



FIGURE 1

SUGGESTED TURNOVER DATA COLLECTION FORM

Job Class \_\_\_\_\_ Position Control Number \_\_\_\_\_  
Date Hired \_\_\_\_\_ Date Terminated \_\_\_\_\_

To Terminating State Employees:

The information requested here is for the use of the Division of Personnel and is not to be reviewed by your immediate superiors. Please check all appropriate items.

1. I am leaving Alaska State Employment to take a higher paying position.
2. I am leaving Alaska State Employment to take a position with better opportunities for professional advancement.
3. I am leaving Alaska State Employment to go to school.
4. I am leaving Alaska State Employment because my spouse has been transferred to another location.
5. I have taken another job in Alaska State Government.
6. I have taken a job with the Federal Government.
7. I will continue to reside in my present location.
8. I am moving to another location in Alaska.
9. I am moving outside Alaska.
10. Dissatisfaction with my supervisor(s) or with the organization of my department is a factor in my termination.

The Division of Personnel is interested in knowing why any employee has decided to leave his position. Please use the space provided below (and additional sheets if necessary) to clarify any of the statements you have checked above and to tell us anything else you would like us to know about the circumstances of your decision to terminate.

Thank you.

*This is a... Personnel section used to ask for this information when a person signed, although it was not always given. There 40 boxes a place for it on the reverse side of the P.F.*

*These recommendations  
are all good.*

#### SUMMARY AND CONCLUSIONS

The purpose of the State Personnel Act is to establish a system of personnel administration based upon the merit principle and adapted to the requirements of the state to the end that persons best qualified to perform the functions of the state will be employed, and that an effective career service will be encouraged, developed, and maintained. With general information about merit employment at hand, it has been possible to describe the Alaska Merit System and to raise pertinent issues concerning its effectiveness.

Underfinancing is impeding development of an effective career service in two ways. First, comparative study indicates that the state does not pay well enough to attract and hold a motivated and capable force of employees. In determining pay, legislators should consider that their decision will directly influence the quality of the classified service in coming years. The state will generally receive what it pays for in the labor market; turnover also will reflect the adequacy of state pay.

Second, adequate financing and staffing is needed to enable the Division of Personnel to contribute to the improved efficiency of the whole state government by meeting the state's personnel needs more promptly. Furthermore, improved staffing would enable the state to strengthen screening procedures and thereby take better advantage of the labor market.

Two possible reforms dealing with the rights of applicants have been discussed. The open register is not in keeping with the merit principle; ways to abolish it without incurring significant administrative costs have been suggested. The lack of a procedure for applicants to seek redress of

violations of their rights to impartial consideration for employment may allow significant abuse. The institution of some applicant grievance procedure would deter such abuse.

Providing for written notice to employees before dismissal, making grievance committee recommendations binding, and granting the personnel board authority and responsibility for penalizing violations of the Personnel Act and Rules are ways to strengthen the system's protection of individual rights. Administrators may violate employee rights out of self-interest, expediency, or indifference. Even simple personality conflicts may tempt persons with authority to abuse it. A strongly enforced merit principle tends to deter arbitrary actions. The Alaska Merit System will more effectively attract and hold desirable employees if the state becomes known as an employer which hires and promotes for reasons of merit alone and which provides adequate system of safeguards.

The institution of an independent Personnel Board may be an effective way to assure a strong merit system in Alaska. This approach would clearly define and allocate authority and responsibility for the personnel function; it might produce a better combination of executive authority and protective control than presently exists. In many ways, an independent Personnel Board makes sense; its appropriateness for Alaska warrants further study. Such research should draw upon the experience of states having independent Civil Service Commissions. In addition, the judgement of administrators, <sup>and a few</sup> (who would have to live with changes that might be made) should be solicited in order to better foresee the implications of such changes.

It is recommended that the Personnel Division reconsider the function of minimum qualifications in the screening process. ~~Minimum qualifications~~

in the-screening-process. Minimum qualifications should be statements of the absolute minimum of training and experience which, combined with adequate motivation and aptitude, would enable an applicant to become a satisfactory employee. The policy of attempting to set employment standards by specifying high minimum qualifications is self-defeating. Specifying "desirable characteristics" in places of minimum qualifications in some or all job classes may be an appropriate way to take better advantage of the Alaskan labor market.

Finally, the desirability of collecting regular comprehensive turnover and employment data has been pointed out. Such data would be a useful management tool for the Division of Personnel and would also provide information of use to other government agencies.

A considerable time lag will separate financial and institutional improvements in the Alaska Merit System from the benefits which these improvements will bring. Since Alaska's government is young and relatively small, the state has an opportunity to profit from its own experience and the experience of older states. However, growth will make bureaucratic improvement more difficult. Thus, Alaska should move now to develop career service fully capable of meeting the demands which will accompany the state's growth.

(BOXED)

THE ALASKA STATE EMPLOYEES ASSOCIATION

The Alaska State Employees Association was chartered by the state as a non-profit corporation in 1959. Presently the association has about 2,100 members contributing \$2 each per month in dues. The ASEA employs a full time executive secretary and a clerical secretary. The organization sees its major functions as:

1. To lobby in the legislature for better pay and improved retirement programs. The ASEA considers the pay bills of 1965 and 1967 and the Retirement and Health Insurance bills of 1968 significant legislative victories.
2. To lobby in the Department of Administration for rules changes which they consider appropriate. Presently the ASEA is attempting to obtain what they consider an adequate policy for overtime compensation.
3. To disseminate information of interest to state employees, especially through their monthly newspaper, the State Employee Reporter.
4. To serve as employee consul in the systems two grievance procedures.

