant rates which will generate income sufficiently in excess of expenses to cover any financial covenants that cooperatives might have in their debt instruments, regardless of their reasonableness.
- * Eliminates Commission review of whether utility facilities are used and useful or otherwise prudent, and replaces it with whatever terms the utility and its lenders have agreed to.

Comments:

As proposed, .381(c) eliminates Commission review of cooperative expenses, this provision eliminates Commission review of the reasonableness of cooperative debt instruments. REA, on whose behalf these changes were suggested according to ARECA, has been contacted by the Commission and has indicated it (1) does not require the changes, (2) it was not contacted about the proposed changes, and (3) it has no problems with the Commission's past decision making under current statutory language.

APUC Comments on Proposed Statutory Revisions

AS 42.05.431(b) - The commission may not alter, change, modify or amend wholesale power agreements after they are in effect.

Impact:

- * Affects all regulated utilities.
- * Is contrary to REA requirements.
- * Destroys Commission ability to protect wholesale and retail consumers.
- * Eliminates Commission oversight of a potentially large element of a utility's operating expenses and revenues.

Comments:

Evidence in a Commission proceeding confirms that until the Commission exercised its jurisdiction over Chugach Electric's wholesale rates, the consumers in Anchorage were subsidizing the rates of Matanuska Electric and Homer Electric Association Cooperatives.

The Commission should have continuing jurisdiction over wholesale rates. Periodic review of wholesale power contracts is necessary to prevent some consumers from subsidizing other consumers.

APUC Comments on Proposed Statutory Revisions

AS 42.05.431(c) - Permanent rates shall not be subject to refund.

Impact:

- * Affects all regulated utilities.
- * Eliminates Commission authority to make refundable permanent rates when evidence provided by a utility indicates that its rates are excessive and a Commission investigation is underway.
- * If rates were ultimately found excessive, the customer would not be entitled to any refund for the period during which the rates were under investigation by the Commission, and arguably under appeal in the courts.

Comments:

Permanent rates are ordinarily not refundable. However, if costs have decreased or revenues increased substantially the Commission has an obligation to determine whether current permanent rates are excessive, just as the Commission has an obligation to determine when a utility requests an interim (emergency) rate increase whether current permanent rates are too low. Interim rate increases are generally granted within 45 days of a utility's request and are refundable. Where the Commission becomes aware, via credible evidence, that rates are too high, current rates are declared interim and refundable, subject to the Commission's final determination. This approach protects both the utility and the ratepayer under either scenario. Legislative adoption of the proposed revision would continue the utility's protected status, but would leave the consumer vulnerable during the intervening period if the investigation confirmed the rates were too high.

At this time, the Commission has made refundable, permanent rates of Matanuska Electric Association when it requested the reinstatement of a fuel surcharge that had been eliminated due to an overrecovery of revenues because of substantial growth in its service area; and permanent rates of Alaska Village Electric Cooperative when it updated its request for Power Cost Assistance and the utility's financial information indicated a substantial overrecovery of revenues.

APUC Comments on Proposed Statutory Revisions

AS 42.05.461 - 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.

Impact:

- * Affects all regulated utilities.
- * Eliminates certain data elements that are essential for rate making and full compliance with other provisions of this chapter (i.e., location of plant in service, original cost, depreciation reserve, depreciation expense, etc.).
- * Makes auditing of utility more difficult.
- * Prevents verification of whether plant is being used to provide utility services.
- * Encourage subjective instead of objective arguments in rate cases.

Comments:

Continuing Property Records (CPR's) provide a complete record of each type of property owned by a utility. The Commission uses these records to verify the net value of plant on which a utility is allowed to earn a return and for which a depreciation expense is allowed.

In order for the utility to prove that its investment is being used for utility service as required by AS 42.05.441(b) without adequate accounts and records, it is anticipated that additional utility funds would be expended to prove to the Commission that utility plant exists and to verify its original cost. This expense, which the Commission believes is unnecessary, would be passed on to the ratepayer.

APUC Comments on Proposed Statutory Revisions

AS 42.05.511(a) - [The commission may investigate the management of a public utility,] In a rate proceeding, the commission has the burden of proving that the management practices 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] are inefficient or unreasonable practices which adversely affect the cost or quality of service of the public utility.

Impact:

- * Affects all regulated utilities.
- * There is an immediate conflict between the proposed language in 511(a) and the existing language in 511(c).
- * Effectively eliminates Commission oversight into management practices of a utility.
- * Burden is shifted from the utility to Commission staff and provides an opportunity for a utility so inclined to slow-down an investigation.
- * Could result in unreasonable delay in approving permanent rates which could jeopardize utility funding and which arguably will result in increased litigation.
- * If management practices can only be reviewed in the context of rate proceedings, then the Commission is forced either to expand a management investigation into a rate proceeding or to regularize review of management practices during a rate proceeding. In either event, this would unnecessarily complicate and lengthen rate proceedings as well as create delays in timely Commission response to pressing management problems affecting service quality.

Comments:

Management investigations are few and instituted only after documented evidence that serious problems affecting the safety, reliability or quality of a utility's service exists. Exhibit 1 shows 14 investigations during a four-year period.

APUC Comments on Proposed Statutory Revisions

AS 42.05.511(a) - [The commission may investigate the management of a public utility,] In a rate proceeding, the commission has the burden of proving that the management practices 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] are inefficient or unreasonable practices which adversely affect the cost or quality of service of the public utility.

Impact:

- * Affects all regulated utilities.
- * There is an immediate conflict between the proposed language in 511(a) and the existing language in 511(c).
- * Effectively eliminates Commission oversight into management practices of a utility.
- * Burden is shifted from the utility to Commission staff and provides an opportunity for a utility so inclined to slow-roll an investigation.
- * Could result in unreasonable delay in approving permanent rates which could jeopardize utility funding and which arguably will result in increased litigation.
- * If management practices can only be reviewed in the context of rate proceedings, then the Commission is forced either to expand a management investigation into a rate proceeding or to regularize review of management practices during a rate proceeding. In either event, this would unnecessarily complicate and lengthen rate proceedings as well as create delays in timely Commission response to pressing management problems affecting service quality.

Comments:

Management investigations are few and instituted only after documented evidence that serious problems affecting the safety, reliability or quality of a utility's service exists. Exhibit 1 shows 14 investigations during a four-year period.

