

## Chapter 42.06. PIPELINE ACT

*Sec. 42.06.010. - 42.06.120l Legislative policy; Alaska Pipeline Commission. [Repealed, Sec. 20 ch 110 SLA 1981].*

Repealed or Renumbered

*Sec. 42.06.130. [Renumbered as AS 42.06.605].*

Repealed or Renumbered

### Article 01. POWERS AND DUTIES OF REGULATORY COMMISSION OF ALASKA

Sec. 42.06.055. Commission decision-making procedures.

The commission shall comply with AS 42.04.080 for matters that come before the commission for decision.

Sec. 42.06.140. General powers and duties.

(a) The commission

(1) shall regulate pipelines and pipeline carriers in the state;

(2) may investigate upon complaint or its own motion, the rates, classifications, rules, regulations, prices, services, practices, and facilities of pipeline carriers, and the performance of obligations under and compliance with the terms of leases issued by the state;

(3) may make, prescribe, or require just, fair, and reasonable rates, classifications, regulations, practices, services, and facilities for pipeline carriers;

(4) may require pipeline carriers and affiliated interests to file with the commission reports and other information and data required or permitted to be required by other provisions of this chapter;

(5) may adopt regulations that are necessary and proper to the performance of its duties under this chapter, including regulations governing practices and procedures of the commission; the regulations may not be inconsistent with state law;

(6) shall during normal business hours have access to and may designate any of its employees, agents, or consultants to inspect and examine the accounts, financial and property records, books, maps, inventories, appraisals, valuations, and related reports kept by a pipeline carrier, or kept for it by others, that directly affect the interests of the state and directly relate to pipelines located in the state;

(7) may initiate, intervene in, and appear personally or by counsel and offer evidence in and participate in, any proceedings involving a pipeline carrier, and affecting the interests of the state, before any officer, department, board, commission, or court of this state;

(8) shall require permits for the construction, enlargement in size or operating capacity, extension, connection and interconnection, operation or abandonment of any oil or gas pipeline facility or facilities, subject to necessary and reasonable terms, conditions and limitations;

(9) may prescribe the system of accounts and regulate the service of an oil or gas pipeline facility;

(10) shall provide all reasonable assistance to the Department of Law in intervening in, offering evidence in, and participating in proceedings involving a pipeline carrier or affiliated interest and affecting the interests of the state, before an officer, department, board, commission, or court of another state or the United States.

(b) The commission may assign a qualified, unbiased, and impartial administrative law judge, with experience in the general practice of law, to conduct hearings under this chapter. The administrative law judge may perform other duties in connection with the administration of this chapter and other laws. An administrative law judge hired to conduct hearings under this chapter shall have been admitted to practice law for at least five years immediately before appointment under this subsection.

Sec. 42.06.150. Powers and duties with respect to federally regulated carriers.

AS 42.06.140 applies to oil and gas pipeline carriers regulated under federal law only to the extent not preempted by federal law.

*Sec. 42.06.160. - 42.06.2001 Administrative authority and procedures. [Repealed, Sec. 20 ch 110 SLA 1981].*

Repealed or Renumbered

Sec. 42.06.210. Publication of reports, orders, decisions, and regulations.

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

Sec. 42.06.220. Annual report.

The commission shall, by February 15 of each year, publish an annual report reviewing its work and notify the legislature that the report is available. The report must contain information and data that bear a significant relationship to the development and regulation of oil or gas pipeline facilities in the state and include an outline of the commission's program for the development and regulation of oil or gas pipeline facilities in the forthcoming year.

Sec. 42.06.230. Jurisdiction of commission.

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

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

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

(2) the intrastate transportation of North Slope natural gas through a North Slope natural gas pipeline.

## Article 02. CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Sec. 42.06.240. Certificate required; special requirements for North Slope natural gas.

