

Chapter 52. Operation of Public Utilities.

Article 7. Water and Wastewater Utilities.

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3 AAC 52.700. Exempt water or wastewater utilities. (a) A water or wastewater utility is exempt from provisions of AS 42.05 requiring a certificate of public convenience and necessity or relating to economic regulation within the meaning of 3 AAC 48.820, if the water or wastewater utility

(1) collects or transports wastewater only by tank, wagon, or similar conveyance, unless the water or wastewater utility provides the service to a public utility which is an affiliated interest;

(2) provides water or wastewater service to a mobile home community exclusively, without a charge separate from the rent paid by tenants of that community; in this paragraph, “mobile home community” means a piece of real property on which the owner develops for lease two or more sites for locating but not permanently affixing mobile homes;

(3) provides bulk water sales exclusively to water haul vehicles or individuals who self-haul water;

(4) serves fewer than 15 service connections;

(5) is a water utility that

(A) is within the service area of and receives bulk water service from a water utility with

(i) a certificate of public convenience and necessity; or

(ii) provisional certification under 3 AAC 52.720 –

3 AAC 52.738; and

(B) does not

(i) create a different pressure zone from the main;

(ii) provide additional treatment to the water supply before distribution;

(iii) sub-meter the water; or

(iv) require payment as a separate line-item on a bill; or

(6) is a wastewater utility that

(A) is within the service area of and receives bulk wastewater service from a wastewater utility, with

(i) a certificate of public convenience and necessity; or

(ii) provisional certification under 3 AAC 52.720 –

3 AAC 52.738; and

(B) does not

(i) treat the wastewater; or

(ii) require payment as a separate line-item on a bill.

(b) A utility's exemption from regulation under this section may be terminated by vote of the members as provided in AS 42.05.712 or by order of the commission for good cause.

(Eff. 6/19/2004, Register 170)

Authority: AS 42.05.141 AS 42.05.711 AS 42.05.712

AS 42.05.151

3 AAC 52.710. Certificate of public convenience and necessity. (a) A water or wastewater utility must obtain a certificate of public convenience and necessity before it provides service to 15 or more service connections unless it is exempt from regulation under 3 AAC 52.700 or is qualified for provisional certification under 3 AAC 52.720. A utility that is provisionally certificated under 3 AAC 52.720 - 3 AAC 52.724 must obtain a certificate of public convenience and necessity if it no longer meets the criteria in 3 AAC 52.720 for provisional certification. A utility that is exempt under 3 AAC 52.700 or qualified for provisional certification under 3 AAC 52.720 may apply for a certificate of public convenience and necessity.

(b) Except as provided in (c) of this section, an applicant for a certificate of public convenience and necessity must provide the following information on a form prescribed by the commission:

(1) the applicant's legal name and the name under which it proposes to do business;

(2) the address of the applicant's principal national place of business, and, if different, its place of business in this state;

(3) the name, title, and telephone number of the individual who is available to provide the commission with information about the application;

(4) the applicant's type of business structure, including

(A) proof of incorporation, registration, or certification, if applicable; and

(B) the name and address of the applicant's registered agent, if applicable;

(5) the names, titles, responsibilities, and qualifications of key management the applicant employs or will employ, including the individuals responsible for the oversight of its financial and technical staff;

(6) a statement explaining why the public convenience and necessity requires the utility service the applicant will provide;

(7) the name of any other utility providing similar service in, or within one mile of, the area the applicant proposes to serve;

(8) the number and type of customers the applicant expects to serve, by geographic location;

(9) for an existing system, a copy of the approval from the Department of Environmental Conservation to operate a domestic wastewater system under 18 AAC 72.240 or to operate a public water system under 18 AAC 80.210, as applicable; if the applicant has not yet obtained operating approval, the applicant must file a schedule agreed to by the Department of Environmental Conservation to complete that department's technical requirements for all utility plant that is under construction;

(10) for a water utility, a description of each source of water for the proposed service area, including

(A) the quantity available;

- (B) pumping capacity for each source;
- (C) reservoir capacity;
- (D) the available reserve capacity, in hours, in case of power outages or well failure; and
- (E) information regarding the treatment necessary to bring the water into compliance with 18 AAC 80;

(11) for a wastewater utility,

- (A) a description of the collection system and treatment facilities;
- (B) information regarding the treatment necessary to bring the discharge into compliance with 18 AAC 70 and 18 AAC 72, and the method of disposal of treated effluent for the proposed service area; and
- (C) information on the receiving environment into which the effluent will be discharged;

(12) documentation that the applicant complies with the Department of Environmental Conservation's operator certification requirements at 18 AAC 74.010; if the applicant is not in compliance with the operator certification requirements, the applicant must file a schedule to come into compliance with those requirements;

(13) a statement confirming that a water meter is installed, calibrated, and working at the entrance to the distribution system;