Docket Number	Docket Title	Reason for Docket	Documentation	Result
1-83-73	Wavilla Refuse, Inc. complaint against Charles Jordan d/b/a Charles's Garbage & Trash Collection (Garbage Hat-Su Borough)	Alleged Unauthorized Provision of Service Within an Existing Certificated Area	Memorandum from existing carrier in support of complaint with proposed order and proposed summons	Pending
* -84-64	Investigation of AVEC (Electric-Rural Village)	Alleged unsafe facilities, inadequate management practices, and overrecovery of rates	Followup to Order requiring correction of S&G Safety Hazards (1978) as a Result of Legislative Inquiry and two resolutions from North & Northwest Ak. Mayors Conference	Pending
* -84-65	Investigation of Norfolk (Water Utility-Eagle River)	Alleged inadequate management practices & inferior Service for recovery Period of Time	SA complaint ltr about water service	Pending

APUC Comments on Proposed Statutory Revisions

AS 42.05.711(h) - The provisions of this chapter other than AS 42.05.221 - 42.05.251 do not apply to a cooperative organized under AS 10.25, unless that cooperative elects to be subject to the provisions of this chapter under the procedure described in AS 42.05.712. [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.]

Impact:

- * Affects regulated cooperatives, both telephone and electric.
- * Eliminates Commission authority to take action on service discontinued or suspended by a cooperative utility.
- * Eliminates Commission authority to modify or revoke a certificate of a cooperative utility.
- * Eliminates Commission authority to approve the transfer of a cooperative's certificate to another utility.
- * Grants to a cooperative a certificate of public convenience and necessity in perpetuity without regard for changes in public need or in fitness and ability of the cooperative utility to serve.

Comments:

This language, like proposed changes to .381(c) and .431(a), virtually eliminates Commission oversight of cooperative utilities after the initial certificate is granted. The Commission believes this suggested change to be contrary to the interests of the consuming public.

1
2 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

3 SENATE BILL NO.

4 IN THE LEGISLATURE OF THE STATE OF ALASKA

5 FOURTEENTH LEGISLATURE - FIRST SESSION

6 A BILL

7 For an Act entitled: "An Act relating to public utilities."

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

9 * Section 1. AS 42.05.141(a) is amended to read:

10 (a) The Alaska Public Utilities Commission may

11 (1) regulate every public utility engaged or proposing to
12 engage in such a business inside the state, except to the extent
13 exempted by AS 42.05.711 [, AND THE POWERS OF THE COMMISSION SHALL BE
14 LIBERALLY CONSTRUED TO ACCOMPLISH ITS STATED PURPOSES];

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

18 (3) make or require just, fair and reasonable rates, clas-
19 sifications, regulations, practices, services and facilities for a
20 public utility;

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

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

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

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2 complaint or other proceeding;

3 (7) examine witnesses and offer evidence in any proceeding
4 affecting the state and initiate or participate in judicial proceed-
5 ings to the extent necessary to protect and promote the interests of
6 the state.

7 * Sec. 2. AS 42.05.141 is amended by adding a new subsection to read:

8 (d) Notwithstanding any other provision of this chapter, the
9 general powers and duties of the commission under this section may not
10 be used to divest the board of directors of a cooperative organized
11 under AS 10.25 of its management authority over the cooperative. For
12 purposes of this section, management authority includes the authority
13 to determine staffing patterns, wage and salary scales and agreements,
14 investment policies and practices, and purchasing and payment
15 arrangements with affiliated interests.

16 * Sec. 3. AS 42.05.221(e) is amended to read:

17 (e) The commission may employ professional consultants to assist
18 it in administering the provisions of this section and may apportion
19 the expenses relating to this administration among [THE] competing
20 utilities and other interested parties, including commission staff and
21 consumer intervenors, other than individual consumers [INVOLVED].

22 * Sec. 4. AS 42.05.361 is amended by adding a new subsection to read:

23 (d) The commission may approve an automatic annual rate adjust-
24 ment clause inserted in a tariff filing by a cooperative utility
25 organized under AS 10.25.

26 * Sec. 5. AS 42.05.421(a) is amended to read:

27 (a) When a tariff filing is made containing a new or revised
28 rate, classification, rule, regulation, practice, or condition of
29 service the commission may, either upon written complaint or upon its
own motion, after reasonable notice, conduct a hearing to determine

1 the reasonableness and propriety of the filing. Pending such a hear
2 ing the commission may, by order stating the reasons for its action
3 suspend the operation of the tariff filing for
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5 (1) a [AN INITIAL] period not longer than six months beyond
6 the time when it would otherwise go into effect if the annual gross
7 revenues of the utility making the filing are more than \$3,000,000
8 and

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

13 * Sec. 6. AS 42.05.421 is amended by adding a new subsection to read:

14 (e) If the commission conducts a hearing to determine the
15 reasonableness and propriety of a tariff filing under (a) of this
16 section and the commission fails to issue a final order on the tariff
17 filing within 12 months after the date of the tariff filing, the
18 tariff filing takes effect on a permanent basis.

19 * Sec. 7. AS 42.05.431 is amended by adding new subsections to read:

20 (b) A cooperative utility organized under AS 10.25 may covenant
21 with mortgage purchasers or other debt purchasers regarding the rate
22 of the cooperative. If the mortgage or other debt instrument contain
23 ing the covenant is purchased and an actual mortgage or debt purchase
24 and holder exists, the mortgage or debt covenant is valid and enforce
25 able and the commission shall fix a rate necessary to provide for th
26 adequate coverage of the mortgage or debt covenant.

27 (c) A municipally owned utility and a cooperative utility
28 organized under AS 10.25 shall file with the commission a copy of
29 executed mortgages or other debt instruments containing covenant
affecting rates.

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2 (d) Notwithstanding any other provision of this chapter, a
3 wholesale power agreement filed as part of a tariff filing may not be
4 altered, modified, changed, or amended by the commission after the
5 effective date of the tariff filing.

6 (e) The commission may not require a public utility to directly
7 or indirectly refund, rebate, or remit in any manner or by any device
8 any portion of a permanent rate approved by the commission that is
9 later found by the commission to be unjust, unreasonable, or unduly
10 discriminatory or preferential.

