

LEG. FINANCE - BILLS 1983 - 1984 1862
SSH B 220 cont. 1862

AGAS Request for permanent rate increase

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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THE STATE OF ALASKA

THE ALASKA PUBLIC UTILITIES COMMISSION

Before Commissioners:

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

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

U-79-32

ORDER NO. 4

ORDER ACCEPTING STIPULATION

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

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

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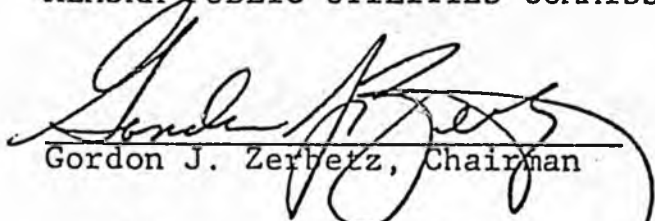
PHONE 276-0222

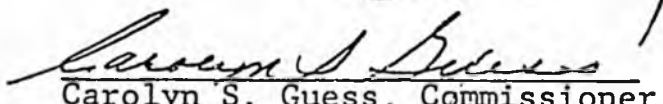
1 record of Mr. Covington for the calendar year 1980 with
2 its 1980 annual report to the Commission;
3 (5) Kenai Utility Service Corporation shall demonstrate to
4 the Commission by year-end 1980 that its continuing
5 property records exist in a form satisfactory to the
6 Commission.

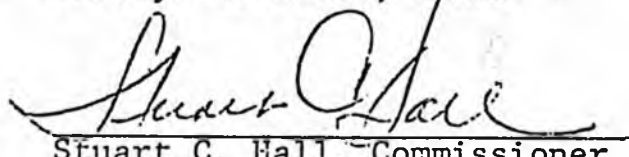
7 IT IS SO ORDERED.

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

10 ALASKA PUBLIC UTILITIES COMMISSION

11 
12 Gordon J. Zerbetz, Chairman

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14 Carolyn S. Guess, Commissioner

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16 Stuart C. Hall, Commissioner

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STATE OF ALASKA
THE ALASKA PUBLIC UTILITIES COMMISSION

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

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

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

BY THE COMMISSION:

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

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

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

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

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

22 The Staff analyzed this filing and noted that the cal-
23 culations and estimates provided were not supported but appeared
24 reasonable with the exception of the depreciation lives of the
25 tanks. Pelco estimated an annual depreciation expense of \$23,400
26 based on an original cost of the tanks of \$117,000. Staff noted
27 that the shortest life to be used for storage tanks would be
28 20 years, which would mean an approximate \$17,000 reduction to the
29 annual depreciation expense. In addition, Staff noted that the
30 rate of return calculation of 15.7 percent was greater than the
31 14.4 percent return recently approved for Pelco in Docket U-81-54.
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1 This difference in return amounted to an approximate \$2,300 dif-
2 ference in revenue, but Staff believed the difference was immate-
3 rial if the revenue requirement for the storage tanks was adjusted
4 for the depreciation expense reduction caused by the change in the
5 service lives of the storage tanks. Staff maintained that the
6 \$17,000 depreciation adjustment, based on the longer life, was the
7 only appropriate reduction to the revenue requirement calculated
8 by Pelco.

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

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

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

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

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

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

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

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

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

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

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

3 THE COMMISSION FURTHER FINDS AND CONCLUDES:

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

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

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

17 ORDER

18 THE COMMISSION FURTHER ORDERS:

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

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

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

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

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

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

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*Matanuska Electric Assn request
for permanent rate increase*

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

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

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

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

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

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

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

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

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

1 made to MEA for construction projects and expansion of its
2 services. Another ad asserted, without listing any examples,
3 that the Commission was "less sensitive to local economic con-
4 ditions than the MEA Board" and that APUC regulation did not
5 permit MEA "to carry out the stated preference of its members
6 regarding rate adjustments, that of smaller incremental rate
7 changes." That, too, is false. The MEA Board determines when
8 that utility's rate filings are made. Obviously the less fre-
9 quently rate increases are requested, the larger the percentage
10 increment is apt to be. Moreover, the MEA General Manager ad-
11 mitted under cross-examination that he ordered the MEA drafting
12 department to "reconfigure" the standard artwork of the cari-
13 cature symbol (an animated electric plug) supplied by the
14 National Rural Electric Cooperative Association (NRECA) to mem-
15 ber cooperatives for the deregulation election campaign in the
16 election. Thus, in the display advertisements in question, the
17 caricature appears swinging a baseball bat at alleged "unnec-
18 essary regulation" (Valley Sun, Eagle River Sun, Frontiersman,
19 Chugiak-Eagle River Star); using a pair of shears to, presum-
20 ably, eliminate "red tape" (Valley Sun, September 16, 1980);
21 painfully straining to obtain release from an animal trap
22 (Chugiak-Eagle River Star, September 4, 1980); and removing a
23 ball and chain (Valley Sun, Eagle River Sun, Frontiersman,
24 Chugiak-Eagle River Star, Anchorage Times, Anchorage Daily News).
25 In short, the Commission believes that the misleading text of
26 the so-called "Pro" and "Con" arguments that appeared in the
27 display advertisements, as well as the doctored caricature, un-
28 fairly weighted the advertising campaign in favor of the MEA
29 Board's position on deregulation. The entire MEA-sponsored
30 campaign lacked the fairness and balance surely contemplated by
31 the Legislature under AS 42.05.712.
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1 For the foregoing reasons the Commission will allow
2 the expenses essential to the mechanics of conducting the
3 election, e.g., ballot printing, mailing and tabulation, but
4 believes the expenses of \$5,305 associated with MEA's adver-
5 tising campaign should be rejected. The balance of \$15,312 in
6 other deregulation expenses will be amortized over two years in
7 equal annual installments. The two-year period appears reason-
8 able inasmuch as AS 42.05.712 allows a utility to conduct
9 deregulation elections at two-year intervals.

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

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

32

Enstar permanent rate increase request

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

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

19 4. Management Fees Paid to Parent Corporation The

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

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

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

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

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

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

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

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Alaska Statutes

Title 42. Public Utilities and Carriers.