(14) a written description and a map of the utility's proposed service area;

(15) a tariff of rates and services that complies with 3 AAC 48.320 - 3 AAC 48.390 if the utility will be subject to economic regulation within the meaning of 3 AAC

48.820, or that complies with 3 AAC 52.730 - 3 AAC 52.740 if the utility will not be subject to economic regulation within the meaning of 3 AAC 48.820;

(16) proforma financial schedules showing the calculation of the rate base for the utility using the appropriate uniform standard of accounts applicable under 3 AAC 48.277 to the utility;

(17) an income statement and balance sheet for the most recent fiscal year for existing systems; an actual income statement and balance sheet from the owner of the utility may be substituted for a new water or wastewater utility that has not begun providing service or that has not completed a full fiscal year of service;

(18) information on the sources of financing for the utility, including grants and loans;

(19) a verification signed by the person authorized to sign on behalf of the applicant that all of the information provided in the application is true, accurate, and complete;

(20) additional filings as required by the commission to explain or supplement the information filed under this subsection.

(c) An applicant that has previously obtained a finding of public convenience and necessity under 3 AAC 52.715 is not required to re-submit information required under (b) of this section unless the information is not currently correct.

(d) The commission will determine if an application for a certificate of public convenience and necessity is complete within 15 business days after the receipt of an application. An incomplete application will be handled as provided in 3 AAC 48.650.

(e) The commission will give notice of an application for a certificate of public convenience and necessity as provided in 3 AAC 48.645(a).

(f) If the commission denies an application, the utility may request a hearing as provided in AS 42.05.171. (Eff. 6/19/2004, Register 170)

Authority: AS 42.05.141 AS 42.05.221 AS 42.05.241
AS 42.05.151

3 AAC 52.715. Public convenience and necessity finding for new utilities. (a) An entity that proposes to provide water or wastewater utility service through a system that is not yet built may not begin construction of the system until the commission determines that the public convenience and necessity requires the service.

(b) An entity described in (a) of this section must file an application for a finding of public convenience and necessity that includes the following:

(1) all information required by 3 AAC 52.710(b)(1) – (4), (6) – (8), (10) – (11), (14), and (18);

(2) an estimate of the cost to design and install the system in compliance with applicable requirement of 18 AAC 80 for a public water system or 18 AAC 72 for a domestic wastewater system;

(3) a projection of revenues and expenses, including capital recovery, for the first full fiscal year after the utility begins collecting fees from customers; if the estimated expenses exceed the estimated revenues, the source of supplemental money that is anticipated to sustain the utility's operation must be identified;

(4) if another utility provides similar service within one mile of the applicant's proposed service area, an explanation why connection to the existing service is not in the customer's interest;

(5) any additional filings the commission requires to explain or supplement the information filed under this subsection.

(c) The commission will determine if an application for a finding of public convenience and necessity is complete within 15 business days after receipt of an application. An incomplete application will be handled as provided in 3 AAC 48.650.

(d) The commission will give notice of an application for a finding of public convenience and necessity as provided in 3 AAC 48.645(a).

(e) The commission will issue a finding of public convenience and necessity or deny the application within 90 days after the entity proposing to provide water or wastewater utility service files a complete application.

(f) If the commission determines that the public convenience and necessity does not require the entity's proposed utility service and denies the application, the entity may request a hearing in accordance with AS 42.05.171. (Eff. 6/19/2004, Register 170)

Authority: AS 42.05.141 AS 42.05.221 AS 42.05.241
AS 42.05.151

3 AAC 52.720. Provisional certification. (a) A provisionally certificated utility is exempt from economic regulation within the meaning of 3 AAC 48.820, except as provided AS 42.05.385 and 3 AAC 52.726.

(b) A water or wastewater utility is eligible for a provisional certificate of public convenience and necessity if the utility owns water treatment and distribution or wastewater treatment and collection facilities and is

(1) a community association, cooperative, political subdivision, or government that has fair and equitable customer representation; for purposes of this paragraph, a utility has fair and equitable customer representation if each individual who is a utility customer has the opportunity to

(A) vote at a local election for members of a board, council, assembly, or body that controls the utility; or

(B) attend meetings and vote directly on matters affecting local utilities;

or

(2) any other form of business structure that has an annual gross revenue less than \$50,000.

