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

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

HB/CB

Jackson

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

Senate Commerce Committee
Mr. Chairman, Legislators:

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

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

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

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

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

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

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

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

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

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

Stanley L. Sobocienski
Secretary
Nome Light & Power Utilities

Attested to:

Elmer C. Straub
Member
Nome Light & Power Utilities

Robert H. Renshaw
Member
Nome Common Council

HB186

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

SENATE COMMERCE COMMITTEE

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

Mr. Chairman, Members of the Committee:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Elmer B. Titus, Manager
Ketchikan Public Utilities

EBT:jh

April 9, 1969

HOUSE JUDICIARY COMMITTEE

SECTIONAL ANALYSIS OF CSHB 202

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

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

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

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

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

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

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

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

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

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

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

AS 42.05.121. This provides that the commission may employ an executive director, requires him to be an experienced administrator and the committee substitute adds the provision that he may be one of the commission members. The committee substitute deletes the authority to hire hearing officers. It also deletes some unnecessary language regarding appointment of personnel. Both the original bill and the substitute provide for contracting for the services of consultants. ¶ The following language should be added after the period on line 5 page 4 of ~~CSHB~~ 202: "The salary of the executive director may not exceed that of a superior court judge." This would prevent him from being paid the full salary for both the director['s] position and the chairman's position if he should happen to be appointed to both.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Jackson

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

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

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

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

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

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

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

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

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

By Phil ~~The Attorney~~ General office,

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

state used without analysis as to its effect and application

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

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

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

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* Sec. 42.05.035. REMOVAL OF COMMISSIONERS.

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

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

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

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

* Sec. 42.05.071. QUORUM.

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

* Sec. 42.05.091. COMPENSATION OF MEMBERS OF COMMISSION.

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

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

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

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

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

This section also gives the commission the authority to employ

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

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

* Sec. 42.05.121(b).

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

* Sec. 42.05.131. ANNUAL REPORT.

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

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

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

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

* Sec. 42.05.151. ADMINISTRATIVE AUTHORITY OF COMMISSION.

This section covers the commissions authority in procedural and

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

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

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

* Sec. 42.05.161. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.

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

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

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

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

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

commissioner may hear a case.

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

* Sec. 42.05.181. HEARING OFFICERS AND AGENTS.

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

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

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

* Sec. 42.05.191. CERTIFICATE REQUIRED.

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

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

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

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

* Sec. 42.05.211 CONDITIONS OF ISSUANCE.

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

* Sec. 42.05.221. DISCONTINUANCE OR ABANDONMENT ---

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

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

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

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

tool, and to assure adequate and reasonable service.

* Sec. 42.05.251. STANDARDS OF SERVICE AND FACILITIES.

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

* Sec. 42.05.261. DISCRIMINATION IN SERVICE.

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

A service discrimination proscription is currently found in AS 42.05.460.

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

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

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

This section is a revised form of AS 42.05.370.

* Sec. 42.05.291. STANDARDS FOR MEASUREMENT.

Currently AS 42.05.410.

* Sec. 42.05.301. TESTING OF METER STANDARDS.

Currently AS 42.05.420.

* Sec. 42.05.311. TESTING OF APPLICANCES.

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

* Sec. 42.05.321. TARIFFS, FILING AND INSPECTION.

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

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

* Sec. 42.05.331. ADHERENCE TO TARIFFS.

This section is similar in its provisions to AS 42.05.510.

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

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

* Sec. 42.05.351. DISCRIMINATION IN RATES.

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

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

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

* Sec. 42.05.361. APPORTIONMENT OF JOINT RATES.

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

* Sec. 42.05.371. Tariff Changes.

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

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

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

The Commission does not presently have suspension authority.

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

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

Provisions of this section are presently found in AS 42.05.520.

* Sec. 42.05.401 and 411. Concerning Reparations.

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

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

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

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

* Sec. 42.05.431. System of Accounts and Reports.

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

Both of these changes were suggested by the Commission.

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

* Sec. 441. Continuing Property Records.

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

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

* Sec. 42.05.451. Depreciation Rates and Accounts.

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

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

* Sec. 42.05.461. Subsidiary Business Accounts.

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

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

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

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

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

* Sec. 42.05.491. Unreasonable Management Practices.

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

* Sec. 42.05.501. Impaired Capital.

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

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

This section is a modified version of AS 42.05.200.

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

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

* Sec. 42.05.531. Review and Enforcement.

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

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

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

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

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

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

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

* Sec. 42.05.601. Joinder of Actions.

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

* Sec. 42.05.611. Eminent Domain.