Chapter

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

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

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

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

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

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

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

Chapter 05. Alaska Public Utilities Commission Act.

Article

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

Article 1. Establishment of Public Utilities Commission.

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

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

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

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

NOTES TO DECISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 2. Powers and Duties of the Commission.

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

Section

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTES TO DECISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Public regulation of nuclear power plants, 82 ALR3d 751.

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

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

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

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

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

NOTES TO DECISIONS

Cited in *Jager v. State*, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975); *United States v. RCA Alaska Communications, Inc.*, Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).
 Collateral references. — 73 C.J.S., Public Utilities, §§ 54, 55.

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

Sec. 42.05.161. Application of Administrative Procedure Act.

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

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

NOTES TO DECISIONS

Standard of review of rate-making decisions. — See *United States v. RCA Alaska Communications, Inc.*, Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

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

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

Effect of amendments. — The 1980 amendment substituted "three" for "two" near the middle of the first sentence. The 1981 amendment added "a hearing officer, or an administrative law judge" following "three or more commissioners" in the first sentence, added "by the hearing officer, or by the administrative law judge"

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

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

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

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

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

NOTES TO DECISIONS

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

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

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

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

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

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

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

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

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

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

Article 3. Certificate of Public Convenience and Necessity.

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

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

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

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

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

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

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

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

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

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

NOTES TO DECISIONS

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

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

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

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

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

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

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

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

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

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

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

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

that any rights under former Alaska Pub. Util. Code, ch. 13, § 221, which was amended by AS 42.05.221, are preserved. Alaska Pub. Util. Ass'n, (File Nos. 2969, 78), overruled on Op. No. (File 1979).

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

This section relates to the interpretation of public utility. *Greater Anchorage Area Borough v. City of Anchorage*, No. 856 (File No. 1972), overruled on Op. No. 1629 (Alaska).

This section deals with disposal sites for solid waste; it provides for control of solid waste by the operator which is subject to regulation. *McClellan v. Alaska Pub. Util. Ass'n*, Sup. Ct. Op. No. 2543, 565 P.2d 616.

This section provides for an equivalent of a permit for immediate dump sites. *McClellan v. Alaska Pub. Util. Ass'n*, Sup. Ct. Op. No. 2543, 565 P.2d 616.

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

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

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

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

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

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

NOTES TO DECISIONS

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

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

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

Sec. 42.05.261. Discontinuance, suspension or abandonment of certificated service. (a) Except as otherwise provided in this section, a public utility may not discontinue or abandon a service for

which a certificate has been issued by the commission unless upon the application of the public utility and if, after notice and opportunity for hearing, the commission finds that the continued service is not required by public convenience and necessity. Any interested person may file with the commission a protest or memorandum of opposition to or in support of discontinuance or abandonment. The commission may authorize temporary suspension of a service or of part of a service.

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

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

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

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

NOTES TO DECISIONS

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

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

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

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

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

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

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

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

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

The general notion that a wilful act

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

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

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

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

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

Article 4. Services and Facilities.

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

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

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

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

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

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

NOTES TO DECISIONS

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

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

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

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

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

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

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

Civil rights: racial or religious discrim-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 5. Rates and Rate Schedules.

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

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

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

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

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

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

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

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

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

NOTES TO DECISIONS

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

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

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

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

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

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

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NOTES TO DECISIONS

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

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

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

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

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

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

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

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

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

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

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

NOTES TO DECISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rate base and
 rate proceeding, 16

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

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

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

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

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

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

NOTES TO DECISIONS

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

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

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

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

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

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

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

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

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

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

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

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

NOTES TO DECISIONS

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

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

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

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

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

NOTES TO DECISIONS

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

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

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

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 7 P.2d 1100 (1975).

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

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

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

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

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

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

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

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

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

NOTES TO DECISIONS

It was error for the superior court to dispense with the commission's order that a utility place funds received pursuant to an interim increase in an escrow account pending the final rate determination since subsection (c) of this section specifically authorizes the commission to take such action. *Alaska Pub. Utils. Comm'n v. Municipality of Anchorage*, Sup. Ct. Op. No. 1645 (File No. 2934), 579 P.2d 1071 (1978).

For discussion of imperfections in the escrow procedure. — See *Alaska Pub. Util. Comm'n v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 1139 (File No. 2314), 534 P.2d 549 (1975).

Denial of interim rate increase held arbitrary. — Where the superior court found that the existing rate was confiscatory, where the borough was clearly operating the sewer utility at a great loss, where the period prior to a final hearing could be construed to be unreasonable and where the commission failed to provide any further justification for its decision, the denial of the interim rate increase was arbitrary, and the supe-

rior court's injunction voiding the commission's order did not constitute an abuse of its discretion. *Alaska Pub. Util. Comm'n v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 1139 (File No. 2314), 534 P.2d 549 (1975).

Commission determination that proposed rates were reasonable was not supported by substantial evidence on the record as a whole. *Jager v. State*, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

Procedure consistent with statutory allocation of burden of proof. — Where the commission had first been satisfied by a public utility's evidence that the rates were reasonable and thereafter turned to complainant to show otherwise, this procedure, consistent with the statutory allocation of the burden of proof, is clearly reasonable. *Jager v. State*, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

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

Sec. 42.05.430. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.431. Power of commission to fix rates. When the commission, after an investigation and hearing, finds that a rate demanded, observed, charged or collected by a public utility for a service, subject to the jurisdiction of the commission, or that a classification, rule, regulation, practice, or contract affecting the rate, is unjust, unreasonable, unduly discriminatory or preferential, the commission shall determine a just and reasonable rate, classification, rule, regulation, practice, or contract to be observed or allowed and shall establish it by order. A municipality may covenant with bond purchasers regarding rates of a municipally owned utility, and the covenant is valid and enforceable and is considered to be a contract with the holders from time to time of the bonds. (§ 6 ch 113 SLA 1970)

NOTES TO DECISIONS

History of section. — See *Alaska Pub. Utils. Comm'n v. Municipality of Anchorage*, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