(c) Water and wastewater utilities that are financially and managerially consolidated and operating under one tariff or ordinance may file a single application providing the information required in 3 AAC 52.722, and may file jointly to comply with the ongoing requirements in 3 AAC 52.724, including application fees. (Eff. 6/19/2004, Register 170)

Authority: AS 42.05.141 AS 42.05.221 AS 42.05.711
AS 42.05.151 AS 42.05.241

3 AAC 52.722. Application for provisional certification. (a) A utility that is eligible under 3 AAC 52.720 to apply for provisional certification must provide the following information on a form prescribed by the commission:

(1) the utility's legal name and the name under which it proposes to do business;

(2) the address of the utility's principal national place of business, and, if different, its place of business in this state;

(3) the name, title, and telephone number of the individual who is available to provide the commission with information about the application;

(4) the applicant's type of business structure, including

(A) proof of incorporation, registration, or certification, if applicable;

and

(B) the name and address of the applicant's registered agent, if applicable;

(5) for entities qualified for provisional certification under 3 AAC 52.720(b)(2), an affidavit stating

(A) annual gross revenue for the most recent fiscal year; or

(B) projected revenues for the first full fiscal year if the utility is a new water or wastewater utility that has not begun providing service or that has not completed a full fiscal year of service;

(6) a written description and a map of the utility's proposed service area;

(7) a copy of the bylaws for any community association or cooperative;

(8) the classes of service and the number of service connections the utility is serving in each class, along with information detailing any planned expansions;

(9) a tariff meeting the requirements of 3 AAC 52.730 – 3 AAC 52.740;

(10) an informational filing detailing the rates the utility will charge for the classes of service available and the amount and source of revenues that are not derived from customer charges;

(11) a verification signed by the person authorized to sign on behalf of the applicant that all of the information provided in the application is true, accurate, and complete;

(12) an application fee of \$300.

(b) A previously certificated water or wastewater utility that is eligible for provisional certification under this section and that does not have a proceeding pending before the commission may return the utility's certificate parchment to the commission and apply for provisional certification as provided in (a) of this section. The utility is not required to re-submit previously filed information unless the information is not currently correct.

(c) The commission will determine if an application for provisional certification is complete within 15 business days after it is filed with the commission. An incomplete application will be handled as provided in 3 AAC 48.650. A provisional certificate will be issued within 90 days after the receipt of a complete application.

(d) Applicants for a provisional certificate of public convenience and necessity are exempt from the public notice provisions of 3 AAC 48.645.

(e) For good cause, the commission may revoke a provisional certificate, suspend the utility's operating authority, require additional information, or take other appropriate action to protect the public. If the commission issues an order under this section, the order will be stayed if the utility requests a hearing within 10 days after the date of the order. (Eff. 6/19/2004, Register 170)

Authority: AS 42.05.141 AS 42.05.221 AS 42.05.254
AS 42.05.151

3 AAC 52.724. Continuing requirements. (a) A provisionally certificated utility

shall file the following on or before January 31 of each year:

- (1) a fee of \$100;
- (2) an affidavit stating that the utility continues to meet the qualifications for provisional certification set out in 3 AAC 52.720;
- (3) a statement of any changes to information submitted with the utility's application for provisional certification;
- (4) an informational filing detailing the rates the utility will charge for the classes of service available and the date when those rates will be effective;
- (5) the utility's income statement for the last fiscal year, showing revenue and expenses including capital recovery, and identifying all sources of revenue including customer fees and operational subsidies from other sources.

(b) A provisionally certificated utility must demonstrate financial sustainability by charging rates that, together with any available subsidy, are sufficient to produce annual revenue equal to or greater than the sum of annual operating expenses and either depreciation expense or reserve fund charges. The commission will consider a provisionally certificated utility to be chronically noncompliant with the financial sustainability standard in this subsection if the sum of operating expenses and either depreciation expense or reserve fund charges exceeds the utility's revenue annually for three consecutive years. The commission will consider a provisionally certificated utility to be critically noncompliant with the financial sustainability standard in this subsection if annual operating expenses exceed the utility's annual revenue for three consecutive years, or if operating expenses exceed the utility's revenues by more than 50 percent in a single year. The commission will notify a chronically or critically noncompliant utility that the utility does not meet the financial sustainability standard. The commission will

also notify appropriate federal and state agencies and non-governmental organizations responsible for administering funding and providing assistance to water and wastewater utilities that a chronically or critically noncompliant utility does not meet the financial sustainability standards. The commission may, upon complaint or its own motion, initiate a formal proceeding under 3 AAC 48.070(c) to investigate a noncompliant utility. A utility may correct its noncompliant status by meeting the financial sustainability standard in this subsection for one year after the utility has been notified of noncompliant status.

(c) A provisionally certificated utility must submit an application as provided in 3 AAC 52.722 before modifying its service area. A utility filing for a service area amendment must include the revised portions of its tariff with its application.

(d) In accordance with AS 42.05.271, the commission may revoke the provisional certification of a utility that fails to make the filings required in (a) of this section. (Eff. 6/19/2004, Register 170)

Authority: AS 42.05.141 AS 42.05.221 AS 42.05.254
AS 42.05.151 AS 42.05.241

3 AAC 52.726. Customer complaints. (a) A provisionally certificated utility shall include the following statement on each bill sent to a customer:

“You should contact us first if you have a complaint about your water or wastewater service. If you are not satisfied after contacting us, you may then file a complaint with the Regulatory Commission of Alaska. The Regulatory Commission of Alaska may be contacted toll-free at 1-800-390-2782, or TDD (907) 276-4533.”