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

* Sec. 42.05.621. Regulation by Municipality.

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

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

* Sec. 42.05.631. Expenses of Investigation and Hearing.

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

* Sec. 42.05.641. Regulatory Fees.

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

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

* Sec. 42.05.651. Public Disclosure of Information.

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

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

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

* Sec. 42.05.661. Validity of Certain Certificates.

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

* Sec. 42.05.671. Utility Classes.

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

* Sec. 42.05.681. Definitions.

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

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

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

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

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

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

* Sec. 42.05.691. Exemptions.

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

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

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

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

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

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

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

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

42.05.121

42.05.171

42.05.441

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

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

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

SECTIONAL ANALYSIS OF CSHB 202

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

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

* Sec. 42.05.030. Term of Office; Vacancy.

Changes made here are appropriate.

* Sec. 42.05.035 and .071.

No significant changes made.

* Sec. 42.05.081. Oath of Office.

The change here is appropriate.

* Sec. 42.05.091. Compensation of Members of Commission.

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

* Sec. 42.05.101 and .111.

No significant changes made.

* Sec. 42.05.121. Employment of Commission Personnel.

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

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

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

* Sec. 42.05.131. Restrictions on Members and Employees.

The extension of restrictions is good.

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

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

Changes in other subsections are minor.

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

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

* Sec. 42.05.161. Application of Administrative Procedure Act.

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

* Sec. 42.05.171. Formal Investigations and Hearings.

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

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

* Deletion of section on Hearing Officers and Agents.

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

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

* Sec. 42.05.181. Final Orders of the Commission.

This section has been added and is appropriate.

* Sec. 42.05.191. Reports on Proceedings.

This section has been added and is appropriate.

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

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

* Sec. 42.05.211. Annual Report.

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

* Sec. 42.05.221. Certificates Required.

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

* Secs. 42.05.231 and 241.

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

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

This is a new section and is desirable.

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

No substantive changes from original provisions.

* Sec. 42.05.271. Modification, Suspension or Revocation.

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

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

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

* Sec. 42.05.351. Testing of Appliances.

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

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

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

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

* Sec. 42.05.371. Adherence to Tariffs.

No substantive change from counterpart.

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

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

* Sec. 42.05.391. Discrimination in RAtes.

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

been made.

* Sec. 42.05.401. Apportionment of Joint RAtes.

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

* Sec. 42.05.411. New Or Revised Tariffs.

No substantive changes.

* Sec. 42.05.421. Suspension of Tariff Filing.

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

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

No substantive changes.

* Deletion of Secs. on "reparations"

No objection to such deletion.

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

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

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

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

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

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

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

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

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

(1) occupy a lawful monopoly position;

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

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

(4) the consumer has no acceptable alternative.

* Sec. 42.05.451. System of Accounts and Reports.

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

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

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

* Sec. 42.05.461. Continuing Property Records.

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

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

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

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

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

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

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

* Sec. 42.05.481. Subsidiary Business Accounts.

No substantive changes.

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

No substantive changes.

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

Only clarifying langauge added.

* Sec. 42.05.521. Impaired Capital.

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

* Sec. 42.05.531. Distribution of Surplus and Profits.

I agree with the changes here.

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

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

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

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

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

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

Anchorage, Alaska
March 6, 1965

TO: The Honorable Eugene Guess
Chairman - House Judiciary Committee

Re: House Bill No. 138

The Honorable Homer Moseley
Chairman - House Commerce Committee

Gentlemen:

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

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

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

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

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

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

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

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

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

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

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

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

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

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provides as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The remainder of the proposed section seems satisfactory.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,