Since public employees traditionally have not had recourse to strike and since the ASEA does not officially represent state employees in collective bargaining (the legislature determines pay),

(BOXED)

the association depends upon straightforward lobbying backed by a potential ability to influence a significant number of votes to achieve its goals.

Although only twenty-one hundred state employees pay dues, all employees receive the association's newspaper and most of them vote in state elections. In addition, the votes of husbands and wives contribute to their potential influence in elections. Furthermore, any state employee, if sufficiently motivated, might well influence the votes of his friends. In a small state where elections are often close, the existence of such unity behind one set of interests might be a decisive factor.

The ASEA attempts to influence legislators and the administration by convincing them that this potential unity is a reality -- that the association will make employees aware of who represents their interests and that state employees will act accordingly.

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

April 4, 1969

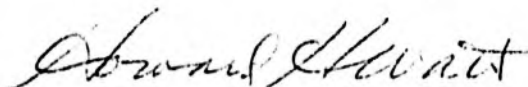
The Honorable Barry W. Jackson  
Alaska State House of Representatives  
Pouch "V" State Capital Building  
Juneau, Alaska 99801

Dear Mr. Jackson:

Attached please find a copy of a self-explanatory petition for your consideration. The original signed copy has been forwarded to the President of the Senate and copies have been sent to the Chairman of the Finance Committee and Chairman of State Affairs Committee.

Thank you in advance for your consideration.

Sincerely,



Howard Watt  
Chairman, Fairbanks Chapter  
A.S.E.A.

PETITION

We, the undersigned employees of the State of Alaska, and residents of the Fairbanks North Star Borough, petition the Legislature and the Governor of the State of Alaska to enact in this session of the Legislature HOUSE BILL 174, with its equivalent SENATE BILL 132, relating to State employees' salaries and providing for an effective date; and HOUSE BILL 106, entitled "An act Amending the State Personnel Act; and creating the Alaska Civil Service Commission".

The desirability of having an independent merit system not influenced by political motivations or by changes in administration, but devoted solely to the creation of a fair, impartial and efficient working staff for our State is only too well established. Such a system, together with fair compensation for services rendered, constitutes the only way to attract and keep in State employment qualified career personnel. Failure to act on these bills will perpetuate a system which has received much well-earned criticism and has cost this State and its people the high cost of constant turnover of personnel, continuous recruitment, and the concomitant training, with reduced efficiency and production.

We therefore urge our representatives, senators, and Governor to enact these bills promptly by such majority of votes as to demonstrate to the people of Alaska their desire for the quality of government and administration this great State of Alaska deserves.

<u>Robert Cameron</u>	<u>311 State St. Fairbanks</u>
<u>John W. ...</u>	<u>870 ... TR. Ct.</u>
<u>Lawrence S. ...</u>	<u>1760 Jack St. Fairbanks</u>
<u>Warren W. Hanson</u>	<u>660 FAIRBANKS ST.</u>
<u>...</u>	<u>...</u>
<u>...</u>	<u>...</u>
<u>...</u>	<u>1811 Carr St. Fairbanks</u>
<u>...</u>	<u>Box 933 Fairbanks</u>
<u>...</u>	<u>672 21st Fairbanks</u>
<u>...</u>	<u>1/4 mile above ... rd</u>

Rush

PETITION

111

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Fred Hupprich  
Rich [unclear]  
W. N. [unclear]  
Bill Hupprich  
Donald [unclear]  
John [unclear]  
Howard [unclear]  
Queen W. Jensen  
Walter [unclear]  
Edward [unclear]

1661 ASPEN  
Town Camp, Delta Junction  
Box 3081 Fairbanks, Alaska  
572 Lakeview Trailer Court, F.B.K.S.  
68 Stearns Highway  
121 [unclear] - Fairbanks, Alaska  
1408 [unclear] St., Fairbanks  
Madison Street, T.C. Fairbanks  
80 [unclear] St. Fairbanks  
611 Front St. Fairbanks - F.B.K.S.

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<u>[Signature]</u>	<u>230 Fairwell Ave. Fairbanks</u>
<u>[Signature]</u>	<u>1603 Jensen Apt 108 FA</u>
<u>[Signature]</u>	<u>5-265 College Alaska</u>
<u>[Signature]</u>	<u>20 Box 912 Fairbanks Alaska</u>
<u>Maurice H. Bellville</u>	<u>1 1/3 mi. Colville Trail, Fairbanks</u>
<u>[Signature]</u>	<u>Black Pt. College, Alaska</u>
<u>[Signature]</u>	<u>Box 5783 College Alaska 99701</u>
<u>[Signature]</u>	<u>"</u>
<u>Ross Atkins</u>	<u>Box 930 North Pole Alaska</u>
<u>_____</u>	<u>_____</u>

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<u>George (Bill) ...</u>	<u>1801 Central, Ft's.</u>
<u>William J. ...</u>	<u>College Alaska</u>
<u>Ken ...</u>	<u>2751 Davis Rd Fairbanks</u>
<u>Thomas L. ...</u>	<u>Box 5709 College Alaska.</u>
<u>Edward ...</u>	<u>1532 Tenth Ave. Fairbanks Alaska - 99701</u>
<u>...</u>	<u>708 ... Fairbanks</u>
<u>...</u>	<u>711 ... Fairbanks.</u>
<u>William S. Eberwein</u>	<u>1301 Turner St. Fairbanks</u>
<u>Lee ...</u>	<u>306 4th St W. NORTH POLE ALASKA</u>
<u>Paul ...</u>	<u>117 ... Fairbanks Alaska</u>