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

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

Confiscation. — A court may evaluate the showing of confiscation. That is, although the process of determining whether a rate is confiscatory involves

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fact/law determinations which require the special competence of the commission, the ultimate issue in confiscation questions is whether due process will be violated by the continued operation of the rate. United States v. RCA Alaska Communications, Inc., Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

This section requires the commission to set rates so as to assure that existing bond covenants are met. Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

As to existing bonds, i.e., those bonds which have actually been marketed and for which there are present purchasers or holders, this section requires that the commission set rates so as to assure that bond covenants will not be breached. Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

And not so as to allow municipality to market proposed bonds. — This section does not require the commission to set rates so as to allow the municipality to market proposed bonds, i.e., bonds which have not yet been sold. Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

Prior to the issuance of bonds, the commission is not required by this section to set a rate which would meet the revenue requirements which would be necessary under the covenants if the bonds were sold. Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

This section specifically provides that bond covenants are "valid and enforceable." Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

Covenants must be honored by commission. — Since the commission's approval of a certain rate is necessary, the covenants must be honored by the commission; otherwise there would be no enforceability of the covenants. Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

The plain meaning of this section requires that once the bonds are actually purchased, and actual bond purchasers and holders exist, the covenants are valid and enforceable. The validity of the bond covenants thus requires the commission to respect the provisions of the covenants,

and insure that they will not be breached. Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

No covenant exists where no purchasers or holders. — An existing covenant requires two parties, and until the municipality's bonds have actual purchasers or holders, no covenant is in existence. Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

And commission's rate-setting authority not interfered with. — Until there is an existing covenant with bond purchasers, there is nothing which is valid and enforceable, and therefore nothing to interfere with the commission's general rate-setting authority. Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

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

Standard of review. — Since generally rate-making decisions relate to complex subject matter which requires the particularized knowledge and experience of the rate-making body, the appropriate standard of review is normally whether the administrative body had a reasonable basis for its decision. United States v. RCA Alaska Communications, Inc., Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

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

the interim rate relief is granted, the public can be adequately protected. Fifth, the utility must show that "serious" and "substantial" questions are involved in the rate

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

Collateral references. — State regulation of rates to consumers of gas or electricity transported across state lines for light or power purposes, 7 ALR 1094.

Municipally owned or operated public utility, power of state or public service commission to regulate rates of, 76 ALR 851, 127 ALR 94.

Power of state to fix a minimum public utility rate, 68 ALR 1002.

Sec. 42.05.440. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.441. Valuation of property of a public utility. (a) The commission may, after providing reasonable notice and opportunity to be heard, ascertain and set the fair value of the whole or any part of the property of a public utility, insofar as it is material to the exercise of the jurisdiction of the commission. The commission may make revaluations from time to time and ascertain the fair value of all new construction, extensions, and additions to the property of a public utility. If a public utility furnishes more than one classification of utility service the utility shall allocate the investment and expenses associated with the property used and useful in furnishing service among the utility services and it may not solely consider the utility's total investment and expenses in fixing rates for a particular service.

(b) In determining the value for rate-making purposes of public utility property used and useful in rendering service to the public, the commission shall be guided by acquisition cost or, if lower, the original cost of the property to the person first devoting it to public service, less accrued depreciation, plus materials and supplies and a reasonable allowance for cash working capital when required.

(c) For rate-making purposes, indebtedness, debt service and payments by a regulated public utility to a person having an ownership interest of more than 70 per cent in the utility shall be considered to be ownership equity, profits or dividends except to the extent that there is a clear and convincing showing that

(1) the indebtedness was incurred, or the payments made, for goods or services which were reasonably necessary for the operation of the utility; and

(2) the goods or services were provided at a cost which was competitive with the price at which they could have been obtained from a person having no ownership interest. (§ 6 ch 113 SLA 1970; am § 1 ch 228 SLA 1976)

l. United States v. Communications, Inc., Sup. Ct. Op. No. 3772, 597 P.2d

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utility. (a) The opportunity to exercise or any part of the utility's total service may make value of all new of a public utility expenses asso- g service among ie utility's total lar service. es of public util- the public, the ver, the original blic service, less id a reasonable

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Separation of intrastate and inter- state properties, expenses and reve- nues is required for properly determining the adequacy of a utility's

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

Sec. 42.05.450. [Repealed, § 5 ch 113 SLA 1970.]

Article 6. Accounts, Records and Reports.

Section

451. System of accounts and reports

461. Continuing property records

471. Depreciation rates, initial losses and accounts

481. Subsidiary business accounts

Section

491. Records and accounts to be kept in state

501. Inspection of books and records by commission

Collateral references. — 64 Am. Jur. 2d, Public Utilities, § 235.

Sec. 42.05.451. System of accounts and reports. (a) The commis- sion may classify the public utilities under its jurisdiction and pre- scribe a uniform system of accounts for each class and the manner in which the accounts and supporting records shall be kept.

(b) Each public utility shall maintain its accounts on a calendar year basis unless specifically authorized by the commission to maintain its accounts on a fiscal year basis. Within 90 days after the close of its authorized annual accounting period, or additional time granted upon a showing of good cause, each public utility shall file with the commis- sion a verified annual report of its operations during the period reported, on forms prescribed by the commission. (§ 6 ch 113 SLA 1970)

Sec. 42.05.460. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.461. Continuing property records. The commission may require a public utility to establish, provide, and maintain as a part of its system of accounts, continuing property records segregated by the year of placement in service, including a list or inventory of all the units of tangible property used or useful in the public service, showing the current location of the property units by definite reference to the specific land parcels upon which the units are located or stored. The commission may require a public utility to keep accounts and records in such a manner as to show, currently, the original cost of the property when first devoted to the public service, and the related reserve for depreciation. Each public utility with annual revenues

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 7. Financial and Management Regulation.

Section

511. Unreasonable management practices

521. Impaired capital

531. Distribution of surplus and profits

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

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

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

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

NOTES TO DECISIONS

Quoted in Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1645 (File No. 2934), 579 P.2d 1071 (1978).

