

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 [Repealed, § 5 ch 113 SLA 1970.]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. 42.05.330. [Repealed, § 5 ch 113 SLA 1970.]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 [Repealed, § 5 ch 113 SLA 1970.]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 which 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 [Repealed, § 5 ch 113 SLA 1970.]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 commerce and economic development may assign the examination and testing function to the section of weights and measures. Upon the payment of a reasonable fee established by the commission, a consumer may have the appliance, which 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)

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 [Repealed, § 5 ch 113 SLA 1970.]

Article 5. Rates and Rate Schedules.

Section	Section
361. Tariffs, contracts, filing and public inspection	391. Discrimination in rates
365. Interest on deposits	401. Apportionment of joint rates
371. Adherence to tariffs	411. New or revised tariffs
381. Rates to be just and reasonable	421. Suspension of tariff filing
385. Charges for water and sewer line extensions	431. Power of commission to fix rates
	441. Valuation of property of a public utility

Collateral references. — 64 Am. Jur. 2d, Public Utilities, §§ 240 — 245.

73B C.J.S., Public Utilities, §§ 13 — 30, 41.

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)

Effect of amendments. — The 1986 amendment in subsection (c) in the first sentence made a minor stylistic change and deleted "or which is not consistent with this chapter or the regulations of the commission" at the end of the sentence and added the last two sentences.

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 negotia-

tions, 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. Atty 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. Atty Gen.

NOTES TO DECISIONS

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

Collateral references. — Excessive-
ness of rates filed and published by carrier
pursuant to law, right to maintain action
against carrier on ground of. 97 ALR 420.

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

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

Collateral references. — Necessity of
filing rates for services which carrier is
not bound to render as common carrier. 19
ALR 982.

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 setting a range for adjustment of rates by a simplified rate filing procedure. A cooperative 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 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. (§ 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)

Effect of amendments. — The 1986 amendment added subsection (e).

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).

Lobbying expenses excluded from revenue requirement. — The commis-

sion 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, Pub. Utils. Comm'n*, 756 P.2d 874 (Alaska 1988).

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

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 includable in utility's rate base and operating expenses in rate proceeding. 16 ALR4th 454.

Injunctions — rates: validity, construction, and application of Johnson Act (29 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) 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)

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 rea-

sonableness 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 Commission. 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 Communications, Inc.*, 597 P.2d 489 (Alaska 1979).

Stated in *Alaska Pub. Util. 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

(1) an initial period not longer than six months beyond the time when it would otherwise go into effect if the annual gross revenues of the utility making the filing are more than \$3,000,000; and

(2) not longer than 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)

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. Util. 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 confisca-

tory, 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. Util. 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 allocation 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).

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).

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, re-generation, 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, are not subject to review or approval by the commission until all long-term debt incurred for the project 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. (§ 6 ch 113 SLA 1970; am §§ 4, 5 ch 104 SLA 1986; am §§ 1, 2 ch 11 SLA 1988)

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

Effect of amendments. — The 1986 amendment added the last four sentences of subsection (a) and added subsection (b).

The 1988 amendment, effective March 12, 1988, added subsections (c) — (e).

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 CSIB 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).

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).

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).

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 ap-

proval 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).

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).

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).

Collateral references. — State regulation of rates to consumers of gas or electricity transported across state lines for light or power purposes. 7 ALR 1094.

Power of state to fix a minimum public utility rate. 68 ALR 1002.

Municipally owned or operated public utility, power of state or public service commission to regulate rates of. 76 ALR 851; 127 ALR 94.

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 per cent 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 Communications, Inc.*, 597 P.2d 489 (Alaska 1979).

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

Article 6. Accounts, Records and Reports.