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<u>Robert B. Harris</u>	<u>Estes, Alaska</u>
<u>Ed Harwood</u>	<u>703 Fulton, F.B.K.</u>
<u>Robert J. Reed</u>	<u>1389 W. Chena</u>
<u>Gene H. [unclear]</u>	<u>1343 - 10<sup>th</sup></u>
<u>Frank W. [unclear]</u>	<u>1512 Central Ave. F.B.K.</u>
<u>Herbert J. Andrews</u>	<u>2019 Carr, F.B.K.</u>
<u>Donald J. [unclear]</u>	<u>829 17<sup>th</sup> Ave</u>
<u>Lee C. [unclear]</u>	<u>907-21<sup>st</sup> Ave - F.B.K.</u>
<u>Edna M. [unclear]</u>	<u>P.O. Box 942 - North Pole, Alaska</u>
<u>William [unclear]</u>	<u>240 [unclear] F.B.K.</u>

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<u>Ernest E. Presley</u>	<u>Persinger Drive, Fairbanks</u>
<u>(Raymond M. McLennan)</u>	<u>345 Church St.</u>
<u>W. L. Benson</u>	<u>Box 456, Fairbanks 1</u>
<u>Raymond A. Darling</u>	<u>Paper Road, Fairbanks</u>
<u>Frank P. Jones</u>	<u>328 Baranoff Fl.</u>
<u>Donald W. Lee</u>	<u>20 mi. Chena Hot Springs Rd.</u>
<u>Clyde V. Miami</u>	<u>1828 Bridgeway</u>
<u>Ray P. Jones</u>	<u>834 1/2 St.</u>
<u>Frank M. Smith</u>	<u>Com. B. Fairbanks</u>
<u>Arthur J. Joseph</u>	<u>1606 Mary Paul</u>

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<u>John A. [unclear]</u>	<u>Reiney Photo 321 3rd St. Central, Fairbanks</u>
<u>Miss Brown</u>	<u>Call [unclear] Box 5-585 College</u>
<u>Don Barks</u>	<u>601 Polaris Bldg. Fairbanks</u>
<u>Mr. [unclear]</u>	<u>616 Bentley Ave. Fairbanks</u>
<u>Chas. Johnson</u>	<u>Box 201 Fairbanks Alaska</u>
<u>Herbert W. Johnson</u>	<u>218 Betty St. Fairbanks</u>
<u>W. F. Norman</u>	<u>1805 Central Fairbanks</u>
<u>Don Pierce</u>	<u>1805 Central FBX</u>
<u>[unclear]</u>	<u>Box 5-585 College</u>
<u>_____</u>	<u>_____</u>

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<u>Donna J. Miller</u>	<u>1616 Cushman - F.B.S.</u>
<u>Arthur R. B. Jr.</u>	<u>1616 Cushman St., F.B.S.</u>
<u>William Schmitt</u>	<u>1616 Cushman St., F.B.S.</u>
<u>Robert E. Lee</u>	<u>1616 Cushman St., F.B.S.</u>
<u>Edwin Egan</u>	<u>1817 Bridgewater Drive</u>
<u>Leonard J. Kase</u>	<u>215 College Rd.</u>
<u>John H. Peterson</u>	<u>1616 Cushman St., F.B.S.</u>
<u>Christopher</u>	
<u>Walter Peterson</u>	



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Christina Cunningham  
Tessie Nashoanich  
Arthur Leon  
Lois Conroy  
Edith Chase  
Linda Finstad  
Nancy Joseph  
Richard Nelson  
Martha

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<u>Lloyd Lundberg</u>	<u>220 Chukar St.</u>
<u>David M. ...</u>	<u>570 1st Ave. Fairb.</u>
<u>Robert A. ...</u>	<u>316 ...</u>
<u>Richard ...</u>	<u>Box 373 Fairbanks</u>
<u>Elmer ...</u>	<u>746 - 9th Ave. Fairbanks</u>
<u>Jack ...</u>	<u>539 - ... H. A. ...</u>
<u>Ralph L. Curtis</u>	<u>Box 54 - College Alaska</u>
<u>...</u>	<u>22 ...</u>
<u>...</u>	<u>...</u>
<u>...</u>	<u>Pioneer Way</u>

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Carol Franick \_\_\_\_\_  
Richard Burton \_\_\_\_\_  
Linda Bentley \_\_\_\_\_  
Janice DeWitt \_\_\_\_\_  
James Walker \_\_\_\_\_  
Orly K. Bayless \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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<u>John M. [Signature]</u>	<u>1161-6th #7, Fairbanks</u>
<u>[Signature]</u>	<u>100 Bridget Fairbanks</u>
<u>[Signature]</u>	<u>531 Northward Bldg. Fairbanks</u>
<u>[Signature]</u>	<u>Box 1757 Fairbanks Alaska</u>
<u>[Signature]</u>	<u>359 Slater Fairbanks</u>
<u>[Signature]</u>	<u>10th Street S. Fairbanks</u>
<u>[Signature]</u>	<u>Box 586 Fairbanks (318 Slater St)</u>
<u>[Signature]</u>	<u>Box 2137 FBKS ALASKA</u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>