11 * Sec. 8. AS 42.05.461 is amended to read:

12 Sec. 42.05.461. CONTINUING PROPERTY RECORDS. The commission may
13 require a public utility to establish, provide, and maintain as a part
14 of its system of accounts, continuing property records segregated by
15 the year of placement in service, including a list or inventory of all
16 the units of tangible property used or useful in the public service [
17 SHOWING THE CURRENT LOCATION OF THE PROPERTY UNITS BY DEFINITE REFER
18 ENCE TO THE SPECIFIC LAND PARCELS UPON WHICH THE UNITS ARE LOCATED OR
19 STORED. THE COMMISSION MAY REQUIRE A PUBLIC UTILITY TO KEEP ACCOUNT
20 AND RECORDS IN SUCH A MANNER AS TO SHOW, CURRENTLY, THE ORIGINAL COST
21 OF THE PROPERTY WHEN FIRST DEVOTED TO THE PUBLIC SERVICE, AND THE
22 RELATED RESERVE FOR DEPRECIATION]. Each public utility with annual
23 revenues exceeding \$100,000 shall keep continuing property records.

24 * Sec. 9. AS 42.05.511(c) is repealed and reenacted to read:

25 (c) In a rate proceeding, the commission has the burden of
26 proving that the management practices of a public utility, including
27 staffing patterns, wage and salary scales and agreements, investment
28 policies and practices, purchasing and payment arrangements with
29 affiliated interests, are inefficient and unreasonable practices that
adversely affect the cost or quality of service of the public utility

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2 * Sec. 10. AS 42.05.711(h) is repealed and reenacted to read:

3 (h) A cooperative utility organized under AS 10.25 is exempt
4 from the provisions of this chapter, other than AS 42.05.221 -
5 42.05.281, unless the cooperative elects to be regulated under the
6 provisions of this chapter according to the procedure described in
7 AS 42.05.713.

8 * Sec. 11. AS 42.05 is amended by adding a new section to read:

9 Sec. 42.05.713. REGULATION BALLOT. (a) By using the procedure
10 described in AS 42.05.712, a cooperative utility organized under
11 AS 10.25 may elect regulation under this chapter in the same manner
12 that a utility or cooperative may elect exemption from the provisions
13 of this chapter.

14 (b) A cooperative that elects to be regulated under this section
15 may elect to terminate its regulation in the same manner.
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March 15, 1985

Introduced: _____
Referred: _____

IN THE _____ BY _____

_____ BILL NO. _____

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: " _____ "

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

SECTION 1. AS 42.05.091. Compensation. (a) 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.

(b) A salary warrant may not be issued to a commissioner until the commissioner has filed with the state officer designated to issue salary warrants an affidavit that no matter referred to the commissioner for opinion or decision has been uncompleted or undecided by the commissioner for a period of more than six months.

1 SECTION 2. AS 42.05.141 is amended to read:

2 The Alaska Public Utilities Commission may

3 (1) regulate every public utility engaged or proposing to engage
4 in such a business inside the state, except to the extent exempted by
5 AS 42.05.711 [and the power of the commission shall be liberally con-
6 strued to accomplish its stated purpose.];

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

10 (3) make or require just, fair and reasonable rates, classifica-
11 tions, regulations, practices, services and facilities for a public
12 utility;

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

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

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

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

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

3 (c) In the establishment of electric service rates under this
4 chapter the commission shall promote the conservation of resources
5 used in the generation of electric energy.

6 (d) Notwithstanding any other provision to the contrary, none of
7 the general powers and duties of the commission operate to divest the
8 board of directors of a cooperative organized under AS 10.25 from
9 exercising management authority for the conduct of that cooperative's
10 affairs.

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12 SECTION 3. AS 42.05 221 is amended to read:

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

23 (b) All certificates of convenience and necessity issued to a
24 public utility before July 1, 1970 remain in effect but they are sub-
25 ject to modification where there are areas of conflict with public

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1 utilities that have not previously been required to have a certificate
2 or where there is a substantial change in circumstances.

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

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

17 (1) delineate the service area boundaries of each in those areas
18 of competition;

19 (2) eliminate existing duplication and paralleling to the fullest
20 reasonable extent;

21 (3) preclude future duplication and paralleling;

22 (4) provide for the exchange of customers and facilities for the
23 purposes of providing better public service and of eliminating
24 duplication and paralleling; and

25 (5) provide such other mutually equitable arrangements as would
26 be in the public interest.

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1 (e) The commission may employ professional consultants to assist
2 it in administering the provisions of this section and may apportion
3 the expenses relating to this administration among the competing
4 [utilities] parties involved[.], including but not limited to
5 utilities, commission staff and consumer intervenors, other than
6 individual consumers.

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8 SECTION 4. AS 42.05.291 shall be amended as follows:

9 (a) Each public utility shall furnish and maintain adequate,
10 efficient and safe service and facilities. This service shall be
11 reasonably continuous and without unreasonable interruption or delay.

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

16 (c) Except in the case of a cooperative organized under AS 10.25,
17 [T]the commission may, upon its own motion or upon complaint, after
18 providing reasonable notice and opportunity for hearing, adopt as to
19 service and facilities, including the crossing of facilities, just and
20 reasonable standards, classifications, regulations, and practices to
21 be furnished, imposed, observed, and followed by public utilities;
22 adopt adequate and reasonable standards for the measurement of quantity,
23 quality, pressure, initial voltage, or other conditions pertaining to
24 the supply of the service of public utilities; adopt reasonable regula-
25 tions for the examination and testing of the service, and for the
26 measurement of it; adopt or approve reasonable regulations, specifica-

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1 tions, and standards to secure the accuracy of meters and appliances
2 for measurement; and provide for the examination and testing of appli-
3 ances used for the measurement of a service of a public utility. In
4 doing so, the commission shall conform to the standard practices of
5 the industry.

6 (d) In the case of a cooperative organized under AS 10.25, the
7 commission may, upon the written petition of 15 percent of the coopera-
8 tive membership, after providing reasonable notice and opportunity for
9 hearing, adopt as to service and facilities, including the crossing of
10 facilities, just and reasonable standards, classifications, regulations,
11 and practices to be furnished, imposed, observed, and followed by public
12 utilities; adopt adequate and reasonable standards for the measurement
13 of quantity, quality, pressure, initial voltage, or other conditions
14 pertaining to the supply of the service of public utilities; adopt
15 reasonable regulations for the examination and testing of the service,
16 and for the measurement of it; adopt or approve reasonable regulations,
17 specifications, and standards to secure the accuracy of meters and
18 appliances for measurement; and provide for the examination and testing
19 of appliances used for the measurement of a service of a public utility.
20 In doing so, the commission shall conform to the standard practices of
21 the industry.