Paul F. Robison

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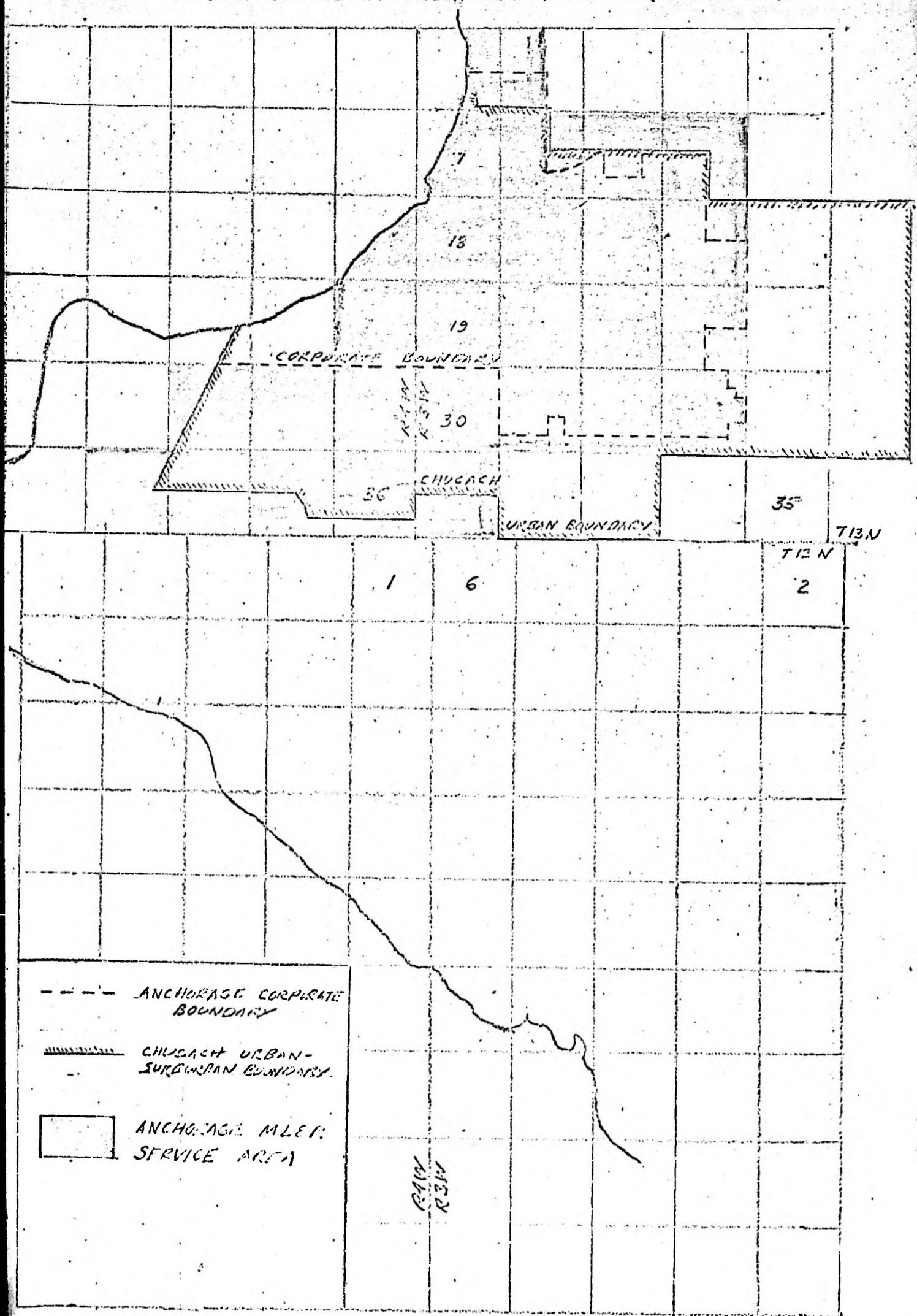
MAP 2 -- SHOWING RELATIONSHIP OF Exhibit

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



UTILITY COMMISSION DATA

Jackson
PSC

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

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

   57 Total

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

IV. Regulatory Jurisdiction over

A. Wholesale electric rates

(a) Private utilities

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

(b) Publicly-owned utilities

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

(c) Cooperative utilities

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

B. Retail electric rates

(a) Private utiliites

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

(b) Publicly-owned utilities

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

(c) Cooperative utilities

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

C. Power to suspend rate changes

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

D. Rate change suspension period

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

E. Power to initiate rate investigations

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

F. Power to prescribe uniform system of accounting

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

G. Other Powers

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

V. Method of Selecting Commissioners

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

VI. Minority party representation on Commission

Facts unknown	10 Commissions
Yes	19 Commissions
No	28 Commissions

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

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

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

INDEX TO SB 54

INDEX TO SB 54 (Cont.)

INDEX TO SB 54 (Cont.)

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

SB 54
Section No.

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

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

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

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

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

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

.045 No response

.055 No response

.065 No response

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

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

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

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

.115 No response

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

.135 No response

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

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

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

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

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

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

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

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

.215 No response

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

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

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

.245 No response

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

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

.295 Suggested Revision: (Should be .305)

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

.305 Suggested Revision: (Should be .295)

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

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

.315 Suggested Revision:

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

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

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

.325 Line 28--Change heading as follows:

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

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

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

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

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

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

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

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

.345(a) No comment

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

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

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

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

.385 No response

.395 No response

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

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

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

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

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

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

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

.465 No response

.475 No response

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

.515 No response

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

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