

STATE OF ALASKA

WC/10-101OK

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT1100 MACKAY BUILDING
338 DENALI STREET
ANCHORAGE, ALASKA 99501

RECEIVED ALASKA PUBLIC UTILITIES COMMISSION

MAR 20 1978

March 8 1978 DOCKET FILE COPY ORIGINAL

CHIEF, COMMON CARRIER BUREAU

Mr. William J. Tricarico
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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MAIL BRANCH

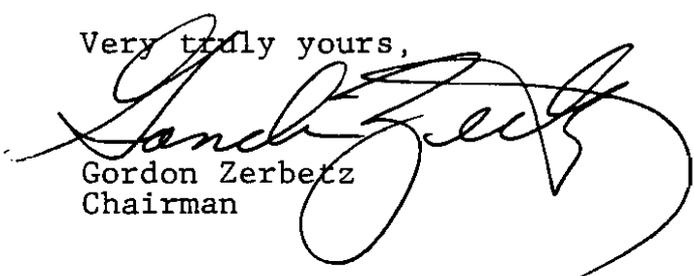
Dear Mr. Tricarico:

The Alaska Public Utilities Commission hereby certifies that: 1) it regulates the rates, terms, and conditions for pole attachments by a cable television system to a pole, duct, conduit, or right-of-way owned or controlled by a utility; and 2) in so regulating such rates, terms, and conditions, it has the authority to consider and does consider the interests of the subscribers of cable television services, as well as the interests of the consumers of the utility services. This certification is provided under Section 224(c)(2) of the Communications Act of 1934, as amended by H. R. 7442.

Unless the Alaska Public Utilities Commission receives notification to the contrary, it will assume that this letter properly qualifies it under Section 224(c)(2) to preempt jurisdiction by the Federal Communications Commission with respect to rates, terms and conditions for pole attachments.

Thank you for your attention to this matter.

Very truly yours,



Gordon Zerbetz
Chairman

GZ:lin

cc: Paul Rodgers
General Counsel, NARUC

3 AAC 48 is amended by adding a new Article 6 as follows:

CHAPTER 48.
PRACTICE AND PROCEDURE

ARTICLE 6.
COST-OF-SERVICE STUDY AND RATE DESIGN
INFORMATION FOR ELECTRIC UTILITIES

Section

- 500. Application and purpose.
- 510. Pricing objectives.
- 520. Costs as basis for rates.
- 530. Cost measures.
- 540. Cost-of-service methods.
- 550. Rate design.
- 560. Related activities.

3 AAC 48.500. APPLICATION AND PURPOSE. (a) 3 AAC 48.500 -- 3 AAC 48.560 apply to all electric utilities subject to the regulatory jurisdiction of the commission under AS 42.-05.361 -- AS 42.05.441.

(b) The purpose of 3 AAC 48.500 -- 3 AAC 48.560 is to set out standard guidelines for cost-of-service methodology and pricing objectives for use by regulated electric utilities in preparation of cost-of-service studies, rate design, and related activity filings. (Eff. __/__/__, Register __)

Authority: AS 42.05.141
AS 42.05.151
AS 42.05.361
AS 42.05.381
AS 42.05.391
AS 42.05.451
AS 42.05.691
AS 42.05.720

3 AAC 48.510. PRICING OBJECTIVES. (a) The primary objectives for the pricing of electricity are:

- (1) the cost causer should be the cost payer objective;
- (2) the revenue requirement or utility financial need objective;
- (3) the equity objective which includes the fair-cost apportionment of revenue requirement among customer classes;
- (4) the conservation objective; and
- (5) the optimal use objective which includes considerations of efficiency.