22 [(d)] (e) If the commission, upon its own motion or upon complaint,
23 after providing reasonable notice and opportunity for hearing, finds
24 that the services or facilities of a public utility are unreasonable,
25 unsafe, inadequate, insufficient, or unreasonably discriminatory, or
26 otherwise in violation of this chapter, the commission shall prescribe,

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1 by regulation or order, the reasonable, safe, adequate, sufficient
2 service or facilities to be observed, furnished, enforced, or employed,
3 including all repairs, changes, alterations, extensions, substitutions,
4 or improvements in facilities that are reasonably necessary and proper
5 for the safety, accommodation, and convenience of the public.

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7 SECTION 5. AS 42.05.381 is amended to read:

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

13 (1) energy conservation efforts;

14 (2) public information designed to promote more efficient use of
15 the utility's facilities or services or to protect the physical plant
16 of the utility;

17 (3) informing shareholders and members of a cooperative of meet-
18 ings of the utility and encouraging attendance; or

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

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

24 (c) In establishing the revenue requirement of a cooperative
25 organized under AS 10.25 the commission shall, upon application of the
26 cooperative, allow the cooperative to, without further filing, adjust

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1 rates to earn a times interest earned ratio approved by the
2 commission.

3 [(c)] (d) A utility, whether subject to regulation by the commis-
4 sion or exempt from regulation, may not charge a fee for connection
5 to, disconnection from, or transfer of services in an amount in excess
6 of the actual cost to the utility of performing the service plus a
7 profit at a reasonable percentage of that cost not to exceed the per-
8 centage established by the commission by regulation.

9 [(d)] (e) A utility shall provide for a reduced fee or surcharge
10 for standby water for fire protection systems approved under AS
11 18.70.081 which use hydraulic sprinklers.

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13 SECTION 6. AS 42.05.421 is amended to read:

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

21 (1) [an initial] a period not longer than six months beyond the
22 time when it would otherwise go into effect if the annual gross reve-
23 nues of the utility making the filing are more than \$3,000,000; and

24 (2) not longer than 150 days before an interim rate equal to the
25 requested new rate goes into effect and not longer than one year

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1 before a permanent rate goes into effect if the annual gross revenues
2 of the utility making the filing are \$3,000,000 or less.

3 (3) failure by the commission to issue a final order on a tariff
4 filing within six months of the filing will result in the tariff filing
5 requested going into effect on a permanent basis.

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

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

25 (d) One who initiates a change in existing tariffs shall bear the
26 burden to prove the reasonableness of the change.

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SECTION 7. AS 42.05.431 is amended to read:

(a) 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. The financial covenants contained in mortgages and other debt instruments of cooperative utilities organized under AS 10.25 are likewise valid and enforceable, and rates set by the commission must be adequate to meet those covenants. Municipal utilities and cooperative utilities organized under AS 10.25 shall file an informational copy of debt instruments affecting rates with the commission upon execution.

(b) The commission may not alter, change, modify or amend wholesale power agreements after they are in effect.

(c) Permanent rates shall not be subject to refund.

1 SECTION 8. AS 42.05.461 is amended to read:

2 The commission may require a public utility to establish,
3 provide, and maintain as a part of its system of accounts, continuing
4 property records segregated by the year of placement in service
5 including a list or inventory of all the units of tangible property
6 used or useful in the public service, [showing the current location of
7 the property units by definite reference to the specific land parcels
8 upon which the units are located or stored. The commission may
9 require a public utility to keep accounts and records in such a manner
10 as to show, currently, the original cost of the property when first
11 devoted to the public service, and the related reserve for
12 depreciation.] Each public utility with annual revenues exceeding
13 \$100,000 shall keep continuing property records.

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15 SECTION 9. AS 42.05.511 is amended to read:

16 (a) [The commission may investigate the management of a public
17 utility,] In a rate proceeding, the commission has the burden of prov-
18 ing that the management practices of a public utility, including but
19 not limited to staffing patterns, wage and salary scales and
20 agreements, investment policies and practices, purchasing and payment
21 arrangements with affiliated interests [for the purpose of
22 determining] are inefficient or unreasonable practices which adversely
23 affect the cost or quality of service of the public utility.

24 (b) Where unreasonable practices are found to exist, the commis-
25 sion may, after providing reasonable notice and opportunity for
26 hearing, take appropriate action to protect the public from the

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1 inefficient or unreasonable practices and may order the public utility
2 to take the corrective action the commission may require to achieve
3 effective development and regulation of public utility services.

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

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15 SECTION 10. AS 42.05.711(h) is repealed and reenacted to read:

16 (h) The provisions of this chapter other than AS 42.05.221 -
17 42.05.251 do not apply to a cooperative organized under AS 10.25, un-
18 less that cooperative elects to be subject to the provisions of this
19 chapter under the procedure described in AS 42.05.712. [A cooperative
20 organized under AS 10.25 may elect to be exempt from the provisions of
21 this chapter, other than AS 42.05.221 - 42.05.281, under the procedure
22 described in AS 42.05.712.

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24 SECTION 11. AS 42.05.712 is amended to read:

25 (a) A utility or cooperative which may elect to be regulated
26 under [exempt from] the provisions of this chapter shall poll its

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1 subscribers or members in the manner described in this section.

2 (b) The votes of a majority of those voting in an election in
3 which at least 15 percent of the eligible subscribers or members re-
4 turn ballots are required for a utility or cooperative to elect to be
5 regulated [exemption] under (a) of this section.

6 (c) Each subscriber or member of the utility or cooperative shall
7 receive notice of an election under this section with the subscriber's
8 or member's regular bill for service at least 60 days before the date
9 set for the election. The notice shall contain impartial language
10 informing the subscribers or members that an election on the option of
11 deregulation or regulation by the Alaska Public Utilities Commission
12 will be held within 60 days and that a ballot to participate in that
13 election will be mailed or delivered to each subscriber or member of
14 the utility or cooperative with the regular bill for service. The
15 notice shall also state that a subscriber or member of the cooperative
16 is entitled to vote in the election without regard to whether the sub-
17 scriber's or member's account with the utility or cooperative is cur-
18 rent and that the ballot must be postmarked or returned to the
19 commission within 30 days after it was mailed or otherwise delivered
20 to the subscriber or member. The notice shall also announce the
21 schedule for one or more public meetings which shall provide an oppor-
22 tunity for the subscribers or members to discuss this election. The
23 public meeting or meetings shall be held not more than 30 days before
24 the ballots are mailed or distributed to those eligible to vote. A
25 cooperative may satisfy this requirement by including a discussion of
26 this election on the agenda of an annual meeting if the annual meeting

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1 is scheduled to be held not more than 30 days before the election.

