

ALASKA STATUTES

**AS 42.04 (Regulatory Commission
of Alaska)**

**AS 42.05 (Alaska Public Utilities
Regulatory Act)**

AS 42.06 (Pipeline Act)

and

**AS 42.45 (Rural and Statewide
Energy Programs)**

(November 2006)

REGULATORY COMMISSION OF ALASKA

701 West 8th Avenue, Suite 300

Anchorage, Alaska 99501-3469

(907) 276-6222

TTY 1-907-276-4533

Title 42. Public Utilities and Carriers.

Chapter

- 04. Regulatory Commission of Alaska (§§ 42.04.010 — 42.04.100)
- 05. Alaska Public Utilities Regulatory Act (§§ 42.05.141 — 42.05.995)
- 06. Pipeline Act (§§ 42.06.055 — 42.06.640)
- 20. Telegraph and Telephone Systems and Cable Lines (§§ 42.20.010 — 42.20.390)
- 30. Miscellaneous Regulations Governing Public Utilities and Carriers (§§ 42.30.010 — 42.30.490)
- 40. Alaska Railroad Corporation (§§ 42.40.010 — 42.40.990)
- 45. Rural and Statewide Energy Programs (§§ 42.45.010 — 42.45.990)

Revisor's notes. — The provisions of this title were redrafted in 1983 to remove personal pronouns pursuant to sec. 4, ch. 58, SLA 1982, and in 1981, 1983, 1989, and 1998 to make other minor word changes.

Collateral references. — Robert L. Habne, Accounting for Public Utilities, (Matthew Bender).

Chapter 04. Regulatory Commission of Alaska.

Article

- 1. Commission and Staff (§§ 42.04.010 — 42.04.080)
- 2. Communications Carriers Section (§ 42.04.100)

Cross references. — For provisions relating to the report required from the Legislative Budget and Audit Committee concerning the restructuring of the Alaska Oil and Gas Conservation and the Regulatory Commission of Alaska, see § 25, ch. 25, SLA 1999 in the 1999 Temporary and Special Acts; for provisions relating to Commission's management information system, see § 26, ch. 25, SLA 1999 in the 1999 Temporary and Special Acts; for transitional provisions relating to the former Alaska Public Utilities Commission and

the Regulatory Commission of Alaska, see § 29, ch. 25, SLA 1999 in the 1999 Temporary and Special Acts; for provision describing the powers and duties of the Regulatory Commission of Alaska during a year after expiration under AS 44.66, see AS 44.66.010(d); for task force inquiry into Regulatory Commission of Alaska, see § 8, ch. 2, TSSLA 2002 in the 2002 Temporary and Special Acts.

Effective dates. — Section 31(c), ch. 25, SLA 1999, makes this chapter effective July 1, 1999.

Article 1. Commission and Staff.

Section

- 10. Regulatory Commission of Alaska created
- 20. Commissioners
- 30. Principal office; seal
- 40. Legal counsel

Section

- 50. Employment of commission personnel
- 60. Restrictions on members and employees
- 70. Powers and duties of commission chair
- 80. Decision-making procedures

Sec. 42.04.010. Regulatory Commission of Alaska created. (a) There is created within the Department of Commerce, Community, and Economic Development as an independent agency of the state the Regulatory Commission of Alaska.

(b) The commission shall annually elect one of its members to serve as chair for the following fiscal year. When a vacancy occurs in the office of chair, the commission shall elect one of its members to serve the remaining term as chair. The term as chair is one year. The chair may be elected to not more than three successive terms as chair. After a

year of not serving as chair, the commissioner is eligible for election as chair again. (§ 1 ch 25 SLA 1999; am § 1 ch 2 TSSLA 2002)

Revisor's notes. — In 2004, in (a) of this section, "Department of Community and Economic Development" was changed to "Department of Commerce, Community, and Economic Development", in accordance with § 3, ch. 47, SLA 2004.

In 1999, in subsection (a) "Community" was substituted for "Commerce" in order to reconcile chs. 25 and 58, SLA 1999.

Effect of amendments. — The 2002 amendment, effective January 15, 2003, rewrote subsection (b).

Sec. 42.04.020. Commissioners. (a) The commission consists of five commissioners appointed by the governor and confirmed by the legislature in joint session. To qualify for appointment as a commissioner, a person must be a member in good standing of the Alaska Bar Association or have a degree from an accredited college or university with a major in engineering, finance, economics, accounting, business administration, or public administration. Actual experience for a period of five years in the practice of law or in the field of engineering, finance, economics, accounting, business administration, or public administration is equivalent to a degree.

(b) The term of office of each member is six years. A commissioner, upon the expiration of a term, shall continue to hold office until a successor is appointed and qualified.

(c) A vacancy arising in the office of a commissioner shall be filled by appointment by the governor and confirmed by the legislature in joint session, and, except as provided in AS 39.05.080(4), an appointee selected to fill a vacancy shall hold office for the balance of the full term for which the predecessor on the commission was appointed.

(d) A vacancy in the commission does not impair the authority of a quorum of commissioners to exercise all the powers and perform all the duties of the commission.

(e) The governor may remove a commissioner from office for cause, including incompetence, neglect of duty, inability to serve, or misconduct in office or because the member, while serving on the commission, is convicted of a misdemeanor for violating a statute or regulation related to public utilities or is convicted of a felony. A commissioner, to be removed for cause, shall be given a copy of the charges and afforded an opportunity to be publicly heard in person or by counsel in the commissioner's own defense upon not less than 10 days' notice. If a commissioner is removed for cause, the governor shall file with the lieutenant governor a complete statement of all charges made against the commissioner and the governor's finding based on the charges, together with a complete record of the proceedings.

(f) Members of the commission are in the exempt service and are entitled to a monthly salary equal to Step C, Range 26, of the salary schedule in AS 39.27.011(a) for Juneau, Alaska. The chair of the commission is entitled to a monthly salary equal to Step C, Range 27, of the salary schedule in AS 39.27.011(a) for Juneau, Alaska.

(g) Each commissioner, before entering upon the duties of office, shall take and subscribe to the oath prescribed for principal officers of the state. (§ 1 ch 25 SLA 1999)

Sec. 42.04.030. Principal office; seal. (a) The commission shall establish a principal office and branch offices necessary to discharge its business efficiently. For the convenience of the public or of parties to a proceeding, the commission may hold meetings, hearings, or other proceedings at other locations.

(b) The commission shall have an official seal. (§ 1 ch 25 SLA 1999)

Cross references. — For provisions relating to the terms of members of the former Alaska Public Utilities Commission and the terms and initial appoint-

ments of the members of the Regulatory Commission of Alaska, see § 28, ch. 25, SLA 1999 in the 1999 Temporary and Special Acts.

Sec. 42.04.040. Legal counsel. (a) The Department of Law shall provide full-time legal counsel to the commission.

(b) The commission may, subject to the approval of the attorney general, contract for the services of specialized legal counsel or legal consultants. (§ 1 ch 25 SLA 1999)

Sec. 42.04.050. Employment of commission personnel. (a) The chair of the commission is responsible for directing the administrative functions of the commission and carrying out the policies as set by the commission. The commission chair may employ engineers, hearing examiners, administrative law judges, arbitrators, mediators, experts, clerks, accountants, and other agents and assistants considered necessary. Employees of the commission who are not in the exempt service under AS 39.25.110 or the partially exempt service under AS 39.25.120 are in the classified service under AS 39.25.100.

(b) The chair of the commission may enter into a contract for no more than \$5,000 to engage the services of a consultant or expert the chair considers necessary. The commission may contract for and engage the services of consultants and experts the commission considers necessary.

(c) At the request of the Alaska Oil and Gas Conservation Commission and to the extent workload permits, the Regulatory Commission of Alaska shall make available to the Alaska Oil and Gas Conservation Commission the services of a hearing examiner. (§ 1 ch 25 SLA 1999; am §§ 1, 2 ch 5 SLA 2000)

Effect of amendments. — The 2000 amendment, effective March 25, 2000, substituted references to hearing examiners for references to hearing officers in subsections (a) and (c) and inserted “arbitrators, mediators,” in subsection (a).

Sec. 42.04.060. Restrictions on members and employees. (a) A member of the commission or an employee of the commission may not have an official connection with, hold stock or securities in, or have a pecuniary interest in a public utility or pipeline carrier within the state. Membership in a cooperative association is not a “pecuniary interest” within the meaning of this section; however, a member or employee of the commission may not be an officer, board member, or employee of a cooperative association. A member or employee may not act upon a matter in which a relationship of the member or employee with any person creates a conflict of interest.

(b) A member or employee of the commission may not, after leaving the position as a member or employee of the commission, act as agent for or on behalf of a public utility in any matter before the commission that was before the commission during the employee’s employment or the member’s term of office. A violation of this subsection is a class A misdemeanor.

(c) Members and employees of the commission, except clerical and secretarial staff, are subject to AS 39.50. Members and employees of the commission are subject to AS 39.52.

(d) A member of the commission is disqualified from voting upon any matter before the commission in which the member has a conflict of interest. (§ 1 ch 25 SLA 1999)

Sec. 42.04.070. Powers and duties of commission chair. (a) The chair of the commission shall

- (1) employ the commission staff;
- (2) establish and implement a time management system for the commission;
- (3) assign the work of the commission to members and staff of the commission so that matters before the commission are resolved as expeditiously and competently as possible; when assigning a matter, the chair shall also set a date by which time the matter should be completed.

(b) The chair of the commission may appoint a hearing examiner or an administrative law judge to hear a matter that has come before the commission; a member of the commission may serve as hearing examiner or, if qualified, as an administrative law judge.

(c) The chair of the commission shall request the attorney general to participate as a party in a matter when the commission believes that it is in the public interest for the attorney general to do so. (§ 1 ch 25 SLA 1999; am § 3 ch 5 SLA 2000; am E.O. No. 111, § 2 (2003))

Cross references. — For transitional provisions relating to the 2003 transfer of the functions and responsibilities of the former public advocacy section from the Regulatory Commission of Alaska to the Department of Law, see § 5, E.O. 111, in the Executive Orders pamphlet.

Effect of amendments. — The 2000 amendment,

effective March 25, 2000, substituted “hearing examiner” for “hearing officer” in two places in subsection (b).

The 2003 amendment, effective July 1, 2003, in subsection (c) substituted “shall request the attorney general” for “shall direct the public advocacy section” and inserted “for the attorney general.”

Sec. 42.04.080. Decision-making procedures. (a) Except as provided in AS 42.05.171 or AS 42.06.140, when a matter comes for decision before the commission under AS 42.05 or AS 42.06, the chair shall appoint a hearing panel composed of three or more members to hear, or if a hearing is not required, to otherwise consider, and decide the case. The panel shall exercise the powers of the commission with respect to the matter.

(b) The commission shall adopt regulations by December 31, 1999, that establish standards of timeliness for the types of cases that come before the commission. The commission shall establish standards based in part on degrees of complexity of the cases. (§ 1 ch 25 SLA 1999)

Sec. 42.04.090. Impartial decision-making. [Repealed, § 6 ch 2 TSSLA 2002.]

Article 2. Communications Carriers Section.

Section

100. Communications carriers section

Sec. 42.04.100. Communications carriers section. There is established within the commission a communications carriers section that shall develop, recommend, and administer policies and programs with respect to the regulation of rates, services, accounting, and facilities of communications common carriers within the state involving the use of wire, cable, radio, and space satellites. (§ 1 ch 25 SLA 1999)

Sec. 42.04.150. Public advocacy section. [Repealed, E.O. 111, § 4 (2003). For current law, see AS 44.23.020(e).]

Chapter 05. Alaska Public Utilities Regulatory Act.

Article

1. Powers and Duties of the Commission (§§ 42.05.141 — 42.05.211)
2. Certificate of Public Convenience and Necessity (§§ 42.05.221 — 42.05.281)
3. Services and Facilities (§§ 42.05.291 — 42.05.351)
4. Rates and Rate Schedules (§§ 42.05.361 — 42.05.441)
5. Accounts, Records, and Reports (§§ 42.05.451 — 42.05.501)
6. Financial and Management Regulation (§§ 42.05.511 — 42.05.531)
7. Judicial Review, Penalties, and Enforcement (§§ 42.05.541 — 42.05.621)
8. Miscellaneous Provisions (§§ 42.05.631 — 42.05.712)
9. Competitive Intrastate Long Distance Telephone Service (§§ 42.05.800 — 42.05.890)
10. General Provisions (§§ 42.05.990, 42.05.995)

Administrative Code. — For regulatory commission of Alaska, see 3 AAC, part 7.

For utility and pipeline tariffs, see 3 AAC 48, art. 2.

Collateral references. — Robert L. Habne, Accounting for Public Utilities, (Matthew Bender).

Article 1. Powers and Duties of the Commission.

Section

141. General powers and duties of the commission
 145. Telecommunications regulation policy
 151. Regulations and hearing procedures
 161. Application of Administrative Procedure Act
 171. Formal hearings
 175. Timelines for issuance of final orders

Section

181. Notice and hearing before final orders
 191. Contents and service of orders
 201. Publication of reports, orders, decisions, and regulations
 211. Annual report

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

Secs. 42.05.010 — 42.05.131. Establishment of Public Utilities Commission. [Repealed, § 5 ch 113 SLA 1970; § 24 ch 25 SLA 1999.]

Sec. 42.05.141. General powers and duties of the commission. (a) The Regulatory Commission of Alaska may do all things necessary or proper to carry out the purposes and exercise the powers expressly granted or reasonably implied in this chapter, including

(1) regulate every public utility engaged or proposing to engage in a utility business inside the state, except to the extent exempted by AS 42.05.711;

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

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

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

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

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

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

(b) The commission shall perform the duties assigned to it under AS 42.45.100 — 42.45.190.

(c) In the establishment of electric service rates under this chapter the commission shall promote the conservation of resources used in the generation of electric energy. (§ 6 ch 113 SLA 1970; am § 1 ch 33 SLA 1971; am § 43 ch 83 SLA 1980; am § 3 ch 18 SLA 1993; am § 1 ch 1 SLA 1995)

Revisor's notes. — In 1999, in subsection (a) "Regulatory Commission of Alaska" was substituted for "Alaska Public Utilities Commission" in accordance with § 30(a), ch. 25, SLA 1999.

Effect of amendments. — The 1993 amendment, effective August 11, 1993, made a section reference substitution in subsection (b).

The 1995 amendment, effective June 26, 1995, in subsection (a), added "do all things necessary or proper to carry out the purposes and exercise the

powers expressly granted or reasonably implied in this chapter, including" at the end of the introductory language, rewrote paragraph (1), and made minor stylistic changes.

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

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

The Alaska Public Utility Commission can require

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

NOTES TO DECISIONS

Disputes among municipalities over control of construction activities. — This chapter simply does not contemplate the establishment of an administrative body with the authority to adjudicate disputes over the authority of boroughs to control construction along their rights of way. Greater Anchorage Area Borough v. City of Anchorage, 504 P.2d 1027 (Alaska 1972), overruled on other grounds, City & Borough of Juneau v. Thibodeau, 595 P.2d 626 (Alaska 1979).

The Public Utilities Commission is not empowered to decide disputes between municipalities over the control of construction activities within rights of way belonging to one of the disputants. Greater Anchorage Area Borough v. City of Anchorage, 504 P.2d 1027 (Alaska 1972), overruled on other grounds, City & Borough of Juneau v. Thibodeau, 595 P.2d 626 (Alaska 1979).

Jurisdiction over disputes over municipal restrictions on utilities. — The commission has jurisdiction pursuant to AS 42.05.251, relating to use of streets in municipalities, to adjudicate a dispute over the reasonableness of fees, terms and conditions imposed by a municipality on the use of its rights-of-ways by a utility. Homer Elec. Ass'n v. City of Kenai, 816 P.2d 182 (Alaska 1991).

There is no "right" to have the commission act. Jager v. State, 537 P.2d 1100 (Alaska 1975).

The matter of rate discrimination and investigation is such that the commission must be free to weigh the charges and data presented and the costs to the public and the utility, against which a complaint has been brought, to determine whether further proceedings are in the public interest. Jager v. State, 537 P.2d 1100 (Alaska 1975).

Powers. — The legislature intended to grant the commission broad powers to establish "fair and just" rates. Implied within that broad grant of powers is the authority for the commission to declare a rate interim and refundable, so long as the commission provides protection for the interests of both the utility and the public. Far N. San., Inc. v. Alaska Pub. Utils. Comm'n, 825 P.2d 867 (Alaska 1992).

Because the Regulatory Commission of Alaska had the power to do all things necessary or proper to carry out its purposes, it had the authority to interpret a provision in a purchase and sale agreement that related to rate disputes; the parties to the contract were bound by the dispute resolution procedures set forth in their contract. Matanuska Elec. Ass'n v. Chugach Elec. Ass'n, 58 P.3d 491 (Alaska 2002).

Failure to hold hearing nonjurisdictional and subject to waiver. — Error involving the commission's failure to hold a hearing before ordering an interim refundable rate was nonjurisdictional and subject to waiver by a party's failure to raise it before the commission. Far N. San., Inc. v. Alaska Pub. Utils. Comm'n, 825 P.2d 867 (Alaska 1992).

The Public Utilities Commission is not compelled to act by the mere filing of a complaint. Jager v. State, 537 P.2d 1100 (Alaska 1975).

Nor can the commission arbitrarily deny relief to a citizen who can demonstrate a sufficient probability that his complaint is valid. Jager v. State, 537 P.2d 1100 (Alaska 1975).

At the least the Public Utilities Commission must offer some justification for its dismissal of a complaint of discrimination in the rate structure based on a prior determination of allocation methods, previous adjudication of permissible discrimination, or other such factors. Jager v. State, 537 P.2d 1100 (Alaska 1975).

Confiscation. — A court may evaluate the showing of confiscation. That is, although the process of determining whether a rate is confiscatory involves fact/law determinations which require the special competence of the commission, the ultimate issue in confiscation questions is whether due process will be violated by the continued operation of the rate. United States v. RCA Alaska Communications, Inc., 597 P.2d 489 (Alaska 1979), overruled on other grounds, Owsichek v. Guide Licensing & Control Bd., 627 P.2d 616 (Alaska 1981).

Standard of review of rate-making decisions. — Since generally rate-making decisions relate to complex subject matter which requires the particularized knowledge and experience of the rate-making body, the appropriate standard of review is normally whether the administrative body had a reasonable basis for its decision. United States v. RCA Alaska Communications, Inc., 597 P.2d 489 (Alaska 1979), overruled on other grounds, Owsichek v. Guide Licensing & Control Bd., 627 P.2d 616 (Alaska 1981).

The following requirements must be met before the superior court can intervene and overrule or modify an order of the Public Utilities Commission affecting utility rates. First, the utility must make a serious and substantial showing that the existing rates are so low as to be confiscatory. Second, the utility is obligated to show that no date has been set by the commission for a prompt final hearing, and that the existing confiscatory rates are likely to remain in force for an unreasonable period of time before the Public Utilities Commission makes its permanent rate determination. Third, the utility must convince the court that without the benefit of being permitted to operate under an interim rate increase, it will face irreparable harm. Fourth, the utility is required to demonstrate that if the interim rate relief is granted, the public can be adequately protected. Fifth, the utility must show that "serious" and "substantial" questions are involved in the rate case it has presented. United States v. RCA Alaska Communications, Inc., 597 P.2d 489 (Alaska 1979), overruled on other grounds, Owsichek v. Guide Licensing & Control Bd., 627 P.2d 616 (Alaska 1981).

Standard used in determining whether to initiate rate investigation upheld. — Under the "reasonable and not arbitrary" standard for review of administrative regulations, the supreme court upheld the standard employed by the Public Utilities Commission in determining whether to initiate a thorough rate investigation, i.e., whether public interest would be served by such investigation. Jager v. State, 537 P.2d 1100 (Alaska 1975).

Municipally owned utilities in competition with other utilities subjected to full gamut of regulation pertaining to other utilities, with exception relating to bond covenants. — See

Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, 555 P.2d 262 (Alaska 1976).

Computation of company's revenue requirements. — The Alaska Public Utilities Commission is not required to use a total company approach (rather than a separated component approach) in computing a company's revenue requirements; it is, for example, clearly within the commission's authority to decide that it wants telephone rates to reflect only the costs

of the service provided a ratepayer. *Glacier State Tel. Co. v. Alaska Pub. Utils. Comm'n*, 724 P.2d 1187 (Alaska 1986).

Quoted in *Homer Elec. Ass'n v. State*, Alaska Pub. Utils. Comm'n, 756 P.2d 874 (Alaska 1988).

Stated in *Matanuska Elec. Ass'n v. Chugach Elec. Ass'n*, 99 P.3d 553 (Alaska 2004).

Cited in *Alaska Pub. Utils. Comm'n v. Municipality of Anchorage*, 902 P.2d 783 (Alaska 1995).

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

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

Public regulation of nuclear power plants. 82 ALR3d 751.

State regulation of radio paging service. 44 ALR4th 216.

Federal legal problems arising from subscription

television or "pay TV" broadcast over the air. 61 ALR Fed. 809.

Incidental provision of utility services, by party not in that business, as subject to regulation by state regulatory authority. 84 ALR4th 894.

Incidental provision of transportation services, by party not primarily in that business, as common carriage subject to state regulatory control. 87 ALR4th 638.

Sec. 42.05.145. Telecommunications regulation policy. A utility that provides local exchange or interexchange telecommunications service in the state affects the public interest. Regulation of these utilities shall, consistent with this chapter, seek to maintain and further the efficiency, availability, and affordability of universal basic telecommunications service. (§ 1 ch 43 SLA 1990)

Cross references. — For a provision directing the Regulatory Commission of Alaska to review rules and regulations governing telecommunications rates, charges between competing telecommunications com-

panies, and competition in telecommunications and to issue proposed regulations not later than November 15, 2003, see § 2, ch. 93, SLA 2003, in the 2003 Temporary and Special Acts.

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

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

(b) The commission shall adopt regulations governing practice and procedure, consistent with due process of law, including the conduct of formal and informal investigations, pre-hearing conferences, hearings, and proceedings, and the handling of procedural motions by a single commissioner. The regulations must provide for the hearing or, when a hearing is not required, other consideration of a matter in accordance with AS 42.04.080. Technical rules of evidence need not apply to investigations, pre-hearing conferences, hearings, and proceedings before the commission. The commission shall provide for representation by out-of-state attorneys substantially in accordance with Rule 81, Alaska Rules of Civil Procedure.

(c) The commission, each commissioner, or an employee authorized by the commission may administer oaths, certify to all official acts, and issue subpoenas, subpoenas duces tecum, and other process to compel the attendance of witnesses and the production of testimony, records, papers, accounts, and documents in an inquiry, investigation, hearing, or proceeding before the commission in any part of the state. Each commissioner is authorized to issue orders on procedural motions. The commission may petition a court of this state to enforce its subpoenas, subpoenas duces tecum, or other process. (§ 6 ch 113 SLA 1970; am § 6 ch 25 SLA 1999)

Effect of amendments. — The 1999 amendment, effective July 1, 1999, added the second sentence in subsection (b).

Opinions of attorney general. — The Alaska

Public Utilities Commission has the authority to promulgate standards for defining costs under the power cost equalization program (AS 44.83.162 — 44.83.165), [now AS 42.45.100 — 42.45.190] and stan-

dards for generation efficiency. The commission is empowered to adopt these standards as regulations under this section, as long as the provisions of the

Administrative Procedure Act are followed. May 16, 1988, Op. Att'y Gen.

NOTES TO DECISIONS

Substantive regulations discretionary. — In subsection (a), the legislature has expressly chosen to make substantive regulations discretionary. *Amerada Hess Pipeline Corp. v. Alaska Pub. Utils. Comm'n*, 711 P.2d 1170 (Alaska 1986).

Subsection (b) requires adoption of procedural regulations only. *Amerada Hess Pipeline Corp. v. Alaska Pub. Utils. Comm'n*, 711 P.2d 1170 (Alaska 1986).

Commission's failure to prescribe burdens and standards of proof. — The Alaska Public Utilities Commission's failure to prescribe burdens and standards of proof does not constitute a violation of the command of subsection (b) to "adopt regulations governing practice and procedure." *Amerada Hess Pipeline Corp. v. Alaska Pub. Utils. Comm'n*, 711 P.2d 1170 (Alaska 1986).

Cost allocation regulations. — The Alaska Public Utilities Commission's failure to adopt cost allocation regulations did not violate the Trans-Alaska pipeline owners' right to due process under the United States or Alaska constitutions. *Amerada Hess Pipeline Corp. v. Alaska Pub. Utils. Comm'n*, 711 P.2d 1170 (Alaska 1986).

Quoted in *ACS of Alaska, Inc. v. Regulatory Comm'n*, 81 P.3d 292 (Alaska 2003).

Cited in *Jager v. State*, 537 P.2d 1100 (Alaska 1975); *United States v. RCA Alaska Communications, Inc.*, 597 P.2d 489 (Alaska 1979); *Far N. San., Inc. v. Alaska Pub. Utils. Comm'n*, 825 P.2d 867 (Alaska 1992).

Collateral references. — 73B C.J.S., Public Utilities, §§ 54, 55.

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

Sec. 42.05.161. Application of Administrative Procedure Act. (a) The administrative adjudication procedures of AS 44.62 (Administrative Procedure Act) do not apply to adjudicatory proceedings of the commission except that final administrative determinations by the commission are subject to judicial review under that Act as provided in AS 42.05.551(a).

(b) AS 44.62 (Administrative Procedure Act) applies to regulations adopted by the commission. (§ 6 ch 113 SLA 1970)

NOTES TO DECISIONS

Standard of review of rate-making decisions. — See *United States v. RCA Alaska Communications, Inc.*, 597 P.2d 489 (Alaska 1979), overruled on other grounds, *Owsichek v. Guide Licensing & Control Bd.*, 627 P.2d 616 (Alaska 1981).

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

Sec. 42.05.171. Formal hearings. A formal hearing that the commission has power to hold may be held by or before a hearing panel appointed under AS 42.04.080, a hearing examiner, or an administrative law judge designated for the purpose by the chair of the commission. In appropriate cases, a formal hearing may be held before an arbitrator or mediator designated for the purpose by the commission. The testimony and evidence in a formal hearing may be taken by the panel, by the hearing examiner, by the arbitrator, by the mediator, or by the administrative law judge to whom the hearing has been assigned. A decision of a hearing examiner, an arbitrator, a mediator, or an administrative law judge is not final until approved by the commission. A commissioner who has not heard or read the testimony, including the argument, may not participate in making a decision of a hearing panel. A party may file a petition for reconsideration of, or an administrative appeal of, a decision by a hearing examiner, an arbitrator, a mediator, or an administrative law judge that has been approved by the commission, or a decision of a hearing panel. The full commission shall act on the petition for reconsideration or the

appeal. In determining the place of a hearing, the commission shall give preference to holding the hearing at a place most convenient for those interested in the subject of the hearing. (§ 6 ch 113 SLA 1970; am § 45 ch 94 SLA 1980; am § 7 ch 110 SLA 1981; am § 7 ch 25 SLA 1999; am § 4 ch 5 SLA 2000)

Effect of amendments. — The 1999 amendment, effective July 1, 1999, added the second, fourth, sixth, and seventh sentences, and rewrote the remaining portions of the section.

The 2000 amendment, effective March 25, 2000, substituted “hearing examiner” for “hearing officer” in four places and inserted references to a mediator in three places.

Sec. 42.05.175. Timelines for issuance of final orders. (a) The commission shall issue a final order not later than six months after a complete application is filed for an application

- (1) for a certificate of public convenience and necessity;
- (2) to amend a certificate of public convenience and necessity;
- (3) to transfer a certificate of public convenience and necessity; and
- (4) to acquire a controlling interest in a certificated public utility.

(b) Notwithstanding a suspension ordered under AS 42.05.421, the commission shall issue a final order not later than nine months after a complete tariff filing is made for a tariff filing that does not change the utility’s revenue requirement or rate design.

(c) Notwithstanding a suspension ordered under AS 42.05.421, the commission shall issue a final order not later than 15 months after a complete tariff filing is made for a tariff filing that changes the utility’s revenue requirement or rate design.

(d) The commission shall issue a final order not later than 12 months after a complete formal complaint is filed against a utility or, when the commission initiates a formal investigation of a utility without the filing of a complete formal complaint, not later than 12 months after the order initiating the formal investigation is issued.

(e) The commission shall issue a final order in a rule-making proceeding not later than 24 months after a complete petition for adoption, amendment, or repeal of a regulation under AS 44.62.180 — 44.62.290 is filed or, when the commission initiates a rule-making docket, not later than 24 months after the order initiating the proceeding is issued.

(f) The commission may extend a timeline required under (a) — (e) of this section if all parties of record consent to the extension or if, for one time only, before the timeline expires, the

- (1) commission reasonably finds that good cause exists to extend the timeline;
- (2) commission issues a written order extending the timeline and setting out its findings regarding good cause; and
- (3) extension of time is 90 days or less.

(g) The commission shall file quarterly reports with the Legislative Budget and Audit Committee identifying all extensions ordered under (f) of this section during the previous quarter and including copies of the written orders issued under (f)(2) of this section.

(h) If the commission does not issue and serve a final order regarding an application or suspended tariff under section (a), (b), or (c) of this section within the applicable timeline specified, and if the commission does not extend the timeline in accordance with (f) of this section, the application or suspended tariff filing shall be considered approved and shall go into effect immediately.

(i) For purposes of this section, “final order” means a dispositive administrative order that resolves all matters at issue and that may be the basis for a petition for reconsideration or request for judicial review.

(j) For purposes of this section, an application, tariff filing, formal complaint, or petition is complete if it complies with the filing, format, and content requirements established by statute, regulation, and forms adopted by the commission under regulation. (§ 3 ch 2 TSSLA 2002)

Effective dates. — Section 11, ch. 2, TSSLA 2002 makes this section effective August 10, 2002, in accordance with AS 01.10.070(c).

Editor's notes. — Section 6, ch. 2, TSSLA 2002, provides that the timelines in this section "apply to all

dockets of the Regulatory Commission of Alaska filed on or after July 1, 2002. For dockets commenced before July 1, 2002, the date of July 1, 2002, shall be used as the date of filing for the purpose of applying the timelines in [this section]."