Register , 1984 COMMERCE AND 3 AAC 48.520
ECONOMIC DEVELOPMENT 3 AAC 48.540

(b) The commission will, in its discretion, consider other pricing objectives on a case-by-case basis. (Eff. ___/___/___, Register ___)

Authority: AS 42.05.141
AS 42.05.151
AS 42.05.361
AS 42.05.381
AS 42.05.391
AS 42.05.691

3 AAC 48.520. COSTS AS BASIS FOR RATES. The fundamental basis for establishing rates in order to meet pricing objectives is costs. The commission will, in its discretion, for appropriate reasons, consider noncost standards in establishing electricity rates. (Eff. ___/___/___, Register ___)

Authority: AS 42.05.141
AS 42.05.151
AS 42.05.361
AS 42.05.381
AS 42.05.391

3 AAC 48.530. COST MEASURES. Accounting (embedded or fully distributed) costs are the primary basis for designing electricity rates. The commission will, in its discretion, upon an appropriate evidentiary basis, consider marginal (incremental) costs in designing electricity rates. (Eff. ___/___/___, Register ___)

Authority: AS 42.05.141
AS 42.05.151
AS 42.05.361
AS 42.05.381
AS 42.05.391

3 AAC 48.540. COST-OF-SERVICE METHODS. (a) Each electric utility that sells 100,000,000 kilowatt-hours or more annually shall submit an accounting cost-of-service study in each rate case in conformance with (c)-(h) of this section.

(b) Each electric utility that sells less than 100,000,000 kilowatt-hours annually shall submit an accounting cost-of-service study when proposing new rate designs or upon reasonable notice by the commission in conformance with (c)-(h) of this section.

(c) Each electric utility shall use the general framework developed in the NARUC Electric Utility Cost Allocation Manual (1973) as the foundation for conducting an accounting cost-of-service study. This framework consists of the following primary components or steps:

(1) costs are functionalized as production, transmission, or distribution;

(2) functionalized costs are subdivided or classified into demand, energy, or customer costs; and

(3) functionalized and classified costs are finally allocated to rate (customer) classes.

(d) Each electric utility shall use customer demand and energy usage characteristics as the method for establishing rate classes for the customers it serves. Residential, small commercial, large commercial, and street lighting are the preferred classification titles for reflecting classes with homogeneous load characteristics. However, the commission will, in its discretion, consider alternative classifications provided that appropriate justification based on load research and consumer bill impact analysis is presented.

(e) In a cost-of-service study required by this section, demand capacity costs will be considered as follows:

(1) Each electric utility that sells 100,000,000 kilowatt-hours or more annually shall provide cost-of-service analyses that show the impact of

(A) allocating demand-related generation and transmission costs to rate classes on the basis of both the peak responsibility method and the average and excess method; and

(B) allocating demand-related distribution costs on the basis of the noncoincident peak method.

(2) Each electric utility that sells less than 100,000,000 kilowatt-hours annually shall provide cost-of-service analyses that show the impact of

(A) allocating demand-related generation and transmission costs to rate classes on the basis of the peak responsibility method; and

(B) allocating demand-related distribution costs on the basis of the noncoincident peak method.

(3) In addition to the methods required by this section, each electric utility may present to the commission additional analyses with appropriate justification which show the impact of using other methods to allocate demand costs.

(f) In a cost-of-service study required by this section, customer costs will be considered as follows:

(1) Customer costs may include

(A) carrying costs associated with service lines (from the transformer to the meter), meters, and installations on customer premises; and

(B) meter reading expense, customer installation expense, meter maintenance, and customer accounting and billing expense.

(2) Customer costs may not include

(A) any portion of the distribution system (facilities) costs, which will be considered and classified as demand-related costs;

(B) any portion of the transmission system; or

(C) any portion of the generation system.

(g) Except as noted in (e) and (f) of this section, where the NARUC Electric Utility Cost Allocation Manual (1973) allows for the use of two or more approaches in addressing a cost-of-service issue, an electric utility shall provide explanation and justification for the use of its selected approach.

(h) Each electric utility shall state the unit customer, energy, and demand (if applicable) cost components for each customer class for each cost-of-service study which is submitted. (Eff. __/__/__, Register __)

Authority: AS 42.05.141
AS 42.05.151
AS 42.05.361
AS 42.05.381
AS 42.05.391
AS 42.05.691

Editor's Note: NARUC = National Association of Regulatory Utility Commissioners. A copy of the NARUC Electric Utility Cost Allocation Manual is available for inspection at the offices of the Alaska Public Utilities Commission, 420 L Street, Suite 100, Anchorage, Alaska.