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<u>James H. Savaris</u>	<u>759-8<sup>th</sup> ave. Fairbanks</u>
<u>Marjorie L. Mullin</u>	<u>P.O. Box 2111 Fairbanks</u>
<u>Valley M. (Siken)</u>	<u>Box 4104-1 8<sup>th</sup> St. W/W 1</u>
<u>Barbara H. Tucker</u>	<u>P.O. Box 1004 FBKS. Alaska</u>
<u>Sylvia M. Guest</u>	<u>1584 Hilton Avenue. FBKS. Alaska</u>
<u>Christina Barth</u>	<u>Nixon Apt 1-B-4, Fairbanks</u>
<u>Elinor D. Olson</u>	<u>1801 Central Fairbanks</u>
<u>Lucas F. Price</u>	<u>P.O. Box 976 North Pole, Alaska</u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>



PETITION

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<u>William J. ...</u>	<u>415-5th Ave. FBKS.</u>
<u>Louis P. ...</u>	<u>1411 MARSH AVE FBKS.</u>
<u>R. H. Robertson</u>	<u>232 State Drive Fairbanks.</u>
<u>J. ...</u>	<u>College Alaska.</u>
<u>J. ...</u>	<u>Box 209 College Alaska</u>
<u>David M. ...</u>	<u>2035 Fenwick St</u>
<u>Stanley W. ...</u>	<u>415 Lakeview T.C.</u>
<u>Donald A. ...</u>	<u>617 Bentley Dr. Fairbanks</u>
<u>Miss S. ...</u>	<u>13 MILES CILINA RIDGE ROAD</u>



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111

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<u>R. W. Ethel</u>	<u>1616 Cushman St. Fairbanks</u>
<u>Ed. [unclear]</u>	<u>1616 Cushman St. Fairbanks</u>
<u>David M. [unclear]</u>	<u>1616 Cushman St. Fairbanks</u>
<u>Karen M. [unclear]</u>	<u>1616 Cushman St. Fairbanks</u>
<u>Carrie R. [unclear]</u>	<u>1616 Cushman Street Fairbanks</u>
<u>[unclear]</u>	<u>1616 Cushman Street Fairbanks</u>
<u>[unclear]</u>	<u>1616 Cushman Street Fairbanks</u>
<u>[unclear]</u>	<u>1616 Cushman Street Fairbanks</u>
<u>[unclear]</u>	<u>1616 Cushman St. Fairbanks</u>

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<u>John W. [Signature]</u>	<u>1303 O'Connor Rd</u>
<u>Joseph W. Seal</u>	<u>13 Mile Richardson Highway</u>
<u>Maureen [Signature]</u>	<u>1111 [Signature] Rd</u>
<u>Ms. Linda [Signature]</u>	<u>901 Apt. E Hillman</u>
<u>Steve [Signature]</u>	<u>370 [Signature]</u>
<u>[Signature]</u>	<u>336 W. [Signature]</u>
<u>[Signature]</u>	<u>321 [Signature] Tr. Ct.</u>
<u>_____</u>	<u>_____</u>
<u>_____</u>	<u>_____</u>
<u>_____</u>	<u>_____</u>

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*Miriam Baskin*

*Wanda A. Nelson*

*Patricia C. Cebek*

*[Signature]*

*[Signature]*

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<u>Bernice H. Pass</u>	<u>Fish &amp; Game - Fairbanks</u>
<u>Ernest A. Roguski</u>	<u>Fish &amp; Game - Fairbanks</u>
<u>William J. [unclear]</u>	<u>Fish &amp; Game - Fairbanks</u>
<u>Bernice H. Pass</u>	<u>Fish &amp; Game - Fairbanks</u>
<u>Kenneth T. Alt</u>	<u>Fish &amp; Game - Fairbanks</u>
<u>James I. [unclear]</u>	<u>Fish &amp; Game - Fairbanks</u>
<u>Peter C. Wendlow</u>	<u>Fish &amp; Game - Fairbanks</u>
<u>[unclear]</u>	<u>Fish &amp; Game - Fairbanks</u>
<u>David R. [unclear]</u>	<u>Mammals - Fairbanks</u>
<u>Victor M. [unclear]</u>	<u>Fish &amp; Game - Fairbanks</u>
<u>William H. Copeland</u>	<u>Division of Lands, Fairbanks</u>

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<u>Charles Mendell</u>	<u>1-D-7 Libon Citta FFB</u>
<u>Harold Linn</u>	<u>418 Barrow, FFB</u>
<u>George Zupka</u>	<u>#8 CRHS AV Fairbanks</u>
<u>Harold Foster</u>	<u>209 Brinkley Fairbanks</u>
<u>Anna L. Cole</u>	<u>3611 Keweenaw Ave FFB</u>
<u>Anna C. Smith</u>	<u>57th Street Fairbanks, Alaska</u>
<u>Ellen Wright</u>	<u>0-4 BTC, Fairbanks FFB</u>
<u>Reggie Conroy</u>	<u>2101 - Central - FFB</u>
<u>W. G. ...</u>	<u>P.O. Box 52 No. 27, Barrow</u>
<u>Therese Marshall</u>	<u>Box 2053 Fairbanks, Alaska</u>



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<u>Judy Horvath</u>	<u>206 Kod Dr. Fbk Alaska</u>
<u>Andrew M. Peltola</u>	<u>102 Fairview Fbk Alaska</u>
<u>Margaret Schlegel</u>	<u>1033 Eighth Ave Fbk Alaska</u>
<u>Eric S. Anderson</u>	<u>1 Dr. McGrade Rt. Town &amp; Country Trct</u>
<u>Mary H. Hansen</u>	<u>Box 1716 FAIRBANKS, AAA</u>
<u>John H. Hansen</u>	<u>715 Bentley Dr. Fbk, AAA</u>
<u>Walter Hagan</u>	<u>1139 Cass St. Fairbanks</u>
<u>Carl A. ...</u>	<u>711 ... St. Fbk</u>
<u>William P. ...</u>	<u>1105 ... St. Fairbanks</u>
<u>L. O. Schumacher</u>	<u>1416 Noble Street</u>