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

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

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

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

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

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

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

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

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

(A) for purposes of evaluating the total volume of intrastate transportation of North Slope natural gas to be accepted for initial intrastate transportation, the commission shall determine total volume based

upon written commitments to tender North Slope natural gas for intrastate firm transportation service continuously for a period of not less than three years after the operation of the North Slope natural gas pipeline commences as follows:

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

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

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

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

(4) if the North Slope natural gas pipeline carrier wants to transport North Slope natural gas within the state in excess of the amount set out in the statement of total volume in the pipeline carrier's certificate of public convenience and necessity, the pipeline carrier may apply for authority to transport a greater volume of North Slope natural gas within the state than the carrier is required by the commission to transport in its order entered under (3)(B) of this subsection; the commission shall grant the authority requested by the pipeline carrier if the commission determines that the pipeline carrier's transportation of a greater volume is consistent with public convenience and necessity.

Sec. 42.06.245. Federally regulated carriers.

The requirements of this chapter pertaining to permits and certificates of public convenience and necessity do not apply to the construction of a pipeline facility exclusively subject to federal jurisdiction or to the interstate portion of the business of a pipeline or pipeline carrier exclusively subject to federal jurisdiction. However, the requirements of this chapter for permits and certificates of public convenience and necessity do apply to all the intrastate portion of the business of a pipeline or pipeline carrier subject to federal jurisdiction whenever it engages in intrastate commerce. However, nothing limits the powers of the commission set out in this chapter except to the extent they are preempted by federal law.

Sec. 42.06.250. Application.

Application for a certificate shall be made in writing to the commission, verified under oath. The commission, by regulation, shall establish the requirements for the form of the application, and the information to be contained in it. Notice of the application shall be served upon the interested parties in the manner that the commission by regulation requires.

Sec. 42.06.260. Public hearings.

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

Sec. 42.06.270. Grant or denial of application.

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

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

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

Sec. 42.06.280. Insurance and security.

The commission may require a lessee to procure and furnish liability and property damage insurance from a company licensed to do business in the state or furnish other security or undertaking upon the terms and conditions the commission considers necessary if the commission finds that the net assets of the lessee are insufficient to protect the public from damage for which the lessee may be liable arising out of the construction or operation of the pipeline.

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

Repealed or Renumbered

Sec. 42.06.286. Pipeline carrier regulatory cost charge.

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

(b) The commission shall by regulation establish a method to determine annually the amount of the regulatory cost charge. If the amount the commission expects to collect under (a) of this section and under AS 42.05.254(a) exceeds the authorized budgets of the commission and the Department of Law public advocacy function under AS 42.04.070 (c) and AS 44.23.020(e), the commission shall, by order, reduce

the percentage determined under (e) of this section so that the total amount of the fees collected approximately equals the authorized budgets of the commission and the Department of Law public advocacy function under AS 42.04.070(c) and AS 44.23.020 (e) for the fiscal year.

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

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

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

(f) In this section, "gross revenue" means the total intrastate operating revenue as shown in a pipeline carrier's annual report required by the commission by regulation.

#### Sec. 42.06.290. Abandonment.

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

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

#### Sec. 42.06.300. Modification, suspension, or revocation of certificates.

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

- (1) the requirements of public convenience and necessity;
- (2) misrepresentation of a material fact in obtaining the certificate;

(3) unauthorized discontinuance or abandonment of all or part of a service that is the subject of the certificate;

(4) wilful failure to comply with the provisions of this chapter, or the regulations or orders of the commission; or

(5) wilful failure to comply with a term, condition, or limitation of the certificate.

#### Sec. 42.06.305. Transfer of operating authority.

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

(b) The commission's decision under this section shall be based on the best interest of the public.

### Article 03. SERVICES AND FACILITIES

#### Sec. 42.06.310. Standards of service and facilities.

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

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

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

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

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

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

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

- (B) substantial detriment to the services furnished by the North Slope natural gas pipeline facility; or
- (C) the creation of safety hazards.

Sec. 42.06.320. Discrimination in service.

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

Sec. 42.06.330. Power of commission to allocate usage.

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

Sec. 42.06.340. Order for joint use or connection.

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

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

(5) determine the apportionment of costs and responsibility for operation and maintenance of the interconnection.

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

## Article 04. RATES AND RATE SCHEDULES

### Sec. 42.06.350. Tariffs, contracts, filing, and public inspection.

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

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

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

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

(2) may not impose a reservation fee or similar charge for reservation of capacity in a natural gas pipeline for interruptible transportation service.