Collateral references. — 73 C.J.S., Public Utilities, § 46 et seq.

Sec. 42.05.520. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.521. Impaired capital. When the commission finds that the capital of a public utility corporation is impaired, or might become impaired, it may, after investigation and hearing, issue an order directing the public utility to cease paying dividends on its common stock until the impairment has been removed. (§ 6 ch 113 SLA 1970)

Sec. 42.05.530. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.531. Distribution of surplus and profits. The surplus and profits of public utilities shall be distributed in accordance with the bylaws or ordinances controlling the utility. (§ 6 ch 113 SLA 1970)

Sec. 42.05.540. [Repealed, § 5 ch 113 SLA 1970.]

Article 8. Judicial Review, Penalties and Enforcement.

Section

- 541. Effect of regulations
- 551. Review and enforcement
- 561. Injunctive and monetary sanctions
- 571. Civil penalties
- 581. Each violation a separate offense

Section

- 601. Actions to recover penalties; disposition
- 611. Penalties cumulative
- 621. Joinder of actions

Collateral references. — 64 Am. Jur. 2d, Public Utilities, §§ 276 — 291. 73 C.J.S., Public Utilities, §§ 64 — 68.

Sec. 42.05.541. Effect of regulations. Regulations adopted and issued by the commission in accordance with this chapter have the effect of law. (§ 6 ch 113 SLA 1970)

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NOTES TO DECISIONS

Regulation requiring jurisdictional separations to be based upon Ozark methodology held mandatory. — See *United States v. RCA Alaska Communications, Inc.*, Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

Sec. 42.05.550. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.551. Review and enforcement. (a) All final orders of the commission are subject to judicial review in accordance with AS 44.62.560 — 44.62.570 of the Administrative Procedure Act.

(b) If an appeal is not taken from a final order of the commission, the commission may apply to the superior court for enforcement of this chapter, the regulations adopted under it and the orders of the commission. The court shall enforce the order by injunction or other process. (§ 6 ch 113 SLA 1970)

NOTES TO DECISIONS

Orders of commission expressly made subject to Administrative Procedure Act. — Subsection (a) of this section expressly makes orders of the Public Utilities Commission subject to the provisions of the Alaska Administrative Procedure Act (AS 44.62). *Greater Anchorage Area Borough v. City of Anchorage*, Sup. Ct. Op. No. 856 (File No. 1569), 504 F.2d 1027 (1972), overruled on other grounds, 595 P.2d 626 (Alaska 1979).

AS 44.62.570 is made applicable to review of final orders of the Public Utilities Commission by this section. *Jager v. State*, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

Applied in *Jeffries v. Glacier State Tel. Co.*, Sup. Ct. Op. No. 1985 (File No. 4298), 604 P.2d 4 (1979).

Sec. 42.05.560. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.561. Injunctive and monetary sanctions. (a) A person who violates a provision of AS 42.05.291 insofar as it governs the safety of pipeline facilities and the transportation of gas or of any regulation issued under AS 42.05.291 is subject to a civil penalty of not more than \$1,000 for each violation for each day that the violation persists. However, the maximum civil penalty shall not exceed \$200,000 for any related series of violations.

(b) A civil penalty may be compromised by the commission. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the state to the person charged or may be recovered in a civil action in the state courts.

(c) A person may be enjoined by the superior court from committing any violation mentioned in this section. (§ 6 ch 113 SLA 1970)

Sec. 42.05.570. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.571. Civil penalties. (a) In addition to all other penalties and remedies provided by law, a public utility and every person, and their lessees or receivers appointed by a court in any way subject to the provisions of this chapter, together with their officers, managers, agents or employees that either violate or procure, aid or abet the violation of any provision of this chapter, or of any order, regulation or written requirement of the commission are subject to a maximum penalty of \$100 for each violation. Each act of omission as well as each act of commission shall be considered a violation subject to the penalty.

(b) A penalty may not be assessed unless the commission first issues an order to show cause why the penalty should not be levied. The order shall describe each violation with reasonable particularity and designate the maximum penalty which may be assessed for each violation. The order shall be served on the alleged violator named in the order. The order shall state a time and place for the hearing.

(c) After a hearing the commission shall enter its findings of fact and final order which shall state when the penalties, if any, are payable. (§ 6 ch 113 SLA 1970)

Sec. 42.05.580. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.581. Each violation a separate offense. Each violation of a provision of this chapter or of an order, decision, regulation or written requirement of the commission is a separate and distinct offense, and in case of a continuing violation each day's continuance is a separate and distinct offense. (§ 6 ch 113 SLA 1970)

Secs. 42.05.590 — 42.05.600. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.601. Actions to recover penalties; disposition. (a) Actions to recover penalties under this chapter shall be brought by the attorney general in a court of competent jurisdiction.

(b) All penalties recovered under the provisions of this chapter shall be paid to the commission and deposited by it in the general fund of the state. (§ 6 ch 113 SLA 1970)

Sec. 42.05.610. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.611. Penalties cumulative. (a) All penalties imposed under this chapter are cumulative and an action for the recovery of a civil penalty is not a bar to any criminal prosecution; a criminal prosecution is not a bar to an action for the recovery of a civil penalty.

(b) Neither a criminal prosecution nor an action to recover a civil penalty is a bar to an enforcement proceeding to require compliance, or to any other remedy provided by this chapter. (§ 6 ch 113 SLA 1970)

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Sec. 42.05.620. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.621. Joinder of actions. Under the applicable court rules, appeals from orders of the commission, applications for enforcement of commission orders and actions for recovery of a penalty may be joined. The court may in the interests of justice separate the action. (§ 6 ch 113 SLA 1970)

Sec. 42.05.630. [Repealed, § 5 ch 113 SLA 1970.]

Article 9. Miscellaneous Provisions.

Section

631. Eminent domain
641. Regulation by municipality
651. Expenses of investigation or hearing
661. Application fees

Section

671. Public records
681. Validity of certain certificates
691. Utility classes

Sec. 42.05.631. Eminent domain. A public utility may exercise the power of eminent domain for public utility uses. This section does not authorize the use of a declaration of taking. (§ 6 ch 113 SLA 1970)

Cross references. — For laws on eminent domain, see AS 09.55.240 — 09.55.640.