2 (d) A ballot with return postage shall be mailed or delivered to
3 each subscriber or member of the utility or cooperative with the sub-
4 scriber's or member's bill for service and shall contain only the
5 following language:

6 "Shall.....(name of utility or cooperative) be regulated by
7 [exempt from regulation] by the Alaska Public Utilities
8 Commission?

9 [] YES [] NO

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11 (e) The results of an election under this section shall be certi-
12 fied by the commission within 60 days after the ballots are mailed or
13 delivered to the subscribers or members.

14 (f) During the 60 days immediately preceding an election under
15 this section a list of subscribers or members of the utility or cooper-
16 ative shall be made available at cost to any subscriber or member of
17 the utility or cooperative who requests ones. The list shall be in
18 the same form that is available to the utility or cooperative.

19 (g) The board of directors of a utility or cooperative may call
20 an election under this section on its own initiative and shall call an
21 election upon the receipt of a valid petition from its subscribers or
22 members. A petition shall be considered valid if it is signed by not
23 less than the number of subscribers or members equal to ten percent of
24 the first 5,000 subscribers or members and three percent of the
25 subscribers or members in excess of 5,000. An election under this
26 section may only be held once every two years.

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1 (h) A utility [or cooperative] which is already exempt from regu-
2 lation under this section may elect to terminate its exemption in the
3 same manner.

4
5 SECTION 12. AS 42.05.720 is amended to read:

6 (1) "affiliated interest" includes:

- 7 (A) a person owning or holding directly or indirectly five per
8 cent or more of the voting securities of a public utility engaged in
9 intrastate business in this state;
- 10 (B) a person, other than those specified in (A) of this paragraph,
11 in a chain of successive ownership of five per cent or more of voting
12 securities, the chain beginning with the holder of the voting securi-
13 ties of such public utility;
- 14 (C) a corporation five per cent or more of whose voting securities
15 are owned by a person owning five per cent or more of the voting secu-
16 rities of the public utility or by a person in such a chain of succes-
17 sive ownership of five per cent or more of voting securities;
- 18 (D) a corporation five per cent or more of whose voting securities
19 are owned or held by a public utility;
- 20 (E) a person with whom the public utility has a management or
21 service contract;
- 22 (F) a person who is an officer or director of such a public util-
23 ity or of a corporation in a chain of successive ownership of five per
24 cent or more of voting securities;
- 25 (G) a corporation which has one or more officers or directors in
26 common with a public utility;

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1 (H) a person or corporation who or which the commission determines
2 as a matter of fact, after investigation and hearing, actually is exer-
3 cising such substantial influence over the policies and actions of a
4 utility in conjunction with one or more other corporations or persons
5 with whom they are related by ownership or blood, or by action in con-
6 cert, that together they are affiliated with the utility within the
7 meaning of this section even though none of them alone is so affili-
8 ated;

9 (I) a person or corporation who or which the commission determines
10 as a matter of fact after investigation and hearing actually is exercis-
11 ing substantial influence over the policies and actions of a utility
12 even though such influence is not based upon stockholdings, stockhold-
13 ers, officers or directors to the extent specified in this section;

14 (2) "commission" means the Alaska Public Utilities Commission;

15 (3) "public" or "general public" means

16 (A) any group of 10 or more customers that purchase the service
17 or commodity furnished by a public utility as defined in (2) of this
18 section; and

19 (B) any utility purchasing the product or service or paying for
20 the transmission of electric energy, natural or manufactured gas, or
21 petroleum products which are re-sold to a group included in (A) of
22 this paragraph or which are used to produce the service or commodity
23 sold to the public by the utility;

24 (4) "public utility" or "utility" includes every corporation
25 (whether public, cooperative, or otherwise), company, individual, or
26 association of individuals, their lessees, trustees, or receivers

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1 appointed by the court, that owns, operates, manages or controls any
2 plant, pipeline or system for

3 (A) furnishing, by generation, transmission or distribution,
4 electrical service to the public for compensation;

5 (B) furnishing telecommunications service to the public for com-
6 pensation;

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

9 (D) furnishing by transmission or distribution of natural or man-
10 ufactured gas to the Alaska public for compensation;

11 (E) furnishing for distribution or by distribution petroleum or
12 petroleum products to the Alaska public for compensation when the con-
13 sumer has no alternative in the choice of supplier of a comparable
14 product and service at an equal or lesser price;

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

17 (5) "rate" includes each rate, toll, fare, rental, charge, or
18 other form of compensation demanded, observed, charged or collected by
19 a public utility for its services;

20 (6) "service" means (unless the context indicates otherwise) every
21 commodity, product, use, facility, convenience or other form of service
22 which is offered for and provided by a public utility for the con-
23 venience and necessity of the public;

24 (7) "tariff" means a rate, charge, toll, rule or regulation of a
25 utility relating to services furnished by the utility to the general
26 public for compensation and every map, page, adoption notice, instru-

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1 ment or other document filed with the commission setting out the terms
2 and conditions under which utility services are offered to the public;
3 [and instruments of concurrence and all other documents and data set-
4 ting out the terms of a utility's business relations with another
5 utility insofar as they affect the general public either directly or
6 indirectly;]

7 (8) "telecommunications" means the transmission and reception of
8 messages, impressions, pictures and signals by means of electricity,
9 electromagnetic waves and any other kind of energy, force variations
10 or impulses whether conveyed by cable, wire, radiated through space,
11 or transmitted through other media within a specified area or between
12 designated points.

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14 SECTION 13. This Act takes effect June 1, 1985.

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APUC Comments on Proposed Statutory Revisions

AS 42.05.711(f)(1),(2),(3), & (4)

(See attached for full text of proposed revisions)

Impact:

- * The proposal is flawed because it does not allow for public input and does not accomplish its intended goal.

Comments:

staff
The Commission agrees that the requirement to frequently file rate cases is burdensome on small utilities. However, in lieu of proposed legislative action at this time, the Staff of the Alaska Public Utilities Commission recommends being given the opportunity to formulate solution options to be presented to the Commission. The Commission, under its authority to promulgate regulations, would then have the opportunity to evaluate the relative merits of these options as well as to accept public comment in an open forum prior to selecting the optimum approach. As an example of a possible solution option, the Commission Staff presents the following outline of a variable tariff concept:

Telephone, Electric, Water and Sewer public utilities that serve less than 750 customers and gross less than \$ 1,000,000 in revenues would be given the option of seeking rate relief through variable rate tariffs. Under this proposal, instead of filing supporting information for increased rates as required by 3 AAC 48.275 (i.e., the current rate case requirements), qualifying utilities could support their need for increasing rates by submitting a comparison between actual fiscal performance during the previous year and the revenue requirement that was approved in the previous rate case. Revenue deficiencies identified in this manner should then be supplemented with operating and capital budgets that would identify anticipated changes in revenues, expenses and capital requirements in the impending year. At intervals not exceeding once every five years, the Commission may require such utilities to fully support their rate requests per 3 AAC 48.275.