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

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

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

Sec. 42.05.191. Contents and service of orders. Every formal order of the commission shall be based upon the facts of record. However, the commission may, without a hearing, issue an order approving any settlement supported by all the parties of record in a proceeding, including a compromise settlement. Every order entered pursuant to a hearing must state the commission's findings, the basis of its findings and conclusions, together with its decision. These orders shall be entered of record and a copy of them shall be served on all parties of record in the proceeding. (§ 6 ch 113 SLA 1970; am § 4 ch 2 TSSLA 2002)

Effect of amendments. — The 2002 amendment, effective August 10, 2002, added the second sentence.

NOTES TO DECISIONS

The standard of review of agency findings of fact is that they will be set aside if they are not supported by substantial evidence on the whole record. Inherent in this standard is a requirement, in part statutory, that the facts found be based on evidence in the record. *City of Fairbanks v. Alaska Pub. Utils. Comm'n*, 611 P.2d 493 (Alaska 1980).

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

Commission's handling of financial information unconstitutional. — Where both the city of

Fairbanks and a corporation sought a certificate of public convenience and necessity to provide telephone service; at the hearing to decide the matter the Alaska public utilities commission staff requested two years' annual balance sheets and income statements from the corporation; the corporation agreed to supply them to the staff, but requested that they not be divulged to Fairbanks or become part of the record, claiming that they were proprietary and that revealing them could place the corporation at a competitive disadvantage in its telecommunications contracting business; it was a violation of procedural due process to have a commission staff member review the income statements and balance sheets and based on that review testify that the corporation could meet its financial commitments and was financially fit, and the information upon which this determination was based was never placed in the record. *City of Fairbanks v. Alaska Pub. Utils. Comm'n*, 611 P.2d 493 (Alaska 1980).

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

Sec. 42.05.201. Publication of reports, orders, decisions, and regulations. All reports, orders, decisions, and regulations of the commission shall be in writing. The commission shall apprise all affected utilities and interested parties of these reports, orders, decisions, and regulations as they are issued and adopted, and, when appropriate to do so, shall publish them in a manner that will reasonably inform the public or the affected consumers of any public utility service. The commission may set charges for costs of printing or reproducing and furnishing copies of its reports, orders, decisions and

regulations. The publication requirement, as it pertains to regulations, does not supersede the requirements of AS 44.62 (Administrative Procedure Act). (§ 6 ch 113 SLA 1970)

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

Sec. 42.05.211. Annual report. The commission shall, by February 15 of each year, publish an annual report reviewing its work and notify the legislature that the report is available. The report must contain information and data that bear a significant relationship to the development and regulation of public utility services in the state and include an outline of the commission's program for the development and regulation of public utility services in the forthcoming year. (§ 6 ch 113 SLA 1970; am § 80 ch 21 SLA 1995)

Effect of amendments. — The 1995 amendment, effective August 8, 1995, substituted the present first sentence for the former first sentence, which read "The commission shall publish an annual report reviewing its work and submit it to the legislature by February 15 of each year."

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

Article 2. Certificate of Public Convenience and Necessity.

Section

221. Certificates required
231. Application
241. Conditions of issuance
251. Use of streets in municipalities
254. Public utility regulatory cost charge

Section

261. Discontinuance, suspension, or abandonment of certificated service
271. Modification, suspension, or revocation of certificates
281. Transfer of certificate

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

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

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

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

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

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

(e) If the commission employs professional consultants to assist it in administering this section, it may apportion the expenses relating to their employment among the competing utilities.

(f) [*Repealed, § 12 ch 136 SLA 1980.*] (§ 6 ch 113 SLA 1970; am § 1 ch 76 SLA 1973; am § 12 ch 136 SLA 1980; am §§ 15, 16 ch 168 SLA 1990)

NOTES TO DECISIONS

A certificate of public convenience and necessity is a property right and as such entitled to protection. *Homer Elec. Ass'n v. City of Kenai*, 423 P.2d 285 (Alaska 1967).

Substantial need for service. — This section requires a showing of public convenience and necessity and is limited specifically to “services;” thus, the Alaska Public Utilities Commission (APUC) only needs to determine whether there is a substantial need for a service. Similarly, the requirement of AS 42.05.241 that APUC find the applicant to be “fit, willing and able to provide the utility services applied for” only requires the commission to focus on the applicant. Neither inquiry requires an exploration into the costs associated with environmental externalities or public subsidies not paid for by consumers as part of the rate charged for the service. *Alaska Fed'n for Community Self-Reliance v. Alaska Pub. Utils. Comm'n*, 879 P.2d 1015 (Alaska 1994).

Certificate does not grant monopoly. — A certificate of public convenience and necessity to a public utility by the Alaska Public Service Commission is not an exclusive, or monopoly, grant to furnish electrical energy within the corporate limits of a city. *Chugach Elec. Ass'n v. City of Anchorage*, 426 P.2d 1001 (Alaska 1967).

A public utility's certificate did not grant to it the exclusive right to furnish electrical energy within the corporate limits of a city. *Homer Elec. Ass'n v. City of Kenai*, 423 P.2d 285 (Alaska 1967).

Commission reserved right to revoke certificate for good cause. — Where the public utility commission granted two different utility companies rights to serve a particular city and later found that competition between the utilities was not in the public interest and awarded the territory to appellee utility, the appellant utility company had no compensable property interest in its certificate allowing it to operate in the territory, because the public utility commission, as a condition of issuing the certificate, reserved the right to revoke it for good cause. *Tlingit-Haida Reg'l Elec. Auth. v. State*, 15 P.3d 754 (Alaska 2001).

Municipality may compete with certificated utility. — The delineation of a service area contained in a certificate of public convenience and necessity does not provide the basis for precluding a municipality from competing, within its own corporate limits, with a certificated utility. *Chugach Elec. Ass'n v. City of Anchorage*, 426 P.2d 1001 (Alaska 1967).

The legislature did not intend, by virtue of its passage of the 1963 amendments to this chapter, that

a certificate of public convenience and necessity was to be a monopoly grant in relation to competition from a municipally owned and operated utility. *Homer Elec. Ass'n v. City of Kenai*, 423 P.2d 285 (Alaska 1967).

The Public Service Commissioner's issuance, to a public utility, of a certificate of public convenience and necessity providing for a service area which encompassed within its territory a city did not preclude such city from furnishing electrical energy within its own city limits, in competition with such public utility's electrical distribution system. *Homer Elec. Ass'n v. City of Kenai*, 423 P.2d 285 (Alaska 1967).

Additional certificate required. — AS 42.05.221(a) required electricity provider to obtain an additional certificate of public convenience and necessity from Regulatory Commission of Alaska prior to engaging in contact with consumers regarding electricity sales outside its allotted area in the area allotted to another public utility. *Chugach Elec. Ass'n v. Regulatory Comm'n of Alaska*, 49 P.3d 246 (Alaska 2002).

Legislative intent. — In enacting subsection (b) of this section the legislature indicated its intention that any right afforded certificated utilities under former AS 42.05.196 was not saved. *Alaska Pub. Utils. Comm'n v. Chugach Elec. Ass'n*, 580 P.2d 687 (Alaska 1978), overruled on other grounds, *City & Borough of Juneau v. Thibodeau*, 595 P.2d 626 (Alaska 1979).

Subsection (b) of this section was supplemented by AS 42.05.271, which provides for the modification, suspension or revocation of certificates for several listed reasons, including the requirements of public convenience and necessity. *Alaska Pub. Utils. Comm'n v. Chugach Elec. Ass'n*, 580 P.2d 687 (Alaska 1978), overruled on other grounds, *City & Borough of Juneau v. Thibodeau*, 595 P.2d 626 (Alaska 1979).

Subsection (d) of this section relates to questions of duplication of electrical services or facilities and the interpretation of a utility's certificate of public convenience and necessity. *Greater Anchorage Area Borough v. City of Anchorage*, 504 P.2d 1027 (Alaska 1972), overruled on other grounds, *City & Borough of Juneau v. Thibodeau*, 595 P.2d 626 (Alaska 1979).

Operation of garbage disposal sites does not constitute a utility service; it is only the passing over of control of solid waste to the disposal site operator which is regulated as a utility function. *McClellan v. Kenai Peninsula Borough*, 565 P.2d 175 (Alaska 1977).

Dumpsters are not equivalent of final landfill sites. — Interpretation that dumpsters serving as intermediate dump sites qualify as the functional equivalent of final landfill sites is not reasonable in that it would allow the Borough to place dumpsters in such a pervasive fashion as to completely vitiate the requirement of former AS 29.48.033(b) and former

subsection (f) of this section that certificate holders be compensated for their interests. *McClellan v. Kenai Peninsula Borough*, 565 P.2d 175 (Alaska 1977).

Quoted in *Homer Elec. Ass'n v. City of Kenai*, 816 P.2d 182 (Alaska 1991).

Cited in *Drake v. Fairbanks N. Star Borough*, 715 P.2d 1167 (Alaska 1986).

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

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

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

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

NOTES TO DECISIONS

Services of particular applicant. — Under AS 42.05.221, a showing of public convenience and necessity is required and is limited specifically to "services;" thus, the Alaska Public Utilities Commission (APUC) only needs to make a determination whether there is a substantial need for a service. Similarly, the requirement of AS 42.05.241 that APUC find the applicant to be "fit, willing and able to provide the utility services applied for" only requires the commission to focus on the applicant. Neither inquiry requires an exploration into the costs associated with environmental external-

ities or public subsidies not paid for by consumers as part of the rate charged for the service. *Alaska Fed'n for Community Self-Reliance v. Alaska Pub. Utils. Comm'n*, 879 P.2d 1015 (Alaska 1994).

Considerations of commission. — The Alaska Public Utilities Commission did not abuse its discretion in denying a telephone company's application and approving the application of another company based on a consideration of both the applications and the applicants. *United Utils., Inc. v. Alaska Pub. Utils. Comm'n*, 935 P.2d 811 (Alaska 1997).

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

Sec. 42.05.251. Use of streets in municipalities. Public utilities have the right to a permit to use public streets, alleys, and other public ways of a municipality upon payment of a reasonable permit fee and on reasonable terms and conditions and with reasonable exceptions the municipality requires. The fee may not exceed the actual cost to the municipality of the utility's use of the public way and of administering the permit program. A dispute as to whether fees, terms, conditions, or exceptions are reasonable shall be decided by the commission. The commission may require a utility to add the amount of any permit fee paid as a pro rata surcharge to its bills for service rendered at locations within the boundaries of any municipality that requires payment of a permit fee. (§ 6 ch 113 SLA 1970; am § 1 ch 104 SLA 1986)

NOTES TO DECISIONS

Jurisdiction over disputes over municipal restrictions on utilities. — The commission has jurisdiction pursuant to this section to adjudicate a dispute over the reasonableness of fees, terms and conditions

imposed by a municipality on the use of its rights-of-ways by a utility. *Homer Elec. Ass'n v. City of Kenai*, 816 P.2d 182 (Alaska 1991).

Municipal franchises granted to a cable tele-

vision company were not superseded by the Alaska Public Utilities Commission Act, AS 42.05, since provisions of a municipal franchise not in actual conflict with commission regulatory activity remain in force. *B-C Cable Co. v. City & Borough of Juneau*, 613 P.2d 616 (Alaska 1980).

Sec. 42.05.253. Public utility regulatory cost charge. [Repealed, § 36 ch 2 FSSLA 1992.]

Sec. 42.05.254. Public utility regulatory cost charge. (a) A regulated public utility operating in the state shall pay to the commission an annual regulatory cost charge in an amount not to exceed the maximum percentage of adjusted gross revenue that applies to the utility sector of which the utility is a part. The regulatory cost charges that the commission expects to collect from all regulated utilities may not exceed the sum of the following percentages of the total adjusted gross revenue of all regulated public utilities derived from operations in the state: (1) not more than .7 percent to fund the operations of the commission, and (2) not more than .17 percent to fund operations of the public advocacy function under AS 42.04.070(c) and AS 44.23.020(e) within the Department of Law. An exempt utility shall pay the actual cost of services provided to it by the commission.

(b) The commission shall by regulation establish a method to determine annually the amount of the regulatory cost charge for a public utility. If the amount the commission expects to collect under (a) of this section and under AS 42.06.286(a) exceeds the authorized budgets of the commission and the Department of Law public advocacy function under AS 42.04.070(c) and AS 44.23.020(e), the commission shall, by order, reduce the percentages determined under (h) of this section so that the total amount of the fees collected approximately equals the authorized budgets of the commission and the Department of Law public advocacy function under AS 42.04.070(c) and AS 44.23.020(e) for the fiscal year.

(c) In determining the amount of the regulatory cost charge imposed under (a) of this section,

(1) a utility selling utility services at wholesale shall modify its gross revenue by deducting payments it receives for wholesale sales;

(2) a local exchange telephone utility shall modify its gross revenue by deducting payments received from other carriers for settlements or access charges;

(3) an electric utility shall reduce its gross revenue by subtracting the cost of power; in this paragraph, "cost of power" means the costs of generation and purchased power reported to the commission.

(d) The commission shall calculate the total regulatory cost charges to be levied against all regulated electric utilities under this section. The commission shall allocate the total amount among the regulated electric utilities by using an equal charge per kilowatt hour sold at retail.

(e) The commission shall administer the charge imposed under this section. The Department of Revenue shall collect and enforce the charge imposed under this section. The Department of Administration shall identify the amount of the operating budgets of the commission and the Department of Law public advocacy function under AS 42.04.070(c) and AS 44.23.020(e) that lapse into the general fund each year. The legislature may appropriate an amount equal to the lapsed amount to the commission and to the Department of Law public advocacy function under AS 42.04.070(c) and AS 44.23.020(e) for operating costs for the next fiscal year. If the legislature does so, the commission shall reduce the total regulatory cost charge collected for that fiscal year by a comparable amount.

(f) The commission shall allow a public utility to recover all payments made to the commission under this section. The commission may not require a public utility to file a rate case in order to be eligible to recover the regulatory cost charge.

(g) The commission may adopt regulations under AS 44.62 (Administrative Procedure Act) necessary to administer this section, including requirements and procedures for

reporting information and making quarterly payments. The Department of Revenue may adopt regulations under AS 44.62 (Administrative Procedure Act) for investigating the accuracy of filed information, and for collecting required payments.

(h) The commission shall by regulation establish a method to determine annually the maximum percentage of adjusted gross revenue that will apply to each regulated public utility sector and the maximum percentage of gross revenue that will apply to the regulated pipeline carrier sector. Other than the cost of services provided to exempt utilities, the method established shall allocate the commission's costs, and the Department of Law's certified costs of its public advocacy function under AS 42.04.070(c) and AS 44.23.020(e), among the regulated public utility sectors and the regulated pipeline carrier sector based on the relative amount of the commission's annual costs and the Department of Law's certified costs that is attributable to regulating each sector. For purposes of this subsection, the Department of Law shall annually certify to the commission the costs of its public advocacy function under AS 42.04.070(c) and AS 44.23.020(e).

(i) In this section,

(1) "adjusted gross revenue" means the gross revenue of a utility as modified under (c) of this section, if appropriate.

(2) "exempt utility" means a public utility that is certificated by the commission under AS 42.05.221 — 42.05.281 but, in accordance with AS 42.05.711, is exempt from other regulatory requirements of this chapter;

(3) "gross revenue" means the total operating revenue from intrastate services, as shown in a utility's annual report required by the commission by regulation;

(4) "regulated utility" means a public utility that is certificated by the commission under AS 42.05.221 — 42.05.281 and that is subject to the other regulatory requirements of this chapter;

(5) "wholesale sales" means sales to another utility for resale under circumstances that make revenue from the resale subject to the regulatory cost charge imposed under this section. (§ 2 ch 1 SLA 1995; am §§ 8 — 11 ch 25 SLA 1999; am §§ 1 — 4 ch 98 SLA 2004)

Revisor's notes. — Subsection (h) was enacted as (i), and paragraph (i)(1) was enacted as (h)(5). Relettered and renumbered in 1999, at which time former subsection (h) was relettered as (i) and its paragraphs renumbered. Also in 1999, the reference in subsection (b) to "(h)" was substituted for "(i)" in conformity with these changes.

Effect of amendments. — The 1999 amendment, effective July 1, 2000, substituted the present language of the first two sentences in subsection (a) for "A regulated public utility operating in the state shall pay to the commission an annual regulatory cost charge in an amount not to exceed .8 percent of gross revenue derived from operations in the state, as modified under (c) of this section if appropriate", substituted "determined under (h)" for "set out in (a)"

in subsection (b), and added paragraph (i)(1) and subsection (h).

The 2004 amendment, effective July 1, 2004, substituted "the sum of the following percentages" for ".8 percent" in the second sentence of subsection (a), and inserted items (1) and (2) in that sentence, substituted "budgets of the commission and the Department of Law public advocacy function under AS 42.04.070(c) and AS 44.23.020(e)" for "budget of the commission" twice in subsection (b) and once in the third sentence of subsection (e), substituted "and the Department of Law public advocacy function under AS 42.04.070(c) and AS 44.23.020(e) for" for "for its" in the fourth sentence of subsection (e), and rewrote subsection (h).

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

Sec. 42.05.261. Discontinuance, suspension, or abandonment of certificated service. (a) Except as otherwise provided in this section, a public utility may not discontinue or abandon a service for which a certificate has been issued by the commission unless upon the application of the public utility and if, after notice and opportunity for hearing, the commission finds that the continued service is not required by public convenience and necessity. Any interested person may file with the commission a protest or memorandum of opposition to or in support of discontinuance or abandonment. The commission may authorize temporary suspension of a service or of part of a service.

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

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

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

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

NOTES TO DECISIONS

AS 42.05.221(b) was supplemented by this section, which provides for the modification, suspension or revocation of certificates for several listed reasons, including the requirements of public convenience and necessity. Alaska Pub. Utils. Comm'n v. Chugach Elec. Ass'n, 580 P.2d 687 (Alaska 1978), overruled on other grounds, City & Borough of Juneau v. Thibodeau, 595 P.2d 626 (Alaska 1979).

The term "wilful" itself is not a "word of art" or a "technical term." It has many different meanings, depending upon the context in which it is used. North State Tel. Co. v. Alaska Pub. Utils. Comm'n, 522 P.2d 711 (Alaska 1974).

The word "wilful" often denotes an act which is voluntary, knowingly or permissively done, as distinguished from one which is accidental or otherwise beyond the control of the person to be charged. North State Tel. Co. v. Alaska Pub. Utils. Comm'n, 522 P.2d 711 (Alaska 1974).

If a person (1) intentionally does an act which is prohibited, irrespective of evil motive or reliance on erroneous advice, or (2) acts with careless disregard of statutory requirements, the violation is wilful. North State Tel. Co. v. Alaska Pub. Utils. Comm'n, 522 P.2d 711 (Alaska 1974).

The concept of wilfulness, i.e., failure to meet responsibility and exercise control, is in accordance with case law. North State Tel. Co. v. Alaska Pub. Utils. Comm'n, 522 P.2d 711 (Alaska 1974).

"Wilful failure" may be such behavior through acts of commission or omission which justified belief that there was an intent entering into and characterizing the failure complained of. North State Tel. Co. v. Alaska Pub. Utils. Comm'n, 522 P.2d 711 (Alaska 1974).

A failure to perform an act for a long period of time, which is required by law to be performed, generally constitutes a wilful failure to perform. North State

Tel. Co. v. Alaska Pub. Utils. Comm'n, 522 P.2d 711 (Alaska 1974).

The general notion that a wilful act implies a bad purpose is derived from criminal statutes. It has no such meaning when used in a statute to denounce an act not in itself wrong. North State Tel. Co. v. Alaska Pub. Utils. Comm'n, 522 P.2d 711 (Alaska 1974).

Commission's definition of "wilful" did not shift burden of justification. — The commission's definition of "wilful" as "requiring only a showing that the failure to comply was with knowledge of the consequences of such failure" in finding that there was a "wilful failure" to meet the condition in the certificate, i.e., "good cause," did not shift the burden of justification to the telephone company; rather, the commission was merely delineating the nature of what would be reasonable justification, so as to render a failure to meet the condition nonwilful and, thus, the nature of the case that had to be made out by the evidence. North State Tel. Co. v. Alaska Pub. Utils. Comm'n, 522 P.2d 711 (Alaska 1974).

Deletion of condition from company's certificate authorized. — Order of the Alaska Public Utilities Commission which deleted a condition from company's certificate which barred company from offering day-to-day collection services when such services were provided by a borough fell squarely within the adjudicatory authority granted the commission by this section. Colville Envtl. Servs., Inc. v. North Slope Borough, 831 P.2d 341 (Alaska 1992).

Commission reserved right to revoke for good cause. — Where the public utility commission granted two different utility companies rights to serve a particular city and later found that competition between the utilities was not in the public interest and awarded the territory to appellee utility, the appellant utility company had no compensable prop-

erty interest in its certificate allowing it to operate in the territory, because the public utility commission, as a condition of issuing the certificate, reserved the right to revoke it for good cause. *Tlingit-Haida Reg'l Elec. Auth. v. State*, 15 P.3d 754 (Alaska 2001).

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

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

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

Article 3. Services and Facilities.

Section

- 291. Standards of service and facilities
- 296. Telephone services for certain impaired subscribers
- 301. Discrimination in service
- 306. Discounted service and reduced rate
- 311. Joint use and interconnection of facilities
- 321. Failure to agree upon joint use or interconnection

Section

- 325. Registration and regulation of alternate operator services
- 331. Standards for measurement
- 341. Testing of meter standards
- 351. Testing of appliances

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

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

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

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

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

NOTES TO DECISIONS

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

utility which result in inadequate service which is different from that provided to the public as a whole, the complaint should be handled as a traditional common-law action, and the superior court should determine the issues in accordance with settled principles of tort liability. *Jeffries v. Glacier State Tel. Co.*, 604 P.2d 4 (Alaska 1979).

Collateral references. — Placement, maintenance, or design of standing utility pole as affecting private utility's liability for personal injury resulting from vehicle's collision with pole within or beside highway. 51 ALR4th 602.

Liability of electric utility to nonpatron for interruption or failure of power. 54 ALR4th 667.

Sec. 42.05.296. Telephone services for certain impaired subscribers. (a) The commission shall adopt regulations to require telephone utilities to provide service to deaf, hard of hearing, and speech impaired subscribers that permits the subscriber to communicate by telephone with persons of normal hearing and that makes available reasonable access of all phases of public telephone service to deaf, hard of hearing, and speech impaired telephone subscribers. The regulations must provide for cost recovery through surcharges added to the basic local exchange rate. The commission shall hold hearings to determine the most cost-effective method of providing this service.

(b) A telephone subscriber is eligible for the service required by (a) of this section if the subscriber is certified as deaf, hard of hearing, or speech impaired by a licensed physician, a speech-language pathologist licensed under AS 08.11, an audiologist, or the Department of Health and Social Services or if the subscriber is an organization representing the deaf, hard of hearing, or speech impaired as determined by the commission. (§ 1 ch 139 SLA 1990; am § 1 ch 7 SLA 1992; am § 20 ch 42 SLA 2000)

Effect of amendments. — The 2000 amendment, effective October 1, 2000, inserted "a speech-language pathologist licensed under AS 08.11, an" in subsection (b).

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

Sec. 42.05.301. Discrimination in service. Except as provided in AS 42.05.306, a public utility may not, as to service, make or grant an unreasonable preference or advantage to any person or subject any person to an unreasonable prejudice or disadvantage. A public utility may not establish or maintain or provide an unreasonable difference as to service, either as between localities or as between classes of service, but nothing in this section prohibits the establishment of reasonable classifications of service or requires unreasonable investment in facilities. (§ 6 ch 113 SLA 1970; am § 1 ch 118 SLA 1990)

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

Civil rights: racial or religious discrimination in

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

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

Sec. 42.05.306. Discounted service and reduced rate. A public utility may provide a discounted service or a reduced rate for essential local exchange telecommunication services to individuals who receive benefits from a means test social services assistance program administered by the state or federal government. The commission may not require a utility to provide a discounted service or reduced rate or to incur uncompensated costs or administrative burdens for services provided under this section. (§ 2 ch 118 SLA 1990)

Collateral references. — Validity of preferential utility rates for elderly or low-income persons. 29 ALR4th 615.

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

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

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

(c) The tariff of a public utility shall include rules setting out the terms and conditions under which it will construct, or permit its customers or subscribers to construct, and install lines, cables, radio links, or pipes from its existing facilities to the premises of applicants for service. (§ 6 ch 113 SLA 1970)

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

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

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

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

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

Sec. 42.05.325. Registration and regulation of alternate operator services. (a) An alternate operator service may not operate in the state until it has registered and filed its tariffs with the commission. The application for registration must include the service's name, the address of its principal place of business, and the name and address of each of the officers of the service.

(b) An alternate operator shall identify the entity that is providing the alternate operator service and the cost of the service before the consumer incurs a charge for the call. If requested, the alternate operator shall transfer or assist in the transfer of the consumer's call to the consumer's carrier of choice. The consumer may not be charged for the transfer. The service shall also post on or near the telephone instruments subject to the alternate operator service information indicating that the consumer may have access to the carrier the consumer prefers to use at no additional charge.

(c) In this section, "alternate operator service"

(1) means a connection to intrastate or interstate long-distance telecommunications facilities from a nonresidential location in the state including a hotel, motel, hospital, or customer-owned pay telephone, or from a place where business from consumers is aggregated, by a person that does not own any of the telecommunications facilities being connected through the service;

(2) does not include an intrastate or interstate long-distance carrier that contracts for operator services and charges rates for those services that are no greater than the rates charged by long-distance carriers regulated by the Regulatory Commission of Alaska or by the Federal Communications Commission. (§ 2 ch 82 SLA 1990)

Revisor's notes. — In 1999, in subsection (c) "Regulatory Commission of Alaska" was substituted for "Alaska Public Utilities Commission" in accordance with § 30(a), ch. 25, SLA 1999.

connection with the enactment of this section, see § 1, ch. 82, SLA 1990 in the Temporary and Special Acts; for coverage under the unfair and deceptive trade practices law, see AS 45.50.473.

Cross references. — For legislative findings in

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

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

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

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

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

Sec. 42.05.351. Testing of appliances. The commission shall provide for the examination and testing of appliances used for the measuring of a service of a public utility and may purchase equipment, apparatus, and standards required for this purpose. The commissioner of transportation and public facilities may assign the examination and testing function to appropriate staff of the Department of Transportation and Public Facilities under AS 45.75. Upon the payment of a reasonable fee established by the commission, a consumer may have an appliance that is used by the consumer tested. The commission shall establish by regulation allowable tolerances with respect to the functioning or operation of the appliance. If the measuring appliance does not perform within these tolerances, the utility concerned shall pay the costs of the test by reimbursing the person requesting the test for the fee paid by that person. This reimbursement shall be made no later than at the time of the next regular billing

following the test. (§ 6 ch 113 SLA 1970; am § 43 ch 127 SLA 1974; am § 84 ch 218 SLA 1976; am § 17 ch 168 SLA 1990; am E.O. No. 98 § 7 (1997))

Effect of amendments. — The 1997 amendment, effective July 1, 1997, rewrote the second sentence.

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

Article 4. Rates and Rate Schedules.

Section

361. Tariffs, contracts, filing, and public inspection
365. Interest on deposits
371. Adherence to tariffs
381. Rates to be just and reasonable
385. Charges for water and sewer line extensions
391. Discrimination in rates

Section

401. Apportionment of joint rates
411. New or revised tariffs
421. Suspension of tariff filing
431. Power of commission to fix rates
441. Valuation of property of a public utility

NOTES TO DECISIONS

Refunds of untariffed rates. — The commission had implied power under this article to order a refund of the unreasonable portion of untariffed rates

charged by a telephone utility. Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, 902 P.2d 783 (Alaska 1995).

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

Public service commission's implied authority to order refund of public utility revenues. 41 ALR5th 783.

Sec. 42.05.361. Tariffs, contracts, filing, and public inspection. (a) Under regulations the commission shall adopt, every public utility shall file with the commission, within the time and in the form the commission designates, its complete tariff showing all rates, including joint rates, tolls, rentals, and charges collected and all classifications, rules, regulations, and terms and conditions under which it furnishes its services and facilities to the general public, or to a regulated or municipally owned utility for resale to the public, together with a copy of every special contract with customers which in any way affects or relates to the serving utility's rates, tolls, charges, rentals, classifications, services, or facilities. The public utility shall clearly print, or type, its complete tariff and keep an up-to-date copy of it on file at its principal business office and at a designated place in each community served. The tariffs shall be made available to, and subject to inspection by, the general public on demand.

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

(c) The commission may reject the filing of all or part of a tariff that does not comply with the form or filing regulations of the commission. A tariff or provision so rejected is void. If the commission rejects a filing, it shall issue a statement of the reasons for the rejection. Unless the utility and the commission agree to an extension of time, the commission may not reject a filing under this subsection after 45 days have elapsed from the date of filing. (§ 6 ch 113 SLA 1970; am § 2 ch 104 SLA 1986)

Opinions of attorney general. — Where public utility company entered into contract to sell natural gas to federal military installations pursuant to federal statute governing such contract negotiations, Alaska Public Utility Commission was precluded by

supremacy clause of U.S. Constitution (Art. VI, cl. 2) from asserting its jurisdiction over the sale. August 4, 1976, Op. Att'y Gen.

The Alaska Public Utility Commission can require that a public utility file copies of its military supply

contracts with the Commission pursuant to subsection (a) of this section. August 4, 1976, Op. Att'y Gen.

NOTES TO DECISIONS

Stated in *United States v. RCA Alaska Communications, Inc.*, 597 P.2d 489 (Alaska 1979).

Cited in *Stepanov v. Homer Elec. Ass'n*, 814 P.2d 731 (Alaska 1991).

Collateral references. — Variation of utility rates based on flat and meter rates. 40 ALR2d 1331.

Sec. 42.05.365. Interest on deposits. (a) A public utility may collect and retain a deposit for contracted recurring monthly service. A public utility that collects and retains a deposit of over \$100 for recurring monthly service shall pay interest on that deposit at or before the time it is returned. Interest paid under this section shall be at the legal rate of interest at the time the deposit is made. However, if the deposit is placed in an interest bearing account, the utility shall pay the interest rate of the interest bearing account.