Collateral references. — Right to enter for preliminary survey or examination, 29 ALR3d 1104.

Power of eminent domain as between state and subdivision or agency thereof, or as between different subdivisions or agencies themselves, 35 ALR3d 1293.

Applicability of zoning regulations to projects of nongovernmental public utilities as affected by utility's power of eminent domain, 87 ALR3d 1265.

Unskillfulness of powerline or other wire, or related structure, as element of damages in easement condemnation proceeding, 97 ALR3d 587.

Review of electric power company's location of transmission line for which condemnation is sought, 19 ALR4th 1026.

Negotiations: sufficiency of condemnor's negotiations required as preliminary to taking in eminent domain, 21 ALR4th 765.

Sec. 42.05.640. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.641. Regulation by municipality. The commission's jurisdiction and authority extend to public utilities operating within a city or borough, whether home rule or otherwise. In the event of a conflict between a certificate, order, decision or regulation of the commission and a charter, permit, franchise, ordinance, rule or regulation of such a local governmental entity, the certificate, order, decision or regulation of the commission shall prevail. (§ 6 ch 113 SLA 1970)

NOTES TO DECISIONS

Municipal franchises granted to a cable television company were not superseded by the Alaska Public

Utilities Commission Act, AS 42.05.010—42.05.721, since provisions of a municipal franchise not in actual conflict with com-

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

Collateral references. — 64 Am. Jur. 2d, Public Utilities, §§ 101 — 109.

Sec. 42.05.650. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.651. Expenses of investigation or hearing. After completion of a hearing or investigation held under this chapter, the commission shall allocate the costs of the hearing or investigation among the parties, including the commission, as is just under the circumstances. In allocating costs, the commission may consider the results, ability to pay, evidence of good faith, other relevant factors and mitigating circumstances. The costs allocated may include the costs of any time devoted to the investigation or hearing by hired consultants, whether or not the consultants appear as witnesses or participants. The costs allocated may also include any out-of-pocket expenses incurred by the commission in the particular proceeding. The commission shall provide an opportunity for any person objecting to an allocation to be heard before the allocation becomes final. (§ 6 ch 113 SLA 1970)

Sec. 42.05.661. Application fees. With each application relating to a certificate the applicant shall pay the commission a fee of \$50 which shall be deposited in the general fund of the state. (§ 6 ch 113 SLA 1970)

Sec. 42.05.671. Public records. (a) Except as provided in (b) of this section, records in the possession of the commission are open to public inspection at reasonable times.

(b) The commission may, by regulation, classify the records submitted to it by regulated utilities as privileged records that are not open to the public for inspection. However, if a record involves an application or tariff filing pending before the commission, the commission shall release the record for the purpose of preparing for or making a presentation to the commission in the proceeding if the record or information derived from the record will be used by the commission in the proceeding.

(c) A person may make written objection to the public disclosure of information contained in a record under the provisions of this chapter or of information obtained by the commission under the provisions of this chapter, stating the grounds for the objection. When an objection is made, the commission may not order the information withheld from public disclosure unless the information adversely affects the interest of the person making written objection and disclosure is not required in the interest of the public.

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(d) In this section, "record" means a report, file, book, account, paper, or application, and the facts and information contained in it. (§ 6 ch 113 SLA 1970; am § 8 ch 110 SLA 1981)

Effect of amendments. — The 1981 amendment rewrote this section.

NOTES TO DECISIONS

Narrow construction. — The privilege reflected by this section should be construed narrowly so that it does not conflict with the constitutional requirements of due process. *City of Fairbanks v. Alaska Pub. Utils. Comm'n & Wire Communications, Inc.*, Sup. Ct. Op. No. 2079 (File No. 3977), 611 P.2d 493 (1980).

Due process controls over section. — The requirement of this section that infor-

mation not be withheld if "required in the interests of the public" will normally prevent a conflict with due process requirements. If a conflict nevertheless occurs, due process must control. *City of Fairbanks v. Alaska Pub. Utils. Comm'n & Wire Communications, Inc.*, Sup. Ct. Op. No. 2079 (File No. 3977), 611 P.2d 493 (1980).

Sec. 42.05.681. Validity of certain certificates. A certificate issued before July 29, 1968, to a public utility for the generation, transmission, or distribution of electric energy and power, or for the furnishing of telecommunications may not be considered as terminated, or voided, for the sole reason that the utility did not or would not produce an annual gross income in excess of \$25,000. (§ 6 ch 113 SLA 1970)

Sec. 42.05.691. Utility classes. The commission may by regulation provide for the classification of public utilities based upon differences in annual revenue, assets, nature of ownership and other appropriate distinctions and as between these classifications, by regulation, provide for different reporting, accounting and other regulatory requirements. (§ 6 ch 113 SLA 1970)

Article 10. General Provisions.

Section	Section
711. Exemptions	720. Definitions
712. Deregulation ballot	721. Short title

Sec. 42.05.701. [Renumbered as AS 42.05.720.]

Sec. 42.05.711. Exemptions. (a) The provisions of this chapter do not apply to a person who furnishes water, gas or petroleum or petroleum products by tank, wagon, or similar conveyance, unless the person is thereby supplying water, gas, petroleum or petroleum products to a public utility in which the person has an "affiliated interest."

(b) Public utilities owned and operated by a political subdivision of the state and none of whose utilities is in competition with any other utility, are exempt from the provisions of this chapter, other than the provisions of AS 42.05.221 — 42.05.281, unless the owner and operator elects to be subject to all provisions of this chapter.

(c) The ownership in whole or part, of the corporate stock of a public utility does not make the owner a public utility.

(d) The commission, on a finding that no legitimate public interest will be served, may exempt a utility from all or any portion of this chapter.

(e) Notwithstanding any other provisions of this chapter, any electric or telephone utility that does not gross \$50,000 annually is exempt from regulation under this chapter unless 25 percent of the subscribers petition the commission for regulation.