### Sec. 42.06.360. Adherence to tariffs.

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

### Sec. 42.06.370. Rates to be just and reasonable.

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

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

(c) Rates demanded, observed, charged, or collected by a North Slope natural gas pipeline carrier for intrastate service shall be designed as if that portion of the North Slope natural gas pipeline were a public utility regulated under the provisions of AS 42.05.

### Sec. 42.06.380. Discrimination in rates.

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

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

Sec. 42.06.390. Initial or revised rates.

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

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

(c) Initial and revised tariffs shall be filed in the manner provided in AS 42.06.350.

Sec. 42.06.400. Suspension of tariff filing.

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

(b) An order suspending a tariff filing may be vacated if, after investigation, the commission finds that it is in all respects proper. Otherwise the commission shall hold a hearing on the suspended filing and issue its order, before the end of the suspension period, granting, denying, or modifying the suspended tariff in whole or in part. If an initial tariff is suspended, the commission shall establish a reasonable temporary tariff. The commission may allow the collection of the filed initial tariff, or it may require collection of the temporary tariff. If the commission allows collection of the filed initial tariff, it shall require the pipeline carrier to place the revenue representing the difference between the filed tariff and the temporary tariff in escrow in a financial institution approved by the commission, and keep accurate accounts of all amounts received, specifying by whom and in whose behalf the amounts are paid. At the end or vacation of the suspension period the amount, if any, owing to the pipeline carrier from the difference between the temporary tariff and the permanent tariff shall be paid to the pipeline carrier. The

surplus, if any, shall be refunded to the persons in whose behalf the amounts were paid into escrow. Funds may not be released from escrow without the commission's prior written consent and instructions to the escrow agent. The commission may allow the pipeline carrier, at the carrier's expense, to substitute a bond or letter of credit in lieu of the escrow requirement. If the commission requires collection of the temporary tariff, it shall require the shipper to place the revenue representing the difference between the filed initial tariff and the temporary tariff in escrow in a financial institution approved by the commission, and require that accurate accounts similar to those specified above in this section be kept by the carrier and the shipper. The person owing shall pay the person owed to the satisfaction of the commission within 30 days after the commission order allowing or setting a permanent tariff. The amount, if any, by which the permanent tariff exceeds the temporary tariff shall be paid by the shipper to the carrier, or, if the temporary tariff exceeds the permanent tariff, the difference shall be paid by the carrier to the shipper, and in either event such payment shall be made with interest calculated on the balance due at the end of each calendar month at the legal rate, as defined in AS 45.45.010 (a). The commission may allow the shipper, at the shipper's expense, to substitute a bond or letter of credit in place of the escrow requirement.

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

(d) One who initiates a change in existing tariffs bears the burden of proving the reasonableness of the change.

#### Sec. 42.06.410. Power of commission to fix rates.

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

(b) If an investigation is conducted in multiple phases, the commission may establish a rate at the end of a single phase. The rate established at the end of a single phase is to be considered a final rate under AS 42.06.400. If the rate established at the conclusion of the proceeding under (a) of this section or after judicial review is less than the rate established after a single phase of an investigation, a shipper is entitled to a refund of the difference between the amounts paid by the shipper and the amounts that would have been paid under the rate established at the conclusion of the proceeding or after judicial review. If the rate

established at the conclusion of the proceeding under (a) of this section or after judicial review is more than the rate established after a single phase, a pipeline carrier is entitled to a payment of the difference between the amounts paid to the carrier and the amount that would have been paid under the rate established at the conclusion of the proceeding or after judicial review.

Sec. 42.06.420. Valuation of property of a pipeline carrier.

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

## Article 05. ACCOUNTS, RECORDS, AND REPORTS

Sec. 42.06.430. General provisions as to accounts, records, and reports.