(b) If delinquent payments result in interruption of service, a public utility is not required to pay interest under (a) of this section for 12 months after reestablishment of service. (§ 1 ch 50 SLA 1986)

Cross references. — For legal rate of interest, see AS 45.45.010.

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

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

NOTES TO DECISIONS

Failure to hold hearing nonjurisdictional and subject to waiver. — Error involving the commission's failure to hold a hearing before ordering an interim refundable rate was nonjurisdictional and subject to waiver by a party's failure to raise it before the commission. *Far N. San., Inc. v. Alaska Pub. Utils.*

Comm'n, 825 P.2d 867 (Alaska 1992).

Applied in *United States v. RCA Alaska Communications, Inc.*, 597 P.2d 489 (Alaska 1979).

Cited in *Matanuska Elec. Ass'n v. Chugach Elec. Ass'n*, 53 P.3d 578 (Alaska 2002).

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

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

- (1) energy conservation efforts;
- (2) public information designed to promote more efficient use of the utility's facilities or services or to protect the physical plant of the utility;
- (3) informing shareholders and members of a cooperative of meetings of the utility and encouraging attendance; or

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

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

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

(d) A utility shall provide for a reduced fee or surcharge for standby water for fire protection systems approved under AS 18.70.081 which use hydraulic sprinklers.

(e) The commission shall adopt regulations for electric cooperatives and for local exchange telephone utilities setting a range for adjustment of rates by a simplified rate filing procedure. A cooperative or telephone utility may apply for permission to adjust its rates over a period of time under the simplified rate filing procedure regulations. The commission shall grant the application if the cooperative or telephone utility satisfies the requirements of the regulations. The commission may review implementation of the simplified rate filing procedure at reasonable intervals and may revoke permission to use the procedure or require modification of the rates to correct an error.

(f) A local exchange telephone utility may adjust its rates in conformance with changes in jurisdictional cost allocation factors required by either the Federal Communications Commission or the Regulatory Commission of Alaska upon a showing to the Regulatory Commission of Alaska of

(1) the order requiring the change in allocation factors;

(2) the aggregate shift in revenue requirement, segregated by service classes or categories, caused by the change in allocation factors; and

(3) the rate adjustment required to conform to the required shift in local revenue requirement.

(g) The commission shall allow, as a necessary and reasonable expense, all payments made to the Department of Environmental Conservation under AS 46.14.240 — 46.14.250. The commission shall allow the public utility to recover these fees through a periodic fuel surcharge rate adjustment.

(h) An electric or telephone utility that has overhead utility distribution lines and that provides services in a municipality with a population of more than 200,000 must spend at least one percent of the utility's annual gross revenue from retail customers in that municipality to place existing overhead utility distribution lines in that municipality underground. In determining the annual gross revenue under this subsection, only revenue derived from the utility's distribution lines in the municipality shall be considered.

(i) An electric or telephone utility that is implementing a program to place existing overhead utility distribution lines located in a municipality underground may amend its rates for services provided to customers in the municipality to enable the utility to recover the full actual cost of placing the lines underground. Notwithstanding AS 42.05.411 — 42.05.431, an amendment to a utility's rates under this subsection is not subject to commission review or approval. A utility amending its rates under this subsection shall notify the commission of the amendment. This subsection applies to an undergrounding program to the extent that the costs do not exceed two percent of the utility's annual gross revenue. If an undergrounding program's costs exceed two percent, the commission may regulate rate increases proposed for the recovery of the amount above two percent.

(j) When an electric utility or a telephone utility is implementing a program to place existing overhead utility distribution lines located in a municipality underground, any other overhead line or cable in the same location shall be placed underground at the same

time. Each entity whose lines or cables are placed underground shall pay the cost of placing its own lines or cables underground. (§ 6 ch 113 SLA 1970; am § 1 ch 86 SLA 1976; am § 5 ch 106 SLA 1977; am § 4 ch 45 SLA 1980; am § 3 ch 104 SLA 1986; am § 1 ch 87 SLA 1990; am §§ 1, 2 ch 81 SLA 1991; am § 11 ch 74 SLA 1993; am § 1 ch 73 SLA 1999; am § 89 ch 21 SLA 2000)

Revisor's notes. — In 1999, in subsection (f) "Regulatory Commission of Alaska" was substituted for "Alaska Public Utilities Commission" in accordance with § 30(a), ch. 25, SLA 1999.

Cross references. — For the Electric and Telephone Cooperative Act see AS 10.25.

Effect of amendments. — The 1993 amendment, effective June 26, 1993, added subsection (g).

The 1999 amendment, effective September 22, 1999, added subsections (h)-(j).

The 2000 amendment, effective April 28, 2000, deleted the former last sentence of subsection (e), which read: "The commission shall adopt the regulations concerning adjustment of rates by local exchange telephone utilities on or before October 1, 1991."

NOTES TO DECISIONS

Separation of intrastate and interstate properties, expenses and revenues is required for properly determining the adequacy of a utility's intrastate rates. *United States v. RCA Alaska Communications, Inc.*, 597 P.2d 489 (Alaska 1979), overruled on other grounds, *Owsichek v. Guide Licensing & Control Bd.*, 627 P.2d 616 (Alaska 1981).

Lobbying expenses excluded from revenue requirement. — The commission acted reasonably and

within its statutory authority in excluding lobbying expenses as part of a utility's revenue requirement. *Homer Elec. Ass'n v. State, Alaska Pub. Utils. Comm'n*, 756 P.2d 874 (Alaska 1988).

Applied in *Alaska Pub. Utils. Comm'n v. Greater Anchorage Area Borough*, 534 P.2d 549 (Alaska 1975).

Cited in *Matanuska Elec. Ass'n v. Chugach Elec. Ass'n*, 53 P.3d 578 (Alaska 2002).

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

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

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

Affiliates: amount paid by public utility to affiliate for goods or services as includible in utility's rate base and operating expenses in rate proceeding. 16 ALR4th 454.

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

Sec. 42.05.385. Charges for water and sewer line extensions. (a) A water or sewer line extension may not be constructed unless the legislative body of each municipality through which the extension passes has approved the extension. This subsection does not apply to an extension that will not create any charges or assessments against the adjacent property.

(b) Except as provided in (e) of this section, when utility service is available to a property owner as a result of a water or sewer line extension, the utility offering the service through the extension shall notify the property owner, according to the procedure set forth for service of process in the Alaska Rules of Civil Procedure, of the charges and interest due the utility if the property owner elects to obtain the utility service through the extension. The property owner does not owe the charge for the extension until the property owner connects to the extension.

(c) Except as provided in (e) of this section, and unless the property owner connects to the extension,

- (1) charges do not accrue against the property for construction of the extension;
- (2) interest does not accrue against the property for the construction of the extension; and
- (3) a lien or encumbrance may not be levied against the property for the construction of the extension.

(d) If the costs of constructing a water or sewer line extension have been paid by charges collected under this chapter, a utility may not charge for connection to the extension an amount greater than the actual cost of the connection.

(e) The provisions of this section do not apply to a water or sewer line extension constructed by a municipality under AS 29.46. (§ 1 ch 107 SLA 1986)

Revisor's notes. — Enacted as AS 42.05.381(e)-(i).
Renumbered in 1986.

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

Sec. 42.05.391. Discrimination in rates. (a) Except as provided in AS 42.05.306, a public utility may not, as to rates, grant an unreasonable preference or advantage to any of its customers or subject a customer to an unreasonable prejudice or disadvantage. A public utility may not establish or maintain an unreasonable difference as to rates, either as between localities or between classes of service. A municipally owned utility may offer uniform or identical rates for a public utility service to customers located in different areas within its certificated service area who receive the same class of service. Any uniform or identical rate shall, upon complaint, be subject to review by the commission and may be set aside if shown to be unreasonable.

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

(c) A public utility may not directly or indirectly refund, rebate or remit in any manner, or by any device, any portion of the rates and charges or charge, demand, or receive a greater or lesser compensation for its services than is specified in its effective tariff. A public utility may not extend to any customer any form of contract, agreement, inducement, privilege, or facility, or apply any rule, regulation, or condition of service except such as are extended or applied to all customers under like circumstances. A public utility may not offer or pay any compensation or consideration or furnish any equipment to secure the installation or adoption of the use of utility service unless it conforms to a tariff approved by the commission, and the compensation, consideration, or equipment is offered to all persons in the same classification using or applying for the public utility service; in determining the reasonableness of such a tariff filed by a public utility the commission shall consider, among other things, evidence of consideration or compensation paid by a competitor, regulated or nonregulated, of the public utility to secure the installation or adoption of the use of the competitor's service.

(d) Nothing in this section prevents a public utility from charging reduced rates to customers transferred to it from a competing utility provided the reduction is an integral part of a contract, arrangement, or plan to eliminate the overlapping of service areas or to minimize duplication of facilities and competition between public utilities. (§ 6 ch 113 SLA 1970; am § 5 ch 136 SLA 1980; am § 3 ch 118 SLA 1990)

NOTES TO DECISIONS

Uniform rates are not required. Jager v. State, 537 P.2d 1100 (Alaska 1975).

Only unreasonable or undue preferences are forbidden. Jager v. State, 537 P.2d 1100 (Alaska 1975).

When the rate structure is such that one class of customers subsidizes another, discrimination may pass beyond its permitted scope and become undue or unreasonable. Jager v. State, 537 P.2d 1100 (Alaska 1975).

Use of existing pre-tax profits builds into new rates any existing discrimination in the rate

structure. Jager v. State, 537 P.2d 1100 (Alaska 1975).

Discrimination based on justified differences is permissible. — Since only that discrimination which is unreasonable is unlawful, discrimination based on justified differences in the cost of service or which is otherwise within the zone of reasonableness is permissible. Jager v. State, 537 P.2d 1100 (Alaska 1975).

Language of section and of former AS 42.05.460 and 42.05.520 compared. — See Oil Heat Inst., Inc. v. Alaska Pub. Serv. Corp., 515 P.2d 1229 (Alaska 1973).

Whether subsection (c) violated is question for initial consideration by commission. — Whether as a matter of law a gas company's plan to increase its sales of natural gas violates the provisions of subsection (c) is a question particularly suited for initial consideration by the Public Utilities Commis-

sion. *Oil Heat Inst., Inc. v. Alaska Pub. Serv. Corp.*, 515 P.2d 1229 (Alaska 1973).

Applied in *United States v. RCA Alaska Communications, Inc.*, 597 P.2d 489 (Alaska 1979).

Quoted in *Glacier State Tel. Co. v. Alaska Pub. Utils. Comm'n*, 724 P.2d 1187 (Alaska 1986).

Collateral references. — Preferential utility rates for elderly or low-income persons. 29 ALR4th 615.

Sec. 42.05.400. [Repealed, § 5 ch 113 SLA 1970.]

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

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

NOTES TO DECISIONS

Applied in *United States v. RCA Alaska Communications, Inc.*, 597 P.2d 489 (Alaska 1979).

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

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

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

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

NOTES TO DECISIONS

Nature of tariff. — This section provides only that a filing of a new or revised tariff be made; it contains no requirement that the tariff be permanent or interim in nature. *United States v. RCA Alaska Com-*

munications, Inc., 597 P.2d 489 (Alaska 1979), overruled on other grounds, *Owsichek v. Guide Licensing & Control Bd.*, 627 P.2d 616 (Alaska 1981).

Stated in *Alaska Pub. Utils. Comm'n v. Greater*

Anchorage Area Borough, 534 P.2d 549 (Alaska 1975).

Cited in *Jager v. State*, 537 P.2d 1100 (Alaska 1975).

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

Sec. 42.05.421. Suspension of tariff filing. (a) When a tariff filing is made containing a new or revised rate, classification, rule, regulation, practice, or condition of service the commission may, either upon written complaint or upon its own motion, after reasonable notice, conduct a hearing to determine the reasonableness and propriety of the filing. Pending the hearing the commission may, by order stating the reasons for its action, suspend the operation of the tariff filing. For a tariff filing that does not change the utility's revenue requirement or rate design, the suspension may last for a period not longer than six months beyond the effective date established in the tariff filing unless the commission extends the period for good cause. For a tariff filing that changes the utility's revenue requirement or rate design, the suspension may last, unless the commission extends the period for good cause, for a period not longer than

(1) six months before an interim rate equal to the requested rate goes into effect and not longer than 12 months before a permanent rate goes into effect if the annual gross revenues of the utility making the filing are more than \$3,000,000; and

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

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

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

(d) One who initiates a change in existing tariffs shall bear the burden to prove the reasonableness of the change. (§ 6 ch 113 SLA 1970; am § 6 ch 136 SLA 1980; am § 2 ch 87 SLA 1990)

NOTES TO DECISIONS

Escrow account for funds received pursuant to increased rate. — It was error for the superior court to dispense with the commission's order that a utility place funds received pursuant to an interim increase in an escrow account pending the final rate determination since subsection (c) of this section specifically authorizes the commission to take such action. *Alaska Pub. Utils. Comm'n v. Municipality of Anchorage*, 579 P.2d 1071 (Alaska 1978).

For discussion of imperfections in the escrow procedure. — See *Alaska Pub. Utils. Comm'n v. Greater Anchorage Area Borough*, 534 P.2d 549 (Alaska 1975).

Denial of interim rate increase held arbitrary. — Where the superior court found that the existing

rate was confiscatory, where the borough was clearly operating the sewer utility at a great loss, where the period prior to a final hearing could be construed to be unreasonable and where the commission failed to provide any further justification for its decision, the denial of the interim rate increase was arbitrary, and the superior court's injunction voiding the commission's order did not constitute an abuse of its discretion. *Alaska Pub. Utils. Comm'n v. Greater Anchorage Area Borough*, 534 P.2d 549 (Alaska 1975).

Commission determination that proposed rates were reasonable was not supported by substantial evidence on the record as a whole. *Jager v. State*, 537 P.2d 1100 (Alaska 1975).

Procedure consistent with statutory alloca-

tion of burden of proof. — Where the commission had first been satisfied by a public utility's evidence that the rates were reasonable and thereafter turned to complainant to show otherwise, this procedure, consistent with the statutory allocation of the burden of proof, is clearly reasonable. *Jager v. State*, 537 P.2d 1100 (Alaska 1975).

Refund methods. — See *United States v. RCA Alaska Communications, Inc.*, 597 P.2d 489 (Alaska 1979), overruled on other grounds, *Owsichek v. Guide Licensing & Control Bd.*, 627 P.2d 616 (Alaska 1981).

Commission did not err in suspending company's tariff revision filings five times, constituting a 22-month suspension, given the complexities involved, including consideration of separated company versus total company's revenue requirements, and the availability of interim relief if warranted. The fact that interest rates dropped from the time the company filed the tariff to the time the commission made its final decision did not entitle the company to an analysis based on the higher rates. *Glacier State Tel.*

Co. v. Alaska Pub. Utils. Comm'n, 724 P.2d 1187 (Alaska 1986).

Powers of commission. — The legislature intended to grant the commission broad powers to establish "fair and just" rates. Implied within that broad grant of powers is the authority for the commission to declare a rate interim and refundable, so long as the commission provides protection for the interests of both the utility and the public. *Far N. San., Inc. v. Alaska Pub. Utils. Comm'n*, 825 P.2d 867 (Alaska 1992).

Failure to hold hearing nonjurisdictional and subject to waiver. — Error involving the commission's failure to hold a hearing before ordering an interim refundable rate was nonjurisdictional and subject to waiver by a party's failure to raise it before the commission. *Far N. San., Inc. v. Alaska Pub. Utils. Comm'n*, 825 P.2d 867 (Alaska 1992).

Cited in *Matanuska Elec. Ass'n v. Chugach Elec. Ass'n*, 53 P.3d 578 (Alaska 2002).

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

Sec. 42.05.431. Power of commission to fix rates. (a) When the commission, after an investigation and hearing, finds that a rate demanded, observed, charged, or collected by a public utility for a service subject to the jurisdiction of the commission, or that a classification, rule, regulation, practice, or contract affecting the rate, is unjust, unreasonable, unduly discriminatory or preferential, the commission shall determine a just and reasonable rate, classification, rule, regulation, practice, or contract to be observed or allowed and shall establish it by order. A municipality may covenant with bond purchasers regarding rates of a municipally owned utility, and the covenant is valid and enforceable and is considered to be a contract with the holders from time to time of the bonds. The financial covenants contained in mortgages and other debt instruments of cooperative utilities organized under AS 10.25 are also valid and enforceable, and rates set by the commission must be adequate to meet those covenants. However, a cooperative utility that is negotiating to enter a mortgage or other debt instrument that provides for a times-interest-earned ratio (TIER) greater than the ratio the commission most recently approved for that cooperative shall submit the mortgage or debt instrument to the commission before the instrument takes effect. The commission may disapprove the instrument within 60 days after its submission. If the commission has not acted within 60 days, the instrument is considered to be approved.

(b) A wholesale power agreement between public utilities is subject to advance approval of the commission. After a wholesale power agreement is in effect, the commission may not invalidate any purchase or sale obligation under the agreement. However, if the commission finds that rates set in accordance with the agreement are not just and reasonable, the commission may order the parties to negotiate an amendment to the agreement and if the parties fail to agree, to use the dispute resolution procedures contained in the contract.

(c) Notwithstanding (b) of this section,

(1) a wholesale agreement for the sale of power from a project licensed by the Federal Energy Regulatory Commission on or before January 1, 1987, and related contracts for the wheeling, storage, regeneration, or wholesale repurchase of power purchased under the agreement, entered into between the Alaska Energy Authority and one or more other public utilities or among the utilities after October 31, 1987, and before January 1, 1988, and amendments to the wholesale agreement or related contract, and the wholesale agreement or related contract assigned by the Alaska Energy Authority to a joint action agency formed under AS 42.45.310 that purchases the project from the Alaska Energy Authority, are not subject to review or approval by the commission until all long-term

debt incurred for the project is retired, or, for a wholesale agreement or related contract assigned to a joint action agency formed under AS 42.45.310, until all long-term debt incurred to pay the purchase price to the Alaska Energy Authority is retired; and

(2) a wholesale agreement or related contract described in (1) of this subsection may contain a covenant for the public utility to establish, charge, and collect rates sufficient to meet its obligations under the contract; the rate covenant is valid and enforceable.

(d) Meetings between the Alaska Energy Authority and public utilities concerning a wholesale agreement for the sale of power or other matter exempted from review of the commission under (c) of this section must comply with AS 44.62.310.

(e) Validated costs incurred by a utility in connection with the related contracts described in (c)(1) of this section must be allowed in the rates charged by the utility. In this subsection, "validated costs" are the actual costs that a utility uses, under the formula set out in related contracts described in (c) of this section, to establish rates, charges for services and rights, and the payment of charges for services and rights. This subsection does not grant the commission jurisdiction to alter or amend the formula set out in those related contracts.

(f) In the establishment of rates of a utility furnishing solid waste material collection and disposal service, the commission shall permit recovery of reasonable, net capital and operating costs relating to solid waste recovery and recycling services after considering the utility's recovery of revenue associated with the service.

(g) In the establishment of rates under this chapter, the commission shall promote cost-effective solid waste recovery and recycling services.

(h) When setting or reviewing rates for a public utility that sends or receives power over the power transmission interties between Fairbanks and Healy or between Anchorage and the Kenai Peninsula, the commission shall consider those costs that have not been directly assigned to other individual generating utilities by the utility responsible for the construction of the intertie to have been incurred for the system existing on August 11, 1993. (§ 6 ch 113 SLA 1970; am §§ 4, 5 ch 104 SLA 1986; am §§ 1, 2 ch 11 SLA 1988; am § 1 ch 46 SLA 1991; am § 4 ch 18 SLA 1993; am § 4 ch 60 SLA 2000)

Revisor's notes. — Subsection (e) was enacted as AS 42.05.511(d). Renumbered in 1988.

Cross references. — For provisions governing the Alaska Energy Authority, see AS 44.83.

Effect of amendments. — The 2000 amendment, effective July 1, 2000, inserted language relating to "wholesale agreements or related contracts assigned" in two places in paragraph (c)(1).

Editor's notes. — Section 8, ch. 104, SLA 1986 provides that (b) of this section "applies only to wholesale power agreements entered into on or after June 7, 1986."

Section 5, ch. 11, SLA 1988 provides that subsections (c) and (e) of this section are retroactive to November 1, 1987.

Legislative history reports. — For legislative letters of intent on the amendments to this section by ch. 11, SLA 1988 (SCS CSHB 356(R1s)), see 1988

House Journal, pp. 2233 — 2234 and 1988 Senate Journal, pp. 2483 — 2484.

Opinions of attorney general. — The Alaska Public Utility Commission was not authorized to review the Long-Term Power Sales Agreement 4 Dam Pool — Initial Project of the Alaska Power Authority, a wholesale power agreement signed by the Alaska Power Authority [now Alaska Energy Authority], two electric cooperatives, and three cities in southeast Alaska, since the agreement was signed prior to June 7, 1986. February 12, 1988, Op. Att'y Gen.

A power purchase contract between the Alaska Power Authority [now Alaska Energy Authority] and Municipal Light & Power is subject to approval by the Alaska Public Utilities Commission under subsection (b). February 18, 1987, Op. Att'y Gen. (Opinion rendered prior to the 1988 amendment of this section.)

NOTES TO DECISIONS

History of section. — See Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, 555 P.2d 262 (Alaska 1976).

The commission may establish rates only after an investigation and hearing. Far N. San., Inc. v. Alaska Pub. Utils. Comm'n, 825 P.2d 867 (Alaska 1992).

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

state rates. United States v. RCA Alaska Communications, Inc., 597 P.2d 489 (Alaska 1979), overruled on other grounds, Owsichuk v. Guide Licensing & Control Bd., 627 P.2d 616 (Alaska 1981).

Confiscation. — A court may evaluate the showing of confiscation. That is, although the process of determining whether a rate is confiscatory involves fact/law determinations which require the special competence of the commission, the ultimate issue in confiscation questions is whether due process will be

violated by the continued operation of the rate. *United States v. RCA Alaska Communications, Inc.*, 597 P.2d 489 (Alaska 1979), overruled on other grounds, *Owsichek v. Guide Licensing & Control Bd.*, 627 P.2d 616 (Alaska 1981).

This section requires the commission to set rates so as to assure that existing bond covenants are met. Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, 555 P.2d 262 (Alaska 1976).

As to existing bonds, i.e., those bonds which have actually been marketed and for which there are present purchasers or holders, this section requires that the commission set rates so as to assure that bond covenants will not be breached. Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, 555 P.2d 262 (Alaska 1976).

And not so as to allow municipality to market proposed bonds. — This section does not require the commission to set rates so as to allow the municipality to market proposed bonds, i.e., bonds which have not yet been sold. Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, 555 P.2d 262 (Alaska 1976).

Prior to the issuance of bonds, the commission is not required by this section to set a rate which would meet the revenue requirements which would be necessary under the covenants if the bonds were sold. Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, 555 P.2d 262 (Alaska 1976).

This section specifically provides that bond covenants are "valid and enforceable." Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, 555 P.2d 262 (Alaska 1976).

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

The plain meaning of this section requires that once the bonds are actually purchased, and actual bond purchasers and holders exist, the covenants are valid and enforceable. The validity of the bond covenants thus requires the commission to respect the provisions of the covenants, and insure that they will not be breached. Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, 555 P.2d 262 (Alaska 1976).

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

And commission's rate-setting authority not interfered with. — Until there is an existing covenant with bond purchasers, there is nothing which is valid and enforceable, and therefore nothing to interfere with the commission's general rate-setting authority. Alaska Pub. Utils. Comm'n v. Municipality of

Anchorage, 555 P.2d 262 (Alaska 1976).

Power to declare rates interim and refundable. — The legislature intended to grant the commission broad powers to establish "fair and just" rates. Implied within that broad grant of powers is the authority for the commission to declare a rate interim and refundable, so long as the commission provides protection for the interests of both the utility and the public. *Far N. San., Inc. v. Alaska Pub. Utils. Comm'n*, 825 P.2d 867 (Alaska 1992).

Failure to hold hearing nonjurisdictional and subject to waiver. — Error involving the commission's failure to hold a hearing before ordering an interim refundable rate was nonjurisdictional and subject to waiver by a party's failure to raise it before the commission. *Far N. San., Inc. v. Alaska Pub. Utils. Comm'n*, 825 P.2d 867 (Alaska 1992).

Municipally owned utilities in competition with other utilities subjected to full gamut of regulation pertaining to other utilities, with exception relating to bond covenants. See Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, 555 P.2d 262 (Alaska 1976).

Standard of review. — Since generally rate-making decisions relate to complex subject matter which requires the particularized knowledge and experience of the rate-making body, the appropriate standard of review is normally whether the administrative body had a reasonable basis for its decision. *United States v. RCA Alaska Communications, Inc.*, 597 P.2d 489 (Alaska 1979), overruled on other grounds, *Owsichek v. Guide Licensing & Control Bd.*, 627 P.2d 616 (Alaska 1981).

The following requirements must be met before the superior court can intervene and overrule or modify an order of the Public Utilities Commission affecting utility rates. First, the utility must make a serious and substantial showing that the existing rates are so low as to be confiscatory. Second, the utility is obligated to show that no date has been set by the commission for a prompt final hearing, and that the existing confiscatory rates are likely to remain in force for an unreasonable period of time before the Public Utilities Commission makes its permanent rate determination. Third, the utility must convince the court that without the benefit of being permitted to operate under an interim rate increase, it will face irreparable harm. Fourth, the utility is required to demonstrate that if the interim rate relief is granted, the public can be adequately protected. Fifth, the utility must show that "serious" and "substantial" questions are involved in the rate case it has presented. *United States v. RCA Alaska Communications, Inc.*, 597 P.2d 489 (Alaska 1979), overruled on other grounds, *Owsichek v. Guide Licensing & Control Bd.*, 627 P.2d 616 (Alaska 1981).

Cited in Alaska Fed'n for Community Self-Reliance v. Alaska Pub. Utils. Comm'n, 879 P.2d 1015 (Alaska 1994).

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

Sec. 42.05.441. Valuation of property of a public utility. (a) The commission may, after providing reasonable notice and opportunity to be heard, ascertain and set the fair value of the whole or any part of the property of a public utility, insofar as it is material to the exercise of the jurisdiction of the commission. The commission may make revaluations from time to time and ascertain the fair value of all new construction, extensions, and additions to the property of a public utility. If a public utility furnishes

more than one classification of utility service the utility shall allocate the investment and expenses associated with the property used and useful in furnishing service among the utility services and it may not solely consider the utility's total investment and expenses in fixing rates for a particular service.

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

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

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

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

NOTES TO DECISIONS

Separation of intrastate and interstate properties, expenses and revenues is required for properly determining the adequacy of a utility's intrastate rates. *United States v. RCA Alaska Communica-*

tions, Inc., 597 P.2d 489 (Alaska 1979), overruled on other grounds, *Owsichek v. Guide Licensing & Control Bd.*, 627 P.2d 616 (Alaska 1981).

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

Article 5. Accounts, Records, and Reports.

Section

451. System of accounts and reports
461. Continuing property records
471. Depreciation rates and accounts

Section

481. Subsidiary business accounts
491. Records and accounts to be kept in state
501. Inspection of books and records

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

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

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

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

Sec. 42.05.461. Continuing property records. The commission may require a public utility to establish, provide, and maintain as a part of its system of accounts, continuing property records segregated by the year of placement in service, including a list or inventory of all the units of tangible property used or useful in the public service,

identifying the property by location and project. The commission may require a public utility to keep accounts and records in a manner that shows the original cost of the property when first devoted to the public service, and the current related reserve for depreciation. A public utility with annual revenues exceeding \$100,000 shall keep continuing property records. (§ 6 ch 113 SLA 1970; am § 3 ch 140 SLA 1990)

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

Sec. 42.05.471. Depreciation rates and accounts. (a) To provide for the loss in service value of its property, not restored by current maintenance, a utility shall charge adequate, but not excessive, depreciation expense for each major class of utility property used and useful in serving the public. From time to time the commission shall determine the proper and adequate rates of depreciation for each major class of property of a public utility. The commission shall accept rates of depreciation and depreciation accounts prescribed and maintained under regulations of a federal agency or the terms of a bond ordinance. The commission shall determine and allow depreciation expense in fixing the rates, tolls, and charges to be paid for the services of a public utility.

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

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

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

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

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

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

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

interest to file with the commission, copies of any or all of these accounts, records, books, maps, inventories, appraisals, valuations, or other reports and documents.

(b) When participating as a party under AS 42.04.070(c) or AS 44.23.020(e), the attorney general shall, at all reasonable times, have the right to reasonable access to, and may designate any of the attorney general's employees, agents, or consultants to inspect and examine, the accounts, records, books, maps, inventories, appraisals, valuations, or other reports and documents kept by public utilities that are relevant to the issues presented in any adjudicatory matter before the commission in which the attorney general has appeared as a party under AS 42.04.070(c) or AS 44.23.020(e). This access is subject to reasonable notice to all parties with an opportunity to object before the commission. Included under this subsection is access to records or other documents under the custody or control of an affiliated interest of a public utility that relate to any contract or transaction between the public utility and the affiliated interest. (§ 6 ch 113 SLA 1970; am § 5 ch 98 SLA 2004)

Effect of amendments. — The 2004 amendment, effective July 1, 2004, added subsection (b).

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

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

Article 6. Financial and Management Regulation.

Section

511. Unreasonable management practices
521. Impaired capital

Section

531. Distribution of surplus and profits

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

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

(c) In a rate proceeding the utility involved has the burden of proving that any written or unwritten contract or arrangement it may have with any of its affiliated interests for the furnishing of any services or for the purchase, sale, lease, or exchange of any property is necessary and consistent with the public interest and that the payment made therefor, or consideration given, is reasonably based, in part, upon the submission of satisfactory proof as to the cost to the affiliated interest of furnishing the service or property and, in part, upon the estimated cost the utility would have incurred if it furnished the service or property with its own personnel and capital. (§ 6 ch 113 SLA 1970)

Cross references. — For limitation on commission's authority with respect to certain contracts be-

tween utilities and the Alaska Power Authority, see AS 42.05.431(c)-(e).