3 AAC 48.550. RATE DESIGN. (a) The customer or fixed charge may recover only those customer costs defined in 3 AAC 48.540(f)(1)(A)-(B). However, the commission will, in its discretion, consider requests to increase or decrease the fixed charge when the electric utility or any other party submits to the commission appropriate justification and analysis which relates to its pricing objectives.

(b) Each electric utility shall use flat rates as the standard rate form for all customer classes. However, the commission will, in its discretion, upon submission of appropriate justification and analysis, including load research data, approve an alternative rate form.

(c) An electric utility may recover demand costs through rates as follows:

(1) Each electric utility shall implement a three-part rate (customer charge, demand charge, and energy charge) at a minimum to all customers consuming in excess of 7,500 kilowatt-hours per month or with a maximum demand of 20 kilowatts per month for three consecutive months; or

(2) In the absence of a separate demand charge as provided for under (c)(1) of this section, demand costs are recoverable through the energy charge.

(3) Conditions for use of seasonal rates by an electric utility are as follows:

(1) Each electric utility shall implement seasonal rates where the rates are demonstrated to be cost-justified and cost-beneficial for the utility system; and

(2) Each electric utility that sells 100,000,000 kilowatt-hours or more annually shall provide, upon reasonable

notice by the commission, appropriate cost-of-service analysis and cost-benefit analysis that address the reasonableness of implementing seasonal rates.

(e) Based on its cost-of-service analysis in conformance with 3 AAC 48.540(c)-(h), each electric utility shall submit its preferred or recommended rates for all customer classes.

(f) The recommended or preferred rates submitted by an electric utility in compliance with (e) of this section must be accompanied by the following:

(1) a comparison or summary of existing and proposed new rates for each customer class; and

(2) a customer bill impact analysis which illustrates the percentage impact of the proposed rates at various levels of customer usage.

(g) Each electric utility shall design and, upon approval of the commission, distribute informative and understandable customer bills. Customer bills must, at a minimum, separately identify the following information for the billing period: customer charge; total kilowatt-hour consumption and associated energy charge(s); monthly kilowatt maximum demand and associated demand charge(s); and the energy surcharge, if appropriate. Where billing is based upon an estimate, the customer bill must reflect this information. (Eff. __/__/__, Register __)

Authority: AS 42.05.141
AS 42.05.151
AS 42.05.361
AS 42.05.381
AS 42.05.391
AS 42.05.691

3 AAC 48.560. RELATED ACTIVITIES. (a) Each electric utility shall develop and implement customer education and information programs for existing and new rate designs.

(b) Each electric utility which sells 100,000,000 kilowatt-hours or more annually shall develop and conduct load research activities for all customer classes in conformance with guidelines promulgated by the commission. (Eff. __/__/__, Register __)

Authority: AS 42.05.141
AS 42.05.151
AS 42.05.691

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

ALASKA PUBLIC UTILITIES COMMISSION DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

420 "L" STREET
SUITE 100
ANCHORAGE, ALASKA 99501
(907) 276-6222

February 25, 1985

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MAR 4 1985

ENFORCEMENT, DIVISION

Margaret Wood, Esq.
Federal Communications
Commission
Room 6206 1919 M Street, N.W.
Washington, D.C. 20554

Re: Certification of Pole Attachment Jurisdiction
by Alaska Public Utilities Commission

Dear Ms. Wood:

This letter is in response to your recent telephone conversation with Commissioner Louis Agi regarding the Alaska Public Utilities Commission's statutes and regulations applicable for resolving disputes concerning pole attachments.

The pertinent sections of the Alaska Statutes that address the Commission's authority to regulate pole attachments are AS 42.-05.321 and AS 42.05.311.

AS 42.05.311, in part, provides that a public utility having poles or pole lines shall for a reasonable compensation, permit another public utility to use them when the public convenience and necessity requires 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.