To the extent necessary to the performance of the duties of the commission as provided in this chapter:

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

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

(3) the commission may by regulation require a pipeline carrier or affiliated interest engaged in activities relating to pipelines to establish and maintain as part of its system of accounts continuing property records showing, as to property units which are actually being used in pipeline activity in this state, the year of placement in service, original cost and current location, and, as to a pipeline system, accounts and records in a manner showing, on a current basis, the original cost of the system in the state and related reserves for depreciation; from time to time the commission shall determine the proper and adequate rates of depreciation for each major class of property of an oil or gas pipeline facility;

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

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

(6) for pipelines subject to the Interstate Commerce Act or the Natural Gas Act, the uniform system of accounts and manner of maintaining them and the property records kept and maintained shall, where considered practicable by the commission, be the same as required under regulations prescribed by the applicable federal agency; however, where federal law permits a pipeline carrier to consolidate its

reporting for more than one pipeline in which it has an ownership interest, the commission shall require the reports to be made on an individual pipeline basis for any pipeline located wholly or in part in the state;

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

(A) for a pipeline subject to 49 U.S.C. 1-1240 (Interstate Commerce Act) or 15 U.S.C. 717-717w (Natural Gas Act), a copy of the annual report as filed with the appropriate federal agency under the applicable Act, and, for other pipelines, a report of general corporation information and financial statements in the same general format as the report of pipelines of the same classification subject to the jurisdiction of the appropriate federal agency;

(B) in the same general format as the report referred to in (A) of this paragraph, a statement of income and investment applicable to pipelines in this state, and a statement of investment, revenues, direct operating costs and other expenses, detailed in accordance with the uniform system of accounts to be applied under this chapter, for each pipeline system designated by the commission under (1) of this section; and

(C) such additional accounts and information as may be required under (2) of this section;

(8) the commission may require such additional accounts and information as may be necessary.

#### Sec. 42.06.440. Inspection of records.

(a) Subject to AS 31.05.035 (c), the commission shall at all reasonable times have access to, and may designate any of its employees, agents, or consultants to inspect and examine, the accounts, records, books, maps, inventories, appraisals, valuations, or other reports and documents, kept by an oil or gas pipeline carrier or its affiliated interests, or prepared or kept for it by others, which relate to any contract or transaction between them. The commission may require an oil or gas pipeline carrier or its affiliated interest to file with the commission copies of any or all of these accounts, records, books, maps, inventories, appraisals, valuations, or other reports and documents, or to maintain those materials at some convenient location in the state specified by order. Costs incurred in complying with a commission request to review the records referred to in this section or to maintain these records in such a manner as to make them conveniently available for the commission's review shall be borne by the party controlling the records.

(b) Subject to AS 31.05.035 (c), when participating as a party under AS 42.04.070(c) or AS 44.23.020 (e), the attorney general shall, at all reasonable times, have the right to reasonable access to, and may designate any of the attorney general's employees, agents, or consultants to inspect and examine, the accounts, records, books, maps, inventories, appraisals, valuations, or other reports and documents kept by an oil or gas pipeline carrier that are relevant to the issues presented in any adjudicatory matter before the commission in which the attorney general has appeared as a party under AS 42.04.070 (c) or AS 44.23.020(e). This access is subject to reasonable notice to all parties with an opportunity to object before the commission. Included under this subsection is access to records or other documents under the custody or control of an affiliated interest of the pipeline carrier that relate to any contract or transaction between the public utility and the affiliated interest. Costs incurred in complying with a request to review the records referred to in this subsection or to maintain those records in such a manner as to make them conveniently available for review shall be borne by the party controlling the records.

#### Sec. 42.06.445. Public records.

(a) Except as provided in (b) and (c) of this section, or prohibited from disclosure under state or federal law, records in the possession of the commission are open to public inspection at reasonable times.

(b) The commission may, by regulation, classify records submitted to it by regulated pipeline carriers or pipelines as privileged records that are not open to the public for inspection. However, if a record involves an application or tariff filing pending before the commission, the commission may release the record for the purpose of preparing for or making a presentation to the commission in the proceeding if the record or information derived from the record is considered by the commission to be relevant to an issue in the proceeding, and if the record or information will be used by the commission in the proceeding. A record or information that the commission releases under this subsection may be released only after giving to the party that filed the record or information reasonable notice of its intention to release the record or information and opportunity to object to that release.