NOTES TO DECISIONS

Applied in *Glacier State Tel. Co. v. Alaska Pub. Utils. Comm'n*, 724 P.2d 1187 (Alaska 1986).

Quoted in *Alaska Pub. Utils. Comm'n v. Municipal-*

ity of Anchorage, 579 P.2d 1071 (Alaska 1978).

Stated in *Matanuska Elec. Ass'n v. Chugach Elec. Ass'n*, 99 P.3d 553 (Alaska 2004).

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

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

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

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

Sec. 42.05.531. Distribution of surplus and profits. The surplus and profits of a public utility shall be distributed in accordance with the bylaws or ordinances controlling the utility. (§ 6 ch 113 SLA 1970; am § 90 ch 21 SLA 2000)

Effect of amendments. — The 2000 amendment, effective April 28, 2000, made a stylistic change.

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

Article 7. Judicial Review, Penalties, and Enforcement.

Section

541. Effect of regulations
551. Review and enforcement
561. Injunctions and monetary sanctions
571. Civil penalties

Section

581. Each violation a separate offense
601. Actions to recover penalties; disposition
611. Penalties cumulative
621. Joinder of actions

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

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

NOTES TO DECISIONS

Regulation requiring jurisdictional separations to be based upon Ozark methodology held mandatory. — See *United States v. RCA Alaska Communications, Inc.*, 597 P.2d 489 (Alaska 1979), overruled on other grounds, *Owsichek v. Guide Licensing & Control Bd.*, 627 P.2d 616 (Alaska 1981).

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

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

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

NOTES TO DECISIONS

Orders of commission expressly made subject to Administrative Procedure Act. — Subsection (a) of this section expressly makes orders of the Public Utilities Commission subject to the provisions of the Alaska Administrative Procedure Act (AS 44.62). *Greater Anchorage Area Borough v. City of Anchor-*

age, 504 P.2d 1027 (Alaska 1972), overruled on other grounds, *City & Borough of Juneau v. Thibodeau*, 595 P.2d 626 (Alaska 1979).

AS 44.62.570 is made applicable to review of final orders of the Public Utilities Commission by this section. *Jager v. State*, 537 P.2d 1100 (Alaska 1975).

Applied in *Jeffries v. Glacier State Tel. Co.*, 604 P.2d 4 (Alaska 1979).

Cited in *City of Kenai v. State, Pub. Utils. Comm'n*, 736 P.2d 760 (Alaska 1987); *Alaska Consumer Advocacy Program v. Alaska Pub. Utils. Comm'n*, 793 P.2d 1028 (Alaska 1990); *Alaska Fed'n for Community Self-Reliance v. Alaska Pub. Utils. Comm'n*, 879 P.2d 1015 (Alaska 1994).

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

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

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

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

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

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

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

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

NOTES TO DECISIONS

Cited in *Alaska Pub. Utils. Comm'n v. Municipality of Anchorage*, 902 P.2d 783 (Alaska 1995).

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

Sec. 42.05.581. Each violation a separate offense. Each violation of a provision of this chapter or of an order, decision, regulation, or written requirement of the commission

is a separate and distinct offense, and in case of a continuing violation each day's continuance is a separate and distinct offense. (§ 6 ch 113 SLA 1970)

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

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

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

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

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

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

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

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

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

Article 8. Miscellaneous Provisions.

Section

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

Section

681. Validity of certain certificates
691. Utility classes
711. Exemptions
712. Deregulation ballot

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

Cross references. — For laws on eminent domain, see AS 09.55.240 — 09.55.460.

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

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

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

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

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

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

Construction and application of rule requiring public use for which property is condemned to be "more necessary" or "higher use" than public use to which property is already appropriated-state takings. 49 ALR5th 769.

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

Sec. 42.05.641. Regulation by municipality. The commission's jurisdiction and authority extend to public utilities operating within a municipality, whether home rule or otherwise. In the event of a conflict between a certificate, order, decision, or regulation of the commission and a charter, permit, franchise, ordinance, rule, or regulation of such a local governmental entity, the certificate, order, decision, or regulation of the commission shall prevail. (§ 6 ch 113 SLA 1970; am § 18 ch 168 SLA 1990)

NOTES TO DECISIONS

Municipal franchises granted to a cable television company were not superseded by the Alaska Public Utilities Commission Act, AS 42.05.010 — 42.05.721, since provisions of a municipal franchise not in actual conflict with commission regulatory

activity remain in force. *B-C Cable Co. v. City & Borough of Juneau*, 613 P.2d 616 (Alaska 1980).

Applied in *Colville Env'tl. Servs., Inc. v. North Slope Borough*, 831 P.2d 341 (Alaska 1992).

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

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

Sec. 42.05.651. Expenses of investigation or hearing. (a) During a hearing or investigation held under this chapter, the commission may allocate the costs of the hearing or investigation among the parties, including the commission, as is just under the circumstances. In allocating costs, the commission shall consider the regulatory cost charge paid by a utility under AS 42.05.254 and may consider the results, ability to pay, evidence of good faith, other relevant factors, and mitigating circumstances. Notwithstanding an intervening party's ability to pay, if the commission determines that an intervening party has conducted its intervention in a frivolous manner, the commission shall allocate all costs associated with the intervention to that party. The costs allocated may include the costs of any time devoted to the investigation or hearing by hired consultants, whether or not the consultants appear as witnesses or participants. The costs allocated may also include any out-of-pocket expenses incurred by the commission in the particular proceeding. The commission shall provide an opportunity for any person objecting to an allocation to be heard before the allocation becomes final.

(b) *[Repealed, § 28 ch 90 SLA 1991.]*

(c) Notwithstanding the commission's discretion under (a) of this section to allocate costs to parties, the commission may not require a state agency to pay any costs allocated to the state agency. (§ 6 ch 113 SLA 1970; am § 63 ch 138 SLA 1986; am § 28 ch 90 SLA 1991; am §§ 21, 22 ch 2 FSSLA 1992; am § 3 ch 1 SLA 1995; am § 6 ch 98 SLA 2004)

Effect of amendments. — The 1995 amendment, effective June 26, 1995, in the first sentence in subsection (a), substituted "During" for "After completion of" at the beginning and "may" for "shall" and inserted "shall consider the regulatory cost charge paid by a utility under AS 42.05.254 and."

The 2004 amendment, effective July 1, 2004, added subsection (c).

Editor's notes. — Section 15, ch. 98, SLA 2004, makes the 2004 enactment of (c) of this section retroactive to May 30, 2003, and sec. 14, ch. 98, SLA 2004 provides that subsection (c) applies to orders of the Regulatory Commission of Alaska regardless of whether the related proceeding under AS 42.05 "was

begun before July 1, 2004."

Opinions of attorney general. — The word "party" in this section and in AS 42.06.610, for purposes of allocating the commission's costs of rulemaking proceedings, should be interpreted in its ordinary legal sense and does not include interested persons who comment in a rulemaking proceeding. It follows that the commission cannot, in order to allocate costs to a person, make that person a party to a rulemaking proceeding, whether by declaration or by invitation to which the person responds. September 29, 1986, Op. Att'y Gen.

NOTES TO DECISIONS

Violation of Supremacy Clause. — The imposition of costs against the federal government pursuant to this section is invalid under the Supremacy Clause, art. VI, cl. 2, of the U.S. Constitution. *United States v. Alaska Pub. Utils. Comm'n*, 800 F. Supp. 857 (D. Alaska 1992), *aff'd*, 23 F.3d 257 (9th Cir. 1994).

The imposition of costs against the federal government pursuant to this section is invalid under the Supremacy Clause because the government must agree to pay these costs before it is allowed to intervene in the hearings, and this interferes with the federal function set out in 40 U.S.C. § 481. *United States v. Alaska Pub. Utils. Comm'n*, 23 F.3d 257 (9th Cir. 1994).

Services performed by attorney general not

“costs”. — The commission erred in allocating as part of its “costs” those fees attributable to services performed by the attorney general’s office in connection with a rate making proceeding. *Homer Elec. Ass’n v. State, Alaska Pub. Utils. Comm’n*, 756 P.2d 874 (Alaska 1988).

Considerations insufficient to support rate increase. — A 100 percent cost allocation to an electric utility was remanded for further findings, where the allocation was based upon insufficient considerations, i.e., that the utility could “better pass along its costs” by requesting the rate increase. *Homer Elec. Ass’n v. State, Alaska Pub. Utils. Comm’n*, 756 P.2d 874 (Alaska 1988).

Sec. 42.05.661. Application fees. With each application relating to a certificate the applicant shall pay the commission a fee set by the commission by regulation that shall be deposited in the general fund of the state. (§ 6 ch 113 SLA 1970; am § 23 ch 2 FSSLA 1992)

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

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

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

(d) In this section, “record” means a report, file, book, account, paper, or application, and the facts and information contained in it. (§ 6 ch 113 SLA 1970; am § 8 ch 110 SLA 1981; am § 7 ch 98 SLA 2004)

Effect of amendments. — The 2004 amendment, effective July 1, 2004, inserted “or by the attorney

general” following “commission” in the first sentence of subsection (c).

NOTES TO DECISIONS

Narrow construction. — The privilege reflected by this section should be construed narrowly so that it does not conflict with the constitutional requirements of due process. *City of Fairbanks v. Alaska Pub. Utils. Comm’n*, 611 P.2d 493 (Alaska 1980).

Due process controls over section. — The re-

quirement of this section that information not be withheld if “required in the interests of the public” will normally prevent a conflict with due process requirements. If a conflict nevertheless occurs, due process must control. *City of Fairbanks v. Alaska Pub. Utils. Comm’n*, 611 P.2d 493 (Alaska 1980).

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

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

Sec. 42.05.701. [Renumbered as AS 42.05.720.]

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

(b) Except as otherwise provided in this subsection and in (o) of this section, public utilities owned and operated by a political subdivision of the state, or electric operating entities established as the instrumentality of two or more public utilities owned and operated by political subdivisions of the state, are exempt from this chapter, other than AS 42.05.221 — 42.05.281 and 42.05.385. However,

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

(2) a utility or electric operating entity that is owned and operated by a political subdivision and that directly competes with another utility or electric operating entity is subject to this chapter and any other utility or electric operating entity owned and operated by the political subdivision is also subject to this chapter; this paragraph does not apply to a utility or electric operating entity owned and operated by a political subdivision that competes with a telecommunications utility.

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

(d) The commission may exempt a utility, a class of utilities, or a utility service from all or a portion of this chapter if the commission finds that the exemption is in the public interest.

(e) Notwithstanding any other provisions of this chapter, any electric or telephone utility that does not gross \$50,000 annually is exempt from regulation under this chapter unless the subscribers petition the commission for regulation under AS 42.05.712(h).

(f) Notwithstanding any other provisions of this chapter, an electric or telephone utility that does not gross \$500,000 annually may elect to be exempt from the provisions of this chapter other than AS 42.05.221 — 42.05.281 under the procedure described in AS 42.05.712.

(g) A utility, other than a telephone or electric utility, that does not gross \$150,000 annually may elect to be exempt from the provisions of this chapter other than AS 42.05.221 — 42.05.281 under the procedure described in AS 42.05.712.

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

(i) A utility that furnishes collection and disposal service of garbage, refuse, trash, or other waste material and has annual gross revenues of \$300,000 or less is exempt from the provisions of this chapter, other than the certification provisions of AS 42.05.221 — 42.05.281, unless the subscribers petition the commission for regulation under AS 42.05.712(h). Notwithstanding AS 42.05.712(b) and (g), if subscribers representing 25 percent of the gross revenue of the utility petition the commission for regulation, the utility is subject to the provisions of this chapter.

(j) The provisions of this chapter do not apply to sales, exchanges, or gifts of energy to an electric utility certificated under this chapter when the energy which is the subject of the sale, exchange, or gift is waste heat, electricity, or other energy which is surplus or the

by-product of an industrial process. In an area in which no electric utility is certificated for service, energy provided by sale, exchange, or gift may be provided to any utility which is certificated for service to that area. A contract for the sale, exchange, or gift of energy exempt under this subsection does not make the supplier a public utility and does not transfer the responsibility to provide utility services from a certificated utility to any other person.

(k) A utility that furnishes cable television service is exempt from the provisions of this chapter other than AS 42.05.221 — 42.05.281 unless the subscribers petition the commission for regulation under the procedure described in AS 42.05.712.

(l) A person, utility, joint action agency established under AS 42.45.310, or cooperative that is exempt from regulation under (a), (d) — (k), or (o) of this section is not subject to regulation by a municipality under AS 29.35.060 and 29.35.070.

(m) The collection and disposal, under AS 29.35.050(c), by a municipality of waste material deposited at an intermediate transfer site is exempt from this chapter.

(n) Except as provided by AS 42.06.370(c), the provisions of this chapter do not apply to a person who owns or operates a natural gas pipeline as a North Slope natural gas pipeline carrier, as that term is defined in AS 42.06.630.

(o) A joint action agency established under AS 42.45.310 is exempt from regulation under this chapter, including the requirement to obtain a certificate of public convenience and necessity under AS 42.05.221, for the operation of, sale of power from, and other activities related to the power project the joint action agency purchases from the Alaska Energy Authority until the wholesale agreement and any related contract assigned by the authority becomes subject to review or approval by the commission under AS 42.05.431. The exemption provided by this subsection extends to repairs and improvements to the power project the joint action agency purchases from the authority but does not extend to any other power project or other activity of the joint action agency.

(p) A regional solid waste management authority established under AS 29.35.800 — 29.35.925 is exempt from regulation under this chapter, except that a solid waste management authority is subject to this chapter if it directly competes with a utility subject to this chapter. (§ 6 ch 113 SLA 1970; am § 3 ch 76 SLA 1973; am § 8 ch 83 SLA 1980; am §§ 7 — 9 ch 136 SLA 1980; am § 89 ch 59 SLA 1982; am § 1 ch 30 SLA 1983; am § 68 ch 74 SLA 1985; am § 1 ch 80 SLA 1985; am § 2 ch 107 SLA 1986; § 5 ch 93 SLA 1990; am § 3 ch 176 SLA 1990; am §§ 4 — 8 ch 1 SLA 1995; am § 2 ch 56 SLA 2000; am §§ 2 — 4 ch 4 SLA 2001; am § 1 ch 74 SLA 2002; am § 3 ch 26 SLA 2006)

Cross references. — For limitations on these exemptions, see AS 42.05.254, AS 42.05.321(b), and AS 42.05.381(c).

Effect of amendments. — The 1995 amendment, effective June 26, 1995, in subsections (e) and (k), deleted “25 percent of” following “unless”; in subsection (e), added “under AS 42.05.712(h)” at the end; in subsection (f), substituted “\$500,000” for “\$325,000”; in subsection (g), substituted “\$150,000” for “\$100,000”; rewrote subsection (i); and, in subsection (k), added “under the procedure described in AS 42.05.712” at the end and made minor stylistic changes.

The 2000 amendment, effective August 9, 2000, added subsection (n).

The 2001 amendment, effective June 25, 2001, inserted the references to subsection (o) in subsections (b) and (l); in subsection (l) inserted “joint action agency established under AS 42.45.310”; and added subsection (o).

The 2002 amendment, effective September 18, 2002, added the language beginning “this paragraph does not apply” to the end of paragraph (b)(2).

The 2006 amendment, effective August 9, 2006, added subsection (p).

Editor’s notes. — Section 4, ch. 176, SLA 1990 provides that subsection (m) does not apply to a municipality with a population of less than 50,000 until July 1, 1991.

Opinions of attorney general. — An electrical utility owned and operated by a regional electrical authority would continue to qualify for the broad exemption from this chapter, available to political subdivisions under subsection (b) of this section once the regional electrical authority had completed its proposed organization as a nonprofit corporation under AS 10.20. June 7, 1976, Op. Att’y Gen.

When a deregulated utility exceeds the gross annual limit of \$325,000 [increased in 1995 to \$500,000] specified in subsection (f), and thus fails to be eligible for deregulation, the deregulation exemption ends automatically, and the utility is again subject to economic regulation. December 20, 1988, Op. Att’y Gen.

In order for the commission to effectively provide for an overview of eligibility for statutory exemption from regulation, it should specify the nature and extent of the exemption certified and require the subject utility to submit a report on its annual operating revenues.

These terms and conditions should be included in the order which certifies the deregulation election results. December 20, 1988, Op. Att’y Gen.

NOTES TO DECISIONS

Municipally owned utilities in competition with other utilities subjected to full gamut of regulation pertaining to other utilities, with exception relating to bond covenants. — See Alaska Pub. Utils. Comm’n v. Municipality of Anchor-

age, 555 P.2d 262 (Alaska 1976).

Cited in Homer Elec. Ass’n v. City of Kenai, 816 P.2d 182 (Alaska 1991); Tlingit-Haida Reg’l Elec. Auth. v. State, 15 P.3d 754 (Alaska 2001).

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

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

(c) Each subscriber or member of the utility or cooperative shall receive notice of an election under this section with the subscriber’s or member’s regular bill for service at least 60 days before the date set for the election. The notice shall contain impartial language informing the subscribers or members that an election on the option of deregulation or regulation by the Regulatory Commission of Alaska will be held within 60 days and that a ballot to participate in that election will be mailed or delivered to each subscriber or member of the utility or cooperative with the regular bill for service. The notice shall also state that a subscriber or member of the cooperative is entitled to vote in the election without regard to whether the subscriber’s or member’s account with the utility or cooperative is current and that the ballot must be postmarked or returned to the commission within 30 days after it was mailed or otherwise delivered to the subscriber or member. The notice shall also announce the schedule for one or more public meetings which shall provide an opportunity for the subscribers or members to discuss this election. The public meeting or meetings shall be held not more than 30 days before the ballots are mailed or distributed to those eligible to vote. A cooperative may satisfy this requirement by including a discussion of this election on the agenda of an annual meeting if the annual meeting is scheduled to be held not more than 30 days before the election.

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

“Shall. (name of utility or cooperative) be exempt from regulation by the Regulatory Commission of Alaska?

[] YES [] NO”

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

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

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

(h) A utility or cooperative that is already exempt from regulation under this section or that is exempt from regulation under AS 42.05.711(e), (i), or (k) may elect to terminate its exemption in the same manner. (§ 10 ch 136 SLA 1980; am § 9 ch 1 SLA 1995)

Revisor's notes. — In 1999, in subsections (c) and (d) "Regulatory Commission of Alaska" was substituted for "Alaska Public Utilities Commission" in accordance with § 30(a), ch. 25, SLA 1999.

Effect of amendments. — The 1995 amendment, effective June 26, 1995, inserted "or that is exempt from regulation under AS 42.05.711(e), (i), or (k)" in subsection (h).

Sec. 42.05.720. [Renumbered as AS 42.05.990.]

Sec. 42.05.721. [Renumbered as AS 42.05.995.]

Article 9. Competitive Intrastate Long Distance Telephone Service.

Section

800. Findings
810. Competition
820. No municipal regulation
830. Exchange access charges
840. Universal service fund

Section

850. Exchange carrier association
860. Restrictions on resale of telecommunications services prohibited
890. Definitions

Editor's notes. — Section 12, ch. 93, SLA 1990 provided that if an administrative agency or a court made a determination that was in effect on September 4, 1990, that required the lieutenant governor to place

one or both of certain initiatives on the 1990 general election ballot, AS 42.05.800 — 42.05.890 were repealed. That contingency did not occur, so §§ 4, 7, and 8, ch. 93, SLA 1990 did not take effect.

Sec. 42.05.800. Findings. The legislature finds that

(1) modern, affordable, efficient, and universally available local and long distance telephone service is essential to the people of the state;

(2) facilities based, long distance telephone service should be provided competitively wherever possible;

(3) technological advances, reduced costs, and increased consumer choices for long distance telephone service, resulting from the adoption of an appropriate competitive market structure, will enhance the state's economic development;

(4) the benefits of competition in long distance telephone service should be shared by consumers throughout the state;

(5) the commission should oversee competition in long distance telephone service to ensure that the competition is fair to consumers and competitors;

(6) the commission should provide for competition in a timely manner and should adopt regulations that eliminate inappropriate impediments to entry for long distance carriers fit, willing, and able to provide service. (§ 2 ch 93 SLA 1990)

Sec. 42.05.810. Competition. (a) By February 14, 1991, the commission shall adopt regulations that authorize and establish conditions governing competition in long distance telephone service.

(b) Beginning February 15, 1991, the commission shall accept applications to provide competitive long distance telephone service and shall approve or reject applications within 90 days after the filing of a complete application. The commission shall approve an application upon a finding that the applicant is fit, willing, and able. The authority granted to a fit, willing, and able applicant shall include the authority to provide intrastate long distance telephone service using any facilities that the applicant owned and operated on May 1, 1990, to provide interstate long distance message telephone service to the public.

(c) Except as provided in (b) of this section, the commission may prohibit installation of facilities for origination or termination of long distance service in a given location only if it determines that installation of the facilities in that location is not in the public interest. (§ 2 ch 93 SLA 1990)

Sec. 42.05.820. No municipal regulation. A long distance telephone company that is exempted in whole or in part from complying with all or a portion of this chapter may not be regulated by a municipality under AS 29.35.060 and 29.35.070. (§ 2 ch 93 SLA 1990)

Sec. 42.05.830. Exchange access charges. In providing for competition under AS 42.05.800 — 42.05.890, the commission shall establish a system of access charges to be paid by long distance carriers to compensate local exchange carriers for the cost of originating and terminating long distance services. (§ 2 ch 93 SLA 1990)

Sec. 42.05.840. Universal service fund. The commission may establish a universal service fund or other mechanism to be used to ensure the provision of long distance telephone service at reasonable rates throughout the state and to otherwise preserve universal service. (§ 2 ch 93 SLA 1990)

Sec. 42.05.850. Exchange carrier association. The commission may require the local exchange carriers to form an association to assist in administering the system of access charges and may require the association to file tariffs and to engage in pooling of exchange access costs and revenue if necessary to achieve the purposes of AS 42.05.800 — 42.05.890. (§ 2 ch 93 SLA 1990)

Cross references. — For legislative intent in enacting this section, see § 1(b), ch. 93, SLA 1990 in the Temporary and Special Acts.

Sec. 42.05.860. Restrictions on resale of telecommunications services prohibited. A telephone company may not prohibit or restrict the resale of telecommunications service. If an interexchange telecommunications service is resold, the reseller shall receive credit in an appropriate amount for an applicable exchange access charge if the credit is necessary to prevent double payment of the access charges. (§ 2 ch 93 SLA 1990)

Sec. 42.05.890. Definitions. In AS 42.05.800 — 42.05.890,

- (1) "local exchange carrier" means any carrier certificated to provide local telephone services;
- (2) "long distance carrier" or "long distance telephone company" means any carrier certificated to provide long distance telephone services;
- (3) "long distance telephone service" or "long distance service" means intrastate, interexchange telephone service. (§ 2 ch 93 SLA 1990)

Revisor's notes. — Enacted as AS 42.05.995. Re-numbered in 1990.

Article 10. General Provisions.

Section
990. Definitions
995. Short title

Sec. 42.05.990. Definitions. In this chapter

- (1) "affiliated interest" includes:
 - (A) a person owning or holding directly or indirectly five percent or more of the voting securities of a public utility engaged in intrastate business in this state;
 - (B) a person, other than those specified in (A) of this paragraph, in a chain of successive ownership of five percent or more of voting securities, the chain beginning with the holder of the voting securities of such public utility;

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

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

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

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

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

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

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

(2) "commission" means the Regulatory Commission of Alaska;

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

(A) a group of 10 or more customers that purchase the service or commodity furnished by a public utility;

(B) one or more customers that purchase electrical service for use within an area that is certificated to and presently or formerly served by an electric utility if the total annual compensation that the electrical utility receives for sales of electricity exceeds \$50,000; and

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

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

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

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

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

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

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

(F) furnishing collection and disposal service of garbage, refuse, trash, or other waste material to the public for compensation;

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

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

(7) "tariff" means a rate, charge, toll, rule, or regulation of a utility relating to services furnished by the utility to the general public for compensation and every map, page,

adoption notice, instrument, or other document filed with the commission setting out the terms and conditions under which utility services are offered to the public and instruments of concurrence and all other documents and data setting out the terms of a utility's business relations with another utility insofar as they affect the general public either directly or indirectly;

(8) "telecommunications" means the transmission and reception of messages, impressions, pictures, and signals by means of electricity, electromagnetic waves, and any other kind of energy, force variations, or impulses whether conveyed by cable, wire, radiated through space, or transmitted through other media within a specified area or between designated points. (§ 6 ch 113 SLA 1970; am § 2 ch 36 SLA 1971; am § 2 ch 76 SLA 1973; § 4 ch 140 SLA 1990; am § 19 ch 168 SLA 1990; am § 12 ch 25 SLA 1999)

Revisor's notes. — Formerly AS 42.05.701. Renumbered as AS 42.05.720 in 1983 and reorganized to alphabetize the defined terms. Renumbered again in 1990.

Effect of amendments. — The 1999 amendment, effective July 1, 1999, substituted "Regulatory Commission of Alaska" for "Alaska Public Utilities Commission" in paragraph (2).

Editor's notes. — Section 5, ch. 140, SLA 1990 provides that the 1990 amendment to (3) of this section "does not apply to an entity that was selling a product or service to customers before June 22, 1990."

NOTES TO DECISIONS

Applied in *McClellan v. Kenai Peninsula Borough*, 565 P.2d 175 (Alaska 1977); *Alaska Pub. Utils. Comm'n v. Chugach Elec. Ass'n*, 580 P.2d 687 (Alaska 1978), overruled on other grounds, *City & Borough of Juneau v. Thibodeau*, 595 P.2d 626 (Alaska 1979); *B-C Cable Co. v. City & Borough of Juneau*, 613 P.2d 616

(Alaska 1980); *Alaska Fed'n for Community Self-Reliance v. Alaska Pub. Utils. Comm'n*, 879 P.2d 1015 (Alaska 1994).

Cited in *Drake v. Fairbanks N. Star Borough*, 715 P.2d 1167 (Alaska 1986).

Collateral references. — 64 Am. Jur. 2d, Public Utilities, §§ 1 — 2.
73B C.J.S., Public Utilities, §§ 1 — 3.

Electricity, gas, or water furnished by public utility as "goods" within provisions of Uniform Commercial Code Article 2 on Sales. 48 ALR3d 1060.

Sec. 42.05.995. Short title. This chapter may be cited as the Alaska Public Utilities Regulatory Act. (§ 6 ch 113 SLA 1970; am § 13 ch 25 SLA 1999)

Revisor's notes. — Formerly AS 42.05.721. Renumbered in 1990.

Effect of amendments. — The 1999 amendment,

effective July 1, 1999, substituted "Regulatory" for "Commission."

Chapter 06. Pipeline Act.

Article

1. Powers and Duties of Regulatory Commission of Alaska (§§ 42.06.055 — 42.06.230)
2. Certificate of Public Convenience and Necessity (§§ 42.06.240 — 42.06.305)
3. Services and Facilities (§§ 42.06.310 — 42.06.340)
4. Rates and Rate Schedules (§§ 42.06.350 — 42.06.420)
5. Accounts, Records, and Reports (§§ 42.06.430 — 42.06.460)
6. Enforcement Provisions (§§ 42.06.470 — 42.06.590)
7. General Provisions (§§ 42.06.605 — 42.06.640)

Administrative Code. — For utility and pipeline tariffs, see 3 AAC 48, art. 2.

Legislative history reports. — For report of the Free Conference Committee on ch. 139, SLA 1972 (FCCS HCS CSSB 314), see 1972 Senate Journal, p. 1072; or 1972 House Journal, p. 1420.

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

13 C.J.S., Carriers, §§ 15 — 24.

Secs. 42.06.010 — 42.06.120. Legislative policy; Alaska Pipeline Commission. [Repealed, § 20 ch 110 SLA 1981.]

Sec. 42.06.130. [Renumbered as AS 42.06.605.]

Article 1. Powers and Duties of Regulatory Commission of Alaska.

Section

55. Commission decision-making procedures
140. General powers and duties
150. Powers and duties with respect to federally regulated carriers

Section

210. Publication of reports, orders, decisions, and regulations
220. Annual report
230. Jurisdiction of commission

Sec. 42.06.055. Commission decision-making procedures. The commission shall comply with AS 42.04.080 for matters that come before the commission for decision. (§ 16 ch 25 SLA 1999)

Effective dates. — Section 31(c), ch. 25, SLA 1999 makes this section effective July 1, 1999.

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

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

(b) The commission may assign a qualified, unbiased, and impartial administrative law judge, with experience in the general practice of law, to conduct hearings under this chapter. The administrative law judge may perform other duties in connection with the administration of this chapter and other laws. An administrative law judge hired to conduct hearings under this chapter shall have been admitted to practice law for at least five years immediately before appointment under this subsection. (§ 1 ch 139 SLA 1972; am §§ 1, 2 ch 201 SLA 1976; am §§ 1 — 3 ch 35 SLA 1977; am § 6 ch 110 SLA 1981)

Revisor's notes. — Subsection (b) was enacted as AS 42.05.121(c). Renumbered in 1981.

NOTES TO DECISIONS

Constitutionality of rate scheme. — See notes to AS 42.06, art. 4. *Cook Inlet Pipe Line Co. v. Alaska Pub. Utils. Comm'n*, 836 P.2d 343 (Alaska 1992). **Applied** in *Amerada Hess Pipeline Corp. v. Alaska Pub. Utils. Comm'n*, 711 P.2d 1170 (Alaska 1986).

Sec. 42.06.150. Powers and duties with respect to federally regulated carriers. AS 42.06.140 applies to oil and gas pipeline carriers regulated under federal law only to the extent not preempted by federal law. (§ 1 ch 139 SLA 1972; am § 9 ch 110 SLA 1981)

Secs. 42.06.160 — 42.06.200. Administrative authority and procedures. [Repealed, § 20 ch 110 SLA 1981.]