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<u>Thomas A. White</u>	<u>175 1/2 Alaska Hwy Fairbanks</u>
<u>John D. Carson</u>	<u>3 1/2 mile Badstuber Rd. Fairbanks</u>
<u>James H. Brown</u>	<u>4300 C. S. Collins Rd. Fairbanks</u>
<u>John W. Kutz</u>	<u>12 Mile Nenana Rd - Box 100 - Fairbanks</u>
<u>James G. Thompson</u>	<u>218 Kady Drive - Fairbanks</u>
<u>Margaret Miller</u>	<u>1011 Smith St. Fairbanks</u>
<u>James A. Hamilton</u>	<u>303 Baker St. Fairbanks</u>
<u>William</u>	<u>Box 1914 Fairbanks</u>
<u>Gertrude Larkin</u>	<u>Box 214 Northwood Bldg. Fairbanks</u>
<u>Don Billings</u>	<u>1-D-2 Fairview Home Fairbanks</u>

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Ed. M. Johnson  
Bruce E. Roberts  
Christy King  
Harold L. ...  
David A. Kelly  
Charles D. ...  
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\_\_\_\_\_  
\_\_\_\_\_

20. 2nd St. Fairbanks Alaska 99701  
1325 Keweenaw Dr. Apt 6 Fairbanks 99701  
Box 5-114 College, Alaska 99701  
511 Water Drive Fairbanks  
328 Illinois Fairbanks 99701  
1433 Aurora Dr. Fairbanks  
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Miles Stuck  
Evelyn McMillan  
Coschen Collins  
John Opala  
James Smith  
Elizabeth Tompkins  
Quanita Lewis  
Thomas Lourenco  
Jan Matheson  
Heinz Wenzel

Box 5544 College ALASKA  
156 Ketter Road Fairbanks  
108 1st St Fairbanks  
655 University Apt 4-C  
Box 5-275 College  
Box 1837 Fairbanks  
722 1st Ave. Alaska  
Box 130 College ALASKA  
2 Mile Barber Rd Fairbanks  
BOX 472 FAIRBANKS. ALASKA

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<u>John C. Riley</u>	<u>325 Illinois St.</u>
<u>Wm. J. ...</u>	<u>328 Illinois St.</u>
<u>Edell Johnson</u>	<u>328 Illinois St.</u>
<u>Wm. K. Martin</u>	<u>113 ... St.</u>
<u>Dorcas Hoch</u>	<u>507 Illinois</u>
<u>Shirley M. ...</u>	<u>1907 Central</u>
<u>Walter ...</u>	<u>328 Illinois St.</u>
<u>Wm. ...</u>	<u>225 ... Road</u>
<u>Louise E. ...</u>	<u>Box 5-429, College, Alaska</u>
<u>B. ...</u>	<u>328 Ill</u>

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

HB

188

STATE OF ALASKA  
THE LEGISLATURE  
LEGISLATIVE AFFAIRS AGENCY

HB 188  
JUNEAU  
ALASKA 99801

**MEMORANDUM**

March 1, 1969

TO: Barry Jackson, Chairman  
House Judiciary Committee

FROM: Arthur H. Peterson  
Revisor of Statutes

SUBJECT: PSC-related bills presently  
before the legislature

HOUSE

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

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

SENATE

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

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

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

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

*Legis. Pub. Serv. Commission*  
*AB/88*

CITY OF FAIRBANKS

MUNICIPAL UTILITIES SYSTEM

CHAIRMAN

WILBUR WALKER

SECRETARY

DON C. CHANDLER

MEMBERS

RAY KOHLER

M.B. SCHIERHORN

RON NERLAND

*Operated By The Public Utilities Board*

648 FIFTH AVENUE

FAIRBANKS, ALASKA

P.O. BOX 2215 - 99701

January 23, 1970

Senator Paul Haggland, Chairman  
and Commerce Committee Members

Gentlemen:

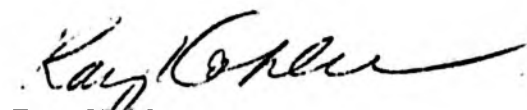
During April 1969, testimony was presented to the Commerce Committee by Fairbanks representative, A. J. Movius. The position of the City was, at that time, and is, that the benefits to be gained in protecting the public's interest are outweighed by the burden imposed on the rate payers who will pay for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

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

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

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

Very truly yours,



Ray Kohler  
Vice Chairman  
Public Utilities Board

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

CITY OF KETCHIKAN

KETCHIKAN PUBLIC UTILITIES

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

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

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

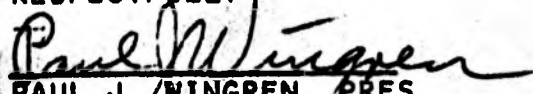
Wednesday, March 5, 1969, at 7:00 P.M., a hearing will be held by the Senate Commerce Committee on Senate Bill No. 128. If you feel this type of legislation would be against your best interests we would strongly urge that you send a letter or telegram expressing your opposition to Senator Paul Haggland,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

KETCHIKAN, ALASKA, 3 MARCH, 1969

DEAR SENATOR HAGGLAND

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

RESPECTFULLY

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

4B 188

KENT H. MILLER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

*Jackson*  
*working copy*

February 7, 1969

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

Dear Mr. Chairman:

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

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

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

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

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

Why not  
simply revise?  
(amend?)