(f) Notwithstanding any other provisions of this chapter, an electric or telephone utility that does not gross \$325,000 annually may elect to be exempt from the provisions of this chapter other than AS 42.05.221 — 42.05.281 under the procedure described in AS 42.05.712.

(g) A utility, other than a telephone or electric utility, that does not gross \$100,000 annually may elect to be exempt from the provisions of this chapter other than AS 42.05.221 — 42.05.281 under the procedure described in AS 42.05.712.

(h) A cooperative organized under AS 10.25 may elect to be exempt from the provisions of this chapter, other than AS 42.05.221 — 42.05.281, under the procedure described in AS 42.05.712.

(i) A utility which furnishes collection and disposal service of garbage, refuse, trash, or other waste material and has annual gross revenues of \$200,000 or less is exempt from the provisions of this chapter, other than the certification provisions of AS 42.05.221 — 42.05.281, unless 25 percent of the subscribers or subscribers representing 25 percent of the gross revenue of the utility petition the commission for regulation.

(j) The provisions of this chapter do not apply to sales, exchanges or gifts of energy to an electric utility certificated under this chapter when the energy which is the subject of the sale, exchange or gift is waste heat, electricity, or other energy which is surplus or the by-product of an industrial process. In an area in which no electric utility is certificated for service, energy provided by sale, exchange or gift may be provided to any utility which is certificated for service to that area. A contract for the sale, exchange or gift of energy exempt under this subsection does not make the supplier a public utility, and does not transfer the responsibility to provide utility services from a certificated utility to any other person.

(k) A utility which furnishes cable television service is exempt from the provisions of this chapter other than AS 42.05.221 — 42.05.281 unless 25 percent of the subscribers petition the commission for regulation.

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(I) A person, utility, or cooperative that is exempt from regulation under AS 42.05.711(a) or (d) — (k) is not subject to regulation by a municipality under AS 29.48.060 — 29.48.090. (§ 6 ch 113 SLA 1970; am § 3 ch 76 SLA 1973; am § 8 ch 83 SLA 1980; am §§ 7-9 ch 136 SLA 1980; am § 89 ch 59 SLA 1982; am § 1 ch 30 SLA 1983)

Cross references. — For limitations on these exemptions, see AS 42.05.321(b) and AS 42.05.381(c).

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

The second 1980 amendment deleted "excepting the furnishing of collection and disposal service of garbage, refuse, trash or other waste material" following "none of whose utilities" near the beginning of subsection (b), deleted the former second sentence in subsection (b), which read: "Notwithstanding any other provisions of this chapter, municipalities providing collection and disposal service of garbage, refuse, trash or other waste material within their corporate boundaries are not subject to regulation by the Alaska Public Utilities Commission unless the municipality elects to be subject to the provisions of this chapter," substituted "\$50,000" for "\$25,000" following "does not gross" near the middle of subsection (e), substituted

"under this chapter" for "hereunder" following "exempt from regulation" near the middle of subsection (e), and added subsections (f) through (i).

The 1982 amendment, effective May 28, 1982, deleted "on June 30, 1980" preceding "a utility," and inserted "annual" preceding "gross revenue" in subsection (i).

The 1983 amendment added subsections (k) and (l).

Opinions of attorney general. — An electrical utility owned and operated by a regional electrical authority would continue to qualify for the broad exemption from this chapter, available to political subdivisions under subsection (b) of this section once the regional electrical authority had completed its proposed organization as a nonprofit corporation pursuant to AS 10.20.005 et seq. June 7, 1976, Op. Att'y Gen.

NOTES TO DECISIONS

Municipally owned utilities in competition with other utilities subjected to full gamut of regulation pertaining to other utilities, with exception

relating to bond covenants. — See Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

Sec. 42.05.712. Deregulation ballot. (a) A utility or cooperative which may elect to be exempt from the provisions of this chapter shall poll its subscribers or members in the manner described in this section.

(b) The votes of a majority of those voting in an election in which at least 15 percent of the eligible subscribers or members return ballots are required for a utility or cooperative to elect exemption under (a) of this section.

(c) Each subscriber or member of the utility or cooperative shall receive notice of an election under this section with the subscriber's or member's regular bill for service at least 60 days before the date set for the election. The notice shall contain impartial language informing the subscribers or members that an election on the option of deregulation or regulation by the Alaska Public Utilities Commission will be held within 60 days and that a ballot to participate in that election will be mailed or delivered to each subscriber or member of the utility or cooperative with the regular bill for service. The notice shall also state

that a subscriber or member of the cooperative is entitled to vote in the election without regard to whether the subscriber's or member's account with the utility or cooperative is current and that the ballot must be postmarked or returned to the commission within 30 days after it was mailed or otherwise delivered to the subscriber or member. The notice shall also announce the schedule for one or more public meetings which shall provide an opportunity for the subscribers or members to discuss this election. The public meeting or meetings shall be held not more than 30 days before the ballots are mailed or distributed to those eligible to vote. A cooperative may satisfy this requirement by including a discussion of this election on the agenda of an annual meeting if the annual meeting is scheduled to be held not more than 30 days before the election.

(d) A ballot with return postage paid shall be mailed or delivered to each subscriber or member of the utility or cooperative with the subscriber's or member's bill for service and shall contain only the following language:

"Shall (name of utility or cooperative) be exempt from regulation by the Alaska Public Utilities Commission?

[] YES [] NO"

(e) The results of an election under this section shall be certified by the commission within 60 days after the ballots are mailed or delivered to the subscribers or members.

(f) During the 60 days immediately preceding an election under this section a list of subscribers or members of the utility or cooperative shall be made available at cost to any subscriber or member of the utility or cooperative who requests one. The list shall be in the same form that is available to the utility or cooperative.

(g) The board of directors of a utility or cooperative may call an election under this section on its own initiative and shall call an election upon receipt of a valid petition from its subscribers or members. A petition shall be considered valid if it is signed by not less than the number of subscribers or members equal to ten percent of the first 5,000 subscribers or members and three percent of the subscribers or members in excess of 5,000. An election under this section may only be held once every two years.