(b) Upon receipt of an informal complaint under 3 AAC 48.120 about a provisionally certificated utility, the commission will contact the provisionally certificated utility to verify that its most recently filed tariff is still effective or to obtain any updates to the tariff. The provisionally certificated utility shall provide any tariff updates within 10 business days after the commission's request. If an informal complaint is not resolved or is appealed by the customer or utility, a formal complaint may be made as provided in 3 AAC 48.130. (Eff. 6/19/2004, Register 170)

Authority: AS 42.05.141 AS 42.05.151

3 AAC 52.730. Tariffs required. (a) A water or wastewater utility that has a provisional certificate, under AS 42.05.711(b), or that is certificated but not subject to economic regulation within the meaning of 3 AAC 48.820 shall comply with the tariff requirements set out in 3 AAC 52.730 – 3 AAC 52.740.

(b) A utility owned and operated by a political subdivision or government may submit approved ordinances that meet the requirements of 3 AAC 52.730 – 3 AAC 52.740, in place of a tariff. (Eff. 6/19/2004, Register 170)

Authority: AS 42.05.141 AS 42.05.291 AS 42.05.711
AS 42.05.151 AS 42.05.361

3 AAC 52.732. Tariff revisions. A provisionally certificated utility may revise its tariffs without commission approval, but must file any revision within 30 days after the effective date of the revised tariff. The filing must state the effective date of the revised tariff. (Eff. 6/19/2004, Register 170)

Authority: AS 42.05.141 AS 42.05.151 AS 42.05.361

3 AAC 52.734. Tariff on file for public inspection. (a) A provisionally certificated utility shall keep its tariff available for public inspection in accordance with 3 AAC 48.250(a) and (b) and 3 AAC 48.260. The effective tariff of a provisionally certificated utility controls the utility's rates, charges, regulations, terms and conditions of service as provided in 3 AAC 48.320. (Eff. 6/19/2004, Register 170)

Authority: AS 42.05.141 AS 42.05.151 AS 42.05.361

3 AAC 52.736. Contents of tariff. The tariff of a provisionally certificated utility must contain the following:

- (1) a title page including the exact legal name of the utility, the service offered, and the complete address of the utility;
- (2) an index page with a complete and accurate list of contents;
- (3) a map or set of maps depicting the utility's service area;
- (4) a written description of the service area matching the area approved by the commission;
- (5) a map depicting the areas, zones, or districts in which any different rate schedules apply;
- (6) a complete set of the regulations governing the services offered;
- (7) a schedule of all rates and charges for each class of service offered. (Eff. 6/19/2004, Register 170)

Authority: AS 42.05.141 AS 42.05.151 AS 42.05.361

3 AAC 52.738. Content of rules and regulations and rates. The tariff of a provisionally certificated utility must include the items listed in 3 AAC 48.370 and 3 AAC 48.380, as applicable. (Eff. 6/19/2004, Register 170)

Authority: AS 42.05.141 AS 42.05.151 AS 42.05.361

3 AAC 52.740. Waiver. (a) Unless otherwise required under AS 42.05, a requirement in 3 AAC 52.730 – 3 AAC 52.738 may be modified or waived, in whole or in part, by order of the commission, on the commission's own motion or on a showing that the waiver or modification is in the public interest. An entity shall file and the commission will consider an application for waiver in accordance with 3 AAC 48.805. (Eff. 6/19/2004, Register 170)

Authority: AS 42.05.141 AS 42.05.151 AS 42.05.711

3 AAC 52.749. Definitions. Unless the context indicates otherwise, in 3 AAC 52.700 – 3 AAC 52.749,

- (1) "affiliated interest" has the meaning given in AS 42.05.990;
- (2) "annual gross revenues" means the revenues that would be accrued by the utility, assuming a 100 percent collection rate from customers;
- (3) "business day" means a day other than Saturday, Sunday, or a state holiday;
- (4) "classes of service" includes residential, commercial, industrial, institutional, or bulk water or sewer service;
- (5) "service connection" means physically separated customer locations that are connected to the water or wastewater plant by a distribution or collection system;

(6) "system" means components used for the collection, treatment, storage, and distribution of drinking water or for the collection, treatment, and disposal of wastewater;

(7) "wastewater utility" means a utility that furnishes sewer service to the public for compensation;

(8) "water utility" means a utility that furnishes drinking water service to the public for compensation. (Eff. 6/19/2004, Register 170)

Authority: AS 42.05.141 AS 42.05.151