Sec. 42.06.210. Publication of reports, orders, decisions, and regulations. All reports, orders, decisions, and regulations of the commission shall be in writing. The commission shall apprise all affected operators of oil or gas pipeline facilities and interested parties of these reports, orders, decisions, and regulations as they are issued and adopted, and, when appropriate to do so, publish them in a manner that will reasonably inform the public or the affected consumers of the services of any oil or gas pipeline facility. The commission may set charges for costs of printing or reproducing and furnishing copies of its reports, orders, decisions, and regulations. The publication requirement, as it pertains to regulations, does not supersede the requirements of AS 44.62 (Administrative Procedure Act). (§ 1 ch 139 SLA 1972)

Sec. 42.06.220. Annual report. The commission shall, by February 15 of each year, publish an annual report reviewing its work and notify the legislature that the report is available. The report must contain information and data that bear a significant relationship to the development and regulation of oil or gas pipeline facilities in the state and include an outline of the commission's program for the development and regulation of oil or gas pipeline facilities in the forthcoming year. (§ 1 ch 139 SLA 1972; am § 81 ch 21 SLA 1995)

Effect of amendments. — The 1995 amendment, effective August 8, 1995, substituted the present first sentence for the former first sentence, which read "The commission shall publish an annual report reviewing its work and submit it to the legislature by February 15 of each year."

Sec. 42.06.230. Jurisdiction of commission. (a) Except as to jurisdiction of the Department of Law as provided by AS 42.06.140(a)(10), the jurisdiction and authority over the subject matter of this chapter is exclusively in the commission. To the extent that the performance of any duties of the commission affects a pipeline carrier or a pipeline subject to regulation under federal law, the performance of its duties may not, as to that pipeline carrier or pipeline, conflict with applicable federal laws, regulations, orders, or other requirements.

(b) The commission's jurisdiction and authority extend to

(1) an oil or gas pipeline facility operating in a municipality, whether home rule or otherwise; if a conflict between a certificate, order, decision, or regulation of the commission and a charter, permit, franchise, ordinance, rule, or regulation of such a local governmental entity occurs, the certificate, order, decision, or regulation of the commission prevails; and

(2) the intrastate transportation of North Slope natural gas through a North Slope natural gas pipeline. (§ 1 ch 139 SLA 1972; am § 3 ch 201 SLA 1976; am § 10 ch 110 SLA 1981; am § 20 ch 168 SLA 1990; am § 3 ch 56 SLA 2000)

Revisor's notes. — Subsection (b) was formerly AS 42.06.600. Renumbered in 1983. effective August 9, 2000, added paragraph (b)(2) and made stylistic changes.

Effect of amendments. — The 2000 amendment,

Article 2. Certificate of Public Convenience and Necessity.

Section

240. Certificate required; special requirements for North Slope natural gas
 245. Federally regulated carriers
 250. Application
 260. Public hearings
 270. Grant or denial of application

Section

280. Insurance and security
 286. Pipeline carrier regulatory cost charge
 290. Abandonment
 300. Modification, suspension, or revocation of certificates
 305. Transfer of operating authority

Sec. 42.06.240. Certificate required; special requirements for North Slope natural gas. (a) After January 1, 1974 a pipeline carrier, or person that will be a pipeline carrier upon completion of any proposed construction or extension, may not engage in the transportation of oil or gas by pipeline subject to the jurisdiction of the commission, or undertake the construction or extension of any pipeline facilities for that purpose, or acquire or operate any pipeline facilities or extension, unless there is in force with respect to that pipeline carrier a certificate of public convenience and necessity issued by the commission authorizing those acts or operations. A certificate shall describe the nature and extent of the authority granted in it, including, as appropriate for the services involved, a description of the authorized area and scope of operation of the oil or gas pipeline facility.

(b) If any person or predecessor in interest was engaged in transportation of oil or gas by pipeline or construction of an oil or gas pipeline on or before January 1, 1974, the commission shall issue a certificate of public convenience and necessity for that pipeline without hearings or proceedings. For purposes of this section, "construction" includes application for a federal right-of-way permit.

(c) In an area where the commission determines that two or more oil or gas pipeline facilities are competing or are planning to compete to offer identical oil or gas pipeline service, and this competition is not in the public interest, the commission shall take appropriate action to eliminate or not allow the competition and undesirable duplication of facilities.

(d) The commission may attach to certificates of convenience and necessity terms and conditions and require issuance of securities it considers necessary for the protection of the environment and for the best interest of the oil or gas pipeline facility and the general public.

(e) The requirement for a certificate does not operate to impose state regulation that has been preempted under federal law. When federal law has preempted state regulation the commission shall accept the findings made under the federal scheme of regulation.

(f) In addition to other requirements of (a) — (e) of this section, the provisions of this subsection apply to a certificate of public convenience and necessity for a North Slope natural gas pipeline carrier or person that will be a North Slope natural gas pipeline carrier under this chapter:

(1) the person making application shall dedicate a portion of the pipeline's initial capacity sufficient to transport the total volume of North Slope natural gas that has been committed by producers and shippers of North Slope natural gas to tendering for intrastate firm transportation service at the time that the operation of the North Slope natural gas pipeline commences;

(2) upon receipt of the certificate application under this subsection, the commission shall issue a public notice inviting prospective intrastate shippers of North Slope natural gas to file requests for service; a request for service submitted by a shipper in response to a notice issued under this paragraph must include a proof of the shipper's commitment to use the North Slope natural gas pipeline for intrastate firm transportation service, specifying the volume of North Slope natural gas that the shipper will tender for initial intrastate firm transportation service;

(3) in its review of an application submitted under this subsection,

(A) for purposes of evaluating the total volume of intrastate transportation of North Slope natural gas to be accepted for initial intrastate transportation, the commission shall determine total volume based upon written commitments to tender North Slope natural gas for intrastate firm transportation service continuously for a period of not less than three years after the operation of the North Slope natural gas pipeline commences as follows:

(i) each request for service by an intrastate shipper that is a public utility, as that term is defined in AS 42.05.990, for the purpose of furnishing natural gas for ultimate consumption within the state by its customers that individually consume an average annual volume of less than 20,000,000 standard cubic feet of gas per day shall be supported by a written commitment by the public utility that sets out the utility's best current estimate of the average annual volume that the utility will require during the three-year period;

(ii) each request for service by an intrastate shipper that is not a public utility, as that term is defined in AS 42.05.990, and each request for service by a public utility for the purpose of furnishing natural gas for ultimate consumption within the state by a customer that individually consumes an average annual volume of 20,000,000 or more standard cubic feet of gas per day, that purchases North Slope natural gas from a North Slope natural gas producer, must be supported by one or more contracts for the purchase of the North Slope natural gas on a take-or-pay basis that extends for a period of not less than three years after the operation of the North Slope natural gas pipeline commences;

(iii) the commission may consider peak volumes specified in the written commitments of North Slope natural gas producers and purchase contracts; and

(B) the commission shall set out in its order granting a certificate of public convenience and necessity the total volume of intrastate North Slope natural gas that the North Slope natural gas pipeline carrier shall accept for intrastate transportation; the total volume may not exceed the volume substantiated by written commitments and contracts that comply with the requirements of this chapter;

(4) if the North Slope natural gas pipeline carrier wants to transport North Slope natural gas within the state in excess of the amount set out in the statement of total volume in the pipeline carrier's certificate of public convenience and necessity, the pipeline carrier may apply for authority to transport a greater volume of North Slope natural gas within the state than the carrier is required by the commission to transport in its order entered under (3)(B) of this subsection; the commission shall grant the authority requested by the pipeline carrier if the commission determines that the pipeline carrier's transportation of a greater volume is consistent with public convenience and necessity. (§ 1 ch 139 SLA 1972; am §§ 1, 2 ch 6 FSSLA 1973; am § 11 ch 110 SLA 1981; am § 4 ch 56 SLA 2000)

Effect of amendments. — The 2000 amendment, effective August 9, 2000, added subsection (f). 13 C.J.S., Carriers, §§ 15 — 24.

Collateral references. — 13 Am. Jur. 2d, Carriers, §§ 75 — 104.

Sec. 42.06.245. Federally regulated carriers. The requirements of this chapter pertaining to permits and certificates of public convenience and necessity do not apply to the construction of a pipeline facility exclusively subject to federal jurisdiction or to the interstate portion of the business of a pipeline or pipeline carrier exclusively subject to federal jurisdiction. However, the requirements of this chapter for permits and certificates of public convenience and necessity do apply to all the intrastate portion of the business of a pipeline or pipeline carrier subject to federal jurisdiction whenever it engages in intrastate commerce. However, nothing limits the powers of the commission set out in this chapter except to the extent they are preempted by federal law. (§ 3 ch 6 FSSLA 1973; am § 12 ch 110 SLA 1981; am § 34 ch 32 SLA 1997)

Effect of amendments. — The 1997 amendment, effective May 16, 1997, substituted “whenever it engages in intrastate” for “whenever they engage in intrastate” in the second sentence and made minor stylistic changes.

NOTES TO DECISIONS

Power to regulate intrastate rates. — Although the legislature recognized that federal regulators had jurisdiction over interstate commerce, the legislature intended to grant the Alaska Public Utilities Commission full power to regulate intrastate rates. *Cook Inlet Pipe Line Co. v. Alaska Pub. Utils. Comm’n*, 836 P.2d 343 (Alaska 1992).

Sec. 42.06.250. Application. Application for a certificate shall be made in writing to the commission, verified under oath. The commission, by regulation, shall establish the requirements for the form of the application, and the information to be contained in it. Notice of the application shall be served upon the interested parties in the manner that the commission by regulation requires. (§ 1 ch 139 SLA 1972; am § 35 ch 32 SLA 1997)

Effect of amendments. — The 1997 amendment, effective May 16, 1997, rewrote this section.

Sec. 42.06.260. Public hearings. At least 30 days before issuing a certificate of convenience and necessity, the commission shall hold a public hearing on the application. Copies of the completed application shall be made available to the public at least 10 days before the public hearing date. A transcript of the public hearing shall be included in the permanent record of agency action on that application, and copies of the public hearing transcripts shall be available to the public. The commission may, without notice of hearing and pending the determination of an application for a certificate, issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, and may by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest. (§ 1 ch 139 SLA 1972)

Sec. 42.06.270. Grant or denial of application. (a) Unless governed by AS 42.06.240(b), a certificate shall be issued to any qualified applicant, authorizing the whole or any part of the operation, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of this chapter and the requirements and regulations of the commission, and that the proposed service, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise the application shall be denied.

(b) The commission, after a hearing upon its own motion or upon application, may determine the gathering areas, or the routes over which, the fixed termini between which, and the intermediate and off route points, if any, to which each authorization under this section is to be limited.

(c) Nothing contained in this chapter shall be construed as a limitation upon the power of the commission to grant certificates of public convenience and necessity for service of an area, or routes, already being served by another pipeline. (§ 1 ch 139 SLA 1972)

Sec. 42.06.280. Insurance and security. The commission may require a lessee to procure and furnish liability and property damage insurance from a company licensed to do business in the state or furnish other security or undertaking upon the terms and conditions the commission considers necessary if the commission finds that the net assets of the lessee are insufficient to protect the public from damage for which the lessee may be liable arising out of the construction or operation of the pipeline. (§ 1 ch 139 SLA 1972; am § 4 ch 6 FSSLA 1973; am § 110 ch 6 SLA 1984)

Sec. 42.06.285. Pipeline carrier regulatory cost charge. [Repealed, § 36 ch 2 FSSLA 1992.]

Sec. 42.06.286. Pipeline carrier regulatory cost charge. (a) A pipeline carrier operating in the state shall pay to the commission an annual regulatory cost charge in an amount not to exceed the sum of the following percentages of gross revenue derived from operations in the state: (1) not more than .7 percent to fund the operations of the commission, and (2) not more than .17 percent to fund operations of the public advocacy function under AS 42.04.070(c) and AS 44.23.020(e) within the Department of Law. A regulatory cost charge may not be assessed on pipeline carrier operations unless the operations are within the jurisdiction of the commission.

(b) The commission shall by regulation establish a method to determine annually the amount of the regulatory cost charge. If the amount the commission expects to collect under (a) of this section and under AS 42.05.254(a) exceeds the authorized budgets of the commission and the Department of Law public advocacy function under AS 42.04.070(c) and AS 44.23.020(e), the commission shall, by order, reduce the percentage determined under (e) of this section so that the total amount of the fees collected approximately equals the authorized budgets of the commission and the Department of Law public advocacy function under AS 42.04.070(c) and AS 44.23.020(e) for the fiscal year.

(c) The commission shall administer the charge imposed under this section. The Department of Revenue shall collect and enforce the charge imposed under this section. The Department of Administration shall identify the amount of the operating budgets of the commission and the Department of Law public advocacy function under AS 42.04.070(c) and AS 44.23.020(e) that lapse into the general fund each year. The legislature may appropriate an amount equal to the lapsed amount to the commission and to the Department of Law public advocacy function under AS 42.04.070(c) and AS 44.23.020(e) for operating costs for the next fiscal year. If the legislature does so, the commission shall reduce the total regulatory cost charge collected for that fiscal year by a comparable amount.

(d) The commission may adopt regulations under AS 44.62 (Administrative Procedure Act) necessary to administer this section, including requirements and procedures for reporting information and making quarterly payments. The Department of Revenue may adopt regulations under AS 44.62 (Administrative Procedure Act) for investigating the accuracy of filed information, and for collecting required payments.

(e) The commission shall by regulation establish a method to determine annually the maximum percentage of gross revenue that will apply to each regulated public utility sector and the maximum percentage of gross revenue that will apply to the regulated pipeline carrier sector in accordance with AS 42.05.254(h).

(f) In this section, "gross revenue" means the total intrastate operating revenue as shown in a pipeline carrier's annual report required by the commission by regulation. (§ 10 ch 1 SLA 1995; am §§ 14, 15 ch 25 SLA 1999; am §§ 8 — 10 ch 98 SLA 2004)

Revisor's notes. — Subsection (e) was enacted as (f). Relettered in 1999, at which time former (e) was relettered as (f) and the reference to "(e)" in subsection (b) was substituted for "(f)" in conformity with these changes. In 2005, in subsection (e), "AS 42.05.254(h)" was substituted for "AS 42.05.254(i)" to reflect the 1999 relettering of AS 42.05.254(i). In 2005, in subsection (e), "AS 42.05.254(h)" was substituted for "AS 42.05.254(i)" to reflect the 1999 relettering of AS 42.05.254(i).

Effect of amendments. — The 1999 amendment, effective July 1, 2000, substituted "determined under (e)" for "set out in (a)" in subsection (b) and added subsection (e).

The 2004 amendment, effective July 1, 2004, substituted "the sum of the following percentages" for ".8 percent" in the first sentence of subsection (a), and inserted items (1) and (2) in that sentence, substituted "budgets of the commission and the Department of Law public advocacy function under AS 42.04.070(c) and AS 44.23.020(e)" for "budget of the commission" twice in subsection (b) and once in the third sentence of subsection (c), substituted "and to the Department of Law public advocacy function under AS 42.04.070(c) and AS 44.23.020(e) for" for "for its" in the fourth sentence of subsection (c), and made stylistic changes.

Sec. 42.06.290. Abandonment. (a) A pipeline carrier may not abandon or permanently discontinue use of all or any portion of a pipeline or abandon or discontinue any service rendered by means of a pipeline that is the subject of a certificate of convenience and necessity, without the permission and approval of the commission, after due notice and hearing, and a finding by the commission that continued service is not required by public convenience and necessity. Any interested person may file with the commission a protest or memorandum of opposition to or in support of discontinuance or abandonment. The commission may authorize temporary suspension of a service or of part of a service.

(b) Upon complaint or upon its own motion, the commission may reinvestigate a previously authorized discontinuance, abandonment, or suspension of a service described in (a) of this section. If, after due notice and hearing, the commission finds that the public convenience and necessity requires the service to be resumed, and that there has not been detrimental reliance on the previous authorization, it may order the operator or owner of the oil or gas pipeline facility to again provide the service. (§ 1 ch 139 SLA 1972)

Sec. 42.06.300. Modification, suspension, or revocation of certificates. Upon complaint or upon its own motion the commission, after due notice and hearing and for good cause shown, may amend, modify, suspend, or revoke a certificate, in whole or in part. Good cause for amendment, modification, suspension, or revocation of a certificate shall be

- (1) the requirements of public convenience and necessity;
- (2) misrepresentation of a material fact in obtaining the certificate;
- (3) unauthorized discontinuance or abandonment of all or part of a service that is the subject of the certificate;
- (4) wilful failure to comply with the provisions of this chapter, or the regulations or orders of the commission; or
- (5) wilful failure to comply with a term, condition, or limitation of the certificate. (§ 1 ch 139 SLA 1972)

Sec. 42.06.305. Transfer of operating authority. (a) Operating authority may not be transferred by sale or lease of the certificate or by the sale of substantially all of the stock or assets of a pipeline carrier holding a certificate without the prior approval of the commission. A transfer not involving a substantial change in ownership shall be summarily approved.

(b) The commission's decision under this section shall be based on the best interest of the public. (§ 1 ch 139 SLA 1972; am § 4 ch 35 SLA 1977; am § 17 ch 25 SLA 1999)

Effect of amendments. — The 1999 amendment, effective July 1, 1999, added subsection (b).

Article 3. Services and Facilities.

Section

310. Standards of service and facilities
320. Discrimination in service

Section

330. Power of commission to allocate usage
340. Order for joint use or connection

Sec. 42.06.310. Standards of service and facilities. (a) Each oil or gas pipeline facility shall furnish and maintain adequate, efficient, and safe service and facilities. This service shall be reasonably continuous and without unreasonable interruption or delay.

(b) If the commission, upon its own motion or upon complaint, after providing reasonable notice and opportunity for hearing, finds that the service or facilities of an oil or gas pipeline facility are unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory, or otherwise in violation of this chapter, the commission shall prescribe by regulation or order, the reasonable, safe, adequate, sufficient service or facilities to be observed, furnished, enforced, or employed, including all repairs, changes, alterations, extensions, substitutions, or improvements in facilities that are reasonably necessary and proper for the safety, accommodation, and convenience of the public and the users. Regulations or orders issued under this subsection shall conform to accepted industry standards and practices.

(c) Every common carrier shall, when ordered by the commission, extend or enlarge its pipeline or storage facilities provided the extension or enlargement shall be found to be reasonable and required in the public interest and that the expense involved will not impair the ability of the common carrier or public utility to perform its duty to the public.

(d) The requirement of (c) of this section does not apply to a North Slope natural gas pipeline carrier to the extent that the capacity of the carrier's North Slope natural gas pipeline does not allow for expanded capacity, and does not apply to require a North Slope natural gas pipeline carrier to enlarge or extend its North Slope natural gas pipeline system. However, the commission may require a North Slope natural gas pipeline carrier to expand, enlarge, or extend its North Slope natural gas pipeline system if, after notice and opportunity for hearing, the commission determines that

(1) a person making a request for expanded, enlarged, or extended service by a North Slope natural gas pipeline carrier has made a firm contractual commitment to the North Slope natural gas pipeline carrier to transport North Slope natural gas; and

(2) the expansion, enlargement, or extension will not result in

(A) substantial injury, including economic injury, to the North Slope natural gas pipeline facility or its customers;

(B) substantial detriment to the services furnished by the North Slope natural gas pipeline facility; or

(C) the creation of safety hazards. (§ 1 ch 139 SLA 1972; am § 29 ch 3 FSSLA 1973; am § 90 ch 59 SLA 1982; am § 5 ch 56 SLA 2000)

Effect of amendments. — The 2000 amendment, effective August 9, 2000, added subsection (d).

Collateral references. — What constitutes aban-

donment of facilities or service, under § 7(b) of Natural Gas Act (15 USCS § 717f(b)). 61 ALR Fed. 454.

Sec. 42.06.320. Discrimination in service. An oil or gas pipeline carrier may not, as to service, make or grant an unreasonable preference or advantage to any person or subject any person to an unreasonable prejudice or disadvantage. An oil or gas pipeline facility that is owned by more than one owner may not require that users make separate requests of each separate owner in order to obtain a reasonable share of the service provided by the oil or gas pipeline facility. (§ 1 ch 139 SLA 1972)

Sec. 42.06.330. Power of commission to allocate usage. If the commission, upon its own motion or upon complaint, after providing reasonable notice and opportunity for hearing, finds that an oil or gas pipeline facility is making or granting an unreasonable preference or advantage to any person or subjecting any person to an unreasonable prejudice or discrimination, the commission may prescribe rules to end the discrimination or the commission may itself prescribe the allocation of the service until it determines the discrimination can be avoided by appropriate rule or agreement. (§ 1 ch 139 SLA 1972)

Sec. 42.06.340. Order for joint use or connection. (a) When there is failure to agree upon the joint use or interconnection of oil or gas pipeline facilities or the conditions or compensation for joint use or interconnections, any interested person may apply to the commission for an order requiring the interconnection. If, after investigation and opportunity for hearing, the commission finds that public convenience and necessity require the joint use or connection, and that the use or connection will not result in substantial injury to the oil or gas pipeline facility or its customers, or in substantial detriment to the services furnished by the oil or gas pipeline facility, or in the creation of safety hazards, it shall

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

(b) During construction of a pipeline the commission, after investigation and opportunity for hearing and findings as required in (a) of this section, may order the inclusion within the pipeline at points that it designates, special fittings including but not limited to tees, wyes, spools, reducers, enlargers, flanges, flange plates, valves, and valve boxes, to reduce the time and cost of future connections for the injection and removal of gas and oil from the main pipeline, and to maintain and facilitate intrastate commerce. A request for special fittings may be made by the commissioner of natural resources for the state. A request for special fittings and valves may be made to the commission by a local government, person, company, or corporation. The cost of furnishing and installing the special fittings shall be paid by the state. However, if the special fittings are used by a person for a commercial enterprise or by a municipality for the operation of a utility, the commission shall require that the using person or municipality reimburse the state for the cost of furnishing and installing. (§ 1 ch 139 SLA 1972; am § 1 ch 5 SSSLA 1974)

Article 4. Rates and Rate Schedules.

Section

- 350. Tariffs, contracts, filing, and public inspection
- 360. Adherence to tariffs
- 370. Rates to be just and reasonable
- 380. Discrimination in rates

Section

- 390. Initial or revised rates
- 400. Suspension of tariff filing
- 410. Power of commission to fix rates
- 420. Valuation of property of a pipeline carrier

NOTES TO DECISIONS

Rate regulation scheme not unconstitutional taking. — The institution of a rate regulation scheme by the Alaska Public Utilities Commission which resulted in lower tariff revenues for an oil pipeline did not constitute an unconstitutional taking of the pipeline's property where there was no showing that the

scheme threatened the pipeline's financial integrity and the argument that the commission took property when it reduced the utilities rate base was without merit, as the pipeline's rate base does not constitute property. *Cook Inlet Pipe Line Co. v. Alaska Pub. Utils. Comm'n*, 836 P.2d 343 (Alaska 1992).

Disparity between intrastate and interstate rates not necessarily unjust discrimination. — In the regulation of public utilities a disparity between interstate rates and intrastate rates does not, by itself, equate to unjust discrimination against interstate commerce. Rather, a finding of unjust discrimination must rest on specific findings based on substantial evidence that demonstrates that the intrastate rates are less than compensatory or insufficient to cover the full cost of service or that they were abnormally low and failed to contribute a fair share of overall revenue. *Cook Inlet Pipe Line Co. v. Alaska Pub. Utils. Comm'n*, 836 P.2d 343 (Alaska 1992).

Intrastate rates not governed by Interstate Commerce Act. — Since § 2 of the Interstate Commerce Act, 49 U.S.C. § 2, which prohibits unlawful discrimination by common carriers in the setting of utility rates, does not apply to intrastate rates, § 2 does not require the Alaska public utilities commission to allow the owners of a pipeline to get intrastate rates which match interstate rates. There are other provisions under federal law, not relied upon by the utility, which prohibit intrastate rate discrimination. *Cook Inlet Pipe Line Co. v. Alaska Pub. Utils. Comm'n*, 836 P.2d 343 (Alaska 1992).

Sec. 42.06.350. Tariffs, contracts, filing, and public inspection. (a) Under regulations adopted by the commission, every intrastate oil or gas pipeline carrier shall file with the commission, within the time and in the form designated by the commission, all rates, tariffs, charges, classifications, rules, regulations, terms, and conditions pertaining to service provided under the certificate, and shall maintain copies on file at its principal business office and at places designated by the commission, available to, and subject to inspection by, the general public on demand.

(b) The commission may reject the filing of all or part of a tariff that does not comply with the form or filing regulations of the commission or that is not consistent with this chapter or the regulations of the commission. A tariff or provision so rejected is void.

(c) In its tariff filed with the commission under (a) of this section, a natural gas pipeline carrier may charge separate rates for firm transportation service and for interruptible transportation service. A natural gas pipeline carrier

(1) may, in addition, impose a reservation fee or similar charge for reservation of capacity in a natural gas pipeline as a condition of providing firm transportation service; the reservation fee or charge imposed by the carrier may not include any variable costs or fixed costs that are not attributable to the provision of firm transportation service;

(2) may not impose a reservation fee or similar charge for reservation of capacity in a natural gas pipeline for interruptible transportation service. (§ 1 ch 139 SLA 1972; am § 6 ch 56 SLA 2000; am § 1 ch 60 SLA 2003)

Effect of amendments. — The 2000 amendment, effective August 9, 2000, added subsection (c).
The 2003 amendment, effective June 12, 2003,

deleted "north slope" preceding "natural gas pipeline" in four places in subsection (c).

Sec. 42.06.360. Adherence to tariffs. The terms and conditions under which a pipeline carrier offers its services and facilities to the public shall be governed strictly by the provisions of its currently effective tariffs. A legally filed and effective tariff rate, charge, rule, regulation, or condition of service may not be changed except in the manner provided in this chapter. If more than one tariff rate or charge can reasonably be applied for billing purposes the one most advantageous to the customer shall be used. (§ 1 ch 139 SLA 1972)

Sec. 42.06.370. Rates to be just and reasonable. (a) All rates demanded or received by a pipeline carrier, or by any two or more pipeline carriers jointly, for a service furnished or to be furnished shall be just and reasonable.

(b) Additional regulations governing determination of a reasonable tariff shall be published by the commission.

(c) Rates demanded, observed, charged, or collected by a North Slope natural gas pipeline carrier for intrastate service shall be designed as if that portion of the North Slope natural gas pipeline were a public utility regulated under the provisions of AS 42.05. (§ 1 ch 139 SLA 1972; am § 7 ch 56 SLA 2000)

Effect of amendments. — The 2000 amendment, effective August 9, 2000, added subsection (c).

Sec. 42.06.380. Discrimination in rates. (a) A pipeline carrier may not, as to rates, grant a preference or advantage to any customer or subject a customer to an unreasonable prejudice or disadvantage. A pipeline carrier may not establish or maintain an unreasonable difference as to rates, either as between localities served or between classes of service provided under the certificate.

(b) A pipeline carrier may not directly or indirectly refund, rebate or remit in any manner, or by any device, any portion of the rates and charges or charge, demand or receive a greater or lesser compensation for service than is specified in its effective tariff nor extend to any customer served under the certificate any form of contract, agreement, inducement, privilege or facility, or apply any rule, regulation or condition of service except as are extended or applied to all customers under like circumstances. (§ 1 ch 139 SLA 1972)

Sec. 42.06.390. Initial or revised rates. (a) A pipeline carrier may not establish or place in effect any initial rates, charges, rules, regulations, conditions of service or practices except after 90 days' notice to the commission and to the public. Notice shall be given by filing with the commission and keeping open for public inspection the tariff provisions which shall plainly indicate the time when the tariff will go into effect. The commission may prescribe additional means of giving notice. The commission, for good cause shown, may allow initial tariffs to take effect on less than 90 days' notice under conditions the commission prescribes by order.

(b) A pipeline carrier may not establish or place in effect any revised rates, charges, rules, regulations, conditions of service or practices except after 30 days' notice to the commission and to the public. Notice shall be given by filing with the commission and keeping open for public inspection the revised tariff provisions which shall plainly indicate the changes to be made in the schedules then in force and the time when the changes will go into effect. The commission may prescribe additional means of giving notice. The commission, for good cause shown, may allow changes to take effect on less than 30 days' notice under conditions the commission prescribes by order.

(c) Initial and revised tariffs shall be filed in the manner provided in AS 42.06.350. (§ 1 ch 139 SLA 1972; am § 5 ch 35 SLA 1977)

Collateral references. — Use of in-line price as basis for initial price determination on issuance of certificate of public convenience and necessity under § 7 of Natural Gas Act (15 USCS § 717f), where area rate has been established. 43 ALR Fed. 803.

Sec. 42.06.400. Suspension of tariff filing. (a) When a tariff filing is made containing an initial or revised rate, classification, rule, regulation, practice, or condition of service the commission may, either upon written complaint or upon its own motion, after reasonable notice, conduct a hearing to determine the reasonableness and propriety of the filing. Pending a hearing the commission may, by order stating the reasons for its action, suspend the operation of the tariff filing for an initial period not longer than six months beyond the time when it would otherwise go into effect. If good cause is shown, the commission may suspend the operation of the tariff filing for an additional period not to exceed one year following the end of the initial suspension period. If information on which to base a just and reasonable tariff is lacking or incomplete at the close of the second suspension period, the commission may, during the suspension period and for good cause shown, with or without a hearing, order a further suspension and in such instance shall order the filed rate to be collected, subject to refund of the difference between the filed rate and the final rate, until a final rate can be set. The commission may order the difference between the temporary rate established under this section and the filed rate to be placed in escrow or secured by bond pending establishment of the final rate.