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

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

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

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

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

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

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

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

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

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

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

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

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

NAMELY?

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

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

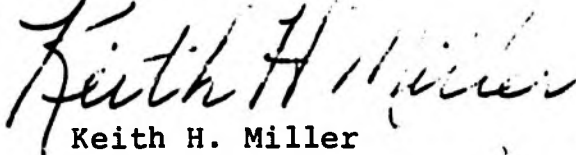
The Hon. Jay S. Hammond

-4-

February 7, 1969

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

Sincerely yours,

  
Keith H. Miller  
Governor

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

PHYSICAL DISABILITY

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

PHYSICAL DEPRECIATION

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

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

PHYSICAL DETERIORATION

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

PHYSICAL DIAGNOSIS

Faulty diagnosis of itself and apart from treatment does not give rise to action for malpractice, since diagnosis may rightly be changed from time to time. "Diagnosis" is defined as the art or act of recognizing the presence of disease from its symptoms, and deciding as to its character, also the decision reached, for determination of type or con-

dition through case or specimen study or conclusion arrived at through critical perception or scrutiny. A "clinical diagnosis" is one made from a study of the symptoms only, and a "physical diagnosis" is one made by means of physical measure, such as palpation and inspection. "Malpractice" is the treatment of a case by surgeon or physician in a manner contrary to accepted rules and with injurious results to the patient; and hence any professional misconduct or any unreasonable lack of skill or fidelity in the performance of professional duties or of mis-treatment of a disease or injury through ignorance and carelessness. *Williams v. Elias*, 1 N.W.2d 121, 124, 140 Neb. 656.

PHYSICAL DISABILITY

Cross References

Crippling

A voter who claimed the assistance of an election officer in preparing his ballot on the ground, not that he was blind or could not read or write, but that he left his eye-glasses at home was not under "physical disability," within Rev.St. art. 36, as amended by Acts 36th Leg., 1919 p. 55, Vernon's Ann.Civ.St. art. 3610, Vernon's Ann.P.C. arts. 224, 225, where he made no effort to get his glasses, the law applying only to permanent disability. *Hillert v. Schwepppe, Tex.*, 294 S. W. 152, 154.

Questions in life policy application regarding deformity, amputation, and physical disability, and whether insured had disease of genito-urinary system, did not suggest to insured operation for removal of testicle so as to warrant cancellation of policy, where application did not disclose such operation being neither "deformity," "amputation," nor necessarily "physical disability." *American Life Ins. Co. v. Bucaya*, 148 So. 617, 620, 227 Ala. 32.

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

§ 1220

PUBLIC UTILITIES ACT  
CALIFORNIA

[Div 1, Pt 1

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

LEGISLATIVE HISTORY

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

COLLATERAL REFERENCES

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

Law Review Articles:

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

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

LEGISLATIVE HISTORY

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

COLLATERAL REFERENCES

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

Law Review Articles:

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

NOTES OF DECISIONS

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

CHAPTER 7

Valuation of Public Utility Properties

- § 1351. Authority to value and revalue property of public utilities.
- § 1352. Hearings to ascertain values: Notice: Preliminary examination: Utilities entitled to hearing: Reduction of evidence to writing.
- § 1353. Making and filing of findings: Review of findings: Findings as admissible in evidence: Findings as conclusive evidence: Manner of controverting facts found.
- § 1354. Additional hearings for revaluations, etc.: Procedure for hearings: Findings.

CROSS REFERENCES

"Commission" and "commissioner": § 20.

§ 1351. Authority to value and revalue property of public utilities. The commission may ascertain for each purpose specified in 368

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

#### LEGISLATIVE HISTORY

Enacted 1951. Based on:

- (a) Stats 1915 ch 91 § 47 subd (a) p 139, as amended by Stats 1917 ch 170 § 1 p 261, without substantial change.
- (b) Stats 1st Ex Sess 1911 ch 14 § 47 subd (a) p 42, as amended by Stats 1913 ch 339 § 1 p 684.
- (c) Stats 1911 ch 20 § 20 p 22.

#### COLLATERAL REFERENCES

Cal Jur 2d Eminent Domain § 353, Public Utilities and Services §§ 53, 55.  
 McKinney's Cal Dig Public Utilities and Services § 52.  
 Am Jur Public Utilities and Services §§ 105 et seq.

#### Law Review Articles:

- 2 CLR 3 (just and scientific basis for establishment of public utility rates, with particular attention to land values).
- 3 CLR 566 (valuation of public service companies for rate-making purposes: going concern value).
- 5 CLR 1 (estimating depreciation in valuation of public utilities for rate-making purposes).
- 12 CLR 283 (theory of prudent investment as a rate basis).
- 15 CLR 445 (investigations on the commission's own motion).
- 32 CLR 398 (rate making of public utilities discussed).
- 23 St BJ 165 (lawyer's view of valuation of public utility property).

#### Annotations:

- 20 ALR 560 (effect of additions constructed at war and postwar prices on valuation for rate-making purposes).
- 49 ALR 1477 (valuation of street easement for street railway rates).
- 63 ALR 1096 (telephone company's rights in, and remedies available to protect, telephone directory and advertising material therein).
- 72 ALR 1232 (capitalizing or funding bond discount).
- 61 ALR2d 866 (liability of public utility to abutting owner for destruction or injury of trees in or near highway or street).
- 64 ALR 1199 (railroad company's liability for injury or death of pedestrian due to condition of surface of crossing).
- 64 ALR2d 1296 (admissibility of evidence of repairs, change of conditions, or precautions taken after accident).
- 66 ALR2d 634 (liability of municipality for torts in connection with airport).
- 67 ALR2d 1364 (liability of railroad for injury or damage resulting from motor vehicle striking bridge or underpass because of insufficient vertical clearance).
- 68 ALR2d 392 (compensation or damages for condemning public utility plant).