AS 42.05.321 provides that in the case of failure to agree upon the joint use or interconnection of facilities or the conditions or compensation for joint use or interconnection, the public utility may apply to the Commission for an Order requiring the interconnection. If the Commission finds that the requirements specified in AS 42.05.311 are met, the Commission will require the joint use and specify the terms and conditions.

Requests for an Order to allow the joint use of facilities are considered as formal complaints. The procedure for filing and processing formal complaints is delineated in 3 AAC 48.130 of the Alaska Administrative Code. 3 AAC 48.130, in part, provides that

Margaret Wood, Esq.
February 25, 1985
Page 2

an answer to a complaint shall be filed 20 days from the date the complaint is filed with the Commission and, if the complaint has not been resolved within the 20 days, the Commission will set the matter for hearing.

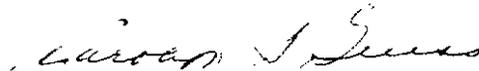
While neither the statutes nor regulations of the Commission purport to limit the time within which the Commission must decide any matter brought before it, any party to a proceeding may always seek judicial relief if our decision is unreasonably delayed and six months is a presumptively reasonable period for a solution of a pole attachment problem. Moreover, as CATV systems are public utilities under our law (see AS 42.05.720), resolution of any pole attachment dispute will necessarily consider the interest of the CATV customers.

Accordingly, I certify that the Alaska Public Utilities Commission has asserted sufficient jurisdiction over the subject of pole attachment matters to bring it in compliance with Section 224(c) of the Communications Act, as amended.

Enclosed for your information are current copies of AS 42.05 and 3 AAC 48.

Thank you for your assistance and if you have any further questions, do not hesitate to contact us.

Very truly yours,



Carolyn S. Guess
Chairman

Enclosures

ALASKA STATUTES

TITLE 42. PUBLIC UTILITIES and CARRIERS

Chapter 05. Alaska Public Utilities Commission Act

Alaska Public Utilities Commission
420 L Street, Suite 100
Anchorage, Alaska 99501

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NOTICE OF PROPOSED CHANGES IN THE REGULATIONS
OF THE ALASKA PUBLIC UTILITIES COMMISSION

Notice is given that the Alaska Public Utilities Commis-
sion, under authority vested by AS 42.05.151, AS 42.05.311, and
AS 42.05.321, proposes to adopt regulations in Title 03 of the
Alaska Administrative Code, dealing with joint use of electric
and telephone utility equipment and facilities by cable televi-
sion (CATV) utilities*, as follows:

The proposed regulations would add a new Article 5 to
3 AAC 52 relating to CATV joint use of electrical and
telephone utility facilities. The sections are made
applicable to all electric, telephone, and CATV utili-
ties in the state, regardless of whether the utilities
are regulated or exempt from the Commission's general
regulatory powers. The proposed regulations encourage
the affected utilities to agree to terms for joint use,
and indicate that the Commission will generally not ex-
ercise its authority to order joint use and determine
the terms of joint use, as long as the utilities appear
to be acting consistent with the policies underlying AS
42.05. If the Commission sets rates for joint use of
utility-owned poles or conduits, the rates will equal
the additional costs of modifications or additions
necessitated by the joint use, and an annual rate equal
to the total cost of a pole or conduit multiplied by the
ratio of the space occupied by the CATV facilities to
the total usable space on the pole or in the conduit.

Unless the utilities submit studies indicating that
other figures are appropriate, the Commission will pre-
sume that the occupied space for a CATV pole attachment
is one foot, and that the total usable space on a pole
is 13.5 feet. The Commission will consider the follow-
ing elements of cost to the owning utility: deprecia-
tion, taxes, return on investment, maintenance, and ad-
ministrative expense. The owning utility's cost cal-
culation shall be based on the investment in its pole or
conduit accounts, divided by the number of poles or the
number of feet of conduit in service.

The regulations also set out a procedure for resolving
joint-use disputes and require final resolution within
360 days of the filing of a complaint.

*Department of Law, File No. 399-026-86: Commission Docket
No. R-85-002.