Section

- 451. System of accounts and reports
- 461. Continuing property records
- 471. Depreciation rates, initial losses and accounts
- 481. Subsidiary business accounts

Section

- 491. Records and accounts to be kept in state
- 501. Inspection of books and records by commission

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, showing the current location of the property units by definite reference to the specific land parcels upon which the units are located or stored. The commission may require a public utility to keep accounts and records in such a manner as to show, currently, the original cost

of the property when first devoted to the public service, and the related reserve for depreciation. A public utility with annual revenues exceeding \$100,000 shall keep continuing property records. (§ 6 ch 113 SLA 1970)

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

Sec. 42.05.471. Depreciation rates, initial losses 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 by commission. 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. (§ 6 ch 113 SLA 1970)

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

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

Article 7. Financial and Management Regulation.

<p>Section 511. Unreasonable management practices</p>	<p>Section 521. Impaired capital 531. Distribution of surplus and profits</p>
--	--

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 between utilities and the Alaska Power Authority, see AS 42.05.431(c) — (e).

NOTES TO DECISIONS

Quoted in Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, 579 P.2d 1071 (Alaska 1978). Applied in Glacier State Tel. Co. v. Alaska Pub. Utils. Comm'n, 724 P.2d 1187 (Alaska 1986).

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 public utilities shall be distributed in accordance with the bylaws or ordinances controlling the utility. (§ 6 ch 113 SLA 1970)

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

Article 8. Judicial Review, Penalties and Enforcement.

<p>Section 541. Effect of regulations 551. Review and enforcement 561. Injunctive and monetary sanctions 571. Civil penalties</p>	<p>Section 581. Each violation a separate offense 601. Actions to recover penalties; disposition 611. Penalties cumulative</p>
---	--

Section

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).

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 Anchorage, 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).

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

Sec. 42.05.561. Injunctive 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 which may be assessed for each 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. (§ 6 ch 113 SLA 1970)

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 9. Miscellaneous Provisions.

Section	Section
631. Eminent domain	671. Public records
641. Regulation by municipality	681. Validity of certain certificates
651. Expenses of investigation or hearing	691. Utility classes
661. Application fees	

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 con-

demnation is sought. 19 ALR4th 1026.

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

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 city or borough, 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)

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 of Juneau, 613 P.2d 616 (Alaska 1980).

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) After completion of a hearing or investigation held under this chapter, the commission shall 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 may consider the results, ability to pay, evidence of good faith, other relevant factors and mitigating circumstances. 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) The commissioner of administration shall separately account for investigation and hearing costs collected under this section that the commission deposits in the general fund. The annual estimated balance in the account may be used by the legislature to make appropriations to the commission to carry out the purposes of this section. (§ 6 ch 113 SLA 1970; am § 63 ch 138 SLA 1986)

Effect of amendments. — The 1986 amendment added subsection (b).

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 inter-

ested 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

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, Pub. Utils. Comm'n*, 756 P.2d 874 (Alaska 1988).

Considerations insufficient to sup-

port 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, 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 of \$50 which shall be deposited in the general fund of the state. (§ 6 ch 113 SLA 1970)

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 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)

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 & Wire Communications, Inc.*, 611 P.2d 493 (Alaska 1980).

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 & Wire Communications, Inc.*, 611 P.2d 493 (Alaska 1980).

Due process controls over section. — The requirement of this section that

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)

Article 10. General Provisions.

Section
711. Exemptions
712. Deregulation ballot

Section
720. Definitions
721. Short title

Sec. 42.05.701. Renumbered. [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, 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.

(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, on a finding that no legitimate public interest will be served, may exempt a utility from all or any portion of this chapter.

(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 25 percent of the subscribers petition the commission for regulation.

(f) Notwithstanding any other provisions of this chapter, an electric or telephone utility that does not gross \$325,000 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 \$100,000 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 which furnishes collection and disposal service of garbage, refuse, trash, or other waste material and has annual gross revenues of \$200,000 or less is exempt from the provisions of this chapter, other than the certification provisions of AS 42.05.221 — 42.05.281, unless 25 percent of the subscribers or subscribers representing 25 percent of the gross revenue of the utility petition the commission for regulation.

(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 which furnishes cable television service is exempt from the provisions of this chapter other than AS 42.05.221 — 42.05.281