(b) An order suspending a tariff filing may be vacated if, after investigation, the commission finds that it is in all respects proper. Otherwise the commission shall hold a hearing on the suspended filing and issue its order, before the end of the suspension period, granting, denying, or modifying the suspended tariff in whole or in part. If an initial tariff is suspended, the commission shall establish a reasonable temporary tariff. The commission may allow the collection of the filed initial tariff, or it may require collection of the temporary tariff. If the commission allows collection of the filed initial tariff, it shall require the pipeline carrier to place the revenue representing the difference between the filed tariff and the temporary tariff in escrow in a financial institution approved by the commission, and keep accurate accounts of all amounts received, specifying by whom and in whose behalf the amounts are paid. At the end or vacation of the suspension period the amount, if any, owing to the pipeline carrier from the difference between the temporary tariff and the permanent tariff shall be paid to the pipeline carrier. The surplus, if any, shall be refunded to the persons in whose behalf the amounts were paid into escrow. Funds may not be released from escrow without the commission's prior written consent and instructions to the escrow agent. The commission may allow the pipeline carrier, at the carrier's expense, to substitute a bond or letter of credit in lieu of the escrow requirement. If the commission requires collection of the temporary tariff, it shall require the shipper to place the revenue representing the difference between the filed initial tariff and the temporary tariff in escrow in a financial institution approved by the commission, and require that accurate accounts similar to those specified above in this section be kept by the carrier and the shipper. The person owing shall pay the person owed to the satisfaction of the commission within 30 days after the commission order allowing or setting a permanent tariff. The amount, if any, by which the permanent tariff exceeds the temporary tariff shall be paid by the shipper to the carrier, or, if the temporary tariff exceeds the permanent tariff, the difference shall be paid by the carrier to the shipper, and in either event such payment shall be made with interest calculated on the balance due at the end of each calendar month at the legal rate, as defined in AS 45.45.010(a). The commission may allow the shipper, at the shipper's expense, to substitute a bond or letter of credit in place of the escrow requirement.

(c) If a proposed increased rate is suspended, the commission shall establish a reasonable temporary tariff. The temporary tariff may be the same as the tariff the carrier is seeking to revise. The commission may allow the collection of the filed proposed increased rate, or it may require collection of the temporary rate. If the commission allows collection of the filed increased rate, it shall require the pipeline carrier to place the revenue representing the difference between the filed proposed increased rate and the temporary rate in escrow in a financial institution approved by the commission, and keep an accurate account of all amounts received, specifying by whom and on whose behalf the amounts are paid. At the end or vacation of the suspension period the amount, if any, owing to the pipeline carrier from the difference between the temporary rate and the permanent rate shall be paid to the pipeline carrier. The surplus, if any, shall be refunded to the persons on whose behalf the amounts were paid into escrow. Funds may not be released from escrow without the commission's prior written consent and instructions to the escrow agent. The commission may allow the pipeline carrier, at the carrier's expense, to substitute a bond or letter of credit in place of the escrow requirement. If the commission requires collection of the temporary rate, it shall require the shipper to place the revenue representing the difference between the proposed increased rate and the temporary rate in escrow in a financial institution approved by the commission, and require that accurate accounts similar to those specified above in this subsection be kept by the carrier and the shipper. The person owing shall pay the person owed to the satisfaction of the commission within 30 days after the commission's order allowing or setting a permanent tariff. The commission may allow the shipper, at the shipper's expense, to substitute a bond or letter of credit instead of meeting the escrow requirement.

(d) One who initiates a change in existing tariffs bears the burden of proving the reasonableness of the change. (§ 1 ch 139 SLA 1972; am § 6 ch 35 SLA 1977; am §§ 1, 2 ch 22 SLA 1978; am § 1 ch 2 SLA 1979)

Sec. 42.06.410. Power of commission to fix rates. (a) When the commission, after an investigation and hearing, finds that a rate demanded, observed, charged, or collected by a pipeline carrier for a service, subject to the jurisdiction of the commission, or that a classification, rule, regulation, practice, or contract affecting the rate, is unjust, unreasonable, unduly discriminatory or preferential, the commission shall determine a just and reasonable rate, classification, rule, regulation, practice, or contract to be observed or allowed and shall establish it by order.

(b) If an investigation is conducted in multiple phases, the commission may establish a rate at the end of a single phase. The rate established at the end of a single phase is to be considered a final rate under AS 42.06.400. If the rate established at the conclusion of the proceeding under (a) of this section or after judicial review is less than the rate established after a single phase of an investigation, a shipper is entitled to a refund of the difference between the amounts paid by the shipper and the amounts that would have been paid under the rate established at the conclusion of the proceeding or after judicial review. If the rate established at the conclusion of the proceeding under (a) of this section or after judicial review is more than the rate established after a single phase, a pipeline carrier is entitled to a payment of the difference between the amounts paid to the carrier and the amount that would have been paid under the rate established at the conclusion of the proceeding or after judicial review. (§ 1 ch 139 SLA 1972; am § 2 ch 27 SLA 1981)

Sec. 42.06.420. Valuation of property of a pipeline carrier. The commission may, after providing reasonable notice and opportunity to be heard, ascertain and set the fair value of the whole or any part of the property of a pipeline carrier, insofar as it is material to the exercise of the jurisdiction of the commission. The commission may make revaluations from time to time and ascertain the fair value of all new construction, extensions, and additions to the property of a pipeline carrier. (§ 1 ch 139 SLA 1972)

Article 5. Accounts, Records, and Reports.

Section

430. General provisions as to accounts, records, and reports

440. Inspection of records

Section

445. Public records

450. Investigations

460. Designation of service agents

Sec. 42.06.430. General provisions as to accounts, records, and reports. To the extent necessary to the performance of the duties of the commission as provided in this chapter:

(1) the commission by regulation shall, for the purposes of this section, classify pipeline facilities, and may designate the pipeline facilities or groups of pipeline facilities within the state that constitute a pipeline system for the purposes of this section;

(2) the commission may by regulation prescribe a uniform system of accounts for any classification of pipeline facilities which best represents and clearly reveals the investment, revenues, direct operating costs and other expenses of the subject classification of facilities, and may prescribe the manner in which the accounts and supporting records are kept in order to clearly show the investment, revenues, and costs pertaining to the subject facilities or to a pipeline system constituting a part of it; accounts shall be maintained on the calendar year basis unless the commission specifically authorizes the maintenance of accounts on the basis of a fiscal year other than the calendar year;

(3) the commission may by regulation require a pipeline carrier or affiliated interest engaged in activities relating to pipelines to establish and maintain as part of its system

of accounts continuing property records showing, as to property units which are actually being used in pipeline activity in this state, the year of placement in service, original cost and current location, and, as to a pipeline system, accounts and records in a manner showing, on a current basis, the original cost of the system in the state and related reserves for depreciation; from time to time the commission shall determine the proper and adequate rates of depreciation for each major class of property of an oil or gas pipeline facility;

(4) the pipeline carrier shall keep its accounts for its pipeline facilities located in this state separate from any accounts relating to any other business (including another pipeline facilities business, or a subsidiary business) it engages in, directly or indirectly; except as the commission provides, property, expense or revenue used in or derived from the other business may not be considered in establishing the rates and charges of the facility;

(5) the pipeline carrier shall keep books, accounts, papers, and records required by this chapter or by regulations adopted by the commission under this chapter in an office in this state and may not remove them from the state except upon written authority by the commission;

(6) for pipelines subject to the Interstate Commerce Act or the Natural Gas Act, the uniform system of accounts and manner of maintaining them and the property records kept and maintained shall, where considered practicable by the commission, be the same as required under regulations prescribed by the applicable federal agency; however, where federal law permits a pipeline carrier to consolidate its reporting for more than one pipeline in which it has an ownership interest, the commission shall require the reports to be made on an individual pipeline basis for any pipeline located wholly or in part in the state;

(7) within 90 days after the close of its authorized annual accounting period, or within additional time granted by the commission for good cause shown, a pipeline carrier shall file a verified annual report with the commission; the annual report must consist of the following:

(A) for a pipeline subject to 49 U.S.C. 1-1240 (Interstate Commerce Act) or 15 U.S.C. 717-717w (Natural Gas Act), a copy of the annual report as filed with the appropriate federal agency under the applicable Act, and, for other pipelines, a report of general corporation information and financial statements in the same general format as the report of pipelines of the same classification subject to the jurisdiction of the appropriate federal agency;

(B) in the same general format as the report referred to in (A) of this paragraph, a statement of income and investment applicable to pipelines in this state, and a statement of investment, revenues, direct operating costs and other expenses, detailed in accordance with the uniform system of accounts to be applied under this chapter, for each pipeline system designated by the commission under (1) of this section; and

(C) such additional accounts and information as may be required under (2) of this section;

(8) the commission may require such additional accounts and information as may be necessary. (§ 1 ch 139 SLA 1972; am §§ 5, 6 ch 6 FSSLA 1973; am § 7 ch 35 SLA 1977)

Sec. 42.06.440. Inspection of records. (a) Subject to AS 31.05.035(c), the commission shall at all reasonable times have access to, and may designate any of its employees, agents, or consultants to inspect and examine, the accounts, records, books, maps, inventories, appraisals, valuations, or other reports and documents, kept by an oil or gas pipeline carrier or its affiliated interests, or prepared or kept for it by others, which relate to any contract or transaction between them. The commission may require an oil or gas pipeline carrier or its affiliated interest to file with the commission copies of any or all of these accounts, records, books, maps, inventories, appraisals, valuations, or other reports

and documents, or to maintain those materials at some convenient location in the state specified by order. Costs incurred in complying with a commission request to review the records referred to in this section or to maintain these records in such a manner as to make them conveniently available for the commission's review shall be borne by the party controlling the records.

(b) Subject to AS 31.05.035(c), when participating as a party under AS 42.04.070(c) or AS 44.23.020(e), the attorney general shall, at all reasonable times, have the right to reasonable access to, and may designate any of the attorney general's employees, agents, or consultants to inspect and examine, the accounts, records, books, maps, inventories, appraisals, valuations, or other reports and documents kept by an oil or gas pipeline carrier that are relevant to the issues presented in any adjudicatory matter before the commission in which the attorney general has appeared as a party under AS 42.04.070(c) or AS 44.23.020(e). This access is subject to reasonable notice to all parties with an opportunity to object before the commission. Included under this subsection is access to records or other documents under the custody or control of an affiliated interest of the pipeline carrier that relate to any contract or transaction between the public utility and the affiliated interest. Costs incurred in complying with a request to review the records referred to in this subsection or to maintain those records in such a manner as to make them conveniently available for review shall be borne by the party controlling the records. (§ 1 ch 139 SLA 1972; am § 8 ch 35 SLA 1977; am § 11 ch 98 SLA 2004)

Effect of amendments. — The 2004 amendment, effective July 1, 2004, added subsection (b).

Sec. 42.06.445. Public records. (a) Except as provided in (b) and (c) of this section, or prohibited from disclosure under state or federal law, records in the possession of the commission are open to public inspection at reasonable times.

(b) The commission may, by regulation, classify records submitted to it by regulated pipeline carriers or pipelines as privileged records that are not open to the public for inspection. However, if a record involves an application or tariff filing pending before the commission, the commission may release the record for the purpose of preparing for or making a presentation to the commission in the proceeding if the record or information derived from the record is considered by the commission to be relevant to an issue in the proceeding, and if the record or information will be used by the commission in the proceeding. A record or information that the commission releases under this subsection may be released only after giving to the party that filed the record or information reasonable notice of its intention to release the record or information and opportunity to object to that release.

(c) A document filed with the commission that relates to the finances or operations of a pipeline subject to federal jurisdiction and that is in addition to or other than the copy of a document required to be filed with the appropriate federal agency is open to inspection only by an appropriate officer or official of the state for relevant purposes of the state.

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

(e) A commissioner may certify as to all official records of the commission under this section and may certify as to all official acts of the commission under this chapter.

(f) In this section, "record" means a report, file, book, account, paper, or application, and the facts and information contained in it. (§ 1 ch 139 SLA 1972; am § 13 ch 110 SLA 1981; am § 18 ch 25 SLA 1999; am § 12 ch 98 SLA 2004)

Revisor's notes. — Formerly AS 42.06.510. Renumbered in 1983.

Effect of amendments. — The 1999 amendment, effective July 1, 1999, deleted ", and the executive director" following "A commissioner" in subsection (e).

The 2004 amendment, effective July 1, 2004, inserted "or by the attorney general" in the first sentence of subsection (d).

Sec. 42.06.450. Investigations. The commission may investigate any matter that affects the cost or quality of transportation of oil or gas in this state by pipeline carriers or affiliated interests or of related services and may ensure compliance by pipeline carriers and their affiliated interests with the provisions of this chapter. Investigations may be public, nonpublic, or both. In conducting investigations, the commission may compel the attendance and testimony of witnesses and the production of records and testimony before the commission or its designee. In the course of an investigation, the commission may exclude from attendance at the taking of investigative testimony all persons except the person compelled to attend, that person's attorney, members of the commission or the commission's staff, and a person authorized to transcribe the proceedings. Following an investigation and after providing reasonable notice and opportunity for hearing, the commission may institute proceedings to determine whether unreasonable practices have occurred, whether expenditures have been imprudently incurred, the costs of those practices or expenditures, and whether a pipeline carrier and its affiliated interests are in compliance with this chapter. Following such a determination, the commission shall take appropriate action to ensure that neither the direct nor indirect costs of any unreasonable practices or imprudent expenditures are included in any tariff or rate of a pipeline carrier or are borne by the public or the state. (§ 1 ch 139 SLA 1972; am § 9 ch 35 SLA 1977)

Sec. 42.06.460. Designation of service agents. Each pipeline carrier shall file with the commission a written appointment of a named permanent resident, which may be a corporation, of this state as its registered agent in this state upon whom service of all notices, regulations, and requests of the commission may be made. The appointment shall specify an address in this state of the appointed agent, which address may be changed from time to time by filing a new Alaska address with the commission. If a pipeline carrier fails to appoint an agent, service of notices, regulations, and requests may be made by posting a copy in the main office of the commission and filing a copy in the office of the lieutenant governor. (§ 1 ch 139 SLA 1972)

Article 6. Enforcement Provisions.

Section

470. Effect of regulations
480. Review and enforcement
530. Injunctions and monetary sanctions
540. Civil penalties
550. Each violation a separate offense

Section

560. Actions to recover damages and penalties; disposition
570. Penalties cumulative
580. Joinder of actions
590. Private cause of action

Sec. 42.06.470. Effect of regulations. Regulations adopted by the commission under this chapter have the effect of law. (§ 1 ch 139 SLA 1972)

Sec. 42.06.480. Review and enforcement. (a) All final orders of the commission are subject to judicial review under AS 44.62.560 — 44.62.570.

(b) If an appeal is not taken from a final order of the commission within 10 calendar days, the commission may apply to the superior court for enforcement of this chapter, the

regulations adopted under it, and the orders of the commission. The court shall enforce the order by injunction or other process. (§ 1 ch 139 SLA 1972; am § 10 ch 35 SLA 1977)

NOTES TO DECISIONS

Standard of review. — The “substitution of judgment” standard of review, under which the reviewing court may substitute its judgment for that of the agency, rather than the “rational basis” standard, under which it is merely determined whether the agency’s decision is supported by the facts and has a reasonable basis in law, will be applied in a suit brought under this act in which all issues revolve

around questions of statutory construction, questions peculiarly suited for judicial resolution and which do not involve agency expertise and in which the agency’s specialized knowledge and experience would not be particularly probative as to the meaning of the statutes. *Tesoro Alaska Petro. Co. v. Kenai Pipe Line Co.*, 746 P.2d 896 (Alaska 1987).

Secs. 42.06.490 — 42.06.500. Complaint against pipeline carriers; adjudication. [Repealed, § 20 ch 110 SLA 1981.]

Sec. 42.06.510. [Renumbered as AS 42.06.445.]

Sec. 42.06.520. [Renumbered as AS 42.06.607.]

Sec. 42.06.530. Injunctions and monetary sanctions. (a) The full amount of damages determined by a civil action may be compromised by the commission. In determining the amount of the damages, or the amount agreed upon in compromise, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the damages, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the state to the person charged or may be recovered in a civil action in the state courts.

(b) A person may be enjoined by the superior court from committing a violation mentioned in this section. (§ 1 ch 139 SLA 1972)

Sec. 42.06.540. Civil penalties. (a) In addition to all other penalties and remedies provided by law, a person subject to the provisions of this chapter, as well as an officer, manager, agent, or employee of that person, that either violates or procures, aids, or abets the violation of any provision of this chapter, or of an order, regulation, or written requirement of the commission is subject to a maximum penalty of \$500 for each violation.

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

(c) After a hearing the commission shall enter its findings of fact and final order which shall state when the penalties, if any, are payable. (§ 1 ch 139 SLA 1972)

Sec. 42.06.550. Each violation a separate offense. Each violation of a provision of this chapter or of an order, decision, regulation, or written requirement of the commission is a separate and distinct offense and in case of a continuing violation each day the violation continues constitutes a separate offense. (§ 1 ch 139 SLA 1972)

Sec. 42.06.560. Actions to recover damages and penalties; disposition. (a) Actions to recover damages and penalties under this chapter shall be brought by the attorney general in a court of competent jurisdiction.

(b) All damages and penalties recovered under the provisions of this chapter shall be paid to the commission and deposited by it in the general fund of the state. (§ 1 ch 139 SLA 1972)

Sec. 42.06.570. Penalties cumulative. (a) All penalties imposed under this chapter are cumulative.

(b) An action to recover a civil penalty is not a bar to an enforcement proceeding to require compliance, or to any other remedy provided by this chapter. (§ 1 ch 139 SLA 1972)

Sec. 42.06.580. Joinder of actions. Under the applicable court rules, appeals from orders of the commission, applications for enforcement of commission orders and actions for recovery of damages or penalties may be joined. The court may in the interests of justice separate the actions. (§ 1 ch 139 SLA 1972)

Sec. 42.06.590. Private cause of action. (a) A person subjected to an unlawful rate, price, service, or practice, in violation of this chapter, may sue in a state court of appropriate jurisdiction for damages resulting from the unlawful rate, price, service, or practice.

(b) If the violation described in (a) of this section resulted in the overcharge of rate or price, the person paying the unlawful rate or price is entitled to recover as damages at least double the amount of the overcharge.

(c) A person recovering damages under this section is entitled to a reasonable attorney fee, fixed by the court, to be taxed and collected as costs of the suit. (§ 1 ch 139 SLA 1972)

Article 7. General Provisions.

Section

605. Restrictions on commissioners and employees

607. Application fees

610. Expenses of investigation or hearing

Section

620. Classification

630. Definitions

640. Short title

Sec. 42.06.600. [Renumbered as AS 42.06.230(b).]

Sec. 42.06.605. Restrictions on commissioners and employees. A member or employee of the commission may not have an official connection with, or hold stock or securities in, or have a pecuniary interest in, a corporation, company, or association engaged in the production or the transportation of oil or gas. A member or employee may not act upon a matter in which the relationship of the member or employee with any person creates a conflict of interest. (§ 1 ch 139 SLA 1972)

Revisor's notes. — Formerly AS 42.06.130. Renumbered in 1983.

Sec. 42.06.607. Application fees. The commission may establish reasonable fees to cover the costs of initial processing of applications for certificates or amendments to certificates. (§ 1 ch 139 SLA 1972)

Revisor's notes. — Formerly AS 42.06.520. Renumbered in 1983.

Sec. 42.06.610. Expenses of investigation or hearing. (a) During a proceeding held under this chapter, the commission may allocate the cost of the proceeding among the parties, including the commission, as is just under the circumstances. In allocating costs, the commission shall consider the regulatory cost charge paid directly or indirectly under AS 42.06.286. The costs allocated may include the costs of any time devoted to investigations or hearings by hired consultants, whether or not the consultants appear as witnesses or participants. The commission shall provide an opportunity for any person objecting to an allocation to be heard before the allocation becomes final.

(b) After completion of a proceeding held under this chapter, the commission may reallocate the cost of the proceeding among the parties, including the commission, as is just under the circumstances. The costs which are reallocated may include the costs of time devoted to investigations or hearings by hired consultants, whether or not the consultants appear as witnesses or participants. The commission shall provide an opportunity for any person objecting to a reallocation to be heard before the reallocation becomes final.

(c) *[Repealed, § 28 ch 90 SLA 1991.]*

(d) Notwithstanding the commission's discretion under (a) and (b) of this section to allocate costs to parties, the commission may not require a state agency to pay any costs allocated to the state agency. (§ 1 ch 139 SLA 1972; am § 3 ch 27 SLA 1981; am § 64 ch 138 SLA 1986; am § 28 ch 90 SLA 1991; am §§ 25, 26 ch 2 FSSLA 1992; am § 11 ch 1 SLA 1995; am § 13 ch 98 SLA 2004)

Effect of amendments. — The 1995 amendment, effective June 26, 1995, in subsection (a), substituted "may" for "shall" in the first sentence and added the present second sentence.

The 2004 amendment, effective July 1, 2004, added subsection (d).

Editor's notes. — Section 15, ch. 98, SLA 2004, makes the 2004 enactment of (d) of this section retroactive to May 30, 2003, and sec. 14, ch. 98, SLA 2004 provides that subsection (d) applies to orders of the Regulatory Commission of Alaska regardless of whether the related proceeding under AS 42.05 "was

begun before July 1, 2004."

Opinions of attorney general. — The word "party" in AS 42.05.651 and in this section, for purposes of allocating the commission's costs of rulemaking proceedings, should be interpreted in its ordinary legal sense and does not include interested persons who comment in a rulemaking proceeding. It follows that the commission cannot in order to allocate costs to a person, make that person a party to a rulemaking proceeding, whether by declaration or by invitation to which the person responds. September 29, 1986, Op. Att'y Gen.

NOTES TO DECISIONS

Inclusion of attorney's fees in the "costs" allocable in this section is consistent both with the apparent intent of the legislature to allow the Alaska Public Utilities Commission to recoup its costs of regulation, and with AS 42.05.141(a)(1) which provides that the powers of the APUC shall be liberally construed to accomplish its stated purposes. *Amerada Hess Pipeline Corp. v. Alaska Pub. Utils. Comm'n*, 711 P.2d 1170 (Alaska 1986).

Proceedings outside cost allocation authorization. — This section does not authorize the Alaska Public Utilities Commission to allocate costs incurred

in any proceedings other than those which are conducted by the commission either solely or concurrently. *Amerada Hess Pipeline Corp. v. Alaska Pub. Utils. Comm'n*, 711 P.2d 1170 (Alaska 1986).

This section was not intended to allow the Alaska Public Utilities Commission to allocate advocacy costs to opposing parties where it appeared as a party in an adversarial proceeding before a different regulatory authority. *Amerada Hess Pipeline Corp. v. Alaska Pub. Utils. Comm'n*, 711 P.2d 1170 (Alaska 1986).

Cited in *Homer Elec. Ass'n v. State, Alaska Pub. Utils. Comm'n*, 756 P.2d 874 (Alaska 1988).

Sec. 42.06.620. Classification. The commission may by regulation provide for the classification of oil or gas pipeline facilities based upon differences in annual revenue, assets, nature of ownership, and other appropriate distinctions and as between these classifications, by regulation, provide for different reporting, accounting, and other regulatory requirements. (§ 1 ch 139 SLA 1972)

Sec. 42.06.630. Definitions. In this chapter

- (1) "affiliated interest" means any person or other entity that
 - (A) is controlled or owned, in whole or in part, by a pipeline carrier;
 - (B) is controlled or owned, in whole or in part, by an entity which controls or owns, in whole or in part, a pipeline carrier;
 - (C) is an agent, employee, contractor, or subcontractor of a pipeline carrier or any entity controlled or owned, in whole or in part, by a pipeline carrier; or
 - (D) controls or owns, in whole or in part, a pipeline carrier;
- (2) "capacity" means, with reference to a North Slope natural gas pipeline, the average daily volume throughput of the North Slope natural gas pipeline, calculated at the

normal operating pressure of the North Slope natural gas pipeline as set out in the pipeline design;

(3) "commission" means the Regulatory Commission of Alaska (AS 42.04.010);

(4) "commissioner" means a member of the commission;

(5) "duties" means duties, powers, obligations, and functions;

(6) "firm transportation service" means service by a natural gas pipeline carrier that is not subject to a prior claim by another shipper or another class of service; service constitutes "firm transportation service" if the service receives the same priority as any other class of firm transportation service;

(7) "gas" includes all natural gas and hydrocarbons produced at the wellhead and not defined as oil;

(8) "interruptible transportation service" means service by a natural gas pipeline carrier in which the carrier's pipeline system capacity may be subject to a prior claim by another shipper or another class of service; a service constitutes "interruptible transportation service" if the service is given a lower priority than another class of service, resulting in noncontinuous service to a shipper of natural gas;

(9) "intrastate," as applied to the transportation of North Slope natural gas, means the transportation of North Slope natural gas between any point within the state and another point within the state, for ultimate consumption of the North Slope natural gas within the state;

(10) "natural gas pipeline" or "natural gas pipeline facility" means all the facilities of a total system of pipe, whether owned or operated by a natural gas pipeline carrier under a contract, agreement, or lease in this state used by a natural gas pipeline carrier for transportation of natural gas for delivery, storage, or further transportation, and including all pipe, pump and compressor stations, station equipment, and all other facilities used or necessary for an integral line of pipe to effectuate the transportation from point to point, excluding, however, gas processing plants, treaters, and separators;

(11) "natural gas pipeline carrier" means the owner, including a corporation, company, or other entity organized under the laws of the United States or of any state, of a natural gas pipeline, as the term is defined in this section, or an interest in it, or any person, including a corporation, company, or other entity organized under the laws of the United States or of any state, authorized to construct or extend pipeline facilities under this chapter;

(12) "North Slope natural gas" means gas that is produced from the area of Alaska lying north of 68 degrees North latitude and that, but for a pipeline subject to regulation under this chapter, had not been committed for sale and delivery in a commercial market due to the prevailing costs or price conditions;

(13) "North Slope natural gas pipeline" or "North Slope natural gas pipeline facility" means all the facilities of a total system of pipe, whether owned or operated by a North Slope natural gas pipeline carrier under a contract, agreement, or lease, in this state used by a North Slope natural gas pipeline carrier for transportation of North Slope natural gas for delivery, storage, or further transportation, including all pipe, pump, and compressor stations, station equipment, gas processing plants, treaters, separators, and all other facilities used or necessary for an integral line of pipe to carry out the transportation from point to point, but excluding marine terminal facilities and the integrated plant, facilities, and equipment, including pollution control equipment, used for conditioning, storage, handling, or processing of North Slope natural gas into liquefied natural gas;

(14) "North Slope natural gas pipeline carrier" means the owner, including a corporation, company, or other entity organized under the laws of the United States or of a state, of a North Slope natural gas pipeline, or an interest in it, or a person, including a corporation, company, or other entity, organized under the laws of the United States or of

a state, authorized to construct, operate, or extend North Slope natural gas pipeline facilities under this chapter;

(15) "oil" includes crude oil, and other hydrocarbons regardless of gravity that are produced at the wellhead in liquid form, its products and liquid hydrocarbons, including the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas;

(16) "pipeline" or "pipeline facility" means all the facilities of a total system of pipe, whether owned or operated by a pipeline carrier under a contract, agreement, or lease, in this state used by a pipeline carrier for transportation, for hire and as a common carrier, of oil, gas, coal, or other mineral slurry for delivery, storage, or further transportation, and including all pipe, pump and compressor stations, station equipment, and all other facilities used or necessary for an integral line of pipe to effectuate the transportation from point to point, excluding, however, gas processing plants, treaters, and separators;

(17) "pipeline carrier" means the owner, including corporations organized under the laws of the United States or of any state, of any pipeline, as the term is defined in this section, or any interest in it, or any person, including corporations organized under the laws of the United States or of any state, authorized to construct or extend pipeline facilities under AS 42.06.240(a);

(18) "regulation" includes rules;

(19) "tariff" means a rate, charge, toll, rule, or regulation of an oil or gas pipeline facility relating to services furnished by the facility to the general public or other users for compensation. (§ 1 ch 139 SLA 1972; am §§ 7, 8 ch 6 FSSLA 1973; am §§ 12 — 14 ch 35 SLA 1977; am §§ 14, 15, 20 ch 110 SLA 1981; am § 88 ch 74 SLA 1985; am § 19 ch 25 SLA 1999; am § 8 ch 56 SLA 2000; am §§ 2 — 4 ch 60 SLA 2003)

Revisor's notes. — Reorganized in 1983, 1998, and 2000 to alphabetize the defined terms.

Paragraphs (10) and (11) were enacted as (18) and (19). Renumbered in 2003, at which time paragraphs (10) — (17) were renumbered as (12) — (19).

Effect of amendments. — The 1999 amendment, effective July, 1999, in paragraph (3), substituted "Regulatory Commission of Alaska" for "Alaska Public Utilities Commission" and inserted a section reference.

The 2000 amendment, effective August 9, 2000, added paragraphs (2), (6), and (8) and (9) and (12) — (14) [formerly (10) — (12)].

The 2003 amendment, effective June 12, 2003, deleted "north slope" preceding "natural gas" in paragraphs (6) and (8) and added paragraphs (10) and (11).

NOTES TO DECISIONS

"Its products" construed. — The legislature intended the phrase "its products" in paragraph (7) [now (13)] to include refined oil. *Tesoro Alaska Petro. Co. v. Kenai Pipe Line Co.*, 746 P.2d 896 (Alaska 1987).

"Pipeline facility" construed. — A marine terminal facility which was physically connected to the remainder of a carrier's pipeline system logically was within the definition of "pipeline facility" in paragraph (8) [now (14)] for the outward movement of crude oil, and thus was subject to the Alaska Public Utilities Commission's regulatory authority. *Tesoro Alaska Petro. Co. v. Kenai Pipe Line Co.*, 746 P.2d 896 (Alaska 1987).

"Transportation from point to point" construed. — It is not necessary that for "transportation from point to point" to fall within paragraph (8) [now (14)] one of the "points" must be a wellhead. Where incoming crude oil is "transported" from a tanker docked at the carrier's wharf, through marine terminal lines, to the terminal storage tanks, this qualifies as "transportation from point to point." *Tesoro Alaska Petro. Co. v. Kenai Pipe Line Co.*, 746 P.2d 896 (Alaska 1987).

Sec. 42.06.640. Short title. This chapter may be cited as the Pipeline Act. (§ 1 ch 139 SLA 1972; am § 16 ch 110 SLA 1981)

Chapter 45. Rural and Statewide Energy Programs.