To achieve and maintain eligibility for this rate relief option, utilities must have timely complied with the filing requirement of their annual reports, must maintain current tariffs and must meet the Commission's service and safety standards.

REVISED

1 Introduced: _____
2 Referred: _____
3 _____

4 IN THE _____ BY _____
5 _____

6
7
8 _____ BILL NO. _____
9 IN THE LEGISLATURE OF THE STATE OF ALASKA
10 FOURTEENTH LEGISLATURE - FIRST SESSION
11 A BILL

12
13 For an Act entitled: " _____ "
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

15
16 SECTION 1. AS 42.05.091. Compensation. (a) Members of the com-
17 mission are in the exempt service and are entitled to a monthly salary
18 equal to Step C, Range 26 of the salary schedule in AS 39.27.011(a)
19 for Juneau, Alaska.

20
21 (b) A salary warrant may not be issued to a commissioner until
22 the commissioner has filed with the state officer designated to issue
23 salary warrants an affidavit that no matter referred to the commis-
24 sioner for opinion or decision has been uncompleted or undecided by
25 the commissioner for a period of more than six months.

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*ck w/comm.
r/eq. services*

1 SECTION 2. AS 42.05.141 is amended to read:

2 The Alaska Public Utilities Commission may

3 (1) regulate every public utility engaged or proposing to engage
4 in such a business inside the state, except to the extent exempted by
5 AS 42.05.711 [and the power of the commission shall be liberally con-
6 strued to accomplish its stated purpose.];

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

10 (3) make or require just, fair and reasonable rates, classifica-
11 tions, regulations, practices, services and facilities for a public
12 utility;

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

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

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

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

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

3 (c) In the establishment of electric service rates under this
4 chapter the commission shall promote the conservation of resources
5 used in the generation of electric energy.

6 (d) Notwithstanding any other provision to the contrary, none of
7 the general powers and duties of the commissioner operate to divest the
8 board of directors of a cooperative organized under AS 10.25 from
9 exercising management authority for the conduct of that cooperative's
10 affairs.

11
12 SECTION 3. AS 42.05.221 is amended to read:

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

23 (b) All certificates of convenience and necessity issued to a
24 public utility before July 1, 1970 remain in effect but they are sub-
25 ject to modification where there are areas of conflict with public
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*ck w/comm.
does this
restrict the
comms.
or duties
See 42.05.511*

1 utilities that have not previously been required to have a certificate
2 or where there is a substantial change in circumstances.

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

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

17 (1) delineate the service area boundaries of each in these areas
18 of competition;

19 (2) eliminate existing duplication and paralleling to the fullest
20 reasonable extent;

21 (3) preclude future duplication and paralleling;

22 (4) provide for the exchange of customers and facilities for the
23 purposes of providing better public service and of eliminating
24 duplication and paralleling; and

25 (5) provide such other mutually equitable arrangements as would
26 be in the public interest.

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42.05.221

1 * (e) The commission may employ professional consultants to assist
2 it in administering the provisions of this section and may apportion
3 the expenses relating to this administration among the competing
4 [utilities] ~~utilities~~ involved, including but not limited to
5 utilities, commission staff and consumer intervenors, other than
6 individual consumers.

7
8 SECTION 4. AS 42.05.291 shall be amended as follows:

9 (a) Each public utility shall furnish and maintain adequate,
10 efficient and safe service and facilities. This service shall be
11 reasonably continuous and without unreasonable interruption or delay.

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

16 (c) Except in the case of a cooperative organized under AS 10.25,
17 [T]he commission may, upon its own motion or upon complaint, after
18 providing reasonable notice and opportunity for hearing, adopt as to
19 service and facilities, including the crossing of facilities, just and
20 reasonable standards, classifications, regulations, and practices to
21 be furnished, imposed, observed, and followed by public utilities;
22 adopt adequate and reasonable standards for the measurement of quantity,
23 quality, pressure, initial voltage, or other conditions pertaining to
24 the supply of the service of public utilities; adopt reasonable regula-
25 tions for the examination and testing of the service, and for the
26 measurement of it; adopt or approve reasonable regulations, specifica-

1 tions, and standards to secure the accuracy of meters and appliances
2 for measurement; and provide for the examination and testing of appli-
3 ances used for the measurement of a service of a public utility. In
4 doing so, the commission shall conform to the standard practices of
5 the industry.

6 (d) In the case of a cooperative organized under AS 10.25, the
7 commission may, upon the written petition of 15 percent of the coopera-
8 tive membership, after providing reasonable notice and opportunity for
9 hearing, adopt as to service and facilities, including the crossing of
10 facilities, just and reasonable standards, classifications, regulations,
11 and practices to be furnished, imposed, observed, and followed by public
12 utilities; adopt adequate and reasonable standards for the measurement
13 of quantity, quality, pressure, initial voltage, or other conditions
14 pertaining to the supply of the service of public utilities; adopt
15 reasonable regulations for the examination and testing of the service,
16 and for the measurement of it; adopt or approve reasonable regulations,
17 specifications, and standards to secure the accuracy of meters and
18 appliances for measurement; and provide for the examination and testing
19 of appliances used for the measurement of a service of a public utility.
20 In doing so, the commission shall conform to the standard practices of
21 the industry.

22 [(d)] (e) If the commission, upon its own motion or upon complaint,
23 after providing reasonable notice and opportunity for hearing, finds
24 that the services or facilities of a public utility are unreasonable,
25 unsafe, inadequate, insufficient, or unreasonably discriminatory, or
26 otherwise in violation of this chapter, the commission shall prescribe,

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? Possibility of
Coop. service areas.
-- Village units --

1 by regulation or order, the reasonable, safe, adequate, sufficient
2 service or facilities to be observed, furnished, enforced, or employed,
3 including all repairs, changes, alterations, extensions, substitutions,
4 or improvements in facilities that are reasonably necessary and proper
5 for the safety, accommodation, and convenience of the public.