(h) A utility or cooperative which is already exempt from regulation under this section may elect to terminate its exemption in the same manner. (§ 10 ch 136 SLA 1980)

Sec. 42.05.720. Definitions. In this chapter

(1) "affiliated interest" includes:

(A) a person owning or holding directly or indirectly five per cent or more of the voting securities of a public utility engaged in intrastate business in this state;

(B) a person, other than those specified in (A) of this paragraph, in a chain of successive ownership of five per cent or more of voting

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(C) a corporation five per cent or more of whose voting securities are owned by a person owning five per cent or more of the voting securities of the public utility or by a person in such a chain of successive ownership of five per cent or more of voting securities;

(D) a corporation five per cent or more of whose voting securities are owned or held by a public utility;

(E) a person with whom the public utility has a management or service contract;

(F) a person who is an officer or director of such a public utility or of a corporation in a chain of successive ownership of five per cent or more of voting securities;

(G) a corporation which has one or more officers or directors in common with a public utility;

(H) a person or corporation who or which the commission determines as a matter of fact, after investigation and hearing, actually is exercising such substantial influence over the policies and actions of a utility in conjunction with one or more other corporations or persons with whom they are related by ownership or blood, or by action in concert, that together they are affiliated with the utility within the meaning of this section even though none of them alone is so affiliated; or

(I) a person or corporation who or which the commission determines as a matter of fact after investigation and hearing actually is exercising substantial influence over the policies and actions of a utility even though such influence is not based upon stockholdings, stockholders, officers or directors to the extent specified in this section;

(2) "commission" means the Alaska Public Utilities Commission;

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

(A) any group of 10 or more customers that purchase the service or commodity furnished by a public utility as defined in (2) of this section; and

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

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

(A) furnishing, by generation, transmission or distribution, electrical service to the public for compensation;

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

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

(D) furnishing by transmission or distribution of natural or manufactured gas to the Alaska public for compensation;

(E) furnishing for distribution or by distribution petroleum or petroleum products to the Alaska public for compensation when the consumer has no alternative in the choice of supplier of a comparable product and service at an equal or lesser price;

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

(5) "rate" includes each rate, toll, fare, rental, charge, or other form of compensation demanded, observed, charged or collected by a public utility for its services;

(6) "service" means (unless the context indicates otherwise) every commodity, product, use, facility, convenience or other form of service which is offered for and provided by a public utility for the convenience and necessity of the public;

(7) "tariff" means a rate, charge, toll, rule or regulation of a utility relating to services furnished by the utility to the general public for compensation and every map, page, adoption notice, instrument or other document filed with the commission setting out the terms and conditions under which utility services are offered to the public and instruments of concurrence and all other documents and data setting out the terms of a utility's business relations with another utility insofar as they affect the general public either directly or indirectly;

(8) "telecommunications" means the transmission and reception of messages, impressions, pictures and signals by means of electricity, electromagnetic waves and any other kind of energy, force variations or impulses whether conveyed by cable, wire, radiated through space, or transmitted through other media within a specified area or between designated points. (§ 6 ch 113 SLA 1970; am § 2 ch 36 SLA 1971; am § 2 ch 76 SLA 1973)

Revisor's notes. — Formerly AS 42.05.701. Renumbered in 1983 and reorganized to alphabetize the defined terms.

Cross references. — For legislative purpose of paragraph (4)(E) of this section, see § 1, ch. 36, SLA 1971 in the Temporary and Special Acts.

NOTES TO DECISIONS

Applied in *McClellan v. Kenai Peninsula Borough*, Sup. Ct. Op. No. 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977); *Alaska Pub. Utils. Comm'n v. Chugach Elec. Ass'n*, Sup. Ct. Op. No. 1636 (File Nos. 2969, 2993), 580 P.2d 687

(1978), overruled on other grounds, Sup. Ct. Op. No. (File No. 3636, 595 P.2d 626 (1979)); *B-C Cable Co. v. City of Juneau*, Sup. Ct. Op. No. 2112 (File No. 4587), 613 P.2d 616 (1980).

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Collateral references. — 64 Am. Jur.
2d, Public Utilities, §§ 1 — 2.
73 C.J.S., Public Utilities, §§ 1 — 3.
What are "public utilities" within provi-
sions relating to municipal purchase, con-
struction or repair of public utility, 9 ALR
1033; 35 ALR 592.

Conclusiveness of charter as regards
character of corporation as a public utility
corporation, 119 ALR 1019.
Electricity, gas, or water furnished by
public utility as "goods" within provisions
of Uniform Commercial Code Article 2 on
Sales, 48 ALR3d 1060.

Sec. 42.05.721. Short title. This chapter may be cited as the Alaska
Public Utilities Commission Act. (§ 6 ch 113 SLA 1970)

Cross references. — For transition
provisions, see § 7, ch. 113, SLA 1970 in
the Temporary and Special Acts.

Chapter 06. Pipeline Act.

Article

1. Powers and Duties of Commission (§§ 42.06.140 — 42.06.230)
2. Certificate of Public Convenience and Necessity (§§ 42.06.240 — 42.06.305)
3. Services and Facilities (§§ 42.06.310 — 42.06.340)
4. Rates and Rate Schedules (§§ 42.06.350 — 42.06.420)
5. Accounts, Records, and Reports (§§ 42.06.430 — 42.06.460)
6. Enforcement Provisions (§§ 42.06.470 — 42.06.590)
7. General Provisions (§§ 42.06.605 — 42.06.640)

Revisor's notes. — Section 20, ch. 110,
SLA 1981 repealed former Articles 1 and 2
of this chapter. The remaining sections in
this chapter, which had been designated
Article 3, were designated Articles 1 — 7
in 1983.

Legislative history reports. For report
on ch. 139, SLA 1972 (FCCS HCS CSSB
314), see 1972 Senate Journal, p. 1072;

1972 House Journal, p. 1420.

Cross references. — For transition
provisions, see the editor's notes following
the title analysis.

Collateral references. — 13 Am. Jur.
2d, Carriers, §§ 20 — 32, 75 — 104; 61 Am.
Jur. 2d, Pipelines, § 1 et seq.; 64 Am. Jur.
2d, Public Utilities, § 292 et seq.
13 C.J.S., Carriers, §§ 15 — 24.