#### NOTES OF DECISIONS

- I. Court Decisions.
- II. Public Utilities Commission Decisions.

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

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

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

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

#### 5. — PROPERTY INCLUDED IN VALUATION

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

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

Nonoperative property.—Cost of diversion dam rendered nonoperative and no longer necessary in rendering

service should be excluded from operative capital. Monterey County Waterworks, In re (1928) 31 CRC 852.

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

Nonutility Property.—Water company rendering private service and utility service which contends that private properties acquired from predecessor have never been dedicated to public use has no legal right to have such properties fully valued for utility-rate fixing purposes merely because utility arm of company may be accorded by the other a revocable permissive right to use that part of the property considered private. This does not mean that were the utility to show that it has a definite legal right to the use of private property for utility purposes it would not be entitled to have a fair value accorded to such a right. Thomas v Monterey County Water Works (1937) 40 CRC 663.

#### 6. — COST AND INVESTMENT

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

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

## § 1351

## PUBLIC UTILITIES ACT

[Div 1, Pt 1]

[II, 7]

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

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

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

Actual cost cannot be sole measure of value, admitting that expenditures for special equipment, labor and management is the best measure of value since substitution partakes of the element of speculation, yet abnormally high or abnormally low costs or costs incurred during a time long since past or for things no longer efficient cannot be the true measure of actual present-day worth of the properties for which just compensation must be fixed. Redding, In re (1921) 19 CRC 207.

The best evidence of development

costs consists of showing what the costs actually amounted to during a reasonable development period and should be applied in all cases where it is possible to determine the nature and extent of actual losses, if any, during such development period. Redding, In re (1921) 19 CRC 207, 203.

Investment in advance of present needs.—In rate proceeding cost of canal enlarged beyond present needs may be appraised upon the basis of the cost of that portion of canal reasonably necessary for service to present consumers. Foothill Ditch Co., In re (1923) 32 CRC 44.

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

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

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

## 7. ——— CONSUMERS' ADVANCES

Consumers' advances in aid of construction being available to utility without payment of interest will be treated as proper deduction in determining rate base. Southern Calif. Gas Co., In re (1923) 32 CRC 379.

## 8. — AMOUNT AND VALUE OF SECURITIES

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

PENNSYLVANIA  
PUBLIC SERVICE COMPANIES 66 § 1151

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

52. — Findings of commission, hearing and determination

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

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

54. — Presumption and burden of proof

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

Burden is upon utility company seeking rate increase to establish all basic facts necessary for consideration by the Public Utility Commission. *Sayre Land Co. v. Pennsylvania Public Utility Commission*, 175 A.2d 307, 196 Pa.Super. 417, 1961, affirmed 185 A.2d 325, 405 Pa. 556.

62. Review

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

**§ 1151. Valuation of property of a public utility**

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

<sup>1</sup> Section 1102 of this title.

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

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

**3. Valuation—In general**

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

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

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

Negative salvage actually incurred by steam heating company, either upon ac-

tual retirement of property without replacement or upon replacement of item of property, is entitled to consideration in rate proceeding. *Id.*

**6. — Fair value, valuation**

The Public Utility Commission is not bound to any specific formula to determine fair value, but it cannot take only one factor as the formula; it need not give equal weight to all measures of fair value, but neither can it weigh fair value only by one consideration. *Scranton Steam Heat Co. v. Pennsylvania Public Utility Commission*, 177 A.2d 693, 194 Pa.Super. 147, 1961, modified on other grounds, 176 A.2d 86, 405 Pa. 397.

**24. Reproduction cost—In general**

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

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

COMPARISON OF STATE REGULATORY BODIES  
TREATMENT OF RATE BASE VALUATION

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

32. West Virginia

33. Wisconsin

34. Wyoming

NOTES

1/ All utilities except telephone.

2/ Does not regulate electric and gas utilities.

3/ Uses inflation allowance only.

4/ Uses inflation allowance for telephone.

5/ Does not regulate electric utilities.

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

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

Alaska State Legislature

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



COMMITTEES  
HEALTH, WELFARE,  
AND EDUCATION  
LABOR AND MANAGEMENT

WHILE IN JUNEAU  
POUCH V  
JUNEAU, ALASKA 99801

Senate

March 15, 1969

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

Dear Barry:

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

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

Sincerely,

*Joe*  
Joe P. Josephson  
State Senator

March 7, 1969

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

Dear Joe:

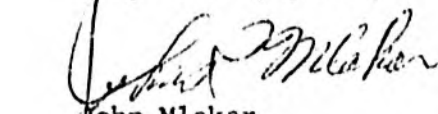
Several Public Service Commission bills have been or perhaps will be introduced in both Alaska Legislative Houses. It appears that one of these bills in original or amended form will pass during this session.