6

7 SECTION 5. AS 42.05.381 is amended to read:

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

13 (1) energy conservation efforts;

14 (2) public information designed to promote more efficient use of
15 the utility's facilities or services or to protect the physical plant
16 of the utility;

17 (3) informing shareholders and members of a cooperative of meet-
18 ings of the utility and encouraging attendance; or

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

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

24 (c) In establishing the revenue requirement of a cooperative
25 organized under AS 10.25 the commission shall, upon application of the
26 cooperative, allow the cooperative to, without further filing, adjust

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Tier indexing
Mich
Virginia
KANSAS

Tier indexing
[presented to Comm. or rejected]

within A RANGE

is it a reasonable return?
Tier-indexing at the discretion of the Comm. (X) (Y) (Z) (basis) ??

1 rates to earn a times interest earned ratio approved by the
2 commission. The results of such adj. shall be subject verification
3 [(c)] (d) A utility, whether subject to regulation by the commis-

4 sion or exempt from regulation, may not charge a fee for connection
5 to, disconnection from, or transfer of services in an amount in excess
6 of the actual cost to the utility of performing the service plus a
7 profit at a reasonable percentage of that cost not to exceed the per-
8 centage established by the commission by regulation.

9 [(d)] (e) A utility shall provide for a reduced fee or surcharge
10 for standby water for fire protection systems approved under AS
11 18.70.081 which use hydraulic sprinklers.

12
13 SECTION 6. AS 42.05.421 is amended to read:

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

Could cause rejection of filing

(1) 6 mo. extension

21 (1) [an initial] a period not longer than six months beyond the
22 time when it would otherwise go into effect if the annual gross reve-
23 nues of the utility making the filing are more than \$3,000,000; and
24 (2) not longer than 150 days before an interim rate equal to the
25 requested new rate goes into effect and not longer than one year

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1 before a permanent rate goes into effect if the annual gross revenues
2 of the utility making the filing are \$3,000,000 or less.

3 (3) failure by the commission to issue a final order on a tariff
4 filing within ¹²~~six~~ months of the filing will result in the tariff filing
5 requested going into effect on a permanent basis.

6 (b) An order suspending a tariff filing may be vacated if, after
7 investigation, the commission finds that it is in all respects proper.

8 Otherwise the commission shall hold a hearing on the suspended filing
9 and issue its order, before the end of the suspension period,
10 granting, denying or modifying the suspended tariff in whole or in
11 part.

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

25 (d) One who initiates a change in existing tariffs shall bear the
26 burden to prove the reasonableness of the change.

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1 SECTION 7. AS 42.05.431 is amended to read:

2 (a) When the commission, after an investigation and hearing,
3 finds that a rate demanded, observed, charged or collected by a public
4 utility for a service, subject to the jurisdiction of the commission,
5 or that a classification, rule regulation, practice, or contract
6 affecting the rate, is unjust, unreasonable, unduly discriminatory or
7 preferential, the commission shall determine a just and reasonable
8 rate, classification, rule, regulation, practice, or contract to be
9 observed or allowed and shall establish it by order. A municipality
10 may covenant with bond purchasers regarding rates of a municipally
11 owned utility, and the covenant is valid and enforceable and is
12 considered to be a contract with the holders from time to time of the
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14 bonds. The financial covenants contained in mortgages and other debt
15 instruments of cooperative utilities organized under AS 10.25 are
16 likewise valid and enforceable, and rates set by the commission must
17 be adequate to meet those covenants. Municipal utilities and
18 cooperative utilities organized under AS 10.25 shall file an
19 informational copy of debt instruments affecting rates with the
20 commission upon execution.

21 (b) The commission may not alter, change, modify or amend whole-
22 sale power agreements after they are in effect.

23 (c) Permanent rates approved by the commission shall not be sub-
24 ject to refund.

should be protected (sacred)



ck w/ Ros GARDENIA City Mgr. SEWARD

see 42.05.511



*need for this is
order to secure
funding in the
financial mkt. - more
secure position.*

1 SECTION 8. AS 42.05.461 is amended to read:

2 The commission may require a public utility to establish,
3 provide, and maintain as a part of its system of accounts, continuing
4 property records segregated by the year of placement in service
5 including a list or inventory of all the units of tangible property
6 used or useful in the public service, [showing the current location of
7 the property units by definite reference to the specific land parcels
8 upon which the units are located or stored. The commission may
9 require a public utility to keep accounts and records in such a manner
10 as to show, currently, the original cost of the property when first
11 devoted to the public service, and the related reserve for
12 depreciation.] Each public utility with annual revenues exceeding
13 \$100,000 shall keep continuing property records.

ok

15 SECTION 9. AS 42.05.511 is amended to read:

16 (a) [The commission may investigate the management of a public
17 utility,] In a rate proceeding, the commission has the burden of proving
18 that the management practices of a public utility, including but
19 not limited to staffing patterns, wage and salary scales and
20 agreements, investment policies and practices, purchasing and payment
21 arrangements with affiliated interests [for the purpose of
22 determining] are inefficient or unreasonable practices which adversely
23 affect the cost or quality of service of the public utility.

24 (b) Where unreasonable practices are found to exist, the commis-
25 sion may, after providing reasonable notice and opportunity for
26 hearing, take appropriate action to protect the public from the

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See Section
42.05.291
Applies to this chapter

1 inefficient or unreasonable practices and may order the public utility
2 to take the corrective action the commission may require to achieve
3 effective development and regulation of public utility services.

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

14
15 SECTION 10. AS. 42.05.711(h) is repealed and reenacted to read:

16 (h) The provisions of this chapter other than AS 42.05.221 -
17 42.05.251 do not apply to a cooperative organized under AS 10.25, un-
18 less that cooperative elects to be subject to the provisions of this
19 chapter under the procedure described in AS 42.05.712. [A cooperative
20 organized under AS 10.25 may elect to be exempt from the provisions of
21 this chapter, other than AS 42.05.221 - 42.05.²⁷¹~~221~~, under the procedure
22 described in AS 42.05.712.] *chg. to 42.05.254*

23
24 SECTION 11. AS 42.05.712 is amended to read:

25 (a) A utility or cooperative which may elect to be regulated
26 under [exempt from] the provisions of this chapter shall poll its

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1 subscribers or members in the manner described in this section.

2 (b) The votes of a majority of those voting in an election in
3 which at least 15 percent of the eligible subscribers or members re-
4 turn ballots are required for a utility or cooperative to elect to be
5 regulated [exemption] under (a) of this section.