Sec. 42.06.010. Legislative declaration of policy. [Repealed, § 20 ch
110 SLA 1981.]

**Secs. 42.06.020 — 42.06.120. Establishment of Alaska Pipeline
Commission.** [Repealed, § 20 ch 110 SLA 1981.]

Sec. 42.06.130. [Renumbered as AS 42.06.605.]

Article 1. Powers and Duties of Commission.

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| Section | Section |
| 140. General powers and duties | 220. Annual report |
| 150. Powers and duties with respect to
federally regulated carriers | 230. Jurisdiction of commission |
| 210. Publication of reports, orders, deci-
sions and regulations | |

Sec. 42.06.140. General powers and duties. (a) The commission

- (1) shall regulate pipelines and pipeline carriers in the state;
- (2) may investigate upon complaint or its own motion, the rates, classifications, rules, regulations, prices, services, practices and facilities of pipeline carriers, and the performance of obligations under and compliance with the terms of leases issued by the state;
- (3) may make, prescribe or require just, fair and reasonable rates, classifications, regulations, practices, services and facilities for pipeline carriers;
- (4) may require pipeline carriers and affiliated interests to file with the commission reports and other information and data required or permitted to be required by other provisions of this chapter;
- (5) may adopt regulations that are necessary and proper to the performance of its duties under this chapter, including regulations governing practices and procedures of the commission, which regulations shall not be inconsistent with state law;
- (6) shall during normal business hours have access to and may designate any of its employees, agents or consultants to inspect and examine, the accounts, financial and property records, books, maps, inventories, appraisals, valuations, and related reports kept by a pipeline carrier, or kept for it by others, which directly affect the interests of the state and directly relate to pipelines located in the state;
- (7) may initiate, intervene in, and appear personally or by counsel and offer evidence in and participate in, any proceedings involving a pipeline carrier, and affecting the interests of the state, before any officer, department, board, commission or court of this state;
- (8) shall require permits for the construction, enlargement in size or operating capacity, extension, connection and interconnection, operation or abandonment of any oil or gas pipeline facility or facilities, subject to necessary and reasonable terms, conditions and limitations;
- (9) may prescribe the system of accounts and regulate the service of an oil or gas pipeline facility;
- (10) shall provide all reasonable assistance to the Department of Law in intervening in, offering evidence in, and participating in proceedings involving a pipeline carrier or affiliated interest and affecting the interests of the state, before an officer, department, board, commission or court of another state or the United States.

(b) The commission may assign a qualified, unbiased, and impartial administrative law judge, with experience in the general practice of law, to conduct hearings under this chapter. The administrative law judge may perform other duties in connection with the administration of this chapter and other laws. An administrative law judge hired to conduct hearings under this chapter shall have been admitted to prac-

§ 42.05.380

PUBLIC UTILITIES AND CARRIERS

§ 42.05.381

NOTES TO DECISIONS

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

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

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

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

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

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

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

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

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

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§ 42.05.500

PUBLIC UTILITIES AND CARRIERS

§ 42.05.511

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

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

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

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

Article 7. Financial and Management Regulation.

Section

511. Unreasonable management practices

521. Impaired capital

531. Distribution of surplus and profits

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

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

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

*vice or property with 33 its own personnel
and capital. (6 ch. 113 SLA 1970)*

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

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

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

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

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

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

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

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

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

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

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

7 (1) money provided or advanced by the utility to acquire
8 ownership of the utility;

9 (2) money provided by the utility for a loan, advance, or
10 deposit to an owner of the utility or to a subsidiary or affiliate of
11 the utility;

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

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

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

18 (f) In establishing rates under this chapter the commission
19 shall consider the revenues and profits of a public utility derived
20 from operations in the state and shall consider the revenues and
21 profits of other businesses operated in the state that are owned by
22 the utility or a holding company, subsidiary, or affiliate of the
23 utility if the utility and its holding companies, subsidiaries or
24 affiliates have combined annual sales in excess of \$5,000,000. If a
25 nonutility company that operates in the state and is owned by a util-
26 ity operating in the state or a holding company, subsidiary, or affil-
27 iate of the utility, has annual sales in excess of \$1,000,000, 15
28 percent of the gross revenues of the nonutility is considered to be
29 utility revenue for the purpose of establishing utility rates.

1 * Sec. 3. AS 42.05 is amended by adding a new section to read:
2 Sec. 42.05.655. INSPECTION JURISDICTION. The on-site inspection
3 jurisdiction of the commission is limited to areas within the state.
4 * Sec. 4. AS 42.05.720(4) is amended to read:
5 (4) "public utility" or "utility" includes every corpora-
6 tion (whether public, cooperative, or otherwise), company, individual,
7 or association of individuals, their lessees, trustees, or receivers
8 appointed by a court, that owns, operates, manages or controls any
9 plant, pipeline or system for
10 (A) furnishing, by generation, transmission or distri-
11 bution, electrical service to the public for compensation;
12 (B) furnishing telecommunications service, except for
13 cable television service, to the public for compensation;
14 (C) furnishing water, steam, or sewer service to the
15 public for compensation;
16 (D) furnishing by transmission or distribution [OF]
17 natural or manufactured gas to the [ALASKA] public for compensa-
18 tion;
19 (E) refining, furnishing for distribution, or
20 distributing [BY DISTRIBUTION] petroleum or petroleum products
21 for [TO] the [ALASKA] public for compensation [WHEN THE CONSUMER
22 HAS NO ALTERNATIVE IN THE CHOICE OF SUPPLIER OF A COMPARABLE
23 PRODUCT AND SERVICE AT AN EQUAL OR LESSER PRICE;
24 (F) FURNISHING COLLECTION AND DISPOSAL SERVICE OF
25 GARBAGE, REFUSE, TRASH OR OTHER WASTE MATERIAL];
26 * Sec. 5. AS 42.05.711(i) is repealed.
27 * Sec. 6. This Act takes effect July 1, 1984.