Notice is also given that any person interested may present written statements or arguments regarding the proposed action to the Alaska Public Utilities Commission, 420 L Street, Suite 100, Anchorage, Alaska 99501. To be considered, the written statements or arguments must be received before June 30, 1987.

This action is not expected to require an increased appropriation.

Copies of the proposed regulations may be obtained by writing to the Alaska Public Utilities Commission, 420 L Street, Suite 100, Anchorage, Alaska 99501, or may be obtained from the Commission at that address.

The Alaska Public Utilities Commission, upon its own motion or the request of any interested person, may, after the deadline stated above, adopt the proposed regulations, adopt the proposed regulations with changes, or may decide to take no action on the proposed regulations. The regulations actually adopted may apply a different methodology or may include specific terms different than those in the proposed regulations.

DATED at Anchorage, Alaska, this 9th day of May, 1987.



T. S. Moninski II
Executive Director

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Alaska Statutes

Title 42. Public Utilities and Carriers.

Chapter

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

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

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

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

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

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

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

Chapter 05. Alaska Public Utilities Commission Act.

Article

1. Establishment of Public Utilities Commission (§§ 42.05.010 — 42.05.131)
2. Powers and Duties of the Commission (§§ 42.05.141 — 42.05.211)
3. Certificate of Public Convenience and Necessity (§§ 42.05.221 — 42.05.241)
4. Services and Facilities (§§ 42.05.291 — 42.05.351)
5. Rates and Rate Schedules (§§ 42.05.361 — 42.05.441)
6. Accounts, Records and Reports (§§ 42.05.461 — 42.05.501)
7. Financial and Management Regulation (§§ 42.05.511 — 42.05.531)
8. Judicial Review, Penalties and Enforcement (§§ 42.05.541 — 42.05.621)
9. Miscellaneous Provisions (§§ 42.05.631 — 42.05.691)
10. General Provisions (§§ 42.05.711 — 42.05.721)

Article 1. Establishment of Public Utilities Commission.

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

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

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

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

NOTES TO DECISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 42.05.081. Oath of office. Each commissioner and the executive director of the commission, before entering upon the duties of their respective offices, shall take and subscribe to the oath prescribed for principal officers of the state. (§ 6 ch 113 SLA 1970)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 ALASKA R.S. 4-32-308C

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

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

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

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

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

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

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

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

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

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

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

Article 2. Powers and Duties of the Commission.

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

§ 42.05.141 PUBLIC UTILITIES AND CARRIERS § 42.05.141

Section

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

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

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

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

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

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

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

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

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

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

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

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

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

Editor's notes. — Section 51, ch. 83, SLA 1980, which provided for the repeal of subsections (b) and (c) effective July 1, **Opinions of attorney general.** — Where public utility company entered into contract to sell natural gas to federal mili-

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

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

NOTES TO DECISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Public regulation of nuclear power plants. 82 ALR3d 751.

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

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

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

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

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

NOTES TO DECISIONS

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

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

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

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

NOTES TO DECISIONS

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

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

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

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

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

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

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

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

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

NOTES TO DECISIONS

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

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

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

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

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

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

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

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

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

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

Article 3. Certificate of Public Convenience and Necessity.

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

Collateral references. — 73 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 after January 1, 1971 without first having obtained from the commission under this chapter a certificate declaring that public convenience and necessity require or will require the service. Where a public utility provides more than one type of utility service, a separate certificate of convenience and necessity is required for each type. A certificate shall describe the nature and extent of the authority granted in it, including, as appropriate for the services involved, a description of the authorized area and scope of operations of the public utility.

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

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

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

(1) delineate the service area boundaries of each in those areas of competition;

(2) eliminate existing duplication and paralleling to the fullest reasonable extent;

(3) preclude future duplication and paralleling;

(4) provide for the exchange of customers and facilities for the purposes of providing better public service and of eliminating duplication and paralleling; and

(5) provide such other mutually equitable arrangements as would be in the public interest.

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

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

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

NOTES TO DECISIONS

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

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

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

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

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

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

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

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

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

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

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

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