(c) A document filed with the commission that relates to the finances or operations of a pipeline subject to federal jurisdiction and that is in addition to or other than the copy of a document required to be filed with the appropriate federal agency is open to inspection only by an appropriate officer or official of the state for relevant purposes of the state.

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

(e) A commissioner may certify as to all official records of the commission under this section and may certify as to all official acts of the commission under this chapter.

(f) In this section, "record" means a report, file, book, account, paper, or application, and the facts and information contained in it.

#### Sec. 42.06.450. Investigations.

The commission may investigate any matter that affects the cost or quality of transportation of oil or gas in this state by pipeline carriers or affiliated interests or of related services and may ensure compliance by pipeline carriers and their affiliated interests with the provisions of this chapter. Investigations may be public, nonpublic, or both. In conducting investigations, the commission may compel the attendance and testimony of witnesses and the production of records and testimony before the commission or its designee. In the course of an investigation, the commission may exclude from attendance at the taking of investigative testimony all persons except the person compelled to attend, that person's attorney, members of the commission or the commission's staff, and a person authorized to transcribe the proceedings. Following an investigation and after providing reasonable notice and opportunity for hearing, the commission may institute proceedings to determine whether unreasonable practices have occurred, whether expenditures have been imprudently incurred, the costs of those practices or expenditures, and whether a pipeline carrier and its affiliated interests are in compliance with this chapter. Following such a determination, the commission shall take appropriate action to ensure that neither the direct nor indirect costs of any unreasonable practices or imprudent expenditures are included in any tariff or rate of a pipeline carrier or are borne by the public or the state.

#### Sec. 42.06.460. Designation of service agents.

Each pipeline carrier shall file with the commission a written appointment of a named permanent resident, which may be a corporation, of this state as its registered agent in this state upon whom service of all

notices, regulations, and requests of the commission may be made. The appointment shall specify an address in this state of the appointed agent, which address may be changed from time to time by filing a new Alaska address with the commission. If a pipeline carrier fails to appoint an agent, service of notices, regulations, and requests may be made by posting a copy in the main office of the commission and filing a copy in the office of the lieutenant governor.

## Article 06. ENFORCEMENT PROVISIONS

Sec. 42.06.470. Effect of regulations.

Regulations adopted by the commission under this chapter have the effect of law.

Sec. 42.06.480. Review and enforcement.

(a) All final orders of the commission are subject to judicial review under AS 44.62.560 - 44.62.570.

(b) If an appeal is not taken from a final order of the commission within 10 calendar days, the commission may apply to the superior court for enforcement of this chapter, the regulations adopted under it, and the orders of the commission. The court shall enforce the order by injunction or other process.

*Sec. 42.06.490. - 42.06.500l Complaint against pipeline carriers; adjudication. [Repealed, Sec. 20 ch 110 SLA 1981].*

Repealed or Renumbered

*Sec. 42.06.510. [Renumbered as AS 42.06.445 ].*

Repealed or Renumbered

*Sec. 42.06.520. [Renumbered as AS 42.06.607 ].*

Repealed or Renumbered

Sec. 42.06.530. Injunctions and monetary sanctions.

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

(b) A person may be enjoined by the superior court from committing a violation mentioned in this section.

Sec. 42.06.540. Civil penalties.

(a) In addition to all other penalties and remedies provided by law, a person subject to the provisions of this chapter, as well as an officer, manager, agent, or employee of that person, that either violates or procures, aids, or abets the violation of any provision of this chapter, or of an order, regulation, or written requirement of the commission is subject to a maximum penalty of \$500 for each violation.

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

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

Sec. 42.06.550. Each violation a separate offense.

Each violation of a provision of this chapter or of an order, decision, regulation, or written requirement of the commission is a separate and distinct offense and in case of a continuing violation each day the violation continues constitutes a separate offense.

Sec. 42.06.560. Actions to recover damages and penalties; disposition.

(a) Actions to recover damages and penalties under this chapter shall be brought by the attorney general in a court of competent jurisdiction.