6 (c) Each subscriber or member of the utility or cooperative shall
7 receive notice of an election under this section with the subscriber's
8 or member's regular bill for service at least 60 days before the date
9 set for the election. The notice shall contain impartial language
10 informing the subscribers or members that an election on the option of
11 deregulation or regulation by the Alaska Public Utilities Commission
12 will be held within 60 days and that a ballot to participate in that
13 election will be mailed or delivered to each subscriber or member of
14 the utility or cooperative with the regular bill for service. The
15 notice shall also state that a subscriber or member of the cooperative
16 is entitled to vote in the election without regard to whether the sub-
17 scriber's or member's account with the utility or cooperative is cur-
18 rent and that the ballot must be postmarked or returned to the
19 commission within 30 days after it was mailed or otherwise delivered
20 to the subscriber or member. The notice shall also announce the
21 schedule for one or more public meetings which shall provide an oppor-
22 tunity for the subscribers or members to discuss this election. The
23 public meeting or meetings shall be held not more than 30 days before
24 the ballots are mailed or distributed to those eligible to vote. A
25 cooperative may satisfy this requirement by including a discussion of
26 this election on the agenda of an annual meeting if the annual meeting

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1 is scheduled to be held not more than 30 days before the election.

2 (d) A ballot with return postage shall be mailed or delivered to
3 each subscriber or member of the utility or cooperative with the sub-
4 scriber's or member's bill for service and shall contain only the
5 following language:

6 "Shall.....(name of utility or cooperative) be regulated by
7 [exempt from regulation] by the Alaska Public Utilities
8 Commission?

9 [] YES [] NO

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11 (e) The results of an election under this section shall be certi-
12 fied by the commission within 60 days after the ballots are mailed or
13 delivered to the subscribers or members.

14 (f) During the 60 days immediately preceding an election under
15 this section a list of subscribers or members of the utility or cooper-
16 ative shall be made available at cost to any subscriber or member of
17 the utility or cooperative who requests ones. The list shall be in
18 the same form that is available to the utility or cooperative.

19 (g) The board of directors of a utility or cooperative may call
20 an election under this section on its own initiative and shall call an
21 election upon the receipt of a valid petition from its subscribers or
22 members. A petition shall be considered valid if it is signed by not
23 less than the number of subscribers or members equal to ten percent of
24 the first 5,000 subscribers or members and three percent of the
25 subscribers or members in excess of 5,000. An election under this
26 section may only be held once every two years.

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1 (h) A utility [or cooperative] which is already exempt from regu-
2 lation under this section may elect to terminate its exemption in the
3 same manner.

4

5 SECTION 12. AS 42.05.720 is amended to read:

6 (i) "affiliated interest" includes:

7 (A) a person owning or holding directly or indirectly five per
8 cent or more of the voting securities of a public utility engaged in
9 intrastate business in this state;

10 (B) a person, other than those specified in (A) of this paragraph,
11 in a chain of successive ownership of five per cent or more of voting
12 securities, the chain beginning with the holder of the voting securi-
13 ties of such public utility;

14 (C) a corporation five per cent or more of whose voting securities
15 are owned by a person owning five per cent or more of the voting secu-
16 rities of the public utility or by a person in such a chain of succes-
17 sive ownership of five per cent or more of voting securities;

18 (D) a corporation five per cent or more of whose voting securities
19 are owned or held by a public utility;

20 (E) a person with whom the public utility has a management or
21 service contract;

22 (F) a person who is an officer or director of such a public util-
23 ity or of a corporation in a chain of successive ownership of five per
24 cent or more of voting securities;

25 (G) a corporation which has one or more officers or directors in
26 common with a public utility;

27

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1 (H) a person or corporation who or which the commission determines
2 as a matter of fact, after investigation and hearing, actually is exer-
3 cising such substantial influence over the policies and actions of a
4 utility in conjunction with one or more other corporations or persons
5 with whom they are related by ownership or blood, or by action in con-
6 cert, that together they are affiliated with the utility within the
7 meaning of this section even though none of them alone is so affili-
8 ated; or

9 (I) a person or corporation who or which the commission determines
10 as a matter of fact after investigation and hearing actually is exercis-
11 ing substantial influence over the policies and actions of a utility
12 even though such influence is not based upon stockholdings, stockhold-
13 ers, officers or directors to the extent specified in this section;

14 (2) "commission" means the Alaska Public Utilities Commission;

15 (3) "public" or "general public" means

16 (A) any group of 10 or more customers that purchase the service
17 or commodity furnished by a public utility as defined in (2) of this
18 section; and

19 (B) any utility purchasing the product or service or paying for
20 the transmission of electric energy, natural or manufactured gas, or
21 petroleum products which are re-sold to a group included in (A) of
22 this paragraph or which are used to produce the service or commodity
23 sold to the public by the utility;

24 (4) "public utility" or "utility" includes every corporation
25 (whether public, cooperative, or otherwise), company, individual, or
26 association of individuals, their lessees, trustees, or receivers

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1 appointed by the court, that owns, operates, manages or controls any
2 plant, pipeline or system for

3 (A) furnishing, by generation, transmission or distribution,
4 electrical service to the public for compensation;

5 (B) furnishing telecommunications service to the public for com-
6 pensation;

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

9 (D) furnishing by transmission or distribution of natural or man-
10 ufactured gas to the Alaska public for compensation;

11 (E) furnishing for distribution or by distribution petroleum or
12 petroleum products to the Alaska public for compensation when the con-
13 sumer has no alternative in the choice of supplier of a comparable
14 product and service at an equal or lesser price;

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

17 (5) "rate" includes each rate, toll, fare, rental, charge, or
18 other form of compensation demanded, observed, charged or collected by
19 a public utility for its services;

20 (6) "service" means (unless the context indicates otherwise) every
21 commodity, product, use, facility, convenience or other form of service
22 which is offered for and provided by a public utility for the con-
23 venience and necessity of the public;

24 (7) "tariff" means a rate, charge, toll, rule or regulation of a
25 utility relating to services furnished by the utility to the general
26 public for compensation and every map, page, adoption notice, instru-

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overly broad?

1 ment or other document filed with the commission setting out the terms
2 and conditions under which utility services are offered to the public;
3 [and instruments of concurrence and all other documents and data set-
4 ting out the terms of a utility's business relations with another
5 utility insofar as they affect the general public either directly or
6 indirectly:]

7 (8) "telecommunications" means the transmission and reception of
8 messages, impressions, pictures and signals by means of electricity,
9 electromagnetic waves and any other kind of energy, force variations
10 or impulses whether conveyed by cable, wire, radiated through space,
11 or transmitted through other media within a specified area or between
12 designated points.

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SECTION 13. This Act takes effect June 1, 1985.

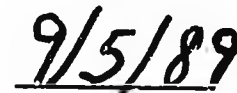


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