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

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

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

Respectfully yours,

  
John Mlakar  
Denali Fuel Company  
Anchorage, Alaska

Attachment

NORTH CAROLINA CODE

Sec. 62-140

- (a) No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service. The Commission may determine any questions of fact arising under this section.
- (b) The Commission shall make reasonable and just rules and regulations.
  - (1) To prevent discrimination in the rates or services of public utilities.
  - (2) To prevent the giving, paying or receiving of any rebate or bonus, directly or indirectly, or misleading or deceiving the public in any manner as to rates charged for the services of public utilities.
- (c) No public utility shall offer or pay any compensation or consideration or furnish any equipment to secure the installation or adoption of the use of such utility service except upon filing of a schedule of such compensation or consideration or equipment to be furnished and approval thereof by the Commission, and offering such compensation, consideration or equipment to all persons within the same classification using or applying for such public utility service; provided, in considering the reasonableness of any such schedule filed by a public utility the Commission shall consider, among other things, evidence of consideration or compensation paid by any competitor, regulated or non-regulated, of the public utility to secure the installation or adoption of the use of such competitors service.

Sec. 42.05.171(b). FINAL ORDERS OF THE COMMISSION.

No final order of the commission compelling affirmative action, denying a right or privilege, or granting a right or privilege over protest of an interested party may be entered by the commission without giving opportunity to be heard, including, if requested by the public utility or any interested party, a public oral hearing.

Sec. 42.05.171(c). DECISIONS. The commission shall

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

Sec. 42.05.431(c). AUDIT OF ACCOUNTS. An audit made by

a certified public accountant, or by a person approved by the commission, shall be accepted by the commission as prima facie correct. (§ 17 ch 199 SLA 1959)

1909

*Willcox v Consolidated Gas Co.* 212 US 19:

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

1913

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

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

1918

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

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

1923

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

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

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

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

1926

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

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

1929

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

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

1930

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

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

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

1933

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

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

1935

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

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

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

1942

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

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

299

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

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### PRESENT STATUS OF FAIR VALUE RULE

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

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

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

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

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

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

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

### RATE OF RETURN CONSIDERATIONS GENERALLY

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

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

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

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

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

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

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

RATE CASES RELATED TO FAIR VALUE

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

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

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

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

(1964) 56 PUR 3d 66

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

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

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

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

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

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

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

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

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

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

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

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

RATE CASES RELATED TO FAIR VALUE - CONT'D

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

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

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

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

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

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

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

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

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

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

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

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

# Public Utilities

## FORTNIGHTLY

## Regulators Have Problems

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

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

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

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

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

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

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

### Rate Determination

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

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

What is the original cost of the property?

What is the original cost depreciated?

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

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

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

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

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



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

### Fixing the Rate Base

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

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

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

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

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

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

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

### Considering Expenses

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

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

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

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

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



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

### Rate of Return

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

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

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

that a utility is entitled in determining a rate of return to do other than use its capitalization as it exists or as it may be in the foreseeable future.

### Cost of Money

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

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

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

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

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

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

### The Rate Case

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

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

Commissioners cannot be expected to have the

<sup>1</sup> *Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission*, 262 US 679, PUR1923D 11, 20.



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

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

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

#### Promotional Practices and Allowances

**A**LTHOUGH the establishment of fair and reasonable rates and the issues that arise in connec-

tion therewith are major regulatory problems, there are other problems that contribute to the regulator's headache and for which solutions must be found. One of these is the use of promotional practices and allowances.

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

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

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

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

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

or with the purchase of equipment, facilities, or appliances.

16. Sales bonuses and allowances to dealers for the sale of equipment, facilities, or appliances.
17. Free heat correction programs.
18. Special rates for the installation of equipment facilities or appliances.

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

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

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

<sup>2</sup> Re Promotional Practices of Electric and Gas Utilities (Ill 1967) 69 PUR3d 317.

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

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

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

### The Issue of Safety

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

If you were to listen to the proponents of the federal safety bills you might draw the conclusion that regulation of safety was something new. This is not the case, however, because when many of the public utility laws across the land were first passed, such laws provided for general supervision of safety. In our own case, the Illinois Commerce Commission or its predecessors have had jurisdiction of safety since at least 1914. The Illinois commission has carried out its responsibility of assuring public safety in a number of ways. First, before a public utility can expand its service into a new area, the utility must obtain a certificate of public con-

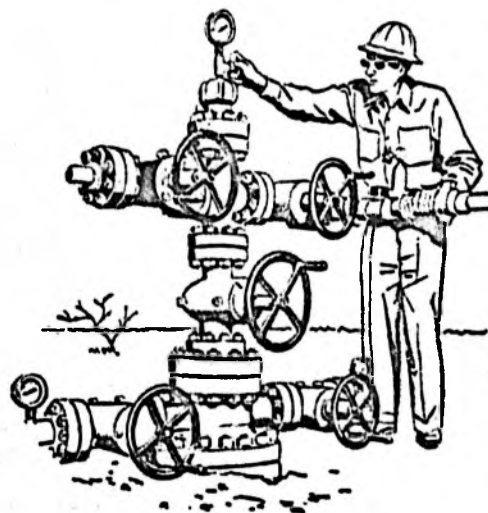
venience and necessity from the commission. A part of the evidence deemed necessary in such certificate cases is the construction, operation, and maintenance specifications for the mains. Secondly, the commission's investigation of accidents, review of accident reports, inspection of pipelines, investigation of complaints, analyses of depreciation, and analyses of per cent of new physical condition during rate proceedings, keeps the commission and its staff advised as to the degree of maintenance and safety of the gas utility system operating in Illinois.

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

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

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

In anticipation of the future, the NARUC Com-



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

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

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

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

#### *Present Customers Not to Be Burdened for Future Costs*

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

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

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

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

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

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

#### *Rate of Return Provides for Inflation*

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

#### *Cost Basis Recognized but Extra Accrual Suggested*

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

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

#### *Right to Restoration of Capital Recognized*

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