Article

1. Power Assistance Programs (§§ 42.45.010 — 42.45.065)
2. Power Cost Equalization Endowment Fund (§§ 42.45.070 — 42.45.099)
3. Power Cost Equalization and Rural Electric Capitalization (§§ 42.45.100 — 42.45.190)
5. Bulk Fuel Revolving Loan Fund (§ 42.45.250)
6. Joint Action Agencies (§§ 42.45.300 — 42.45.320)
7. Water-Power Development Projects (§ 42.45.350)
8. Miscellaneous Provisions (§§ 42.45.400, 42.45.410)
9. General Provisions (§ 42.45.990)

Cross references. — For legislative findings and intent in enacting this chapter, see § 1, ch. 18, SLA 1993 in the Temporary and Special Acts; for transitional provisions, see §§ 34, 35, and 38, ch. 18, SLA 1993 in the Temporary and Special Acts.

Legislative history reports. — For governor's

transmittal letter for ch. 36, SLA 2004 (SB 337) making a series of amendments to this chapter, see 2004 Senate Journal 2179 — 2180.

Administrative Code. — For loan programs, see 3 AAC 106.

For grant programs, see 3 AAC 107.

Article 1. Power Assistance Programs.

Section

10. Power project fund
20. Rural electrification revolving loan fund

Section

40. Southeast energy fund
65. Reimbursement for costs of power projects

Sec. 42.45.010. Power project fund. (a) The power project fund is established as a separate fund. The fund shall be distinct from any other money or funds of the authority and includes only money appropriated by the legislature and money deposited under (g) of this section.

(b) The authority may make loans from the power project fund

(1) to electric utilities, regional electric authorities, municipalities, regional and village corporations, village councils, independent power producers, and nonprofit marketing cooperatives to pay the costs of

(A) reconnaissance studies, feasibility studies, license and permit applications, preconstruction engineering, and design of power projects;

(B) constructing, equipping, modifying, improving, and expanding small-scale power production facilities that are designed to produce less than 10 megawatts of power, bulk fuel storage facilities, and transmission and distribution facilities, including energy production, transmission and distribution, waste energy, energy conservation, energy efficiency, and alternative energy facilities and equipment; and

(C) reconnaissance studies, preconstruction engineering, design, construction, equipping, modification, and expansion of potable water supply including surface storage and groundwater sources and transmission of water from surface storage to existing distribution systems;

(2) to a borrower for a power project or for bulk fuel, waste energy, energy conservation, energy efficiency, or alternative energy facilities or equipment if

(A) the loan is entered into under a leveraged lease financing arrangement;

(B) the party that will be responsible for the power project or the bulk fuel, waste energy, energy conservation, energy efficiency, or alternative energy facilities or equipment is an electric utility, regional electric authority, municipality, regional or village corporation, village council, independent power producer, or nonprofit marketing cooperative; and

(C) the borrower seeking the loan demonstrates to the authority that the financing arrangement for the power project or the bulk fuel, waste energy, energy conservation, energy efficiency, or alternative energy facilities or equipment will reduce financing costs for the project, facilities, or equipment below costs of comparable public power projects, facilities, or equipment.

(c) Before making a loan from the power project fund, the authority shall, by regulation, specify

(1) standards for the eligibility of borrowers and the types of projects to be financed with loans;

(2) standards regarding the technical and economic viability and revenue self-sufficiency of eligible projects;

(3) collateral or other security required for loans;

(4) the terms and conditions of loans;

(5) criteria to establish financial feasibility and to measure the amount of state assistance necessary for particular projects to meet the financial feasibility criteria; and

(6) other relevant criteria, standards, or procedures.

(d) A loan made by the authority shall be made according to the standards, criteria, and procedures established by regulation under this section.

(e) Repayment of the loans shall be secured in any manner that the authority determines is feasible to assure prompt repayment under a loan agreement entered into with the borrower. The authority may make an unsecured loan from the power project fund to a borrower regulated by the Regulatory Commission of Alaska under AS 42.05 if the borrower has a substantial history of repaying long-term loans and the capacity to repay the loan. Under a loan agreement, repayment may be deferred for 10 years or until the project for which the loan is made has achieved earnings from its operations sufficient to pay the loan, whichever is earlier.

(f) Power projects are subject to the following limitations on interest and specific restrictions:

(1) power projects for which loans are outstanding from the former water resources revolving loan fund (former AS 45.86) on July 13, 1978, may receive additional financing from the power project fund; if granted,

(A) the term of the additional financing may not exceed 50 years;

(B) the interest of the additional financing must be at a rate of not less than three or more than five percent a year on the unpaid balance;

(C) the grant of the additional financing must be conditioned on the repayment of loan principal and interest to begin on the earlier of

(i) the date of the start of commercial operation of the project; or

(ii) 10 years from the date the loan is granted;

(2) a loan for a power project

(A) may not be granted for a term that exceeds 50 years; and

(B) shall be granted at an interest rate that is not less than zero percent and that is the lesser of

(i) a rate equal to the percentage that is the average weekly yield of municipal bonds for the 12-months preceding the date of the loan, as determined by the authority from municipal bond yield rates reported in the 30-year revenue index of the Weekly Bond Buyer; or

(ii) a rate determined by the authority that allows the project to meet criteria of financial feasibility established under (c) of this section.

(g) Loan repayments and interest earned by loans from the power project fund shall be deposited in the power project fund unless an appropriation to fund the loan directs otherwise.

(h) The legislature may forgive the repayment of a loan made from the power project fund for a reconnaissance study or a feasibility study when the authority finds that the power project for which the loan was made is not feasible.

(i) Money in the power project fund may be used by the legislature to make appropriations for costs of administering the fund.

(j) The authority may not enter into a loan from the power project fund for a major project unless it has legislative approval of the project and the amount. An appropriation for the loan that names the project constitutes approval required by this subsection. A major project is a project in which the cumulative state monetary involvement, through loans, grants, and bonds, is at least \$5,000,000 or a project for which a loan of more than \$5,000,000 has been requested. (§ 5 ch 18 SLA 1993; am §§ 1, 2 ch 36 SLA 2004; am § 36 ch 12 SLA 2006)

Revisor's notes. — In 1999, in subsection (e) "Regulatory Commission of Alaska" was substituted for "Alaska Public Utilities Commission" in accordance with § 30(a), ch. 25, SLA 1999. In 1999, in this section, "department" was changed to "authority" in accordance with § 91(b), ch. 58, SLA 1999.

Effect of amendments. — The 2004 amendment, effective June 4, 2004, in subsection (b), deleted "subject to AS 42.45.060" at the beginning of the introductory language, deleted "conservation facilities" following "10 megawatts of power" in paragraph (1)(B), substituted "waste energy, energy conservation, energy efficiency, and alternative energy facilities and equipment" for "and waste energy conservation facilities that depend on fossil fuel, wind power, tidal, geothermal, biomass, hydroelectric, solar, or other nonnuclear energy sources" in paragraph (1)(B), and inserted "or for bulk fuel, waste energy, energy con-

servation, energy efficiency, or alternative energy facilities or equipment" in paragraph (2); and added subsection (j).

The 2006 amendment, effective April 4, 2006, in paragraph (2) of subsection (b), inserted "or the bulk fuel, waste energy, energy conservation, energy efficiency, or alternative energy facilities or equipment" in subparagraph (B), and rewrote subparagraph (C).

Opinions of attorney general. — A PPF loan may be made to Cordova Electric Cooperative (CEC) for the purpose of CEC using the loan funds to pay developer to develop a project which is specifically for CEC, and which CEC has already obligated itself to purchase, once developer has made it capable of commercial operation. The loan funds were to be used for costs which are allowable under the PPF statutes. December 5, 1995, Op. Att'y Gen.

Sec. 42.45.020. Rural electrification revolving loan fund. (a) The rural electrification revolving loan fund is established in the authority. The fund consists of

- (1) appropriations made to the fund; and
- (2) repayments of principal and interest on loans made under this section.

(b) The authority may make loans from the rural electrification revolving loan fund to electric utilities certified under AS 42.05. A loan from the fund may be made only for the purpose of extending new electric service into an area of the state that an electric utility may serve under a certificate of public convenience and necessity issued under AS 42.05. A loan may be made from the fund to an electric utility if the utility invests the money necessary to provide one pole, one span of line, one transformer, and one service drop for each consumer for whom immediate service would be provided by the extension of electric service. However, a loan may not be made from the fund unless the extension of electric service would provide immediate service to at least three consumers.

(c) A loan from the rural electrification revolving loan fund shall bear an annual rate of interest of two percent of the unpaid balance of the loan.

(d) When the authority makes a loan under this section, the electric utility receiving the loan shall,

(1) in addition to the rates that it is authorized to charge, charge the consumers served by the electric service extended with the loan proceeds an amount sufficient to pay the interest costs of the loan;

(2) pay to the authority annually an amount equal to

(A) interest of two percent on the unpaid balance of the loan; and

(B) payments on the unpaid balance of the principal of the loan for each new consumer served by the electric service extended with the loan proceeds; payments on the unpaid balance of the principal of the loan shall be made at a rate equal to the difference between the actual cost of making the service connection to the consumers and the minimum investment per consumer required of the utility before a loan is made under (b) of this section.

(e) The authority shall

(1) adopt regulations necessary to carry out the provisions of this section; and

(2) administer the rural electrification revolving loan fund.

(3) *[Repealed, § 19 ch 6 SLA 1998.]*

(f) Money in the rural electrification revolving loan fund may be used by the legislature to make appropriations for costs of administering the fund.

(g) On June 30 of each fiscal year the unexpended and unobligated cash balance of the fund that is attributable to loans owned by the fund lapses into the general fund.

(h) In this section,

(1) "consumer" means a person or a governmental agency, if the person or governmental agency requests and offers to pay for electrical service to a facility or part of a facility; the authority shall consider a person who, or a governmental agency that, offers to pay for electrical service to several facilities to be a separate consumer for each facility, if each facility is physically separate from another facility, other than through electric service lines, and if the person or governmental agency requests and offers to pay for electrical service to each facility;

(2) "facility" means a structure capable of receiving and using electrical energy; and

(3) "governmental agency" includes, with respect to the state or federal government or a municipal government, a legislative body, board of regents, administrative body, board, commission, committee, subcommittee, authority, council, agency, public corporation, school board, department, division, bureau, or other subordinate unit, whether advisory or otherwise, of the state, federal, or municipal government. (§ 5 ch 18 SLA 1993; am § 83 ch 21 SLA 1995; am § 19 ch 6 SLA 1998; am § 20 ch 25 SLA 1999; am § 84 ch 58 SLA 1999; am § 3 ch 36 SLA 2004)

Revisor's notes. — In 1999, in this section, "department" was changed to "authority" in accordance with § 91(b), ch. 58, SLA 1999, at which time subsection (b) was reorganized to reflect the 1999 repeal of (b)(1).

Effect of amendments. — The 1995 amendment, effective August 8, 1995, in paragraph (e)(3), substituted "have available" for "submit to the legislature" at the beginning and added "; the department shall notify the legislature that the report is available" at the end.

The 1998 amendment, effective June 28, 1998, repealed paragraph (e)(3).

The first 1999 amendment, effective July 1, 1999, substituted "under AS 42.05" for "by the Alaska Public Utilities Commission" in two places in the introductory language of subsection (b).

The second 1999 amendment, effective July 1, 1999, repealed paragraph (b)(1).

The 2004 amendment, effective June 4, 2004, deleted "Subject to AS 42.45.060" at the beginning of the first sentence of subsection (b).

Sec. 42.45.030. Loan advisory committee. [Repealed, § 84 ch 58 SLA 1999.]

Sec. 42.45.040. Southeast energy fund. The Southeast energy fund is established as a separate fund. The fund consists of money transferred to it under former AS 42.45.050. The authority may make grants from the Southeast energy fund to utilities participating in the power transmission intertie between the Swan Lake and Tye Lake hydroelectric projects for power projects, for repayment of loans, and for payments on bonds. (§ 5 ch 18 SLA 1993; am § 5 ch 60 SLA 2000)

Revisor's notes. — In 1999, in this section, "department" was changed to "authority" in accordance with § 91(b), ch. 58, SLA 1999.

Effect of amendments. — The 2000 amendment, effective July 1, 2000, inserted "former" in the first sentence.

Opinions of attorney general. — The depart-

ment is not required to pursue annual appropriations in order to disburse moneys in the southeast energy fund and the power cost equalization and rural electric capitalization fund once the legislature has capitalized those funds. September 27, 1995 Op. Att'y Gen.

Sec. 42.45.050. Four dam pool transfer fund. [Repealed, § 12 ch 60 SLA 2000.]

Sec. 42.45.060. Approval by loan committee and legislature. [Repealed, § 11 ch 36 SLA 2004.]

Sec. 42.45.065. Reimbursement for costs of power projects. (a) Subject to appropriations for the purpose, during each fiscal year, the authority shall allocate to each entity listed in (b) of this section an amount to reimburse the cost paid by the entity during the immediately preceding fiscal year for the principal and interest on outstanding debt for the project listed. An allocation may be made to an entity only if

(1) the debt was incurred before July 1, 2005; and

(2) the power project financed with the debt proceeds is owned and operated by the entity.

(b) The authority may make an allocation to an entity under (a) of this section only for reimbursement of costs incurred for construction and renovation of the following power projects and only for reimbursement of total project costs incurred up to the following amounts:

PROJECT

Kodiak Electric Association, Inc. (Nyman Combined Cycle Cogeneration Plant)	\$ 6,000,000
Cordova Electric Cooperative (Power Creek Hydropower Station)	12,000,000
Golden Valley Electric Association (Rock Creek line extension)	700,000
Copper Valley Electric Association, Inc., Valdez (cogeneration projects)	10,000,000
The Four Dam Pool Power Agency (Southeast Intertie, Swan Lake to Tyee Lake)	20,000,000
Metlakatla Power and Light (utility plant and capital additions) (§ 6 ch 115 SLA 2002)	3,000,000

Cross references. — For transitional provision applicable to the determination of allocations to be made under (a) of the section during state fiscal year 2003, see § 8, ch. 115, SLA 2002, in the 2002 Temporary and Special Acts. For statement of legislative intent with respect to the reimbursement allocation payable under (b) of the section to the Cordova Elec-

tric Cooperative, see § 2, ch. 115, SLA 2002, in the 2002 Temporary and Special Acts.

Effective dates. — Section 9, ch. 115, SLA 2002 makes this section effective July 1, 2002. The Act was approved by the governor on July 2, 2002, so the actual effective date is July 3, 2002.

Article 2. Power Cost Equalization Endowment Fund.

Section

- 70. Power cost equalization endowment fund established
- 80. Powers and duties of the commissioner of revenue

Section

- 85. Use of the power cost equalization endowment fund
- 99. Definition

Cross references. — For legislative findings related to the enactment of AS 42.45.070 — 42.45.099, see § 1, ch. 60, SLA 2000 in the 2000 Temporary and Special Acts. For legislative authorization for the sale of the four dam pool, see sec. 15, ch. 60, SLA 2000 in the 2000 Temporary and Special Acts, sec. 4, ch. 100,

SLA 2004 in the 2004 Temporary and Special Acts, and sec. 1, ch. 31, SLA 2006, in the 2006 Temporary and Special Acts.

Effective dates. — Section 21, ch. 60, SLA 2000 makes this article effective July 1, 2000.

Sec. 42.45.070. Power cost equalization endowment fund established. (a) The power cost equalization endowment fund is established as a separate fund of the authority. The fund consists of

- (1) legislative appropriations to the fund that are not designated for annual expenditure for the purpose of power cost equalization;
- (2) accumulated earnings of the fund;

(3) gifts, bequests, contributions of money and other assets, and federal money given to the fund that are not designated for annual expenditure for power cost equalization; and

(4) *[Repealed, § 13 ch 60 SLA 2000.]*

(b) Nothing in this section creates a dedicated fund.

(c) *[Repealed, § 13 ch 60 SLA 2000.]* (§ 6 ch 60 SLA 2000; am §§ 7, 13 ch 60 SLA 2000)

Effect of amendments. — The 2000 amendment, effective February 1, 2002, repealed paragraph (a)(4) and subsection (c).

Sec. 42.45.080. Powers and duties of the commissioner of revenue. (a) The commissioner of revenue is the fiduciary of the fund. In managing the fund, the commissioner shall

(1) have the same powers and duties as are provided in AS 37.10.071; and

(2) invest the fund in a manner likely to achieve at least a seven percent nominal return over time.

(b) In managing the fund, the commissioner shall

(1) consider the status of the fund's capital and the income generated on both current and probable future bases;

(2) determine the appropriate investment objectives;

(3) establish investment policies to achieve the objectives; and

(4) act only in regard to the best financial interests of the fund.

(c) On July 1 of each year, the commissioner shall determine the monthly average market value of the fund for the previous three fiscal years. (§ 6 ch 60 SLA 2000)

Sec. 42.45.085. Use of the power cost equalization endowment fund. (a) Seven percent of the amount determined by the commissioner of revenue on July 1 of each year under AS 42.45.080(c) may be appropriated for the fiscal year beginning the following July 1 for the following purposes:

(1) funding the power cost equalization and rural electric capitalization fund (AS 42.45.100);

(2) reimbursement to the Department of Revenue for the costs of establishing and managing the fund; and

(3) reimbursement of other costs of administration of the fund.

(b) Nothing in this section creates a dedicated fund. (§ 6 ch 60 SLA 2000)

Cross references. — For special appropriation amounts for fiscal years 2002 through the first fiscal year that begins after the closing date of the sale of the four dam pool, see § 14, ch. 60, SLA 2000 in the 2000 Temporary and Special Acts.

Sec. 42.45.099. Definition. In AS 42.45.070 — 42.45.099, "fund" means the power cost equalization endowment fund established in AS 42.45.070. (§ 6 ch 60 SLA 2000)

Article 3. Power Cost Equalization and Rural Electric Capitalization.

Section

- 100. Power cost equalization and rural electric capitalization fund
- 110. Entitlement to power cost equalization
- 115. Exclusion from eligibility
- 120. Notice to customers
- 130. Cost minimization

Section

- 140. Customer petitions
- 150. Definitions for AS 42.45.100 — 42.45.150
- 160. Adjustments to power cost equalization
- 170. Equalization assistance to unregulated utilities
- 180. Grants for utility improvements
- 190. Definition for AS 42.45.100 — 42.45.190

Sec. 42.45.100. Power cost equalization and rural electric capitalization fund. (a) The power cost equalization and rural electric capitalization fund is established as a separate fund for the purpose of

(1) equalizing power cost per kilowatt-hour statewide at a cost close to or equal to the mean of the cost per kilowatt-hour in Anchorage, Fairbanks, and Juneau by paying money from the fund to eligible electric utilities in the state; and

(2) making grants to eligible utilities under AS 42.45.180 to improve the performance of the utility.

(b) The fund shall be administered by the authority as a fund distinct from the other funds of the authority. The fund is composed of

(1) money appropriated to provide power cost equalization to eligible electric utilities and to provide grants for utility improvements;

(2) money appropriated from the National Petroleum Reserve — Alaska special revenue fund under AS 37.05.530(g);

(3) money appropriated from the power cost equalization endowment fund (AS 42.45.070) under AS 42.45.085(a);

(4) gifts, bequests, contributions from other sources, and federal money; and

(5) interest earned on the fund balance.

(c) The fund is not a dedicated fund. (§ 5 ch 18 SLA 1993; am § 4 ch 93 SLA 1999; am § 8 ch 60 SLA 2000)

Revisor's notes. — In 1999, in this section, "department" was changed to "authority" in accordance with § 91(b), ch. 58, SLA 1999. In 2000, in (a)(2) of this section, "making" was substituted for "to make" to correct a manifest error.

Effect of amendments. — The 1999 amendment, effective July 8, 1999, in subsection (b) added present paragraphs (2) and (3), redesignated former paragraph (2) as paragraph (4), and in paragraph (4) substituted "the fund balance" for "those appropriations."

The 2000 amendment, effective July 1, 2000, added present paragraph (b)(3) and made related changes and in paragraph (b)(4) inserted ", and federal money."

Opinions of attorney general. — The Alaska

Public Utilities Commission has the authority to promulgate standards for defining costs under the power cost equalization program (the article), and standards for generation efficiency. The commission is empowered to adopt these standards as regulations under AS 42.05.151, as long as the provisions of the Administrative Procedure Act are followed (decided under former AS 44.83.162 — 44-83.165). May 16, 1988, Op. Att'y Gen.

The department is not required to pursue annual appropriations in order to disburse moneys in the southeast energy fund and the power cost equalization and rural electric capitalization fund once the legislature has capitalized those funds. September 27, 1995 Op. Att'y Gen.

Sec. 42.45.110. Entitlement to power cost equalization. (a) The costs used to calculate the amount of power cost equalization for all electric utilities eligible under AS 42.45.100 — 42.45.150 include all allowable costs, except return on equity, used by the Regulatory Commission of Alaska to determine the revenue requirement for electric utilities subject to rate regulation under AS 42.05. The costs used in determining the power cost equalization per kilowatt-hour shall exclude any other type of assistance that reduces the customer's costs of power on a kilowatt-hour basis and that is provided to the electric utility within 60 days before the commission determines the power cost equalization per kilowatt-hour of the electric utility. In calculating power cost equalization, the commission may not consider validated costs or kilowatt-hour sales associated with a United States Department of Defense facility.

(b) An eligible electric utility is entitled to receive power cost equalization

(1) for sales of power to local community facilities, calculated in the aggregate for each community served by the electric utility, for actual consumption of not more than 70 kilowatt-hours per month for each resident of the community; the number of community residents shall be determined under AS 29.60.020; and

(2) for actual consumption of not more than 500 kilowatt-hours per month sold to each residential customer.

(c) The amount of power cost equalization provided per kilowatt-hour under subsection (b) of this section may not exceed 95 percent of the power costs, or the average rate per eligible kilowatt-hour sold, whichever is less, as determined by the commission. However,

(1) during the state fiscal year that began July 1, 1999, the power costs for which power cost equalization were paid to an electric utility were limited to minimum power costs of more than 12 cents per kilowatt-hour and less than 52.5 cents per kilowatt-hour;

(2) during each following state fiscal year, the commission shall adjust the power costs for which power cost equalization may be paid to an electric utility based on the weighted average retail residential rate in Anchorage, Fairbanks, and Juneau; however, the commission may not adjust the power costs under this paragraph to reduce the amount below the lower limit set out in (1) of this subsection; and

(3) the power cost equalization per kilowatt-hour may be determined for a utility without historical kilowatt-hour sales data by using kilowatt-hours generated.

(d) An electric utility whose customers receive power cost equalization under AS 42.45.100 — 42.45.150 shall set out in its tariff the rates without the power cost equalization and the amount of power cost equalization per kilowatt-hour sold. The rate charged to the customer shall be the difference between the two amounts. Power cost equalization paid under AS 42.45.100 — 42.45.150 shall be used to reduce the cost of all power sold to local community facilities, in the aggregate, to the extent of 70 kilowatt-hours per month per resident of the community, and to reduce the cost of the first 500 kilowatt-hours per residential customer per month.

(e) The power cost equalization program shall be administered by the authority based on a determination by the commission under (a) and (c) of this section of power cost equalization per kilowatt-hour for each eligible electric utility.

(f) The authority may not deny an eligible electric utility power cost equalization because complete cost information is not available. The commission shall assist an eligible electric utility that is exempt from rate regulation under AS 42.05 to provide the cost information the commission considers necessary to comply with AS 42.45.100 — 42.45.150. Only power costs that are supportable may be considered in calculating power cost equalization. Each electric utility is responsible for keeping records that provide the information necessary to comply with AS 42.45.100 — 42.45.150 including records of monthly kilowatt-hour sales or generation, monthly fuel balances, fuel purchases, and monthly utility fuel consumption.

(g) The commission shall determine the cost of fuel for each eligible electric utility using the procedure for approving fuel cost rate adjustments of electric utilities subject to rate regulation under AS 42.05.

(h) Each electric utility receiving power cost equalization approved by the commission shall

(1) report monthly to the authority within the time and in the form the authority requires; and

(2) use operational equipment designed to meter individual utility customer power consumption and to determine and record the utility's overall fuel consumption.

(i) The authority shall review the report required under (h) of this section. After review and approval of the report, the authority shall, subject to appropriation, pay to each eligible electric utility an amount equal to the power cost equalization per kilowatt-hour determined under (a) and (c) of this section, multiplied by the number of kilowatt-hours eligible for power cost equalization that were sold during the preceding month to all customers of the utility under (b) of this section. Payment shall be made by the authority within 30 days after receipt from the utility of the report required under (h) of this section. If appropriations that have been made for the purpose by July 1 of a fiscal year are insufficient for payment in full, the amount paid to each electric utility shall be reduced on a pro rata basis. In making the pro rata reductions required by this subsection, the authority may not consider any potential supplemental appropriation

until the appropriation has been enacted. (§ 5 ch 18 SLA 1993; am §§ 7 — 11 ch 9 SLA 1994; am §§ 5 — 8 ch 93 SLA 1999)

Revisor's notes. — In 1999, in subsection (a), "Regulatory Commission of Alaska" was substituted for "Alaska Public Utilities Commission" in accordance with § 30(a), ch. 25, SLA 1999. In 1999, in this section, "department" was changed to "authority" in accordance with § 91(b), ch. 58, SLA 1999.

Effect of amendments. — The 1994 amendment, effective April 7, 1994, substituted "commission" for "department" in subsections (c) and (e)-(h).

The 1999 amendment, effective July 8, 1999, re-wrote paragraph (b)(2); in subsection (c) substituted "July 1, 1999" for "July 1, 1993" and "12 cents" for "9.5

cents" in paragraph (1) and added the language beginning "however" at the end of paragraph (2); in the last sentence in subsection (d) substituted "500" for "700," inserted "residential," and deleted "for all other classes served by the electric utility except state and federal offices and state and federal facilities other than public schools" from the end; and in subsection (i) rewrote the next-to-last sentence and added the last sentence.

Editor's notes. — Under § 20, ch. 9, SLA 1994, the 1994 amendments to this section are retroactive to August 11, 1993.

Sec. 42.45.115. Exclusion from eligibility. (a) Notwithstanding the definition of "eligible electric utility" in AS 42.45.150, an electric utility whose primary source of power for sale to customers is one or more of the power projects that were part of the former initial project may not be considered an eligible electric utility.

(b) In this section, "former initial project" includes the Tyee Lake, Swan Lake, Solomon Gulch, and Terror Lake hydroelectric facilities. (§ 9 ch 60 SLA 2000)

Effective dates. — Section 21, ch. 60, SLA 2000 makes this section effective July 1, 2000.

Sec. 42.45.120. Notice to customers. If an electric utility receives power cost equalization under AS 42.45.100 — 42.45.150, the utility shall either give to its electric service customers eligible under this program, for each period for which the payment is received,

(1) the following notice:

NOTICE TO CUSTOMER

For the most recent monthly reporting period under the State of Alaska's power cost equalization program, this utility's actual fuel efficiency for your community was kilowatt-hours a gallon. The applicable fuel efficiency standard set out in regulations for the power cost equalization program is kilowatt-hours a gallon.

For the current billing period, the utility will be paid under the State of Alaska's power cost equalization program (AS 42.45.100) to assist the utility and its customers in reducing the high cost of generation of electric energy.

Your total electrical service cost	\$.....
Less state equalization	\$.....
Your charge	\$.....; or

(2) a notice approved by the authority that provides electric service customers the same information provided by the notice in (1) of this section. (§ 5 ch 18 SLA 1993; am § 9 ch 93 SLA 1999)

Revisor's notes. — In 1999, in this section, "department" was changed to "authority" in accordance with § 91(b), ch. 58, SLA 1999.

Effect of amendments. — The 1999 amendment, effective July 8, 1999, added the first paragraph in the "NOTICE TO CUSTOMER" form.

Sec. 42.45.130. Cost minimization. (a) In order to qualify for power cost equalization, each electric utility shall make every reasonable effort to minimize administrative, operating, and overhead costs, including using the best available technology consistent with sound utility management practices. In reviewing applications for power cost equalization, the commission may require the elimination of unnecessary operating expenses. Each eligible electric utility shall cooperate with appropriate state agencies to

implement cost-effective energy conservation measures and to plan for and implement feasible alternatives to diesel generation.

(b) In this section, “energy conservation measures” include weatherization and other insulating methods, utilization of waste heat, appropriate sizing of new generating equipment, and other programs of the state or federal government intended and available for energy conservation. (§ 5 ch 18 SLA 1993; am § 12 ch 9 SLA 1994)

Effect of amendments. — The 1994 amendment, effective April 7, 1994, substituted “commission” for “department” in the second sentence in subsection (a).

Editor’s notes. — Under § 20, ch. 9, SLA 1994, the 1994 amendment to (a) of this section is retroactive to August 11, 1993.

Sec. 42.45.140. Customer petitions. If the authority receives a petition requesting power cost equalization, signed by at least 25 percent of the customers of an electric utility that is subject to rate regulation under AS 42.05 and that has not applied for power cost equalization under AS 42.45.100 — 42.45.150, the authority shall require the utility to submit a power cost equalization application. Upon a determination of eligibility for power cost equalization, the utility, as a part of its service, shall receive power cost equalization and pass power cost equalization benefits to its customers under AS 42.45.100 — 42.45.150. (§ 5 ch 18 SLA 1993)

Revisor’s notes. — In 1999, in this section, “department” was changed to “authority” in accordance with § 91(b), ch. 58, SLA 1999.