(b) All damages and penalties recovered under the provisions of this chapter shall be paid to the commission and deposited by it in the general fund of the state.

Sec. 42.06.570. Penalties cumulative.

(a) All penalties imposed under this chapter are cumulative.

(b) An action to recover a civil penalty is not a bar to an enforcement proceeding to require compliance, or to any other remedy provided by this chapter.

Sec. 42.06.580. Joinder of actions.

Under the applicable court rules, appeals from orders of the commission, applications for enforcement of commission orders and actions for recovery of damages or penalties may be joined. The court may in the interests of justice separate the actions.

Sec. 42.06.590. Private cause of action.

(a) A person subjected to an unlawful rate, price, service, or practice, in violation of this chapter, may sue in a state court of appropriate jurisdiction for damages resulting from the unlawful rate, price, service, or practice.

(b) If the violation described in (a) of this section resulted in the overcharge of rate or price, the person paying the unlawful rate or price is entitled to recover as damages at least double the amount of the overcharge.

(c) A person recovering damages under this section is entitled to a reasonable attorney fee, fixed by the court, to be taxed and collected as costs of the suit.

## Article 07. GENERAL PROVISIONS

Sec. 42.06.600. [Renumbered as AS 42.06.230 (b)].

Repealed or Renumbered

Sec. 42.06.605. Restrictions on commissioners and employees.

A member or employee of the commission may not have an official connection with, or hold stock or securities in, or have a pecuniary interest in, a corporation, company, or association engaged in the production or the transportation of oil or gas. A member or employee may not act upon a matter in which the relationship of the member or employee with any person creates a conflict of interest.

Sec. 42.06.607. Application fees.

The commission may establish reasonable fees to cover the costs of initial processing of applications for certificates or amendments to certificates.

Sec. 42.06.610. Expenses of investigation or hearing.

(a) During a proceeding held under this chapter, the commission may allocate the cost of the proceeding among the parties, including the commission, as is just under the circumstances. In allocating costs, the commission shall consider the regulatory cost charge paid directly or indirectly under AS 42.06.286. The costs allocated may include the costs of any time devoted to investigations or hearings by hired consultants, whether or not the consultants appear as witnesses or participants. The commission shall provide an opportunity for any person objecting to an allocation to be heard before the allocation becomes final.

(b) After completion of a proceeding held under this chapter, the commission may reallocate the cost of the proceeding among the parties, including the commission, as is just under the circumstances. The costs which are reallocated may include the costs of time devoted to investigations or hearings by hired consultants, whether or not the consultants appear as witnesses or participants. The commission shall provide an opportunity for any person objecting to a reallocation to be heard before the reallocation becomes final.

(c) *[Repealed, Sec. 28 ch 90 SLA 1991]*.

(d) Notwithstanding the commission's discretion under (a) and (b) of this section to allocate costs to parties, the commission may not require a state agency to pay any costs allocated to the state agency.

Sec. 42.06.620. Classification.

The commission may by regulation provide for the classification of oil or gas pipeline facilities based upon differences in annual revenue, assets, nature of ownership, and other appropriate distinctions and as between these classifications, by regulation, provide for different reporting, accounting, and other regulatory requirements.

Sec. 42.06.630. Definitions.

In this chapter

(1) "affiliated interest" means any person or other entity that

(A) is controlled or owned, in whole or in part, by a pipeline carrier;

(B) is controlled or owned, in whole or in part, by an entity which controls or owns, in whole or in part, a pipeline carrier;

(C) is an agent, employee, contractor, or subcontractor of a pipeline carrier or any entity controlled or owned, in whole or in part, by a pipeline carrier; or

(D) controls or owns, in whole or in part, a pipeline carrier;

(2) "capacity" means, with reference to a North Slope natural gas pipeline, the average daily volume throughput of the North Slope natural gas pipeline, calculated at the normal operating pressure of the North Slope natural gas pipeline as set out in the pipeline design;

(3) "commission" means the Regulatory Commission of Alaska (AS 42.04.010);

(4) "commissioner" means a member of the commission;

(5) "duties" means duties, powers, obligations, and functions;