Sec. 42.45.150. Definitions for AS 42.45.100 — 42.45.150. In AS 42.45.100 — 42.45.150,

(1) “community facility” means a water and sewer facility, public outdoor lighting, charitable educational facility, or community building whose operations are not paid for by the state, the federal government, or private commercial interests;

(2) “eligible electric utility” or “electric utility” means a public, cooperative, or other corporation, company, individual, or association of individuals, and includes the lessees, trustees, or receivers appointed by a court, that

(A) owns, operates, manages, or controls a plant or system for the furnishing, by generation, transmission, or distribution, of electric service to the public for compensation;

(B) during calendar year 1983, had a residential consumption level of power eligible for power cost equalization under former AS 44.83 of less than 7,500 megawatt hours or had a residential consumption level of power eligible for power cost equalization under former AS 44.83 of less than 15,000 megawatt hours if the utility served two or more municipalities or unincorporated communities; and

(C) during calendar year 1984, used diesel fired generators to produce more than 75 percent of the electrical consumption of the utility; an electric utility that is a subsidiary of another electric utility is an “eligible electric utility” if the operations of the subsidiary, considered separately, meet the eligibility requirements of AS 42.45.100 — 42.45.150; if an electric utility did not receive power cost assistance in 1983 but is otherwise eligible for power cost equalization under AS 42.45.100 — 42.45.150, the utility is an “eligible electric utility”;

(3) “power costs” means costs used in determining power cost equalization under AS 42.45.110(a) and (c). (§ 5 ch 18 SLA 1993)

Sec. 42.45.160. Adjustments to power cost equalization. (a) The commission may adjust the power cost equalization per kilowatt-hour, determined under AS 42.45.100 — 42.45.150, payable to an electric utility that is subject to rate regulation under AS 42.05 if the

(1) commission has approved a fuel cost rate adjustment caused by an increase or decrease in the electric utility’s cost of fuel;

(2) commission has approved a permanent or interim rate increase or decrease that establishes a higher or lower power cost;

(3) authority has discovered, in reviewing the monthly data submitted by the electric utility, discrepancies that require adjustment of the power cost equalization; or

(4) authority determines that appropriations are insufficient to finance full payments to eligible electric utilities.

(b) An electric utility that is eligible to receive power cost equalization under this section and that receives power cost equalization per kilowatt-hour approved by the commission shall report monthly to the authority within the time and in the form the authority requires. An electric utility shall report

(1) the power cost equalization per kilowatt-hour approved by the commission;

(2) the total kilowatt-hours sold to each class of customer during the preceding month;

(3) the total kilowatt-hours eligible for power cost equalization under this section sold to each class of customer during the preceding month;

(4) the total kilowatt-hours generated during the preceding month, if available;

(5) any commission approved amendments to the schedule of rates in effect during the preceding month; and

(6) an increase or decrease in the current unit price of fuel from the base price used by the commission in determining power costs if the change is expected to result in a subsequent power cost equalization adjustment.

(c) The provisions of AS 42.45.100 — 42.45.150 relating to the determination of the amount of power cost equalization and payment of the equalization assistance apply to equalization assistance under this section. (§ 5 ch 18 SLA 1993; am § 13 ch 9 SLA 1994)

Revisor's notes. — In 1993, "department" was substituted for "authority" in (a)(3) and (4) of this section to correct a manifest error in ch. 18, SLA 1993.

In 1999, in this section, "department" was changed to "authority" in accordance with § 91(b), ch. 58, SLA 1999.

Effect of amendments. — The 1994 amendment,

effective April 7, 1994, in subsection (b), substituted "commission" for "department" in the introductory language and in paragraphs (1), (5), and (6).

Editor's notes. — Under § 20, ch. 9, SLA 1994, the 1994 amendment to (b) of this section is retroactive to August 11, 1993.

Sec. 42.45.170. Equalization assistance to unregulated utilities. (a) An electric utility that is not subject to rate regulation by the Regulatory Commission of Alaska under AS 42.05 may receive power cost equalization if the utility is otherwise eligible for equalization assistance under AS 42.45.100 — 42.45.150 and if the utility

(1) files with the commission financial data necessary to determine the power cost equalization per kilowatt-hour as prescribed by the commission and that is in compliance with AS 42.45.100 — 42.45.150;

(2) reports monthly to the authority, within the time and in the form required, the information required in (b) of this section;

(3) sets rates

(A) that consider the power cost equalization provided under AS 42.45.100 — 42.45.150 by subtracting from its revenue requirements for electric services the power cost equalization per kilowatt-hour that it is eligible to receive; and

(B) under which the power cost equalization provided in AS 42.45.070 — 42.45.110 is applied as a credit only against the cost of kilowatt-hours eligible for equalization assistance under AS 42.45.100 — 42.45.150 that are consumed by each customer in any month;

(4) allows audits that the commission determines are necessary to ensure compliance with this section; and

(5) furnishes its electric service customers eligible under this program a notice as specified in AS 42.45.120.

(b) An electric utility that is eligible to receive power cost equalization under this section shall report in accordance with (a)(2) of this section

- (1) the power cost equalization per kilowatt-hour approved by the commission;
- (2) the total kilowatt-hours sold to each class of customer during the preceding month;
- (3) the total kilowatt-hours eligible for power cost equalization under this section sold to each class of customer during the preceding month;
- (4) the total kilowatt-hours generated during the preceding month, if available;
- (5) any amendments to the schedule of rates in effect during the preceding month; and
- (6) an increase or decrease in the current unit price of fuel from the base price used by the commission in determining power costs if the change is expected to result in a subsequent equalization assistance level adjustment.

(c) An electric utility that is eligible to receive power cost equalization under this section may have its power cost equalization per kilowatt-hour determination changed by the commission if the

- (1) commission has verified an increase or decrease in the electric utility's cost of fuel;
- (2) commission has verified an increase in rates based on an increase in costs;
- (3) authority has discovered, in reviewing the monthly data submitted by the electric utility, discrepancies that require adjustment of the power cost equalization; or
- (4) authority determines that appropriations are insufficient to finance full payments to eligible electric utilities.

(d) The provisions of AS 42.45.100 — 42.45.150 relating to the determination of the amount of power cost equalization and payment of the equalization assistance apply to equalization assistance under this section.

(e) An application for power cost equalization by an electric utility that is eligible to receive power cost under this section does not extend the jurisdiction of the Regulatory Commission of Alaska beyond that established by AS 42.05. (§ 5 ch 18 SLA 1993; am §§ 14 — 16 ch 9 SLA 1994; am § 4 ch 36 SLA 2004)

Revisor's notes. — In 1999, in subsections (a) and (e) "Regulatory Commission of Alaska" was substituted for "Alaska Public Utilities Commission" in accordance with § 30(a), ch. 25, SLA 1999. In 1999, in this section, "department" was changed to "authority" in accordance with § 91(b), ch. 58, SLA 1999.

Effect of amendments. — The 1994 amendment, effective April 7, 1994, substituted "commission" for "department" in paragraphs (a)(1), (a)(4), (b)(1), and (b)(6); and, in subsection (c), substituted "commission" for "department" and deleted "department" following

"if the" in the introductory language, and added "commission" at the beginning of paragraphs (1) and (2) and "department" at the beginning of paragraphs (3) and (4).

The 2004 amendment, effective June 4, 2004, substituted "AS 42.45.070 — 42.45.110" for "AS 42.45.060 — 42.45.110" in paragraph (a)(3)(B).

Editor's notes. — Under § 20, ch. 9, SLA 1994, the 1994 amendments to this section are retroactive to August 11, 1993.

Sec. 42.45.180. Grants for utility improvements. (a) The authority may make a grant from the fund for an eligible utility for a small power project that will reduce the cost of generating or transmitting power to the customers of the utility. The amount of the grant may not exceed 75 percent of the cost of the project. The authority may not make a grant under this section unless the eligible utility has secured financing for 25 percent of the cost of the project from a source other than the power cost equalization and rural electric capitalization fund, as provided under (c) of this section.

(b) The authority may not allocate more than three percent of the balance in the fund to grants under this section in a fiscal year.

(c) In determining whether an eligible utility has secured financing for 25 percent of the cost of the project from a source other than the power cost equalization and rural electric capitalization fund, the authority shall accept solicited and unsolicited proposals for third party financing or for a joint venture between the utility and an entity from the private sector provided that the private sector participant has

- (1) a valid state business license;
- (2) a resolution or letter of agreement executed by the eligible utility agreeing to participation by the private sector participant;

(3) a business plan that illustrates how the proposed project will reduce the cost of generating or transmitting power to the customers of the utility.

(d) In this section,

(1) "eligible utility" has the meaning given in AS 42.45.150;

(2) "project" includes

(A) power generation systems;

(B) transmission systems;

(C) distribution systems;

(D) metering systems;

(E) energy store systems;

(F) energy conservation programs; and

(G) bulk fuel storage facilities;

(3) "small power project" means a new or modified project that will either generate, store, or conserve no more than 1.5 megawatts of power or provide a metering system, transmission system, distribution system, or bulk fuel storage facility that has an estimated cost of less than \$3,000,000. (§ 5 ch 18 SLA 1993)

Revisor's notes. — In 1999, in this section, "department" was changed to "authority" in accordance with § 91(b), ch. 58, SLA 1999.

Opinions of attorney general. — The department is not required to pursue annual appropriations

in order to disburse moneys in the southeast energy fund and the power cost equalization and rural electric capitalization fund once the legislature has capitalized those funds. September 27, 1995 Op. Att'y Gen.

Sec. 42.45.190. Definition for AS 42.45.100 — 42.45.190. In AS 42.45.100 — 42.45.190, "fund" means the power cost equalization and rural electric capitalization fund established under AS 42.45.100. (§ 5 ch 18 SLA 1993)

Article 4. Electrical Service Extension Fund.

Sec. 42.45.200. Electrical service extension fund established. [Repealed, § 12 ch 36 SLA 2004.]

Article 5. Bulk Fuel Revolving Loan Fund.

Section

250. Bulk fuel revolving loan fund

Sec. 42.45.250. Bulk fuel revolving loan fund. (a) The bulk fuel revolving loan fund is established in the authority to assist communities, utilities providing power in communities, and fuel retailers in communities in purchasing bulk fuel to generate power or supply the public with fuel for use in communities. A community, or a person generating power or selling fuel in a community who has written endorsement from the governing body of each community for which a loan from the fund is sought, is eligible for a loan from the bulk fuel revolving loan fund for a purchase of an emergency supply or a semiannual or annual supply of bulk fuel to be used in the community.

(b) Money in the fund may be used by the legislature to make appropriations for costs of administering this section.

(c) The foreclosure expense account is established as a special account within the bulk fuel revolving loan fund. This account is established as a reserve from fund equity.

(d) The authority may spend money credited to the foreclosure expense account when necessary to protect the state's security interest in collateral on loans made under this section or to defray expenses incurred during foreclosure proceedings after a default by an obligor.

(e) Loans made from the bulk fuel revolving loan fund to one borrower in any fiscal year

(1) may not exceed \$400,000, or, if the borrower is a cooperative corporation organized under AS 10.15 or an electric cooperative organized under AS 10.25 and uses the loan to purchase bulk fuel on behalf of more than one community, may not exceed the lesser of \$400,000 multiplied by the number of communities on whose behalf the bulk fuel is to be purchased, or \$1,500,000;

(2) shall be repaid in one year or less; and

(3) may not exceed 90 percent of the wholesale price of the fuel purchased.

(f) Interest may be charged on a loan made from the bulk fuel revolving loan fund. Interest shall be charged on a loan at a rate equal to the percentage of the average weekly yield of municipal bonds for the 12 months preceding the date of the loan, as determined by the authority from municipal bond yield rates reported in the 30-year revenue index of the Weekly Bond Buyer. However, if the authority finds that a community cannot afford to repay a portion of interest on a loan, and makes a determination in writing, the authority may reduce or eliminate the interest rate applicable to the loan.

(g) Repayments of the principal, the interest, and the money chargeable to principal or interest that is collected through liquidation by foreclosure or other process on a loan made under this section shall be paid into the bulk fuel revolving loan fund. The fund is not a dedicated fund.

(h) The authority may contract for the administration of the bulk fuel loan program established in this section.

(i) The authority shall dispose of property acquired through default or foreclosure of a loan made under this section. Disposal shall be made in a manner that serves the best interests of the state, and may include the amortization of payments over a period of years.

(j) The authority may adopt regulations necessary to carry out the provisions of this section, including regulations to establish reasonable fees for services provided and charges for collecting the fees.

(k) The authority may collect the fees and collection charges established under (j) of this section and shall deposit the money in the general fund.

(l) In this section,

(1) "community" means an organized municipality or an unincorporated village that is a social unit, with a population of less than 2,000 people.

(2) "person" has the meaning given in AS 01.10.060 and includes a corporation, a cooperative, a joint venture, and a governmental entity. (§ 5 ch 18 SLA 1993; am § 1 ch 121 SLA 2002; am § 8 ch 117 SLA 2003; am §§ 5 — 7, 11 ch 36 SLA 2004; am § 1 ch 78 SLA 2006)

Revisor's notes. — In 1999, in this section, "department" was changed to "authority" in accordance with § 91(b), ch. 58, SLA 1999.

In 2000, in subsection (k), "(j) of this section" was substituted for "(i) of this section" to correct a manifest error in ch. 18, SLA 1993. In 2004, former paragraph (l)(2) was renumbered as (l)(1) to reflect the 2004 repeal of former paragraph (l)(1); Paragraph (l)(2) was enacted as (l)(3) and renumbered in 2004.

Effect of amendments. — The 2002 amendment, effective July 6, 2002, substituted "\$200,000" for "\$100,000" in paragraph (e)(1).

The 2003 amendment, effective September 16, 2003, substituted "\$300,000" for "\$200,000" in paragraph (e)(1).

The 2004 amendment, effective June 4, 2004, re-wrote subsection (a), deleted "are not subject to AS 42.45.060 and" following "fiscal year" in the introductory language of subsection (e), repealed former paragraph (l)(1) defining bulk fuel storage facility, and added paragraph (l)(3) (now (l)(3)).

The 2006 amendment, effective September 17, 2006, substituted the present provisions of paragraph (e)(1) for "may not exceed \$300,000."

Editor's notes. — Section 14, ch. 36, SLA 2004, makes the 2004 amendment of (a) of this section and the addition of paragraph (3) [renumbered as paragraph (2)] to (l) of this section retroactive to June 1, 1984.

Article 6. Joint Action Agencies.

Section

300. Joint action agencies

310. Acquisition of power project

Section

320. Liability, indemnification, and insurance

Sec. 42.45.300. Joint action agencies. Two or more public utilities may form a joint action agency for the purpose of participation in the design, construction, operation, and maintenance of a generating or transmission facility and to secure financing for carrying out the design, construction, operation, and maintenance of the facility. A joint action agency may request the Alaska Industrial Development and Export Authority to issue revenue bonds for projects of the agency. A joint action agency has the powers of a public utility under AS 42.05. (§ 5 ch 18 SLA 1993)

Sec. 42.45.310. Acquisition of power project. (a) Two or more public utilities that purchase power from a power project acquired or constructed as part of the former energy program for Alaska and owned by the Alaska Energy Authority under AS 44.83.396 may form a joint action agency under AS 42.45.300 and under this section to purchase the power project from the Alaska Energy Authority if the purchase and sale of the project has first been authorized by law.

(b) The agency may

(1) acquire, own, operate, and manage one or more power projects or generating or transmission facilities; and

(2) participate in the design, development, construction, operation, and maintenance of a generating or transmission facility.

(c) The agency is a body corporate and politic and an instrumentality of the public utilities that form the agency, but has a separate and independent legal existence from the public utilities. A debt, obligation, or liability of the agency does not constitute a debt, obligation, or liability of a public utility or the state. A liability incurred by the agency shall be satisfied exclusively from the assets or revenue of the agency, and a creditor of the agency or any other person does not have any right of action or claim against a public utility or the state, because of a debt, obligation, or liability of the agency. The agency has the powers of a public utility under AS 42.05 and the immunities of a public utility. In addition to the powers granted to the agency under AS 42.45.300 and this section, the agency has the power

(1) to adopt bylaws of the agency;

(2) to sue and be sued;

(3) to carry out the authorized purposes of the agency;

(4) subject to (e) of this section, to issue revenue bonds and other obligations that are not obligations of either the state or the public utilities that are parties to the agency agreement to provide financing to carry out the authorized purposes of the agency;

(5) in addition to the powers of eminent domain in AS 42.05.631, to exercise the powers of eminent domain and a declaration of taking to acquire land or materials within the boundaries of the power project purchased by the agency from the Alaska Energy Authority under the procedures set out in AS 09.55.240 — 09.55.460 to carry out the authorized purposes of a joint action agency; and

(6) to use facilities, projects, and related assets owned, leased, or operated by the joint action agency as security in accordance with applicable law.

(d) The agency is created by a written agreement among the public utilities forming the agency. Each public utility forming the agency shall adopt the terms of the agreement by ordinance or resolution. After the public utilities that are parties to the agency agreement adopt and execute the agreement, the board of directors of the agency shall file the agency agreement with the Department of Commerce, Community, and Economic Development. Subject to (c) of this section, the agency agreement may define the powers, functions, and activities of the agency and specify the means by which they shall be performed. The agency agreement may establish the rights and responsibilities of the public utilities that form the agency. If applicable, the agency agreement must provide for

(1) apportionment between the public utilities that are parties to the agency agreement of responsibility for expenses incurred in the performance of the functions or activities;

(2) apportionment of fees or other revenue derived from the functions or activities and the manner in which the revenue shall be accounted for;

(3) the transfer of personnel and the preservation of employment benefits; and

(4) the rights of the public utilities that are parties to the agency agreement to terminate the agreement, subject to (e) of this section, including resolving disputes if the public utilities are unable, upon termination of the agency agreement, to agree on the transfer of personnel or the division of assets and liabilities between the parties to the agreement.

(e) The public utilities that are parties to the agency agreement shall pledge and agree with the holders of revenue bonds or other obligations issued by the agency, including with a state entity that provides financing to the agency, that the public utilities and the agency will not terminate the agency or take any other action that would limit or alter the rights and powers vested in the agency by this section to fulfill the terms of a contract made by the agency with the holders of the bonds or other obligations and that the public utilities and the agency will not in any way impair the rights and remedies of the holders until the bonds or other obligations, together with the interest on them with interest on unpaid installments of interest, and all costs and expenses in connection with an action or proceeding by or on behalf of the holders of the bonds or other obligations are fully met and discharged. The agency may include this pledge and agreement of the public utilities and the agency, insofar as it refers to holders of bonds and other obligations of the agency, in a contract with the holders and, insofar as it relates to a state entity, in a contract with the state entity.

(f) Bonds and other obligations issued by the agency and all interest and income from them and all fees, charges, funds, revenue, income, and other money pledged or available to pay or secure the payment of the bonds or obligations or interest on them are exempt from taxation. The real and personal property of the agency and the assets, income, and receipts of the agency are exempt from all taxes and special assessments of the state or a political subdivision of the state, except that electricity sold at retail by an agency is subject to the electric cooperative tax (AS 10.25.540 — 10.25.570).

(g) A loan to, investment in, or other financial assistance provided to the agency by the state or any political subdivision of the state does not constitute a violation of AS 37.10.085.

(h) An agency formed by, and that continues to include, one or more municipal public utilities is a political subdivision for purposes of AS 38.05.810, and functions as a political subdivision in the acquisition and ownership of the power project under the agreement authorized by this section. Except as provided in this subsection, the agency is not a political subdivision of the state.

(i) The agency may not sell a project owned by the agency to any purchaser without the approval of the legislature in advance of the effective date of the sale, except that a sale made to a public utility that is a party to the agreement does not require legislative approval.

(j) Notwithstanding (i) of this section, the project and related assets may be transferred in connection with a foreclosure or other enforcement of a lien or security interest to a party holding a lien or security interest acquired under (c)(6) of this section or to another party without legislative approval. A party obtaining a property interest under this subsection may transfer that interest without legislative approval.

(k) In this section,

(1) "agency" means a joint action agency formed under this section;

(2) "agency agreement" or "agreement" means the written agreement described in (d) of this section between or among the public utilities creating a joint action agency;

(3) "parties to the agency agreement" means those public utilities that initially form the agency and,

(A) in the event of a permitted withdrawal of a public utility from the agency in accordance with the terms of the agency agreement, those public utilities that remain parties to the agency agreement; and

(B) if authorized by law, includes an additional public utility that becomes a party to the agency agreement;

(4) "public utility" has the meaning given the term in AS 42.05.990;

(5) "state entity" means a state department, authority, or other administrative unit of the executive branch of state government. (§ 10 ch 60 SLA 2000; am §§ 5 — 12 ch 4 SLA 2001; am §§ 1 — 3 ch 100 SLA 2004)

Revisor's notes. — Subsections (i) and (j) were enacted as (j) and (k) and relettered in 2004, at which time former subsection (i) was redesignated subsection (k). The paragraphs in subsection (k) were renumbered in 2001 to alphabetize the defined terms.

In 2004, in (d) of this section, "Department of Community and Economic Development" was changed to "Department of Commerce, Community, and Economic Development", in accordance with § 3, ch. 47, SLA 2004.

Effect of amendments. — The 2001 amendment, effective June 25, 2001, rewrote subsections (c)-(f);

substituted "financial assistance" for "financial aid" in subsection (g); added paragraphs (i)(2) and (i)(3); and made stylistic changes in subsections (a), (g), and (h).

The 2004 amendment, effective June 26, 2004, added paragraph (c)(6), and made related changes; in subsection (h), added the language beginning "and functions as a political subdivision" through the end of the subsection; and added subsections (j) and (k) [now (i) and (j)].

Effective dates. — Section 21, ch. 60, SLA 2000 makes this section effective July 1, 2000.

Sec. 42.45.320. Liability, indemnification, and insurance. (a) A protected person is not individually liable for conduct performed within the scope of the person's duties for the agency. However, the protected person may be held individually liable for conduct if it was not reasonable for the person to believe that the conduct was in, or not contrary to, the best interests of the agency.

(b) Unless prohibited by the agency agreement, the agency shall indemnify a protected person who is or may be made a party to a contested matter arising out of acts or omissions within the scope of the person's duties for the agency against expenses actually and reasonably incurred in connection with the contested matter. However, the agency may not indemnify the protected person if the person did not reasonably believe the conduct to be in, or not opposed to, the best interests of the agency. With respect to a criminal action or proceeding, the agency shall indemnify a protected person unless the person had reasonable cause to believe that the conduct was unlawful.

(c) An agency may purchase and maintain insurance on behalf of a protected person against liability asserted against the protected person and incurred in an official capacity or arising out of the person's status.

(d) In this section,

(1) "agency" means a joint action agency formed under AS 42.45.310;

(2) "conduct" includes action, inaction, and omission;

(3) "contested matter" means a proposed, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative;

(4) "expenses" include attorney fees, judgments, fines, and amounts paid in settlement;

(5) "protected person" means a director, officer, employee, or agent of an agency. (§ 13 ch 4 SLA 2001)

Effective dates. — Section 13, ch. 4, SLA 2001, which enacted this section, took effect on June 25, 2001.

Article 7. Water-Power Development Projects.

Section

350. Licensing of water-power development projects

Effective dates. — Section 2, ch. 107, SLA 2002 makes this article effective January 31, 2003.

Sec. 42.45.350. Licensing of water-power development projects. (a) The Regulatory Commission of Alaska shall adopt regulations to establish a regulatory program for water-power development projects that qualify under this section.

(b) The regulatory program established under this section must

(1) protect the public interest, the purposes listed in (2) of this subsection, and the environment to the same extent provided by the requirements for licensing and regulation by the Federal Energy Regulatory Commission under 16 U.S.C. 792 — 823c and other applicable federal laws, including 16 U.S.C. 1531 et seq. (Endangered Species Act) and 16 U.S.C. 661 et seq. (Fish and Wildlife Coordination Act);

(2) give equal consideration to

(A) energy conservation;

(B) the protection of, mitigation of damage to, and enhancement of, fish and wildlife, including related spawning grounds and habitat;

(C) the protection of recreational opportunities;

(D) the preservation of other aspects of environmental quality;

(E) the interests of resident Alaska Natives;

(F) other beneficial public uses, including irrigation, flood control, water supply, navigation; and

(G) the interest of Alaska residents and landowners; and

(3) require, as a condition of a license for any qualifying project work,

(A) the construction, maintenance, and operation by a licensee at the licensee's own expense of the lights and signals that may be directed by the secretary of the department of the United States government in which the United States Coast Guard is operating and the fishways that are prescribed by the Secretary of the Interior or the Secretary of Commerce, as appropriate;

(B) the operation of any navigation facilities that may be constructed as part of any project to be controlled at all times by the reasonable rules and regulations that are adopted by the Secretary of the Army; and

(C) conditions for the protection of, mitigation of damage to, and enhancement of fish and wildlife based on recommendations received under 16 U.S.C. 661 et seq. (Fish and Wildlife Coordination Act) from the National Marine Fisheries Service, the United States Fish and Wildlife Service, and the state Department of Fish and Game.

(c) For purposes of this section, the term "qualifying project work" means a project work

(1) that is not part of a project licensed under 16 U.S.C. 792 — 823c or exempted from licensing under 16 U.S.C. 792 — 823c or under 16 U.S.C. 2705 (sec. 405 of the Public Utility Regulatory Policies Act of 1978) before November 9, 2000;

(2) for which a preliminary permit, a license application, or an application for an exemption from licensing has not been accepted for filing by the Federal Energy Regulatory Commission before November 9, 2000, unless the application is withdrawn at the election of the applicant;

(3) that is part of a project that has a power production capacity of 5,000 kilowatts or less;

(4) that is located entirely within the boundaries of the state; and

(5) that is not located in whole or in part on an Indian reservation, a conservation system unit as defined in 16 U.S.C. 3102 (sec. 102, Alaska National Interest Lands Conservation Act), or on a segment of a river designated for study for addition to the National Wild and Scenic Rivers System.

(d) In the case of nonqualifying project work that would be qualifying project work but for the fact that the project has been licensed or exempted from licensing by the Federal

Energy Regulatory Commission before November 9, 2000, the licensee of the project may elect to make the project subject to licensing and regulation by the state under this section.

(e) With respect to projects located in whole or in part on a reservation, a conservation system unit, or federal public land, a state license or exemption from licensing is subject to

(1) the approval of the secretary of the federal department having jurisdiction over those lands; and

(2) the conditions that the secretary may prescribe.

(f) The Regulatory Commission of Alaska shall notify the Federal Energy Regulatory Commission not later than 30 days after making any significant modification to its regulatory program under this section.

(g) In this section,

(1) "federal public land" means the land and interest in land owned by the United States that is subject to private appropriation and disposal under public land laws, but does not include a reservation;

(2) "licensee" means any person, state, or municipality licensed under the provisions of 16 U.S.C. 797 and any assignee or successor in interest of the licensee thereof;

(3) "project" means, notwithstanding the definition in AS 42.45.990, a complete unit of improvement or development, consisting of a power house, all water conduits, all dams and appurtenant works and structures, including navigation structures, that are a part of the unit, and all storage, diverting, or forebay reservoirs directly connected with the unit, the primary line or lines transmitting power from the unit to the point of junction with the distribution system or with the interconnected primary transmission system, all miscellaneous structures used and useful in connection with the unit or any part of the unit, and all water rights, rights-of-way, ditches, dams, reservoirs, land, or interests in land the use and occupancy of which are necessary or appropriate in the maintenance and operation of the unit;

(4) "project work" means the physical structure of a project;

(5) "reservation"

(A) means a national forest; tribal land embraced within an Indian reservation; a military reservation; other land and an interest in land owned by the United States and withdrawn, reserved, or withheld from private appropriation and disposal under the public land laws; and land and an interest in land acquired and held for any public purposes;

(B) does not include a national monument or national park. (§ 1 ch 107 SLA 2002)

Revisor's notes. — In 2002, in subsection (a), for "commission" to correct a manifest error in ch. 107, "Regulatory Commission of Alaska" was substituted SLA 2002.

Article 8. Miscellaneous Provisions.

Section

400. Assistance to rural utilities

410. Relationship with private sector

Sec. 42.45.400. Assistance to rural utilities. (a) The authority shall provide technical assistance to rural utilities including catastrophe prevention programs and other training programs for utility projects. The authority shall provide rural utilities with the technical assistance and training that the utilities need to improve the efficiency, safety, and reliability of their power systems and to prevent emergency situations from developing. At a minimum, the assistance and training must include information on

(1) reducing distribution line losses;

(2) installation of generators that are more fuel efficient;

(3) preventative maintenance programs;

- (4) safety inspections;
- (5) installing and maintaining waste heat systems;
- (6) improved metering systems;
- (7) improved management and administration; and
- (8) coordinating regional activities, including circuit rider maintenance programs.

(b) In providing rural utilities with technical assistance and training, the authority shall give priority to contracting with the private sector for these services.

(c) This section does not create a duty in tort, and may not be the basis for an action against the state, the authority, or the officers, employees, agents, or contractors of either for damages, injury, or death. (§ 5 ch 18 SLA 1993; am § 8 ch 36 SLA 2004)

Revisor's notes. — In 1999, in this section, “department” was changed to “authority” in accordance with § 91(b), ch. 58, SLA 1999.

Effect of amendments. — The 2004 amendment, effective June 4, 2004, added subsection (c).

Sec. 42.45.410. Relationship with private sector. The authority shall, to the maximum extent feasible, carry out its powers and duties under this chapter by entering into contracts with appropriate entities in the private sector. (§ 5 ch 18 SLA 1993)

Revisor's notes. — In 1999, in this section, “department” was changed to “authority” in accordance with § 91(b), ch. 58, SLA 1999.

Article 9. General Provisions.

Section

990. Definitions

Sec. 42.45.990. Definitions. In this chapter, unless the context otherwise requires,

(1) “authority” means the Alaska Energy Authority.

(2) “feasibility study”

(A) means a study conducted to establish the economic and environmental practicality of completing a proposed power project;

(B) includes engineering and design work to meet the requirements for submission of a license application for a proposed new project to the Federal Energy Regulatory Commission;

(3) “power” includes electrical energy generated, distributed, bought, or sold for lighting, heating, power, and every other useful purpose;

(4) “power project” or “project” means a plant, works, system, or facility, together with related or necessary facilities and appurtenances, including a divided or undivided interest in or a right to the capacity of a power project or project, that is used or is useful for the purpose of

(A) electrical or thermal energy production other than nuclear energy production;

(B) waste energy utilization and energy conservation; or

(C) transmission, purchase, sale, exchange, and interchange of electrical or thermal energy, including district heating or interties;

(5) “reconnaissance study” means a study conducted to assess the present and future electrical and thermal energy needs of an area. (§ 5 ch 18 SLA 1993; am §§ 49, 84 ch 58 SLA 1999)

Revisor's notes. — Paragraph (1) was enacted as (6). Renumbered in 1999.

effective July 1, 1999, added present paragraph (1) and repealed former paragraph (1).

Effect of amendments. — The 1999 amendment,