(6) "firm transportation service" means service by a natural gas pipeline carrier that is not subject to a prior claim by another shipper or another class of service; service constitutes "firm transportation service" if the service receives the same priority as any other class of firm transportation service;

(7) "gas" includes all natural gas and hydrocarbons produced at the wellhead and not defined as oil;

(8) "interruptible transportation service" means service by a natural gas pipeline carrier in which the carrier's pipeline system capacity may be subject to a prior claim by another shipper or another class of service; a service constitutes "interruptible transportation service" if the service is given a lower priority than another class of service, resulting in noncontinuous service to a shipper of natural gas;

(9) "intrastate," as applied to the transportation of North Slope natural gas, means the transportation of North Slope natural gas between any point within the state and another point within the state, for ultimate consumption of the North Slope natural gas within the state;

(10) "natural gas pipeline" or "natural gas pipeline facility" means all the facilities of a total system of pipe, whether owned or operated by a natural gas pipeline carrier under a contract, agreement, or lease in this state used by a natural gas pipeline carrier for transportation of natural gas for delivery, storage, or further transportation, and including all pipe, pump and compressor stations, station equipment, and all other facilities used or necessary for an integral line of pipe to effectuate the transportation from point to point, excluding, however, gas processing plants, treaters, and separators;

(11) "natural gas pipeline carrier" means the owner, including a corporation, company, or other entity organized under the laws of the United States or of any state, of a natural gas pipeline, as the term is defined in this section, or an interest in it, or any person, including a corporation, company, or other entity organized under the laws of the United States or of any state, authorized to construct or extend pipeline facilities under this chapter;

(12) "North Slope natural gas" means gas that is produced from the area of Alaska lying north of 68 degrees North latitude and that, but for a pipeline subject to regulation under this chapter, had not been committed for sale and delivery in a commercial market due to the prevailing costs or price conditions;

(13) "North Slope natural gas pipeline" or "North Slope natural gas pipeline facility" means all the facilities of a total system of pipe, whether owned or operated by a North Slope natural gas pipeline carrier under a contract, agreement, or lease, in this state used by a North Slope natural gas pipeline carrier for transportation of North Slope natural gas for delivery, storage, or further transportation, including all pipe, pump, and compressor stations, station equipment, gas processing plants, treaters, separators, and all other facilities used or necessary for an integral line of pipe to carry out the

transportation from point to point, but excluding marine terminal facilities and the integrated plant, facilities, and equipment, including pollution control equipment, used for conditioning, storage, handling, or processing of North Slope natural gas into liquefied natural gas;

(14) "North Slope natural gas pipeline carrier" means the owner, including a corporation, company, or other entity organized under the laws of the United States or of a state, of a North Slope natural gas pipeline, or an interest in it, or a person, including a corporation, company, or other entity, organized under the laws of the United States or of a state, authorized to construct, operate, or extend North Slope natural gas pipeline facilities under this chapter.

(15) "oil" includes crude oil, and other hydrocarbons regardless of gravity that are produced at the wellhead in liquid form, its products and liquid hydrocarbons, including the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas;

(16) "pipeline" or "pipeline facility" means all the facilities of a total system of pipe, whether owned or operated by a pipeline carrier under a contract, agreement, or lease, in this state used by a pipeline carrier for transportation, for hire and as a common carrier, of oil, gas, coal, or other mineral slurry for delivery, storage, or further transportation, and including all pipe, pump and compressor stations, station equipment, and all other facilities used or necessary for an integral line of pipe to effectuate the transportation from point to point, excluding, however, gas processing plants, treaters, and separators;

(17) "pipeline carrier" means the owner, including corporations organized under the laws of the United States or of any state, of any pipeline, as the term is defined in this section, or any interest in it, or any person, including corporations organized under the laws of the United States or of any state, authorized to construct or extend pipeline facilities under AS 42.06.240 (a);

(18) "regulation" includes rules;

(19) "tariff" means a rate, charge, toll, rule, or regulation of an oil or gas pipeline facility relating to services furnished by the facility to the general public or other users for compensation.

Sec. 42.06.640. Short title.

This chapter may be cited as the Pipeline Act.